

SECOND DIVISION

[G.R. No. 134217. May 11, 2000.]

KENNETH ROY SAVAGE/K ANGELIN EXPORT TRADING,
owned and managed by GEMMA DEMORAL-SAVAGE,
*petitioners,vs.***JUDGE APRONIANO B. TAYPIN, Presiding Judge,**
RTC-BR. 12, Cebu City, CEBU PROVINCIAL PROSECUTOR'S
OFFICE, NATIONAL BUREAU OF INVESTIGATION, Region VII,
Cebu City, JUANITA NG MENDOZA, MENDCO DEVELOPMENT
CORPORATION, ALFREDO SABJON and DANTE SOSMENA,
respondents.

Pepito & Ventura Law Offices for petitioners.

Carlos A. Marcos for private respondents.

SYNOPSIS

Petitioners seek to nullify the search warrant issued by respondent Judge Aproniano B. Taypin of the Regional Trial Court, Br. 12, Cebu City, in connection with an unfair competition case which resulted in the seizure of certain pieces of wrought iron furniture from the factory of petitioners located in Biasong, Talisay, Cebu. Their motion to quash the search warrant was denied by respondent Judge as well as their motion to reconsider the denial. Hence, the present petition for *certiorari*. Petitioners claimed that respondent trial court had no jurisdiction over the offense since it was not designated as a special court for Intellectual Property Rights (IPR), citing in support thereof Supreme Court Administrative Order No. 113-95 designating certain branches of the Regional Trial Courts, Metropolitan Trial Courts and Municipal Trial Courts in Cities as Special Courts for IPR. The other issues to be resolved by the Court in the present petition were (a) the need for a certification of non-forum shopping; and, (b) the existence of the crime of unfair competition as a felony.

The Supreme Court ruled that petitioners apparently misconstrued the import of the designation of Special Courts for violations of IPR. Administrative Order No. 113-95 merely specified which court could "try and decide" cases involving violations of IPR. It did not, and could not, vest exclusive jurisdiction with regard to all matters (including the issuance of search warrants and other judicial processes) in any one court. Jurisdiction is conferred upon courts by substantive law, in this case, BP Blg. 129, and not by a procedural rule, much less by an administrative order. The power to issue search warrants for violations of IPR has not been exclusively vested in the courts

enumerated in Supreme Court Administrative Order No. 113-95. The Court also ruled that the absence of a certification of non-forum shopping will not result in the dismissal of an application for search warrant because the Rules of Court, as amended, requires such certification only from initiatory pleadings, omitting any mention of "applications." On the issue of the existence of the crime of unfair competition as a felony, the Court ruled that said issue had been rendered moot and academic by the enactment of the Intellectual Property Rights Code which expressly repealed Articles 188 and 189 of the Revised Penal Code. Although the present case traces its origins to the year 1997, or before the enactment of the IPR Code, the Court was constrained to invoke the provisions of the Code. The Court applied Article 22 of the Revised Penal Code which provides that penal laws shall be applied retrospectively, if such application would be beneficial to the accused. Since the IPR Code effectively obliterates the possibility of any criminal liability attaching to the acts alleged, then that Code must be applied in the present case. Since the assailed search warrant was null and void due to the express repeal of Articles 188 and 189 of the Revised Penal Code by the Intellectual Property Rights Code, the Court ordered all properties seized by virtue thereof be returned to petitioners in accordance with established jurisprudence.

SYLLABUS

1. REMEDIAL LAW; JURISDICTION; SUPREME COURT ADMINISTRATIVE ORDER NO. 113-95 DID NOT VEST JURISDICTION IN ANY ONE COURT BUT MERELY SPECIFIED WHICH COURT COULD DECIDE AND TRY CASES INVOLVING VIOLATIONS OF INTELLECTUAL PROPERTY RIGHTS; JURISDICTION IS VESTED BY SUBSTANTIVE LAW AND NOT BY PROCEDURAL RULE, MUCH LESS BY AN ADMINISTRATIVE ORDER. — Petitioners apparently misconstrued the import of the designation of Special Courts for IPR. Administrative Order No. 113-95 merely specified which court could "try and decide" cases involving violations of IPR. It did not, and could not, vest exclusive jurisdiction with regard to all matters (including the issuance of search warrants and other judicial processes) in any one court. Jurisdiction is conferred upon courts by substantive law; in this case, BP Blg. 129, and not by a procedural rule, much less by an administrative order. The power to issue search warrants for violations of IPR has not been exclusively vested in the courts enumerated in Supreme Court Administrative Order No. 113-95.

2. ID.; FORUM-SHOPPING; ABSENCE OF CERTIFICATION OF NON-FORUM SHOPPING WILL NOT RESULT IN DISMISSAL OF APPLICATION FOR SEARCH WARRANT; RULES OF COURT AS AMENDED REQUIRES SUCH CERTIFICATION ONLY FROM INITIATORY PLEADINGS, OMITTING ANY MENTION OF "APPLICATIONS." — Petitioners allege that the application for a search warrant should have been dismissed outright since it was not accompanied by a certification of non-forum shopping, citing as authority therefor *Washington Distillers*,

Inc. v. Court of Appeals. In that case, we sustained the quashal of the search warrant because the applicant had been guilty of forum shopping as private respondent sought a search warrant from the Manila Regional Trial Court only after he was denied by the courts of Pampanga. The instant case differs significantly, for here there is no allegation of forum-shopping, only failure to acquire a certification against forum-shopping. The Rules of Court as amended requires such certification only from initiatory pleadings, omitting any mention of "applications." In contrast, Supreme Court Circular 04-94, the old rule on the matter, required such certification even from "applications." Our ruling in *Washington Distillers* required no such certification from applications for search warrants. Hence, the absence of such certification will not result in the dismissal of an application for search warrant.

3. MERCANTILE LAW; INTELLECTUAL PROPERTY RIGHTS CODE; EXPRESSLY REPEALED ARTICLE 189 OF REVISED PENAL CODE. — The last question to be resolved is whether unfair competition involving design patents punishable under Art. 189 of the *Revised Penal Code* exists in this case. Prosecutor Ivan Herrero seems to agree as he filed the corresponding Information against petitioners on 17 March 1998. However, since the *IPR Code* took effect on 1 January 1998 any discussion contrary to the view herein expressed would be pointless. The repealing clause of the Code provides — All Acts and parts of Acts inconsistent herewith, more particularly, Republic Act No. 165, as amended; Republic Act No. 166, as amended; and *Articles 188 and 189 of the Revised Penal Code*; Presidential Decree No. 49, including Presidential Decree No. 285, as amended, are hereby repealed. The issue involving the existence of "unfair competition" as a felony involving design patents, referred to in Art. 189 of the Revised Penal Code, has been rendered moot and academic by the repeal of the article.

4. CRIMINAL LAW; AMBIGUITY BETWEEN PROVISIONS OF REPUBLIC ACT 8293 AND ARTICLE 189 OF REVISED PENAL CODE CONSTRUED STRICTLY AGAINST STATE AND LIBERALLY IN FAVOR OF ACCUSED. — The search warrant cannot even be issued by virtue of a possible violation of the *IPR Code*. The assailed acts specifically alleged were the manufacture and fabrication of wrought iron furniture similar to that patented by MENDCO, without securing any license or patent for the same, for the purpose of deceiving or defrauding Mendco and the buying public. 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. Respondents invoke jurisprudence to support their contention that "unfair competition" exists in this case. However, we are prevented from applying these principles, along with the new

provisions on Unfair Competition found in the *IPR Code*, to the alleged acts of the petitioners, for such acts constitute patent infringement as defined by the same Code.

5. ID.; ID.; RETROACTIVE EFFECT OF PENAL LAWS; INTELLECTUAL PROPERTY RIGHTS CODE PREVAILS OVER REVISED PENAL CODE IN CASE AT BAR SINCE IT EFFECTIVELY OBLITERATES POSSIBILITY OF ANY CRIMINAL LIABILITY ATTACHING TO ACTS ALLEGED. — Although this case traces its origins to the year 1997 or before the enactment of the *IPR Code*, we are constrained to invoke the provisions of the Code. Article 22 of the *Revised Penal Code* provides that penal laws shall be applied retrospectively, if such application would be beneficial to the accused. Since the *IPR Code* effectively obliterates the possibility of any criminal liability attaching to the acts alleged, then that Code must be applied here.

DECISION

BELLOSILLO, J :

Petitioners KENNETH ROY SAVAGE and K ANGELIN EXPORT TRADING, owned and managed by GEMMA DEMORAL-SAVAGE, seek to nullify the search warrant issued by respondent Judge Aproniano B. Taypin of the Regional Trial Court, Br. 12, Cebu City, which resulted in the seizure of certain pieces of wrought iron furniture from the factory of petitioners located in Biasong, Talisay, Cebu. Their motion to quash the search warrant was denied by respondent Judge as well as their motion to reconsider the denial. Hence, this petition for *certiorari*.

The antecedent facts: Acting on a complaint lodged by private respondent Eric Ng Mendoza, president and general manager of Mendco Development Corporation (MENDCO), [1] Supervising Agent Jose Ernie Monsanto of the National Bureau of Investigation (NBI) filed an application for search warrant with the Regional Trial Court of Cebu City. [2] The application sought the authorization to search the premises of K Angelin Export International located in Biasong, Talisay, Cebu, and to seize the pieces of wrought iron furniture found therein which were allegedly the object of unfair competition involving design patents, punishable under Art. 189 of the *Revised Penal Code* as amended. The assailed *Search Warrant No. 637-10-1697-12* was issued by respondent Judge on 16 October 1997 and executed in the afternoon of the following day by NBI agents. [3] Seized from the factory were several pieces of furniture, indicated in the *Inventory Sheet* attached to the *Return of Search Warrant* and all items seized have remained in NBI custody up to the present. [4]

On 30 October 1997 petitioners moved to quash the search warrant alleging that: (a) the crime they were accused of did not exist; (b) the issuance of the warrant was not

based on probable cause; (c) the judge failed to ask the witnesses searching questions; and, (d) the warrant did not particularly describe the things to be seized. [5]

On 10 November 1997 petitioners filed a *Supplemental Motion to Quash* where they additionally alleged that the assailed warrant was applied for without a certification against forum shopping. [6] On 30 January 1998 respondent Judge denied the *Motion to Quash* and the *Supplemental Motion to Quash*. [7] On 2 March 1998 petitioners moved to reconsider the denial of their motion to quash and alleged substantially the same grounds found in their original *Motion to Quash* but adding thereto two (2) new grounds, namely: (a) respondent court has no jurisdiction over the subject-matter; and, (b) respondent court failed to "substantiate" the order sought to be reconsidered. [8] The denial of their last motion [9] prompted petitioners to come to this Court.

The principal issues that must be addressed in this petition are: (a) questions involving jurisdiction over the offense; (b) the need for a certification of non-forum shopping; and, (c) the existence of the crime

Petitioners claim that respondent trial court had no jurisdiction over the offense since it was not designated as a special court for *Intellectual Property Rights* (IPR), citing in support thereof Supreme Court Administrative Order No. 113-95 designating certain branches of the Regional Trial Courts, Metropolitan Trial Courts and Municipal Trial Courts in Cities as Special Courts for IPR. The courts enumerated therein are mandated to try and decide violations of IPR including Art. 189 of the *Revised Penal Code* committed within their respective territorial jurisdictions. The sala of Judge Benigno G. Gaviola of the RTC-Br. 9, Cebu City, was designated Special Court for IPR for the 7th Judicial Region. [10] Subsequently Supreme Court Administrative Order No. 104-96 was issued providing that jurisdiction over all violations of IPR was thereafter confined to the Regional Trial Courts. [11]

The authority to issue search warrants was not among those mentioned in the administrative orders. But the Court has consistently ruled that a search warrant is merely a process issued by the court in the exercise of its ancillary jurisdiction and not a criminal action which it may entertain pursuant to its original jurisdiction. [12] The authority to issue search warrants is inherent in all courts and may be effected outside their territorial jurisdiction. [13] In the instant case, the premises searched located in Biasong, Talisay, Cebu, are well within the territorial jurisdiction of the respondent court. [14]

Petitioners apparently misconstrued the import of the designation of Special Courts for IPR. Administrative Order No. 113-95 merely specified which court could "try and decide" cases involving violations of IPR. It did not, and could not, vest exclusive jurisdiction with regard to all matters (including the issuance of search warrants and other judicial processes) in any one court. Jurisdiction is conferred upon courts by substantive law; in this case, *BP Blg. 129*, and not by a procedural rule, much less by an administrative order. [15] The power to issue search warrants for violations

of IPR has not been exclusively vested in the courts enumerated in Supreme Court Administrative Order No. 113-95.

Petitioners next allege that the application for a search warrant should have been dismissed outright since it was not accompanied by a certification of non-forum shopping, citing as authority therefor *Washington Distillers, Inc. v. Court of Appeals*. [16] In that case, we sustained the quashal of the search warrant because the applicant had been guilty of forum shopping as private respondent sought a search warrant from the Manila Regional Trial Court only after he was denied by the courts of Pampanga. The instant case differs significantly, for here there is no allegation of forum-shopping, only failure to acquire a certification against forum-shopping. The Rules of Court as amended requires such certification only from initiatory pleadings, omitting any mention of "applications." [17] In contrast, Supreme Court Circular 04-94, the old rule on the matter, required such certification even from "applications." Our ruling in *Washington Distillers* required no such certification from applications for search warrants. Hence, the absence of such certification will not result in the dismissal of an application for search warrant.

The last question to be resolved is whether unfair competition involving design patents punishable under Art. 189 of the *Revised Penal Code* exists in this case. Prosecutor Ivan Herrero seems to agree as he filed the corresponding Information against petitioners on 17 March 1998. [18] However, since the *IPR Code* took effect on 1 January 1998 any discussion contrary to the view herein expressed would be pointless. The repealing clause of the Code provides —

All Acts and parts of Acts inconsistent herewith, more particularly, Republic Act No. 165, as amended; Republic Act No. 166, as amended; and *Articles 188 and 189 of the Revised Penal Code*; Presidential Decree No. 49, including Presidential Decree 285, as amended, are hereby repealed (italics ours) [19]

The issue involving the existence of "unfair competition" as a felony involving design patents, referred to in Art. 189 of the *Revised Penal Code*, has been rendered moot and academic by the repeal of the article.

The search warrant cannot even be issued by virtue of a possible violation of the *IPR Code*. The assailed acts specifically alleged were the manufacture and fabrication of wrought iron furniture similar to that patented by MENDCO, without securing any license or patent for the same, for the purpose of deceiving or defrauding Mendco and the buying public. [20] The Code defines "unfair competition" thus —

168.2 Any person who shall employ deception or any other means contrary to good faith by which he shall pass off the goods manufactured by him or in which he deals, or his business, or services for those of the one having established such goodwill, or shall commit any acts calculated to produce said result, shall be guilty of unfair competition, and shall be subject to an 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 feature 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 services 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 goods, businesses or services of another. [21]

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, [22] for penal statutes cannot be enlarged or extended by intendment, implication or any equitable consideration. [23] Respondents invoke jurisprudence to support their contention that unfair competition" exists in this case. [24] However, we are prevented from applying these principles, along with the new provisions on Unfair Competition found in the *IPR Code*, to the alleged acts of the petitioners, for such acts constitute patent infringement as defined by the same Code —

SECTION 76. *Civil Action for Infringement.*— 76.1. The making, using, offering for sale, selling, or importing a patented product or a product obtained directly or indirectly from a patented process, or the use of a patented process without authorization of the patentee constitutes patent infringement. [25]

Although this case traces its origins to the year 1997 or before the enactment of the *IPR Code*, we are constrained to invoke the provisions of the Code. Article 22 of the *Revised Penal Code* provides that penal laws shall be applied retrospectively, if such application would be beneficial to the accused. [26] Since the *IPR Code* effectively

obliterates the possibility of any criminal liability attaching to the acts alleged, then that Code must be applied here.

In the issuance of search warrants, the Rules of Court requires a finding of probable cause in connection with *one specific offense* to be determined personally by the judge after examination of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the things to be seized. [27] Hence, since there is no crime to speak of, the search warrant does not even begin to fulfill these stringent requirements and is therefore defective on its face. The nullity of the warrant renders moot and academic the other issues raised in petitioners' *Motion to Quash* and *Motion for Reconsideration*. Since the assailed search warrant is null and void, all property seized by virtue thereof should be returned to petitioners in accordance with established jurisprudence. [28]

In petitioners' *Reply with Additional Information* they allege that the trial court denied their motion to transfer their case to a Special Court for IPR. We have gone through the records and we fail to find any trace of such motion or even a copy of the order denying it. All that appears in the records is a copy of an order granting a similar motion filed by a certain Minnie Dayon with regard to *Search Warrant No. 639-10-1697-12*. [29] This attachment being immaterial we shall give it no further attention.

WHEREFORE, the Order of the Regional Trial Court, Br. 12, Cebu City, dated 30 January 1998, denying the *Motion to Quash Search Warrant No. 637-10-1697-12* dated 30 October 1997 and the *Supplemental Motion to Quash* dated 10 November 1997 filed by petitioners, as well as the Order dated 8 April 1998 denying petitioners' *Motion for Reconsideration* dated 2 March 1998, is SET ASIDE. Search Warrant No. 637-10-1697-12 issued on 16 October 1997 is ANNULLED and SET ASIDE, and respondents are ordered to return to petitioners the property seized by virtue of the illegal search warrant.

SO ORDERED.

Mendoza, Quisumbing and Buena, JJ., concur.

De Leon, Jr., J., is on leave.

Footnotes

1. Original Record, pp. 222-223.
2. *Id.*, p. 1.
3. *Id.*, pp. 5 and 9.
4. *Id.*, pp. 11; *Rollo*, p. 31.
5. Original Record, pp. 13-14.

6. *Id.*,p. 30.
7. *Id.*,p.84.
8. *Id.*,p. 86.
9. *Id.*,p. 124.
10. Supreme Court Administrative Order No. 113-95, 2 October 1995.
11. Supreme Court Administrative Order No. 104-96, 21 October 1996.
12. *Ilano v. Court of Appeals*, G.R. No. 109560, 26 May 1995 244 SCRA 346, citing *Malaloan v. Court of Appeals*, G.R. No. 104879, 6 May 1994, 232 SCRA 249.
13. *Malaloan v. Court of Appeals*, G.R. No. 104879, 6 May 1994, 232 SCRA 249.
14. Par. 3 (h),Sec. 14, Chapter II, *Batas Pambansa Blg. 129*
15. *See Note 13.*
16. *G.R. No. 118151, 22 August 1996, 260 SCRA 821.*
17. *Sec. 5, Rule 7, Rules of Court.*
18. *Original Record, pp. 239-240.*
19. *Subsection 239.1, Section 239, Part V, RA 8293.*
20. *See Note 16.*
21. *Sec. 168, Part III, RA 8293.*
22. *People vs. Subido,G.R. No. 21734, 5 September 1975, 66 SCRA 545.*
23. *People v. Garcia, 85 Phil. 651 (1950).*
24. *Cigarette Manufacturing Co. v. Mojica, 27 Phil. 266 (1914);Ogura v. Chua, 59 Phil. 471 (1934).*
25. *Chapter VIII, Part II, RA 8293.*
26. *Act No. 3815.*
27. *Sec. 3, Rule 126, Rules of Court.*

28. *Nolasco v. Pano*, G.R. No. 69803, 30 January 1987, 147 SCRA 509.

29. *Rollo*, p. 156.