

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**

10  
11 **AND:**

**PHOENIX CONSTRUCTION LTD.**

**DEFENDANT**

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17 **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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26 **Before:**

**The Hon. Mr. Justice Charles Quin**

27 **Heard:**

**2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> August 2010**

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

**17<sup>th</sup> August 2010**

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

**3<sup>rd</sup> and the 13<sup>th</sup> September 2010**

30  
31 **RULING**  
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- 34 1. On the 25<sup>th</sup> August 2006 the Plaintiff was employed by the Defendant and  
35 directed by a servant or agent of the Defendant to attach a steel fixture to a  
36 steel beam with the use of a Hilti nail gun. The Plaintiff was working with a  
37 co-worker, Mr. Anthony Marrant ("Mr. Marrant") who was using the gun  
38 when a nail discharged from the Hilti gun and flew into the Plaintiff's left

1 eye and, as a result, the Plaintiff suffered serious personal injury, pain and  
2 suffering, and was taken to the George Town Hospital, Grand Cayman.

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4 **Pleadings**

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

11  
12 3. The Plaintiff pleaded that s.62(b) of the Labour Law applied, and that the  
13 Defendant was in breach of its statutory duty, by not ensuring that suitable  
14 safety glasses or protective screens were provided to protect the eyes of the  
15 Plaintiff who was employed in a process involving a special risk of injury to  
16 the eyes in accordance with, or as required by, the provisions of s.62(b) of  
17 the Labour Law.

18  
19 4. Further, or in the alternative, the Plaintiff pleaded that the said injuries, loss  
20 and damage were caused by the negligence of the Defendant, its servants or  
21 agents, the particulars of which are set out at paragraph 7 of the said  
22 Statement of Claim:

23  
24 “7. ...

- 25 a) *Failing to take any or any adequate precautions for the*  
26 *safety of the Plaintiff while he was engaged in this work.*  
27 b) *Exposing the Plaintiff to a risk of damage or injury of*  
28 *which they knew or ought to have known.*

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- 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 carry out the work in safety or to protect the eyes of the Plaintiff while he was carrying out the work.*
- d) *Directing and requiring the Plaintiff to carry out the work without providing him with any suitable goggles/safety glasses or protective screens to protect his eyes when they knew or ought to have known that it was unsafe and dangerous for him to carry out the work without suitable goggles/safety glasses or protective screens.*
- e) *Directing and requiring the Plaintiff to attach a steel fixture to a steel beam by use of a nail gun when the Defendants knew or ought to have known that that [sic] it was unsafe and dangerous for him to carry out this work in this manner.*
- f) *Failing to provide or maintain a safe or proper system of work.*
- g) *Failing in all the above circumstances to take reasonable care for the safety of the Plaintiff.”*

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5. On the 3<sup>rd</sup> April 2007 the Defendant filed its Defence denying the Plaintiff’s claims and also alleging that the Plaintiff was in breach of statutory duty and further, that the accident was caused solely, or contributed to by the negligence of the Plaintiff.
6. In its Defence the Defendant pleaded that its foreman, Mr. Jesse Trinier (“Mr. Trinier”), instructed the Plaintiff to either obtain hardened steel nails from the hardware supplier prior to commencing the work to affix the steel track, or alternatively to use TEC screws.
7. The Defendant averred that the Plaintiff had been given prior training in health and safety, especially on the importance of personal safety equipment, such as safety glasses. The Defendant averred that the Plaintiff was aware of the Defendant’s written safety policy when it is stated that the employee was

1 to cease work immediately in any circumstance where a danger exists, until  
2 such time as the necessary safety precautions could be implemented.

3  
4 8. The Defendant pleaded that the Plaintiff obtained the Hilti gun from the tool  
5 box without prior consent from Mr. Trinier.

6  
7 9. In addition to denying the Plaintiff's claim the Defendant also pleaded that  
8 the Plaintiff's injuries, loss and damage were caused solely, or were  
9 contributed to, by the Plaintiff's own breach of s.64(1) and s.64(3) of the  
10 Labour Law (2001 Revision)

11  
12 10. The Defendant also pleaded in its Defence that the accident was caused  
13 solely or contributed to by the negligence of the Plaintiff, and also pleaded  
14 that the particulars of the Plaintiff's negligence were that the Plaintiff:

- 15  
16 *"1. Failed to take any adequate precautions, or at all, for his own safety*  
17 *by not wearing safety glasses provided by the Defendant;*  
18 *2. Failed to follow the instructions from Mr. Trinier, in that he did not*  
19 *use either the TEC screws or obtain and use the hardened Hilti*  
20 *nails;*  
21 *3. Failed to use the correct equipment, in that mild steel Hilti nails*  
22 *were used in the Hilti gun, which was contrary to Mr. Trinier's*  
23 *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*  
26 *written instructions pertaining to the use of equipment and/or safety*  
27 *equipment;*  
28 *6. Exposed himself to the risk of injury;*  
29 *7. In all the circumstances fail[ed] to take any care for his own*  
30 *personal safety and welfare whilst in the employ of the Defendant,*  
31 *particularly when carrying out Mr. Trinier's instructions on Friday*  
32 *the 25<sup>th</sup> August 2006."*  
33

1           11.    On the 6<sup>th</sup> September 2007 the Plaintiff filed his Reply. In his Reply the  
2           Plaintiff denied that he had been given prior training in health and safety,  
3           especially in relation to the importance of personal safety equipment such as  
4           safety glasses.

5

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

8

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

14

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

17

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

22

23

### **Evidence**

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25          16.    The Plaintiff stated in his witness statement dated the 26<sup>th</sup> March 2008 that  
26          the Defendant's foreman, Mr. Trinier, gave the Plaintiff and his co-worker,

1 Mr. Marrant, instructions to frame the overhead steel beam and then cover it  
2 with sheetrock. Mr. Trinier told the Plaintiff and Mr. Marrant that they could  
3 use either screws or a Hilti gun and nails to attach the track to the steel beam,  
4 and then to that they would attach the sheetrock.

5  
6 17. The Plaintiff and Mr. Marrant decided to use  $\frac{3}{4}$  inch screws. The Plaintiff  
7 made an initial search for  $\frac{3}{4}$  inch screws and when he could not find any he  
8 went to Mr. Trinier in his office – which the Plaintiff stated is located in, and  
9 forms a part of, the storage container.

10  
11 18. Mr. Trinier told the Plaintiff that he had no  $\frac{3}{4}$  inch screws, but took the  
12 Plaintiff to the storage area of the container, where they began looking  
13 through some boxes in search of the screws. Mr. Trinier gave the Plaintiff  
14 some 6 inch screws. The Plaintiff said that they would be too long and Mr.  
15 Trinier insisted that the Plaintiff should try them.

16  
17 19. The Plaintiff went back to Mr. Marrant, who expressed surprise about the use  
18 of the 6 inch screws. The Plaintiff then looked for the driver tip and could not  
19 find one.

20  
21 20. The Plaintiff averred in his evidence that he went back to Mr. Trinier and  
22 told him that he could not get the correct driver tip for the screws. Mr. Trinier  
23 then told the Plaintiff to use the Hilti gun. The Plaintiff asked Mr. Trinier if  
24 he had any  $\frac{3}{8}$ <sup>th</sup> inch nails. Mr. Trinier told the Plaintiff to go and ask Mr.  
25 Graham for some  $\frac{1}{2}$  inch or  $\frac{3}{4}$  inch nails because he thought that the  $\frac{3}{8}$ <sup>th</sup>  
26 inch nails were finished.

1           21.     The Plaintiff went to ask Mr. Graham for the nails and Mr. Graham provided  
2                   him with ½ inch nails.

3  
4           22.     The Plaintiff's evidence is that after collecting nails he returned to the  
5                   storage container and found the Hilti gun case. The Plaintiff's evidence is  
6                   that he opened the case to make sure that everything was inside, and then  
7                   noticed that there were no safety glasses, only the Hilti gun and some powder  
8                   shells. Consequently, according to the Plaintiff, he began looking around the  
9                   storage container for safety glasses, but was unable to find any.

10  
11          23.     The Plaintiff's evidence was that he went back to Mr. Trinier who was in his  
12                   office and told him that he could not find any safety glasses – either in the  
13                   Hilti gun case or in the storage area of the container. The Plaintiff's evidence  
14                   is that Mr. Trinier told him to go and look around and said words to the  
15                   effect, "*There must be a pair somewhere in there.*" The Plaintiff said he  
16                   looked a second time in the storage area of the container but still could not  
17                   find any.

18  
19          24.     The Plaintiff then recalled that he had a pair of safety glasses in the trunk of  
20                   his car and, accordingly, he went and retrieved them. He recalled that Mr.  
21                   Marrant had given him these glasses approximately two months earlier.

22  
23          25.     The Plaintiff went back upstairs to where he and Mr. Marrant were working.  
24                   He recalls Mr. Marrant picking up the Hilti gun case and opening it. The  
25                   Plaintiff's evidence is that Mr. Marrant opened the Hilti gun case and Mr.  
26                   Marrant also stated that there were no safety glasses inside. The Plaintiff said



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

8  
9           30.     By comparison, the Plaintiff said that when he went back to Mr. Trinier for  
10                    safety glasses, he got the impression that Mr. Trinier was annoyed.

11  
12          31.     The Plaintiff denied ever seeing any safety glasses in Mr. Trinier's office.

13  
14          32.     The Plaintiff accepted that he knew that the task he was undertaking was  
15                    dangerous, but he said that he allowed Mr. Marrant to use his safety glasses  
16                    because he was the operator of the Hilti gun. The Plaintiff said he and Mr.  
17                    Marrant worked as a team and as Mr. Marrant was the operator he allowed  
18                    Mr. Marrant to wear the safety glasses.

19  
20          33.     Asked why he did not simply down tools and tell Mr. Trinier that he would  
21                    not undertake the task, the Plaintiff said he did not consider that to be an  
22                    option and, in fact, the Plaintiff said that he felt that to take that course would  
23                    have been disastrous, because he would be opposing a directive, and a  
24                    directive that came from Mr. Trinier himself. The Plaintiff said he viewed  
25                    that option as "*a sure case of being fired*" – not just because of the act, but  
26                    because of who and how Mr. Trinier was. The Plaintiff said that, against that

1 background, he decided that he would “*just look away when Mr. Marrant*  
2 *fired the gun.*” Regrettably, this did not prevent the accident from occurring.

3  
4 34. The Plaintiff candidly admitted that he was aware of the risk of not wearing  
5 safety glasses, even though he was only assisting the operator, and stated that  
6 his method was simply to turn his face away – which, he felt, was the only  
7 option at that time.

8  
9 35. The Court noted that the Defendant’s counsel actually complimented the  
10 Plaintiff on his honesty in this regard.

11  
12 36. However, in cross examination the Plaintiff maintained his position that  
13 every foreman issues the worker with safety glasses whenever there is a job  
14 like the one he and Mr. Marrant were assigned and doing at the time of the  
15 accident. The Plaintiff went on to state that whenever a worker went on a  
16 site, “*it was the duty of the foreman on the site [to give the safety glasses],*  
17 *depending upon the job, if the job entails that you do the work we do, then*  
18 *the foreman gives you a pair of goggles.*”

19  
20 **Meeting on the 15<sup>th</sup> March 2006**

21  
22 37. The Plaintiff was asked by the Defendant’s counsel about what he described  
23 as a “safety briefing” held on the 15<sup>th</sup> March 2006. The Plaintiff had no  
24 recollection of that meeting, and despite vigorous cross examination said he  
25 was not aware of it nor did he attend.

1 **Safety Policy**

2  
3 38. The Plaintiff was shown a copy of the Defendant’s safety policy document  
4 and said that he had never been given any safety document.

5  
6 39. The Plaintiff said:

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9  
10 *“When you go on a site the foreman has all the goggles, all the overalls,*  
11 *whatever tool you need, and when you leave that site you leave*  
12 *everything there and you go to another site, there is another foreman,*  
13 *and it’s the same type of job, would issue the items we needed.”*

14  
15 40. The Plaintiff had no recollection of being supplied with safety glasses and  
16 said he was more or less casually given a pair by Mr. Marrant.

17  
18 **Steve Urkel Glasses**

19  
20 41. The Defendant relied on one portion of the witness statement of Mr. McRae,  
21 dated the 27<sup>th</sup> March 2007 when Mr. McRae said he gave safety glasses to  
22 both the Plaintiff and Mr. Marrant. Mr. McRae recalled the Plaintiff being  
23 reluctant to wear the safety glasses as they were not *“stylish...and I told him*  
24 *he had to wear them.”*

25  
26 42. The Plaintiff was cross examined at length on this point and he said, *“This*  
27 *was merely a joke.”* The Plaintiff stated that when Mr. McRae gave him the  
28 pair, he, the Plaintiff, was joking with Mr. McRae, and said that it looked like

1 the pair that Urkel (on the television sitcom Family Matters) used to wear –  
2 in other words, really ugly glasses. The Plaintiff described Mr. McRae as an  
3 easygoing foreman who enjoyed a joke. He said Mr. McRae loved working  
4 with them. He said though Mr. McRae was easygoing, he was firm about  
5 getting the job done. The Plaintiff said that the glasses were ugly even  
6 though it was meant as a joke, but he was wearing them whilst jack  
7 hammering and needed the safety goggles. The Plaintiff stated to defence  
8 counsel:

9  
10 *“I think if Bill McRae was here he would have seen it differently because*  
11 *he knows I am very serious about safety and that, in particular, wearing*  
12 *goggles, especially using that Hilti gun, you know I would always go that*  
13 *extra mile in ensuring safety.”*

14  
15 43. The Plaintiff said:

16  
17 *“The joke was the goggles in itself. It was what you call nerdy and I did*  
18 *make a comment on it referring to Steve Urkel, the comedian on this*  
19 *comedy show, and you know I told him I would have preferred a brand*  
20 *name. I never did use the word stylish. It was meant as a joke, it was*  
21 *purely a joke and I was actually surprised to read that Bill did put that in*  
22 *here because it was a joke.”*

23  
24 44. The Plaintiff was asked what happened to these safety glasses. He said they  
25 were left at the job site because *“Bill McRae was very adamant in stating to*  
26 *us continuously that the job in itself was...”* and the Plaintiff forgot the term

1 Mr. McRae used but it was more or less that whatever was purchased on the  
2 job site stays on the job site.

3  
4 **Walk-off-the-Job Option**

5  
6 45. The Plaintiff was vigorously cross examined as to why he did not refuse to  
7 assist Mr. Marrant until he received an additional pair of safety glasses. The  
8 Plaintiff told the Court that this would have been disastrous, meaning, he  
9 might have lost his job. In other words, the Plaintiff said that he would be  
10 opposing Mr. Trinier's directive and therefore he never considered not  
11 assisting Mr. Marrant an option, even though he had no safety glasses to  
12 wear. The Plaintiff said:

13  
14 *"I just look[ed] at it as a sure case of being fired, not just because I*  
15 *refused a directive but also because of who Mr. Trinier was and how he*  
16 *is."*

17  
18 **Five pairs of safety glasses**

19  
20 46. The Plaintiff was cross examined about the existence of five pairs of safety  
21 glasses. He said, *"I have no idea."* He said that he did search in the storage  
22 container. He did approach Mr. Trinier and ask him for safety glasses. And  
23 the Plaintiff said that if there were some, either on the desk or on the top of  
24 the computer, he would have seen them or Mr. Trinier would have provided  
25 them.

1 **Safety policy document**

2  
3 47. The Plaintiff was shown a safety policy document and he said that he had  
4 never seen it. It was put to him that he did receive a copy prior to the date of  
5 the accident and the Plaintiff said, “*Sir, if I had, I would have it in my*  
6 *possession.*” The Plaintiff said he would have remembered it not because he  
7 had been given it, but he would have studied it and tried to understand it  
8 properly. The Plaintiff said that he had no recollection of receiving the safety  
9 document or any safety document.

10  
11 48. It was put to the Plaintiff that the safety policy documents were distributed at  
12 the meeting of the 15<sup>th</sup> March 2006, conducted by Mr. Shane Howell (“Mr.  
13 Howell”) and Mr. David Johnson (“Mr. Johnson”). The Plaintiff said he had  
14 no recollection of receiving this document or any safety document.

15  
16 49. The Plaintiff said that on the sites that he had worked goggles were almost  
17 always in the case.

18  
19 *“If not then goggles would be there for us to use because we were like a*  
20 *team that just goes around working for different foremen to whatever*  
21 *site, and the safety equipment, such as goggles, stays [sic] on the site.”*

22  
23 The Plaintiff said he would have his own tools like “*...hammers, shears and*  
24 *things like that.*”

1 **Mr. Richard Graham**

2  
3 50. Mr. Graham provided a Witness Statement on the 20<sup>th</sup> April 2007. Mr.  
4 Graham was employed to another construction company but was  
5 subcontracted to the Defendant as a carpenter. Mr. Graham recalled working  
6 on the Savannah worksite with the Plaintiff at the time of the accident.

7  
8 51. Mr. Graham recalled running out of nails on a day prior to the incident and  
9 asking Mr. Trinier if he had any. He recalls Mr. Trinier looking around the  
10 container and not finding any. Mr. Trinier then asked Mr. Graham to pick up  
11 some the following morning on his way to work.

12  
13 52. Mr. Graham could not recall exactly which day of the week he picked up the  
14 nails however, on the following morning Mr. Graham recalls going to the  
15 A.L. Thompson store to purchase nails. He could not get 3/8<sup>th</sup> inch nails so  
16 he called Mr. Trinier who told him to pick up 3/4 inch and 1/2 inch nails.

17  
18 53. Mr. Graham recalls Friday the 25<sup>th</sup> August 2006 and he recalled the Plaintiff  
19 asking him to get him some nails to do a particular job. The Plaintiff told him  
20 he needed Hilti gun nails and Mr. Graham gave the Plaintiff 1/2 inch nails.  
21 Mr. Graham said these were the same hardened steel Hilti gun nails he had  
22 bought from A.L. Thompson.

23  
24 54. Mr. Graham said that he was never supplied with any safety glasses until  
25 after the accident on the 25<sup>th</sup> August 2006 involving the Plaintiff.  
26



1 searched the storage container but he found none. Mr. Marrant recalled the  
2 Plaintiff saying that he had managed to get one from his car.

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

8  
9 60. Upon being unable to find any safety glasses, Mr. Marrant went back  
10 upstairs and noticed that the Plaintiff had begun cutting the tracks.

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

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

25



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

3  
4       68.     Mr. Marrant said that when they were working on the scaffolding he knew  
5             that the Plaintiff had no glasses. Mr. Marrant also candidly admitted that he  
6             did not give any warning when he fired the second shot to attach the track to  
7             the beam. He said he did not look at what the Plaintiff was doing because his  
8             attention was focused on shooting the gun.

9  
10      69.     Asked why he did not have two pairs of glasses Mr. Marrant said he had  
11             gone down and searched for another pair, *“but I didn’t find any.”*  
12             Furthermore, he said that neither the Plaintiff, nor he, had ever been issued  
13             with glasses. Mr. Marrant explained and said,

14  
15                     *“We never issue, meaning we never get any. Nobody gave me any*  
16                     *glasses, never in that company. Nobody else ever gave any glasses. We*  
17                     *get two from the office.”*

18  
19             He said,

20                     *“He got for himself. I would not say somebody give it to me. If I pick it up*  
21                     *myself I would not say it’s issued to me. If me pick it up myself I would*  
22                     *not say it’s issued.”*

23  
24             He said he received the glasses from *“Mr. Haughton.”* Mr. Marrant said,  
25



1 sitting at the computer with some prepared questions. Mr. Marrant's  
2 evidence is that Mr. Hawley would "*type in the answers as I answered the*  
3 *questions.*" Mr. Hawley then printed off a sheet of paper with the questions  
4 and answers and handed it to me to read and asked me to sign the document.  
5 Mr. Marrant said that he is a slow reader and was given little time to read and  
6 understand the document. However, Mr. Marrant said that he could see that  
7 some of the answers were not as he had stated them. Mr. Marrant said he told  
8 Mr. Hawley this and he noted that Mr. Hawley began to make changes at the  
9 same time as he was repeating his answers to him. Mr. Hawley then printed a  
10 second copy and gave it to Mr. Marrant, who then signed it, and that  
11 statement was dated the 6<sup>th</sup> February 2007.

12  
13 73. Later on when Mr. Marrant read and comprehended the statement he realised  
14 that things had been recorded incorrectly and some things had not been  
15 recorded at all or not fully. Mr. Marrant said he noticed that question 8 did  
16 not reflect what he had said. He also noted other things in relation to answers  
17 to questions 2, 3, and 7. Mr. Marrant's evidence is that he felt that Mr.  
18 Hawley had not written down his statement as he answered. Mr. Marrant also  
19 said, "*... it may be that he does not understand how I express myself.*"

20  
21 74. As a result of seeing these errors, Mr. Marrant went to "Paul" and asked him  
22 to call Mr. Hawley. Mr. Marrant told Mr. Hawley that there were still  
23 corrections to be made and he pointed out the answer to question 8 in  
24 particular. Question 8 was whether there were additional safety glasses  
25 available on the site. Mr. Marrant said he had answered "no" but Mr. Hawley

1 had recorded a “yes.” Mr. Marrant said he told “Paul” that he wanted to  
2 make the corrections “now.”

3  
4 75. Mr. Marrant noticed other errors on the statement and it was arranged that he  
5 would go to see Mr. Hawley on the 9<sup>th</sup> February. A second meeting took  
6 place on the 9<sup>th</sup> February and Mr. Marrant said he wanted to change his  
7 answers to questions 2, 3, 7, 8, and 9. Although Mr. Marrant signed the  
8 statement prepared for him by Mr. Hawley a second time he felt that he  
9 wanted to clarify his answers, as he felt the answers were not fully recorded.  
10 Mr. Marrant said he felt nervous and under some amount of pressure to sign  
11 the document as everybody in the room was waiting for him to sign, and he  
12 signed it without reading it carefully.

13  
14 76. Mr. Marrant said the discussion with Mr. Trinier regarding the Hilti gun took  
15 place the same day as the accident and not on the day prior to the accident.

16  
17 77. In relation to question 7 Mr. Marrant said that Phoenix knew that he did not  
18 have his safety glasses because he had reported, through a foreman called  
19 Gonzales, that his safety glasses had been stolen, and Gonzales had reported  
20 the loss to the project manager. Mr. Marrant said he had not lost his safety  
21 glasses they were stolen.

22  
23 78. Mr. Marrant said his answer to question 8 was not fully recorded. He said his  
24 complete answer was,

25

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

4  
5                                    **Cross examination of Mr. Marrant**

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

9  
10                    *“I never really said this stuff that is here. Steve asked me the question,*  
11                    *him write and me tell him seh Steve, you can't really write what me nuh*  
12                    *say. Because me nuh really talk like them. So each time him write it, I tell*  
13                    *him I nuh say that, him still write it. So me say, well, whatever...you*  
14                    *understand? Because him nuh really put what me seh.”*

15  
16            80.     The Court intervened and asked the witness, Mr. Marrant, to give his  
17            evidence more slowly and he stated,

18  
19                    *“When him ask me the question, him write what him feel like write. Him*  
20                    *type it like how him want type it. So that's why we end up with this and*  
21                    *all kind of confusion and these two papers.”*

22  
23            81.     For example, with respect to question number 7, Defendant's counsel asked  
24            Mr. Marrant if the response written in his statement which stated, *“Mr.*  
25            *Marrant said he lost his safety glasses”* was correct. In reply to counsel Mr.  
26            Marrant said,

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

82. Mr. Marrant went on to say,

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

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

83. Asked whether he was given an opportunity to make corrections to his statement Mr. Marrant said, *“Not really.”*

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

1 85. Mr. Marrant was asked about a Mr. Watkis. He replied, “*Who is Mr.*  
2 *Watkis?*” When it was put to him that he was the sweeping man he said, “*Oh*  
3 *Jerome.*”  
4

5 **Defence case**

6 **Mr. Jesse Trinier**  
7

8 86. Mr. Trinier’s evidence in chief is contained in his witness statement dated the  
9 18<sup>th</sup> of April 2007.  
10

11 87. Mr. Trinier states that he was the foreman in charge of a team of 30 workers  
12 from Phoenix, together with some ten subcontractors working on a project at  
13 the Savannah Foster’s Supermarket in May 2006.  
14

15 88. Mr. Trinier said that Mr. Jerome Watkis (“Mr. Watkis”) was vested with the  
16 additional responsibility to assist any employee or subcontractor to obtain  
17 any materials or safety equipment that may be required from his office or the  
18 works trailer. He said that the back 2/3<sup>rd</sup> of the works trailer stored items and  
19 equipment needed on the site, and the forward 1/3<sup>rd</sup> was his site office.  
20

21 89. Mr. Trinier said there were approximately five pairs of safety glasses in his  
22 office.  
23

24 90. Mr. Trinier’s evidence is that on Thursday the 24<sup>th</sup> August 2006 he instructed  
25 the Plaintiff to attach a steel track to a steel beam on the second floor of the  
26 site and told him that it could be done with TEC screws, using a driver, or

1 using hardened steel Hilti nails with the use of a Hilti gun. He said he told the  
2 Plaintiff that there were only mild steel Hilti nails on site and that these nails  
3 would be unsafe for use on that job. Mr. Trinier said the Plaintiff was told to  
4 take time the following morning to pick up hardened steel Hilti nails from  
5 one of the local building supply houses, or he was to use the TEC screws.

6  
7 91. Mr. Trinier said that on Friday the 25<sup>th</sup> August 2006 he was working on the  
8 first floor of the job site whilst the Plaintiff was working with Mr. Watkis  
9 and Mr. Marrant on the second floor. Mr. Trinier said that he was aware that  
10 the Plaintiff and Mr. Marrant were working together on the scaffolding, with  
11 one person holding the steel track at shoulder level and with the other person  
12 at the other end of the steel track and attaching the track with either the driver  
13 and TEC screws or Hilti gun and nails.

14  
15 92. Mr. Trinier's evidence in chief is that at approximately 2:00 p.m. on Friday  
16 the 25<sup>th</sup> August 2006 the Plaintiff came down to him with an eye injury. He  
17 said the Plaintiff was sent to hospital. Mr. Trinier's evidence is that he recalls  
18 making numerous calls to Mr. Marrant and to Mr. Brock Jaeck to check on  
19 the Plaintiff's progress.

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

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

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

11

12   **Cross examination of Mr. Trinier**

13

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

18

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

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

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

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

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

26

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  
3                   some cross examination by the Plaintiff’s counsel, that he had brought  
4                   medium-sized screws to the Plaintiff and Mr. Marrant and admitted that it  
5                   was understood that if the Plaintiff and Mr. Marrant could not find the  
6                   correct hardened steel nails for 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  
10                  in 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*  
13                  *screws?”* 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*  
16                  *they were to find the nails and to do the job, so explain to me why you*  
17                  *brought them the screws?”* Mr. Trinier replied, *“Because if they couldn’t find*  
18                  *the nails they were to use the screws so the job could get done. Using the*  
19                  *screws is a harder method. It takes a little bit more time but it still completes*  
20                  *the job.”*

21

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

26

1           106. Mr. Trinier denied that the Plaintiff had come to him and told him that he  
2           could not find the proper driver. Mr. Trinier said he did not recall the  
3           Plaintiff coming into his office and saying he could not find any safety  
4           glasses in the Hilti case. Mr. Trinier said it was “... *not true when the*  
5           *Plaintiff said that he had been looking for goggles, and that Mr. Trinier said*  
6           *they were somewhere around.*”  
7

8           107. Mr. Trinier said he was not aware whether or not there were glasses in the  
9           Hilti gun case, but he did accept that there were no glasses in the Hilti gun  
10          case.  
11

12          108. Mr. Trinier accepted that although safety was everyone’s duty, he was the  
13          primary and principal person responsible for safety on the site, and he also  
14          accepted that the safety glasses should be kept with the Hilti gun.  
15          Furthermore, Mr. Trinier accepted that he never told either the Plaintiff or  
16          Mr. Marrant that there were safety glasses in his office. Mr. Trinier could not  
17          recall whether there were any safety glasses in the storage area, but he  
18          recalled that there were roughly five sets in his office.  
19

20          109. In answer to a question from the Court Mr. Trinier said he did not recall  
21          whether the safety glasses were at the desk at which he was sitting or at one  
22          of the desks beside that. He said he had several chairs and desks in there  
23          because one minute he would be looking at drawings and the next minute he  
24          would be on the computer and vice versa, so he was not sure where in the  
25          office the approximately five safety glasses were.  
26

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

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

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

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

24  
25          114. Mr. Trinier said that he never provided the Plaintiff with a pair of safety  
26          glasses, nor was he asked for them. Mr. Trinier also accepted that the

1 Plaintiff would have had no way of knowing whether Mr. Trinier had safety  
2 glasses on site. Mr. Trinier denied that the Plaintiff had come to him for  
3 safety glasses.

4  
5 115. Mr. Trinier was familiar with the Defendant's safety policy document, but  
6 accepted that he did not provide a copy of this document to the Plaintiff. Mr.  
7 Trinier also accepted that the safety policy document was not posted  
8 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  
12 had meetings on a quarterly basis and that these quarterly meetings would  
13 deal with safety and other issues.

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

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

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

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

13  
14          121. When it was put to him that both the Plaintiff and Mr. Marrant were certain  
15          that they had used the correct nails, the Plaintiff accepted that he could not  
16          recall the 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,  
19          but he did accept that he was the go-fer man who would sweep and take out  
20          garbage.

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

24

1 124. Mr. Trinier said that he did not know whether the Plaintiff had ever received  
2 any prior training in health and safety, nor did he know whether the Plaintiff  
3 was ever provided with a copy of the Defendant's safety policy document.  
4

5 **Mr. David Johnson**  
6

7 125. Mr. Johnson provided a witness statement on the 27<sup>th</sup> March 2007 and  
8 confirmed that he was initially a project coordinator with the Defendant's  
9 company, but was promoted in January 2006 to Operations Manager.  
10

11 126. He recalled that as Operations Manager he chaired a staff meeting on the 15<sup>th</sup>  
12 March 2006. Mr. Johnson's evidence is that the staff meeting was  
13 compulsory for all staff to attend. At the meeting he briefed the staff on the  
14 company's health and safety policy and advised them of the safety policy  
15 document. He said he went through the safety policy document with the staff.  
16

17 127. In his evidence in chief Mr. Johnson said that his presentation dealt with the  
18 proper use of tools, which was to be monitored by foremen to promote safety  
19 and reduce wear and tear. Mr. Johnson also briefed the staff on safety and the  
20 importance of safety, which included the wearing of safety equipment and  
21 when safety equipment should be worn.  
22

23 128. Mr. Johnson said that after the meeting he gave copies of the company's  
24 safety policy document to all of the foremen with instructions to give a copy  
25 of the document to each and every staff member under their supervision.  
26

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

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

8  
9       131. Mr. Johnson accepted that it was possible that workers did not attend the  
10          meeting.

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

16  
17       133. Mr. Johnson could not say whether Mr. Marrant was at the meeting. Mr.  
18          Johnson accepted that there was no attendance note.

19  
20       134. However, the safety document was at the meeting and he provided one to  
21          each of the foremen, with instructions to provide it to the workers.

22  
23       135. Mr. Johnson could not remember who the Plaintiff's foreman was at the time  
24          of the meeting and he was unsure whether the Plaintiff's foreman was given  
25          a copy of the safety document.

26





1 in his written statement, Mr. Trinier alleged that the Plaintiff did not use the  
2 correct nails.

3  
4 145. It is clear from the evidence before the Court that the Plaintiff obtained the  
5 nails from Mr. Graham and there was no independent evidence from any  
6 source that the nails which Mr. Marrant and the Plaintiff used to perform the  
7 subject task were the incorrect nails.

8  
9 146. In fact, the Court noticed that Mr. Trinier changed his position on the  
10 question of the incorrect nails and candidly admitted at the end of his cross  
11 examination that he did not know what type of nails were in the gun, and  
12 further, there was no basis for his first allegation regarding nails.

13  
14 147. Accordingly, the Court finds that Mr. Marrant did not use any incorrect nails,  
15 and no fault can be laid at the door of the either Mr. Marrant or the Plaintiff  
16 for the use of the nails that were used by Mr. Marrant on the 25<sup>th</sup> August  
17 2006.

18  
19 **The Plaintiff obtained the Hilti gun from the “toolbox” without prior consent of Mr.**  
20 **Trinier**

21  
22 148. It is clear from all the evidence put before the Court that there was no basis  
23 whatsoever for this pleading and that, not only did the Plaintiff have Mr.  
24 Trinier’s consent but in fact he was instructed by Mr. Trinier to use the Hilti  
25 gun in order to affix a steel track to a steel beam.

26

## Safety Glasses

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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.

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

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

8  
9       154. Having listened carefully to both the Plaintiff and Mr. Trinier, I accept the  
10      Plaintiff's evidence that he asked Mr. Trinier for a pair of safety glasses and  
11      Mr. Trinier told him to go and find a pair. I further accept the Plaintiff's  
12      evidence that he took all reasonable steps to find a pair of safety glasses.

13  
14      155. In addition, it is unchallenged that there were no safety glasses in the Hilti  
15      gun case. The Court finds that the Defendant is in breach of its statutory duty  
16      in failing to provide suitable protection for the eyes, in that, it should be  
17      mandatory that the Defendant and its servants and agents to ensure that the  
18      safety glasses are with the Hilti gun and in the Hilti gun case at all times.

19  
20      156. Once the foreman, Mr. Trinier, instructed the Plaintiff and Mr. Marrant to  
21      affix the steel track to a steel beam by means of a Hilti gun, it was incumbent  
22      upon him to ensure that both the Plaintiff and Mr. Marrant had safety glasses  
23      before undertaking the task. Mr. Trinier, had given the instructions. He, as  
24      the foreman, has primary, overall responsibility to ensure that the  
25      Defendant's employees are properly equipped with safety equipment. He  
26      failed to exercise his duty to the Plaintiff. In not ensuring that the Plaintiff

1 and Mr. Marrant were provided with glasses before undertaking the task, the  
2 foreman had failed in his responsibility to properly supervise and ensure that  
3 they were both provided with the necessary safety equipment for the task.  
4

5 157. The evidence of the Defendant's Operations Manager, Mr. Johnson, is that  
6 safety glasses, as a matter of good practice, should be in the Hilti gun case.  
7 Mr. Johnson also accepted that it was the foreman's duty to ensure that the  
8 Plaintiff and Mr. Marrant had safety glasses.  
9

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

19 159. Again I find that the Defendant is in breach of its statutory duty in failing to  
20 provide suitable protection for the eyes in accordance with s.62(b) of the  
21 Labour Law. Furthermore, the Defendant is negligent in failing to take  
22 adequate precautions for the safety of the Plaintiff and for failing to provide a  
23 safe system of work.  
24  
25  
26

1 **Health and Safety Training**

2

3 160. The Defendant pleaded in its Defence that the Plaintiff attended a staff  
4 meeting at the Defendant's premises in Industrial Park on the 15<sup>th</sup> March  
5 2006 when the Defendant's written policy, including the use personal safety  
6 equipment was distributed to all staff members present, including the  
7 Plaintiff.

8

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

14

15 162. In his evidence in chief he said that one of the main emphases at the meeting  
16 was to present himself as the Operations Manager to the work crews. He  
17 said, "*people were aware of our safety policy and it gave me the opportunity*  
18 *to distribute the safety policy again and answer any questions that anyone*  
19 *might have at that time with regard to the safety policy.*"

20

21 163. At one stage in his evidence Mr. Trinier stated that he and Phoenix had  
22 quarterly meetings. By the end of his cross examination Mr. Trinier's  
23 position changed dramatically, when he was merely insisting that there was  
24 more than one meeting during his nine years as a foreman with the Defendant  
25 company.

26

1       164. The only reliable evidence regarding any meetings associated with safety  
2       policy is that one meeting did take place on the 15<sup>th</sup> March 2006.

3  
4       165. The Court finds that for the Defendant to describe this as a health and safety  
5       meeting, is, to some extent, stretching the truth. It is clear from the meeting  
6       agenda that Mr. Howell chaired the meeting and the first and primary aim  
7       was to introduce Mr. Johnson to the team, and to give an overview of Mr.  
8       Johnson's position. This included Field Management, Quality Control,  
9       Projects and Scheduling, Safety Policy Awareness, the roles of three other  
10      third parties, and, Future Profit Share expectations. On any view, safety  
11      policy took only a fraction of that time, possibly amounting to a quarter or  
12      perhaps a third of the time allotted. All the typed meeting agenda stated  
13      regarding safety policy was to introduce to the employees that there would be  
14      visits from government safety inspectors and the possible impact to the  
15      Defendant from possible infringements. There is one line on the meeting  
16      agenda regarding the importance of safety, both on site and in day-to-day  
17      operations.

18  
19      166. The Court finds that there is no note of who attended that meeting. There is  
20      no evidence adduced by the Defence that either the Plaintiff or Mr. Marrant  
21      attended the meeting. The Plaintiff and Mr. Marrant are both adamant that  
22      they did not attend the meeting, nor were they told of the content of the  
23      meeting.

24  
25      167. This Court accepts the evidence of the Plaintiff and Mr. Marrant, in that, they  
26      were not at the meeting on the 15<sup>th</sup> March 2006. There is no evidence to

1 suggest that the Defendant or its servants or agents made any attempt to  
2 ensure the Plaintiff and Mr. Marrant attended the meeting. There is no  
3 evidence that there was any attempt to have a separate meeting with the  
4 Plaintiff and Mr. Marrant to discuss safety policy. There is no evidence that  
5 either the Plaintiff or Mr. Marrant had ever received any safety training from  
6 the Defendant or any of its servants or agents.

7  
8 168. The Defendant produced in evidence a rather sparse, inadequate and undated  
9 safety policy which had clearly been photocopied many times.

10  
11 169. The safety policy document states that all employees are required to read and  
12 be familiar with the company safety policy. It also states, “...*you are*  
13 *encouraged to maintain a copy and to review it from time to time.*” However  
14 when one examines the Defendant’s safety policy document it does not  
15 provide any rules or regulations for the employees to follow. It does not  
16 provide any guidelines of what is expected and required of the employees. It  
17 boldly states that, “*Should an employee refuse to follow a safety policy he*  
18 *may at the discretion of the foreman be dismissed.*” However, there are no  
19 written rules, regulations, guidelines or any policies to which the employees  
20 are supposed to adhere on any safety policy of the Defendant company.

21  
22 170. Accordingly, on all the evidence before it, this Court finds that the Plaintiff  
23 was not given any prior training in health and safety. Furthermore, this Court  
24 finds that there is no evidence that the Plaintiff was given any instructions or  
25 guidelines on personal safety equipment.



1 174. Mr. Trinier frankly conceded that he never told the Plaintiff or Mr. Marrant  
2 that there were any safety glasses and that he never checked that they had the  
3 proper safety equipment. Further, Mr. Trinier admitted that he never told the  
4 Plaintiff or Mr. Marrant to wear safety glasses.

5

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

11

### 12 **Contributory Negligence**

13

14 176. The Defendant alleged in its Defence that the Plaintiff was in breach of  
15 statutory duty in not following the safety policies set out on the 15<sup>th</sup> March  
16 2006 and not being fully aware of the undated safety policy document.

17

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

20

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

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25 179. I now ask myself the question: Was there any element of contributory  
26 negligence?

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

181. In addition, the Defendant’s Operations Manager, Mr. Johnson, accepted that the Plaintiff was a “safety conscious” individual who was the type of man who would wear goggles when required.

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

183. The Plaintiff’s response to this is that he had a genuine and real fear that this would jeopardize his employment with the Defendant company and therefore it was not something he was prepared to do. The Plaintiff’s evidence is that downing tools was not an option for him. He had never done that before and under the circumstances, with Mr. Trinier being a demanding foreman, he

1 just did not consider downing tools to be a viable option. In fact, the Plaintiff  
2 professed to having a real fear that he would be fired if he had downed tools.  
3 I find the Plaintiff's expressed fear for his continued employment to be  
4 sincere and real.

5  
6 184. I find that the Plaintiff's health and safety training was virtually non-existent.  
7 The Defendant's undated safety policy document was entirely inadequate and  
8 provided the employees with no safety policies. The foreman failed to  
9 exercise the necessary precautions to ensure that the Plaintiff was wearing  
10 glasses. The Plaintiff took all reasonable steps to try and locate a pair of  
11 safety glasses. There were no safety glasses in the storage container and no  
12 safety glasses in the Hilti gun case. The Plaintiff was left with the one  
13 precaution, which was to try and look away when Mr. Marrant fired the gun.

14  
15 185. It is clear from the evidence of other third parties that the Plaintiff was a very  
16 safety conscious individual and this Court finds that the Plaintiff took all  
17 reasonable steps to try and ensure that he and Mr. Marrant were protected.

18  
19 186. Accordingly I do not find that the accident was caused, or contributed to, by  
20 the negligence of the Plaintiff.

21  
22 187. In addition, for the aforesaid reasons, I find that the Plaintiff did not willfully  
23 and did not, without reasonable cause, act to endanger himself, and therefore  
24 was not in breach of s.64(1) and (3) of the Labour Law.

25

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

7  
8           189. Having examined all the evidence and heard submissions from both counsel,  
9 I find on the balance of probabilities that the Plaintiff has made out his case  
10 that the said injuries, loss and damage were caused by the negligence of the  
11 Defendant, its servants or agents, in:

- 12  
13                   i. Failing to take any adequate precautions for the safety of the  
14                   Plaintiff while he was engaged in his work;  
15                   ii. Exposing the Plaintiff to a risk of injury of which the Defendant  
16                   and its servants and agents knew or ought to have known;  
17                   iii. Failing to provide the Plaintiff with suitable safety glasses to  
18                   protect the eyes of the Plaintiff while he was carrying out his  
19                   work;  
20                   iv. Directing the Plaintiff to carry out the work without providing  
21                   him with any suitable safety glasses to protect his eyes when the  
22                   Defendant, its servants and agents knew or ought to have known  
23                   that it was unsafe and dangerous for him to carry out the work  
24                   without suitable safety glasses;  
25                   v. Directing the Plaintiff to attach a steel fixture to a steel beam by  
26                   use of a nail gun when the Defendant, its servants and agents

1                                   knew or ought to have known that that it was unsafe and  
2                                   dangerous for the Plaintiff to carry out this work in this manner;  
3                                   vi. Failing to provide or maintain a safe or proper system of work.

4  
5  
6       190.     Accordingly, this Court finds the Defendant liable for the Plaintiff's personal  
7                                   injury, loss and damage, by reason of the negligence and breach of statutory  
8                                   duty of the Defendant and its servants and agents.

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

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**Dated this the 11<sup>th</sup> November 2010**

**Hon. Mr. Justice Charles Quin**  
**Judge of the Grand Court**