

IN THE COMMISSION OF INQUIRY INTO THE
DIAPHRAGM WALL AND PLATFORM SLAB CONSTRUCTION
WORKS AT HUNG HOM STATION EXTENSION UNDER THE
SHATIN TO CENTRAL LINK PROJECT

4TH WITNESS STATEMENT OF MR. POON CHUK-HUNG, JASON

I, POON Chuk-hung, Jason of Suite A, 15/F, Kimberley House, 35 Kimberley Road, Tsim Sha Tsui, Kowloon, Hong Kong say this:-

1. I refer to my three witness statements dated 3rd September 2018, 14th September 2018 and 11th October 2018 (“the three witness statements”). I am now giving a further supplemental witness statement to address and clarify certain very important issues after having heard Leighton’s opening submissions on 22nd October 2018 which expressly criticised me for staying silent on the commercial dispute between Leighton and Chinat in the three witness statements. This witness statement aims to provide a full picture of the commercial dispute and I hope the Commission would grant its indulgence to accept this witness statement. I adopt all abbreviations and nomenclature in the three witness statements.
2. I wish to clarify that the three witness statements I provided to the Commission focused specifically on the technical problem with the works at the Hung Hom Station extension stipulated in the Terms of Reference which is directly related to public safety. I did not think, and still do not think, that the peripheral matters, such as the commercial dispute between Leighton and Chinat would assist the Commission in finding whether there had been any defective works.
3. I do not agree with Leighton’s view that these commercial matters should have been brought to the Commission’s attention, or that the matters were deliberately concealed to mislead anyone, including the Commission.

4. Nevertheless, in response to Leighton's criticism, I feel that I, as an honest and conscientious person, should disclose to the Commission in full the background to the commercial dispute between Leighton and Chinat.

5. The background is summarised as follows:-

Sep 2016	Chinat's Jason Poon orally informed Leighton's Anthony Zervaas the first time of the Defective Steel Works.	D1/D23/45
Oct 2016	Chinat started reviewing the Final Account for all works under Contract No. 1112 and found out that there were outstanding sums.	
11 Nov 2016	Fatal accident of a worker at the construction site under the Liantang project. Chinat's sister company and Leighton got into a serious dispute concerning their respective liabilities.	D1/D727-728
Late Nov 2016	Leighton's Zervaas orally admitted to Poon that threaded rebars had been cut in the Hung Hom Station site and agreed to find a solution.	D1/D23/46
Dec 2016	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.	<u>Final Account dated 10.12.2016</u> (D2/D1030)
	Leighton's Zervaas suddenly denied the occurrence of the cutting of threaded rebars.	D1/D23/47
10 Dec 2016	Poon emailed Leighton's Zervaas informing him of an outstanding sum of around HK\$17 mil (\$17,490,315.38) by the end of November 2016, together with some other outstanding sums to be calculated regarding overtime and nightshift of Chinat's staff.	<u>Emails dated 10.12.2018 & 12.12.2018</u> (D2/D1031-1034)

		<u>DRM Overtime Agreement</u> (D2/D1035-1041)
12 Dec 2016	<p>Poon and Leighton's Zervaas reached a Milestone and Final Account Settlement Agreement.</p> <p>Parties agreed that a total of \$28 mil will be paid to Chinat for all works under Contract No. 1112 according to the (initial) Milestone Repayment Schedule.</p>	C12/C7841-7843
12 Dec 2016	Leighton paid Chinat \$7 mil.	<u>Income</u>
14 Dec 2016	Leighton paid Chinat \$4 mil.	<u>Statement</u> (D2/D1042)
04 Jan 2017	Poon emailed Leighton's Zervaas regarding 'Clarification on the Liability on Delay due to Late Handover and Delay by Others'. Poon explained that Chinat did not cause the delay and Leighton must not use it as an excuse to delay payment.	<u>Email dated</u> <u>04.01.2017</u> (D2/D1043-1052)
05 Jan 2017	<p>Leighton sent Poon a complaint letter regarding Chinat's alleged failure to comply with work progress, therefore putting December 2016 milestone repayment on hold.</p> <p>It was put on written record that Leighton would release a \$6 mil cheque, with a condition precedent that Chinat must complete its works pursuant to the December milestone schedule.</p> <p>In fact, Leighton had imposed 2 additional conditions precedent – first, Poon must stay silent on the Defective Steel Works; and second, Poon</p>	C12/C7858-7860

	must cooperate with Leighton concerning the Liantang fatal accident.	
	Poon refused the unconscientious conditional offer of a \$6 mil cheque. He equally turned down a partial payment of \$3 mil.	C7863-7867 (C7863)
06 Jan 2017	Poon emailed Leighton's Zervaas (cc-ed Leighton's Joe Tam) regarding the Defective Steel Works.	D1/D233-235 (D234)
09 Jan 2017	Leighton paid Chinat \$4.5 mil without imposing any conditions, as part of the milestone payment for December 2016.	<u>Income Statement</u> (D2/D1042)
23 Jan 2017	Poon and Leighton's Zervaas reached a Revised Milestone and Final Account Settlement Agreement due to mistakes in calculation. Parties agreed that a total of \$33 mil will be paid to Chinat for all works under Contract No. 1112 according to the (revised) Milestone Repayment Schedule.	C12/C7944-7977 (C7945)
	Leighton paid Chinat \$1.5 mil as part of the milestone payment for December 2016. The same day, Leighton paid Chinat another \$3.5 mil.	<u>Income Statement</u> (D2/D1042)
14 Feb 2017	Leighton paid Chinat \$2.5 mil.	<u>Income</u>
28 Feb 2017	Leighton paid Chinat \$2.5mil.	<u>Statement</u>
16 Mar 2017	Leighton paid Chinat \$2.5 mil.	(D2/D1042)
31 Mar 2017	Leighton paid Chinat \$1 mil.	
20 Apr 2017	Leighton paid Chinat \$475,250.	
28 Apr 2017	Leighton paid Chinat \$1 mil.	
31 May 2017	Leighton paid Chinat \$0.5 mil.	
29 Jul 2017	Leighton paid Chinat \$0.5 mil.	

08 Aug 2017	Leighton paid Chinat \$0.5 mil.	
15 Aug 2017	Leighton paid Chinat \$0.5 mil.	
11, 13 Sep 2017	As a common practice to delay payment, Leighton sent Poon complaint letters regarding Chinat's alleged poor performance.	C12/C7979-7980 C12/C7982
15 Sep 2017	Poon emailed Leighton's Zervaas demanding a reply concerning the Defective Steel Works.	C12/C7987
	Poon emailed THB's Frank Chan regarding the Defective Steel Works.	D1/D26/55 D1/D239
	Poon met with Leighton's Karl Speed and Anthony Zervaas. Speed's initial attitude was hostile when he was informed of the Defective Steel Works, and threatened Poon.	D1/D28/59
18 Sep 2017	Poon met again with Leighton's Speed and Zervaas. Speed expressed willingness to work with Chinat. Among other things, Speed reassured Poon that the Defective Steel Works will be rectified. As such, Poon agreed not to disclose the matter to anyone, including the Government, thus entered into the Confidentiality Agreement with Leighton.	D1/D29/62 D1/D244-248
	Upon Leighton's request, Poon emailed THB's S H Leung to withdraw the matter. The wordings in the email had been reviewed and amended by Leighton.	D1/D250
	Also upon Leighton's request, Poon deleted some photos and a video depicting the cutting of threaded rebars by Leighton's workers.	
19 Sep 2017	Leighton paid Chinat \$1.6mil.	<u>Income Statement</u> (D2/D1042)
24 Apr 2018	Leighton terminated Liantang subcontract with Chinat's sister company when the company refused	C12/C8071-8072

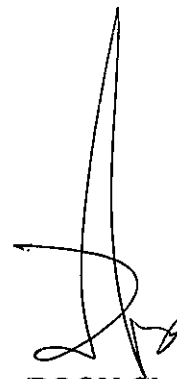
	to agree to the plea bargain concerning the fatal accident in November 2016.	
28 May 2018	Poon approached by Apple Daily concerning the defective works in EWL slab. Poon emailed Leighton's Zervaas to inform the same.	C12/C8074-8075

6. In short, there was no such pattern, as Leighton alleges, of Chinat demanding payment from Leighton and subsequently pressurising Leighton by 'threatening' to disclose the Defective Steel Works to relevant authorities if Leighton failed to pay.
7. If Leighton was of a view that there were no Defective Steel Works, they ought not to have felt pressurised or threatened in any way. Such 'threats' would not have worked.
8. The commercial dispute had been an ongoing matter since December 2016, when 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 the Defective Steel Works and the Liantang fatal accident.
9. It is important to note that the sums Chinat demanded were not 'additional moneys' as MTRCL put it in its opening submissions (MTRCL's OS, transcript p. 51, 18). They were sums to which Chinat is entitled for works completed under Contract No. 1112. As a responsible employer, I have a duty to ensure that all my staff members are paid on time. I became extremely worried when Leighton fell substantially behind their payment to Chinat.
10. In January 2017, I sent Leighton's Zervaas an email to seek a formal, written response because he had previously given inconsistent oral responses in November and December 2016 respectively.
11. The reason to send another email in September 2017 to Leighton's Zervaas to follow up on the matter were, first, Leighton failed to provide a satisfactory answer; and second, Chinat, at that time, was about to complete all its works in the Hung Hom Station site, and therefore felt the need to settle all outstanding matters, including the Defective Steel Works and payments.

12. It must be stressed that I did not approach the media myself in May 2018. Rather, it was Apple Daily who approached me concerning the defective works in the EWL slab. Pursuant to clause 3.4(a) of the Confidentiality Agreement, I forwarded the email in Chinese from Apple Daily to Leighton's Zervaas, together with an English translation which I translated for his perusal.
13. It would be unfair to say that there was a purely commercial motive to my disclosure of the Defective Steel Works. The commercial dispute and the defective works are two entirely different matters. Ever since I discovered the Defective Steel Works, my intention was all along genuine, that is to have them rectified so that the structure is safe for the public.
14. Finally, in response to Leighton's criticism of my decision to pour concrete despite having identified the Defective Steel Works, I wish to emphasise that, as a subcontractor, Chinat was merely responsible for carrying out its works. After all 'hold point' inspections have been carried out by engineers of Leighton and MTRCL, they, together with Leighton's concrete coordinator, would 'call off' the concrete (to bring concrete to the site), and then instruct Chinat's staff members to pour the concrete.

I believe that the facts stated in this witness statement are true.

Dated this the 25th day of October 2018.



(POON Chuk-hung, Jason)