

SECOND DIVISION

[G.R. No. 108946. January 28, 1999]

FRANCISCO G. JOAQUIN, JR., and BJ PRODUCTIONS, INC., *petitioners*, vs. FRANKLIN DRILON GABRIEL ZOSA, WILLIAM ESPOSO, FELIPE MEDINA, JR., and CASEY FRANCISCO, *respondents*.

DECISION

MENDOZA, J.:

This is a petition for *certiorari*. Petitioners seek to annul the resolution of the Department of Justice, dated August 12, 1992, in Criminal Case No. Q-92-27854, entitled Gabriel Zosa, et al. v. City Prosecutor of Quezon City and Francisco Joaquin, Jr., and its resolution, dated December 3, 1992, denying petitioner Joaquin's motion for reconsideration.

Petitioner BJ Productions, Inc. (BJPI) is the holder/grantee of Certificate of Copyright No. M922, dated January 28, 1971, of *Rhoda and Me*, a dating game show aired from 1970 to 1977.

On June 28, 1973, petitioner BJPI submitted to the National Library an addendum to its certificate of copyright specifying the shows format and style of presentation.

On July 14, 1991, while watching television, petitioner Francisco Joaquin, Jr., president of BJPI, saw on RPN Channel 9 an episode of *Its a Date*, which was produced by IXL Productions, Inc. (IXL). On July 18, 1991, he wrote a letter to private respondent Gabriel M. Zosa, president and general manager of IXL, informing Zosa that BJPI had a copyright to *Rhoda and Me* and demanding that IXL discontinue airing *Its a Date*.

In a letter, dated July 19, 1991, private respondent Zosa apologized to petitioner Joaquin and requested a meeting to discuss a possible settlement. IXL, however, continued airing *Its a Date*, prompting petitioner Joaquin to send a second letter on July 25, 1991 in which he reiterated his demand and warned that, if IXL did not comply, he would endorse the matter to his attorneys for proper legal action.

Meanwhile, private respondent Zosa sought to register IXL's copyright to the first episode of *Its a Date* for which it was issued by the National Library a certificate of copyright on August 14, 1991.

Upon complaint of petitioners, an information for violation of P.D. No. 49 was filed against private respondent Zosa together with certain officers of RPN Channel 9, namely, William Esposo, Felipe Medina, and Casey Francisco, in the Regional Trial Court of Quezon City where it was docketed as Criminal Case No. 92-27854 and assigned to Branch 104 thereof. However, private respondent Zosa sought a review of the resolution of the Assistant City Prosecutor before the Department of Justice.

On August 12, 1992, respondent Secretary of Justice Franklin M. Drilon reversed the Assistant City Prosecutor's findings and directed him to move for the dismissal of the case against private respondents. [\[1\]](#)

Petitioner Joaquin filed a motion for reconsideration, but his motion was denied by respondent Secretary

of Justice on December 3, 1992. Hence, this petition. Petitioners contend that:

1. The public respondent gravely abused his discretion amounting to lack of jurisdiction when he invoked non-presentation of the master tape as being fatal to the existence of probable cause to prove infringement, despite the fact that private respondents never raised the same as a controverted issue.
2. The public respondent gravely abused his discretion amounting to lack of jurisdiction when he arrogated unto himself the determination of what is copyrightable - an issue which is exclusively within the jurisdiction of the regional trial court to assess in a proper proceeding.

Both public and private respondents maintain that petitioners failed to establish the existence of probable cause due to their failure to present the copyrighted master videotape of *Rhoda and Me*. They contend that petitioner BJPIs copyright covers only a specific episode of *Rhoda and Me* and that the formats or concepts of dating game shows are not covered by copyright protection under P. D. No. 49.

Non-Assignment of Error

Petitioners claim that their failure to submit the copyrighted master videotape of the television show *Rhoda and Me* was not raised in issue by private respondents during the preliminary investigation and, therefore, it was error for the Secretary of Justice to reverse the investigating prosecutors finding of probable cause on this ground.

A preliminary investigation falls under the authority of the state prosecutor who is given by law the power to direct and control criminal actions.^[2] He is, however, subject to the control of the Secretary of Justice. Thus, Rule 112, 4 of the Revised Rules of Criminal Procedure, provides:

SEC. 4. *Duty of investigating fiscal.* - If the investigating fiscal finds cause to hold the respondent for trial, he shall prepare the resolution and corresponding information. He shall certify under oath that he, or as shown by the record, an authorized officer, has personally examined the complainant and his witnesses, that there is reasonable ground to believe that a crime has been committed and that the accused is probably guilty thereof, that the accused was informed of the complaint and of the evidence submitted against him and that he was given an opportunity to submit controverting evidence. Otherwise, he shall recommend dismissal of the complaint.

In either case, he shall forward the records of the case to the provincial or city fiscal or chief state prosecutor within five (5) days from his resolution. The latter shall take appropriate action thereon within ten (10) days from receipt thereof, immediately informing the parties of said action.

No complaint or information may be filed or dismissed by an investigating fiscal without the prior written authority or approval of the provincial or city fiscal or chief state prosecutor.

Where the investigating assistant fiscal recommends the dismissal of the case but his findings are reversed by the provincial or city fiscal or chief state prosecutor on the ground that a probable cause exists, the latter may, by himself, file the corresponding information against the respondent or direct any other assistant fiscal or state prosecutor to do so, without conducting another preliminary investigation.

If upon petition by a proper party, the Secretary of Justice reverses the resolution of the provincial or city fiscal or chief state prosecutor, he shall direct the fiscal concerned to file the corresponding information without conducting another preliminary investigation or to dismiss or move for dismissal

of the complaint or information.

In reviewing resolutions of prosecutors, the Secretary of Justice is not precluded from considering errors, although unassigned, for the purpose of determining whether there is probable cause for filing cases in court. He must make his own finding of probable cause and is not confined to the issues raised by the parties during preliminary investigation. Moreover, his findings are not subject to review unless shown to have been made with grave abuse.

Opinion of the Secretary of Justice

Petitioners contend, however, that the determination of the question whether the format or mechanics of a show is entitled to copyright protection is for the court, and not the Secretary of Justice, to make. They assail the following portion of the resolution of the respondent Secretary of Justice:

[T]he essence of copyright infringement is the copying, in whole or in part, of copyrightable materials as defined and enumerated in Section 2 of PD. No. 49. Apart from the manner in which it is actually expressed, however, the idea of a dating game show is, in the opinion of this Office, a non-copyrightable material. Ideas, concepts, formats, or schemes in their abstract form clearly do not fall within the class of works or materials susceptible of copyright registration as provided in PD. No. 49.^[3] (Emphasis added.)

It is indeed true that the question whether the format or mechanics of petitioners television show is entitled to copyright protection is a legal question for the court to make. This does not, however, preclude respondent Secretary of Justice from making a preliminary determination of this question in resolving whether there is probable cause for filing the case in court. In doing so in this case, he did not commit any grave error.

Presentation of Master Tape

Petitioners claim that respondent Secretary of Justice gravely abused his discretion in ruling that the master videotape should have been presented in order to determine whether there was probable cause for copyright infringement. They contend that *20th Century Fox Film Corporation v. Court of Appeals*,^[4] on which respondent Secretary of Justice relied in reversing the resolution of the investigating prosecutor, is inapplicable to the case at bar because in the present case, the parties presented sufficient evidence which clearly establish linkages between the copyrighted show *Rhoda and Me* and the infringing TV show *Its a Date*.^[5]

The case of *20th Century Fox Film Corporation* involved raids conducted on various videotape outlets allegedly selling or renting out pirated videotapes. The trial court found that the affidavits of NBI agents, given in support of the application for the search warrant, were insufficient without the master tape. Accordingly, the trial court lifted the search warrants it had previously issued against the defendants. On petition for review, this Court sustained the action of the trial court and ruled:^[6]

The presentation of the master tapes of the copyrighted films from which the pirated films were allegedly copied, was necessary for the validity of search warrants against those who have in their possession the pirated films. The petitioners argument to the effect that the presentation of the master tapes at the time of application may not be necessary as these would be merely evidentiary in nature and not determinative of whether or not a probable cause exists to justify the issuance of the search warrants is not meritorious. The

court cannot presume that duplicate or copied tapes were necessarily reproduced from master tapes that it owns.

The application for search warrants was directed against video tape outlets which allegedly were engaged in the unauthorized sale and renting out of copyrighted films belonging to the petitioner pursuant to P.D. 49.

The essence of a copyright infringement is the similarity or at least substantial similarity of the purported pirated works to the copyrighted work. Hence, the applicant must present to the court the copyrighted films to compare them with the purchased evidence of the video tapes allegedly pirated to determine whether the latter is an unauthorized reproduction of the former. This linkage of the copyrighted films to the pirated films must be established to satisfy the requirements of probable cause. Mere allegations as to the existence of the copyrighted films cannot serve as basis for the issuance of a search warrant.

This ruling was qualified in the later case of *Columbia Pictures, Inc. v. Court of Appeals*^[7] in which it was held:

In fine, the supposed *pronunciamento* in said case regarding the necessity for the presentation of the master tapes of the copyrighted films for the validity of search warrants should at most be understood to merely serve as a guidepost in determining the existence of probable cause in copyright infringement cases *where there is doubt as to the true nexus between the master tape and the pirated copies*. An objective and careful reading of the decision in said case could lead to no other conclusion than that said directive was hardly intended to be a sweeping and inflexible requirement in all or similar copyright infringement cases. . . .^[8]

In the case at bar, during the preliminary investigation, petitioners and private respondents presented written descriptions of the formats of their respective television shows, on the basis of which the investigating prosecutor ruled:

As may [be] gleaned from the evidence on record, the substance of the television productions complainants RHODA AND ME and ZOSAS ITS A DATE is that two matches are made between a male and a female, both single, and the two couples are treated to a night or two of dining and/or dancing at the expense of the show. The major concepts of both shows is the same. Any difference appear mere variations of the major concepts.

That there is an infringement on the copyright of the show RHODA AND ME both in content and in the execution of the video presentation are established because respondents ITS A DATE is practically an exact copy of complainants RHODA AND ME because of substantial similarities as follows, to wit:

RHODA AND ME ITS A DATE

Set I Set I

a. Unmarried participant a. same

of one gender (searcher) appears on one side of a divider, while three (3) unmarried participants of the other gender are on the other side of the divider. This arrangement is done to ensure that the searcher does not see the searchees.

b. Searcher asks a question b. same

to be answered by each of the searchees. The purpose is to determine who among the searchees is the

most compatible with the searcher.

c. Searcher speculates on the c. same

match to the searchee.

d. Selection is made by the d. Selection is

use of compute (sic) methods, based on the
or by the way questions are answer of the
answered, or similar methods. Searchees.

Set 2 Set 2

Same as above with the genders same

of the searcher and searchees interchanged.^[9]

Petitioners assert that the format of *Rhoda and Me* is a product of ingenuity and skill and is thus entitled to copyright protection. It is their position that the presentation of a point-by-point comparison of the formats of the two shows clearly demonstrates the nexus between the shows and hence establishes the existence of probable cause for copyright infringement. Such being the case, they did not have to produce the master tape.

To begin with, the format of a show is not copyrightable. Section 2 of P.D. No. 49,^[10] otherwise known as the DECREE ON INTELLECTUAL PROPERTY, enumerates the classes of work entitled to copyright protection, to wit:

Section 2. The rights granted by this Decree shall, from the moment of creation, subsist with respect to any of the following classes of works:

(A) Books, including composite and cyclopedic works, manuscripts, directories, and gazetteers;

(B) Periodicals, including pamphlets and newspapers;

(C) Lectures, sermons, addresses, dissertations prepared for oral delivery;

(D) Letters;

(E) Dramatic or dramatico-musical compositions; choreographic works and entertainments in dumb shows, the acting form of which is fixed in writing or otherwise;

(F) Musical compositions, with or without words;

(G) Works of drawing, painting, architecture, sculpture, engraving, lithography, and other works of art; models or designs for works of art;

(H) Reproductions of a work of art;

(I) Original ornamental designs or models for articles of manufacture, whether or not patentable, and other works of applied art;

(J) Maps, plans, sketches, and charts;

- (K) Drawings or plastic works of a scientific or technical character;
- (L) Photographic works and works produced by a process analogous to photography; lantern slides;
- (M) Cinematographic works and works produced by a process analogous to cinematography or any process for making audio-visual recordings;
- (N) Computer programs;
- (O) Prints, pictorial illustrations advertising copies, labels, tags, and box wraps;
- (P) Dramatizations, translations, adaptations, abridgements, arrangements and other alterations of literary, musical or artistic works or of works of the Philippine government as herein defined, which shall be protected as provided in Section 8 of this Decree.
- (Q) Collections of literary, scholarly, or artistic works or of works referred to in Section 9 of this Decree which by reason of the selection and arrangement of their contents constitute intellectual creations, the same to be protected as such in accordance with Section 8 of this Decree.
- (R) Other literary, scholarly, scientific and artistic works.

This provision is substantially the same as 172 of the INTELLECTUAL PROPERTY CODE OF THE PHILIPPINES (R.A. No. 8293).^[11] The format or mechanics of a television show is not included in the list of protected works in 2 of P.D. No. 49. For this reason, the protection afforded by the law cannot be extended to cover them.

Copyright, in the strict sense of the term, is purely a statutory right. It is a new or independent right granted by the statute, and not simply a pre-existing right regulated by the statute. Being a statutory grant, the rights are only such as the statute confers, and may be obtained and enjoyed only with respect to the subjects and by the persons, and on terms and conditions specified in the statute.^[12]

Since . . . copyright in published works is purely a statutory creation, a copyright may be obtained only for a work falling within the statutory enumeration or description.^[13]

Regardless of the historical viewpoint, it is authoritatively settled in the United States that there is no copyright except that which is both created and secured by act of Congress^[14]

P.D. No. 49, 2, in enumerating what are subject to copyright, refers to finished works and not to concepts. The copyright does not extend to an idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work.^[15] Thus, the new INTELLECTUAL PROPERTY CODE OF THE PHILIPPINES provides:

Sec. 175. *Unprotected Subject Matter.* - Notwithstanding the provisions of Sections 172 and 173, no protection shall extend, under this law, to any idea, procedure, system, method or operation, concept, principle, discovery or mere data as such, even if they are expressed, explained, illustrated or embodied in a work; news of the day and other miscellaneous facts having the character of mere items of press information; or any official text of a legislative, administrative or legal nature, as well as any official translation thereof.

What then is the subject matter of petitioners copyright? This Court is of the opinion that petitioner BJPIs copyright covers audio-visual recordings of each episode of *Rhoda and Me*, as falling within the class of

works mentioned in P.D. 49, 2(M), to wit:

Cinematographic works and works produced by a process analogous to cinematography or any process for making audio-visual recordings;

The copyright does not extend to the general concept or format of its dating game show. Accordingly, by the very nature of the subject of petitioner BJPIs copyright, the investigating prosecutor should have the opportunity to compare the videotapes of the two shows.

Mere description by words of the general format of the two dating game shows is insufficient; the presentation of the master videotape in evidence was indispensable to the determination of the existence of probable cause. As aptly observed by respondent Secretary of Justice:

A television show includes more than mere words can describe because it involves a whole spectrum of visuals and effects, video and audio, such that no similarity or dissimilarity may be found by merely describing the general copyright/format of both dating game shows.^[16]

WHEREFORE, the petition is hereby **DISMISSED**.

SO ORDERED.

Puno, Quisumbing, and Buena, JJ., concur.

Bellosillo, J., (Chairman), no part due to relation to one of the parties.

[1] Petition, Annex A, p. 4; *Rollo*, p. 27.

[2] *Sangguniang Bayan of Batac, Ilocos Norte v. Albano*, 260 SCRA 561 (1996).

[3] Petition, Annex B, pp. 1-2; *Rollo*, pp. 28-29.

[4] 164 SCRA 655 (1988).

[5] Petition, p. 17; *Rollo*, p. 18.

[6] *Id.*, at 663-664.

[7] 261 SCRA 144 (1996).

[8] *Id.*, 173.

[9] Petition Annex G; *Rollo*, pp. 44-45.

[10] Promulgated on November 14, 1972.

[11] Effective on January 1, 1998.

SEC. 172. *Literary and Artistic Works*. - 172.1. Literary and artistic works, hereinafter referred to as works, are original intellectual creations in the literary and artistic domain protected from the moment of their creation and shall include in particular:

- (a) Books, pamphlets, articles and other writings;
- (b) Periodicals and newspapers;
- (c) Lectures, sermons, addresses, dissertations prepared for oral delivery whether or not reduced in writing or other material form;
- (d) Letters;
- (e) Dramatic or dramatico-musical compositions; choreographic works or entertainment in dumb shows;

- (f) Musical compositions, with or without words;
- (g) Works of drawing, painting, architecture, sculpture, engraving, lithography or other works of art; models or designs for works of art;
- (h) Original ornamental designs or models for articles of manufacture, whether or not registrable as an industrial design and other works of applied art;
- (i) Illustrations, maps, plans, sketches, charts and three-dimensional works relative to geography, topography, architecture or science;
- (j) Drawings or plastic works of a scientific or technical character;
- (k) Photographic works including works produced by a process analogous to photography; lantern slides;
- (l) Audiovisual works and cinematographic works and works produced by a process analogous to cinematography or any process for making audio-visual recordings;
- (m) Pictorial illustrations and advertisements;
- (n) Computer programs; and
- (o) Other literary, scholarly, scientific and artistic works.

[\[12\]](#) 18 C.J.S. 161.

[\[13\]](#) *Id.*, at 165.

[\[14\]](#) HORACE G. BALL, LAW OF COPYRIGHT AND LITERARY PROPERTY. 45 (1944).

[\[15\]](#) NEIL BOORSTYN, COPYRIGHT LAW 25 (1981).

[\[16\]](#) Comment of Public Respondent, p. 9; *Rollo*, p. 152.