

ORIGINALDecision No. 55305

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

NINA P. MASCHING AND ROBERT H. MASCHING,)	
)	
Complainants,)	
)	
vs.)	Case No. 5938
)	
THE PACIFIC TELEPHONE AND TELEGRAPH)	
COMPANY, a corporation,)	
)	
Defendant.)	

Juaneita M. Veron, for complainant.
Lawler, Felix and Hall, by John M. Sink,
for defendant.
C. George Deukmaian, for the Los Angeles
County Sheriff's Department, intervener.

O P I N I O N

The complaint herein, filed on May 8, 1957, alleges that Nina P. Masching resides at 10713 South Van Ness, Apartment 1, Inglewood, California, and Robert H. Masching resides at 10713 South Van Ness, Apartment 2, Inglewood, California; that complainant Nina P. Masching, has prior to March 12, 1957, obtained telephone service from the defendant for no less than ten years and has had telephone service from the defendant at the present address, a multiple dwelling owned by said complainant, for two years prior to March 12, 1957; that the complainant Robert H. Masching, has had telephone service furnished by the defendant at his said address for not less than one year prior to March 12, 1957; that on or about March 12, 1957, detectives and investigators from the office of the Los Angeles County Sheriff came to the respective dwellings of the complainants and arrested each of them on suspicion of bookmaking and removed their telephone instruments; that on March 14, 1957, each of the

complainants was released from custody after hearings on writs of habeas corpus; that no complaint has been filed against either complainant by the Los Angeles County Sheriff's department or any other law enforcement agency for bookmaking or any other crime; that at no time has either complainant engaged in the business or occupation of bookmaking; that neither complainant intends in the future to engage in the business of bookmaking or in any other criminal activity; and that a telephone is necessary to complainant Nina F. Masching as her husband is ill, having suffered several strokes.

On May 27, 1957, the telephone company filed an answer, the principal allegation of which was that on or about March 15, 1957, it had reasonable cause to believe that the use made or to be made of the telephone service furnished to complainant Nina P. Masching under telephone number Plymouth 6-6430 at 10713 South Van Ness Avenue, Apartment 1, Inglewood, California, and of the telephone service furnished to complainant Robert H. Masching under telephone numbers Plymouth 6-8698 and Plymouth 4-9577 at 10713 South Van Ness Avenue, Apartment 2, Inglewood, California, was prohibited by law and that such service was being or was to be used as an instrumentality directly or indirectly to violate or to aid and abet the violation of the law; and that said defendant having reasonable cause disconnected said service on the said date pursuant to the order of the California Public Utilities Commission in Decision No. 41415, dated April 6, 1948, in Case No. 4930 (47 Cal. P.U.C. 853).

A public hearing was held in Los Angeles before Examiner Kent C. Rogers on June 25, 1957, and the matter was submitted.

Complainant Nina P. Masching testified that in March, 1957, she had a telephone in her name in her apartment; that she rented a

room to Gertrude O'Donnell who also had a telephone in the apartment; that her son Robert Masching had the apartment next door and had a telephone therein with an extension for answering purposes in her apartment; that on about March 12, 1957, she was in the kitchen knitting; that the telephones were in the kitchen; that she received a call from some one desiring to place a horse race bet with her; that she informed the caller that she does not take horse race bets and hung up; that shortly thereafter several sheriff's deputies in plain clothes broke down her apartment door; that she was informed that she was under arrest for bookmaking and the telephones were removed; that she was taken to jail and later that same day released on a writ of habeas corpus; that no complaint was ever issued against her; that she has never used the telephone for bookmaking purposes; and that she has not permitted anyone else to use the telephone for such purposes. Complainant Robert H. Masching testified that he had resided at 10713 South Van Ness, Apartment 2, Inglewood, for about one year prior to March 12, 1957, that he is in the automobile wholesaling business and operates out of his home and a used car lot; that for about two months prior to March 12, 1957, he had a business telephone and a private telephone in his apartment; that on March 12, 1957, sheriff's deputies broke into his apartment, removed his telephones and arrested him; that he was asleep when they broke in; that they asked him if his telephones were used for bookmaking and he said no; that after his arrest he was released on a writ of habeas corpus and no complaint was filed against him; that his business telephone has an extension to his mother's apartment next door so she can answer when he is absent.

A Los Angeles County Deputy Sheriff testified that on March 12, 1957, he and four other deputies went to the vicinity of the complainant's residence at about 2:30 p.m.; that he called the number Pleasant 6-8698 and a female voice answered; that he gave a horse race bet and the voice replied "at Bay Meadows"; that he said yes and the voice asked who was calling; that the witness said his name was Russell and the female voice said it doesn't sound right and hung up; that he and the other officers forced an entrance to Apartment No. 2, Robert H. Masching's apartment; that Robert H. Masching was in the kitchen but the witness couldn't find the telephone, Pleasant 6-8698; that he observed two telephone cords by Apartment No. 1 next door but couldn't tell where they came from or went to; that Robert H. Masching said his mother lived in Apartment No. 1; that the officers knocked and no one answered so they forced an entrance thereto; that the officers arrested Mrs. Nina Masching; that there were three telephones in the kitchen; that in the kitchen was a large pad containing the results of horse races run that day; and that for about 15 minutes after the officers entered Apartment No. 1 each telephone rang frequently and when the officers answered the calling party hung up except in one instance when the caller asked for the results of a race. The witness further testified that subsequently the same day a telephone with number Plymouth 6-8698 was found in the closet in Apartment No. 2.

In rebuttal Nina P. Masching testified that when the deputy sheriff called Plymouth 6-8698 she answered, the deputy mentioned a Mr. Russell but his call didn't make sense to her so she hung up the telephone. She further stated that while the deputies were in her house the telephone rang on only a few occasions and one call was from her husband.

Exhibits 1, 2 and 3 are letters from the Sheriff's Department of Los Angeles County to the telephone company advising the telephone company that complainants' telephones were, on March 12, 1957, being used for disseminating horse racing information used in connection with bookmaking in violation of Section 337-a of the California Penal Code; that the respective telephone instruments had been confiscated, and requesting that the defendant disconnect the services. Exhibit No. 1 refers to Plymouth 6-6430 furnished to complainant Nina Masching at 10713 South Van Ness Avenue, Apartment No. 1, and Exhibits Nos. 2 and 3 refer to Plymouth 6-8698 and Plymouth 4-9547, respectively, both furnished to complainant Robert H. (Bob) Masching at 10713 South Van Ness Avenue, Apartment No. 2. A telephone company employee testified that each of these letters was received by the telephone company on March 15, 1957, and that a central office disconnection of each service was effected shortly thereafter pursuant to the respective requests. The position of the telephone company was that it had acted with reasonable cause, as that term is used in Decision No. 41415, referred to supra, in disconnecting said services inasmuch as it had received the letters designated Exhibits 1, 2 and 3.

In the light of the record herein we find that the action of the telephone company was based upon reasonable cause as that term is used in Decision No. 41415, referred to supra. We further find that the telephone facilities as referred to herein were used in connection with illegal bookmaking activities.

