

Decision 93636 OCT 20 1981

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

BONNE CHANCE CIE, INCORPORATED,
a California corporation,

Complainant,

vs.

PACIFIC TELEPHONE AND
TELEGRAPH COMPANY,

Defendant.

Case 10988
(Filed May 22, 1981)

Conrad Walker, Attorney at Law, for
Bonne Chance Cie, Incorporated,
complainant.
Roger P. Downes, Attorney at Law, for
the Pacific Telephone and Telegraph
Company, defendant.
Hugh E. McKanus, Attorney at Law, for
People of California, intervenor.

O P I N I O N

This is a complaint by Bonne Chance Cie, Incorporated (Bonne Chance) against The Pacific Telephone and Telegraph Company (PT&T). The complaint seeks an order requiring PT&T to transfer certain telephone numbers to Bonne Chance and restore service to those numbers. The district attorney of San Diego County (District Attorney) appeared as an intervenor in the proceeding.

A duly noticed public hearing was held in this matter before Administrative Law Judge Donald B. Jarvis in San Diego on July 10, 1981. It was submitted subject to the filing of transcript which was received on August 12, 1981.

The following findings of fact summarize the evidence provided at the hearing:

Findings of Fact

1. At all times herein mentioned Lottie Ballard (Ballard), also-known as "B.B.", was the subscriber for PT&T telephone service for the following businesses at the indicated locations with the specified telephone numbers:

CAMEO MODELS
ATHENA MODELS
B & J JANITORIAL SERVICES

at 4494-30th Street and 5269 Diane Avenue, San Diego, California, Pacific Telephone Numbers:

(714) 565-4067	(714) 284-3583
(714) 292-9250	(714) 284-6770
(714) 560-9778	(714) 284-7365
(714) 284-7171	(714) 284-7442
(714) 284-3579	(714) 284-8257

2. Ballard has been arrested on at least 19 occasions for prostitution-related activity for which she has had several convictions. On July 27, 1977, Ballard was arrested in San Diego on a warrant charging a violation of Penal Code § 315 (running a bawdy house). She pleaded guilty to violating Penal Code § 415.3 (disturbing the peace). Ballard was arrested on March 9, 1980 for violating Penal Code § 647(b) (soliciting prostitution). She was released under Penal Code § 849(b). On June 27, 1980, Ballard was arrested and charged with violating the following Penal Code §§: 266(h) (pimping), 266(i) (pandering), 315 (running a bawdy house), 316 (running a disorderly house), and 647(b) (soliciting prostitution). The record does not indicate the disposition of these charges.

3. On September 4, 11, 19, and November 26, 1980, and March 26, 1981 undercover officers of the City of San Diego Police Department rented hotel or motel rooms and called Cameo Models (Cameo) requesting that a model be sent to the room. Each time a model was dispatched to the room. On two occasions the woman modeled a bathing suit and/or lingerie and then solicited an act of prostitution. On four occasions the woman solicited an act of prostitution without any modeling.

4. On September 24, 1980, Suzie Hays, a female San Diego reserve police officer, acting in an undercover capacity, infiltrated Ballard's operations. Hays feigned an eye problem and wore a patch so she would not have to make customer calls. Hays worked in the Cameo office where she handled telephone calls. Her instructions included that she was never to answer the phone saying it was a modeling agency and she could tell callers that the models accepted "tips." The number of one of the telephones was in the name of B & J Maintenance and Janitorial Service. Hays was paid for her services by a check drawn on the account of B & J Maintenance and Janitorial Service.

5. On December 15, 1980, San Diego Police Officer R. M. Harris was called to the Nite Lite Inn. The motel security officer, Robert J. Lewandowski reported overhearing a solicitation for prostitution in Room 130. The officers contacted the occupants of Room 130, who were identified as Ignacio Ojeda and Patricia Frost. Frost had been sent to the room by Cameo (565-4067), and was overheard to accept Ojeda's offer of \$30 and his watch in exchange for a sex act.

6. On April 2, 1981 there was a meeting of Cameo's employees which was infiltrated by Officer Hays, who wore a transmitter. The conversation at the meeting was transmitted to other police officers who recorded it. Frost was one of the persons present at the meeting. The meeting included a discussion of using the technique of purporting to sell clothes as the basis for charging for prostitution. Police officers raided the meeting and arrested Ballard and 17 others on charges of prostitution-related activity. Frost was one of the persons arrested.

7. In April 1981, Frost negotiated with Ballard for the purchase of Ballard's business. Frost caused the creation of Bonne Chance as the vehicle for making the purchase.

Bonne Chance filed articles of incorporation with the Secretary of State on April 23, 1981. On April 30, 1981 Bonne Chance and Ballard entered into an "Agreement of Sale of Business." The agreement provided in part that:

"2. Seller [Ballard] does hereby sell, convey, transfer, assign and deliver unto Buyer [Bonne Chance], and Buyer agrees to purchase from Seller, all of the following assets:

"(a) All right, title and interest Seller has in certain modeling agencies, to wit, CAMEO MODELS, ATHENA MODELS, BAGDAHD STUDIOS, SAHARA DANCERS AND CHERI'S CLASSY MODELS.

"(b) All right, title and interest of Seller in the following telephone numbers: 292-9250, 565-4067, 284-6770, and 284-7442, all of the aforesaid telephone numbers being in the 714 area code. . . ."

At the hearing, Frost did not know the address where Bonne Chance conducts operations.

8. During the latter part of April 1981, Frost requested that PT&T supersede telephone number 565-4067 from Ballard to Bonne Chance. A similar request was made on May 4, 1981 for numbers 292-9250, 284-6770, and 284-7442. PT&T did not act on these requests prior to May 15, 1981 and has not acted on them since then.

9. On May 15, 1981, Judge Bruce T. Iredale, Judge of the Municipal Court, San Diego Judicial District issued a "Finding of Probable Cause" which found that there was probable cause to believe that the telephone numbers listed in Finding 1 were "being used as an instrumentality to violate and assist in the violation of the penal laws of the State of California, and the character of the acts is such that, absent immediate and summary action in the

premises, significant dangers to the public health, safety or welfare will result." Immediately thereafter, the San Diego Chief of Police, under Decision 71797, transmitted to PT&T a request to discontinue service at the cited telephone numbers along with a copy of the Finding of Probable Cause. In accordance with the request and Finding of Probable Cause, PT&T discontinued service to the cited telephone numbers on May 15, 1981.

10. Bonne Chance is presently conducting the business of Cameo, using the telephone number (714) 280-3000, which is not the subject matter of this proceeding.

11. Bonne Chance claims that the business of Cameo is that of sending models to clients' homes, hotel or motel rooms to model swimwear for the purpose of selling the swimwear. Cameo lists its telephone numbers in the yellow pages of PT&T's current San Diego directory under the heading of "Massage".

12. Prior to the transfer of the Cameo business from Ballard to Bonne Chance, Cameo advertised in Swing, which is a newspaper that contains advertisements for swinging couples and sex for sale in various manners oriented to Riverside, San Diego, and Los Angeles Counties. After Bonne Chance acquired Cameo it continued running substantially similar ads in Swing.

13. Frost was aware that Cameo was being used for soliciting prostitution when she caused the formation of Bonne Chance and acquired Cameo from Ballard.

14. The modus operandi of Cameo under Bonne Chance is substantially similar to that under Ballard.

15. On July 8, 1981 a San Diego undercover police officer rented a motel room and called 280-3000, the current number for Cameo which was listed in Cameo's ad in Swing, and requested a model. A model was dispatched. The officer paid a modeling fee of \$70 and the model briefly modeled one swimsuit. She engaged in

sexually provocative actions. She asked the officer if he wanted to buy swimsuits. He inquired if he would be getting "anything else." She responded that "legally" that was all he would get. She quoted a price of \$162 for the swimsuits. The officer paid the amount, whereupon the model removed the swimsuit she was wearing, continued the sexually provocative conduct, lay down nude on the bed and offered herself for an act of prostitution. She was then arrested.

Material Issues

The material issues presented in this proceeding are:

(1) Did PT&T act unreasonably in denying supersedure and reconnection of the telephone service here involved? (2) Assuming PT&T did not act unreasonably, do the facts adduced at the hearing warrant an order directing supersedure and reconnection?

Discussion

A. Interim Relief

The complaint requested interim relief prior to hearing. The Commission's rules and general rules of pleading require that complaints set forth facts sufficient to constitute a cause of action. (Rule 10, CCP §425.10.) The complaint is brief and contains many conclusory allegations. It did not contain a copy of the Finding of Probable Cause and supporting affidavit. The beneficial ownership of Bonne Chance was not set forth. Interim relief prior to hearing was not granted because the complaint did not state sufficient facts to cause such relief to be given. However, a hearing was expeditiously calendared on the merits. The complaint was filed on May 22, 1981, the answer on June 29, 1981, and the hearing was held on July 10, 1981.

The question of interim restoration of service is within the jurisdiction of the Commission. (Goldin v PUC (1979) 23 C 3d 638.) In making this determination it is necessary to consider, among other things, the adequacy of the affidavit presented to the magistrate. (Goldin at pp. 667-69.) As indicated, ex parte interim relief was not granted because of inadequate pleadings. The subsequently developed record confirms the validity of the Commission's position. Frost is the owner of Bonne Chance. She is named in the affidavit as a person who solicited an act of prostitution while employed by Cameo. This certainly presents a question of fact of whether ex parte interim relief would result in the continuing use of the telephone numbers to violate the penal laws of California with a significant danger to the public health, safety, or welfare.

B. PT&T Tariff Rule 17 (c)

PT&T and District Attorney contend that the complaint does not state a cause of action because under its tariff Bonne Chance has no legal right to supersede to the telephone number to which Ballard was the subscriber. They cite Rule 17(C) of PT&T's Tariff PUC - 36-1 in support of this position. The section provides that:

"(C) Changes in Telephone Numbers

The assignment of a number to a customer's telephone service will be made at the discretion of the Utility. The customer has no proprietary right in the number, and the Utility may make such reasonable changes in telephone number or central office designation as the requirements of the service may demand."

The presiding administrative law judge ruled that the application of Rule 17(C) was subject to a test of reasonableness and permitted evidence on this subject. The ruling correctly disposed of this issue. (Viviano v PT&T (1968) 69 CPUC 158; Casselberry v PT&T (1972) D.80679 in C-9273.)

C. The Merits

The first issue to be resolved in this proceeding is whether PT&T acted unreasonably in denying supersedure of the telephone numbers in question, and refusing to reinstitute service. We conclude it did not.

Bonne Chance requested supersedure from one telephone number in late April 1981 and for the remaining ones on May 4, 1981. PT&T took no action on the request prior to May 15, 1981. The service to each of the numbers was in operation during this period, but Ballard was the subscriber. The service to all the telephone numbers was discontinued on May 15, 1981 after PT&T received the letter from the San Diego chief of police together with the magistrate's Finding of Probable Cause and the supporting affidavit. PT&T's subsequent refusal to supersede and reconnect the telephone numbers in controversy to Bonne Chance was not unreasonable. (Goldin v FUC, supra.)

The remaining issue is whether, after hearing, the Commission should order supersedure and reconnection.

The evidence is overwhelming that while owned by Ballard, Cameo was conducting a business of prostitution under the guise of a modeling service. Frost was an employee of Ballard who was aware of and participated in that operation. She attended a strategy session which formulated a modus operandi to conceal the nature of the business. Frost was well aware of the nature of the business when she caused Bonne Chance to be incorporated to purchase it. Subsequent operations of Bonne Chance corroborate this knowledge. Bonne Chance claims to be a modeling business but lists itself in the yellow pages under "Massage". Any goodwill which may have been transferred from Ballard to Bonne Chance relates to an illegal activity.

"The general rule is that...a contract against public policy or against the mandate of a statute, may not be made the foundation of any action, either in law or in equity. (In re Groome, 94 Cal 69 [29 P 487]; Chateau v Single, 114 Cal 91 [45 P 1015, 55 Am.St.Rep. 63, 33 L.R.A. 750]; Moore v Moore, 130 Cal 110 [62 P 294, 80 Am.St.Rep. 78.])" (Hooper v Barranti (1947) 81 CA 2d 570, 574; Bradley v Doherty (1973) 30 CA 3d 991, cert. denied 414 US 878; Dunn v Stegemann (1909) 10 CA 38.) Under the facts of this case, ordering the requested supersedure and reconnection would result in the furtherance of illegal commercial activity. (Goldin v PUC, supra, at pp. 655-56.) The authorities previously cited and public policy mandate that we do not take such action. (Lee On v Long (1951) 37 C 2d 499, 502; Sokol v PUC (1966) 65 C 2d 247, 256.)

Conclusions of Law

1. The telephones with the numbers enumerated in Finding 1 were used during the period September 4, 1980 to May 15, 1981, directly and indirectly, to assist in the violation of the California laws against prostitution.
2. Cameo conducts a business of prostitution under the guise of a modeling agency. The change in ownership from Ballard to Bonne Chance did not change the nature of the business.
3. PT&T acted in accordance with law when it disconnected service to the telephone numbers set forth in Finding 1 under the Finding of Probable Cause issued by the judge of the Municipal Court.
4. PT&T did not act unreasonably in refusing to supersede the telephone numbers set forth in Finding 1 from Ballard to Bonne Chance and to reinstitute service at these numbers.
5. Since Bonne Chance is engaged in illegal activities it would be contrary to law for the Commission to order the telephone

numbers set forth in Finding 1 superseded from Ballard to Bonne Chance and service reconnected at these numbers.

6. No relief should be granted Bonne Chance in this proceeding.

O R D E R

IT IS ORDERED that complainant is entitled to no relief in this proceeding and the complaint is denied.

This order becomes effective 30 days from today.

Dated OCT 20 1981, at San Francisco, California.

JOHN E. BRYSON
President
RICHARD D. GRAVELLE
LEONARD M. GRIMES, JR.
VICTOR CALVO
PRISCILLA C. GREW
Commissioners

I certify that this decision was approved by the above Commissioners today.

John E. Bryson