

COLUMBIA PICTURES, INC., ORION PICTURES CORP., PARAMOUNT PICTURES CORP., TWENTIETH CENTURY FOX FILM CORP., UNITED ARTISTS CORP., UNIVERSAL CITY STUDIOS, INC., THE WALT DISNEY CO...*G.R. No. 78631. June 29, 1993*

Ponente: MELO, J.

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Before us is a petition for certiorari seeking to set aside the order dated May 29, 1987 of the Regional Trial Court of the National Capital Region (Branch 167, Pasig) directing the immediate release and return of television sets, video cassette recorders, rewinders, tape head cleaners, accessories, equipment, and other paraphernalia or pieces of machinery which had been seized by operatives of the National Bureau of Investigation by virtue of a search warrant.

Petitioners herein are all foreign corporations organized and existing under the laws of the United States of America and represented in the Philippines by their attorney-in-fact, Rebecca Benitez-Cruz of the Motion Picture Association of America, Inc. (MPAA for brevity). Private respondent FGT Video Network, Inc. is a merger of Fox, Galactic, and Technica Video. It is registered with and licensed by the Videogram Regulatory Board as a distributor under License No. 1333 VMM. Technica Video, Inc. which is part of the merger, is registered with and licensed as a reproducer by the said board under License No. 967 VMM (p. 11, Rollo).

In a letter dated April 20, 1987, the MPAA, through counsel Rico V. Domingo, lodged a complaint before then Director Antonio Carpio of the National Bureau of Investigation (NBI) against certain video establishments for violation of Presidential Decree No. 49 (Protection of Intellectual Property), as amended by Presidential Decree No. 1988, in connection with its anti-piracy campaign. Specifically complaining of the "unauthorized sale, rental, reproduction and/or disposition of copyrighted film", the MPAA sought the NBI's "urgent assistance in the conduct of search and seizure operations in Metro Manila and elsewhere". (p. 29, Rollo.)

On the basis of said letter, NBI and private agents conducted discreet surveillance operations on certain video establishments, among them private respondent FGT Video Network, Inc. (FGT). Thus, on April 20, 1987, Danilo Manalang, a.k.a. Ronaldo Lim, allegedly an NBI agent, went to the office of FGT to have the copyrighted motion pictures "Cleopatra" owned by Twentieth Century Fox Film Corp. and "The Ten Commandments" owned by Paramount Pictures, Inc. reproduced or retaped in video format. For the reproduction services, FGT issued Order Slip No. 3482 dated April 20, 1987 and Delivery Slip No. 118667 dated April 22, 1987, for which services Danilo Manalang paid P45.00. On May 5, 1987, Manalang also had MGM's copyrighted film "Walk Like a Man" reproduced or retaped by FGT for P15.00 (p. 5, Rollo).

Consequently, on May 14, 1987, NBI Agent III Lauro C. Reyes, with Manalang and Rebecca Benitez-Cruz as witnesses, applied for a search warrant with the Regional Trial Court in Pasig. Introduced as evidence in support of the application were the following: the letter dated April 20, 1987 of the MPAA through Rico V. Domingo

(Exh. A); FGT's Order Slip No. 3842 (Exh. B); FGT's Delivery Slip No. 118667 (Exh. B-1); video cassettes containing the film "The Ten Commandments" (Exhs. B-1-A, B-1-B); video cassette containing the film "Cleopatra" (Exh. B-1-C); video cassette containing the film "Walk Like a Man" (Exh. B-1-D); FGT's Order Slip No. 3923 dated May 5, 1987 (Exh. B-2); FGT's Delivery Slip No. 123321 dated May 6, 1987 (Exh. B-3); list of copyrighted MPAA member company titles (Exh. C); sketch of location of FGT's office or premises (Exh. D); affidavit of Rebecca Benitez-Cruz (Exh. E); special power of attorney designating Ms. Benitez-Cruz as petitioners' attorney-in-fact (Exh. F to F-8); and affidavit of Danilo Manalang (Exh. G).

Upon the offer of these pieces of evidence, Judge Alfredo C. Flores of the aforesaid court, issued Search Warrant No. 45 which reads:

TO ANY PEACE OFFICER:

GREETINGS:

It appearing to the satisfaction of the Undersigned after examining under oath NBI Senior Agent Lauro C. Reyes and his witnesses Mr. Danilo Manalang and Ms. Rebecca Benitez-Cruz, that there is a probable cause to believe that Violation of Section 56 P.D. No. 49 as amended by P.D. No. 1988 (otherwise known as the Decree on Protection of Intellectual Property) has been committed and that there are good and sufficient reasons to believe that FGT Video Network, Inc., Manuel Mendoza, Alfredo C. Ongyanco, Eric Apolonio, Susan Yang and Eduardo Yotoko are responsible and have in control/possession at No. 4 Epifanio de los Santos corner Connecticut, Greenhills, San Juan, Metro Manila (per attached sketch and list of MPAA member Company Titles) the following properties to wit:

- (a) Pirated video tapes of the copyrighted motion pictures/films the titles of which are mentioned in the attached list;
- (b) Posters, advertising leaflets, flyers, brochures, invoices, lists of titles being reproduced or retaped, journals, ledgers, jon (sic) order slips, delivery slips and books of accounts bearing and/or mentioning the pirated films with titles (as per attached list), or otherwise used in the reproduction/repating business of the defendants;
- (c) Television sets, video cassette recorders, rewinders, tape head cleaners, accessories, equipment and other machines and paraphernalia or materials used or intended to be used in the unlawful sale, lease, distribution, or possession for purpose of sale, lease, distribution, circulation or public exhibition of the above-mentioned pirated video tapes which they are keeping and concealing in the premises above-described, which should be seized and brought to the Undersigned.

You are hereby commanded to make an immediate search at any time in the day between 8:00 A.M. to 5:00 P.M. of the premises above-described and forthwith seize and take possession of the above-enumerated personal properties, and bring said properties to the undersigned immediately upon implementation to be dealt with as the law directs.

WITNESS MY HAND this 14th day of May, 1987, at Pasig, Metro Manila. (pp. 30-31, Rollo; Emphasis supplied.)

At or about high noon of the same day, agents from the NBI, led by Lauro C. Reyes and Mamerto Espartero, with the assistance of the personnel of the Videogram Regulatory Board headed by Elmer San Pascual, duly served Search Warrant No. 45 on the operators or representatives of FGT. In the course of the search of the premises of FGT, the NBI agents found and seized various video tapes of duly copyrighted motion pictures or films owned and exclusively distributed by petitioners. Also seized were machines and equipment, television sets, paraphernalia, materials, accessories, rewinders, tape head cleaners, statements of order, return slips, video prints,

flyers, production orders, and posters. Inventories of these seized articles were then prepared and copies thereof were furnished Jess Ayson, production manager of FGT. On May 18, 1987, the NBI agents filed a return of the search warrant with a motion to retain custody of the seized items (p. 32, Rollo).

Meanwhile, FGT filed an urgent motion for the immediate release of equipment and accessories "not covered" by the search warrant, without prejudice to the filing of a motion to quash the said search warrant (p. 101, Rollo). It argued that as a licensed video reproducer, FGT had the right to maintain possession of the seized reproduction equipment and paraphernalia which are not contraband or illegal per se, but are rather "exclusively used and intended to be used for reproduction" and not in the "sale, lease, distribution or possession for purposes of sale, lease distribution, circulation or public exhibition of pirated video tapes". (p. 102, Rollo.)

Petitioners opposed the motion, asserting that the seized articles were all lawfully taken. They explained that since FGT was a videogram distributor and not a reproducer, "it may be logically concluded that such 634 VCRs, accessories, etc." were "used or intended to be used in the unlawful sale, lease, distribution or possession for purposes of sale, lease, distribution, circulation or public exhibition of, at the very least, the 310 videocassette tapes containing the copyrighted films/motion pictures." They asserted that Search Warrant No. 45 was issued upon the proper determination of probable cause and that, therefore, it is not for FGT "to second-guess the wisdom" of the court's directive to seize the questioned VCRs and accessories "as an inquiry thereon would involve evidentiary matters which are better ventilated in the criminal prosecution proper". (pp. 107-116, Rollo.)

Finding that FGT was a "registered and duly licensed distributor and in certain instances and under special instructions and conditions... reproducer of videograms" and that, therefore, its right to possess and use the seized equipment had been "placed in serious doubt", the lower court resolved the doubt "against the Government and in favor of a lawful business enterprise." Applying the constitutional precept of presumption of innocence and considering that the seized articles are not contraband, respondent court ruled that to allow the Government "to keep possession of the equipment(s) and machines where there is no actual criminal charge" would amount to a "confiscation in violation of the due process clause of the constitution, notwithstanding the filing by the Director of the NBI of a letter to the Department of Justice recommending that the defendants be charged with violation of Section 56 of P.D. No. 49, as amended by P.D. No. 1988." (pp. 131-132, Rollo.)

Thus, in its order on May 29, 1987, the lower court granted FGT's motion and ordered the immediate release and return of the "television sets, video cassette recorders, rewinders, tape head cleaners, accessories, equipment and other machines or paraphernalias, as reflected in the 'Receipt for Properties Seized' attached to the records of the case beginning from page 84 to page 130, to the defendants, excluding video cassette tapes reflected in the 'Receipts for Properties Seized', beginning from page 132 to page 146 of the records." Respondent court also ordered the inventory of all articles returned with individual descriptions "to evidence their existence" copies of which inventory should be furnished the NBI and the court (p. 132, Rollo).

Hence, the present recourse.

As prayed for by petitioners, on June 17, 1987, the Court issued a temporary restraining order enjoining respondents from implementing the lower court's order of May 29, 1987 upon a bond in the amount of P750,000.00 which petitioners accordingly posted on June 19, 1987. (pp. 138--141, Rollo.)

The sole issue to be resolved is whether or not the lower court acted with grave abuse of discretion amounting to lack of jurisdiction in ordering the immediate release and return of some of the items seized by virtue of the search warrant.

Petitioners insist that the search warrant was issued upon due determination of probable cause. They argue that

FGT's act of illegally reproducing copyrighted films had been clearly established by evidence on record and that FGT's principal ground in praying for the immediate release of the seized articles is a matter of defense which should be ventilated at the trial of the case on the merits.

Private respondents, on the other hand, claim that the issuance of Search Warrant No. 45 is tainted with illegality as no particular or specific acts or omissions constituting the offense charged had been alleged in the application for its issuance.

The right to security against unreasonable searches and seizures is guaranteed under Section 2, Article III of the 1987 Constitution which provides:

Sec. 2. The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined 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 persons or things to be seized.

Thus, Sections 3 and 4 of Rule 126 of the Rules of Court provide for the requisites in the issuance of search warrants:

SEC. 3. 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.

SEC. 4. Examination of complainant; record. -- The judge must, before issuing the warrant, personally examine in the form of searching questions and answers, in writing and under oath the complainant and the witnesses he may produce on facts personally known to them and attach to the record their sworn statements together with any affidavits submitted.

In issuing a search warrant, the judge must strictly comply with the constitutional and statutory requirements. He must determine the existence of probable cause by personally examining the applicant and his witnesses in the form of searching questions (Silva vs. Presiding Judge, RTC of Negros Oriental, Br. XXXIII (203 SCRA 140 [1991])). The search warrant must contain a specific description of the place to be searched and the articles sought to be seized must be described with particularity (Pendon vs. Court of Appeals, 191 SCRA 429 [1990]).

Withal, measured by the a foregoing constitutional and legal provisions as well as the existing jurisprudence on the matter, we find that Search Warrant No. 45 fails to satisfy the test of legality. More so because the Court has previously decided a case dealing with virtually the same search warrant.

In 20th Century Fox Film Corp. vs. Court of Appeals (164 SCRA 655 [1988]), wherein therein petitioner is also one of the petitioners herein, we upheld the legality of the order of the lower court lifting the search warrant issued under circumstances similar to those obtaining in the case at bar.

A striking similarity between the case at bar and 20th Century Fox is the fact that Search Warrant No. 45, specifically paragraph (c) thereof describing the articles to be seized, contains an almost identical description as the warrant issued in the 20th Century Fox case, to wit:

(c) Television sets, Video Cassettes Recorders, rewinders, tape head cleaners, accessories, equipments and other machines used or intended to be used in the unlawful reproduction, sale, rental/lease, distribution of the above-mentioned video tapes which she is keeping and concealing in the premises above-described. (at p. 664.)

On the propriety of the seizure of the articles above-described, we held in said case:

Television sets, video cassette recorders, rewinders and tape cleaners are articles which can be found in a video tape store engaged in the legitimate business of lending or renting out betamax tapes. In short, these articles and appliances are generally connected with, or related to a legitimate business not necessarily involving piracy of intellectual property or infringement of copyright laws. Hence, including these articles without specification and/or particularity that they were really instruments in violating an Anti-Piracy law makes the search warrant too general which could result in the confiscation of all items found in any video store. (at p. 665.)

The language used in paragraph (c) of Search Warrant No. 45 is thus too all-embracing as to include all the paraphernalia of FGT in the operation of its business. As the search warrant is in the nature of a general one, it is constitutionally objectionable (*Corro vs. Lising*, 137 SCRA 541 [1985]).

In consequence, respondent court was merely correcting its own erroneous conclusions in issuing Search Warrant No. 45 when it ordered the return of the seized television sets and other paraphernalia specified in the motion filed by FGT. This can be gleaned from its statement that "... the machines and equipment could have been used or intended to be used in the illegal reproduction of tapes of the copyrighted motion pictures/films, yet, it cannot be said with moral certainty that the machines or equipment(s) were used in violating the law by the mere fact that pirated video tapes of the copyrighted motion pictures/films were reproduced. As already stated, FGT Video Network, Inc. is a registered and duly licensed distributor and in certain instances and under special instructions ... reproducer of videograms, and as such, it has the right to keep in its possession, maintain and operate reproduction equipment(s) and paraphernalia(s)." (pp. 131-132, Rollo.)

Far from being despotic or arbitrary, respondent judge must be commended for rectifying his error when he found that his initial conclusions were inaccurate and erroneous, colliding as they did with the constitutional rights of private respondent.

Much has been said in the media about piracy of films and videotapes and that violators of the law must be brought to the courts but, as the Court said in *Bagalihog vs. Fernandez* (198 SCRA 614 [1991]), "[z]eal in the pursuit of criminals cannot ennoble the use of arbitrary methods that the Constitution itself abhors." (at p. 622.)

WHEREFORE, the petition is DISMISSED, the assailed order of May 29, 1987 AFFIRMED, and the temporary restraining order issued on June 18, 1987, vacated and lifted.

SO ORDERED.

Feliciano, (Chairman), Bidin, Davide, Jr., and Romero, JJ., concur.

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