

Hoya Corp v Asahi Glass Co Ltd and others  
[2010] SGHC 15

**Case Number** : Suit No 789 of 2008 (Registrar's Appeals Nos 196, 205 and 206 of 2009)  
**Decision Date** : 14 January 2010  
**Tribunal/Court** : High Court  
**Coram** : Choo Han Teck J  
**Counsel Name(s)** : Kang Choon Hwee Alban, Koh Chia Ling and Chua Kian Kiong Nathanael (ATMD Bird & Bird LLP) for the plaintiff; Low Chai Chong and Lim Jun Hao Alvin (Rodyk & Davidson) for the defendants.  
**Parties** : Hoya Corp — Asahi Glass Co Ltd and others

*Civil Procedure*

14 January 2010

**Choo Han Teck J:**

1 The three Registrar's Appeals (RA 196, 205 and 206) were heard before me. RA 196 was an appeal by the defendants against the assistant registrar's dismissal of their application to strike out the plaintiff's Statement of Claim in this action. RA 205 was the defendants' appeal against the order for the filing of a Supplementary List of Documents and discovery of various documents specified in Schedule A attached to the plaintiff's application in summons 1901 of 2009X. RA 206 was the defendants' appeal against the assistant registrar's order granting leave to the plaintiff to amend its Statement of Claim in this action.

2 The principal parties were the plaintiff and the first defendant. They were companies in Japan. They were rival specialist lens manufacturers. The second and third defendants were subsidiaries of the first defendant. The fourth defendant averred that they were not involved in the present dispute between the principal parties. The subject matter in dispute was whether the first defendant was in breach of the plaintiff's patent rights in a very specific part of a glass lens product, namely, the rim of the lens. The plaintiff claimed patent rights over the glass substrate in the rim of the lens that was polished to a specific degree. This claim was disputed and the issue would be the focus of the trial in this action. A similar action is being pursued in Thailand against the second defendant. The writ and statement of claim was filed on 28 October 2008. The brief claim alleged that the defendants had infringed the plaintiff's patent and had disposed of or were disposing of the product in question (the glass substrate). The defendants asked for further and better particulars on 12 December 2008. The plaintiff declined to answer on the ground that the defendants already had the information. The defendants wrote to the plaintiff seeking clarification of its claim. The plaintiff obtained an order from Lee Seiu Kin J on 3 March 2009 to against the disposal of 50 glass substrates belonging to the defendants, and on 27 March the plaintiff served a Notice of Experiments on the defendants intending to prove the infringement of its patent by the defendants. The defendants rejected the results of the experiments claimed by the plaintiff.

3 On 23 April 2009 the plaintiff obtained a list of discovery against the defendants. This was the subject of appeal in RA 205. Included in this list was an inventory of the defendants' glass substrates, shipping documents, purchase specification documents, supply specification documents, shipping inspection and lot acceptance test data, design documents, manufacturing flow charts, instruction

manuals, and design documents relating to the composition of the glass material. On 5 May 2009 the defendants applied to strike out the plaintiff's statement of claim. On 8 May 2009 Lee J ordered the 50 substrates to be released to the plaintiff for experiments. The defendants complied. On 21 May 2009 the plaintiff made an urgent application to amend its statement of claim.

4 On appeal, I was satisfied that the original statement of claim was vague as to the acts of the alleged joint tortfeasors, and in particular, there was no clear averment as to how they had acted in concert with each other. More importantly, there was no pleading as to what the act of infringement was. However, I was of the view that it was not unfair at this stage to allow the plaintiff to amend its statement of claim to address its claim more specifically. The defendants' appeal against the order allowing the amendment was accordingly dismissed. The amended claim appeared to have addressed the complaint of inadequate pleading. The ultimate question as to how successful the amendment was is one for the trial judge to decide. The order granting leave to amend was therefore upheld. Once that was the case, the basis for the defendants' application to strike out the claim faded, and their appeal against the refusal to strike out was inconsequential and dismissed with no order as to costs. I disallowed costs to the plaintiff because I was of the view that the defendants' application made it aware that its original pleading was inadequate.

5 In respect of the appeal against the further discovery in RA 205, the plaintiff did not satisfy me that the orders were relevant or fair at this stage, and under the circumstances. The burden of proof lay with the plaintiff. The documents sought were commercial documents of the defendants in respect of their business. In the circumstances of the present case and the nature of the product, I was of the view that the seizure of the defendants' glass substrates adequately, if not generously, gave it the opportunity to discover important and relevant information regarding its claim. Anything more at this point in the absence of any more direct and clearer proof of the need to examine the rival commercial and industrial papers may give the plaintiff a right it would not, and should not have. On the balance, I was of the view that it would be fairer to disallow the discovery sought. The defendants appeal in RA 205 was therefore allowed.

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