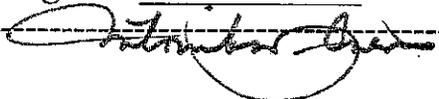


**G.R. No. 258159 – EFRAIM C. GENUINO, Petitioner, v. COMMISSION ON AUDIT (COA), ET AL., Respondents.**

Promulgated: June 13, 2023

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**DISSENTING OPINION**

**GAERLAN, J.:**

On June 15, 2021, the Court, through retired Associate Justice Edgardo L. Delos Santos, rendered a Decision in *Genuino v. Commission on Audit*<sup>1</sup> (2021 Genuino Decision) declaring that in accordance with Section 15,<sup>2</sup> Title V of Presidential Decree (P.D.) No. 1869, the audit jurisdiction of the Commission on Audit (COA) over the funds of the Philippine Amusement and Gaming Corporation (PAGCOR) is limited to the five percent (5%) franchise tax and the Government's fifty percent (50%) share of the gross earnings of PAGCOR.

Less than two years later, or on February 14, 2023, the Court, through Associate Justice Ramon Paul L. Hernando, took a 180-degree turn and rendered a Decision<sup>3</sup> in the same case (2023 Genuino Decision), striking down as unconstitutional Section 15 of P.D. No. 1869. Nevertheless, the said 2023 Genuino Decision provided that the same shall be applied prospectively, *viz.*:

Considering the novel pronouncements made by the Court in this Decision, We deem it necessary to emphasize that this opinion shall apply prospectively and shall not affect parties who had relied on, and acted upon, the force of former contrary views. This is rooted in justice and fairness, as explained in *People v. Jabinal*:

Decisions of this Court, although in themselves not laws, are nevertheless evidence of what the laws mean, . . . The interpretation upon a law by this Court constitutes, in a way, a part of the law as of the date that law was originally passed, since this Court's construction merely establishes the contemporaneous legislative intent that the law thus construed intends to effectuate. The settled rule supported by numerous

<sup>1</sup> G.R. No. 230818, June 15, 2021 [Per J. Delos Santos, *En banc*].

<sup>2</sup> SECTION 15. *Auditor* — The Commission on Audit or any government agency that the Office of the President may designate shall appoint a representative who shall be the Auditor of the Corporation and such personnel as may be necessary to assist said representative in the performance of his duties. The salaries of the Auditor or representative and his staff shall be fixed by the Chairman of the Commission on Audit or designated government agency, with the advice of the Board, and said salaries and other expenses shall be paid by the Corporation. The funds of the Corporation to be covered by the audit shall be limited to the 5% franchise tax and the 50% of the gross earnings pertaining to the Government as its share.

<sup>3</sup> G.R. No. 230818, February 14, 2023 [Per J. Hernando, *En banc*].

authorities is a restatement of the legal maxim “*legis interpretatio legis vim obtinet*”—the interpretation placed upon the written law by a competent court has the force of law. ... When a doctrine of this Court is overruled and a different view is adopted, the new doctrine should be applied prospectively, and should not apply to parties who had relied on the old doctrine and acted on the faith thereof. This is especially true in the construction and application of criminal laws, where it is necessary that the punishability of an act be reasonably foreseen for the guidance of society.<sup>4</sup> (Citation omitted)

The *ponencia* holds that notwithstanding this clear-cut and unequivocal pronouncement, the facts obtaining in the above-captioned case preclude Efraim C. Genuino (petitioner) from benefiting from the prospective application of the 2023 Genuino Decision. Thus, the *ponencia* declares:

While the 2023 *Genuino* Resolution is intended to be prospective in application, in order to “not affect parties who had relied on, and acted upon, the force of former contrary views,” the Court finds that this statement would not apply with regard to Genuino specifically in relation to the facts of this case.

The disallowed transactions in this case occurred in 2008 and 2009, while the transaction disallowed in the 2023 *Genuino* Resolution occurred in 2010. It can hardly be said, therefore, that Genuino could have relied on the doctrine the Court laid down in the 2021 *Genuino* Decision, which was promulgated on June 15, 2021, and which was reversed, after judicious study, in the 2023 *Genuino* Resolution. If Genuino is liable for the transaction subject of the 2023 *Genuino* Resolution, he must, with equal force, be held liable for the transactions subject of this case.<sup>5</sup>

With due respect, I disagree.

Equity and fair play call for the application of the doctrine of operative fact which recognizes the effects of the law or executive issuance prior to its invalidation when relied upon by the public in good faith.<sup>6</sup> Said doctrine exhorts that until the judiciary declares the invalidity of certain legislative or executive acts, such acts are presumed constitutional and valid.<sup>7</sup>

In *Agbayani, de v. Philippine National Bank*,<sup>8</sup> the Court elucidated:

The decision now on appeal reflects the orthodox view that an unconstitutional act, for that matter an executive order or a municipal ordinance likewise suffering from that infirmity, cannot be the source of any

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<sup>4</sup> *Id.*

<sup>5</sup> *Ponencia*, p. 5.

<sup>6</sup> *Partido Demokratiko Pilipino-Lakas ng Bayan (PDP-LABAN) v. Commission on Elections*, G.R. No. 225152, October 5, 2021 [Per J. Lopez, M., *En banc*].

<sup>7</sup> *Sadain v. Office of the Ombudsman*, G.R. No. 253688, February 8, 2023 [Per J. Inting, Third Division].

<sup>8</sup> 148 Phil. 443 (1971), [Per J. Fernando, *En banc*].

legal rights or duties. Nor can it justify any official act taken under it. Its repugnancy to the fundamental law once judicially declared results in its being to all intents and purposes a mere scrap of paper. As the new Civil Code puts it: "When the courts declare a law to be inconsistent with the Constitution, the former shall be void and the latter shall govern. Administrative or executive acts, orders and regulations shall be valid only when they are not contrary to the laws or the Constitution." It is understandable why it should be so, the Constitution being supreme and paramount. Any legislative or executive act contrary to its terms cannot survive.

Such a view has support in logic and possesses the merit of simplicity. It may not however be sufficiently realistic. It does not admit of doubt that prior to the declaration of nullity such challenged legislative or executive act must have been in force and had to be complied with. This is so as until after the judiciary, in an appropriate case, declares its invalidity, it is entitled to obedience and respect. Parties may have acted under it and may have changed their positions. What could be more fitting than that in a subsequent litigation regard be had to what has been done while such legislative or executive act was in operation and presumed to be valid in all respects. It is now accepted as a doctrine that prior to its being nullified, its existence as a fact must be reckoned with. This is merely to reflect awareness that precisely because the judiciary is the governmental organ which has the final say on whether or not a legislative or executive measure is valid, a period of time may have elapsed before it can exercise the power of judicial review that may lead to a declaration of nullity. It would be to deprive the law of its quality of fairness and justice then, if there be no recognition of what had transpired prior to such adjudication.

In the language of an American Supreme Court decision: "The actual existence of a statute, prior to such a determination [of unconstitutionality], is an operative fact and may have consequences which cannot justly be ignored. The past cannot always be erased by a new judicial declaration. The effect of the subsequent ruling as to invalidity may have to be considered in various aspects, — with respect to particular relations, individual and corporate, and particular conduct, private and official." ...<sup>9</sup> (Citations omitted)

Thus, from the enactment of P.D. No. 1869 by former President Ferdinand E. Marcos until the invalidation of Section 15 thereof in the 2023 Genuino Decision, the effects of said provision, having been relied upon in good faith, must be recognized as valid.<sup>10</sup>

To this end, I humbly submit that the reckoning point of the prospective application of the doctrine laid down in the 2023 Genuino Decision is the date of its finality. The COA's audit of PAGCOR's funds prior to this date should still be subject to the limitation provided under Section 15 of P.D. No. 1869.

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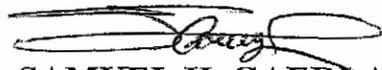
<sup>9</sup> Id. at 447-448.

<sup>10</sup> *Commissioner of Internal Revenue v. San Roque Power Corporation*, 719 Phil. 137, 158 (2013), [Per J. Carpio, *En banc*].

Moreover, it is my considered view that the 2021 Genuino Decision, prior to its reversal by the 2023 Genuino Decision, is a “judicial interpretation of a statute,”<sup>11</sup> in this case P.D. No. 1869, which “constitutes part of that law as of the date of its original passage.”<sup>12</sup> In other words, the 2021 Genuino Decision’s judicial interpretation of Section 15 of P.D. No. 1869 should be deemed incorporated at the moment of its legislation.<sup>13</sup>

Thus, the 2021 Genuino Decision should govern the scope of the COA’s audit jurisdiction of PAGCOR funds from the date of the effectivity of P.D. No. 1869, or on July 11, 1983, until the day prior to the finality of the 2023 Genuino Decision.

Prescinding from this proposition, it may be concluded that the COA did not have any jurisdiction to audit the funds subject of the instant case. Accordingly, petitioner could not be held personally liable therefor.

  
**SAMUEL H. GAERLAN**  
Associate Justice

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<sup>11</sup> *Castro v. Deloria*, 597 Phil. 18, 25 (2009), [Per J. Austria-Martinez, Third Division].

<sup>12</sup> *Id.* at 25–26.

<sup>13</sup> *Id.* at 26.