IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2018] SGHC 153

Originating Summons No 96 of 2018
(Registrar's Appeal No 99 of 2018)

Between

Ling Kong Henry

… *Plaintiff*

And

Tanglin Club

… *Defendant*

GROUNDS OF DECISION

[Arbitration] — [Agreement] — [Scope]
[Arbitration] — [Stay of court proceedings] — [Court's discretion under the Arbitration Act]

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Introduction

1 The defendant, Tanglin Club ("the Club"), is a social club registered under the Societies Act (Cap 311, 2014 Rev Ed) ("Societies Act"). The plaintiff, Mr Henry Kong Ling ("Mr Ling"), has been a member of the club since 1992.[1]

2 The Club's Rules make provision for disciplinary action to be taken upon complaint by members. The same Rules also contain a dispute resolution clause dealing with disputes for which no express provision in the Rules has been made. Pursuant to certain complaints in February 2017, the Club took disciplinary proceedings against Mr Ling, which concluded with a written reprimand to him on 31 August 2017. Mr Ling thereafter filed this originating

[1] Mr Ling's affidavit dated 22 January 2018 at para 4.

summons on 19 January 2018 for, *inter alia*, a declaration that the Club had breached the rules of natural justice and fairness in its conduct of the disciplinary proceedings. He also sought various consequential reliefs, including damages for humiliation, embarrassment, mental distress and the deprivation of his rights as a member.

3 On 2 February 2018, the Club then filed an application for Mr Ling's claim to be stayed under s 6 of the Arbitration Act (Cap 10, 2002 Rev Ed) ("Arbitration Act"), on the ground that its Rules contain an agreement to arbitrate Mr Ling's dispute. This application was dismissed by an Assistant Registrar on 28 March 2018. I allowed the Club's appeal and granted the stay requested on 24 April 2018. Mr Ling has now appealed and I furnish the grounds of my decision.

Background

4 The Club has a room on its fourth floor which was used by a group of about 30 members ("the Bridge Players") and their guests for their weekly game of bridge. The General Committee ("GC"), on which Mr Ling served three tenures, from 2013–4, 2014–5, and most recently, 2016–7, took the view that the arrangement was only temporary and repeatedly requested that the Bridge Players vacate the room. They refused to do so.[2]

5 In or around February 2017, the Bridge Players requisitioned for a Special General Meeting ("the SGM"), seeking a members' resolution that the room remain exclusively for card and board games and not be re-designated for other purposes.[3] Prior to the SGM, Mr Ling sent several WhatsApp messages

[2] Mr Ling's affidavit dated 22 January 2018 at paras 22–25.

[3] Mr Ling's affidavit dated 22 January 2018 at para 27.

and emails to some club members, urging them to vote against the Bridge Players' resolution.[4] In those messages and emails, Mr Ling made comments such as:

(a) "We cannot allow anarchy to brew and fester on our watch";[5]

(b) "That is why we must take action now, and take strong stance on violators. Use the club rules to favour and save this club from falling into anarchy";[6]

(c) "If you do not wish to see our club into anarchy, come to the SGM and vote against their requisition".[7]

6 The SGM was held on 15 March 2017, where the Bridge Players failed to secure a majority of votes for their proposed resolution. As a result, they had to vacate the Level 4 Room.[8]

7 Subsequently, some members wrote emails and letters to the General Manager of the Club to complain that Mr Ling's messages were "shockingly disrespectful", "unkind", "insulting" and in "very bad taste". Particular objection was taken against Mr Ling's use of the word "anarchy" when referring to the conduct of the Bridge Players.[9]

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4 Mr Ling's affidavit dated 22 January 2018 at paras 33–34.

5 Mr Ling's affidavit dated 22 January 2018 at p 18.

6 Mr Ling's affidavit dated 22 January 2018 at p 19.

7 The Club's written submissions dated 20 April 2018 at para 5; Mr Ling's affidavit dated 22 January 2018 at p 290.

8 Mr Ling's affidavit dated 22 January 2018 at para 35.

9 Mr Ling's affidavit dated 22 January 2018 at pp 283, 284, 285, 287, 288.

8 In accordance with Rule 26 of the Club's Rules, the complaints were considered by the General Manager who prepared a report ("the GM Report") for the Membership and Rules Sub-Committee ("MRSC"), which recommended that an Inquiry Sub-Committee ("ISC") be convened.[10] Subsequently after consideration of a report prepared by the ISC, the GC issued a letter of reprimand to Mr Ling on 31 August 2017. The letter stated that, while there was a breach of the Rules by sending offensive and disrespectful emails and messages, it was determined that such behaviour did not constitute a serious breach, and no further disciplinary action was to be taken.[11]

Legal context, arguments and issues

9 The Club premised its stay application on s 6 of the Arbitration Act, which reads:

> **Stay of legal proceedings**
>
> **6**.—(1) Where any party to an arbitration agreement institutes any proceedings in any court against any other party to the agreement in respect of any matter which is the subject of the agreement, any party to the agreement may, at any time after appearance and before delivering any pleading or taking any other step in the proceedings, apply to that court to stay the proceedings so far as the proceedings relate to that matter.
>
> (2) The court to which an application has been made in accordance with subsection (1) may, if the court is satisfied that —
>
> (a) there is no sufficient reason why the matter should not be referred in accordance with the arbitration agreement; and
>
> (b) the applicant was, at the time when the proceedings were commenced, and still remains, ready

[10] Mr Ling's affidavit dated 22 January 2018 at para 43; Mr Ling's written submissions at para 14.

[11] Mr Ling's affidavit dated 22 January 2018 at pp 351–352.

> and willing to do all things necessary to the proper conduct of the arbitration,
>
> make an order, upon such terms as the court thinks fit, staying the proceedings so far as the proceedings relate to that matter.
>
> …

10 Sections 6(1) and (2) of the Arbitration Act set out the following requirements for a stay to be ordered:

> (a) The subject matter of the court proceedings must be the subject of the arbitration agreement;
>
> (b) The party seeking the stay must not have delivered any pleading or taken any step in the proceedings;
>
> (c) There are no sufficient reasons why court proceedings should not be stayed; and
>
> (d) The party seeking the stay must be ready and willing to do all things necessary to the proper conduct of the arbitration.

11 The arbitration clause that lies at the heart of this application, Rule 45B, is reproduced at [16] below. In the present case, (b) and (d) were not in dispute. In relation to (a), the plaintiff premised his case on the words "for which express provision has not been made in these Rules" found in Rule 45B(i). Mr Ling submitted that since disciplinary proceedings under Rule 26 have been convened against him , Rule 45B would not be applicable because the latter "clearly excludes its own operation if proceedings under other rules have been invoked". Mr Ling argued, therefore, that his claim did not fall within the scope of the arbitration clause (*ie*, Rule 45B). Furthermore, Rule 45B contains neither an appellate or review process for issues arising for disciplinary proceedings

commenced under Rule 26.[12] . As for the requirement set out in (c), the plaintiff submitted that the court should refuse a stay to "ensure the observance of the due process of law and procedural fairness". He alleged that the disciplinary proceedings were instituted against him for "political" reasons, and had caused him "embarrassment, humiliation, pain and suffering".[13] It was also contended that as a matter of public policy, only the courts may determine issues arising from breaches of the rules of natural justice.[14] Counsel clarified at the hearing that it was not Mr Ling's case that the dispute was not arbitrable. Instead, this argument went towards justifying his submission that the court should exercise its discretion to refuse a stay.

12 The Club, on the other hand, submitted that the scope of the dispute resolution provision is broad and covers both matters addressed and not yet addressed by the Rules. It could not be correct that Rule 45B only covers matters not addressed by the Rules, because that interpretation would render the phrase "any matter dealt with in the Rules" in Rule 45B otiose. Furthermore, it would make little sense for Rule 45B(i) to exclude matters concerning disciplinary proceeding because many disputes involving social clubs revolve around the conduct of such proceedings. Additionally, the Club submitted that Mr Ling's grievances cannot be dealt with under Rule 26 because disciplinary proceedings have already been concluded. Therefore, even if Mr Ling were correct that Rule 45B(i) only covers matters which are not addressed by any other Rule, the dispute would still fall under Rule 45B, there being no other Rule through which Mr Ling may be granted the remedies which he sought.[15] As for whether the

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12 Mr Ling's written submissions at paras 53–68.

13 Mr Ling's written submissions at paras 69–85.

14 Mr Ling's written submissions at paras 86–102.

15 The Club's written submissions at paras 51–67.

court should otherwise refuse a stay, the Club emphasised that the court would only so refuse in exceptional cases. These circumstances did not exist because Mr Ling was contractually obliged to follow the procedure established in Rule 45B. Rule 45B is capable of being performed, notwithstanding any procedural irregularities.[16]

13 At first instance, the Assistant Registrar agreed with Mr Ling that Rule 45B was not engaged where a dispute arises over the conduct of disciplinary proceedings under Rule 26. He dismissed the Club's application.

14 On appeal, the following issues arose for consideration:

(a) Is there an agreement to arbitrate within the meaning of s 6 of the Arbitration Act?

(b) If so, does the dispute at hand engage the agreement to arbitrate?

(c) And, if s 6 of the Arbitration Act applies, are there sufficient reasons for refusing a stay of court proceedings?

15 For reasons that I explain below, I was satisfied that Rule 45B is an agreement to arbitrate and that the dispute in the present case engages Rule 45B. As there was no reason to exercise my discretion to refuse a stay against the procedures set out in Rule 45B, I granted a stay pursuant to s 6 of the Arbitration Act.

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16 The Club's written submissions at paras 72–102.

Is Rule 45B an agreement to arbitrate?

16 The Rules form a contractual basis for the relationship between the Club and its members. As made clear by *Kay Swee Pin v Singapore Island Country Club* [2008] 2 SLR(R) 802 at [2], "[t]he legal relationship between any club and its members lies in contract, and the rights of members are determined by the terms of the contract, which are found in the constitution or the rules of the club". In this connection, Rule 45B provides:

> 45B(i) Where a dispute or question arises between the Club and a member or between a member and a member (hereinafter referred to as "the Parties") *touching on any matter dealt with in these Rules, any matter of the Club or arising out of such matter, for which express provision has not been made in these Rules*, the Parties shall resolve such dispute or question in accordance with this Rule and the Club and any member involved shall not take any steps in relation to such dispute or question save as is specifically provided herein.
>
> 45B(ii) Such dispute or question shall be first referred by the Committee or the member raising the dispute or question, to the General Manager by notice in writing for conciliation. Conciliation will be carried out by such conciliator or conciliators appointed by the Conciliation, Mediation and Arbitration Board ("Board"), in accordance with such procedure prescribed in the Bye Laws of the Club. The General Manager shall initiate the conciliation procedure within seven (7) days of receipt of the said notice and such conciliation procedure shall be concluded within fourteen (14) days after initiation, unless the parties to the dispute or question agree on any extension of time.
>
> 45B(iii) If the dispute or question is not resolved through conciliation, the dispute or question shall be immediately referred to mediation. Mediation will be carried out by such mediator or mediators appointed by the Board, in accordance with such procedure prescribed in the Bye Laws of the Club. The General Manager shall initiate the mediation procedure within seven (7) days of being notified that the dispute or question has not been resolved by conciliation. The mediation procedure shall be concluded within thirty (30) days after initiation, unless the parties to the dispute or question agree on any extension of time.

> 45B(iv) *If the dispute or question is not resolved through mediation, the dispute or question shall be immediately referred to arbitration.* Arbitration will be carried out by such arbitrator or arbitrators appointed by the Board in accordance with such procedure prescribed in the Bye Laws of the Club.
>
> …
>
> [emphasis added]

17 The starting inquiry to the present application under s 6 of the Arbitration Act would necessarily be the question of whether Rule 45B is an agreement to arbitrate. Section 4(1) of the Arbitration Act defines an arbitration agreement as one where "parties [agree to] to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship".

18 Unlike typical arbitration agreements where parties agree to directly proceed to arbitration if a dispute should arise, Rule 45B employs a multi-tier dispute resolution mechanism: first by way of conciliation, followed by mediation, and then finally, arbitration. While Mr Ling did not contend that Rule 45B was not an agreement to arbitrate, it was nonetheless important to consider if this was an arbitration clause within the meaning of s 4 of the Arbitration Act, as this is a foundational step to the application of the Arbitration Act.

19 There appears to be some debate as to whether a multi-tier dispute resolution clause constitutes an agreement to arbitrate. This debate can be explained from two conceptual perspectives. The first perspective is that the entire multi-tier dispute resolution clause is an agreement to arbitrate. The obligation to arbitrate, however, is only invoked when the preconditions to the commencement of arbitration have been fulfilled. The second perspective is that there is no agreement to arbitrate at the outset. Instead, the agreement is limited

to the first tier dispute resolution forum chosen by the parties. The agreement to arbitrate only arises after the preconditions have been exhausted.

20 The Club cited in support the case of *Westco Airconditioning Ltd v Sui Chong Construction & Engineering Co Ltd* [1998] 1 HKC 254 ("*Westco*"). There, the High Court of the Hong Kong Special Administrative Region dealt with a clause where there was a step preliminary to arbitration. The arbitration clause in that case required parties first to refer the dispute to "the architect", and if either party was dissatisfied with the architect's decision or if the architect made no decision within 90 days, that party could require the dispute to be referred to arbitration. Findlay J held that an agreement which required parties to submit a dispute first to a pre-arbitral dispute resolution procedure was nevertheless an arbitration agreement (at p 258):

> An agreement that requires that the parties submit their disputes ultimately to arbitration, although it may also require the parties in the first instance to follow a procedure — such as, attempting an amicable settlement — is, to my eyes, an arbitration agreement. A first instance procedure such as this is not in any way inconsistent with the concept of arbitration ….
>
> … It matters not … that the parties must, firstly, take some other step before [proceeding to arbitration]. It cannot possibly have been the intention of the parties that, if one of them issues a writ before that step is taken, their joint wish to avoid proceedings at law is frustrated.

Findlay J was of the view that a clause requiring parties to ultimately submit disputes to arbitration, regardless of any preconditions before the commencement of arbitration, evinces an intention to avoid litigation and is therefore, as a whole, to be regarded as an agreement to arbitrate. This is essentially the first conceptual perspective I have mentioned above.

21 In arriving at his conclusion on whether the multi-tier dispute resolution clause in question was an agreement to arbitrate, Findlay J discussed the House of Lords' decision in *Channel Tunnel Group v Balfour Beatty Ltd* [1993] 1 All ER 664 ("*Channel Tunnel*"), which concerned a clause requiring parties to submit their disputes to a panel of experts before proceeding to have the dispute heard by arbitrators. Findlay J read Lord Mustill's speech in *Channel Tunnel* as stating that multi-tier dispute resolution clauses do not necessarily represent an agreement to arbitrate (at p 258):

> Lord Mustill had some difficult in finding that the clause in the contract with which he was concerned was 'an arbitration agreement'. He said … that there was 'substantial force' in the argument that it was not, but was an agreement to submit the dispute to a panel of experts, 'the arbitrators providing no more than a contingent form of appeal' …

On Findlay J's reading of *Channel Tunnel*, it would appear that Lord Mustill did not view the multi-tier dispute resolution clause in that case to be an agreement to arbitrate as it was simply an agreement to submit disputes to a panel of experts. In other words, the agreement was limited to the first tier of the clause. This appears consistent with the second conceptual perspective earlier canvassed.

22 Nevertheless, the seeming controversy surfaced in *Westco* must be viewed with circumspection. Findlay J was essentially addressing a specific argument made by counsel (at p 256):

> The defendant has issued a summons seeking an order that all further proceedings be stayed. It relies on s 6 [of the Hong Kong equivalent of the Singapore Arbitration Act] …
>
> …
>
> One might have thought that was the beginning and end of the argument: the plaintiff has brought before the court a matter concerning disputes that are subject of an arbitration

> agreement, the defendant has requested that these be referred to arbitration, and it is not obvious that the agreement is null and void, inoperative or incapable of being performed. *But Mr Lam argues that the arbitration is subject to a condition precedent; that is, that, before the matter may proceed to arbitration, the architect must decide the matter, or the time for him to make a decision must have elapsed, neither of which has happened. This means, says Mr Lam, that the arbitration is "inoperative".* My initial reaction to this was that this was not a good argument. I thought that the initial reference to the architect was part of the arbitration process, and certainly not inconsistent with it. *But Mr Lam, with his usual assiduity, has found authority that supports what he says.*
>
> [emphasis added]

23 Findlay J's reading of *Channel Tunnel* was based on counsel's argument. Caution should therefore be exercised in suggesting that Lord Mustill in *Channel Tunnel* was of the view that the multi-tier dispute resolution clause in question was not an agreement to arbitrate. The following extract makes this clear (at p 353):

> I first recall the words of the subsection:
>
> > If any party to an arbitration agreement … commences any legal proceedings … in respect of any matter agreed to be referred … the court shall make an order staying the proceedings.
>
> Most of the argument on this subsection was confined to the words "an arbitration agreement". These words are not clear, and there is substantial force in the submission that clause 67 [which was the multi-tier dispute resolution clause in question] clause 67 is not … "an agreement … to submit to arbitration present or future differences", but an agreement to submit such differences to resolution by a panel of experts, the arbitrators providing no more than a contingent form of appeal … *Whilst acknowledging the force of this argument, if the words of the section were the only source of uncertainly I would have been prepared without undue difficulty to hold that clause 67 is "an arbitration agreement".*
>
> [emphasis added]

24 Lord Mustill was describing an argument (*ie*, that clause 67 was merely an agreement to submit the dispute to a panel of experts and not arbitrators) as forceful. However, while he acknowledged the force of the argument, he would have "been prepared without undue difficulty to hold that clause 67 is 'an arbitration agreement'". As Professor Born in Gary Born, *International Commercial Arbitration* (Kluwer Law International, 2nd Ed, 2014) at pp 279–280 stated: "in [*Channel Tunnel*], the House of Lords held, 'without undue difficulty,' that a clause providing for referral of disputes to three independent experts, followed by an appeal to an arbitral tribunal, constituted an arbitration agreement". Hence, contrary to any perceived differences in how multi-tier dispute resolution clauses are to be regarded, the English and Hong Kong authorities speak with one voice – that such clauses constitute agreements to arbitrate. This is consistent with *Wilson Taylor Asia Pacific v Dyna-Jet Pte Ltd* [2017] 2 SLR 362 where it was conceded in the Court of Appeal that a clause which only entitled one party to compel arbitration and made arbitration of a future dispute optional, instead of placing the parties under an immediate obligation to arbitrate their disputes, would constitute, as found by the High Court, an agreement to arbitrate: at [13]. In *International Research Corp PLC v Lufthansa Systems Asia Pacific Pte Ltd and another* [2014] 1 SLR 130, where no objection was taken was taken to a multi-tier dispute resolution clause save on grounds of certainty, the Court of Appeal did not appear to regard the clause in question as anything other than an agreement to arbitrate: at [54].

25 A dispute resolution clause is essentially an expression of the parties' agreement on the forum (or fora) to have a matter resolved. If the clause seeks to avoid dispute resolution in a court setting by ultimately having a matter proceed to arbitration, this intention ought to be upheld. The object is to give full effect to parties' agreement. This must apply with equal force to clauses

which include conciliatory steps as a preface. I mention, in this context, another aspect of *Channel Tunnel* different from that highlighted above. Lord Mustill's primary reason for the stay in the case was based on the inherent jurisdiction of the English courts to stay proceedings brought before it in breach of an agreement to decide disputes in some other way other than in court proceedings (see 352B). In explaining, Lord Mustill cited the judgment of MacKinnon J in *Racecourse Betting Control Board v Secretary for Air* [1944] Ch 114 at p 126 where he stated: "the court makes people abide by their contracts". It is this respect for party autonomy in contractual relations that is the cornerstone underlying judicial non-intervention in arbitration: see also *Tjong Very Sumito and others v Antig Investments Pte Ltd* [2009] 4 SLR(R) 732 ("*Tjong Very Sumito*") at [28]. And the same policy rationale is seen in the provisions allowing for a stay for mediation under s 8 of the Mediation Act 2017 (No 1 of 2017). Party autonomy is fundamental when the court is seeking to enforce contractual obligations, because the premise of the court's intervention lies in the bargain struck between parties.

26 I found, accordingly, that Rule 45B was an agreement to arbitrate, even though conciliation and mediation were preconditions to arbitration.

Is Rule 45B applicable to the dispute?

27 Mr Ling's primary argument was that there was no "dispute or question [arising] between the Club and a member … touching on any matter dealt with in these Rules, any matter of the Club or arising out of such matter, for which express provision has not been made in these Rules", as required by Rule 45B(i).

28 First, is there any dispute? Mr Ling submitted that there is no dispute because the disciplinary proceedings have "closed". The Court of Appeal in

Tjong Very Sumito at [69(c)] stated: "the court will interpret the word 'dispute' broadly… and will readily find that a *dispute exists unless the defendant has unequivocally admitted that the claim is due and payable*" [emphasis in original]. In the present case, Mr Ling was clearly disputing how the Club had conducted the disciplinary proceedings which concluded with a written reprimand. The Club did not admit to Mr Ling's allegations, but instead "categorically contest[ed] any and all" of them.[17] There is therefore clearly a dispute between the Club and Mr Ling.

29 Given that there was a dispute, the crucial query, then, was whether the dispute was on a matter touching on the Rules for which no other process was already expressly provided by the Rules, as required by Rule 45B. Mr Ling's contention is that the dispute was governed by Rule 26, and therefore, Rule 45B was not applicable. "[E]xpress provision", he says, has been made by the Rules. I disagree with Mr Ling's contention. It cannot be said that Rule 26 expressly deals with the dispute at hand such that Rule 45B would be rendered inapplicable. This is so for three reasons.

30 The first arises from a textual analysis of Rules 26 and 45B. Rule 45B has been set out previously at [16]. The relevant part of Rule 26 used by the GC in constituting the ISC is as follows:

> **Inquiry Sub-Committee**
>
> 26(v) Inquiry Sub-Committee
>
> (a) The Committee may at any time appoint an Inquiry Sub-Committee to inquire into any alleged infringement of the Rules or Bye-laws of the Club or any behaviour or action considered unacceptable and or inappropriate to the Club, for which it is not immediately apparent that disciplinary action needs to be taken. Its aim shall be to determine the facts.

[17] Mr Wood's affidavit dated 7 March 2018 at para 16.

> (b) The Sub-Committee shall consists of three or more members, at least one of whom must be a Committee Member. The Chairman shall be a Committee Member. No member or Committee Member with a personal involvement in the matter inquired into may be a member of the Inquiry Sub-Committee.
>
> (c) The Sub-Committee shall report is findings to the Committee, which will decide whether any further action is required.

31 It is not disputed that the disciplinary proceedings against Mr Ling were commenced, and dealt with, pursuant to Rule 26. It is equally clear that Rule 26 does not deal with any dispute that arises after the conclusion of such disciplinary proceedings. In the present case, the matter had been dealt with and a reprimand administered. From the Club's point of view, Rule 26 had been utilised, and was no longer in play. Rule 26 only spells out the manner of conduct of disciplinary proceedings, and does not include any procedure for challenging the findings of the ISC or the GC. As Mr Ling himself pointed out, there is no rule that provides for appeal or review after the completion of disciplinary proceedings. Mr Ling sought to challenge the disciplinary proceedings, and Rule 26 does not provide a process for him to do so. Rule 26 also does not contemplate the reliefs sought by Mr Ling, which include declarations, the setting aside of the Club's decision that he had breached its Rules and Bye-Laws, as well as damages. Thus, it cannot be said that Mr Ling's dispute with the Club over the conduct of disciplinary proceedings has been expressly provided for by the Rules.

32 Secondly, although no provision has been made for appeal or review, disputes, such as the present, arising out of concluded disciplinary proceedings must have been well within the contemplation of the drafters of Rule 45B. I turn, in this context, to a transcript of the Club's Special General Meeting on 14 January 2013, where the Club's then legal advisor, Mr N. Sreenivasan S.C. was

questioned on the drafting intent of the draft Rules. Extrinsic evidence of the surrounding circumstances accompanying the conclusion of a contract may be admitted, even in the absence of any ambiguity, to aid in the exercise of the interpretation (as distinguished from the contradiction, variation, addition or subtraction) of the expressions used by the parties: see s 94(*f*) of the Evidence Act (Cap 97, 1997 Rev Ed), *Zurich Insurance (Singapore) Pte Ltd v B-Gold Interior Design & Construction Pte Ltd* [2008] 3 SLR(R) 1029 ("*Zurich Insurance*") at [132(c)] and more recently, *Yap Son On v Ding Pei Zhen* [2017] 1 SLR 219 at [41].

33 Both parties relied on different aspects of the transcript. The Club relied on the following:[18]

> Mr N Sreenivasan: Okay, on your point about disciplinary proceedings are specifically provided under – in the existing Club rules, under rule 26. And disciplinary proceedings provide for suspension and expulsion and inquiry and so on and so forth. That has not been touched.
>
> What it means is that if member slaps member, and the Club wants to suspend or expel the member, that's done under the disciplinary provisions. If you want to sue the member for slapping you, in -- within the ambit of these rules, then you go by the procedure set out in 45(b).
>
> The writ given was to take club disputes to be done by way of conciliation, mediation, arbitration and to keep it out of court …

34 Mr Ling relied on the following:[19]

> Ms Angela Loke: … My point is there is a conflict in terms of what is considered as any matter dealt with, which should also include disciplinary matters, because it doesn't specifically exclude that, it is inclusive in this statement. And we know that

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18 Peter Wood's affidavit dated 7 March 2018 at p 49.

19 Peter Wood's affidavit dated 7 March 2018 at pp 49–50.

> legally, when we go to court, every word in the rules mean something.
>
> Mr N Sreenivasan: I thought it says touching – the: "45(b) applies to any matter touching on any matter dealt with or in these rules any matter of the Club or arising out of such matter for which express provision has not been made.
>
> So if express provision has been made, it's dealt with under those –
>
> Ms Angela Loke: What –
>
> Mr N Sreenivasan: If it is not made, it's dealt with under here.
>
> …
>
> Ms Angela Loke: Can we ask where those expression provision are in the rules?
>
> Mr N Sreenivasan: You have express provision for disciplinary proceedings.
>
> Ms Angela Loke: Yes.
>
> Mr N Sreenivasan: And there are no other express provisions in the rules.
>
> Ms Angela Loke: Exactly.
>
> Mr N Sreenivasan: For any other form of dispute resolution, so *everything else is caught under 45(b).*

35 While neither exchange deals with the precise scenario at hand, there is some value in the transcript. In the earlier extract used by the Club, Mr Sreenivasan explained the difference between disciplinary proceedings and private disputes between two members. Clearly Rule 26 applied to the former and Rule 45B to the latter situation. In the later extract used by the plaintiff, Mr Sreenivasan explained that express provision has been made for disciplinary proceedings and thus disciplinary proceedings must be dealt with under Rule 26. What this case presents is a dispute that has arisen after the conclusion of disciplinary proceedings. No express provision has been made for such disputes. Therefore, it is a dispute touching on disciplinary proceedings for which no express provision is made by Rule 26. Significantly, Mr Sreenivasan ended off

the exchange by stating that "everything else is caught under [Rule 45B]". It follows then, that reading Rule 45B to cover the present case, as a dispute that touches on the Rules but is not expressly provided for, is consistent with his explanation.

36 Third, a broad reading of the ambit of Rule 45B is consonant with the purposes of the drafters of the Rules. In *Zurich Insurance,* the Court of Appeal endorsed the view, at [131], that the court in interpreting contracts will "have regard to … why a particular obligation was undertaken". The purpose of the amendments was summarised by Mr Sreenivasan as "to cut down disputes, reduce the cost for the Club, and to keep things out of court as far as possible".[20] A reading of Rule 45B to include disputes arising out of Rule 26 reasonably puts into effect this object.

The court's discretion to refuse a stay

37 It was not disputed that under s 6(2)(*a*) of the Arbitration Act, the courts retain a discretion to refuse a stay of proceedings in favour of arbitration. In contrast, a stay is mandatory under s 6 of the International Arbitration Act (Cap 143A, 2002 Rev Ed) ("IAA"). The Court of Appeal recognised this difference in *Tjong Very Sumito* at [31], where it explained that "the regimes for international and domestic arbitrations remain bifurcated and are governed by distinct statutory regimes". Significantly, the court went on to hold that even though "the courts here do have a somewhat wider role and broader judicial latitude in domestic arbitration; … *this is to be exercised in a guarded manner*" [emphasis added]. Two cases decided under the Arbitration Act explain further.

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[20] Peter Wood's affidavit dated 7 March 2018 at p 47.

38 The first is *Soh Beng Tee & Co v Fairmount Development Pte Ltd* [2007] 3 SLR(R) 86 ("*Soh Beng Tee*"), where the Court of Appeal clarified that the judicial approach to both the Arbitration Act and the IAA should not diverge too widely (at [61]):

> … Parliament intended that the [Arbitration Act] should largely mirror the IAA and international practices reflected in the Model Law save that the courts have been vested with more supervisory powers in the case of domestic arbitrations…

39 The Court of Appeal explained that the policy considerations which undergird both regimes are broadly similar. The first is "to support arbitration as a 'useful and efficient alternative dispute resolution … process to settle commercial disputes'". The court recognised that "[a]ggressive judicial intervention can only result in the prolonging of the arbitral process and encourage myriad unmeritorious challenges to arbitral award by dissatisfied parties": *Soh Beng Tee* at [62]. The second consideration is to "preserve party autonomy" by giving full effect to the parties' agreement to arbitrate: *Soh Beng Tee* at [98].

40 The point on party autonomy was further elaborated by Steven Chong J in *Maybank Kim Eng Securities Pte Ltd v Lim Keng Yong and another* [2016] 3 SLR 431, also a case decided under the Arbitration Act. Chong J cited *Tomolugen Holdings Ltd v Silica Investors Ltd* [2016] 1 SLR 373 ("*Tomolugen Holdings*") at [21] for the following propositions:

> … We recognise that a plaintiff's right to sue whoever he wants and where he wants is a fundamental one. *But, that right is not absolute*. It is restrained only to a modest extent when the plaintiff's claim is stayed temporarily pending the resolution of a related arbitration, as opposed to when the plaintiff's claim is shut out in its entirety… In appropriate cases, *that right may be curtailed or may even be regarded as subsidiary to holding the*

> *plaintiff to his obligation to arbitrate where he has agreed to do so…*
>
> … The court must in every case aim to strike a balance between three higher-order concerns that may pull in different considerations: first, a plaintiff's right to choose whom he wants to sue and where; second, the court's desire to prevent a plaintiff from circumventing the operation of an arbitration clause; and third, the court's inherent power to manage its processes to prevent an abuse of process and ensure the efficient and fair resolution of disputes. The balance that is struck must ultimately serve the ends of justice…
>
> [original emphasis omitted; emphasis added]

41 Whilst recognising that *Tomulugen Holdings* was decided under the IAA, Chong J held at [22]–[23] that these principles "clearly" apply to an arbitration governed by the Arbitration Act. Thus, even though the court's power to grant a stay under s 6 of the Arbitration Act is discretionary, the burden is on the plaintiff to "show sufficient reason why the matter should not be referred to arbitration", and "[a]ssuming the applicant is ready and willing to arbitrate, the court will only refuse a stay in *exceptional* cases" [emphasis added]. Such an approach is "in line with the desirability of holding the parties to their agreement, as well as Singapore's strong policy in favour of arbitration".

42 Were there any exceptional reasons here? Mr Ling relied on three arguments in attempting to show exceptional reasons: first, that the Societies Act mandated the court's intervention; second, that there were technical impediments to the use of Rule 45B; and third, reasons of natural justice. I deal with these in turn.

Societies Act

43 I deal first with the arguments in respect of s 35(2) of the Societies Act, which provides:

> (2) In the event of any dispute arising among the members of the governing body or the members of the society, the adjustment of its affairs *shall be referred to the High Court*, and the Court shall make such order in the matter as it thinks fit.
>
> [emphasis added]

44 Mr Ling submitted that this provision makes it mandatory for disputes involving registered societies to be referred to the High Court instead of arbitration.[21] And because it is not disputed that the Club is registered under the Societies Act, he submitted that his dispute cannot be resolved by an arbitrator. Mr Ling was unable to locate the purpose behind this provision from the relevant parliamentary debates, and neither have any local cases applied the provision. The Club was of the view, nevertheless, that on its face the provision did not compel the court to exercise its discretion to refuse a stay. I agreed with this view. The subject matter of the court's jurisdiction under the section is "the adjustment" of a society's affairs. Such "adjustment of its affairs" would imply wider issues of its constitution or property holding. The originating summons did not concern the wider affairs of the Club, but merely a private dispute between a member and the Club, brought by a member dissatisfied with concluded disciplinary proceedings regarding the conduct of a single member.

45 Further, the history of the provision shows that s 35(2) of the Societies Act is not intended to apply to the dispute at hand. Prior to 28 February 2014, s 35 of the Societies Act (Cap 311, 1985 Rev Ed) ("the 1985 Act") did not comprise sub-sections (1) and (2). It contained sub-sections (a) to (h), which read:

> **Provisions applicable to registered societies**
>
> **35**. The following provisions shall apply to all registered societies:

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[21] Mr Ling's written submissions at paras 89–90.

(*a*) the movable property of a society, if not vested in trustees, shall be deemed to be vested for the time being in the governing body of the society, and in all proceedings civil and criminal may be described as the property of the governing body of the society by their proper title;

(*b*) every such society may sue or be sued in the name in which it was registered under this Act;

(*c*) a writ of summons or other legal process may be served on a society by serving it on an officer of the society, or by leaving it at, or sending it by registered post to, the registered address of the society;

(*d*) except as otherwise provided in section 36, no judgment in any suit against a registered society shall be put into force against the person or property of any officer or member of the society but only against the property of the society;

(*e*) any member who is in arrears of subscriptions which, according to the rules of the society, he is bound to pay, or who takes possession or detains any property of the society contrary to those rules, or who injures or destroys any property of the society, may be sued for the arrears or for the damage accruing from his wrongful possession, detention, injury or destruction of that property by and in the name of the society;

(*f*) any member of the society who steals, purloins or embezzles any money or other property, or wilfully and maliciously destroys or injures any property of the society, or forges any deed, bond, security for money, receipt or other instrument whereby the funds of the society may be exposed to loss, shall be subject to the same prosecution, and, if convicted, shall be liable to be punished in like manner as any person, not a member, would be subject and liable to in respect of the like offence;

(*g*) in the absence of any specific provision in the rules of a society any number not less than three-fifths of the members for the time being resident in Singapore of the society may determine that it shall be dissolved forthwith, or at a time agreed upon, and all necessary steps shall be taken for the disposal and settlement of the property of the society and its claims and liabilities according to the rules of the society applicable thereto, and if none, then as the governing body finds expedient:

Provided that in the event of any dispute arising among the members of the governing body or the members of the society,

> *the adjustment of its affairs shall be referred to the High Court, and the Court shall make such order in the matter as it thinks fit*;
>
> (*h*) no society shall be dissolved unless three-fifths of the members so resident as aforesaid have expressed a wish for such dissolution by their votes delivered in person or by proxy at a general meeting convened for the purpose.
>
> [emphasis added]

46 It is clear from the above that s 35(2) as is presently enacted was merely a proviso to s 35(*g*) in the 1985 Act, and only applied where a registered society was in the midst of dissolution.

47 In February 2014, s 35 was enacted as follows:

> **Provisions applicable to registered societies**
>
> **35**.—(1) The following provisions shall apply to all registered societies:
>
> … [(a) to (f) in the same terms as [45] above] …
>
> (g) subject to subsection (2), in the absence of any specific provision in the rules of a society, any number not less than three-fifths of the members of the society for the time being resident in Singapore may determine that it shall be dissolved forthwith, or at a time agreed upon, and all necessary steps shall be taken for the disposal and settlement of the property of the society and its claims and liabilities according to the rules of the society applicable thereto, and if none, then as the governing body finds expedient;
>
> … [(h) in the same terms as [45] above] …
>
> (2) In the event of any dispute arising among the members of the governing body or the members of the society, the adjustment of its affairs shall be referred to the High Court, and the Court shall make such order in the matter as it thinks fit.

48 Section 35(2), which is relied upon by Mr Ling, became an independent sub-section, and now appears to apply to "any dispute". Nevertheless, it is important to note that (g) states at its commencement, "subject to subsection (2)". In my judgment, subsection (2) remained only relevant to subsection

(1)(*g*). This is supported by the fact that the 2014 amendment to s 35 of the 1985 Act was not effected by Parliament through primary legislation, but was an editorial revision by the Law Revision Commissioners in 2014. This is evident in Comparative Table in the Societies Act which states:

> The following provision in the 1985 Revised Edition of the Societies Act has been renumbered by the Law Revision Commissioners in the 2014 Revised Edition.
>
> This Comparative Table is provided for the convenience of users. It is not part of the Societies Act.

2014 Ed.	**1985 Ed.**
35–(1) and (2)	35

49 Section 4 of the Revised Edition of the Laws Act (Cap 275, 1995 Rev Ed) ("RELA") sets out the powers of the Law Revision Commissioners. Such powers are generally limited to clerical or editorial (*ie*, non-substantive) amendments to Acts of Parliament. Section 4(1)(*l*) of the RELA, in particular, specifies that the Law Revision Commissioners may only correct grammatical, typographical and similar mistakes in any Act and the to make verbal additions, omissions or alterations "not affecting the meaning of any Act".

50 Of relevance is *The Managing Committee of the Sengunthar Education Board Erode by its President VVC Murugesa Mudaliar v SA Periswami and another* [1964] 1 MLJ 272 ("*Sengunthar Education Board*"), a decision of the High Court of Judicature at Madras. In that case, the court considered s 13 of the Societies Registration Act (Act No 21 of 1860) (India), which is *in pari materia* to the former s 35(*g*) of the 1985 Act. The court held that "the dispute referred to [in s 13] has obviously reference only to a dispute arising in the

process of winding up of the society. This section has no application whatsoever to a case where the society is not dissolved."

51 It was clear, therefore, that the original Parliamentary intent of the words relied upon by Mr Ling, as a proviso to s 35(*g*), applied only in the adjustment of the affairs of a society on a dissolution by three-fourths of its members. In the light of the Law Revision Commissioners' powers under the RELA, this intent remained the same. The Law Revision Commissioners further made this clear by the addition of the first four words of the present subsection (1)(*g*). Section 35(2) of the Societies Act does not mandate that the dispute at hand be dealt with only by the High Court.

Technical impediments

52 Mr Ling further asserted that Rule 45B was incapable of being performed, for two reasons. His first reason is that there is no Bye-Law governing the appointment of conciliators, mediators, arbitrators and the procedures for conciliation, mediation and arbitration. This reason is incorrect because Bye-Law 42 states:[22]

> Rule 45B sets out the consultation, conciliation, mediation, arbitration and legal proceedings provisions applicable to disputes or questions which arise between the Club and a member or between a member and a member.
>
> For information, a flowchart outlining the conciliation, mediation and arbitration aspects of those procedures is attached as Appendix A to these Bye-laws.

53 Appendix A consists of a flowchart setting out the timelines and procedures for conciliation, mediation and arbitration. It also summarises, in point form, those who are qualified to be appointed as members of the Board,

[22] Mr Ling's bundle of documents at p 91.

as well as conciliators, mediators, and arbitrators.[23] In any event, Bye-Law 42 refers to Rule 45B, which, as it says, sets out the rules governing the appointment of conciliators, mediators and arbitrators (Rule 45B(vii)) as well as the procedures for conciliation, mediation and arbitration (Rule 45B(ii)–(iv)). A possible objection could be taken to the paucity of details in Bye-Law 42. However, that would not be a sufficient reason to refuse a stay. In this vein, the comments of the Court of Appeal in *Insigma Technology Co Ltd v Alstom Technology Ltd* [2009] 3 SLR(R) 936 ("*Insigma Technology*") are instructive:

> 31 …where parties have evinced a clear intention to settle any dispute by arbitration, the court should give effect to such intention, *even if certain aspects of the agreement may be ambiguous, inconsistent, incomplete or lacking in certain particulars*… so long as the arbitration can be carried out without prejudice to the rights of either party and so long as giving effect to such intention does not result in an arbitration that is not within the contemplation of either party…
>
> 34 … This approach to the interpretation of an arbitration agreement is necessary to uphold the underlying and fundamental principle of party autonomy as far as possible in the selection of the kind of arbitration and the terms of the arbitration…
>
> [emphasis added]

54 In any event, the absence of detailed procedural rules would not hamper the conduct of the arbitration. This is because the arbitrator is, subject to any procedure otherwise agreed between the parties, the "master of his own procedure and has a wide discretionary power to conduct the arbitration proceedings in the way he sees fit, so long as what he is doing is not manifestly unfair or contrary to natural justice": *Anwar Siraj and another v Ting Kang Chung and another* [2003] 2 SLR(R) 287 at [41].

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[23] Mr Ling's bundle of documents at p 92.

55 Mr Ling's second reason for Rule 45B being incapable of being performed is premised on the fact that no Conciliation, Mediation and Arbitration Board ("CMA Board") has been appointed as required under Rule 45B(v). The Club clarified that the a CMA Board was appointed at a GC meeting on 27 July 2016, *where Mr Ling was present*.[24] This assertion was not challenged by Mr Ling. Therein, however, lies a procedural irregularity – Rule 45B(v) requires the CMA Board to be appointed at every third *Annual General Meeting*, which is different from a GC meeting. That does not, however, preclude the dispute from proceeding to arbitration. As Professor Born wrote in *International Commercial Arbitration* at p 942:

> … [I]n virtually all cases, procedural missteps in commencing an arbitration will not affect the validity of the parties' underlying arbitration agreement, but instead only the ability of the claimant to pursue a particular submission or reference to arbitration. In general, *nothing prevents the claimant who has failed to comply with procedural requirements of an arbitration agreement in one instance from subsequently complying with the applicable procedural requirements and then properly commencing a new or different arbitration.*
>
> [emphasis added]

56 This sensible approach is consonant with our courts' desire to give effect to parties' intention to arbitrate (as underscored in *Insigma Technology*), and the Court of Appeal's exhortation in *Soh Beng Tee* at [98] that "[a]rid, hollow, technical or procedural objections that do not prejudice any party should never be countenanced". In this case, the Club could correct the irregularity by appointing a CMA Board at the next Annual General Meeting. Indeed, Mr Wood had indicated that one would be held at the end of May 2018, by which time the CMA Board could be formally appointed in accordance with Rule 45B(v).[25] I note that if this were correct, the CMA Board would have been

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[24] The Club's written submissions at paras 92–93.

appointed before the release of these written grounds. Mr Ling would therefore not be prejudiced by any further delay.

Breach of natural justice

57 Mr Ling made extensive allegations in relation to breaches of natural justice. In brief, his allegations included that the ISC was incorrectly convened and contained a member with a conflict of interest; that proceedings were held suspiciously close to the GC campaign period; that certain documents and the GM Report were not extended to him; that a settlement reached with Mr Sadiq who was dealt with for similar complaints, was not made known to or available to him; and he was informed that the current president Mr Wiener had allegedly said that he would "fix [Mr Ling] once and for all".[26] These allegations essentially seek to impugn the conduct of the disciplinary proceedings and the constitution of the ISC. The Club denied the allegations but declined to respond because it was of the view that the court was not the correct forum to address them.

58 Notwithstanding Mr Ling's allegations, three points are crucial. First, there is no link between the GC, which Mr Ling contends is biased, and the CMA Board, which would appoint arbitrators to adjudicate on Mr Ling's complaints if conciliation and mediation were not successful. The plaintiff insisted that proceedings brought under Rule 45B would still be tainted by the bias shown by the GC and first and second ISCs, but there was no logical reason why this would be so. Mr Ling's complaint was against the current president as well as members of the GC and the first and second ISCs, none of whom appear

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25 Mr Wood's affidavit dated 7 March 2018 at para 34.

26 Franklin Wong's affidavit dated 23 January 2018 at para 25.

to be part of the CMA Board. According to Rule 45B(v), the CMA Board would comprise at least three, and no more than five, past presidents of the Club. There was no evidence that any of these past presidents would be biased against Mr Ling and there was therefore no reason to expect that the CMA Board would not act independently.

59 Secondly, under Rule 45B(vii), the arbitrators to be appointed by the CMA Board may not be members of the Club. They would, therefore, be entirely free of Club interests.

60 Thirdly, even if Mr Ling were able to substantiate his arguments on breach of natural justice, his contentions in relation to natural justice at this point are simply premature. The alleged irregularities surrounding the disciplinary proceedings are disputes that fall squarely within the ambit of Rule 45B. In other words, it is not that the court has no jurisdiction over this issue, or does not wish to exercise its jurisdiction. Rather, the complaint ought to be first dealt with pursuant to the procedure set out in Rule 45B; the Rule 45B process may be used to deal with the allegations of breaches of natural justice. Where the contract that governs has provided express terms to deal with such issues, recourse should first be had to the procedure provided. Otherwise, the court would not be upholding the parties' contractual bargain and intention to have the matter ventilated outside the court process. In any event, Rule 45B(vii), as well as s 48(1)(*a*)(vii) of the Arbitration Act, permit Mr Ling to challenge the arbitral award on the ground of a breach of natural justice. If, after compliance with Rule 45B, natural justice issues still need to be addressed, the court may still do so.

Conclusion

61 In the result, I allowed the appeal and ordered that Mr Ling's claim against the Club be stayed in favour of the procedure provided by Rule 45B. Costs of the appeal and the hearing below were awarded to the Club and fixed, including disbursements, at $4,500.

Valerie Thean
Judge

Bryan Manaf Ghows, Soh Leong Kiat, Anthony and Wan Rui Jie, Erwin (Taylor Vinters Via LLC) for the plaintiff;
Ramesh Selvaraj and Tseng Zhi Cheng, Sean Douglas (Allen & Gledhill LLP) for the defendant.