Trek Technology (Singapore) Pte Ltd v FE Global Electronics Pte Ltd and Others and Another Suit
[2003] SGHC 185

Case Number : Suit 609/2002, 604/2002, RA 281/2003

Decision Date : 25 August 2003

Tribunal/Court : High Court

Coram : Choo Han Teck J

Counsel Name(s) : Ponnampalam Sivakumar (Ella Cheong and G Mirandah) for third defendants; Tony Yeo and Joanna Koh (Drew and Napier LLC) for plaintiffs

Parties : Trek Technology (Singapore) Pte Ltd — FE Global Electronics Pte Ltd; Electec Pte Ltd; M-Systems Flash Disk Pioneers Ltd

Civil Procedure – Discovery of documents – Specific discovery – Interest in fair disposal of matter – Whether reciprocal order for discovery of internal e-mail should be made

Civil Procedure – Discovery of documents – Whether discovery of class of documents should be allowed – Whether documents relevant to proceedings – Rules of Court (Cap 322, R 5, 1997 Rev Ed) O 24 r 5

Civil Procedure – Pleadings – Amendment – Whether court should consider matters deleted by amendment

1 This was an appeal by the third defendant in Suit No 609 of 2002 against an order for discovery. The third defendant and the plaintiff are involved in a dispute over the patent rights of a product popularly known as the 'thumb drive'. A single thumb drive, as counsel for the plaintiff Mr Yeo tells me, is capable of holding as much data as a hundred 'floppy disks'.

2 In their re-amended defence and counterclaim the third defendant averred that they had met the plaintiffs several times (before the action commenced) to discuss plans for collaboration. They further averred that 'correspondence were exchanged primarily by email'. This re-amended statement of claim was amended pursuant to an order of court dated 14 October 2002.

3 The plaintiffs then applied for specific discovery of all internal email within the third defendant's organisation. Mr Yeo argued that it has occurred to the plaintiffs that email was the main mode of communication among the top executive officers of the third defendants. He surmised that if those officers had sent correspondence by email to the plaintiffs they would undoubtedly have done so amongst themselves. He further submitted that in May 2001, the plaintiffs' patent agent from the United States of America had visited the third defendants and told them in great detail why the plaintiffs' patent does not infringe the third defendants' patent. Counsel submitted that the plaintiffs thus concluded that this visit must have engendered much internal discussions and they were not likely to have been conducted through email.

4 These arguments persuaded the assistant registrar who granted the order for discovery of documents between July 2000 and May 2002. The third defendant appealed against this order. The arguments before me were largely the same as that made below. Mr Sivakumar, counsel for the third defendant argued that the request for specific discovery arose in respect of matters pleaded in the defence and counterclaim. He submitted that the plaintiffs had taken the position that all those matters were irrelevant. Consequently, the third defendant had amended and deleted those references. I agree with Mr Yeo, only insofar as the fact that once matters have been raised the court may take cognisance of them even though they were subsequently deleted by amendment. But, the point is, ought an order for discovery be made for a specific class of documents arising from those matters pleaded? That depends on the circumstances of each case.

5 In the present case, the plaintiffs say that the reference to correspondence by email between the third defendant and the plaintiffs made the plaintiffs realise that the senior officers of the third defendant communicate mainly be email. Thus, there must be some internal email on record. If that was the basis, the argument applies both ways. Mr Yeo conceded that it might but argued that the third defendant must make the application and he would then take instructions as to whether his clients had similar internal documents. In my view, the central issues in this action concern the validity of the patents of the parties competing products. The battle will involve highly technical details of technology and also of law. Given the circumstances, I would like to see such a fight be conducted evenly and openly such that if a class of documents are to be disclosed, the reciprocal order should be made in respect of the other party. Since I am not convinced that there are any relevance in the internal email at this point, although the trial judge may, with more information think otherwise, the appropriate order should be to reserve the right to make the said discovery application before the trial judge. In order that there is no delay in producing the documents when the time comes, I also ordered parties to have such documents, if any, ready for disclosure when and if so ordered by the trial judge.

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