

**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**

THIRD WITNESS STATEMENT OF ANTHONY ZERVAAS

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

1. I refer to my first witness statement dated 13 September 2018 (“**First Witness Statement**”) and my second witness statement dated 15 October 2018 (“**Second Witness Statement**”). Unless otherwise stated or the context otherwise requires, any abbreviations shall bear the same meaning as in my First Witness Statement and Second Witness Statement.
2. I make this third witness statement in reply to the fourth witness statement of Mr. POON Chuk-Hung, Jason (“**Jason Poon**”) dated 25 October 2018 which includes a chronology of Jason Poon’s alleged background of events (“**4th Poon Statement**”). .
3. Any allegations or matters raised in the 4th Poon Statement which are not expressly dealt with in this statement are denied and shall not be construed as an admission on my part.
4. Unless otherwise stated, the facts stated herein are within my personal knowledge and are true. Where the facts and matters stated herein are not within my own knowledge, they are based on the stated sources and are true to the best of my knowledge.

Jason Poon’s allegations regarding events in September 2016

5. In response to Jason Poon’s allegation that he informed me of the alleged cutting of the threaded ends of rebars in September 2016, I repeat paragraph 12 of my First Witness Statement and paragraph 6 and 7(d) of my Second Witness Statement and say that this allegation is false. In fact:
 - (a) Jason Poon did not inform me of the alleged cutting of the threaded ends of rebars in September 2016;

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- (b) I did not join the Project until 11 October 2016;
- (c) I was first informed of the alleged cutting of the threaded ends of rebars by way of Jason Poon's email sent at 9.45am on 6 January 2017 (Exhibit "AZ-4" of my First Witness Statement);
- (d) As Jason Poon's email of 6 January 2017 came out of the blue, I responded on the same day (Exhibit "AZ-8" of my First Witness Statement) noting that it was quite alarming that Jason Poon had not brought the issue to Leighton's attention earlier in particular when the alleged malpractice occurred in September 2015; and
- (e) Jason Poon again responded in his reply email of 7 January 2017 (Exhibit "AZ-9" of my First Witness Statement) stating that Kyle Rodgers knew about the alleged cutting, and did not dispute the fact that he did not raise this issue earlier with me or anyone else at Leighton.

Jason Poon's allegations regarding events in November 2016

6. In response to Jason Poon's allegation that I admitted that there was cutting of the threaded ends of rebars, I repeat paragraph 7 of my Second Witness Statement and say that this allegation is false. In fact:
- (a) I never had the alleged conversation with Jason Poon in or about late November 2016;
 - (b) Contrary to Jason Poon's allegation, I did not:
 - i. *"admit that threaded ends of rebars had been cut"*; or
 - ii. *"agree to find a solution"*; and
 - (c) As indicated in paragraph 5(b) to (d) above, I was not aware, and had not been informed, of the alleged cutting of threaded ends of rebars in or about November 2016. I therefore did not admit, and could not have admitted, that threaded ends of rebars had been cut or agree to find a solution to the alleged cutting of the threaded ends of rebars.

Jason Poon's allegations regarding events in December 2016

7. In response to paragraphs 5, 8 and 9 of the 4th Poon Statement, I say that the following allegations relating to December 2016 are false:

- (a) *“After reviewing the Final Account, Poon found out that Leighton fell behind payment. Poon negotiated with Leighton’s Zervaas, who admitted that Leighton was facing financial difficulty at the time and asked Poon for payment to be delayed.”*
- (b) *“Chinat discovered from its Final Account that Leighton fell behind its payment since October 2016. This action was deliberate. It was primarily due to Leighton’s financial difficulty and Poon’s unwillingness to cooperate with Leighton in covering up on the Defective Steel works and the Liantang fatal accident.”*
- (c) *“the sums Chinat demanded were not ‘additional moneys’... They were sums to which Chinat is entitled...”*

8. In fact:

- (a) I did not make any such statement to Jason Poon regarding the financial position of Leighton;
- (b) Leighton made all required payments to China Technology promptly. The chronology at paragraph 5 of the 4th Poon Statement confirms that China Technology received regular payments from Leighton;
- (c) Leighton had always paid any amounts due to China Technology in a timely manner; and
- (d) The payment demanded by Jason Poon on 10 December 2018 was not made because China Technology was not entitled to such payment.

9. I had ongoing discussions with Poon since the end of November 2016 regarding the revised milestone and final payment schedule for China Technology’s Subcontract. These discussions arose because China Technology was falling behind schedule and was not achieving productivity outputs. I had meeting with Jason Poon on 10 December 2016 regarding these ongoing discussions and recorded a summary of the meeting in an email to Paul Freeman (Operations Manager of Leighton at that time) (produced and marked Exhibit “AZ-34”). As part of these ongoing negotiations between Leighton and China Technology, Jason Poon sent me an email dated 10 December 2016 demanding payment of HK\$17,490,315.38. I reiterate that China Technology was not

entitled to the payment as demanded. The parties resolved the negotiations on 12 December 2016 by agreeing to a revised milestone and final account payment schedule (Exhibit “AZ-2” of my First Witness Statement).

10. In response to Jason Poon’s allegation that I “*suddenly denied the occurrence of the cutting of threaded rebars*” in December 2016, I repeat paragraphs 5(a) to (d) above and say that this allegation is false because I was not aware of the alleged cutting of threaded ends of rebars in December 2016 and, therefore, could not have denied such allegation at the time.

Jason Poon’s allegations regarding events in January 2017

11. In relation to Jason Poon’s email dated 4 January 2017 (Exhibit “AZ-26” of my Second Witness Statement), which alleged that Leighton had delayed payment to China Technology, I repeat paragraph 5 to 8 of my First Witness Statement and paragraph 7(e) of my Second Witness Statement. In summary:
 - (a) Jason Poon demanded HK\$6 million for the works carried out by China Technology at the end of December 2016;
 - (b) My team assessed that China Technology had only completed 50% of the agreed milestones for the end of December 2016;
 - (c) China Technology was only entitled to payment on completion of 100% of the milestones;
 - (d) China Technology’s claim that the non-achievement of milestones was due to failure of others was unfounded and unsupported;
 - (e) Leighton’s position regarding China Technology’s non-achievement of milestones and substandard performance were recorded in the email and letter correspondence between Leighton and China Technology in early January 2017 (Exhibit “AZ-3” of my First Witness Statement and Exhibit “AZ-26” of my Second Witness Statement). These emails express Leighton’s dissatisfaction with China Technology’s work; and
 - (f) Joe Tam, the Construction Manager of the Project, sent me a record of the unsatisfactory or unfinished work of China Technology with photographs (Exhibit “AZ-27” and “AZ-28” of my Second Witness Statement).

12. In that context, I attended a meeting with Jason Poon on 5 January 2017 and thereafter I prepared an internal email to Sutipol Chindapol (Leighton's Commercial Manager at that time) and the rest of my team (produced and marked Exhibit "AZ-33"), stating that: *"I just completed a meeting with Jason. We undertook a program status together, the program status indicates that only 50% of the milestone(s) have been achieved. In conclusion, Jason was offered a \$3m cheque today and the remaining \$3m to be paid when the milestone was achieved (forecast end next week). Jason refused this offer... Jason stormed out of the room as I refused to give him the \$6m cheque."*
13. In response to Jason Poon's allegation that Leighton *"imposed 2 additional conditions precedent"* that *"Poon must stay silent on the Defective Steel Works"* and *"cooperate with Leighton concerning the Liantang fatal accident"*, I say that this allegation is false. In fact:
- (a) During all my discussions with Jason Poon, I never imposed the alleged two conditions on Jason Poon or China Technology;
 - (b) I was not aware, and did not know, of any one at Leighton who would impose the alleged two conditions on Jason Poon or China Technology;
 - (c) I do not believe that any one at Leighton imposed the alleged two conditions on Jason Poon or China Technology; and
 - (d) As confirmed by Jason Poon, on 9 January 2017, Leighton paid HK\$4.5 million to China Technology without any conditions imposed.
14. In response to Jason Poon's allegation that he *"refused the unconscientious conditional offer of a \$6 mil cheque"* and *"turned down a partial payment of \$3 mil"*, I say that this allegation is false. In fact:
- (a) I did not make the alleged conditional offer of HK\$6 million to Jason Poon or China Technology;
 - (b) I was not aware, and did not know, of any one at Leighton who made the alleged conditional offer of HK\$6 million to Jason Poon or China Technology;
 - (c) I do not believe that any one at Leighton would make such alleged conditional offer of HK\$6 million to Jason Poon or China Technology;
 - (d) I repeat paragraph 8 of my First Witness Statement that:

- i. I refused Jason Poon's demand made on 4 January 2017 that Leighton immediately release the HK\$6 million payment to China Technology due to its non-achievement of the agreed milestones; and
 - ii. I repeated to Jason Poon that the condition precedent for such payment was completion of 100% of the agreed milestones;
 - (e) As China Technology had only completed 50% of the agreed milestones, I offered HK\$3 million payment to Jason Poon which represented 50% of the HK\$6 million that would have been payable if China Technology had achieved the agreed milestones; and
 - (f) As shown in my email to Sutipol Chindapol and my team on 5 January 2017 (Exhibit "AZ-33"):
 - i. I never made the alleged conditional offer of HK\$6 million to Jason Poon or China Technology; and
 - ii. Jason Poon turned down an offer of a partial payment of HK\$3 million when I told him that the remaining HK\$3 million would be paid when he achieved the agreed milestones.
15. In response to the alleged events of January 2016 as set out in paragraph 5 of the 4th Poon Statement, I note that:
- (a) As set out in paragraphs 9, 10, 17 and 18 of my First Witness Statement:
 - i. Jason Poon removed his entire labour from site on 5 January 2017;
 - ii. On 6 January 2017, Jason Poon maintained only a token workforce on site;
 - iii. To achieve work progress, I brought Jason Poon back to the negotiation table and agreed to release payment to him; and
 - iv. I agreed to a revised milestone and final account payment schedule as I could see that Jason Poon had mis-calculated his cost to complete the contract works and I wanted to make sure that China Technology could finish the job and get the work progressed; and
 - (b) I did not discuss or impose any of the alleged conditions in the negotiations with China Technology regarding payment and the revised milestone and final account payment schedule.

Jason Poon's allegations regarding events in September 2017

16. In response to Jason Poon's allegation of Leighton's "*common practice to delay payment*", Leighton does not deliberately hold up payments to its subcontractors. I repeat paragraphs 8, 11 and 12 above.
17. In response to Jason Poon's allegation that Karl Speed was "*hostile when he was informed of the Defective Steel Works, and threatened Poon*" at a meeting on 15 September 2017:
- (a) I repeat paragraphs 25 to 28 of my First Witness Statement and paragraph 10 of my Second Witness Statement;
 - (b) There was no discussion at all regarding Jason Poon's allegation that the threaded ends of rebars were cut off; the focus of the meeting was only on maintaining the relationship between Leighton and China Technology;
 - (c) Karl Speed did not threaten Jason Poon during the meeting. In fact, Jason Poon complained to Karl Speed that China Technology had been purportedly backlisted by Leighton for all future tenders, and Karl Speed reassured Jason Poon that China Technology was not blacklisted and reiterated that Leighton would like to maintain the working relationship with Jason Poon; and
 - (d) Jason Poon raised the allegation that Leighton had blacklisted China Technology in June 2017 (three months before the meeting in September 2017). As a result of and contrary to Jason Poon's allegations, I made internal enquiries and confirmed that China Technology had not been blacklisted. I confirmed this with Jason Poon in an email of 19 June 2017 (produced and marked Exhibit "AZ-35").
18. In response to Jason Poon's summary of the alleged events which took place on 18 September 2017:
- (a) I repeat paragraph 27 of my First Witness Statement, that the Confidentiality Agreement was entered as it is not in the best interest of Leighton for its subcontractors to disclose commercial information with respect to a mutual termination. Jason Poon agreed to the Confidentiality Agreement on 15 September 2017, and not as a result of the alleged meeting of 18 September 2017;
 - (b) I repeat paragraph 12 of my Second Witness Statement:

- i. I did not have any meeting with Jason Poon and Karl Speed on 18 September 2017; and
 - ii. I could not have attended any meeting with Jason Poon at around 3.00pm on 18 September 2017 given my meeting schedule on that day (Exhibit “AZ-32” of my Second Witness Statement); and
- (c) All the details of the alleged discussions are false, as the alleged meeting did not take place. In fact:
- i. Karl Speed did not reassure “*Poon that the Defective Steel Works will be rectified*”;
 - ii. Poon did not agree “*not to disclose the matter [the alleged cutting of threaded ends of rebars] to anyone, including the Government*”. Neither I nor Karl Speed, to the extent that I am aware, ever requested Jason Poon to keep confidential the alleged cutting to anyone in any of our discussions with Jason Poon. In fact, I did not stop Jason Poon from sending the proposed response to Apple Daily regarding the alleged cutting of threaded ends of rebars, and did not respond further to Jason Poon when he confirmed that he would “*feedback freely*” to Apple Daily “*when Leighton confirmed that there is no malpractice on our [the] Confidentiality Agreement*” as this was not the purpose of the Confidentiality Agreement (Exhibit “AZ-22” and “AZ-23” of my First Witness Statement); and
 - iii. I repeat paragraph 29 of my First Witness Statement that Jason Poon emailed the Secretary for Transport and Housing Department on 18 September 2017 on his own volition. I am not aware, and do not believe that any one at Leighton would have reviewed and/or amended this email before it was sent by Jason Poon; and
- (d) There was no email correspondence between me and Jason Poon after 15 September 2017 regarding the alleged events of 18 September 2017. All of the correspondence between me and Poon on 15 September 2017 has been exhibited to my First Witness Statement and my Second Witness Statement.

Jason Poon’s allegations regarding events in April and May 2018

19. In response to Jason Poon’s recollection of events which took place on 24 April 2018:

- (a) I repeat paragraphs 30 and 31 of my First Witness Statement that the termination of the subcontract of Liantang Project was due to China Technology’s substandard performance and unreasonable requests (Exhibit “AZ-20” of my First Witness Statement); and
- (b) It is incorrect that Leighton terminated the subcontract for the Liantang Project when China Technology “*refused to agree to the plea bargain concerning the fatal accident in November 2016*”.

20. In response to paragraph 12 of the 4th Poon Statement and Jason Poon’s recollection of events which took place on 28 May 2018:

- (a) I repeat paragraphs 32 and 33 of my First Witness Statement;
- (b) On 28 May 2018, Poon emailed me and claimed that he was approached by Apple Daily for a response on China Technology’s final account and confidentiality agreement for the Project. I noted that Apple Daily referred to email correspondence between Leighton and China Technology of 6 January 2017 and 15 September 2017 (the “**Correspondence**”);
- (c) I confirm that I did not send the Correspondence to Apple Daily, and am not aware that any one else from Leighton who sent or would have sent the Correspondence to Apple Daily; and
- (d) Contrary to Jason Poon’s allegation that Leighton requested Jason Poon not to disclose matters relating to the alleged cutting of threaded ends of the rebars, I did not stop Jason Poon from sending the proposed response to Apple Daily. In fact, I did not respond further to Jason Poon when he confirmed that he would “*feedback freely*” to Apple Daily. (Exhibit “AZ-22” and “AZ-23” of my First Witness Statement).

Dated the 29th day of October 2018.

Signed: _____

Anthony Zervaas