

## All Of Our Client's Rights Are Reserved: A Meaningless Cliché Until It Is Not

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Lawyers are often fond of ending correspondence with the now-habitual phrase: "All of our client's rights are reserved." Much like the delicate tulip atop a barista's latte, it is as much form as function, so familiar, it can feel like mere legal decoration.

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But recent jurisprudence suggests that this time-worn phrase might carry more weight than previously thought.

### A Legal Reminder From The Court Of Appeal

In *Esa Jurutera Perunding Sdn Bhd v Universiti Malaya* [2025] 2 MLJ 618, the Malaysian Court of Appeal breathed new life into this familiar legal refrain, reinforcing its potential significance in arbitration-related disputes.

Universiti Malaya (the Plaintiff) appointed Esa Jurutera Perunding (the Defendant) as a civil and structural engineering consultant under a Memorandum of Agreement (MOA) dated 3 June 2008. Clause 2 of the MOA incorporated additional documents, collectively forming the Agreement, which included an arbitration clause.

Despite the arbitration clause, the Plaintiff commenced court proceedings in October 2022. What followed was a series of procedural steps by the Defendant, where it:

1. Entered appearance on 17 October 2022.
2. Sought, and was granted, two extensions of time to file its defence (ultimately due by 1 December 2022).
3. Served a notice dated 24 November 2022 requesting documents referenced in the Plaintiff's pleadings.
4. Informed the Plaintiff that it would file a defence by 5 December 2022.
5. Crucially, on 1 December 2022, served a Notice of Arbitration.
6. Filed an application under Section 10(1) of the Arbitration Act 2005 (AA 2005) to stay the court proceedings.

The High Court eventually rejected the stay, prompting an appeal.

### The Legal Issue: Has The Defendant Taken “Any Other Steps”?

Under Section 10(1) of the AA 2005, a party seeking a stay of proceedings in favour of arbitration must not have taken “any other step in the proceedings”. This is a provision that courts have interpreted as a bar to arbitration where a party has clearly engaged with the litigation process.

The High Court held that the Defendant, by seeking extensions and requesting documents, had taken steps inconsistent with arbitration — specifically, that it had evinced an intention to submit to the court's jurisdiction.

The Court of Appeal disagreed with the High Court.

### The Court of Appeal's Reasoning

Reversing the High Court's decision, the Court of Appeal reaffirmed the primacy of arbitration clauses and the statutory intent behind Section 10(1), which is to honour the parties' contractual agreement to arbitrate.

The court acknowledged that filing a defence would clearly constitute a step in the proceedings. However, it drew a distinction between filing a defence and preparatory acts that fall short of substantive engagement with the merits of the case.

Seeking extensions and requesting documents, the court held, were procedural steps aimed at preparing for a possible defence but not conclusive evidence of an intention to litigate. Crucially, the Defendant's correspondence requesting documents was accompanied by the phrase: *All of our Client's rights are reserved*.

While general in nature, the court found this reservation sufficient to preserve the Defendant's right to arbitrate. The High Court, it said, had erred by failing to consider the effect of that reservation.

In support, the Court referred to its prior decision in *Airbus Helicopters Malaysia Sdn Bhd v Aerial Power Lines Sdn Bhd* [2024] 2 MLJ 471, where it held that courts should favour arbitration unless there is a clear and unequivocal intention to abandon that right.

### A Recalibration Of Section 10(1)?

The decision arguably narrows the scope of “steps in the proceedings” under Section 10(1), suggesting that only unequivocal actions such as filing a defence may disqualify a party from seeking arbitration. Whether this interpretation holds will depend on the Federal Court, where an appeal may yet be heard.

For now, the case stands as a potent reminder that legal boilerplate — “All rights reserved” — can have real consequences. Lawyers would be well advised not to discard it too quickly.

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