

FIRST DIVISION

[G.R. No. 170217, December 10, 2012]

HPS SOFTWARE AND COMMUNICATION CORPORATION AND HYMAN YAP, PETITIONERS, VS. PHILIPPINE LONG DISTANCE TELEPHONE COMPANY (PLOT), JOSE JORGE E. CORPUZ, IN HIS CAPACITY AS THE CHIEF OF THE PNP-SPECIAL TASK FORCE GROUP-VISAYAS, PHILIP YAP, FATIMA CIMAFRANCA, AND EASTERN TELECOMMUNICATIONS PHILIPPINES, INC., RESPONDENTS.

[G.R. NO. 170694]

PHILIPPINE LONG DISTANCE TELEPHONE COMPANY, PETITIONER, VS. HPS SOFTWARE AND COMMUNICATION CORPORATION, INCLUDING ITS INCORPORATORS, DIRECTORS, OFFICERS: PHILIP YAP, STANLEY T. YAP, ELAINE .JOY T. YAP, JULIE Y. SY, HYMAN A. YAP AND OTHER PERSONS UNDER THEIR EMPLOY, JOHN DOE AND JANE DOE, IN THE PREMISES LOCATED AT HPS BUILDING, PLARIDEL ST., BRGY. ALANG-ALANG, MANDAUE CITY, CEBU, RESPONDENTS.

D E C I S I O N

LEONARDO-DE CASTRO, J.:

Before the Court are two consolidated petitions for review on *certiorari* under Rule 45 of the Rules of Court each seeking to annul and set aside a ruling of the Court of Appeals concerning the May 23, 2001 Joint Order^[1] issued by the Regional Trial Court of Mandaue City, Branch 55. In G.R. No. 170217, petitioners HPS Software and Communication Corporation and Hyman Yap (HPS Corporation, *et al.*) seek to nullify the March 26, 2004 Decision^[2] as well as the September 27, 2005 Resolution^[3] of the former Fourth (4th) Division of the Court of Appeals in CA-G.R. SP No. 65682, entitled "*Philippine Long Distance Telephone Company v. Hon. Judge Ulric Cañete, in his capacity as the Presiding Judge of the Regional Trial Court, Branch 55, Mandaue City, HPS Software and Communications Corporation; its Officers and/or Directors: Philip Yap, Hyman Yap, Fatima Cimafranca; Eastern Telecommunications Phils., Inc., and Jose Jorge E. Corpuz, in his capacity as the Chief of the PNP - Special Task Force Group- Visayas.*" The March 26, 2004 Decision modified the May 23, 2001 Joint Order of the trial court by setting aside the portion directing the immediate return of the seized items to HPS Corporation and, as a consequence, directing the Philippine National Police (PNP) - Special Task Force Group – Visayas to retrieve possession and take custody of all the seized items pending the final disposition of the appeal filed by Philippine Long Distance Telephone Company (PLDT) on the said May 23, 2001 Joint Order. The September 27, 2005 Resolution denied for lack of merit HPS Corporation, *et al.*'s subsequent Motion for Reconsideration. On the other hand, in G.R. No. 170694, petitioner PLDT

seeks to set aside the April 8, 2005 Decision^[4] as well as the December 7, 2005 Resolution^[5] of the former Eighteenth Division of the Court of Appeals in CA-G.R. CV No. 75838, entitled "*People of the Philippines, Philippine Long Distance Telephone Company v. HPS Software and Communication Corporation, its Incorporators, Directors, Officers: Philip Yap, Stanley T. Yap, Elaine Joy T. Yap, Julie Y. Sy, Hyman A. Yap and Other Persons Under Their Employ, John Doe and Jane Doe, in the premises located at HPS Building, Plaridel St., Brgy. Alang-Alang, Mandaue City, Cebu.*" The April 8, 2005 Decision affirmed the May 23, 2001 Joint Order of the trial court while the December 7, 2005 Resolution denied for lack of merit PLDT's subsequent Motion for Reconsideration.

The undisputed thread of facts binding these consolidated cases, as summarized in the assailed May 23, 2001 Joint Order, follows:

[O]n October 20, 2000, the complainant PAOCTF filed with this Honorable Court two applications for the issuance of search warrant for Violation of Article 308 of the Revised Penal Code for Theft of Telephone Services and for Violation of P.D. 401 for unauthorized installation of telephone communication equipments following the complaint of the Philippine Long Distance Telephone Company or PLDT that they were able to monitor the use of the respondents in their premises of Mabuhay card and equipments capable of receiving and transmitting calls from the USA to the Philippines without these calls passing through the facilities of PLDT.

Complainant's witnesses Richard Dira and Reuben Hinagdanan testified under oath that Respondents are engaged in the business of International [S]imple Resale or unauthorized sale of international long distance calls. They explained that International Simple Resale (ISR) is an alternative call pattern employed by communication provider outside of the country. This is a method of routing and completing international long distance call using pre-paid card which respondents are selling in the States. These calls are made through access number and by passes the PLDT International Gate Way Facilities and by passes the monitoring system, thus making the international long distance calls appear as local calls, to the damage and prejudice of PLDT which is deprived of revenues as a result thereof.

Complainant's witnesses Richard Dira and Reuben Hinagdanan testified that they found out that respondents are engaged in the business of International Simple Resale on September 13, 2000 when they conducted a test call using Mabuhay Card. They followed the dialing instructions found at the back of the card and dialed "00" and the access code number 18008595845 of the said Mabuhay Card. They were then prompted by a voice to enter the PIN code to validate and after entering the PIN code number 332 1479224, they were again prompted to dial the country code of the Philippines 011-6332 and then dialed telephone number 2563066. Although the test calls were incoming international calls from the United States, they discovered in the course of their test calls that PLDT telephone lines/numbers were identified as the calling party, specifically 032-3449294 and 032-3449280. They testified that the test calls passing through the Mabuhay Card were being reflected as local

calls only and not overseas calls. Upon verification, they discovered that the lines were subscribed by Philip Yap whose address is HPS Software Communication Corporation at Plaridel St., Alang-alang, Mandaue City. They also testified that the lines subscribed by Philip Yap were transferred to HPS Software and Communications Corporation of the same address. They further testified that the respondents committed these crimes by installing telecommunication equipments like multiplexers, lines, cables, computers and other switching equipments in the HPS Building and connected these equipments with PLDT telephone lines which coursed the calls through international privatized lines where the call is unmonitored and coursed through the switch equipments in Cebu particularly in Philip Yap's line and distributed to the subscribers in Cebu.

Satisfied with the affidavits and sworn testimony of the complainant's witnesses that they were able to trace the long distance calls that they made on September 13, 2000 from the record of these calls in the PLDT telephone numbers 032 3449280 and 032 3449294 of Philip Yap and/or later on transferred to HPS Software and Communication Corporation using the said Mabuhay Card in conducting said test calls, and that they saw the telephone equipments like lines, cables, antennas, computers, modems, multiplexers and other switching equipments, Cisco 2600/3600, Nokia BB256K (with Bayantel marking) inside the compound of the respondents being used for this purpose, this court issued the questioned search warrants to seize the instruments of the crime.^[6]

On October 20, 2000, the trial court issued two search warrants denominated as S.W. No. 2000-10-467^[7] for Violation of Article 308 of the Revised Penal Code (Theft of Telephone Services) and S.W. No. 2000-10- 468^[8] for violation of Presidential Decree No. 401 (Unauthorized Installation of Telephone Connections) which both contained identical orders directing that several items are to be seized from the premises of HPS Corporation and from the persons of Hyman Yap, *et al.*

The search warrants were immediately implemented on the same day by a PAOCTF-Visayas team led by Police Inspector (P/Insp.) Danilo Villanueva. The police team searched the premises of HPS Corporation located at HPS Building, Plaridel St., Brgy. Alang-Alang, Mandaue City, Cebu and seized the articles specified in the search warrants.^[9]

Subsequently, a preliminary investigation was conducted by Assistant City Prosecutor Yope M. Cotecson (Pros. Cotecson) of the Office of the City Prosecutor of Mandaue City who thereafter issued a Resolution dated April 2, 2001^[10] which found probable cause that all the crimes charged were committed and that Philip Yap, Hyman Yap, Stanley Yap, Elaine Joy Yap, Julie Y. Sy, as well as Gene Frederick Boniel, Michael Vincent Pozon, John Doe and Jane Doe were probably guilty thereof. The dispositive portion of the said April 2, 2001 Resolution reads as follows:

Wherefore, all the foregoing considered, the undersigned finds the existence of probable cause for the crimes of Theft and Violation of PD

401 against all the respondents herein, excluding Fatima Cimafranca, hence, filing in court of corresponding Informations is hereby duly recommended.^[11]

On November 23, 2000, Philip Yap and Hyman Yap filed a Motion to Quash and/or Suppress Illegally Seized Evidence.^[12] Then on December 11, 2000, HPS Corporation filed a Motion to Quash Search Warrant and Return of the Things Seized.^[13] Both pleadings sought to quash the search warrants at issue on the grounds that the same did not refer to a specific offense; that there was no probable cause; and that the search warrants were general warrants and were wrongly implemented. In response, PLDT formally opposed the aforementioned pleadings through the filing of a Consolidated Opposition.^[14]

The trial court then conducted hearings on whether or not to quash the subject search warrants and, in the course thereof, the parties produced their respective evidence. HPS Corporation, *et al.* presented, as testimonial evidence, the testimonies of Mr. Jesus M. Laureano, the Chief Enforcement and Operation Officer of the National Telecommunications Commission (NTC)-Region VII and Ms. Marie Audrey Balbuena Aller, HPS Corporation's administrative officer, while PLDT presented Engr. Policarpio Tolentino, who held the position of Engineer II, Common Carrier Authorization Division of the NTC.^[15]

In the course of Engr. Tolentino's testimony, he identified certain pieces of evidence which PLDT caused to be marked as its own exhibits but was objected to by HPS Corporation, *et al.* on the grounds of immateriality. The trial court sustained the objection and accordingly disallowed the production of said exhibits. Thus, PLDT filed a Manifestation with Tender of Excluded Evidence^[16] on April 18, 2001 which tendered the excluded evidence of (a) *Mabuhay* card with Personal Identification Number (PIN) code number 349 4374802 (Exhibit "E"), and (b) Investigation Report dated October 2, 2000 prepared by Engr. Tolentino in connection with the validation he made on the complaints of PLDT against ISR activities in Cebu City and Davao City (Exhibit "G").

Subsequently, on April 19, 2001, PLDT formally offered in evidence, as part of Engr. Tolentino's testimony and in support of PLDT's opposition to HPS Corporation, *et al.*'s motion to quash, the following: (a) Subpoena *Duces Tecum* and *Ad Testificandum* issued by the trial court to Engr. Tolentino, commanding him to appear and testify before it on March 26, 27 and 28, 2001 (Exhibit "A"); (b) Identification Card No. 180 of Engr. Tolentino (Exhibit "B"); (c) PLDT's letter dated September 22, 2000, addressed to then NTC Commissioner Joseph A. Santiago (Exhibit "C"); (d) Travel Order No. 52-9-2000 issued to Engr. Tolentino and signed by then NTC Commissioner Joseph Santiago (Exhibit "D"); and (e) Travel Order No. 07-03-2001 dated March 23, 2001 issued to Engr. Tolentino by then NTC Commissioner Eliseo M. Rio, Jr., authorizing Engr. Tolentino to appear and testify before the trial court (Exhibit "F").^[17]

PLDT then filed a Motion for Time to File Memorandum^[18] asking the trial court that it be allowed to submit a Memorandum in support of its opposition to the motion to quash search warrants filed by HPS Corporation, *et al.* within a period of twenty (20)

days from receipt of the trial court's ruling. Consequently, in an Order^[19] dated May 3, 2001, the trial court admitted Exhibits "A," "B," "C," "D," and "F" as part of the testimony of Engr. Tolentino. The trial court also directed PLDT to file its Memorandum within twenty (20) days from receipt of said Order. As PLDT's counsel received said Order on May 16, 2001, it reckoned that it had until June 5, 2001 to file the aforementioned Memorandum.

However, the trial court issued the assailed Joint Order on May 23, 2001, before the period for the filing of PLDT's Memorandum had lapsed. The dispositive portion of said Order states:

WHEREFORE, premises considered, the motion to quash the search warrants and return the things seized is hereby granted. Search Warrant Nos. 2000-10-467 and 2000-10-468 are ordered quashed. The things seized under the said search warrants are hereby ordered to be immediately returned to respondent HPS Software and Communication Corporation.^[20]

When PLDT discovered this development, it filed a Notice of Appeal^[21] on June 7, 2001 which the trial court gave due course via an Order^[22] dated June 13, 2001. This case would be later docketed as CA- G.R. CV No. 75838.

PLDT likewise asserted that, without its knowledge, the trial court caused the release to HPS Corporation, *et al.* of all the seized items that were in custody and possession of the PNP Task Force Group-Visayas. According to PLDT, it would not have been able to learn about the precipitate discharge of said items were it not for a Memorandum^[23] dated June 13, 2001 issued by Police Superintendent Jose Jorge E. Corpuz which PLDT claimed to have received only on June 27, 2001. Said document indicated that the items seized under the search warrants at issue were released from the custody of the police and returned to HPS Corporation, *et al.* through its counsel, Atty. Roque Paloma, Jr.

Thus, on July 18, 2001, PLDT filed a Petition for *Certiorari* under Rule 65^[24] with the Court of Appeals assailing the trial court's release of the seized equipment despite the fact that the Joint Order dated May 23, 2001 had not yet attained finality. This petition became the subject matter of CA- G.R. SP No. 65682.

The former Fourth Division of the Court of Appeals issued a Decision dated March 26, 2004 in CA-G.R. SP No. 65682 which granted PLDT's petition for *certiorari* and set aside the trial court's May 23, 2001 Joint Order insofar as it released the seized equipment at issue. The dispositive portion of the March 26, 2004 Decision reads:

WHEREFORE, premises considered, the instant petition is hereby **GRANTED**. Accordingly, the respondent judge's May 23, 2001 Joint Order is **MODIFIED** by **SETTING ASIDE** that portion directing the immediate return of the seized items to respondent HPS. Consequently, the respondent PNP Special Task Force is directed to retrieve possession and