

**IN THE DISTRICT COURT
AT WELLINGTON**

**I TE KŌTI-Ā-ROHE
KI TE WHANGANUI-A-TARA**

**CRI-2020-004-007389
CRI-2020-004-001041**

COMMERCE COMMISSION
Prosecutor

v

**MASONS PLASTABRICK LIMITED
CERTMARK INTERNATIONAL PTY LIMITED**
Defendants

Date: 11 March 2022

Appearances: Appearance of counsel excused

MINUTE OF JUDGE N J SAINSBURY

[1] This sitting is to confirm the sentences, particularly in the light of the application by the defendant, Certmark, that the indicative sentence be reduced due to inability to pay. This decision is given in the Wellington District Court, that is due to where I am currently sitting. It remains an Auckland District Court matter.

[2] I have previously issued a decision on a disputed facts hearing that dealt with the level of sentencing to be imposed against both parties.¹ All counsel have an opportunity to be heard on the level of sentence. Counsel do not seek to be present when the sentences are confirmed. I now formally impose the sentences.

¹ COMMERCE COMMISSION v MASONS PLASTABRICK LIMITED [2021] NZDC 19084 [24 September 2021]

[3] For Masons:

- (a) Starting point: \$400,000
- (b) Discount for lack of previous convictions and cooperation: 15%
- (c) Discount for guilty plea: 25%
- (d) End sentence: \$240,000 (imposed by way of fines of \$40,000 for each of the six charges to which Masons pleaded guilty)

[4] For Certmark:

- (a) Starting point: \$350,000
- (b) Discount for lack of previous convictions and cooperation: 15%
- (c) Discount for guilty plea: 25%
- (d) End sentence: \$210,000

[5] CertMark sought that the level of fine be reduced because of their financial position or at the very least that they be able to make arrangements to pay off the fine over time.

[6] I have considered the affidavit from Anthony Boughton as well as the submissions filed. I agree with the Commission that I cannot conclude on the information before me that CertMark would not be able to pay the fine imposed. Although I have had accounts put before me, they were not prepared for this purpose. I accept that like so many businesses in the current climate, CertMark has been experiencing difficulty and that may continue into the future. That said, I do not accept that CertMark will be unable to pay the fine over time.

[7] To that extent the fine stands as indicated. I consider that CertMark should be in a position to pay the fine over a period of time. The arrangements for that will need

to be made with the registry. It will be a matter of CertMark working with the registry to find a level of payment that is reasonable in the circumstances. Accordingly, the level of fine stands. CertMark to pay that over time. Certmark has until 31 May 2022 to make those arrangements.

Judge NJ Sainsbury

District Court Judge | Kaiwhakawā o te Kōti ā-Rohe

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