

**IN THE DISTRICT COURT  
AT WAIHI**

**I TE KŌTI-Ā-ROHE  
KI WAIHĪ**

**CRI-2021-079-000437  
[2022] NZDC 6605**

**WORKSAFE NEW ZEALAND**  
Prosecutor

v

**JTK TRUSTEE LIMITED**  
Respondent

Hearing: 11 April 2022  
Appearances: A Simpson for the Prosecutor  
No appearance by or for the Respondent  
Judgment: 11 April 2022

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**ORAL JUDGMENT OF JUDGE W LAWSON**

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[1] JTK Trustees Limited appears in the District Court at Waihi today 11 April 2022.

[2] There is some history to this matter. A representative of the defendant JTK Trustees Limited has been in communication with the Court but has indicated that he would not or could not appear on previous occasions. I will address that issue in more detail in a moment.

[3] This matter was first before the Court on 9 February. Ms Simpson appears for the informant WorkSafe.

[4] On 14 February the matter came before Judge Mabey and he recorded that there was no appearance by the defendant company. He adjourned the matter to 28 March at 10 am for formal proof and sentencing. Since then a representative of the defendant company has been in touch with the Court and made efforts to have the matter adjourned.

[5] On 25 March the matter was adjourned by consent and a teleconference was to be arranged to try to advance issues of plea from the defendant company, and to decide whether the matter would proceed as anticipated by Judge Mabey or whether the matter would be actively defended.

[6] The representative of JTK Trustees Limited did not want to engage with the teleconference process, and so the matter was set down to proceed today. Notice was given to the representative of the defendant.

[7] The Court then received a document which is simply headed "Notice". It is dated 5 April and it refers to the parties, WorkSafe and JTK Trustees Limited. The notice reads as follows:

NOTICE to all employees of WORKSAFE NEW ZEALAND and the Ministry of Justice and any other associated party's.

Imperial laws act 1988 section 5 clearly states New Zealand is under the laws of England, as a charge sheet must be produced with the injured parties full name and signature, this has yet to be received.

If any party proceeds, they will be attempting to construct a trust in which case they will become constructive trustee on payment of any fine.

Regards  
Eric  
Shareholder

[8] Ms Simpson has been here in court for the informant since the commencement of court at 10 am. It is now approaching 1 pm and there is still no sign of any representative of the defendant company.

[9] Judge Mabey made it clear that this matter would proceed by formal proof and there is power to proceed by way of formal proof for a category 1 offence pursuant to

s 124 of the Criminal Procedure Act 2011. If I choose to proceed pursuant to s 124(2)(c) I am entitled to take into account the material which is filed by way of affidavit or formal written statement.

[10] I have considered the circumstances and decide that it is appropriate to proceed with this matter by way of formal proof. I am satisfied that the suitable representatives of JTK Trustees Limited are aware of this matter and has been provided with disclosure. The defendant has had ample notice, they have been properly served, and it has been made clear that the matter will proceed in the absence of the defendant. No representative of the defendant attends today.

[11] Ms Simpson, for the informant, has filed a large volume of material by way of formal proof. I have seen affidavits of Darren Young, Jack Mains and David McLaughlin. I have also seen a large number of formal written statements from key people involved.

[12] The Charging Document charges that on 28 December 2020 the defendant being a PCBU having a duty to ensure so far as is reasonably practicable the health and safety of other persons, including the named complainant, was not put at risk from work carried out as part of a conduct of the business or undertaking, namely while riding a land-borne inflatable slide (the Mammoth slide) and that failure exposed individuals to a risk of death or serious injury from a fall from height. The particulars are that it was reasonably practicable for JTK Trustees Limited to have:

- (a) Insured the Mammoth slide complied with required standards including Australian Standard 3533.4.1-2005/2018 and Electricity Safety Regulations 2010.
- (b) Developed, implemented and monitored an effective safe system of work associated with all activities related to the operation of a Mammoth slide including clear operating requirements, and an effective emergency plan.

- (c) Ensured its workers provided adequate supervision and instruction to persons riding the Mammoth slide.

[13] The affidavit of Darren Murray Young is detailed and covers a large part of the elements of the offence. Initially, when I looked at this I had some concern that there were no affidavits from the people involved, in particular, the victim. However, the victim's formal written statement has been annexed to the affidavit of the WorkSafe investigator for consideration. I have considered those formal written statements, and I am satisfied that they can properly be taken into account.

[14] Mr Young is a health and safety inspector employed by WorkSafe. He took over the investigation from an earlier appointed inspector. Mr Young deposes that the defendant is a limited liability company and is conducting a business undertaking, and therefore, is a PCBU as defined by s 17 of the Health and Safety at Work Act 2015. The defendant has one director, a Mr Eric Gerritsen. Suitable certificates of incorporation were attached to the affidavit of Mr Young.

[15] On 28 November 2020 WorkSafe were notified of an incident involving persons, including the named victim. A number of people had been riding a land-borne inflatable slide known as the "Mammoth slide" when it collapsed. The victim, along with 12 children fell 12.1 metres from the platform on the mammoth slide to the ground. The victim sustained significant leg injuries and was flown to Waikato Hospital. Other children sustained minor injuries and were treated at the scene.

[16] Enquiries identified that Mr Gerritsen was the sole director of the company and that the company had operated the slide. The New Zealand Police attended the scene and there were statements from Constable Resink, Constable Hargreaves and Constable Toroa. I have considered the contents of those statements.

[17] The initial appointed WorkSafe inspector spoke with the victim at Waikato Hospital and took a statement from him. WorkSafe also engaged experts to give evidence in relation to this matter and provide expert reports. I have considered those reports and I will come to those in a moment.

[18] At the time of the initial investigation Mr Gerritsen confirmed verbally that he did not have a manufacturer's manual for the slide, nor did he have manuals for the blowers. Mr Gerritsen was able to produce other documentation, including risk management plan, staff checklists, Mammoth Slide operation setup procedures, notes made on Mr Gerritsen's Outlook account, a hazard register and prestart check form.

[19] Mr Gerritsen confirmed that he did not record the staff training meetings that were held so could not produce records of those. He also was unable to produce other records.

[20] Following the inspection on 26 January the defendant company was issued with two prohibition notices to cease operation of the Mammoth slide.

[21] Mr Young's affidavit details a chronology of events at paragraph 34 starting from events on 15 December 2020 when the defendant applied to the Thames-Coromandel District Council for consent to operate the slide during the festival.

[22] I do not intend to review the entirety of the chronology but suffice as to say it sets out in clear and concise form the chronology of events.

[23] The essential aspects of it are that the victim on 29 January stated that just prior to the incident when he got to the top of the slide everyone was falling down. He had told his brother to tell the operator to stop letting people up because there were too many people at the top. The victim says that he was on the unstable platform when the Mammoth slide started to collapse. He was located towards the back of the Mammoth slide by the right-hand stairs. He felt the whole slide give way and he then fell to the ground. He said that the Mammoth slide deflated very quickly, in a matter of seconds.

[24] Approximately 12 people were at the top of the slide, just prior to it collapsing, and as a result they fell, and all received injuries. The children were treated for relatively minor injuries, but the primary victim sustained more serious injuries to his legs. He was flown to Waikato Hospital where he underwent three surgeries. He had

a compound left distal tibia and fibula fracture and right closed distal tibia and fibula ankle fracture. He required significant medical treatment to deal with those injuries.

[25] Mr Young's affidavit deals in some detail with the legislative requirements of an operator of the defendant and then goes on to identify previous incidents that are known. He then identifies three reasonably practical actions that the defendant had failed. They are:

- (a) That the defendant failed to ensure the Mammoth slide complied with the required standard, including AS 3533.4.1-2005/2018 and the Electricity Safety Regulation 2010.
- (b) He also said that the company failed to develop, implement and monitor an effective safety system of work associated with all activities relating to the operation of the Mammoth slide, including key operation requirements and effective emergency plans.
- (c) Finally, the company failed to ensure its workers provided adequate supervision and instructions to persons using the slide.

[26] I have also considered an affidavit from Jack Mains. Mr Mains is a chartered engineer. He completed a report in relation to this matter and confirmed the non-compliance of the Mammoth slide. He identified that WorkSafe New Zealand had issued a technical bulletin on 14 July 2015 and it was reissued in September of 2019 requiring organisers of events for land-borne slides where they are erected and identified that they must comply with AS 3533.4.1-2005. The report identified a number of deficiencies with the blowers and with the slide itself.

[27] In conclusion the opinion of Mr Mains was that the land-borne inflatable device was deficient in a number of ways as follows:

- (a) That the manufacturer's documentation was not available and there was no manufactured data placed on the device.

- (b) That the anchorages are in poor repair and untested from the information available.
- (c) That the dual stairs are only suitable for children under one metre tall and quite unstable for adults.
- (d) There appeared to be no operating restrictions on patrons' size in the owner's documentation. Any limitations the manufacturer might have placed are unknown due to the lack of documentation.
- (e) There were air leaks via holes in the seams and in the structure and back through the blowers such that the structural integrity could not be maintained for sufficient periods to enable safe evacuation of the device in the event of the blower power failure.
- (f) The means of supplying electrical power to the blowers does not appear to have been compliant with the electrical safety standards and regulations.

[28] Mr Mains said that at the time of the accident in question if the same or similar blowers observed as part of the assessment were in use then the backflow combined with the leakage in the structure made the accident unpreventable if the same power supply interruption were to occur.

[29] In short Mr Mains identified a number of deficiencies.

[30] I have also considered an affidavit of Mr McLaughlin who is the electrical expert. His affidavit is relatively detailed and attaches his report. The conclusions are that in his opinion some of the electrical equipment that was in use for the supply of the air for the blowers was unsatisfactory and unsafe. He determined that the electrical equipment was generally unsafe, that there was potential risk of injury to persons handling the blowers while in use if they contacted with accessible live parts through damage causing to the blowers. The electrical system as it was set up had the potential

to fail at any moment resulting in the loss of power to the blowers and therefore resulting in potential risk to users.

[31] Accepting all of the circumstances, as detailed in the evidence filed I am satisfied beyond a reasonable doubt that the charge is proven and on a formal proof basis and the defendant will be found guilty and convicted.

A handwritten signature in black ink, appearing to be 'W Lawson', written in a cursive style.

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Judge W Lawson

District Court Judge | Kaiwhakawā o te Kōti ā-Rohe

Date of authentication | Rā motuhēhēnga: 14/04/2022