HCCT 131/2024
[2025] HKCFI 2987

IN THE HIGH COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION
COURT OF FIRST INSTANCE

CONSTRUCTION AND ARBITRATION PROCEEDINGS NO 131 OF 2024

IN THE MATTER of a Final Award dated 4th November 2024 made Online by the Hong Kong Arbitration Society

and

IN THE MATTER of Section 84 of the Arbitration Ordinance (Cap. 609)

and

IN THE MATTER of Order 73 Rule 10 of the Rules of the High Court (Cap. 4A)

BETWEEN:-

CCC — Applicant

and

AAC — Respondent

Before: Deputy High Court Judge Sir William Blair in Chambers (Not Open to Public)

Date of Hearing: 3 July 2025
Date of Judgment: 18 July 2025

J U D G M E N T

Introduction

1. This is the substantive hearing of an application by the Respondent to set aside an *ex parte* order granted on 14 November 2024 giving leave to enforce an arbitration award as a judgment of the court in favour of the Applicant moneylender against the Respondent on the grounds that:-

(1) The purported arbitration agreements are invalid;

(2) The Respondent was not given proper notice of the arbitral proceedings and/or was otherwise unable to present his case;

(3) It would be contrary to public policy to enforce the award for the Applicant's fraudulent and immoral conduct; and/or

(4) It would be just to refuse enforcement of the Award.

2. The award in question (the "Award") is a final award made by the Hong Kong Arbitration Society ("HKAS") on 4 November 2024. The arbitration took place under the HKAS Online Arbitration Rules.

3. In *G v P* [2023] 4 HKLRD 563 at *para* 27, Mimmie Chan J explained the process that applies to leave to enforce arbitration awards. The

application to the Court is made *ex parte* under *s.* 84(1) of the Arbitration Ordinance (Cap 609) (the "Ordinance") and Order 73 rule 10(3) RHC. The Ordinance only requires that the applicant adduces evidence of the duly authenticated original or a duly certified copy of the award, and the original arbitration agreement or a duly certified copy of it. The application for enforcement is dealt with "mechanistically" (*Re PetroChina International (HK) Corp Ltd* [2011] 4 HKLRD 604, at *paras* 12-13), and the Court does not examine whether the arbitration agreement or the award is valid. However, when leave is granted to enforce the award on the *ex parte* application, leave is at the same time granted to the respondent to apply to set aside the order granting leave. It is then for the respondent to invoke one or more of the grounds set out in *s.* 86 of the Ordinance, and it is at this stage that the case will be scrutinised by the Court, to see if enforcement of the award may be refused.

4. The relevant grounds in this case are in *ss.* 86(1) and (2) of the Ordinance:

> "(1) Enforcement of an award referred to in section 85 may be refused if the person against whom it is invoked proves –
>
> (b) that the arbitration agreement was not valid –
>
> (i) under the law to which the parties subjected it; or
>
> (ii) (if there was no indication of the law to which the arbitration agreement was subjected) under the law of the country where the award was made;
>
> (c) that the person –
>
> (i) was not given proper notice of the appointment of the arbitrator or of the arbitral proceedings; or (ii) was otherwise unable to present his case.
>
> (2) Enforcement of an award referred to in section 85 may also be refused if –
>
> (b) it would be contrary to public policy to enforce the award; or

(c) for any other reason the court considers that it is just to do so."

The facts

5. The Applicant is a Hong Kong company engaged in the business of moneylending under the Money Lenders Ordinance (Cap 163). The Respondent is an individual who lives in Hong Kong. The material before the court is to the effect that he was born in Mainland China and received secondary school education.

6. The Applicant's case is that on 16 and 17 July 2024 it loaned HK$710,000 and HK$190,000 respectively to the Respondent making a total of HK$900,000. This was pursuant to two Mortgage Loan Agreements and two Supplemental Loan Agreements all dated 16 July 2024. It is unclear whether there was a mortgage. I shall refer to the Mortgage Loan Agreements simply as "Loan Agreements".

7. The Loan Agreements set out among other things the terms of the lending, by which the sums advanced carried interest at 36%, and were repayable after three months on 16 October 2024.

8. It is the Supplemental Loan Agreements that deal with dispute resolution. The terms state that the Applicant has an option of whether to refer any dispute to arbitration administered by the HKAS in accordance with the HKAS Online Arbitration Rules, or by way of court proceedings in the Hong Kong courts. This option is extended to the moneylender only. The borrower is given no option. The documents are in two pages, the first setting out the dispute resolution clause, and the second being the signatures page.

9. The acknowledgments of receipt show that the money was paid out in cash. The Applicant says that this was at the Respondent's request. The agreements state that they were negotiated and signed at the Applicant's registered address, but the Respondent says that in fact he attended at the offices of a realty company and a solicitors firm for these purposes. This is not in dispute.

10. Further, the Respondent says that he did not sign the first page of the Supplemental Loan Agreements whereas the second pages bear signatures similar to his. This is a matter I will come back to. He also says that he did not actually receive HK$ 900,000. The Award at paragraph 12 is to the effect that he repaid HK$ 81,000 around 16 July 2024. On behalf of the Respondent, it is said that this shows that part of the loan was in reality withheld, which would among other things affect the calculation of interest.

11. It is not in dispute that on 26 July 2024, the Respondent sent a WhatsApp to the Applicant asking to be sent the contract. The same day the Applicant sent him via WhatsApp copies of the first and second Loan Agreements. However, they did not send copies of either of the Supplemental Loan Agreements which is where the dispute resolution provisions are contained. As noted, this states the Applicant's option to refer disputes to HKAS under their Online Arbitration Rules, or to the Court.

12. The Respondent seems at an early stage to have taken objection to the loan process. He says he made a police report on 15 August 2024. There is a copy of a Witness Statement he made to the police dated 28 October 2024, which refers to a complaint to the Police Licensing Office on 23 September 2024. However, the content is redacted he says because of

concerns of "tipping off" the moneylender of a possible criminal investigation. Avoiding tipping off the regulated party is familiar aspect of regulatory complaints, but it has had the result that the Court is not aware of the content of the complaints which the Respondent was making.

13. Meantime, messages were sent to the Respondent by the Applicant on WhatsApp on 14, 15 and 19 August, 25 September, and 16 October 2024. The content varied, but they clearly reminded him of his indebtedness, the last being sent on the day the loans fell due.

14. On 16 October 2024, the Applicant commenced arbitration proceedings against the Respondent by submitting a Notice of Arbitration to the HKAS. The Court has not been provided with a copy of the Notice, but that there was a notice is not in dispute.

15. On the Applicant's case, on the same day, the HKAS sent the Respondent an SMS message in the Chinese language on the mobile phone number he gave in the application forms for the loans. There was a user name and password for him to access the Notice of Arbitration. The Respondent says that he did not receive this SMS. I shall return to this central dispute of fact.

16. It is not however disputed that on 23 October 2024, the HKAS sent the Respondent an SMS notifying him of the appointment of an arbitrator.

17. Nor is it disputed that on 4 November 2024, the HKAS sent the Respondent an SMS notifying him that the arbitral award had been handed down.

18. The Respondent did not respond to any of these messages, though they contained the phone and email contact details of the HKAS in case of enquiries.

19. As noted above, an *ex parte* order giving leave to enforce the arbitration award as a judgment of the court was granted on 14 November 2024. The present summons to set the judgment aside was taken out on 4 December 2024.

The parties' submissions

20. As noted above, the Respondent's case is that he did not sign the first page of the Supplemental Loan Agreements. He says that the Applicant has been guilty of fraud in that respect. The signing did not take place in the Applicant's offices, and involved intermediaries, including someone referred to as "Brother Fung". He says that this gives rise to the possibility of collusion, and a real risk that he may have been taken off guard and unaware of the terms of the loans as well as the arbitration agreements. He says that the Applicant does not say who actually explained the loan documents or whether the property is really subject to mortgage as the title of the loan agreements suggests. Brother Fung also seemed to become non-contactable as his office appeared to be cleared after the police report. He says that he never received the SMS said to have been sent on 16 October 2024, and the fact that he had taken the case up with the police and others shows that he would have responded had he known about it and not simply ignored it.

21. Further, the Respondent submits that a peculiar feature of this case is the "abnormal lightning speed" from the commencement of the arbitration to

the publication of the award which is out of the norm of other major arbitral institution rules or court rules. In the circumstances, the arbitrator failed to allow him a sufficient or fair opportunity to present his case. The whole circumstances are so unsettling that the Court should be ready to set aside the enforcement order so as to protect the structural integrity of the arbitration proceedings and to uphold due process.

22. The Applicant in its submissions points out that the Respondent accepts that he received the second and third SMSs, and says that it can safely be assumed that he received the first one also with the Notice of Arbitration. Even if he treated the notice as spam, he is still taken to have received proper notice. He says he did not receive the loans, and was plainly lying in that and other respects. The signatures on the various agreements are the same, and there is no substance in the assertions that they do not belong to him. His case in fraud does not get off the ground. Having chosen not to take part in the arbitration, he cannot now claim that there are breaches of the Money Lending Ordinance. In any case, the fact that the documents were not signed in the lenders' offices does not affect the validity of the loans (*M Success Finance Ltd v 馬玉兒* [2022] HKDC 696). There is no force in the collusion case, or the complaints that he did not have time to react to the case and lacked a proper opportunity to put his case. It lies ill in his mouth to complain that he was not given a chance to present his case when he could have contacted HKAS to find out more about the arbitration. It is his own doing that he did not get to present his case in the arbitration. He has not put forward any legal basis for his contention that the Arbitrator somehow ought to have "considered the potential defences based on the evidence before him" before making the Award. His approach of making all sorts of unsubstantiated allegations betrays the lack of

bona fides of his Application. The court should dismiss his Application with indemnity costs.

Discussion

Fraud

23. The Respondent's case is that the Applicant has acted fraudulently in this case. The Supplemental Loan Agreements consist of two pages, the first setting out the dispute resolution provisions, and the second being a signing page. He says that the signature at the right bottom corner of the first page does not belong to him and is different from his usual signature, whereas the second pages of the agreements bear signatures similar to his. On this basis, he says that the first pages were subsequently manufactured and attached to the empty signing pages for the purpose of bringing the matter to arbitration in a secretive manner unknown to him. He relies on the fact that when he asked for the contract, he was sent the Loan Agreements only.

24. In answer, the Applicant seeks to destroy his credibility with the assertion that the Respondent " … *made the bare (and bold)* suggestion *that he never received the loans*", which was a lie. It is said that the fact that he lied on this point shows that he is lying on everything else.

25. However, the Respondent does not say that he never received the loans. As pointed out above, he says that he did not receive the full HK$ 900,000. This finds support in the Award which says at paragraph 12 that he repaid HK$ 81,000 around 16 July 2024. The Respondent's point is that this shows that part of the loan was in reality withheld.

26. The Applicant also says that the signature on the second page, which the Respondent accepts is his, looks the same as that on the first page. This seems to me to be correct, though these are not the comparisons of an expert, and cannot carry much weight.

27. However, overall, I agree with the Applicant that these allegations of fraud have no clear basis. The Respondent does not fully engage with the Applicant's affirmations that which describe how he approached them because he needed money to repay his existing debts, and that they followed his requests including as to the payment of cash and the involvement of Brother Fung. He does not explain why the fact that Brother Fung's offices seem to have been vacated should be a pointer to fraud on the part of the Applicant. He says that it is fishy that the Supplemental Loan Agreements were not sent to him along with the Mortgage Loan Agreements. This is clearly an important point, and no proper explanation has been given by the Applicant as to how this happened. But it does not in itself support the inference of fraud, because it is equally explicable as a careless omission.

28. Allegations of fraud must be clearly proved, and I accept the Applicant's submissions that on the basis of the material before the court, there is no real prospect of success of the fraud allegation being made good (*T v C* (unrep., HCCT 23/2015, Mimmie Chan J, 14 March 2016) at *para* 14). The Applicant has satisfied me that the Respondent signed and thereby agreed to the documentation. It follows that I reject the Respondent's case under *s.* 86(2)(b) of the Ordinance that it would be contrary to public policy to enforce the award on grounds of the Applicant's fraudulent and immoral conduct.

Proper notice of the arbitral proceedings

29. The most substantial question in the case is whether the Respondent had proper notice of the arbitration proceedings.

30. Under *s.* 86(1) of the Ordinance, enforcement of an award may be refused if the person against whom it is invoked proves that the person was not given proper notice of the appointment of the arbitrator or of the arbitral proceedings; or was otherwise unable to present his case.

31. The effect of this provision has been summarised by Mimmie Chan J in *CC v AC* [2025] HKCFI 855, in which the learned judge refers to decisions in various jurisdictions. In summary, she holds at para 14 that enforcement of an award "may" be refused if the person against whom it is invoked proves that he was not given "proper" notice of the proceedings or of the appointment of the arbitrator. Reference is made to her judgment in *Sun Tian Gang v Hong Kong & China Gas (Jilin) Ltd* (2016) 5 HKLRD 221, stating that "due and fair notice" of proceedings should be given to the parties. Any presumption or deemed notice provision in the applicable terms may be rebutted by credible evidence that no proper notice had in fact been received by the party, but the burden of establishing this lies squarely on the party seeking to invoke the ground.

32. In *OUE Lippo Healthcare Ltd v David Lin Kao Kun* [2019] HKCFI 1630, Coleman J also referred to questions of fairness, holding at paragraph 67 that, "The concept of 'proper' notice may be different from 'actual notice' and brings into play questions of fairness. Proper notice is usually concerned with assessment of whether the notice is likely to bring the relevant information to the attention of the person notified. That may take into account any

contractually agreed notice provisions, any agreed dispute resolution mechanism and relevant institutional rules. It is a question of fact."

33. The dispute resolution mechanism in clause 1 of the Supplemental Loan Agreements states that:

> "Any dispute or difference arising out of or in connection with the Loan Agreement and this Supplemental Loan Agreement shall, at the option of the Claimant (or the Plaintiff, as may be applicable), be referred to and finally resolved by arbitration administrated by the Hong Kong Arbitration Society and in accordance with the HKAS Online Arbitration Rules for the time being in force or by court proceedings in Hong Kong courts."

34. This identical clause has been held to be a valid clause giving the right to the moneylender to choose between arbitration administered by the Hong Kong Arbitration Society in accordance with the HKAS Online Arbitration Rules or litigation through the courts (*G v P* [2023] 4 HKLRD 563, Mimmie Chan J at §§9-13).

35. The learned judge said at para 2 that, "… when the Applicant [moneylender] exercised its option and chose arbitration as the method of dispute resolution, in this case by commencing the Arbitration, the Respondent is bound by the Applicant's choice, an arbitration agreement came into existence and the Respondent is compelled to follow the option conferred on and chosen by the Applicant. On an objective reading of the dispute resolution clause in question, there is no option at all conferred on the Respondent". The contrary has not been argued before me.

36. The factual question that arises is whether the Respondent actually received the SMS message from HKAS on 16 October 2024. As noted, he says

he did not, and he has not deleted the message or changed his phone. He says that he has not been able to obtain his messaging record from CSL, his mobile service provider. He suggests that the message could have been blocked or could not be received because of its size.

37. However, as the Applicant points out, the messages of 23 October as regards appointment of an arbitrator and 4 November as to the rendering of the Award were sent to the same number and the Respondent accepts that he received these. His reason for not inquiring of HKAS as to the position is that these messages (unlike that of 16 October) did not name the parties and he did not know what an arbitration is so assumed that they were spam or misdirected. However, he accepts that he did receive WhatsApp from the Applicant including that on 16 October 2024 which reminded him that the loans fell due that day.

38. The Applicant has obtained evidence from Faisal Mehmood who is a Software Developer for HKAS. He says that he built the Online Arbitration Platform which sends emails and/or SMS messages to notify parties of online arbitral proceedings administered by HKAS. The SMS message of 16 October 2024 appears on the Online Arbitration Platform. It uses an American provider well known, he says, for its efficiency. If the SMS message is not delivered, the provider returns the undelivered status to HKAS. This did not happen in the case of the 16 October 2024 message. He says that the mechanism of notifying parties through SMS message applies to other online arbitral proceedings since the commencement of the platform in around 2019. There has never been, he says, any complaint that parties to arbitration proceedings were not able to receive a SMS message when the same was displayed as “delivered” on the platform.

39. That being the state of the evidence, I conclude that the message of 16 October 2024 was received by the Respondent. There is little doubt as to this, and the Respondent's case to the contrary is not convincing.

40. The message stated the parties to the arbitration, and provided a link to the Notice of Arbitration. It provided a link through which the Response could be submitted. It gave an account name, and a password, and instructed the recipient to change the password after the initial login. It gave the phone and email contact details of the HKAS in case of inquiries.

41. It was submitted on behalf of the Respondent that an SMS message is not a suitable method of notifying a party that arbitration proceedings have been commenced against that party. However, by agreeing to arbitration under the HKAS Online Arbitration Rules, he is taken to have accepted this. The authorities draw a distinction between a party actually knowing about an arbitration, and being given proper notice of the same. The term "proper" is used in the provisions of s. 86 of the Ordinance set out above, which reproduce the Model Law. I consider that the Respondent was given proper notice of the arbitral proceedings.

42. However, I also consider that there is force in the further submissions of counsel for the Respondent as to the potential risks in giving of notice by this medium. I return to this later.

No sufficient time to react or defend

43. The Respondent submits that a peculiar feature of the case is the "abnormal lightning speed" of the commencement of arbitration to the publication of the award. He submits that that he had no sufficient time to react

or defend, and thus the arbitrator did not allow him a sufficient or fair opportunity to present his case. The Applicant rejects this contention.

44. Article 1 of the Online Rules provides that the term "online arbitration" refers to the dispute resolution method for commencing arbitration proceedings in the Online Arbitration Platform of HKAS. According to the evidence in the case, this platform was commenced around 2019, and has worked satisfactorily since at least at the technical level.

45. It is the 2025 English language version of the Online Rules that is before the Court. I am told that there is no material difference between this version and that in force at the time of these transactions.

46. The following provisions are particularly relevant in understanding the nature of these arbitrations:

a. Article 2.1 provides that any written communication of arbitration documents including the arbitration notice shall be deemed to be received by a Party or the Arbitral Tribunal or by Hong Kong Arbitration Society if transmitted by methods of electronic service, including, amongst others, SMS message.

b. Article 6.1 provides that the Respondent must file the Response through the Online Arbitration Platform within 7 days of the service of the Notice of Arbitration.

c. Article 6.5 provides that if within 7 days of the service of the Notice of Arbitration, the Respondent has failed to file the Response without showing sufficient cause for such failure, HKAS

may proceed with the Arbitration and the Arbitral Tribunal may make an award on the basis of the information and evidence before it without a hearing.

d. Article 13.3 provides that unless otherwise agreed by the parties or decided by HKAS or the Arbitral Tribunal after taking into account what fairness requires in the circumstances of the case, no legal representatives are allowed to act on behalf of either party in the arbitration.

e. Article 15.9 provides that unless otherwise agreed by the parties or decided by HKAS, the arbitration is decided on the documents, without a hearing.

f. Article 17 provides that unless time is extended, the Arbitrator shall render an Award within 7 days of the expiration of the period for the parties making their submissions or the hearing (if any).

47. It is apparent from these rules that the purpose of the HKAS online arbitration service is to provide a speedy process which can be done by an unrepresented party online. Clearly, the arbitration must comply with due process, and speed must not be allowed to prejudice this. But there is no complaint merely on the basis of the tight time frame, because the Rules are intended to avoid the delay and expense that is associated with conventional proceedings both in arbitration and in court.

48. Where it is said that a person was "otherwise unable to present his case" (in other words section 86(1)(c)(ii) of the Ordinance), it has been held that the conduct complained of must be sufficiently serious or egregious to say that

the party has been denied due process (*OUE Lippo Healthcare*, above, at paragraph 68). Given the nature of the arbitration, this is not a case in which the Respondent was unable to present his case. He did not do so, but that was because of his non-participation in the arbitration.

Conclusion

49. The case under *s.* 86(2)(c) of the Ordinance (empowering the court to decline to enforce an award for any other reason that the court considers it is just to do so) is dependent on the other grounds. For the reasons set out above, therefore, the Respondent does not succeed in his challenge to the Award.

50. However, I accept the submissions of the Respondent's counsel that there are some unsatisfactory aspects of this case, which I should address. These arise in the context of online arbitrations in respect of moneylending transactions. They concern two important aspects of the arbitration process, namely the giving of notice to the borrower of the arbitration option, and the sending of the notice of arbitration to the borrower when the arbitration commences.

51. As noted above, following the transactions, on 26 July 2024 the Respondent sent a WhatsApp to the Applicant asking to be sent the contract. The Applicant sent him *via* WhatsApp copies of the first and second Loan Agreements, but it did not send copies of either of the Supplemental Loan Agreements. This is where the dispute resolution provisions of the transactions are contained, including the Applicant's option to refer disputes to HKAS under their Online Arbitration Rules, rather than to the Court.

52. I have held that there is no sufficient evidence that this was a deliberate deception, as the Respondent argued. However, though counsel for the Applicant rightly admitted at the hearing that the Supplemental Loan Agreements were not sent, he did not give any explanation as to why this was not done.

53. Clearly, this was a serious omission on the part of the Applicant. It is reasonable for a borrower to request copies of agreements the borrower has previously signed – the mere fact that copies may have been provided at the time does not make it unreasonable. The moneylender should provide them, and obviously that includes the whole agreements. Here, the entire dispute resolution provisions were omitted. These make the arbitration option very clear. I have reflected this omission in the costs order I am making.

54. The second is a more general point. The giving of a proper notice of arbitration is an essential step in any arbitration, and online arbitration is no different. Under the HKAS Online Arbitration Rules this can be by SMS message, as was done in this case. But the question arises as to what action – if any – should be taken by the arbitral tribunal if the respondent does not respond.

55. In the present case, the Award states that on 23 October 2024, the tribunal conducted a preliminary review and requested further information and evidence from the parties. It states that the Applicant submitted additional materials and evidence on 24 October 2024. In an arbitration under the HKAS Online Arbitration Rules, communications take place through the chat room, so these would not be seen by a non-participating respondent. At the hearing, the Applicant was not able to help as to what the additional material and evidence consisted of.

56. The Award goes on to state that the "Respondent has had ample opportunity to participate in this arbitration". It is not clear, however, on what basis this statement is made. Where a notice of arbitration is sent by SMS to a respondent's phone, there may be a number of reasons for the respondent's non-participation in the arbitration other than a conscious decision not to participate. The respondent may not be able to reply to the SMS for some good reason, or reluctant to click on the links for fear of fraud which unfortunately proliferates on this medium, or the message may simply be overlooked.

57. There is some legal commentary that sheds light on this situation. In his textbook on *International Commercial Arbitration*, 3rd edn, which was cited to me by counsel on both sides and is generally taken as authoritative, Gary Born says that, "If a party defaults, the tribunal should proceed with the arbitration on an *ex parte* basis, first attempting to obtain the defaulting party's participation and thereafter ensuring at every step that the defaulting party receives notice of the ongoing proceedings" (§ 15.08 [DD]).

58. Doubtless attempting to obtain the defaulting party's participation is partly to protect the integrity of the arbitration, but it also has the effect of protecting the respondent by checking that the notice of arbitration has actually been received. This statement of good practice is in the context of international commercial arbitration, but there seems no good reason why, suitably adapted for the online context, it should not apply to an online arbitration brought by a moneylender against a borrower. I appreciate the submission on behalf of the Applicant that further SMS messages followed in the present case, and that these should alerted the Respondent to the arbitration. But the point of principle applies to the Notice of Arbitration itself, the giving of which (as noted above) has always been regarded as an essential step.

59. I make it clear that the arbitrator in the present case was a very experienced arbitrator, and I do not seek to second-guess his procedural decisions in this arbitration. But speaking generally, on the authority of best practice as outlined in *Born*, and while each case will be different, in an online arbitration of this kind good practice suggests that the arbitrator, or the claimant at the request of the arbitrator, should check whether the notice of arbitration has actually been received and understood as such by the non-participating respondent borrower. This reflects the importance of fairness as identified in the *CC v AC*¸ *OUE Lippo Healthcare*, and *G v P* cases cited above. What should be done will depend on the circumstances, including what contact information is available, and the good judgment of the tribunal.

Order

60. On a *nisi* basis, I will make the order attached by the Applicant to its submissions, namely dismissing the summons dated 4 December 2024, and the order by Mimmie Chan J of 14 November 2024 to stand.

61. Having successfully resisted the challenge to the enforcement order, the Applicant seeks its costs on the indemnity basis. That is the general order that applies in unsuccessful challenges to arbitration awards in the absence of special circumstances (*Chimbusco International Petroleum (Singapore) Pte Ltd v Fully Best Trading Ltd* [2016] 1 HKLRD 582 at para 5, Mimmie Chan J). As described further above, subsequent to the loan transactions the Respondent requested the Applicant to send the contract, but the copies sent omitted the Supplemental Loan Agreements that included the arbitration option. Though I have concluded that it was not deliberate, and even though copies may have been provided at the time of the transactions, I consider that this was a serious

omission on the part of the Applicant, and as such amounts to special circumstances. On a *nisi* basis, I order that the costs of this application be to the Applicant on a party to party basis rather than an indemnity basis. I would add that in consumer online arbitrations of this kind, in my view it may not be difficult to depart from the indemnity costs principle if that reflects a fair economic balance between the parties.

62. Also on a *nisi* basis, there will be a certificate for one counsel. This is not to underestimate the value to their client of the other two counsel who appeared for the Applicant at the hearing, but the case does not justify imposing the extra cost on the Respondent.

63. I thank counsel on both sides for their assistance.

(Sir William Blair)
Deputy High Court Judge

Mr Oscar Tan, Mr Jason PH Wong and Mr Kelvin Wong, instructed by Yip & Co., for the Applicant

Mr Billy Mok and Mr Terrence Cheng, instructed by Jal N. Karbhari & Co., for the Respondent