**CAPTION SHEET**

**Department of Labour**  .v. **GREENWAY DEVELOPMENTS LIMITED**

**Address** Registered Office

 33 Harbelle Close

 Mayfield

 Tauranga

**TOC** Summons

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# CHARGES

(1) Section 18(1)(a) and section 50(1)(a) of the Health and Safety in Employment Act 1992

On or about 13 May 2013 at 10 Fasching Lane, Tauriko, Tauranga, Greenway Developments Limited, being a principal failed to take all practicable steps to ensure that a contractor, namely Peter Leslie Laurence Giles was not harmed while doing any work that the contractor was engaged to do, namely the erection of trusses.

**Penalty: A fine not exceeding $250,000**

**SUMMARY OF FACTS**

**GREENWAY DEVELOPMENTS LIMITED**

1. The Defendant company operates a residential property construction company. The Defendant is based in Tauranga.

BACKGROUND

1. In April 2013 the Defendant was engaged by homeowners David and Rebecca Mackenzie to construct a residential building at 10 Fasching Lane, Tauriko, Tauranga.
2. In April 2013 the Defendant engaged Peter Leslie Laurence Giles (“Mr Giles”) as a building contractor to work at the residential building site at 10 Fasching Lane.
3. On 13 May 2013 Mr Giles was carrying out work for the Defendant when he suffered serious harm.

THE ACCIDENT

1. On 13 May 2013 Mr Giles together with Francis Woods (“Mr Woods”) and Jack Thompson (“Mr Thompson”) were erecting trusses for the construction of the garage at the residential building site.
2. The trusses had arrived on site that morning and they were unloaded onto the top plate of the garage by a Hiab crane.
3. At approximately 10.00am the three workers began erecting the gable-end truss on the garage.
4. The truss was being manoeuvred into a position from where it could eventually be secured to the top plate of the garage. Mr Thompson was situated at the eastern side of the truss, working from the top plate. Mr Woods was positioned in the middle on the concrete floor using a prop that had been nailed onto and near the apex of the truss to push it upwards and Mr Giles was on the top plate on the western side of the truss.
5. The truss was heavy due to it being waterlogged. As it was being manoeuvred into position by sliding it along the top plate, the apex pivoted and the truss slipped off the top plate.
6. As the truss slipped, Mr Giles lost his balance and fell from the top plate to the ground.
7. At the time of the accident there was no effective means of fall protection in place.
8. Mr Giles suffered a fracture to his left wrist and jaw.

THE HAZARD

1. The height from the top plate to the concrete floor of the garage was approximately 3 metres. Both the garage and house were single storey.
2. Prior to the accident, the Defendant had discussed the job of putting up the framing and the hazards involved with the task with Mr Giles and Mr Woods. No formal hazard identification or job hazard analysis was undertaken.
3. No specific discussions were held in respect of the erection of the trusses or what means of fall prevention could have been in place to control the hazard of a risk of a fall from heights.
4. After the accident, the Defendant acquired portable scaffolding from another site in order to erect the remaining trusses at 10 Fasching Lane.
5. The Ministry of Business, Innovation and Employment’s publication *Best Practice Guidelines for Working at height in New Zealand* (“the Guidelines”) is widely accepted as the industry standard for work of this nature and provides guidance for people at height.
6. Section 6, in particular 6.1 and 6.4 of the Guidelines provides guidance on the use of scaffolding and safety mesh as a means of fall protection group control.

THE BREACH

1. The Informant's investigation into the incident revealed the following breach of the Health and Safety in Employment Act 1992:

Section 18(1)(b)

1. As a principal, the Defendant was obliged to take all practicable steps to ensure that no contractor was harmed while doing work the contractor was engaged to do.
2. The Defendant should have taken the following practicable steps:
3. To have ensured that an effective means of fall protection was in place and used by the contractor.

This could have been achieved through the use of either;

1. Perimeter scaffolding around the structure to allow the workers to stand on a safe work platform on either side of the truss during the erection of the truss and a means of fall protection, such as safety mesh, netting or a safe work platform immediately underneath the underside of the trusses to prevent or mitigate a fall from heights while the truss is fixed into position; or
2. Portable scaffolding on either side of the exterior of the structure and an internal means of fall protection, such as safety mesh, netting or a safe work platform immediately underneath the underside of the trusses.

PENALTY

1. Upon conviction the Defendant is liable to a fine not exceeding $250,000.
2. The Defendant has not previously appeared.