



SUPREME COURT OF THE PHILIPPINES
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Republic of the Philippines
Supreme Court
Manila City

EN BANC

NOTICE

Sirs/Mesdames:

Please take notice that the Court en banc issued a Resolution dated JULY 11, 2023, which reads as follows:

“G.R. No. 249444 (NATIONAL TRANSMISSION CORPORATION [TransCo], petitioner, vs. COMMISSION ON AUDIT [COA] and COA CHAIRPERSON MICHAEL G. AGUINALDO, respondents.)

X-----X

RESOLUTION

Before the Court is a Petition for *Certiorari*¹ (Petition) under Rule 65, in relation to Rule 64, of the Rules of Court assailing (a) Decision No. 2019-389² dated August 28, 2019 of the Commission on Audit (COA) Commission Proper (COA Proper) and (b) Decision No. 2013-02³ dated June 24, 2013 of the COA Corporate Government Sector (CGS)-Cluster 3.

On May 4, 2009, petitioner National Transmission Corporation (TransCo) entered into a Contract of Professional Consultancy Services⁴ with Atty. Ily Grace T. Yumul (Atty. Yumul) from April 1, 2009 to September 30, 2009.⁵ Atty. Yumul’s contract outlined the scope of her services as follows:

1. Render legal [advice] on contract matters referred to her by the TransCo President and [Chief Executive Officer (CEO)] for comments, inclusive of [memoranda of understandings], agreements[,] and other legal documents requiring the President [and] CEO’s actions;
2. [Advise] TransCo’s President [and] CEO on administrative and/or corporate legal issues affecting TransCo’s operations; [and]

¹ *Rollo*, pp. 3–77.

² *Id.* at 36–43. Signed by Chairperson Michael G. Aguinaldo and Commissioners Jose A. Fabia and Roland C. Pondoc.

³ *Id.* at 32–35. Signed by Director IV Rufina S. Laquindanum.

⁴ *Id.* at 72–75.

⁵ *Id.* at 37 and 73.

[Handwritten Signature]

3. Perform other professional services as may be required by TransCo's President [and] CEO in relation to the performance of [the] Contract.⁶

On December 8, 2010, TransCo received COA Notice of Disallowance (ND) No. TC-10-007⁷ dated November 19, 2010, which disallowed two payments made to Atty. Yumul in the amounts of ₱94,000.00 and ₱47,000.00 for consultancy services she rendered for the months of June, July, and August 2009. In the ND, the COA Auditor noted that the disallowance was due to the non-submission of (a) a written conformity and acquiescence of the Office of the Government Corporate Counsel (OGCC) and (b) a written concurrence of the COA in the hiring of a private lawyer. The ND cited COA Circular No. 95-011⁸ dated December 4, 1995 and Office of the President (OP) Memorandum Circular No. 9⁹ (MC No. 9) dated August 27, 1998 as legal bases.

The following persons¹⁰ were made liable for the disallowed amounts in the ND:

Name	Position / Designation	Nature of Participation in the Transaction
F.C. Palo (Ms. Palo) ¹¹	Financial Specialist	Verified that the Disbursement Voucher (DV) was supported by the necessary documents
Arthur N. Aguilar (Mr. Aguilar)	President and CEO	Certified that expenses were necessary, lawful, and incurred under his direct supervision; approved payment and approved the service contract.
Atty. Yumul	Payee	Received the payment

TransCo appealed the ND to the Director of the COA CGS-Cluster B on February 24, 2011.¹² However, on December 29, 2015, TransCo received a Notice of Finality of COA CGS-Cluster 3 Decision No. 2013-02 affirming the ND.¹³ Alleging that it had not yet received a copy of the COA-CGS Cluster 3 Decision, TransCo sent a clarificatory letter through its General

⁶ *Id.* at 72-73.

⁷ *Id.* at 44.

⁸ Titled "PROHIBITION AGAINST EMPLOYMENT BY GOVERNMENT AGENCIES AND INSTRUMENTALITIES, INCLUDING GOVERNMENT-OWNED OR CONTROLLED CORPORATIONS, OF PRIVATE LAWYERS TO HANDLE THEIR LEGAL CASES."

⁹ Titled "PROHIBITING GOVERNMENT-OWNED OR CONTROLLED CORPORATIONS (GOCCS) FROM REFERRING THEIR CASES AND LEGAL MATTERS TO THE OFFICE OF THE SOLICITOR GENERAL, PRIVATE LEGAL COUNSEL OR LAW FIRMS AND DIRECTING THE GOCCS TO REFER THEIR CASES AND LEGAL MATTERS TO THE OFFICE OF THE GOVERNMENT CORPORATE COUNSEL, UNLESS OTHERWISE AUTHORIZED UNDER CERTAIN EXCEPTIONAL CIRCUMSTANCES."

¹⁰ *Rollo*, p. 38.

¹¹ "Mr. Palo" in some parts of the *rollo*.

¹² *Rollo*, pp. 45-58, Appeal Memorandum.

¹³ *Id.* at 61.

Counsel on January 11, 2016¹⁴ and subsequently filed a Petition for Review¹⁵ on February 17, 2016 before the COA Proper.

Before the COA Proper, TransCo argued that the requirements of prior written conformity of the OGCC and prior written concurrence of the COA apply only when private lawyers are being hired to handle cases pending before a court or other tribunal.¹⁶ In contrast, Atty. Yumul's services were limited to giving independent legal advice to TransCo's President and CEO.¹⁷ TransCo also argued that the requirements of prior written conformity and prior written concurrence are imposed only on legal consultants, and are therefore an obvious prejudice against those in the legal profession *versus* other professionals.¹⁸

On September 12, 2019,¹⁹ TransCo received a copy of COA Proper Decision 2019-389²⁰ dated August 28, 2019, the dispositive portion of which states:

WHEREFORE, premises considered, the Petition for Review of [TransCo], of [COA CGS]-Cluster 3 Decision No. 2013-02 dated June 24, 2013, is **DENIED**. Accordingly, [ND] No. TC-10-007 dated November 19, 2010, on the payment of consultancy services of [Atty. Yumul] for the months of June to August 2009 in the total amount of [P]141,000.00, is hereby **AFFIRMED**. However, Atty. Yumul is not required to refund the amount paid to her for services rendered, but [Mr. Aguilar], President and [CEO], and [Ms. Palo], Financial Specialist, both of TransCo, shall be solidarily liable for the amount of [P]141,000.00.²¹ (Emphasis in the original)

The COA Proper decided TransCo's Petition for Review on the merits, upholding the validity of both COA Circular No. 95-011 and OP MC No. 9 dated August 27, 1998.²² Citing *Dr. Oñate v. COA*,²³ the COA explained that the requirements of prior written conformity of the OGCC and prior written concurrence of the COA in the hiring of private lawyers apply regardless of the type of legal service performed.²⁴ It also dismissed TransCo's argument that the COA Circular No. 95-011 is biased against lawyers, noting that even the Supreme Court has recognized the validity thereof.²⁵ As to the argument that Atty. Yumul was hired as a consultant of the President and not of TransCo as a whole, the COA said that this distinction is of no moment, the prohibition being applicable to any form of legal service and being based on the public policy to curtail unnecessary

¹⁴ *Id.*

¹⁵ *Id.* at 59-71.

¹⁶ *Id.* at 62-65.

¹⁷ *Id.* at 65-67.

¹⁸ *Id.* at 67-69.

¹⁹ *Id.* at 7.

²⁰ *Id.* at 36-43.

²¹ *Id.* at 42.

²² *Id.* at 39-40.

²³ 789 Phil. 260 (2016) [Per J. Peralta, *En Banc*].

²⁴ *Rollo*, p. 40.

²⁵ *Id.* at 41.

public expenditures.²⁶ Citing *Polloso v. Gangan*²⁷ (*Polloso*), the COA Proper modified the ND by excusing Atty. Yumul from refunding the amounts she received for services actually rendered, but maintained that Mr. Aguilar and Ms. Palo were solidarily liable for the amounts disallowed.²⁸

Hence, the instant Petition.

TransCo reiterates its argument that the requirements of prior written conformity of the OGCC and prior written concurrence of the COA are only applicable to the hiring of private lawyers who will represent government-owned and -controlled corporations (GOCC) before courts or tribunals.²⁹ It cites OGCC Memorandum Circular No. 2 entitled “Clarifying and Defining the Relationship Between the OGCC and Legal Departments and Retained Counsel of GOCCs, [Government Corporate Entities] and [Government Instrumentalities with Corporate Powers],” pointing out that the OGCC has control and supervision only over legal departments and retained counsels, while its legal consultant, Atty. Yumul, did not become part of said department and merely gave independent legal advice to a member of the Board.³⁰

TransCo maintains that applying the requirements of prior written conformity and concurrence in the hiring of legal consultants will result in bias or prejudice against a consultant in the legal profession, since there are no such requirements when hiring other professional consultants such as engineers or accountants.³¹

Finally, TransCo argues that the hiring of Atty. Yumul as consultant was necessary for TransCo to achieve its mandate under the Electric Power Industry Reform Act (EPIRA)³² and allowed TransCo to address urgent and complicated issues affecting transmission in the Philippines.³³ The TransCo officers who authorized the disbursement of funds acted in good faith,³⁴ and considering that the government benefited from Atty. Yumul’s services, the principle of *quantum meruit* must be applied to her.³⁵

On the other hand, the COA, through the Office of the Solicitor General (OSG), argues in its Comment³⁶ dated February 22, 2022 that there are substantial distinctions between the hiring of a private lawyer and a general consultant: (a) the hiring of a private lawyer undermines a

²⁶ *Id.*

²⁷ 390 Phil. 1101 (2000) [Per J. Kapunan, *En Banc*].

²⁸ *Rollo*, pp. 41–42.

²⁹ *Id.* at 9–10.

³⁰ *Id.* at 11–13.

³¹ *Id.* at 14–15.

³² REPUBLIC ACT NO. 9136 or AN ACT ORDAINING REFORMS IN THE ELECTRIC POWER INDUSTRY, AMENDING FOR THE PURPOSE CERTAIN LAWS AND FOR OTHER PURPOSES, approved on June 8, 2001.

³³ *Rollo*, pp. 16–17.

³⁴ *Id.* at 18–23.

³⁵ *Id.* at 23–26.

³⁶ *Id.* at 87–118.

harmonious and consistent interpretation of the law among all GOCCs; and (b) there is no specific government agency tasked to cater to the needs of GOCCs for non-legal services.³⁷ The OSG also argues that the COA did not act with grave abuse of discretion, as in fact, its assailed Decision No. 2019-389 is in accord with law.³⁸ TransCo also failed to prove either that Atty. Yumul's services were absolutely necessary or that she possessed a unique skillset to justify her engagement over TransCo's own legal department or the OGCC; in fact, Atty. Yumul was hired during her first year in the practice of law, and there was nothing in either her resumé or her accomplishment reports that would suggest any unique expertise.³⁹ Finally, the OSG argues that Ms. Palo and Mr. Aguilar, who approved the disbursement of funds in payment to Atty. Yumul, did not act in good faith, since at the time Atty. Yumul was hired, the Court's ruling in *Polloso* had already been promulgated for almost a decade.⁴⁰ Furthermore, Mr. Aguilar's decision to hire Atty. Yumul, a first-year lawyer, at a monthly retainer of ₱47,000.00 net of taxes, exceeded the basic monthly pay of an Associate Justice of the Court at that time.⁴¹

In its Reply⁴² dated September 2, 2022, TransCo merely echoes its arguments in the Petition, specifically (a) that the requirements of prior written conformity of the OGCC and prior written concurrence of the COA are discriminatory towards the legal profession;⁴³ (b) that the COA acted with grave abuse of discretion in strictly applying the requirements of prior written conformity and concurrence despite TransCo's exceptional and special circumstances;⁴⁴ and (c) that the TransCo officers who approved the payments to Atty. Yumul acted in good faith.⁴⁵

Issue

Whether or not the COA erred in affirming the disallowance of payments made to Atty. Yumul on the basis of the prior written conformity/concurrence requirements in COA Circular No. 95-011 and OP MC No. 9.

Ruling of the Court

After a careful review of the parties' submissions in this case, the Court finds that the COA correctly upheld the subject disallowance.

³⁷ *Id.* at 97.

³⁸ *Id.* at 100.

³⁹ *Id.* at 101.

⁴⁰ *Id.* at 103.

⁴¹ The OSG cites Executive Order No. 719 dated May 1, 2008, which provides that the basic monthly salary for Salary Grade 31 was ₱48,915.00. See *id.*

⁴² *Id.* at 127-138.

⁴³ *Id.* at 128-129.

⁴⁴ *Id.* at 129-132.

⁴⁵ *Id.* at 132-133.

In the fairly recent case of *PSALM Corporation v. COA*,⁴⁶ the Court emphasized that “the rationale for the concurrence requirement was to ensure the reasonableness of the amount of legal fees to be paid.”⁴⁷ On the other hand, the requirement of obtaining the conformity of the OSG or the OGCC is meant to attest to the “necessity and/or expediency of the hiring of providers of legal services.”⁴⁸ Consistent with this, both COA Circular No. 95-011 and OP MC No. 9 seek to reduce unnecessary government expenditure by minimizing the legal expenses of GOCCs.

These foundational principles of the conformity and concurrence requirements controvert TransCo’s claims that the said requirements do not apply to the hiring of Atty. Yumul because (a) she did not represent TransCo in any trial or proceeding before any court or tribunal and (b) she merely gave legal advice to a member of the Board, and not the agency itself. These distinctions are more apparent than real. Neither of these change the fact that public funds were used to pay for Atty. Yumul’s legal services, the necessity of which was not sufficiently proven by TransCo through the OGCC’s concurrence nor through any of its submissions before this Court. Aside from bare and generalized statements to the effect that Atty. Yumul’s services were necessary for TransCo to achieve its mandate under the EPIRA, TransCo did not offer any explanation as to why it relied on a private lawyer’s services, instead of its own legal department or the OGCC.

Furthermore, that the requirements apply to *any kind of legal service* (and not merely to those involving representation before a court or tribunal) was already settled in *Polloso*, where the Court said:

Contrary to the view espoused by petitioner, **the prohibition covers the hiring of private lawyers to render any form of legal service. It makes no distinction as to whether or not the legal services to be performed involve an actual legal controversy or court litigation.** Petitioner insists that the prohibition pertains only to “handling of legal cases,” perhaps because this is what is stated in the title of the circular. To rely on the title of the circular would go against a basic rule in statutory construction that a particular clause should not be studied as a detached and isolated expression, but the whole and every part of the statute must be considered in fixing the meaning of any of its part.

It bears repeating that the purpose of [COA Circular No. 86-255, with subject “Inhibition against employment by government agencies and instrumentalities, including government-owned or controlled corporations, of private lawyers to handle their legal cases” dated April 2, 1986] is to **curtail the unauthorized and unnecessary disbursement of public funds to private lawyers for services rendered to the government.** This is in line with the [COA’s] constitutional mandate to promulgate accounting and auditing rules and regulations including those for the

⁴⁶ G.R. No. 247924, November 16, 2021 [Per J. Lazaro-Javier, *En Banc*].

⁴⁷ *Id.*

⁴⁸ *Id.*

prevention and disallowance of irregular, unnecessary, excessive, extravagant[,] or unconscionable expenditures or uses of government funds and properties. Having determined the intent of the law, this Court has the imperative duty to give it effect even if the policy goes beyond the letter or words of the statute.⁴⁹ (Citations omitted and emphasis supplied)

Considering the goal of curtailing unnecessary expenditures on private legal services, the direct beneficiary of such services — whether the agency as a whole, or a member of the Board or other officer in particular — also becomes immaterial. After all, the legal services in question should still be pertinent to and redound to the benefit of TransCo despite being rendered directly to a member of the Board. In any case, the conformity of the OGCC and concurrence of the COA must be obtained before such legal services may be procured.

The Court also disagrees that the requirements of prior written conformity and concurrence are biased against the legal profession. TransCo points out that there are no such requirements when hiring other professional consultants such as engineers or accountants. However, TransCo failed to consider that the legal profession is distinct from such other professions because of the existence of government agencies established precisely to render legal services to the government, namely, the OSG and the OGCC. This difference in situation between lawyers and other professionals accounts for the difference in requirements and is not in any way a matter of bias or prejudice against the legal profession.

As regards the responsibility of returning the disallowed amounts, the Court deems it proper to discuss separately the individual liabilities of those listed in the COA's ND: Ms. Palo (financial specialist); Mr. Aguilar (President and CEO of TransCo); and Atty. Yumul herself.

In *Madera v. COA*,⁵⁰ the Court explained that the liability to return improperly disbursed public funds is a civil liability. The individual liabilities of the different actors involved in the disbursement depend on their participation and are anchored in different provisions of law. The Court said:

Correspondingly, personal liability to return the disallowed amounts must be understood as civil liability based on the loss incurred by the government because of the transaction, while administrative or criminal liability may arise from irregular or unlawful acts attending the transaction. This should be the starting point of determining who must return. The existence and amount of the loss and the nature of the transaction must dictate upon whom the liability to return is imposed.

⁴⁹ *Polloso v. Gangan*, 390 Phil. 1101, 1109, 1111 (2000) [Per J. Kapunan, *En Banc*].

⁵⁰ 882 Phil. 744 (2020) [Per J. Caguioa, *En Banc*].

Sections 38 and 39, Chapter 9, Book I of the Administrative Code of 1987 cover the civil liability of officers for acts done in performance of official duties:

SECTION 38. *Liability of Superior Officers.* — (1) A public officer shall not be civilly liable for acts done in the performance of his official duties, **unless there is a clear showing of bad faith, malice[,] or gross negligence.**

....

(3) A head of a department or a superior officer shall not be civilly liable for the wrongful acts, omissions of duty, negligence, or misfeasance of his subordinates, unless he has actually authorized by written order the specific act or misconduct complained of.

SECTION 39. *Liability of Subordinate Officers.* — No subordinate officer or employee shall be civilly liable for acts done by him in good faith in the performance of his duties. **However, he shall be liable for willful or negligent acts done by him which are contrary to law, morals, public policy[,] and good customs even if he acted under orders or instructions of his superiors.**

By the very language of these provisions, the liability for unlawful expenditures is civil. Nonetheless, since these provisions are situated in Chapter 9, Book I of the Administrative Code of 1987 entitled “General Principles Governing Public Officers,” the liability is inextricably linked with the administrative law sphere. **Thus, the civil liability provided under these provisions is hinged on the fact that the public officers performed his official duties with bad faith, malice, or gross negligence.**⁵¹ (Citations and underscoring omitted, and emphasis supplied)

The Court in *Madera* further explained how the participation and liability of officers who approved the disbursement of funds may be evaluated:

Notably, the COA’s regulations relating to the settlement of accounts and balances illustrate **when different actors in an audit disallowance can be held liable either based on their having custody of the funds, and having approved or certified the expenditure.** The Court notes that officers referred to under Sections 19.1.1 and 19.1.3 of the [Manual on Certificate of Settlement and Balances (MCSB)], and Sections 16.1.1 and 16.1.3 of the [Rules and Regulations on Settlement of Accounts (RRSA)], may nevertheless be **held liable based on the extent of their certifications contained in the forms required by the COA under Section 19.1.2 of MCSB, and Section 16.1.2 of the RRSA.** To ensure that public officers who have in their favor the unrebutted presumption of good faith and regularity in the performance of official duty, or those who can show that the circumstances of their case prove that

⁵¹ *Id.* at 792–794.

they acted in good faith and with diligence, the Court adopts Associate Justice Marvic M.V.F. Leonen's (Justice Leonen) proposed **circumstances or badges for the determination of whether an authorizing officer exercised the diligence of a good father of a family:**

For one to be absolved of liability the following requisites [may be considered]: (1) Certificates of Availability of Funds pursuant to Section 40 of the Administrative Code, (2) In-house or Department of Justice legal opinion, (3) that there is no precedent disallowing a similar case in jurisprudence, (4) that it is traditionally practiced within the agency and no prior disallowance has been issued, [or] (5) with regard [to] the question of law, that there is a reasonable textual interpretation on its legality.

Thus, to the extent that these badges of good faith and diligence are applicable to both approving and certifying officers, these should be considered before holding these officers, whose participation in the disallowed transaction was in the performance of their official duties, liable. The presence of any of these factors in a case may tend to uphold the presumption of good faith in the performance of official functions accorded to the officers involved, which must always be examined relative to the circumstances attending therein.⁵² (Emphasis supplied)

While *Madera* was a case involving the disallowance of benefits and allowances paid to government employees, the foregoing principles on civil liability of public officers were similarly applied to cases involving disallowed payments under government contracts in the subsequent case of *Torreta v. COA*⁵³ (*Torreta*). In *Torreta*, the Court promulgated the following rules on the return of disallowed amounts:

1. If a [ND] is set aside by the Court, no return shall be required from any of the persons held liable therein.
2. If a [ND] is upheld, the rules on return are as follows:
 - a. Approving and certifying officers who acted in good faith, in the regular performance of official functions, and with the diligence of a good father of the family are not civilly liable to return consistent with Section 38 of the Administrative Code of 1987.
 - b. Pursuant to Section 43 of the Administrative Code of 1987, approving and certifying officers who are clearly shown to have acted with bad faith, malice, or gross negligence, are solidarily liable together with the recipients for the return of the disallowed amount.
 - c. The civil liability for the disallowed amount may be reduced by the amounts due to the recipient based on the application of the principle of *quantum meruit* on a case[-]to[-]case basis.

⁵² *Id.* at 797-798.

⁵³ 889 Phil. 1119 (2020) [Per J. Gaerlan, *En Banc*].

d. These rules are without prejudice to the application of the more specific provisions of law, COA rules and regulations, and accounting principles depending on the nature of the government contract involved.⁵⁴

The Court resolves the liabilities of Ms. Palo, Mr. Aguilar, and Atty. Yumul based on the foregoing principles.

In its assailed Decision No. 2019-389, the COA Proper excused Atty. Yumul from returning the amounts paid to her on the ground of good faith. The Court agrees, but for a different reason: Atty. Yumul must be excused from return on the basis of *quantum meruit* as required by Rule 2(c) in *Torreta*. There is no dispute whatsoever that she rendered the services required of her under her contract with TransCo. To require her to return the amounts she received would be tantamount to unjust enrichment on the part of the government.

As to Ms. Palo, she must likewise be excused from returning the disallowed amounts on the basis of good faith, consistent with Rule 2(a) in *Torreta*. The ND notes that her participation in the disbursement of the subject funds was in verifying that the DV was supported by the necessary documents. This does not pertain to the propriety of engaging the services of Atty. Yumul.

In *Celeste v. COA*,⁵⁵ the Court discussed the liability of officers whose duty was to certify the completeness of supporting documents:

Officers performing ministerial duties are not involved in decision-making for the agency to which they belong. They are bound to implement the directives of those in higher and policy-determining positions.

....

In this case, that Buted was merely performing a ministerial duty when he certified the availability of funds is evident, and was admitted by COA. He could not have refused to certify the availability of funds if that were factually true, and nothing in the records would indicate otherwise. The Court finds that De Leon's participation as cashier is likewise ministerial.

....

The foregoing is clear on the role of the cashier in disbursement: he or she verifies completeness of signatures and supporting documents prior to payment to the recipients concerned. If the signatures and supporting documents are complete, he or she signs the check and later on releases the same to the payee. There is no room for the cashier to refuse to perform these duties. Like the role of Buted as SCA, De Leon, as Cashier, was not responsible for and in fact did not certify as to the

⁵⁴ *Id.* at 1159-1160, citing Associate Justice Estela M. Perlas-Bernabe's Concurring Opinion.

⁵⁵ G.R. No. 237843, June 15, 2021 [Per J. Caguioa, *En Banc*].

legality and propriety of the grant and payment of CNAI — the very matter upon which the disbursement was based.

Hence, insofar as the disallowances in this case are anchored on the illegality of granting CNAI to managerial employees [—] and not on the availability of funds nor adequacy of documents [—] during the subject periods, Buted and De Leon acted in good faith and cannot be held liable for the amounts disallowed.⁵⁶ (Citation, emphasis, and underscoring omitted)

The COA, through the OSG, argues that Ms. Palo acted in bad faith, because if she had done her duty, she could have noticed that there was neither OGCC conformity nor COA concurrence. The Court disagrees. The requirements of written conformity and concurrence should have been complied with prior to entering into the contract with Atty. Yumul. At the time payment was to be made — the same time that Ms. Palo would participate in the disbursement process — a contract had already been signed and services had already been rendered.⁵⁷ It would have been fair for Ms. Palo to assume that the higher officials of TransCo had complied with all necessary requirements prior to engaging Atty. Yumul's services. While further inquiry by her could have served as extra precaution, the lack thereof will not result in a finding of bad faith or gross negligence on her part.

In contrast, the Court finds no badges of good faith in the approval of the service contracts by Mr. Aguilar. COA Circular No. 95-011 was issued on December 4, 1995, and OP MC No. 9 was issued on August 27, 1998. Both issuances had already been in effect for years when TransCo entered into the contract with Atty. Yumul in 2009. To be clear, this does not automatically equate to malice and intent to do wrong in the hiring of a private lawyer, but he should have been aware of these issuances. To repeat, TransCo has not been able to offer any concrete explanation for its failure to first obtain the written conformity of the OGCC and the written concurrence of the COA before engaging Atty. Yumul's services.

Nevertheless, Mr. Aguilar's civil liability to return the disallowed amounts is subject to Rule 2(c) in *Torreta*, which dictates that the amount to be returned by those solidarily liable shall be equitably reduced where *quantum meruit* is applicable, to the extent of the amount which the recipient was allowed to retain. The Court explained:

In these cases, it is deemed fit that the passive recipients be ordered to return what they received subject to the application of the principle of *quantum meruit*. *Quantum meruit* literally means "as much as he deserves." Under this principle, a person may recover a reasonable value of the thing he delivered or the service he rendered. The principle


⁵⁶ *Id.*

⁵⁷ *Rollo*, p. 73. The Contract of Services between TransCo and Atty. Yumul states that payment was to be made at the end of every month, subject to the submission of accomplishment reports for the periods covered. See Contract of Professional Consultancy Services, Article IV, Contractual Fee.

also acts as a device to prevent undue enrichment based on the equitable postulate that it is unjust for a person to retain benefit without paying for it. The principle of *quantum meruit* is predicated on equity. In the case of *Geronimo v. COA*, it has been held that “the [r]ecovery on the basis of *quantum meruit* was allowed despite the invalidity or absence of a written contract between the contractor and the government agency.” In *Dr. Eslao v. COA*, the Court explained that the denial of the contractor’s claim would result in the government unjustly enriching itself. The Court further reasoned that justice and equity demand compensation on the basis of *quantum meruit*. **Thus, in applying this principle, the amount in which the petitioners together with the other liable individuals [must return] shall be equitably reduced.**⁵⁸ (Citations omitted and emphasis supplied)

WHEREFORE, premises considered, the Petition for *Certiorari* is hereby **PARTIALLY GRANTED**. Decision No. 2019-389 dated August 28, 2019 of the Commission on Audit is **AMENDED**. Petitioner National Transmission Corporation’s officials and employees named in the subject Notices of Disallowances are hereby excused from returning the disallowed amounts.” (52)

By authority of the Court:


MARIFE M. LOMIBAO-CUEVAS
Clerk of Court *fk*

⁵⁸ *Torreta v. COA*, 889 Phil. 1119, 1148–1149 (2020) [Per J. Gaerlan, *En Banc*].

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