

THE HIGH COURT

1987 No. 4029P

BETWEEN

DENIS JOSEPH O'SULLIVAN

PLAINTIFF

AND

ROSICAL LIMITED AND PASCALE LIMITED

DEFENDANTS

Judgment of Egan J. delivered the 28th day of July 1988.

This Judgment will be mainly concerned with the Plaintiff's claim against Rosical Ltd. who defended the case. It will be quite short as the issues to be decided are few.

By an agreement evidenced in writing in the form of a letter dated the 2nd day of April 1984 which was signed by Dr. W.P. Millrine under the words "For Alembic (Holdings) Ltd." and by the Plaintiff it was agreed that a new subsidiary company would be established to manufacture cyanoacrylates and other related products and that 20% of the issued share capital of the new company would be given to the Plaintiff without payment, that he would be technical director and a member of the Board of the new company, that he would be paid a salary of £18,000 per annum together with expenses, that he would be entitled to holidays as therein stated and that he would be entitled

to a company car and that, in return, the Plaintiff would assign all Patent rights held by him in respect of a Hand Cream and a Psoriasis preparation to the new company.

In the month of May 1984 the Plaintiff commenced working for the new company which had been formed and was known as Alembic Chemicals Limited and thus the agreement hereinbefore referred to commenced to be performed even though there were disputes which need not be discussed.

The Patent rights owned by the Plaintiff were not, however, assigned to Alembic Chemicals Limited and this brings us to the main issue of fact which requires to be determined. The Plaintiff alleges that sometime in August or September 1984 Dr. Millrine suggested to him that instead of assigning his Patent rights as agreed to Alembic Chemicals Ltd. (of which he was a working director with Dr. Millrine and a Dr. Healy) he should transfer the rights to another company which would be a holding company and not a trading company and that this would enable tax free income to be generated. The Plaintiff gave evidence to the effect that, having thought about the proposition, he agreed to it subject to one qualification i.e. that in the event of Alembic Chemicals Ltd. going into receivership he would require the Patent rights to be transferred back to him.

A letter dated the 26th September 1984 was written to the Plaintiff on the notepaper of Alembic Chemicals Ltd. and it was signed by Dr. W.P. Millrine and Dr. J. Healy. It was in the terms following:-

"Dear Dr. O'Sullivan,

As agreed, in the event of Alembic Chemicals Ltd. going into receivership and/or liquidation, we will arrange to have the Patents transferred to you".

Dr. Millrine, however, gave evidence that this letter dated the 26th September 1984 was written at a time when the original agreed intention i.e. an assignment to Alembic Chemicals Ltd. was still alive and there had not been any thought or discussion in relation to an assignment to some other holding company or companies. He said that the letter was only intended to operate if the Patents were assigned to Alembic Chemicals Ltd.

If Dr. Millrine's evidence is truthful one would wonder why did the Plaintiff sign the letter dated the 2nd April 1984 when it did not contain any promise or agreement such as that contained in the letter of the 26th September 1984. If it was important to the Plaintiff to receive this assurance, why did he wait almost five months before demanding it?

Did something happen which influenced the Plaintiff to seek the undertaking given in the letter dated 26th September 1984? I have come to the conclusion that the seeking and obtaining of the undertaking arose because of the new proposal and agreement that the Patent rights would not be transferred to Alembic Chemicals Ltd. but would be assigned to new holding companies.

Rosical Ltd. had, in fact, been incorporated on the 3rd day of August 1984 and had as its first directors John H. Dockrell and Laurence K. Shields. Letters of resignation from these two directors were produced at a

meeting of the company on the 11th day of September 1984 and the new directors were Dr. Millrine, Dr. Healy and Dr. O'Sullivan. It is clear, therefore, that Dr. Millrine and Dr. Healy were already deeply involved with Rosical Ltd. prior to their signing the letter dated 26th September 1984. It is difficult to believe and I do not believe that discussions in relation to a transfer to Rosical Ltd. had not taken place prior to the 26th September 1984.

There were other conflicts in the evidence with which it is not necessary to deal specifically but, in general, I prefer and accept the evidence given by the Plaintiff.

Assignments of the Patent rights were made to the Defendants in 1985 by the Plaintiff and these assignments were unconditional on their face. The Plaintiff had no legal advice in regard to them but I am fully satisfied that the Defendants took these assignments with full notice of the agreement or undertaking contained in the said letter dated the 26th September 1984 and that they are bound in law by the equity which accrued to the Plaintiff by virtue of the said agreement.

On the 4th day of December 1985 a Petition for the winding-up of Alembic Chemicals Ltd. was presented by the Plaintiff and by Order of the High Court made the 25th day of February 1987 the High Court ordered that the said Company be wound up. A receiver was appointed on the 6th day of March 1987. On the happening of these events the said agreement dated the 26th day of September 1984 became operative.

The Court accordingly declares that the Plaintiff

is now and has been since the 6th day of March 1987
entitled to all the patents, inventions and the various
patent applications assigned by him to the Defendants.

J. F. Egan.

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