Ting Kang Chung John *v* Teo Hee Lai Building Constructions Pte Ltd and others
[2010] SGHC 20

Case Number : Originating Summons No 1807 of 2006

Decision Date : 18 January 2010

Tribunal/Court : High Court

Coram : Quentin Loh JC

Counsel Name(s) : Ng Yuen (Malkin & Maxwell LLP) for the Plaintiff; Thulasidas s/o Rengasamy Suppramaniam (M/s Ling Das & Partners) for the First Defendant; 2nd and 3rd Defendants in person.

Parties : Ting Kang Chung John — Teo Hee Lai Building Constructions Pte Ltd and others

Arbitration – Extension of Time to Issue Award

18 January 2010 Judgment reserved.

Quentin Loh JC:

1 This unfortunate saga started off as a not uncommon building and construction dispute between the owners of a property and a contractor. Unusually, it soon became a full blown mêlée which also embroiled the arbitrator appointed to resolve their disputes.

2 The parties involved in these Consolidated Originating Summonses, (No 1807 of 2006/S and No 1231 of 2008/W), are:

(a) Mr Anwar Siraj ("Siraj"), and his wife, Ms Norma Khoo Cheng Neo ("Norma"), who were the owners of a property, 2 Siglap Valley, Singapore ("the Property"); references to "the Sirajs" or "Siraj" will also include, unless otherwise stated, Norma;

(b) Teo Hee Lai Building Construction Pte Ltd ("the Contractor"), is a company that carries on the business of building and construction and Mr Teo Hee Lai ("Teo"), is a director of the Contractor who was dealing with the construction work on the Property; and

(c) Mr John Ting Kang Chung ("the Arbitrator"), an architect of many years standing and a former Treasurer and two-term President of the Singapore Institute of Architects.

3 The Arbitrator is the Plaintiff in Originating Summons No 1807 of 2006/N, the Contractor is the 1st Defendant, Siraj is the 2nd Defendant and Norma is the 3rd Defendant. In this originating summons, the Arbitrator is asking for the following orders:

(a) that time for the Arbitrator to issue the Arbitration Award be extended to 15 April 2005;

(b) that the Defendants do jointly and severally pay the Plaintiff the sum of $199,178.40 being the arbitrator's fee outstanding and due under the Arbitration; and

(c) costs.

4 The Sirajs are the Plaintiffs in Originating Summons No 1231 of 2008/W, the Arbitrator is the 1st

Defendant and the Contractor is the 2nd Defendant. In this originating summons, Siraj and Norma are asking for the following orders:

(a) that the Arbitration Award be set aside;

(b) the Arbitration Agreement shall cease to have effect;

(c) any and all pending and/or unresolved disputes and/or new disputes which may arise hereafter may be referred to the Courts for resolution/determination;

(d) the costs, losses and/or damages suffered by Siraj and Norma arising from the failed arbitration and/or misconduct of the Arbitrator/Contractor be assessed;

(e) any other relief and/or remedies that Court deems fit and just; and

(f) costs.

The Background Facts

5 Siraj and Norma, as owners of the Property, entered into a building and construction contract with the Contractor to demolish the one-storey house on the Property and reconstruct a larger two-storey house with an attic, basement and swimming pool for S$1.2 million. The Letter of Award was dated 29 December 1999. The Contract was on the standard Singapore Institute of Architects Form, (Lump Sum 6th Edition, August 1999) and dated 30 December 1999. The construction period was 52 weeks and completion date was 9 January 2001. Sometime on or about 5 April 2001, pursuant to a disputed joint inspection, the Property was handed back to Siraj and Norma. The project architect did not issue a Completion Certificate nor a Certificate of Partial Re-Entry. However the Certificate of Statutory Completion was issued by the Building and Construction Authority on 30 April 2002. By that time disputes and differences had already arisen between the parties. These disputes included fairly common building and construction issues including, (but not limited to), defective workmanship, defects, rectification, delays, entitlement to extensions of time, whether time was at large, whether works were complete by 9 January 2001, whether a certificate of partial re-entry should have been issued, payment of $265,190.17 under a progress claim, a claim for $10,557.50 for Setsco testing (on waterproofing) and report, release of the retention sum, outstanding works and claims for work done.

6 The Contract contained an arbitration clause, Clause 37(1), requiring the parties to refer any and all disputes arising between them to arbitration. Under this clause, if the parties failed to agree on an arbitrator, the Singapore Institute of Architects, ("the SIA"), would appoint an arbitrator for them within 28 days of written notice being given by any party to the SIA. This clause also provided that the arbitration proceedings were to be conducted in accordance with the Arbitration Rules of the SIA, ("the Rules"), for the time being in force. The Rules were first published by the SIA in January 1999 and incorporated for the first time in August 1999 in the 6th Edition of the SIA Contract Forms.

The Course of the Arbitration Proceedings

7 The Contractor sent two letters to the project architect on 25 July and 6 August 2001, which listed some of the disputes to be submitted to arbitration and referred to the appointing of an arbitrator. As notices to arbitrate, these were a little ambiguous. On 16 August 2001 the Contractor gave a proper notice to the Sirajs reciting the disputes that had arisen between them and referring their dispute to arbitration pursuant to Clause 37 of the Contract. Further letters met with no

response, even when the Contractor's lawyer, Mr Das of Ling Das & Partners, ("Mr Das" and "LDP" respectively), wrote on 31 August 2001. Eventually, Messrs Khattar Wong & Partners replied on 1 October 2001 stating that they acted for the Sirajs and asked LDP to write to the SIA to appoint an arbitrator. LDP did so on 8 October 2001. The Chairman, ADR Committee of the SIA replied on the same day stating the fees payable, *viz*, a registration fee of $515 payable to the SIA, a minimum non-refundable fee of $2,000 ($1,000 to be paid by each party), to be paid to the Arbitrator before the commencement of proceedings and noting that the Arbitrator was entitled to ask for an additional security deposit. The time charge of $350 per hour was also stated as being applicable and the Arbitrator would have to be reimbursed for all out-of-pocket expenses incurred by him. The Contractor paid the $515 and the President, SIA nominated the Arbitrator on 7 December 2001. The Arbitrator accepted the nomination on 10 December 2001 and the SIA President confirmed the appointment on 12 December 2001 to LDP.

8 There were some delays in paying the minimum non-refundable fees to the Arbitrator. The Contractor paid its share of $1,000 on 28 December 2001 but the Sirajs despite being represented by Messrs Khattar Wong & Partners, did not. Finally, in order to obtain a preliminary meeting with the arbitrator, the Contractor paid the Sirajs share of $1,000 on 30 January 2001 to the Arbitrator. On 11 March 2001, at the first preliminary Meeting, the Arbitrator issued directions on the filing of pleadings: the Points of Claim, the Points of Defence and Counterclaim and the Reply and Defence to Counterclaim. By this time, Siraj had discharged Messrs Khattar Wong & Partners and appointed Messrs Tan, Rajah & Cheah to represent them. A site inspection took place on 14 March 2002 with lawyers from Messrs Tan, Rajah & Cheah being present.

9 By 11 June 2002, (3 months after the first preliminary meeting), all the pleadings had been filed. Siraj applied for and was allowed to file a Reply (*ie*, a Rejoinder) with regard to the Counterclaim. The Arbitrator wrote to the parties on 10 June 2002 stating that he would convene a meeting at a convenient date. Siraj's solicitor wrote to the Arbitrator on 12 June 2002 for the hearing to be conducted as soon as possible because of the serious defects. Nothing further was heard from the Arbitrator despite the 12 June 2002 letter and reminders on 31 July 2002 and 15 August 2002. Meanwhile discovery took place. During this process there were valid complaints by Siraj about his abortive attempts to inspect the Contractor's documents. By a letter dated 5 September 2002, the Arbitrator requested each party to pay $8,250 to him, making a total of $18,500, for "...the estimated arbitration fees…" (including $2000 which had earlier been paid). Both Siraj and the Contractor complied and paid. AEICs were filed and exchanged by early October 2002.

10 Pursuant to the repeated requests by Siraj's solicitor, who by then was Mr Raman of Messrs G Raman & Partners, the Arbitrator fixed a meeting on 29 August 2002. At this meeting, Mr Raman raised an oral application for security for costs as their counterclaim was for about $1 to $1.2 million, the Contractor's claim was only for about $300,000 and the Contractor's paid up capital was only around $400,000. LDP objected and asked that a formal application be filed and supported by affidavit evidence. Siraj complied. In a tit-for-tat measure, the Contractor also applied for security for costs.

11 These security for costs applications were heard by the Arbitrator on 23 September 2002. The Arbitrator then adjourned to consider his decision on both applications. Siraj wrote to the Arbitrator on 30 October 2002 enquiring about the outcome of the applications. The Arbitrator replied on 31 October 2002 that he had faxed a letter to the parties on 11 October 2002. Mysteriously, neither party received that letter which read:

> Reference the hearing on 23.9.02.
>
> Please be informed that I will need to consult an expert to advise on the quantum of a security

> for costs and damages.
>
> The fee chargeable by the expert is to be shared equally by the claimants and respondents.

The Arbitrator then sent another letter dated 30 October 2002 which stated:

> I should clarify that I intend to appoint an expert to advise me in relation to procedural matters relating to arbitration, which would include the security for costs application that has been made before me.

To a letter from Siraj asking whether counsel could assist him in any difficulty he may be having on procedural matters and pointing out that expert assistance was sought only on specific issues, the Arbitrator replied on 13 November 2002 stating that he had not previously decided to award security for costs and damages and had not delegated his duty to another person. He also stated that he had since made his decision on the applications and had sent notice of the decision to the parties without having consulted anyone on the applications. He said he intended to consult counsel solely on procedural issues as and when the need arose. In another letter of 13 November 2002, the Arbitrator ruled:

> With regard to the application for security for cost and damages, having heard the parties' arguments, I rule and direct that the parties' applications are to be dismissed with costs in any event.

12 This flip-flopping certainly would not engender any confidence in the parties to an arbitral dispute. Not surprisingly, from thereon, innumerable applications were taken out and separate proceedings initiated, both in arbitral proceedings, the Subordinate Courts and the High Court by the Sirajs. Quite a few these applications and proceedings reached the Court of Appeal. The Sirajs made a call on the performance bond issued by Tai Ping Insurance Company Ltd on 28 September 2001. The Contractor applied for and obtained an injunction to prevent payment under the performance bond. This injunction was later discharged, then restored on appeal to the High Court and eventually discharged by the Court of Appeal on 24 October 2002. The Sirajs received payment of $120,000 on the bond on or around 8 November 2002. This resulted in DC Suit No 4018 of 2001/N, reported at [2005] SGDC 3, where Siraj claimed damages due to the 408-day delay in making payment under the performance bond. This particular action reached the High Court on appeal in DCA No 19 of 2004/R. On 6 April 2005, Lai J only awarded interest for the delay in making payment, holding that Siraj had failed to prove that he suffered any loss or damage and each party was ordered to pay its own costs.

13 Siraj also commenced OM No 26 of 2002 on 25 November 2002 to remove the Arbitrator on the grounds of, *inter alia*, delays, misconduct relating to requests for discovery, documents, security for costs, hearing dates and allowing alleged fraudulent and fictitious documents into the arbitration. Because of this application, the Arbitration dates fixed for November 2002 had to be vacated. OM No 26 of 2002 was dismissed by Tay J on 24 March 2003; this is reported in [2003] SGHC 64.

14 In a letter dated 17 March 2003, Siraj listed 22 interlocutory applications he wished to make. This was heard on 14 April 2003. The hearing lasted some 5 hours, after approximately 6 of these applications, the Sirajs, who were represented at that time by Mr Raman, decided not to participate further as they were dissatisfied with the way the Arbitrator handled the interlocutory applications. The Arbitrator dismissed all 22 applications by a letter dated 30 April 2003.

15 On 13 May 2003, the Arbitrator wrote to the parties stating that a considerable amount of time had been spent by him in the arbitration and the deposit of $18,500 previously paid to him was not

enough to cover the fees payable for the work done to date and for the work yet to be done. He stated he had spent approximately 130 hours as of 5 May 2003. The Arbitrator therefore made a call under Article 13.1 of the Rules for each party to deposit $25,000 to secure his fees and expenses and that these sums were to be paid by 27 May 2003. The Arbitrator also drew the parties' attention to Article 13.5 of the Rules. Siraj protested and queried the time spent by the Arbitrator. The Arbitrator replied on 6 June 2003 enclosing a 12-page itemised time sheet from 15 January 2002 to 5 May 2003 showing the breakdown of his 131 hours and 40 min of time spent in the arbitration proceedings. On 29 August 2003, the Arbitrator sent another reminder to the parties to deposit $25,000 each to account of fees and expenses. The Contractor forwarded his $25,000 to the Arbitrator on 10 September 2003 but the Sirajs did not. On the 24 September 2003, the Arbitrator noted payment by the Contractor and directed the Sirajs to pay their $25,000. In this letter he also invited the Contractor to consider paying the Sirajs' $25,000 and noted:

> If the Claimants do pay the Respondents' share of the deposit, I am prepared to consider making an order under Article 13.3 of the SIA Rules in respect of the payment of S$25,000 to secure the payment of that sum to the Claimants, but I would of course have to hear the parties beforehand.

The Arbitrator's reference to Article 13.3 of the Rules is erroneous as it provides for security for costs and not the payment of a deposit by one party on behalf of a defaulting party. Article 13.3 of the Rules provided that the Arbitrator shall have the power to order any party to provide security for the legal or other costs of any other party by way of deposit or bank guarantee or in any other manner the Arbitrator thinks fit. What the Arbitrator must have meant was that if the Contractor paid the respondents' share of $25,000, he would give credit for that sum by treating payment of that sum appropriately in his eventual award or as part of the costs payable in the arbitration.

16 In the meanwhile, Siraj appealed against the decision of Tay J in OM No.26 of 2002 by filing CA 10/2003 and the arbitration hearing, re-fixed for 2 June 2003, had to be postponed again. Mr Das accepted however this was by consent because if the Court of Appeal agreed with the Sirajs and removed the arbitrator, then there was no point in the meanwhile continuing with the Arbitration.

17 To return to the course of the arbitration, the Court of Appeal dismissed the Sirajs' appeal against Tay J's decision in OM 26 of 2002 on 18 August 2003. On 26 August 2003, the Arbitrator wrote to the parties stating that he understood that the appeal from Tay J's decision in OM No 26 of 2002 had been dismissed by the Court of Appeal and directed that the parties appear before him on 10 September 2003 to take hearing dates. The meeting to take dates for the hearing was contentious with Siraj writing rude and unhelpful letters to the Arbitrator before and after the meeting. By then Siraj was representing himself whilst Mr Raman continued to represent Norma. Dates were suggested, discussed and narrowed down to (a) 17 to 28 November 2003, excepting 25 November 2003, and/or (b) 1 to 19 December 2003. Mr Ravidass, (Mr Raman's colleague), said Mr Raman's diary was free on those dates but he would still need to take instructions from Norma as she was on hospitalisation leave. Siraj objected to the meeting on a number of grounds including the ground that a District Court Judge had not fixed dates for an assessment of damages in a matter where the Sirajs were plaintiffs and where Mr Das was for the third party. Siraj therefore disagreed with the Arbitrator's proposed hearing dates in two tranches from 17 to 28 November 2003, but excluding 25 November 2003, and 1 to 5 December 2003 as set out in the Arbitrator's letter dated 24 September 2003. (Subsequent to that meeting, the Subordinate Courts did not fix a date for the assessment but fixed a PTC for 3 October 2003).

18 The Arbitrator wrote to the parties on 1 October 2003, noting that the parties were to revert to him on the proposed dates. He was available; Mr Das and his client confirmed they were available

but he had still not heard from Siraj and Mr Raman. The Arbitrator asked the parties to confirm the dates by close of business 6 October 2003. Mr Raman sent a letter dated 6 October 2003 stating that he was still awaiting his client, Norma's, instructions. Mr Siraj sent a letter dated 7 October 2003 on various other points and issues but did not confirm his availability for the 'blocked off' dates. By a fax dated 9 October 2003, the Arbitrator ruled that having given the parties ample opportunity to confirm their availability, he proceeded, (for the third time), to schedule hearing dates in two tranches, on 21, 24 to 28 November 2003, excluding 25 November 2003 and 1 to 5 December 2003.

19 On the 27 October 2003, Mr Das wrote in for a date to hear his client's application based on Article 13.5 of the Rules which provided that if a party failed to pay a deposit directed by the arbitrator to secure his fees and expenses under Article 13.1 or Article 13.2, the arbitrator may refuse to hear the claims or counterclaims of the non-complying party but the arbitrator may proceed to determine the claims or counterclaims of the complying parties. As noted above, the Arbitrator had earlier directed the parties to deposit an additional $25,000 each on 23 May 2003. Neither party complied. In his 29 August 2009 letter, he reminded the parties of his direction. The Contractor then paid his $25,000 on 10 September 2003 but the Sirajs did not despite another reminder from the Arbitrator on 24 September 2003.

20 The Arbitrator fixed the 19 November 2003, 4.00 pm for the Contractor's application. On the day in question, Siraj and Mr Raman did not turn up. The Arbitrator asked his secretary to call Siraj and Mr Raman's office. The secretary drew a blank at Siraj's office as one "Anne" said Siraj was not in the office and she did not know where he was. Mr Raman was reached but said that he was not attending the hearing. The Arbitrator informed Mr Das of the outcome of the calls and Mr Das proceeded with his application. In a fax dated 20 November 2003, the Arbitrator gave Siraj and Mr Raman a final opportunity to make submissions on Mr Das's application and asked that they do so by 9.30 am, 21 November 2003, failing which he will proceed to issue his ruling on the application. Neither Siraj nor Mr Raman responded and the Arbitrator proceeded to issue his decision in a fax dated 21 November 2003. He allowed the application, and directed and ruled that in accordance with Article 13.5 of the Rules, he would not hear the claims or counterclaims of the Respondents in the arbitration so long as his direction to pay the $25,000 deposit to secure his fees and expenses has not been complied with. He also awarded costs of $1,000 to the Contractor. In this fax, the Arbitrator referred to a letter each from Siraj and Mr Raman, both dated 20 November 2003, informing him that they will not be able to attend the hearing of the arbitration proper which commenced at 10 am on the 21 November 2003 or to provide written submissions by this time as there was a certain court hearing that they had to attend. It is noteworthy that the Sirajs had up to this point in time not put forward any valid reason not to take the hearing dates.

21 On the first day of the hearing on 21 November 2003, Siraj, Norma and her solicitor, Mr Raman did not appear. Attempts were made to contact them by the Arbitrator's secretary. She was not able to reach Siraj, Mr Raman said he had sent a letter "last evening" and that he and his client would not be attending the hearing. The Arbitrator informed Mr Das of the calls and the results and asked if they were ready and wished to proceed with the hearing. Mr Das said he was but suggested that the hearing be adjourned and resume on Monday, 24 November 2003 at 10 am. The Arbitrator agreed and sent a letter to all parties recording the foregoing, informed the parties of Mr Das's application for wasted costs and inviting the 'Respondents' to explain their reasons for not attending the hearing in the morning of the 21 November 2003 as he understood that their hearing in the Subordinate Courts was scheduled for one afternoon only.

22 On 24 November 2003, Siraj, Norma and Mr Raman again failed to turn up. The Arbitrator waited from 10 am to 10.30 am. His secretary telephoned Mr Raman's office and was told he would not be attending the hearing but his secretary was unable to reach Siraj. At 10:30 am, the Arbitrator

proceeded with the hearing. Mr Das proceeded to open his case, presented his evidence, called his witnesses and concluded his case by 5.15 pm. The Arbitrator then wrote to the parties recording what happened on 24 November 2003 and stated that he would consider the evidence presented to date.

23 On 1 December 2003, the Arbitrator wrote to the parties asking the Contractor to submit final written submissions if it wished to within 2 weeks, *ie*, by 14 December 2003; Siraj and Norma were given liberty to submit written submissions in reply within 2 weeks of receipt of the Contractor's written submissions; and the Contractor was given 10 days thereafter to file written reply submissions.

24 Mr Raman wrote to the Arbitrator on 15 December 2003 expressing surprise that the Arbitrator proceeded with the hearing in the absence of his client. Mr Raman referred to his previous correspondence asking "…for a number of matters to be set right before [they] could attend before [the Arbitrator] for the hearing...", accused the Arbitrator of ignoring the rules of natural justice, conducting a hearing that was a farce and a perversion of justice in the name of an arbitration and rhetorically asked "..how on earth.." the Respondents could submit written submissions when they were not at the hearing, did not hear what the Contractor's witnesses had to say, did not peruse the documents presented by the Contractor or the Arbitrator's notes of evidence. Mr Raman then wrote that his client would have no choice except to seek a remedy elsewhere at the appropriate time.

25 The Contractor sent in his written submissions on 12 December 2003. The Sirajs did not send in any written submissions.

26 Despite some correspondence, there was a long silence from the Arbitrator after 12 December 2003. Mr Raman wrote to the Arbitrator on 7 April 2004 and said that his client, Norma, took the position that the time to make the award had already expired under Article 14.1 of the Rules. In a second letter with the same date, Mr Raman also wrote to LDP, copied the Arbitrator, and at paragraphs 4 and 7 referred to the time for the Arbitrator to make his award having expired. Yet it was only about 1 year 2 months later, on 15 April 2005, that the Arbitrator wrote to the parties stating that his Award was published and ready for collection. The Arbitrator also asked for payment of $199,178.40 for his outstanding fees, costs and expenses of and incidental to the hearing of the arbitration up to the publishing of his Award. LDP protested the level of Arbitrator's fees being charged and asked for a breakdown. The Arbitrator stood firm and stated in a letter dated 28 April 2006 to the parties that if his fees were not paid by 12 May 2006, he would refer the matter to this solicitors to recover his fees. In another letter dated 11 May 2005 to the parties, he stated that he did not intend to enter into any further correspondence on the quantum of costs and pointed to Section 36 of the Arbitration Act, (taxation by the Court where an Arbitrator's fee is disputed).

27 This delay of 1 year 4 months resulted in a very unfortunate consequence. Article 14.1 of the Rules states:

> Unless all the parties agree otherwise, the Arbitrator shall make his Award in writing within sixty (60) days from the date on which the hearing is closed and shall state the reasons upon which his Award is based. The Award shall state its date and shall be signed by the Arbitrator.

The Arbitrator accepts that in view of the non-response of Siraj and Mr Raman and the receipt of the written submissions of the Contractor on 12 December 2003, the time limit for his Award to be issued expired on 10 February 2004; (see para 16 of his Affidavit affirmed on 15 September 2006 in OS 1807/2006). Whilst there can be an interesting debate on when the hearing was closed, *ie*, 60 days from: (a) the 12 December 2003 when the Contractor filed and served his written submissions on the

Arbitrator (and presumably on Siraj) or (b) 15 December 2003 when Mr Raman (and assuming Siraj sent a similar letter on the same date, and if on a different date on the later of the two dates) sent in his letter clearly electing not to file any written submissions or (c) 26 December 2003 being the expiry of 2 weeks when Siraj and Norma should have filed and served their written submissions, this issue does not arise for consideration as the Award was published long after the maximum possible time therefor had expired.

28 On 1 February 2006, Siraj wrote to the Arbitrator referring to the "...lapsed arbitration..." and noting, amongst other things, that in the Arbitrator's latest facsimile of 31 May 2005 he had dropped the title "Arbitrator" when signing off and asked the Arbitrator whether he accepted the position taken by Mr Raman in his letter dated 7 April 2004 that "…the time for [the Arbitrator] to write the award has already expired..." and that "...any award made by [the Arbitrator] will be invalid and unenforceable…" Despite this correspondence, it was only on 19 June 2006, some 2 years 4 months after the time for publishing his Award expired, that the Arbitrator wrote to the parties proposing a meeting on 26 June 2006 to extend time limit by consent. Mr Das wrote in for the Contractor on 30 June 2006 agreeing to the extension of time. Consent was of course not forthcoming from the Sirajs. On 19 September 2006, (about 2 years 7 months after time had expired), the Arbitrator filed OS 1807/2006 asking for an extension of time to 15 April 2005 to issue his Award and that the Sirajs and Contractor jointly and severally pay him the sum of $199,178.40 for his outstanding fees.

The Numerous Legal Proceedings

29 Innumerable legal proceedings, mostly initiated by the Sirajs, sprang from this dispute. There were two District Court actions and appeals therefrom. There were two other originating summonses, two originating motions, Suit No 348 of 2006 and innumerable applications taken out by the Sirajs. The Court of Appeal dealt with about 10 appeals: CA 53/2002, CA 10/2003, DCA 19/2004, CA 112/2006, CA 15/2008, CA 21/2008, CA 80/2008, CA 172/2008, CA 18/2009, CA 49/2009.

30 After one too many appeals, on 5 February 2009 the Court of Appeal ordered, in CA 172 of 2008, that OS No 1807 of 2006 and OS No 1231 of 2008 be consolidated and enjoined the parties from taking out any more applications in respect of these consolidated originating summonses and directed the parties to proceed to a hearing. Mention should be made of a successful application by the Arbitrator, Summons in Chambers No 5671 of 2007 for a mareva injunction freezing $250,000 of the Sirajs from the sale of the Property. The Sirajs appealed to the Court of Appeal in CA 80 of 2008/Q and on 8 July 2009, the Court of Appeal reduced the funds frozen to $100,000.

31 As I was assigned to hear the Consolidated Originating Summonses, I dealt with various outstanding applications in relation to the hearing, *eg*, (a) an application to expunge parts of an affidavit; (b) an application to cross-examine deponents of three affidavits, (c) leave to file a response affidavit, (d) a review of taxation and a related OS No 1213 of 2009. The application to expunge parts of the affidavits was dismissed as there were no grounds to do so but Sirajs were given leave to cross-examine the Arbitrator and file a response affidavit if the Sirajs deemed it necessary. Finally the consolidated originating summonses, which arose from the arbitration, proceeded for hearing from 16 to 18 December 2009, some 8 years after the Arbitrator was appointed by the President of the SIA.

Extension of Time to Issue an Award

32 The Arbitrator's error in overlooking a time limit within which to issue his award was a very serious error. Party autonomy, which is a cornerstone of arbitration, has been emphasized time and again by our highest Court. If the parties have chosen to agree to a time limit within which an

arbitrator has to render his award and that contract or arbitration clause contains no provision to extend time, other than by mutual agreement, then no court is in a position to re-write the contract for the parties, (unless there is a statutory provision conferring such a power). For this reason, Redfern & Hunter's *Law and Practice of International Commercial Arbitration* (4th Ed, 2004) warns at [8-66]:

> A limit may be imposed as to the time within which the arbitral tribunal must make its award. **When this limit is reached, the authority or mandate of the arbitral tribunal is at an end and <u>it no longer has jurisdiction to make a valid award</u>** . This means there where a time-limit exists, care must be taken to see that either:
>
> - the time-limit is observed; or
> - the time-limit is extended before it expires.
>
> The purpose of time-limits is to ensure that the case is dealt with speedily; such limits may be imposed on the tribunal by the rules of an arbitral institution, by the relevant law, or by the agreement of parties.
>
> (emphases added)

A substantially similar passage in the 1st Edition of the above book was cited with approval in *Petro-Canada v Alberta Gas Ethylene Co* (1991) 121 AR 199 at 214; see also *Ian MacDonald Library Services Ltd v PZ Resort Systems Inc* (1987) 14 BCLR (2d) 273 where the court set aside an arbitration award made several months after the expiry of the time for making it; see also Halsbury's Laws of Singapore, Vol 2 (Butterworths Asia, 1998) footnote 6 to [20.102]. As against that, Robert Merkin, *Aribtration Law*, (Informa, Looseleaf Ed, 1991, May 2009 Release states at [18.29]: "...The expiry of the time limit does not necessarily operate to remove the jurisdiction of the arbitrators, and there are a number of possibilities for the extension of time. In the first place, time may not be of the essence under the contract, so that its expiry has no effect." With respect, I disagree with the foregoing statement by Merkin. I am of the view that the statement in Redfern & Hunter, quoted above, is the correct analysis.

33 The former Arbitration Act (Cap 10, 1985 Rev Ed), ("the AA 1985") is the applicable Act as the 2001 Arbitration Act (Cap 10), ("the AA 2001"), only came into force on 1 March 2002 and this arbitration was commenced in July or August 2001; (section 65 of the AA 2001 provides that AA 2001 would not apply to arbitrations commenced before 1 March 2002 unless the parties have so agreed in writing). Section 15 of the AA 1985 provides:

> The time for making an award may be enlarged by order of the court or a judge thereof, whether the time for making the award had expired or not.

There are no Singapore cases on this provision and therefore no guidelines have been previously laid down as to how a Court should exercise its discretion when an application is made under Section 15 to extend time to make an award.

34 Mr Ng, counsel for the Arbitrator, sought to rely on *Hong Huat Development Co (Pte) Ltd v Hiap Hong & Co Pte Ltd* [2000] 2 SLR 609 for the proposition that under the SIA Form contract, once an award was published, delay was not a good reason to set aside an award even it was published 10 years late; *a fortiori* where the delay was only 1 year 2 months late. But as I pointed out to Mr Ng, that case is of no help to his client because the contract there was entered into on the 1979 SIA

Conditions of Contract. That contract form did not include the important sub-paragraph 2 in Clause 37(1) which appears only from the 6th Edition onwards:

> The arbitration proceedings shall be conducted in accordance with the Arbitration Rules of the S.I.A. for the time being in force which Rules are deemed to be incorporated by reference to this clause.

As noted above, the SIA Arbitration Rules were first published in January 1999 and only incorporated into the SIA Conditions of Contract Form in the 6th Edition published in August 1999. In *Hong Huat Development* the Court of Appeal while noting that a 10 year delay in publishing an award was deplorable, also observed that once published, the courts could not set it aside. But this does not assist the Arbitrator here because there were no rules governing the arbitration in *Hong Huat* that limited the time for the award to be issued. Building contract disputes arising from SIA Form contracts entered into after August 1999 would have incorporated the Rules which imposed a time limit on arbitrators to make their awards. Simply put, the issue in *Hong Huat Development* was different. It was for setting aside an award, *inter alia*, on the ground that the delay in its publication amounted to misconduct and the Court of Appeal held that despite the deplorable 10-year delay, once an award was rendered, delay *per se* was not a good enough reason to set aside it aside. The parties could have applied before the award was rendered to have applied to remove the arbitrator but they did not do so.

35 Mr Ng also referred me to *Parkes v Smith* (1850) 15 QB 297 for the proposition that a court could extend the time limit for an award to be published a second time beyond the specified date in the arbitration agreement and at a time when the award was not yet published. Mr Ng relied on the following passage in the judgement, (but I take a little more of the passage than quoted in Mr Ng's written submissions); in response to counsel's submission that the enlargement of time for making an award was regular, Lord Campbell CJ said:

> We think you need not argue this point. We are of the opinion that the agreement stated in the indenture was a good submission when controversies actually arose. And, the submission being valid under stat. 9 & 10 W.3, c.15, the Judge had power to enlarge the time under stat. 3 & 4 W.4, c.42, s.39. We think it was the intention that such a power should be exercised, the law putting confidence to that extent in the public functionaries, and presuming that they will exercise the authority with proper caution.

I find this case of little or no assistance for two reasons. First, the case was quite different on its facts and the application to extend time was made *before* expiry of the time limit. This case involved a partnership dispute where the indenture dated 23 December 1846, provided that if there were any differences or disputes between the partners on the instalment payments to the retiring partner or any deductions therefrom, it would be referred to arbitration before a named arbitrator who was to render his award in writing before the expiration of 4 calendar months from the 1st day of January 1847 and that "… it shall be lawful for the said arbitrator by any writing … from time to time to enlarge the time for making his award in the said matters … but so as the period to which the time shall be so enlarged shall not exceed the 1st day of July 1847." When such disputes arose, the matter was referred to the named arbitrator for arbitration. The arbitrator here was very careful to be mindful of his time limit. *Before* the expiration of the 4 months, the arbitrator extended, in writing, the time limit to 29 June 1847 as he was empowered to under the arbitration clause and thereafter, *before* 29 June 1847, the arbitrator applied to court to extend the time to 1 December 1847 to render his award. This order was granted by the Court. The arbitrator then rendered his award before the expiry of the extended time limit. Secondly, care should be taken when relying on such an old statutory provision

where the background to that statutory enactment was quite different from the 1985 AA which was a separate statute containing 41 sections and 3 schedules. The power to extend time in *Parkes v Smith* was under section 39 of 3 & 4 W.4, c.42 which was an 1833 statute dealing with the law on amendment, *eg*, Section 1 gave the power to judges to make alterations in the mode of pleadings in the superior courts. Section 39 dealt with enforcing and upholding submissions to arbitration and tucked away at the very end of that section it provided:

> …and that the Court or any Judge thereof may from Time to Time enlarge the Term for any such Arbitrator making his Award.

Nonetheless, even then it is interesting to note that counsel for the plaintiff, J A Russell argued at p 307, which seemed to be accepted by the court, that the latest cases at that time, including *Leslie v Richardson* 6 Com. B. 378, favoured the power of the courts to enlarge time but the authority to enlarge after the expiration of a limited time has never been recognised where the clause was restrictively worded as in their case.

36 Section 15 of the AA 1985 is based on Section 13(2) of the 1950 English Arbitration Act which provides:

> 13–(2) The time, if any, limited for making an award, whether under this Act of otherwise, may from time to time be enlarged by order of the High Court or a judge thereof, whether that time has expired or not.

There appear to be only two reported English cases on this provision. Both provide limited guidance on their facts for the exercise of the discretion under Section 31(2) but do not lay down any general rules.

37 In *Oakland Metal Co Ltd v D Benaim & Co Ltd* [1953] 2 QB 261, a case decided well before *The Nema*, (see [38] below), the main issue before the court was whether an award was a nullity because one of the arbitrators was not qualified. The arbitration clause called for arbitration under the LME Rules, (London Metal Exchange), or the NA Rules, (National Association of Non-ferrous Scrap Metal Merchants). Both the LME and NA Rules required arbitrators to be duly qualified under their respective regimes. When disputes arose, A proposed arbitration under the LME Rules. B proposed the NA Rules. B, upon perusing a copy of the LME Rules sent by A, wrote and asked A to (i) consider using the NA Rules as the rules were substantially similar to the LME Rules, (ii) that as they, (B), had already appointed X, who was duly qualified under the NA Rules, to be their arbitrator, suggested that A should choose an arbitrator duly qualified under the NA Rules and (iii) for the arbitration to proceed under the NA Rules. A then replied on 24 December 1952 appointing Y, who was qualified under the LME Rules but not the NA Rules, as their arbitrator but made no reference to his qualification or the rules under which the arbitration should proceed. The arbitration proceeded under the NA Rules and an award was made in favour of B on 16 February 1953. A then sought to nullify the award on various grounds; the main ground being that Y was not qualified under the NA Rules. The case centres on this issue. Not surprisingly, A's contention was given short shrift. The court held that A was estopped from raising his appointed arbitrator's lack of qualification. A also relied upon other grounds which were all rejected. One of them was that under the NA and LME Rules, rule 7 required the award to be made and delivered to the secretary of the association within a period of 30 days from the appointment of the arbitrator last appointed; that would have been in early February 1953 whereas the award was not made until 16 February 1953. B asked the Court to extend time to make the award under section 13(b) of the English 1950 Arbitration Act. Parker, J said: "Under that section the court has a very wide discretion to enlarge the time after it has expired. It seems to me this is a proper case in which to do so, subject to this, that the court hesitates to do so if the application is made at

a late date." The learned judge went on to say that it was perfectly reasonable, given the commencement of court proceedings, for B not to make the application at once but to apply to the trial judge because if B had made such an application to the master, the master would have referred the matter to the trial judge. The court proceeded to extend the time to make the award by one month thereby validating the award which was made about a fortnight beyond the time limited to do so.

38 In *Techno Ltd v Allied Dunbar Assurance Plc & Ors* [1993] 22 EG 109, a rent review arbitration, the parties had agreed a statement of facts which included a certain assumption that a hypothetical building, by reference to which the rent was to be assessed, was to be of "similar…height construction and layout" to the building actually being rented, even though the assumption set out in the rent review clause was silent as to height, construction and layout of hypothetical building. However the arbitrator rejected the assumption included in the agreed statement of facts as he felt that the rent review clause was silent as to 'height, construction and layout', and limiting himself to the characteristics of the hypothetical premises as set out in the lease, formed a view on the annual rent and issued his award. The Court agreed with the tenant that the arbitrator had misconducted himself in discarding the assumption agreed upon by the parties and remitted the matter back to the arbitrator for reconsideration. The Court also extended the time for the arbitrator to do so. This case thus stands for the proposition that if an award is made in time, but is remitted back to the arbitrator due to some technical misconduct that could be corrected, the court will extend time for the arbitrator to do so. This is an obvious case where the discretion should be exercised to extend time in effect as an ancillary power to the court's power to remit.

39 It is clear that section 15 of AA 1985 confers upon the court a wide discretion to extend time whether or not the time limit has expired. Whilst there are no express limitations, unlike section 36 of the 2001 AA, there is little doubt that this discretion has to be judicially exercised. The sea change in the ability to resort to the courts from arbitrations, arbitrators and their awards occurred as long ago as 1982 in *Pioneer Shipping Ltd v BTP Tioxide, "The Nema"* [1982] AC 724 and *Antaios Compania Naviera SA v Salen Rederierna ARBITRATOR, "The Antaios"* [1985] AC 191 and both of these cases have been adopted by our Court of Appeal in *Hong Huat Development* and in many other cases. Since then, party autonomy has been emphasized as a cornerstone time and again together with a policy of minimal court intervention by our highest court.

40 So when should a court exercise its discretion to extend time and override the parties' agreement? A clear case to do so would be to curb abuse where a time limit is imposed by reference to the commencement of the arbitration. In such a case, it is open to a party to frustrate the arbitration by delaying tactics until it becomes impossible to comply with the time-limit: see Redfern & Hunter's *Law and Practice of International Commercial Arbitration* (4th Ed, 2004) at [8-67]. For this reason, after reviewing the pros and cons and some institutional rules, the learned authors opine at [8-68] that in general it is preferable that no time limit should be prescribed. Equally where a party, by his actions, such as taking out an injunction, prevents an arbitrator from making his award within the time limit, can expect the court to extend time provided the arbitrator applies to extend time as soon as it becomes apparent that he cannot comply with the agreed time limit.

41 In my view it is clear that section 15 of the AA 1985 should be exercised by a court to prevent a substantial injustice, as in the example above, and provided there is no prejudice to the other party. The court should be slow to exercise its discretion if by doing so it overrides party autonomy which is paramount. First, if an arbitration clause is clearly worded that come what may the arbitrator *must* issue his award within a specified time, a court should not interfere unless there are exceptional circumstances. The parties may well have a reason to agree a tight timeline, *eg*, because there are downstream arbitrations which would depend on the result of the first arbitration. Secondly, unless

there are very good reasons, a court should not entertain any application under section 15 if the time limit has expired, *a fortiori*, if the time limit has expired by a large margin. The longer the delay in making the application the less likely a court would exercise its discretion to extend time. What is a large margin must necessarily depend on the facts of each case. There should be no hard and fast rule. What is clear in this case is that the delay was by such a wide margin that I would not entertain any such application for an extension of time, *a fortiori* when there were letters dated 7 April 2004 pointing this out to the Arbitrator. Despite these letters, he only published his award just over one year later on 15 April 2005 and the first attempt to ask the parties to agree was only on 19 June 2006. It would not only be a prudent measure but a preferable pre-requisite that any application for extension of time should be made before expiry of the time limit agreed to by the parties for rendering the award. Any application to extend time after the time limit has expired would need very good reasons and extenuating circumstances for the court to exercise its discretion to extend time, *eg*, the court remits an award or part of an award back to the arbitrator to reconsider. Thirdly, the discretion is exercised if in all the circumstances of the case it would cause a substantial injustice if time were not extended. The prejudice to the other party should also be put into the scales when deciding if substantial injustice would result.

42 If a party meets these three criterion, what then would constitute good reasons for an extension? Again this is fact sensitive and no hard and fast rules should be set. Obvious examples come to mind, *eg*, an arbitrator may be taken ill for a substantial period of time after close of the hearing or there was a fire in his premises which caused his documents and working papers to be destroyed or the matter was much more complex than envisaged by the agreed time line and the arbitrator needs more time to render a properly reasoned award. All these would be good grounds and would likely be factors that will influence a court to exercise the discretion under section 15 to extend the time limit, especially when it is made before the expiry of the time limit. Section 15 undeniably provides that the application can be made before or after the expiry of the time limit. This caters, for example, where a serious illness or a fire intervenes just before the expiry of the time limit and the arbitrator is only able to make such an application upon recovery which is after the time limit has expired.

43 The law has moved on and I refer by way of comparison to section 36 of the AA 2001 which now lays down the following considerations for domestic arbitrations commenced after 1 March 2002:

(i) Unless otherwise agreed by the parties, the Court has a discretion to extend time either on the application of one of the parties or the arbitrator;

(ii) All arbitral processes for such an extension of time must have been exhausted before applying to the court;

(iii) The Court shall not grant an extension of time unless it is satisfied that substantial injustice would otherwise be done; and

(iv) The Court has the discretion to extend time for such period and on such terms as it thinks fit, whether or not the time limited under the arbitration agreement or by a previous order of court has expired.

Under section 36, three points should be noted. First all available arbitral avenues to extend time must have been exhausted. This includes asking the other party to agree. If the present case fell to be decided under section 36 of the AA 2001, then the arbitrator should try to get the consent of the parties well *before* the expiry of the time limit so that failing agreement of the parties, he has time to make the application to court. Secondly, section 36(4) now spells out what was silent in section 15

1985 AA; the Court will not extend time unless it is satisfied, *ie*, the applicant must prove on a balance of probabilities, that substantial injustice would be done if time is not extended. This also includes balancing any prejudice that the other party may suffer if time is extended. Robert Merkin, *Arbitration Act 1996* (Informa: 2008, 4th Ed) at p.183 opines that the 'substantial injustice' test means the court should take into account relative fault, the sum at stake and the consequence of failure to act. I would agree but say that these are not the only factors to take into account, the court should be able to weigh all the facts and circumstances of the case before it. These first two points are also reflected in section 50 of the English Arbitration Act 1996, a provision upon which our section 36 is closely modelled. Reference should be made to *Minermet SpA Milan v Luckyfield Shipping Corpn SA* [2004] Lloyds Rep 348 and *Pirtek (UK) Ltd v Deanswood Ltd* [2005] EWHC 2301 for illustrations of how the English Courts have applied section 50 of their 1996 Act. Thirdly, now the parties can, by agreement, exclude the court's power to extend time but the agreement must clearly state and preferably provide that there shall be *no* enlargement of time to make the award, whether by the parties or by the arbitrator. It is probably unnecessary to state expressly that they forego their rights for an extension under the AA 2001 although as a measure *ex abundanti cautela* the parties should do so. Unlike section 15 of the AA 1985, which applied irrespective of the parties' agreement, section 36 (1) to (3) endorses the principle of party autonomy. Section 36 reflects the modern view that having chosen arbitration as a method of dispute resolution, there must be finality and the parties have to live with their arbitrator and his award, good, bad or indifferent.

44 It follows that the Arbitrator has failed to satisfy the foregoing criterion by being out of time by a considerate period both in the making his award and in bringing his application to extend time and also because the SIA Rules imposed a clear and strict time limit. The failure by an applicant to satisfy or fully satisfy the above criterion does not, *ipso facto*, deprive him from obtaining an extension of time under section 15, 1985 AA. The less fully the above criterion are satisfied, the better the reasons must be for the court to extend time. It is to this and considerations of injustice, to which I now turn.

The Arbitrator's Reasons for Not Being Able to Issue his Award in Time

45 The Arbitrator gave a number of reasons for not being able to render his award within the time limited by the SIA Rules. Besides making his application well after the time limited for making his award had expired, (see [26] and [28] above), I first note that his reasons were not all within one affidavit. Some were 'developed' over time.

46 First, the Arbitrator complained that the issues raised were complex and/or complicated. An examination of these issues will reveal that on any view this was an overstatement; they were the usual kind of disputes one would expect in any building and construction dispute.

(a) The first issue listed was that there were over no less than 8 requests for extensions of time ("EOTs"), and complicated by the fact that the project architect had not dealt with them, allegations that the Sirajs had interfered with the construction schedule, including requiring works to be stopped to carry out an owner-instructed test and delay certificates allegedly being erroneously issued. The Arbitrator also stated that the complication was that he had to sort out all the above facts and the sequence of occurrence thereof. This is quite surprising. EOTs and time issues arise in almost every building and construction dispute. Any experienced architect would expect to face these issues in their everyday practice in dealing with applications for EOTs from contractors and certifying or refusing EOTs under the SIA or PSSCOC Conditions of Contract in Singapore. Moreover, the construction sequencing here would not be overly complex because they involved construction sequences for a 2-storey bungalow with an attic, basement and pool; not a warehouse, hotel, hospital or commercial complex.

(b) Another "complex" issue was the Contractor's entitlement to various payments and complicated by the Sirajs' allegations that there were 42 outstanding or defective items of work; he refers to the most serious alleged defect, described by the Sirajs as 'life threatening', over a discharge pipe at the basement toilet which protruded 30cm above the floor trap purportedly to cater to external water table level which was 30 cm above the basement floor. Again disputes as to entitlement to payment and deductions are commonplace and there are almost no building and construction disputes which do not feature such issues as a major portion of the disputes. The quantity surveyors may value works done, but it is the architect who finally certifies payment under the SIA Forms and it is the architect who issues the final certificate and final accounts. Assessment of defects or outstanding works are also commonly dealt with by the Architect when a project nears completion. Lists of defects or outstanding works for practical completion, TOP and CSC inspections and defects liability period occur in every construction project and these lists are issued by the architect.

(c) As for the protruding 30 cm discharge pipe, which was also listed as a complex and complicated issue, the Arbitrator was able to criticise the designer for designing a basement for a property at the bottom of a valley with a high water table; something he criticised as going against the forces of nature. When giving evidence, he clarified he was referring to a design defect but yet conceded he did not say so in his written award and in the portion where he gave his reasons, he wrongly said "…It is not clear whether the flooding of the Basement could be due to the low water table at that locality." Upon being questioned, he admitted he meant "high" water table.

(d) The Arbitrator also had to decide whether the Contractor had completed the 'Works' by 9 January 2001, the contract completion date. This again is a straightforward factual issue for decision and I cannot see how it is unusually complex or complicated. It is all the more surprising as the CSC had been issued and the Sirajs were living in the Property. Again it is something that an architect has to certify as a matter of routine in all his projects in his professional life.

(e) Whether time was at large was another issue listed as being complex and complicated by the Sirajs' behaviour. I note that this again often arises in building and construction disputes especially when it is linked with assessment of EOTs. I asked the Arbitrator and he certainly knew what this entailed.

(f) The Arbitrator also referred to the issue of whether a Certificate of Partial Re-Entry deeming Completion as at 5 April 2001 ought to have been issued by the project architect. This again is a not unusual occurrence on which an architect would be asked to make a call in projects where it is alleged the works are not complete but the owner decides to take partial possession of the works. This is one of the very certificates an architect may be asked to issue in the SIA Form. If the Arbitrator in his professional life as an architect may be called to issue such a certificate under the SIA Form, I cannot see how it could be thought of as such a complex issue for him.

(g) The Arbitrator had to decide what payments were due to the Contractor. There was nothing complex about this. If the Arbitrator needed to measure any quantities, he had the right to appoint an expert to assist him. Otherwise it was a straightforward question as to what payments were due to the Contractor; what sums were the Sirajs entitled to deduct for defects or outstanding works or delays in completion; what was the final balance and in whose favour it was. Whether the sum of $256,190.17 was due or not, whether it was a progress claim or a quantum meruit claim, who was to pay for the $10,557.50 bill, whether the Contractor was entitled to further payment on the Final Account were all grist for the mill. There was nothing

unduly complex or complicated about these payment issues. If there were any additional complexities or complications that took these issues out of the ordinary disputes one would expect in a building and construction contract dispute, the Arbitrator has certainly not made out anything at all in that direction.

(h) Whether the retention sum should be released to the contractor was, quite remarkably, listed as a complicated issue.

47 A second reason given was that because the Sirajs chose not to attend the arbitration hearing, or to file Final Submissions or to give evidence, meant that he did not have the benefit of their rebuttals to the Contractor's claims. As a result he had to spend long hours poring over the pleadings, analysing the evidence and arguments presented on behalf of the Contractor and analysing evidence submitted by the Sirajs prior to the hearing. At the hearing, the Arbitrator also emphasized that the Sirajs had submitted over 3,500 documents which he had to go through in checking them against the claims of the Contractor. This calls for comment on two scores.

48 First, the Arbitrator would have been aware of this difficulty immediately after the hearing on 24 November 2003. He was in possession of all the facts by then and should have known this was going to cause the complication or complexity he now complains of. He therefore should have taken out an application to extend time well before the time limited for the making of his award. This reason therefore cannot help him.

49 Secondly, and more significantly, it shows this Arbitrator's lack of experience and knowledge. This squarely raises the issue of just what the duty of the Arbitrator is where one party to an arbitration involving oral evidence chooses not to attend the arbitration hearing, but has submitted documents in his list of documents and his AEICs. It is certainly *not* the duty of an arbitrator in a default hearing to assume the role of advocate for the absent party or to protect its interests. Guidance can be found in the standard textbooks on arbitration:

(a) see Mustill & Boyd, *Commercial Arbitration* (Butterworths, 2nd Ed, 1989) at pp.537-538: "The arbitrator must properly address himself to the question whether the claimant's evidence proves his case. This requires him not only to make sure that the evidence bears out the claimant's assertion, but also that it has the appearance of being true, and is internally consistent. Further than this, he need not, and indeed should not, go. It is not his function to search out the truth, but to choose between two versions presented to him; and if only one version is presented, he does not thereby become an advocate for the other side."

(b) see *Merkin* Arbitration Law (Looseleaf Ed, 2009) at [16.33]: "Faced with the need to proceed *ex parte*, the arbitrator's duty is to proceed fairly as is possible under the circumstances, but the arbitrator must not act as advocates for the absent party, seeking to put forward their own theories to contradict the unchallenged evidence of the attending party, at least unless that party is given an opportunity to rebut those theories";

(c) see *Redfern & Hunter*, the Law and Practice of International Commercial Arbitration, (4th Ed, 2004) at [6-121]: "The arbitral tribunal has no duty to act as advocate for a party who has elected not to appear, but it must examine the merits of the arguments of law and fact put to it by the participating party, so as to satisfy itself that these are well-founded."

(d) this has also been endorsed by the courts, see *Fox v PG Wellfair* [1981] 2 Lloyd's Rep 514, a building contract claim with alleged defects where the respondents allowed the hearing to go undefended, and although the case involved an arbitrator using his own special knowledge, Lord

> Denning MR said at p.522: "But in a case like this I do not think it is the duty of the arbitrator to protect the interests of the unrepresented party. If the defendants chose not to turn up to protect themselves, it is no part of the arbitrator's duty to do it for them."

Applying these principles, in my judgment, the Arbitrator was wrong to try to justify the time spent on the arbitration, by saying he had to trawl through over 3,500 documents submitted by the Sirajs to check the evidence. If an arbitrator who only heard the evidence of the Contactor's witnesses and perused their documents put forward at the *ex parte* hearing, then proceeds to trawl through the documents of the absent party to see if they contradict the Contractor's evidence, he will or may be taking evidence into account that is not even attested to or explained or put to witnesses and applying and giving effect to them in coming to his conclusions without giving the complying party a chance to comment on or rebut the same. Further it is extremely difficult for such an Arbitrator to avoid developing his own theories and doing so without giving the other party a chance to meet or rebut the same will amount to misconduct. All the arbitrator is required to do in such circumstances is to scrutinise the evidence of the attending party, ask such questions as he feels necessary on *their* evidence to satisfy himself that it proves their case and claims on a balance of probabilities. He is entitled to test and probe internal inconsistencies or contradictions appearing on the attending party's evidence. He is not to act as an advocate for the absent party based on that absent party's pleadings and/or documents and/or AEICs if they have been filed. This is standard arbitration procedure if the parties' evidence is presented by witnesses and documents.

50 A third complaint was that the Sirajs made innumerable challenges to his handling of the arbitration. They made repeated allegations of procedural errors culminating in 22 interlocutory applications before the hearing. The Arbitrator handled that correctly by giving the Sirajs and their counsel the opportunity to ventilate them and proceed to dismiss them as they were without merit. The Arbitrator also complained that even after the hearing, the Sirajs and Dr Raman showered letters on him continually challenging his conduct citing letters of 8 (2 letters), 9 (2 letters), 10, 12, 15, 19 December 2003, 23 and 29 March 2004 and 7 April 2004 (2 letters). Having perused these letters, I can see the language used was rude and unpleasant but I cannot see that they are of such a nature that they would cause anyone, other than someone with too delicate a disposition to handle any unpleasantness and disputes, much loss of sleep in dealing with them. They certainly are not of such a nature that would unduly complicate the making of an award in a case like this. Arbitrators just have to deal firmly with parties who indulge in such tactics and who use intemperate and rude language. It is unfortunately all part and parcel of an arbitrator's work.

51 A fourth complaint was that Siraj made complaints to the police. As these have been the subject of numerous separate applications and proceedings, I shall not repeat them here other than to give a brief summary. Siraj brought along some exhibits to a preliminary hearing. They included some pumps for the swimming pool, a mattress that was soiled by water in the basement and a box of papers or documents. The Arbitrator complained that that gave rise to the filing of police reports, complaints to the Home Affairs Ministry and the filing of Magistrate's complaints. The Arbitrator explained to me in the witness box that he was in a bind. If he made an award in favour of the Contractor, then the Sirajs would contend (and presumably proceed to set aside his award on the ground) that he did so to spite them for filing all those reports and proceedings but if he found for the Sirajs then the Contractor would contend that he caved in to pressure (and similarly apply to set aside his award). So he had to wait until these matters were resolved before he could continue. I found this reason put forward by the Arbitrator to clearly show he did not have the necessary training, competence or experience to handle arbitrations. I asked the Arbitrator what if a party deliberately set about doing such acts to make sure his arbitrator sat tight and not make his award for a few years? Would that not be falling prey to delaying tactics? He said with hindsight, he saw what I meant. His behaviour also did not explain why he did not apply to court well before February

2004 to extend time on this ground. He would have been roundly advised by the judge not to get distracted by such manoeuvres by any party and proceed to make his award, confident in his own ability to be objective and to make his findings without bias and to stand by it no matter what antics a party may be up to in trying to delay or disrupt the arbitration process.

52 A fifth reason given by the Arbitrator for needing an extension of time was that he became the President of the SIA after his appointment. He says that unfortunately at the relevant time a lot of unexpected matters arose which involved him as the President of the SIA and these matters involved the government and government linked bodies. He had to deal with the measures after the 9/11 attack, he had to deal with finalising household shelters that were a requirement for all new buildings and then there were the discussions for legislation similar to Australia's Security of Payment Act. SIA was opposed to the last mentioned matter as the campaign to get that legislation implied the SIA Conditions of Contract were unfair to contractors. Eventually the Building and Construction Industry Security of Payment Act was passed in November 2004. The Arbitrator set out an impressive number of meetings he had to attend at paragraphs 9, 10 and 11 of his Affidavit sworn on the 24 July 2007. The short answer to this is that an arbitrator who accepts an appointment should ensure he has the time to complete his task. All the more so when the Arbitrator should have remembered that his own professional body drafted the Rules which imposed the 60 day time limit to make an award.

53 I find that none of these factors put forward by the Arbitrator constitute reasons, let alone good reasons, to extend time to make his award out of time. He informed the parties his award was ready for collection 1 year 2 months after the time had expired for him to do so. He tried to get the parties consent to extend time more than 2 years 4 months after time had expired to make his award. Furthermore, his application to extend time under section 15 1985 AA was made way out of time, more than 2 years 7 months after the time to make his award had expired. That alone would have precluded any consideration by a court to extend time under section 15 of 1985 AA unless there were very exceptional reasons or extenuating circumstances.

54 Weighing all the above factors this case boils down to the following.

(a) First, was there a clear and applicable time limit within which the award had to be made? The answer is a clear: Yes.

(b) Secondly, was the application to extend time under section 15, 1985 AA made in time? For the reasons set out above, the answer is clearly: No.

(c) Thirdly, is the application supported by good reasons or grounds? Admittedly the Sirajs were difficult and obstructive but this of itself is not a reason to extend time. The Arbitrator has not furnished any good reason in support of his application. The answer to this question is thus: No.

(d) Fourthly, is this application supported by the interests of justice? The answer is no because the actual work done by the Arbitrator cannot be considered to serve either party's quest for justice. The process adopted by the Arbitrator was flawed and his strange award and the manner of its publication did not engender any confidence in the dispute resolution process. Moreover, both parties considered his fee for this process to be, to put it mildly, excessive. Although this may be cured by taxation under section 36, 1985 AA, it does not arise in this case. Whilst it may be a hardship for the Contractor to have his monetary award a nullity, this is not a substantial injustice because the parties have chosen arbitration for their dispute resolution and errors of the arbitrator are part and parcel of this choice.

The Appointment of Arbitrators by the SIA

The Appointment of Arbitrators by the SIA

55 Siraj started off his cross-examination of the Arbitration by asking about his qualifications to conduct arbitrations and the Arbitrator's "Certificate", (marked "AS-1"), issued by the Singapore Institute of Arbitrators, ("SIArb"). Siraj questioned the Arbitrator as to how long the course lasted and his clear answer was that the course was over a few months, held during weekends and then followed by an examination. He repeated this a number of times. Siraj pressed on, pointing out that the Certificate only referred to the course being conducted on two days over a weekend, 29 and 30 March 2003 and then one day, 5 April 2003, on the next weekend, presumably for the examinations. The Arbitrator continued to deny this and said: "The three days there are the 3 days of examination after the course." That was quite untrue.

56 After his cross-examination and re-examination, I posed some questions to the Arbitrator and gave him a chance to correct his evidence. The Arbitrator agreed with me that his course was the Entry Level Course. I reminded him of his earlier answer and re-asked him about the length of the course and he replied:

> …I think what I meant to say, it happened over a stretch over a few months or something like that. I think---I think was a---it was-- it was not like one week or a few days in a row. It was---I remember it was, er, like weekends...

I then prefaced my next question with the statement that some of my ex-partners in practice attended this same course run by SIArb and I know that there were 2 days of lectures over one weekend and the next weekend was the one-day examination. I then asked him whether he would reconsider his earlier answer to Siraj. The Arbitrator however maintained his answer:

Court:	I'm asking because I'm a little confused
	…
	---In my [practice] life, I have had partners attending this course and I understood the course to be as follows: You attend one weekend
	…
	---where you are given talks, lectures, maybe some material to read and next weekend or the weekend after that there's an exam, and if you pass it then you will get a entry level certificate ?
	…
Arbitrator:	Erm, I---I---if I recall, I think it happened more than one weekends, the course more than one weekends. Er, I think they gave us some time to go back and reflect and study the notes before the written exam.

Court:	Yes, but this course that is run by SIArb … ---the Singapore Institute of [Arbitrators] … ---in fact provides for one weekend of lectures or studies and material and the second---the next weekend is the exam, whether there is a period in between or not. So it isn't the case where you attend a course for say six months or a year and then you take the exam?
Arbitrator:	Yah, it's not the six months course. I think---but I---I---if I could recall correctly, I think there was more than one weekend lectures, you know, not just one lecture.
Court:	So how many do you think there were?
Arbitrator:	Er, honestly I can't remember how many. I remember it was more than one, lah, yah. But its definitely not a six months course, you're actually right there, yah…

57 I know his answer to be incorrect. What the Arbitrator attended was the Entry Level Course run by the SIArb and the Chartered Institute of Arbitrators. It states so on the certificate:

This is to certify that:

Ting Kang Chung, John

attended the

INTERNATIONAL ENTRY COURSE 2003

on

ARBITRATION LAW & PRACTICE

jointly conducted by

CHARTERED INSTITUTE OF ARBITRATORS

and

SINGAPORE INSTUTE OF ARBITRATORS

on 29 & 30 March, 5 April 2003

and passed the Written Examination

Dated this 20th day of August 2003

This is well known to anyone practising or working in the arbitration field. It is also well known to anyone in the arbitration field in Singapore that this Entry Level Course is only a basic course, it does not include the writing of an award. The next level course run by SIArb will involve the writing of an award as part of the examination. These are all matters that are well publicised by the SIArb and well known in the arbitration community, (including aspirants), in Singapore.

58 More than that, the Arbitrator only obtained his Entry Level Qualification quite some time after he was appointed arbitrator by the SIA on 12 December 2001 in the dispute between the Sirajs and the Contractor. I then asked the Arbitrator whether he had any previous experience in conducting an arbitration before this appointment. His answer was no, only mediations, which of course are entirely different.

59 I must say I find this disturbing. I have also referred above to various aspects of the Arbitrator's handling of this arbitration which showed he did not have the training, the experience nor the competence to handle this arbitration. This is well illustrated by his answer to a question I put to him, in relation to [11] above:

Court:	…Now an issue for security for costs
	…
	---its even in your [SIA] arbitration rules, right ? So wouldn't you expect someone who's appointed an arbitrator to be able to deal with an issue like security for costs ?
Arbitrator:	Yes, yes.

60 Ever since the SIA Form of Contract made its appearance in 1980, it is a form that is very commonly used in private and commercial construction projects. Together with the PSSCOC form used for statutory board and semi-government projects both forms are ubiquitous in Singapore. The SIA Form has always contained an arbitration clause which provided for appointment of an arbitrator by the SIA if the parties cannot agree and it is also well known in the industry that the appointees will come from a list maintained by the SIA. I asked the Arbitrator and he confirmed that the SIA keeps a list of arbitrators for appointment in such situations. Despite being a Treasurer and two-term President of the SIA, the Arbitrator was quite vague on details.

Court:	…When the parties write in to the Singapore Institute of Architects to appoint an arbitrator—
	…
	---is it a person or a committee which chooses the arbitrator for the parties?
Arbitrator:	Okay, there's a committee that actually vet through all the applications that come in and then the committee will make [a] recommendation to the President to formally make their appointment. So it's a committee, you know, there's a whole committee.
Court:	How many [are there] in the committee?
Arbitrator:	I think it maybe six---or six or seven, it's a---its not one, its not two, it's about maybe six or seven, I think. I think it's---yah.
Court:	So when a---when a party or parties write in to the Institute of Architects---
	…
	---to appoint an arbitrator, does the Institute keep a list of arbitrators.
Arbitrator:	Yes
	…
	We have a list of arbitrators.
Court:	You have a list. And the people on that list, are they only architects?
Arbitrator:	I believe not. I think, er, mostly may be architects but we have other people on our list.
Court:	Like engineers, [lawyers,] quantity surveyors?
Arbitrator:	Like engineers, lawyers, quantity surveyors, yah.
Court:	In 2001 and 2002 was that the position?
Arbitrator:	Er, [2001]---002 is it? Er, I know that the---I'm not sure whether at that point the---the [other] professions were on our list or not yet. I think at some point we changed it. Originally it was only architects, the members of the Institute. Eventually we realised that the industry had changed and all that, so we expanded the list of expert but I can't remember which year it changed over. Sorry Sir. Yah.
Court:	I see. So how does the Institute of Architects choose people to get on that list?

Arbitrator:	Ah, well, Well it’s the process where the interested, er, party will write in to this … ---yah, to the institute with a part---with their CVs and track record and the evidence they have gone through the experience and they have gone through enough professional practice as well as the, er, er, education to be able to handle, er, cases, right. And I think---I remember, er, some of the more complicate[d] ones, if I now remember, they even allow some of the junior people to sit in as a obser---observer.
Court:	…My … question is, how does SIA, the Institute of Architects vet…applicants who want to get on their list?
Arbitrator:	Okay. This, er---it’s the same---the---the---the committee will actually vet through all the submission or the CVs … Of the applicants, yah.
Court:	So if I write in and I only have an architecture degree--- … I’ve practiced for 15 years, I seem to be a competent architect, but I have had no experience in arbitration, will you still accept that person on the list?
Arbitrator:	**No, he may be very competent professional architect, but we won’t because you don’t have any experience or even the training in arbitration…**
Court:	Even in 2001?
Arbitrator:	Er, 2001---
Court:	[In] 2002?
Arbitrator:	Two ---
Court:	--- and 2002 when you were President of the SIA ?

Arbitrator:	I was, er, yah, let me see ah, erm, yah, they---I---I know we make changes to the---the way we do and all that so it's not like a one off thing. Er, I think at some point it changes over, but I think if I'm not mistaken, I think, er, a lot of the members may not have done arbitration were actually put through courses, even practice clinic. And if he just---I mean, for example, er, one of the---the two-oh-[oh]-two the---my memo out to the members, they were turned into activities organised already that date for that year. Out of that, two were for arbitration, okay, training people to be arbitrator. One was basically on extension of time, one was on defects I believe, so out of the 22, four were very focussed on this kind of problems, so---so we do have regular---I know we have regular courses and practice clinics on this matter.
	[emphasis added]

These answers speak for themselves. The Arbitrator did not explain how, despite not meeting the criterion he attested to, he was still appointed arbitrator for these parties' dispute by the SIA. I have no doubt that the Arbitrator is a very distinguished architect with many years of dedicated service to his profession, but that does not necessarily make him a competent arbitrator.

61 The SIA should bear in mind, as the Arbitrator himself acknowledged in cross-examination, appointing an arbitrator for parties who cannot agree on one is a service to the construction industry and indeed to members of the public who enter into contracts on the SIA Form to carry out alternations and additions or construct their homes. Given the widespread use of its form, it is incumbent on them to ensure that only competent arbitrators are appointed for the parties who have disputes and differences.

Court:	You know, when the Institute appoints an arbitrator because the parties can't agree upon an arbitrator, would you agree with me that this is a service to the construction industry?
Arbitrator:	Totally, very much so it's a service, Sir.
	…
Court:	You see, because if you don't do that, with all respect to the Institute, there is a chance that these novice arbitrators may be learning at the expense of the parties. Do you agree?
Arbitrator:	I agree with you totally Sir.

There should also be transparency as to the arbitrators who are on their list. There should be no issues in making such a list public on their website as other institutions like the SIAC and SIArb do. It should be a badge of honour to the Institute and those on the list in providing the construction industry and the public a laudable service.

62 The SIA should also bear in mind Singapore's push to be a centre of excellence for arbitration and to build up Singapore as an arbitration hub. Putting forth arbitrators without the requisite competence and ability will only impede this initiative and bring disrepute upon the arbitration

community in Singapore.

The Conduct of Siraj

63 It would not be fair to the Arbitrator if I did not say something about the way in which Siraj has gone about his dispute with the Contractor and then with the Arbitrator. Siraj is a very strong-minded individual who has his own ideas of what should be and what should not be. The Sirajs were therefore often difficult and obstructive. Having heard some of his applications, I must say that he also sees shadows, which appear to him to mask something very diabolical, when there are none. When someone, be it the Arbitrator or registrar or judge, does not agree with him or rules against him, he can be forgiven if he thinks to himself that that person is wrong or does not know what he is doing or is biased or favours the other party or is stupid or even harbours some secret agenda. When a second person in that category rules against him, and being charitable, one can still understand him having such feelings. By the time it comes to the 5th, 6th or 7th person ruling against him, then it is time for Siraj to take a step back and objectively ask himself, is it possible that he is the one who holds a mistaken view or has the wrong end of the stick? This is exactly what Tay, J meant when he said in his judgement: "The fact that an arbitrator seems to be constantly ruling in favour of one party is equally consistent with the merits being on that party's side." (see [43], [2003] SGHC 64).

64 The many applications Siraj took out before the arbitrator and the objections he put forward, were often misconceived and misguided. The tone his letters took was unnecessarily confrontational, aggressive and rude. His taking out 22 interlocutory applications and after going through only 6 of them, refusing to go on with the rest on the ground that the Arbitrator was biased, unfair and misconducting the proceedings was totally unwarranted. The language he often used was uncalled for.

65 As noted above, there were also innumerable applications made by the Sirajs in the Courts and about 10 of which took up the time of the Court of Appeal. The Sirajs complained bitterly about being mulcted in costs. However this often was the result of their misguided applications, their erroneous views and misconceived actions, all of which were of their own doing.

66 I illustrate my observations with a simple matter that went completely out of hand and was blown out of all proportion to the event from which it emanated – his mistaken and misguided view of what happens to exhibits and documents in between hearings. The Sirajs brought some evidence to a preliminary hearing on 14 April 2003 before the arbitrator; this included dismantled swimming pool pumps, a dismantled filter, a queen-sized mattress soiled by water ingress in the basement and a box of documents. After the preliminary meeting, Siraj refused to remove the same from the conference room venue. He said he was aggrieved that the Arbitrator did not even look at it. The Arbitrator says he did and took notes of the exhibits. The Arbitrator felt they were more relevant to the hearing rather than the interlocutory hearing before him. Siraj refused to remove the would-be exhibits and said they should be left there until the hearing as they would be used at the hearing. He did not see why he had to incur, having brought it to the arbitration venue, the cost of removing them only to bring them back again. I pointed out to Siraj that if the preliminary meeting or a hearing was held at a hotel, as was often done, when the hearing or that tranche was completed and another tranche was to be held at some later date, would he not, as a party, have to remove his exhibits and documents? Was it reasonable to say it should be left at the venue until the next hearing? His only answer to me was that the Arbitrator refused to even look at it. This refusal by the Sirajs to take back their exhibits escalated to a right royal battle between the Sirajs and the Arbitrator. The Arbitrator threatened to return the items and then employed a contractor to take the exhibits and unload them in front of the Property sometime on or around 2 October 2003.

67 This is how Siraj characterised the incident in his Affidavit, affirmed on 27 October 2009, and this is typical of the language he uses:

> 67. Equipped with this private and priviledged information that both Mr Siraj and Ms Khoo were severely handicapped and/or on hospitalization leave, **Mr John Ting embarked on malicious, scandalous and oppressive acts of gangsterism and high handedness**. Mr John Ting behaved like a mafia mastermind orchestrating a series of criminal acts to harass, intimidate and oppress Mr Siraj and Ms Khoo. It seems that Mr John Ting preferred to spend his time committing mischief and other criminal offences and cause grievous harm, damage and trauma than to convene a "simple" meeting even if it was for a mere 10 minutes to consider the bundle of documents and other items brought along by Mr Siraj for the meeting on 14th April 2003.
>
> 68. …The scene of the crime was just outside the gates of the then residence of Anwar Siraj and Ms Norma Khoo … Photographic evidence of this have been submitted to both the Police and the Courts.
>
> 69. The motley band of thugs like merceneries [*sic*] of various Nationalities failed to offload their "cargo" and left the locality but not without climbing on the parapets, calverts [*sic*] intruding into the privacy of the occupants and making loud noise and fuss outside the premises and generally making a nuisance of themselves.
>
> 70. …Whilst he repeated his threats to Dr G Raman to dump the items at Dr Raman's office, Mr John Ting clearly did not have the guts or the courage to carry out his harassment and dumping acts at the office of Dr G Raman. However, typical of a bully unable to execute his tyranical [*sic*] ways on one side, Mr John Ting then turned his attention back again on the residence of Anwar Siraj and Ms Norma Khoo who was still recovering from her illness.
>
> 71. **Mr John Ting struck again on 02nd October 2009**. [*sic*]
>
> 72. This time with added malice, vengence [*sic*] and bravado, **Mr John Ting's then secretary and hired thugs managed to commit a series of offences which were all reported to the Police**. Mr John Ting's lackeys behaved far worse than loan shark harassment agents. So bold were these bunch of criminals that they had the time to take their own photographs of what they had done. They qualified as an unlawful assembly [*sic*] with a common intention to commit mischief and other offences.

Siraj filed a police report and initiated three Magisrate's Complaints accusing the Arbitrator with committing the crimes of illegal dumping, public nuisance and obstruction under the Environmental Health Act and the Penal Code. The Arbitrator says he had to attend at the Subordinate Courts on 21 and 23 February 2005 to deal with these Magistrate's Complaints. The Sirajs were dissatisfied with the lack of progress and prosecution of their complaints. This culminated in an application by the Sirajs, OS No 1213 of 2009, for leave under Order 53 RSC, to issue mandatory orders against the police and the Senior District Judge which was heard by me on 14 December 2009. In that application Siraj made allegations, *inter alia*, of a ganging-up between the police, officers of the Subordinate Courts, the Attorney-General's Chambers and the assistant registrars of the High Court against him and his wife who were the non-privileged underclass from the heartlands of Singapore. He sees himself as the persecuted under-dog when much of it is of his own doing.

68 Distressing as these complaints must have been to the Arbitrator, they cannot form any ground for an extension of time in the circumstances of this case. In appropriate cases, and this is not one of

them, an extension can be sought from the Courts under section 15, 1985 AA. But this should be done before the expiry of the time limit. Complaints, allegations of misconduct and even worse have, from time to time, been levelled against arbitrators. They are mostly without merit and taken by a disappointed party. Such complaints come with the territory and arbitrators have to be of sterner stuff, believing in their own competence and objectivity to carry out their function and complete the arbitration fairly, with due despatch and economy, undeterred by such tactics employed by a party.

The Fees Charged by the Arbitrator

69 The Arbitrator also asks that the Court makes an order that the parties jointly and severally pay the Plaintiff the sum of $199,178.40 being the arbitrator's fees outstanding and due under the Arbitration.

70 Both parties have, at different stages, challenged the level of fees of the Arbitrator. The Sirajs were the first to challenge the Arbitrator's indication that he had spent over 130 hours as of the 5 May 2003 when he asked for a deposit beyond the $20,500, ($2,000 and $9,250 from the Contractor and $9,250 from Sirajs) he had received thus far. During the hearing Siraj effectively cross-examined the Arbitrator on the time sheet he had submitted to the parties on 6 June 2003 and pointed to some not insignificant errors. When the Arbitrator wrote to the parties on 15 April 2005 stating that his Award was published and ready for collection upon payment of $199,178.40 for his outstanding fees, costs and expenses incurred up to the publishing of the Award, LDP replied on 9 May 2005, objecting to the fees and asking for a breakdown.

71 The Arbitrator claims that he spent 692 hours on this arbitration and the writing of his award. At $350 per hour, this came up to $242,200. After deducting the $34,250 paid by the Contractor and $9,250 by the Sirajs from this sum, the balance outstanding was $198,700. The Arbitrator's breakdown included:

(a) 226 hours and 10 minutes or 28 continuous 8-hour days perusing pleadings and documents, reviewing letters received, preparing and sending letters in preparation for the hearing over a period of 2 years, 10 months from 16 January 2002 to 24 November 2003;

(b) 9 hours for the aborted hearing on 21 November and for the one day hearing on 24 November 2003 where the Contractor presented his case and evidence;

(c) 40 hours for the analysis of evidence and arguments presented by the Contractor;

(d) 363 hours and 30 minutes or 45 continuous 8-hour days for the analysis of the evidence presented by the Sirajs, this translates to $127,225 worth of work; and

(e) 16 hours for the drafting of the award.

Whereas the Arbitrator charged 12 hours for meetings with the parties and interlocutory applications for the earlier period and 4 hours for the site visit, post hearing, he clocked an inexplicable 19 hours and 20 minutes from 8 December 2003 to 8 April 2004 when he did relatively little. One wonders whether this time spent in combating the Sirajs got included into this item.

72 As noted above, the hearing took only 1 day. It proceeded without the Sirajs as they refused to participate. Only the Contractor presented his witnesses and their evidence. According to Dr Raman's letter of 26 September 2002, they had 4 witnesses. Written submissions were only made by the Contractor. From this, the Arbitrator managed to clock up fees of $242,200. Whilst he spent 40

hours on the evidence of the Contractor, item (d) above shows he clocked more than 9 times that in analysing the "evidence" of the Sirajs, something which he should not have done. On top of that in the period from 16 January 2002 to 24 November 2003, (one wonders whether the aborted hearing on 21 November has been double-counted) he spent some 226 hours perusing pleadings and documents and dealing with correspondence.

73 Bearing these hours clocked, I examined his Award, which was released to the parties in stages. It showed for the first part, a 6 page Award. The first page is in the nature of a cover sheet of court documents stating: "In the matter of the Arbitration…" and setting out the parties and the title: "Final Award of Arbitration", 3½ pages of essentially recitals and 1½ pages of findings and awards of monetary figures. What is remarkable is:

(a) The Arbitrator lists 8 issues comprising the Contractor's claims: whether works were completed by 9 January 2001; whether a Certificate of Partial Re-Entry deeming Completion as of 5 April 2001 ought to have been issued; whether the Contractor is entitled to an extension of time from 9 January to 4 April 2001 or for such period as the Arbitrator deems fit; whether time is at large and if so whether works was completed within a reasonable time; whether the sum of $265,190.17 is due to be paid by the Sirajs to the Contractor (whether under Progress Claim No.13 or on a quantum meruit); whether the retention monies of $24,010/86 ought to be released; whether the Contractor is entitled to be paid a sum of $10,557.50 and on the Final Accounts, what if any sums are further payable.

(b) The Arbitrator then makes his findings on these 8 issues in 8 points and 9 lines: Works were completed on 5 April 2001; the Completion Certificate ought to have been issued to so certify as of 5 April 2001; the Contractor was entitled to an EOT from 9 January to 26 March 2001; time is not at large; Interim Certificate No.13 ought to have been issued for the sum of $303,015.30; retention monies of $25,695.35 ought to be released; the Contractor is entitled to the sum of $10,557.50 under para.2.8 of the POC; and the Award does not include the Final Account.

It is difficult to see what is so complex and complicated as made out in the numerous affidavits.

(c) The total award is $329,268.15 (after taking into account LAD of $10,000) with interest and costs; and the Arbitrator's costs come up to $242,678.40. Such a quantum of costs for a standard construction dispute, which proceeded *ex parte* for one day, and resulted in a 6 page Award, (and a further 5 pages of 'reasons'), offends the principle of proportionality and common sense.

(d) Without the second part of the Award, the 6-page Award which is complete on its own together with the Arbitrator's signature does not give any grounds for his findings and his award of monetary sums. This would be contrary to Article 14.1 of the Rules.

(e) Moreover, the 6th page has a curious feature, at the bottom left hand corner there appears a stamp with words (underlined and italicised in this judgement) filled in: "Signed and published on the *15th* day of *APRIL* 20 *05* by me. In the presence of *JANIS TAN* . (Witness)" But there is no signature of Janis Tan appearing. Why the Arbitrator found it necessary to have this stamp and words is a mystery. It shows to me his lack of knowledge in the writing of an award.

74 Attached to his Award were a further 5 pages setting out "grounds" for the Arbitrator's decisions. The setting, format and style are quite different from the first part of the 6-page Award and the lines are single spaced. This led Siraj to question whether they were added on at some later

point of time. If they were, then the 6 page award would not comply with Article 14.1. Given what I have seen in this case, I unfortunately share those suspicions. Furthermore some of his reasoning is quite laconic:

> 2) Whether works was completed by 9 January 2001.
>
> FIND: Works was not completed by 9 January 2001.
>
> a) The photographs shown in the [Contractor's] submissions (CB 68 to 72) show that generally the works on the 1st storey, 2nd storey and the attic were completed.
>
> b) The external works, basement and pool were not completed.

There is no reference to the Sirajs' list of alleged defects and outstanding works or why, if he did, the Arbitrator dismissed the same.

75 It follows, even if I took the view that an extension of time was warranted, I would not have ordered the parties to pay the Arbitrator's fees as they are totally out of proportion and excessive in these circumstances. I am not persuaded that the quantum was justified. As pointed out by Mr Das in his submissions, a distinction must be drawn between the number of hours an arbitrator alleges he spent and the number of hours he reasonably needed to do so. Mr Das says we should bear in mind that this involved an *ex parte* hearing of one day, an Award of 6 pages with 5 pages of grounds of decision, straightforward issues, some 21 hours of actual time for interlocutory applications and a site visit. If it was an issue and necessary to decide the reasonable level of fees for this arbitration, I would have sent the Arbitrator's fees for taxation under section 36 1985 AA, but it does not arise here. As this is a domestic arbitration, different considerations apply from those, with respect, correctly set out in *VV v VW* [2008] 2 SLR 929 in relation to international arbitrations. Our Courts would have the jurisdiction and interest in ensuring a proper level of fees and costs levied, whether of arbitrators or counsel, in domestic arbitrations.

Conclusion and Judgement

76 For the reasons set out above:

> (i) I decline to extend time to 15 April 2005, as prayed for under prayer 1 of OS No 1807 of 2006/S, for the Arbitrator to render his Award under section 15 1985 AA. In the result, the Arbitrator's Final Award of Arbitration dated 15 April 2005, being made out of time under Article 14.1 the Rules is void and of no effect.
>
> (ii) I decline to make an order that the Arbitrator's fees and expenses set out in prayer 2 of OS No 1807 of 2006/S be jointly and severally paid by the Sirajs and the Contractor. It also follows from (i) that such fees are irrecoverable by the Arbitrator.
>
> (iii) In view of my order in (i) above, there is no necessity to make any order on prayers 1 and 2 of OS No1231 of 2008/W.
>
> (iv) Subject to [77] and [78] below, I decline to make any order for prayers 3, 4 and 5 of OS No 1231 of 2008/W and dismiss these applications.

I would have been minded to order the refund of the Contractor's $25,000 paid on 10 September 2003 but there is no such claim by the Contractor in these consolidated originating summonses.

77 The unfortunate result and consequences of the Arbitrator's delay in making his award means the Sirajs and Contractor's disputes and differences under the building contract remain unresolved to date. Further, if there is any possible liability on the part of any of the project consultants or third parties, and I must not be taken to say there are any such liabilities, then the parties would be time barred by now to pursue those avenues. As matters now stand, it is especially unfortunate for the Contractor who thought he had a valid award for his monetary claims. Given the fact that the Notice of Arbitration and the Sirajs' counterclaims were brought well within the time bar and the circumstances of this unfortunate saga which resulted in the award being invalid and of no effect, there should be no bar to their re-commencing their appointment of another arbitrator to complete their agreed dispute resolution process. For the avoidance of doubt, both the Sirajs and the Contractor are entitled to raise any issues, disputes or differences they may have over this Contract so that it can be resolved once and for all. If it were necessary, and I do not think it is, I would have considered this to be an appropriate case to make an order under section 30 of the Limitation Act (Cap 163, 1996 Rev Ed) that the period between the commencement of the arbitration proceedings to the date of this judgement be excluded in computing any relevant limitation period. Although section 30 of the Limitation Act was repealed along with the 1985 AA, it would still have been applicable here because the arbitration proceedings were commenced before its repeal on 1 March 2002.

78 Pursuant to prayer 5 of OS No 1231 of 2008/W, I hereby give leave to both parties to recommence their dispute resolution through arbitration by sending within 60 days from the date of this judgement, a letter to the President of the SIA to appoint an arbitrator if they cannot agree on one within 30 days from the date of this judgement. It is my hope the President of the SIA will appoint an experienced and competent arbitrator this time round with the capability to resolve the disputes and differences of these parties and if he considers the current SIA Panel as not including such a candidate, he should feel free to go outside the current SIA panel. Clause 37(1) of the General Conditions of Contract does not contain any prohibition against this.

79 The mareva injunction must be discharged. As I may not be apprised of all the facts or orders or terms, if any, made in relation to the mareva injunction and its variation by the Court of Appeal, the Registrar will fix an urgent date for the parties to come before me to make their respective submissions including any consequential orders that may be necessary.

80 Normally, costs should follow the event but I may not be aware of any special facts that may require an order otherwise. However, before I make a final decision on costs for these consolidated originating summonses, since the parties will be appearing before me to deal with the discharge of the mareva injunction, the parties are to address me on costs at that hearing to be fixed by the Registrar, referred to above.

81 Lastly, as this matter has had a long and tortured history, there will be liberty to apply.

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