

**SEBASTIAN COSCOLLUELA, PLAINTIFF AND APPELLEE, VS.
TRANQUILINO H. VALDERRAMA, DEFENDANT AND APPELLANT.***G.R. No. 13757. August 31, 1961*

Ponente: DIZON, J.

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Appellee Sebastian Coscolluela was the owner of the Escos Lumber Mill established in the municipality of Asia, Negros Occidental since the year 1950. It secured its logs and timber from a forest concession known as the Escos Concession, with an area of 11,600 hectares, situated in the same municipality, under an ordinary timber license renewable annually. Because of failing business, lack of capital and other factors, on October 11, 1952 appellee entered with appellant, also a concessionaire of forest land nearby, into a contract (Exhibit F) entitled "Cession and Assignment of Concession Rights and other Properties" whereby, for and in consideration of Five Thousand Pesos he ceded, sold and conveyed to appellant—subject to the conditions specified therein—

"Seventy percent (70%) of all his rights, interests, title, and participations in the above-mentioned Escos Lumber Mill, together with all the equipment, materials, and buildings, as well as all other appurtenances stated above, including his rights in the above-mentioned forest concession as well as all the rights of ways granted to him by third persons for passing through and using their lands, in favor of the Second Part, Tranquilino H. Valderrama, his heirs and assigns, subject to the following conditions:

(a) That from this date, the Second Part shall take possession of and operate all the above-mentioned lumber mill, forest concession, and other properties, including the thirty percent (30%) thereof belonging to the First Part;

(b) That the First Part shall be entitled to receive thirty percent (30%) of the net profit of the operation of the whole of said concession and/or lumber mill;

(c) That all the obligations of the First Part in favor of the third persons in connection with the above-mentioned lumber mill and forest concession prior to this date shall remain as his own obligation; Provided, that the net income of the operation of this lumber mill shall be applied by the Second Part to the payment of all the above-mentioned obligation until the same shall have been fully paid up;

(d) That the Second Part shall have exclusive and absolute management and control of all the above-mentioned lumber mill and forest concession, including thirty per centum (30%) thereof belonging to the First Part; Provided, that the First Part hereby authorize the Second Part to cut all the timber in said forest concession, and to secure the renewal of said concession in his name or his successor in interest;

(e) That the First Part hereby subleases to the Second Part all his leases from third persons in connection with the operation of the Escos Lumber Mill;

(f) That this contract shall be effective from this date."

After appellant had taken possession and control of the Escos Concession and the Mill, including its equipment, assets and books, he established an office for the business under his administration in Mandalayan, Bacolod City,

under the name of Valco Lumber Company, and employed appellee as Superintendent thereof.

As at the time of the execution of the contract aforesaid appellee's application for the renewal of the Escos license for the year 1952-1953 was still pending approval by the Bureau of Forestry, the contract authorized appellant "to secure the renewal of said concession in his name or his successor in interest". On January 3, 1953, however, appellee received notice from District Forest Ranger Jose C. Parreño, to the effect that his application for renewal of his forest concession had been Rejected for non-payment of forest and reforestation charges for the year 1952. On the same day he wrote appellant requesting him to seek reconsideration of said order. A few days later, however, appellant acquired or secured the issuance of the Escos license in his own name and caused it to be consolidated with his other concessions under License Agreement No. 45, and on January 27, 1953 he dismissed appellee as Superintendent.

Upon appellee's return to Bacolod City, the creditors of the Escos Lumber Mill began demanding immediate payment of their credits and some of them brought the matter to court. After conferring with appellant's lawyer, Mr. David Fuentebella, to reach an understanding regarding his controversy with appellant, Fuentebella notified appellee on April 23, 1953 that he had no right to any participation in the profits and assets of the Escos Lumber Mill and the Escos Concession. Thereupon appellee instituted the present action in the Court of First Instance of Negros Occidental to recover damages from appellant for breach of contract; to require appellant to render an accounting of the profits and properties of the business; to pay the Escos Accounts; to carry out the incorporation of the business, recognizing appellee's 30% participation therein, and to pay the amount of P100,000 as moral and exemplary damages, plus reasonable attorney's fees and the costs of suit. In a supplemental pleading appellee prayed for the alternative remedy of rescission of the contract in the event that specific performance thereof was not feasible.

Appellee's evidence is to the effect that he and appellant agreed to form a new corporation under the name of Valco (Valderrama—Coscolluela) Lumber Co., Inc., its assets to include all the machinery and other property pertaining to the Escos Lumber Mill and the Escos Concession; that their shares in the corporation would be in the following proportion: 30% for appellee and 70% for appellant; that, for his part, appellant agreed to put up the necessary additional capital and equipment, perfect the renewal of the Escos Concession, pay the Escos Accounts and collect the accounts receivable; that the Contract Exhibit F was in the nature of a provisional working plan pending the perfection of the formation of the corporation; that, as a matter of fact, appellee signed two other documents referring to the incorporation of the business under the name of Valco Lumber Co., which documents were retained by appellant and copies thereof never furnished him; that in not carrying out the incorporation of the business, as well as in acquiring the Escos Concession in his own name and in expelling appellee as Superintendent, appellant committed a breach of contract.

On the other hand, appellant's contention is that Exhibit F was the only agreement between the parties; that said contract was invalid because appellee's rights to the Escos Concession had already expired at the time of its execution; that he had agreed to work for the renewal not of the license for the year 1952-1953 but for that corresponding to subsequent years.

After trial, the lower court rendered judgment rescinding the contract Exhibit F and ordering the appellant to pay appellee damages in the total sum of P950,726.33 and the costs of suit.

Appellant's contentions in this instance are, in substance, the same as those he raised below, namely, that the lower court erred: (a) in admitting parol evidence to prove the existence of, and in holding that there were other agreements collateral to the written contract Exhibit F; (b) in construing favorably to the appellee the provisions of the aforesaid written contract, contrary to its clear and explicit terms; (c) in holding that appellant had violated

said contract fraudulently and in bad faith; and (d) in awarding to appellee the enormous sum of P950,726.33 as damages, instead of awarding damages in favor of appellant.

On the question of whether the written contract Exhibit F was the only contract between the parties or they had collateral agreements related thereto, it is pertinent to consider the following circumstances:

(1) Both parties agree that the sum of P5,000.00 mentioned in said contract is not its true consideration; but while appellee contends that the true consideration was appellant's promise and commitment to organize a new corporation to carry on the business of the Escos Lumber Mill and the Escos Concession, the capital thereof to be apportioned 70% for appellant and 30% for appellee; to administer the business and furnish additional capital for its operation; to collect accounts receivable and also pay the pending accounts of the Escos Lumber Mill, appellant's contention is that the true consideration supporting the contract was nothing more than his commitment to appoint appellee as Superintendent of the business. Appellant's contention is untenable. Appellee would not have ceded to him 70% interest in all the assets, equipment and accounts receivable of the Escos Lumber Mill and the Escos Concession for nothing but his appointment as Superintendent. That the consideration for the cession must have been something much more than that is clearly indicated by the fact—admitted by appellant himself and his counsel—that Articles of Incorporation and By-laws for the corporation to be organized had really been drafted by appellant's counsel and that appellee had been made to sign them, although only a copy of Exhibit F was given to him. Besides, appellee's evidence in this connection shows that, aside from Exhibit F and the aforesaid Articles of Incorporation and By-laws, appellant's counsel had prepared a third document whereby both parties had agreed to assign or convey to the new corporation their respective share or interest in the business as fixed by the terms and provisions of the contract Exhibit F.

(2) The name under which the new corporation was to be known was Valco Lumber Co., Inc. The first word is an obvious combination of the first syllable of appellant's surname (Valderrama) and of part of the first syllable of appellee's surname (Coscolluela).

(3) While the contract Exhibit F provides that all the obligations and accounts of the Escos Lumber Mill and the Escos Concession in favor of third person were to remain as appellee's obligations, it also provided that the net income to be obtained from the operation of the lumber mill shall be applied to the payment thereof. Part of appellee's contention, therefore, is corroborated by the contents of Exhibit F and the latter is in consonance, in general terms, with appellee's theory that the new corporation was to assume the obligation of paying all pending accounts of the Escos Lumber Mill and the Escos Concession, such payment to be made out of the net income derived from the operation of the lumber mill. If in view of the unavoidable delay in the approval of the incorporation papers, the parties executed the contract Exhibit F, it must have been solely to enable appellant to take immediate possession, control and administration of the Escos Lumber Mill and the Escos Concession.

Appellant—at first—denied the existence of the incorporation papers and that there had been any final or definite agreement about them, but his own lawyer, testifying as witness, admitted having prepared said papers (trans. 10-23-56, pp. 242-3, 283-5) and that the same were signed by appellant (Id. p. 284). Appellant himself—upon cross-examination—admitted that the final draft of the incorporation papers had been prepared (trans. 3-28-57, pp. 726-7).

All these circumstances lead to the conclusion that the written contract Exhibit F was only provisional and that, as appellee contends and the lower court found, there were collateral agreements entered into by the parties at the time of its execution.

In connection with the provisions of Exhibit F regarding payment of the Escos accounts and the renewal of the Escos Concession license, appellant claims that the lower court erred not only in construing them in spite of their

clearness, but also in construing them in a manner favorable to appellee's contention. We find these claims likewise to be without merit.

Paragraph (c) of Exhibit F is of the following tenor:

"(c) That all the obligations of the First Part in favor of the third person in connection with the above-mentioned lumber mill and forest concession prior to this date shall remain as his own obligation; Provided, that the net income of the operation of this lumber mill shall be applied by the Second Part to the payment of all the above-mentioned obligation until the same shall have been fully paid up."

There is no doubt that the stipulation contained in the above paragraph are ambiguous, because while the first part says that the obligations of the Escos Lumber Mill and Escos Concession in favor of third persons were to remain as appellee's obligations, the last part thereof provides that said obligations or accounts shall be fully paid with the net income obtained from the operation of the lumber mill. As Atty. Fuentebella, appellant's counsel, was the one who drafted the agreement, we agree with the trial court that this ambiguity should be construed against him. But even without relying on this, it appears that appellee's contention in this regard is more worthy of belief. Indeed, he would not have agreed to retain only 30% interest in the new business after ceding all his rights and interests in the Escos Concession and the Escos Lumber Mill—including equipment and other assets—if he was still to pay all the pending accounts. Precisely, he had to part away with the major portion of his interest in said business because of lack of funds.

Regarding the Escos license for the year 1952-1953, there is no question that when the contract Exhibit F was executed, appellant was fully aware of the fact that the corresponding application for its renewal was pending approval in the Bureau of Forestry. For this reason the contract authorized him to have the renewed license issued either in his name or in that of his successor in interest. The mere fact, therefore, that he secured the license in his own name did not constitute a violation of the contract Exhibit F if appellant's idea was to live up to his other obligations under said contract. But his conduct before and after securing the renewed license in his name clearly shows that he did not. As stated heretofore, appellee immediately notified appellant of the order of the Bureau of Forestry disapproving the renewal of the Escos license on the ground of nonpayment of the required fees for the previous year, and requested him to have the same reconsidered. When appellant approached the Director of said bureau in Bacolod City, he apparently made representations for the "renewal Escos license" (Exhibit 8—Deposition Tamesis) but did not submit a copy of his contract with appellee. Therefore, although said office knew of the existence of said contract, it had no other alternative but to consider appellant's personal application when the same was filed on January 6, 1953. Former Director Tamesis said in this connection, however, that had appellee or appellant—his representative and partner—gone to the bureau and manifested willingness to comply with the conditions whose unfulfillment caused the rejection of appellee's application for renewal, there would have been no objection to the granting of the renewed license.

Then after securing the license in his name on January 8, 1953, he immediately caused the inclusion of the Escos concession in his own Ordinary Timber License and proceeded to complete his plans by dismissing appellee from his position as Superintendent and refusing him access to the books and records of the business. It is therefore clear that the filing of appellant's application in his own name was made without appellee's knowledge and without appellant having exerted any serious effort to secure a reconsideration of the Bureau of Forestry's order disapproving appellee's application for the renewal of the Escos License. In other words, it is obvious that appellant took advantage of the disapproval of appellee's application to file his own personal application, to have the Escos Concession added to his own and to do away with the services of appellee as Superintendent. Considering all these circumstances, we do not hesitate to agree with the trial court when in its decision it says:

"El Juzgado estima ilegal, inmoral y no ajustado a la norma de un proceder honrado el acto del demandado en

tomar ventaja del demandante despues que este haya depositado en el toda la autoridad y la confianza.

"Evidentemente, despues que el adquiriera la licencia de la concesion en su propio nombre el demandado no pudo resistir a la tentacion de apropiarse de todo el negocio recurriendo a tecnicismos legales tales como su alegacion de que la licencia de la concesion de la Escos no podia ser objeto de contrato o controvirtiendo el estado de la licencia de la concesion del demandante al tiempo del otorgamiento del contrato Exhibito "F". El Juzgado cree que al recurrir a estos tecnicismos el demandado no ha hecho otra cosa mas que revelar su mala fe por la razon de que la licencia de una concesion es objeto valido de un contrato, sujeto, desde luego, a la aprobacion del Director de la Oficina de Montes, tal como lo preveian las partes en este caso; y en cuanto a la alegacion de que el derecho del demandante ya habia caducado, el mismo demandado admitio en repreguntas de que el demandante le habia explicado la pendencia del estado de la licencia de la concesion al tiempo de otorgarse el contrato Exhibito "F", y que la solicitud para la renovacion de dicha licencia para el año fiscal de 1952-1953 (Exh. "D-1") ya se habia presentado por el demandante, pero que dicha solicitud se hallaba bajo consideracion por la Oficina de Montes. (T.S.N. Hearing, Oct. 26, 1956, pp. 510-511, 535).

"La conducta del demandado subsiguiente a la adquisicion de la licencia de la concesion en su propio nombre bosqueja de una manera grafica e indubitable la norma de una conducta fraudulenta y de la mala fe, particularmente;

"(1) Al rehusar llevar a cabo la incorporacion del negocio unido con su actuacion suspicaz de ocultar los documentos referentes a la incorporacion;

"(2) Expulsando al demandante de una manera descortes del cargo de Superintendente de la area forestal;

"(3) Rehusando pagar las Cuentas Escos lo que naturalmente indujo a los acreedores del demandante a apremiar el cobro de las mismas por la via judicial;

"(4) Negandose a rendir cuentas del negocio e impidiendo el examen de los libros y de los archivos por el demandante;

"(5) Suministrando informes falsos a la Oficina de Montes de haber comprado los trozos de madera de la Escos Lumber Mill tal como hizo constar en su carta exhibito 'RRRR94', si bien nego en repreguntas haber comprado trozos de madera de la Escos Lumber Mill (t.s.n., Hearing April 15, 1957, pp. 590-591);

"(6) Negandose arbitrariamente a cumplir con el contrato Exhibito "F" por su resolucion unilateral despues que hubo adquirido la licencia de la concesion en su propio nombre en 8 de Enero de 1953 y notificando al demandante de su decision solamente en 24 de Abril de 1935 o sea, cuatro meses y medio despues. (V. Exh. 'Q').

'Court:

Q.— You did not. That is all right. After you obtained the license in your name, did you notify Mr. Coscolluela either verbally or in writing that you could not proceed anymore. . . to go through with the conditions appearing in Exhibit 'F'?

A.— Yes.

Q.— How?

A.— In writing. Our attorney notified him.

Q.— And that was the formality that you took and considered exhibit 'F' as no longer in force? Is that the only formality that you adopted in order to consider Exhibit 'F' as not inforcible any more?

A.— I have no formal action.

Q.— My question is if that is the only formality that you took?

A.— As far as I could remember, yes.' (t.s.n., April 15, 1957, p. 581)

Q.— Now, in answer to my previous question, you stated that after you had secured the license in your own name, your lawyer informed Mr. Coscolluela of the termination of your agreement. Showing to you this document which is Annex 'C' of the complaint and the same has been marked as Exhibit 'Q'. Will you please state to this Honorable Court if this is the letter which you referred to? (Atty. Gonzales shows exhibit 'Q' to the witness.)

A.— (Witness after looking at the said exhibit.) I think this is the copy of the letter.' (t.s.n., April 15, 1957, pp. 590).

"(7) Fingiendo falsamente ignorancia del estado de la licencia del demandante al tiempo de firmar el contrato, Exhibito 'F' (Exh. 'Q'; t.s.n, Hearing Oct. 25, 1956, p. 561), no obstante el hecho de que el estaba enterado de que la solicitud de renovacion se encontraba bajo consideracion al tiempo de firmarse el contrato Exhibito 'F' (t.s.n., Hearing Oct. 26, 1956, p. 535)."

In connection with the last assignment of error, the lower court found that the remedy of specific performance was no longer possible to grant in view of the personal nature of the obligation sought to be enforced, the existing antagonism between the parties, the granting by the Bureau of Forestry of the Escos Concession to appellant, and the circumstance that a substantial portion of what would have been the capital or assets of the new corporation must have either disappeared or been rendered obsolete through wear and tear. Instead said court granted the alternative relief—the rescission of the contract—and awarded the following damages:

"1. Perdida del negocio:

Habiendo perdido la Escos Lumber Mill, incluyendo su activo, en beneficio del demandado, el demandante tiene derecho a recobrar el valor de dicho capital tal como se ha asesorado en el Exhibito 'H' en la cantidad de P300,726.33.

"2. Perdida de los derechos a la Concesion.

Como quiera que el demandado se halla actualmente disfrutando exclusivamente de la licencia de la anterior Escos Concession cuya concesion, de acuerdo con la declaracion e informe del Senior Forest Ranger Agaloos, tiene posibilidades comerciales favorables pudiendo producir 'twelve million board feet' al año por 25 años en terminos de madera limpia, opinamos que el calculo del demandante sobre el valor de sus derechos a la misma en P350,000.00, as razonable.

"3. Perdida del credito, hostigamiento indebido, y otros daños morales:

Por los actos del demandado que dieron por resultado la perdida del credito y la estimacion del demandante en la comunidad, hostigamiento indebido por sus acreedores y congoja mental, afliccion seria, ofensa del sentimiento, costo al demandante debido a la infraccion del contrato caraterizada con la conducta fraudulenta y mala fe, el demandante tiene derecho a recobrar daños morales en la cantidad de P100.00.

"4. Daños ejemplares:

Considerando las circunstancias bajo las cuales el demandado deliberadamente y con mala fe tomo injusta ventaja del fideicomiso y de la confianza depositada en el por el demandante, y particularmente por su conducta fraudulenta, opresiva y malevola, por via de ejemplo o correccion para el bien publico, el demandado debe pagar al demandante la cantidad de P200,000.00.

"5. Honorarios de abogado:

Asimismo, declaramos que en vista de las circunstancias, particularmente el fraude y la mala fe del demandado, el demandante tiene derecho a cobrar honorarios de abogado en la cantidad de P10,000.00.

EN VIRTUD DE TODO LO EXPUESTO, se condena al demandado a pagar al demandante en concepto de daños la suma de P950,726.33, y a pagar las costas del juicio."

Because of the loss of appellee's business—the Escos Lumber Mill—the lower court awarded appellee the sum of P300,726.33. The principal basis for such award is the document Exhibit A which enumerates the equipment purchased for and used in said mill. The value given to each of the different items was taken from the books of the Escos Lumber Mill and represents their acquisition price or book value, without regard to depreciation. In this connection it is to be presumed that appellee had been using such equipment since 1950. Moreover, appellee himself admitted that some items included in the list had already been burned (trans. pp. 152-158, Aug. 26, 1955). Considering these circumstances, the nature of the properties inventoried in Exhibit A, and the absence of concrete evidence showing their actual condition and value at the time of their assignment and conveyance to appellant, we find ourselves constrained to fix their reasonable value at that time in an amount equal to 25% of that appearing on the aforesaid document.

The P350,000.00 which the lower court considered as the value of appellee's rights in the Escos Concession was based mainly on the Reconnaissance Report Exhibit C submitted by Senior Forest Ranger Vicente Agaloos who testified during the trial as appellee's witness. He prepared said report while on special detail with the Escos Concession, this special assignment having been possible through arrangements made between appellee and the Bureau of Forestry. Agaloos, however admitted that his report was not an official government report; that it was not transmitted to the Bureau of Forestry for correction and approval, and that it was delivered directly by him to appellee (trans. pp. 157-159, Feb. 21, 1956).

On the question of whether appellee is entitled to an award in connection with the value of the Escos Concession, it must be borne in mind that the same was not really his property but that of the State; that whether he or appellant or the corporation they had agreed to organize could continue receiving benefits therefrom depended on whether they could continue renewing the annual license granted by the government. In other words, appellee and his successors in interest could only be considered as lessees and the value of their lease on the concession could only be in the form of whatever profits could be realized in the exploitation of the Escos Concession. Unfortunately, we do not find in the record any concrete evidence to prove these possible or probable profits, either under appellee's or appellant's management; to the contrary, there is evidence to the effect that the operation of the mill by appellee had not been too successful. We believe, therefore, that appellee is not entitled to recover damages in this connection.

In connection with the award of P100,000.00 as moral damages, we have held heretofore that appellant was guilty of bad faith in not carrying out his agreement with appellee in connection with the incorporation of the new business, in acquiring the Escos Concession exclusively for himself, and in dismissing appellee as Superintendent. That the latter is entitled to recover moral damages is, therefore, clear, but we believe that the sum of P20,000.00 would be sufficient as such. As a result, we also find appellee to be entitled to recover an equal amount, as exemplary damages, namely, P20,000.00.

Modified as above indicated, the judgment appealed from is affirmed in all other respects, with costs.

Bengzon, C. J., Padilla, Concepcion, Reyes, J. B. L., Barrera, Paredes, De Leon, and Natividad, JJ., concur.

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