

Amsterdam Appeal Court upholds judgment rejecting claim for disclosure of documents pending disclosure in underlying arbitration

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In *EssilorLuxottica v GrandVision* (ECLI:NL:GHAMS:2021:941), the Amsterdam Appeal Court upheld a judgment rejecting applications for the disclosure of seized documents due to the decision on disclosure requests in the underlying arbitration.

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The Amsterdam Appeal Court has upheld a judgment rejecting EssilorLuxottica's (EssiLux) application for disclosure of documents by HAL Optical Investments (HAL) and GrandVision relating to a share purchase agreement (SPA) affected by the COVID-19 outbreak.

In July 2019, EssiLux and HAL entered into the SPA in respect of GrandVision's shares for about EUR5.5 billion, containing an arbitration clause. EssiLux and GrandVision also entered into a related support agreement (SA), also containing an arbitration clause. The proposed takeover is under investigation by the European Commission. Arbitration proceedings are pending between GrandVision and HAL on the one hand and EssiLux on the other, regarding whether GrandVision complied with its post-COVID-19 obligations under the SA.

After obtaining leave in July 2020, EssiLux seized documents at GrandVision's and HAL's main offices in the Netherlands. It then sought disclosure of the documents in urgent relief proceedings before the Amsterdam District Court, which would entitle it to actually access the documents, but that was rejected. It then appealed that decision, but only as regards GrandVision.

First, the appeal court addressed whether it had jurisdiction to rule on the disclosure application despite the arbitration clause in the SA. As the parties explicitly agreed to arbitration without prejudice to each party's right to seek injunctive relief in urgent relief proceedings before the Amsterdam District Court, the court ruled it had jurisdiction.

The court then ruled that EssiLux had an urgent interest in obtaining the documents because written submissions were soon to be filed in the arbitration.

Applying the criteria for disclosure of documents in Dutch civil proceedings, the court ruled that it could not establish whether the disclosure EssiLux sought fell within the limited disclosure agreed to by the parties in the arbitration. Moreover, the tribunal had already ruled on disclosure requests. To the extent that the tribunal had rejected the request for disclosure, the court considered it uncertain that EssiLux could nonetheless be entitled to those documents. In respect of the documents over which the tribunal had ordered disclosure, EssiLux did not need to obtain these through state court proceedings, as GrandVision had stated that it would comply with any order for disclosure by the tribunal.

The decision indicates that the Dutch courts give weight to an arbitral tribunal's disclosure orders. In this case the court found no grounds for ordering further disclosure than that ordered by the tribunal.

Case: *EssilorLuxottica v GrandVision* (ECLI:NL:GHAMS:2021:941) (6 April 2021).

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