IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1997] SGHC 169

Suit 1684/1992

Between

P T Mendjangan

… *Plaintiff*

And

Abbott Laboratories
(Singapore) Pte Ltd

… *Defendant*

GROUNDS OF DECISION

Version No 1: 29 Oct 2026 (23:45 hrs)

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P T Mendjangan v Abbott Laboratories (Singapore) Pte Ltd

[1997] SGHC 169

Suit 1684/1992
Lim Teong Qwee JC
20 June 1997

1 **Judgment:**

2 **GROUNDS OF JUDGMENT**

3 1. This action was commenced by writ issued in August 1992. The statement of claim was annexed and there has been no amendment until the trial.

4 2. The plaintiff is an Indonesian corporation and the defendant is a Singapore corporation. The plaintiff's claim is pleaded in this way. Paragraph 1 alleges that the plaintiff was appointed the distributor of the defendant's products and such appointment ceased in or about 1990. Paragraph 2 alleges that "in the course of the said appointment and cessation of the said appointment there became due and owing from the Defendant to the Plaintiff [certain sums of money]". Paragraph 3 alleges an agreement to pay interest. I pause here to say that in para 1 of its defence the defendant denies any dealing with the plaintiff and alleges that the appointment of the plaintiff as distributor was made under two successive agreements with Abbott Laboratories International Company ("Abbott USA") a Delaware corporation.

5 3. I return to the statement of claim. Paragraph 4 states:

6 "The sum of S$857,632.65 as of the 20th day of November 1990 and agreed interest thereon at the rate of 3% per month from the 20th day of November 1990 is due from the Defendant to the Plaintiff in respect of the said sums of monies pleaded in paragraph 2 above as the amount found due and owing from the Defendant to the Plaintiff on accounts stated between the Plaintiff and the Defendant."

7 When counsel opened the plaintiff's case she said there was only one account stated and para 4 of the statement of claim was amended accordingly. She also identified the document containing the account stated but it was impossible to see how the amount claimed was arrived at. After a short adjournment the amount claimed was amended to $601,233.74.

8 4. Paragraph 5 of the statement of claim alleges that the defendant remained indebted as claimed and para 6 alleges that the defendant had wrongfully failed to pay despite repeated demands.

9 5. In its defence the defendant in addition to the ground of defence I have referred to denies that any money was due to the plaintiff and denies the account stated and in the alternative counterclaims some $20,000 for goods sold and delivered if there were any dealings for which it was liable as alleged.

10 6. The further and better particulars as to the allegations in para 1 of the statement of claim allege that "the relevant documents containing or evidencing the distributorship agreement are found in various letters of communication between the Plaintiffs and the Defendants in particular the letters and agreements of the following dates" and this is followed by a list of 16 documents

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dated between February 1986 and May 1990. In the course of opening the plaintiff's case counsel said that the agreement for the appointment was an agreement dated 20 November 1986 made between Abbott USA and the plaintiff. This is in fact the first of the two successive agreements referred to in the defence. Counsel also referred to two documents said to evidence amendments to the agreement. The statement of claim and the further and better particulars were amended accordingly.

11 ***Claim***

12 7. In the statement of claim in its now amended form the claim is for $601,233.74 and is made against the defendant a Singapore corporation for money payable on an account stated. The account stated is in respect of money which became due and owing "in the course of" an appointment as a distributor of the defendant's products and the cessation of such appointment. The appointment is contained in an agreement dated 20 November 1986 made between a Delaware corporation and the plaintiff as subsequently amended.

13 **(1) Appointment of plaintiff**

14 8. Mr Sastra Munanto said in his affidavit that he was the managing director of the plaintiff. He said that he was approached by the defendant's managing director Mr Freddie Lee and that after several meetings and discussions he received a fax dated 23 January 1986 and "thereafter, several further letters and documents and agreement were forwarded by the Defendants to the Plaintiffs, all of which culminated in the Plaintiffs' said appointment as the Defendants' distributor".

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15 9. The communication of 23 January 1986 (which is clearly a telex and not a fax) says in item 1:

16 "I hope to give you letter of intent to appoint Mendjangan as non-exclusive distributor in next few days. Meanwhile US is working on agreement."

17 The sender appears to be "Freddie Lee, Abbott Singapore".

18 10. One of the several further letters is a letter dated 13 February 1986. The heading in the letter is "Letter of Intent". The letter says:

19 "I write to confirm that ABBOTT wants to appoint your company as our non-exclusive distributor in Indonesia.

20 Consequently we are preparing an agreement for your consideration which we will forward to you in the near future."

21 It appears to be signed by Mr Lee for the defendant.

22 11. Another of the letters is a letter dated 14 March 1986. It is also headed "Letter of Intent" and apart from the omission of "non-exclusive" it says exactly what the earlier letter says and appears to be signed by Mr Lee as area manager of the defendant. These were the only letters of intent. They were issued by the defendant but it is apparent that the agreement was being prepared in the USA.

23 12. The several documents referred to by Mr Munanto include the agreement of 20 November 1986 made between Abbott USA and the plaintiff. It is called "Distributor Agreement" and in it Abbott USA is described as a

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Delaware corporation. Clause 1 provides for the appointment by Abbott USA of the plaintiff as a distributor in Indonesia for the products listed in an attached document.

24 13. The first of the documents evidencing an amendment is an agreement in a letter from the defendant dated 22 September 1987 and signed by Mr Lee. It was also signed by Mr Munanto for the plaintiff. It appears to contain details of arrangements for continuing to carry into effect the agreement of 20 November 1986. The second document said to evidence a further amendment is another letter from the defendant signed by Mr Lee and dated 6 April 1990. It was not signed by anyone else. This letter says:

25 "As a result of a review on the distributor agreement by the legal department in US, (which is a standard procedure following your request for extension) we have to go back to the previous arrangement of shipping to you goods based on sales orders and not consignment orders."

26 The agreement of 20 November 1986 was for a fixed period of 3 years and would have expired in November 1989. If there was any letter containing a request for extension or any reply to the defendant’s letter of 6 April 1990 it has not been produced and if it has my attention has not been drawn to it.

27 14. There is another agreement by which the plaintiff was appointed a distributor of Abbott USA. It is dated 10 April 1990 and is made between Abbott USA and the plaintiff. This is the second agreement referred to in the defence. This agreement like the one dated 20 November 1986 also provides for the appointment by Abbott USA of the plaintiff as a distributor in Indonesia for the products listed in an attached document.

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28 15. Under cross-examination Mr Munanto said:

29 "Q: Put: Distributorship agreement between your company (plaintiff) and Abbott Laboratories International Co?

30 A: Agree. Freddie Lee, regional manager of Abbott, told us agreement had to be sent to HQ in America for them to sign over there.

31 Q: This agreement. Signed 20/11/86 between plaintiff and Abbott Laboratories International Co?

32 A: Yes.

33 Q: DB-37. Agreement. DB-60. Your signature?

34 (Note: DB-37 is the agreement dated 10 April 1990 and DB-60 is the signature page of that agreement.)

35 A: Yes.

36 Q: Entered into this agreement on behalf of plaintiff?

37 A: Yes.

38 Q: DB-37. Agreement between Abbott Laboratories International Co and plaintiff?

39 A: Don’t know contents. Not gone through contents.

40 Q: Date 10/4/90?

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41 A: Yes.

42 Q: Put: At 10/4/90 plaintiff was distributor of Abbott Laboratories International Co?

43 A: Yes.

44 Q: Products your company was to distribute at DB-61/74?

45 A: Yes.

46 Q: Your affidavit para 9(b). Put: Distributorship agreement referred are agreements I referred to? PB-15 and DB-37?

47 (Note: PB-15 is the agreement dated 20 November 1986.)

48 A: Agree."

49 16. There is an agreement between the defendant and the plaintiff among the other letters and documents Mr Munanto referred to. Under this agreement the plaintiff received some equipment for use in conjunction with some of the products which the plaintiff would purchase from the defendant. This agreement is dated 18 March 1986 and appears to have been made some eight months before the plaintiff's appointment. There is no evidence that this agreement or any products purchased by the plaintiff for use in conjunction with it had anything to do with the "appointment and cessation of the said appointment" giving rise to the indebtedness alleged in para 2 of the statement of claim.

50 17. On the evidence before me the plaintiff was appointed a distributor by Abbott USA and not by the defendant. The appointment was made under the

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two agreements dated 20 November 1986 and 10 April 1990. Both agreements provide for the plaintiff to place orders for and to purchase the products described in an attached list and for Abbott USA to deliver the products. There is no agreement identified in the statement of claim by which the plaintiff was appointed the distributor of the defendant's products and in my judgment the plaintiff has not proved its case as pleaded.

51 **(2) Account stated**

52 18. The account stated is said to be contained in pp 224 to 227 of the plaintiff's bundle of documents. In her closing submission counsel for the plaintiff conceded that all the items in the account were covered by appendix III to a letter dated 11 January 1991 from Abbott Singapore Diagnostics Division at p 208 of the plaintiff's bundle of documents. Appendix III is at p 214. There is no evidence that this is from the defendant but it has not been denied. The letter of 11 January 1991 clearly says that the claims in appendix III are not agreed unless Mr Lee and Mr Cacang Effendy of P T Abbott Indonesia both agree.

53 19. Page 224 of the plaintiff's bundle of documents is a four-page letter from the plaintiff to the defendant dated 26 January 1991. It is marked for the attention of Mr Lee. The letter begins:

54 "We would like to clarify again all the outstanding which Abbott should pay to PT MENDJANGAN :"

55 Item I of the letter says:

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56 "The following amount had been approved by Cacang Effendy (PT ABBOTT Indonesia), refer to result of the meeting on January 18, 1991."

57 The total amount shown in the summary that follows is $407,112.31. Item II says:

58 "The following amount is waiting for Freddie Lee’s approval, because Cacang can’t decide it."

59 The total amount shown in the summary that follows is $194,121.43. Item III refers to an amount the plaintiff must pay the defendant and does not appear to have been taken into account in the statement of claim but in the conclusion I have arrived at it is not relevant. The letter concludes:

60 "Thank you for your earliest reply to confirm all the amount above, especially for point (II)."

61 20. The letter of 26 January 1991 was signed by Ms Anna Iskandar for the plaintiff. It was not signed by anyone else. It does not allege that the two sums under items I and II had been agreed by both Mr Lee and Mr Effendy to be due to the plaintiff. In respect of item II it is clearly a request by the plaintiff for the defendant to confirm the amount due and there has been no such confirmation.

62 21. There is no evidence of any response to the plaintiff’s letter of 26 January 1991 but the plaintiff has produced a letter from the defendant dated 30 January 1991. It refers to invoices faxed to the plaintiff on 11 January 1991. These are the invoices sent with the defendant’s letter of 11 January 1991 with

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appendix III. It does not admit any money due to the plaintiff. It requests a response to the letter of 11 January 1991.

63 22. Under cross-examination Mr Munanto said:

64 "(To court): Freddie Lee faxed me to say Cacang Effendy and Sardjono Basuki would come to my office to discuss matters with me. I do not know actually meaning of express authority.

65 Q: Identify fax? DB-255?

66 A: Yes."

67 23. DB-255 is the defendant's letter of 11 January 1991. This is what it says:

68 "Re : Our telephone conversation on 9 January 1991

69 Attached are the following appendixes for your information.

70 1) Appendix I - Invoices which we will issue credit notes.

71 2) Appendix II - Invoices which are in dispute. Cacang will meet you on 19 January 1991 at 10 am to settle this. Please finalise by signing agreement. Any items which cannot be agreed will be treated separately. I hope most of the items will be finalized.

72 3) Appendix III - Claims which we do not agree unless Cacang and Freddie agree together."

73 and appendix III says:

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74 "Claims Not Agreed

75 $

76 1) PTM 791/A01/MEN/90 60,380.24

77 2) PTM 472/A01/MEN/90

78 Import Tax of 20% is not

79 accurate. Cacang will

80 obtain correct data. 468,964.29

81 3) PTM 470/A01/MEN/90 166,198.07 "

82 (Note: Item (3) as printed refers to "472" but the

83 parties agreed that it should be "470".)

84 24. In para 12 of Mr Munanto's affidavit he said:

85 "In the course of all these disputes, the Plaintiffs and Defendants sought to amicably resolve the matter and numerous communications ensued, and meetings were also convened. This culminated in a meeting on 18th January 1991 between the Defendants' duly appointed representatives, PTAB's Cacang Effendy and Sardjono Basuki, and the Plaintiffs' Tjandra Munanto and Anna Iskandar."

86 Under cross-examination Mr Munanto said Mr Effendy and Mr Basuki were appointed in writing by the letter of the defendant dated 11 January 1991.

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87 25. The defendant's letter of 11 January 1991 does not appoint Mr Effendy and Mr Basuki to represent the defendant or Abbott USA. In regard to appendix III what it says is that unless both Mr Effendy and Mr Lee agree the claims are not agreed.

88 26. Ms Anna Iskandar produced what appears to be a record of proceedings at a meeting on 18 January 1991. The meeting was attended by Mr Effendy, Mr Basuki, Mr Tjandra Munanto and Ms Iskandar. On item (1) of appendix III this is what was recorded:

89 "According to Cacang, Freddie Lee will decide for this matter."

90 On item (2) of appendix III this is what was recorded:

91 "ADD agreed to pay for item (1) up to item (12) S$335,964.52.

92 Still in pending to be discussed later with FL = S$118,590.37."

93 On item (3) of appendix III this is what was recorded:

94 "Summary : (Mendjangan agreed to pay) :

95 Sub total I S$ 706,914.02

96 Sub total II S$ 3,579.22

97 Sub total III S$ 21,791.00

98 Sub total IV S$ 234.00

99 _____

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100 S$ 732,518.24

101 Deducted for the fllwg amount :

102 Letter 0120/A01/MEN/90 S$ 957.60

103 0295/A01/MEN/90 S$ 1638.00

104 0305/A01/MEN/90 S$ 586.06

105 0446/A01/MEN/90 S$ 1094.40

106 0454/A01/MEN/90 S$ 26273.82

107 0462/A01/MEN/90 S$ 1647.19

108 0465/A01/MEN/90 S$ 262.11

109 0468/A01/MEN/90 S$ 39877.74

110 Balance payment for Aug wk S$ 1965.48

111 Sep wk S$ 1746.54

112 _____

113 Total S$ 76048.94 "

114 The record also shows that three items of claims by the plaintiff were still pending.

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115 27. Counsel for the plaintiff was unable to say what was the nature of the account stated that was the subject matter of the claim. As a claim by the plaintiff and admitted to be correct by the defendant the plaintiff has not proved the admission and there is no claim for the underlying liability. As a "real account stated" containing items of credit and debit and a balance struck it has not been proved that any balance was struck or agreed upon. Even if Mr Effendy had any authority on his own to strike a balance or agree any balance it appears from the evidence adduced by the plaintiff that no such balance has been struck or agreed. And DB-255 said to confer authority on Mr Effendy required the agreement of Mr Lee and Mr Lee has not agreed. The account stated sued on is clearly not of the class where a claim has been made by the plaintiff and the defendant has for valuable consideration agreed to accept it as correct. See *Camillo Tank Steamship Co Ltd v Alexandria Engineering Works* (1921) 38 TLR 134 at p 143 (left) per Viscount Cave.

116 28. For these reasons I dismiss the plaintiff's claim with costs.

117 ***Counterclaim***

118 29. The counterclaim is clearly unsustainable. It is conditioned upon the defendant being liable to the plaintiff in their dealings with each other. Since I have found that the defendant is not liable the counterclaim must also fail.

119 30. The counterclaim also fails as the defendant's evidence is based substantially on entries in its accounting records and no evidence has been adduced as to the underlying transactions. Further a majority of the defendant's documents evidencing its transactions with the plaintiff during the period 1986 to 1990 were destroyed in a warehouse fire on 11 May 1995. Entries in books of accounts regularly kept in the course of business by the defendant are relevant

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but such statements alone will not be sufficient evidence to charge the plaintiff with any liability. See s 34 of the Evidence Act.

120 31. The defendant's counterclaim is dismissed with costs.

121 Dated this 20th day of June 1997.

122 LIM TEONG QWEE

123 JUDICIAL COMMISSIONER

124 SUPREME COURT

125 Solicitors: Esvaran & Tan

126 Drew & Napier

Lim Teong Qwee JC

Baltej Kaur for the plaintiff
Morris John and Cecelia Girvin for the defendant

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