Equinox Offshore Accommodation Ltd v Richshore Marine Supplies Pte Ltd [2010] SGHC 122

Suit No:	Originating Summons No 1419 of 2009; Summons No 49 & 589 of 2010
Decision Date:	22 April 2010
Court:	High Court
Coram:	Teo Guan Siew AR
Counsel:	Francis Goh (Harry Elias Partnership LLP) for the plaintiff; Valerie Ang (Straits Law Practice LLC) for the defendant.

Civil Procedure

22 April 2010

Teo Guan Siew AR:

GROUNDS OF DECISION:

1 This originating summons raised the question of whether a party to an arbitration agreement is able to obtain an order from the court for pre-arbitral discovery, *ie* discovery prior to and for the purpose of commencing arbitration proceedings.

Background

2 The plaintiff, Equinox Offshore Accommodation Limited, and the defendant, Richshore Marine Supplies Pte Ltd, had entered into an agreement under which the defendant was appointed as the plaintiff's sole and exclusive agent in Singapore for the purchase of goods of a certain description ("the Agreement"). In consideration of the services provided, the defendant was entitled to payment based on a 12 percent mark-up on the price of such goods purchased on behalf of the plaintiff. Under clause 3(iii) of the Agreement, the defendant agreed that it would:

> "... ***keep proper and accurate accounts and records of purchases made on behalf of [the plaintiff]*** including full details of the persons from whom they are purchased, the quantity, the total price paid and whenever possible the price per quantity and also of the expenses incurred by them in making the purchases and arranging for delivery as required by [the plaintiff] and of all other charges incurred in relation to such purchases and ***will permit [the plaintiff] by its duly appointed agents to inspect those accounts and records at such times as it may respectively require.***" [emphasis added]

The Agreement contained an arbitration clause which stated that any dispute arising out of or in connection with the Agreement shall be referred to arbitration in Singapore in accordance with the Arbitration Rules of the Singapore International Arbitration Centre ("SIAC Rules").

3 The plaintiff brought this originating summons, pursuant to O 24 r 6(1) of the Rules of Court (Cap 322, R 5, 2006 Rev Ed), to seek discovery of the accounts and records falling within the definition in clause 3(iii) of the Agreement, from 1 January 2008 to date. The basis of the application was that the plaintiff had grounds to believe that the defendant had overcharged the plaintiff in respect of the goods purchased on its behalf, in breach of the terms of the Agreement. In the alternative, the plaintiff sought to enforce its contractual right under clause 3(iii) to inspect the same category of documents. In response, the defendant initially filed a summons

(SUM 49/2010) to stay the *entire* originating summons proceedings in favour of arbitration. Subsequently however, the defendant filed another summons (SUM 589/2010) to amend SUM 49/2010, so as to restrict the stay application to only the plaintiff's prayer for inspection of documents pursuant to clause 3(iii) of the Agreement, and to seek instead for the dismissal of the plaintiff's prayer for discovery under O 24 r 6(1).

4 In resisting the defendant's application for stay under s 6 of the International Arbitration Act (Cap 143A, 2002 Rev Ed) ("the IAA"), the plaintiff cited the case of *Navigator Investments Services Ltd v Acclaim Insurance Brokers Pte Ltd* [2010] 1 SLR 25 ("*Navigator Investments*"), wherein the Court of Appeal decided that an application for pre-action discovery does not fall within the scope of s 6 of the IAA. This is because the earliest point in time at which a stay application can be made is when a substantive claim has already been crystallised, which would not be the case where the application is for discovery *prior* to the bringing of a claim. However, the plaintiff's reliance on *Navigator Investments* for this point was misplaced in the context of the present case because leave had been granted to the defendant to amend the summons such that the stay application only related to the alternative prayer to exercise the plaintiff's contractual right of inspection. The defendant was not seeking to stay the application for discovery, but rather to ask the court to dismiss it.

5 Section 6 of the IAA provides that any party to an arbitration agreement to which the Act applies may, "at any time after appearance", apply to stay the court proceedings. The Court of Appeal in *Navigator Investments* clarified (at [51]) that even though no appearance is required to be entered in respect of all originating summons following amendments to the Rules of Court in 2006 (see in particular O 12 r 9), this does not mean that originating summonses cannot now be stayed. The plaintiff was clearly, by its alternative prayer, contending that the defendant was in breach of its contractual obligation under clause 3(iii) of the Agreement to allow the plaintiff to inspect the relevant accounts and records. The defendant, on the other hand, argued that the plaintiff was not entitled to such inspection under the terms of the Agreement as the plaintiff had already made payment and accepted the goods as purchased by the defendant. In this situation, there was, in my view, a dispute which fell within the scope of the arbitration clause in the Agreement. It should also be mentioned that the plaintiff's counsel did not seriously pursue the alternative claim for inspection under the contract, choosing instead to focus primarily on the issue of discovery. I therefore granted the defendant's application to stay in favour of arbitration the aspect of the originating summons which sought to enforce the contractual right of inspection. The other aspect of the originating summons which pertained to discovery was less straightforward, and necessitated a consideration of when the court can grant discovery where the parties before the court have an arbitration agreement.

The distinction between pre-action and pre-arbitral discovery

6 The plaintiff's counsel referred to the approach of the Court of Appeal in *Navigator Investments*, which was to facilitate and promote arbitration wherever possible. This extended to recognising the availability of pre-*action* discovery even where there is an arbitration clause *prima facie* applicable to the potential dispute between the parties involved. Following such a robust approach, it was argued, there is no longer a need to maintain a distinction between what may be classified as pre-action discovery and what may be classified as pre-arbitral discovery. This argument was, in my view, untenable in light of the Court of Appeal's express recognition in the same case that this distinction still exists (at [64]):

> There is, of course, a difference between pre-*action* discovery on the one hand and pre-*arbitral* discovery on the other…It has, to the best of our knowledge, not been settled by our courts as to whether or not the *courts* would be able to grant pre-*arbitral* discovery. [emphasis in original]

7 The Court of Appeal in *Navigator Investments* also referred to its own earlier decision in

Woh Hup (Pte) Ltd v Lian Teck Construction Pte Ltd [2005] SGCA 26 ("*Woh Hup*"), in which the court had explained as follows (at [21]):

> It is helpful at this stage to clarify the terms "pre-action discovery" and "pre-arbitral discovery". We are of the view that the term "pre-arbitral discovery" should be restricted to discovery sought before the commencement of arbitral proceedings *per se*. Thus, any discovery prior to and for the purpose of commencing legal proceedings, including that sought by a party to an arbitration agreement, should still be termed "pre-action discovery".

8 Thus, where one party to a contract with an arbitration clause believes that he may have a cause of action against the other contracting party but which falls outside the scope of the arbitration clause, and he brings an application under O 24 r 6(1) to try and determine whether it is viable to commence that cause of action in court, it would be an application for pre-*action* discovery. That was the situation in *Woh Hup*, where the party seeking discovery took the view that the arbitration clause in the parties' agreement was not of universal application to all of its claims, and therefore intended to institute legal proceedings in the High Court. This is in contrast to a case where the party applying to court for discovery does so with the intention of ascertaining whether it would have a viable cause of action *to pursue in arbitration*. This latter scenario involves an application for pre-*arbitral* discovery. In the former case of pre-*action* discovery, if the party seeking discovery subsequently commences an action in court based on the strength of the documents discovered, it of course remains open for the other party to apply to court to stay the proceedings in favour of arbitration.

9 In the present case, despite the prayer in the originating summons being couched as one for pre-action discovery, there was little doubt that what the plaintiff sought was in fact pre-arbitral discovery. The Chief Operating Officer of the plaintiff stated in his affidavit as follows:

> "I verily believe that an examination of the Defendants' accounts and records of purchases will enable us to ascertain whether we have legitimate causes of actions [*sic*] against the Defendants for overcharging in breach of the terms of the Agreement. ***If, in fact, the causes of action fall within the scope of the arbitration clause of the Agreement, we will then commence the appropriate proceedings to resolve the dispute***." [emphasis added]

10 Similarly, the affidavit of the plaintiff's Legal and Commercial Director stated that:

> "[T]he Plaintiffs are not trying to avoid their obligations under the Agreement. ***The Plaintiffs remain ready and willing to submit any disputes between the Parties to arbitration*** should such dispute fall within the scope of clause 11 [the arbitration clause] of the Agreement." [emphasis added]

11 It was thus clear that the purpose of seeking discovery of the accounts and records of purchases was to enable the plaintiff to determine whether it had a viable claim for which to commence *arbitration* proceedings. There was no suggestion at all in the affidavits filed on behalf of the plaintiff or during submissions by its counsel that the plaintiff's possible claim against the defendant for overcharging under the Agreement might fall outside the scope of the arbitration clause and be the subject of a court action.

12 Counsel for the plaintiff did allude to the possibility that the plaintiff might also have a claim against the defendant's director, one Mr David Sim. To the extent that Mr Sim was obviously not a party to the Agreement and accordingly was not bound by the arbitration clause therein, the argument made was that the documents were therefore sought also with a view to ascertaining whether to commence *court* proceedings against Mr Sim. With respect, this argument was tenuous. Nowhere in the several affidavits filed by the plaintiff in support of the application was there any mention of a possible claim against the individual directors such as

Mr Sim. The assertion was made only in the *reply* written submissions, after the plaintiff's counsel became aware of the defendant's objection on the ground that this court has no jurisdiction to order pre-arbitral discovery. In the circumstance, I found persuasive the submission by the defendant's counsel that Mr David Sim was added into the picture more as an afterthought to justify the plaintiff's position that this application was for pre-action discovery, so as to get around any difficulties of jurisdiction as to pre-arbitral discovery. In this regard, it was telling that no indication whatsoever was given by the plaintiff as to what would be the nature of the possible cause of action against Mr Sim, short of alleging that several email correspondences suggested it was suspicious why Mr Sim was reluctant to allow for the audit of the defendant's accounts. It was clear to me that any claim for overcharging had to be against the defendant and not its directors. The plaintiff was seeking disclosure of documents to ascertain the viability of such a cause of action, which would be within the scope of the arbitration clause. This was an application for pre-arbitral discovery.

Whether the court has jurisdiction to grant pre-arbitral discovery

13 The question of whether the court has the power to order pre-arbitral discovery has not been resolved by our courts. In *Woh Hup*, the Court of Appeal considered the issue but left it open because the court reached the conclusion that the application before it was in fact for pre-action discovery.

14 The plaintiff's application for discovery was based on O 24 r 6(1), which reads as follows:

> **Discovery against other person (O. 24, r. 6)**
>
> 6. —(1) An application for an order for the discovery of documents before the commencement of *proceedings* shall be made by originating summons and the person against whom the order is sought shall be made defendant to the originating summons. [emphasis added]

Rule 3 of the same Order states that:

> (3) An originating summons under paragraph (1) … shall be supported by an affidavit which must —
>
> > (a) in the case of an originating summons under paragraph (1), state the grounds for the application, the material facts pertaining to the intended proceedings and whether the person against whom the order is sought is likely to be party to ***subsequent proceedings in Court***;
>
> [emphasis added]

15 The pertinent question would be whether the word "proceedings" in O 24 r 6(1) is restricted to court proceedings, or whether it encompasses proceedings in arbitration. The requirement in rule 6(3) that the supporting affidavit state whether the respondent to the application is likely to be party to "subsequent proceedings in Court" suggests that O 24 r 6(1) is only concerned with discovery prior to the commencement of a court action. Professor Pinsler has expressed a similar view, by tracing the court's power to order discovery under the Rules of Court back to the primary Act (see Jeffrey Pinsler, "Is Discovery Available Prior to the Commencement of Arbitration Proceedings" [2005] SJLS 64 ("Professor Pinsler's article") at 65):

> It would seem that this rule [O 24 r 6] does not apply to an application for discovery prior to arbitration. The power to order discovery is vested in the courts pursuant to paragraph 12 of the First Schedule to the Supreme Court of Judicature Act ('SCJA'). This paragraph

states:

> Power before or after any proceedings are commenced to order discovery of facts or documents by any party to the proceedings or by any other person in such manner as may be prescribed by the Rules of Court.

As the SCJA concerns the courts, the term "proceedings" in paragraph 12 should be construed to mean proceedings in court. Paragraph 12 provides that the power is to be exercised in accordance with the RC [Rules of Court]. Order 23, rule 6 has a well-defined scope which does not appear to encompass discovery in anticipation of arbitration. Order 23, rule 6(1) is limited to "discovery of documents before the commencement of proceedings". The word "proceedings" requires interpretation in the context of paragraph 12 of the First Schedule to the SCJA.

16 The Professor's view was described by the Court of Appeal in *Navigator Investments* as "persuasive not only because of the detailed arguments set out in this learned article, but also because it would be most appropriate for the courts (if it is at all possible) to leave the *entire* conduct of arbitration proceedings in the hands of the arbitral tribunal". Based on a reading of O 24 r 6 itself, and adopting as well Professor Pinsler's reasoning, I decided that O 24 r 6(1) does not grant the court the power to order discovery prior to the institution of arbitration proceedings.

17 Although the originating summons prayed for relief specifically under O 24 r 6(1), the plaintiff's counsel went further during submissions to argue that the court also has the inherent jurisdiction to order discovery in aid of anticipated arbitration proceedings. The invocation of the court's inherent jurisdiction under O 92 r 4 was considered by the Court of Appeal in *Wee Soon Kim v Law Society of Singapore* [2001] 2 SLR(R) 821. Chao Hick Tin JA, in delivering the judgment of the court, made the following general comment on when the court should exercise such inherent powers (at [27]):

> It seems to us clear that by its very nature, how an inherent jurisdiction, whether as set out in O 92 r 4 or under common law, should be exercised should not be circumscribed by rigid criteria or tests. In each instance the court must exercise it judiciously. In his lecture on "The Inherent Jurisdiction of the Court" published in *Current Legal Problems 1970*, Sir Jack Jacob (until lately the general editor of the *Supreme Court Practice*) opined that this jurisdiction may be invoked when it is just and equitable to do so and in particular to ensure the observance of the due process of law, to prevent improper vexation or oppression and to do justice between the parties. ***Without intending to be exhaustive, we think an essential touchstone is really that of "need"***. [emphasis added]

18 Chao JA went on to explain why the court was of the view that there was no such "need" for the court to exercise its inherent jurisdiction so as to allow the two solicitors in that case, against whom complaints were made, to be able to intervene in the disciplinary proceedings instituted against them:

> 28 … Pt VII of the Act [Legal Profession Act] sets out an ***elaborate scheme*** on how a complaint against a solicitor should be dealt with, with emphasis on objectivity and transparency and the need for maintaining the highest standards of professionalism and integrity…
>
> 29 It cannot be disputed that the solicitor complained against has ***an interest*** in the outcome of an application made by a complainant under s 96. It is also understandable why the solicitor may wish to intervene in that proceeding even though it is quite unnecessary for him to do so. ***But it is altogether another thing to say that there is a necessity for him to do so, a need of such a gravity that the court should invoke its***

> ***inherent jurisdiction***. The intervention in such a situation by the solicitor may or may not be of assistance to the court … Thus, we hold that the circumstances do not warrant the court invoking its inherent jurisdiction.
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> 30 The question might well be asked, what prejudice would the intervention cause to the complainant/applicant. But we do not think that that is the correct approach upon which to invoke the court's inherent jurisdiction. It may well be that the question of prejudice is relevant to determine whether intervention should be allowed in the circumstances of a case. ***But that is not to say that once no prejudice is shown, the court should invoke that jurisdiction. There must nevertheless be reasonably strong or compelling reasons showing why that jurisdiction should be invoked.***
>
> [emphasis added]

19 It is therefore insufficient to merely show that you have an interest or desire that the court exercises its inherent jurisdiction under O 92 r 4. A real "need" of sufficient gravity must be shown. It also will not suffice to show that no prejudice will be caused to the other party. The requirement is one of "strong and compelling reasons" for the court to exercise its inherent powers. In particular, if a statutory regime with detailed rules already exists to govern the procedure in that particular area, it is unlikely that such necessity would arise (see also Jeffrey Pinsler, "Inherent Jurisdiction Re-visited: An Expanding Doctrine" (2002) 14 SAcLJ 1).

20 In the present case, the arbitration clause in the Agreement referred to the SIAC rules, and it was common ground that this meant that the *lex arbitrii* was the IAA. The IAA, and the corresponding O 69A of the Rules of Court, contain detailed rules regulating the procedural rights and reliefs connected to international arbitration, including *inter alia* the procedures for setting aside of arbitral awards and enforcement of arbitral awards by the court. However, the IAA and O 69A do not make provision for obtaining discovery from the court prior to the institution of arbitration proceedings. In fact, the effect of recent amendments to the IAA was to remove the power of the court to grant discovery orders even in relation to *existing* arbitration proceedings.

21 One key reason for amending the IAA was to allow the court to make interim orders such as *Mareva* injunctions to support arbitrations conducted outside Singapore. At the same time however, the court's power to make orders relating to matters that concern the actual conduct of the arbitration was curtailed. In particular, the previous s 12(7) of the IAA (which provided for the court to have the same power as the arbitral tribunal in making orders for, *inter alia*, discovery) was replaced by a new s 12A which specifically omits discovery from the types of orders that the court is empowered to grant in aid of arbitration. During the Second Reading of the International Arbitration (Amendment) Bill (*Singapore Parliamentary Debates*, Official Report (19 October 2009) vol 86), the Minister for Law explained the changes as such:

> *Court-ordered interim measures in support of foreign arbitrations*
>
> The first [amendment] is to allow court-ordered interim measures in support of arbitrations conducted outside Singapore…
>
> While this amendment augments the powers of the Court in relation to arbitration, it also places appropriate restrictions on the exercise of these powers.
>
> It is in line with our policy of minimal curial intervention in arbitration proceedings.
>
> The scope of the new powers is limited to interim measures in support of arbitration, for example interim injunctions to preserve assets. ***They do not extend to procedural or evidential matters dealing with the actual conduct of the arbitration itself – like***

> ***discovery***, interrogatories, or security for costs. ***These procedural matters fall within the province of the arbitral tribunal and must be decided by the tribunal itself.***
>
> [emphasis added]

22 Given that there are specific legislative provisions dealing with the types of court-ordered measures that can be granted in aid of arbitration, it would appear that there is no "need" for the court to exercise its inherent jurisdiction. Furthermore, with the recent amendments to the IAA which restrict the court's power to make orders in relation to the actual conduct of arbitration, it would seem more consistent with Parliament's intention for the court not to be granting pre-arbitral discovery.

23 Having said that, it may conceivably be argued that pre-arbitral discovery is a different type of relief from the interim measures contemplated by these legislative provisions, and hence should be regulated by other rules. Such discovery orders are by their very nature made prior to the commencement of any arbitration proceedings and in that sense, it may be contended, do not impact the actual conduct and outcome of the arbitration. The flaw in such an argument has however been convincingly pointed out (see Professor Pinsler's article at 66):

> It might be contended that as the purpose of pre-arbitration discovery is to determine whether there is a cause of action to be pursued and would not affect the outcome of the arbitration, therefore the process may be governed by rules other than those found in the arbitration legislation. There are weaknesses in this argument. As the evidence obtained in advance of the arbitration would be crucial to the issues to be adjudicated in the course of arbitration, discovery would most certainly affect the conduct of the proceedings. Furthermore, the issue of whether a party has a right of action against another party pursuant to their arbitration agreement is obviously within the scope of the arbitration legislation.

24 If the issue of pre-arbitral discovery is one that ought properly to fall within the purview of arbitration legislation, could this be a case where there has been a "gap", in that the IAA and O 69A have failed to provide for the same, such that there is a need for the court to intervene by its inherent jurisdiction? Counsel for the plaintiff argued that his client was in the position of a putative claimant, and needed the assistance of the court to determine if it had a viable claim to pursue against the defendant in arbitration proceedings. If relief similar to that under O 24 r 6(1) was unavailable, should the court not exercise its inherent powers to order discovery in aid of such a putative claimant who needed to know whether to commence arbitration?

25 While such an argument is not completely unpersuasive, primacy must always be accorded to the fact that arbitration is the *contractually* chosen mode of dispute resolution by the parties themselves. This means one of two things. First, the issue of whether pre-arbitral discovery should be available must also be viewed from the perspective of the other contracting party, against whom the discovery order is sought. His interest in having the matter resolved solely by means of the arbitration process, be it for considerations such as confidentiality or to save time and reduce costs *etc*, ought to be taken into account. Again, I can do no better than quote from Professor Pinsler's article (at 74):

> If arbitration is the dispute resolution mechanism chosen and agreed to by the parties as the preferred alternative to court proceedings, an application to invoke the court process in order to obtain discovery would be improper in the absence of agreed terms to this effect. ***The respondent to such an application might well complain that he is being unjustly deprived of the benefits which form the basis of his agreement to arbitrate. Court proceedings would involve increased expenditure, delays arising from this initial application and possible appeals, the risk of adverse publicity in a more public forum, formality and complexity in adjudication compared to the relatively relaxed atmosphere***

> ***of an arbitration***. Such outcomes would also be contrary to the spirit of the arbitral process which is intended to operate independently of the courts.
>
> [emphasis added]

Second, if the concern is that there is no mechanism for compelling the disclosure of documents prior to the institution of arbitration proceedings, as Professor Pinsler also pointed out, it surely is for the parties to make the necessary contractual provision for such a pre-arbitral process of discovery. If commercial parties contractually chose arbitration as the form of their dispute resolution, then they should be bound by the arbitration rules and procedure to which they had subscribed.

26 Indeed, the Court of Appeal in *Woh Hup*, although not expressing any conclusive view on whether the court could order pre-arbitral discovery, commented as follows (at [36]):

> [I]t appeared to us that any matter submitted to arbitration should, in general, and certainly wherever possible, be dealt with by the arbitral tribunal. To invoke the assistance of the courts prior to the commencement of arbitral proceedings may, in certain instances, appear to run contrary to the spirit and scheme of arbitration.

Importantly, the court further noted the potential for abuse, in the context of pre-*action* discovery:

> 34 We are cognisant of the policy-related concerns raised by the appellants' counsel, who has pointed out that allowing parties to an arbitration agreement to obtain pre-action discovery might potentially ***give rise to an abuse of process, since the court would not consider the applicability of the arbitration agreement at that juncture***. The appellants also argued that the trial judge's qualification that the disclosed documents be used only for court proceedings was of little assistance; such a qualification might not sufficiently safeguard against the possibility that ***a party who had obtained discovery might subsequently institute arbitration proceedings, while falsely claiming that the arbitration proceedings were not premised on the documents disclosed.***
>
> 35 There seems to be a conflict between a plaintiff's need to know whether he has a likely cause of action and the prejudice that may be caused to the defendant who has given discovery if the parties end up going to arbitration instead. While the plaintiff may legitimately apply for pre-action discovery, ***the potential for abuse is particularly high where the arbitration clause is or is very likely to be operative***. It appeared to us, therefore, that in circumstances where, on a plain literal reading, the arbitration clause *prima facie* covers the dispute in question, the court may refuse to grant discovery to prevent a possible abuse of process by the applicant. Such a refusal would be made without prejudice to a later court's determination on the applicability of the arbitration clause.
>
> [emphasis added]

27 The court in *Woh Hup* was concerned with the possible abuse in that a party to an arbitration agreement may be able to obtain documents from the other side by an application to court (which at that juncture would not consider whether the arbitration clause applies), and then subsequently making use of those documents for the purpose of initiating arbitration proceedings instead. That would appear to be precisely the effect if an order for pre-*arbitral* discovery is granted by the Court.

28 Taking into account all the above considerations, I reached the view that the court has no power, whether under O 24 r 6(1) or pursuant to its inherent jurisdiction, to make an order for

pre-arbitral discovery in relation to arbitration that may but have not been commenced.

If the court has jurisdiction to grant pre-arbitral discovery, should it be granted in the present case?

29 I proceeded further to consider what the result ought to be in the event that I was wrong and the court does have the power to order pre-arbitral discovery.

30 In *Bayerische Hypo- und Vereinsbank AG v Asia Pacific Breweries (Singapore) Pte Ltd* [2004] 4 SLR(R) 39, Belinda Ang J refused to order pre-action discovery primarily on the basis that the applicant banks had not shown sufficient grounds for the application. Ang J explained (at [25]):

> It seems to me that the banks are not constrained from starting proceedings without pre-action discovery. From their contentions, it is obvious that the banks have taken a view as to whether they have a case that APBS is responsible for the loans and whether to plead a case. It has not been said anywhere in the affidavits or in submissions by counsel that without pre-action discovery the banks are unable to plead a case. ***This is unlike the case of an applicant who is unable to plead a case as he does not yet know whether he has a viable claim against the opponents, and needs pre-action discovery to fill the void or gaps in his knowledge. That is the nature (and I should add, function) of pre-action discovery, and the rule is there to assist him to search for the answer***...
>
> [emphasis added]

31 Ang J further stressed the important overriding requirement of necessity under O 24 r 7. While it is common for lawyers to focus on the relevance of the documents sought, it must also be shown that the pre-action discovery is necessary for disposing fairly of the proceedings or for saving costs.

32 The above principles should be equally applicable to an application for pre-arbitral discovery, whether under O 24 r 6(1) or pursuant to the court's inherent jurisdiction (assuming my primary conclusion is wrong and such relief is available). Despite submissions to the contrary by the plaintiff's counsel, this was, in my view, not a case where the claimant was unsure and needed to ascertain the nature of its claim. As pointed out by the defendant's counsel, the plaintiff had stated the basis of its possible claim against the defendant, namely that of overcharging and claiming for interest which the defendant was allegedly not entitled to under the Agreement. The plaintiff also possessed sufficient evidence on which to mount a claim in arbitration against the defendant. In particular, it had competing quotes from other suppliers, which upon a comparison with the prices charged by the defendant allegedly showed that the defendant had inflated the prices. Of course, inspection of the defendant's accounts and records of purchases would assist the plaintiff, but discovery prior to the commencement of proceedings should not be ordered to enable the plaintiff to formulate a *better* claim. It should only be ordered to assist a claimant who is in the dark as to what claim to pursue. As stated in *Singapore Civil Procedure 2007* (at paragraph 24/6/5), where the plaintiff has sufficient evidence to commence a claim, he is generally not entitled to discovery before action in order to *fully* plead his case.

33 The plaintiff's counsel also failed to persuade me that ordering the discovery prayed for in this application was necessary to dispose of the matter fairly or to save costs. The category of documents for which discovery was sought mirrored the class of documents covered by clause 3 (iii) of the Agreement. The plaintiff had a contractual right to the inspection of those documents, and there was no necessity for a court order. If, as the plaintiff asserted, the defendant was wrongfully denying its contractual right of inspection, the plaintiff's recourse ought to be, as contractually provided for, to enforce that right by the process of arbitration.

Conclusion

34 In the result, I dismissed the plaintiff's discovery application, primarily on the basis that the plaintiff was in fact seeking not pre-action discovery but rather pre-arbitral discovery, for which the court has no jurisdiction to order.