

EN BANC

[G.R. No. 185544, January 13, 2015]

**THE LAW FIRM OF LAGUESMA MAGSALIN CONSULTA AND
GASTARDO, PETITIONER, VS. THE COMMISSION ON AUDIT
AND/OR REYNALDO A. VILLAR AND JUANITO G. ESPINO, JR. IN
THEIR CAPACITIES AS CHAIRMAN AND COMMISSIONER,
RESPECTIVELY, RESPONDENTS.**

DECISION

LEONEN, J.:

When a government entity engages the legal services of private counsel, it must do so with the necessary authorization required by law; otherwise, its officials bind themselves to be personally liable for compensating private counsel's services.

This is a petition^[1] for certiorari filed pursuant to Rule XI, Section 1 of the 1997 Revised Rules of Procedure of the Commission on Audit. The petition seeks to annul the decision^[2] dated September 27, 2007 and resolution^[3] dated November 5, 2008 of the Commission on Audit, which disallowed the payment of retainer fees to the law firm of Laguesma Magsalin Consulta and Gastardo for legal services rendered to Clark Development Corporation.^[4]

Sometime in 2001, officers of Clark Development Corporation,^[5] a government-owned and controlled corporation, approached the law firm of Laguesma Magsalin Consulta and Gastardo for its possible assistance in handling the corporation's labor cases.^[6]

Clark Development Corporation, through its legal officers and after the law firm's acquiescence, "sought from the Office of the Government Corporate Counsel ['OGCC'] its approval for the engagement of [Laguesma Magsalin Consulta and Gastardo] as external counsel."^[7]

On December 4, 2001, the Office of the Government Corporate Counsel denied the request.^[8] Clark Development Corporation then filed a request for reconsideration.^[9]

On May 20, 2002, the Office of the Government Corporate Counsel, through Government Corporate Counsel Amado D. Valdez (Government Corporate Counsel Valdez), reconsidered the request and approved the engagement of Laguesma Magsalin Consulta and Gastardo.^[10] It also furnished Clark Development Corporation a copy of a pro-forma retainerhip contract^[11] containing the suggested terms and conditions of the retainerhip.^[12] It instructed Clark Development Corporation to submit a copy of the contract to the Office of the Government

Corporate Counsel after all the parties concerned have signed it.^[13]

In the meantime, Laguesma Magsalin Consulta and Gastardo commenced rendering legal services to Clark Development Corporation. At this point, Clark Development Corporation had yet to secure the authorization and clearance from the Office of the Government Corporate Counsel or the concurrence of the Commission on Audit of the retainership contract. According to the law firm, Clark Development Corporation's officers assured the law firm that it was in the process of securing the approval of the Commission on Audit.^[14]

On June 28, 2002, Clark Development Corporation, through its Board of Directors, approved Laguesma Magsalin Consulta and Gastardo's engagement as private counsel.^[15] In 2003, it also approved the assignment of additional labor cases to the law firm.^[16]

On July 13, 2005, Clark Development Corporation requested the Commission on Audit for concurrence of the retainership contract it executed with Laguesma Magsalin Consulta and Gastardo.^[17] According to the law firm, it was only at this point when Clark Development Corporation informed them that the Commission on Audit required the clearance and approval of the Office of the Government Corporate Counsel before it could approve the release of Clark Development Corporation's funds to settle the legal fees due to the law firm.^[18]

On August 5, 2005, State Auditor IV Elvira G. Punzalan informed Clark Development Corporation that its request for clearance could not be acted upon until the Office of the Government Corporate Counsel approves the retainership contract with finality.^[19]

On August 10, 2005, Clark Development Corporation sent a letter-request to the Office of the Government Corporate Counsel for the final approval of the retainership contract, in compliance with the Commission on Audit's requirements.^[20]

On December 22, 2005, Government Corporate Counsel Agnes VST Devanadera (Government Corporate Counsel Devanadera) denied Clark Development Corporation's request for approval on the ground that the pro-forma retainership contract given to them was not "based on the premise that the monthly retainer's fee and concomitant charges are reasonable and could pass in audit by COA."^[21] She found that Clark Development Corporation adopted instead the law firm's proposals concerning the payment of a retainer's fee on a per case basis without informing the Office of the Government Corporate Counsel. She, however, ruled that the law firm was entitled to payment under the principle of *quantum meruit* and subject to Clark Development Corporation Board's approval and the usual government auditing rules and regulations.^[22]

On December 27, 2005, Clark Development Corporation relayed Government Corporate Counsel Devanadera's letter to the Commission's Audit Team Leader, highlighting the portion on the approval of payment to Laguesma Magsalin Consulta and Gastardo on the basis of *quantum meruit*.^[23]

On November 9, 2006, the Commission on Audit's Office of the General Counsel, Legal and Adjudication Sector issued a "Third Indorsement"^[24] denying Clark Development Corporation's request for clearance, citing its failure to secure a prior written concurrence of the Commission on Audit and the approval with finality of the Office of the Government Corporate Counsel.^[25] It also stated that its request for concurrence was made three (3) years after engaging the legal services of the law firm.^[26]

On December 4, 2006, Laguesma Magsalin Consulta and Gastardo appealed the "Third Indorsement" to the Commission on Audit. On December 12, 2006, Clark Development Corporation also filed a motion for reconsideration.^[27]

On September 27, 2007, the Commission on Audit rendered the assailed decision denying the appeal and motion for reconsideration. It ruled that Clark Development Corporation violated Commission on Audit Circular No. 98-002 dated June 9, 1998 and Office of the President Memorandum Circular No. 9 dated August 27, 1998 when it engaged the legal services of Laguesma Magsalin Consulta and Gastardo without the final approval and written concurrence of the Commission on Audit.^[28] It also ruled that it was not the government's responsibility to pay the legal fees already incurred by Clark Development Corporation, but rather by the government officials who violated the regulations on the matter.^[29]

Clark Development Corporation and Laguesma Magsalin Consulta and Gastardo separately filed motions for reconsideration,^[30] which the Commission on Audit denied in the assailed resolution dated November 5, 2008. The resolution also disallowed the payment of legal fees to the law firm on the basis of *quantum meruit* since the Commission on Audit Circular No. 86-255 mandates that the engagement of private counsel without prior approval "shall be a personal liability of the officials concerned."^[31]

Laguesma Magsalin Consulta and Gastardo filed this petition for certiorari on December 19, 2008.^[32] Respondents, through the Office of the Solicitor General, filed their comment^[33] dated May 7, 2009. The reply^[34] was filed on September 1, 2009.

The primordial issue to be resolved by this court is whether the Commission on Audit erred in disallowing the payment of the legal fees to Laguesma Magsalin Consulta and Gastardo as Clark Development Corporation's private counsel.

To resolve this issue, however, several procedural and substantive issues must first be addressed:

Procedural:

1. Whether the petition was filed on time; and
2. Whether petitioner is the real party-in-interest.

Substantive:

1. Whether the Commission on Audit erred in denying Clark Development Corporation's request for clearance in engaging petitioner as private counsel;
2. Whether the Commission on Audit correctly cited *Polloso v. Gangan*^[35] and *PHIVIDEC Industrial Authority v. Capitol Steel Corporation*^[36] in support of its denial; and
3. Whether the Commission on Audit erred in ruling that petitioner should not be paid on the basis of *quantum meruit* and that any payment for its legal services should be the personal liability of Clark Development Corporation's officials.

Petitioner argues that *Polloso* and *PHIVIDEC* are not applicable to the circumstances at hand because in both cases, the government agency concerned had failed to secure the approval of both the Office of the Government Corporate Counsel and the Commission on Audit.^[37] Petitioner asserts that it was able to secure authorization from the Office of the Government Corporate Counsel prior to rendering services to Clark Development Corporation for all but two (2) of the labor cases assigned to it.^[38] It argues that the May 20, 2002 letter from Government Corporate Counsel Valdez was tantamount to a grant of authorization since it granted Clark Development Corporation's request for reconsideration.^[39]

In their comment,^[40] respondents argue that petitioner is not a real party-in-interest to the case.^[41] They argue that it is Clark Development Corporation, and not petitioner, who is a real party-in-interest since the subject of the assailed decision was the denial of the corporation's request for clearance.^[42]

Respondents also allege that it was only on July 13, 2005, or three (3) years after the hiring of petitioner, when Clark Development Corporation requested the Commission on Audit's concurrence of the retainership contract between Clark Development Corporation and petitioner.^[43] They argue that the retainership contract was not approved with finality by the Office of the Government Corporate Counsel.^[44] Further, *Polloso* and *PHIVIDEC* are applicable to this case since both cases involve the "indispensability of [the] prior written concurrence of both [the Office of the Government Corporate Counsel] and the [Commission on Audit] before any [government-owned and controlled corporation] can hire an external counsel."^[45]

In its reply,^[46] petitioner argues that it is a real party-in-interest since "it rendered its services to [Clark Development Corporation], which ultimately redounded to the benefit of the Republic"^[47] and that "it deserves to be paid what is its due as a matter of right."^[48] Petitioner also reiterates its argument that *Polloso* and *PHIVIDEC* are not applicable to this case since the factual antecedents are not the same.^[49]

The petition is denied.

The petition was filed out of time

Petitioner states that it filed this petition under Rule XI, Section 1 of the 1997 Revised Rules of Procedure of the Commission on Audit.^[50] The rule states:

RULE XI
JUDICIAL REVIEW

SECTION 1. Petition for Certiorari. — Any decision, order or resolution of the Commission may be brought to the Supreme Court on certiorari by the aggrieved party within thirty (30) days from receipt of a copy thereof in the manner provided by law, the Rules of Court^[51] and these Rules.

This rule is based on Article IX-A, Section 7 of the Constitution, which states:

Section 7. Each Commission shall decide by a majority vote of all its Members, any case or matter brought before it within sixty days from the date of its submission for decision or resolution. A case or matter is deemed submitted for decision or resolution upon the filing of the last pleading, brief, or memorandum required by the rules of the Commission or by the Commission itself. *Unless otherwise provided by this Constitution or by law, any decision, order, or ruling of each Commission may be brought to the Supreme Court on certiorari by the aggrieved party within thirty days from receipt of a copy thereof.* (Emphasis supplied)

Ordinarily, a petition for certiorari under Rule 65 of the Rules of Court has a reglementary period of 60 days from receipt of denial of the motion for reconsideration. The Constitution, however, specifies that the reglementary period for assailing the decisions, orders, or rulings of the constitutional commissions is thirty (30) days from receipt of the decision, order, or ruling. For this reason, a separate rule was enacted in the Rules of Court.

Rule 64 of the Rules of Civil Procedure provides the guidelines for filing a petition for certiorari under this rule. Section 2 of the rule specifies that “[a] judgment or final order or resolution of the Commission on Elections and the Commission on Audit may be brought by the aggrieved party to the Supreme Court on certiorari under Rule 65, **except as hereinafter provided.**”

The phrase, “except as hereinafter provided,” specifies that any petition for certiorari filed under this rule follows the same requisites as those of Rule 65 except for certain provisions found only in Rule 64. One of these provisions concerns the time given to file the petition.

Section 3 of Rule 64 of the Rules of Civil Procedure states:

SEC. 3. Time to file petition. — *The petition shall be filed within thirty (30) days from notice of the judgment or final order or resolution sought to be reviewed. The filing of a motion for new trial or reconsideration of*