

**Commission of Inquiry into the Diaphragm Wall and Platform Slab Construction
Works at the Hung Hom Station Extension under the Shatin to Central Link Project**

FIRST WITNESS STATEMENT OF ANTHONY ZERVAAS

I, ANTHONY ZERVAAS, of 39/F Sun Hung Kai Centre, 30 Harbour Road, Hong Kong, will say as follows:

My role and responsibility

1. From October 2016 to April 2017, I was the Project Director employed by Leighton Contractors (Asia) Limited (“**Leighton**”) for the Hung Hom Station Extension contract (Contract SCL 1112) (the “**Project**”) under the Shatin-Central rail link project. I was taking over from Malcom Plummer (who was the Project Director at the relevant time). The project manager for the Project is MTR Corporation Limited (“**MTRCL**”). Prior to October 2016, I had no involvement in the Project.
2. My main responsibility as project director was to handle profit and loss matters, and oversee the progress and safety of the building works. I was not directly involved in any inspections or supervision over the carrying out of the building works.
3. In April 2017, I was promoted to the position of Operations Manager of Leighton. This role involved looking after a number of Leighton’s projects and still required me to have high-level oversight of the Project.

China Tech’s complaint of alleged malpractice on site

4. China Technology Corporation Limited (“**China Tech**”) was a subcontractor of Leighton responsible for erecting the formwork and concreting on the East West Line platform slab (“**EWL Slab**”) and the North South Line platform slab (“**NSL Slab**”) of the Project under Agreement No. H2601/SC/077 (the “**Subcontract**”) (produced and marked Exhibit **AZ-1**). China Tech’s director and majority shareholder is Jason Poon Chuk Hung (“**Poon**”). While Poon’s wife was also a director and shareholder, I only ever dealt with Poon and he represented China Tech in all of his dealings with me and/or Leighton.

5. In December 2016, I started negotiations with Poon to agree on a revised milestone and final account payment schedule for China Tech's Subcontract. The background to these negotiations was that China Tech was falling behind schedule and was not achieving productivity outputs. Poon had complained that China Tech needed to receive more payments from Leighton that were assessed in accordance with the Subcontract as the amounts were not sufficient to cover his costs, in particular, the labour wages. In the hope that he would manage his inefficiencies going forward, I agreed to a revised milestone and payment schedule.
6. On 12 December 2016, after several meetings that month, I agreed a revised milestone and final account payment schedule with Poon for the Subcontract (produced and marked Exhibit **AZ-2**). Under the revised schedule, China Tech would receive progressive payments from Leighton based on achievement of various milestones, which China Tech agreed to. This decision to continue the relationship with China Tech was made in the hope that China Tech's performance would improve.
7. By the end of December 2016, Poon came to me and asked for payment of HK\$6 million for the works carried out by China Tech. My team's assessment was that China Tech had at that time only completed 50% of the agreed end of December 2016 milestones. In a number of informal oral discussions, I told Poon that China Tech would not get paid until it achieved the agreed milestones for December 2016, which he had agreed only in mid-December. Poon was not satisfied with my response.
8. On 4 January 2017, Poon made a demand on me that Leighton immediately release the HK\$6 million payment to China Tech and claimed that the non-achievement of the milestones was due to the failure of others. I repeated to Poon that the condition precedent for payment was completion of 100% of the milestones and that his claim that others (namely, steel fixer) had prevented China Tech from achievement was not supported. Leighton and China Tech exchanges emails and letters in early January 2017 (produced and marked Exhibit **AZ-3**).
9. On 5 January 2017, Poon removed his entire labour (about 272 workers) from site, and he told me that if Leighton undertook any concrete casting work on his behalf, he would call the media.
10. On 6 January 2017, Poon maintained only a token workforce on site (about 60 workers).

11. On the same day at 9:45 am, Poon sent an email to me and Joe Tam (who was the Construction Manager of the Project) alleging that due to purported rebar/coupler installation malpractice of staff of Leighton in September 2015, that “*Leighton labour had cut away the threading section of the threaded lapping bar and pretending secured installation*” on the diaphragm wall, the structural integrity of the EWL Slab may be in question (produced and marked Exhibit **AZ-4**). He demanded feedback by the end of the day including records proving structural integrity, or he would report the finding directly to the Legislative Council Panel on Transport and ask for public investigation the following morning. Later at 1:18 pm, Poon sent an email to me that “*there will be several [reporters] from local media visiting our site office for an interview on our company*” (produced and marked Exhibit **AZ-5**).
12. Poon’s email alleging malpractice relating to rebar/coupler installation came out of the blue because that was the first time I had ever heard of any such allegations, despite the fact that his allegations appeared to relate to events in September 2015.
13. Given the serious allegations made by Poon, I immediately forwarded that email to Michael Fu of MTRCL, copying my superiors at the time, Paul Freeman (Operations Manager of Leighton at that time) and Stephen Lumb (Heading of Engineering) (produced and marked Exhibit **AZ-6**). Leighton mobilised Stephen Lumb and his team to come to site with the team to conduct an investigation.
14. The matters set out in paragraphs 8 to 13 above were recorded in my email to, amongst others, Boyd Merrett (General Manager of Leighton at the time) on 6 January 2017 (produced and marked Exhibit **AZ-7**).
15. I also replied to Poon on 6 January 2017 (produced and marked Exhibit **AZ-8**), telling him that it was quite alarming that he had not brought the issue to Leighton’s attention earlier particularly when the alleged malpractice occurred in September 2015, and that an investigation had been commenced to review the allegations in his email.
16. Poon replied on 7 January 2017 (produced and marked Exhibit **AZ-9**) alleging (without any evidence) that Khyle Roger who was in charge of the site was “*well aware*” and “*directing the activities*”, and he went on to state “*call a spade a spade*” and that it was Leighton’s “*unfair commercial manner*” which led to their action “*on commercial*

review”, and that “*further findings on serious non-conformity will be explored later which may evidence many hearsay on site*”.

17. To achieve work progress, I brought Poon back to the negotiation table. I could see that Poon thought he had mis-calculated his cost to complete the contract works, whereas I wanted to make sure that he had enough money to finish the job so that we could get the work progressed. On or around 23 January 2017, Leighton agreed to increase the final account payment from HK\$28 million to HK\$33 million for the same reasons noted in paragraph 6 above, and signed a revised milestone and final account payment schedule (produced and marked Exhibit **AZ-10**). Poon did not make further allegations to me regarding the malpractice until September 2017.
18. From memory, after the revised milestone and final account payment schedule was signed, for a period of time Poon and China Tech did perform and progress was made.
19. As stated above, Leighton carried out an investigation on Poon’s allegations in his email. I was not involved in the investigation as I wanted it to be an independent review, particularly when I had no knowledge of what was undertaken in the project back in September 2015. I recall being briefed by Stephen Lumb (Head of Engineering) that Leighton could not find any evidence to suggest there was any malpractice as Poon had alleged.

Termination of China Tech’s Subcontract at the Project

20. In August 2017, John Kitching became the Project Director and I recall that John Kitching was having issues with Poon regarding payments, in that Poon was constantly wanting to get paid based on his outgoings rather than based on milestones progress.
21. Leighton sent two letters of 11 September 2017 (produced and marked Exhibit **AZ-11**) and 13 September 2017 (produced and marked Exhibit **AZ-12**) to China Tech regarding China Tech’s poor performance under the Subcontract. China Tech responded on 15 September 2017 blaming others for its poor performance and delay on outstanding works, and raised the issue again that “*we had reported the matter of cheating coupler & threading since this January*” (produced and marked Exhibit **AZ-13**).

22. On 15 September 2017, when I was in Macau handling another of Leighton's project, I received a call from Poon. I believe Poon called me because John Kitching was away, and he asked me what was happening to his payments. I told Poon that I was going into a client meeting and I offered to meet him the following morning on site. He then immediately said: "what about my email I sent to you in January?" I said I had reported to MTRCL and we had conducted an investigation, and Leighton's Head of Engineering could not find any evidence to suggest there were any issues as he alleged. Poon then asked: "are you going to pay me?" I told Poon to be reasonable about this and again offered to meet him the next morning to work things out as I was not aware of the details. Poon then just hung up on me.
23. Poon sent me two emails that day. The first email was sent to me as a reply to his email of 6 January 2017 (produced and marked Exhibit **AZ-14**). The second email was sent to Mr Frank Chan, the Secretary for Transport and Housing, which was copied to me (produced and marked Exhibit **AZ-15**), and it stated in vague terms that there was an "important issue" which China Tech had found and reported in January 2017 on the execution of the works at the Project which was said to be "*much related to the interest of the public*", and invited Mr Frank Chan to come and have a joint interview the next morning urgently with MTRCL and Leighton to discuss.
24. I was concerned about Poon's telephone call and emails. I therefore returned to Hong Kong and arranged to meet Poon at Leighton's Head Office in the afternoon of the same day. At that meeting, there was no discussion at all about the emails that Poon had sent earlier that day or his allegation that the threaded ends had been cut off the rebar that was installed in the EWL Slab. Rather, Poon complained that Leighton had not paid him and he needed to pay his wages. I told Poon that there were still defects in the works and some miscellaneous works yet to be performed. I reminded him that we had already agreed two final account agreements and yet China Tech had still not met the milestones, and I asked him what he wanted to do. After some back and forth discussion, I said to Poon that it appeared that he had no intention to finish the work on the Project and it was in our mutual interests to shake hands and part ways so that Leighton could get new contractors in to finish off the works. Poon agreed. We eventually agreed that China Tech would sign a termination agreement and Leighton would pay China Tech HK\$1.6 million for the work that had been completed to date.

25. I asked Karl Speed, the General Manager of Leighton, to meet Poon on that day to preserve Leighton's commercial relationship with Poon. At that meeting, Poon complained to Karl that China Tech had been purportedly blacklisted by Leighton for all future tenders. Karl told Poon that China Tech was not blacklisted. Karl noted that China Tech's joint venture with FEWA was still working with Leighton as the formwork subcontractor for a project in Liantang ("**Liantang Project**") (where Leighton was building a passenger terminal building at the boundary control point) and that Leighton wanted China Tech to do a good job on that project. Karl reiterated that Leighton would like to maintain the working relationship with Poon.
26. A final account was prepared and signed by Poon that day (produced and marked Exhibit **AZ-16**). I recall that it was co-signed by Poon's wife who was a director of China Tech on the following Monday (18 September 2017) at Leighton's office.
27. Poon signed a confidentiality agreement (produced and marked Exhibit **AZ-17**) as part of the termination of the Subcontract. Poon was happy to sign it. This is because Leighton does not want other subcontractors to know about the terms of the termination. Obviously, it is not in the best interest of Leighton for its subcontractors to disclose commercial information with respect to a mutual termination.
28. During the meeting between Karl Speed, Poon and me, there was no discussion at all about the emails that Poon had sent earlier in the day, the "*important issue much related to the interest of the public*" raised in Poon's email to the Secretary for Transport, or his allegation that the threaded ends of rebars were cut off. The focus of that meeting was only on maintaining relationship between Leighton and China Tech.
29. On 18 September 2017, Poon emailed the Secretary for Transport and Highways Department (which was copied to me) and stated that the suspected issues had been cleared and believed it is a "*full and final end of the issue*" and invited all to "*close all relevant files accordingly*" (produced and marked Exhibit **AZ-18**). Leighton did not ask Poon to send that email; he did so on his own volition.

Termination of China Tech's subcontract at Liantang

30. Since December 2017, Leighton had been complaining to the China Tech-FEWA joint venture about its substandard performance of the construction works in the Liantang

Project (produced and marked Exhibit **AZ-19**). The situation aggravated in March 2018 when the China Tech-FEWA joint venture refused to complete any remaining works until Leighton agreed to pay all their workers' wages and expenses on site at cost, which Leighton found unacceptable as such were the responsibilities of the China Tech-FEWA joint venture. Oral discussions with the China Tech-FEWA joint venture took place and in view of the significant delays on site which were caused, and to avoid further delays and disruption, Leighton's project team decided that it was best to terminate the subcontract with the China Tech-FEWA joint venture. Leighton and the China Tech-FEWA joint venture came close to reaching an agreement on mutual termination. However, Poon changed his stance with respect to the amount of termination payment and it was clearly unreasonable and obvious that Leighton and Poon could not reach a mutual agreement on termination.

31. On 24 April 2018, Leighton terminated the subcontract between Leighton and the China Tech-FEWA joint venture at the Liantang project due to substandard performance and unreasonable requests (produced and marked Exhibit **AZ-20**).
32. A month after the termination of the subcontract with the China Tech-FEWA joint venture, on 28 May 2018, Poon emailed me and claimed he had been approached by Apple Daily earlier that day for a response on China Tech's final account and confidentiality agreement for the Project. He again alleged that there was malpractice and mismanagement by Leighton and asked for my feedback or else he would release his draft reply to Apple Daily which alleged "*persisting malpractice by others*" (produced and marked Exhibit **AZ-21**).
33. I replied on 29 May 2018 (at 10:01 am) and stated that Leighton was not aware of any malpractice in relation to the matters raised in his email (produced and marked Exhibit **AZ-22**). Poon replied and said he will "*feedback freely when Leighton confirmed that there is no malpractice on our [the] Agreement of Confidentiality*" (produced and marked Exhibit **AZ-23**).
34. At 10:35 am on the same day, Poon emailed me and accused Leighton or MTRCL of trying to "*self-disclose the incident of malpractice of coupler to facilitate your own aims or benefits*", and out of the blue referred to China Tech's letter of 15 September 2017

(see paragraph 21 above) and demanded “*formal feedback*” (produced and marked Exhibit **AZ-24**). I decided not to respond to Poon and we have had no dealings since.

Dated the 13th day of September 2018.

Signed: _____

Anthony Zervaas