Anwar Siraj and another *v* Teo Hee Lai Building Construction Pte Ltd [2013] SGHC 200

Case Number	: Originating Summons No 1200 of 2010
Decision Date	: 08 October 2013
Tribunal/Court	: High Court
Coram	: Quentin Loh J
Counsel Name(s)	: Plaintiffs in person; Edwin Lee (Eldan Law LLP) for the non-party; Teo Hee Lai for the Defendant.
Parties	: Anwar Siraj and another — Teo Hee Lai Building Construction Pte Ltd

Arbitration – Discharge of Arbitrator

8 October 2013

Quentin Loh J:

1 The plaintiffs ("Plaintiffs") have filed a notice of appeal against my decision on 27 October 2011 which gave leave to an arbitrator, Mr Chow Kok Fong, ("Mr Chow") appointed by this court in Originating Summons No 1200 of 2008 ("OS 1200"), to withdraw from his appointment. The time for the Plaintiffs to file their notice of appeal against my decision has long passed. There is no effective defendant to challenge the Plaintiffs because the defendant ("Defendant") stopped attending these proceedings at an early stage, citing financial constraints.

The Facts

2 OS 1200 is but one in a series of many proceedings commenced by the Plaintiffs over the renovation of their property at No. 2 Siglap Valley, Singapore 455810. They entered into a contract on the Singapore Institute of Architects Form (Lump Sum, 6th Ed, August 1999) with the Defendant to demolish their one storey house and to construct a two-storey house with an attic, basement and swimming pool at the end of December 1999. Disputes arose between the Plaintiffs and the Defendant, and they proceeded to arbitration in August 2001. The Singapore Institute of Architects ("SIA") nominated an arbitrator, Mr John Ting Kang Chung ("Mr John Ting"), and the ensuing arbitration went through what I can only describe as a fractious and stormy course with the Plaintiffs eventually not participating in the hearing. The award that was issued was challenged by the Plaintiffs in OS 1807 of 2006 ("OS 1807"). I heard OS 1807 and OS 1231 of 2008 as a consolidated originating summons in December 2009 and issued my judgment on 18 January 2010 (see *Ting Kang Chung John v Teo Hee Lai Building Constructions Pte Ltd and others* [2010] 2 SLR 625). For the reasons set out in my judgment, I set aside the arbitral award.

3 This resulted in the Plaintiffs commencing OS 1200 for, *inter alia*, the appointment of another arbitrator because the SIA, which had nominated Mr Chow, had allegedly failed to do so within the prescribed time limits. Further, the Plaintiffs wanted the court to appoint the arbitrator so there would be no future dispute as to the validity of the appointment. It should be noted that I pointed out to the Plaintiffs that they could carry on with the arbitration, which would involve arbitration costs, or proceed with a court action as they could argue the Defendant had abandoned the arbitration agreement. The Plaintiffs were given an opportunity to consider their options over the lunch

adjournment. They came back after lunch and told me they wanted to proceed with arbitration. I accordingly made, *inter alia*, the following orders on 1 February 2011:

> … Pursuant to the Building Contract entered into between the Plaintiffs and the Defendant, and upon the SIA's failure to appoint an arbitrator within the time limits set out in General Condition 37(1), and pursuant to the Arbitration Act (Cap 10, 1985 Rev Ed), Mr Chow Kok Fong is hereby appointed Arbitrator in respect of the disputes that have arisen between the parties.
>
> …
>
> Liberty to apply – if Chow Kok Fong says he cannot for some reason or other be the Arbitrator.
>
> (a) I also refused the Plaintiffs' other applications in relation to the provision of security for the arbitration by the Defendant.

4 Unfortunately, the arbitration before Mr Chow also became stormy for two reasons. First, because of problems in transferring the documents from the former arbitrator, Mr John Ting, to Mr Chow. Secondly, because the relationship between Mr Chow and the Plaintiffs also deteriorated, and I hasten to add not due to any fault of Mr Chow.

5 The former problem arose because Mr John Ting had possession of the documents filed with him for the first arbitration hearing. This resulted in the Plaintiffs commencing OS 1179 of 2010 ("OS 1179") on the 22 November 2010, naming Mr John Ting as the defendant, for the retrieval of these documents and drawings. The matter came before me on 6 April 2011 and took a considerable time to sort out because of the acrimonious attitude taken by the parties. To be fair to the Plaintiffs, the documents were handed over to Mr Chow in a rather disorganised and incomplete state with poor indexing, resulting in the documents being handed over in batches. Also, the audio tapes had gone missing. The Plaintiffs made these complaints in their joint skeletal written submission (ASNK:1179/SUM 1333/JWS1) dated 27 October 2011 at para 30(f):

> John Ting and his solicitors returned the documents to us in such [a] jumbled up, haphazard fashion. The documents were neither arranged in chronological order nor in any rational or logical sequence or classification. This is evident from the 67-page index prepared by [the] Defendant's solicitors to describe the documents returned to us. [**refer** to our comments at **page 25 to 44** of our affidavit **Anwar Siraj ASNK:TKCJ 3rd: 22.06.11].** However**, in sharp contrast John Ting and his solicitors [who] handed over what was purportedly "the contractor's documents submitted in the arbitration" arranged in chronological order as evident in the 87-page index prepared by them to describe what was handed over. It is amazing how within 3 weeks John Ting and his solicitors, were able to re-arrange, add to the bundle what was not given to us and meticulously edit the description as well as even "editing" the contents of some of the documents. John Ting and his solicitors also appear to have taken great pains to remove any and all documents that would reflect the wrongdoings of himself, as arbitrator or the contractors (the Claimants in the abortive Arbitration) thus making the handover a highly selective presentation of the case for the contractors. Such was the extent of their attempt to influence the new Arbitrator.**
>
> [emphasis in bold in the original]

6 There were hearings for OS 1179 in chambers before me on 4 July 2011, 27 October 2011, 20 March 2012 and 9 July 2012 to deal with this matter and tax the costs. Subsequently, there were minor disputes on some of the items taxed which I duly dealt with at the 12 August 2013 hearing.

7 The Plaintiffs complained that Mr John Ting transferred not only documents which were the Defendant's documents submitted in the arbitration, but other documents of the Defendant; Mr Chow read those documents, which the Plaintiffs say he should not have, and therefore he was "corrupted" by considering all these other documents from the Defendant. The Plaintiffs alleged that Mr Chow received some 529 documents when he should only have received 129 documents (this latter figure was later increased to 135 documents). It was certainly no fault of Mr Chow's that these documents came to him. It was the result of the Plaintiffs' application for the handover of documents from Mr John Ting to Mr Chow.

8 The Plaintiffs also alleged that Mr Chow gave directions that were somehow unfair or incorrect and disagreed with his directions on the procedure for the hearing. Mr Siraj submitted on 27 October 2011 that:

> But he has given us procedural orders, he set the time table. Fine, we have to follow him, not us. His time table gave us 3 weeks, 3 weeks, 3 weeks to write, not just our affidavit verifying list, he also made us to write---then we had to do was to get a witness then because I said, "I did try, documents only, arbitration, because everything is historical.

9 How the second arbitration before Mr Chow also descended into fractiousness and acrimony is well documented in a letter dated 3 October 2011 written by Mr Chow to the court setting out his reasons for applying for leave to be discharged as the appointed arbitrator. It is worth setting out most of this letter as it documents the perfectly normal directions issued by Mr Chow in the beginning, how the receipt of documents from Mr John Ting to Mr Chow became a problem, how the Plaintiffs started to disagree with Mr Chow and his conduct of the arbitration, the ensuing uncalled for personal and unwarranted attacks made by the Plaintiffs against Mr Chow, and the language in which the Plaintiffs came to express themselves:

> 1. I refer to the Order of Court dated 1 February 2011, wherein the court had appointed me as Arbitrator in respect of the dispute that had arisen between the Plaintiffs and Defendants, with liberty to apply.
>
> 2. Pursuant to the order for liberty to apply, I respectfully seek a hearing before the Honourable Justice Quentin Loh to apply for leave for me to be discharged as the appointed Arbitrator.
>
> 3. In view of the remarks made in several letters that were written by the Plaintiffs, I had written to both the Plaintiffs and Defendants on 23 September 2011 to seek their consent to my discharge as the arbitrator. I asked for their reply by 27 September 2011. I did not consider that I should continue as the Arbitrator if I did not enjoy the confidence of the parties, nor should I have to subject myself to remarks and insinuations made against me by the Plaintiffs.
>
> 4. By letter 27 September 2011, the Plaintiffs wrote to inform me that they "have no objection whatsoever" to me applying to the High Court to discharge myself as the Arbitrator, "save as to costs".
>
> 5. The Defendants, although having been informed of the proceedings throughout, did not reply. The Defendants in fact have never participated in the proceedings, nor corresponded with me since my appointment.
>
> 6. The events leading up to my decision, and the remarks made by the Plaintiffs are as follows:

(a) Following my appointment, I conducted a 1st Preliminary Meeting on 18 March 2011 (attended only by the Plaintiffs although the Defendant was also notified) and issued directions for the parties to file their respective Statement of Case by 29 April 2011 and Statement of Defence within 6 weeks after service of the Statement of Case. The 2nd Preliminary Meeting was scheduled for 16 June 2011.

(b) On 26 April 2011, Stamford Law Corporation, solicitors for the previous Arbitrator Mr John Ting, wrote to me and enclosed 5 arch lever files of documents containing documents submitted by the Defendants during the earlier arbitration under Mr John Ting. Stamford Law Corporation stated that they had been directed to do so by the Honourable Justice Quentin Loh on 6 April 2011.

(c) On 29 April 2011, the Plaintiffs submitted their Statement of Case accordingly.

(d) On 12 May 2011, the Plaintiffs wrote to ask for leave to inspect the documents that had been forwarded to me by Stamford law Corporation.

(e) On 13 May 2011, I wrote to the Plaintiffs and acceded to their request for inspection. In that same letter, I also notified the Defendants that they were entitled to be present during the inspection. The inspection was fixed for 14 June 2011.

(f) On 10 June 2011, with the Defendants having failed to file any Statement of Defence, the Plaintiffs wrote to me to seek a documents-only arbitration, stating that it would be a "judicious approach" for the expeditious resolution of the matter.

(g) On 16 June 2011, I held a 2nd Preliminary Meeting which was attended by the Plaintiffs but not the Defendants. The Plaintiffs withdrew their application for a documents-only arbitration after I referred the meeting to matters which had to be considered in the event that proceedings proceed in the absence of one of the parties (pp. 220 and 221 of *Russell on Arbitration*, 22nd Edition, Sweet & Maxwell 2003). I gave directions for the exchange of the list of documents, inspection and witness statements. I also gave directions that parties should consider the case and address the principles of causation and proof of damage as set out in the cases of *Robertson Quay Investments Pte Ltd v Steen Consultants Pte Ltd* [2008] 2 SLR 623 and *Sunny Yap Boon Keng v Pacific Prince International Pte Ltd* [2009] 1 SLR 385.

(h) On 7 July 2011, the Plaintiffs served their Affidavit Verifying List of Documents.

(i) Only 9 July 2011, the Plaintiffs wrote to me to inform me that they object to me having sight of and/or review of and/or reference to the documents handed over to me by Stamford Law Corporation on 26 April 2011. They further stated that at a special hearing for directions before the Honourable Justice Quentin Loh held on 4 July 2011, the learned Judge had directed that the Plaintiffs be allowed time to complete their inspection of the documents that had been handed over to me by Stamford Law Corporation.

(j) On 14 July 2011, I wrote to the Plaintiffs and Defendants to state that I had not sought the documents, but that they had been deposited with me by Stamford Law Corporation following the direction of the Honourable Judge. My inspection of them was also just to ensure that the documents received into my custody accords with the list of documents provided by Stamford Law Corporation. I had already afforded all parties on opportunity to inspect the documents on 16 June 2011, and the Plaintiffs did take up the

opportunity to inspect the documents in my presence. In order to address the Plaintiff's objections, I therefore directed that both parties were to file written submissions by 29 July 2011, and that the submissions should deal with the issue of the prejudice that my inspection of the documents is likely to have on the Plaintiffs' case, and to state the specific reliefs that are sought.

(k) On 28 July 2011, the Plaintiffs wrote to me to state that they were "quite upset and disturbed by the tone and tenor of the Arbitrator's letter", and that they were "shocked by the requirement to file and exchange submissions given strict timelines and specify content" (sic). Paragraph 13 of their letter was entitled "The Tribunal and Only the Tribunal Knows", and they stated that "(a) the Tribunal and only the Tribunal knows the extent to which the documents in his custody have been 'checked' or inspected (b) The Tribunal and only the Tribunal knows the extent to which the checking of the contents cover some or part of the content (c) The Tribunal and only the Tribunal knows the extent, if any, the content of the documents particularly letters from John Ting and/or directions from John Ting can and will affect his determination in the arbitration.

(l) On 1 August 2011, I wrote to the parties to record that since neither party had filed submissions, after considering the basis on which the notice of objection contained in the Plaintiffs' letter dated 9 July 2011 was lodged, I dismissed the objection and directed that the Tribunal's fees of $500 should be borne by the Claimants.

(m) On 5 August 2011, the Plaintiffs filed their witness statements sworn by 3 witnesses. I did not receive any filings from the Defendants.

(n) On 18 August 2011, I wrote to the parties to confirm that the arbitration hearing was scheduled for the 2nd to the 5th of October 2011.

(o) On 31 August 2011, the Plaintiffs filed their Opening Statement in 6 volumes. The Defendants did not.

(p) On 2 September 2011, I wrote to acknowledge receipt of the Opening Statement and to set out the procedure at the 3-day hearing. In the interest of saving time, I directed that the Opening Statement would be taken as read, the Claimants would be entitled to introduce evidence of their factual witnesses on the 1st and 2nd days, and 3rd day would be reserved for me to clarify any further issues with respect to the Opening Statement and the evidence adduced.

(q) On 5 September 2011, the Plaintiffs wrote to request for further inspection of the documents that had been handed over to me by Stamford Law Corporation previously.

(r) On 6 September 2011, I acceded to the Plaintiffs' request and scheduled the inspection for 14 September 2011.

(s) On 13 September 2011, I wrote to the parties to seek a further deposit of $40,000 since the matter was proceeding towards a hearing in October 2011.

(t) On the same day, the Plaintiffs wrote to me in respect of my letter of 2 September 2011 where I had set out the procedure for the 3-day arbitration. They commented that the entire proceedings could be completed in less than half the time if the Defendants chose to be absent. They also stated that "[u]nless the Tribunal states otherwise" the "witness

statements ought to be taken as read…". The Plaintiffs also then stated in 6 paragraphs how the hearing could be reduced to at most 1.5 days.

(u) On 14 September 2011, the Plaintiffs inspected the documents.

(v) On 16 September 2011, I wrote to the parties to explain my directions for the inspection of the documents, allocation of time at the hearing and the documents that were handed over to me by Stamford Law Corporation.

(w) On 20 September 2011, the Plaintiffs wrote and made numerous remarks as follows:

(i) "With all due respect we note that the Honourable Arbitrator, Mr Chow Kok Fong has ignored and/or neglected and/or refused to respond to the letters and submissions referred to above"

(ii) "Under the circumstances it is imperative that the Honourable Arbitrator Mr Chow Kok Fong acts positively before the Final Hearing on the following:

(a) **assures the Respondents** that the Respondents' Documents submitted by the Respondents in the abortive Arbitration and now in Mr Chow Kok Fong's custody mixed and interspersed with other 'corruptive documents' will be sieved and separated from the other 'corruptive documents' and be taken into consideration by the Arbitrator…"

(b) **acts upon the written assurance to the Respondents and makes such action seen to be done;**

(c) **assures the Claimants** in writing that the Honourable Arbitrator, Mr Chow Kok Fong, **will not** have any sight of the 'corruptive documents' inproperly (sic)and unlawfully handed over by John Ting Kang Chung and/or his solicitors;

(d) acts upon the written assurance to the Claimants and makes such action seen to be done by sealing 'the corruptive documents' and in the presence of the parties sealed (sic) the corruptive documents in the presence of the parties and retaining same pending a decision by the Courts on its disposal;

(e) grants permission to both the Claimants and the Respondents to sort, separate and segregate the corruptive documents from the documents submitted by the Respondents in the abortive arbitration and to witness the sealing of the corruptive documents;

(f) confirm that the Honourable Arbitrator, Mr Chow Kok Fong will be able to carry out the above on or before 3 October 2011…"

(emphasis are as found in the original text)

(iii) "The Claimants are indeed, most disappointed (sic) that despite having raised critical outstanding matters to the Honourable Arbitrator, Mr Chow Kok Fong, the Tribunal has selected to ignore matters and/or neglected to act fairly, impartially, expeditiously and economically for the resolution of the disputes at hand."

(iv) "Up to the time of writing and hand delivery/receipt of this letter by the Arbitrator,

the Claimants have still not received any response. This is most telling"

(v) "Whilst the terms set by Mr Chow Kok Fong allow for him to call for further security for his fees, it is without doubt implicit in the contractual arrangement and under the Arbitration Act… that work **must be done with due diligence and without neglect.**"

(vi) "The third procedural order is highly questionable"

(vii) "The time frame for payment set by the Honourable Mr Chow Kok Fong is also unreasonable particularly in light of the unfinished tasks expected of him and the pressing schedule for the parties to prepare for the fast approaching arbitration. This is much akin to the unfair and unjustifiable requirements for submissions on the 'corrupted documents' submitted by John Ting Kang Chung's solicitors…"

(viii) "With all due respect to the Honourable Arbitrator, Mr Chow Kok Fong, this demand for $40,000 without doing the work may be construed as an act of oppression and, indeed obstruction of the course of justice"

(ix) "We ought to make it abundantly clear that Claimants' intention to take this course of action arises only because of the neglect by the Honourable Tribunal to attend to outstanding work which omission could result in the entire arbitration to be declared null and void…"

(x) "It would appear that the Honourable Arbitrator, Mr Chow Kok Fong, is either hesitant or reluctant to settle the issue of the contentious documents ("the corruptive documents")"

(xi) "A clear statement on this ought to be issued by the Honourable Mr Chow Kok Fong. This would be not only a better but more honourable way out than the generation of obstacles with the imposition of an oppressive act by way of demand of huge sums of money."

(xii) "Whilst the tasks at hand call for substantial courage and maturity of the quasi-judicial authority, we trust that the Honourable Mr Chow Kok Fong will rise to the occasion and do what is just and right"

(x) On 23 September 2011, the Plaintiffs made numerous remarks as follows:

(i) The letter is entitled "SECOND REMINDER TO COMPLETE OUTSTANDING MATTERS BEFORE FINAL HEARING AND BEFORE FURTHER PAYMENT OF ADDITIONAL DEPOSIT OF $40,000 – PURPORTEDLY TO COVER ARBITRATOR'S FEES"

(ii) "We rush this response to reiterate our position set out in our letter of 20th September 2011 AND to highlight that we will be forced to make an application to the Courts if we do not receive a positive response from Mr Chow Kok Fong on or before 12 noon Monday 26th September 2011"

(iii) "We say this as it is becoming increasingly evident that with each passing day the Tribunal appears to be entering further into the arena and becoming embroiled in the fray whilst the Respondents remain totally silent doing absolutely nothing."

(iv) "No rule of Natural Justice allows for the Claimants in such a situation to be placed in so disadvantages a position" (sic)

(v) "the Claimants reserve their rights to raise the matter of what they have discovered as improper or unlawful to the Courts at the opportune time"

(vi) "any attempt to limit the results of the inspection to only the Arbitration proceedings even in the face of wrongful and/or unlawful action will be deemed as interference in the administration of justice"

(vii) "The rules of natural justice apply to both the Respondents and the Claimants. By protecting one side the Tribunal cannot cause injury to the other side. To constrain one side under the delusion of the rules of Natural Justice is injustice in itself."

(viii) "Fourthly, on the 'Allocation of Time of the Hearing" we are still missing a reasonable estimate of how much time the Tribunal intends to take and for how long he intends to retain the witnesses."

(ix) "At $500/- per hour charged by Mr Chow Kok Fong it is only reasonable to expect an exceptionally high level of productivity and excellent capacity to grasp the significant and critical points"

(x) "… whilst the Tribunal has repeated raised the matter of the Rules of Natural Justice, the Tribunal ought to take cognizance of the fact and deal appropriately with it… failing to do so will render the entire Arbitration proceedings null and void"

(xi) "The choice is left to the Honourable Mr Chow Kok Fong"

(xii) "We do not expect the Tribunal to add to our sorrows but rather to resolve the disputes with the sense of justice and fairness"

7. As stated above, on 23 September 2011, in view of the loss of confidence in the tribunal by the Plaintiffs and the remarks made, I therefore wrote to the parties to seek their consent to the discharge. The Plaintiffs consented in their letter of 27 September 2011, "save as to costs".

8. In addition to my application for leave to be discharged as arbitrator, I also apply for a direction for all documents that were previously forwarded to me by Stamford Law Corporation on 26 April 2011 to be returned to them.

…

[emphasis in bold in original]

10 On the 27 September 2011, the Plaintiffs sent a letter to the Court, attaching Mr Chow's letter of 23 September 2011 with their comments thereon and stated:

10 In view of Mr Chow Kok Fong's statement of intention and particularly the basis being the purported "remarks directed at (him)", Claimants in the Arbitration (Plaintiffs in the OS1200/2010/T) hereby set out their position:

(**a**) **The Claimants have no objection whatsoever to the Honourable Mr Chow Kok Fong**

applying to the High Court to discharge himself as Arbitrator save as to costs;

(**b**) **By copy of this letter to the Honourable Arbitrator which will be delivered by hand today the Claimants request the Honourable Arbitrator to do so as soon as possible as "time is of the essence";**

(**c**) **The Plaintiffs in OS1200/2010/T withdraw their urgent request for an immediate Hearing under "liberty to apply" to resolve critical outstanding matters, which application we e-filed vide our letter of 26 th September 2011 (referred to at paragraph 1 above); and**

(**d**) **We reserve all our rights and interests in this matter including but not limited to our right to rebut the unfounded allegations set out in the Honourable Mr Chow Kok Fong's letter dated 23 September 2011.**

[emphasis in bold and underlined in original]

(a) This letter was copied to Mr Chow and it included the following note to Mr Chow at the end of their letter:

Whilst we maintain that we have not directed any improper remarks at you we will respect your decision to opt out. **For the avoidance of any doubt whatsoever we have no objection to your intended application to the Court to discharge yourself as Arbitrator save as to costs.** As time is of the essence, and as you have recognized that Arbitrations should be conducted expeditiously we humbly request that your application be made on an urgent basis. Meanwhile, in view of your intention we propose to…

[Emphasis in the original]

11 I heard the parties on 27 October 2011. The transcript will show that the Plaintiffs had no objection to Mr Chow's application to be discharged. I asked them twice and the Plaintiffs affirmed both times that they were agreeable to his withdrawal:

1st Plaintiff:	As from what he has said about us and gone through here, "s going to be very difficult, your Honour.
Court:	All right. So you don't want him?
1st Plaintiff:	He wants---he wants out, let him go.
Court:	No.
1st Plaintiff:	Yah.
Court:	I'm trying to persuade him to stay so you can stay in the course and finish it.
1st Plaintiff:	But how is he going to be when he---he said such nasty things about us which are not true?
	…
Court:	All right. So what do I do when I discharge him? What are you going to do?
	…
"Court:	Mr Chow has applied to discharge himself, you have no objections?

1st Plaintiff: No.

Court: All right, so I'm going to record this here."

…

"Court: Mr Chow, your application to discharge yourself is granted.

Chow: I'm obliged, your Honour.

Court: You will be entitled to charge reasonable costs to date. Such costs will be submitted to the Court meaning to me for review and decision as to reasonableness. All right...

…

"Court: [To the Plaintiffs] I've asked you, "Will you reconsider?" You say, "No". So my order stands that Mr Chow can withdraw.

1st Plaintiff: Thank you."

…

"Court: Thank you. So do you need any more orders from me?

1st Plaintiff: No, not on Mr Chow. Basically we will take--- we'll take up this action against Mr Chow. We'll take up separate action.

…

Court: Mr Chow, you are allowed to discharge yourself, withdraw as arbitrator and you all can do as you are advised and the way you think best suits your interest. All right?

12 I accordingly, I made the following orders for OS 1200/2010 on 27 October 2011:

Mr Chow – application to discharge yourself is granted.

You will be entitled to charge reasonable costs to date.

Such costs will be submitted to Court, for review as decision as to reasonableness and quantum.

Documents will be returned to Stamford Law by Arbitrator.

13 On 8 November 2011, the Plaintiffs sent a letter requesting further argument with respect to OS 1179; this letter was headed:

ORIGINATING SUMMONS 1179/2010/P

AND SUMMONS (OTHERS) 1333/2011/B

REQUEST FOR FURTHER ARGUMENTS …

Summons No. 1333/2011/B was an application under OS 1179 for Mr John Ting to submit to cross-examination by the Plaintiffs. In this letter, after the 7-paragraph introductory remarks, (which noted that Mr Chow, a "non-party" to OS 1179, was allowed to remain in Chambers and that the Hearing for

Directions was a joint hearing with OS 1200 where the "…learned Judge made certain 'final' decisions on some of the matters in both OSs"), the Plaintiffs went on to make observations and points on and against my costs orders in OS 1179, asked to be given a fair and reasonable opportunity to respond and rebut the OS 1179 Defendant's affidavits and to present their case in OS 1200, set out their views on Mr Chow's handling of the arbitration and what transpired, accused Mr Chow of sending "… outrageously blatant" letters that were "…designed to generate a paper trail so as to opt out of the Arbitration" and wanted to be allowed to file "…a complete set of correspondence with Mr Chow Kok Fong" as it would be grossly unfair on them to allow Mr Chow's discharge without placing on record all the evidence which "…negates the allegations made by Mr Chow Kok Fong against the [Plaintiffs]".

14 The above took up most of the 12-page 68 paragraph letter. There was, within those 12 pages, two paragraphs which stated that further arguments were required to "regularize" the "joint hearing of OS1179/2010/P and OS 1200/2010/P" and further explained that:

(a) the court should make a specific ruling that it was considering the request of Mr Chow to discharge himself on the basis of the "liberty to apply" granted to the parties in OS 1200; and

(b) such a specific ruling is "essential to avoid any doubts or complications in the future particularly any intended action against John Ting Kang Chung for having messed up not one, but two arbitrations."

In this letter, the Plaintiffs did not say they disagreed with the discharge of Mr Chow as arbitrator. Their concern was to seek a specific ruling that the basis of the request by Mr Chow to be discharged was the liberty to apply order in OS 1200. Their main concern were the matters in relation to OS 1179 and their wish to put all the correspondence between them and Mr Chow "on record" which they alleged would prove Mr Chow's unfairness to them and a reimbursement of the deposit paid to him.

15 Pursuant to a Registry Notice for OS 1179, dated 2 March 2012, the parties, *viz*, the Plaintiffs and Mr John Ting's Counsel, Mr Daniel Chia, came before me on 20 March 2012:

(a) Mr Chia raised the preliminary objection that the Plaintiffs were out of time as I would have been deemed to have certified no further argument on 22 November 2011 (14 days after the Plaintiffs' 8 November 2011 letter). However Mr Chia very kindly indicated he was willing to deal with the Plaintiffs' arguments nonetheless since they were litigants in person.

(b) The Plaintiffs went through the history of the matter and argued that the costs I awarded against Mr John Ting was inadequate and why I should allow them to cross-examine Mr John Ting. At the end of the hearing, I said I would think about the costs awarded to the Plaintiffs for OS 1179, in the meanwhile the parties were to try and agree the disbursements, failing which I would tax them and I refused the Plaintiffs' application to cross-examine Mr John Ting.

(c) Although what was before me was OS 1179, the Plaintiffs did say at the beginning of the hearing that:

(i) the "joint hearing" of OS 1200 and OS 1179 should be "regularised";

(ii) they had believed that the 27 October 2011 hearing was a directions hearing only;

(iii) they should be given a fair and reasonable opportunity to present their case in OS 1200;

(iv) they would like the hearing of OS 1200 be on another day with notice being given to the Defendant in OS 1200 and that Mr Chow be asked to attend as well; and

(v) they did not "botch" up the second arbitration.

(d) The Plaintiffs then went on with their arguments set out at [15(b)] above.

As time had run out, I directed that another half day be fixed for hearing OS 1200. In doing so, it should be noted that I did not rule that I was going to hear further arguments, but to fix another time for the Plaintiffs to explain what they wanted "regularised". It would not have been right after such a lapse of time, to do so without hearing the other party. Given the Plaintiffs' views in their letter of 8 November 2011, I had formed the view that making all the correspondence between the Plaintiffs and Mr Chow "part of the record" was totally unnecessary. What had been written by the parties was existing evidence if it was ever necessary to produce them, whether they formed part of the record or not. What the Plaintiffs said to me at [15(c)] above was, almost a by-the-way comment, before they went on with their arguments on OS 1179

16 The parties came before me on 9 July 2012. As the Registry Notice included both OS 1200 and OS 1179 in its heading, Mr Edwin Lee ("Mr Lee"), counsel for Mr Chow turned up. The Plaintiffs again said rather vaguely that Mr Chow should not apply for discharge under OS 1200 and they needed to "regularise" that. Because Mr Chow was not served a copy of the Plaintiffs' 8 November 2011 letter and Mr Lee asked that a copy be served on him so that he could take instructions, I directed that the Plaintiffs serve a copy of the 8 November 2011 letter on Mr Lee. Mr Lee made the point that the Plaintiffs had not filed any appeal against my decision given on 27 October 2011 and Mr Lee asked for, and I gave, my confirmation that this was not to hear further arguments on that order, as the time to do so had long passed, but to understand what the Plaintiffs was saying had to be done to "regularise" Mr Chow's discharge.

17 The next hearing was on 27 July 2012 where the Plaintiffs and Mr Chow's counsel, Ms Looi Ming Ming ("Ms Looi"), appeared before me. The Defendants, as usual, did not appear. At this hearing I took quite some time to get exactly what the Plaintiffs were saying should have been done and what in their view, needed "regularising". They argued that Mr Chow's application on 3 October 2011 was merely an application for leave to apply for leave to be discharged. The order of 27 October 2011 was made "in breach of natural justice". Besides other arguments, Ms Looi emphasised that the court had not granted leave for further arguments with respect to the 27 October 2011. As the Plaintiffs had made references to the numerous hearings and what they said apparently happened, I told the parties that I had to trawl through considerable history, affidavits, submissions and hearings (with transcripts where available) arising from this long drawn-out matter to check whether what the Plaintiffs alleged was correct and that I would need some time to do so. I adjourned the matter for that purpose.

The Plaintiffs' submissions

18 The Plaintiffs' submissions, if I understand them correctly, may be briefly summarised as follows:

(a) With Mr Chow's acceptance of his appointment as arbitrator, OS 1200 had been concluded and the Originating Summons cannot be arbitrarily revived.

(b) In any case, Mr Chow being a non-party had no *locus standi* to intervene in the OS 1200 proceedings.

(c) Mr Chow could not apply for his discharge as arbitrator through the "liberty to apply" order made on 1 February 2011

(d) The joint hearing of OS 1200 and OS 1179 together on 27 October 2011 had taken the Plaintiffs by surprise and resulted in proceedings becoming excessively complicated and convoluted in breach of natural justice.

19 In order to "regularize" the proceedings, the Plaintiffs sought a declaratory judgment that Mr Chow ought to file a fresh summons to be heard on his own application to be discharged as arbitrator.

My decision

20 A preliminary point I must make is that what took place on 27 July 2012 was *not* to hear further arguments but to understand what the Plaintiffs were complaining about or what they were asking the court to "regularize". This is evident from the transcripts of the hearing on 9 July 2012 which preceded the 27 July 2012 hearing. [note: 1] Accordingly, I confirmed that Mr Chow was validly discharged on 27 October 2011 and stated:

> The Arbitrator appointed in OS 1200/2010 was validly discharged on 27 October 2011. It is incorrect and there is no merit in [the Plaintiffs'] contention that Mr Chow has to intervene first and then file a fresh application for leave to be discharged or be discharged.
>
> It was clear to me, on 27 October 2011 that the Plaintiff's relationship with Mr Chow Kok Fong had deteriorated and had become very [acrimonious]; the Plaintiffs made clear they had lost trust in Mr Chow and this is also captured in contemporaneous correspondence.
>
> I asked the Plaintiffs not once but twice about their not wanting Mr Chow to continue as Arbitrator and on both occasions they made clear they were agreeable to his withdrawal. I note that this was in addition to their agreement to his discharge in writing in their response to Mr Chow's letter of 3 October 2011.
>
> The argument on breach of natural justice in hearing OS1200/2011 and OS1179/2010 together is also without merit. The Plaintiffs were clearly put on notice that Mr Chow was applying to discharge himself as Arbitrator in his letter of 3 October 2011 and it is clear that the Plaintiffs addressed the court on both matters at the beginning of the hearing on 27 October 2011.
>
> It would have been an unnecessary waste of time and money in the circumstances for Mr Chow to, eg, intervene as a party and then take out an application for leave to discharge himself. In any case, any non-compliance with the Rules of Court, is an irregularity under Order 2. Most importantly, the Plaintiffs have not suffered any prejudice thereby. Indeed Mr Chow's discharge was what they clearly wanted.
>
> For the avoidance of doubt, what took place on 27 July 2012 was *not* to hear further arguments but to understand what the Plaintiffs were complaining about or what they were asking the Court to do; that is also evident from the transcript taken for that day.
>
> I have now made my positions clear and that is the end of OS1200/2010.
>
> Mr Lee, if you wish to leave, you can do so.
>
> EL: Thank you.

I now set out the reasons for my decision in more detail.

Hearing of Further Arguments

21 First, having trawled through the earlier hearings, submissions and affidavits, it was evident that the Plaintiffs had no objections to Mr Chow's application for leave to withdraw (see above at [10] and [12]). It was also clear that I gave Mr Chow leave to withdraw and discharged his appointment as arbitrator and made consequential orders on his costs and the documents in his possession. In light of what transpired, the Plaintiffs cannot ask for "further arguments" on Mr Chow's discharge or manner of his discharge because they took the stand that they had no objections to it or presented any arguments against it. They clearly had lost confidence in him and no longer wished to continue the arbitration with Mr Chow as the arbitrator. Having presented no arguments against Mr Chow's discharge or the manner of his discharge, they could have no *further* arguments to make on that score. In truth, the Plaintiffs have had a change of mind, for reasons best known to them, and they now wanted to re-open a matter to which they had no objections.

22 Moreover, it is clear from their letter of 8 November 2011 that the Plaintiffs wanted to make further arguments on the matters canvassed in OS 1179 and the orders I had made there on 27 October 2011. The Plaintiffs did include in their letter of 8 November 2011 a request that the court "regularize the procedure" in OS 1200, but that was certainly not a request for further arguments. If for whatever reason they subsequently disagreed with my decision, they could have appealed against my order discharging Mr Chow. Their time to do so ran out on 28 November 2011.

23 Even if I assume for the purpose of argument, that the Plaintiff's letter of 8 November 2011 was also a request for further arguments in relation to OS 1200, they have the difficulty of overcoming O 56 r 2(2) of the Rules of Court (Cap 322, R 5, 2006 Rev Ed) ("Rules of Court") which provides:

> Unless the Registrar informs the party making the application within 14 days of the receipt of the application that the Judge requires further arguments, the Judge shall be deemed to have certified that he requires no further arguments.

The 14 day period elapsed with no response from this court. On a plain reading of the provision, I would be deemed to have certified that I required no further arguments in respect of the 27 October order in relation to OS 1200 on 22 November 2011 (14 days after 8 November 2011).

24 Had the Plaintiffs been dissatisfied with the 27 October order, the appropriate recourse would have been to file a notice of appeal. Time to file the same would run from the date the Judge is deemed to have certified that he requires no further arguments: see s 28B (b)(ii) Supreme Court of Judicature Act (Cap 322, 2007 Revised Edition). The time, therefore, for the Plaintiffs to file an appeal against my 27 October 2011 order with respect to Mr Chow has long passed as they should have filed their appeal within one month after 22 November 2011.

25 In any case, I was of the view that Mr Chow was validly discharged on 27 October 2011 and that there was no merit in the Plaintiffs' contention that Mr Chow, being a non-party to OS 1200, should have first sought to intervene before filing a fresh application for leave to be discharged.

Right of an arbitrator to resign

26 A preliminary issue arises in this instance - did Mr Chow have the right to resign his appointment in the first place? The arbitrator's rights and obligations are derived from a conjunction of contract and status, his acceptance of appointment gives rise to a trilateral contract, in which the arbitrator

becomes a party to the previously bilateral arbitration agreement between the parties: see Browne-Wilkinson VC in *K/S Norjarl A/S v Hyundai Heavy Industries Co Ltd* [1992] 1 QB 863, at 884. In Robert M Merkin's *Arbitration Law* (Lloyd's of London, Looseleaf ed., 1991 -) at [10.86], it was stated:

> Whether an arbitrator has the right to resign is a matter of contract between the parties and the arbitrator. He will have the right to resign lawfully in any circumstances specified in the contract, and also where the parties are in repudiatory breach of their agreement with him.

27 Several texts discuss the right of an arbitrator to resign from his appointment, see *eg*, Gary Born, *International Commercial Arbitration Vol.1* (Kluwer Law International, 2009) ("Gary Born") at Chapter 12, pp 1634–1638 where the learned author states at p 1634:

> An arbitrator is also contractually obliged to complete the mandate which he or she accepts, and therefore not to resign during the course of the arbitration *without good cause*. [emphasis added]

A footnote to that proposition refers to the AAA/ABA Code of Ethics Canon I (H) which refers to unanticipated circumstances that would render it impossible or impracticable to continue as giving rise to right to withdraw. The learned author goes on in a footnote at p 1635 to reference various national laws that allow an arbitrator to resign for good cause, just cause, justifiable reasons or reasonable cause. The labels may differ but the principle is clear.

28 I have no doubt that in the circumstances that have arisen here, Mr Chow had good and justifiable cause to resign. It was clear to me by 27 October 2011 that the Plaintiffs' relationship with Mr Chow had deteriorated and become very acrimonious (again I emphasize that this was not in any way caused by Mr Chow). This was captured in contemporaneous correspondence between the Plaintiffs and Mr Chow leading up to his asking for leave to discharge himself as the arbitrator.

29 In the Plaintiffs' Letter of 20 September 2011, the Plaintiffs accused Mr Chow of having "ignored and/or neglected and/or refused to respond" to letters that were previously sent to him (at para 1). The Plaintiffs alleged that Mr Chow had "selected to ignore the matters and/or neglected to act fairly, impartially, expeditiously and economically for the resolution of the disputes at hand" (at para 7).

30 At para 6 of the same letter, the Plaintiffs listed several steps which they demanded Mr Chow take before the final hearing. The list included a demand for a written assurance to the parties that he would not have any sight of the "corruptive" documents improperly and unlawfully handed over by the previous arbitrator, Mr John Ting, and that Mr Chow sealed the "corruptive" documents in the presence of the parties.

31 The Plaintiffs further implied at paras 8 to 9 that Mr Chow had not carried out his duties as the arbitrator with due diligence in the light of his refusal to respond to the claimants' letters and submissions on the issue of "corruptive" documents from the previous arbitration:

> 8 The Claimants have given adequate time since receipt of this questionable demand letter for the Honourable Mr Chow Kok Fong to respond to the letters and submissions listed at para 1 above. Up to the time of writing and hand deliver/receipt of this letter by the Arbitrator, the **Claimants have still not received any response. This is most telling.** [emphasis in bold in original]
>
> 9 Whilst the terms set by Mr Chow Kok Fong allow for him to call for further security for his fees, it is without doubt implicit in the contractual arrangement and under the Arbitration Act (Cap.10 1985 Revised Edition) and the Singapore Institute of Architects' Arbitration Rules that

work must be done with due diligence and without neglect. [emphasis in bold in original]

32 The Plaintiffs proceeded to request that Mr Chow give his reasons for requesting a further deposit of $40,000 and alluded to the possibility of taking out an application to tax Mr Chow's fees if they were not satisfied with his response: at paras10, 11 and 17. The Plaintiffs averred at para 14 that Mr Chow's demand for further deposits of $40,000 "may be construed as an act of oppression, and, indeed, obstruction to the course of justice."

33 The Plaintiffs concluded their letter as follows:

> 19 The Arbitrator's fees are always protected under the law. In fact the Arbitrator may hold a lien on the Award until his fees are paid. But an equally important provision under the law is that the proceedings move forward impartially and lawfully (a just, expeditious and economical resolution of the disputes).
>
> 20 Finally, we are obliged to remind the Honourable Mr Chow Kok Fong that he will not only be dis[a]ppointing the parties in the Arbitration but also the Honourable Court (the appointing authority) that had paced its trust and confidence of in Mr Chow Kok Fong. *Whilst the tasks at hand call for substantial courage and maturity of the quasi-judicial authority, we trust that the Honourable Mr Chow Kok Fong will rise to the occasion and do what is just and right*. [emphasis added]

34 The Plaintiffs wrote another letter dated 23 September 2011 in response to Mr Chow's letter dated 16 September 2011. In this letter, the Plaintiffs cast doubt on the arbitrator's impartiality and accused the tribunal of "entering further into the arena and becoming embroiled in the fray" as well as "taking sides", which have placed them in a "disadvantageous position" contrary to natural justice (at paras 4 and 5). In this regard, the Plaintiffs stated their position at para 10 of their letter:

> (a) the Claimants reserve their rights to raise the matter of what they have discovered as improper or unlawful to the Courts at the opportune time;
>
> (b) any attempt to limit the results of the inspection to only the Arbitration proceedings even in the face of wrongful and/or unlawful action will be deemed as interference in the administration of justice; and
>
> (c) The rules of natural justice apply to both the Respondents and the Claimants. By protecting one side the Tribunal cannot cause injury to the other side. To constrain one side under the delusion of the rules of Natural Justice is injustice in itself.

35 The Plaintiffs further averred that Mr Chow's refusal to deal with the issue of "corruptive" documents would render the current proceedings "null and void" and stated in this regard at para 15:

> At S$500/- per hour charged by Mr Chow Kok Fong it is only reasonable to expect an exceptionally high level of productivity and excellent capacity to grasp the significant and critical points.

36 The Plaintiffs concluded, "[w]e do not expect the Tribunal to add to our sorrows but rather to resolve the disputes with the sense of justice and fairness".

37 From the above correspondence, it was apparent that the Plaintiffs had lost their trust, quite unjustifiably I must add, in Mr Chow's ability to conduct the arbitration in a fair and efficacious

manner. The Respondent had taken no part in the arbitration proceedings. It was in this context that Mr Chow wrote to the Plaintiffs on 23 September 2011 giving notice of his intention to apply for leave from the court to discharge himself as the arbitrator unless the Plaintiffs gave reasons otherwise. Moreover, as noted above, it should be emphasised that the Plaintiffs never objected to Mr Chow discharging himself as the arbitrator despite having been given several opportunities to do so.

38 I further observe that the Plaintiffs continued to repeat their accusations against Mr Chow long after my order allowing Mr Chow to discharge himself as the arbitrator:

(a) in their letter dated 08 November 2011 seeking further arguments before myself:

…

34 … Given his extensive qualifications he ought to have known that his additional condition imposed by him would be an interference in the administration of justice. Moreover, by so doing the learned Mr Chow Kok Fong was unwittingly getting involved into the disputes by entering into the arena.

…

43 It is puzzling why despite repeated reference to this letter the Honourable Mr Chow Kok Fong has selected to ignore it again purportedly on the grounds that it was not filed within time. … It is clear that the hurried reaction by the Arbitrator was an unfortunate overreaction by which he unwittingly entered into the arena.

…

53 The quick denial by Mr Chow Kok Fong raises the question of integrity on his part.

54 In fact, we had on several occasions noted that he had been inconsistent in his directions and actions resulting in him distorting and misrepresenting matters. …

(b) in their joint written submissions tendered for a hearing on 9 July 2012 ("ASNK 1200/JWS2"):

29 We also humbly submit that **Chow Kok Fong will also have to bear some proportion of the responsibility and blame** for not acting properly or appropriately when faced with such an awkward situation. However, this will be the substance of a separate action against Chow Kok Fong and others. [emphasis in bold in original]

…

36 Surely, Chow Kok Fong, with his long list of qualifications and purported experience and expertise, ought to have known better how to properly handle such a situation in the light of the gross misrepresentation by John Ting Kang Chung and his solicitors. It is indeed most puzzling that Chow Kok Fong reacted in the way he did.

(c) in their supplementary written submissions dated 25 July 2012 for a hearing on 27 July 2012 ("ASNK 1200/JWS 2A"):

…

47 Mr Chow Kok Fong has legal training and has been touted as being among the best in Singapore in Arbitration. He ought to have known better than to interfere into proceedings for which he was a non-party. Worse still, he ought to have known better than to attempt a "back door" entry by a non-party under the guise of "liberty to apply" granted only to parties.

48 Mr Chow Kok Fong accepted the appointment as Arbitrator mainly on his own terms which related primarily to his fees. … He ought to have known better that very high fees only mean an equivalent high standard of performance.

49 A failure to live up to the reasonable expectation of the parties must have its consequences. The parties in the Arbitration must, in accordance with the Rules of Natural Justice, be accorded their rights to present their case in full on how the Arbitration has been derailed and now suspended. …

39 From the evidence before me, none of the Plaintiffs' accusations against Mr Chow are valid. I cannot accept that someone with Mr Chow's experience and knowledge can become "corrupted" by reading documents that are not relevant nor admissible. Importantly, the Plaintiffs cannot dictate to the arbitrator how he should run the arbitration. On the contrary, the procedural orders made and how Mr Chow conducted the arbitration thus far, as set out in Mr Chow's letter of 3 October 2011, cannot be criticised on any score.

40 I have had occasion to comment in other judgments on the misconceptions of the Plaintiffs, see *Anwar Siraj and another v Attorney General* [2010] SGHC 36 (OS 1213 of 2009) and in *Ting Kang Chung John v Teo Hee Lai Building Constructions Pte Ltd and others* [2010] 2 SLR 625 where I said at [63] and would repeat:

… 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 fifth, sixth or seventh 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 judgment: "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 *Anwar Siraj v Ting Kang Chung* [[2003] SGHC 64] at [43]).

41 I have no doubt in the circumstances that Mr Chow had the right to resign. He was the subject of numerous unfounded accusations and allegations, many of which were not only unwarranted but also scurrilous. They were couched in very strong and aggressive terms which were quite uncalled for. I turn now to consider the proper procedure for him to resign as arbitrator.

Proper procedure for discharge or resignation of arbitrator

42 Was the procedure adopted by Mr Chow wrong? The SIA Arbitration Rules (2nd ed, Reprint August 2013) do not prescribe any particular mode for an arbitrator to resign from his appointment.

Our Arbitration Act (Cap 10, 2002 Rev Ed) is also silent on the procedure for an arbitrator to resign. I have no doubt that in the absence of any set procedure in the institutional rules, national laws or the contract setting out the terms of appointment, a letter to the parties clearly stating that the arbitrator wishes to resign or resigns is sufficient. This was held to be the case in *Hong Kiat Construction Pte Ltd v Ngiam Benjamin* [2009] SGHC 158 where a communication by the arbitrator stating that he intended to resign if he did not hear from either of the parties within 7 days from the date of his letter to the parties was held to have taken effect according to its terms.

43 As there has been no argument made before me, I offer no opinion on whether there should be a notice period or a meeting to deal with consequential matters before the resignation takes place. I would imagine that much would depend on the circumstances of each case. Here, Mr Chow wrote to both parties on 23 September 2011 seeking their consent to his discharge as arbitrator in light of the Plaintiffs' remarks in their letters to him, and asked for their reply by 27 September 2011. The Respondent as usual did not respond but the Plaintiffs responded by their letter of 27 September 2011 stating that they had "no objection whatsoever … save as to costs", see [9] and [10] above. Gary Born notes that there is generally no requirement for an arbitrator to state his reasons for resigning and drafters of the UNCITRAL Rules rejected proposals that required a resigning arbitrator to provide a statement of his reasons: see Gary Born p 1637. The learned author however notes that most conscientious practitioners will often choose to do so. Here, Mr Chow set out his reasons in full and as I found earlier, he had very good reasons and proper cause for wanting to resign.

44 I therefore find that Mr Chow did not need to ask the court for leave to withdraw. He could have effectively done so by a simple letter. However, he chose to do so out of respect for the court which had appointed him. Nevertheless, assuming that he did have to ask for leave from court, I turn now to consider the Plaintiffs' contention that leave had been irregularly obtained.

45 With respect to non-parties, O 45 r 9(1) of the Rules Of Court provides:

> Any person, not being a party to a cause or matter, who obtains any order or in whose favour any order is made, shall be entitled to enforce obedience to the order by the same process as if he were a party.

The question that follows from this is whether the order in question ("ORC 592/2011") appointing Mr Chow as the arbitrator in respect of the disputes arising between the parties was an order obtained by or made in his favour.

46 The terms of the order are set out at [3] above. I further indicated that there would be liberty to apply "if Chow Kok Fong says he cannot for some reason or other be the Arbitrator". [note: 2]

47 I agree with the Plaintiffs that the "liberty to apply" order is only intended to supplement the main orders in form and convenience so that the main orders may be carried out and may not be used to vary the order of the court: see *Tan Yeow Khoon and another v Tan Yeow Tat and another* [1999] 3 SLR(R) 717, *Koh Ewe Chee v Koh Hua Leong and another* [2002] 1 SLR(R) 943 and *Kamla Lal Hiranand v Lal Hiranand* [2003] 3 SLR(R) 198. Therefore, taken together with the first order appointing Mr Chow as the arbitrator, the "liberty to apply" order appeared to be one granted to the parties to seek a fresh appointee should Mr Chow decline his appointment by the court under OS 1200; its scope probably did not extend to a situation where matters arising after his appointment led to the arbitrator applying for leave from court to discharge himself.

48 Nevertheless, O 2 r 1 of the Rules of Court provides that any failure to comply with the requirements of the Rules of Court is to be treated as an irregularity and will not nullify the

proceedings, any step taken in the proceeding, or any document, judgment or order therein. The court may make any order it deems fit to correct the irregularities and generally the courts have taken a liberal approach in exercising this discretion: see *Sinwa SS (HK) Co Ltd v Morten Innhaug* [2010] 4 SLR 1. However, the courts would refuse to grant such a remedy where: (a) the curative approach would result in prejudice; (b) where the nature of the error is so serious or fundamental that it cannot, in principle, be validated; (c) where the mandatory nature of the rule breached may be construed as excluding cure; (d) where the rule is sufficiently comprehensive to govern non-compliance; and (e) where the substantive application, if made, would have failed: see Jeffery Pinsler, *Principles of Civil Procedure* (Academy Publishing, 2013) at para 01.040. None of these apply here. In the circumstances, it was clear to me that the irregularity was one which could be cured.

49 It would not only have been an unnecessary waste of time and money but also oppressive for the Plaintiffs to require Mr Chow to intervene as a party and then take out a fresh application for leave to discharge himself in light of the unusual circumstances and since Mr Chow's discharge was what they clearly wanted. Most importantly, the Plaintiffs did not suffer any prejudice thereby.

No breach of natural justice

50 The Plaintiffs' allegation that there has been a breach of natural justice in hearing OS 1200 and OS 1179 together on 27 October 2011 was also groundless. First, the Plaintiffs had been clearly put on notice that Mr Chow was applying to discharge himself as the arbitrator from his letter dated 3 October 2011, on which they were copied. Secondly, the Plaintiffs' position and stand in the matter had been fully set out in the correspondence between the parties, most if not all of which were copied to the Court or indeed in submissions or affidavits. Thirdly, the Plaintiffs had also been put on notice that both OS 1200 and OS 1179 were being heard together on 27 October 2011. The Supreme Court Registry had sent the parties letters dated 12 September 2011 and 19 October 2011 in relation to the hearing of OS 1179 and a letter dated 24 October 2011 in relation to the hearing of OS 1200. Finally, it was clear that the Plaintiffs knew that the two matters were being heard together at the beginning of the hearing on 27 October 2011. [note: 3] I have already set out above what transpired at the 27 October 2011 hearing. The Plaintiffs were given ample opportunity to be heard on Mr Chow's application for discharge; they not only had no objection to his resignation, they clearly said they did not wish to have him as the arbitrator.

51 For the above reasons, I clarified at the 12 August 2013 chamber hearing, that there was nothing to be done to "regularise" the procedure and my earlier order that Mr Chow Kok Fong be allowed to discharge himself as the arbitrator stands. I note again that the Plaintiffs are hopelessly out of time to appeal against the order made by me on 27 October 2011.

[note: 1] NE 09.07.2013 21/13 – 21/21; 28/2 – 28/7 and 32/31 – 33/3

[note: 2] NE 01.02.2011 4/26-4/28

[note: 3] NE 27.10.2010 1/8 – 1/25