DCPI 2370/2014

[2019] HKDC 1495

**IN THE DISTRICT COURT OF THE**

# **HONG KONG SPECIAL ADMINISTRATIVE REGION**

PERSONAL INJURIES ACTION NO.2370 OF 2014

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BETWEEN

YAU PO SHAN Plaintiff

and

THE EXPRESS LIFT COMPANY LIMITED 1st Defendant

SYNERGIS MANAGEMENT SERVICES 2nd Defendant

LIMITED

\_\_\_\_\_\_\_\_\_\_\_\_

Before : Deputy District Judge S.H. Lee in Court

Dates of Hearing : 25, 26 & 27 February 2019

Date of Judgment : 8 November 2019

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**JUDGMENT**

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1. The plaintiff (**Ms Yau**) began this action in Oct 2014 against the 1st defendant lift contractor (**D1**) and the 2nd defendant building manager (**D2**) to recover damages for personal injuries she sustained in a lift accident on 1 Nov 2011.
2. Ms Yau gave evidence that, upon reaching 2/F, the subject lift she was travelling (**the Lift**) suddenly plunged and jerked twice before it stopped and stalled violently at approximately 1-2 feet below the lobby floor (**the** **Accident**). She called no other witnesses.
3. D1 called no witness at all. Not a single D1’s engineer or technician who examined or repaired the Lift is called.
4. D2 called only its former assistant property manager Mr Wong Chun Pong (**CP Wong**) to give evidence. He managed the Estate from 2010 to about Jun/July 2011 and thus no D2’s staff on duty shortly before, or on the day of, the Accident is called.
5. No investigation report of the Accident by D1, D2 or the Electrical & Mechanical Services Department (**EMSD**) is produced either. Neither is expert on liability called.
6. Issues were joined on liability as to whether or not:

(1) the doctrine of *res ipsa loquitur* (**the Doctrine**) applies against D1 to make it liable to Ms Yau (**Issue 1**); and

(2) D2 has failed in its duty to supervise D1’s works and becomes liable to Ms Yau (**Issue 2**).

1. Mr Vincent Lung (**Mr Lung**)[[1]](#footnote-1) appearing for Ms Yau contended yes to Issue 1 and submitted that an inference of negligence can, and should, be drawn against D1.
2. Mr Brian Lo (**Mr Lo**) appearing for D1 answered Issue 1 in the negative, arguing that 2 pre-conditions of the Doctrine have not been satisfied and that, if the Doctrine applies at all, any prima facie case so raised had been neutralized by D1 having taken reasonable care in maintaining the Lift.
3. On Issue 2, Mr Lung advanced 2 grounds to submit a positive answer: -

(1) The first relates to D1’s proposal to renew, inter alia, the Lift, which was said not to have been followed up at all before the Accident (**1st Ground**); and

(2) The second relates to 5 previous trapping incidents of the Lift in Oct 2011, whose alleged “root cause” was said not to be have been identified and solved before the Accident (**2nd Ground**).

1. In reply, Mr Alex Lai (**Mr Lai**) appearing for D2 contended that Issue 2 should be answered in the negative, arguing that D2 could reasonably be entitled to rely on, he described, a “first-class” contractor like D1 and that D2 had done all that could reasonably be expected of it in terms of supervision.
2. On quantum, Ms Yau claimed around $650,000 in total in her Revised Statement of Damages (**RSOD**). Both D1 and D2 assert that she was contributorily negligent (**CN**) in not holding the handrails of the Lift. Save with her claim for travel expenses, all remaining heads of her claim are not agreed.
3. In the event D2 is held liable to Ms Yau and not otherwise, D2 seeks an indemnity or contribution from D1 (**the Contribution Proceedings**). D1 contests the Contribution Proceedings.

*Background facts*

1. Much of the facts is not disputed, cannot be disputed or cannot be seriously disputed. I find them as follows.

*The parties*

1. On 1 Nov 2011, Ms Yau, aged 29, was a resident at 11/F of Block 6 of Tsui Ning Garden (**Block 6**), Tuen Mun (**the Estate**). Since 11, she has resided in Block 6 of the Estate.
2. On the same day, D1 was the lift contractor of the Estate appointed by its incorporated owners (**the IO**) and responsible for maintenance and repairs of all the lifts of the Estate. It has been the lift contractor of the Estate *since at least 2004*.
3. On the same day, D2 was the building manager of the Estate appointed by the IO and entrusted with the management of the common parts of the Estate, including all its lifts. D2 had entered into a management service contract with the IO covering *1 Aug 2010* to 31 July 2012 (**the** **Management Contract**).

*The Lift*

1. At all material times, the Estate had a total of 18 lifts and 3 of them served Block 6. The Lift was lift no.16 serving odd number floors[[2]](#footnote-2) of Block 6. It had a maximum load of 900kg and a speed of 2.0m/s[[3]](#footnote-3). Its size was about 1.5m x 1.5m[[4]](#footnote-4). It could accommodate 12 passengers[[5]](#footnote-5). It was manufactured by D1’s parent company. According to Ms Yau, it has not been replaced for at least 18 years.
2. By reason of the provisions of the Management Contract[[6]](#footnote-6), the provisions of the Building Management Ordinance[[7]](#footnote-7), and the evidence of CP Wong below, the Lift was, I think, common parts of the Estate under D2’s control and management at all material times.

*D1’s report to the IO*

1. *Before* D2 became manager of the Estate in Aug 2010, on or about 8 Mar 2010, D1 had provided the IO with a report in Chinese regarding renewal works of the control system of the lifts of the Estate entitled “電梯控制系統更新工程(報告)” (**the Report**)[[8]](#footnote-8).
2. D1 had identified in section A of the Report (電梯現況及需要改善要點) the existing conditions (項目現況) of, inter alia, the control system (控制系統) of the lifts of the Estate as: “**繼電器邏輯控制 \*平樓誤差達40mm \*特別故障跟查困難** (bold and underline supplied)”. The recommended improvement (建議改善要點) in this respect is “電腦微處理器控制 \*運行平穩順暢 \*平樓精確+3mm…”
3. At section B (更新工程内容) of the Report, there was a diagrammatic presentation of the entire lift system by way of diagrams of a lift car, its cable and its associated equipment. D1 identified by way of rectangular boxes and arrows on it the divers equipment to be renewed (更新設備), one of the box being control cabinet (控制櫃), at the apex of the said entire lift system.
4. D1 gave the works expenses (工程費用) at section C of the Report. After taking into account estimated subsidies from the authorities, the outlay of the IO was estimated to be $4,131,000 (or $229,500 per each lift).

*The prevailing legislation*

1. At all material times, the legislation regarding lift safety wasLifts and Escalators (Safety) Ordinance, Cap. 327 (**L&ESO**). Under s.29A(1) thereof, no person other than authorized persons[[9]](#footnote-9) shall carry out “lift works”[[10]](#footnote-10). D1 was at all material times a “registered lift contractor” under L&ESO.
2. The then frequency of a) periodic maintenance of lifts; b) periodic examination of lifts and c) periodic testing of safety equipment of lifts by authorized persons below (as the case may be) to be arranged by “owner”[[11]](#footnote-11) of lifts prescribed by L&ESO was: -
3. at **monthly** intervals by “registered lift contractor” (s.19)
4. at **yearly** intervals by “registered lift engineer” (s.21); and
5. at i) **yearly** intervals *without* any load in the lift during operation (s.23(1)(a)) or, *in lieu of the said 12-month period*, at ii) **5-yearly** intervals with *full rated* load in the lift during operation (s.23(1)(b) & s.23(2)), by “registered lift engineer”.
6. The then **monthly** periodic maintenance prescribed by s.19 of L&ESO required “the lift… all machinery and equipment connected therewith and the safety equipment provided therefor to be inspected, cleaned, oiled and adjusted”.
7. The then **yearly** periodic examination prescribed by s.21 of L&ESO required “the lift to be thoroughly examined … in order to determine whether the lift and all machinery and equipment connected therewith is in safe working order and… shall include, where applicable, an examination of the… *control equipment*of the lift… and of the safety equipment provided for the lift (italics supplied)”.
8. Under clause 2.2 of then Code of Practice for Lift Works and Escalator Works[[12]](#footnote-12) issued by EMSD (**COP**)[[13]](#footnote-13), registered lift contractors had the responsibility to ensure that the lift works were carried out in a safe manner in order to protect the safety and health of*the general public* (italics supplied).
9. Under then clause 4.1 of the COP, maintenance included the inspecting, cleaning, oiling and adjusting of a lift in order to keep the equipment and their accessories *in good working order and prevent faults from occurring*. Even though s.19 of L&ESO required periodic maintenance to be carried out at ***monthly*** interval, maintenance service was *recommended* to be carried out on lifts *at least* ***once every 2 weeks***. Repair works covered the fault attending and *fault finding* activities as well as the action and work to restore the equipment or accessories to good working condition (italics and bold supplied).

*D1’s lift contracts with the IO*

1. These then statutory frequencies of a) periodic maintenance of lifts; b) periodic examination of lifts and c) periodic testing of safety equipment of lifts were *incorporated* in lift maintenance contracts D1 had entered into with the IO, except for c), as was then recommended in the COP, the *statutory* frequency was increased from *monthly* interval to a *contractual* frequency of ***bi-weekly*** intervals.

*The 2009 Contract*

1. D1 and the IO had a lift maintenance contract in Chinese covering 1 Sept 2009 *to 31 Aug 2011* (**the 2009 Contract**). Under it, D1 shall: -
2. ensure that all works (including repair works) comply with the requirements of L&ESO (clause 4.3);
3. arrange periodic maintenance, examination and testing to comply with such standards prescribed by L&ESO (clause 4.6.1(a));
4. arrange periodic examination and testing at **same** intervals required by s.21 & s.23 of L&ESO (clause 4.6.3);
5. arrange periodic maintenance at ***bi-weekly*** intervals (clause 5.2) to restore the lifts to safe standard (clause 5.3);
6. comply with, inter alia, ss.21 & 23 of L&ESO in terms of periodic examination and testing (clause 5.5); and
7. provide maintenance record for inspection, including recording therein any repair works carried out by its staff (clauses 4.1(c) and 7.1).

*The Extension Contract*

1. By a letter in Chinese signed by D1 in July 2011, the IO and D1 mutually agreed to extend the 2009 Contract on the ***same*** terms for 2 months *up to 31 Oct 2011* (**the** **Extension Contract**).

*The 2011 Contract*

1. As for lift maintenance service for the Estate *as from 1 Nov 2011*, D2, on behalf of the IO, prepared Chinese tender documents of the same and invited tenders to be submitted by 18 Aug 2011 (**the Tender Documents**). On 17 Aug 2011, D1 approved and signed on the Tender Documents and submitted its tender to the IO.
2. At its annual general meeting held on 17 Sept 2011, the IO resolved to accept D1’s tender and awarded another 2-year contract to D1. On 18 Nov 2011, the IO and D1 executed a 2-year contract in Chinese for the lifts of the Estate effective *as from 1 Nov 2011* (**the 2011 Contract**) i.e. effective *as from the day of the Accident*.
3. The 2011 Contract expressly provides that such terms of the Tender Documents accepted by D1 shall be incorporated to become its terms and, hence, applicable *on the day of the Accident*.
4. Clause 4.2 at section 3 (合約條款) of the Tender Documents provides that all works done by D1 shall be verified by D2 after service is rendered by D1.
5. According to section 4 (合約特殊條款) of the Tender Documents, D1 shall: -

(1) take over duties of maintaining the lifts of the Estate as from effective date of the contract and shall carry out regular maintenance of the said lifts *in line with section 5 thereof* (clause 4.1); and

(2) arrange periodic maintenance, including examination, testing and adjustment etc. to the lifts and associated equipment at ***bi-weekly*** intervals *in line with detailed requirements at section 5 thereof* and provide detailed reports within 7 days of inspection. If D1 discover any damage or breakdown, it shall at once notify D2 and fill the same down in the maintenance records (clause 6.2).

1. Section 5 (工作條款及細則) of the Tender Documents provides that D1 shall: -
2. provide qualified engineers and technicians in line with legal requirements and arrange maintenance, repair, testing and examination services to ensure that all lifts operate in safe, satisfactory and ideal conditions (clause 1.1);
3. shall inspect and repair in accordance with L&ESO and the latest COP issued thereunder (clause 1.5);
4. ensure that maintenance service includes inspection of *control equipment* (控制裝置) in order to ensure safe working of lifts and *prevent faults from recurring* (clause 2.1);
5. arrange periodic examination at **monthly** intervals pursuant to s.19 of L&ESO and at ***bi-weekly*** intervals according to applicable guidelines (clause 2.2);
6. arrange periodic examination at ***bi-weekly*** intervals to the following items at machinery room **(機房**), including “各類在**控掣櫃內控制裝置**及引線檢查、**接點收緊及清潔**，例如**繼電器**... (bold and underline supplied)”(clause 4.1.1 iii));
7. arrange periodic examination of *such items of repair and maintenance works at* ***clause 4.1*** *every 3 months, every 6 months, every 12 months and every 5 years* and at such frequencies in line with L&ESO and latest requirements of applicable COP (clause 4.2.1, clause 4.3.1, clause 4.4.1, clause 4.5.1 and clause 4.6);
8. arrange periodic testing at **same** intervals in line with s.23 of L&ESO (clause 5.1); and
9. be responsible to record every on-site inspection and works carried out on maintenance records (clause 9).
10. Annexed to the Tender Documents is one Table 1 giving information of, inter alia, the Lift. Its last annual, and its last 5-yearly, testing was recorded to have been carried out on 11 Mar 2011 and Mar 2011 respectively.

*The last 5-yearly, and last annual, test of the Lift by D1*

1. There is produced one 2-page safety test and examination report in Chinese of this last 5-yearly, and last annual, examination and testing of the Lift (**the Test Report**). It was carried out, pursuant to s23 of L&ESO and the provisions of the 2009 Contract, by D1’s registered lift engineer on 11 Mar 2011 with the Lift *fully loaded* during operation.
2. I give full weight to the contents of the Test Report. Save for one item[[14]](#footnote-14), all other marked items thereof were favorably marked with “Pass”, “Yes”, “No” and “Good” (as the case may be). 6 items were identified requiring immediate follow-up[[15]](#footnote-15) and all have been carried out by 23 Mar 2011. Not a single item required letter to be issued to the owner for follow-up[[16]](#footnote-16). The overall test status of the Lift was marked “Pass”.

*The maintenance records kept by D2*

1. The next material documentary evidence produced regarding the conditions of, incidents happening to and works done to, the Lift shortly before and on the day of the Accident is 2-page extract (pp.45 & 46) of one 9-column[[17]](#footnote-17) maintenance records (工作日誌) in Chinese of the Lift, lift No.17 and lift No.18 for the period from *8 Oct* to 27 Dec 2011 (**the Logbook**) kept by D2, and filled in by D1’s staff, pursuant to the provisions of the Extension Contract and of the 2011 Contract.
2. According to CP Wong’s evidence I accept, whenever D1’s staff attended the Estate to inspect, examine, maintain and/or repair, inter alia, the Lift (be it routine or ad hoc), they would first report to D2 and, after completing their works, fill in the information required by, and sign on, the Logbook. They would afterwards report again to D2’s staff, who would sign on the Logbook to confirm/verify the same.
3. For all entries from the 1st entry at the top of p.45 to 2nd entry from top at p.46 of the Logbook i.e. the subject one for the Accident, their column (8) were all signed by one Catherine Lee, who was CP Wong’s former colleague at management office of the Estate. She was not called as witness either.

*The last bi-weekly examination of the Lift by D1*

1. According to the Logbook, the last *bi-weekly* examination of the Lift was, I accept, carried out by D1 on 18 Oct 2011. That was recorded as the 10th entry from top of p.45 of the Logbook. This “regular maintenance” (例行保養) of the Lift, lift No.17 and lift No.18 was, I accept, carried out by one 周福來 (**Chow**) of D1[[18]](#footnote-18) from 1505 to 1830 hours on 18 Oct 2011, exactly ***2 weeks*** before the day of the Accident. Chow was not called as witness either.
2. I do not accept there was another “regular maintenance” (例行保養) of the Lift on 21 Oct 2011 as claimed by CP Wong. Though the “routine” box was ticked in column (2) of this *only* entry dated 21 Oct 2011 in the Logbook, instead of the 4 Chinese words of 例行保養 one may expect to find *if* it was regular maintenance, one finds in column (6) the Chinese words of “投訴行機震（檢查）”. Again, the engineer or technician concerned was not called.

*The 5 previous trapping incidents of the Lift in Oct 2011*

1. Looking at p.45 of the Logbook, between 8 Oct 2011 and 31 Oct 2011, there were, I find, 5 instances, and 5 entries, of passengers being trapped inside the Lift that required firemen to arrive to release them. Their dates are **16, 17, 22, 28 and 29** Oct 2011[[19]](#footnote-19) with the 5 related boxes of “trapping” all ticked in columns (2) and words like “去到消防放人” put down in columns (5) (**the 5 Incidents**).
2. On each of the 5 Incidents, D1 had, as recorded in the Logbook, sent its staff to attend to the Lift and service of the Lift was later resumed. None of the staff so sent by D1 were called as witness. Among those sent for the trapping incident on 17 Oct 2011, one was called 黃偉文 (**Wong**)[[20]](#footnote-20).
3. As we shall see below, on 1 Nov 2011, Wong arrived at the Estate after the Accident and attended to the Lift. D1 had filed a witness statement of 黃偉文 in Mar 2016 (**Wong’s W/S**). But, by the time of trial, Wong has left D1 and he is no longer willing to testify. All counsels before me agreed, and I accept, that the contents of Wong’s W/S are thus inadmissible as evidence.

*The last repair of the Lift by D1 before the Accident*

1. The last entry of the Lift before that for the Accident was on 31 Oct 2011[[21]](#footnote-21). The box of “trapping” was ticked and 0800 odd hours was put down in column (4) of “passenger released”. But no words like “去到消防放人” were found in column (5). Instead, it was put down that something was replaced (更換). I find it likely to be another trapping incident not involving firemen and that repairs were made to the Lift by Chow[[22]](#footnote-22) before it resumed service at 1130 hours.

*The Accident*

1. The Accident happened at around 0755 hours on 1 Nov 2011. It was Tuesday and Ms Yau took the Lift to go down the lobby to go to work at that time. At that time, there were altogether 7 passengers, including Ms Yau, inside the Lift. Such total number of trapped/rescued passengers was verified by an Incident Report of D2 compiled by Mr Albany Ng (**Ng**), D2’s building supervisor, at 0849 hours on the day of the Accident (**the Incident Report**) and another Incident Report dated 19 Nov 2014 (**the FS Report**) compiled by the Fire Services Department (**FSD**).

*Ms Yau could not hold handrails*

1. Ms Yau agreed with Mr Lo, and I find, that handrails were installed with the Lift on the day of the Accident. Notwithstanding Mr Lo’s cross-examination, I accept Ms Yau’s unshaken evidence that she could not reasonably grab, and thus had not grabbed, hold of the handrails before and at the time of the Accident because of other passengers inside the Lift.
2. When Ms Yau entered the Lift, there were, she said, several other passengers already inside it. Some of them were holding handbags and bags for work, and some were school children carrying heavy backpacks. They all stood near the handrails and thus obstructed her from holding onto them. She was thus forced to stand in the center of the Lift unable to grab hold of its handrails for support during her journey. She had attempted to reach out for the handrails during the Accident but was unable to do so for the same reason.
3. Considering the date, and the hours, of the Accident, I find Ms Yau’s explanation inherently likely. Moreover, her evidence on this point was supported by entries to the said effect in the Incident Report. I therefore accept her evidence on this point.
4. The claim of CN therefore fails.

*Circumstances of the Accident*

1. Mr Lai challenged Ms Yau’s account of the Accident. First of all, I do not believe, as he put to Ms Yau, that she had “misunderstood” the Lift to have plunged downwards in the Accident more quickly than it normally descended.
2. I say so because, according to the Incident Report, security guard on duty at Block 6 reported a *“bang”* sound being heard upon the Lift reaching the ground. And Ng saw the Lift stopped at about 1 foot *below* ground level when firemen opened its door. These entries support, I think, Ms Yau’s evidence of the Lift having plunged downwards at a speed greater than its normal speed (and of the Lift having landed *below* the lobby or ground floor) as she said.
3. Secondly, I do note that Dr Julian W. Chang (**Dr Chang**) recorded in his medical notes of his consultation with Ms Yau in Mar 2012 that the Lift “dropped from *1st floor* -> ground floor (italics supplied)” and that Dr Lee Po Chin (**Dr Lee**) and Dr Chiang Si Chung Arthur (**Dr Chiang** and collectively **the 2 Experts**) in their joint expert report dated 18 Jan 2017 (**the Joint Report**) related a history of the Lift having “dropped from *First floor* to Ground floor (italics supplied)” “according to Ms Yau”.
4. Nonetheless, Ms Yau maintained under cross-examination of the above medical records that the Accident happened when the Lift reached *2/F* and I accept her evidence in this respect.
5. Ms Yau had, I think, convincingly explained in the box that she had looked at the indicator of the Lift to find out which floor it had reached when the Accident happened and had observed, inter alia, “2/F” on it. That occurs to me a likely reaction of anyone encountering the Accident.
6. Turning to the records of the 3 doctors, considering their roles as treating doctor and court experts on quantum, I find it unlikely they would have focused on *liability* as far as the *exact* floor the Accident began. Of interest, none of them recorded the Lift having landed *below* ground floor or level. And they could, I think, easily have recorded “2/F” uttered orally by Ms Yau in punti into “1/F” in English when they wrote their medical notes and report in English.
7. In any event, such discrepancy of one floor (as opposed to many floors) is, I agree with Mr Lung, relatively minor that it does not materially affect Ms Yau’s credibility or reliability.
8. Overall, I accept Ms Yau’s evidence of the course of the Accident, including that it happened at 2/F as she said.

*Ms Yau rescued by firemen*

1. As recorded by Incident Report and the FS Report[[23]](#footnote-23), security guard on duty at the lobby of Block 6 reported the Accident to control room. The Accident was at once reported to D1 and to FSD. FSD vehicle soon arrived.
2. At about 0814 hours, firemen opened the door of the Lift. They later *restored* it to ground level and released, inter alia, Ms Yau from it. Ms Yau reported discomfort and ambulance was called. She was later taken by ambulance to Accident & Emergency Department (**A&E Dept**) of Tuen Mun Hospital (**TMH**).

*Follow-up action by D1*

1. In the meantime, Wong arrived at the Estate at about 0824 hours. At about 0840 hours, the Lift was shut down for inspection and repair by him and another. That was recorded down in the Incident Report and at p.46 of the Logbook.

*The entry of the Accident*

1. The relevant entry of the Accident was the very 1st entry at the top of p.46 of the Logbook (**the Accident Entry**). D1’s staff was recorded to have arrived at 0823 hours in column (1). The box of “trapping” in column (2) was ticked. Importantly, the “cause of fault or work done &/or parts replaced” in column (5) was recorded as: “(去到消防放人) **KVAB拍不好 (更換)** (bold and underline supplied)”. According to column (6), service of the Lift was resumed at 1446 hours. At column (7), the chop of, inter alia, Wong was put down.
2. For D1’s admissions on pleadings and on interrogatories served by D2 referred below, I give full weight to the contents of the Accident Entry.

*Another regular maintenance of the Lift by D1*

1. In line with *bi-weekly* intervals required by the 2011 Contract, another “regular examination” of the Lift, lift No.17 and lift No.18 was, I find, also carried out by Chow on 1 Nov 2011 from 0830 to 1830 hours as recorded by the 2nd entry from the top at p.46 of the Logbook.

*Cause of the Accident: contactor problem of KVAB Relay*

1. On all evidence adduced, including the contents of the Accident Entry and the admissions of D1 below, I find it likely that the Accident was caused by a failure of the KVAB Relay (繼電器), a relay for drive motion signaling, of the Lift.
2. The KVAB Relay (繼電器) was, I find, a control equipment of the control system (控制系統) of the Lift, situated inside control cabinet (控制櫃)of the machinery room (機房) as indicated in the Report and the Tender Documents. It had some contactor (接觸點) problem leading to the Accident, and it was thus replaced by Wong, after, and on the day of, the Accident.
3. D1 had made admissions below (which I give full weight) to the above effect.
4. D2 had served interrogatories on D1[[24]](#footnote-24) (**the Interrogatories**) regarding, inter alia, allegation at para 11 of Wong’s W/S that, after the Accident, “D1 found the KVAB 計(繼)電器 was malfunction and the connection point of the said device needed to be replaced”[[25]](#footnote-25) and demanding D1 to state, inter alia, (a) the function of the said KVAB 計(繼)電器. D1’s field manager[[26]](#footnote-26) had made an affidavit in answer[[27]](#footnote-27) (**the Affidavit**) to **admit** at para 5: “the function of the said KVAB relay (繼電器) is a relay for drive motion signaling”.
5. In reply to plaintiff’s plea at para 3A of Amended Statement of Claim[[28]](#footnote-28), D1 **admitted** at para 7A of its Amended Defence[[29]](#footnote-29), that, on the day of the Accident, its staff “Wong Wai Man (黃偉文) inspected the Lift and discovered that the cause for the breakdown of the Lift was the contactor of the KVAB Relay (KVAB繼電器的接觸點) in need of replacement”.
6. In reply to para 10 of D2’s statement of claim[[30]](#footnote-30) in the Contribution Proceedings[[31]](#footnote-31), D1 **admitted** at para 9 of its Defence in the Contribution Proceedings[[32]](#footnote-32) that “the Lift had a breakdown on 1 Nov 2011 and D1’s technician, Mr Wong, subsequently checked the Lift and found that the contactor of the KVAB relay (KVAB繼電器接觸點) needs replacement”.
7. As against D2, I arrive at the same cause of the Accident above despite Mr Lai’s observation and submissions that the English word of “Relay” and the Chinese words of “繼電器” were absent in the Accident Entry. In the absence of any other contrary evidence pointing to the English word of “KVAB” in the Accident Entry referring to any other distinct component of the Lift that caused the Accident, I think one can safely read, and should read, the said entry together with the relevant contents of the Affidavit, the Report, the Tender Documents and the two witness statements of CP Wong[[33]](#footnote-33) to infer, and arrive equally at, some contactor (接觸點) problem of the KVAB Relay (繼電器) of the Lift as the cause of the Accident.

*Application of subsidy from the authorities*

1. One month odd after the Accident, on 16 Dec 2011, the management committee of the IO held its 15th meeting. A minute of this meeting was produced (**the Minute**).
2. As recorded at para 7.2 of the Minute and I so find, D2 reported in the said meeting to the IO that documents *had* been submitted (已呈交) to EMSD to apply for government subsidy to replace all lifts of the Estate and EMSD had replied that the said application would be processed and/or approved by about mid-Jan 2012.

*Discussion*

*Issue 1: Plaintiff’s case against D1*

1. It is not disputed by Mr Lo, and I find, that D1 at all material times owed a duty of care at common law to Ms Yau as passenger of the Lift to inspect the Lift, including its KVAB Relay (繼電器), properly and to keep it properly maintained to protect her health and safety.
2. I find the said duty to include KVAB Relay (繼電器) despite it was not *specifically* mentioned in the 2009 Contract or in the Extension Contract. The said component had, I observe, already found its way into the Report made by D1 as early as in Mar 2010 and into the Tender Documents signed by D1 as early in August 2011.
3. Mr Lung submitted that D1 was negligent in failing to have inspected the Lift, including its KVAB Relay (繼電器), and/or kept it properly maintained, in time or at all. An inference of negligence should, he argued, be drawn on the Doctrine, despite the precise cause of the contactor problem of the said component is unknown.

*The Doctrine*

1. The Doctrine is a mode of inferential reasoning. It comes into play where an accident of unknown cause is one that would not normally happen without negligence on the part of the defendant in control of the object or activity which injured the plaintiff. In such a situation the court is able to infer negligence on the defendant’s part unless he offers an acceptable explanation consistent with his having taken reasonable care: *Sanfield Building Contractors Ltd v Li Kai Cheong* (2003) 6 HKCFAR 207, 211D-F, per Bokhary PJ.
2. It is a rule of evidence and it states no principle of law. It is only a convenient label to apply to a set of circumstances in which a claimant proves a case so as to call for a rebuttal from the defendant, without having to allege and prove any specific act or omission on the part of the defendant. He merely proves a result, not any particular act or omission producing the result: *Clerk & Lindsell on Torts*, 21st Edition, para 8-184 at p.583.
3. The burden of proving negligence rests throughout the case on a plaintiff. The effect of the Doctrine is only that faced with a *prima facie* case of negligence, the defendant would be found negligent unless he produced evidence that was capable of rebutting the *prima facie* case: *Ng Chun-pui v Lee Chuen-tat* [1988] 2 HKLR 425, cited in *陳樹榮 對 領匯管理有限公司*, unreported, DCPI 1883/2011, 1 June 2016, para 31. There is no onus on the defendant to disprove negligence: *Sanfield*, supra, 211G-I.
4. The 3 conditions for the Doctrine to apply are: (1) the occurrence is such that it would not have happened without negligence; (2) the thing that inflicted the damage was under the sole management and control of the defendant, or of someone for whom he is responsible or whom he has a right to control[[34]](#footnote-34); and (3) there must be no evidence as to why or how the occurrence took place. If there is, then appeal to the Doctrine is inappropriate for the question of the defendant’s negligence must be determined on that evidence: *Clerk & Lindsell*, supra, para 8-184.
5. The above principles of law are not controversial. Mr Lo took no issue about condition (2) and I am satisfied it was met.

*Condition (3): accident of unknown cause*

1. Mr Lo submitted that condition (3) has not been met. D1 had already, he stressed, made known in its pleadings (and the Accident Entry showed) that the cause of the Accident lied in failure of the KVAB Relay of the Lift such that the Doctrine does not apply.
2. Mr Lo sought support from *陳樹榮*, supra,where the Doctrine was held inapplicable[[35]](#footnote-35) as the subject lift accident was shown by evidence to have been caused by detached worn guide shoe (導靴) found fallen down to lift shaft after the accident.
3. He also referred to *Kong Lin Fat Johnny v IO of Chang Pao Ching Building & Anor*, unreported, DCPI 1580/2010, 12 Sept 2014, where the Doctrine was also held inapplicable[[36]](#footnote-36) when the subject lift accident was shown by evidence to have been caused by faulty car door switch that had been loosened by vibration during the lift car’s downward travel.
4. Mr Lung in reply relied on the judgment of Bokhary PJ at 211D of *Sanfield*: “But it matters not that the immediate cause of an accident (e.g. brake failure or a burst tyre) is known. As long as the cause on which the issue of liability actually turns (e.g. why the brakes failed or the tyre burst) is unknown, the accident is regarded as one of unknown cause”.
5. Mr Lo countered to submit that the above passage is only obiter as the issue before the Court of Final Appeal in *Sanfield*, supra, is one of latent defect.
6. In any event, on the analysis of Bokhary PJ, submitted Mr Lo, the underlying cause of the Accident is known to be contactor problem of the KVAB Relay, which required replacement on the day of the Accident. It does not matter that expert evidence on liability is required to explain such problem and the plaintiff has elected not to adduce the same.
7. I do not agree with Mr Lo.
8. While the appellant in *Sanfield*, supra, did not argue on appeal *against* the application of the Doctrine, the Court of Final Appeal upheld the judgment of the trial judge based on the Doctrine when *only* the *immediate* cause is known at trial. On the trial judge’s findings, the scaffold[[37]](#footnote-37) (which the victim had climbed) toppled. But there was no evidence as to what made the scaffold toppled[[38]](#footnote-38). The cause *on which the liability issue actually turns* thus remained unknown at trial.
9. Even if the above passage of Bokhary PJ in *Sanfield*, supra, is obiter and not binding on me, I think it is highly persuasive and authoritative as it came from the highest court of the land and all other 4 members of the Court of Final Appeal agreed with the judgment of Bokhary PJ.
10. I therefore decide to follow the judgment of Bokhary PJ *in Sanfield, supra,* and not to follow *陳樹榮*, supra, or *Kong Johnny*, supra. I note that *Sanfield, supra,* was not cited at all in *陳樹榮*, supra, or in *Kong Johnny*, supra.
11. Applying the principles of *Sanfield, supra,* I agree with Mr Lung that the cause on which the liability issue of this action actually turns i.e. why the KVAB Relay of the Lift failed (or why there was contactor problem of the said KVAB Relay) on the day of the Accident remains unknown on the evidence before me.
12. The Accident remains, I think, an accident of unknown cause for the Doctrine to apply and I so rule.

*Condition (1): the Accident would not have happened without negligence*

1. By reference to a long line of escalator authorities starting locally with *Kam Wai Ming v MTR & Anor*, unreported, DCPI 408/2002, 11 Dec 2003, that held that mere or unexpected stopping of escalators cannot give rise to an inference of negligence on the Doctrine *as escalators are designed to stop in an emergency*[[39]](#footnote-39), Mr Lai first submitted that the Accident is not one such that it would not have happened without negligence on the part of D1.
2. Mr Lo next submitted that it is inherently difficult to apply the Doctrine to complex moving machinery like the Lift, which is expected to have stopping mechanism to deal with a fall or breakdown. No case of lift contractor being liable on the Doctrine was, he stressed, produced before this court.
3. The mere fall and stop of the Lift or the failure of its KVAB Relay, Mr Lo argued, are not evidence by themselves that there is an occurrence that would not have happened without negligence on the part of D1. There is no expert evidence to show that the manner of stopping of the Lift on the day of the Accident was not in line with its design. The Lift may, he argued, fail for its old age. Though its KVAB Relay was “replaced” afterwards, the Accident Entry, argued Mr Lo, nowhere recorded that it was “defective”.
4. Mr Lai further argued that a defective component *per se* is insufficient to give rise to inference of fault of any party and he sought support from para 92 of the judgment of*陳樹榮*, supra, and para 141 of the judgment of *Kong Johnny*, supra.
5. Starting with lifts in general, I agree with Mr Lo that they have material differences in terms of design and running from those of escalators. Escalators must be designed to so stop not to propel riders off the steps whereas, one imagines, there is no such risk for enclosed lift cars. Buttons are installed in escalators for riders to stop their running in emergencies like shoelace trapped between steps or article of clothing got entangled. Such risk of outside or external interference is, I think, unheard of in case of lifts. But I would assume Mr Lo was right to say that lifts, like escalators, should equally have mechanism to deal with a sudden stop or fall in an emergency.
6. Hence, as between lifts authorities and escalators authorities cited before me, I think the former are generally more comparable and applicable to this case. The latter, if applicable at all, should be treated with caution.
7. With the above observation and caveat, I move to consider the Lift and the Accident.
8. In the Accident, the Lift certainly did not fall straight to the ground without stopping at all, or without engaging stopping mechanism, such that the Doctrine must apply as Mr Lo had conceded.
9. But, equally, unlike mere stopping of escalators in escalators authorities put before me, the Accident, I think, went beyond mere fall and stop of the Lift. In the Accident, on reaching 2/F of Block 6, the Lift suddenly *plunged* at *greater* than its normal speed and *jerked twice* before it stopped and stalled *violently* at about 1 foot *below* the lobby floor (causing a “*bang*” sound) such that Ms Yau and others were *trapped* inside it. Firemen had to *restore* the Lift to ground level before *releasing* her out from the Lift.
10. Considering the circumstances of the Accident as a whole, applying common sense, it does not look like to me normal functioning of the Lift at all, though it was an old lift. I do not think it likely that the Lift was designed to function like that.

1. In the escalator case of *Chan Ching Yuk v OTIS Elevator & Anor*, unreported, DCPI 248/2005, 11 Sept 2007[[40]](#footnote-40), had the escalator in that case suddenly stopped and then moved again or, alternatively, jerked, his Honour Judge Leung also considered that it was not mere sudden stoppage and not how the escalator was designed to function and believed that the plaintiff could rely on the Doctrine to infer negligence as it was an apparent abnormal functioning of the escalator[[41]](#footnote-41).
2. Turning to the KVAB Relay of the Lift, whose contactor problem led to the Accident, while the word “defective” was not found in the Accident Entry, one begs to ask why Wong did not adjust or repair it but saw fit to “replace” it, or why it had not been replaced at an *earlier* examination of the Lift by D1.
3. It should be noted that the other circumstances established by evidence adduced include:

(1) KVAB Relay was a control equipment of the control system of the Lift, situated *inside* control cabinet of the *machinery room* and, hence, unlikely to be subject to natural elements like rain, interference by foreign objects or users of the Lift;

(2) D1 had *recognized* and *discovered* the conditions of KVAB Relays of the lifts of the Estate in general and suggested *improvement* be made to them in the Report as early as in Mar 2010;

(3) Specific provision had been made in the Tender Documents signed by D1 as early as in Aug 2011 (and in the 2011 Contract) for D1 to arrange periodic examination of KVAB Relays (繼電器) of the lifts of the Estate every 14 days, every 3 months, every 6 months and every 12 months by way of its *obligations* of *maintaining*, inter alia, the Lift;

(4) The total number of passengers inside the Lift at the time of the Accident did not exceed its maximum capacity of 12 persons;

(5) Wong *could* discover, and *had* discovered, the contactor problem of the KVAB Relay of the Lift being its cause, and replaced the said KVAB Relay, *within* 7 hours on the *same* day of the Accident.

These proven circumstances combined went beyond, I think, *mere* failure of a component of the Lift.

1. In so far Mr Lai relied on para 92 of the judgment of *陳樹榮*, supra[[42]](#footnote-42), those words were, I think, said by the deputy district judge in the context of analyzing the maintenance **evidence** *given* by 2nd defendant lift contractor before him.
2. At para 141 of the judgment of *Kong Johnny*, supra[[43]](#footnote-43), the deputy district judge also, I note, said at the end of the same para: “*the facts of each particular case must be closely scrutinized to see if it is a case of negligence*, a case of accident without negligence of any persons or otherwise (italics supplied)”.
3. Taking all circumstances established by evidence adduced before me, I agree with Mr Lung that the Accident was an occurrence that would not have happened without negligence on the part of D1 in terms of inspection, maintenance and repair of the Lift, including its KVAB Relay.
4. Condition (1) is, I think, also met.
5. Hence, the Doctrine applies in the circumstances of this case against D1. There is, I think, *prima facie* evidence of negligence that calls for a rebuttal from D1.

*Prima facie case rebutted or not?*

1. Mr Lo **submitted** that any inference, if any, of negligence has been displaced by D1’s *evidence*of reasonable *maintenance* and *repair* of the Lift.
2. He developed his submissions along the following lines:
3. He adopted Mr Lai’s submissions, or description, of D1 being a “first class” contractor on the evidence;
4. He stressed that, as shown by the Logbook, D1 had carried out since 18 Oct 2011 periodic examination, or regular maintenance, of the Lift at *bi-weekly* intervals in line with the Extension Contract and the 2011 Contract, *more frequently* than that required by L&ESO;
5. He added that D1’s staff had filled in the Logbook as required by its contracts with the IO;
6. Also shown by the Logbook and the evidence of CP Wong, D1, he said, had attended to the Estate to provide ad hoc inspection and repair to its lifts at D2’s request from time to time;
7. He emphasized there is no factual or expert evidence that these maintenance and repairs were not properly done[[44]](#footnote-44); and
8. He repeated that the plaintiff bears the burden of proof in this action.
9. On evidence before me, including D1’s own introduction in the Tender Documents, I agree with Mr Lai that D1 was a *competent* contractor in a position to fulfill the obligations of its lift maintenance contracts with the IO. It had the necessary knowledge, resources, qualified personnel and experience to undertake them[[45]](#footnote-45). It does not matter one labelled it “first-class” contractor or not. But that, I think, does not answer the question whether it had at the material times *properly inspected and maintained* the Lift or not.
10. It is also true, and not disputed, that D1 had complied with its contractual and statutory obligations to arrange required frequencies of testing, inspection and examination of the lifts of the Estate, including the Lift, and also arranged for ad hoc inspections and repairs from time to time as required. And records in form of the Test Report and the Logbook are put before me.
11. But, importantly, save except for the Test Report, there is no evidence of the detailed works and manner of maintenance, inspection, examination, testing and repairs that were *actually* carried out by D1 on the Lift and its KVAB Relay at all material times before the Accident.
12. While the Test Report gives a long list of tested items of the Lift carried out by D1’s registered lift engineer, it does not specifically include KVAB Relay. In any event, this test was carried out as long as more than 7 months *before* the Accident.
13. The “regular maintenance” entries in the Logbook gives one no clue what inspection and maintenance works were *actually* carried by D1 on the Lift and how they were *actually* carried out, in particular, whether or not they included its KVAB Relay[[46]](#footnote-46).
14. Save for the cause(s) of, and works required for, the breakdown of the lift on the day in question, such ad hoc entries in the Logbook does not assist D1 regarding the Accident involving the Lift on the day of the Accident.
15. The Accident Entry does not tell one either whether or not (and if so, how) the KVAB Relay of the Lift was *actually* inspected and maintained by D1 at the material times, how its contactor problem *arose* in the first place (and whether it related to D1’s *fault* or otherwise) and whether or not such problem *could* reasonably have been *discovered* and *avoided* by D1.
16. In answer to the Interrogatories on para 11 of Wong’s W/S as to: (b) whether D1 had carried out any examination to the said KVAB 計(繼)電器 before the Accident; and (c) if yes to (b), why the examination carried out did not reveal the malfunction of the said KVAB 計(繼)電器 at that time, D1 **admitted** at para 6 of the Affidavit to say: “D1 has no documentary record of *specific* examination on the KVAB relay (italics and underline supplied)”.
17. In contrast, in *陳樹榮*, supra, documentary **evidence** was ***produced*** showing *specific* inspection of subject guide shoes at 7 *bi-weekly* examination in the 3 months before accident[[47]](#footnote-47). Technician who attended after subject accident were also ***called*** in*陳樹榮*, supra, and his ***evidence*** on maintenance of guide shoes, and cause of the accident, was accepted by the court[[48]](#footnote-48).
18. Instead, the plaintiff relied on the Doctrine and elected not to adduce positive evidence, factual or expert, to prove and/or pinpoint any specific fault of D1 in inspecting and/or maintaining the Lift. And the burden of proof never shifts to D1 even with the application of the Doctrine.
19. After careful analysis of all evidence ***adduced*** before me, I cannot but conclude that the *prima facie* case of negligence so raised against D1 on the Doctrine was never rebutted.
20. D1 had, I also conclude, failed to ***adduce*** **evidence** of its regular and proper inspection and maintenance of the Lift, including its KVAB Relay, at all material times before the Accident that is *capable* of ***rebutting*** the said *prima facie* case.

*Answer to Issue 1*

1. Hence, I agree with Mr Lung that an inference of negligence can be, and should be, drawn against D1 for failing to have inspected the Lift, including its KVAB Relay (繼電器), and/or kept it maintained properly, in time or at all (and it does not matter precisely what the specific fault(s) of D1 was/were) and that, had D1 not so failed, its contactor problem would not have arisen and/or would have been identified and solved in good time and the Accident avoided.
2. The plaintiff has thus proven her case against D1 and D1 is liable in negligence to Ms Yau.

*Issue 2: Plaintiff’s case against D2*

1. On the facts above, I find that, at all material times, D2 was an occupier of the Lift under Occupiers Liability Ordinance, Cap.314 (**OLO**) and Ms Yau a lawful visitor to it under OLO.
2. Hence, I agree with Mr Lung that D2 owed to Ms Yau the common duty of care to take such care as in all the circumstances of this case is reasonable to see that she would be reasonably safe in using the Lift: s.3(2) of OLO.
3. Mr Lung took no issue with the selection and/or appointment of D1 as the lift contractor of the Estate in the first place[[49]](#footnote-49). Neither did he take issue with the provisions of D1’s maintenance contracts with the IO[[50]](#footnote-50). And maintenance records of the Lift had apparently been kept by D2 by way of the Logbook.
4. Mr Lung focused his case against D2 on *supervision* and submitted that D2 was in breach of its duty for failing to have supervised D1 on the 1st and/or 2nd Grounds.
5. In opposing plaintiff’s claim, Mr Lai relied on s.3(4)(b) of OLO[[51]](#footnote-51). According to UK court of appeal[[52]](#footnote-52), the subsection is a statutory recognition of the correctness of the decision of*Hazeldine v C.A. Daw & Son Ltd* [1941] 2 KB 343, where a landlord’s obligation to take care to ensure that the lift he provided was reasonably safe was discharged by employing competent contractors.

*1st Ground: the Report*

1. Mr Lung emphasized that D1 had as early as in Mar 2010 recommended to improve or renew the control system of the lifts of the Estate and D1 had specifically identified in the Report problems with KVAB Relays. A reasonable building manager ought, he argued, to have taken up the recommendations in the Report with the IO *before* the Accident in Nov 2011, by which time a reasonable period of time should have expired for that to be done as it was by then 1 year and 8 months from the date of the Report.
2. Though D2 could only become responsible for the said follow-up as from 1 Aug 2010 when it became manager of the Estate, there is, Mr Lung argued, no evidence that D2 had *ever* followed up on D1’s recommendations in the Report since it took over as building manager in Aug 2010.
3. There was, Mr Lung stressed, no documentary evidence produced to show D2’s efforts, if any, to take up the recommendations of the Report with the IO *before* 1 Nov 2011 e.g. bringing them up as item of agenda for IO to vote at meetings. As to such minimal contrary evidence of CP Wong in his supplemental witness statement and in the box, he urged this court not to accept them.
4. Moving to causation, though the problems of KVAB Relay identified in the Report may pose no immediate danger, had they been solved by having the recommendations in the Report implemented, Mr Lung argued, the Accident could likely have been avoided.
5. One should, I think, first observe the followings about the contents of the Report:
6. D1 had never suggested in it that the lifts of the Estate were *unsafe* or *dangerous* to be used or that they should be replaced *at once* without delay[[53]](#footnote-53).
7. The recommendations were put forward as renewal (更新) or improvement (改善) (the Lift has, after all, not been replaced for at least 18 years).
8. The total expenditure for all 18 lifts of the Estate plus employing contractor costs as much as $6.4M odd. With estimated government subsidy of $2.2M odd, the estimated outlay to be paid by the IO remained a no small sum of $4.1M odd.
9. One year after the Report, the overall test status of the Lift, one further observes, was still marked “pass” in the Test Report. The items to be followed up did not include the recommendations in the Report. Hence, there seems to be no cause or urgency even by Mar 2011 to implement these recommendations at substantial costs. Even allowing for the happening of the 5 Incidents in Oct 2011, one wonders objectively whether reasonable time had expired by the Accident for D2 to follow them up with the IO.
10. In any event, though more documentary evidence is not forthcoming and the Minute itself gave no specific date of IO’s having made its subsidy application to EMSD to replace all the lifts of the Estate, I believe in CP Wong who said at para 10 of his supplemental witness statement dated Apr 2017 that such application had been made by D2 on behalf of the IO *before* the Accident.
11. CP Wong had answered Mr Lung in the box that, *since* the Report was made available, D2 had discussions with the IO *throughout* about the suggested improvements in the Report and had applied on its behalf for government subsidy for the same. I accept this evidence, noting that CP Wong has already left D2 by trial[[54]](#footnote-54) and have no motive to distort his evidence. The record in the Minute is, I think, also consistent with such evidence.
12. As such, D2 did follow up on the recommendations of the Reports with the IO *before* the Accident and Mr Lung’s submissions fail on the facts I find.
13. Furthermore, D2 could at best, one thinks, follow up the recommendations and could not *dictate* their implementation and progress. It was up to the IO to decide whether or not (and, if so, how and when) to implement them and it was also up to the authorities to decide whether or not to grant subsidy for the IO (and, if so, to decide the amount). Hence, I am not satisfied with Mr Lung causation submissions either. There *mere* follow-up of these recommendations by D2 by no means could likely avoid the Accident as he submitted.
14. This 1st Ground fails.

*2nd Ground: the 5 Incidents*

1. By reference to the 5 Incidents in Oct 2011 shortly before the Accident, Mr Lung submitted by way of opening[[55]](#footnote-55) that D2 should have taken reasonable steps by, for example, specifically requesting D1 to identify the cause(s) of repeated breakdowns of the Lift and look into the root of the problem.
2. Mr Lung prayed in aid the judgment of *Kong Johnny*, supra, where the court concluded at para 203 that the two defendants[[56]](#footnote-56) had not taken reasonable steps to maintain and repair the lift before accident by, such as, asking the lift contractor to identify the cause(s) of the repeated lift breakdowns and to solve the root of the problem and, had they done so, such as by paying heed to its car door switch, the accident could be avoided.
3. Mr Lung further cited *Dimitrelos v 14 Martin Place Pty Limited*[2007] NSWCA 85, where it was said that such statement in *Hazeldine*, supra, that it is always sufficient for the occupier of a building to discharge its duty so far as providing proper lifts by choosing a first class firm of lift engineers to superintend the lifts may no longer be sufficient in 21st century[[57]](#footnote-57).
4. In cross-examining CP Wong, Mr Lung put that it was extraordinary (不尋常) for the Lift to have as many as 5 trapping incidents in one single month of Oct 2011. CP Wong disagreed.
5. CP Wong did, however agreed that a responsible manager, faced with 5 trapping incidents in one single month, would undertake a thorough examination of the lift concerned to identify the underlying reason.
6. Mr Lung next pointed the facts that trapping incident **twice** occurred *again* the *next* day after incident (i.e. on 17 Oct after the incident on 16 Oct 2011 and on 29 Oct after the incident on 28 Oct 2011) and suggested that D1’s works on 16and 28Oct was not effective. CP Wong disagreed, saying that D2 had never received any report from D1 that the Lift should be shut down.
7. Mr Lung continued to put that the circumstances of this case demand a responsible manager to seek a second opinion from another contractor. CP Wong disagreed, saying that it was rare to seek opinion from another contractor other than the appointed one and it was not for D2 to so decide.
8. In closing, Mr Lung **submitted** that the 5 Incidents all had the *same* “root cause” of KVAB Relay but that had not been properly identified, and resolved, by D1’s staff during inspections and repairs each time after the 5 Incidents such that the Accident was not avoided on 1 Nov 2011.
9. He further relied on the case of *Poon Kwok Wing Ernest v Airport Authority* [2010] 3 HKLRD 354, wherethe escalator had for *unknown* reasons stopped many times butneither the defendant authority nor its escalator contractor found out what caused the stoppages and they just sent someone to reactivate the escalator each time after repeated stoppages[[58]](#footnote-58).
10. The court of appeal, he stressed, said at para 32 of the judgment of *Poon Ernest*, supra, that had the defendant authority and its contractor “tried their best to find out what it was which caused the escalator to stop suddenly for no reason, they should have been able to ascertain the cause(s) and take remedial measures… If, after examination, they still could not ascertain what caused the unexplained stoppages, then caution might require that the escalator… be shut down and not be used until the cause(s) of the stoppages was/were ascertained and proper remedial measures were taken”.
11. Absent D1 calling at trial its technicians or engineers sent to attend to the Lift on the days of the 5 Incidents, Mr Lung **submitted** that it is *questionable* that the alleged causes of fault put down in column (5) of the Logbook on these 5 entries were the “correct” ones (or the correct diagnosis) and that such works done/parts replaced carried out by D1 as recorded in the same column on these 5 dates were the “proper” remedial measures taken in response thereto.
12. The 5 Incidents were, he skillfully argued relying on *Poon Ernest*, supra, all trapping incidents of the Lift with passengers trapped for *unknown* causes, occurring as many as 5 times within a short period of 1 month that reasonably called for D2 to specifically instruct D1 to identify the cause(s) of these repeated trapping and to look into the root of the problem.
13. It is, I think, significant to note that Mr Lung does not rely on the Doctrine as against D2. As such, he has to *prove by evidence* the 2nd Ground he made *specifically* against D2. In contrast, in *Poon Ernest*, supra, the court of appeal allowed the appeal by drawing an *inference* of negligence against the defendant authority[[59]](#footnote-59).
14. For reasons below, I differ from Mr Lung and decide to give full weight to D1’s entries at column (5) of the Logbook for the 5 Incidents, accept the causes of fault as recorded being the “correct” ones for the 5 Incidents and the works done/parts replaced as recorded being their “proper” response or remedy thereto.
15. While D1 had not called its technicians and engineers concerned, neither did Mr Lung call contrary expert evidence on liability to *contradict* these entries for the 5 Incidents or to *prove* that the 5 Incidents were all caused by *common* failure of KVAB Relay of the Lift.
16. In *Kong Johnny*, supra, there was produced joint expert report opining faulty car door switch as the *common* cause of the repeated breakdown by reference to remark in investigation report prepared by EMSD that the lift contractor had not been able to identify it as the problem that caused the lift breakdowns and hence had not been able to effectively solve the problem[[60]](#footnote-60).
17. There was no suggestion that those inspections of, and works to, the Lift on the 5 Incidents were not carried out by *qualified* staff or that these entries were not made by the staff *themselves*.
18. On evidence before me, one cannot think of any motive for these staff to conceal or misrepresent matters in making these entries for the 5 Incidents in the Logbook.
19. These entries for the 5 Incidents in the Logbook were made *contemporaneously* by them shortly *after their having spent differing periods of time* on these 5 days to inspect the Lift, *having* *discovered* its source of problem and having undertaken repair works to rectify such problem they discovered.
20. As qualified personnel and with the Lift shut down and time made available to them for inspection, they should be in a good position to discover its source of problem on the 5 Incidents (indeed, the plaintiff also accepts column (5) of the Accident Entry, accepts that Wong had been able to discover, and had *properly* discovered, the *correct* cause of the Accident being contactor problem of the KVAB Relay of the Lift and made the *proper* remedy of replacing the KVAB Relay. Wong, who also attended to the Lift on the incident on 17 Oct 2011, was also not called. Had KVAB Relay failure been the cause for the incident on 17 Oct 2011, Wong should also, one imagines, been able to discover it on 17 Oct as he did on 1 Nov 2011).
21. While Catherine Lee of D2 was not called (and CP Wong no longer managed the Estate in Oct 2011), one imagines it inherently unlikely that, after D1 staff had completed their works on the Lift after each of the 5 Incidents, she did not *verify* that it had *apparently resumed its normal working* before resuming its service (and the Lift did resume normal service thereafter for different periods of time before encountering breakdown or trapping again and such service resumption was *consistent* with a “proper” cure having been made).
22. While passengers were trapped in the Lift in the 5 Incidents, there was no evidence adduced that, as was the case in the Accident, the Lift suddenly plunged and jerked, or that it stopped and stalled violently below ground, in these 5 earlier incidents. There is no evidence that their other circumstances were alike or similar.
23. Hence, I agree with Mr Lai that the 5 Incidents all had *known* causes *different* from that of KVAB Relay failure for the Accident, which feature materially distinguishes this case from the cases of *Kong Johnny*, supra, and *Poon Ernest*, supra. The Accident was, I find, an *isolated* incident on its own. There is thus, I think, no *common* root cause to be identified and solved so as to avoid the Accident as submitted by Mr Lung.
24. In any event, Mr Lai’s submissions that lift maintenance is works of a highly technical nature that the law (i.e. L&ESO) allows only authorized or qualified persons to undertake remain, I think, of weighty force even in 21st century.
25. As was said by CP Wong (though he no longer managed the Estate in Oct 2011), the Lift was, I accept, *only* allowed by D2 after each breakdown (and, I think, after each of the 5 Incidents) to resume service after D1’s staff *confirmed* that it was safe to do so.
26. With different causes *identified* by D1’s staff for each of the 5 Incidents and works done/parts replaced by them to deal with each of these causes as they *confirmed* by making, and signing on, the entries for the 5 Incidents in the Logbook, and with the Lift *apparently resuming normal working order afterwards*, I agree with CP Wong (and Mr Lai) that there was nothing at the material times that caused D2 to question such confirmation from D1.
27. There is, one notes, no evidence of earlier history of the Lift (e.g. more extract of the Logbook earlier in time) adduced that proves that the 5 Incidents were relatively more frequent or serious than that or those in the past (the Lift, after all, has not been replaced for at least 18 years). Neither is there evidence adduced that injury or death was caused to anyone in any of the 5 Incidents.
28. One must further bear in mind that the Accident happened on the *very 1st day* of a *new* 2-year contract *recently* awarded to D1 by resolution of the IO at meeting held on 17 Sept 2011 (though the 2011 Contract was yet to be executed).
29. Given that there was no complaint by Mr Lung about the selection and appointment of D1 by the IO, the suggestion he put to CP Wong that D2 should seek a second opinion from another contractor than that recently appointed by the IO because of the 5 Incidents in Oct 2011 sounds more to me an *afterthought* with the benefit of hindsight than a reasonable step that ought to have been taken by D2 in its circumstances and position at the material times.
30. All things considered, at all material times, D2 was, I agree with Mr Lai, reasonably entitled to rely on the expertise and judgment of D1 and that D2 had done all that could reasonably be expected of it in terms of supervision.
31. This 2nd Ground also fails.

*Answer to Issue 2*

1. D2 is thus not liable to the plaintiff under OLO for failing to supervise D1, be it on 1st and/or 2nd Grounds.

*Contribution Proceedings*

1. Given my answer to Issue 2, I do not find it necessary to decide on the Contribution Proceedings.

*Quantum*

*Injuries, treatments & sick leave*

1. According to medical report produced, whose contents I give full weight, on arrival at A&E Dept of TMH, Ms Yau complained of neck, low back and right ankle injury. Examination revealed tenderness over neck, low back and right ankle regions. Cervical spines X-ray showed no fracture. She was treated and discharged on the same day.
2. On 5 Nov 2011, Ms Yau consulted Dr Tio Man Kwun Peter (**Dr Tio**). She thereafter attended Hong Kong Sport and Dance Injury Centre on 5 occasions for treatment between 8 and 16 Nov 2011. On 22 Nov 2011, she consulted Dr T. K. Tan (**Dr Tan**). Afterwards, she received chiropractic treatment from a chiropractic doctor[[61]](#footnote-61) on 32 occasions from 22 Nov 2011 to 23 Apr 2012. On 20 Mar 2012, she consulted Dr Chang. These treatments sought by her are, I find, all proven by documents before me.
3. Ms Yau was given intermittently a total of 38 days of sick leave from 1 Nov 2011 to 24 Apr 2012. Such length of sick leave is proven by certificates produced and opined reasonable or acceptable by the 2 Experts and I so find.

*Diagnosis & causation*

1. Both the 2 Experts agreed in Joint Report, and I find, that Ms Yau suffered from soft tissues injuries at her neck, low back and right ankle as a result of the Accident. They both opined that such injuries are consistent with the mode or mechanism of injury she described.
2. Both the 2 Experts further agreed in their joint supplemental medical report dated 3 July 2017, and I find, that such laxity of anterior talofibular ligament of her right ankle (and instability of her right ankle) found on their joint examination in Nov 2016 (**the 2016 Examination**) was *unrelated* or not caused by the Accident[[62]](#footnote-62).
3. Hence, Mr Lung sensibly opened his case by abandoning the claim for future medical expenses (i.e. reconstruction surgery of Ms Yau’s right ankle) advanced in RSOD.

*Disability, prognosis & impairment*

1. Further, despite Ms Yau’s contrary evidence in the box, I agree with Dr Chiang’s opinion in the Joint Report that the severity of her complaints made in the 2016 Examination is likely due to post-Apr 2012 events or disease *unrelated* to the Accident and/or *over-emphasis* of symptoms on her part. Put another way, I agree and find that Ms Yau’s soft tissue injury to neck, back and right ankle had already achieved satisfactory recovery by about end of Apr 2012.
2. My reasons are that: -

(1) She suffered only soft issue injury in the Accident, with no fracture on X-ray nor neurological symptoms reported. It is, I think, inherently improbable that her symptoms arising therefrom remained unresolved and as severe as she claimed even by the 2016 Examination 5 years later.

(2) The fact that she did not seek further medical treatment after Apr 2012 is, in my view, supportive of her having achieved satisfactory recovery of her injuries.

(3) By her consultation with Dr Chang in Mar 2012, her *main* complaint was with right elbow and right flank and her neck and low back symptoms *at that stage* was, I agree with Dr Chiang and on the medical records of Dr Chang, *only mild*.

(4) *Most* symptoms complained by her in the 2016 Examination were, according to Dr Chiang and I agree, not noted by Dr Chang when she consulted him in Mar 2012 more than 4 years ago.

(5) The *objective* examination findings of neck and back in the 2016 Examination revealed, I agree with Dr Chiang, a likely satisfactory condition that did not support her then complaints.

1. For the above reasons, I find it also likely that Ms Yau has reached the stage of maximal medical recovery by about end of Apr 2012. In any event, both the 2 Expert agreed that she has so achieved by the 2016 Examination. They opined in the Joint Report that further treatment apart from stretching and strengthening exercise of the neck and back is not necessary and that further deterioration of these symptoms of her to require surgery is not expected.
2. And I think it likely, and I find, that Ms Yau has by trial only mild residual symptoms of pain, numbness and/or stiffness over her neck and spine that was caused by the Accident. Indeed, she agreed with Mr Lai in the box that further recovery has been achieved by her after the 2016 Examination.
3. In terms of percentage of total impairment of the whole person, in line with my agreement with Dr Chiang’s opinions on divers points, I prefer his assessment of 1% to 2% to that of 4% made by Dr Lee[[63]](#footnote-63). The former reflects, I think, a more accurate assessment of Ms Yau’s current residual neck and back symptoms that was caused by the Accident.
4. As to Ms Yau’s claimed inability to return to sports after the Accident and her evidence to that effect “for fear of aggravating her injuries”, I think it likely that she had only been *temporarily* handicapped to return to sports, if she enjoyed at all before the Accident, prior to end of April 2012 due to soft tissue injuries she received in the Accident (for which she soon mostly recovered) but that any subsequent incapacity, if any, was likely due to her ligament laxity of her right ankle *unrelated* to the Accident. The 2 Experts nowhere opined in the Joint Report that she could *never* return to sports after, and due to, her soft tissues injuries in the Accident.
5. Despite Ms Yau’s claim in her witness statement that she was devoted to sports before the Accident, she gave, I note, no particulars at all of such sports activities she participated prior to the Accident[[64]](#footnote-64). In the RSOD and in the Joint Report, she only mentioned about jogging (she said in the box she did that in order to reduce weight for her marriage in 2012) before the Accident and no more.
6. One last aspect of Ms Yau’s loss of amenities not challenged by defence (and, for this reason, I would accept) is her evidence in her witness statement dated 17 Dec 2015 that she had to avoid carrying[[65]](#footnote-65) her first *newborn* baby (born in 2013) due to her injuries in the Accident. This, I accept, is considerable loss of amenities to her in terms of her mother-and-child relationship and her self-esteem as a responsible mother. But such joy and duty is, one thinks, short-lived as the child would grow up with time such that carrying is no longer required.
7. In this respect, I also accept Ms Yau’s evidence, supported by Dr Lee’s opinion in the Joint Report, that she has, due to residual neck and back pain she suffers as a result of the Accident, impaired lifting capacity to perform strenuous activities such as lifting weight (though Dr Lee also opined, and I agree, that her overall neck and back function should still be in the satisfactory state).

*Pain, suffering & loss of Amenities (****PSLA****)*

1. At his opening, Mr Lung reduced Ms Yau’s claim for PSLA award to one of $180,000 to $220,000. Mr Lai suggested in closing an award in the range of $60,000 to $80,000 whereas Mr Lo submitted in closing that any award should not exceed $100,000.
2. Learned counsels have cited altogether a total of 12 comparable authorities[[66]](#footnote-66). Having carefully compared their circumstances against those of this case, I find the 3 cases cited at para 46.1, 46.3 and 46.4 of Mr Lung’s written opening submissions[[67]](#footnote-67) more comparable to our case than the cases cited by Mr Lai or Mr Lo.
3. All things considered, including having taken inflation into account, I consider an appropriate PSLA award in the circumstances of this case to be **$180,000**.

*Loss of earning capacity*

1. By his closing submissions, Mr Lung reduced Ms Yau’s claim for loss of earning capacity to a sum equal to 2 months’ of her monthly earnings i.e. $25,150, it being her case and evidence (that I accept) that she earned on average $12,575/month at the material times according to her tax documents.
2. Mr Lai helpfully reminded this court to the applicable principles on this head set out in *Yu Kok Wing v Lee Tim Loi* [2001] 2 HKLRD 306, 311J-312F[[68]](#footnote-68).
3. The 1st stage consideration of this head requires me to consider whether or not there is a “substantial” or “real” risk that a plaintiff will lose his present job at some time before the estimated end of his working life.
4. For reasons below, I do not think this 1st stage was met in this case.
5. Ms Yau, she said in the box, is a Form 5 graduate that has enrolled in secretarial course.
6. According to tax documents produced, she worked as a receptionist in 2010-2011 tax year before she joined Target Insurance Co Ltd (**Target**) as an administrative assistant.
7. Her *main* duties with Target, according to para 5 of her witness statement, are receiving guest by sitting at reception for long time[[69]](#footnote-69), answering telephone calls and using computer to do words processing works.
8. While I believe Ms Yau may be *incidentally* required to handle and move lever arch files in the course of her works with Target[[70]](#footnote-70), I find it unlikely her main duties. Put another way, unlike a construction worker, she is not frequently required to lift heavy weight from time to time in the course of her works.
9. As such, I find Ms Yau a clerical worker before the Accident.
10. On my findings above, she has already made satisfactory recovery of soft tissue injuries to her neck, back and right ankle by about end of Apr 2012.
11. Accordingly, I agree with Dr Chiang’s opinion in the Joint Report that Ms Yau should be able to work in the pre-injury job with a satisfactory capacity. Indeed, Dr Lee also considered Ms Yau working all along as a clerical worker and impairment in employability is not expected.
12. Hence, I cannot find any real risk of her losing her job with Target due to injuries she received in the Accident.
13. In so far Ms Yau raised for the first time in the box of losing promotional prospect in Target due to her injuries in the Accident, I have great doubt of such claim as it was not said *specifically* in her witness statement[[71]](#footnote-71). In any event, this is not her pleaded case for this head in RSOD, which referred to her having risk of her being sacked and difficulty of finding another job in the future.
14. In fact, as Ms Yau admitted in the box, she left Target in 2016 on her own due partly to her birth of a 2nd child in 2016 and thereafter became a housewife financially dependent on her husband in part.
15. Since such departure from Target in 2016, as was also said by her in the box, she has not tried finding jobs thereafter and has never reapplied to work in Target again.
16. Though it is not uncommon for married housewife with children to return to labour market after the children have grown up and the remaining length of estimated working life of Ms Yau remains long in view of her age today, in view of her training, past working experience and family circumstances, I think it unlikely that she would seek blue collar jobs requiring lifting in the future. More likely than not, she would seek clerical jobs that she did in the past.
17. As such, Dr Lee’s opinion in the Joint Report that Ms Yau may have difficulty returning to jobs that require lifting is, I think, neither here nor there.
18. And I cannot therefore find any real risk of Ms Yau being handicapped in the labour market should she really return to it in the rest of her working life.
19. This head, I therefore conclude, fails on the 1st stage.

*Special damages*

*Medical expenses*

1. Mr Lai agreed to plaintiff’s claim of medical expenses in the total sum of $25,610. They are well supported by documents. Mr Lo also agreed to such total sum spent by Ms Yau but disputed her entitlement to 2 items thereof.
2. Mr Lo first submitted that Ms Yau’s consultation with Dr Chang in Mar 2012 had nothing to do with the Accident or her injuries in the Accident. I disagree. While she “mainly” complained of right elbow symptoms in that consultation, she also made that visit to Dr Chang “for the management of the residues from 1 Nov 2011” according to Dr Chiang at the Joint Report.
3. Mr Lo next submitted that such chiropractic treatment Ms Yau has received was not recommended by medical practitioner nor endorsed by the 2 Experts. Again, I disagree. First, Dr Tan, a medical practitioner, did refer Ms Yau to receive chiropractic treatment[[72]](#footnote-72). Secondly, while the 2 Experts only considered conservative treatments of medication and physiotherapy given to Ms Yau appropriate, they both also said at the Joint Report that chiropractic treatment is a common treatment modality that patients would look for in cases of back and neck pain.
4. I therefore allow medical expenses of **$25,610** claimed by Ms Yau in full.

*Tonic food*

1. Ms Yau’s claim for tonic food fails, I think, for the simple reason of lack of evidence of her consumption.

*Travel expenses*

1. I allow travel expenses as parties agreed in the sum of **$1,000**.

*Summary*

1. On my assessment, the total amount of damages payable to Ms Yau for injuries she sustained in the Accident is therefore **$206,610** i.e. $180,000 + $25,610 + $1,000.

*Disposition of main action*

1. Accordingly, I enter judgment in plaintiff’s favour against the 1st defendant in the sum of $206,610 together with interest on PSLA award of $180,000 at 2% p.a. from the date of service of the writ to the date of this judgment and also interest on special damages in sum of $26,610 at half judgment rate from the date of the Accident to the date of this judgment.
2. And I dismiss plaintiff’s claim against the 2nd defendant.

*Costs of main action*

1. As agreed by all parties in closing, submissions on the costs of the main action are to be made by all 3 parties, and decided by this court, after this judgment is handed down.

*Disposition, and costs, of the Contribution Proceedings*

1. Submissions on such order(s), if any, to be made in the Contribution Proceedings and on the costs order to be made therein are also to be made by D1 and D2, and decided by this court, after this judgment is handed down.

*Directions for further submissions*

1. I direct parties to discuss among themselves, to endeavor, if practicable, to agree on the matters in the preceding 2 paragraphs and to jointly report in writing to this court within 14 days of this judgment or such extended time this court allows on application by joint letter:

1) the contents of such full or partial agreement, if any, they have reached;

2) the issues that require this court to resolve on such areas they disagree among themselves (or the different orders that the parties propose this court to make);

3) whether or not the parties agree for this court to resolve the disputed issues on paper without oral hearing and, if agreed, what directions for filing and service of written submissions the parties propose this court to make; and

4) if no to 3) above, what directions of filing and service of skeleton submissions and what length of oral hearing required for resolving the disputed issues they propose this court to make and arrange.

1. The parties are at liberty to apply jointly for such other directions for making further submissions if required.
2. Finally, it remains for me to thank all 4 counsels for their submissions and assistance.

(LEE Siu-ho)

Deputy District Judge

Mr Vincent LUNG and Ms Ivy HO, instructed by Messrs. K. H. Teh & Co., for the Plaintiff

Mr Brian LO, instructed by Messrs. Huen & Partners, for the 1st Defendant

Mr Alex Y.H. LAI, instructed by Messrs. Li & Partners, for the 2nd Defendant

1. Leading Ms Ivy Ho [↑](#footnote-ref-1)
2. There were altogether 18 odd number floors. The lowest of them was 1/F. The highest of them was 35/F. [↑](#footnote-ref-2)
3. according to one Table 1 referred below [↑](#footnote-ref-3)
4. according to an Incident Report of the Fire Services Department referred below [↑](#footnote-ref-4)
5. according to a safety test and examination report referred below [↑](#footnote-ref-5)
6. clauses 1.1, 1.2 and 3.16 [↑](#footnote-ref-6)
7. sections 14(1), 16 and Schedule 1 (item 9) of Cap. 344 [↑](#footnote-ref-7)
8. It was signed by D1’s manager (營業經理) in name of 黃偉強. [↑](#footnote-ref-8)
9. The persons authorized are (a) registered lift engineer; (b) competent lift worker employed by a registered lift contractor; and (c) a worker directly supervised, at the site where the lift works are being carried out, by a registered lift engineer or a competent lift worker employed by a registered lift contractor. [↑](#footnote-ref-9)
10. which works include testing, maintenance, repair of a lift and any associated inspections or examination [↑](#footnote-ref-10)
11. “Owner”, in relation to a lift, means the owner of the building in which the lift is installed: section 2 of L&ESO. I find the IO “owner” of the Lift under L&ESO. [↑](#footnote-ref-11)
12. 2002 Edition [↑](#footnote-ref-12)
13. under s.27G of L&ESO [↑](#footnote-ref-13)
14. Item 4.6: “light in well” marked “Fair” [↑](#footnote-ref-14)
15. 需即時跟進項目 [↑](#footnote-ref-15)
16. 需要業主跟進的項目（出信） [↑](#footnote-ref-16)
17. The 9 columns are: (1) date & time contractor’s representative arrived at site; (2) type of work with 3 choices: (i) breakdown, (ii) trapping, and (iii) routine; (3) lift number; (4) date & time passenger released; (5) cause of fault or work done &/or parts replaced; (6) date & time service resumed; (7) engineer’s or worker’s chop & signature; (8) remark(s); and (9) owner’s or owner’s agent’s name & signature. [↑](#footnote-ref-17)
18. with the identifying number 8090T, as recorded in column (7) [↑](#footnote-ref-18)
19. They are the 8th, 9th, 15th, 18th & 19th entries on that page. There are altogether 20 entries at p.45 of the Logbook. [↑](#footnote-ref-19)
20. with the identifying number 8166C recorded in column (7) [↑](#footnote-ref-20)
21. It was the bottom entry at p.45 of the Logbook [↑](#footnote-ref-21)
22. The chop of Chow was found in column (7). [↑](#footnote-ref-22)
23. Except for some minor timing differences which I do not find it necessary to resolve, their contents in this respect are, I think, consistent. [↑](#footnote-ref-23)
24. in June 2016 [↑](#footnote-ref-24)
25. For lack of Wong from the witness stand, it is, of course, inadmissible. [↑](#footnote-ref-25)
26. Wong Wai Keung [↑](#footnote-ref-26)
27. In July 2017 [↑](#footnote-ref-27)
28. It reads: “On 1 Nov 2011 but after the Accident, Mr Wong Wai Man (transliteration of 黃偉文), an employee of D1, discovered that the Accident was caused by a defect at the KVAB Relay (KVAB繼電器), and that the KVAB Relay had to be replaced”. The Amended Statement of Claim was filed in Dec 2017. [↑](#footnote-ref-28)
29. filed in Mar 2018 [↑](#footnote-ref-29)
30. It reads: “The Accident was caused by the defect and/or mal-functioning and/or failure of a component of the Lift, namely the KVAB relay (KVAB 繼電器), which needed to be replaced and which D1 was responsible as the maintenance contractor and the registered lift contractor”. [↑](#footnote-ref-30)
31. filed in May 2017 [↑](#footnote-ref-31)
32. filed in June 2017 [↑](#footnote-ref-32)
33. Especially para 7 to 9 of his supplemental witness statement, which in turn referred to the Logbook annexed to his witness statement [↑](#footnote-ref-33)
34. See also para 28 of *Sanfield*, supra. [↑](#footnote-ref-34)
35. At para 50 of the judgment [↑](#footnote-ref-35)
36. At para 203 of the judgment [↑](#footnote-ref-36)
37. The scaffold was found to be stationary with its castors locked before the accident. This concurrent findings of fact by the trial judge and by the court of appeal was not disturbed before the court of final appeal, see para 10 & 16 of the judgment. [↑](#footnote-ref-37)
38. See para 8 of the judgment [↑](#footnote-ref-38)
39. See para 57 & 59 of the judgment [↑](#footnote-ref-39)
40. cited by both defence counsels [↑](#footnote-ref-40)
41. See para 36 & 37 of the judgment [↑](#footnote-ref-41)
42. “但導靴破爛離位亦可因不當使用，如過重，猛烈撞擊升降機造成。這是不能預測的。在此情況下，即使第二被告人記錄了導靴的更換日期，並根據其耐用性，定期作出更換，都對不能預測的情況沒有任何幫助，就如汽車的輪呔。雖已作適當維修及檢查，但仍會在行駛中，碰到尖物而爆呔或洩氣，這是不能避免的。” [↑](#footnote-ref-42)
43. “Further, it must be borne in mind that even if a lift owner or lift manager has properly maintained his lift, the lift may still break down due to sudden, unforeseeable, or even unknown reasons. It is because accidents sometimes happen without the fault or negligence of anyone.” [↑](#footnote-ref-43)
44. Ms Yau, Mr Lo argued, should have adduced evidence to show that D1 could have avoided the Accident had its maintenance works been carried out to the required competence and frequency but she did not do so. [↑](#footnote-ref-44)
45. See para 4 of Mr Lai’s written opening submissions [↑](#footnote-ref-45)
46. I give no weight to CP Wong’s evidence at para 9 of his supplemental witness statement that the regular maintenance of the Lift carried out by D1 on 18 Oct 2011 *included KVAB Relay*. He did not participate in the said maintenance works. And he no longer managed the Estate by then. [↑](#footnote-ref-46)
47. See para 89(8) of the judgment [↑](#footnote-ref-47)
48. See para 14-19, 87-94 of the judgment [↑](#footnote-ref-48)
49. D1 was, as I have said above, a competent contractor for the same, whether or not it should be described as a “first class” contractor. In any event, it was the IO, and not D2, which had the right to accept, and which had accepted, D1’s tender for the 2011 Contract. [↑](#footnote-ref-49)
50. He never alleged that their maintenance regime, including frequencies of inspection, testing and examination, were in any way insufficient or deficient. [↑](#footnote-ref-50)
51. “where damage is caused to a visitor by a danger due to the faulty execution of any work of construction, maintenance or repair by an independent contractor employed by the occupier, the occupier is not to be treated without more as answerable for the danger if in all the circumstances he had acted reasonably in entrusting the work to an independent contractor and had taken such steps (**if any**) as he reasonably ought in order to satisfy himself that the contractor was competent and that the work had been properly done *(bold added to indicate emphasis laid by Mr Lai)*” [↑](#footnote-ref-51)
52. *Berryman v London Borough of Hounslow* [1997] PIQR P83, P85 [↑](#footnote-ref-52)
53. Compare Goddard LJ’s similar observations on report sent by engineer to landlord at 370-371 of *Hazeldine*, supra. [↑](#footnote-ref-53)
54. CP Wong left D2 in Oct 2018, he said. [↑](#footnote-ref-54)
55. At para 44 of plaintiff’s written opening submissions [↑](#footnote-ref-55)
56. The incorporated owners being 1st defendant and the property management company being the 2nd defendant [↑](#footnote-ref-56)
57. At para 14 to 17 of the judgment. The duty to keep lifts maintained, it was further said, means more than a duty to attend to cases where there has been a malfunction of the lifts and also extends to taking such preventive measures as will ensure that the lifts will not malfunction. [↑](#footnote-ref-57)
58. The trial judge found that 6 escalators in the airport for unknown reasons stopped 30 times within one year, 6 of which occurred in respect of T1V2, which was the escalator involved in the accident, and that the occurrences were rather frequent. [↑](#footnote-ref-58)
59. Neither the defendant authority nor its escalator contractor could produce evidence accepted by the court that repairs and maintenance had been done at regular intervals to the escalator involved. The theory they advanced that the escalator stopped because someone pressed the emergency bottom was totally rejected by the trial judge: see para 29-31 & 33 of the judgment [↑](#footnote-ref-59)
60. See para 109 & 110 of the judgment [↑](#footnote-ref-60)
61. Vincent Chan [↑](#footnote-ref-61)
62. The reasons being the A&E Dept records of TMH showed only tenderness at right ankle. Subsequent medical records and sick leaves showed no more treatment directed to right ankle. Examination by Dr Tio on 5 Nov 2011 revealed only right medial ankle pain and not any ligament disruption. Such symptoms over right ankle revealed to Dr Tio were over the medial (inner) side while the laxity noted by the 2 Experts in the 2016 Examination was over the lateral (outer) side of the right ankle. Neither was right ankle symptoms mentioned to Dr Chang in Mar 2012. [↑](#footnote-ref-62)
63. Dr Lee no longer maintained in the joint supplemental medical report the 3% impairment he opined in the Joint Report for the inability of Ms Yau’s right ankle as it was not shown to be related to the Accident. [↑](#footnote-ref-63)
64. She said of ball games under cross-examination by Mr Lai but particulars of her pre-Accident participation were also lacking, not to mention that “ball games” was never mentioned in her witness statement. [↑](#footnote-ref-64)
65. Including “【騎膊馬】” referred to at para 33 of her witness statement. [↑](#footnote-ref-65)
66. See para 46 of plaintiff’s written opening submissions, para 35-38 of D1’s written opening submissions and para 47-50 of D2’s written opening submissions [↑](#footnote-ref-66)
67. They are 1) *Tong Chun Yip v Leung Sai Lau* [2019] HKDC 48; 2) *Wong Eleven v China Way Transportation* [2018] HKDC 1016; 3) *Chiu Man Chi v Motorola Asia Pacific Ltd*, unreported, HCPI 150/2011, 16 Mar 2016 [↑](#footnote-ref-67)
68. Where the court of appeal referred to *Chan Wai Tong v Li Ping Sum* [1985] HKLR 176, 183B-D, and *Moeliker v A Reyrolle & Co Ltd* [1977] 1 WLR 132, 142A-C [↑](#footnote-ref-68)
69. 長時間於前臺端坐迎候來賓 [↑](#footnote-ref-69)
70. Which task she can, I think, handle alone with such number of files of such weight *within* her capability, with help of colleague(s) or with equipment like trolley [↑](#footnote-ref-70)
71. Including para 32 where she claimed it was so covered. [↑](#footnote-ref-71)
72. See referral letter addressed to Vincent Chan given by Dr Tan at p.420 of trial bundle [↑](#footnote-ref-72)