

SECOND DIVISION

[G.R. NO. 163858, June 28, 2005]

UNITED LABORATORIES, INC., PETITIONER, VS. ERNESTO ISIP AND/OR SHALIMAR PHILIPPINES AND/OR OCCUPANTS, SHALIMAR BUILDING, NO. 1571, ARAGON STREET, STA. CRUZ, MANILA, RESPONDENTS.

DECISION

CALLEJO, SR., J.:

Rolando H. Besarra, Special Investigator III of the National Bureau of Investigation (NBI), filed an application, in the Regional Trial Court (RTC) of Manila, for the issuance of a search warrant concerning the first and second floors of the Shalimar Building, located at No. 1571, Aragon Street (formerly No. 1524, Lacson Avenue, Sta. Cruz, Manila) occupied and/or used by Shalimar Philippines, owned/operated by Ernesto Isip; and for the seizure of the following for violation of Section 4(a), in relation to Section 8, of Republic Act (R.A.) No. 8203:

- a. Finished or unfinished products of UNITED LABORATORIES (UNILAB), particularly REVICON multivitamins;
- b. Sundry items such as tags, labels, boxes, packages, wrappers, receptacles, advertisements and other paraphernalia used in the offering for sale, sale and/or distribution of counterfeit REVICON multivitamins;
- c. Sales invoices, delivery receipts, official receipts, ledgers, journals, purchase orders and all other books of accounts and documents used in recording the manufacture and/or importation, distribution and/or sales of counterfeit REVICON multivitamins.^[1]

The application was docketed as *People v. Ernesto Isip, et al., Respondents*, Search Warrant Case No. 04-4916 and raffled to Branch 24 of the court. Appended thereto were the following: (1) a sketch^[2] showing the location of the building to be searched; (2) the affidavit^[3] of Charlie Rabe of the Armadillo Protection and Security Agency hired by United Laboratories, Inc. (UNILAB), who allegedly saw the manufacture, production and/or distribution of fake drug products such as Revicon by Shalimar Philippines; (3) the letter-request of UNILAB, the duly licensed and exclusive manufacturer and/or distributor of Revicon and Disudrin, for the monitoring of the unauthorized production/manufacture of the said drugs and, if warranted, for their seizure; (4) the letter-complaint^[4] of UNILAB issued through its Director of the Security and Safety Group; and (5) the joint affidavit^[5] of NBI Agents Roberto Divinagracia and Rolando Besarra containing the following allegations:

2. When learned that an Asset was already placed by ARMADILLO PROTECTIVE AND SECURITY AGENCY named CHARLIE RABE, who was renting a room since November 2003, at the said premises located at No. 1571 Aragon St., Sta. Cruz, Manila. MR. RABE averred that the owner of the premises is a certain MR. ERNESTO ISIP and that the said premises which is known as SHALIMAR PHILIPPINES, Shalimar Building, are being used to manufacture counterfeit UNILAB products, particularly REVICON multivitamins, which was already patented by UNILAB since 1985;

3. Upon verification of the report, we found out that the said premises is a six-story structure, with an additional floor as a penthouse, and colored red-brown. It has a tight security arrangement wherein non-residents are not allowed to enter or reconnoiter in the premises;

4. We also learned that its old address is No. 1524 Lacson Avenue, Sta. Cruz, Manila, and has a new address as 1571 Aragon St., Sta. Cruz, Manila; and that the area of counterfeiting operations are the first and second floors of Shalimar Building;

5. Since we cannot enter the premises, we instructed the Asset to take pictures of the area especially the places wherein the clandestine manufacturing operations were being held. At a peril to his well-being and security, the Asset was able to take photographs herein incorporated into this Search Warrant Application.^[6]

A representative from UNILAB, Michael Tome, testified during the hearing on the application for the search warrant. After conducting the requisite searching questions, the court granted the application and issued Search Warrant No. 04-4916 dated January 27, 2004, directing any police officer of the law to conduct a search of the first and second floors of the Shalimar Building located at No. 1571, Aragon Street, Sta. Cruz, Manila. The court also directed the police to seize the following items:

- a. Finished or unfinished products of UNITED LABORATORIES (UNILAB), particularly REVICON multivitamins;
- b. Sundry items such as tags, labels, boxes, packages, wrappers, receptacles, advertisements and other paraphernalia used in the offering for sale, sale and/or distribution of counterfeit REVICON multivitamins;
- c. Sales invoices, delivery receipts, official receipts, ledgers, journals, purchase orders and all other books of accounts and documents used in recording the manufacture and/or importation, distribution and/or sales of counterfeit REVICON multivitamins.^[7]

The court also ordered the delivery of the seized items before it, together with a true inventory thereof executed under oath.

The search warrant was implemented at 4:30 p.m. on January 27, 2004 by NBI agents Besarra and Divinagracia, in coordination with UNILAB employees. No fake Revicon multivitamins were found; instead, there were sealed boxes at the first and

second floors of the Shalimar Building which, when opened by the NBI agents in the presence of respondent Isip, contained the following:

<u>QUANTITY/UNIT</u>	<u>DESCRIPTION</u>
792 Bottles	Disudrin 60 ml.
30 Boxes (100 pieces each)	Inoflox 200 mg. ^[8]

NBI Special Investigator Divinagracia submitted an inventory of the things seized in which he declared that the search of the first and second floors of the Shalimar Building at No. 1571, Aragon Street, Sta. Cruz, Manila, the premises described in the warrant, was done in an orderly and peaceful manner. He also filed a Return of Search Warrant,^[9] alleging that no other articles/items other than those mentioned in the warrant and inventory sheet were seized. The agent prayed that of the items seized, ten boxes of Disudrin 60 ml., and at least one box of Inoflox be turned over to the custody of the Bureau of Food and Drugs (BFAD) for examination.^[10] The court issued an order granting the motion, on the condition that the turn over be made before the court, in the presence of a representative from the respondents and the court.^[11]

The respondents filed an "Urgent Motion to Quash the Search Warrant or to Suppress Evidence."^[12] They contended that the implementing officers of the NBI conducted their search at the first, second, third and fourth floors of the building at No. 1524-A, Lacson Avenue, Sta. Cruz, Manila, where items in "open display" were allegedly found. They pointed out, however, that such premises was different from the address described in the search warrant, the first and second floors of the Shalimar Building located at No. 1571, Aragon Street, Sta. Cruz, Manila. The respondents, likewise, asserted that the NBI officers seized Disudrin and Inoflox products which were not included in the list of properties to be seized in the search warrant.

UNILAB, in collaboration with the NBI, opposed the motion, insisting that the search was limited to the first and second floors of the Shalimar building located at the corner of Aragon Street and Lacson Avenue, Sta. Cruz, Manila. They averred that, based on the sketch appended to the search warrant application, Rabe's affidavit, as well as the joint affidavit of Besarra and Divinagracia, the building where the search was conducted was located at No. 1571, Aragon Street corner Lacson Avenue, Sta. Cruz, Manila. They pointed out that No. 1524 Lacson Avenue, Sta. Cruz, Manila was the old address, and the new address was No. 1571, Aragon Street, Sta. Cruz, Manila. They maintained that the warrant was not implemented in any other place.^[13]

In reply, the respondents insisted that the items seized were different from those listed in the search warrant. They also claimed that the seizure took place in the building located at No. 1524-A which was not depicted in the sketch of the premises which the applicant submitted to the trial court.^[14] In accordance with the ruling of this Court in *People v. Court of Appeals*,^[15] the respondents served a copy of their pleading on UNILAB.^[16]

On March 11, 2004, the trial court issued an Order^[17] granting the motion of the

respondents, on the ground that the things seized, namely, Disudrin and Inoflox, were not those described in the search warrant. On March 16, 2004, the trial court issued an advisory^[18] that the seized articles could no longer be admitted in evidence against the respondents in any proceedings, as the search warrant had already been quashed.

UNILAB, through the Ureta Law Office, filed a motion, in collaboration with the NBI agents, for the reconsideration of the order, contending that the ground used by the court in quashing the warrant was not that invoked by the respondents, and that the seizure of the items was justified by the plain view doctrine. The respondents objected to the appearance of the counsel of UNILAB, contending that the latter could not appear for the People of the Philippines. The respondents moved that the motion for reconsideration of UNILAB be stricken off the record. Disputing the claims of UNILAB, they insisted that the items seized were contained in boxes at the time of the seizure at No. 1524-A, Lacson Avenue corner Aragon Street, Sta. Cruz, Manila, and were not apparently incriminating on plain view. Moreover, the seized items were not those described and itemized in the search warrant application, as well as the warrant issued by the court itself. The respondents emphasized that the Shalimar Laboratories is authorized to manufacture galenical preparations of the following products:

Products:

- Povidone Iodine
- Chamomile Oil
- Salicylic Acid 10 g.
- Hydrogen Peroxide 3% Topical Solution
- Aceite de Alcamforado
- Aceite de Manzanilla^[19]

In a manifestation and opposition, the respondents assailed the appearance of the counsel of UNILAB, and insisted that it was not authorized to appear before the court under the Rules of Court, and to file pleadings. They averred that the BFAD was the authorized government agency to file an application for a search warrant.

In its counter-manifestation, UNILAB averred that it had the personality to file the motion for reconsideration because it was the one which sought the filing of the application for a search warrant; besides, it was not proscribed by Rule 126 of the Revised Rules of Criminal Procedure from participating in the proceedings and filing pleadings. The only parties to the case were the NBI and UNILAB and not the State or public prosecutor. UNILAB also argued that the offended party, or the holder of a license to operate, may intervene through counsel under Section 16 of Rule 110, in relation to Section 7(e), of the Rules of Criminal Procedure.

UNILAB prayed that an ocular inspection be conducted of the place searched by the NBI officers.^[20] In their rejoinder, the respondents manifested that an ocular inspection was the option to look forward to.^[21] However, no such ocular inspection

of the said premises was conducted.

In the meantime, the BFAD submitted to the court the result of its examination of the Disudrin and Inoflox samples which the NBI officers seized from the Shalimar Building. On its examination of the actual component of Inoflox, the BFAD declared that the substance failed the test.^[22] The BFAD, likewise, declared that the examined Disudrin syrup failed the test.^[23] The BFAD had earlier issued the following report:

PRODUCT NAME	Manufacturer	L.N.	E.D.	FINDINGS
1. Phenylpropanolamine (Disudrin) 2.5 mg./5mL Syrup	Unilab	21021552	3-06	-Registered, however, label/physical appearance does not conform with the BFAD approved label/registered specifications.
2. Ofloxacin (Inoflox) 200 mg. tablet.	Unilab	99017407	3-05	-Registered, however, label/physical appearance does not conform with the BFAD approved label/registered specifications. ^[24]

On May 28, 2004, the trial court issued an Order^[25] denying the motion for reconsideration filed by UNILAB. The court declared that:

The Search Warrant is crystal clear: The seizing officers were only authorized to take possession of "finished or unfinished products of United Laboratories (UNILAB), particularly REVICON Multivitamins, and documents evidencing the counterfeit nature of said products. The Receipt/Inventory of Property Seized pursuant to the warrant does not, however, include REVICON but other products. And whether or not these seized products are imitations of UNILAB items is beside the point. No evidence was shown nor any was given during the proceedings on the application for search warrant relative to the seized products.

On this score alone, the search suffered from a fatal infirmity and, hence, cannot be sustained.^[26]

UNILAB, thus, filed the present petition for review on *certiorari* under Rule 45 of the Rules of Court, where the following issues are raised:

Whether or not the seized 792 bottles of Disudrin 60 ml. and 30 boxes of Inoflox 200 mg. are INADMISSIBLE as evidence against the respondents because they constitute the "fruit of the poisonous tree" or, CONVERSELY, whether or not the seizure of the same counterfeit drugs is justified and