

EN BANC

[G.R. No. 213716. October 10, 2017]

JOSE S. RAMISCAL, JR., *petitioner*, vs. **COMMISSION ON AUDIT**, *respondent*.

SYLLABUS

- 1. REMEDIAL LAW; CIVIL PROCEDURE; SPECIAL CIVIL ACTIONS; CERTIORARI; LIMITED TO ERRORS OF JURISDICTION OR GRAVE ABUSE OF DISCRETION.—** The Constitution and the Rules of Court limit the permissible scope of inquiry in petitions under Rules 64 and 65 to errors of jurisdiction or grave abuse of discretion. There is grave abuse of discretion when there is an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act in contemplation of law as when the judgment rendered is not based on law and evidence but on caprice, whim and despotism. Hence, unless tainted with grave abuse of discretion, the COA's simple errors of judgment cannot be reviewed even by this Court. Rather, the general policy has been to accord weight and respect to the decisions of the COA. The limitation of the Court's power of review over the COA's rulings merely complements its nature as an independent constitutional body that is tasked to safeguard the proper use of government (and, ultimately, the people's) property by vesting it with the power to: (1) determine whether government entities comply with the law and the rules in disbursing public funds; and (2) disallow illegal disbursements of these funds. The deference is also based on the doctrine of separation of powers and the COA's presumed expertise in the laws it is entrusted to enforce.
- 2. CIVIL LAW; CIVIL CODE; MODES OF ACQUIRING OWNERSHIP; PRESCRIPTION; DOES NOT RUN AGAINST THE STATE AND ITS SUBDIVISIONS.—** The right of the State, through the COA, to recover public funds that have been established to be irregularly and illegally disbursed does not prescribe. Article 1108 (4) of the Civil Code expressly provides that prescription does not run against the State and its subdivisions. This rule has been consistently adhered to in a long line of cases involving reversion of public lands, where

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it is often repeated that when the government is the real party in interest, and it is proceeding mainly to assert its own right to recover its own property, there can, as a rule, be no defense grounded on laches or prescription. We find that this rule applies, regardless of the nature of *the government property*. Article 1108 (4) does not distinguish between real or personal properties of the State. There is also no reason why the logic behind the rule's application to reversion cases should not equally apply to the recovery of any form of government property. In fact, in an early case involving a collection suit for unpaid loans between the Republic and a private party, the Court, citing Article 1108 (4) of the Civil Code, held that the case was brought by the Republic in the exercise of its sovereign functions to protect the interests of the State over a public property.

- 3. REMEDIAL LAW; CIVIL PROCEDURE; CAUSE OF ACTION; ELEMENTS.**— A cause of action arises when that which should have been done is not done, or that which should not have been done is done. A party's right of action accrues only when the confluence of the following elements is established: (a) a right in favor of the plaintiff by whatever means and under whatever law it arises or is created; (b) an obligation on the part of defendant to respect such right; and (c) an act or omission on the part of such defendant violative of the right of the plaintiff. It is only when the last element occurs or takes place can it be said in law that a cause of action has arisen. More, the aggrieved party must have either actual or presumptive knowledge of the violation by the guilty party of his rights either by an act or omission.
- 4. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; THREEFOLD LIABILITY RULE; THE ACTION THAT MAY RESULT FOR EACH LIABILITY UNDER THE RULE MAY PROCEED INDEPENDENTLY OF ONE ANOTHER, AS THE QUANTUM OF EVIDENCE REQUIRED IN EACH CASE IS DIFFERENT.**— The "threefold liability rule" holds that the wrongful acts or omissions of a public officer may give rise to civil, criminal and administrative liability. This simply means that a public officer may be held civilly, criminally, and administratively liable for a wrongful doing. Thus, if such violation or wrongful act results in damages to an individual, the public officer may be held civilly liable to reimburse the

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injured party. If the law violated attaches a penal sanction, the erring officer may also be punished criminally. Finally, such violation may also lead to suspension, removal from office, or other administrative sanctions. The action that may result for each liability under the “threefold liability rule” may proceed independently of one another, as in fact, the quantum of evidence required in each case is different. Thus, in *Reyna v. Commission on Audit*, we held that a criminal case filed before the Office of the Ombudsman is distinct and separate from the proceedings on the disallowance before the COA. Furthermore, the right of the government to exercise administrative supervision over erring public officials is lost when they cease their functions in office. Consequently, the government must commence an administrative case while they are in office; otherwise, the disciplining body would no longer have any jurisdiction over them. The same is not true with civil and criminal cases. We have ruled in the past that even if an administrative case may no longer be filed against public officials who have already resigned or retired, criminal and civil cases may still be filed against them. The administrative case contemplated under the threefold liability rule is one that goes into the conduct of the public official and is intended to be disciplinary.

- 5. ID.; CONSTITUTIONAL COMMISSIONS; COMMISSION ON AUDIT; AUTHORITY OVER NATIONAL REVENUE TAXES; LIMITED TO THE DUTY TO ASCERTAIN WHETHER A GOVERNMENT AGENCY HAS PAID THE CORRECT TAXES AND IT DOES NOT CARRY THE CONCOMITANT DUTY TO COLLECT TAXES.—** The COA has authority to ascertain whether a government agency has paid the correct taxes. Section 2, Article IX-D of the Constitution gives the Commission the broad power, authority, and duty to examine, audit, and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property, owned or held in trust by, or pertaining to, the Government, or any of its subdivisions, agencies, or instrumentalities. This constitutional mandate is echoed in various provisions of PD No. 1445. x x x The authority of the Commission over national revenue taxes, however, appears to be limited. Section 28 of PD 1445 gives the Commission the authority to examine books, papers, and documents filed by individuals and corporations with, and which are in the custody

of, government offices in connection with government revenue collection operations, **for the sole purpose of ascertaining** that all funds determined by the appropriate agencies as collectible and due the government have actually been collected, except as otherwise provided in the Internal Revenue Code. This authority, in turn, is consistent with the duty of the Commission to establish that all obligations of the agency have been accurately recorded, and with its power, under such regulations as it may prescribe, to authorize and enforce the settlement of accounts subsisting between agencies of the government. This limited duty to ascertain under Section 28 expressly gives way to the Internal Revenue Code. It does not carry the concomitant duty to collect taxes. As it is, the BIR is the government agency vested with the power and duty to both assess and collect national internal revenue taxes.

6. ID.; ID.; ID.; NOTICE OF CHARGE; SHALL BE ISSUED SHOULD THERE BE ANY DEFICIENCIES BECAUSE OF UNDER-APPRAISAL, UNDER-ASSESSMENT OR UNDER-COLLECTION IF THE GOVERNMENT AGENCY OR UNIT BEING EXAMINED BY THE COMMISSION ON AUDIT IS ONE THAT HAS THE AUTHORITY TO FUNCTION TO COLLECT TAXES.—

It is a different matter x x x if the government agency or unit being examined and audited by the COA is one that has the authority or function to collect taxes, such as the BIR itself or a local government unit. In such cases, the audit would not only cover the disbursements made, but also the revenues, receipts, and other incomes of the agency or unit. Should there be any deficiencies because of under-appraisal, under-assessment or under-collection, the COA shall issue a notice of charge. This is not the case here. The underpaid capital gains and documentary stamp taxes did not come from the account of the AFP-RSBS and did not form part of its revenues, receipts or other incomes. The COA therefore erred in issuing the NC against petitioner for the collection of these taxes. It is, in a sense, barking up the wrong tree. Quite tellingly, the SAT Report did not recommend that the AFP-RSBS be held accountable for the deficient taxes. Instead, it merely recommended the enforcement by the BIR for the collection of the deficiency on capital gains and documentary stamp taxes.

APPEARANCES OF COUNSEL

Eusebio H. Gatbonton for petitioner.
The Solicitor General for respondent.

D E C I S I O N

JARDELEZA, J.:

This is a petition for review on *certiorari*¹ under Rule 64, in relation to Rule 65, of the Rules of Court, assailing the Decision² dated September 13, 2012 and Resolution³ dated May 6, 2014 of the Commission on Audit (COA) in COA Decision No. 2012-139. The Decision denied petitioner Jose S. Ramiscal's appeal for exclusion from liability in Notice of Disallowance (ND) No. 2010-07-084-(1996) and Notice of Charge (NC) No. 2010-07-001-(1996), while the Resolution denied petitioner's motion for reconsideration for lack of merit.

During the 11th Congress (1998 to 2001), the Senate's Committees on Accountability of Public Officers and Investigations (Blue Ribbon) and National Defense and Security held hearings to investigate the alleged anomalous acquisitions of land by the Armed Forces of the Philippines Retirement and Separation Benefits System (AFP-RSBS) in Calamba, Laguna and Tanauan, Batangas. Prompted by a series of resolutions by the Senate, the Deputy Ombudsman for the Military and other Law Enforcement Offices sent to the COA a request dated April 29, 2004 for the conduct of audit on past and present transactions of the AFP-RSBS. Thus, the COA constituted a special audit team (SAT)⁴ to conduct the special audit/investigation.⁵

¹ *Rollo*, pp. 3-18.

² *Id.* at 20-27.

³ *Id.* at 28.

⁴ By virtue of COA Legal And Adjudication Office Order No. 2004-125 dated December 29, 2004, as amended. *Id.* at 20-21.

⁵ *Id.* at 20.

The SAT found, among others, that the AFP-RSBS, represented by petitioner, purchased from Concord Resources, Inc.⁶ four parcels of land with a total area of 227,562 square meters in Calamba, Laguna (collectively, the Calamba properties). These lands were intended to serve as right-of-way to the 600-hectare property of the AFP-RSBS called the Calamba Land Banking project.⁷ The SAT discovered that two deeds of sale containing different considerations were executed to cover the purchase. The deed of sale recorded with the Registry of Deeds of Calamba, Laguna disclosed that the total purchase price was ₱91,024,800. On the other hand, the records obtained by the audit team from the AFP-RSBS management revealed that another deed of sale was executed by Concord Resources, Inc. alone and has a purchase price of ₱341,343,000. The AFP-RSBS paid Concord Resources, Inc. this consideration as was recorded in its books of account.⁸

The SAT concluded that the deed of sale filed before the Registry of Deeds was the true deed of sale, considering that it was signed by both parties. It followed then that the true purchase price was ₱91,024,800 and as such, the government lost ₱250,318,200 when it allegedly paid Concord Resources, Inc. ₱341,343,000.⁹

The SAT also concluded that the execution of two deeds of sale covering the same parcels of land resulted in the underpayment of capital gains and documentary stamp taxes in the amount of ₱16,270,683. Based on the amount paid by the AFP-RSBS to Concord Resources, Inc., the total taxes that should have been paid was ₱22,187,295 and not ₱5,916,612.¹⁰

⁶ Represented by its President and Treasurer, Elizabeth Liang and Jesus Garcia, respectively. See *id.* at 6.

⁷ *Id.* at 223.

⁸ *Id.* at 37-38.

⁹ *Id.* at 38.

¹⁰ *Id.* at 38-39.

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On October 10, 2005, the SAT issued Audit Observation Memorandum No. 2005-01 (AOM) to then AFP-RSBS President, Cesar Jaime for comment.¹¹

On July 28, 2010, the SAT issued ND No. 2010-07-084-(1996)¹² and NC No. 2010-07-001-(1996).¹³ The ND directed petitioner, Elizabeth Liang, Jesus Garcia, and Rosemarie Ragasa¹⁴ to immediately settle the amount of ₱250,318,200 representing excess payment for the Calamba properties. The NC, on the other hand, directed petitioner, Oscar Martinez,¹⁵ and Alma Paraiso¹⁶ to immediately settle the amount of ₱16,270,683 representing the deficiency for capital gains and documentary stamp taxes.

Petitioner appealed the ND and the NC before the Commission Proper, but the same was denied for lack of merit.

Hence, this petition which raises the following issues:

1. Whether the action of the COA in issuing the ND and NC had already prescribed;
2. Whether the COA had already lost its jurisdiction over the case and on the person of petitioner when a criminal case, involving the same set of facts and circumstances, had already been filed with the Sandiganbayan;
3. Whether the COA is authorized to issue an NC involving the payment of capital gains and documentary stamp taxes which are national internal revenue taxes; and
4. Whether the COA has authority to institute an administrative complaint or proceedings against petitioner who had already resigned.

¹¹ *Id.* at 202-205.

¹² *Id.* at 214-215.

¹³ *Id.* at 216-217.

¹⁴ Revenue District Officer, RR No.9, ROO No. 56, Calamba City.

¹⁵ VP Comptroller of AFP-RSBS.

¹⁶ Head Internal Audit of AFP-RSBS.

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On March 27, 2017, petitioner also filed an Urgent Motion for Issuance of Temporary Restraining Order, praying that the COA be enjoined to suspend or recall its Order of Execution No. 2017-012 on the NC.

We partially grant the petition.

The Constitution and the Rules of Court limit the permissible scope of inquiry in petitions under Rules 64 and 65 to errors of jurisdiction or grave abuse of discretion.¹⁷ There is grave abuse of discretion when there is an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act in contemplation of law as when the judgment rendered is not based on law and evidence but on caprice, whim and despotism.¹⁸ Hence, unless tainted with grave abuse of discretion, the COA's simple errors of judgment cannot be reviewed even by this Court.¹⁹ Rather, the general policy has been to accord weight and respect to the decisions of the COA. The limitation of the Court's power of review over the COA's rulings merely complements its nature as an independent constitutional body that is tasked to safeguard the proper use of government (and, ultimately, the people's) property by vesting it with the power to: (1) determine whether government entities comply with the law and the rules in disbursing public funds; and (2). disallow illegal disbursements of these funds.²⁰ The deference is also based on the doctrine of separation of powers and the COA's presumed expertise in the laws it is entrusted to enforce.²¹

¹⁷ *Fontanilla v. The Commission Proper, Commission on Audit*, G.R. No. 209714, June 21, 2016, 794 SCRA 213, 223-224.

¹⁸ *City of General Santos v. Commission on Audit*, G.R. No. 199439, April 22, 2014, 723 SCRA 77, 86.

¹⁹ *Fontanilla v. The Commission Proper, Commission on Audit*, *supra* note 17 at 223-224.

²⁰ Concurring and Dissenting Opinion of Justice Brion in *Technical Education and Skills Development Authority (TESDA) v. Commission on Audit*, G.R. No. 204869, March 11, 2014, 718 SCRA 402, 429.

²¹ See *Delos Santos v. Commission on Audit*, G.R. No. 198457, August 13, 2013, 703 SCRA 502, 513.

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Bearing the foregoing principles in mind, we now proceed to determine whether the COA gravely abused its discretion in affirming the ND and NC issued against petitioner.

I

Petitioner argues that the ND and NC have already prescribed pursuant to Articles 1149 and 1153 of the Civil Code. Article 1149 provides that all other actions whose periods are not fixed in the Civil Code or in other laws must be brought within five (5) years from the time the right of action accrues. Article 1153, on the other hand, provides that the period for prescription of actions to demand accounting runs from the day the persons who should render the same cease in their functions. Petitioner explains that the transaction subject of the ND and NC occurred in 1997, a year before he resigned in 1998. He concluded that in accordance with Articles 1149 and 1153, the COA has until 2003 within which to issue an ND or NC. As it happened, however, it was only in 2004 when the audit investigation transpired. Consequently, the ND and NC issued against him in 2010 have already prescribed.

Petitioner is mistaken. The right of the State, through the COA, to recover public funds that have been established to be irregularly and illegally disbursed does not prescribe.

Article 1108 (4) of the Civil Code expressly provides that prescription does not run against the State and its subdivisions. This rule has been consistently adhered to in a long line of cases involving reversion of public lands, where it is often repeated that when the government is the real party in interest, and it is proceeding mainly to assert its own right to recover its own property, there can, as a rule, be no defense grounded on laches or prescription.²² We find that this rule applies, regardless of the nature *of the government property*. Article 1108 (4) does not distinguish between real or personal properties of the State. There is also no reason why the logic behind the

²² *Republic v. Heirs of Agustin L. Angeles*, G.R. No. 141296, October 7, 2002, 390 SCRA 502, 509.

rule's application to reversion cases should not equally apply to the recovery of any form of government property. In fact, in an early case involving a collection suit for unpaid loans between the Republic and a private party, the Court, citing Article 1108 (4) of the Civil Code, held that the case was brought by the Republic in the exercise of its sovereign functions to protect the interests of the State over a public property.²³

Moreover, the SAT was created by authority of COA Legal and Adjudication Office Order No. 2004-125. SATs may be created by the Legal and Adjudication Office of the COA based on complaints or audit findings indicating existence of fraud as contained in audit reports or audit observation memoranda.²⁴ This flows from the investigative and inquisitorial powers of the COA under Section 40 of Presidential Decree (PD) No. 1445, otherwise known as the General Auditing Code of the Philippines.²⁵ Thus, while ordinarily, under Section 52 of PD 1445, a settled account may only be reopened or reviewed within three years after the original settlement on the grounds that it is tainted with fraud, collusion, or error calculation, or when new and material evidence is discovered, a SAT is not constrained by this time limit. It may still reopen and review accounts that have already been post-audited and/or settled pursuant to Section 52. An Office Order directing the special audit is deemed sufficient authority to reopen the accounts.²⁶ As applied here,

²³ *Republic v. Grijaldo*, G.R. No. L-20240, December 31, 1965, 15 SCRA 681, 687.

²⁴ COA Memorandum No. 2002-053.

²⁵ Presidential Decree No. 1445, Sec. 40. x x x

1. The Chairman or any Commissioner of the Commission, the central office managers, the regional directors, the auditors of any government agency, and any other official or employee of the Commission specially deputed in writing for the purpose by the Chairman shall, in compliance with the requirement of due process, have the power to summon the parties to a case brought before the Commission for resolution, issue *subpoena* and *subpoena duces tecum*, administer oaths, and otherwise take testimony in any investigation or inquiry on any matter within the jurisdiction of the Commission. x x x

²⁶ COA Circular No. 2009-006, Chapter III, Sec. 15.2.

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however, there is as yet no settled account to speak of because it was only in 2003 when the nature of the AFP-RSBS as a government or public entity was decided with finality in *People v. Sandiganbayan, Jose S. Ramiscal, Jr., et al.*²⁷

Even if we follow petitioner's argument that Articles 1149 and 1153 of the Civil Code apply here, the action of the COA is still not barred by the statute of limitations. Indeed, petitioner's actions occurred in 1997, after the consummated sale of the Calamba properties and its supposed inclusion in the account of the AFP-RSBS. However, the COA's cause of action would accrue later, for it was only in 2004 when it was informed of a possible irregularity of the sale when the Ombudsman requested it to conduct an audit of prior transactions of the AFP-RSBS.

A cause of action arises when that which should have been done is not done, or that which should not have been done is done. A party's right of action accrues only when the confluence of the following elements is established: (a) a right in favor of the plaintiff by whatever means and under whatever law it arises or is created; (b) an obligation on the part of defendant to respect such right; and (c) an act or omission on the part of such defendant violative of the right of the plaintiff. It is only when the last element occurs or takes place can it be said in law that a cause of action has arisen. More, the aggrieved party must have either actual or presumptive knowledge of the violation by the guilty party of his rights either by an act or omission.²⁸

²⁷ G.R. No. 145951, August 12, 2003, 408 SCRA 672.

²⁸ *Banco Filipino Savings and Mortgage Bank v. Court of Appeals*, G.R. No. 129227, May 30, 2000, 332 SCRA 241, 252. A similar principle operates in criminal cases involving violations of special laws. The Court has expounded on this in *Disini v. Sandiganbayan First Division*, G.R. Nos. 169823-24, September 11, 2013, 705 SCRA 459, 481-483:

Generally, the prescriptive period shall commence to run on the day the crime is committed. That an aggrieved person "entitled to an action has no knowledge of his right to sue or of the facts out of which his right arises," does not prevent the running of the prescriptive period. An exception to this rule is the "*blameless ignorance*" doctrine, incorporated in Section 2 of Act No. 3326. Under this doctrine, "the

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To recall, the Ombudsman requested the COA to conduct an audit in view of *People v. Sandiganbayan, Jose Ramiscal, Jr., et al.*, where the Court ruled that the AFP is a government entity whose funds are public in nature. Petitioner argued in that case that the AFP-RSBS is a private entity. He, in fact, admitted in his Appeal Memorandum before the COA that prior to *People v. Sandiganbayan, Jose Ramiscal, Jr., et al.*, the AFP-RSBS has been operating as a private entity since its creation in 1973.²⁹ Thus, the special audit in 2004 was the first audit ever conducted over its funds.

statute of limitations runs only upon discovery of the fact of the invasion of a right which will support a cause of action. In other words, the courts would decline to apply the statute of limitations where the plaintiff does not know or has no reasonable means of knowing the existence of a cause of action.” It was in this accord that the Court confronted the question on the running of the prescriptive period in *People v. Duque* which became the cornerstone of our 1999 Decision in *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto* (G.R. No. 130149), and the subsequent cases which Ombudsman Desierto dismissed, emphatically, on the ground of prescription too. Thus, we held in a catena of cases, that if the violation of the special law was not known at the time of its commission, the prescription begins to run only from the discovery thereof, i.e., discovery of the unlawful nature of the constitutive act or acts.

Corollary, it is safe to conclude that the prescriptive period for the crime which is the subject herein, commenced from the date of its discovery in 1992 after the Committee made an exhaustive investigation. When the complaint was filed in 1997, only five years have elapsed, and, hence, prescription has not yet set in. The rationale for this was succinctly discussed in the 1999 Presidential Ad Hoc Fact-Finding Committee on Behest Loans, that “it was well-high impossible for the State, the aggrieved party, to have known these crimes committed prior to the 1986 EDSA Revolution, because of the alleged connivance and conspiracy among involved public officials and the beneficiaries of the loans.” In yet another pronouncement, in the 2001 *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto* (G.R. No. 130817), the Court held that during the Marcos regime, no person would have dared to question the legality of these transactions. (Italics in the original emphasis supplied.)

²⁹ *Rollo*, p. 224.

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The COA immediately created the SAT in 2004 upon the request of Ombudsman. In 2005, the SAT had issued its AOM against the AFP-RSBS. At this point, however, an AOM is merely an initial step in the conduct of an investigative audit to determine the propriety of the disbursements made.³⁰ The AOM issued to the AFP-RSBS, in particular, merely requested it to explain: (1) why the AFP-RSBS paid Concord Resources, Inc. P341,343,000 based on a unilateral deed of sale instead of P91,024,800 pursuant to a bilateral deed of sale executed by the parties; (2) why the AFP-RSBS acquiesced on the execution of two (2) deeds of sale covering the same parcels of land that resulted in the underpayment of taxes; (3) which of the two (2) deeds of sale is genuine; and (4) why the AFP-RSBS paid a consideration which is 328% higher than the property's zonal valuation per Department of Finance Order No. 16-97 dated December 16, 1996.³¹

After the issuance of an AOM, there are still several steps to be conducted before a final conclusion can be made or before the proper action can be had against the auditee.³² As we have elaborated in *Corales v. Republic*:

A perusal of COA Memorandum No. 2002-053, particularly Roman Numeral III, Letter A, paragraphs 1 to 5 and 9, reveals that any finding or observation by the Auditor stated in the AOM is not yet conclusive, as the comment/justification of the head of office or his duly authorized representative is still necessary before the Auditor can make any conclusion. The Auditor may give due course or find the comment/justification to be without merit but in either case, the Auditor shall clearly state the reason for the conclusion reached and recommendation made. Subsequent thereto, the Auditor shall transmit the AOM, together with the comment or justification of the Auditee and the former's recommendation to the Director, Legal and Adjudication Office (DLAO), for the sector concerned in Metro Manila and/or the Regional

³⁰ *Corales v. Republic*, G.R. No. 186613, August 27, 2013, 703 SCRA 623, 640-641.

³¹ *Rollo*, pp. 202-205.

³² *Corales v. Republic*, *supra*.

Legal and Adjudication Cluster Director (RLACD) in the case of regions. The transmittal shall be coursed through the Cluster Director concerned and the Regional Cluster Director, as the case may be, for their own comment and recommendation. The DLAO for the sector concerned in the Central Office and the RLACD shall make the necessary evaluation of the records transmitted with the AOM. When, on the basis is thereof: he finds that the transaction should be suspended or disallowed, he will then issue the corresponding Notice of Suspension (NS), Notice of Disallowance (ND) or Notice of Charge (NC), as the case may be, furnishing a copy thereof to the Cluster Director. Otherwise, the Director may dispatch a team to conduct further investigation work to justify the contemplated action. If after in-depth investigation, the DLAO for each sector in Metro Manila and the RLACD for the regions find that the issuance of the NS, ND, and NC is warranted, he shall issue the same and transmit such NS, ND or NC, as the case may be, to the agency head and other persons found liable therefor.³³

From the foregoing, it would be from the issuance of an AOM in 2005 that the COA's right of action against petitioner, or its right to disallow or charge AFP-RSBS' accounts, would have only accrued. It was only then that the COA would have had actual or presumptive knowledge of any illegal or irregular disbursement of public funds. Hence, the COA would have had until 2010 within which to issue a notice of disallowance or charge, which is considered as an audit decision, recommendation or disposition.³⁴

II

Petitioner argues that the audit proceedings may no longer proceed against him because of his prior retirement and the pendency of a criminal case involving the same facts before the Sandiganbayan. We disagree.

The "threefold liability rule" holds that the wrongful acts or omissions of a public officer may give rise to civil, criminal and administrative liability.³⁵ This simply means that a public

³³ *Id.*

³⁴ Revised Rules of Procedure of the Commission on Audit (2009), Rule IV, Sec. 4.

³⁵ *Office of the Ombudsman v. Andutan, Jr.*, G.R. No. 164679, July 27, 2011, 654 SCRA 539, 557.

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officer may be held civilly, criminally, and administratively liable for a wrongful doing. Thus, if such violation or wrongful act results in damages to an individual, the public officer may be held civilly liable to reimburse the injured party. If the law violated attaches a penal sanction, the erring officer may also be punished criminally. Finally, such violation may also lead to suspension, removal from office, or other administrative sanctions.³⁶

The action that may result for each liability under the “threefold liability rule” may proceed independently of one another, as in fact, the quantum of evidence required in each case is different.³⁷ Thus, in *Reyna v. Commission on Audit*,³⁸ we held that a criminal case filed before the Office of the Ombudsman is distinct and separate from the proceedings on the disallowance before the COA.

Furthermore, the right of the government to exercise administrative supervision over erring public officials is lost when they cease their functions in office. Consequently, the government must commence an administrative case while they are in office; otherwise, the disciplining body would no longer have any jurisdiction over them. The same is not true with civil and criminal cases. We have ruled in the past that even if an administrative case may no longer be filed against public officials who have already resigned or retired, criminal and civil cases may still be filed against them.³⁹ The administrative case contemplated under the threefold liability rule is one that goes into the conduct of the public official and is intended to be disciplinary.

This is not the nature of the present case against petitioner. The audit proceedings before the COA may be characterized

³⁶ *Tecson v. Sandiganbayan*, G.R. No. 123045, November 16, 1999, 318 SCRA 80, 88.

³⁷ See *Torredes v. Villamor*, G.R. No. 151110, September 11, 2008, 564 SCRA 492, 499-500; and *Ampil v. Office of the Ombudsman*, G.R. No. 192685, July 31, 2013, 703 SCRA 1, 39.

³⁸ G.R. No. 167219, February 8, 2011, 642 SCRA 210, 235.

³⁹ See *Re: Missing Exhibits and Court Properties in Regional Trial Court, Branch 4, Panabo City, Davao del Norte*, A.M. No. 10-2-41-RTC, February 27, 2013, 692 SCRA 8, 15; *Tecson v. Sandiganbayan*, *supra* note 36.

as administrative, but only in the sense that the COA is an administrative body. Essentially, though, the conduct of the audit was not an exercise of the government's administrative supervision over petitioner where he may be meted out with a penalty of suspension or dismissal from office, with an order of restitution a mere accessory penalty. What was being determined through the COA audit proceedings was his civil liability and accountability over the excess in the disbursement of public funds and the underpaid taxes.⁴⁰ The audit proceedings not being an administrative case against him, petitioner's resignation in 1998 does not serve to bar the present case.

III

Petitioner maintains that the COA has no jurisdiction to issue the NC involving the payment of capital gains and documentary stamp taxes because these are national revenue taxes, the assessment and collection of which fall within the jurisdiction of the Bureau of Internal Revenue (BIR).

Petitioner's argument is partially correct.

The COA has authority to ascertain whether a government agency has paid the correct taxes. Section 2, Article IX-D of the Constitution gives the Commission the broad power, authority, and duty to examine, audit, and settle all accounts

⁴⁰ See *Proton Pilipinas Corporation v. Republic*, G.R. No. 165027, October 12, 2006, 504 SCRA 528, 540-541, where the Court held that:

[T]he civil case for the collection of unpaid customs duties and taxes cannot be simultaneously instituted and determined in the same proceedings as the criminal cases before the Sandiganbayan, as it cannot be made the civil aspect of the criminal cases filed before it. It should be borne in mind that the tax and the obligation to pay the same are all created by statute; so are its collection and payment governed by statute. The payment of taxes is a duty which the law requires to be paid. Said obligation is not a consequence of the felonious acts charged in the criminal proceeding nor is it a mere civil liability arising from crime that could be wiped out by the judicial declaration of non-existence of the criminal acts charged. **Hence, the payment and collection of customs duties and taxes in itself creates civil liability on the part of the taxpayer.** Such civil liability to pay taxes arises from the fact, for instance, that one has engaged himself in business, and not because of any criminal act committed by him. (Emphasis supplied; citations omitted.)

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pertaining to the revenue and receipts of, and expenditures or uses of funds and property, owned or held in trust by, or pertaining to, the Government, or any of its subdivisions, agencies, or instrumentalities. This constitutional mandate is echoed in various provisions of PD No. 1445. Section 26, in part, specifically provides that the general jurisdiction of the Commission includes the examination, audit, and settlement of all debts and claims of any sort due from or owing to the Government or any of its subdivisions, agencies and instrumentalities. Additionally, paragraph 2, Section 25 of PD No. 1445 provides that, as a primary objective, the Commission shall develop and implement a comprehensive audit program that shall encompass an examination of financial transactions, accounts, and reports, including evaluation of compliance with applicable laws and regulations.

The authority of the Commission over national revenue taxes, however, appears to be limited. Section 28 of PD 1445 gives the Commission the authority to examine books, papers, and documents filed by individuals and corporations with, and which are in the custody of government offices in connection with government revenue collection operations, **for the sole purpose of ascertaining** that all funds determined by the appropriate agencies as collectible and due the government have actually been collected, except as otherwise provided in the Internal Revenue Code. This authority, in turn, is consistent with the duty of the Commission to establish that all obligations of the agency have been accurately recorded,⁴¹ and with its power, under such regulations as it may prescribe, to authorize and enforce the settlement of accounts subsisting between agencies of the government.⁴² This limited duty to ascertain under Section 28 expressly gives way to the Internal Revenue Code. It does not carry the concomitant duty to collect taxes. As it is, the BIR is the government agency vested with the power and duty to both assess and collect national internal revenue taxes

We disagree with the argument of the COA that it was merely performing its duty to ensure that all government revenues are

⁴¹ Presidential Decree No. 1445, Sec. 59.

⁴² Presidential Decree No. 1445, Sec. 34.

collected when it issued the NC. Again, Section 28 of PD 1445 is clear that the only purpose of the examination is to ascertain. Even under Section 35 of PD 1445, which COA cited in its assailed Decision, its authority to assist in the collection and enforcement of all debts and claims due the government shall be done **through proper channels**.⁴³ The COA's duty to collect or settle taxes, it appears, is done only in a facilitative manner.

It is a different matter, however, if the government agency or unit being examined and audited by the COA is one that has the authority or function to collect taxes, such as the BIR itself or a local government unit. In such cases, the audit would not only cover the disbursements made, but also the revenues, receipts, and other incomes of the agency or unit. Should there be any deficiencies because of under-appraisal, under-assessment or under-collection, the COA shall issue a notice of charge.⁴⁴

This is not the case here. The underpaid capital gains and documentary stamp taxes did not come from the account of the AFP-RSBS and did not form part of its revenues, receipts or other incomes. The COA therefore erred in issuing the NC against petitioner for the collection of these taxes. It is, in a sense, barking up the wrong tree. Quite tellingly, the SAT Report did not recommend that the AFP-RSBS be held accountable for

⁴³ See Presidential Decree No. 1445. Sec. 35. *Collection of indebtedness due the government*. The Commission shall, through proper channels assist in the collection and enforcement of all debts and claims, and the restitution of all funds or the replacement or payment at a reasonable price of property, found to be due the Government, or any of its subdivisions, agencies or instrumentalities, or any government-owned or controlled corporation or self-governing board, commission or agency of the government, in the settlement and adjustment of its accounts. If any legal proceeding is necessary to that end, the Commission shall refer the case to the Solicitor General, the Government Corporate Counsel, or the legal staff of the creditor government office or agency concerned to institute such legal proceeding. The Commission shall extend full support in the litigation. All such moneys due and payable shall bear interest at the legal rate from the date of written demand by the Commission.

⁴⁴ Revised Rules of Procedure of the Commission on Audit (2009), Rule 1, Sec. 4(8); See *Demaala v. Commission on Audit*, G.R. No. 199752, February 17, 2015, 750 SCRA 612.

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the deficient taxes. Instead, it merely recommended the enforcement by the BIR for the collection of the deficiency on capital gains and documentary stamp taxes.⁴⁵

Moreover, the deed of sale between the AFP-RSBS and Concord Resources, Inc. specifically provided that all taxes such as withholding tax, documentary stamp tax and other costs and expenses covering transfer tax, documentation and notarial and registration fees, shall be for the sole and exclusive account of Concord Resources, Inc.⁴⁶ In fact, both the SAT Report and the AOM noted that the Certificate Authorizing Registration No. 615456 dated August 27, 1996 issued by the Revenue District Officer of Calamba, Laguna disclosed that it was Concord Resources, Inc. which paid the capital gains and documentary stamp taxes.⁴⁷

Finally, we find it incongruent to disallow the difference of P250,318,200 but, at the same time, charge P16,270,683 against petitioner for the alleged underpaid taxes. Considering that the amount of P91,024,800 is being held as the correct purchase price of the sale, the correct taxes in the amount of P5,916,612 have already been settled. To demand more on the ground that all income from whatever sources is taxable would unjustly enrich the government.

WHEREFORE, the instant petition is hereby **PARTIALLY GRANTED**. COA Decision No. 2012-139 dated September 13, 2012 and Resolution dated May 6, 2014 are hereby **AFFIRMED** with the **MODIFICATION** that petitioner is **NOT LIABLE** under Notice of Charge No. 2010-07-001-(1996).

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Bersamin, del Castillo, Perlas-Bernabe, Leonen, Caguioa, Tijam, and Reyes, Jr., JJ., concur.

Leonardo-de Castro, Peralta, and Gesmundo, JJ., no part.

Martires, J., on official leave.

⁴⁵ *Rollo*, p. 45.

⁴⁶ *Id.* at 60.

⁴⁷ *Id.* at 39, 203.