

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS**

EVA WINN,)
Plaintiff,)
) CASE NO.: _____
V.)
)
TORIN, INC., TORIN JACKS, INC.) JURY TRIAL DEMANDED
C.R. BROPHY MACHINE WORKS, INC.,)
Defendants.)

COMPLAINT

Plaintiff EVA WINN for her Complaint alleges as follows:

I.
NATURE OF THE ACTION

1. This is an action for personal injuries and economic damages suffered by Plaintiff as a direct and proximate result of the Defendants' negligent and wrongful conduct in connection with the design, development, manufacture, testing, packaging, promoting, marketing, distribution, labeling and/or sale of a clamp-on trailer tongue jack (the "Jack") and including the trailer tongue jack wheel and wheel assembly to include the axle and all other parts pertaining to the wheel, axle and wheel assembly (hereinafter the "Wheel"). The Jack and the Wheel on a trailer gave way, pinning Plaintiff's leg and causing severe injuries.

II.
PARTIES, JURISDICTION, AND VENUE

2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §1332(a)(1) because this case is a civil action where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between citizens of different States.

3. Venue is properly set in this District pursuant to 28 U.S.C. §1391(b) since

a substantial part of the events giving rise to the claim occurred within this judicial district.

4. Consistent with the Due Process Clause of the Fifth and Fourteenth Amendments, the Court has personal jurisdiction over Defendants, because Defendants are present in the State of Illinois, such that requiring an appearance does not offend traditional notions of fair play and substantial justice.

5. This Court has personal jurisdiction over each of the Defendants in this diversity case because a state court in the State of Illinois would have such jurisdiction under 735 ILCS 5/2-209, in that:

- a. each Defendant and/or its predecessor(s), together with those with whom they were acting in concert, manufactured trailer jacks and trailer jack wheels for use with trailers, distributed trailer jacks and trailer jack wheels, marketed trailer jacks and trailer jack wheels to citizens of Illinois, and/or distributed trailer jacks and trailer jack wheels, intending that such products regularly would be, and knowing they regularly were, sold and used in the State of Illinois;
- b. Plaintiff's claims against each Defendant arise out of these contacts between the Defendant and/or its predecessor(s), together with those with whom they were acting in concert, with the State of Illinois; and
- c. These contacts between each Defendant and/or its predecessors, together with those with whom they were acting in concert, and the State of Illinois, were so regular, frequent, and sustained as to provide fair warning that it might be hauled into court there, such that requiring it to defend this action in the State of Illinois does not offend traditional notions of fair play and substantial justice.

6. Requiring Defendants to litigate these claims in Illinois does not offend traditional notions of fair play and substantial justice and is permitted by the United States Constitution. All of Plaintiff's claims arise in part from conduct Defendants purposefully directed to Illinois. On information and belief, Defendants' trailer products are sold at many local and national retail stores, online and are incorporated by manufacturers into their products being sold and can be readily found on websites and in retail stores and throughout the State of Illinois. On information and belief, Defendants avail themselves of numerous advertising and promotional materials regarding their defective products specifically intended to reach consumers in Illinois, including

but not limited to advertisements on the internet and pop-up advertisements on the internet and their products are delivered to consumers in the State of Illinois.

7. At all relevant times, Plaintiff Eva Winn was a resident of Polk County, Florida.

8. Defendants regularly conduct or solicit business and derive substantial revenue from goods used or consumed in, inter alia, the State of Illinois.

9. Defendant TORIN, INC., ("hereinafter "Torin") is and at all times relevant to this action was a California corporation with its corporate headquarters in Ontario, California is believed to be the manufacturer of the Jack.

10. Defendant TORIN JACKS INC., ("hereinafter "Torin Jacks") is and at all times relevant to this action was a California corporation with its corporate headquarters in Alhambra, California is believed to be the manufacturer of the Jack.

11. Defendant C.R. BROPHY MACHINE WORKS, INC. (hereinafter "Brophy") is and at all times relevant to this action was an Oregon corporation with its corporate headquarters in Milwaukie, Oregon and is believed to be the manufacturer of the Wheel.

12. At all times relevant hereto, Defendants were engaged in the business of designing, developing, manufacturing, testing, packaging, promoting, marketing, distributing, labeling, and/or selling the Jacks and the Wheels.

13. Upon information and belief, at all relevant times, Defendants were present and doing business in the State of Illinois.

14. At all relevant times, Defendants transacted, solicited, and conducted business in the State of Illinois and derived substantial revenue from such business.

15. At all times relevant hereto, Defendants expected or should have expected that its acts would have consequences within the United States of America, and the State of Illinois in

particular.

16. Defendants manufacture and market Jacks and Wheels throughout the United States and were engaged in the business of designing, developing, manufacturing, testing, packaging, promoting, marketing, distributing, labeling, and/or selling Jack and Wheel products.

17. On information and belief, each Defendant was the agent and employee of each other Defendant, and in doing the things alleged was acting within the course and scope of such agency and employment and with each other Defendant's actual and implied permission, consent, authorization, and approval.

III. **FACTUAL ALLEGATIONS**

18. On June 21, 2019, Plaintiff was lawful in all respects on property located at 23725 Greg Hollow Road, Thebes, Illinois 62990 ("the Property") as an invited guest.

19. On the Property was a "homemade" black utility trailer ("Trailer"), owned by the owner of the Property, Michael Browning. Mowing equipment and machinery was loaded on the Trailer on the Property.

20. There were and had been severe weather conditions existing, including thunderstorms, wind storms, heavy rain, and flooding, and the ground was saturated and muddy.

21. Plaintiff (age 61), her husband, and others were in the process of cleaning up storm debris on the Property and performing clean-up of the mess on the Property left by the storms.

22. The Trailer was equipped with a jack that utilized brackets with screws and nuts to hold the tongue jack securely in place and the jack was equipped with a wheel.

23. The Jack, a Big Red ATR39001R ½ Ton Capacity Swing-Back Bolt-On Trailer Jack ("Jack") was designed, developed, manufactured, tested, packaged, promoted, marketed,

distributed, labeled, and/or sold by the Torin Defendants.

24. The Wheel was designed, developed, manufactured, tested, packaged, promoted, marketed, distributed, labeled, and/or sold by Defendant Brophy.

25. Plaintiff deciding to take a break from the clean-up efforts in which she had been engaged, saw her husband sitting on the A-frame tongue of the Trailer and went to sit down on the A-frame tongue of the Trailer as well.

26. Just as Plaintiff sat down on the A-frame of the tongue of the Trailer, the Jack and Wheel failed, and the Trailer moved forward and toward her. Plaintiff's husband jumped up, avoiding any injury; however, Plaintiff was unable to escape the sudden movement, and the tongue of the Trailer came down, collapsing on Plaintiff's leg and trapping her leg beneath the Trailer tongue, crushing Plaintiff's leg and causing her serious injuries.

27. There were approximately ten (10) other individuals assisting in the clean-up efforts on the Property. When the Trailer suddenly moved, trapping Plaintiff's leg beneath the tongue, three or four of those persons rushed to Plaintiff's aid and, after an arduous struggle, were able to free Plaintiff's leg from the collapsed front tongue of the Trailer.

28. Emergency services were contacted and the first person to arrive, a paramedic, indicated that the ambulance was having difficulties reaching the Property due to the severe weather conditions and debris-covered roads.

29. After nearly an hour's delay, while Plaintiff was in constant and severe pain with each minute that passed, the ambulance finally arrived to find Plaintiff helplessly waiting with a severely crushed and injured leg, foot, and ankle.

30. Upon determining all available conditions and after assessment, medical personnel made a decision to take Plaintiff to a Missouri hospital where, based upon the nature

and extent of Plaintiff's injuries, emergency physicians determined Plaintiff should be, and was, life-flighted to a trauma center better suited to treat her.

31. The trauma center physicians determined that Plaintiff had sustained a severe bi-malleolar ankle fracture, "acute displaced and angulated fracture of the medial malleolus and distal right tibia with approximately 14 mm lateral displacement of the major distal fracture fragment," "acute oblique fracture line extending through the distal right fibular metaphysis with approximately 11 mm lateral displacement and lateral angulation of the major distal fracture rather," and "lateral subluxation/partial dislocation of the talus," as well as other internal injuries to her leg, foot, and ankle, and the intense swelling made surgery impossible at that time.

32. Plaintiff also suffered injuries to her back and spine due to this incident and has been receiving medical care and treatment since the injuries on June 21, 2019, has additional treatments and procedures scheduled in the near future, and will require medical care and treatment due to her injuries for the remainder of her life.

33. On and before June 21, 2019, Plaintiff was gainfully employed. However, she was unable to work immediately following the incident and has continued--and will continue--to suffer permanent economic losses, including lost wages and lost earning capacity. She will also have disability, disfigurement, medical costs, pain and suffering, and other economic and emotional damages for the remainder of her life.

34. Plaintiff sustained injuries of a personal and pecuniary nature, including permanent injuries, partial or full disability, disfigurement, pain and suffering, lost wages, loss of the enjoyment of some of life's activities, and medical expenses in the past and, in all reasonable medical probability, medical expenses in the future.

IV.
CAUSES OF ACTION

COUNT 1
STRICT PRODUCT LIABILITY

35. Plaintiff incorporates by this reference the allegations set forth in the paragraphs above as if fully set forth herein.

36. The Torin Defendants were under a duty to manufacture, design, sell and distribute its Big Red Trailer Jack in a reasonably safe condition so that it did not pose an unreasonable danger for persons in the vicinity of the trailer.

37. Defendant Brophy was under a duty to manufacture, design, sell and distribute its Wheel in a reasonably safe condition so that it did not pose an unreasonable danger for persons in the vicinity of the trailer.

38. On June 21, 2021, Plaintiff was severely injured when the A-frame of the trailer she was sitting on suddenly and unexpectedly collapsed due to the trailer jack and wheel failing. The trailer jack and wheel were unreasonably dangerous for their foreseeable uses in one or more of the following respects:

39. The Jack and Wheel manufactured and/or supplied by Defendants was unaccompanied by proper warnings regarding all possible Jack and Wheel failures and the warnings given did not accurately reflect the severity of the potential for the Jack and the Wheel to give way. Defendants failed to perform adequate testing in that adequate testing would have shown that the Jack and Wheel were prone to collapse and possessed serious risk to persons with respect to which full and proper warnings accurately and fully reflecting the dangerous condition even when installed and working as instructed and intended, should have been made. Only with warnings that would have clearly and completely identified the risks and dangers

associated with using the Jack and Wheel would have been proper.

40. The Jack and Wheel manufactured and/or distributed and/or supplied by Defendants was defective due to inadequate warning or instruction because Defendants failed to provide adequate warnings to users or consumers.

41. The Jack and Wheel were in an unreasonably dangerous condition which existed at the time the trailer jack left the control of Defendants.

42. Alternatively, the Wheel and the Jack manufactured and/or distributed and/or supplied by Defendants was defective in design or formulation in that, when it left the hands of the manufacturers and/or suppliers and/or distributors, the foreseeable risks exceeded the benefits associated with the design.

43. The Jack and Wheel manufactured and/or distributed and/or supplied by Defendants was defective in design or formulation in that, when it left the hands of the manufacturers and/or suppliers and/or distributors, it was unreasonably dangerous, it was more dangerous than an ordinary consumer would expect and more dangerous than alternative products available for use.

44. There existed, at all times material hereto, safer alternative products and safer designs were available and cost effective.

45. The Jack and Wheel manufactured and/or distributed and/or supplied by Defendants was unreasonably dangerous for its foreseeable uses in that it failed to perform in the manner reasonably to be expected in light of its nature and intended function, as both the Jack and Wheel allowed the trailer to collapse on Plaintiff's body.

46. As a direct, producing and proximate cause and result of the defective condition of the Jack and Wheel, Plaintiff has suffered damage and injury.

47. As the proximate cause and legal result of the defective condition of the Jack and Wheel manufactured and/or supplied and/or distributed by Defendants, and as a direct and legal result of the conduct of Defendants described herein, Plaintiff has been damaged.

COUNT 2
NEGLIGENCE

48. Plaintiff incorporates by this reference the allegations set forth in the paragraphs above as if fully set forth herein.

49. Defendants owed Plaintiff legal duties in connection with its development, manufacture, and distribution of Jack and Wheel. Defendants breached those duties, proximately causing Plaintiff's injuries. Specifically, Defendants failed to meet their duty to use reasonable care in the testing, creating, designing, manufacturing, labeling, packaging, marketing, selling, and warning of the Jack and Wheel. Defendants are liable for acts and/or omissions amounting to negligence, gross negligence and/or malice including, but not limited to the following:

- a. Failure to adequately warn Plaintiff and those utilizing the Jack and Wheel on trailers;
- b. Failure to use reasonable care in testing and inspecting the Jack and Wheel so as to ascertain whether or not it was safe for the purpose for which it was designed, manufactured and sold;
- c. Failure to use reasonable care in implementing and/or utilizing a reasonably safe design in the manufacture of the Jack and Wheel;
- d. Failure to use reasonable care in the process of manufacturing and assembling the Jack and Wheel in a reasonably safe condition for the use for which it was intended;
- e. Failure to use reasonable care in the manner and method of warning Plaintiff and trailer users and assemblers as to the danger and risks of using the Jack and Wheel; and
- f. Such further acts and/or omissions that may be proven at trial.

50. The above-described acts and/or omissions of Defendants were a direct and proximate cause of the severe, permanent and disabling injuries and resulting damages to Plaintiff.

IV.

PLAINTIFF'S PRAYERS FOR RELIEF

Plaintiff EVA WINN prays that this Court enter judgment in her favor and against Defendants jointly and severally for actual and compensatory damages in an amount greater than \$75,000.00, plus costs of suit, severally as to each Defendant for punitive damages in an amount sufficient to punish it and encourage it and others from similar conduct, and for such further relief as is just and appropriate in the circumstances.

V.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff demands a jury trial as to all issues triable by a jury.

DATED: June 21, 2021

Respectfully submitted,

/s/ Damon Mathias

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