

UNIVERSAL FOOD CORPO-RATION, PETITIONER, VS. THE COURT OF APPEALS, MAGDALO V. FRANCISCO, SR., AND VICTORIANO V. FRANCISCO, RESPONDENTS.

G.R. No. L-29155. May 13, 1970

Ponente: CASTRO, J.

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CASTRO, J.:

Petition for certiorari by the Universal Food Corporation against the decision of the Court of Appeals of February 13, 1968 in CA-G.R. 31430-R (Magdalo V. Francisco, Sr. and Victoriano V. Francisco, plaintiffs-appellants vs. Universal Food Corpora-tion, defendant-appellee), the dispositive portion of which reads as follows:

"WHEREFORE, the appealed decision is here-by reversed; the BILL OF ASSIGNMENT marked Exhi-bit A is hereby rescinded, and defendant is hereby or-dered to return to plaintiff Magdalo V. Francisco, Sr., his Mafran sauce trademark and formula subject-matter of Exhibit A, and to pay him his monthly salary of P300.00 from December 1, 1960, until the return to him of said trademark and formula, plus attorney's fees in the amount of P500.00, with costs against defendant."

On February 14, 1961 Magdalo V. Francisco Sr. and Victoriano V. Francisco filed with the Court of First Instance of Manila, against the Universal Food Corporation, an action for rescission of a contract entitled "Bill of Assignment," the plaintiffs prayed the court to adjudge the defendant as without any right to the use of the Mafran trademark and formula, and order the latter to res-tore to them the said right of use; to order the defendant to pair Magdalo V. Francisco, Sr. his unpaid salary from December 1, 1960, as well as damages in the sum of P40,000, and to pay the costs of suit.[1]

On February 28, the defendant filed its answer containing admissions and denials. Paragraph 3 thereof "admits the allega-tions contained in paragraph 3 of plaintiffs' complaint." The ans-wer further alleged that the defendant had complied with all the terms and conditions of the Bill of Assignment and, consequently, the plaintiffs are not entitled to rescission thereof; that the plain-tiff Magdalo V. Francisco, Sr. was riot dismissed from the service as permanent chief chemist of the corporation as he is still its chief chemist; and, by way of special defenses, that the afore-said plaintiff is estopped from questioning 1) the contents and due execution of the Bill of Assignment, 2) the corporate acts of the petitioner, particularly the resolution adopted by its board of di-rectors at the special meeting held on October 14, 1960, to suspend operations to avoid further losses due to increase in the prices of raw materials, since the same plaintiff was present when that re-solution was adopted and even took part in the consideration there-of, 3) the actuations of its president and general manager in en-forcing and implementing the said resolution, 4) the fact that the same plaintiff was negligent in the performance of his duties as chief chemist of the corporation, and 5) the further fact that the said plaintiff was delinquent in the payment of his subscribed shares of stock with the corporation. The defendant corporation prayed for the dismissal of the complaint, and asked for P750 as attor-ney's fees and 5,000 in exemplary or corrective damages.

On June 25, 1962 the lower court dismissed the plaintiffs' complaint as well as the defendant's claim for damages

and attorney's fees, with costs against the former, who promptly appealed to the Court of Appeals. On February 13, 1969 the appellate court rendered the judgment now the subject of the present recourse.

The Court of Appeals arrived at the following "uncontroverted" findings of fact:

"That as far back as 1938, plaintiff Magdalo V. Francisco, Sr. discovered or invented a formula for the manufacture of a food seasoning (sauce) derived from banana fruits popularly known as MAFRAN sauce; that the manufacture of this product was used in commercial scale in 1942, and in the same year plaintiff registered his trademark in his name as owner and inventor with the Bureau of Patents; that due to lack of sufficient capital to finance the expansion of the business, in 1960, said plaintiff secured the financial assistance of Tirso T. Reyes who, after a series of negotiations, formed with others defendant Universal Food Corporation eventually leading to the execution on May 11, 1960 of the aforementioned 'Bill of Assignment' (Exhibit A or 1).

"Conformably with the terms and conditions of Exh. A, plaintiff Magdalo V. Francisco, Sr. was appointed Chief Chemist with a salary of P300.00 a month, and plaintiff Victoriano V. Francisco was appointed auditor and superintendent with a salary of P250.00 a month. Since the start of the operation of defendant corporation, plaintiff Magdalo V. Francisco, Sr., when preparing the secret materials inside the laboratory, never allowed anyone, not even his own son, or the President and General Manager Tirso T. Reyes of defendant, to enter the laboratory in order to keep the formula secret to himself. However, said plaintiff expressed a willingness to give the formula to defendant provided that the same should be placed or kept inside a safe to be opened only when he is already incapacitated to perform his duties as Chief Chemist, but defendant never acquired a safe for that purpose. On July 26, 1960, President and General Manager Tirso T. Reyes wrote plaintiff requesting him to permit one or two members of his family to observe the preparation of the 'Mafran Sauce' (Exhibit C), but said request was denied by plaintiff. In spite of such denial, Tirso T. Reyes did not compel or force plaintiff to accede to said request. Thereafter, however, due to the alleged scarcity and high prices of raw materials, on November 28, 1960, Secretary-Treasurer Ciriaco de Guzman of defendant issued a Memorandum (Exhibit B), duly approved by the President and General Manager Tirso T. Reyes, that only Supervisor Ricardo Francisco should be retained in the factory and that the salary of plaintiff Magdalo V. Francisco, Sr., should be stopped for the time being until the corporation should resume its operation. Some five (5) days later, that is, on December 3, 1960, President and General Manager Tirso T. Reyes issued a memorandum to Victoriano Francisco ordering him to report to the factory and produce 'Mafran Sauce' at the rate of not less than 100 cases a day so as to cope with the orders of the corporation's various distributors and dealers, and with instructions to take only the necessary daily employees without employing permanent employees (Exhibit B). Again, on December 6, 1961, another memorandum was issued by the same President and General Manager instructing the Assistant Chief Chemist Ricardo Francisco, to recall all daily employees who are connected in the production of Mafran Sauce and also some additional daily employees for the production of Porky Pops (Exhibit B-1). On December 29, 1960, another memorandum was issued by the President and General Manager instructing Ricardo Francisco, as Chief Chemist; and Porfirio Zarraga, as Acting Superintendent, to produce Mafran Sauce and Porky Pops in full swing starting January 2, 1961 with further instructions to hire daily laborers in order to cope with the full blast production (Exhibit S-2). Plaintiff Magdalo V. Francisco, Sr. received his salary as Chief Chemist in the amount of P300.00 a month only until his services were terminated on November 30, 1960. On January 9 and 16, 1961, defendant, acting thru its President and General Manager, authorized Porfirio Zarraga and Paula de Bacula to look for a buyer of the corporation including its trademarks, formula and assets at a price of not less than P 300,000.00 (Exhibits D and 3D-1). Due to these successive memoranda, without plaintiff Magdalo V. Francisco, Sr. being recalled back to work, the latter filed the present action on February 14, 1961. About a month afterwards, in a letter dated March 20, 1961, defendant, thru its President and General Manager, requested said plaintiff to report for duty (Exhibit 3), but the latter declined the request because the present action was already filed in court (Exhibit J)."

1. The petitioner's first contention is that the respondents are not entitled to rescission. It is argued that under

article 1191 of the new Civil Code, the right to rescind a reciprocal obligation is not absolute and can be demanded only if one is ready, willing and able to comply with his own obligation and the other is not; that under article 1169 of the same Code, in reciprocal Obligations, neither party incurs in delay if the other does not comply or is not ready to comply in a proper manner with what is incumbent upon him; that in this case the trial court found that the respondents not only have failed to show that the petitioner has been guilty of default in performing its contractual obligations, "but the record sufficiently reveals the fact that it was the plaintiff Magdalo V. Francisco who had been remiss in the compliance of his contractual obligation to cede and transfer to the defendant the formula for Mafran Sauce;" that even the respondent Court of Appeals found that as "observed by the lower court, 'the record is replete with the various attempts made by the defendant (herein petitioner) to secure the said formula from Magdalo V. Francisco to no avail; and that upon the foregoing findings, the respondent Court of Appeals unjustly concluded that the private respondents are entitled to rescind the Bill of Assignment.

The threshold question is whether by virtue of the terms of the Bill of Assignment the respondent Magdalo V. Francisco, Sr. ceded and transferred to the petitioner corporation the formula for Mafran sauce.[2]

The Bill of Assignment sets forth the following terms and conditions:

"THAT the Party of the First Part [Magdalo V. Francisco, Sr.] is the sole and exclusive owner of the MAFRAN trade-mark and the formula, for MAFRAN SAUCE;

"THAT for and in consideration of the royalty of TWO (2%) PER CENTUM or the net annual profit which the PARTY OF THE Second Part [Universal Food Corporation] may realize by and out of its production of MAFRAN SAUCE and other food products and from other business which the Party of the Second Part may engage in as defined in its Articles of Incorporation, and which its Board of Directors shall determine and declare, said Party of the First Part hereby assign, transfer, and convey all its property rights and interest over said Mafran trademark and formula for MAFRAN SAUCE unto the Party of the Second Part;"

"THAT the payment for the royalty of TWO (2%) PER CENTUM of the annual net profit which the Party of the Second Part obligates itself to pay unto the Party of the First Part as founder and as owner of the MAFRAN trademark and formula for MAFRAN SAUCE, shall be paid at every end of the Fiscal year after the proper accounting and inventories has been undertaken by the Party of the Second Part and after a competent auditor designated by the Board of Directors shall have duly examined and audited its books of accounts and shall have certified as to the correctness of its Financial Statement;

"THAT it is hereby understood that the Party of the First Part, to improve the quality of the products of the Party of the First Part and to increase its production, shall endeavor or undertake such research, study, experiments and testing, to invent or cause to invent additional formula or formulas, the property rights and interest thereon shall likewise be assigned, transferred and conveyed unto the Party of the Second Part in consideration of the foregoing premises, covenants and stipulations:

"THAT in the operation and management of the Party of the First Part, the Party of the First Part shall be entitled to the following Participation:

"(a) THAT Dr. MAGDALO V. FRANCISCO shall be appointed Second Vice-President and Chief Chemist of the Party of the Second Part, which appointments are permanent in character; and Mr. VICTORIANO V. FRANCISCO shall be appointed Auditor thereof and in the event that the Treasurer or any officer who may have the custody of the funds, assets and other properties of the Party of the Second Part comes from the Party of the First Part, then the Auditor shall not be appointed from the latter; furthermore should the Auditor be appointed from the Party representing the majority shares of the Party of the Second Part, then the Treasurer shall be appointed from the Party of the First Part;

"(b) THAT in case of death or other disabilities they should become incapacitated to discharge the duties of their respective position; then, their shares or assigns and who may have necessary qualifications shall be preferred to succeed them;

"(c) THAT the Party of the First Part shall always be entitled to at least two (2) membership in the Board of Directors of the Party of the Second Part;

"(d) THAT in the manufacture of MAFRAN SAUCE and other food products by the Party of the Second Part, the Chief Chemist shall have and shall exercise absolute control and supervision over the laboratory assistants and personnel and in the purchase and safekeeping of the Chemicals and other mixtures used in the preparation of said products;

"THAT this assignment, transfer and conveyance is absolute and irrevocable in no case shall the PARTY OF THE First Part ask, demand or sue for the surrender of its rights and interest over said MAFRAN trademark and mafran formula, except when a dissolution of the Party of the Second Part, voluntary or otherwise, eventually arises, in which case then the property rights and interests over said trademark and formula shall automatically re-vert the Party of the First Part."

Certain provisions of the Bill of Assignment would seem to support the petitioner's position that the respondent patentee, Magdalo V. Francisco, Sr. ceded and transferred to the petitioner corporation the formula for Mafran sauce. Thus, the last part of the second paragraph recites that the respondent patentee "assign, transfer and convey all its property rights and interest over said Mafran trademark and formula for MAFRAN SAUCE unto the Party of the Second Part," and the last paragraph states that such "assignment, transfer and conveyance is absolute and irrevocable (and) in no case shall the PARTY OF THE First Part ask, demand or sue for the surrender of its rights and interest over said MAFRAN trademark and mafran formula."

However, a perceptive analysis of the entire instrument and the language employed therein^[3] would lead one to the conclusion that what was actually ceded and transferred was only the use of the Mafran sauce formula. This was the precise intention of the parties,^[4] as we shall presently show.

Firstly, one of the principal considerations of the Bill of Assignment is the payment of "royalty of TWO (2%) PER CENTUM of the net annual profit" which the petitioner corporation may realize by and/or out of its production of Mafran sauce and other food products, etc. The word "royalty," when employed in connection with a license under a patent, means the compensation paid for the use of a patented invention.

"'Royalty,' when used in connection with a license under a patent, means the compensation paid by the licensee to the licensor for the use of the licensor's patented invention." (Hazelton Corporation vs. Zenith Radio Corporation, 100 F. 2d 10, 16)^[5]

Secondly, in order to preserve the secrecy of the Mafran formula and to prevent its unauthorized proliferation, it is provided in paragraph 5-(a) of the Bill that the respondent patentee was to be appointed "chief chemist * * * permanent in character," and that in case of his "death or other disabilities," then his "heirs or assigns who may have necessary qualifications shall be preferred to succeed" him as such chief chemist. It is further provided in paragraph 5-(d) that the same respondent shall have and shall exercise absolute control and supervision over the laboratory assistants and personnel and over the purchase and safekeeping of the chemicals and other mixtures used in the preparation of the said product. All these provisions of the Bill of Assignment clearly show that the intention of the respondent patentee at the time of its execution was to part, not with the formula for Mafran sauce, but only its use, to preserve the monopoly and to effectively prohibit anyone from availing of the invention.^[6]

Thirdly, pursuant to the last paragraph of the Bill, should dissolution of, the petitioner corporation eventually take

place, "the property rights and interests over said trademark and for-mula shall automatically revert" to the respondent patentee. This must be so, because there could be no reversion of the trademark and formula in this case, if, as contended by the petitioner, the respondent patentee assigned, ceded and transferred the trademark and formula - and not merely, the right to use it - for then such assignment passes the property in such patent right to the petitioner corporation to which it is ceded, which, on the corporation becoming insolvent, will become part of the property in the hands of the receiver thereof.[7]

Fourthly it is alleged in paragraph 3 of the respondents' complaint that what was ceded and transferred by virtue of the Bill of Assignment is the "use of the formula" (and not the formu-la itself). This incontrovertible fact is admitted without equivocati-on in paragraph 3 of the petitioner's answer. Hence, it does "not require, proof and cannot be contradicted." [8] The last part of paragraph 3 of the complaint and paragraph 3 of the answer are reproduced below for ready reference:

"3. - * * * and due to these privileges, the plaintiff in return assigned to said corporation his interest and rights over the said trademark and for-mula, so that the defendant corporation could use the formula in the preparation and manufacture of the mafran sauce, and the trade name for the mar-keting of said project, as appearing in said Con-tract * * *."

"3. - Defendant admits the allegation in paragraph 3 of plaintiff's complaint."

Fifthly, the facts of the case compellingly demonstrate con-tinued possession of the Mafran sauce formula by the respondent patentee.

Finally, our conclusion is fortified by the admonition of the Civil Code that a conveyance should be interpreted to effect "the least transmission of rights," [9] and is there a better example of least transmission of rights than allowing or permitting only the use, without transfer of ownership, of the formula for Mafran Sauce.

The foregoing reasons support the conclusion of the Court of Appeals [10] that what was actually ceded and transferred by the respondent patentee Magdalo V. Francisco, Sr. in favor of the pe-titioner corporation was only the use of the formula. Properly speaking, the Bill of Assignment vested in the petitioner corpora-tion no title to the formula. Without basis, therefore, is the obser-vation or the lower court that the respondent patentee "had been remiss in the compliance of his contractual obligation to cede and transfer to the defendant the formula for Mafran sauce."

2. The next fundamental question for resolution is whether the respondent Magdalo V. Francisco, Sr. was dismissed from his position as chief chemist of the corporation without justifi-able cause, and in violation of paragraph 5-(a) of the Bill of Assign-ment which in part provides that his appointment is "permanent in character."

The petitioner submits that there is nothing in the successive memoranda issued by the corporate officers of the petitioner, marked exhibits B, B-1 and B-2, from which can be implied that the respondent patentee was being dismissed from his position as chief chemist of the corporation. The fact, continues the petitioner, is that at a special meeting of the board of directors of the corporation held on October 14, 1960, when the board decided to suspend operations of the factory for two to four months and to retain only a skeletal force to avoid further losses, the two private respondents were present, and the respondent patentee was even designated as the acting superintendent, and assigned the mission of explaining to the personnel a the factory why the corporation was stopping opera-tions temporarily and laying off personnel. The petitioner further submits that exhibit B indicates that the salary of the respondent pa-tentee would not be paid only during the time that the petitioner cor-poration was idle, and that he could draw his salary as soon as the corporation resumed operations. The clear import of this exhibit was allegedly entirely disregarded by the respondent Court of Appeals, which concluded that since the

petitioner resumed partial production of Mafran sauce without notifying the said respondent formally, the latter had been dismissed as chief chemist, without considering that the petitioner had to resume partial operations only to fill its pending orders, and that the respondents were duly notified of that decision, that is, that exhibit B-1 was addressed to Ricardo Francisco, and this was made known to the respondent Victoriano V. Francisco. Besides, the records will show that the respondent patentee had knowledge of the resumption of production by the corporation, but in spite of such knowledge he did not report for work.

The petitioner further submits that if the respondent patentee really had unqualified interest in propagating the product he claimed he so dearly loved, certainly he would not have waited for a formal notification but would have immediately reported for work, considering that he was then and still is a member of the corporation's board of directors, and insofar as the petitioner is concerned, he is still its chief chemist; and because Ricardo Francisco is a son of the respondent patentee to whom had been entrusted the performance of the duties of chief chemist, while the respondent Victoriano V. Francisco is his brother, the respondent patentee could not feign ignorance of the resumption of operations.

The petitioner finally submits that although exhibit B-2 is addressed to Ricardo Francisco, and is dated December 29, 1960, the records will show that the petitioner was set to resume full capacity production only sometime in March or April, 1961, and the respondent patentee cannot deny that in the very same month when the petitioner was set to resume full production, he received a copy of the resolution of its board of directors, directing him to report immediately for duty; that exhibit H, of a later vintage as it is dated February 1, 1961, clearly shows that Ricardo Francisco was merely the acting chemist, and this was the situation on February 1, 1961, thirteen days before the filing of the present action for rescission. The designation of Ricardo Francisco as the chief chemist carried no weight because the president and general manager of the corporation had no power to make the designation without the consent of the Corporation's board of directors. The fact of the matter is that although the respondent Magdalo V. Francisco, Sr. was not mentioned in exhibit H as chief chemist, this same exhibit clearly indicates that Ricardo Francisco was merely the acting chemist as he was the one assisting his father.

In our view, the foregoing submissions cannot outweigh the uncontroverted facts. On November 28, 1960 the secretary-treasurer of the corporation issued a memorandum (exh. B), duly approved by its president and general manager, directing that only Ricardo Francisco be retained in the factory and that the salary of respondent patentee, as chief chemist, be stopped for the time being until the corporation resumed operations. This measure was taken allegedly because of the scarcity and high prices of raw materials. Five days later, however, or on December 3, the president and general manager issued a memorandum (exh. B-1) ordering the respondent Victoriano V. Francisco to report to the factory and to produce Mafran sauce at the rate of no less than 100 cases a day to cope with the orders of the various distributors and dealers of the corporation, and instructing him to take only the necessary daily employees without employing permanent ones. Then on December 6, the same president and general manager issued yet another memorandum (exh. B-2), instructing Ricardo Francisco, as assistant chief chemist, to recall all daily employees connected with the production of Mafran sauce and to hire additional daily employees for the production of Porky Pops. Twenty-three days afterwards, or on December 29, the same president and general manager issued still another memorandum (exh. S-2), directing "Ricardo Francisco, as Chief Chemist" and Porfirio Zarraga, as acting superintendent, to produce Mafran sauce and Porky Pops in full swing, starting January 2, 1961, with the further instruction to hire daily laborers in order to cope with the full-blast production. And finally, at the hearing held on October 24, 1961, the same president and general manager admitted that "I consider that the two months we paid him (referring to respondent Magdalo V. Francisco, Sr.) is the separation pay."

The facts narrated in the preceding paragraph were the prevailing milieu on February 14, 1961 when the

complaint for rescission of the Bill of Assignment was filed. They clearly prove that the petitioner, acting through its corporate officers,[11] schemed and maneuvered to ease out, separate and dismiss the said respondent from the service as permanent chief chemist, in flagrant violation of paragraph 5-(a) and (b) of the Bill of Assignment. The fact that a month after the institution of the action for rescission, the petitioner corporation, thru its president and general manager, requested the respondent patentee to report for duty (exh. 3), is of no consequence. As the Court of Appeals correctly observed, such request was a "recall to placate said plain-tiff."

3. We now come to the question of rescission of the Bill of Assignment. In this connection, we quote for ready reference the following articles of the new Civil Code governing rescission of contracts:

"ART. 1191. The power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him.

"The injured party may choose between the fulfillment and the rescission of the obligation, with the payment of damages in either case. He may also seek rescission even after he has chosen fulfillment, if the latter should become impossible.

"The court shall decree the rescission claimed, unless there be just cause authorizing the fixing of a period.

"This is understood to be without prejudice to the rights of third persons who have acquired the thing, in accordance with articles 1385 and 1388 of the Mortgage Law."

"ART. 1383. The action for rescission is subsidiary; it cannot be instituted except when the party suffering damage has no other legal means to obtain reparation for the same."

"ART. 1384. Rescission shall be only to the extent necessary to cover the damages caused."

At the moment, we shall concern ourselves with the first two paragraphs of article 1191. The power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him. The injured party may choose between fulfillment and rescission of the obligation, with payment of damages in either case.

In this case before us, there is no controversy that the provisions of the Bill of Assignment are reciprocal in nature. The petitioner corporation violated the Bill of Assignment, specifically paragraph 5-(a) and (b), by terminating the services of the respondent patentee Magdalo v. Francisco, Sr., without lawful and justifiable cause.

Upon the factual milieu, is rescission of the Bill of Assignment proper?

The general rule is that rescission of a contract will not be permitted for a slight or casual breach, but only for such substantial and fundamental breach as would defeat the very object of the parties in making the agreement.[12] The question of whether breach of a contract is substantial depends upon the attendant circumstances.[13] The petitioner contends that rescission of the Bill of Assignment should be denied, because under article 1383, rescission is a subsidiary remedy which cannot be instituted except when the party suffering damage has no other legal means to obtain reparation for the same. However, in this case the dismissal of the respondent patentee Magdalo V. Francisco, Sr. as the permanent chief chemist of the corporation is a fundamental and substantial breach of the Bill of Assignment. He was dismissed without any fault or negligence on his part. Thus, apart from the legal principle that the option - to demand performance or ask for rescission of a contract - belongs to the injured party,[14] the fact remains that the respondents-appellees had no alternative but to file the present action for rescission and damages. It is to be emphasized that the respondent patentee would not have agreed to the other terms of the Bill of Assignment were it not for the basic commitment of the petitioner corporation to appoint him as its Second Vice-President and Chief Chemist on a permanent basis; that in the

manufacture of Mafran sauce and other food products he would have "absolute control and supervision over the laboratory assistants and personnel and in the purchase and safeguarding said products;" and that only by all these measures could the respondent patentee preserve effectively the secrecy of the formula, prevent its proliferation, enjoy its monopoly, and, in the process afford and secure for himself a lifetime job and steady income. The salient provisions of the Bill of Assignment, namely, the transfer to the corporation of only the use of the formula; the appointment of the respondent patentee as Second Vice-President and chief chemist on a permanent status; the obligation of the said respondent patentee to continue research on the patent to improve the quality of the products of the corporation; the need of absolute control and supervision over the laboratory assistants and personnel and in the purchase and safekeeping of the chemicals and other mixtures used in the preparation of said product - all these provisions of the Bill of Assignment are so interdependent that violation of one would result in virtual nullification of the rest.

4. The petitioner further contends that it was error for the Court of Appeals to hold that the respondent patentee is entitled to payment of his monthly salary of P300 from December 1, 1960, until the return to him of the Mafran trademark and formula, arguing that under article 1191, the right to specific performance is not conjunctive with the right to rescind a reciprocal contract; that a plaintiff cannot ask for both remedies; that the appellate court awarded the respondents both remedies as it held that the respondents are entitled to rescind the Bill of Assignment and also that the respondent patentee is entitled to his salary aforesaid; that this is a gross error of law, when it is considered that such holding would make the petitioner liable to pay respondent patentee's salary from December 1, 1960 to "kingdom come," as the said holding requires the petitioner to make payment until it returns the formula which, the appellate court itself found, the corporation never had; that, moreover, the fact is that the said respondent patentee refused to go back to work, notwithstanding the call for him to return - which negates his right to be paid his back salaries for services which he had not rendered; and that if the said respondent is entitled to be paid any back salary, the same should be computed only from December 1, 1960 to March 31, 1961, for on March 20, 1961 the petitioner had already formally called him back to work.

The above contention is without merit leading once more the Bill of Assignment in its entirety and the particular provisions in their proper setting, we hold that the contract placed the use of the formula for Mafran sauce with the petitioner, subject to defined limitations. One of the considerations for the transfer of the use thereof was the undertaking on the part of the petitioner corporation to employ the respondent patentee as the Second Vice-President and Chief Chemist on a permanent status, at a monthly salary of P300, unless "death or other disabilities" supervened. Under these circumstances, the petitioner corporation could not escape liability to pay the private respondent patentee his agreed monthly salary, as long as the use, as well as the right to use, the formula for Mafran sauce remained with the corporation.

5. The petitioner finally contends that the Court of Appeals - erred in ordering the corporation to return to the respondents the trademark and formula for Mafran sauce, when both the decision of the appellate court and that of the lower court state that the corporation is not aware nor is in possession of the formula for Mafran sauce, and the respondent patentee admittedly never gave the same to the corporation. According to the petitioner these findings would render it impossible to carry out the order to return the formula to the respondent patentee. The petitioner's predicament is understandable. Article 1385 of the new Civil Code provides that rescission creates the obligation to return the things which were the object of the contract. Be that as it may, it is a logical inference from the appellate court's decision that what was meant to be returned to the respondent patentee is not the formula itself, but only its use and the right to such use. Thus, the respondents in their complaint for rescission specifically and particularly pray, among others, that the petitioner corporation be adjudged as "without any right to use said trademark and formula."

ACCORDINGLY, conformably with the observations we have above made, the judgment of the Court of Appeals is modified to read as follows: "Wherefore, the appealed decision is reversed. The Bill of Assignment (Exhibit A) is hereby rescinded, and the defendant-corporation is ordered to return and restore to the plaintiff Magdalo V. Francisco, Sr. the right to the use of his Mafran sauce trademark and formula, subject-matter of the Bill of Assignment, and to this, end the defendant corporation and all its assigns and successors are hereby permanently enjoined, effective immediately from using in any manner the said Mafran sauce trademark and formula. The defendant corporation shall also pay to Magdalo V. Francisco, Sr. his monthly salary of P300 from December 1, 1960, until the date of finality of this judgment, inclusive, the total amount due to him to earn legal interest from the date of the finality of this judgment until it shall have been fully paid, plus attorney's fees in the amount of P500, with costs against the defendant corporation." As thus modified, the said judgment is affirmed; with co-against the petitioner corporation.

Concepcion, C.J., Dizon, Makalintal, Zaldivar, Fernando, Barredo, and Villamor, JJ., concur.

Reyes, J., concurs in a separate opinion.

Teehankee, J., took no part.

[1] The complaint alleges:

"3. - That on the 31st day of May, 1960 plaintiffs and defendant corporation entered into contract, in which it was stipulated among other things, that inasmuch as plaintiff Magdalo V. Francisco, Sr. is the owner and author of the formula of mafran sauce as above stated, he will be appointed as Second-Vice-President and Chief Chemist of the defendant corporation, which appointments are permanent in character; and as such Chief shall have and shall exercise absolute control and supervision over the laboratory assistants and personnel, and in the purchase and safe-keeping of the chemicals and other mixtures used in the preparation of said product in order to preserve the secrecy of the said formula in the preparation of the mafran sauce, in the manufacture of which the defendant corporation will be engaged as its principal business, and other products which from time to time the plaintiff may discover and prepare as Chemist; and due to these privileges, the plaintiff in return assigned to said corporation his interests and rights over the said trade mark and formula, so that the defendant corporation could use the formula in the preparation and manufacture of the mafran sauce, and the trade name for the marketing of said product, as appearing in said Contract;

"4. - That the defendant corporation, thru the machination of its President and Manager, Mr. Tirso T. Reyes, and in violation of the terms and conditions of the said Contract, as above stated, and for the purpose of defrauding the herein plaintiff, said defendant without any justifiable cause dismissed all the assistants and laborers of the plaintiff in said laboratory, wherein mafran sauce is prepared, with the evident intention to discover the secret of the said formula; and when they were not able to do so, due to the precaution made by the plaintiff in the preparation of said mafran sauce, the aforementioned defendant without justifiable cause and in violation of the said Contract with regard to the permanent character of his appointment as Chief Chemist, dismissed him as such (Chief Chemist) from the service of the defendant corporation, and appointed other employees in his place in the preparation of the said mafran sauce, and proceeded with the manufacture and marketing of the said product in the absence of the herein plaintiff;

"5. - That in furtherance of the intention of the defendant to deprive the herein plaintiffs of their right on the royalty equivalent to 2% of the net profit of the corporation that may be realized in the manufacture of mafran sauce and other like products and to complete its lent scheme to get at all cost the ownership of the said trade mark and formula which is the main objective of the said corporation, said defendant thru machination of its President and Manager, Mr. Tirso T. Reyes and in connivance with his associates representing the majority of the

stockholders of the said corporation, the latter is now selling in favor of a third party, the assets of their corporation together with the ownership of the aforementioned trade mark and formula, in violation of the conditions at the said Contract;

"6. - That due to this malicious attitude of the defendant, plaintiff Magdalo V. Francisco, Sr. was deprived of his salary from December 1, 1960 up to the present time at the rate of THREE HUNDRED (P300.00) PESOS a month, in violation of the conditions of the said Contract of Assignment;

"7. - That the defendant in order to add insult to injury, prepared or caused the preparation and manufacture of ma-fran sauce of inferior quality and sold it in the market; and as a result of these unlawful acts of the defendant, the good name and reputation of the mafran sauce went down causing thereby irreparable damages to the plaintiff as owner and author of the said formula and trade name, which could be reasonably estimated in an amount not less than FORTY THOUSAND (P40,000.00) PESOS as of today, plus an additional sum equivalent to TEN THOUSAND (P10,000.00) PESOS a month from this date until the re-turn of the said trade mark and formula to the plaintiffs;

"8. - That due to this malicious attitude of the defendant and unlawful machination of its president And manager, Mr. Tirso T. Reyes, the plaintiffs were constrained to engage the services of the undersigned counsel in the agreed amount of FIVE THOUSAND (P5,000.00) PESOS, Philippine Currency."

[2] A patent is a property (Blum vs. C. 1, R, 183 F. 2d 881; Marshall vs. Colgate-Palmolive-Peet Co., 175 F. 2d 215; Lamar vs. Granger, 99.F. Supp. 17). It has the attributes of personalty (Hartley Pen Co. vs. Lindy Pen Co., 10. F. R. D. 141, cited in 25-6th-D-1328). A patent right or any interest therein may be sold or assigned. "The patentee may assign his patent right in toto or he may grant limited rights of manufacture and sale to others (40 Am. Jur, sec. 133, p. 621, notes 12). The patentee has the right to sell it or to keep it; to manufacture the article himself or to authorize others to sell it (40 Am.Jur., sec. 4, p. 534, notes 9 & 10). The right of a patentee has the characteristics and incidents of other sorts of property, and that it is as much entitled to the protection of the courts as in any other character of property (E. Bennet & Sons vs. National Harrow Co., 186 IL S. 70, 46 L ed 1058, 22 S Ct 747).

[3] The interpretation of public instruments involves a question of law, since the contract is in the nature of law between the parties. The whole instrument should be read in toto (Pio Sian Melliza vs. City of Iloilo et al., G.R. No. L-24732, April 30, 1968); see also Wilson v. Olsen, 30 P. (2d), 710, 711.

[4] Under this section referring to par. 1, sec. 47, Title 35, USCA, which is substantially similar to sec. 50 of P. A. 1651, a patent may be assigned only by a written instrument and although no particular form of words is essential, such instrument must be substantially a transfer actual or constructive, with the clear intent of the assignor, at the time, to part with his legal interest, in whole or in part and with full knowledge of the rights so transferred." (Owen vs. Paramount Productions, D. C. Cal. 1941, 41 F. Supp. 551). See also note 3, and Bacordo vs. Alcantara et al., G.R. No. L-20080, July 30, 1965.)

[5] See also Commissioner of Internal Revenue vs. Clarion Oil Co., 148 13% 2d 671, 673; 77 C.J. S., 542-543.

[6] Two constituent property elements, of distinct source, nature, and divisible content inhere in every patented invention. One is property in invention itself - the right to make, use and sell the patented object or through others - the second is property in the monopoly - the right effectively to prohibit others from practicing the invention or profiting therefrom without owner's consent. * * * Rights in the invention itself may be transferred either separately or together, upon one person or many, and each may independently of the others use the rights received. The Monopoly is indivisible, except as to locality, although several assignees may jointly hold the

undivided interest in the patent. (*Zenith Radio Corp. vs. Radio Corp. of America*, 121 F. Supp. 803, 805 (May 20, 1954).

[7] *Douglas vs. Campbell*, 24 Ohio - Cir. Ct. R. 241, cited in p. 43, USCA, Title 35, on Patents.

[8] Admissions made by the parties in the pleadings, or in the course of the trial or other proceedings do not require proof and can not be contradicted unless previously shown to have been made through palpable mistake (sec. 2, Rule 129, new Rules of Court).

[9] Cf. *Angela Estate, Inc., et al. vs. CFI of Negros Occidental, et al.*, G.R. No. L-27084, July 31, 1988, citing Art. 1378, 1st sent, N. C. C., and *Olinio vs. Medina*, 13 Phil. 379.

[10] The findings and conclusions of fact of the Court of Appeals will not be disturbed by the Supreme Court so long as there is evidence to support the same (*A tanacio vs. People*, G.R. No. L-7537, Oct. 24, 1955); see also *Arroyo, et al. vs. El Beaterio del Smo. Rosario de Molo, et al.*, G.R. No. L-22005, May 3, 1968; *Al-quiza et al. vs. A lquiza, et al.*, G.R. No. L-23342, Feb. 10, 1968; *MD Transit Taxi Co., Inc. vs. Court of Appeals, et al.*, G.R. No. L-23882, Feb. 17, 1968; *City of Manila vs. Teotico, et al.*, G.R. No. L-23052, Jan. 29, 1968.

[11] Not of de minimis importance in a proper approach to the problem at hand, is the nature of a general manager's position in the corporate structure. A rule that has gained acceptance through the years is that a corporate officer 'intrusted with the general management and control of its business, has implied authority to make any contract or do any other act which is necessary or appropriate to the conduct of the ordinary business of the corporation.' As such officer, 'he may, without any special authority from the Board of Directors, perform all acts of an ordinary nature, which by usage or necessity are incident to his office, and may bind the corporation by contracts in matters arising, in the usual course of business.' (*The Board of Liquidators, etc. vs. Heirs of Maximo M. Kalaw, et al.*, G.R. No. L-18805, August 14, 1967.)

[12] *Song Fo & Co. vs. Hawaiian-Philippine Co.*, 47 Phil. 821, 827.

[13] *Corpus vs. Hon. Alikpala, et al.*, G.R. Nos. L-23707 & L-23720, Jan. 17, 1968.

[14] *Jacinto vs. Carpenter*, 46 Phil. 893.

150 6 pt 6 pt 0 3 MicrosoftInternetExplorer4 /* Style Definitions */ table.MsoNormalTable {mso-style-name:"Table Normal"; mso-tstyle-rowband-size:0; mso-tstyle-colband-size:0; mso-style-noshow:yes; mso-style-parent:""; mso-padding-alt:0in 5.4pt 0in 5.4pt; mso-para-margin:0in; mso-para-margin-bottom:.0001pt; mso-pagination:widow-orphan; font-size:10.0pt; font-family:"Times New Roman";}

CONCURRING OPINION

REYES, J. B. L., J.:

I concur with the opinion penned by Mr. Justice Fred Ruiz Castro, but would like to add that the argument of petitioner that the rescission demanded by the respondent-appellee, Magdalo Francisco, should be denied because under Article 1883 of the Civil Code of the Philippines rescission can not be demanded except when the party suffering damage has no other legal mean to obtain reparation, is predicated on a failure to distinguish between a rescission for breach of contract under Article 1191 of the Civil Code and a rescission by reason of lesion or economic prejudice, under Article 1981, et seq. The rescission on account of breach of stipulation is not predicated on injury to economic interest of the party plaintiff but on the breach of faith by the defendant, that violates the reciprocity between the parties. It is not a subsidiary action, and Article 1191 may be scanned without

disclosing anywhere that the action for rescission thereunder is subordinated to anything other than the culpable breach of his obligations by the defendant. This rescission is a principal action retaliatory in character, it being unjust that party he held bound to fulfill his promises when the other violates his. As expressed in the old Latin aphorism: "Non servanti fidem, non est fides servanda". Hence the reparation of damages for the breach is purely secondary.

On the contrary, in the rescission by reason of lesion or economic prejudice, the cause of action is subordinated to the existence of that prejudice, because it is the *raison detre* as well as the measure of the right to rescind. Hence, where the defendant makes good the damage caused, the action can not be maintained or continued, as expressly provided in Articles 1888 and 1884. But the operation of these two articles is limited to the cases of rescission for lesion enumerated in Article 1881 of the Civil Code of the Philippines and does not apply to cases under Article 1191.

It is probable that the petitioner's confusion arose from the defective technique of the new Code that terms both instances as "resolution," without distinction between them; unlike the previous Spanish Civil Code of 1889, that differentiated "resolution" for breach of stipulations from "rescission" by reason of lesion or damage.^[1] But the terminological vagueness does not justify confusing one case with the other, considering the patent difference in causes and results of either action.

[1] See Articles 1124 and 1291, Civil Code of 1889.

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