



IN THE COURT OF SESSION

September 2014

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R E C O R D

in the cause

GRAEME BROWN

against

DMT INDUSTRIAL SUPPLIES

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Adam Lawrence Parker LLP,  
Solicitors for Pursuer.

Jamiesons LLP,  
Solicitors for Defender.

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R E C O R D

in the cause

GRAEME BROWN, 127 Church Street, Newtown, PR20 2KB

- PURSUER;

against

DMT INDUSTRIAL SUPPLIES, 4 Randolph Road, Peterburgh, PR9 5DD

- DEFENDER.

IN THE COURT OF SESSION

SUMMONS  
(Personal Injury Action)

GRAEME BROWN, 127 Church Street, Newtown, PR20 2KB

- PURSUER;

against

DMT INDUSTRIAL SUPPLIES, 4 Randolph Road, Peterburgh, PR9 5DD

- DEFENDER.

Elizabeth II, by the Grace of God, of the United Kingdom of Great Britain and Northern Ireland and of Her other Realms and Territories, Queen, Head of the Commonwealth, Defender of the Faith, to DMT INDUSTRIAL SUPPLIES. By this summons, the pursuer craves the Lords of our Council and Session to pronounce a decree against you in terms of the conclusions appended to this summons. If you have any good reason why such decree should not be pronounced, you must enter appearance at the Office of Court, Court of Session, 2 Parliament Square, Edinburgh EH1 1RQ, within three days after the date of the calling of the summons in court. The summons shall not call in court earlier than 21 days after the date of service on you of this summons. **Be warned that, if appearance is not entered on your behalf, the pursuer may obtain decree against you in your absence.**

Given under our Signet at Edinburgh,

14C Pilmore Lane  
Newtown  
Solicitor for Pursuer

CONCLUSIONS

A.

(FIRST) For payment by the defenders to the pursuer of the sum of ONE HUNDRED THOUSAND POUNDS (£100,000) STERLING with interest thereon at the rate of eight per cent a year from the date of citation to follow hereon or from such other date at such other rate as to the Court shall seem appropriate until payment.

B.

(SECOND) For the expenses of the action.

STATEMENT OF CLAIM FOR PURSUER

and

ANSWERS THERETO FOR DEFENDERS

C.

Cond. 1 The pursuer is Graeme Brown. He resides at 127 Church Street, Newtown, PR20 2KB. His date of birth is 9th June, 1969. The pursuer is a Production Worker.

Ans. 1 Admitted the pursuer is Graeme Brown. *Quoad ultra* not known and not admitted.

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Cond. 2 The defender is DMT Industrial Supplies. They are a company incorporated under the Companies Acts and have a place of business at 4 Randolph Road, Peterburgh, PR9 5DD. The defenders are plastic component manufacturers.

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Ans. 2 Admitted.

Cond. 3 The court has jurisdiction to hear this claim against the defenders because the

- A. pursuer seeks reparation for loss, injury and damage sustained by him through breach of duty on the part of the defenders. The harmful event in consequence of which the pursuer suffered said loss, injury and damage occurred in Scotland.

Ans. 3 Admitted.

- B. Cond. 4 On or around 15th August 2012 at or about 2.45 pm, the pursuer was working in the course of his employment with the defenders at their factory premises on Randolph Road, Peterburgh. The pursuer was employed as a production worker operating a Seissman TD 4500 Extrusion machine. He had been employed by the defenders since about 1<sup>st</sup> August 2010. The pursuer had been instructed by his foreman, John Williams,
- C. to fetch a 60mm C-Spanner for adjusting the ancillary extrusion chute on the TD 4500. The C-Spanners were kept by the defenders in a toolbox positioned adjacent to the input plastics hopper and approximately 10 metres behind the back of the TD 4500. The lighting in that area of the factory was very poor. Three out of five electric ceiling lights in the vicinity were not operating at the material time. As the pursuer walked around the
- D. back of the main extrusion chute he suddenly tripped over a piece of sheet metal lying on the factory floor and fell striking his left leg on the floor. The piece of sheet metal the pursuer fell over comprised the left fintail panel of the ancillary extrusion chute. It had previously been loosened off or removed by one of the pursuer's colleagues and either laid or had fallen onto the floor. The pursuer does not know the identity of the colleague
- E. who had previously loosened off or removed the panel. As a consequence of the accident the pursuer suffered loss, injury and damage. The defenders' answers are denied except insofar as coinciding herewith.

A.

Ans. 4          Admitted on or about on or around 15th August 2012 the pursuer was working in the course of his employment with the defenders at their factory premises on Randolph Road, Peterburgh. Admitted that the pursuer was employed as a production worker on a Seissman TD 4500 Extrusion machine. Admitted that he had been employed by the defenders since about 1<sup>st</sup> August 2010. Admitted that C-Spanners were kept in a box adjacent to the input plastics hopper. Admitted that this box was positioned approximately 10 metres from the Seissman TD. Believed to be true that the pursuer fell and sustained injury under explanation that the circumstances in which he did so are not known and not admitted. *Quoad ultra* denied. Explained and averred that John Williams was on annual leave on 1<sup>st</sup> August 2012. At the material time he was on holiday in Portugal. He did not return to the UK until 3<sup>rd</sup> August 2012. Further explained and averred that the ancillary extrusion chute panels are attached to the extruder with 25mm 'Kwik-Clips'. The clips are easily released by hand. There would be no purpose in using a 60mm C-Spanner for adjusting the chute panels. The pursuer's alleged accident was not witnessed by any of his colleagues. The pursuer did not report any such incident until the following day. The lighting in the area where the pursuer allegedly fell is adequate for its purpose. This is not a designated traffic route. It is rarely necessary for the defenders employees to access the area. All electrical lights were operating correctly at the material time. The defenders system of maintenance ensures that any defective light bulbs are replaced immediately. The presence of a fintail panel on the floor would have been immediately obvious to anybody in the vicinity. The panel

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- A. measures approximately 2.25 metres by 1.75 metres and is painted bright pink. The factory's floor is dark gray concrete.

- Cond. 5 As a result of the accident, the pursuer suffered loss, injury and damage. He attended the Accident & Emergency Department of the Royal Hospital, Evans Road, Newtown, PR14 0SH. It was noted that he had lacerations, severe swelling and bruising injuries to his left leg. X-rays showed a fracture of his upper left tibia and possible left patella fracture. Reduction of the tibia fracture was attempted under local anaesthetic but was unsuccessful. The pursuer was admitted to the Orthopaedic Ward of the said Hospital. An operation was carried out on 25th August 2012 under general anaesthetic.
- C. The pursuer was discharged on 27<sup>th</sup> August 2012. He was unable to bear weight until October 2012 and required to use a walking stick. He was in considerable pain and discomfort during this period and required to take painkillers. The pursuer was unable to return to work until October 2013. He received sick pay during this period but lost earnings details of which will be produced. He also lost his annual bonus payment of £2,500 after tax. Although his leg pain appears to have largely resolved for the time being he is now likely to develop arthritis in his knee within the next three to five years. In the event that he develops arthritis the pursuer may require to undergo a knee replacement in his mid to late 50's and possible revision thereafter. The pursuer would require prolonged periods of medical treatment. He would require to be absent from his work and is likely to lose earnings as a consequence. He may have to retire early from his present employment and seek sedentary employment at lower earnings. The pursuer suffered psychiatric injury as a consequence of the accident. As he fell he was fearful
- E.

that he might fall into the exposed extruder chute and suffer fatal or significant injury. He could not sleep for months after the incident and experienced frequent flashbacks to his accident. The pursuer was diagnosed on 15/7/14 by Dr Kenwright, Consultant Psychiatrist as having suffered PTSD for a period of approximately six months following the incident. The Psychiatric Report dated 15/7/14 will be lodged in process. The pursuer received services from his wife Deirdre Brown who he required to assist him with household chores, shopping, driving, washing and dressing. Reference is made to Section 8 of the Administration of Justice (Scotland) Act 1982. As a result of the accident the pursuer was unable to render personal services on behalf of his mother. He was unable to look after her garden or to assist her with her weekly shop for a period of about a year. The pursuer reasonably estimates this claim to be valued at £1,000 under Section 9 of the Administration of Justice (Scotland) Act 1982. As a result of the accident, the pursuer incurred out of pocket expenses. He incurred travelling expenses getting to and from medical appointments. He required to pay for non-prescription painkillers (£50), dressings and walking aids to improve the strength in his injured leg (£168). He required to purchase an orthopaedic stool at the cost of £29.95. He incurred physiotherapy costs in the region of £1,000. The pursuer accordingly seeks damages under the following heads of claim: (1) solatium; (2) loss of past earnings; (3) loss of future earnings; (4) Section 8; and (5) out-of-pocket expenses. The defender's averments in answer are denied except insofar as coinciding herewith.

Ans. 5            The nature and extent of the pursuer's loss, injury and damage is not known and not admitted. *Quoad ultra* denied.

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- A. Cond. 6 The pursuer's claim is based on the defender's breach of statutory duty. The defenders were in breach of the duties incumbent on them in terms of Regulations 5 and 12 of the Workplace (Health, Safety and Welfare) Regulations 1992. The defender's averments in answer are denied except insofar as coinciding herewith. Explained and averred that the pursuer duly complied with all duties incumbent upon him in the circumstances. Poor lighting in the vicinity of where the panel was lying resulted in the
- B. pursuer being unaware of the obstruction prior to his fall.

- C. Ans. 6 Reference is made to Regulations 5 and 12 of the Workplace (Health, Safety and Welfare) Regulations 1992 beyond which no admission is made. *Quoad ultra* denied. The defenders complied with any statutory duties incumbent on them in the circumstances. *Esto* the defenders are liable to the pursuer (which is denied) the pursuer caused, or in any event, contributed to the occurrence of his accident. The pursuer had a duty to take reasonable care to watch where he was going and where he was placing his feet. The existence of the panel lying on the floor would have been obvious to anyone exercising reasonable care.

D.

IN RESPECT WHEREOF

14C Pilmore Lane  
Newtown  
Solicitor for Pursuer

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Ref: GYS/DXD/31