(j) that it had not been demonstrated, however, that there has been a denial of natural justice to Nauru as a result of the arbitrator's decision".

His Honour also approved the comments of Rogers CJ CommD in Imperial Leatherware (at p.661):

> "I would venture to suggest that one reason why parties submit to arbitration is so that they should avoid 'pre-trial pleading, discovery and other procedures of the court.' This is so whether the arbitration is long and complex, or short and simple. The heart of the arbitral procedure lies in its ability to provide speedy determination of the real issues".

The proprietor had conceded that the power which it contended existed under Section 47 for the Court to require the arbitrator to direct the delivery of further particulars should only be exercised in particular or special circumstances.

His Honour concluded that even though in his view further particulars should have been directed, it was not appropriate, applying the above principles, for him to intervene.

ARBITRATION AGREEMENT— CONTRACT JCCA (or B) 1985

Supreme Court of New South Wales (Unreported)
Giles J.
3 April 1992
Turner Corporation Ltd v Austotel Pty. Ltd.

JCCA (or B) 1985 is a standard contract commonly used in the building industry. Its arbitration clause, clause 13, has recently been subjected to close judicial consideration in both Victoria and New South Wales. So far as is relevant, clause 13 provides:

> "13.01 In the event of any dispute or difference arising between the Proprietor (or the Architect on his behalf whether acting under paragraphs 5.02.01 or 5.02.02) on the one hand and the Builder on the other hand (subject to the provisions of Clause 6.09) at any time as to the construction of this Agreement or as to any matter or thing of whatsoever nature arising thereunder or in connection therewith then either party shall give to the other notice in writing by hand or by certified mail adequately identifying the matters the subject of that dispute or difference and the giving of such notice shall be a condition precedent to the commencement by either party of proceedings (whether by way of litigation or arbitration) with regard to the matters the subject of that dispute or difference as identified in that notice.

13.02 At the expiration of ten (10) days from the date of receipt of the notice referred to in Clause 13.01 by the Proprietor or the Builder as the case may be the party giving such notice shall:

13.02.01 Deposit with the Secretary of the Chapter of the Royal Institute of Architects or the Secretary of The Master Builders' Association of the State or Territory in which the Site is located the sum of Five hundred dollars ($500.00) by way of security for costs of the arbitration proceedings;

13.02.02 notify the other party in writing that he requires the dispute or difference to be referred to arbitration; and

13.02.03 together with the Notification referred to in paragraph 13.02.02 provide to the other party evidence that he has made the deposit as referred to in paragraph 13.02.01.

Subject to compliance as well with the provisions of paragraphs 13.02.01 and 13.02.03 such dispute or difference (unless meanwhile settled) shall upon receipt by the other party of that notice given pursuant to paragraph 13.02.02 then be and is hereby referred to arbitration pursuant to the succeeding Clauses of this Section 13."

In Woolworths Limited v. Herschell Constructions Pty. Ltd. (in liquidation) 11 ACLR 18 (see casenote in "The Arbitrator", Vol. 10, p.78, August 1991), a notice of dispute had been given by the defendant under clause 13.01. Before the expiration of the 10 day period referred to in clause 13.02, the plaintiff issued Supreme Court proceedings. The defendant applied for a stay of these proceedings pursuant to Section 53 of the Commercial Arbitration Act. An application under Section 53 for a stay of proceedings can only be made by a party "to an arbitration agreement'. Smith J. held that he should not grant a stay of proceedings under Section 53 since clause 13 was not an arbitration agreement but only an option to arbitrate. Clause 13 only became an arbitration agreement when all the steps referred to in clauses 13.01 and 13.02 had been complied with.

A similar fact situation arose in the present case. His Honour, after a careful consideration of relevant authorities, and particularly Woolworths, declined to follow Woolworths. He held that clause 13 was an arbitration agreement and that it was appropriate to grant a stay of proceedings even though steps required by clause 13.02 had not been complied with.

The applicant builder also submitted, pursuant to Section 53, that there was "sufficient reason why the matter should not be referred to arbitration" and that the respondent proprietor was not "ready and willing to do all things necessary for the proper conduct of the arbitration". His Honour did not accept either of these submissions.