

1 **IN THE GRAND COURT OF THE CAYMAN ISLANDS**
2 **HOLDEN AT GEORGE TOWN**

Cause No: 101/2007

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6 **BETWEEN:**

EDDIE TRIMMINGHAM

PLAINTIFF

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10 **AND:**

PHOENIX CONSTRUCTION LTD.

DEFENDANT

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15 **Appearances:**

**Mr. Kyle Broadhurst and Mrs. Terrence
Caudeiron of Broadhurst Barristers for the
Plaintiff**

**Mr. Shaun McCann and Mr. Gary
Hendrikse of Campbells for the Defendant**

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22 **Before:**

The Hon. Mr. Justice Charles Quin

23 **Heard:**

2nd, 3rd and 4th August 2010

24 **Defendant's written submissions filed:**

17th August 2010

25 **Plaintiff's written submissions filed:**

3rd and the 13th September 2010

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27 **RULING**
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- 30 1. On the 25th August 2006 the Plaintiff was employed by the Defendant and directed
31 by a servant or agent of the Defendant to attach a steel fixture to a steel beam with
32 the use of a Hilti nail gun. The Plaintiff was working with a co-worker, Mr.
33 Anthony Marrant ("Mr. Marrant") who was using the gun when a nail discharged
34 from the Hilti gun and flew into the Plaintiff's left eye and, as a result, the Plaintiff
35 suffered serious personal injury, pain and suffering, and was taken to the George
36 Town Hospital, Grand Cayman.

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PLEADINGS



2. On the 8th March 2007 the Plaintiff issued his Writ of Summons and Statement of Claim. The Plaintiff claimed damages for injuries, loss and damage by reason of the breach of statutory duty owed by the Defendant to the Plaintiff, pursuant to s.62(b) of the Labour Law (2001 Revision), and by reason of the negligence of the Defendant, its servants and agents.

3. The Plaintiff pleaded that s.62(b) of the Labour Law applied, and that the Defendant was in breach of its statutory duty, by not ensuring that suitable safety glasses or protective screens were provided to protect the eyes of the Plaintiff who was employed in a process involving a special risk of injury to the eyes in accordance with, or as required by, the provisions of s.62(b) of the Labour Law.

4. Further, or in the alternative, the Plaintiff pleaded that the said injuries, loss and damage were caused by the negligence of the Defendant, its servants or agents, the particulars of which are set out at paragraph 7 of the said Statement of Claim:

“7. ...

- a) *Failing to take any or any adequate precautions for the safety of the Plaintiff while he was engaged in this work.*
- b) *Exposing the Plaintiff to a risk of damage or injury of which they knew or ought to have known.*
- c) *Failing to provide the Plaintiff with adequate or suitable appliances and in particular with any or any suitable goggles/safety glasses or protective screens to enable him to*

1 7. The Defendant averred that the Plaintiff had been given prior training in health and
2 safety, especially on the importance of personal safety equipment, such as safety
3 glasses. The Defendant averred that the Plaintiff was aware of the Defendant's
4 written safety policy when it is stated that the employee was to cease work
5 immediately in any circumstance where a danger exists, until such time as the
6 necessary safety precautions could be implemented.

7
8 8. The Defendant pleaded that the Plaintiff obtained the Hilti gun from the tool box
9 without prior consent from Mr. Trinier.

10 9. In addition to denying the Plaintiff's claim the Defendant also pleaded that the
11 Plaintiff's injuries, loss and damage were caused solely, or were contributed to, by
12 the Plaintiff's own breach of s.64(1) and s.64(3) of the Labour Law (2001 Revision)

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14 10. The Defendant also pleaded in its Defence that the accident was caused solely or
15 contributed to by the negligence of the Plaintiff, and also pleaded that the
16 particulars of the Plaintiff's negligence were that the Plaintiff:

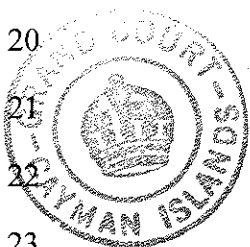
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18 *"1. Failed to take any adequate precautions, or at all, for his own safety by not*
19 *wearing safety glasses provided by the Defendant;*

20 *2. Failed to follow the instructions from Mr. Trinier, in that he did not use*
21 *either the TEC screws or obtain and use the hardened Hilti nails;*

22 *3. Failed to use the correct equipment, in that mild steel Hilti nails were used*
23 *in the Hilti gun, which was contrary to Mr. Trinier's instructions;*

24 *4. Failed to comply with the Defendant's safety policy;*

25 *5. Failed to follow the Defendant's health and safety information and written*
26 *instructions pertaining to the use of equipment and/or safety equipment;*



1 6. *Exposed himself to the risk of injury;*

2 7. *In all the circumstances fail[ed] to take any care for his own personal*
3 *safety and welfare whilst in the employ of the Defendant, particularly when*
4 *carrying out Mr. Trinier's instructions on Friday the 25th August 2006."*

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6 11. On the 6th September 2007 the Plaintiff filed his Reply. In his Reply the Plaintiff
7 denied that he had been given prior training in health and safety, especially in
8 relation to the importance of personal safety equipment such as safety glasses.

9
10 12. The Plaintiff denied that he was aware of the Defendant's written safety policy.

11
12 13. The Plaintiff denied that he had not followed the instructions of the foreman, Mr.
13 Trinier – averring that he had informed the foreman that the driver for the screws
14 that had been provided could not be located, and that he had obtained the nails from
15 Mr. Richard Graham ("Mr. Graham") from whom the foreman had directed him to
16 obtain them.

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18 14. The Plaintiff denied that he had obtained the Hilti gun without the foreman's
19 permission.

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21 15. The Plaintiff admitted that he had allowed his co-worker, Mr. Marrant, to use the
22 safety glasses which he had retrieved from his vehicle. Further, the Plaintiff
23 admitted that he was not wearing any safety glasses at the time of the accident.



EVIDENCE

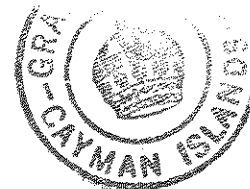
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16. The Plaintiff stated in his witness statement dated the 26th March 2008 that the Defendant's foreman, Mr. Trinier, gave the Plaintiff and his co-worker, Mr. Marrant, instructions to frame the overhead steel beam and then cover it with sheetrock. Mr. Trinier told the Plaintiff and Mr. Marrant that they could use either screws or a Hilti gun and nails to attach the track to the steel beam, and then to that they would attach the sheetrock.

17. The Plaintiff and Mr. Marrant decided to use ¾ inch screws. The Plaintiff made an initial search for ¾ inch screws and when he could not find any he went to Mr. Trinier in his office – which the Plaintiff stated is located in, and forms a part of, the storage container.

18. Mr. Trinier told the Plaintiff that he had no ¾ inch screws, but took the Plaintiff to the storage area of the container, where they began looking through some boxes in search of the screws. Mr. Trinier gave the Plaintiff some 6-inch screws. The Plaintiff said that they would be too long and Mr. Trinier insisted that the Plaintiff should try them.

19. The Plaintiff went back to Mr. Marrant, who expressed surprise about the use of the 6 inch screws. The Plaintiff then looked for the driver tip and could not find one.



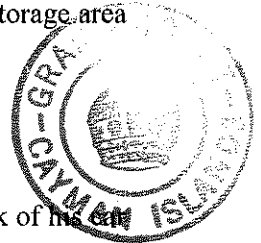
1 20. The Plaintiff averred in his evidence that he went back to Mr. Trinier and told him
2 that he could not get the correct driver tip for the screws. Mr. Trinier then told the
3 Plaintiff to use the Hilti gun. The Plaintiff asked Mr. Trinier if he had any 3/8th inch
4 nails. Mr. Trinier told the Plaintiff to go and ask Mr. Graham for some 1/2 inch or 3/4
5 inch nails because he thought that the 3/8th inch nails were finished.

6 21. The Plaintiff went to ask Mr. Graham for the nails and Mr. Graham provided him
7 with 1/2 inch nails.

8
9 22. The Plaintiff's evidence is that after collecting nails he returned to the storage
10 container and found the Hilti gun case. The Plaintiff's evidence is that he opened
11 the case to make sure that everything was inside, and then noticed that there were
12 no safety glasses, only the Hilti gun and some powder shells. Consequently,
13 according to the Plaintiff, he began looking around the storage container for safety
14 glasses, but was unable to find any.

15
16 23. The Plaintiff's evidence was that he went back to Mr. Trinier who was in his office
17 and told him that he could not find any safety glasses – either in the Hilti gun case
18 or in the storage area of the container. The Plaintiff's evidence is that Mr. Trinier
19 told him to go and look around and said words to the effect, "*There must be a pair*
20 *somewhere in there.*" The Plaintiff said he looked a second time in the storage area
21 of the container but still could not find any.

22
23 24. The Plaintiff then recalled that he had a pair of safety glasses in the trunk of his car
24 and, accordingly, he went and retrieved them. He recalled that Mr. Marrant had
25 given him these glasses approximately two months earlier.



1 25. The Plaintiff went back upstairs to where he and Mr. Marrant were working. He
2 recalls Mr. Marrant picking up the Hilti gun case and opening it. The Plaintiff's
3 evidence is that Mr. Marrant opened the Hilti gun case and Mr. Marrant also stated
4 that there were no safety glasses inside. The Plaintiff said that he knew that, and
5 that is why he brought the pair of safety glasses from the car.

6
7 26. The Plaintiff's evidence is that Mr. Marrant then went away and whilst he was
8 away the Plaintiff started to measure and cut the tracks for fitting to the steel beam.

9
10 27. When Mr. Marrant returned to the Plaintiff, Mr. Marrant picked up the safety
11 glasses and put them on. Mr. Marrant then attached the first piece of track that the
12 Plaintiff had cut. Mr. Marrant was having difficulty attaching the second piece of
13 track and therefore the Plaintiff climbed on to the scaffolding to hold one end of the
14 track in an effort to keep it in place. Next, Mr. Marrant attempted to fire the Hilti
15 gun again and the nail shot past the Plaintiff's right eye and hit his left eye. The
16 Plaintiff immediately felt severe pain and came down off the scaffolding. Mr.
17 Marrant drove the Plaintiff to the hospital where he received treatment.

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CROSS EXAMINATION OF PLAINTIFF

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28. In cross examination from Defendant's counsel the Plaintiff denied ever being issued with any glasses by the Defendant. In addition, the Plaintiff said that on that site he had not been issued with any safety glasses. He only went for the glasses in his car because he remembered that Mr. Marrant had given them to him some weeks earlier. The Plaintiff's position is that it was for the foreman to ensure that a worker had safety glasses whenever there was a job to be done, such as the one he was doing with Mr. Marrant.

29. The Plaintiff's evidence is that Mr. Bill McRae ("Mr. McRae") who was the foreman on the last Phoenix job site, always insisted on providing safety equipment, but equally, he always insisted that the safety equipment, such as safety glasses, were returned to the foreman when a worker left the site or completed a job. The Plaintiff said that Mr. McRae would ensure that *"we have the right safety tools to work with and that was something Mr. McRae always stressed."*

30. By comparison, the Plaintiff said that when he went back to Mr. Trinier for safety glasses, he got the impression that Mr. Trinier was annoyed.

31. The Plaintiff denied ever seeing any safety glasses in Mr. Trinier's office.



1 32. The Plaintiff accepted that he knew that the task he was undertaking was
2 dangerous, but he said that he allowed Mr. Marrant to use his safety glasses
3 because he was the operator of the Hilti gun. The Plaintiff said he and Mr. Marrant
4 worked as a team and as Mr. Marrant was the operator he allowed Mr. Marrant to
5 wear the safety glasses.

6
7 33. Asked why he did not simply down tools and tell Mr. Trinier that he would not
8 undertake the task, the Plaintiff said he did not consider that to be an option and, in
9 fact, the Plaintiff said that he felt that to take that course would have been
10 disastrous, because he would be opposing a directive, and a directive that came
11 from Mr. Trinier himself. The Plaintiff said he viewed that option as “*a sure case of*
12 *being fired*” – not just because of the act, but because of who and how Mr. Trinier
13 was. The Plaintiff said that, against that background, he decided that he would “*just*
14 *look away when Mr. Marrant fired the gun.*” Regrettably, this did not prevent the
15 accident from occurring.

16
17 34. The Plaintiff candidly admitted that he was aware of the risk of not wearing safety
18 glasses, even though he was only assisting the operator, and stated that his method
19 was simply to turn his face away – which, he felt, was the only option at that time.

20
21 35. The Court noted that the Defendant’s counsel actually complimented the Plaintiff
22 on his honesty in this regard.



1 36. However, in cross examination the Plaintiff maintained his position that every
2 foreman issues the worker with safety glasses whenever there is a job like the one
3 he and Mr. Marrant were assigned and doing at the time of the accident. The
4 Plaintiff went on to state that whenever a worker went on a site, *"it was the duty of*
5 *the foreman on the site [to give the safety glasses], depending upon the job, if the*
6 *job entails that you do the work we do, then the foreman gives you a pair of*
7 *goggles."*

8
9 **MEETING ON THE 15TH MARCH 2006**

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11 37. The Plaintiff was asked by the Defendant's counsel about what he described as a
12 "safety briefing" held on the 15th March 2006. The Plaintiff had no recollection of
13 that meeting, and despite vigorous cross examination said he was not aware of it
14 nor did he attend.

15
16 **SAFETY POLICY**



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18 38. The Plaintiff was shown a copy of the Defendant's safety policy document and said
19 that he had never been given any safety document.

20
21 39. The Plaintiff said:

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23 *"When you go on a site the foreman has all the goggles, all the overalls,*
24 *whatever tool you need, and when you leave that site you leave everything there*
25 *and you go to another site, there is another foreman, and it's the same type of*
26 *job, would issue the items we needed."*
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1 43. The Plaintiff said:

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“The joke was the goggles in itself. It was what you call nerdy and I did make a comment on it referring to Steve Urkel, the comedian on this comedy show, and you know I told him I would have preferred a brand name. I never did use the word stylish. It was meant as a joke, it was purely a joke and I was actually surprised to read that Bill did put that in here because it was a joke.”

8

9 44. The Plaintiff was asked what happened to these safety glasses. He said they were left at the job site because *“Bill McRae was very adamant in stating to us continuously that the job in itself was...”* and the Plaintiff forgot the term Mr. McRae used but it was more or less that whatever was purchased on the job site stays on the job site.

14

15

WALK-OFF-THE-JOB OPTION

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17 45. The Plaintiff was vigorously cross examined as to why he did not refuse to assist Mr. Marrant until he received an additional pair of safety glasses. The Plaintiff told the Court that this would have been disastrous, meaning, he might have lost his job. In other words, the Plaintiff said that he would be opposing Mr. Trinier’s directive and therefore he never considered not assisting Mr. Marrant an option, even though he had no safety glasses to wear. The Plaintiff said:

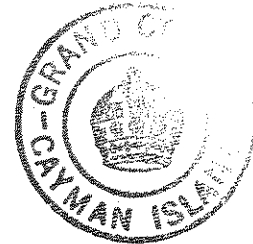
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“I just look[ed] at it as a sure case of being fired, not just because I refused a directive but also because of who Mr. Trinier was and how he is.”

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FIVE PAIRS OF SAFETY GLASSES

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46. The Plaintiff was cross examined about the existence of five pairs of safety glasses. He said, “*I have no idea.*” He said that he did search in the storage container. He did approach Mr. Trinier and ask him for safety glasses. And the Plaintiff said that if there were some, either on the desk or on the top of the computer, he would have seen them or Mr. Trinier would have provided them.

SAFETY POLICY DOCUMENT



47. The Plaintiff was shown a safety policy document and he said that he had never seen it. It was put to him that he did receive a copy prior to the date of the accident and the Plaintiff said, “*Sir, if I had, I would have it in my possession.*” The Plaintiff said he would have remembered it not because he had been given it, but he would have studied it and tried to understand it properly. The Plaintiff said that he had no recollection of receiving the safety document or any safety document.

48. It was put to the Plaintiff that the safety policy documents were distributed at the meeting of the 15th March 2006, conducted by Mr. Shane Howell (“Mr. Howell”) and Mr. David Johnson (“Mr. Johnson”). The Plaintiff said he had no recollection of receiving this document or any safety document.

49. The Plaintiff said that on the sites that he had worked goggles were almost always in the case.

1 *"If not then goggles would be there for us to use because we were like a team*
2 *that just goes around working for different foremen to whatever site, and the*
3 *safety equipment, such as goggles, stays [sic] on the site."*

4
5 The Plaintiff said he would have his own tools like "...hammers, shears and things like
6 that."

7
8 **MR. RICHARD GRAHAM**



9
10 50. Mr. Graham provided a Witness Statement on the 20th April 2007. Mr. Graham was
11 employed to another construction company but was subcontracted to the Defendant
12 as a carpenter. Mr. Graham recalled working on the Savannah worksite with the
13 Plaintiff at the time of the accident.

14
15 51. Mr. Graham recalled running out of nails on a day prior to the incident and asking
16 Mr. Trinier if he had any. He recalls Mr. Trinier looking around the container and
17 not finding any. Mr. Trinier then asked Mr. Graham to pick up some the following
18 morning on his way to work.

19
20 52. Mr. Graham could not recall exactly which day of the week he picked up the nails
21 however, on the following morning Mr. Graham recalls going to the A.L.
22 Thompson store to purchase nails. He could not get 3/8th inch nails so he called Mr.
23 Trinier who told him to pick up 3/4 inch and 1/2 inch nails.

1 53. Mr. Graham recalls Friday the 25th August 2006 and he recalled the Plaintiff asking
2 him to get him some nails to do a particular job. The Plaintiff told him he needed
3 Hilti gun nails and Mr. Graham gave the Plaintiff ½ inch nails. Mr. Graham said
4 these were the same hardened steel Hilti gun nails he had bought from A.L.
5 Thompson.

6
7 54. Mr. Graham said that he was never supplied with any safety glasses until after the
8 accident on the 25th August 2006 involving the Plaintiff.

9
10 55. In cross examination Mr. Graham accepted that if you are using the Hilti gun you
11 should wear safety glasses and further, if you are assisting someone who is using a
12 Hilti gun you would wear safety glasses.

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1 *ANTHONY MORRANT*

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3 56. Mr. Marrant provided a witness statement on the 7th February 2007 and then a
4 subsequent supplementary witness statement dated the 10th February 2007.

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6 57. Mr. Marrant said that on Friday the 25th August 2006 he recalls after lunch, at about
7 1:00 p.m., the foreman, Mr. Trinier, taking him and the Plaintiff upstairs on the job
8 they were doing, where he pointed out a steel beam. Mr. Trinier asked Mr. Marrant
9 and the Plaintiff to build a frame around the beam Mr. Marrant recalls the Plaintiff
10 and himself discussing this with Mr. Trinier, as to whether they would use self-
11 tapping screws and a driver, or a Hilti gun and nails. Mr. Marrant recalls looking
12 for the screws and not being able to obtain ¾ inch screws. Mr. Marrant then recalls
13 the Plaintiff going off and returning with 6 inch screws. Mr. Marrant recalls not
14 being able to find the driver and therefore they were forced to use the Hilti gun.

15
16 58. Mr. Marrant recalls the Plaintiff returning with the Hilti gun and some nails, and he
17 recalls noticing that there was one pair of safety glasses. Mr. Marrant's evidence is
18 that he looked in the Hilti gun box, but he did not see any safety glasses. Mr.
19 Marrant recalls asking the Plaintiff if there were any other safety glasses
20 downstairs, to which the Plaintiff replied that he had searched the storage container
21 but he found none. Mr. Marrant recalled the Plaintiff saying that he had managed to
22 get one from his car.



1 59. Mr. Marrant decided to go down to look for the pair of safety glasses. He said he
2 looked in the storage container but he could not find any. He said he looked in the
3 container because everything is kept there and it is the only place where tools and
4 other equipment are kept.

5

6 60. Upon being unable to find any safety glasses, Mr. Marrant went back upstairs and
7 noticed that the Plaintiff had begun cutting the tracks.

8

9 61. Mr. Marrant noticed that the pieces (cut by the Plaintiff) were small and he felt that
10 he could attach the beam without any assistance. With that in mind Mr. Marrant
11 took up the safety glasses, put them on and started to attach the small track to the
12 beam, using the Hilti gun and the nails. Mr. Marrant recalls successfully fastening
13 the first track to the beam.

14

15 62. However, the second track was 10 feet in length and Mr. Marrant felt that he
16 needed the Plaintiff's help to secure this piece. Accordingly, the Plaintiff "got up
17 and held the other end." Mr. Marrant said that he started to shoot the nail into the
18 track to attach it to the beam and the nail did not hold so the track shifted. He said
19 the Plaintiff was in the process of fixing his end when he shot the Hilti gun again
20 and then suddenly realised that the nail went into the Plaintiff's left eye.

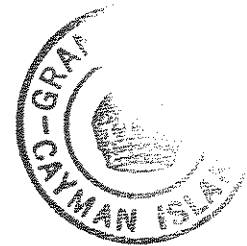
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22 63. Mr. Marrant said that this incident took place somewhere between 1:30 p.m. and
23 2:00 p.m. on the 25th August 2006. Mr. Marrant recalls going down to Mr. Trinier
24 and Mr. Trinier saying that someone should take the Plaintiff to the hospital. Mr.
25 Marrant realised that the Plaintiff was in severe pain and drove him to the hospital
26 and to the Emergency A&E department for treatment.



1 64. Mr. Marrant stated that neither he nor the Plaintiff were ever issued with safety
2 glasses.

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4 **CROSS EXAMINATION OF MR. MARRANT**



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6 65. Mr. Marrant in cross examination said that he did not use the screws because the
7 screws were too long and they never had a driver for the screws. Therefore, he
8 recalls the Plaintiff going off to get the Hilti gun and the nails. Mr. Marrant recalls
9 seeing only one pair of glasses. Accordingly he looked in the Hilti gun case but he
10 did not see any safety glasses.

11
12 66. Mr. Marrant said that if two people are working as a team there would normally be
13 two pairs of safety glasses in use. Accordingly, Mr. Marrant went to check the
14 container. Asked why he had not asked Mr. Trinier, he said, "*Well normally*
15 *everything would be in the container. The container is a storage area, but we have*
16 *everything – tools, safety gear, hard hats, stuff like that, everything [in there].*"

17
18 67. Mr. Marrant accepted that they were working as a team with the Hilti gun and they
19 should have had two pairs of safety glasses.

20
21 68. Mr. Marrant said that when they were working on the scaffolding he knew that the
22 Plaintiff had no glasses. Mr. Marrant also candidly admitted that he did not give
23 any warning when he fired the second shot to attach the track to the beam. He said
24 he did not look at what the Plaintiff was doing because his attention was focused on
25 shooting the gun.

1 69. Asked why he did not have two pairs of glasses Mr. Marrant said he had gone down
2 and searched for another pair, "*but I didn't find any.*" Furthermore, he said that
3 neither the Plaintiff, nor he, had ever been issued with glasses. Mr. Marrant
4 explained and said,

5
6 "*We never issue, meaning we never get any. Nobody gave me any glasses,*
7 *never in that company. Nobody else ever gave any glasses. We get two from the*
8 *office.*"

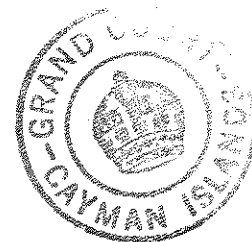
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10 He said,

11 "*He got for himself. I would not say somebody give it to me. If I pick it up*
12 *myself I would not say it's issued to me. If me pick it up myself I would not say*
13 *it's issued.*"

14
15 He said he received the glasses from "*Mr. Haughton.*" Mr. Marrant said,

16
17 "*I would not say issue. I would say issue is if somebody would call you and give*
18 *you something. I would refer that as issue. But the fact that I go pick them up I*
19 *would not refer that as issue.*"

20
21 70. It was put to Mr. Marrant under cross examination that neither he nor the Plaintiff
22 should have started the job to which Mr. Marrant said,



1 second copy and gave it to Mr. Marrant, who then signed it, and that statement was
2 dated the 6th February 2007.

3
4 73. Later on when Mr. Marrant read and comprehended the statement he realised that
5 things had been recorded incorrectly and some things had not been recorded at all
6 or not fully. Mr. Marrant said he noticed that question 8 did not reflect what he had
7 said. He also noted other things in relation to answers to questions 2, 3, and 7. Mr.
8 Marrant's evidence is that he felt that Mr. Hawley had not written down his
9 statement as he answered. Mr. Marrant also said, "... *it may be that he does not*
10 *understand how I express myself.*"

11
12 74. As a result of seeing these errors, Mr. Marrant went to "Paul" and asked him to call
13 Mr. Hawley. Mr. Marrant told Mr. Hawley that there were still corrections to be
14 made and he pointed out the answer to question 8 in particular. Question 8 was
15 whether there were additional safety glasses available on the site. Mr. Marrant said
16 he had answered "no" but Mr. Hawley had recorded a "yes." Mr. Marrant said he
17 told "Paul" that he wanted to make the corrections "now."

18
19 75. Mr. Marrant noticed other errors on the statement and it was arranged that he would
20 go to see Mr. Hawley on the 9th February. A second meeting took place on the 9th
21 February and Mr. Marrant said he wanted to change his answers to questions 2, 3,
22 7, 8, and 9. Although Mr. Marrant signed the statement prepared for him by Mr.
23 Hawley a second time he felt that he wanted to clarify his answers, as he felt the
24 answers were not fully recorded. Mr. Marrant said he felt nervous and under some
25 amount of pressure to sign the document as everybody in the room was waiting for
26 him to sign, and he signed it without reading it carefully.



1 76. Mr. Marrant said the discussion with Mr. Trinier regarding the Hilti gun took place
2 the same day as the accident and not on the day prior to the accident.

3
4 77. In relation to question 7 Mr. Marrant said that Phoenix knew that he did not have
5 his safety glasses because he had reported, through a foreman called Gonzales, that
6 his safety glasses had been stolen, and Gonzales had reported the loss to the project
7 manager. Mr. Marrant said he had not lost his safety glasses they were stolen.

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10 78. Mr. Marrant said his answer to question 8 was not fully recorded. He said his
11 complete answer was,

12
13 *“No, I do not know if there were additional safety glasses. I looked for safety*
14 *glasses in the container but I did not find any and I did not ask anyone for safety*
15 *glasses.”*

16
17 **CROSS EXAMINATION OF MR. MORRANT**

18
19 79. Mr. Marrant was adamant that the discussion over the Hilti gun was not the day
20 before as suggested in his answers. He said,

21
22 *“I never really said this stuff that is here. Steve asked me the question, him*
23 *write and me tell him seh Steve, you can't really write what me nuh say.*
24 *Because me nuh really talk like them. So each time him write it, I tell him I nuh*
25 *say that, him still write it. So me say, well, whatever...you understand? Because*
26 *him nuh really put what me seh.”*

1 80. The Court intervened and asked the witness, Mr. Marrant, to give his evidence
2 more slowly and he stated,

3
4 *“When him ask me the question, him write what him feel like write. Him type it*
5 *like how him want type it. So that’s why we end up with this and all kind of*
6 *confusion and these two papers.”*

7
8 81. For example, with respect to question number 7, Defendant’s counsel asked Mr.
9 Marrant if the response written in his statement which stated, *“Mr. Marrant said he*
10 *lost his safety glasses”* was correct. In reply to counsel Mr. Marrant said,

11
12 *“I did not say I lost them. Steve write what he want write. I told him that some*
13 *children steal them from the job site, but him put seh I lost them.”*

14
15 82. Mr. Marrant went on to say,

16
17 *“Mr. Hawley say me have to sign it so me just sign it because it is the same*
18 *each time: Me try to explain in my own way and him put it in him way. I would*
19 *explain it in my way, him would put it in his way, so we always end up with this*
20 *result, with a mix up, because he is trying to put things that I was not saying so*
21 *it is a mix up.*

22 *The first time they take me from work and carry me into the office and buck up*
23 *all four of them. Them laugh and say, I ambush the guy who carry me, seh I*
24 *ambush, seh is like they have to force me to do something me never really*
25 *wanted to do, so them just carry me and make me buck up on them.”*

26



1 83. Asked whether he was given an opportunity to make corrections to his statement
2 Mr. Marrant said, "Not really."

3
4 84. Mr. Marrant said that he asked for safety glasses some months prior to the incident
5 and he got two pairs from Mr. Houghton. He said that he did not have to sign for
6 anything and he said there was never any procedure for signing for safety glasses.

7
8 85. Mr. Marrant was asked about a Mr. Watkis. He replied, "Who is Mr. Watkis?"
9 When it was put to him that he was the sweeping man he said, "Oh Jerome."

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DEFENCE CASE

MR. JESSE TRINIER

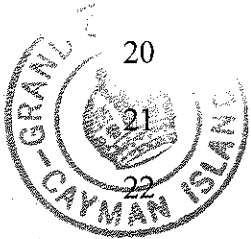
86. Mr. Trinier's evidence in chief is contained in his witness statement dated the 18th of April 2007.

87. Mr. Trinier states that he was the foreman in charge of a team of 30 workers from Phoenix, together with some ten subcontractors working on a project at the Savannah Foster's Supermarket in May 2006.

88. Mr. Trinier said that Mr. Jerome Watkis ("Mr. Watkis") was vested with the additional responsibility to assist any employee or subcontractor to obtain any materials or safety equipment that may be required from his office or the works trailer. He said that the back 2/3rd of the works trailer stored items and equipment needed on the site, and the forward 1/3rd was his site office.

89. Mr. Trinier said there were approximately five pairs of safety glasses in his office.

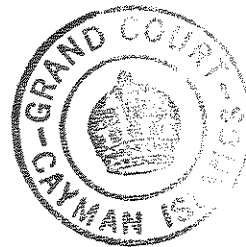
90. Mr. Trinier's evidence is that on Thursday the 24th August 2006 he instructed the Plaintiff to attach a steel track to a steel beam on the second floor of the site and told him that it could be done with TEC screws, using a driver, or using hardened steel Hilti nails with the use of a Hilti gun. He said he told the Plaintiff that there were only mild steel Hilti nails on site and that these nails would be unsafe for use on that job. Mr. Trinier said the Plaintiff was told to take time the following morning to pick up hardened steel Hilti nails from one of the local building supply houses, or he was to use the TEC screws.



1 91. Mr. Trinier said that on Friday the 25th August 2006 he was working on the first
2 floor of the job site whilst the Plaintiff was working with Mr. Watkis and Mr.
3 Marrant on the second floor. Mr. Trinier said that he was aware that the Plaintiff
4 and Mr. Marrant were working together on the scaffolding, with one person holding
5 the steel track at shoulder level and with the other person at the other end of the
6 steel track and attaching the track with either the driver and TEC screws or Hilti
7 gun and nails.

8
9 92. Mr. Trinier's evidence in chief is that at approximately 2:00 p.m. on Friday the 25th
10 August 2006 the Plaintiff came down to him with an eye injury. He said the
11 Plaintiff was sent to hospital. Mr. Trinier's evidence is that he recalls making
12 numerous calls to Mr. Marrant and to Mr. Brock Jaeck to check on the Plaintiff's
13 progress.

14
15 93. Mr. Trinier's evidence is that 15 minutes after the Plaintiff had been taken to
16 hospital Mr. Watkis brought the Hilti gun and nails to the works trailer and Mr.
17 Trinier had noticed that the Plaintiff had not followed his instructions to use TEC
18 screws or the hardened steel Hilti nails, but had used the mild steel Hilti nails.
19 Furthermore, Mr. Trinier said that at no stage had the Plaintiff approached him for a
20 pair of safety glasses.



1 94. Asked by his counsel, Mr. McCann, if he recalled where those five pairs of safety
2 glasses were kept, Mr. Trinier said, "*It would have been on one of the desks.*" When
3 Mr. McCann asked him if he had come across an operator of a Hilti gun or a person
4 assisting him, without protective glasses, would he have done anything, Mr. Trinier
5 said he would have ensured that they had safety equipment. Mr. Trinier said,

6
7 "*I would have obviously looked for safety glasses at that point. It's very*
8 *clear that everybody should have that and everybody should do their due*
9 *diligence when using equipment that is hazardous.*"

10

11

CROSS EXAMINATION OF MR. TRINIER

12

13 95. Plaintiff's counsel, Mr. Broadhurst, suggested to Mr. Trinier that there was no need
14 for Mr. Marrant or the Plaintiff to check with him before obtaining the nail gun, to
15 which Mr. Trinier replied, "*No they should check with me and we should have*
16 *discussed the nails but they had not come to see me.*"

17

18 96. Mr. Trinier said he had no recollection of instructing Mr. Graham to purchase Hilti
19 nails. He said he had no recollection of Mr. Graham calling him and saying he was
20 not able to get 3/8th inch nails and Mr. Trinier telling him to get 3/4 inch or 1/2 inch
21 nails. Mr. Trinier had no recollection of telling Mr. Graham to go and purchase the
22 nails, and did not accept that Mr. Graham was telling the truth. In fact, referring to
23 Mr. Graham stating in his evidence that Mr. Trinier had told him to purchase nails,
24 Mr. Trinier said, "*That is not true.*"

25

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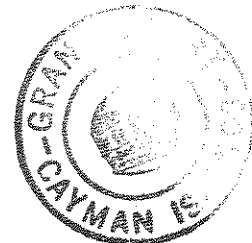


1 97. It is Mr. Trinier's evidence that Mr. Marrant and the Plaintiff had used the wrong
2 nails for the Hilti gun. When asked by the Plaintiff's counsel when did he, Mr.
3 Trinier, learn that the Plaintiff and Mr. Marrant could not find the correct hardened
4 steel nails, Mr. Trinier responded, "*I didn't because they never came to me.*" Mr.
5 Trinier was then asked by the Plaintiff's counsel "*Why then did you bring them the*
6 *screws?*" to which Mr. Trinier responded, "*Because if they could not find the nails*
7 *they were to use the screws so the job would get done.*"
8

9 98. Mr. Broadhurst put it to Mr. Trinier that what actually occurred was that the
10 Plaintiff had come down looking for screws and that Mr. Trinier had given him the
11 screws. To this, Mr. Trinier replied, "*No, that's not what I put in my statement.*"
12

13 99. Mr. Trinier recalls bringing the screws to the Plaintiff but did not recall having any
14 conversation with the Plaintiff regarding a proper driver, and he could not recall
15 whether the Plaintiff came to his office to tell him that he couldn't find any safety
16 glasses in the Hilti gun case. In fact, on further questioning, Mr. Trinier said that
17 that was not true.
18

19 100. On being questioned by the Plaintiff's counsel as to whether he may have got the
20 wrong day when he instructed the Plaintiff and Mr. Marrant to start the framing,
21 Mr. Trinier accepted that it was possible, and he added, "*It's possible that the*
22 *incident wouldn't have happened if they wore safety glasses too.*"
23
24
25



1 101. On the question of whether he had a conversation about the nails and screws,
2 generally, with the Plaintiff and Mr. Marrant, Mr. Trinier conceded, after some
3 cross examination by the Plaintiff's counsel, that he had brought medium-sized
4 screws to the Plaintiff and Mr. Marrant and admitted that it was understood that if
5 the Plaintiff and Mr. Marrant could not find the correct hardened steel nails for
6 steel, then they were to use screws.

7

8 102. The Plaintiff's counsel asked Mr. Trinier when was it that he learned hat the
9 Plaintiff and Mr. Marrant could not find the correct hardened steel nails and in
10 reply Mr. Trinier said, "*Well I didn't because they never came to me.*"

11

12 103. Asked by counsel for the Plaintiff, "*Well then, why did you bring them the screws?*"
13 Mr. Trinier replied, "*It was the second option.*"

14

15 104. It was put to Mr. Trinier, "*Well, you just told the Court a moment ago that they*
16 *were to find the nails and to do the job, so explain to me why you brought them the*
17 *screws?*" Mr. Trinier replied, "*Because if they couldn't find the nails they were to*
18 *use the screws so the job could get done. Using the screws is a harder method. It*
19 *takes a little bit more time but it still completes the job.*"

20

21 105. The Plaintiff's counsel then asked Mr. Trinier, "*What actually occurred was that*
22 *Eddie came down looking for screws and you gave him screws, isn't that correct?*"
23 and Mr. Trinier's response was, "*No, that's not what I put in my statement.*"

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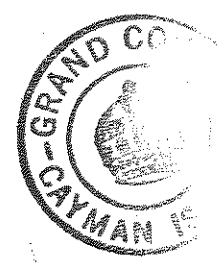


1 106. Mr. Trinier denied that the Plaintiff had come to him and told him that he could not
2 find the proper driver. Mr. Trinier said he did not recall the Plaintiff coming into his
3 office and saying he could not find any safety glasses in the Hilti case. Mr. Trinier
4 said it was "... not true when the Plaintiff said that he had been looking for goggles,
5 and that Mr. Trinier said they were somewhere around."

6
7 107. Mr. Trinier said he was not aware whether or not there were glasses in the Hilti gun
8 case, but he did accept that there were no glasses in the Hilti gun case.

9
10 108. Mr. Trinier accepted that although safety was everyone's duty, he was the primary
11 and principal person responsible for safety on the site, and he also accepted that the
12 safety glasses should be kept with the Hilti gun. Furthermore, Mr. Trinier accepted
13 that he never told either the Plaintiff or Mr. Marrant that there were safety glasses
14 in his office. Mr. Trinier could not recall whether there were any safety glasses in
15 the storage area, but he recalled that there were roughly five sets in his office.

16
17 109. In answer to a question from the Court Mr. Trinier said he did not recall whether
18 the safety glasses were at the desk at which he was sitting or at one of the desks
19 beside that. He said he had several chairs and desks in there because one minute he
20 would be looking at drawings and the next minute he would be on the computer and
21 vise versa, so he was not sure where in the office the approximately five safety
22 glasses were.



1 110. Mr. Trinier accepted that when workers come on the site it is his responsibility to
2 check to ensure they have the proper safety equipment. When asked whether he did
3 that in this case he said, "*Not that I can recall.*" Mr. Trinier accepted that he did not
4 ask the Plaintiff or Mr. Marrant if they had safety glasses prior to using the Hilti
5 gun, because he said he did not see the two men at all.

6
7 111. Mr. Trinier said that his right-hand man, Mr. Watkis, was aware of all the safety
8 equipment "*that we have and everybody knew that they should go to him if they*
9 *needed anything.*"

10
11 112. Mr. Trinier was asked whether he ever went out to check on the Plaintiff and Mr.
12 Marrant when they were fixing the track, he replied that he had gone up there at
13 some point in the morning but he could not recall when.

14
15 113. Mr. Trinier accepted that it was his responsibility to ensure that the safety
16 equipment was available on the site. Mr. Trinier accepted that if he had seen the
17 men conducting this task and had seen that the Plaintiff was not wearing safety
18 goggles he would have stopped them. Mr. Trinier confirmed that he had not
19 worked with the Plaintiff before and he recalled that he may have worked with Mr.
20 Marrant. Mr. Trinier also accepted in cross examination that it would have been a
21 good idea for him to have checked with the Plaintiff to ensure that he had proper
22 safety equipment.

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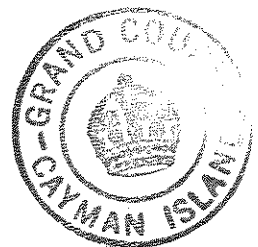
1 114. Mr. Trinier said that he never provided the Plaintiff with a pair of safety glasses,
2 nor was he asked for them. Mr. Trinier also accepted that the Plaintiff would have
3 had no way of knowing whether Mr. Trinier had safety glasses on site. Mr. Trinier
4 denied that the Plaintiff had come to him for safety glasses.

5
6 115. Mr. Trinier was familiar with the Defendant's safety policy document, but accepted
7 that he did not provide a copy of this document to the Plaintiff. Mr. Trinier also
8 accepted that the safety policy document was not posted anywhere on the work site.

9
10 116. Mr. Trinier said he designed the documents at Phoenix and there were safety
11 orientations on a regular basis. In fact, Mr. Trinier initially said that Phoenix had
12 meetings on a quarterly basis and that these quarterly meetings would deal with
13 safety and other issues.

14 117. After further cross examination Mr. Trinier accepted that these meetings were not
15 always about safety and further, he finally accepted that there was definitely more
16 than one meeting in his 9 ½-year tenure.

17
18 118. Mr. Trinier accepted that under the heading General Responsibility in the safety
19 document the job site foreman was directly responsible for all safety matters on the
20 site. Mr. Trinier also accepted that the foreman was responsible to ensure that all
21 employees followed all safety policies and to report any refusal by an employee to
22 follow such safety policy. Mr. Trinier also accepted that the foreman was to ensure
23 that all employees were properly instructed, to ensure that safety equipment, such
24 as glasses, was to be provided, and that the foreman was to supervise.



1 119. In response to cross examination Mr. Trinier accepted that he did not recall telling
2 the Plaintiff or Mr Marrant to wear safety glasses, nor did he recall providing them
3 with safety glasses, and, finally, he did not supervise them performing the task he
4 had assigned to them. Mr. Trinier's evidence was that he did not instruct the
5 Plaintiff and Mr. Marrant to wear safety equipment and safety glasses, nor did he
6 provide them with safety glasses.

7
8 120. Mr. Trinier said use of a Hilti gun required high-strength, hardened nails, and after
9 cross examination Mr. Trinier accepted that although he had said in his statement
10 that, after the accident, he had looked at the gun and said there were mild steel nails
11 in the gun, he now said that he really couldn't recall what type of nails were in the
12 gun.

13
14 121. When it was put to him that both the Plaintiff and Mr. Marrant were certain that
15 they had used the correct nails, the Plaintiff accepted that he could not recall the
16 type of nails that were in the Hilti gun.

17
18 122. Mr. Trinier in cross examination said that Mr. Watkis did more than sweep, but he
19 did accept that he was the go-fer man who would sweep and take out garbage.

20
21 123. Mr. Trinier could not recall whether he ever told the Plaintiff or Mr. Marrant that
22 one of Mr. Watkis' responsibilities was distributing safety equipment.

23
24 124. Mr. Trinier said that he did not know whether the Plaintiff had ever received any
25 prior training in health and safety, nor did he know whether the Plaintiff was ever
26 provided with a copy of the Defendant's safety policy document.

1 *MR. DAVID JOHNSON*

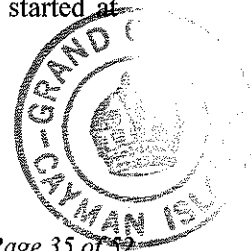
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3 125. Mr. Johnson provided a witness statement on the 27th March 2007 and confirmed
4 that he was initially a project coordinator with the Defendant's company, but was
5 promoted in January 2006 to Operations Manager.

6
7 126. He recalled that as Operations Manager he chaired a staff meeting on the 15th
8 March 2006. Mr. Johnson's evidence is that the staff meeting was compulsory for
9 all staff to attend. At the meeting he briefed the staff on the company's health and
10 safety policy and advised them of the safety policy document. He said he went
11 through the safety policy document with the staff.

12
13 127. In his evidence in chief Mr. Johnson said that his presentation dealt with the proper
14 use of tools, which was to be monitored by foremen to promote safety and reduce
15 wear and tear. Mr. Johnson also briefed the staff on safety and the importance of
16 safety, which included the wearing of safety equipment and when safety equipment
17 should be worn.

18
19 128. Mr. Johnson said that after the meeting he gave copies of the company's safety
20 policy document to all of the foremen with instructions to give a copy of the
21 document to each and every staff member under their supervision.

22
23 129. In response to counsel for the Defendant Mr. Johnson said he could not recall if the
24 Plaintiff had been present at that meeting. He recalled that the meeting started at
25 4:00 p.m. and ended at 5:00 p.m.



1 130. In cross examination Mr. Johnson confirmed that, based on his observations of the
2 Plaintiff, he was a safety-conscious individual, and he was the type of man to wear
3 safety glasses if required.
4

5 131. Mr. Johnson accepted that it was possible that workers did not attend the meeting.
6

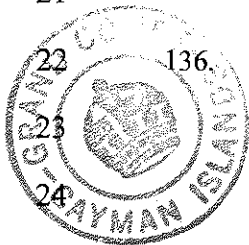
7 132. Under cross examination Mr. Johnson said the main purpose of the meeting was to
8 introduce himself and to go through a number of different things affecting the
9 company. Mr. Johnson accepted that the agenda at the head of the document was
10 his agenda.
11

12 133. Mr. Johnson could not say whether Mr. Marrant was at the meeting. Mr. Johnson
13 accepted that there was no attendance note.
14

15 134. However, the safety document was at the meeting and he provided one to each of
16 the foremen, with instructions to provide it to the workers.
17

18 135. Mr. Johnson could not remember who the Plaintiff's foreman was at the time of the
19 meeting and he was unsure whether the Plaintiff's foreman was given a copy of the
20 safety document.
21

22 136. Mr. Johnson said that, since the accident, the company had imposed a policy that all
23 workers had to sign a copy of the safety policy, and also that the safety policy was
24 being revised.
25

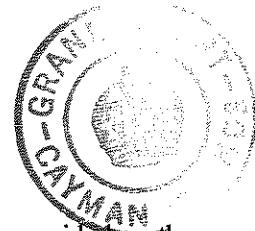


1 137. Mr. Johnson accepted that he heard about Mr. Marrant's missing glasses, but he
2 could not say to whom the missing glasses had been officially reported.

3
4 138. Mr. Johnson accepted that it is good practice to keep a pair of safety glasses in the
5 Hilti gun case and further, that a foreman should take steps to make himself sure of
6 what safety equipment workers have and do not have. Mr. Johnson also agreed that
7 the foreman should ensure that the guys had safety glasses, and further, that each
8 person should have a pair of glasses, just as a helmet or any other personal
9 protective safety gear.

10
11 139. Mr. Johnson accepted that it was the foreman's responsibility to ensure that the
12 safety equipment was stored and that the workers knew where to find it. Mr.
13 Johnson accepted that if a foreman failed to inform an employee of the availability
14 of safety glasses if asked, that foreman would be in breach of the safety policy.

15
16 *IAN HAUGHTON*



17
18 140. Mr. Haughton's evidence in chief is given in his witness statement provided on the
19 27th March 2007. Mr. Haughton said he had been a foreman for the Defendant's
20 company for 3 ½ years. He recalled working in the Defendant's warehouse
21 distributing materials and equipment in July and August 2006. During that period
22 he recalls giving two pairs of safety glasses to Mr. Marrant, who was to give a pair
23 to the Plaintiff.

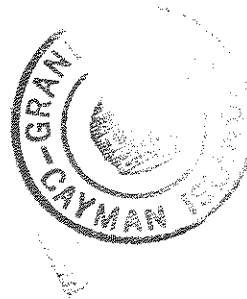
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1 141. In cross examination by the Plaintiff's counsel, Mr. Haughton accepted that,
2 according to the Defendant's safety policy, it is the foreman that is charged with the
3 duty to ensure that safety equipment is provided. And further, Mr. Haughton
4 accepted that if a foreman does not comply with the safety policy, that foreman
5 could lose his job.

6
7 142. Mr. Haughton's evidence was that after the Plaintiff's accident, the Defendant
8 issued a safety policy to all the workers and insisted that all the workers had to sign
9 it.

10
11 143. Mr. Haughton recalled the meeting on the 15th March 2006. Mr. Haughton's
12 recollection was that one of the reasons of the meeting was to introduce Mr.
13 Johnson in his new role and the meeting was also about the company's
14 productivity. Mr. Haughton said it was a general meeting and it also included
15 safety, future plans and several other things which he could quite remember. Mr.
16 Haughton said that no attendance list was kept.

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ANALYSIS OF THE EVIDENCE

PLAINTIFF'S USE OF INCORRECT NAILS



144. The Defendant's case, as pleaded in its Defence, is that the Plaintiff failed to follow Mr. Trinier's instructions to obtain hardened steel Hilti nails. Further, in his written statement, Mr. Trinier alleged that the Plaintiff did not use the correct nails.

145. It is clear from the evidence before the Court that the Plaintiff obtained the nails from Mr. Graham and there was no independent evidence from any source that the nails which Mr. Marrant and the Plaintiff used to perform the subject task were the incorrect nails.

146. In fact, the Court noticed that Mr. Trinier changed his position on the question of the incorrect nails and candidly admitted at the end of his cross examination that he did not know what type of nails were in the gun, and further, there was no basis for his first allegation regarding nails.

147. Accordingly, the Court finds that Mr. Marrant did not use any incorrect nails, and no fault can be laid at the door of the either Mr. Marrant or the Plaintiff for the use of the nails that were used by Mr. Marrant on the 25th August 2006.

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*THE PLAINTIFF OBTAINED THE HILTI GUN FROM THE "TOOLBOX"
WITHOUT PRIOR CONSENT OF MR. TRINIER*

148. It is clear from all the evidence put before the Court that there was no basis whatsoever for this pleading and that, not only did the Plaintiff have Mr. Trinier's consent but in fact he was instructed by Mr. Trinier to use the Hilti gun in order to affix a steel track to a steel beam.

SAFETY GLASSES



149. The Plaintiff's counsel submits that there is a statutory duty under s.62(b) of the Labour Law to provide safety glasses, and further, under the common law relating to duty of care to the Plaintiff, there is an overlapping duty to provide safety equipment which, having been instructed to use the Hilti gun, should have been provided.

150. There is no evidence before the Court that the Defendant ever issued either the Plaintiff, or Mr. Marrant, with safety glasses. It is clear that Mr. Marrant had obtained two pairs of glasses from a Mr. Haughton some time before they went on the Countryside site. The evidence is that Mr. Marrant's safety glasses were stolen and he reported the loss. He was never supplied with an additional set.

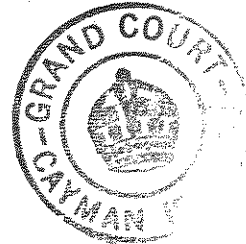
151. The Court has been told that the Plaintiff and Mr. Marrant had only been working for possibly five days on the Foster's supermarket site in Savannah. They were not issued with safety glasses by the foreman, Mr. Trinier, nor by any other servant or agent of the Defendant on the site.

1 152. There is unchallenged evidence that the Plaintiff searched the storage container for
2 a set of safety glasses. There is unchallenged evidence that Mr. Marrant searched
3 the storage container for safety glasses and neither the Plaintiff nor Mr. Marrant
4 was able to find any safety glasses.

5
6 153. There is a conflict of evidence as to whether the Plaintiff asked Mr. Trinier for a
7 pair of safety glasses. This Court preferred the evidence of the Plaintiff, who I find
8 to be honest, reliable and straightforward. Mr. Trinier's evidence regarding safety
9 glasses was vague. He said there were approximately five safety glasses. He said
10 the safety glasses were somewhere inside his office but he could not remember
11 whether they were on a desk, and, if so, which desk.

12
13 154. Having listened carefully to both the Plaintiff and Mr. Trinier, I accept the
14 Plaintiff's evidence that he asked Mr. Trinier for a pair of safety glasses and Mr.
15 Trinier told him to go and find a pair. I further accept the Plaintiff's evidence that
16 he took all reasonable steps to find a pair of safety glasses.

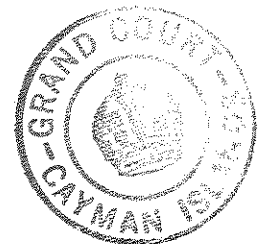
17
18 155. In addition, it is unchallenged that there were no safety glasses in the Hilti gun case.
19 The Court finds that the Defendant is in breach of its statutory duty in failing to
20 provide suitable protection for the eyes, in that, it should be mandatory that the
21 Defendant and its servants and agents to ensure that the safety glasses are with the
22 Hilti gun and in the Hilti gun case at all times.



1 156. Once the foreman, Mr. Trinier, instructed the Plaintiff and Mr. Marrant to affix the
2 steel track to a steel beam by means of a Hilti gun, it was incumbent upon him to
3 ensure that both the Plaintiff and Mr. Marrant had safety glasses before undertaking
4 the task. Mr. Trinier, had given the instructions. He, as the foreman, has primary,
5 overall responsibility to ensure that the Defendant's employees are properly
6 equipped with safety equipment. He failed to exercise his duty to the Plaintiff. In
7 not ensuring that the Plaintiff and Mr. Marrant were provided with glasses before
8 undertaking the task, the foreman had failed in his responsibility to properly
9 supervise and ensure that they were both provided with the necessary safety
10 equipment for the task.

11
12 157. The evidence of the Defendant's Operations Manager, Mr. Johnson, is that safety
13 glasses, as a matter of good practice, should be in the Hilti gun case. Mr. Johnson
14 also accepted that it was the foreman's duty to ensure that the Plaintiff and Mr.
15 Marrant had safety glasses.

16
17 158. The Court finds that if the glasses had been in the Hilti gun case as they should
18 have been, Mr. Marrant would have used them when he was using the Hilti gun,
19 and the Plaintiff would have been in a position to use the other pair when he
20 assisted Mr. Marrant. As it was, because there were no glasses in the Hilti gun case,
21 the Plaintiff unselfishly allowed Mr. Marrant to use his safety glasses, thereby
22 leaving the Plaintiff at risk when they both followed Mr. Trinier's instructions to
23 affix a steel track to a steel beam by means of the Hilti gun.



1 159. Again I find that the Defendant is in breach of its statutory duty in failing to provide
2 suitable protection for the eyes in accordance with s.62(b) of the Labour Law.
3 Furthermore, the Defendant is negligent in failing to take adequate precautions for
4 the safety of the Plaintiff and for failing to provide a safe system of work.

5
6 ***HEALTH AND SAFETY TRAINING***
7



8 160. The Defendant pleaded in its Defence that the Plaintiff attended a staff meeting at
9 the Defendant's premises in Industrial Park on the 15th March 2006 when the
10 Defendant's written policy, including the use personal safety equipment was
11 distributed to all staff members present, including the Plaintiff.

12
13 161. In his evidence in chief Mr. Johnson stated that he chaired the staff meeting. He
14 said the staff meeting was compulsory for all staff to attend, but he could not recall
15 if the Plaintiff was in attendance. He said that he briefed the staff on the company's
16 health and safety policy and advised them of the safety policy document.

17
18 162. In his evidence in chief he said that one of the main emphases at the meeting was to
19 present himself as the Operations Manager to the work crews. He said, "*people*
20 *were aware of our safety policy and it gave me the opportunity to distribute the*
21 *safety policy again and answer any questions that anyone might have at that time*
22 *with regard to the safety policy.*"
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1 163. At one stage in his evidence Mr. Trinier stated that he and Phoenix had quarterly
2 meetings. By the end of his cross examination Mr. Trinier's position changed
3 dramatically, when he was merely insisting that there was more than one meeting
4 during his nine years as a foreman with the Defendant company.

5
6 164. The only reliable evidence regarding any meetings associated with safety policy is
7 that one meeting did take place on the 15th March 2006.

8
9 165. The Court finds that for the Defendant to describe this as a health and safety
10 meeting, is, to some extent, stretching the truth. It is clear from the meeting agenda
11 that Mr. Howell chaired the meeting and the first and primary aim was to introduce
12 Mr. Johnson to the team, and to give an overview of Mr. Johnson's position. This
13 included Field Management, Quality Control, Projects and Scheduling, Safety
14 Policy Awareness, the roles of three other third parties, and, Future Profit Share
15 expectations. On any view, safety policy took only a fraction of that time, possibly
16 amounting to a quarter or perhaps a third of the time allotted. All the typed meeting
17 agenda stated regarding safety policy was to introduce to the employees that there
18 would be visits from government safety inspectors and the possible impact to the
19 Defendant from possible infringements. There is one line on the meeting agenda
20 regarding the importance of safety, both on site and in day-to-day operations.

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1 166. The Court finds that there is no note of who attended that meeting. There is no
2 evidence adduced by the Defence that either the Plaintiff or Mr. Marrant attended
3 the meeting. The Plaintiff and Mr. Marrant are both adamant that they did not
4 attend the meeting, nor were they told of the content of the meeting.

5
6 167. This Court accepts the evidence of the Plaintiff and Mr. Marrant, in that, they were
7 not at the meeting on the 15th March 2006. There is no evidence to suggest that the
8 Defendant or its servants or agents made any attempt to ensure the Plaintiff and Mr.
9 Marrant attended the meeting. There is no evidence that there was any attempt to
10 have a separate meeting with the Plaintiff and Mr. Marrant to discuss safety policy.
11 There is no evidence that either the Plaintiff or Mr. Marrant had ever received any
12 safety training from the Defendant or any of its servants or agents.

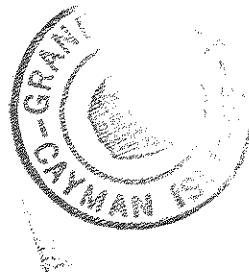
13
14 168. The Defendant produced in evidence a rather sparse, inadequate and undated safety
15 policy which had clearly been photocopied many times.

16
17 169. The safety policy document states that all employees are required to read and be
18 familiar with the company safety policy. It also states, "...*you are encouraged to*
19 *maintain a copy and to review it from time to time.*" However when one examines
20 the Defendant's safety policy document it does not provide any rules or regulations
21 for the employees to follow. It does not provide any guidelines of what is expected
22 and required of the employees. It boldly states that, "*Should an employee refuse to*
23 *follow a safety policy he may at the discretion of the foreman be dismissed.*"
24 However, there are no written rules, regulations, guidelines or any policies to which
25 the employees are supposed to adhere on any safety policy of the Defendant
26 company.

1 170. Accordingly, on all the evidence before it, this Court finds that the Plaintiff was not
2 given any prior training in health and safety. Furthermore, this Court finds that
3 there is no evidence that the Plaintiff was given any instructions or guidelines on
4 personal safety equipment.

5
6 171. Indeed, I find on the evidence before the Court that the Plaintiff and Mr. Marrant
7 were entirely unaware of the Defendant's written safety policy or of any safety
8 policy for the Defendant.

9
10 172. What the Defendant's safety policy does state is that the, *"job site foreman is*
11 *directly responsible for all safety matters on the site. He is to ensure that each*
12 *employee follows all safety policies and he is to report any refusal by any employee*
13 *to follow policies."* Furthermore it adds that, *"The foreman is additionally*
14 *responsible to attempt to correct any potentially dangerous situations created by*
15 *site conditions, subcontractors, or any other persons on site who are not directly in*
16 *the employ of the company"* and further, *"the foreman is to ensure that all*
17 *employees wear protective clothing when conditions warrant it. Protective clothing*
18 *may include, buy (sic) [but] may not be limited to; hats, hard hats, gloves, steel-*
19 *toed shoes, long trousers, safety glasses."*



1 173. Having heard all the evidence it is clear that Mr. Trinier did not comply with the
2 duties laid out by the Defendant for the jobsite foreman. He failed to ensure that
3 there were glasses in the Hilti gun case. When instructing the Plaintiff and Mr.
4 Marrant to affix the steel track to the steel beam, he did not ensure that they both
5 had safety glasses. Indeed, Mr. Trinier as foreman instructed the Plaintiff and Mr.
6 Marrant to attempt a potentially dangerous task without ensuring that they had the
7 necessary safety glasses to ensure they were protected.

8
9 174. Mr. Trinier frankly conceded that he never told the Plaintiff or Mr. Marrant that
10 there were any safety glasses and that he never checked that they had the proper
11 safety equipment. Further, Mr. Trinier admitted that he never told the Plaintiff or
12 Mr. Marrant to wear safety glasses.

13
14 175. Again the Court finds that the Defendant, through its servant and agent, Mr. Trinier,
15 failed to provide suitable protection for the Plaintiff's eye in accordance with
16 s.62(b) of the Labour Law. Further the Defendant, through its servant and agent,
17 Mr. Trinier, was negligent in failing to take adequate precautions for the safety of
18 the Plaintiff.



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2
3 *CONTRIBUTORY NEGLIGENCE*

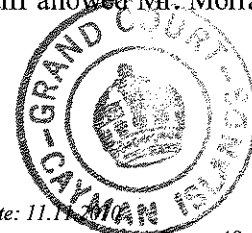
4 176. The Defendant alleged in its Defence that the Plaintiff was in breach of statutory
5 duty in not following the safety policies set out on the 15th March 2006 and not
6 being fully aware of the undated safety policy document.

7 177. Furthermore, the Defendant avers in its Defence that the Plaintiff was guilty of
8 contributory negligence in exposing himself to the risk of the injury.

9
10 178. I have dealt with the question of nails, safety glasses, as well as with the inadequacy
11 of the Defendant's safety policy document, and the Defendant's failure to ensure
12 that the Plaintiff received any health and safety training.

13
14 179. I now ask myself the question: Was there any element of contributory negligence?
15

16 180. I find on the evidence before me that the Plaintiff did take a number of steps to try
17 and find some safety glasses before attempting to affix the steel track to the steel
18 beam with Mr. Marrant. He searched the container, which was the usual place to
19 find safety glasses. He was not issued any safety glasses. He searched the Hilti gun
20 case for safety glass. He asked the foreman, Mr. Trinier, for safety glasses. Mr.
21 Trinier's response to the Plaintiff was that he, the Plaintiff, was to go and find a
22 pair. The Plaintiff then had a second look for the safety glasses. Mr. Marrant had
23 also searched for safety glasses and eventually when neither the Plaintiff nor Mr.
24 Marrant could find any safety glasses on the site the Plaintiff allowed Mr. Marrant
25 to use his safety glasses.
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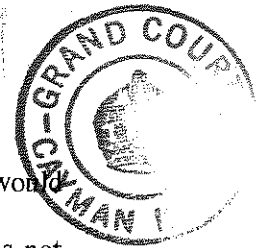


1 181. In addition, the Defendant's Operations Manager, Mr. Johnson, accepted that the
2 Plaintiff was a "safety conscious" individual who was the type of man who would
3 wear goggles when required.
4

5 182. The contention the Defendant makes is that the Plaintiff should have been so
6 acutely aware of the dangerous nature of the task that he should not have attempted
7 to assist Mr. Marrant without safety glasses, and in fact, should have even resorted
8 to downing tools.
9

10 183. The Plaintiff's response to this is that he had a genuine and real fear that this would
11 jeopardize his employment with the Defendant company and therefore it was not
12 something he was prepared to do. The Plaintiff's evidence is that downing tools
13 was not an option for him. He had never done that before and under the
14 circumstances, with Mr. Trinier being a demanding foreman, he just did not
15 consider downing tools to be a viable option. In fact, the Plaintiff professed to
16 having a real fear that he would be fired if he had downed tools. I find the
17 Plaintiff's expressed fear for his continued employment to be sincere and real.
18

19 184. I find that the Plaintiff's health and safety training was virtually non-existent. The
20 Defendant's undated safety policy document was entirely inadequate and provided
21 the employees with no safety policies. The foreman failed to exercise the necessary
22 precautions to ensure that the Plaintiff was wearing glasses. The Plaintiff took all
23 reasonable steps to try and locate a pair of safety glasses. There were no safety
24 glasses in the storage container and no safety glasses in the Hilti gun case. The
25 Plaintiff was left with the one precaution, which was to try and look away when Mr.
26 Marrant fired the gun.



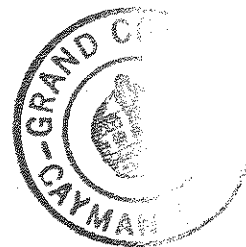
1 185. It is clear from the evidence of other third parties that the Plaintiff was a very safety
2 conscious individual and this Court finds that the Plaintiff took all reasonable steps
3 to try and ensure that he and Mr. Marrant were protected.
4

5 186. Accordingly I do not find that the accident was caused, or contributed to, by the
6 negligence of the Plaintiff.
7

8 187. In addition, for the aforesaid reasons, I find that the Plaintiff did not willfully and
9 did not, without reasonable cause, act to endanger himself, and therefore was not in
10 breach of s.64(1) and (3) of the Labour Law.
11

12 188. Having examined the evidence and the written submissions of both counsel, I find
13 that on the balance of probabilities the Defendant was in breach of its statutory duty
14 by not ensuring that suitable safety glasses were provided to protect the eyes of the
15 Plaintiff, who was employed in a process involving a special risk of injury to the
16 eyes, as required by the provisions of s.62(b) of the Labour Law.
17

18 189. Having examined all the evidence and heard submissions from both counsel, I find
19 on the balance of probabilities that the Plaintiff has made out his case that the said
20 injuries, loss and damage were caused by the negligence of the Defendant, its
21 servants or agents, in:
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- i. Failing to take any adequate precautions for the safety of the Plaintiff while he was engaged in his work;
- ii. Exposing the Plaintiff to a risk of injury of which the Defendant and its servants and agents knew or ought to have known;
- iii. Failing to provide the Plaintiff with suitable safety glasses to protect the eyes of the Plaintiff while he was carrying out his work;
- iv. Directing the Plaintiff to carry out the work without providing him with any suitable safety glasses to protect his eyes when the Defendant, its servants and agents knew or ought to have known that it was unsafe and dangerous for him to carry out the work without suitable safety glasses;
- v. Directing the Plaintiff to attach a steel fixture to a steel beam by use of a nail gun when the Defendant, its servants and agents knew or ought to have known that that it was unsafe and dangerous for the Plaintiff to carry out this work in this manner;
- vi. Failing to provide or maintain a safe or proper system of work.

190. Accordingly, this Court finds the Defendant liable for the Plaintiff's personal injury, loss and damage, by reason of the negligence and breach of statutory duty of the Defendant and its servants and agents.

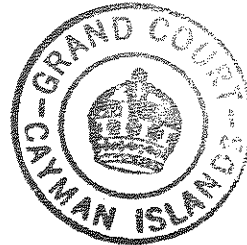
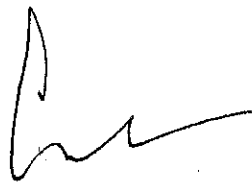


1 191. As costs follow the event, the Court orders that the Plaintiff's costs are to be paid
2 by the Defendant and to be taxed if not agreed.

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Dated this the 11th November 2010

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10 **Hon. Mr. Justice Charles Quin Q.C.**
11 **Judge of the Grand Court**