Lanxess Pte Ltd v APP Chemicals International (Mau) Ltd
[2009] SGHC 25

Case Number : Suit 730/2006

Decision Date : 30 January 2009

Tribunal/Court : High Court

Coram : Andrew Ang J

Counsel Name(s) : Yap Yin Soon and Edmund Tham (Allen & Gledhill LLP) for the plaintiff; Siraj Omar and See Chern Yang (Premier Law LLC) for the defendant

Parties : Lanxess Pte Ltd — APP Chemicals International (Mau) Ltd

Contract – Assignment – Requirements for legal and equitable assignment – Section 4(8) Civil Law Act (Cap 43, 1999 Rev Ed)

30 January 2009 Judgment reserved

Andrew Ang J:

1 The plaintiff is a company incorporated in Singapore involved in the business of trading and supplying chemicals. The defendant is a company incorporated in Mauritius and part of the Asia Pulp & Paper group of companies ("APP group"), carrying on the business of trading in chemical products. In the years 1999 to 2001, the APP group used the defendant as the contracting party to purchase goods from a company then known as Bayer (Singapore) Pte Ltd for the use of various mills within the APP group. To reassure Bayer (Singapore) Pte Ltd, the defendant's obligations and debts were guaranteed by Asia Pulp & Paper Company Pte Ltd ("APP"), which is also a shareholder of the defendant. The plaintiff's claim arises from numerous invoices issued by Bayer (Singapore) Pte Ltd to the defendant in the years 2000 to 2001 for chemical products supplied to the defendant. It is not disputed that a significant portion of the amount set out in these invoices is unpaid and remains outstanding. Claiming to be the assignee of the benefit of the amounts still owing under these transactions, the plaintiff brought the present suit for US$10,199,553.12 ("the debt") with interest, or damages.

2 The plaintiff argued that there was an assignment ("the first assignment") from Bayer (South East Asia) Pte Ltd, formerly known (until 27 November 2000) as Bayer (Singapore) Pte Ltd ("BSEA(1)"), to Bayer Polyurethanes Asia Pte Ltd on 1 January 2002 via the Agreement for Sale and Purchase of Business ("ASPB"). On 2 January 2002, Bayer Polyurethanes Asia Pte Ltd changed its name to Bayer (South East Asia) Pte Ltd ("BSEA(2)") and BSEA(1) changed its name to Bayer Trading Pte Ltd. There was a notice in the Straits Times on 10 January 2002 ("the Straits Times advertisement") stating:

> The Board of Bayer Polyurethanes Asia Pte Ltd would like to inform you of the integration of Bayer (South East Asia) Pte Ltd with its operation and the change of its name to Bayer (South East Asia) Pte Ltd with effect from 2 January 2002.

3 The plaintiff further argued that there was a second assignment from BSEA(2) to itself on 1 July 2004 via an Asset Purchase Agreement ("APA") dated 1 July 2004 and evidenced by a Deed of Assignment ("the Deed") dated 8 November 2005 ("the second assignment"). On 7 August 2004, Bayer Trading Pte Ltd (formerly BSEA(1)) was dissolved by way of members' voluntary winding up.

4 The defendant admitted at [4] of its amended defence that it did order chemical products from Bayer (Singapore) Pte Ltd on various occasions between 1999 and early 2001. Those products were delivered to various paper mills that were part of the APP group and the relevant invoices were sent to the defendant; the defendant further admitted that in respect of those invoices an amount equal to the debt remains unpaid. The defendant denied, however, that there was any assignment in law or equity of the right to recover this debt. The defendant also denied that there was ever any common assumption or agreement between the plaintiff and defendant that the debt would be paid to the plaintiff.

5 The issues before me were: whether the two alleged assignments were valid in law under s 4(8) of the Civil Law Act (Cap 43, 1999 Rev Ed) ("the Act"), or in equity; alternatively, if neither assignment was valid, whether the defendant was estopped by convention from denying its obligation to pay the debt to the plaintiff.

The law on assignment

6 The requirements for a legal assignment are set out in s 4(8) of the Act which provides:

> Any absolute assignment by writing under the hand of the assignor, not purporting to be by way of charge only, of any debt or other legal chose in action of which express notice in writing has been given to the debtor, trustee or other person from whom the assignor would have been entitled to receive or claim such debt or chose in action, shall be and be deemed to have been effectual in law, … to pass and transfer the legal right to such debt or chose in action, from the date of such notice, and all legal and other remedies for the same, and the power to give a good discharge for the same, without the concurrence of the assignor.

7 There are three requirements under s 4(8): the assignment must be absolute and not by way of charge only; it must be in writing under the hand of the assignor; and express notice in writing must be given to the person liable to the assignor under the assigned chose in action. In *Salim Anthony v Sumitomo Corp Capital Asia Pte Ltd* ("*Salim Anthony*") [2004] 3 SLR 331, Lai Siu Chiu J considered what constitutes notice of assignment and affirmed the authorities cited to her at [91]–[92]:

> 91 … compliance with s 4(8) of the Act is not the only legal requirement. The notice of assignment must also be clear and unambiguous. For this proposition, I refer to the plaintiff's citation of an extract from *Cheshire, Fifoot & Furmston's Law of Contract (Second Singapore and Malaysian Edition)* (Butterworths Asia, 1998) where the author stated (at 861):
>
> > The one essential in all cases is that the notice should be clear and unambiguous. It must expressly or implicitly record the fact of assignment, and must plainly indicate to the debtor that by virtue of the assignment the assignee is entitled to receive the money.
>
> 92 The notice must also be unconditional. The plaintiff referred to an extract from *Chitty on Contracts* vol 1 (28th Ed, 1999) where the authors, in commenting on s 136 of the UK Law of Property Act 1925 ("the LPA"), which provision is *in pari materia* with s 4(8) of the Act, had this to say (at para 20-016):
>
> > Under the statute notice in writing to the debtor is necessary. It is "wrong to suppose that a separate document purposely prepared as a notice, and described as such, is necessary in order to satisfy the statute. The statute only requires that information relative to the assignment shall be conveyed to the debtor, and that it shall be conveyed in writing." … Beyond this, however, the statute has been strictly construed, and it has been held that the

notice must be unconditional …

8 Thus not only must there be express notice in writing, but the notice must also be clear, unambiguous and unconditional. A mere statement of intention to assign is thus insufficient. However, there is no prescribed form of notice, nor is there a need for a separate document for the specific purpose of notifying the debtor; the fact of assignment may be *implicitly* recorded and it would suffice for information *relative* to the assignment to be conveyed in writing to the debtor. In *Salim Anthony* ([7] *supra*), Lai J found that the notice of assignment was defective and invalid because the transferee was not identified, there were conditions attached to the transfer and the actual transfer had not yet taken place. The notice also referred to a purported assignment agreement which could not have existed on the specified date; the notice was neither clear nor unambiguous.

9 The plaintiff cited *Van Lynn Developments Ltd v Pelias Construction Co Ltd* [1969] 1 QB 607, where the English Court of Appeal held that under s 136(1) of the Law of Property Act 1925 (which is substantively similar to s 4(8) of the Act) written notification of the assignment had to be given to the debtor so that he should know to whom he had to pay the debt, and the fact that the letter in question did not state the date of the assignment and wrongly stated that notice of the assignment had already been given ("an inaccurate surplusage" which could be ignored) did not prevent it from being valid notice for the purposes of the section. Davies LJ added (at 614), that in *Denney, Gasquet and Metcalfe v Conklin* ("*Denney*") [1913] 3 KB 177, good notice was given by way only of a letter which did not mention an assignment at all but referred to a deed of arrangement, and did not mention the amount that had been assigned but was merely a request for an account showing all dealings as between the debtor and the assignor. The letter in question read (*Denney* at 178):

> Dear Sir,
>
> *Re* Yourself and Walter Derham.
>
> The trustees of the deed of arrangement, dated the 5th of December, 1907, and executed by Mr. Walter Derham, have instructed us to apply to you for an account showing all dealings between yourself and Mr. Walter Derham. The reason of this application is that there appears from Mr. Derham's books to be a considerable debt due from you to him for money advanced.
>
> An early reply will oblige.

10 Thus, in *Denney* ([9] *supra*) there was no demand for payment as such; nor was there evidence that the defendant actually made payment pursuant to such notice. Nevertheless, Atkin J found that (at 180–181):

> … this letter, though not worded with the precision of a more formal notice, does indicate with sufficient certainty to the defendant that Derham has executed a deed which assigns to the trustees the debt formerly due to him; and that the debt when the amount is ascertained must be paid to the trustees and not to Derham.

11 Finally, Widgery LJ pointed out at 615 (as was cited in part by Lai J in the extract from *Chitty* at [7] above) that:

> … the only formality required by the section is that express notice in writing be given to the debtor. The section does not speak of "a notice": it speaks of "notice." Accordingly, it is wrong to suppose that a separate document purposely prepared as a notice, and described as such, is necessary in order to satisfy the statute. The statute only requires that information relative to

> the assignment shall be conveyed to the debtor, and that it shall be conveyed in writing. … Once it is appreciated that the section requires no more, it becomes obvious that the objection to the notice in this case, that it was not intended as a notice but merely to record the fact that notice had already been given, must fail.

12 As for equitable assignments, there is no requirement of notice to the debtor or even the assignee; what must be shown is a manifestation of the assignor's intention to assign (see *Tsu Soo Sin v Oei Tjiong Bin* [2008] SGCA 46). I will return to the legal tests in considering the validity of the first and second assignments in law or equity below.

The evidence

13 The plaintiff called two witnesses. The first, Mr Ian Clive Wood ("Mr Wood") has been managing director of the plaintiff since July 2004 and was formerly general manager of the Bayer Chemicals Sub-group of BSEA(2) from 1 October 2002, a few months after discussions with APP regarding instalment payment of the debt had commenced. The second, Ms Lim Joo Joon ("Ms Lim") is the plaintiff's chief financial officer and prior to joining the plaintiff in July 2004 was the finance manager in the Corporate Services Department of BSEA(1). When BSEA(1) transferred its assets and liabilities to BSEA(2) she remained finance manager of BSEA(2)'s Corporate Services Department. In all three companies she was in charge of accounts and finances, including monitoring and following up on outstanding sums owed to each company. It was common ground between the parties that BSEA(1) started selling chemicals to the defendant in early 1999. At the request of APP's representatives during the negotiations, the transactions for the supply of chemical products to the defendant were made between BSEA(1) and the defendant. BSEA(1) in turn obtained a guarantee (dated 10 May 1999) by APP of the defendant's obligations to BSEA(1). Ms Lim was involved in the negotiations between BSEA(1) and APP group representatives acting for APP and the defendant in 1999, and was part of the team in BSEA(1) that reviewed and approved the guarantee by APP.

14 In the years 2000 to 2001, BSEA(1) sold and delivered chemical products to the defendant for US$11,236,568.19. Mr Wood testified that when he joined BSEA(2) in October 2002, the total debt owed by the defendant was US$10,801,707.76 under invoices and bills of exchange for goods sold and delivered to it. According to Mr Wood, APP represented to the plaintiff during negotiations that it was acting for the APP companies concerned, including the defendant, and eventually an instalment payment scheme was agreed upon. Following further discussions, it was agreed that for every new order of chemical products to be supplied to APP's mills (rather than the defendant, which was simply the contracting vehicle in the original arrangement) a premium of 10% over the sale price would be charged, which premium would go towards repayment of the debt. The parties also agreed, as the defendant required, that regular statements of accounts be issued to it. The defendant did not challenge this part of Mr Wood's evidence in cross-examination.

15 According to Mr Wood, whose evidence on this point was not challenged, the defendant first paid the 10% debt repayment upon goods being sold to APP in March 2003 pursuant to these discussions, and the last 10% repayment was made pursuant to a shipment made by the plaintiff sometime in March 2006. These payments were acknowledged on statements of account issued first on BSEA(2)'s letterhead and later on the plaintiff's, and a total of US$1,036,619.95 was paid by way of these 10% repayments.

16 The plaintiff argued that both assignments had fulfilled the requirements of s 4(8) of the Act and were thus valid statutory assignments. Alternatively, it argued that both assignments were valid equitable assignments. The defendant's case was that there was no evidence that either BSEA(1) or BSEA(2) had even intended to assign the debt to BSEA(2) and the plaintiff respectively, since neither

the ASPB nor the APA contained any express reference to the debt or the defendant. The defendant thus submitted that there was no equitable assignment, much less any legal assignment.

17 The defendant called one witness, Mr Kurniawan Yuwono, who stated only that he did not have personal knowledge of transactions giving rise to the debt, that the defendant's current staff had not been able to contact the relevant people who might have such personal knowledge and its former employees appeared not to have maintained any proper filing system in respect of the relevant documents. The plaintiff did not cross-examine this witness.

18 Having adduced no contradictory evidence, the defendant's case constituted a denial of the plaintiff's allegations as well as contentions that the plaintiff's witnesses were not credible. The existence and quantum of the debt not being in dispute, the defendant did not deny that the debt constituted an existing chose in action. The question was whether this chose had been validly assigned, ultimately, to the plaintiff.

The first assignment – whether the debt was validly assigned from BSEA(1) to BSEA(2)

The Agreement for Sale and Purchase of Business

19 The plaintiff relied on the ASPB dated 1 January 2002 between BSEA(1) and BSEA(2) (then known as Bayer Polyurethanes Asia Pte Ltd) as the operative document effecting the assignment of the benefit of the debt. Clause 1 of the ASPB provided that BSEA(1) would transfer to BSEA(2):

> … the whole of the undertaking of [BSEA(1)] pertaining to its business of the sale, processing and distribution of chemical products, pharmaceutical products … including all the assets whatsoever and wheresoever of [BSEA(1)] relating thereto and specifically:-
>
> …
>
> (ii) any rights or interests which may be vested in [BSEA(1)] pertaining to its business aforesaid together with the full benefit of all contracts and agreements to which [BSEA(1)] is a party …

20 The plaintiff explained that the debt had been written off for accounting purposes and therefore was not reflected in a debit note dated 1 January 2002 which set out the assets and liabilities transferred to BSEA(2) ("the debit note"). However, the plaintiff argued that the ASPB was the operative document, and that despite the debt not appearing on the debit note it was nonetheless still an asset transferred via the ASPB. The defendant placed much emphasis on the fact that the plaintiff had amended its statement of claim and relied on first the debit note but later the ASPB to assert the first assignment, contending that the plaintiff's reliance on the ASPB was "an afterthought and, in any event, utterly misconceived". First, neither the defendant nor the debt was mentioned in the ASPB; second, the ASPB was not mentioned in the original or first amended statement of claim. This second point is not meritorious and I do not find that the plaintiff's formulation of its case here should be material to the merits of its claim. At trial, counsel for the plaintiff, Mr Yap Yin Soon ("Mr Yap"), candidly admitted that it had made mistakes in the early stages of the case, particularly because it thought that there was no issue with the first assignment from BSEA(1) to BSEA(2), but in any case those mistakes were rectified by amending the pleadings when it realised what documents were available. I would therefore not accord any significance to the fact that the ASPB was included almost a year and a half after the writ of summons was first filed.

21 As for the lack of specific reference to the debt and the defendant in the ASPB, the plaintiff

explained that the debt was not specifically identified because it represented only a small part of the business and assets being transferred from BSEA(1) to BSEA(2), and in any case it fell within cl 1(ii) of the ASPB. On a plain reading of the ASPB, and considering the absolute and unconditional language of the Straits Times advertisement on 10 January 2002, it was evident that the debt must be included in the transfer of business and merging of operations. The defendant did not adduce any evidence to the contrary and could not rebut this simply by pointing to the lack of specific identification of the debt.

22 An apparent issue was whether the debt was transferable if it had been written off by BSEA(1). The defendant first submitted that "the [d]ebt had already been written off and it therefore would not have formed part of [BSEA(1)'s] undertakings. It would accordingly not have formed part of what was transferred to [BSEA(2)], whether under the [ASPB] and/or the [debit note]". However, the defendant later clarified in its letter to the court dated 15 September 2008 (in response to the plaintiff's closing submissions) that it was not contending that the debt had been extinguished by virtue of having been written off. Rather, it argued that the debt "did not form part of [BSEA(1)'s] assets and liabilities as at the effective date of the [ASPB]" because it was not listed in the *debit note* which Ms Lim had conceded was the only listing of BSEA(1)'s assets and liabilities as of the effective date of the ASPB. The question is thus whether the debt was part of BSEA(1)'s assets falling within the ASPB notwithstanding that it was not specifically identified in the debit note, which brings us back to the point at [20] above. I see no reason why the answer to this question should differ from the position with regard to the lack of specific reference in the ASPB. The plaintiff pointed out that the debit note did not list the debt as an asset because it had been written off. Since the defendant agreed that the fact that the debt had been written off did not mean it had been extinguished, it was still an asset capable of being sold, transferred or assigned, and was, in my view, in fact transferred by way of the ASPB.

23 Accordingly, the defendant's contention that BSEA(1) did not *intend* to assign the right to recover the debt to BSEA(2) along with the rest of its business was also not persuasive. The defendant agreed that simply writing off the debt for accounting purposes did not mean that BSEA(1) had entirely relinquished its right to repayment. Similarly, considering that the debt was only one of BSEA(1)'s assets and a small part of the business that was being consolidated with BSEA(2) under the ASPB, I do not think the omission to specifically identify the debt or the defendant by name should be taken as intent not to transfer the rights to the debt.

24 With regard to the requirement for notice, the defendant submitted that the Straits Times advertisement announcing the integration of BSEA(1) and BSEA(2)'s operations and the change of BSEA(2)'s name with effect from 2 January 2002 had nothing to do with the first assignment because the plaintiff's case was that the first assignment was, according to the ASPB, effected on 1 January 2002. The defendant submitted that the Straits Times advertisement was not a valid notice of the assignment because it made no mention of the debt, the defendant, or the fact that the debt had been assigned to BSEA(2); Ms Lim had also admitted that the advertisement was meant to inform the general public and BSEA(2)'s business associates and not intended to inform APP specifically.

25 As set out at [7]–[9] above, the requirement of notice does not oblige the assignor or assignee to follow a prescribed form or even make express, direct reference to the assignment. All that the assignor or assignee must do under s 4(8) of the Act is to convey, in writing, information relative to the assignment that indicates to the debtor that by virtue of the assignment the assignee has the right to the benefit of the obligation in question. The Straits Times advertisement focused on the integration of BSEA(1) and BSEA(2)'s operations rather than the transfer pursuant to the ASPB, but it was in writing, and, unlike the situation in *Salim Anthony* ([7] *supra*), it was unconditional. However, assuming *arguendo* that the Straits Times advertisement was not sufficiently unambiguous and thus

did not qualify as statutory notice, there were also the statements of account issued by BSEA(2) from 15 January to 24 June 2004, all of which were signed by Mr Eddy Rusli for the defendant. Each statement of account had as its subject "Debt Settlement" and read:

> With regard to the following transaction, we hereby acknowledge the deduction of the amount of US$ from the total purchase value, to be applied towards the debt purportedly due from APP Chemicals International (MAU) Limited, but in fact due from the Buyer stated below, as a recipient of the products ordered from us by APP Chemicals International (MAU) Limited.

26 Pursuant to the statements of account issued by BSEA(2) (before the statements of account were issued by the plaintiff instead), the defendant did in fact make payment amounting to a total of $273,397.70. These statements of account did not allude to the first assignment but clearly identified BSEA(2) as creditor and the defendant obliged, making no objection to BSEA(2)'s right to repayment. The defendant cannot deny that it knew and agreed that the debt was due to BSEA(2). In my opinion, therefore, while it might be somewhat debatable whether the Straits Times advertisement and/or the statements of account sufficed as notice under s 4(8) of the Act, the first assignment was clearly valid in equity at least, and in fact the defendant did perform its obligations as debtor pursuant to it. The fact also remains that, having made some payments as evidenced by the statements of account issued by BSEA(2) and the plaintiff, the defendant never made payment of the debt to its creditor, be it BSEA(1), BSEA(2) or the plaintiff. The defendant cannot now rely on any technical imperfection in statutory notice to completely escape this obligation.

The second assignment – whether the debt was assigned from BSEA(2) to the plaintiff

The Asset Purchase Agreement

27 The plaintiff relied on the APA dated 1 July 2004 between "Bayer (South East Asia) Pte Ltd" as the seller and the plaintiff as buyer as the instrument transferring the chose in writing from BSEA(2) to the plaintiff. The APA identified the seller in Preamble 0.1 as:

> … a company incorporated under the laws of the Republic of Singapore with limited liability and having its registered office at No. 9 Benoi Sector, Singapore 629844, [and] a direct subsidiary of Bayer AG, Leverkusen, Germany (hereinafter, "BAG").

The buyer (the plaintiff) was defined in Preamble 0.2 as:

> … a company incorporated under the laws of the Republic of Singapore with limited liability and having its registered office at No. 9 Benoi Sector, Singapore 629844, [and] a direct LANXESS Deutschland Gmbh.

28 Preamble 0.3 and 0.4 specified the "LANXESS-Business" to be sold and purchased by the parties pursuant to the APA; this included the "paper" strategic business unit which the plaintiff explained was the relevant business unit as regarded the debt and its dealings with the defendant and the APP group. Clause 1.1 of the APA provided for the sale and purchase of, inter alia, all Sold Assets, which was defined in cl 2.1 and included, at cl 2.1(e):

> all rights and claims against Asia, Paper & Pulp resulting from sales of paper chemicals which have not yet been settled due to the inability of Asia Paper & Pulp to settle the accounts.

29 The plaintiff submitted that as of 1 July 2004 "Bayer (South East Asia) Pte Ltd" could only refer to BSEA(2) because BSEA(1) had changed its name to Bayer Trading Pte Ltd more than two years

ago, on 2 January 2002. The APA provided for the sale of BSEA(2)'s entire polymers and chemical business and all related assets to the plaintiff; this was the same business that had earlier been sold and transferred from BSEA(1) to BSEA(2).

30 The plaintiff continued to supply chemical products to the APP mills after 1 July 2004, as BSEA(2) had done until 1 July 2004, and applied a 10% premium to the invoices for each shipment as partial payment of the debt. These shipments and partial payments were acknowledged by BSEA(2), the defendant and the plaintiff in the statements of account. As the plaintiff pointed out, the fact that BSEA(2) had transferred its polymers and chemicals business on 1 July 2004 to the plaintiff was reflected in the statements of account: the last statement of account issued by BSEA(2) covered a shipment of chemical products supplied by BSEA(2) to the APP mills in May 2004 and the first statement of account issued by the plaintiff covered the very next shipment made in June–July 2004. The plaintiff submitted that the coincidence in time of the plaintiff taking over from BSEA(2) the agreement with APP to continue the sales and shipments of the paper chemical products to the APP mills, with the effective date of the sale, transfer and assignment of the business and assets under the APA was further evidence that this part of the business and assets was assigned to the plaintiff under the APA.

31 There was some question about the reference to "Asia, Paper & Pulp" in cl 2.1(e). The plaintiff submitted that given that there was "no such entity in the APP Group of companies known simply as 'Asia, Paper & Pulp', [this was] obviously a generic term meant to capture all companies within the APP umbrella who owed a debt to the assignor". Ms Lim, who used to work with BSEA(2) and had signed the APA on the plaintiff's behalf, accordingly testified that the clause "would include the old debts under the APP Chemicals International (Mau) Ltd, as well as the other current outstandings". There is no question that the defendant is part of the APP group. On the totality of the evidence, it must be inferred that a reference to "Asia, Paper & Pulp" would *prima facie* include the defendant since the defendant had been doing business with BSEA(1). Even assuming that BSEA(2) did not have any dealings with the defendant at the time of the APA, this fact would not be relevant; the material question is whether BSEA(1) had a right against the defendant that could be transferred to BSEA(2) via the APA, and clearly it did.

32 The Deed was made on 8 November 2005 as:

> … the evidence for the third parties of a general "Assignment of Claims" … contained in the Assets Purchase Agreement signed in Singapore on 1st July 2004 between Bayer (South East Asia) Pte Ltd (Formerly Bayer (Singapore) Pte Ltd) of No 9 Benoi Sector Singapore … of the One Part and Lanxess Pte Ltd of No 9 Benoi Sector, Singapore … of the Other Part.

33 The Deed was signed and sealed by the directors of "Bayer (South East Asia) Pte Ltd (formerly Bayer (Singapore) Pte Ltd)" as the assignor and the plaintiff as assignee, and the defendant was named as debtor in Schedule A in the amount of US$10,301,063.88. This was an erroneous identification of the assignor, because by the time the Deed was made the company formerly known as Bayer (Singapore) Pte Ltd, that is, BSEA(1), had already been voluntarily wound up. The APA simply named "Bayer (South East Asia) Pte Ltd" as assignor; while the APA was dated about one month prior to BSEA(1)'s winding-up, by that time BSEA(1) had already changed its name to Bayer Trading Pte Ltd (on 2 January 2002) and only BSEA(2) was known as "Bayer (South East Asia) Pte Ltd" (also since 2 January 2002). Thus, there was no question in relation to the APA; the only mistake was in the unfortunate (and rather unnecessary) addition of "(Formerly Bayer (Singapore) Pte Ltd)" in the Deed.

34 The defendant argued that the Deed must have been intended to have legal effect rather than

merely to give notice to third parties of the assignment via the APA, since it was drafted by lawyers. The defendant further argued that the Deed was invalid because it referred to BSEA(1) which had ceased to be a legal entity when the Deed was purportedly executed on 8 November 2005, having been dissolved by members' voluntary winding up on 7 August 2004. Thus, there was no second assignment. I do not accept this line of argument. The APA was the operative document and the mistaken reference in the Deed to BSEA(1) was an ambiguity easily clarified by reference to the other contemporaneous documents. If the Deed was invalid, this would not affect the validity of the APA. Since the plaintiff stands by its primary position that the assignment was effected by the APA, with the Deed only providing notice to third parties, the mistake in identifying the assignor, even if fatal to the validity of the Deed, would not be adverse to the APA because it is beyond dispute that as of 1 July 2004 only BSEA(2) went by the name of "Bayer (South East Asia) Pte Ltd".

35 Mr Yap, however, sought to preserve the alternative argument that the Deed was the operative document in the event that I found the APA did not effectively assign the debt to BSEA(2). As Mr Yap put it, the "fallback position" was that "this assignment was created to serve as notice which [could] be given to third parties, because they didn't want to disclose to third parties the confidential document which is the asset purchase agreement". This submission was contrary to the wording of the Deed itself, and the plaintiff could not have it both ways; either the APA was operative and the Deed merely gave notice as the plaintiff pleaded, or the Deed *alone* was operative. The Deed could not be operative "in the alternative".

36 The plaintiff submitted that the mistaken naming of BSEA(1) did not operate on the defendant's mind and that the defendant was fully aware that the two documents giving notice could not be referring to BSEA(1) but to BSEA(2). Practically speaking, it does not really matter whether the defendant thought the assignor was BSEA(1) or BSEA(2). The function of the Deed being to give notice to the relevant third parties, even if the defendant thought that the assignor was BSEA(1) which had already changed its name, there could have been no doubt as to the identity of the *assignee*. If the defendant's case is that it was obliged to pay BSEA(1) and had notice of neither the first nor the second assignment, the Deed together with the statements of account must have sufficed to make it amply clear that the plaintiff was to receive payments under the original scheme negotiated and agreed between BSEA(1) and the defendant. The mistake in the Deed, if fatal to the Deed, would have no bearing on the defendant's obligations to pay the plaintiff, and the statements of account would suffice to provide requisite notice independent of the Deed (see [40]–[42] below).

37 The plaintiff further submitted that the second assignment was absolute, being for the whole of the debt, not subject to conditions and not by way of charge only. The defendant rightly did not challenge this, submitting that the key question was whether the debt comprised part of the "entire polymers and chemical business and all related assets" of BSEA(2) which was transferred to the plaintiff pursuant to the APA. The defendant emphasised that neither the debt nor the defendant was mentioned in the APA and there was no listing (or definition) of the "entire polymers and chemical business and all related assets" of BSEA(2) in the APA. This is the same objection that was raised to the first assignment, and I find, again, that there was no need for the debt to be specifically identified as a related asset; rather, given that the "entire" business and "all" related assets were being transferred, only if the debt was *not* to be assigned then would it have to be named.

38 Finally, the defendant submitted that the plaintiff's assertion that BSEA(2) no longer retained any rights or interests in the debt was not supported by any evidence given by BSEA(2). It argued that the plaintiff must have been able to subpoena a representative from BSEA(2) to testify to this, and its omission to do so should prompt the court to draw an adverse inference "and assume that [BSEA(2)'s] evidence would have been adverse to the plaintiff". This is correct, but not of material importance in the final analysis.

The statements of account

39 Mr Wood explained in his affidavit of evidence-in-chief that the defendant required that the statements of account be issued to acknowledge the part payment of the debt and the balance still owing. The statements of account were to be issued by the plaintiff, stating the sale transaction details, the 10% repayment amount and the balance debt amount after deducting the 10% repayment amount. The plaintiff submitted that the intention to record the debt repayments was evident from the initial exchanges between APP and BSEA(2), as well as the initial format of the statement of account drafted by APP. From 23 February 2005 the statements of account were issued on the plaintiff's letterhead, though Mr Wood continued signing on the acknowledgment form as he had earlier done for BSEA(2). Each statement of account read:

> **Subject: Debt Settlement**
>
> With regard to the following transaction, we hereby acknowledge the deduction of the amount of US$ from the total purchase value, to be applied towards the debt purportedly due from APP Chemicals International (MAU) Limited, but in fact due from the Buyer stated below, as a recipient of the products ordered from us by APP Chemicals International (MAU) Limited.
>
> Buyer: PT Pindo Deli Pulp & Paper Mills

40 This paragraph was identical to the previous statements of accounts (see [25] above). The first 22 statements of account from the plaintiff issued on 23 February 2005 were signed by Mr Reza Kamayata for the defendant, who had also signed all the previous statements of accounts starting from 15 January 2004 when they were issued by BSEA(2). The plaintiff submitted that the defendant's signing on the statements of account evidenced that they had notice of the assignment, as well as its consent to the content of the statements of account, including the fact that payments would be made to the issuer of the statements of account. As Ms Lim pointed out, at no point did the defendant's representatives ask why the plaintiff had taken over supplying the products and invoicing accordingly. The defendant did in fact make payment to the plaintiff pursuant to the statements of account; the last of which the defendant acknowledged was dated 3 October 2005.

41 The defendant submitted that the statements of account issued between 15 January 2004 and 24 June 2004 did not constitute written notice since they made no mention of the purported assignment but merely reflected a progressive decrease in the quantum of the debt against payments received from various mills in the APP group. This submission cannot stand in the face of the language of each the statement of account, which clearly asserted a right by the issuer to repayment of the debt from the defendant or the actual buyer. Each statement of account was an implicit record of the fact of assignment and plainly indicated to the defendant that by virtue of the assignment the plaintiff was entitled to receive the money. Furthermore, partial payment was actually made pursuant to, and the defendant's representatives accordingly acknowledged and signed, 22 statements of account dated 23 February 2005, nine statements of account dated 3 May 2005 and 14 statements of account dated 3 October 2005. These statements of accounts evidenced not just written notice but also the defendant's actual knowledge of and acquiescence to the second assignment. I therefore also find that the second assignment was a valid legal assignment.

Conclusion

42 In short, the defendant admitted the debt but simply put the plaintiff to strict proof of both assignments without providing any evidence to counter the plaintiff's case. Having considered the evidence and the parties' submissions, I find that the plaintiff has discharged its burden of proof and

that the benefit of the debt was validly assigned to first BSEA(2) by BSEA(1), and then by BSEA(2) to the plaintiff.

43 The plaintiff emphasised that both its witnesses were not only former senior employees of BSEA(2), with Ms Lim's involvement stretching back to the time of the first assignment when she was an employee of BSEA(1), but they were also principally and directly involved in the transactions in question and were therefore well placed to give evidence based on their personal knowledge of the plaintiff's, BSEA(2)'s and BSEA(1)'s positions in relation to the transactions in question. The plaintiff did not submit whether or how this fact should buttress the witnesses' credibility, but the point was that even if there was no legal assignment, the defendant's contention that there had been no intention to assign on either occasion could not stand. Considering that notice to the debtor is not a requirement for equitable assignments (*Tsu Soo Sin v Oei Tjiong Bin*) ([12] *supra*), both assignments would have been good in equity.

44 As I have found for the plaintiff on the basis that both alleged assignments were valid and effective in law, there is no need for me to consider the plaintiff's argument for estoppel by convention. Nevertheless, considering the elements of estoppel by convention (see *Travista Development Pte Ltd v Tan Kim Swee Augustine* [2008] 2 SLR 474 at [31]):

(a) The parties must have acted on "an assumed and incorrect state of fact or law" … in their course of dealing;

(b) The assumption must either be shared by both parties pursuant to an agreement or something akin to an agreement, or made by one party and acquiesced to by the other; and

(c) It must be unjust or unconscionable to allow the parties (or one of them) to go back on that assumption,

and considering that the statements of account were always signed by the defendant's Mr Reza Kamayata (who was not called as a defence witness) even when they were issued by the plaintiff, I think that if neither assignment was valid in law or equity there would be a very strong case for estoppel by convention.

45 The plaintiff's claim is therefore allowed and the defendant is to pay the debt, contractual interest at the rate of 2% above the average prime lending rate of the Association of Banks in Singapore pursuant to cl 15 of the conditions of sale, as well as the plaintiff's costs to be agreed or taxed.