Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

HPS SOFTWARE AND COMMUNICATION CORPORATION and HYMAN YAP, Petitioners, *- versus -* **PHILIPPINE LONG DISTANCE TELEPHONE COMPANY (PLDT), 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. 170217**
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PHILIPPINE LONG DISTANCE TELEPHONE COMPANY, Petitioner, *- versus -* **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.	**G.R. No. 170694** Present: SERENO, *C.J.,* Chairperson, LEONARDO-DE CASTRO, DEL CASTILLO,* VILLARAMA, JR., and REYES, *JJ.* Promulgated: **DEC 10 2012**

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* Per Raffle dated December 5, 2012.

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.

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1 *Rollo* (G.R. No. 170217), pp. 318-327; penned by Judge Ulric R. Cañete.

2 Id. at 30-37; penned by Associate Justice Elvi John S. Asuncion with Associate Justices Godardo A. Jacinto and Lucas P. Bersamin (now a member of this Court), concurring.

3 Id. at 38-39.

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.
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> 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

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4 *Rollo* (G.R. No. 170694), pp. 82-94; penned by Associate Justice Ramon M. Bato, Jr. with Executive Justice Mercedes Gozo-Dadole and Associate Justice Pampio A. Abarintos, concurring.

5 Id. at 96-97.

> calls, to the damage and prejudice of PLDT which is deprived of revenues as a result thereof.
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> 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.
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> 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-

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6 *Rollo* (G.R. No. 170217), pp. 318-320.
7 *Rollo* (G.R. No. 170694), pp. 191-192.

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

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8 Id. at 193-194.
9 *Rollo* (G.R. No. 170217), pp. 358-361.
10 Id. at 366-377.
11 Id. at 377.
12 Id. at 408-415.

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

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13 Id. at 378-407.
14 Id. at 321.
15 Id. at 323-325.
16 *Rollo* (G.R. No. 170694), pp. 262-269.

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.

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17 Id. at 270-280.
18 *Rollo* (G.R. No. 170217), pp. 424-427.
19 Id. at 428.

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

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20 Id. at 327.
21 Id. at 429-431.
22 Id. at 434.
23 Id. at 435.
24 CA *rollo*, pp. 2-41.

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 take custody of all the seized items, as enumerated in the inventory *a quo*, pending the final disposition of the appeal filed by the petitioner on respondent judge's May 23, 2001 Joint Order.[25]

HPS Corporation, *et al.* moved for reconsideration of said Court of Appeals ruling but this motion was denied for lack of merit via a Resolution dated September 27, 2005. Subsequently, HPS Corporation, *et al.* filed a Petition for Review on *Certiorari* under Rule 45[26] with this Court on November 16, 2005. The petition was docketed as G.R. No. 170217.

On the other hand, PLDT's appeal docketed as CA-G.R. CV No. 75838 was resolved by the former Eighteenth Division of the Court of Appeals in a Decision dated April 8, 2005. The dispositive portion of the April 8, 2005 Decision states:

> **WHEREFORE**, the Joint Order of the Regional Trial Court, Branch 55, Mandaue City, dated May 23, 2001, is hereby **AFFIRMED**.[27]

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25 *Rollo* (G.R. No. 170217), pp. 36-37.
26 Id. at 5-29.
27 *Rollo* (G.R. No. 170694), p. 93.

PLDT moved for reconsideration but this was rebuffed by the Court of Appeals through a Resolution dated December 7, 2005. Unperturbed, PLDT filed a Petition for Review on *Certiorari* under Rule 45[28] with this Court on January 26, 2006. The petition was, in turn, docketed as G.R. No. 170694.

In a Resolution[29] dated August 28, 2006, the Court resolved to consolidate G.R. No. 170217 and G.R. No. 170694 in the interest of speedy and orderly administration of justice.

HPS Corporation, *et al.*'s Joint Memorandum (for respondents HPS Software and Communication Corporation, Hyman Yap, Stanley Yap, Elaine Joy Yap and Julie Sy)[30] dated June 23, 2008 to the consolidated cases of G.R. No. 170217 and G.R. No. 170694 raised the following issues for consideration:

> **IV.1. Whether or not the above-entitled two (2) petitions are already moot and academic with this Honorable Supreme Court's promulgation of the doctrinal decision for the case of *Luis Marcos P. Laurel vs. Hon. Zeus C. Abrogar, People of the Philippines and Philippine Long Distance Telephone Company, G.R. No. 155076, February 27, 2006,* declaring that: "x x x the telecommunication services provided by PLDT and its business of providing said services are not personal properties under Article 308 of the Revised Penal Code.**
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> **x x x In the Philippines, Congress has not amended the Revised Penal Code to include theft of services or theft of business as felonies. Instead, it approved a law, Republic Act No. 8484, otherwise known as the Access Devices Regulation Act of 1998, on February 11, 1998. x x x."?**
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> In the most unlikely event that the above-entitled two (2) petitions have not yet been rendered moot by the doctrinal decision in the said

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28 Id. at 12-80.
29 Id. at 1164-1165.
30 *Rollo* (G.R. No. 170217), pp. 725-799.

Laurel case, HPS respectfully submit that the following are the other issues:

IV.2. Whether or not the Court of Appeals committed grave abuse of discretion when it declared that the subject warrants are general warrants?

IV.3. Whether or not the factual findings of the trial court in its May 23, 2001 Order that there was no probable cause in issuing the subject warrants is already conclusive, when the said factual findings are duly supported with evidence; were confirmed by the Court of Appeals; and, PLDT did not refute the damning evidence against it when it still had all the opportunity to do so?

IV.4. Whether or not the trial court committed grave abuse of discretion amounting to lack or in excess of jurisdiction when it stated in its May 23, 2001 Joint Order that:

> **"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 Communications Corporation."**

IV.5. Whether or not PLDT's memorandum was necessary before a decision can be rendered by the trial court?

IV.6. Whether or not there was a need for PLDT to first file a Motion for Reconsideration before filing its petition for certiorari in the subject case?

IV.7. Whether or not a Petition for Certiorari was the appropriate remedy for PLDT when it had recourse to other plain remedy other than the Petition for Certiorari?

IV.8. Whether or not PLDT has the legal interest and personality to file the present petition when the complainant PAOCTF has already voluntarily complied with or satisfied the Joint Order.

IV.9. Whether or not the Court of Appeals can, in a petition for certiorari, nullify a litigant's or the Search Warrants Applicant's exercise of its prerogative of accepting and complying with the said May 23, 2001 Joint Order of the trial court?

IV.10. Whether or not there was forum shopping when PLDT filed an appeal and a petition for certiorari on the same May 23, 2001 Joint Order issued by the trial court?

IV.11. Whether or not the Court of Appeals gravely abused its discretion when it upheld the trial court's decision to disallow the testimony of Engr. Policarpio Tolentino during the hearings of the motion to quash the subject search warrants when the said Engr. Tolentino was not even presented as witness during the hearing for the application of the subject search warrants; and, as the Court of Appeals had declared: "*. . . We cannot but entertain serious doubts as to the regularity of the performance of his official function*"?

IV.12. Whether or not PLDT's counsel can sue its own client, the applicant of the subject search warrant?[31]

On the other hand, PLDT raised the following arguments in its Memorandum[32] dated June 16, 2008 to the consolidated cases of G.R. No. 170217 and G.R. No. 170694:

I

THE COURT OF APPEALS GRAVELY MISAPPREHENDED THE FACTS WHEN IT SUSTAINED THE QUASHAL OF THE SEARCH WARRANTS DESPITE THE CLEAR AND SUFFICIENT EVIDENCE ON RECORD ESTABLISHING PROBABLE CAUSE FOR THE ISSUANCE THEREOF.

II

THE COURT OF APPEALS GRAVELY ERRED IN INDISCRIMINATELY RELYING UPON RULINGS OF THIS HONORABLE COURT THAT ARE NOT APPLICABLE TO THIS CASE.

A. THE RULING IN *LAGON V. HOOVEN COMALCO INDUSTRIES, INC.* THAT LITIGATIONS SHOULD NOT BE RESOLVED ON THE BASIS OF SUPPOSITIONS, DEDUCTIONS IS NOT PROPER IN THIS CASE CONSIDERING THAT:

1. The Search Warrant Case is merely a step preparatory to the filing of criminal cases against the Respondents. Thus, the applicant needed only to establish probable cause for the issuance of the search warrants and not proof beyond reasonable doubt.

2. Even assuming *arguendo* that there is some controversy as to the value remaining in the *Mabuhay* card,

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31 Id. at 769-771.

32 Id. at 647-724.

the totality of evidence submitted during the applications for the Search Warrant is more than sufficient to establish probable cause.

B. THE RULING IN *DAYONOT V. NATIONAL LABOR RELATIONS COMMISSION* THAT AN ADVERSE INFERENCE ARISES FROM A PARTY'S FAILURE TO REBUT AN ASSERTION THAT WOULD HAVE NATURALLY INVITED AN IMMEDIATE AND PERVASIVE OPPOSITION IS INAPPLICABLE IN THIS CASE CONSIDERING THAT:

1. PLDT sufficiently rebutted Respondents' claim that PLDT has no cause to complain because of its prior knowledge of HPS's internet services.

2. Assuming *arguendo* that PLDT had knowledge of HPS's internet services, such fact is immaterial in the determination of the propriety of the Search Warrants issued in this case. The Search Warrants were issued because the evidence presented by PAOCTF overwhelmingly established the existence of probable cause that Respondents were probably committing a crime and the objects used for the crime are in the premises to be searched.

III

THE COURT OF APPEALS GRAVELY ERRED IN SUSTAINING THE DISALLOWANCE OF A PORTION OF ENGR. TOLENTINO'S TESTIMONY AND OF THE INTRODUCTION OF THE *MABUHAY* CARD AND HIS INVESTIGATION REPORT IN VIOLATION OF THE PRESUMPTION THAT OFFICIAL DUTY HAS BEEN REGULARLY PERFORMED.

IV

THE COURT OF APPEALS GRAVELY ERRED IN SUSTAINING THE TRIAL COURT'S JOINT ORDER WHICH WAS ISSUED WITH UNDUE HASTE. THE COURT OF APPEALS OVERLOOKED FACTS WHICH CLEARLY DEMONSTRATED THE TRIAL COURT'S PREJUDGMENT OF THE CASE IN FAVOR OF RESPONDENTS, IN VIOLATION OF PLDT'S RIGHT TO DUE PROCESS.

V

THE COURT OF APPEALS GRAVELY ERRED IN DECLARING THAT THE CONTESTED SEARCH WARRANTS ARE IN THE NATURE OF GENERAL WARRANTS CONSIDERING THAT:

A. THE ISSUE OF WHETHER THE SEARCH WARRANTS ARE GENERAL WARRANTS WAS NEVER RAISED IN THE APPEAL BEFORE IT.

B. IN ANY CASE, THE SEARCH WARRANTS STATED WITH SUFFICIENT PARTICULARITY THE PLACE TO BE SEARCHED AND THE OBJECTS TO BE SEIZED, IN CONFORMITY WITH THE CONSTITUTIONAL AND JURISPRUDENTIAL REQUIREMENTS IN THE ISSUANCE OF SEARCH WARRANTS.

VI

RESPONDENTS' ALLEGATION THAT PLDT FAILED TO COMPLY WITH THE REQUIREMENTS OF SECTION 3, RULE 45 AND SECTION 4, RULE 7 OF THE RULES OF COURT IS COMPLETELY BASELESS CONSIDERING THAT:

A. PLDT COMPLIED WITH THE RULES ON PROOF OF SERVICE.

B. THE PETITION WAS PROPERLY VERIFIED. ASSUMING *ARGUENDO* THAT THE ORIGINAL VERIFICATION SUBMITTED WAS DEFICIENT, THE SAME WAS PROMPTLY CORRECTED BY PLDT, IN FULL COMPLIANCE WITH THE DIRECTIVE OF THIS HONORABLE COURT.

C. PLDT DID NOT ENGAGE IN FORUM-SHOPPING.

1. The issues, subject matter and reliefs prayed for in the Appeal Case and the *Certiorari* Case are distinct and separate from one another.

2. Assuming *arguendo* that the Appeal Case involves the same parties, subject matter and reliefs in the *Certiorari* Case, then Respondents are equally guilty of forum-shopping when they elevated the Decision of the Court of Appeals in the *Certiorari* Case to this Honorable Court.

VII

RESPONDENTS' RELIANCE ON THE CASE OF *LAUREL V. ABROGAR* IS ERRONEOUS AND MISLEADING. *LAUREL V. ABROGAR* IS NOT YET FINAL AND EXECUTORY, HENCE, CANNOT BIND EVEN THE PARTIES THERETO, MUCH LESS RESPONDENTS HEREIN.[33] (Citations omitted.)

A year later, on June 1, 2009, PLDT submitted a Supplemental Memorandum[34] to its June 16, 2008 Memorandum. In the said pleading,

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33 Id. at 668-671.

34 Id. at 816-824.

PLDT pointed out the reversal by the Supreme Court *En Banc* of the February 27, 2006 Decision in *Laurel v. Abrogar*[35] and raised it as a crucial issue in the present consolidated case:

> IN A RESOLUTION DATED 13 JANUARY 2009, THIS HONORABLE COURT *EN BANC* SET ASIDE THE 27 FEBRUARY 2006 DECISION IN *LAUREL V. ABROGAR*. THEREFORE, THE PREVAILING DOCTRINE WITH RESPECT TO THE ACT OF CONDUCTING ISR OPERATIONS IS THAT IT IS AN ACT OF SUBTRACTION COVERED BY THE PROVISIONS ON THEFT, AND THAT THE BUSINESS OF PROVIDING TELECOMMUNICATION OR TELEPHONE SERVICE IS CONSIDERED PERSONAL PROPERTY WHICH CAN BE THE OBJECT OF THEFT UNDER ARTICLE 308 OF THE REVISED PENAL CODE. THUS, RESPONDENTS CAN NO LONGER RELY ON THE 27 FEBRUARY 2006 DECISION OF THIS HONORABLE COURT IN *LAUREL V. ABROGAR*.[36]

After evaluating the aforementioned submissions, the Court has identified the following questions as the only relevant issues that need to be resolved in this consolidated case:

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> WHETHER OR NOT PLDT HAS LEGAL PERSONALITY TO FILE THE PETITION FOR SPECIAL CIVIL ACTION OF *CERTIORARI* IN CA-G.R. SP No. 65682 AND, SUBSEQUENTLY, THE PETITION FOR REVIEW IN G.R. NO. 170694 WITHOUT THE CONSENT OR APPROVAL OF THE SOLICITOR GENERAL.
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> II
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> WHETHER OR NOT PLDT'S PETITION FOR *CERTIORARI* SHOULD HAVE BEEN DISMISSED OUTRIGHT BY THE COURT OF APPEALS SINCE NO MOTION FOR RECONSIDERATION WAS FILED BY PLDT FROM THE ASSAILED MAY 23, 2001 JOINT ORDER OF THE TRIAL COURT.
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> III
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> WHETHER OR NOT PLDT COMMITTED FORUM-SHOPPING.

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35 518 Phil. 409 (2006).

36 *Rollo* (G.R. No. 170217), pp. 816-817.

IV

WHETHER OR NOT THE TWO (2) SEARCH WARRANTS WERE IMPROPERLY QUASHED.

V

WHETHER OR NOT THE SUBJECT SEARCH WARRANTS ARE IN THE NATURE OF GENERAL WARRANTS.

VI

WHETHER OR NOT THE RELEASE OF THE ITEMS SEIZED BY VIRTUE OF THE SUBJECT SEARCH WARRANTS WAS PROPER.

Before resolving the aforementioned issues, we will first discuss the state of jurisprudence on the issue of whether or not the activity referred to as "international simple resale" (ISR) is considered a criminal act of Theft in this jurisdiction.

To recall, HPS Corporation, *et al.* contends that PLDT's petition in G.R. No. 170694 has already become moot and academic because the alleged criminal activity which PLDT asserts as having been committed by HPS Corporation, *et al.* has been declared by this Court as not constituting the crime of Theft or any other crime for that matter. HPS Corporation, *et al.* draws support for their claim from the February 27, 2006 Decision of this Court in *Laurel v. Abrogar*.[37]

In that case, PLDT sued Baynet Co., Ltd. (Baynet) and its corporate officers for the crime of Theft through stealing the international long distance calls belonging to PLDT by conducting 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. One of those impleaded in the Amended Information, Luis Marcos P. Laurel

[37] Supra note 35.

(Laurel), moved for the quashal of the Amended Information arguing that an ISR activity does not constitute the felony of Theft under Article 308 of the Revised Penal Code (RPC). Both the trial court and the Court of Appeals did not find merit in his motion. However, this Court speaking through its First Division upheld Laurel's contention by ruling that the Amended Information does not contain material allegations charging petitioner with theft of personal property since international long distance calls and the business of providing telecommunication or telephone services are not personal properties under Article 308 of the Revised Penal Code. The Court then explained the basis for this previous ruling in this wise:

> In defining theft, under Article 308 of the Revised Penal Code, as the taking of personal property without the consent of the owner thereof, the Philippine Legislature could not have contemplated the human voice which is converted into electronic impulses or electrical current which are transmitted to the party called through the PSTN of respondent PLDT and the ISR of Baynet Card Ltd. within its coverage. When the Revised Penal Code was approved, on December 8, 1930, international telephone calls and the transmission and routing of electronic voice signals or impulses emanating from said calls, through the PSTN, IPL and ISR, were still non-existent. Case law is that, where a legislative history fails to evidence congressional awareness of the scope of the statute claimed by the respondents, a narrow interpretation of the law is more consistent with the usual approach to the construction of the statute. Penal responsibility cannot be extended beyond the fair scope of the statutory mandate.[38]

Undaunted, PLDT filed a Motion for Reconsideration with Motion to Refer the Case to the Supreme Court *En Banc*. This motion was acted upon favorably by the Court *En Banc* in a Resolution[39] dated January 13, 2009 thereby reconsidering and setting aside the February 27, 2006 Decision. In resolving PLDT's motion, the Court *En Banc* held that:

> The acts of "subtraction" include: (a) tampering with any wire, meter, or other apparatus installed or used for generating, containing, conducting, or measuring electricity, telegraph or telephone service; (b)

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38 Id. at 438-439.

39 *Laurel v. Abrogar*, G.R. No. 155076, January 13, 2009, 576 SCRA 41.

tapping or otherwise wrongfully deflecting or taking any electric current from such wire, meter, or other apparatus; and (c) using or enjoying the benefits of any device by means of which one may fraudulently obtain any current of electricity or any telegraph or telephone service.

In the instant case, the act of conducting ISR operations by illegally connecting various equipment or apparatus to private respondent PLDT's telephone system, through which petitioner is able to resell or re-route international long distance calls using respondent PLDT's facilities constitutes all three acts of subtraction mentioned above.

The business of providing telecommunication or telephone service is likewise personal property which can be the object of theft under Article 308 of the Revised Penal Code. Business may be appropriated under Section 2 of Act No. 3952 (Bulk Sales Law), hence, could be the object of theft:

> "Section 2. Any sale, transfer, mortgage, or assignment of a stock of goods, wares, merchandise, provisions, or materials otherwise than in the ordinary course of trade and the regular prosecution of the business of the vendor, mortgagor, transferor, or assignor, or any sale, transfer, mortgage, or assignment of all, or substantially all, of the business or trade theretofore conducted by the vendor, mortgagor, transferor or assignor, or all, or substantially all, of the fixtures and equipment used in and about the business of the vendor, mortgagor, transferor, or assignor, shall be deemed to be a sale and transfer in bulk, in contemplation of the Act. x x x."

In *Strocheker v. Ramirez*, this Court stated:

> "With regard to the nature of the property thus mortgaged, which is one-half interest in the business above described, such interest is a personal property capable of appropriation and not included in the enumeration of real properties in Article 335 of the Civil Code, and may be the subject of mortgage."

Interest in business was not specifically enumerated as personal property in the Civil Code in force at the time the above decision was rendered. Yet, interest in business was declared to be personal property since it is capable of appropriation and not included in the enumeration of real properties. Article 414 of the Civil Code provides that all things which are or may be the object of appropriation are considered either real property or personal property. Business is likewise not enumerated as personal property under the Civil Code. Just like interest in business, however, it may be appropriated. Following the ruling in *Strochecker v. Ramirez*, business should also be classified as personal property. Since it is not included in the exclusive enumeration of real properties under Article 415, it is therefore personal property.

> As can be clearly gleaned from the above disquisitions, petitioner's acts constitute theft of respondent PLDT's business and service, committed by means of the unlawful use of the latter's facilities. x x x.[40] (Citations omitted.)

Plainly, from the aforementioned doctrinal pronouncement, this Court had categorically stated and still maintains that an ISR activity is an act of subtraction covered by the provisions on Theft, and that the business of providing telecommunication or telephone service is personal property, which can be the object of Theft under Article 308 of the Revised Penal Code.

Having established that an ISR activity is considered as Theft according to the prevailing jurisprudence on the matter, this Court will now proceed to discuss the central issues involved in this consolidated case.

Anent the first issue of whether PLDT possesses the legal personality to file the petition in G.R. No. 170694 in light of respondents' claim that, in criminal appeals, it is the Solicitor General which has the exclusive and sole power to file such appeals in behalf of the People of the Philippines, this Court rules in the affirmative.

The petition filed by PLDT before this Court does not involve an ordinary criminal action which requires the participation and conformity of the City Prosecutor or the Solicitor General when raised before appellate courts.

On the contrary, what is involved here is a search warrant proceeding which is not a criminal action, much less a civil action, but a special criminal

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[40] Id. at 53-55.

process. In the seminal case of *Malaloan v. Court of Appeals*,[41] we expounded on this doctrine in this wise:

> The basic flaw in this reasoning is in erroneously equating the application for and the obtention of a search warrant with the institution and prosecution of a criminal action in a trial court. It would thus categorize what is only a special criminal *process*, the power to issue which is inherent in *all* courts, as equivalent to a criminal *action*, jurisdiction over which is reposed in *specific* courts of indicated competence. It ignores the fact that the requisites, procedure and purpose for the issuance of a search warrant are completely different from those for the institution of a criminal action.
>
> For, indeed, a warrant, such as a warrant of arrest or a search warrant, merely constitutes process. A search warrant is defined in our jurisdiction as an order in writing issued in the name of the People of the Philippines signed by a judge and directed to a peace officer, commanding him to search for personal property and bring it before the court. A search warrant is in the nature of a criminal process akin to a writ of discovery. It is a special and peculiar remedy, drastic in its nature, and made necessary because of a public necessity.
>
> In American jurisdictions, from which we have taken our jural concept and provisions on search warrants, such warrant is definitively considered merely as a process, generally issued by a court in the exercise of its ancillary jurisdiction, and not a criminal action to be entertained by a court pursuant to its original jurisdiction. We emphasize this fact for purposes of both issues as formulated in this opinion, with the catalogue of authorities herein.
>
> Invariably, a judicial process is defined as a writ, *warrant*, subpoena, or other formal writing issued by authority of law; also the means of accomplishing an end, including judicial proceedings, or all writs, *warrants*, summonses, and *orders* of courts of justice or judicial officers. It is likewise held to include a writ, summons, or *order* issued in a judicial proceeding to acquire jurisdiction of a person or his property, to expedite the cause or enforce the judgment, or a writ, *warrant*, mandate, or other process issuing from a court of justice.[42] (Citations omitted.)

Since a search warrant proceeding is not a criminal action, it necessarily follows that the requirement set forth in Section 5, Rule 110 of the Rules on Criminal Procedure which states that "all criminal actions

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41 G.R. No. 104879, May 6, 1994, 232 SCRA 249.

42 Id. at 256-257.

either commenced by complaint or by information shall be prosecuted under the direction and control of a public prosecutor" does not apply.

In *Columbia Pictures Entertainment, Inc. v. Court of Appeals,*[43] we sustained the legal personality of a private complainant to file an action or an appeal without the imprimatur of government prosecutors on the basis of the foregoing ratiocination:

> The threshold issue that must first be determined is whether or not petitioners have the legal personality and standing to file the appeal.
>
> Private respondent asserts that the proceedings for the issuance and/or quashal of a search warrant are criminal in nature. Thus, the parties in such a case are the "People" as offended party and the accused. A private complainant is relegated to the role of a witness who does not have the right to appeal except where the civil aspect is deemed instituted with the criminal case.
>
> Petitioners, on the other hand, argue that as the offended parties in the criminal case, they have the right to institute an appeal from the questioned order.
>
> From the records it is clear that, as complainants, petitioners were involved in the proceedings which led to the issuance of Search Warrant No. 23. In *People v. Nano*, the Court declared that while the general rule is that it is only the Solicitor General who is authorized to bring or defend actions on behalf of the People or the Republic of the Philippines once the case is brought before this Court or the Court of Appeals, if there appears to be grave error committed by the judge or a lack of due process, the petition will be deemed filed by the private complainants therein as if it were filed by the Solicitor General. In line with this ruling, the Court gives this petition due course and will allow petitioners to argue their case against the questioned order in lieu of the Solicitor General. (Citation omitted.)

Similarly, in the subsequent case of *Sony Computer Entertainment, Inc. v. Bright Future Technologies, Inc.*,[44] we upheld the right of a private complainant, at whose initiative a search warrant was issued, to participate in any incident arising from or in connection with search warrant

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43 330 Phil. 771, 778 (1996).

44 G.R. No. 169156, February 15, 2007, 516 SCRA 62.

proceedings independently from the State. We quote the relevant discussion in that case here:

> The issue of whether a private complainant, like SCEI, has the right to participate in search warrant proceedings was addressed in the affirmative in *United Laboratories, Inc. v. Isip*:
>
> > . . . [A] private individual or a private corporation complaining to the NBI or to a government agency charged with the enforcement of special penal laws, such as the BFAD, may *appear, participate and file pleadings* in the search warrant proceedings ***to maintain***, *inter alia, the validity of the search warrant* issued by the court and the ***admissibility*** *of the properties seized* in anticipation of a criminal case to be filed; such private party may do so in collaboration with the NBI or such government agency. The party *may file an opposition to a motion to quash* the search warrant issued by the court, *or a motion for the reconsideration* of the court order granting such motion to quash.[45]

With regard to the second issue of whether or not PLDT's petition for *certiorari* under Rule 65 of the 1997 Rules of Civil Procedure should have been dismissed outright by the Court of Appeals since no motion for reconsideration was filed by PLDT from the assailed May 23, 2001 Joint Order of the trial court, this Court declares that, due to the peculiar circumstances obtaining in this case, the petition for *certiorari* was properly given due course by the Court of Appeals despite the non-fulfillment of the requirement of the filing of a motion for reconsideration.

The general rule is that a motion for reconsideration is a condition *sine qua non* before a petition for *certiorari* may lie, its purpose being to grant an opportunity for the court *a quo* to correct any error attributed to it by a re-examination of the legal and factual circumstances of the case.[46]

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45 Id. at 68-69.

46 *Pineda v. Court of Appeals* (*Former Ninth Division*), G.R. No. 181643, November 17, 2010, 635 SCRA 274, 281.

However, the rule is not absolute and jurisprudence has laid down the following exceptions when the filing of a petition for *certiorari* is proper notwithstanding the failure to file a motion for reconsideration:

> (a) where the order is a patent nullity, as where the court *a quo* has no jurisdiction;
>
> (b) where the questions raised in the *certiorari* proceedings have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court;
>
> (c) where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government or of the petitioner or the subject matter of the petition is perishable;
>
> (d) where, under the circumstances, a motion for reconsideration would be useless;
>
> (e) where petitioner was deprived of due process and there is extreme urgency for relief;
>
> (f) where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable;
>
> (g) where the proceedings in the lower court are a nullity for lack of due process;
>
> (h) where the proceeding was *ex parte* or in which the petitioner had no opportunity to object; and,
>
> (i) where the issue raised is one purely of law or public interest is involved.[47]

In the case at bar, it is apparent that PLDT was deprived of due process when the trial court expeditiously released the items seized by virtue of the subject search warrants without waiting for PLDT to file its memorandum and despite the fact that no motion for execution was filed by respondents which is required in this case because, as stated in the assailed March 26, 2004 Decision of the Court of Appeals in CA-G.R. SP No. 65682,

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[47] *Republic v. Pantranco North Express, Inc. (PNEI)*, G.R. No. 178593, February 15, 2012, 666 SCRA 199, 205-206, citing *Sim v. National Labor Relations Commission*, G.R. No.157376, October 2, 2007, 534 SCRA 515, 521-522.

the May 23, 2001 Joint Order of the trial court is a final order which disposes of the action or proceeding and which may be the subject of an appeal. Thus, it is not immediately executory. Moreover, the items seized by virtue of the subject search warrants had already been released by the trial court to the custody of respondents thereby creating a situation wherein a motion for reconsideration would be useless. For these foregoing reasons, the relaxation of the settled rule by the former Fourth Division of the Court of Appeals is justified.

Moving on to the third issue of whether PLDT was engaged in forum shopping when it filed a petition for *certiorari* under Rule 65 with the Court of Appeals despite the fact that it had previously filed an appeal from the assailed May 23, 2001 Joint Order, this Court rules in the negative.

In *Metropolitan Bank and Trust Company v. International Exchange Bank*,[48] we reiterated the jurisprudential definition of forum shopping in this wise:

> Forum shopping has been defined as an act of a party, against whom an adverse judgment has been rendered in one forum, of seeking and possibly getting a favorable opinion in another forum, **other than by appeal or a special civil action for *certiorari***, or the institution of two or more actions or proceedings grounded on the same cause on the supposition that one or the other court would make a favorable disposition. (Citation omitted.)

Thus, there is forum shopping when, between an action pending before this Court and another one, there exist: (1) identity of parties, or at least such parties as represent the same interests in both actions; (2) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (3) the identity of the two preceding particulars is such that any judgment rendered in the other action will, regardless of which party is

[48] G.R. Nos. 176008 & 176131, August 10, 2011, 655 SCRA 263, 274.

successful, amount to *res judicata* in the action under consideration; said requisites also constitutive of the requisites for *auter action pendant* or *lis pendens*.[49]

In the case at bar, forum shopping cannot be considered to be present because the appeal that PLDT elevated to the Court of Appeals is an examination of the validity of the trial court's action of quashing the search warrants that it initially issued while, on the other hand, the petition for *certiorari* is an inquiry on whether or not the trial court judge committed grave abuse of discretion when he ordered the release of the seized items subject of the search warrants despite the fact that its May 23, 2001 Joint Order had not yet become final and executory, nor had any motion for execution pending appeal been filed by the HPS Corporation, *et al.* Therefore, it is readily apparent that both cases posed different causes of action.

As to the fourth issue of whether or not the two search warrants at issue were improperly quashed, PLDT argues that the Court of Appeals erroneously appreciated the facts of the case and the significance of the evidence on record when it sustained the quashal of the subject search warrants by the trial court mainly on the basis of test calls using a *Mabuhay* card with PIN code number 332 1479224[50] which was the same *Mabuhay* card that was presented by PLDT to support its application for a search warrant against HPS Corporation, *et al.* These test calls were conducted in NTC-Region VII Office on November 3, 2000 and in open court on January 10, 2001. PLDT insists that these test calls, which were made after the issuance of the subject search warrants, are immaterial to the issue of whether or not HPS Corporation, *et al.* were engaged in ISR activities using

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49 *Making Enterprises, Inc. v. Marfori*, G.R. No. 152239, August 17, 2011, 655 SCRA 528, 537.

50 *Rollo* (G.R. No. 170694), p. 113.

the equipment seized at the time the subject search warrants were issued and implemented. PLDT further argues that a search warrant is merely a preparatory step to the filing of a criminal case; thus, an applicant needs only to establish probable cause for the issuance of a search warrant and not proof beyond reasonable doubt. In this case, PLDT believes that it had established probable cause that is sufficient enough to defeat the motion to quash filed by HPS Corporation, *et al.*

We find that the contention is impressed with merit.

This Court has consistently held that the validity of the issuance of a search warrant rests upon the following factors: (1) **it must be issued upon probable cause**; (2) the probable cause must be determined by the judge himself and not by the applicant or any other person; (3) in the determination of probable cause, the judge must examine, under oath or affirmation, the complainant and such witnesses as the latter may produce; and (4) the warrant issued must particularly describe the place to be searched and persons and things to be seized.[51]

Probable cause, as a condition for the issuance of a search warrant, is such reasons supported by facts and circumstances as will warrant a cautious man to believe that his action and the means taken in prosecuting it are legally just and proper. It requires facts and circumstances that would lead a reasonably prudent man to believe that an offense has been committed and that the objects sought in connection with that offense are in the place to be searched.[52]

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51 *People v. Tuan*, G.R. No. 176066, August 11, 2010, 628 SCRA 226, 245.

52 *Tan v. Sy Tiong Gue*, G.R. No. 174570, February 17, 2010, 613 SCRA 98, 106.

In *Microsoft Corporation v. Maxicorp, Inc.*,[53] this Court held that the quantum of evidence required to prove probable cause is not the same quantum of evidence needed to establish proof beyond reasonable doubt which is required in a criminal case that may be subsequently filed. We ruled in this case that:

> The determination of probable cause does not call for the application of rules and standards of proof that a judgment of conviction requires after trial on the merits. As implied by the words themselves, "probable cause" is concerned with probability, not absolute or even moral certainty. The prosecution need not present at this stage proof beyond reasonable doubt. The standards of judgment are those of a reasonably prudent man, not the exacting calibrations of a judge after a full-blown trial.[54] (Citation omitted.)

In the case at bar, both the trial court and the former Eighteenth Division of the Court of Appeals agree that no probable cause existed to justify the issuance of the subject search warrants. In sustaining the findings of the trial court, the Court of Appeals in its assailed Decision dated April 8, 2005 in CA-G.R. CV No. 75838 ratiocinated in this manner:

> As a giant in the telecommunications industry, PLDT's declaration in page 21 of its appellant's brief that it would "take sometime, or after a certain number of minutes is consumed, before the true value of the card is correspondingly reflected", by way of further explaining the nature of the subject Mabuhay Card as not being a "smart" card, is conceded with much alacrity.
>
> We are not, however, prepared to subscribe to the theory that the twenty (20) minutes deducted from the balance of the subject Mabuhay Card after a couple of test calls were completed in open court on January 10, 2001 already included the time earlier consumed by the PLDT personnel in conducting their test calls prior to the application for the questioned warrants but belatedly deducted only during the test calls conducted by the court *a quo*. It is beyond cavil that litigations cannot be properly resolved by suppositions, deductions, or even presumptions, with no basis in evidence, for the truth must have to be determined by the hard rules of admissibility and proof. This Court cannot quite fathom why PLDT, with all the resources available to it, failed to substantiate this

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53 481 Phil. 550 (2004).

54 Id. at 566-567.

particular supposition before the court *a quo*, when it could have helped their case immensely. We note that at the hearing held on January 10, 2001, the trial judge allowed the conduct of test calls in open court in order to determine if the subject Mabuhay Card had in fact been used, as alleged by PLDT. However, it was proven that the Card retained its original value of $10 despite several test calls already conducted in the past using the same. PLDT should have refuted this damning evidence while it still had all the opportunity to do so, but it did not.

Moreover, if we go by the gauge set by PLDT itself that it would take a certain number of minutes before the true value of the card is reflected accordingly, then we fail to see how the test calls conducted by its personnel on September 13, 2000 could only be deducted on January 10, 2001, after almost four (4) months.

PLDT cannot likewise capitalize on the fact that, despite the series of test calls made by Engr. Jesus Laureno at the NTC, Region VII office on November 3, 2000, the subject Mabuhay Card still had $10 worth of calls. Had PLDT closely examined the testimony of Engr. Laureno in open court, it would have realized that not one of said calls ever got connected to a destination number. Thus:

> "Q You said that after you heard that female voice which says that you still have ten (10) dollars and you entered your call at the country of destination, you did not proceed that call. Will you please tell the Court of the six test calls that were conducted, how many calls were up to that particular portion?
>
> A Five (5).
>
> Q Will you please tell the Court who… since that were five (5) test calls, how many calls did you personally make up to that particular portion?
>
> A Only one (1).
>
> Q In whose presence?
>
> A In the presence of Director Butaslac, Engr. Miguel, Engr. Yeban, Engr. Hinaut and three (3) PNP personnel, Atty. Muntuerto and Atty. Paloma.
>
> Q What about the other four (4)? You mentioned of five (5) test calls and you made only one, who did the other four (4) test calls which give the said results?
>
> A The third call was done by Engr. Yeban using the same procedure and then followed by the PNP personnel. Actually, the first one who dial or demonstrate is Atty. Muntuerto, me is the second; third is Engr. Yeban; the fourth is the PNP personnel and also the fifth; and the sixth test calls was Engr. Yeban and with that

> call, we already proceeded to the dialing the destination number which we call one of the numbers of our office.
>
> Q What number of the office was called following the instruction that you have ten (10) dollars and that you enter your destination number now?
>
> A 346-06-87.
>
> Q What happened? You said that, that was done on the sixth test calls, what happened after that destination number was entered?
>
> A The call is not completed and the female voice said to retry again." (TSN, January 10, 2001, pp. 45-48)
>
> In fine, PLDT cannot argue that the court *a quo* should not have relied heavily upon the result of the test calls made by the NTC- Regional Office as well as those done in open court on January 10, 2001, as there are other convincing evidence such as the testimonies of its personnel showing that, in fact, test calls and ocular inspections had been conducted yielding positive results. Precisely, the trial court anchored its determination of probable cause for the issuance of the questioned warrants on the sworn statements of the PLDT personnel that test calls had been made using the subject Mabuhay Card. However, said statements were later proven to be wanting in factual basis.[55]

Essentially, the reasoning of the Court of Appeals relies solely on the fact that the *Mabuhay* card with PIN code number 332 1479224 with a card value of $10.00 did not lose any of its $10.00 value before it was used in the test calls conducted at the NTC-Region VII office and in open court. Thus, the Court of Appeals concluded that, contrary to PLDT's claims, no test calls using the same *Mabuhay* card were actually made by PLDT's witnesses when it applied for a search warrant against HPS Corporation, *et al.*; otherwise, the *Mabuhay* card should have had less than $10.00 value left in it.

This Court cannot subscribe to such a hasty conclusion because the determination of whether or not test calls were indeed made by PLDT on *Mabuhay* card with PIN code number 332 1479224 cannot be ascertained

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[55] *Rollo* (G.R. No. 170217), pp. 109-111.

solely by checking the value reflected on the aforementioned *Mabuhay* card. In fact, reliance on this method of verification is fraught with questions that strike deep into the capability of the said *Mabuhay* card to automatically and accurately reflect the fact that it had indeed been used by PLDT's witnesses to make test calls.

We find that indeed PLDT never represented that the *Mabuhay* card had an accurate recording system that would automatically deduct the value of a call from the value of the card at the time the call was made. Certainly, PLDT was not in a position to make such an assertion as it did not have a hand in the production and programming of said *Mabuhay* card.

Furthermore, several plausible reasons could be entertained for the non-deduction of the value of the *Mabuhay* card other than the trial court's assertion that the said phone card could not have been utilized in test calls made by PLDT's witnesses.

One explanation that PLDT offered is that the said *Mabuhay* card might not be a "smart" card which, in telecommunications industry parlance, is a card that automatically debits the value of a call as it is made as opposed to a non-"smart" card which takes a considerable amount of time before the true value of the card is correspondingly reflected in the balance.

Another explanation that PLDT suggests is that the test calls that were conducted in NTC-Region VII on November 3, 2000 and in open court on January 10, 2001 were made long after the subject search warrants were issued which was on October 20, 2000. During the time in between said events, the identity of the *Mabuhay* card was already a matter of judicial record and, thus, easily ascertainable by any interested party. PLDT asserts this circumstance could have provided HPS Corporation, *et al.* the

opportunity to examine the prosecution's evidence, identify the specific *Mabuhay* card that PLDT's witnesses used and manipulate the remaining value reflected on the said phone card. This idea is not farfetched considering that if HPS Corporation, *et al.* did indeed engage in illegal ISR activities using *Mabuhay* cards then it would not be impossible for HPS Corporation, *et al.* to possess the technical knowledge to reconfigure the *Mabuhay* card that was used in evidence by PLDT. In support of this tampering theory, PLDT points to HPS Corporation, *et al.*'s vehement opposition to the introduction of a different *Mabuhay* card during the testimony of Engr. Tolentino, which PLDT attributes to HPS Corporation, *et al.*'s lack of opportunity to identify and manipulate this particular phone card.

Since the value of the subject *Mabuhay* card may be susceptible to tampering, it would have been more prudent for the trial court and the Court of Appeals to weigh the other evidence on record. As summarized in its memorandum, PLDT submitted the following to the trial court, during the application for the subject search warrants and during the hearing on HPS Corporation, *et al.*'s motion to suppress the evidence:

> a. The affidavit[56] and testimony[57] of PLDT employee Engr. Reuben C. Hinagdanan (Engr. Hinagdanan) which was given during the application for the issuance of the subject search warrants. In his affidavit and testimony, Engr. Hinagdanan averred that PLDT conducted surveillance on the ISR activities of HPS Corporation, *et al.* and that the said surveillance operation yielded positive results that PLDT

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56 *Rollo* (G.R. No. 170694), pp. 98-169.
57 Id. at 565-588.

telephone lines subscribed by Philip Yap and/or HPS Corporation were being utilized for illegal ISR operations.

b. The call detail records[58] which are attached as Annex "C" to Engr. Hinagdanan's affidavit which indicated that test calls were made by Engr. Hinagdanan using the *Mabuhay* card with PIN code number 332 1479224. The said document also indicated that even if the calls originated from the United States of America, the calling party reflected therein are local numbers of telephone lines which PLDT had verified as the same as those subscribed by Philip Yap and/or HPS Corporation.

c. The affidavit[59] and testimony[60] of PLDT employee Engr. Richard L. Dira (Engr. Dira) which was given during the application for the issuance of the subject search warrants. In his affidavit and testimony, Engr. Dira averred that he personally conducted an ocular inspection in the premises of HPS Corporation and that the said inspection revealed that all PLDT lines subscribed by Philip Yap and/or HPS Corporation were illegally connected to various telecommunications and switching equipment which were used in illegal ISR activities conducted by HPS Corporation, *et al.*

d. The testimony[61] and investigation report[62] of Engr. Tolentino which details the test calls he made using *Mabuhay* card with PIN code number 349 4374802. This is

58 Id. at 127.
59 Id. at 170-182.
60 Id. at 588-594.
61 Id. at 595-802.
62 Id. at 268-269.

a different *Mabuhay* card than what was used by PLDT in its application for the subject search warrants. According to his investigation report, the telephone lines subscribed by Philip Yap and/or HPS Corporation were indeed utilized for illegal ISR operations.

e. The testimony[63] of Police Officer Narciso Ouano, Jr. (Officer Ouano) of the Legal and Investigation Division of the PAOCTF given during the hearing on the application for the issuance of the subject search warrants wherein Officer Ouano averred that, upon complaint of PLDT, the PAOCTF conducted surveillance operations which yielded positive results that HPS Corporation, *et al.* were engaged in illegal ISR activities.

f. The results of a traffic study[64] conducted by PLDT on the twenty (20) direct telephone lines subscribed by Philip Yap and/or HPS Corporation which detailed the extent of the losses suffered by PLDT as a result of the illegal ISR activities conducted by HPS Corporation, *et al.*

Taken together, the aforementioned pieces of evidence are more than sufficient to support a finding that test calls were indeed made by PLDT's witnesses using *Mabuhay* card with PIN code number 332 1479224 and, more importantly, that probable cause necessary to engender a belief that HPS Corporation, *et al.* had probably committed the crime of Theft through illegal ISR activities exists. To reiterate, evidence to show probable cause to issue a search warrant must be distinguished from proof beyond reasonable doubt which, at this juncture of the criminal case, is not required.

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63 Id. at 565-574.
64 Id. at 168-169.

With regard to the issue of whether or not the subject search warrants are in the nature of general warrants, PLDT argues that, contrary to the ruling of the former Eighteenth Division of the Court of Appeals in its assailed Decision dated April 8, 2005 in CA-G.R. CV No. 75838, the subject search warrants cannot be considered as such because the contents of both stated, with sufficient particularity, the place to be searched and the objects to be seized, in conformity with the constitutional and jurisprudential requirements in the issuance of search warrants. On the other hand, HPS Corporation, *et al.* echoes the declaration of the Court of Appeals that the language used in the subject search warrants are so all-embracing as to include all conceivable records and equipment of HPS Corporation regardless of whether they are legal or illegal.

We rule that PLDT's argument on this point is well taken.

A search warrant issued must particularly describe the place to be searched and persons or things to be seized in order for it to be valid,[65] otherwise, it is considered as a general warrant which is proscribed by both jurisprudence and the 1987 Constitution.

In *Uy Kheytin v. Villareal*,[66] we explained the purpose of the aforementioned requirement for a valid search warrant, to wit:

> [A] search warrant should *particularly describe* the place to be searched and the things to be seized. The evident purpose and intent of this requirement is to limit the things to be seized to those, and only those, particularly described in the search warrant – x x x what articles they shall seize, to the end that "unreasonable searches and seizures" may not be made, - that abuses may not be committed. x x x

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65 *Del Castillo v. People*, G.R. No. 185128, January 30, 2012, 664 SCRA 430, 439.

66 42 Phil. 886, 896-897 (1920).

In *Bache & Co. (Phil.), Inc. v. Ruiz*,[67] we held that, among other things, it is only required that a search warrant be specific as far as the circumstances will ordinarily allow, such that:

> A search warrant may be said to particularly describe the things to be seized when the description therein is as specific as the circumstances will ordinarily allow; or when the description expresses a conclusion of fact – not of law - by which the warrant officer may be guided in making the search and seizure; or when the things described are limited to those which bear direct relation to the offense for which the warrant is being issued. x x x. (Citations omitted.)

The disputed text of the subject search warrants reads as follows:

> a. LINES, CABLES AND ANTENNAS or equipment or device capable of transmitting air waves or frequency, such as an IPL and telephone lines and equipment;
>
> b. COMPUTERS or any equipment or device capable of accepting information applying the described process of the information and supplying the result of this processes;
>
> c. MODEMS or any equipment or device that enables data terminal equipment such as computers to communicate with each other data-terminal equipment via a telephone line;
>
> d. MULTIPLEXERS or any equipment or device that enables two or more signals from different sources to pass through a common cable or transmission line;
>
> e. SWITCHING EQUIPMENT or equipment or device capable of connecting telephone lines;
>
> f. SOFTWARE, DISKETTES, TAPES, OR EQUIPMENT, or device used for recording and storing information; and
>
> g. Manuals, phone cards, access codes, billing statements, receipts, contracts, checks, orders, communications, and documents, lease and/or subscription agreements or contracts, communications and documents pertaining to securing and using telephone lines and or equipment in relation to Mr. Yap/HPS' ISR Operations.

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[67] 147 Phil. 794, 811 (1971).

Utilizing the benchmark that was previously discussed, this Court finds that the subject search warrants are not general warrants because the items to be seized were sufficiently identified physically and were also specifically identified by stating their relation to the offenses charged which are Theft and Violation of Presidential Decree No. 401 through the conduct of illegal ISR activities.

Lastly, on the issue of whether or not the release of the items seized by virtue of the subject search warrants was proper, this Court rules in the negative.

We quote with approval the disquisition of the Court of Appeals on this particular issue in its assailed Decision dated March 26, 2004 in CA-G.R. SP No. 65682, to wit:

> Although there was no separate order from the respondent judge directing the immediate release of the seized items, such directive was already contained in the Joint Order dated May 23, 2001. The dispositive portion of the assailed Joint Order reads:
>
> > "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 the respondent HPS Software and Communication Corporation.
> >
> > SO ORDERED."
>
> As properly pointed out by the petitioner PLDT, the May 23, 2001 Joint Order of the respondent judge is not "immediately executory". It is a final order which disposes of the action or proceeding and which may be the subject of an appeal. *Section 1, Rule 39* of the 1997 *Rules of Civil Procedure* provides:
>
> > "Section 1. *Execution upon judgments or final orders* – Execution shall issue as a matter of right, <u>on motion</u>, upon judgment or order that disposes of the action or proceeding <u>upon the expiration of the period to appeal therefrom, if no appeal has been duly perfected.</u>

x x x x

> From the foregoing, it is clear that execution may issue only upon motion by a party and only upon the expiration of the period to appeal, if no appeal has been perfected. Otherwise, if an appeal has been duly perfected, the parties would have to wait for the final resolution of the appeal before it may execute the judgment or final order – except for instances where an execution pending appeal is granted by the proper court of law.
>
> It would appear that despite the absence of any motion for execution, the respondent judge enforced his Joint Order by directing the release of the seized items from the physical custody of the PNP Special Task Force on June 5, 2001 – less than the fifteen-day prescribed period within which an aggrieved party may file an appeal or for such Joint Order to become final and executory in the absence of an appeal. Clearly the release of the seized items was enforced prematurely and without any previous motion for execution on record.
>
> We cannot give weight to the argument that the seized items were voluntarily released by the PNP Special Task Force, and thus, with such voluntary implementation of the May 23, 2001 Joint Order, the latter is already final and executed.
>
> We take note that the PNP Special Task Force only retained physical custody of the seized items. However, it was clearly the respondent judge who ordered and released said seized items with his directive in the May 23, 2001 Joint Order. The PNP Special Task Force could not release the said items without the directive and authority of the court *a quo*. Hence, such compliance cannot be deemed voluntary at all.
>
> From the foregoing discussion, it is apparent that the respondent judge's directive in the May 23, 2001 Joint Order for the immediate return of the seized items to the respondent HPS was enforced prematurely and in grave abuse of discretion. Clearly, the Joint Order dated May 23, 2001 was not yet final and executory when it was implemented on June 5, 2001. Moreover, a motion for execution filed by the interested party is obviously lacking. Thus, this Court concludes that there is no legal basis for the implementation of the May 23, 2001 Joint Order when the seized items were released on June 5, 2001.[68]

In all, we agree with the former Fourth Division of the Court of Appeals that there was indeed grave abuse of discretion on the part of the trial court in the premature haste attending the release of the items seized.

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[68] *Rollo* (G.R. No. 170217), pp. 35-36.

WHEREFORE, premises considered, the petition of HPS Corporation, *et al.* in G.R. No. 170217 is **DENIED** for lack of merit. The petition of PLDT in G.R. No. 170694 is **GRANTED**. The assailed Decision dated April 8, 2005 as well as the Resolution dated December 7, 2005 of the Court of Appeals in CA-G.R. CV No. 75838 are hereby **REVERSED** and **SET ASIDE**. No costs.

SO ORDERED.

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

MARIANO C. DEL CASTILLO
Associate Justice

MARTIN S. VILLARAMA, JR.
Associate Justice

BIENVENIDO L. REYES
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify 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's Division.

MARIA LOURDES P. A. SERENO
Chief Justice