

**HON NE CHAN, YUNJI ZENG, AND JOHN DOE, PETITIONERS, VS.
HONDA MOTOR CO., LTD., AND HONDA PHIL., INC., RESPONDENTS.**

G.R. No. 172775. December 19, 2007

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

Before the Court is a Petition for Review on Certiorari of the Decision[1] of the Court of Appeals in CA-G.R. SP No. 85353, granting respondents' Petition for Certiorari and setting aside the Orders dated 20 February 2004 and 18 May 2004, of the Regional Trial Court (RTC) of Manila, Branch 46.

On 14 November 2003, the National Bureau of Investigation (NBI), through Special Investigator (SI) Glenn Lacaran, applied for search warrants with the RTC against petitioners for alleged violation of Section 168[2] in relation to Section 170[3] of Republic Act No. 8293 or the Intellectual Property Code of the Philippines.[4]

On the same date, RTC Judge Artemio S. Tipon issued two search warrants. The first warrant, Search Warrant No. 03-4438,[5] was directed against petitioner "Hon Ne Chan and John Does, operating under the name and style `Dragon Spirit Motorcycle Center,' located at No. 192 M.H. del Pilar Street corner 10[th] Avenue, Grace Park, Caloocan City, Metro Manila."

On the other hand, the second search warrant, or Search Warrant No. 03-4439[6] was issued against petitioner "Yunji Zeng and John Does, operating under the name and style `Dragon Spirit Motorcycle Center,' located at No. 192 E. Delos Santos Avenue, Caloocan City, Metro Manila."

Except for the names of respondents and addresses to be searched, both search warrants stated the following:

SEARCH WARRANT[7]

TO ANY PEACE OFFICER:

G R E E T I N G S:

It appearing to the satisfaction of the undersigned, after examining under oath the applicant Special Investigator Glenn M. Lacaran of the National Bureau of Investigation, and his witnesses Atty. Elmer NA. Cadano and Mr. Rene C. Baltazar, that there are good and sufficient reasons to believe that a violation of Sec. 168 in relation to Sec. 170 of the R.A. No. 8293 has been committed and that there are good and sufficient reasons to believe that the following :

a)

Motorcycles bearing the model names and/or markings "DS-110", "DSM-110", "SUPER WAVE", "DS-125", "DSM-125", "WAVE R", and "WAVE" and the engines, moldings, spare parts, tires and accessories for the manufacture and assembly of such motorcycles;

b)

Papers, documents, brochures, documents, receipts, invoices, ledgers, books of accounts, labels, materials, paraphernalia, effects, computer software, computer systems, central processing units, hard disks, floppy disks, diskettes, data storage and retrieval devices, monitors, and vehicles used or intended to be used in importing, producing, manufacturing, assembling, selling, marketing, distributing, dealing with and/or otherwise disposing of motorcycles bearing the model names and/or markings "DS-110", "DSM-110", "SUPER WAVE", "DS-125, DSM-125", "WAVE R", and WAVE",

are in the possession and control of Respondents HON NE CHAN[8] and JOHN DOES, operating under the name and style "DRAGON SPIRIT MOTORCYCLE CENTER", located at No. 192 M. H. Del Pilar Street corner 10[th] Avenue, Grace Park, Caloocan City, Metro Manila, and are being kept and concealed at the said address.[9]

You are hereby commanded to make an immediate search at any time of the day of the premises above-described and to search for, and seize, the above-described personal properties which are the subject of the aforesaid offense and bring to this Court said properties to be dealt with as the law directs.

GIVEN UNDER MY HAND AND SEAL this 14[th] day of November, 2003 at the City of Manila, Philippines.

ARTEMIO S. TIPON

Judge

On the strength of these search warrants, NBI agents conducted a search of petitioners' premises and seized the following items:

- from petitioner Hon Ne Chan's premises:

a)

seven (7) motorcycles bearing the model name "DSM WAVE R;"

b)

three (3) motorcycles bearing the model name "DSM SUPER WAVE", and

c)

one (1) motorcycle bearing the model name "WAVE CX".

- from petitioner Yunji Zeng's premises:

a)

twenty-one (21) motorcycles bearing the model name "WAVE CX 110;"

b)

eight (8) motorcycles bearing the model name "WAVE 110;"

c)

thirty-five (35) motorcycles bearing the model name "WAVE 125";

d)

one (1) motorcycle bearing the model name "WAVE R";

e)

eight (8) motorcycles bearing the model name "SUPER WAVE 110;" and

f)

two (2) plastic bags containing various documents.[10]

On 1 December 2003, petitioners filed with the RTC a Joint Motion to Quash Search Warrants and to Return Illegally Seized Items,[11] averring therein that the search warrants were issued despite the absence of probable cause and that they were in the nature of general search warrants. Respondents filed their Opposition thereto on 7 January 2004[12] but despite this, the trial court still issued an Order dated 20 February 2004 which quashed both Search Warrants No. 03-4438 and 03-4439 and ordered the NBI to return to petitioners the articles seized. In quashing the search warrants, the trial court held that the return of the twenty-two "WAVE CX 110" motorcycle units was proper for they were never specifically mentioned therein. As regards the rest of the items seized by the NBI agents, the trial court decreed that their return to petitioners was justified due to lack of probable cause in the issuance of the search warrants.

Respondents' Motion for Reconsideration dated 12 March 2004[13] was denied by the court a quo through its Order of 18 May 2004.[14] This prompted respondents to seek recourse before the Court of Appeals via a Petition for Certiorari.[15]

On 31 January 2006, the Court of Appeals rendered the now assailed Decision granting respondents' petition and setting aside the RTC's Orders dated 20 February 2004 and 18 May 2004.[16] The appellate court likewise denied petitioners' Motion for Reconsideration due to lack of merit.

Hence, the present petition imputing error to the Court of Appeals because of the following:

i.

THE COURT OF APPEALS SERIOUSLY ERRED AND GRAVELY ABUSED ITS DISCRETION IN RULING THAT THE WARRANTS COMPLIED WITH THE CONSTITUTIONAL AND STATUTORY REQUIREMENTS FOR THE ISSUANCE OF VALID SEARCH WARRANTS NOTWITHSTANDING THE LACK OF PROBABLE CAUSE IN CONNECTION WITH ONE SPECIFIC OFFENSE TO SEARCH AND SEIZE THE MOTORCYCLE UNITS OF THE PETITIONERS AND THE LACK OF PARTICULARITY IN THE DESCRIPTION OF THE THINGS TO BE SEARCHED.

ii.

THE COURT OF APPEALS COMMITTED GRAVE, SERIOUS AND REVERSIBLE ERROR IN RULING THAT RESPONDENT HAD ESTABLISHED GOODWILL IN HONDA WAVE MOTORCYCLE DESPITE OF THE FACT THAT THERE IS NO EVIDENCE ON RECORD SUPPORTING THE CLAIM.

iii.

THE COURT OF APPEALS COMMITTED A MISAPPREHENSION OF FACTS IN RULING THAT THE PETITIONERS PASSED OFF THEIR GOODS AS THAT OF THE RESPONDENTS BY USING THE MODEL NAME WAVE AND EMBODYING THE PROMINENT FEATURES OF THE DESIGNS, WHICH IS THE VERY ESSENCE OF UNFAIR COMPETITION.[17]

We are primarily tasked to resolve the questions of: 1) whether probable cause existed in the issuance of the subject search warrants; 2) whether said search warrants were in the nature of general search warrants and therefore null and void; and 3) whether there existed an offense to which the issuance of the search warrants was connected.

We affirm the Decision of the Court of Appeals.

The pertinent provision of the Rules of Court on the issuance of a search warrant provides:

Rule 126
Search and Seizure

x x x x

SEC. 4. Requisites for issuing search warrant. – A search warrant shall not issue but upon probable cause in connection with one specific offense to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the things to be seized which may be anywhere in the Philippines.

Thus, 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 or things to be seized.[18]

In this case, petitioners argue that the requirements enumerated in Rule 126 of the Rules of Court pertaining to the issuance of a search warrant were not fulfilled when Search Warrants No. 03-4438 and 03-4439 were issued by the trial court. First, they contend that no probable cause existed meriting the issuance of the search warrants in that it was stated in the Application for Search Warrant of National Bureau of Investigation Special Investigator (NBI SI) Lacaran that "(h)e has information and verily believes that (petitioners) are in possession or has in their control properties which are being sold, retailed, distributed, imported, dealt with or otherwise disposed of, or intended to be used as a means of committing a violation of Section 168 in relation to Section 170 of Republic Act No. 8293 otherwise known as the Intellectual Property Code of the Philippines"[19] Said statement, petitioners insist, failed to meet the condition that probable cause must be shown to be within the personal knowledge of the complainant or the witnesses he may produce and not based on mere hearsay.[20]

It is settled that in determining probable cause, a judge is duty-bound to personally examine under oath the complainant and the witnesses he may present. Emphasis must be laid on the fact that the oath required must refer to "the truth of the facts within the personal knowledge of the petitioner or his witnesses, because the purpose thereof is to convince the committing magistrate, not the individual making the affidavit and seeking the issuance of the warrant, of the existence of probable cause." [21] Search warrants are not issued on loose, vague or doubtful basis of fact, or on mere suspicion or belief.[22]

In the case at bar, petitioners capitalize on the first paragraph of the Application for Search Warrant executed by NBI SI Lacaran to support their argument that he lacked the personal knowledge required by both the Rules of

Court and by jurisprudence. However, the very next paragraph of the application reveals the tremulous nature of their argument for it is clearly stated therein that far from merely relying on mere information and belief, NBI SI Lacaran "personally verified the report and found [it] to be a fact." [23] This, to our mind, removed the basis of his application from mere hearsay and supported the earlier finding of probable cause on the part of the examining judge. We cannot, thus, agree in his Order of 20 February 2004 quashing the search warrants he earlier issued on 14 November 2003.

It is likewise well to reiterate here that "probable cause," as far as the issuance of a search warrant is concerned, has been uniformly defined as such facts and circumstances which would lead a reasonable, discreet and prudent man to believe that an offense has been committed, and that the objects sought in connection with the offense are in the place sought to be searched. [24] Equally important is our declaration in *Microsoft Corporation and Lotus Development Corporation v. Maxicorp, Inc.* [25] 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 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. [26]

Applying these standards, we hold that the trial court overstepped its boundaries as far as determination of probable cause is concerned when it ratiocinated in its Order dated 20 February 2004 that –

With respect to the other units seized by the NBI, their immediate release is likewise proper since there is no showing of probable cause that justified the issuance of the search warrant. The (herein respondents) claims (sic) that the (herein petitioners) are guilty of Unfair Competition because of the alleged similarities between its motorcycle units and those of the (petitioners). There maybe similarities as claimed by the (respondents) but the differences far outweigh the similarities that any confusion to the consumer is remote and speculative. These differences are quite evident from the very comparative pictures attached by the (petitioners) in its (sic) application for Search Warrant as well as in the Opposition filed relative to the pending "Joint Motion to Quash Search Warrants and to Return Illegally Seized Items."

Aside from the differences in features, the motorcycle units sold by the (petitioners) prominently bear the distinct trade name "DRAGON SPIRIT." This is not the same trade name of the (respondents), which is Honda. The fact alone would practically eliminate any possible confusion on the part of the public that the motorcycle units they would be buying from the (petitioners) are those manufactured and/or sold by (respondents). [27]

Such pronouncement by the RTC is utterly premature for, at that point, all that was presented before it by respondents was evidence, which to their minds, was sufficient to support a finding of probable cause. The trial court's above-cited declaration unmistakably conveys the message that no unfair competition exists in this case – a conclusion that is not within its competence to make, for its task is merely confined to the preliminary matter of determination of probable cause and nothing more. The evidence it requires to dispense this function is, as stated before, far less stringent than that required in the trial on the merits of the charge involving unfair competition.

Petitioners also argue that the search warrants in question partook the nature of general search warrants in that they included motorcycles bearing the model name "WAVE." They insist that word "WAVE" is generic and that it fails to pass the requirement of particularity of the items to be seized. They also maintain that had the word "WAVE" been enough, there would have been no need for petitioners to state in their application for search warrants the specific motorcycle models, i.e., "DSM WAVE," "DSM SUPERWAVE 110," and "WAVE R 125." [28]

It is elemental that in order to be valid, a search warrant must particularly describe the place to be searched and the things to be seized. The constitutional requirement of reasonable particularity of description of the things to be seized is primarily meant to enable the law enforcers serving the warrant to: (1) readily identify the properties to be seized and thus prevent them from seizing the wrong items; and (2) leave said peace officers with no discretion regarding the articles to be seized and thus prevent unreasonable searches and seizures.[29] It is not, however, required that the things to be seized must be described in precise and minute detail as to leave no room for doubt on the part of the searching authorities.[30]

In *Bache and Co. (Phil.), Inc. v. Judge Ruiz*,[31] it was pointed out that one of the tests to determine the particularity in the description of objects to be seized under a search warrant is when the things described are limited to those which bear direct relation to the offense for which the warrant is being issued. A reading of the search warrants issued by the trial court in this case reveals that the items to be seized, including motorcycles, are those which are connected with the alleged violation of Section 168 in relation to Section 170 of Republic Act No. 8293, notwithstanding the use of the generic word "WAVE." We, therefore, adopt the following finding of the appellate court:

We may say this of the Wave motorcycles. It is evident that Wave is the model name of the motorcycles produced by the (herein respondents) Honda and, therefore, any imitation unit that is in the possession of the (herein petitioners) and carries the name Wave is the fit object of the warrants – whether some other name or figure is affixed to it or not. The name Wave CX 110 is but a [species] of units under the generic name Wave. The warrant that directs the seizure of Wave logically includes Wave CX 110 and is by no means converted into a roving commission when it allows the officer to seize it.[32]

Anent petitioners' contention that the search warrants were issued in relation to no particular offense, they rely on the holding of this Court in *Savage v. Judge Taypin*,[33] where it was held that –

There is evidently no mention of any crime of "unfair competition" involving design patents in the controlling provisions on Unfair Competition. It is therefore unclear whether the crime exists at all, for the enactment of RA 8293 did not result in the reenactment of Art. 189 of the Revised Penal Code. In the face of this ambiguity, we must strictly construe the statute against the State and liberally in favor of the accused, for penal statutes cannot be enlarged or extended by intendment, implication or any equitable consideration.[34]

A reading of said case readily exposes its stark inapplicability to the instant Petition.

To be sure, the search warrant in *Savage* was issued in the face of possible violation of Republic Act No. 8293. The acts complained of in said case were the alleged manufacture and fabrication of wrought iron furniture similar to that patented by private respondent therein sans any license or patent for the same, for the purpose of deceiving or defrauding private respondent and the buying public.

In making the above-quoted declaration in said case, this Court recognized that paragraph 3 of Article 189 of the Revised Penal Code stating that –

- Any person who, by means of false or fraudulent representations or declarations, orally or in writing, or by other fraudulent means shall procure from the patent office or from any other office which may hereafter be established by law for the purposes, the registration of a tradename, trademark, or service mark, or of himself as the owner of such tradename, trademark, or service mark or an entry respecting a tradename, trademark, or servicemark.

was not included in the enactment of Section 168 of Republic Act No. 8293.

On the other hand, in the Application for Search Warrant filed by NBI SI Lacaran, it is clearly stated that what respondents are complaining about was the alleged violation of the goodwill they have established with respect to

their motorcycle models "WAVE 110 S" and "WAVE 125 S" and which goodwill is entitled to protection in the same manner as other property rights. It is quite obvious then that their cause of action arose out of the intrusion into their established goodwill involving the two motorcycle models and not patent infringement, as what existed in *Savage*.

WHEREFORE, premises considered the present petition for review is DENIED, and the 31 January 2006 Decision of the Court of Appeals and its 17 May 2006 Resolution in CA-G.R. SP No. 85353 are AFFIRMED. Costs against petitioners.

SO ORDERED

Ynares-Santiago, (Chairperson), Austria-Martinez, , and Reyes, JJ., concur.
Nachura, J., On leave.

[1] Penned by Associate Justice Mario L. Guariña III with Associate Justices Roberto A. Barrios and Santiago Javier Ranada, concurring; rollo, pp. 30-39.

[2] SEC. 168. Unfair Competition, Rights, Regulation and Remedies. – 168.1. A person who has identified in the mind of the public the goods he manufactures or deals in, his business or services from those of others, whether or not a registered mark is employed, has a property right in the goodwill of the said goods, business or services so identified, which will be protected in the same manner as other property rights.

168.2. Any person who shall employ deception or any other means contrary to good faith by which he shall pass off the goods manufactures by him or in which he deals, or his business, or services for those of the one having established such goodwill, or who shall commit any acts calculated to produce said result, shall be guilty of unfair competition, and shall be subject to any action therefor.

168.3. In particular, and without in any way limiting the scope of protection against unfair competition, the following shall be deemed guilty of unfair competition:

(a) Any person, who is selling his goods and gives them the general appearance of goods of another manufacturer or dealer, either as to the goods themselves or in the wrapping of the packages in which they are contained, or the devices or words thereon, or in any other feather of their appearance, which would be likely to influence purchasers to believe that the goods offered are those of a manufacturer or dealer, other than the actual manufacturer or dealer, or who otherwise clothes the goods with such appearance as shall deceive the public and defraud another of his legitimate trade, or any subsequent vendor of such goods or any agent of any vendor engaged in selling such goods with a like purpose;

(b) Any person who by any artifice or device, or who employs any other means calculated to induce the false belief that such person is offering the service of another who has identified such services in the mind of the public; or

(c) Any person who shall make any false statement in the course of trade or who shall commit any other act contrary to good faith of a nature calculated to discredit the goods, business or services of another.

168.4. The remedies provided by Sections 156, 157 and 161 shall apply mutatis mutandis.

[3] SEC. 170. Penalties. – Independent of the civil and administrative sanctions imposed by law, a criminal penalty of imprisonment from two (2) years to five (5) years and a fine ranging from Fifty thousand pesos (P50,000) to Two Hundred thousand pesos (P200,000), shall be imposed on any person who is found guilty of

committing any of the acts mentioned in Section 155, Section 168 and Subsection 169.1.

[4] Records, pp. 1-57.

[5] Id. at 74-76.

[6] Id. at 64-66.

[7] Search Warrant No. 03-4438.

[8] "Yunji Zeng."

[9] No. 195, E. delos Santos Avenue, Caloocan City for Search Warrant No. 03-4439.

[10] Rollo, pp. 12-13.

[11] Id. at 85-93.

[12] Records, pp. 104-117.

[13] Id. at 136-172.

[14] Id. at 296-297.

[15] CA rollo, pp. 2-50.

[16] Rollo, pp. 30-38.

[17] Id. at 15-16.

[18] Republic v. Sandiganbayan, G.R. Nos. 112708-09, 29 March 1996, 255 SCRA 438, 481-482.

[19] Records, p. 1.

[20] Prudente v. Dayrit, G.R. No. 82870, 14 December 1989, 180 SCRA 69, 76.

[21] Id. at 78.

[22] Cupcupin v. People of the Philippines, 440 Phil. 712, 727 (2002).

[23] Records, pp. 2-3.

[24] Kho v. Hon. Lanzas, G.R. No. 150877, 4 May 2006, 489 SCRA 444, 464.

[25] G.R. No. 140946, 13 September 2004, 438 SCRA 224.

[26] Id. at 236.

[27] Records, p. 128.

[28] Rollo, p. 21.

[29] People v. Tee, 443 Phil. 521, 535 (2003).

[30] Kho v. Makalintal, G.R. Nos. 94902-06, 21 April 1999, 306 SCRA 70, 77-78.

[31] 148 Phil. 794, 811 (1971) cited in Al-Ghoul v. Court of Appeals, 416 Phil. 759, 771 (2001).

[32] Rollo, p. 35.

[33] 387 Phil. 718 (2000).

[34] Id. at 727.

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