IN THE DISTRICT COURT
AT TAURANGA

I TE KŌTI-Ā-ROHE
KI TAURANGA MOANA

CRI-2023-070-001020
CRI-2023-070-001022
[2024] NZDC 1982

WORKSAFE NEW ZEALAND
Prosecutor

v

INSPIRE BUILDING LIMITED
THE THORNE GROUP BOP LIMITED
Defendants

Hearing:	31 January 2024
Appearances:	A Everett for the Prosecutor S Corlett with P Couldwell for Inspire Building Limited S Curlett with A Smith for The Thorne Group BOP Limited
Judgment:	31 January 2024

NOTES OF JUDGE J P GEOGHEGAN ON SENTENCING

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[1] The defendants in this matter, Inspire Building Limited and The Thorne Group BOP Limited, face one charge each of being a person conducting a business or undertaking having a duty to ensure so far as is reasonably practicable the health and safety of workers who work for them, including Ethan Thomas Perham-Turner, while the workers were at work in the business or undertaking, namely erecting prefabricated timber frames did fail to comply with that duty and that failure exposed workers to a risk of death or serious injury.

[2] The charges carry a maximum fine not exceeding $1.5 million which underlines the seriousness of the charges.

[3] The two defendants are companies involved in residential development and construction. The Thorne Group is a residential development company with its core business being the design and project management of residential development projects. It subcontracts all building work to building companies and trades. It employs approximately 14 workers including office and administration staff and on average carries out around 15 design and project management contracts across the Bay of Plenty region each year.

[4] Inspire Building Limited is a small construction business which had four employees including its sole director Mr David Wild. Mr Wild physically carried out building works with the company and ran the company's operation on site at any given time.

[5] Thorne Group was engaged to design, project manage and construct a residential dwelling at 16 Te Kaka Place, Omokoroa. The project included the construction of two residential properties on neighbouring lots at the site, lot 86 and lot 87. Thorne Group engaged Inspire to construct the properties on both lots 86 and 87. Inspire had been working at the site since November 2021.

[6] The site consisted of two concrete slabs and a split level with an 800-millimetre step-down from a proposed garage to a living area. There was a working platform of flat land around the perimeter. The dwelling construction involved putting together pre-cut timber frames. The frames relevant to the tragedy that occurred on 30 March 2022, numbered eight in total between 40 and 183 kilograms.

[7] On 30 March 2022, frames were delivered to the site. They were unwrapped by the four workers present who included Mr Ethan Perham-Turner, a first-year apprentice employed by Inspire. The other workers were also present, namely the on-site foreman who was a qualified builder, a third-year apprentice builder and Inspire's sole director Mr David Wild, who had significant building experience and qualifications. At around noon the builders began manually lifting the frames into place. It was a fine day with no wind.

[8] A brace which was nailed from two frames referred to as E-22 and E-23 which weighed 177.9 kilograms and 181.8 kilograms respectively was removed by one of the builders as it was in the way of standing up another frame referred to as E-21. Bracing is a method of providing lateral support to a building to resist wind pressure, earthquakes, and movement of walls under construction before linings are fixed.

[9] Inspire's usual practice was that if a brace were to be removed then a further brace would be put in place before any removal occurred. The brace, which was nailed from frames E-22 and E-23 to the frame stack was removed by one of the workers because it was in the way, as I have said, of standing up frame E-21. There is no dispute that the company director Mr Wild did not instruct the worker to remove that brace and Mr Wild was not aware it had been removed prior to the incident which took place shortly afterwards. At that point in time however, there were no temporary braces in use to support frames E-16 to E-23 at the site, a total of seven installed frames, however the frames were secured to adjacent and perpendicular frames.

[10] At this time, Mr Perham-Turner was standing on the outside of frames E-22 and E-23 on the surrounding dirt area. He was holding the frame steady and upright. His job was to hold the frames in place and balance them as the other workers stood up frame E-21. At this time frames E-22 and E-23 were freestanding. As frame E-21 was lifted from the stack of frames at one end, it appears that it slipped and then came into contact with frames E-22 and E-23 causing them to fall. They began falling in Mr Perham-Turner's direction. Mr Perham-Turner was attempting to stop them falling as he was walking backwards. He then let go of the frames and endeavoured to escape, given the weight of the frames. Tragically, he has slipped on the edge of a dirt bank and fallen onto his chest and the top plate of frames E-22 and E-23 struck him on the back of his neck and head resulting in fatal injuries.

[11] An expert building consultant employed by an organisation called InterSafe in Australia was instructed by WorkSafe to consider the incident which had occurred. He identified two essential factors which were absent at the time of the incident, namely, that a brace was not installed on the two frames prior to removing the existing brace and that frames over 100 kilograms should be lifted by crane.

[12] WorkSafe considered that the factors contributing to what occurred that day were the following in respect to Inspire:

(a) A frame layout plan containing the weights of the frames was not provided.

(b) There was a culture of very heavy lifting.

(c) There was a culture of high-risk work practices.

(d) Inspire workers did not receive adequate training in manual handling and there was no association qualification of acceptable weights of lift, individually or collectively.

(e) That there was no procedure for frame erection produced by Inspire.

[13] In respect of The Thorne Group WorkSafe contend that the relevant factors include:

(a) That there was no enquiry made at Thorne Group site inspections as to how particular tasks were to be completed which would in itself, have given insight into the risks being taken.

(b) There was no adequate pre-qualification process applied by Thorne Group to Inspire.

(c) Thorne Group did not ensure the existence of a procedure for frame erection provided by Inspire.

[14] The defendants have pleaded guilty in failing to take the following reasonably practicable actions. With reference to Inspire:

(a) Develop, implement and communicate an effective system of work for the installation of timber frames.

(b) To ensure effective controls such as using a mechanical aid and bracing when installing timber frames at the site.

(c) In ensuring its workers were adequately trained in manual handling.

(d) In carrying out effective consultation with Thorne Group as to how it was planning to install the timber frames at the site including the weight of the frames and what controls such as using a mechanical aid and bracing were to be used.

[15] With reference to The Thorne Group:

(a) Failing to carry out effective consultation with Inspire as to how they were planning to install the timber frames including the weight of the frames and what controls such as mechanical aid and bracing were to be used.

(b) Ensuring the use of a mechanical aid to assist with installing the timber frames at the site.

(c) Ensuring adequate monitoring of the effectiveness of the safe systems of work used by Inspire installing timber frames at the site.

[16] Neither Thorne Group nor Inspire have any previous relevant records with WorkSafe and both are referred to in the summary of facts as being cooperative with the investigation process. Mr Everett has made the point however, that cooperation with an investigation is a statutory duty.

[17] Ethan Perham-Turner was 19 years old at the time of his death. He had the rest of his life ahead of him. It is clear from the victim impact statements which have been delivered today by family members, namely his mother, his sister and two of his grandparents that he was loved by them, and that love was returned. He is described by his mother as someone people loved being around and were drawn to. He has been described as kind, caring, generous, fun, was confident, loyal and dependable. This process can never bring Ethan back. It can never remotely compensate for his loss,

but as I said at the outset of this sentencing today, I do express the hope that in some small way it will assist the family in dealing with the grief that each member of the family is experiencing. I would add that it is clear from the additional information I have read that Ethan had a positive impact on those he worked with and for. I am mindful of the fact that his death has also had a significant impact on the directors and employees of the two defendants.

[18] Having heard from counsel, there is a victim impact statement from an employee, Mr Porter. He is also a victim of this tragedy. Mr Porter has filed a victim impact statement which refers to the very significant effect upon him of being at the worksite that day. He has referred to having suffered depression and PTSD as a result of what occurred that day. Parts of Mr Porter's victim impact statement have been very seriously disputed by Inspire as they refer to work practices. I simply wish to clarify, as I did to counsel, that the basis for this sentencing today is the summary of facts and not other matters. Accordingly, any matters which are contentious, and which are not the subject of the summary of facts will be put to one side by me in reaching a decision as to sentence.

[19] What is very, very clear is that Ethan's loss has been a profound one for his family and that they struggle with the grief of that loss every day and I want to acknowledge that.

[20] Section 151 subs (2) of the Health and Safety at Work Act 2015 sets out specific sentencing criteria for the courts to follow. The criteria to be applied are that the Court must apply the Sentencing Act 2002 and must have particular regard to:

(a) Sections 7 to 10 of that Act.

(b) The purpose of the Health and Safety at Work Act.

(c) The risk of and the potential for illness, injury or death that could have occurred.

(d) Whether death, serious injury or serious illness occurred or could reasonably have been expected to have occurred.

(e) The safety record of the person (including without limitation, any warning, infringement notice, or improvement notice issued to the person or enforceable undertaking agreed to by the person) to the extent that it shows whether any aggravating factor is present.

(f) The degree of departure from prevailing standards in the person's sector or industry as an aggravating factor.

(g) The person's financial capacity or ability to pay any fine to the extent that is has the effect of increasing the amount of the fine.

[21] The purpose of the Act is set out in s 3 and includes s 3 subs (1)(a) which provides:

(a) Protecting workers and other persons against harm to their health, safety, and welfare by eliminating or minimising risks arising from work or from prescribed high-risk plant.

[22] Section 3 subs (2) provides:

(a) Regard must be had to the principle that workers and other persons should be given the highest level of protection against harm to their health, safety and welfare from hazards and risks arising from work or from specified types of plant as is reasonably practicable.

[23] I am also required to have regard, as previously referred to, to the provisions of the Sentencing Act and in this case it is submitted by WorkSafe that the most relevant purposes of sentencing in respect of this matter are:

(a) Holding the defendants accountable for the harm done by the offending.

(b) Promoting in the defendants a sense of responsibility for that harm.

(c) Providing for the interests of victims.

(d) Denouncing the conduct in which the defendants were involved.

(e) Deterrence both in relation to the defendants and more generally.

[24] As to the principles set out in s 8 it is submitted on behalf of WorkSafe that the following principles are applicable:

(a) The gravity of the offending including the degree of culpability.

(b) The seriousness of the type of offence as indicated by the maximum prescribed penalty.

(c) The effects of the offending on the victims.

[25] The current Act replaced the earlier Health and Safety Act 1992. The approach to sentencing under that Act was set out in a guideline judgment, *Department of Labour v Hanham & Philp Contractors Ltd* which was a full decision of the High Court.[1] A further guideline decision, *Stumpmaster v WorkSafe New Zealand* now sets out the approach to sentencing under the Health and Safety at Work Act 2015.[2] Essentially however, the sentencing methodology remains the same as under the previous Act. A four-step approach is required. Namely:

(a) Assess the amount of reparation.

(b) Fix the amount of the fine by reference first to the guideline bands and then having regard to aggravating and mitigating factors.

(c) To determine what further orders under s 152 to 158 of the Act are required.

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[1] *Department of Labour v Hanham & Philp Contractors Lid* (2008) 6 NZELR 79
[2] *Stumpmaster v WorkSafe New Zealand* [2018] NZHC 2020.

(d) To make an overall assessment of the proportionality and appropriateness of the sanctions imposed by the first three steps.

[26] Reparation is compensatory in nature, and it is designed to recompense and individual or family for loss, harm or damage resulting from the offending. That must be fixed with regard to the relevant parts of the Sentencing Act with particular regard to s 32. It will include taking account of any offer of amends and the financial capacity of an offender, which is a relevant issue in this matter. The authorities have reiterated the obvious point that reparation for emotional harm is an intuitive exercise with its quantification a finite calculation. In *Big Tuff Pallets Ltd v Department of Labour* Harrison J stated:[3]

> The judicial objective is to strike a figure which is just in all the circumstances and which in this context compensates for actual harm arising from the offence in the form of anguish, distress, and mental suffering. The nature of the injury is or may be relevant to the extent that it causes physical and mental suffering or incapacity whether short-term or long-term.

[27] In this case, it is accepted that there are two victims, namely Mr Perham-Turner who was killed and Mr Miles Porter who witnessed the death of Mr Perham-Turner.

[28] I have already referred to the victim impact statements of the family. The emotional toll it has taken on each member of the family is plain from those statements. Mr Perham-Turner lived with one of his brothers in a cottage on a rural property owned by his grandparents. He was clearly very close to them, and they have also struggled significantly in their grief. One of the consistent themes of the victim impact statements is not only their grief, but their anger and their feeling that this loss was preventable. The second victim Mr Porter has, as I have said, witnessed the death of Mr Perham-Turner and took nine months off work, ultimately being diagnosed with PTSD.

[29] The prosecution submits that $130,000 is the appropriate payment applicable in these circumstances. As acknowledged by counsel in their very thorough and helpful submissions, the task of calculating a sum for the loss of a loved one is an impossible task. While there is no tariff, and each case must be approached on an

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[3] *Big Tuff Pallets Ltd v Department of Labour* (2009) 7 NZELR 322 at [19].

individual basis awards made in other cases may assist in arriving at an appropriate award in this case. Consistency is also an important consideration as recognised by Nation J in his judgment in *Ocean Fisheries Limited v Maritime New Zealand.*[4] I am grateful to counsel for providing a range of cases considering awards in other cases where there has been loss of life. It is notable that more recent authorities have increased the level of reparations payable in cases involving fatalities.

[30] Taking into the matters that are referred to in counsel's submissions and having reviewed the authorities referred to me, I consider that an appropriate reparation payment to the family of Mr Perham-Turner is one of $130,000 and I fix that reparation accordingly.

[31] With reference to Mr Porter, WorkSafe seek a reparation payment of $25,000 together with the sum of $5076.30 for consequential loss. Both defendants have referred to the fact that that sum should be considered taking into account the authorities as being at the higher end of the scale. As I have said, parts of Mr Porter's victim impact statements are strongly disputed by Inspire. What is not disputed however is the fact that the incident will have had, and will continue to have, a significant effect upon Mr Porter.

[32] In her judgment in *Nino's Limited v Maritime New Zealand* Thomas J upheld reparation payments in respect of crew members of a commercial fishing vessel which sank.[5] The crew members were rescued after suffering what was described as a near-death experience. Reparation payments of $25,000 to those who had provided a victim impact statement were directed and $10,000 for a crew member who had not done so. Reference was also made to the judgment of then Chief Judge Doogue in *WorkSafe New Zealand v Department of Corrections* and to the proposition that emotional harm payments of $25,000 could be paid where workers were suffering from post-traumatic stress having witnessed a death where they too were exposed to risk.[6] I do not have details of the amount actually awarded to the deceased's fellow worker in that case, but in any event I consider the facts of the present case to be somewhat different to the

[4] *Ocean Fisheries Limited v Maritime New Zealand* [2021] NZHC 2083.
[5] *Nino's Limited v Maritime New Zealand* [2020] NZHC 1467.
[6] *WorkSafe New Zealand v Department of Corrections* [2017] NZDC 819.

facts in the cases I have just referred to. In the *Department of Corrections* case the fellow worker was at direct and immediate risk of injury and had to take physical action to avoid that injury. As I have said, in *Ninos* the workers suffered what was described as a near-death experience.

[33] The experience of Mr Porter while distressing was at a level removed in my assessment, from those workers in the cases I have just referred to. I assess the appropriate level of reparation as being $10,000. The consequential loss of $5076.30 is not disputed by the defendants and accordingly Mr Porter is awarded reparation of $10,000 together with consequential loss of $5076.30.

[34] It is necessary to consider the apportionment of those reparation payments between the two defendants. WorkSafe submits that an appropriate apportionment of reparation is 40 per cent to Thorne Group and 60 per cent to Inspire. Inspire submits that an appropriate apportionment is one of 50/50.

[35] I have been referred to the judgment in *WorkSafe New Zealand v Ikon Homes NZ Ltd* as a case involving a very similar set of facts to the present.[7] In this case I consider the culpability of Inspire to be greater than that of Thorne Group. While Thorne Group failed to adequately monitor the effectiveness of Inspire's safety systems of work it was, in my assessment, entitled to rely to some degree on Inspire's track record in the local building industry and particularly on the building experience of Mr Wild. There was a clear duty on Inspire to assess the circumstances which existed at the time the framing was erected and on ensuring that all necessary braces were put in place. It would appear that a simple step of having taken a break to ensure that a replacement brace was fitted as required, would have avoided the tragedy which followed.

[36] I consider the culpability of Inspire to be higher than that of Thorne Group and accordingly I have reached the view that the appropriate apportionment of reparation is 60 per cent to Inspire and 40 per cent to Thorne Group. I note also that there is no difficulty noted in the defendants' ability to pay the reparation. Different considerations apply to a fine.

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[7] *WorkSafe New Zealand v Ikon Homes* [2019] NZDC 16134.

[37] Turning to the issue of the appropriate fine. In the *Stump Master* decision, four guideline bands were set out as follows: Low culpability - up to $250,000. Medium culpability - $250,000 to $600,000. High culpability - $600,000 to $1 million. Very high culpability - $1 million plus.

[38] I have referred to the submissions which WorkSafe has made in relation to the alleged failings of both Inspire and The Thorne Group. Clearly, there was a failure to develop an effective and safe system of working regarding the installation of timber frames. Clearly, it would appear that mechanical aids should have been used with the installation of the timber frames. What must be pointed out however is that a Hiab had been used to deliver the timber frame, that Thorne Group accepted that its responsibility was to provide any mechanical aid and that it was ready, willing, and able to do so when requested. That request, regrettably was not made.

[39] WorkSafe submit that defendants' conduct departed significantly from industry guidelines, that the risks involved in manually installing heavy timber frames are well-known, significant and obvious and that reasonably practicable actions such as the utilisation of a Hiab were not prohibitively expensive. All of that is accepted, I think, on the part of the defendants.

[40] With reference to guidelines however both defendants have made the point effectively that guidelines are still lacking in the building industry in New Zealand regarding the weight and use of timber frames. That is something which clearly needs urgent attention.

[41] With reference to the decisions in *Ikon, WorkSafe New Zealand v Quick Earth Moving Ltd*[8] and *WorkSafe New Zealand v RS Construction Ltd*[9] it is submitted that the culpability of the defendants fall within the range of medium culpability and that accordingly the Court should consider starting points of $550,000 for Inspire and $450,000 for The Thorne Group. While there is some minor divergence from the factors referred to by WorkSafe, the defendants as I have said, broadly accept the matters referred to.

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[8] *WorkSafe New Zealand v Quick Earth Moving Ltd* [2019] NZDC 18190.
[9] *WorkSafe New Zealand v RS Construction Ltd* [2022] NZDC 20781.

[42] For Inspire, it is submitted that a starting point of between $450,000 and $475,000 would be appropriate and for The Thorne Group it is submitted that $350,000 is appropriate.

[43] For Inspire, it was submitted that Inspire had not entirely failed to take all reasonably practicable steps or entirely failed to appreciate the risks inherent in the tasks being undertaken and that Mr Wild had been unaware that the brace that had been installed at frames E-22 to E-23 had been removed. That is not disputed. An obvious response to that is that Mr Wild was on site at the time and could have made an enquiry as to whether or not a brace had been installed which would have avoided what followed, in all likelihood.

[44] For The Thorne Group the following matters were submitted:

(a) Inspire's building work was known to Thorne Group through previous projects. Mr Wild was a licensed building practitioner with a Site 2 licence. Thorne Group's not unreasonable expectation was that Inspire had adequately trained its workers to be competent and fully qualified for the required building works including in respect of manual handling and the installation of timber frames.

(b) Thorne Group had always provided an option of using a Hiab or crane to assist with any heavy lifting. It relied on Inspire in terms of the assessment of risk to request the use of a Hiab or crane. In addition, the bracing had already been removed and mechanical lifting aids would not eliminate or even reduce the risk of an unbraced frame falling. That may be open to question. It was the removal of the brace that was central to the accident which occurred.

(c) At all relevant times, Thorne Group used a reputable management system and relied on its policies and systems.

(d) In terms of departure from standards prevailing in the industry there is no clear public guidance from WorkSafe on specific weight liftings for

manual handling. In that regard, the obvious point was made by Mr Everett for WorkSafe that the responsibility for this lies with the building industry, not with WorkSafe. Construction work does fundamentally involve the manual handling of objects of varying weights. In the absence of specific guidelines each person must individually assess every lift that takes place at a workplace. The uncertainty in this area is apparent from the fact that the Australian safety expert engaged by WorkSafe had initially recommended, in order to prevent muscular skeletal injuries from timber frames exceeding 120 kilograms, lifting with the use of a mechanical aid before later revising that opinion and recommending a 100-kilogram limit. Clearly, there is further work to be done in this area.

(e) It is accepted that the risk of workers being injured by unbraced frames is well-known to the building industry. It is also accepted that the provision of a Hiab or crane would not have been cost-prohibitive and would have been readily available.

[45] Finally, Thorne submits that there was a significant difference in the positions of Thorne Group and Inspire, in regard to the control of the site on the day of the tragedy. Decisions relating to the building work and appropriate methods were ultimately made by Inspire, despite the fact that Thorne Group's project manager regularly attended the site and had general oversight of the construction project. It is accepted however that Thorne Group should have consulted with Inspire in respect of Inspire's safety system of work for the installation of timber frames.

[46] In the light of those matters it is submitted, as I have said, by Thorne Group that an appropriate starting point is one of $350,000.

[47] While the authorities refer to the need for specific attention to the individual facts of each case, and while that is important, other cases can be of assistance and as previously mentioned it is important that there be consistency in sentencing. I have been referred to the sentencing judgment in *Icon Homes* and the similarities between the facts of that case and this are striking. That case involved an 18-year-old

apprentice carpenter who sustained life-changing back injuries when a large timber frame fell on top of him in a residential building site. His employer, who had immediate responsibility for day-to-day operations on the building site, faced a fine with a starting point in that case of $450,000. In that case the director of the company had 35 years' experience as a residential builder and was actively supervising the workers and undertook an informal analysis of weather and conditions and the anticipated weight of the timber frames. The frames were partially secured to the floor with Ramset screws and a temporary brace. Here, there appears to have been no analysis of the anticipated weight of the frames and of course a brace was removed.

[48] Having considered the various authorities referred to me I fix a starting point for Inspire in respect of a fine in the sum of $500,000.

[49] Thorne Group accepts the failings which I have referred to. It also has a clear responsibility to provide for the safety of builders on the work site. Its culpability must however be seen as less than that of Inspire and with respect or with reference to the factors referred to me and the authorities, I have referred to I fix a starting point of a fine of $350,000 for Thorne Group.

[50] I turn to consider appropriate allowances. It is clear as I have said from the outset that all involved in this matter have been seriously affected by the death of Mr Perham-Turner. That is also obvious from the evidence which has been filed on behalf of Thorne. That refers to the steps taken by Thorne after the accident. I also have regard to the affidavit of Mr Wild who also refers to similar matters.

[51] I am satisfied having read the carefully prepared submissions of counsel that there should be an overall allowance of 40 per cent for each defendant's guilty plea, cooperation with the investigation, remorse which I accept is entirely genuine, and previous good record, neither defendant having a previous conviction. I also take into account the willingness of the defendants to engage in restorative justice. I am not satisfied that there is sufficient difference between the defendants to warrant a differential in their allowance. With respect to that 40 per cent, 25 per cent of that figure is an allowance for a guilty plea, which I accept was entered at the earliest possible date.

[52] Application of that percentage allowance means a fine for Inspire of $300,00 and a fine for The Thorne Group of $210,000.

[53] It is necessary to consider the ability of the companies to meet these fines. That is a necessary step in the process. Thorne Group accepts that it has the ability to pay the fine imposed, but it wishes it recorded that such a fine will need to be paid in instalments.

[54] The position of Inspire is significantly different. It is a smaller company than The Thorne Group and its ability to pay has been the subject of affidavit evidence from both the accountant who acts for Inspire and an accountant engaged by WorkSafe. It is maintained by Inspire that the maximum sustainable fine is one of $30,000 payable at the rate of $6000 per annum. It is submitted that any greater fine would simply result in a situation where the company would be placed in liquidation.

[55] I need to refer to that briefly. The affidavit of Inspire's accountant Mr Richard Glubb, was that he had been the accountant for Inspire since 2021. Mr Glubb set out details regarding the company's financial statements. He recorded in respect of those financial statements that [redacted]. Mr Glubb deposed that based on Inspire's future current financial position and future forecast it was his opinion that the company could sustain a $30,000 fine payable over a five-year period. Mr Glubb also made the point, which is quite significant in terms of assessing Inspire's financial circumstances, that [redacted]. After that, the position of the company is quite uncertain.

[56] That affidavit evidence was contested by an accountant engaged by WorkSafe. That accountant suggested that a payment of $70,000 by way of fine was viable with payment of a lump sum of $20,000 in monthly instalments of $833 for five years. That was based on historical considerations and in an affidavit in reply, Mr Glubb made

that point. He made the point that it is all very well to make that assessment based on historical figures but that one also has to have regard to the future financial performance of the company. In that regard, the shareholders were unable to pay their shareholders current account and the company was not in a position to borrow due to various issues referred to by Mr Glubb and which I will not repeat.

[57] At the outset of this sentencing, I enquired of Mr Everett for WorkSafe as to whether or not any agreement had been reached in respect of the financial position of Inspire. The response of Mr Everett was that WorkSafe accepted the affidavit evidence of Mr Glubb as being someone who had familiarity on a day-to-day basis with the accounts of the company. On that basis, I record that I rely on the affidavit evidence of Mr Glubb and accept that evidence in terms of the ability of Inspire to pay a fine. That fine will be reduced accordingly to the sum of $30,000. I record also that that fine will need to be met by instalment by agreement with WorkSafe.

[58] Finally, there is the issue of contribution to costs. WorkSafe seek an order for the payment of $11,712.02 in costs. There is no dispute or disagreement about that and accordingly an order is made requiring the defendants to meet the sum of $11,712.02 for the costs of WorkSafe. The costs are to be met equally by the defendants.

[59] As a final step I am required to consider the proportionality of the fines and reparation and other cost orders made. I consider looking at the matter globally that the fines imposed, particularly in respect of Inspire given its financial position, are appropriate and that the penalties imposed are proportionate. Accordingly, that deals with the issue of fines, reparation and other costs.

[60] A final matter to be addressed is the issue of name suppression. Mr Corlett has sought the suppression of the name of Mr Wild as the director of Inspire. I can easily accept that this tragedy has had a significant effect on Mr Wild personally. A suppression order is also sought in relation to any publication of Mr Wild's medical condition and the financial position of Inspire.

[61] I have also heard from a representative of Stuff who has emphasised the principles of open justice. Those principles are significant principles indeed. This tragedy occurred two years ago. It is not unreasonable to assume that the fact of it and the identities involved in it are well-known. They will certainly be well-known within the building industry. There may well be ongoing issues for Mr Wild, however those issues in my assessment do not overcome the principle of open justice and I decline the application for suppression of Mr Wild's name. Relevant to that is also the fact that his name is attached to the name of the company and will be easily ascertained in that way.

[62] I take a different view in respect of Mr Wild's medical position. I do not consider that there is any legitimate public interest in Mr Wild's medical condition being published or any financial details relating to the circumstances of the company being published. Accordingly, I make an order suppressing the financial details of Inspire Limited and the medical condition of Mr Wild.

[63] By way of summary, the orders that I make are therefore these:

(a) An order for payment of reparation to the family of Mr Perham-Turner in the sum of $130,000 to be apportioned as to 60 per cent by Inspire Limited and 40 per cent by Thorne Group.

(b) An order for reparation to Mr Miles Porter in the sum of $10,000 together with a payment of $5076.30 for consequential loss. That is to be apportioned as to 60 per cent by Inspire Limited and 40 per cent by Thorne Group.

(c) The Thorne Group is fined the sum of $210,000.

(d) Inspire Limited is fined the sum of $30,000.

(e) I record that both fines are to be the subject of payment by instalment as negotiated with the Ministry of Justice.

(f) The defendants are to pay costs to WorkSafe in the sum of $11,712.02 with each defendant to bear one half of those costs.

[64] I also record that Mr Corlett has indicated there may be an appeal against my declining of the suppression order in respect of Mr Wild and accordingly I make an order for interim suppression to be effective for 20 working days or in the absence of an appeal whichever occurs first.

[65] I authorise WorkSafe to release a copy of the summary of facts to accredited news media.

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Judge JP Geoghegan
District Court Judge | Kaiwhakawā o te Kōti ā-Rohe
Date of authentication | Rā motuhēhēnga: 28/02/2024