

**IN THE DISTRICT COURT
AT AUCKLAND**

**CRI-2014-004-000041
CRI-2014-004-002054**

**MINISTRY OF BUSINESS, INNOVATION AND EMPLOYMENT
Informant**

v

**DTOWN LIMITED (TRADING AS BRITOMART MAGAZINE)
ZOLO LIMITED (TRADING AS CITY STAR CONVENIENCE STORE)
Defendants**

Hearing: 05 August 2014

Appearances: S Simon for the Informant
P Howard-Smith for the Defendant

Judgment: 05 August 2014

NOTES OF JUDGE J P GITTOS ON SENTENCING

[1] Well having considered a sentencing indication, which I gave earlier today, both Dtown Limited (Trading as Britomart Magazine) and Zolo Limited (Trading as City Star Convenience Store) have, through counsel, entered pleas of guilty to each of the three charges that they face in respect to each company. There are two charges laid under reg 80 Electrical (Safety) Regulations 2010 and one charge laid under s 163C(1) Electricity Act 1992, all of which have to do with the sale and continuing sale after warnings that the devices were unsafe of electrical adapter devices from their shops.

[2] The circumstances leading to their pleas of guilty and the summary of facts have been adequately canvassed in the sentencing indication, which I gave earlier, as has the Court's rationale for a start point and end point for sentencing being rehearsed, and I do not propose to go through that exercise again. The sentencing indication remarks can suitably be typed up and can go with these brief sentencing remarks as explanatory of the scheme of sentence and the Court's view that a penalty of significant dimensions is required in the circumstances.

[3] So, taking as I have, and has been accepted by plea, a start point over the three charges in relation to each of the companies of \$50,000, I take the charge under the Electricity Act, which carries a maximum of two years' imprisonment and \$500,000 fine as being demonstrably the lead charge in the circumstances and I apportion the start point amongst the three charges in each case.

[4] I have had the benefit of submissions from both parties, which detail the way in which these companies have been able to be of assistance to the prosecution, and that is acknowledged by Mr Simons who was prepared to concede, certainly in submissions relating to the sentencing indication, that a significant deduction should be allowed for that.

[5] I cannot see that in terms of *Hessell v R* [2010] NZSC 135, [2011] 1 NZLR decision, much really can be given for a plea, coming as it does on the day of trial, although I note counsel submission that some matters that were not in dispute were ironed out in a telephone conference with another Judge earlier on, and there has been

broad cooperation between the defendants and the prosecution leading up to the presentation of this application for a sentencing indication this morning.

[6] So, overall, I think it is not unreasonable to allow a discount from that start point of 20 percent, which leaves a net penalty of \$40,000 in respect of each defendant, to be apportioned across the three charges.

[7] I approach that in this way: That on the charges under the Electricity Act, each defendant will be convicted and fined \$30,000 and ordered to pay Court costs of \$130.00. In relation to each of the two charges under the regulations, each company will be convicted and fined \$5000 and ordered to pay Court costs of \$130.00.

J P Gittos
District Court Judge