**IN THE DISTRICT COURT**
**AT NORTH SHORE**

**I TE KŌTI-Ā-ROHE**
**KI ŌKAHUKURA**

**CRI-2020-044-000142**
**[2020] NZDC 10543**

**WORKSAFE NEW ZEALAND**
Prosecutor

v

**DHG BUILDING LIMITED**
Defendant

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| Hearing: | 9 June 2020 |
| Appearances: | M Kirtland and M Town for the Prosecutor<br>D Wang for the Defendant |
| Judgment: | 9 June 2020 |

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**NOTES OF JUDGE D WALLWORK ON SENTENCING**

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[1] The defendant, DHG Building Limited, pleaded guilty to one charge of being a person to whom a prohibition notice was issued prohibiting all work or activity on the second level of the building under construction did fail to comply with that prohibition notice.

[2] I note that this is a strict liability offence and the maximum penalty is $500,000. As noted by both counsel there is no guideline judgment for sentencing under s 107 Health and Safety at Work Act 2015 and while there are no guideline decisions setting out culpability for defendants such as DHG Building Limited

*Stumpmaster & Ors v WorkSafe New Zealand*, when adjusted, provides a guidance as to the starting and ending points even though the adjustments need to be made.[1]

[3] Ms Town has set out what she deems as the bands in the written submissions. The defence counsel on the other hand submits that the Court should be cautious when dealing with this case due to the absence of the appropriate common law guidance.

[4] Mr Wang disagrees with the prosecution assessment on the banding he provides and does not agree that the current offending fits into Mr Simpson's (who wrote the submissions) medium band. Ms Town also says that the matter should be dealt with in the medium band. The prosecution say that it should be on the medium band and that the starting point should be $140,000. Mr Wang's starting point is the lower band of up to $83,000.

[5] Mr Wang has referred to a case of *WorkSafe New Zealand v Inter Pro Group Limited*, which has some similarities to this present case. In this case a prohibition notice was served on the defendant in regard to unsafe scaffolding. Risk of fall from height for the workers was identified as the primary safety concern. The defendant breached by continuing to work whilst the notice was still enforced. The Court held the offending was low in culpability category and considered a starting point of $25,000. The defendant did have breaches but was nevertheless given mitigating circumstances. The Court in that case reached an end sentence of $10,000 having finally considered the defendant's financial circumstances.

[6] In this particular case, on 15 January WorkSafe inspector, Kevin Pope attended this particular site. He observed a group of workers unloading timber packets from a crane directly onto the second level of a two storey building at the site. There was inadequate fall protection in place to protect workers from the risk of fall from height. Inspector Pope proceeded to carry out an inspection and noted a number of issues at the site, in particular several scaffold tags attached to the structure's access points that stated "scaffold unsafe." The inspector formed a view that the workers had been exposed to the risk of a fall from a height and issued the defendant with a prohibition notice.

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[1] *Stumpmaster & Ors v WorkSafe New Zealand* [2018] NZHC 2020

[7] On 17 January, while undertaking a worksite assessment, the inspector observed four workers at the defendant's site working from the second level in breach of the prohibition notice. On 21 January the inspector attended the site three times at the request of Mr Yang to remove the prohibition notice and the prohibition notice was lifted on the third visit. From the time of the offending, which was 15 January, to 21 January it was some six days before the issue was rectified.

[8] In assessing the reparation to be paid to the victim my first reference is to the guideline bands. The prosecutor submissions state that there should be an assessment of quantum for reparation. There is no evidence of any realised harm in this case and accordingly the prosecutor is not seeking any reparation. There is a guideline decision of *Stumpmaster* which sets out culpability for PCBU entities and the prosecutor submits that the Court should apply *Stumpmaster* culpability bands with an adjustment to take account of the fact of the maximum penalty being $500,000 rather than $1 million.

[9] Defence counsel on the other hand submits that the defence should be cautious when dealing with this case due to the absence of appropriate common law guidance. He does not agree that the current offending fits within the medium band that Mr Simpson, who wrote the original submissions, does. Mr Wang refers to three cases. *WorkSafe Limited v Inter Pro* does have some similarities to the present case. Again this was a prohibition notice served on the defendant, risk of fall from a height for the workers was identified as the primary safety concern. The defendant breached by continuing to work whilst the notice was still enforced and the Court held that the offending was in the low culpability category and considered the starting point of $25,000. The Court reached an end sentence of $10,000 having finally considered the defendant's financial circumstances.

[10] I accordingly find the defendant in this case is at the lower range of up to $83,000. My starting point is therefore $80,000. I give credit of 15 percent for DHG Building Limited's good record and co-operation having no previous offending Which therefore adjusts the starting point to $68,000. I give a further 25 percent for early guilty plea bringing the total to $51,000 and for completeness I round it to $50,000.

[11] I award costs of $1413.03 as requested.

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Judge D Wallwork
District Court Judge

Date of authentication: 12/06/2020
In an electronic form, authenticated pursuant to Rule 2.2(2)(b) Criminal Procedure Rules 2012.