

DCPI 4228/2019

[2022] HKDC 680

**IN THE DISTRICT COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION
PERSONAL INJURIES ACTION NO 4228 OF 2019**

BETWEEN

LIANG YUANHONG

Plaintiff

and

TSE FU SANG

1st Defendant

TSE LAP KEUNG

2nd Defendant

Before: Deputy District Judge Jason Wong in Court

Dates of Hearing: 19, 20 & 23 May 2022

Date of Judgment: 11 July 2022

JUDGMENT

1. Mr Liang, the plaintiff, was formerly a tenant at Room 2 of Flat S, 7th Floor, Kwong Yuen Buildings, No 4 Kam Lam Street, Mong Kok, Kowloon. He began to reside at room 2 on 3 November 2013. At the time, the defendants were the registered owners of the flat who acted through Mr Tse Siu Keung (“Mr Tse”) as their agent.

2. Upon expiry of the second tenancy agreement on 4 March 2016, Mr Liang remained as a tenant of room 2 under an oral periodic monthly tenancy. A notice to quit was given to Mr Liang on 29 March 2017 which later resulted in a judgment of the Lands Tribunal dated 26 May 2017 in LDPD 853 of 2017. Mr Liang was ordered to, *inter alia*, forthwith deliver vacant possession of room 2 but execution was stayed until 6 June 2017. By agreement, execution of the order for vacant possession was further stayed to 30 June 2017 on the condition that Mr Liang paid to Mr Tse HK\$1,800 representing the mense profit for the period between 5 May 2017 and 4 June 2017.

3. There is no dispute that Mr Liang paid the mense profit as agreed and was entitled to lawfully occupy room 2 as a licensee up to 30 June 2017. There is also no dispute that during this period the defendants owed a common duty of care to Mr Liang.

4. On 11 June 2017, Mr Liang was brought to the Kwong Wah Hospital. There he complained of “back injury after a fall and right eye injury by falling object”. After an irrigation to the eye had been performed, Mr Liang was admitted to the orthopaedic ward for further management to his back. Two weeks later, he was transferred to the TWGHs Wong Tai Sin Hospital where he stayed for more than a month as an in-patient for rehabilitation. Mr Liang had altogether been hospitalised for about 2 months. According to the joint orthopaedic report dated 28 January 2021, at the time of the examination Mr Liang still complained of blurred vision, on and off eye tearing with pain, on and off low back pain and posterior lower limb pain, on and off right temporal headache. He had no difficulty

in the activities of daily living but needed to take painkillers 2 times a day for the low back pain. For the purposes of this trial, it is unnecessary to go in the details of Mr Liang's residual disabilities. Generally speaking, the orthopaedic experts Dr Tio Man Kwun, Peter and Dr Ko Put Shui, Peter were in agreement that Mr Liang sustained lower back contusion, head injury and right eye injury. They opined that he had achieved maximal medical improvement for his conditions.

5. This trial turns singly on how Mr Liang sustained those injuries. Mr Liang claims that on the day in question a concrete debris by the size of 18 inches times 10 inches fell from a ceiling beam in room 2 which hit his head while he was making tea. The strike caused him to lose consciousness for a short period and fall to the ground. Some parts of the debris also, as he describes in Court, flew into his eyes. A photo of the concrete debris was taken on 1 September 2017.

6. No admission is made by the defendants to those claims. Their position is that they did not receive any complaint from Mr Liang about the concrete debris fall until 31 August 2017. On 1 September 2017, a contractor Mr Hau Yu Fung ("Mr Hau") was sent to room 2 to conduct repairs to the beam in question. The photo taken by Mr Liang was part of the concrete removed from the beam by Mr Hau on that day.

7. Mr Liang is the only witness for his case. Pursuant to cross examination, Mr Stony Chan, counsel for the defendants, takes two main points. Firstly, on 15 April 2017 between 4:36 pm and 4:49 pm Mr Liang sent instant messages and photos through WeChat to Mr Tse. Those messages and photos were triggered by a reminder from Mr Tse, apparently

after giving the notice to quit, of a return of the rental deposit to Mr Liang in the amount of HK\$3,200.

8. In an attempt to negotiate for a new lease, Mr Liang offered to pay monthly rent at HK\$2,200 and advocated the fact of his continued residence in room 2 notwithstanding that his requests for repairs had never been answered by Mr Tse. Mr Liang wrote that he had to find solutions himself and believed other tenants would have moved out long ago. In that context, earlier photos showing the unsatisfactory state of repairs of the room were resent to Mr Tse.

9. What then followed was a time stamp at 4:55 pm which would suggest that Mr Liang had more to say to Mr Tse afterwards. When asked about it, Mr Liang said at one point that he had that part of the chat history removed but quickly clarified that he could not remember as it was a long time ago. The next entry after the time stamp was a message from Mr Tse sent 3 days later on 18 April 2017 at 8:23 pm to refuse a renewal of the lease.

10. Pausing here, it is to be observed that the WeChat messages relied on by Mr Liang were reproduced by way of a sequence of screenshots of his mobile phone. While the time stamp for 15 April 2017 4:55 pm appears to be recorded immediately after the photos sent by Mr Liang at the bottom of the second last screenshot, the time stamp somehow did not appear to be similarly recorded in the last screenshot which would otherwise have been a continuation of the chain of messages. Instead, the last page of screenshots shows consecutively Mr Tse's response on 18 April 2017 and a further request by Mr Liang made half an

hour later for a one-month grace period for vacating room 2. This point has not been taken any further by either Mr Chan or Mr Walker Sham, counsel for the plaintiff. That said, it is the overall testimony of Mr Liang that he had produced all the messages exchanged with Mr Tse between 15 and 18 April 2017.

11. Mr Chan rather invites the court to contrast the above WeChat exchanges with the witness statement of Mr Liang in which he clearly described about persistent concrete spalling since November 2013 and the complaints made from time to time to Mr Tse through telephone, in person and by instant messages. Mr Chan argues that the WeChat messages which were specifically exhibited to this part of the witness statement were remarkably silent about the concrete spall and also the beam in question. It is pointed out that Mr Liang had merely complained in the WeChat messages about plaster flaking from the ceiling. The relevant part of the messages stated as follows,

“最重要的是我一搬入来一个月左右，天花上面一直有灰沙往下掉，打电话同你讲和微信影相传给你，你从来都没有搵过维修师傅来搞过，我都一样咁住，换了其他租客一早就搬走了。之前传过好多天花顶掉灰沙的相片给你还有吗？假如没有现在再传给你看吧。希望可以继续做你的租客！多谢晒！”

12. The anomaly, as Mr Chan further argues, is amplified by a photo taken on 15 April 2017 to evidence that a Mr Cheung, a caretaker of the building, conducted an inspection of the beam in room 2. On a separate note paper, Mr Liang recorded the time of visit to be 5:23 pm. Given the proximity of the visit to the WeChat messages sent by Mr Liang on the same day, the failure to make any reference to either the concrete spalling

or to the beam, which Mr Liang described in his note to be posing a danger, in the WeChat messages moments before the visit paid by Mr Chan is said to be telling.

13. More telling, submits Mr Chan, was at the start of the first tenancy, Mr Liang had to undergo the misfortune of a water pipe burst from an upstairs unit which leaked into the ceiling of room 2. The matter was resolved by promises made in the presence of 3 police officers on the one hand from the owner of that unit to conduct repairs and pay compensation in the amount of HK\$3,800, and on the other hand from Mr Tse that room 2 would be free from concrete spalling and water seepage. But for the promises made by Mr Tse, Mr Liang claimed in his witness statement that he would not have continued to live in room 2. Mr Tse agreed about the water pipe burst but denied having made the promises as alleged.

14. Had that been true, Mr Chan makes the point that it would be unusual for Mr Liang, as someone suffering from the prolonged nuisance of living in dilapidated conditions and also someone who had once threatened to quit the premises because of those conditions, not to bring the promises up with Mr Tse in the WeChat messages. The real reason, as it was suggested to Mr Liang under cross examination, was that the ceiling beam presented no problems all this time.

15. Mr Liang's answer was that he complained to Mr Tse in person repeatedly about the concrete spall in the ceiling and about the beam of the room. He also complained to Mr Tse over telephone. Mr Liang said that he had tried to look for other places for lease but was not successful and had to therefore stay behind.

16. The second point Mr Chan takes relates to the way how the injuries were inflicted. In the statement of claim, it was originally pleaded that the concrete debris first fell on Mr Liang's head and then his body. Subsequently in his answer to further and better particulars, Mr Liang clarified the positions to be head first and then the back. Mr Chan submits that the pleaded facts were in stark contrast with Mr Liang's testimony at trial when he described under cross examination more than once that the concrete debris fell on his head and back at the same time.

17. To be more precise, Mr Liang said that the accident was sudden. When it happened, it sounded like thunder and he lost consciousness after a thump sound. The next thing Mr Liang remembered was the pain in the waist as he woke up finding himself lying on the floor in a lateral position. He said that the whole floor was splattered with concrete debris. When Mr Chan confronted Mr Liang with the pleadings, Mr Liang maintained his testimony that he was hit on the head and back at the same time. Mr Liang considered the pleadings to be also correct because the two hits were almost concurrent. With hindsight, Mr Liang felt that he was hit at the back of his head first as he recalled about losing consciousness right after. In addition to those injuries, Mr Liang also claimed that fragments of debris flew, or shot, to use his words, into his eyes.

18. After the accident, Mr Liang was hospitalised until 19 August 2017. In the meantime, he made a report to the Buildings Department on 22 June 2017 which led to an inspection of room 2 conducted by two officers on 21 August 2017. According to the inspection report of the

Buildings Department, the reinforcing steel in the ceiling beam was exposed. There was however no immediate structural danger found.

19. In his witness statement, Mr Liang stated that a Buildings Department officer Mr Leung considered there was immediate danger after an inspection. Mr Liang therefore immediately telephoned to ask Mr Tse to come to room 2 and ordered Mr Tse to fix the concrete spalling in the ceiling as soon as possible. Photos were exhibited to depict the attendance of the Buildings Department officers and Mr Tse on that day.

20. At trial, Mr Liang clarified that during the inspection the Buildings Department officers told him that the owner was responsible for the repairs. They recommended Mr Liang to contact the owner and so Mr Leung telephoned Mr Tse. Mr Tse was unable to attend room 2 at the time. Mr Leung then spoke directly with Mr Tse whereupon Mr Tse made a promise to carry out repair works. The entire conversation took place on speaker phone such that everyone in the room was able to hear it. Mr Tse visited room 2 after work later on the same day, which was when a photo of him was taken.

21. During cross examination, it was put by Mr Chan to Mr Liang that he failed to bring up the impact on the eye in his witness statement. It was also put to Mr Liang that the telephone conversation between Mr Leung and Mr Tse did not take place since there was no record of it in the Buildings Department inspection report.

22. Of all this, the primary contention of Mr Chan is to cast doubt on the photo said to be taken by Mr Liang of the concrete debris on

1 September 2017. The argument is that given the events said to have happened on 21 August 2017, it was unreasonable for Mr Liang to continue to keep the concrete debris particularly when room 2 was a small unit. Even if he had kept the debris after 21 August 2017, there was equally no reason for Mr Liang to wait until 1 September 2017 to take the photo. Mr Liang could have done so anytime beforehand and sent the photo to Mr Tse through WeChat.

23. Mr Chan hence submits that it was inherently improbable for the accident to occur on 11 June 2017 and that the photo in question was in fact of a different concrete slab Mr Hau had dismantled from the ceiling on 1 September 2017.

24. For the defence case, Mr Tse was one of the two defence witnesses.

25. Shortly after the start of his cross examination, Mr Sham asked Mr Tse whether he had arranged for a contractor to inspect room 2 apart from 1 September 2017. Mr Tse gave a vague answer but his recollection generally was that he had sent a contractor a few times to room 2 to clear blocked drains. He did not remember about sending a contractor for another reason.

26. Mr Sham then directed Mr Tse to the WeChat messages by which Mr Liang made complaints about plaster flaking from the ceiling in April 2017. Mr Tse agreed that he received the messages and did not take issue that Mr Liang raised those complaints as such. He further agreed that he was expected to handle them. Mr Tse said that there was water dropping

from the ceiling and he planned to arrange for repair works after the ceiling had become dry. However, rather than to wait for that to happen, Mr Liang had already painted the ceiling himself. Mr Tse also said that when he attended room 2, he did not notice any problem with the ceiling. The photos that were sent by Mr Liang actually depicted the new paint applied by him.

27. At this juncture, Mr Sham sought to clarify whether by referring to “water dropping” in the ceiling, the incident related to the water pipe burst from the upstairs unit at the beginning of the tenancy in 2013. Mr Tse replied unmistakably that it was not but then corrected himself that he meant plaster dropping not water dropping.

28. Mr Sham then suggested to Mr Tse that the patches of yellow and grey seen from the photos of the ceiling and a wall under an air-conditioner were mould stains. Mr Tse disagreed. He said that those patches were the plaster of the wall. They appeared to be patches because Mr Liang did not scrape the area clean and painted varnish instead of emulsion paint over the plaster. Mr Tse also remembered that he asked about the patches when he collected rent at room 2. Mr Liang said that he did the paint job himself and no longer needed Mr Tse to handle the problem.

29. For that matter, Mr Sham quite adequately asked the question why Mr Tse had not made a reply in the WeChat messages to rebut the complaints of Mr Liang. There was no answer to this from Mr Tse. Mr Tse agreed that there were repeated complaints of plaster falling from Mr Liang through instant messages. Mr Tse did not write back to say that the

complaints were resolved because Mr Liang had taken them upon himself. Mr Tse did not message to say that he saw no problem with the ceiling.

30. The above testimony of Mr Tse is also contrasted by his first witness statement where he denied in strong terms that Mr Liang ever made complaints about concrete spalling from the ceiling or from the walls in room 2. Mr Tse only accepted that there were complaints about plaster flaking from the walls but he gave a different reason for not making arrangements for repair works. He stated that Mr Liang and he were unable to find a time convenient to both of them for an on-site inspection. There was no mention about complaints of plaster flaking of the ceiling in the witness statement.

31. Mr Tse was next shown the photo taken by Mr Liang on 15 April 2017 depicting Mr Cheung standing nearby the beam under the main door of room 2. The crack in the beam was large and conspicuous indicating, even to the eyes of a lay person, an imminent hazard. Mr Tse agreed that to be the case but asserted, for the first time, that the crack was caused by holes Mr Liang had drilled into the beam. Mr Tse then claimed that he remembered the beam to be intact when Mr Liang spoke about painting the patches in the ceiling and the wall himself.

32. As to when the crack in the beam came to his attention, the testimony of Mr Tse was not entirely clear. At first, Mr Tse answered quickly with some certainty that the beam was intact before February 2017. In the follow up questions posed by Mr Sham, Mr Tse said rather unexpectedly that he did not know when the crack started to appear thereafter. He claimed that he learned about the crack after these

proceedings were begun, then changed his answer to 1 September 2017 being the day on which repair works were conducted by Mr Hau. In gist, his stance was that he did not know whether or when the concrete debris fell on Mr Liang.

33. The answer of Mr Tse, in my view, puts to question what seems to be a deceptively vivid recollection of the beam being intact before February 2017. It also raises doubt about how he came to know that the crack was the aftermath of Mr Liang's own fault. This is beside the fact that these allegations have not been brought up by Mr Tse in the WeChat messages or in his witness statements.

34. Over cross examination, Mr Tse also firmly denied that Mr Liang had called from the hospital to report about the accident. Mr Tse was certain that the accident did not happen on the day in question because he received a letter from the Buildings Department and made a telephone enquiry to be told about the problem with the beam. Mr Tse then instructed Mr Hau to go to room 2 on 1 September 2017. Photos were sent to Mr Tse from Mr Hau on the mobile phone and it was under these circumstances Mr Tse knew about the crack. Mr Tse denied that he visited room 2 on 21 August 2017 and said that the photo produced by Mr Liang was an old photo taken in 2013 when he came for the water seepage incident.

35. This version of events was again contradicted by his witness statements in which Mr Tse stated that he received a phone call from Mr Liang at the hospital. In the telephone call Mr Liang said that he was injured in room 2 but did not say how the injuries were sustained. It was also not Mr Tse's case in the witness statements that he sent Mr Hau

because of the information received from the Buildings Department. He stated that he sent Mr Hau after receiving a complaint from Mr Liang in the night of 31 August 2017, which was the first time Mr Tse received a complaint about the beam.

36. The second witness of the defendants was Mr Hau. In his witness statement, Mr Hau said that in the evening of 31 August 2017 he received a telephone call from Mr Tse to carry out an inspection of the beam in room 2. Mr Hau was specifically instructed to conduct repairs if there was a spalling problem.

37. Mr Hau arrived at room 2 on the next day at about 7:30 pm when Mr Liang showed Mr Hau the beam. There was by that time a crack of 8 inches by 30 inches in dimension. Mr Hau considered that there was a need to start repair works which he did immediately.

38. During the time when works were underway, Mr Hau stated that Mr Liang took photographs of him from different angles continuously without stopping. Mr Hau asked for pictures not to be taken of him, and Mr Liang answered that the photos were only of the concrete not Mr Hau. Mr Hau did not accept this and threatened to cease the repair works. Mr Liang then stopped taking photos.

39. It is the evidence of Mr Hau that he removed from the beam a concrete slab in the size of 8 inches by 15 inches. As he was lowering the concrete slab to the floor, Mr Liang began to take more photos. Mr Hau asked Mr Liang why, but Mr Liang did not say anything. Mr Hau proceeded to put the concrete slab into a red bag. At this point Mr Liang

requested Mr Hau to bring the concrete slab out again for more photo shooting. Mr Hau asked for a second time why and Mr Liang similarly did not give an answer. Mr Hau then placed the concrete slab back into the bag and left room 2.

40. In the photo taken by Mr Liang on 1 September 2017, it depicts three fragments of a concrete slab placed above a red bag. Mr Hau said in his witness statement that he recognised the depicted concrete slab to be “very similar” to the one he removed from the ceiling on that day.

41. Mr Sham elected not to cross examine Mr Hau.

42. Having heard the testimonies of all the witnesses, I have no hesitation to find Mr Liang to be an honest and reliable witness. He lived in a subdivided unit paying a monthly rent of HK\$2,200. In all likelihood, he was a person of meager means which would make the finding of an alternative accommodation a difficult task. Mr Chan has not suggested otherwise. With limited options available, it does not come as a surprise that Mr Liang had to put up with the unsatisfactory living conditions. It is also apparent that the defendants had been deferring their liability as landlords, given that the small amount of revenue generated from the rental proceeds was unlikely going to justify the costs of repair.

43. I accept the testimony of Mr Liang that the accident was sudden and swift. It follows that the inability to remember exactly whether he was hit on the head first then the back or at the same time is an insignificant detail. As Mr Sham has rightly submitted, the accident was corroborated by other evidence such as a record from Mr Cheung

containing particulars about the arrival of an ambulance with a vehicle number A332 and three paramedics on board, the medical report of Kwong Wah Hospital stating that Mr Liang was admitted to the Accident & Emergency Department at 6:39 pm that evening, and an admission note from the same hospital recording that Mr Liang described about “ceiling stones falling on him”.

44. As for the criticism from Mr Chan about Mr Liang keeping the concrete debris for an unreasonably long time since the accident or the inspection by the Buildings Department, I find the argument to be unimpressive. Mr Liang made repeated complaints about persistent plaster falling from the ceiling and walls. He had taken numerous photos which were sent to Mr Tse. His complaints had simply gone ignored. Even by taking Mr Tse’s testimony, which for avoidance of doubt I do not accept to be credible, that Mr Liang painted the ceiling and walls himself, the extensiveness of the patches shows how the defendants had been remiss about the state of repairs of room 2 and to leave that entirely in the hands of the tenant.

45. The constant inaction by the defendants led to a report made to the Buildings Department, and it was only then the defendants sent Mr Hau to conduct repairs some 10 days after the inspection. Under these circumstances, I find it hard to believe for Mr Liang to be so premeditated as to take the gamble of photographing an unrelated concrete slab for an ill purpose of proving an accident that had never taken place. It is much more likely that Mr Liang carefully safe kept the concrete debris from the accident and had decidedly not taken the chance of the defendants refuting liability as they have now ended up doing in these proceedings.

46. Turning to Mr Tse, his testimony was demonstrably unbelievable. For the most part, a crack which extended across the beam to almost the full width of the main door was clearly depicted in at least two of the photos sent by Mr Liang to Mr Tse on 15 April 2017. I find it most shocking for Mr Tse, who did not deny having received those photos, to then say that he had no recollection about a crack after February but first learned about it from Mr Liang in the evening on 31 August 2017 followed by Mr Hau on 1 September 2017. Mr Tse did not explain why he was so certain about the beam being intact before February. He did not explain how he came to know Mr Liang drilled holes in the beam. He was unable to tell when the letter was received from the Buildings Department.

47. Other than the obvious inconsistencies between Mr Tse's testimony and his witness statements, which will not be repeated here, I am also mindful about a number of significant matters that were not put to Mr Liang under cross examination. For example, it was not put to Mr Liang that Mr Tse intended to arrange for repair works but asked to wait for the ceiling to dry. For this matter, Mr Tse changed his evidence that instead of water dropping he meant plaster dropping from the ceiling. There being no longer a necessity for a drying process, it is even more inexplicable for the defendants to further delay the repair works. Be that as it may, it was not put to Mr Liang that he had took the repairs upon himself and told Mr Tse that his help was not needed. It was not put to Mr Liang that the corresponding photos showed the varnish he applied over the patches. It was not put to Mr Liang that Mr Tse arranged for repair works by virtue of the letter received from the Buildings Department. It was not put to Mr Liang that he had drilled the holes into the beam which

caused it to crack. It was not put to him that the beam was intact before February 2017.

48. There is no merit, as I find, in the testimony of Mr Tse. It is obvious that many of his assertions were made up along the way depending on how the question had been posed to him.

49. For the testimony of Mr Hau, at the beginning of the trial I have raised the question with counsel as to the whereabouts of the concrete slab depicted in the photo of 1 September 2017. Neither Mr Sham or Mr Chan is able to assist on this and parties have not produced the concrete slab in these proceedings. At the end of the day, there is no physical evidence either way as to whether there was one concrete slab from 11 June 2017 or another from 1 September 2017. According to Mr Hau, he had placed the concrete slab into a red bag which belonged to him and took it away as he left room 2. Why did he do so and where the concrete slab ended up at are both unknown. I find his testimony asserting that the photo shows a “very similar” concrete slab to be very dubious under these circumstances and attach no weight to it.

50. For all these reasons, I find in favour of the plaintiff on liability. Since Mr Chan has indicated that the defendants will not pursue the defence of contributory negligence and damages are agreed, I make an award in favour of the plaintiff as follows:-

(a) PLSA, HK\$120,000;

(b) Pre-trial loss of earnings and MPF, HK\$80,000;

(c) Loss of earning capacity, HK\$15,000;

(d) Medical expenses, HK\$2,500;

(e) Travelling expenses, HK\$2,500;

(f) Tonic Food, HK\$2,000.

51. I also make the usual order for interest at 2% per annum for general damages from the date of the Writ to the date of judgment and interest at half judgment rate per annum for the pre-trial loss of earnings and special damages from the date of accident to the date of judgment.

52. As for costs, I make an order that costs of these proceedings be to the plaintiff, to be taxed if not agreed with certificate for counsel. The plaintiff's own costs are to be taxed in accordance with the Legal Aid Regulations.

(Jason Wong)
Deputy District Judge

Mr Walker Sham, instructed by Ivan Tang & Co, for the plaintiff

Mr Stony Chan, instructed by T K Tsui & Co., for the 1st and 2nd defendants