

## FIRST DIVISION

[ G.R. NO. 155076, February 27, 2006 ]

**LUIS MARCOS P. LAUREL, PETITIONER, VS. HON. ZEUS C. ABROGAR, PRESIDING JUDGE OF THE REGIONAL TRIAL COURT, MAKATI CITY, BRANCH 150, PEOPLE OF THE PHILIPPINES & PHILIPPINE LONG DISTANCE TELEPHONE COMPANY, RESPONDENTS.**

### D E C I S I O N

**CALLEJO, SR., J.:**

Before us is a Petition for Review on *Certiorari* of the Decision<sup>[1]</sup> of the Court of Appeals (CA) in CA-G.R. SP No. 68841 affirming the Order issued by Judge Zeus C. Abrogar, Regional Trial Court (RTC), Makati City, Branch 150, which denied the "Motion to Quash (With Motion to Defer Arraignment)" in Criminal Case No. 99-2425 for theft.

Philippine Long Distance Telephone Company (PLDT) is the holder of a legislative franchise to render local and international telecommunication services under Republic Act No. 7082.<sup>[2]</sup> Under said law, PLDT is authorized to establish, operate, manage, lease, maintain and purchase telecommunication systems, including transmitting, receiving and switching stations, for both domestic and international calls. For this purpose, it has installed an estimated 1.7 million telephone lines nationwide. PLDT also offers other services as authorized by Certificates of Public Convenience and Necessity (CPCN) duly issued by the National Telecommunications Commission (NTC), and operates and maintains an International Gateway Facility (IGF). The PLDT network is thus principally composed of the Public Switch Telephone Network (PSTN), telephone handsets and/or telecommunications equipment used by its subscribers, the wires and cables linking said telephone handsets and/or telecommunications equipment, antenna, the IGF, and other telecommunications equipment which provide interconnections.<sup>[3]</sup>

PLDT alleges that one of the alternative calling patterns that constitute network fraud and violate its network integrity is that which is known as International Simple Resale (ISR). ISR is a method of routing and completing international long distance calls using International Private Leased Lines (IPL), cables, antenna or air wave or frequency, which connect directly to the local or domestic exchange facilities of the terminating country (the country where the call is destined). The IPL is linked to switching equipment which is connected to a PLDT telephone line/number. In the process, the calls bypass the IGF found at the terminating country, or in some instances, even those from the originating country.<sup>[4]</sup>

One such alternative calling service is that offered by Baynet Co., Ltd. (Baynet) which sells "Bay Super Orient Card" phone cards to people who call their friends and relatives in the Philippines. With said card, one is entitled to a 27-minute call to the

Philippines for about ¥37.03 per minute. After dialing the ISR access number indicated in the phone card, the ISR operator requests the subscriber to give the PIN number also indicated in the phone card. Once the caller's identity (as purchaser of the phone card) is confirmed, the ISR operator will then provide a Philippine local line to the requesting caller via the IPL. According to PLDT, calls made through the IPL never pass the toll center of IGF operators in the Philippines. Using the local line, the Baynet card user is able to place a call to any point in the Philippines, provided the local line is National Direct Dial (NDD) capable.<sup>[5]</sup>

PLDT asserts that Baynet conducts its ISR activities by utilizing an IPL to course its incoming international long distance calls from Japan. The IPL is linked to switching equipment, which is then connected to PLDT telephone lines/numbers and equipment, with Baynet as subscriber. Through the use of the telephone lines and other auxiliary equipment, Baynet is able to connect an international long distance call from Japan to any part of the Philippines, and make it appear as a call originating from Metro Manila. Consequently, the operator of an ISR is able to evade payment of access, termination or bypass charges and accounting rates, as well as compliance with the regulatory requirements of the NTC. Thus, the ISR operator offers international telecommunication services at a lower rate, to the damage and prejudice of legitimate operators like PLDT.<sup>[6]</sup>

PLDT pointed out that Baynet utilized the following equipment for its ISR activities: lines, cables, and antennas or equipment or device capable of transmitting air waves or frequency, such as an IPL and telephone lines and equipment; computers or any equipment or device capable of accepting information applying the prescribed process of the information and supplying the result of this process; modems or any equipment or device that enables a data terminal equipment such as computers to communicate with other data terminal equipment via a telephone line; multiplexers or any equipment or device that enables two or more signals from different sources to pass through a common cable or transmission line; switching equipment, or equipment or device capable of connecting telephone lines; and software, diskettes, tapes or equipment or device used for recording and storing information.<sup>[7]</sup>

PLDT also discovered that Baynet subscribed to a total of 123 PLDT telephone lines/numbers.<sup>[8]</sup> Based on the Traffic Study conducted on the volume of calls passing through Baynet's ISR network which bypass the IGF toll center, PLDT incurred an estimated monthly loss of P10,185,325.96.<sup>[9]</sup> Records at the Securities and Exchange Commission (SEC) also revealed that Baynet was not authorized to provide international or domestic long distance telephone service in the country. The following are its officers: Yuji Hijioka, a Japanese national (chairman of the board of directors); Gina C. Mukaida, a Filipina (board member and president); Luis Marcos P. Laurel, a Filipino (board member and corporate secretary); Ricky Chan Pe, a Filipino (board member and treasurer); and Yasushi Ueshima, also a Japanese national (board member).

Upon complaint of PLDT against Baynet for *network fraud*, and on the strength of two search warrants<sup>[10]</sup> issued by the RTC of Makati, Branch 147, National Bureau of Investigation (NBI) agents searched its office at the 7<sup>th</sup> Floor, SJG Building, Kalayaan Avenue, Makati City on November 8, 1999. Atsushi Matsuura, Nobuyoshi Miyake, Edourd D. Lacson and Rolando J. Villegas were arrested by NBI agents while

in the act of manning the operations of Baynet. Seized in the premises during the search were numerous equipment and devices used in its ISR activities, such as multiplexers, modems, computer monitors, CPUs, antenna, assorted computer peripheral cords and microprocessors, cables/wires, assorted PLDT statement of accounts, parabolic antennae and voltage regulators.

State Prosecutor Ofelia L. Calo conducted an inquest investigation and issued a Resolution<sup>[11]</sup> on January 28, 2000, finding probable cause for theft under Article 308 of the Revised Penal Code and Presidential Decree No. 401<sup>[12]</sup> against the respondents therein, including Laurel.

On February 8, 2000, State Prosecutor Calo filed an Information with the RTC of Makati City charging Matsuura, Miyake, Lacson and Villegas with *theft under Article 308 of the Revised Penal Code*. After conducting the requisite preliminary investigation, the State Prosecutor filed an Amended Information impleading Laurel (a partner in the law firm of Ingles, Laurel, Salinas, and, until November 19, 1999, a member of the board of directors and corporate secretary of Baynet), and the other members of the board of directors of said corporation, namely, Yuji Hijioka, Yasushi Ueshima, Mukaida, Lacson and Villegas, as accused for theft under Article 308 of the Revised Penal Code. The inculpatory portion of the Amended Information reads:

On or about September 10-19, 1999, or prior thereto, in Makati City, and within the jurisdiction of this Honorable Court, the accused, conspiring and confederating together and all of them mutually helping and aiding one another, with intent to gain and without the knowledge and consent of the Philippine Long Distance Telephone (PLDT), did then and there willfully, unlawfully and feloniously take, steal and use the international long distance calls belonging to PLDT by conducting International Simple Resale (ISR), which is a method of routing and completing international long distance calls using lines, cables, antennae, and/or air wave frequency which connect directly to the local or domestic exchange facilities of the country where the call is destined, effectively stealing this business from PLDT while using its facilities in the estimated amount of P20,370,651.92 to the damage and prejudice of PLDT, in the said amount.

CONTRARY TO LAW.<sup>[13]</sup>

Accused Laurel filed a "Motion to Quash (with Motion to Defer Arraignment)" on the ground that the factual allegations in the Amended Information do not constitute the felony of theft under Article 308 of the Revised Penal Code. He averred that the Revised Penal Code, or any other special penal law for that matter, does not prohibit ISR operations. He claimed that telephone calls with the use of PLDT telephone lines, whether domestic or international, belong to the persons making the call, not to PLDT. He argued that the caller merely uses the facilities of PLDT, and what the latter owns are the telecommunication infrastructures or facilities through which the call is made. He also asserted that PLDT is compensated for the caller's use of its facilities by way of rental; for an outgoing overseas call, PLDT charges the caller per minute, based on the duration of the call. Thus, no personal property was stolen from PLDT. According to Laurel, the P20,370,651.92 stated in the Information, if anything, represents the rental for the use of PLDT facilities, and not the value of anything owned by it. Finally, he averred that the allegations in the Amended

Information are already subsumed under the Information for violation of Presidential Decree (P.D.) No. 401 filed and pending in the Metropolitan Trial Court of Makati City, docketed as Criminal Case No. 276766.

The prosecution, through private complainant PLDT, opposed the motion,<sup>[14]</sup> contending that the movant unlawfully took personal property belonging to it, as follows: 1) *intangible telephone services* that are being offered by PLDT and other telecommunication companies, i.e., the connection and interconnection to their telephone lines/facilities; 2) *the use of those facilities* over a period of time; and 3) *the revenues derived* in connection with the rendition of such services and the use of such facilities.<sup>[15]</sup>

The prosecution asserted that the use of PLDT's intangible telephone services/facilities allows electronic voice signals to pass through the same, and ultimately to the called party's number. It averred that such service/facility is akin to electricity which, although an intangible property, may, nevertheless, be appropriated and be the subject of theft. Such service over a period of time for a consideration is the business that PLDT provides to its customers, which enables the latter to send various messages to installed recipients. The service rendered by PLDT is akin to merchandise which has specific value, and therefore, capable of appropriation by another, as in this case, through the ISR operations conducted by the movant and his co-accused.

The prosecution further alleged that "international business calls and revenues constitute personal property envisaged in Article 308 of the Revised Penal Code." Moreover, the intangible telephone services/facilities belong to PLDT and not to the movant and the other accused, because they have no telephone services and facilities of their own duly authorized by the NTC; thus, the taking by the movant and his co-accused of *PLDT services* was with intent to gain and without the latter's consent.

The prosecution pointed out that the accused, as well as the movant, were paid in exchange for their illegal appropriation and use of PLDT's telephone services and facilities; on the other hand, the accused did not pay a single centavo for their illegal ISR operations. Thus, the acts of the accused were akin to the use of a "jumper" by a consumer to deflect the current from the house electric meter, thereby enabling one to steal electricity. The prosecution emphasized that its position is fortified by the Resolutions of the Department of Justice in *PLDT v. Tiongson, et al.* (I.S. No. 97-0925) and in *PAOCTF-PLDT v. Elton John Tuason, et al.* (I.S. No. 2000-370) which were issued on August 14, 2000 finding probable cause for theft against the respondents therein.

On September 14, 2001, the RTC issued an Order<sup>[16]</sup> denying the Motion to Quash the Amended Information. The court declared that, although there is no law that expressly prohibits the use of ISR, the facts alleged in the Amended Information "will show how the alleged crime was committed by conducting ISR," to the damage and prejudice of PLDT.

Laurel filed a Motion for Reconsideration<sup>[17]</sup> of the Order, alleging that international long distance calls are not personal property, and are not capable of appropriation. He maintained that business or revenue is not considered personal property, and

that the prosecution failed to adduce proof of its existence and the subsequent loss of personal property belonging to another. Citing the ruling of the Court in *United States v. De Guzman*,<sup>[18]</sup> Laurel averred that the case is not one with telephone calls which originate with a particular caller and terminates with the called party. He insisted that telephone calls are considered privileged communications under the Constitution and cannot be considered as "the property of PLDT." He further argued that there is no kinship between telephone calls and electricity or gas, as the latter are forms of energy which are generated and consumable, and may be considered as personal property because of such characteristic. On the other hand, the movant argued, the telephone business is not a form of energy but is an activity.

In its Order<sup>[19]</sup> dated December 11, 2001, the RTC denied the movant's Motion for Reconsideration. This time, it ruled that what was stolen from PLDT was its "business" because, as alleged in the Amended Information, the international long distance calls made through the facilities of PLDT formed part of its business. The RTC noted that the movant was charged with stealing the business of PLDT. To support its ruling, it cited *Strochecker v. Ramirez*,<sup>[20]</sup> where the Court ruled that interest in business is personal property capable of appropriation. It further declared that, through their ISR operations, the movant and his co-accused deprived PLDT of fees for international long distance calls, and that the ISR used by the movant and his co-accused was no different from the "jumper" used for stealing electricity.

Laurel then filed a Petition for *Certiorari* with the CA, assailing the Order of the RTC. He alleged that the respondent judge gravely abused his discretion in denying his Motion to Quash the Amended Information.<sup>[21]</sup> As gleaned from the material averments of the amended information, he was charged with stealing the international long distance calls belonging to PLDT, not its business. Moreover, the RTC failed to distinguish between the business of PLDT (providing services for international long distance calls) and the revenues derived therefrom. He opined that a "business" or its revenues cannot be considered as personal property under Article 308 of the Revised Penal Code, since a "business" is "(1) a commercial or mercantile activity customarily engaged in as a means of livelihood and typically involving some independence of judgment and power of decision; (2) a commercial or industrial enterprise; and (3) refers to transactions, dealings or intercourse of any nature." On the other hand, the term "revenue" is defined as "the income that comes back from an investment (as in real or personal property); the annual or periodical rents, profits, interests, or issues of any species of real or personal property."<sup>[22]</sup>

Laurel further posited that an electric company's business is the production and distribution of electricity; a gas company's business is the production and/or distribution of gas (as fuel); while a water company's business is the production and distribution of potable water. He argued that the "business" in all these cases is the commercial activity, while the goods and merchandise are the products of such activity. Thus, in prosecutions for theft of certain forms of energy, it is the electricity or gas which is alleged to be stolen and not the "business" of providing electricity or gas. However, since a telephone company does not produce any energy, goods or merchandise and merely renders a service or, in the words of PLDT, "the connection and interconnection to their telephone lines/facilities," such service cannot be the subject of theft as defined in Article 308 of the Revised Penal Code.<sup>[23]</sup>