

**IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY**

CIV2006-404-3523

UNDER	The Patents Act 1953
IN THE MATTER OF	Infringement of New Zealand Letters Patent No. 328961
BETWEEN	NICHOLAS ROBERT COLLINS Plaintiff
AND	DALGANA PTY LIMITED First Defendant
AND	MSA (AUST) PTY LIMITED Second Defendant
AND	CRANE DISTRIBUTION NZ LIMITED Third Defendant
AND	HAVERSTOCK SAFETY & ENVIRONMENTAL LIMITED Fourth Defendant

Hearing: 11 May 2007

Appearances: A McDonald for Plaintiff
J A Hazel for First, Second and Fourth Defendants

Judgment: 22 May 2007 at 4.00 pm

JUDGMENT OF ASSOCIATE JUDGE H SARGISSON

Solicitors:
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[1] The first, second and fourth defendants have filed an application seeking orders “directing the plaintiff to provide further and better particulars of breaches”.

[2] The application was filed on 8 March 2007 and states it is made in reliance on r 185 of the High Court Rules.

[3] Although the application seeks orders in general terms, it includes a number of grounds which provide some clarification of what the first, second and fourth defendants are seeking. Counsel provided further clarification at the hearing. Mr Hazel confirmed that the ground these defendants rely on is ground b, which reads:

That the plaintiff’s amended particulars of breaches dated 25 January 2007 is incomplete. R 725ZK requires the plaintiff to state at least one instance of an infringement. The amended particulars of breaches do not provide an instance of infringement by (at least) the first defendant.

[4] Mr Hazel also confirmed that the application is confined to a request that the plaintiff give one instance of the first defendant’s having infringed the plaintiff’s patent in the manner alleged in paragraph 1 of the Amended Particulars of Breaches dated 25 January 2005. Paragraph 1 states:

1. Prior to the issue of the notice of proceeding ... the first, second ... defendants have jointly and/or severely infringed New Zealand Letters Patent No. 328961 by offering for sale and/or selling in New Zealand, without the authority of the plaintiff, a “permanent” roof anchor under the trademark **GOTCHA SAFE** ... described and illustrated in the attached promotional material which embodies the invention described in the Complete Specification ... as claimed in the claims 1, 2, 3, 6 and 8 thereof.

[5] Ms MacDonald was content that I should deal with the application as being confined to such a request and I proceeded accordingly.

The parties’ positions

[6] There is no dispute that the statement of claim does not contain and was not delivered with particulars of infringement by the first defendant. The relevant part of the statement of claim pleads: