Drydocks World-Singapore Pte Ltd (formerly known as Pan-United Shipyard Pte Ltd) *v* Jurong Port Pte Ltd
[2010] SGHC 185

Case Number	: Suit No 757 of 2009 (Summons No 1811 of 2010)
Decision Date	: 30 June 2010
Tribunal/Court	: High Court
Coram	: Nathaniel Khng AR
Counsel Name(s)	: Lai Yew Fai, Melissa Marie Tan Shu Ling and Teo Guan Kee (Rajah & Tann LLP) for the plaintiff; Jude Philomen Benny and Grace Lin Li'En (Joseph Tan Jude Benny LLP) for the defendant.
Parties	: Drydocks World-Singapore Pte Ltd (formerly known as Pan-United Shipyard Pte Ltd) — Jurong Port Pte Ltd

Arbitration

30 June 2010 Judgment reserved.

Nathaniel Khng AR:

Introduction

1 This is an application ("the Application") by the defendant, Drydocks World-Singapore Pte Ltd ("Drydocks") (formerly known as Pan-United Shipyard Pte Ltd), for, *inter alia*, a stay of Suit No 757 of 2009 ("the Action") filed by the plaintiff, Jurong Port Pte Ltd ("Jurong Port"), on three alternative grounds, *viz*, s 6 of the Arbitration Act (Cap 10, 2002 Rev Ed), the inherent jurisdiction of the court, and the pending arbitration proceedings between the parties on the same dispute. Jurong Port resists the Application in its entirety, although its general counsel, Mr Lim Tat Kuan ("Mr Lim") deposed that Jurong Port is willing to accept a stay if the court should impose a condition on the stay, *viz*, that Drydocks waives its right to argue any defence based on the Limitation Act (Cap 163, 1996 Rev Ed) that is premised upon a limitation period expiring on or after 4 September 2009 (*ie*, the date of the commencement of the Action). [note: 1]

2 This judgment contains my decision, as well as brief reasons for my decision. In this judgment, for convenience, the term/condition that the limitation defence be waived in arbitration proceedings will hereafter be referred to as "the Condition" and the term/condition that Jurong Port seeks (see [1] above) will hereafter be referred to as "the Modified Condition".

Background facts

3 Jurong Port and Drydocks entered into three separate contracts on 30 June 2000, 14 March 2001 and 29 January 2003. For ease of reference, the three contracts will hereafter be referred to, respectively, as "the 2000 Contract", "the 2001 Contract" and "the 2003 Contract", and, collectively, as "the Contracts". Pursuant to the Contracts, Drydocks was to design, supply, install and commission nine quay cranes ("the Cranes"). The 2000 Contract and 2001 Contract incorporated, *inter alia*, the July 1999 edition of the Public Sector Standard Conditions of Contract for Construction Works. The 2003 Contract incorporated, *inter alia*, the May 2001 edition of the Public Sector Standard Conditions of Contract for Design and Build.

4 The Contracts each contained a number of clauses that dealt with dispute resolution. The pertinent clauses for present purposes ("the Clauses"), which are identical in each of the Contracts, are as follows:

> **34.1 Reference to the Superintending Officer**
>
> (1) If a dispute or difference of whatsoever kind shall arise between the Employer [*ie*, Jurong Port] or the Superintending Officer or the Superintending Officer's Representative and the Contractor [*ie*, Drydocks] in connection with or arising out of the Contract or the execution of the Works, whether during the execution of the Works or after their completion and whether before or after any termination of the Contract or the Contractor's employment, including any dispute or difference as to any opinion, instruction, determination, decision, certificate or valuation of the Superintending Officer or the Superintending Officer's Representative, it shall in the first place be referred by either party in writing to the Superintending Officer for his decision. Such reference shall state that it is made pursuant to this Clause and a copy shall be sent to the other party to the Contract.
>
> (2) No later than the expiry of 30 days after the date upon which the Superintending Officer received such reference, the Superintending Officer shall give notice of his decision in writing to the Employer and to the Contractor and shall for information state therein that it is given pursuant to this Clause. Such decision shall identify the reference pursuant to which it is made and shall be final and binding on the parties to this Contract unless, as hereinafter provided, either party shall require that the decision should be referred to arbitration.
>
> …
>
> **34.2 Reference to Arbitration**
>
> If either the Employer or Contractor is dissatisfied with the decision of the Superintending Officer made pursuant to Clause 34.1 hereof, or if the Superintending Officer fails to give notice of his decision on or before the expiry of the 30 day period following the date on which the Superintending Officer received the reference, then the Employer or the Contractor may, within 90 days from the date of receipt of the aforesaid decision of the Superintending Officer, or within 90 days from the date of expiry of the aforesaid 30 day period (as the case may be) give notice to the other party with a copy for information to the Superintending Officer of his intention to refer the decision or the dispute or difference that had not been decided to an arbitrator. … Any such reference shall be deemed to be a submission to arbitration within the meaning of the Arbitration Act or any re-enactment or modification thereof.

5 By about 2004, the Cranes were delivered and put into operation by Jurong Port. In 2007, Jurong Port discovered certain defects in the Cranes, and entered into negotiations with Drydocks for the rectification of the defects. As Drydocks took no steps to rectify the defects, Jurong Port engaged third-party contractors in August 2007 to carry out repair work on the Cranes. Following the completion of the repairs in or around April 2009, Jurong Port entered into negotiations with Drydocks for compensation for the costs of the repairs. Further defects in the Cranes were subsequently discovered. On 4 September 2009, Jurong Port commenced the Action in order to "ensure that it did not fall foul of any limitation periods that may be applicable to its claim". [note: 2] The writ was served

on 3 March 2010. Drydocks filed its memorandum of appearance on 10 March 2010. In the statement of claim, which was filed on 19 April 2010, Jurong Port pleaded that defects had been discovered in the Cranes in 2007, 2008 and 2009, and claimed damages from Drydocks on the basis of negligence, breach of contract, breach of warranty, as well as misrepresentation.

6 On 7 December 2009, Jurong Port referred the matter to the respective Superintending Officers under the Contracts – Ms Mao Whey Ying ("Ms Mao") for the 2000 Contract (Drydocks seemed to question her status in its letter to her dated 8 April 2010 (see, also, [7] below)), Mr Fong Yue Kwong ("Mr Fong") for the 2001 Contract and Mr Tan Kok Bin ("Mr Tan") for the 2003 Contract – for their decision (pursuant to the Clauses (see [4] above)). On 19 January 2010, Mr Fong appointed Mr Tan to decide on the issues arising out of the 2001 Contract. Mr Tan rendered his decisions on the issues arising out of the 2001 Contract and the 2003 Contract on 21 January 2010 and 19 January 2010 respectively. In his decisions, he held, *inter alia*, that Drydocks was to compensate Jurong Port for the sums of $1,191,652 (in relation to the 2001 Contract) and $2,793,266.53 (in relation to the 2003 Contract). In its reply to Mr Tan on his decisions, Drydocks stated, *inter alia*, that the decisions had not been rendered before the contractual deadline of 30 days for the decisions (found in the Clauses (see [4] above)) had expired and the decisions were therefore not final and binding. On 5 March 2010, Drydocks issued a notice of arbitration (pursuant to the Clauses (see [4] above)) with respect to Mr Tan's decisions.

7 Ms Mao, on her part, advised the parties, in a letter dated 5 January 2010 that was addressed to Jurong Port and copied to Drydocks, to jointly appoint an independent assessor for the establishment of the material facts and evidence. The parties subsequently entered into discussions on a joint appointment of an independent assessor. On 8 April 2010, Drydocks wrote to Ms Mao to inform her that the parties could not reach an agreement *vis-a-vis* the appointment of an independent assessor, and also asked her whether she would be rendering a decision on the issues arising out of the 2000 Contract. Ms Mao failed to reply, and on 22 April 2010, Drydocks wrote to Ms Mao to ask her to render a decision within three days, failing which, it would proceed on the basis that she would not be rendering a decision. On 27 April 2010, Drydocks received a letter dated 22 April 2010 from Ms Mao, which stated that the "opinion and response as expressed in [the] letter dated 5 [January] 2010 to Jurong Port on the same issue remain". On 29 April 2010, Drydocks issued a notice of arbitration (pursuant to the Clauses (see [4] above)) in regard to the issues arising out of the 2000 Contract.

8 It was not denied that arbitration proceedings had been commenced with respect to the entire dispute between the parties following the issuance of the two notices of arbitration ("the Notices of Arbitration") by Drydocks. On each of the two different occasions that Drydocks issued the Notices of Arbitration to Jurong Port, Drydocks concomitantly invited Jurong Port to discontinue the Action. In a letter dated 11 March 2010, Jurong Port offered to discontinue the Action, provided that Drydocks gave its agreement to the Condition. In another letter dated 19 March 2010, Jurong Port offered to discontinue the Action, provided that Drydocks gave its agreement to the Modified Condition. However, Drydocks did not agree to either the Condition or the Modified Condition.

The main submissions of the parties

9 Drydocks submitted that the Action should be stayed pursuant to s 6 of the Arbitration Act. In support of this submission, Drydocks pointed out that the dispute is subject to valid arbitration agreements between the parties, pleadings had not been delivered and no other step in the proceedings had been taken, it was and still remains ready and willing to proceed with arbitration, and no sufficient reasons exist to show that the dispute should not be referred to arbitration. Drydocks submitted, in the alternative, that the court should exercise its inherent jurisdiction to stay the

Action or should stay the Action on the basis of the pending arbitration proceedings on the dispute. Drydocks also submitted that the court should not grant a stay with the Modified Condition. In support of this submission, Drydocks distinguished the present case from two cases in which the Condition was imposed (*viz*, *The Xanadu* [1997] 3 SLR(R) 360 and *The Duden* [2008] 4 SLR(R) 984), and argued, *inter alia*, that no special circumstances exist to justify the imposition of the Modified Condition, no hardship or prejudice would be suffered by Jurong Port if the Modified Condition is not imposed, and any hardship suffered by Jurong Point if the Modified Condition is not imposed should be considered to be self-induced hardship.

10 Jurong Port submitted that a stay of the Action should not be granted. The main reason provided in support was that there could be "possible issues of limitation". [note: 3] Its case for breach of warranty would probably be unaffected, as the breach in question should be considered to be a continuing breach. However, its receipt of the Notices of Arbitration, which had the effect of stopping time from running for the purposes of limitation periods (pursuant to ss 9 and 11(1) of the Arbitration Act), might have occurred more than three years after the initial discovery of defects in the Cranes and this could give rise to limitation issues, having regard to s 24A of the Limitation Act (which prescribes, *inter alia*, a limitation period of three years for certain types of actions). With reference to *The Escherscheim* [1976] 1 WLR 339, the following was submitted: [note: 4]

> It has been held that the court would exercise its discretion to refuse a stay of legal proceedings if the defendant would otherwise be able to render the arbitration ineffective by raising the [limitation] defence in the arbitration (which would not arise in the legal proceedings).

11 Jurong Port submitted, in the alternative, that any stay that is granted should be a conditional stay, *ie*, a stay with the Modified Condition. In support of this submission, Jurong Port argued, *inter alia*, that Drydocks had never really disputed liability, the Clauses only allow a party who is dissatisfied with a decision of the Superintending Officer to refer the dispute to arbitration and Drydocks had delayed in so doing, and an unconditional stay could result in Jurong Port being deprived of its claim. Jurong Port further emphasised that it was acting reasonably in asking for the Modified Condition, rather than the Condition, to be imposed.

Section 6 of the Arbitration Act

12 Under s 6(1) of the Arbitration Act, where a party to an arbitration agreement institutes court proceedings against another party to the same agreement for a matter that falls within the scope of the agreement, any of the parties to the agreement may, after entering appearance but before delivering any pleading or taking any other step in the proceedings, apply to the court for a stay of the court proceedings relating to that matter. Under s 6(2), the court has the discretion to grant a stay (*cf*, s 6(2) of the International Arbitration Act (Cap 143A, 2002 Rev Ed)), and will do so if satisfied that "there is no sufficient reason" for not referring the matter to arbitration and the party applying for a stay was and remains "ready and willing to do all things necessary to the proper conduct of the arbitration". Sections 6(1) and 6(2) of the Arbitration Act, in full, would be as follows:

> **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 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.

…

13 Jurong Port did not contest the fact that the dispute is subject to arbitration agreements between the parties, that Drydocks had not taken any other step in the proceedings, and that Drydocks was and remains ready and willing to proceed with arbitration. Jurong Port did, however, argue that the court should exercise its discretion not to grant a stay. It is trite law that the party opposing a stay in favour of arbitration bears the burden of showing that there is sufficient reason why the matter should not be referred to arbitration (see *JDC Corp and another v Lightweight Concrete Pte Ltd* [1999] 1 SLR(R) 96 at [10]). That said, it has been observed in one treatise that "[t]he presumption is in favour of a stay" and that "[i]n practice there are very few grounds which have been held to justify a refusal of a stay" (see Robert Merkin & Johanna Hjalmarsson, *Singapore Arbitration Legislation* (Informa, 2009) at pp 131–132). It could be added that there is no general rule that the court, as Jurong Port seems to suggests (see [10] above), should exercise its discretion to refuse a stay if the ensuing arbitration proceedings would be rendered ineffective by issues of limitation that would not have arisen if court proceedings had continued. Indeed, it has been observed in another treatise that the fact that "an arbitration will be out of time is not in itself a ground for refusing a stay" (see Sir Michael J Mustill & Stewart C Boyd, *Commercial Arbitration* (Butterworths, 2nd Ed, 1989) at p 477).

14 Under s 6(2) of the Arbitration Act, the court is allowed to grant a stay "upon such terms as the court thinks fit" ("the AA phrase"). Pursuant to the AA phrase, Jurong Port has urged the court to order, at most, a conditional stay, *ie*, a stay with the Modified Condition. This express averment to a power to grant a stay of proceedings on terms/conditions was included in the re-enactment of the Arbitration Act in 2001 (as Act 37 of 2001 (the precursor to the present version of the Arbitration Act)). Prior to that, only the International Arbitration Act (first enacted as Act 23 of 1994) contained a similar phrase, *viz*, in s 6(2), which stated (and continues to state) that the court can grant a stay "upon such terms or conditions as it may think fit" ("the IAA phrase"). Counsel for both parties submitted that there is no local case law on the AA phrase. They were, however, in agreement that the leading cases on the IAA phrase, *The Xanadu* and *The Duden*, were instructive.

15 In *The Xanadu*, Lai Kew Chai J held (at [6]) that the court would be "entitled to impose terms and conditions as appear reasonable or required by the ties of justice". In that case, an assistant registrar had stayed court proceedings in favour of arbitration, and also imposed the Condition. Lai J upheld the decision to impose the Condition on appeal, stating (at [6]):

> For the following reasons, I would go further and state that I would have imposed the same condition [ie, the Condition] in the circumstances of this case. Firstly, there was, at the least, sufficient ambiguity which was reasonably entertained by the plaintiffs on the question whether the relevant bill of lading had identified the arbitration clause which was invoked. It was therefore reasonable for the plaintiffs to have commenced these admiralty proceedings. Secondly, the defendants waited until after early September 1996, after the expiry of the time bar, before they

filed their application on 20 September 1996 to stay these proceedings. It was noteworthy that the statement of claim was filed on 13 August 1996. Thirdly, if the condition was not imposed, the plaintiffs would suffer undue and disproportionate hardship, seeing that their claim is in excess of US$222,518.

Lai J's decision was upheld by the Court of Appeal in Civil Appeal No 139 of 1997.

16 In *The Duden*, Andrew Ang J dismissed an appeal against the decision of an assistant registrar, who ordered a stay of court proceedings in favour of arbitration and imposed the Condition. The stay application filed by the defendants was based on a bill of lading, which provided for, *inter alia*, the incorporation of an arbitration agreement that was to be found in an unidentified charterparty. The vagueness *vis-a-vis* the identity of the charterparty ultimately resulted in the plaintiffs only becoming aware of the terms of the arbitration agreement after the limitation period in question had expired. In the opinion of Ang J, the circumstances "demanded" the imposition of the Condition (at [23]). In the earlier parts of his grounds of decision, Ang J elucidated the following principles in relation to the imposition of terms/conditions pursuant to the IAA phrase (at [12]–[16]):

> 12 The discretion of the court to impose terms and conditions upon a stay of court proceedings in favour of arbitration is an *unfettered discretion*. This was the view of Lai Siu Chiu J in *Splosna Plovba International Shipping and Chartering d o o v Adria Orient Line Pte Ltd* [1998] SGHC 289. …
>
> 13 With respect, Lai J's opinion appears to me to be in accord with the intention of the Legislature. …
>
> 14 That having been said, discretionary power must, of course, be exercised judiciously. The corollary to a wide discretionary power is the great caution with which it should be exercised. …
>
> 15 The main guiding principle in my view is that courts generally should be slow to interfere in the arbitration process. In recent years, courts have moved from strong uncertainty as to the arbitration process resulting in extensive judicial interference or the non-enforcement of arbitration agreements to a position in favour of arbitration, *ie* deferring to party autonomy and avoiding intervention where possible (Julian D M Lew, Loukas A Mistelis & Stefan M Kröll, *Comparative International Commercial Arbitration* (Kluwer Law International, 2003) at p 356).
>
> 16 Nevertheless, in a case such as this, the court should not be reluctant to intervene by exercising its statutory power to impose conditions where the justice of the case calls for it. … But even then, a condition imposed as to the waiver of a defence of time bar [*ie*, the Condition] can only be justified in "very special circumstances as it takes away a substantive right of one of the parties" (see the commentary on *The Xanadu* in *Halsbury's Laws of Singapore* vol 2 (LexisNexis, 2003 Reissue) at para 20.044).
>
> [emphasis in original]

Ang J's decision was upheld by the Court of Appeal in Civil Appeal No 123 of 2008.

17 In my view, the same principles enunciated in *The Xanadu* and *The Duden* should be applicable in the present case, notwithstanding the fact that the present case concerns the AA phrase as opposed to the IAA phrase. At the hearing, counsel for Jurong Port argued (although without much elaboration) that the policy considerations underlying the Arbitration Act, which are different from the

policy considerations underlying the International Arbitration Act, should mean that the court should take a less strict approach when considering whether terms/conditions should be imposed pursuant to the AA phrase. In my view, this argument is not entirely sound. To begin with, it has been observed that although the court has "a somewhat wider role and broader judicial latitude in domestic arbitration ... this is to be exercised in a *guarded manner*" [emphasis added] (see the grounds of decision of the Court of Appeal in *Tjong Very Sumito and others v Antig Investments Pte Ltd* [2009] 4 SLR(R) 732 at [31]). It has also been observed that the Arbitration Act and the International Arbitration Act "ought, as far as the statutory language allows, to be *read consistently* because both statutes, taken together, comprise the entire arbitration regime available in Singapore" [emphasis added] (see the grounds of decision of the Court of Appeal in *NCC International AB v Alliance Concrete Singapore Pte Ltd* [2008] 2 SLR(R) 565 ("*NCC International*) at [43]).

18 It should be added that both the Arbitration Act and the International Arbitration Act have significant similarities, and that both are based largely on the UNCITRAL Model Law on International Commercial Arbitration ("the Model Law") (see *Singapore Parliamentary Debates, Official Report* (5 October 2001) vol 73 at col 2214 (Assoc Prof Ho Peng Kee, Minister of State for Law)). In *Soh Beng Tee & Co Pte Ltd v Fairmount Development Pte Ltd* [2007] 3 SLR(R) 86, the Court of Appeal stated (at [61]):

> [I]t is clear that Parliament intended that the [Arbitration] Act (as recently amended in 2002) should largely mirror the IAA [*ie*, the International Arbitration Act] 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: see Second Reading of the Arbitration Bill (Bill 37 of 2001) on 5 October 2001 (*Singapore Parliamentary Debates, Official Report* (5 October 2001) vol 73 at col 2213).

Also, in *NCC International*, the Court of Appeal observed (at [23]–[25]):

> 23 The powers of the Singapore courts in respect of international arbitration are therefore listed exhaustively in the IAA [*ie*, the International Arbitration Act] where matters governed by the Model Law are concerned.
>
> 24 In respect of domestic arbitration, Singapore brought its regime in line with that under the Model Law by enacting the Arbitration Act 2001 (Act 37 of 2001) ("the 2001 Act"), the immediate precursor of the AA [*ie*, the Arbitration Act]. The 2001 Act was largely based on the Model Law, but also incorporated useful features from the Arbitration Act 1996 (c 23) (UK) …: see Law Reform and Revision Division, Attorney-General's Chambers, *Review of Arbitration Laws* (LRRD No 3/2001) … at para 4.3. The purpose of this approach, as stated in *Singapore Parliamentary Debates, Official Report* (5 October 2001) vol 73 at col 2214 (Assoc Prof Ho Peng Kee, Minister of State for Law), was to allow:
>
> > ... the creation of an arbitration regime that is in line with international standards and yet preserves key features of those existing arbitration practices that are deemed to be desirable for domestic arbitrations.
>
> 25 Hence, the AA (which is substantially similar to the 2001 Act) shares a common bedrock with the IAA, including the preservation of commercial certainty by limiting curial intervention, but with certain modifications tailored to suit domestic arbitration.

19 That said, in my view, there is no reason why the approach of the court towards the imposition of terms/conditions pursuant to the AA phrase ought to be any different from the approach taken

towards the imposition of terms/conditions pursuant to the IAA phrase. Parenthetically, it could be added that the fact that the AA phrase is found within a framework which allows the court to exercise discretion in granting stays while the IAA phrase is found within a framework which does not allow the court to exercise discretion in granting stays (upon the fulfillment of certain criteria) is not, in itself, a sufficient indication that Parliament had intended that a less strict approach should be taken with regard to the imposition of terms/conditions pursuant to the AA phrase as compared to the IAA phrase.

20 Drawing from *The Xanadu* and *The Duden*, the general principles applicable for the imposition of terms/conditions pursuant to the AA phrase (and also the IAA phrase) can be summarised as follows. First, the court has an *unfettered discretion* to impose any terms/conditions upon staying court proceedings in favour of arbitration. Second, any terms/conditions imposed must be *reasonable* and *appropriate* in the circumstances. Third, the discretionary power to impose terms/conditions must be exercised *judiciously*, with the main guiding principle being that the court should generally be *slow to interfere in the arbitration process*. Fourth, the court should *not be reluctant* to impose terms/conditions where the justice of the case calls for it. It goes without saying that the party arguing for the imposition of a term/condition bears the burden of establishing that the desired term/condition should be imposed. In addition, the Condition (or a term/condition to similar effect) should only be imposed in special circumstances as it takes away a substantive right of one of the parties (see the astute suggestion of the learned author of *Halsbury's Laws of Singapore* vol 2 (LexisNexis, 2003 Reissue) in an endnote at para 20.044, which was adopted in *The Duden* at [16] (see [16] above)).

Decision of the court on a stay under s 6 of the Arbitration Act

21 In my view, the circumstances and evidence taken in totality clearly indicate that an unconditional stay should be ordered pursuant to s 6 of the Arbitration Act.

22 Three observations ought to be highlighted in particular. First, there is a significant degree of uncertainty as to whether Jurong Port will suffer undue and disproportionate hardship. For one, Jurong Port, on its own submissions, has at least one basis for its claim that will probably remain unaffected by any limitation issues, *viz*, breach of warranty (see [10] above). In addition, Jurong Port could not confirm that there will *likely* be limitation issues. Its argument, as would be recalled, was merely that there are "*possible* issues of limitation" [emphasis added] (see [10] above). For completeness, it should be added that Mr Lim gave an explanation for the failure to pinpoint probable limitation issues that can be described as being rather bare (having regard to the fact that Jurong Port has had *several years* since the first discovery of defects in the Cranes to obtain the necessary information). He stated: [note: 5]

> It is not totally clear when the limitation period would expire in this case as [Drydocks] had delivered the [C]ranes to [Jurong Port] all the way back in 2001 to 2004. Many of [Jurong Port's] staff have left and the nature of the defects in the [C]ranes were latent defects making it extremely difficult to determine with any certainty when they manifested themselves and when [Jurong Port] found out about them.

Second, the evidence does not establish that there was any untoward conduct on the part of Drydocks. Third, Jurong Port was fully cognisant of the Clauses, and would or should have been aware of the steps that it had to take in order to ensure that any reference of the dispute to arbitration would take place within the relevant limitation periods.

23 In light of the above, there is no need for me to consider Drydocks' alternative grounds for a

stay of proceedings.

Conclusion

24 For the foregoing reasons, I grant an unconditional stay of the Action based on s 6 of the Arbitration Act. I will hear the parties on the issue of costs.

[note: 1] Affidavit of Mr Lim filed on 5 May 2010 at paras 11 and 28– 30; Affidavit of Mr Lim filed on 13 May 2010 at para 12.

[note: 2] Affidavit of Mr Lim filed on 5 May 2010 at para 22.

[note: 3] Jurong Port's written submissions at para 14.

[note: 4] Jurong Port's written submissions at para 19.

[note: 5] Affidavit of Mr Lim filed on 5 May 2010 at para 21.