

**IN THE DISTRICT COURT
AT WHANGAREI**

CRI-2014-088-000695

COMMERCE COMMISSION
Informant

v

JOHN GARNETT
Defendant

Hearing: 5 August 2014
Appearances: C Paterson for the Informant
J Young for the Defendant
Judgment: 05 August 2014

NOTES OF JUDGE DUNCAN G HARVEY ON SENTENCING

[1] Mr Garnett, you are for sentence today on 20 charges of obtaining by deception.

[2] I am obliged to counsel for the Commission. They have filed a very full summary of facts that stretches to some pages. I do not intend to traverse that summary of facts in all its detail; a copy will of course be made available to anyone who wishes the full details.

[3] Suffice it to say that what is alleged here and what you have accepted is that over a 20 month period you, as a director of Forrest Hill Farms, were party to that company obtaining a pecuniary advantage by deception. In particular, you falsely packaged cage eggs into non-cage eggs packaging and you then supplied those falsely packaged eggs to your customers. You were responsible for the packaging of

approximately 206,000 dozen cage eggs into non-cage egg packaging which resulted in a pecuniary advantage to you of approximately \$376,000.

[4] In preparing for this sentencing I have had the advantage of reading a very substantial amount of material. I have read the submissions filed by both counsel. I have read the pre-sentence report. I have read the references that have been filed in support of yourself. I have read letters from your former wife and your daughter. I have read the cases that have been referred to by counsel. I have done some of my own research and I have listened to the submissions that have been made to me this morning.

[5] Although counsel have already outlined for me what they submit to be the aggravating and the mitigating factors of this offending, I have an obligation to again specify very clearly the basis upon which I am sentencing you.

[6] There is of course a need for me to hold you accountable for the offending and to make it clear that this conduct is completely and utterly unacceptable. There is a need for me to impose a sentence that is truly deterrent. In this case that is an extremely important principle because if what you claim to be occurring is true, then this type of behaviour in the egg industry is common. That is a very disturbing comment and clearly a message needs to be sent to anybody who is minded to behave in this way, that if they do and if the offending is detected, then the consequences will be very severe.

[7] I have to have regard to the principles of sentencing. I have to have regard to the gravity of the offending. I have to take into account the length of time that this offending went on for, but it is very important, and both counsel have stressed this to me in their submissions, that I be consistent. I must treat you in the same way that other people are treated for like offending, and I accept that I must impose the least restrictive outcome that I can.

[8] Both counsel have referred me to a Court of Appeal decision *R v Varjan* CA97/03, 26 June 2003. That is a particularly important decision because

that outlines the matters that the Court is required to assess when sentencing for offences of this nature.

[9] The first matter that I have to take into account is the nature of the offending, and as has been submitted to me, this was deliberate offending and it took place over a considerable period of time, some 20 months. It was clearly premeditated and it was designed to deceive both your direct customers and of course ultimately, the public who purchased those eggs.

[10] The Commission submit to me that this was large scale offending, and I accept that. They also submit to me that it was quite sophisticated. In fact the way in which you went about it was not particularly sophisticated, you simply packaged cage eggs into the wrong packaging, but as the Commission quite correctly points out, the people purchasing those eggs had absolutely no way of knowing. They had to rely on your honesty and they had to rely on the honesty of the packaging. They were severely let down.

[11] There were three completely different sets of victims. The first victims of course were your direct customers, the supermarkets who bought the eggs off you then there were, of course, members of the public who, for their own particular reasons, prefer to purchase free range eggs rather than caged eggs, they were deceived; and thirdly of course, the egg industry as a whole because it is likely that as a result of your offending public confidence in the packaging of eggs will be diminished.

[12] I am told that the losses now have been accepted and that the agreed figure for sentencing is \$376,000. The motivation of course was you trying to maximise your profit. I accept you were doing that because your business was in trouble, but that does not alter the fact that that was the motivation for the offending.

[13] The public here were deceived. There was a breach of trust because of the impossibility for people to look at an egg and tell whether it is either free range or caged. They had to rely, as I have said, on your honesty and the honesty of

packaging and accordingly, they were obliged to trust you. To that extent there was a breach of trust.

[14] As far as impact on the victims are concerned, that is a particularly difficult matter to assess because of course members of the public will not know in fact whether they have in fact been deceived or not. Certainly your direct customers know that they have been deceived, and the Commission is also of course concerned about the wider impact on the reputation of egg producers generally.

[15] The Commission accept that there are no personal aggravating features of this offending and that is a convenient place for me to turn to the pre-sentence report. The pre-sentence report is a comparatively brief document; it recites for me your present circumstances, both personal and financial. It tells me that you are considered to be at a low risk of re-offending, and I accept that. The ultimate recommendation in the pre-sentence report is one of home detention and community work.

[16] Both counsel have referred to a number of previous decisions. The purpose of that of course is to assist me in imposing a sentence which is truly consistent. The cases that I have been referred to in particular, are *the Commerce Commission v Klair*, *Police v Cogan and McKenzie*, *Lamont v R* (2006) 22 NZTC 19,907 (HC), *Harris v Ministry of Social Development*, *R v Simpson* [2013] NZHC 2524 and *Silcock v Police* [2014] NZHC 1515. I have also been referred to a very recent appeal decision *Klair v Commerce Commission*. As you have already heard me say to counsel, all of these cases are very different and ultimately I have to try and assess here the seriousness of your offending, but with a mind to the approach taken in other cases.

[17] The Commerce Commission submit that a starting point of between three and three and a half years is appropriate here. Your counsel submits two and a half to three years. When I take into account all the aggravating features of this offending, and in particular, the undermining of the public faith in the egg industry and the possible damage done to the industry as a whole, I assess that the appropriate starting point here is a starting point of three and a half years' imprisonment.

[18] Turning then to your personal circumstances. There are no aggravating features so far as you are personally concerned. There are a number of mitigating features. You pleaded guilty at what I accept was the very first opportunity. You co-operated fully with the Commerce Commission investigation. After an initial reluctance you were completely open with them. You voluntarily returned from Australia for this sentencing.

[19] Clearly you are entitled to full credit for your plea of guilty. I assess that credit as being in the vicinity of 10 and a half to 11 months.

[20] The Commission submit that I should allow a further 10 percent to recognise your co-operation. I understand that submission; however, it does not in my view, take sufficient account; first, of your voluntary return from Australia; secondly, it does not take into account what I now know to have been your physical and mental condition at the time of this offending. I am satisfied that you were suffering from very severe stress. I am satisfied that you were suffering from depression. You saw what was happening to your company as a personal failure. That does not excuse what you did, but in order to try and save your business and with it the jobs of your employees, you decided to embark on what was a massive large scale fraud. I have to say Mr Garnett that I have struggled with this sentencing. On the one hand I have your personal circumstances, but on the other I am faced with what can only be described as very serious offending.

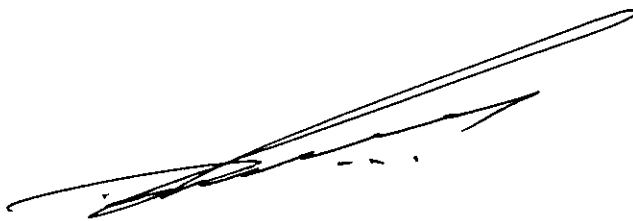
[21] Had it not been for the personal factors that I have outlined I would have today sent you to prison because that is how seriously I regard this offending. However, by co-operating in the way that you did, by coming back from Australia, and taking into account your health, I am satisfied that it would be unjust to send you to prison. Accordingly, you are sentenced to a term of home detention for 12 months. That sentence will be served on the conditions set out in the pre-sentence report. Those conditions are:

[22] That upon being released from Court today you will travel directly to your Glendale Road address and once there you will remain until the probation officer and/or security guard arrives.

[23] You are not to possess, purchase or consume any alcohol or illicit drugs for the term of home detention.

[24] You are to undertake any counselling as directed by the probation officer.

[25] It is also important in my view that you put something back into the community; particularly bearing in mind that here reparation would be an empty order. Accordingly, you are also to complete 200 hours' community work.

A handwritten signature in black ink, appearing to read 'Duncan G Harvey', written in a cursive style with a long, sweeping underline.

Duncan G Harvey
District Court Judge