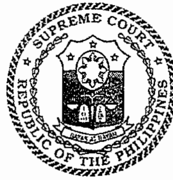

SUPREME COURT OF THE PHILIPPINES
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Republic of the Philippines
Supreme Court
Manila

EN BANC

SECURITIES AND EXCHANGE COMMISSION, Petitioner,	**G.R. No. 252198**
	Present:
-versus-	**GESMUNDO, *C.J.*, PERLAS-BERNABE, LEONEN, CAGUIOA, HERNANDO, CARANDANG, LAZARO-JAVIER, INTING, ZALAMEDA, LOPEZ, M.V. DELOS SANTOS, GAERLAN, ROSARIO, and LOPEZ, J.Y. *JJ.***
	Promulgated: April 27, 2021
COMMISSION ON AUDIT, Respondent.	

x---x

D E C I S I O N

LAZARO-JAVIER, *J.*:

The Case

This Petition for *Certiorari*[1] assails the following dispositions of the Commission on Audit (COA) in *Subject: Automatic Review of Commission on Audit National Government Sector – Cluster 2 Decision No. 2013-004 dated April 1, 2013, on the appeal of Securities and Exchange Commission (SEC) from Notice of Disallowance No. 11-003-101-(10) dated December 10, 2011 on SEC's monthly share in the Provident Fund contribution of its employees, amounting to ₱19,723,444.66*:

1) Decision No. 2018-010[2] dated January 17, 2018 insofar as it disallowed the Securities and Exchange Commission's (SEC's) payment of contribution to the provident fund for its officers and employees, using its retained earnings in the amount of ₱19,723,444.66, and holding the approving, certifying and authorizing officers solidarily liable to return the entire amount; and

2) Resolution No. 2020-180[3] dated January 29, 2020 which denied petitioner's motion for reconsideration.

Antecedents

By Resolution No. 31, Series of 2002,[4] petitioner Securities and Exchange Commission (SEC) established a provident fund for its officials and employees pursuant to the following provisions of the Securities Regulation Code[5] (SRC), *viz.*:

SEC. 7. Reorganization.– x x x

x x x

7.2. All positions of the Commission shall be governed by a compensation and position classification systems and qualification standards approved by the Commission based on a comprehensive job analysis and audit of actual duties and responsibilities. The compensation plan shall be comparable with the prevailing compensation plan in the Bangko Sentral ng Pilipinas and other government financial institutions and shall be subject to periodic review by the Commission no more than once every two (2) years without prejudice to yearly merit reviews or increases based on productivity and efficiency. **The Commission shall, therefore, be exempt from laws, rules, and regulations on compensation, position classification and qualification standards.** The Commission shall, however, endeavor to make its system conform as closely as possible with the principles under the Compensation and Position Classification Act of 1989 (Republic Act No. 6758, as amended). (Emphasis supplied)

x x x x

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[1] Under Rule 64 of the Revised Rules of Court, *rollo*, pp. 3-64.
[2] *Id.* at 70-78.
[3] *Id.* at 79-83.
[4]. "RESOLVED, That the establishment of a Provident Fund in the Securities and Exchange Commission (SEC) be, as the same, is hereby APPROVED subject to compliance of the existing guidelines on the same," *id.* at 102.
[5] Republic Act No. 8799, approved July 19, 2000.

SEC. 75. Partial Use Of Income. - To carry out the purposes of this Code, the Commission is hereby authorized, in addition to its annual budget, to retain and utilize an amount equal to one hundred million pesos (₱100,000,000.00) from its income.

The use of such additional amount shall be subject to the auditing requirements, standards and procedures under existing laws.

In its subsequent SEC-EXS Resolution No. 144, Series of 2003,[6] the SEC En Banc approved an across-the-board fifteen percent (15%) increase of its counterpart contribution to the provident fund based on the basic salaries of its officials and employees. This increase will be sourced from its retained income per Section 75 of the SRC. As for its officials and employees, three percent (3%) shall be deducted from their respective salaries as their contribution. Thus:

RESOLVED, **To APPROVE the 15% of the basic salary of the members(employees) as the Commission's counterpart contribution to the SEC Provident Fund which shall be taken from the SEC's retained income under Section 75 of the SRC** in addition to the service fees received by the Commission (e.g. GSIS service fees, LRF service fees, rebates from publication and rebates from building insurance premiums, etc.) **subject to the DBM's approval and the agreement by the employees on the 3% reduction from their salary as their personal contribution to the fund.** (Emphases supplied)

Meantime, the SEC got hold of a Letter[7] dated August 19, 2004 from the Department of Budget and Management (DBM) informing that there was no need for SEC to secure a Notice of Cash Allocation (NCA) for the use of the sum of ₱2,000,000.00 to cover capital outlays, specifically for the purchase of furniture, fixtures, and equipment, since the sum will be sourced from its retained income for Fiscal Year 2001, thus:

Under Section 75 of R.A. No. 8799, the Securities and Exchange Commission is authorized, in addition to its annual budget, to retain and utilize an amount equal to One Hundred Million Pesos (₱100,000,000) from the income to carry out the purposes of the Securities Regulation Code. Since the retained income of the Commission is an "off budget" account, meaning we do not release an allotment for the purpose, then the release of NCA is not necessary.

The utilization of the retained income is left to the discretion of the Commission subject to the usual accounting and auditing rules and regulations. (Emphasis supplied)

Encouraged by this pronouncement that "*[t]he utilization of the retained income is left to the discretion of the Commission,*" the SEC En Banc, on December 21, 2004, issued SEC-EXS Resolution No. 137, series of 2004.[8]

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[6] *Rollo*, p. 103.
[7] *Id.* at 104.
[8] *Id.* at 105.

The same approved the annual allocation of its provident fund contribution from its retained income starting 2004, *viz.*:

> RESOLVED, To APPROVE the annual allocation from the SEC Retention Income of the amount equivalent to fifteen percent (15%) of the annual payroll of the SEC employees computed monthly starting CY 2004 as the Commission's 15% counterpart contribution to the SEC Provident Fund.
>
> RESOLVED FURTHER, That the P20.7 Million Counterpart contribution of the Commission for 2004 shall be used as seed money of the Fund and the employee-members of the Fund shall be deducted of their 3% counterpart contribution starting January 2005.

Thereafter, pursuant to Section 93,[9] General Provisions of the General Appropriations Act for FY 2010 (GAA 2010), the SEC, on February 26, 2010, submitted to the DBM the following documents: a) Annual Operating Budgets for Retained Income for FY2010; and b) 2009 Financial Statements. These documents showed that ₱81,000,000.00 was allocated for salary differentials and other personnel benefits. **Out of this amount, ₱19,723,444.66** was disbursed as its counterpart contribution to the provident fund, *viz.*:

Check			
No.	Date	Amount	Particulars
360370	01-26-10	P1,652,025.45	For the month of January 2010
360415	02-22-10	1,409,170.95	For the month of February 2010
360420	02-24-10	243,925.95	For the month of February 2010
360459	03-16-10	4,242.33	For the month of January 2010
360465	03-19-10	1,651,763.83	For the month of March 2010
360502	04-14-10	7,975.68	For the month of February 2010
360507	04-22-10	1,647,026.80	For the month of April 2010
360556	05-20-10	9,748.31	For the month of March & April 2010
360557	05-20-10	1,617,723.17	For the month of May 2010
360596	06-10-10	1,613,743.08	For the month of June 2010
360665	07-27-10	1,617,872.91	For the month of July 2010
360696	08-24-10	1,609,714.79	For the month of August 2010
360698	09-01-10	15,941.63	For the months of June & July 2010
360730	09-20-10	1,625,945.87	For the month of September 2010
360795	10-12-10	1,635,985.11	For the month of October 2010
361180	12-23-10	23,533.83	For the months of Sept. and Nov. 2010
361214	12-23-10	9,027.85	For the month of August 2010
361213	12-23-10	1,819.04	For the month of October 2010
361212	12-23-10	4,761.75	For the month of December 2010
361235	12-30-10	36,274.92	For the months June to August 2010
361234	12-30-10	1,631,418.51	For the month November 2010
361233	12-30-10	1,623,433.70	For the month of December 2010

[9] Submission of Annual Operating Budgets for Retained Income and Financial Statements. Any department, bureau, office, or agency that is authorized by law to retain and use its income shall prepare and submit its annual operating budget covering its income and corresponding expenditures as well as its audited financial statements of the immediately preceding year to the DBM not later than March 1 of every year.

Failure to submit the said annual operating budget and the audited financial statements shall render any disbursement from said retained income void, and shall subject the erring officials and employees to disciplinary actions in accordance with Section 43, Chapter 5, and Section 80, Chapter 7, Book VI of E.O. No. 292, and to appropriate criminal action under existing penal laws.

361228	12-30-10	16,661.97	For the months of June & July 2010
361285	12-30-10	13,707.23	For the months of Sept.& Oct.2010
Total		**P19,723,444.66**[10]	

Under **Notice of Disallowance No. 11-003-101-(10)**[11] **dated December 10, 2011**, however, COA-SEC Audit Team Leader Milagros Torres-Songsong and Supervising Auditor Manuel Saes disallowed the disbursement of ₱19,723,444.66, thus:

> The amount of ₱19,723,444.66 was disallowed in audit for the following reasons:
>
> (a) The disbursement from retained income under the account Personal Services- Other Personnel benefits is not in accord with Section 1 of the Special Provisions for the SEC of Republic Act No.9970-General Appropriations Act for Fiscal Year 2010, since the purpose of the retained income is to augment the MOOE and CO requirements of the Commission. (Exhibit Y)
>
> (b) The grant of personnel benefits authorized by law but not supported by specific appropriation is deemed unauthorized as Section 23*(should be Section 37)* of Presidential Decree (PD) 1177 states that all moneys appropriated for functions, activities, projects and programs shall be available solely for the specific purpose for which these are appropriated; and,
>
> (c) Though the compensation plan of the Commission shall be comparable with the prevailing compensation plan of the Bangko Sentral ng Pilipinas and other government financial institutions, the same is still subject to the approval of the Office of the President pursuant to Sections 34 & 35 of Chapter 5, Book VI of the Administrative Code. Hence, the letter dated August 20, 2008 (Exhibit Z1-2) from the Office of the President showed such approval of the pay scale of SEC officials and the compensation plan for the SEC for CY 2008 and which specified that "Additional funding requirement of P11.8 Million shall be sourced from SEC's retention income. For succeeding years estimated at P15.7 Million annually shall be included in the PS appropriation for SEC."[12] *(italics supplied)*

Consequently, the following persons were directed to immediately settle the disallowed amount, namely: 1) Atty. Ma. Juanita E. Cueto (Commissioner); 2) Atty. Manuel Huberto B. Gaite (Commissioner); 3) Eladio M. Jala (Commissioner); 4) Adelaida C. Navarro-Banaria (Director, Financial Management Department); 5) Thoureth I. dela Cruz (Assistant Director, Budget and Fiscal Division, Fiscal Management Department); 6) Renato A. Santos (Assistant Director, Accounting Division, Fiscal Management Department); and 7) all Payees.[13]

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[10] *Rollo*, p. 186.
[11] *Id.* at 186-188.
[12] *Id.* at 187.
[13] *Id.* at 187-188.

Proceedings before the
COA-National Government Sector (COA-NGS) Cluster 2

In its Appeal Memorandum[14] dated June 22, 2012, the SEC essentially argued:

First. The COA-SEC auditors erred in treating the retained income of SEC as a fund within the GAA 2010 when in fact, this retained income is an "off-budget" account. Off-budget accounts are not subject to annual appropriations by the Congress and are accounted for separately under a different set of books. There is no need for an annual congressional budget authority prior to the release of off-budget accounts because the Congress, had, by law, previously authorized the continuous use of the funds for the purpose indicated. Even the DBM explicitly recognized that this retained income is treated as an off-budget account;

Second. The retained income of the SEC was used pursuant to Section 75 of RA 8799. The COA can only disallow the use of this retained income if it were used for purposes contrary to the SRC;

Third. The maintenance of a provident fund to provide supplementary benefits to, and improve the quality of life, work, and general welfare of the employees has been authorized since 1992 through the GAAs. Such authority was even present under Section 44[15] of GAA 2010;

Fourth. The auditors erred in concluding that GAA 2010 restricted the use of retained income to Maintenance and Other Operating Expenses (MOOE) and Capital Outlay (CO);

Fifth. The disallowance cannot be justified under the Salary Standardization Law (RA 6758) because the SEC is exempt from its coverage;

Sixth. Presidential Decree No. 1177[16] (PD 1177) does not apply to remittances of the SEC to the provident fund since these are sourced from its retained income, consequently, presidential approval is not required. The 1987 Constitution does not require all appropriations to be contained exclusively in the GAA;

Seventh. The SEC was denied due process because the COA-SEC's notice of disallowance is bereft of factual basis; and

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[14] *Id.* at 189-215.

[15] Sec. 44. Service Fees. Departments, bureaus, offices and agencies, which collect service fees for the payment of any obligation through authorized deductions under Section 43, shall deposit said service fees with the National Treasury, to be recorded in its books of accounts as trust receipts. Said service fees shall be used exclusively for the operation of a Provident Fund in favor of all its employees in accordance with pertinent rules and regulations. The Provident Fund shall be used for loaning operations and other purposes beneficial to all members as may be approved by its governing board.

[16] REVISING THE BUDGET PROCESS IN ORDER TO INSTITUTIONALIZE THE BUDGETARY INNOVATIONS OF THE NEW SOCIETY.

Finally. The officers and employees of the SEC acted in good faith when they authorized, or benefitted from, the disallowed payments, thus, they cannot be compelled to return the amounts they received under the provident fund.

In their Answer[17] dated November 20, 2012, the COA-Department of Trade and Industry (COA-DTI), represented by Audit Team Leader Rosalinda Albania and Supervising Auditor Mary Adelino, among others, countered that the SEC does not have absolute discretion on the use of its retained income. For the same is still subject to auditing requirements, standards, and procedures under existing laws such as the Administrative Code of 1987 and the GAA 2010.

As it was, Special Provision No. 1 for SEC in the GAA 2010 impliedly amended Section 75 of the SRC, restricting the use of its retained income to MOOE and CO only, to the exclusion of Personal Services. Meanwhile, Section 43[18] of the GAA 2010 expressly provided that payments for contributions to provident funds must be taken out from appropriations for Personal Services.

Although the SEC is exempt from laws pertaining to compensation, position classification, and qualification standards, it does not have the absolute, nay, exclusive authority to set the compensation plan for its officials and employees. Its system must still conform as closely as possible to the principles in the Compensation and Position Classification Act of 1989 and subject to approval of the President.

More, the SEC is also covered by Sections 3(n), 8, and 9 of the Corporate Governance Act which provide that the respective Positions Classification Systems of government instrumentalities and agencies must be approved by the President. Consequently, any allocation from the retained income of the SEC to the provident fund should first be approved by the President or the DBM. Records reveal, however, that per Memorandum dated August 19, 2008, the Executive Secretary approved the request of the SEC to implement a revised compensation plan, but this approval did not cover any item for Personal Services.

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[17] *Rollo*, pp. 218-233.

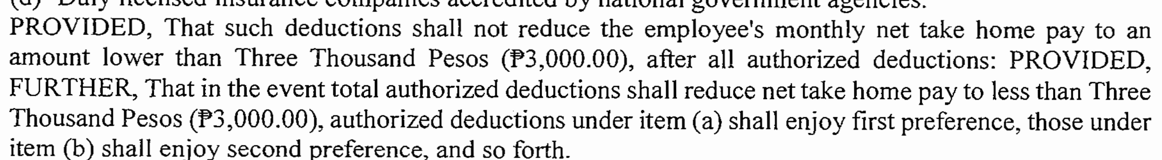
[18] Sec. 43. Authorized Deductions. Deductions from salaries, emoluments or other benefits accruing to any government employee chargeable against the appropriations for personal services may be allowed for the payment of individual employee's contributions or obligations due the following:

(a) •The BIR, GSIS, HDMF and PHIC;

(b) •Mutual benefits associations, thrift banks and non-stock savings and loan associations duly operating under existing laws which are managed by and/or for the benefit of government employees;

(c) •Associations/cooperatives/provident funds organized and managed by government employees for their benefit and welfare; and

(d) •Duly licensed insurance companies accredited by national government agencies.



PROVIDED, That such deductions shall not reduce the employee's monthly net take home pay to an amount lower than Three Thousand Pesos (₱3,000.00), after all authorized deductions: PROVIDED, FURTHER, That in the event total authorized deductions shall reduce net take home pay to less than Three Thousand Pesos (₱3,000.00), authorized deductions under item (a) shall enjoy first preference, those under item (b) shall enjoy second preference, and so forth.

In any event, the notice of disallowance here was issued in accordance with the 2009 COA Revised Rules of Procedure.

Finally, good faith cannot justify non-compliance with the usual accounting and auditing rules and regulations as well as the GAA 2010.

By Decision No. 2013-004 dated April 1, 2013, the COA-NGS Cluster 2 affirmed with modification. The SEC approving officers and employees were all absolved of the obligation to refund the disallowed amount on account of their honest belief that they were entitled to the said amount.[19]

Ruling of the COA En Banc

On automatic review, the COA En Banc, under its assailed Decision No. 2018-010 dated January 17, 2018, affirmed with modification, thus:

> **WHEREFORE**, premises considered, Commission on Audit National Government Sector-Cluster 2 Decision No. 2013-004 dated April 1, 2013 is hereby **APPROVED**. Accordingly, Notice of Disallowance No. 11-003-101-(10) dated December 10, 2011, on the remittance of monthly share contribution to the Provident Fund of the Securities and Exchange Commission (SEC) officials and employees in the amount of ₱19,723,444.66, is hereby **AFFIRMED with MODIFICATION**. The SEC personnel need not refund the disallowed amounts remitted to Provident Fund. However, the approving/certifying/authorizing SEC officers are solidarily liable for the total amount of disallowance.[20]

It excused the SEC employees from refunding the amount they each received from the counterpart contribution of the SEC to the provident fund; but held the approving, certifying and authorizing officers solidarily liable for the total disallowance.

The subsequent Motion for Reconsideration[21] of the SEC was denied in the assailed Resolution[22] dated January 29, 2020.

The Present Petition

The SEC now seeks affirmative relief from the Court via Rule 64 of the Rules of Court. It charges the COA with grave abuse of discretion amounting to excess or lack of jurisdiction when it disallowed the sum of ₱19,723,444.66 based on its alleged erroneous reasoning that the use of this retained income should have been restricted to the augmentation of MOOE and CO requirements of the agency. The SEC argues that in drawing this conclusion, the COA overlooked the fact that the amount in question was part of its retained income under Section 75 of the SRC. As such, it was an off-budget

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[19] *Rollo*, p. 75.
[20] *Id.* at 77.
[21] *Id.* at 85-99.
[22] *Id.* at 79-83.

fund, did not need appropriation, and was not included within the coverage of the GAA 2010. Section 75 of the SRC grants the SEC exclusive discretion on how it should be used. Also, the GAA 2010, as a general law, should be read together with the SRC, a special law. Both should be interpreted in such a way that there is no conflict in their respective provisions. Repeals by implication are not favored. In case of conflict though, Section 75 of the SRC should prevail since it is the special law on the subject.[23]

The Office of the Solicitor General (OSG), through Solicitor General Jose Calida, Assistant Solicitor General Gilbert Medrano, and Associate Solicitor Paolo Mikael Quilala, posits that the COA is imbued with a wide latitude to determine, prevent, and disallow irregular, unnecessary, excessive, extravagant, or unconscionable expenditures of government funds. The authority of the SEC under Section 75 of SRC is not absolute for the use of its retained earnings is still subject to auditing requirements, standards, and procedures under existing laws. The SEC violated Special Provision No. 1 for the SEC in GAA 2010, Section 37 of PD 1177, and Sections 34 and 25, Chapter V, Book VI of EO 292. The SEC officials did not act in good faith when they approved the sum of ₱19,723,444.66 as its contribution to the provident fund because they were presumed to have been aware of the existing laws restricting the application of Section 75 of the SRC.[24]

Threshold Issues

1) Did COA Decision No. 2018-010 dated January 17, 2018 validly disallow the allocation and payment of ₱19,723,444.66 to the provident fund?

2) Are the approving, certifying, and authorizing officials of the SEC liable to refund the disallowed amount?

Ruling

The disallowance of the ₱19,723,444.66 disbursement is valid

The primary rule in addressing any problem relating to the understanding or interpretation of a law is to examine the law itself to see what it plainly says. This is the plain meaning rule of statutory construction.[25] To go beyond what the law says and interpret it in its ordinary and plain meaning would be tantamount to judicial legislation. The plain meaning rule or *verba legis* is the most basic of all statutory construction principles. When the words

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[23] Petition dated June 10, 2020. *Id.* at 3-66

[24] Comment dated December 14, 2020. *Id.* at 254-271.

[25] Re: Letter of Court of Appeals Justice Vicente S.E. Veloso for Entitlement to Longevity Pay for His Services as Commission Member III of the National Labor Relations Commission, 760 Phil. 62, 93 (2015).

or language of a statute is clear, there may be no need to interpret it in a manner different from what the word plainly implies. This rule is premised on the presumption that the legislature knows the meaning of the words, to have used words advisedly, and to have expressed its intent by use of such words as are found in the statute.[26]

We apply *verba legis* to Section 75 of the SRC, *viz.*:

> SEC. 75. Partial Use of Income. - To carry out the purposes of this Code, the Commission is hereby authorized, in addition to its annual budget, to retain and utilize an amount equal to one hundred million pesos (₱100,000,000.00) from its income.
>
> **The use of such additional amount shall be subject to the auditing requirements, standards and procedures under existing laws.** (Emphasis supplied)

The provision bears two (2) parts. The first grants the SEC the authority to retain and utilize ₱100,000,000.00 from its income, in addition to its annual budget while the second imposes a restriction to this authority **"subject to the auditing requirements, standards and procedures under existing laws."** One such law is the GAA 2010 which contains the following Special Provision No. 1 for the SEC, *viz.*:

> Special Provision(s)
>
> 1. Use of Income. In addition to the amounts appropriated herein, One Hundred Million Pesos (₱100,000,000) sourced from registration and filing fees collected by the Commission pursuant to Section 75 of R.A. 8799 shall be used to augment the MOOE and Capital Outlay requirements of the Commission.[27]

This provision clearly limits the use of income for augmenting only the MOOE and CO allocations of the SEC.

Special Provision No. 1 did not repeal[28] Section 75 of the SRC, but simply imposed a limitation on how the SEC could use its retained income. The two provisions are, therefore, supplementary; not contradictory.

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[26] *Tan v. Crisologo*, 820 Phil. 611, 624 (2017).

[27] See Special Provisions, AC. Securities and Exchange Commission, XXVI. Other Executive Offices, General Appropriaitons Act for FY 2010.

[28] An implied repeal transpires when a substantial conflict exists between the new and the prior laws. In the absence of an express repeal, a subsequent law cannot be construed as repealing a prior law unless an irreconcilable inconsistency and repugnancy exist in the terms of the new and the old laws.[28] Repeal by implication is not favoured, unless manifestly intended by the legislature, or unless it is convincingly and unambiguously demonstrated, that the laws or orders are clearly repugnant and patently inconsistent with one another so that they cannot co-exist; the legislature is presumed to know the existing law and would express a repeal if one is intended. **There are two instances of implied repeal.** One takes place when the provisions in the two acts on the same subject matter are irreconcilably contradictory, in which case, the later act, to the extent of the conflict, constitutes an implied repeal of the earlier one. The other occurs when the later act covers the whole subject of the earlier one and is clearly intended as a substitute; thus, it will operate to repeal the earlier law; See *Bank of Commerce v. Planters Development Bank*, 695 Phil. 627, 650 (2012).

But the SEC failed to comply with the plain letter of Special Provision No. 1 when it used its retained income to pay for its counterpart contribution to the provident fund, which is neither an MOOE nor a CO item.

To be sure, Section 7.b, The Chart of Accounts, Volume III of the Manual on the New Government Accounting System for National Government Agencies (MNGAS-NGA) defines MOOE, as follows:

> Sec. 7. Classification of Expenses. The expense accounts are classified into:
>
> x x x x
>
> b. Maintenance and Other Operating Expenses (MOOE) - These accounts include expenses necessary for the regular operations of an agency like, among others, traveling expenses, training and seminar expenses, water, electricity, supplies expense, maintenance of property, plant and equipment, and other maintenance and operating expenses.

The relevant provisions of the GAA 2010 on MOOE read:

> Sec. 63. Augmentation of Maintenance and Other Operating Expenses Items. Agencies may augment any item of expenditure within MOOE, except confidential and intelligence funds, from savings in other items of MOOE without prior approval of the DBM, subject to the limitations provided under Section 18 of the General Provisions of this Act.
>
> Sec. 18. Mandatory Expenditures. **The amounts programmed, particularly for, but not limited to, petroleum, oil and lubricants as well as for water, illumination and power services, telephone and other communication services, rent, retirement gratuity and terminal leave requirements shall be disbursed solely for such items of expenditures:** PROVIDED, That any savings generated from these items after taking into consideration the agency's full year requirements may be realigned only in the last quarter.
>
> **Use of funds in violation of this section shall be void**, and shall subject the erring officials and employees to disciplinary action in accordance with Section 43, Chapter 5 and Section 80, Chapter 7, Book VI of E.O. No. 292, and to appropriate criminal action under existing penal laws. (Emphases supplied)

As for "capital outlay" or capital expenditure, the DBM has repeatedly defined it in the glossary of terms attached to its annual issuance of Budget of Expenditures and Sources of Financing (BESF). In the BESF for fiscal year 2020, the usual definition of capital outlay was reiterated, thus:

> Capital Outlays or Capital Expenditures. An expenditure category/expense class for the purchase of goods and services, the benefits of which extend beyond the fiscal year and which add to the assets of

> Government, including investments in the capital stock of GOCCs and their subsidiaries.[29]

Applying the aforequoted provisions, the payment of the counterpart contribution of the SEC to the provident fund did not have anything to do with augmenting its MOOE or CO as required under Special Provision 1.

To elucidate, a provident fund "*is a type of retirement plan where both the employer and employee make fixed contributions. Out of the accumulated fund and its earnings, employees receive benefits upon their retirement, separation from service or disability.*"[30] Thus, when SEC utilized its retained income to pay for its counterpart in the provident fund, it was not for the purpose of paying for "*expenses necessary for the regular operations of an agency like, among others, traveling expenses, training and seminar expenses, water, electricity, supplies expense, maintenance of property, plant and equipment, and other maintenance and operating expenses.*" Nor was the payment used for the "*purchase of goods and services, the benefits of which extend beyond the fiscal year and which add to the assets of Government.*"

Verily, the COA correctly classified contributions to the provident fund within the category of "personal services" which include an expenditure category/expense class for payment of salaries, wages and other compensation (e.g., merit, salary increase, cost-of-living-allowances, honoraria and commutable allowances, etc.) of permanent, temporary, contractual, and casual employees of the government.

Consequently, the disbursement of the SEC's retained income of ₱19,723,444.66 to augment its funds for personal services, instead of the MOOE and CO, warrants its disallowance.[31] On this score, the COA aptly ruled:

> The use of Retained Income is not left to the exclusive jurisdiction of the Board of Directors. While it is true that Section 7.2 of RA No. 8799 exempts SEC from laws and regulations on compensations standards and mandates it to formulate its own compensation system comparable with the compensation plan of the Bangko Sentral ng Pilipinas and other financial institutions in government, Section 75 thereof did not give full and absolute authority to SEC officials to use their Retained Income at their own discretion. More so, the SEC violated the Special Provision of RA No. 9970 (GAA for FY 2010), which provides that the use of Retained Income sourced from the P100 million fund is to be retained and utilized only to augment the MOOE and CO requirements of the SEC. The disallowed disbursement cannot be considered as augmenting the MOOE and CO requirements of the SEC.
>
> Thus, this Commission concurs in the disallowance for non-compliance with the requirements of the law. The charging of the personal

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[29] See https://www.dbm.gov.ph/wp-content/uploads/BESF/BESF2020/GLOSSARY.pdf (Last accessed: March 8, 2021.

[30] *GERSIP Association, Inc. v. GSIS*, 719 Phil. 526, 533 (2013).

[31] See *Nazareth v. Villar*, 702 Phil. 319 (2013).

services against the SEC Retained Income violates Item 9 of Joint Resolution No. 4, series of 2009, of the House of Representatives, and approved by former President Gloria M. Arroyo, which provides that:

> Exempt Entities – x x x That any increase in the existing salary rates, as well as the grant of new allowances, benefits, and incentives, or increase in the rates thereof shall be subject to the approval of the President upon recommendation of the DBM.[32]

So must it be.

The approving, certifying, and authorizing officers are not liable to return the entire disapproved amount in the absence of malice, bad faith or gross negligence

The validity of the notice of disallowance does not automatically entail a corresponding liability on the part of the approving, certifying, and authorizing officers to return the disallowed amount. In determining whether they are liable, we are guided by the Rules on Return laid down in ***Madera, et. al. v. COA (Madera),***[33] *viz.*:

> *E. The Rules on Return*
>
> In view of the foregoing discussion, the Court pronounces:
>
> 1. If a Notice of Disallowance is set aside by the Court, no return shall be required from any of the persons held liable therein.
>
> 2. If a Notice of Disallowance is upheld, the rules on return are as follows:
>
> (a) Approving and certifying officers who acted in good faith, in 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.
>
> (b) **Approving and certifying officers who are clearly shown to have acted in bad faith, malice, or gross negligence** are, pursuant to Section 43 of the Administrative Code of 1987, solidarily liable to return only the net disallowed amount which, as discussed herein, excludes amounts excused under the following Sections 2c and 2d.
>
> (c) **Recipients – whether approving or certifying officers or mere passive recipients – are liable to return the disallowed amounts respectively received by them, unless they are able to show that the amounts they received were genuinely given in consideration of services rendered.**

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[32] *Rollo*, pp. 75-76.

[33] G.R. No. 244128, September 15, 2020.

> (d) **The Court may likewise excuse the return of recipients based on undue prejudice**, social justice considerations, and other *bona fide* exceptions as it may determine on a case to case basis. (emphases added)

As explained in ***Madera***, Sections 38 and 39, Chapter 9, Book I, of the Administrative Code[34] expressly state that a public officer may only be held civilly liable for acts done in the performance of his or her official duty upon a clear showing that he or she performed such duty with bad faith, malice, or gross negligence. Section 43,[35] Chapter 5, Book IV of the Administrative Code further underscores that guilty officers are jointly and solidarily liable for the disallowed amounts.

Malice or bad faith implies a conscious and intentional design to do a wrongful act for a dishonest purpose or moral obliquity.[36] Gross neglect of duty or gross negligence, on the other hand, refers to negligence characterized by the want of even slight care, or by acting or omitting to act in a situation where there is a duty to act, not inadvertently but wilfully and intentionally, with a conscious indifference to the consequences, insofar as other persons may be affected. It is the omission of that care that even inattentive and thoughtless men never fail to give to their own property. It denotes a flagrant and culpable refusal or unwillingness of a person to perform a duty.[37]

Here, there is no showing, as none was shown, that the approving, certifying, and authorizing officers of the SEC acted with malice or bad faith or gross negligence in approving the payment of its counterpart contribution to the provident fund using its retained income. On the contrary, their actions invariably carry the badge of good faith.

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[34] **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.
2) Any public officer who, without just cause, neglects to perform a duty within a period fixed by law or regulation, or within a reasonable period if none is fixed, shall be liable for damages to the private party concerned without prejudice to such other liability as may be prescribed by law.
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.

[35] **SECTION 43.** Liability for Illegal Expenditures. – Every expenditure or obligation authorized or incurred in violation of the provisions of this Code or of the general and special provisions contained in the annual General or other Appropriations Act shall be void. Every payment made in violation of said provisions shall be illegal and every official or employee authorizing or making such payment, or taking part therein, and every person receiving such payment shall be jointly and severally liable to the Government for the full amount so paid or received.

Any official or employee of the Government knowingly incurring any obligation, or authorizing any expenditure in violation of the provisions herein, or taking part therein, shall be dismissed from the service, after due notice and hearing by the duly authorized appointing official. If the appointing official is other than the President and should he fail to remove such official or employee, the President may exercise the power of removal.

[36] *California Clothing, Inc., et. al. v. Quiñones*, 720 Phil. 373, 381 (2013).

[37] *Office of the Ombudsman v. De Leon*, 705 Phil. 26, 37 (2013); also see *GSIS v. Manalo*, 795 Phil. 832, 858 (2016).

Madera adopted Justice Leonen's enumeration of factors indicative of good faith in disallowance cases, thus:

> x x x 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 the question of law, that there is a reasonable textual interpretation on its legality. [Emphasis supplied]

Applying this standard, the Court, in ***National Transmission Corporation v. COA and COA Chairperson Aguinaldo,***[38] excused the officers of the National Transmission Corporation (TransCo) from joint and solidary liability for the disallowed amount since TransCo simply committed an honest mistake when it relied on COA Audit Circular No. 89-300 to justify the grant of allowances for Extraordinary and Miscellaneous Expenses to its officials. As held:

> True, Transco misread COA Circular No. 2006-001 and mistakenly relied on COA Audit Circular No. 89-300, which solely applies to NGAs. However, it is worthy to note that at that time, there was yet a judicial interpretation of the COA rules on what constitutes "or other documents evidencing disbursements." The Court's careful analysis of the use of certification in claims for EME reimbursement of GOCCs was only made *in Espinas* in 2014. Thus, it can hardly be concluded that the approving/certifying officers of Transco did not act in good faith when they admitted the certifications as evidence of disbursement.
>
> Moreover, Transco had been granting EME to its officials since it started its operations in 2003 but the payments of EME were disallowed only in 2010. The records are lacking in proof that between the years 2003 and 2010, certifications were not recognized as valid proof of disbursements. The records did not even show that audit observation memoranda were previously issued to inform Transco of the deficiencies reflected in the audit of accounts, operations or transactions, if any, such as the absence of supporting documents. What is clear from the records is that the approving/certifying officers of Transco committed an honest lapse of judgment when they granted the irregular EME. Their mistake was not indicative of willful and deliberate intent to disregard the COA rules and regulations but only an error of judgment made in good faith. Accordingly, the approving and certifying officers, having acted in good faith in the regular performance of their official functions, are not civilly liable to return the disallowed amount in accordance with Section 38 (1), Chapter 9, Book I of the Administrative Code of 1987.

Here, the Court considers the following circumstances which ought to absolve the officials concerned of joint and solidary liability for the unlawful payment:

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[38] G.R. No. 244193, November 10, 2020.

First. There had been no prior disallowance of payment of the SEC's contribution to the provident fund using its retained income. To recall, the provident fund was set up in **2004**. Meanwhile, the Court takes judicial notice of the fact that Special Provision 1 restricting the use of SEC's retained income to MOOE and CO had already been incorporated in the GAA as early as **2005**. The provision was likewise present in the re-enacted budget of 2006, as well as in the GAAs for 2008 and 2009.

Clearly, the SEC had already been making payments of its counterpart contribution for about five (5) years **under the same restriction** before the same was disallowed. They cannot therefore be faulted for thinking and believing that the payments they made all this time were above board. Prior to the disallowance in 2010, they were not informed of any irregularity in their practice.

Second. The DBM itself, by Letter dated August 19, 2004, assured the SEC that "*[t]he utilization of the retained income is left to the discretion of the Commission subject to the usual accounting and auditing rules and regulations*." Notably, **the letter was issued at a time when Special Provision 1 was not yet in the GAA.**

To be sure, the 2004 GAA was a re-enactment of the 2003 budget. In turn, the 2003 GAA did not contain a special provision restricting the use of the SEC's retained income to MOOE and CO only. This explains why the letter from the DBM seemingly gave the SEC a wide latitude of discretion on how to spend its retained income. As it was, though, the SEC could not have perpetually relied on this letter. For in the immediately following year, Special Provision 1 was already incorporated in the GAA, effectively negating the DBM's aforesaid advice.

Finally. The approving, certifying, and authorizing officers honestly believed that they were giving effect to Section 7.2 of the SRC, mandating the SEC to adopt a compensation plan comparable with the prevailing compensation plan in the Bangko Sentral ng Pilipinas and other government financial institutions. Surely, they had to adopt a system of compensation which would attract the best and the brightest into joining their ranks. They simply found that the way to do this, albeit mistakenly, was to utilize the retained earnings granted in Section 75 of the SRC to augment its personal service items.

All told, the foregoing circumstances negate malice, bad faith, or gross negligence. On the contrary, they are badges of good faith sufficient to absolve the approving, certifying, and authorizing officers of the SEC from joint and solidary liability.

The approving, certifying, and authorizing officers are not individually liable to return the amount they received lest they suffer undue prejudice

In ***Abellanosa v. COA (Abellanosa)***,[39] Senior Associate Justice Perlas-Bernabe made a distinction between the joint and solidary liability of an approving, certifying and authorizing officer under administrative law and the said officer's individual liability under civil law. She also refined the rules on return first outlined in *Madera*, thus:

> On the other hand, **when a public officer is to be held civilly liable not in his or her capacity as an approving/authorizing officer but merely as a payee-recipient innocently receiving a portion of the disallowed amount, the liability is to be viewed not from the public accountability framework of the Administrative Code but instead, from the lens of unjust enrichment and the principle of solutio indebiti under a purely civil law framework. The reason for this is because the civil liability of such payee-recipient – in contrast to an approving/authorizing officer – has no direct substantive relation to the performance of one's official duties or functions, particularly in terms of approving/authorizing the unlawful expenditure. As such, the payee-recipient is treated as a debtor of the government whose civil liability is based on *solutio indebiti*, which is a distinct source of obligation.**
>
> **When the civil obligation is sourced from *solutio indebiti*, good faith is inconsequential.** Accordingly, previous rulings absolving passive recipients solely and automatically based on their good faith contravene the true legal import of a *solutio indebiti* obligation and, hence, as per Madera, have now been abandoned. Thus, as it stands, the general rule is that recipients, notwithstanding their good faith, are civilly liable to return the disallowed amounts they had individually received on the basis of *solutio indebiti.*
>
> **This notwithstanding, the Court in *Madera* also recognized certain exceptions to the general rule on return. Bearing in mind its underlying premise, which is "the ancient principle that no one shall enrich himself unjustly at the expense of another," *solutio indebiti* finds no application where recipients were not unjustly enriched at the expense of the government. Particularly, these pertain to disallowed personnel incentives and benefits which are either: (1) genuinely given in consideration of services rendered (see Rule 2c of the *Madera* Rules on Return); or (2) excused by the Court to be returned on the basis of undue prejudice, social justice considerations, and other *bona fide* exceptions as may be determined on a case-to-case basis (see Rule 2d of the Madera Rules on Return).**
>
> **As a supplement to the *Madera* Rules on Return, the Court now finds it fitting to clarify that in order to fall under Rule 2c, *i.e.*, amounts genuinely given in consideration of services rendered, the following requisites must concur:**
>
> > **(a) the personnel incentive or benefit has proper basis in law but is only disallowed due to irregularities that are merely procedural in nature; and**
> >
> > **(b) the personnel incentive or benefit must have a clear, direct, and reasonable connection to the actual performance of the payee-recipient's official work and functions for which**

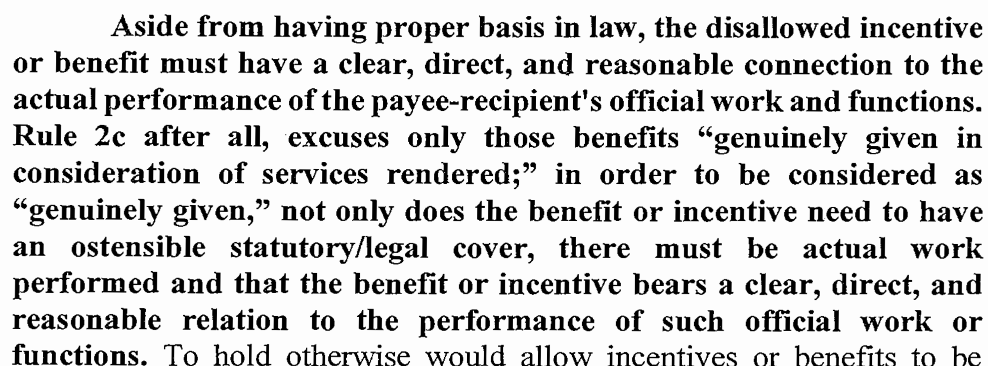
[39] G.R. No. 185806, November 17, 2020.

the benefit or incentive was intended as further compensation.

Verily, these refined parameters are meant to prevent the indiscriminate and loose invocation of Rule 2c of the *Madera* Rules on Return which may virtually result in the practical inability of the government to recover. To stress, Rule 2c as well as Rule 2d should remain true to their nature as exceptional scenarios; they should not be haphazardly applied as an excuse for non-return, else they effectively override the general rule which, again, is to return disallowed public expenditures.

With respect to the first requisite above mentioned, Associate Justice Alfredo Benjamin S. Caguioa (Justice Caguioa) – the *ponente* of *Madera* – aptly points out that the exception under Rule 2c was not intended to cover compensation not authorized by law or those granted against salary standardization laws. **Thus, amounts excused under the said rule should be understood to be limited to disbursements adequately supported by factual and legal basis, but were nonetheless validly disallowed by the COA on account of procedural infirmities. As the esteemed magistrate observes, these may include amounts, such as basic pay, fringe benefits, and other fixed or variable forms of compensation permitted under existing laws, which were granted without the due observance of procedural rules and regulations (e.g., matters of form, or inadequate documentation supplied/rectified later on).** As Justice Caguioa explains:

> Under this rubric, the benefits that the Court may allow payees to retain as an exception to Rule 2c's rule of return on the basis of *solutio indebiti* are limited to compensation authorized by law including: (i) basic pay in the form of salaries and wages; (ii) other fixed compensation in the form of fringe benefits authorized by law; (iii) variable compensation (e.g., honoraria or overtime pay) within the amounts authorized by law despite the procedural mistakes that might have been committed by approving and certifying officers.[48] These, to my mind, are the only forms of compensation that can truly be considered "genuinely given in consideration of services rendered," such that their recovery (by the government) which results from a disallowance (again, only because of procedural mistakes that might have been committed by approving and certifying officers) means the government is unjustly enriched (*i.e.*, it benefitted from services received from its employees without making payment for it).
>
> The exception to Rule 2c was not intended to cover all allowances that can be considered "genuinely given in consideration of services rendered" so as to defeat the general rule that payees are liable to return disallowed personnel benefits that they respectively received.

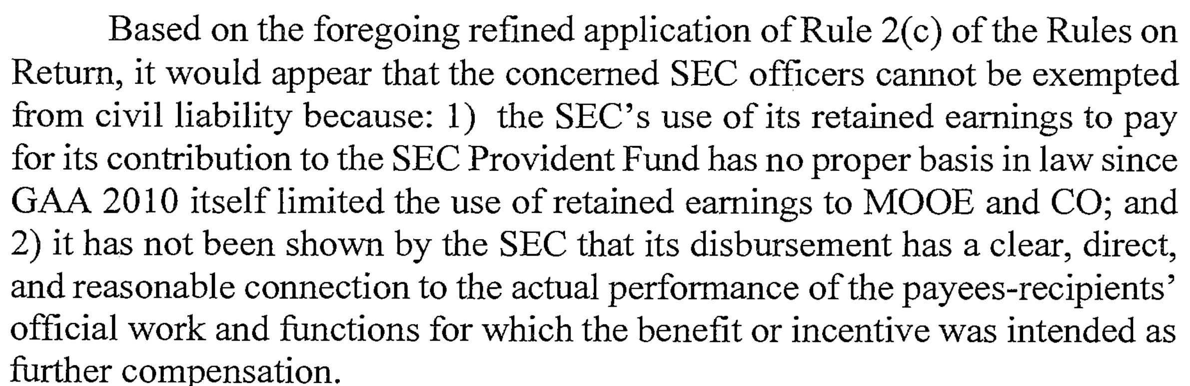


Aside from having proper basis in law, the disallowed incentive or benefit must have a clear, direct, and reasonable connection to the actual performance of the payee-recipient's official work and functions. Rule 2c after all, excuses only those benefits "genuinely given in consideration of services rendered;" in order to be considered as "genuinely given," not only does the benefit or incentive need to have an ostensible statutory/legal cover, there must be actual work performed and that the benefit or incentive bears a clear, direct, and reasonable relation to the performance of such official work or functions. To hold otherwise would allow incentives or benefits to be

excused based on a broad and sweeping association to work that can easily be feigned by unscrupulous public officers and in the process, would severely limit the ability of the government to recover.

The same considerations ought to underlie the application of Rule 2d as a ground to excuse return. In *Madera*, the Court also recognized that the existence of undue prejudice, social justice considerations, and other bona fide exceptions, as determined on a case-to-case basis, may also negate the strict application of *solutio indebiti*. This exception was borne from the recognition that in certain instances, the attending facts of a given case may furnish an equitable basis for the payees to retain the amounts they had received. **While Rule 2d is couched in broader language as compared to Rule 2c, the application of Rule 2d should always remain true to its purpose: it must constitute a bona fide instance which strongly impels the Court to prevent a clear inequity arising from a directive to return. Ultimately, it is only in highly exceptional circumstances, after taking into account all factors (such as the nature and purpose of the disbursement, and its underlying conditions) that the civil liability to return may be excused. For indeed, it was never the Court's intention for Rules 2c and 2d of Madera to be a jurisprudential loophole that would cause the government fiscal leakage and debilitating loss.**

It is important to rein in Rules 2c and 2d of the *Madera* Rules on Return because their application has a direct bearing on the resulting amount to be returned by erring approving/authorizing officers civilly held liable under Section 38, in relation to Section 43, of the Administrative Code. In *Madera*, the Court explained that when recipients are excused to return disallowed amounts for the reason that they were genuinely made in consideration of services rendered, or for some other bona fide exception determined by the Court on a case to case basis, the erring approving/authorizing officers' solidary obligation for the disallowed amount is net of the amounts excused to be returned by the recipients (net disallowed amount). The justifiable exclusion of these amounts signals that no proper loss should be recognized in favor of the government, and thus, reduces the total amount to be returned to the extent corresponding to such exclusions. Accordingly, since there is a justified reason excusing return, the State should not be allowed a double recovery of these amounts from the erring public officials and individuals notwithstanding their bad faith, malice or gross negligence. Needless to say, even if the civil liability becomes limited in this sense, these erring public officers and those who have confederated and conspired with them remain subject to the appropriate administrative and criminal actions which may be separately and distinctly pursued against them. (Emphases supplied)



Based on the foregoing refined application of Rule 2(c) of the Rules on Return, it would appear that the concerned SEC officers cannot be exempted from civil liability because: 1) the SEC's use of its retained earnings to pay for its contribution to the SEC Provident Fund has no proper basis in law since GAA 2010 itself limited the use of retained earnings to MOOE and CO; and 2) it has not been shown by the SEC that its disbursement has a clear, direct, and reasonable connection to the actual performance of the payees-recipients' official work and functions for which the benefit or incentive was intended as further compensation.

Yet, we apply Rule 2d of the Rules of Return on ground of undue prejudice and, per ***Abellanosa***, *"to prevent a clear inequity arising from a directive to return."*

First. We are confronted by the fact that the COA En Banc had already absolved the SEC payees-recipients from civil liability. Their absolution has not been questioned in the present petition. Notably, the concerned SEC officers are also payees-recipients in their own right, hence, the absolution of civil liability by COA En Banc also applied to them. It would be highly iniquitous to let the SEC officers return the amounts they received while the rest of the SEC payees-recipients go scot-free. On this score, *Madera* itself noted:

> As the Court has previously held, government employment should be seen as an opportunity for individuals of good will to render honest-to-goodness public service, and not a trap for the unwary. It should be an attractive alternative to private employment, not an undesirable undertaking grudgingly accepted, to therefore regret. **While the Court supports the mandate of the COA in ensuring that the funds of the government are properly utilized and the return to the government of funds unduly spent, the same must not be at the expense of public officials and employees who are directly tasked to discharge and render public service - especially when the presumptions of good faith and regularity in the performance of their duties have not been rebutted or overturned.** Otherwise, the Court would unintentionally sanction the discouragement of competent and well-meaning individuals from joining the government. When service in the government is seen as unattractive and unappealing, it is the public that suffers.
>
> Taking all this into consideration, the Court has laid down the rules that it deems equitable to the government whose interest is safeguarded by the COA, on the one hand, and to the government employees who approved, certified, and received the disallowed benefits, on the other.
>
> **Finally, the Court exhorts the COA to take into consideration the pronouncements made herein to prevent future decisions that "result [in] exempting recipients who are in good faith from refunding the amount received x x x [while] approving officers are made to shoulder the entire amount paid to the employees" and impose, in the very words of the COA itself, "an inequitable burden on the approving officers, considering that they are or remain exposed to administrative and even criminal liability for their act in approving such benefits, and is not consistent with the concept of solutio indebiti and the principle of unjust enrichment."** (Emphases supplied)

True, it may be argued that the COA En Banc had already absolved all the payees-recipients, except the concerned SEC officers, and the only remaining point to be resolved is whether said SEC officials should be held civilly liable. But, again, to order the SEC officers to return will result in an inequitable and unjust situation where the SEC officers, who are also payees-recipients, have a different civil liability while the rest of the payees-recipients

are forgiven. To sanction such course of action would violate their right to equal protection.

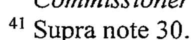
The equal protection clause means that no person or class of persons shall be deprived of the same protection of laws enjoyed by other persons or other classes in the same place in like circumstances. Thus, the guarantee of the equal protection of laws is not violated if there is reasonable classification. It must be shown, therefore, that the classification (1) rests on substantial distinctions; (2) is germane to the purpose of the law; (3) is not limited to existing conditions only; and (4) applies equally to all members of the same class.[40]

Here, there is no substantial distinction to justify a different treatment of SEC officers, who are payees-recipients, from other payees-recipients when it comes to individual civil liability. In fact, as payees-recipients themselves, the SEC officers are within the same class as the SEC employees, for they all received a 15% counterpart contribution from the SEC that was sourced from its retained earnings. Verily, to hold the SEC officers individually and civilly liable amounts to undue prejudice, thus, they should likewise be exempted from such liability.

Second, it is erroneous, nay, unfair to conclude that only the SEC officers benefited from the agency's unauthorized counterpart contributions to their provident fund accounts. Provident funds are set up in a way that all members will derive a set of benefits by reason of their membership – securing loans, grant of dividends, disability benefits, retirement benefits, and severance packages. Once the funds are put into the provident fund, they are already intermingled and become a trust fund for the benefit of all provident fund members. In ***GERSIP Association, Inc. v. GSIS***,[41] the Court held that a provident fund is essentially an express trust.

In other words, all other provident fund members benefited from the SEC's contribution under the account of its officers, albeit indirectly. Thus, if We were to apply *solutio indebiti* as basis for liability, the SEC officers should not bear the obligation to return alone; it should be shared by all provident fund members. As it was, however, these other members had already been absolved from liability. It would therefore be unfair to hold the SEC officers liable to pay for the benefits which these other members indirectly received.

Finally, undue prejudice would also occur if the payees-recipients, including the concerned SEC officers, are made to foot an additional 15% contribution which ought to have been shouldered by the SEC itself. To repeat, payees-recipients contribute an equivalent of 3% of their monthly salary. To order them to answer for the 15% counterpart contribution of the SEC would, in effect, make their total contribution equivalent to 18% of their



[40] *Commissioner of Customs v. Hypermix Feeds Corp.*, 680 Phil. 681, 693 (2012).
[41] Supra note 30.

monthly salary. Under Section 43[42] of the General Provisions of GAA 2010, salary deductions for provident funds, among others, is allowed so long as an employee's total take home pay will not fall below ₱3,000.00. By ordering payees-recipients to return the amounts in effect increasing their provident fund contributions to 18%, low-ranked employees may already have a take home pay of less than ₱3,000.00.

All told, the SEC officers would suffer undue prejudice should they be compelled to return the amounts paid under their names in the provident fund using SEC's retained earnings. At any rate, it could also disrupt the provident fund system and cause unforeseen damage and complications to its finances.

ACCORDINGLY, Decision No. 2018-010 dated January 17, 2018 and Resolution No. 2020-180 dated January 29, 2020 of the Commission on Audit – En Banc are **AFFIRMED** with **MODIFICATION**. The approving, certifying, and authorizing officers of the Securities and Exchange Commission are absolved from refunding the disallowed amount solidarily and individually under Notice of Disallowance No. 11-003-101-(10) dated December 10, 2011.

SO ORDERED.

AMY C. LAZARO-JAVIER
Associate Justice

[42] General Provisions: Sec. 43. Authorized Deductions. Deductions from salaries, emoluments, or other benefits, accruing to any government employee chargeable against the appropriations for personal services may be allowed for the payment of individual employee's contributions or obligations due the following:

x x x

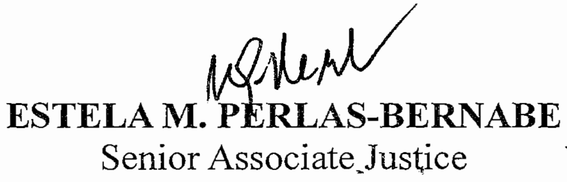
(a) Associations/cooperatives/**provident funds** organized and managed by government employees for their benefit and welfare; and

x x x

PROVIDED, That such deductions shall not reduce the employee's monthly net take home pay to an amount lower than Three Thousand Pesos (₱3,000.00), after all authorized deductions: PROVIDED, FURTHER, That in the event total authorized deductions shall reduce net take home pay to less than Three Thousand Pesos (₱3,000.00), authorized deductions under item (a) shall enjoy first preference, those under item (b) shall enjoy second preference, and so forth.

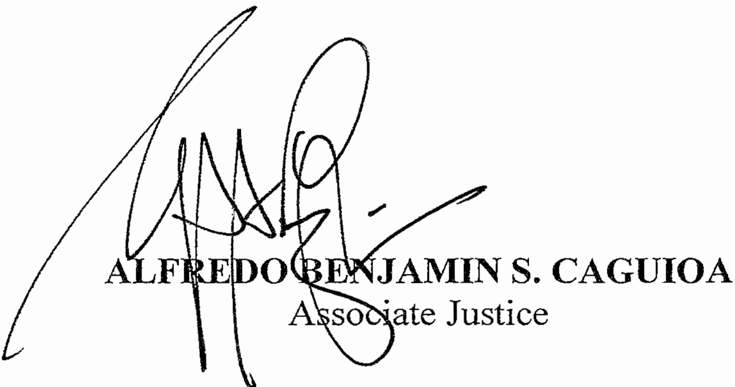
WE CONCUR:

ALEXANDER G. GESMUNDO
Chief Justice

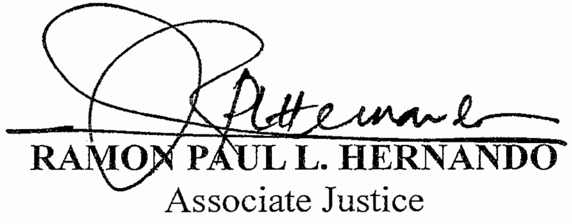


ESTELA M. PERLAS-BERNABE
Senior Associate Justice

MARVIC M.V.F. LEONEN
Associate Justice



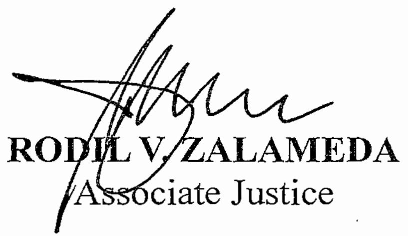
ALFREDO BENJAMIN S. CAGUIOA
Associate Justice



RAMON PAUL L. HERNANDO
Associate Justice

ROSMARI D. CARANDANG
Associate Justice

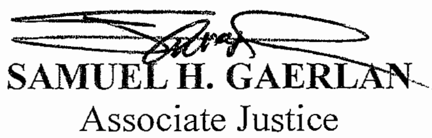
HENRI JEAN PAUL B. INTING
Associate Justice



RODIL V. ZALAMEDA
Associate Justice

MARIO V. LOPEZ
Associate Justice

EDGARDO L. DE LOS SANTOS
Associate Justice



SAMUEL H. GAERLAN
Associate Justice

RICARDO R. ROSARIO
Associate Justice

JHOSEP Y. LOPEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.

ALEXANDER G. GESMUNDO
Chief Justice