

**Li Xian v Tat Lee Supplies Co., Inc.**

2011 NY Slip Op 34180(U)

November 17, 2011

Supreme Court, Bronx County

Docket Number: 304347/2009

Judge: Lucindo Suarez

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX: I.A.S. PART 19

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LI XIAN and XONGYING REN a/k/a LILY REN,

Plaintiffs,

DECISION AND ORDER

Index No. 304347/2009

- against -

TAT LEE SUPPLIES CO., INC., LORIMER  
DEVELOPMENT, LLC, EIGHTH AVENUE BUILDERS  
CORP., J&H SEAFOOD, INC., and JINGXHI LI,

Defendants.

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PRESENT: Hon. Lucindo Suarez

Upon inquest conducted November 10, 2011 (Angela Hofmeister, Senior Court Reporter); the action against defendants Lorimer Development, LLC and Eighth Ave. Builders Corp. having been discontinued by stipulation filed September 1, 2010; and due deliberation; the court finds:

Plaintiffs Li Xian and Zongying Ren a/k/a Lily Ren both sustained traumatic brain injuries when they were assaulted with a hammer while working inside defendant's premises. The perpetrator was later identified as defendant Jingzhi Li. Both plaintiffs were transported to Bellevue Hospital Center ("Bellevue") after the incident.

Xian sustained severe comminuted fractures to the superior and posterior aspects of the parietal bones with depressed fracture fragments; pneumocephalus; subarachnoid and epidural hematoma and hemorrhage; parenchymal contusions; and multiple contusions and lacerations to the head and hands. Xian has undergone no less than six surgical procedures after the incident, including a biparietal convexity craniotomy, cranioplasty with titanium wire mesh, wound debridement, and the insertion of an IVC filter.<sup>1</sup> Xian has also undergone a rotational scalp flap procedure, placement of a tissue

<sup>1</sup> The medical records also identify plaintiff's first surgery as a biparietal craniectomy.

expander, and hair placement. Although Xian contracted MRSA during his admission, the infection did not cause any significant complications to the treatment of his open head wound.

Xian also sustained a comminuted fracture of the first metacarpal in his left hand and a fracture of the fourth metacarpal and a comminuted fracture of the fifth metacarpal in his dominant right hand.

Xian's left hand injury was treated with a spica splint. The right hand injury was treated with closed reduction and percutaneous pinning. Lacerations to both his hands were closed with sutures.

Xian experienced some right-sided paralysis during his admission in Bellevue. A CT scan of the cervical spine taken after the accident noted evidence of multilevel degenerative changes, specifically disc osteophyte complexes at C4-C5 and C5-C6 and some spinal compromise, but no evidence of a traumatic injury. CT scans of the thoracic spine and lumbar spine taken two days after the accident revealed mild disc bulges and degenerative osteophyte formation from T8 through T12 but no other proof of a traumatic injury. Xian received occupational therapy and rehabilitation for cognitive difficulties and functional mobility. He regained functionality in his right leg and arm and used a cane, walker and wheelchair to move about the hospital.

Xian remained at Bellevue for approximately two and one-half months before being released to Coler Goldwater Special Hospital and Nursing Facility ("Coler Goldwater") to continue his rehabilitation. Since his release from Coler Goldwater, Xian has complained of numbness to his lower extremities, especially to his right leg and foot, and suffered from constant right foot drop. In June 2009, his doctor confirmed Xian suffered from spastic hemiparesis on his right side as a residual sign of his traumatic brain injury. In March 2010, Xian underwent a C5 corpectomy with discectomy and fusion of C4 through C7 to treat spastic paraparesis and signs of myelopathy. Although the procedure appeared to alleviate some of his symptoms, Xian was still unable to walk without using a cane or walker.

Imaging records from 2008 show that the left hand injury had fully healed. However, Xian developed a mallet finger deformity of the fourth finger of his right hand in August 2008. The condition was treated with a mallet finger splint. A 2009 MRI of the brain revealed encephalomalacia and gliosis on the parietal lobes bilaterally but no other changes.

At the time of the incident, Xian owned a business selling seafood products. He has not returned to work. He is now divorced and lives alone in an apartment in an elevator building. He is wheelchair bound and relies on a home health aide to assist him in all his daily living activities. He still experiences pain in his head, back and legs. He can no longer golf, play tennis, or vacation with friends.

Ren sustained bifrontal calvarial fractures, with a comminuted frontal fracture of the left calvarium and a minimally displaced frontal fracture of the right calvarium over the right orbital roof; epidural hematoma; hemorrhages along the fracture lines; pneumocephalus on the left side; ecchymosis around the right eye; scalp and facial lacerations requiring sutures and staples; and multiple contusions. None of Ren's injuries required surgical intervention. More recent CT scans reveal healed bifrontal bone fractures with a mild depression deformity of the left frontal bone. Ren also sustained a sprained right wrist, which was treated with a splint. Ren was admitted to Bellevue for over one month for treatment, which included occupational therapy and rehabilitation for cognitive difficulties, safety awareness, balance/coordination, and functional mobility.

After her release from Bellevue, Ren received treatment for post-traumatic stress disorder and depression. She also received treatment for pains to her spine and shoulder. A CT scan of the cervical spine taken shortly after the accident revealed a disc herniation and endplate osteophytic ridging at C5-C6, suggestive of degenerative disc disease, but no evidence of a traumatic injury. X-rays taken in May 2008 of the cervical and lumbar spine and right shoulder were also unremarkable. However, MRIs of

those areas taken the following year showed mild bulging and mild hypertrophic changes L4-L5 and L5-S1, and disc herniation at C5-C6 and joint effusion and swelling of the right shoulder. Ren received treatment for her right shoulder and neck and back pain for nearly three years. Medical evaluations performed during that period show she complaint of constant headaches and dizziness.

Ren, who was married when the incident occurred, is now divorced. She lives with her seventeen year old daughter and relies upon her daughter to perform all household tasks, such as cooking, cleaning and shopping. She has not worked since the incident. She can no longer attend church, vacation with friends, dance or visit her daughter's school. Ren also testified she often suffers from headaches and dizziness.

At inquest, plaintiffs met their burden of proof by establishing damages by a preponderance of the evidence through the presentation of credible and competent testimonial and documentary evidence.

Accordingly, it is

ORDERED, that plaintiff Li Xian is entitled to judgment in the amount of six million dollars (\$6,000,000.00) in damages; and it is further

ORDERED, that plaintiff Zongying Ren a/k/a Lily Ren is entitled to judgment in the amount of one million seventy hundred fifty thousand dollars (\$1,750,000.00) in damages; and it is further

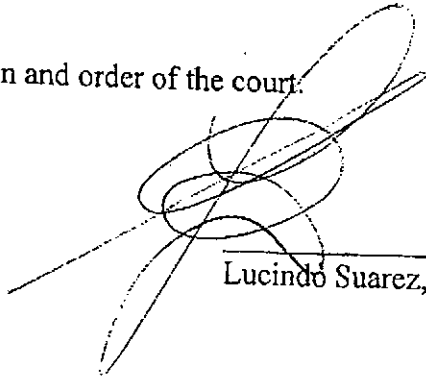
ORDERED, the action against defendants J&H Seafood, Inc. and Jingzhi Li is severed and dismissed as abandoned; and it is further

ORDERED, that the clerk of the court is directed to enter judgment in the amount of seven million seven hundred fifty thousand dollars (\$7,750,000.00) against defendant Tat Lee Supplies Co., Inc.; and it is further

ORDERED, that the clerk of the court is directed to enter judgment in favor of defendants J&H Seafood, Inc. and Jingzhi Li dismissing plaintiffs' complaint against them.

This constitutes the decision and order of the court.

Dated: November 17, 2011



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Lucindo Suarez, J.S.C.