

EN BANC

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

**JOSE S. RAMISCAL, JR., PETITIONER, VS. COMMISSION ON
AUDIT, RESPONDENT.**

DECISION

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 Decision^[2] dated September 13, 2012 and Resolution^[3] 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]

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 P91,024,800. 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 P341,343,000. 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 P91,024,800 and as such, the government lost P250,318,200 when it allegedly paid Concord Resources, Inc. P341,343,000.^[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 P16,270,683. Based on the amount paid by the AFP-RSBS to Concord Resources, Inc., the total taxes that should have been paid was P22,187,295 and not P5,916,612.^[10]

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 Ragasa^[14] to immediately settle the amount of P250,318,200 representing excess payment for the Calamba properties. The NC, on the other hand, directed petitioner, Oscar Martinez,^[15] and Alma Paraiso^[16] to immediately settle the amount of P16,270,683 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.

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]

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 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, 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]

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.

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 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 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, NO, and NC is warranted, he shall issue the same and transmit such NS, NO 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