

**IN THE DISTRICT COURT
AT MANUKAU**

**I TE KŌTI-Ā-ROHE
KI MANUKAU**

**CRI-2018-092-009842
[2020] NZDC 10107**

THE QUEEN

v

**MIRA SINGH
LALITA WATI SINGH
AERO FIRE (NZ) SALES & SERVICE LIMITED**

Hearing: 3 June 2020

Appearances: A Luck for the Crown
H-N Kim on behalf of M Dyhrberg QC for the Defendants

Judgment: 3 June 2020

NOTES OF JUDGE P RECORDON ON SENTENCING

[1] Mr and Mrs Singh, it has come to the point where we will finalize this matter, and this will be the last day that you are required to come to the Court because sentencing will take place. We have had a discussion prior to the sentencing today and Mr Luck has spoken to his client, to the Commissioner, and Ms Kim has spoken with you. That is because I raised the issue of emotional harm – reparation – and, in itself, complicated, but the Commissioner has acknowledged, through Mr Luck, that it is a possibility if it is limited. I think that is something that should be considered and as part of the process. Restorative justice could have been ordered, it does not appear to have been directed. Possibly had that charge of obtaining by deception under the Crimes Act 1961 remained, maybe there would have been almost a compulsory referral to restorative just or not, it depends on the Judge on the day.

[2] For you, you are getting on with your lives, I can appreciate that. The company is not going so well Ms Kim says, nevertheless, the company has put aside some money which can be paid pretty well immediately. That is a responsible thing to do, and I thank you for that.

[3] The decision I am giving, you know the result before I have given it essentially because we have been talking about it, but I need to say a few things because it has to be recorded. Other cases in the future, they may look back and see what has happened in a certain case so they know where their case stands as far as what the amounts to be paid might be.

[4] These charges really involve behaviour from the two of you and the company which was very possibly dangerous, I think that has to be emphasized, and certainly dishonest. There were misrepresentations made relating to the way these extinguishers, essential safety devices, operated and how effective they were. There was also criticism of the two of you and others, of the machines in the possession of a number of these people. The defendants' target was small businesses, and it appears to be consciously targeting those small businesses on your behalf. Businesses that were, as Mr Luck has said in his submissions, unlikely to be aware of their obligations regarding fire safety equipment, a very technical area for any business. Bigger companies would know what they require, and smaller companies, really, they have an extinguisher, but they do not know whether it is the right one for them.

[5] Reading through the victim impact statements, it is very clear that a number of the people who received new extinguishers had extinguishers which they wanted back later on because they realised the ones that you supplied were nowhere near as good as the ones that you had taken, but they did not get them back. They were concerned that if there were a need to use these extinguishers they would not do the job that they were required to do. There were also misrepresentations, again, regarding the servicing that these new extinguishers required, at cost of course. There was a conscious effort on your behalves to persuade customers to require services they did not need and, as I said, servicing and maintenance as part of that.

[6] It went on for quite some time, a period of around about 26 months, and it seems you purported to service at least 772 extinguishers. There was planning, moderately sophisticated the Crown says, and money was coming in to you and the company during that time.

[7] There is a number of cases which have been decided and, as far as I can see in discussion prior to the sentencing with counsel, most of them appear to be District Court. There is a decision from the late Judge Rob Ronayne, there is one from Paul Mabey, they are both District Court decisions. There are others, some extensive, some brief, and Mr Luck has been involved in some of those decisions.

[8] The Crown submits – Ms Dyhrberg and Ms Kim today are not really arguing too much with the starting point for each of you – \$25,000 to \$30,000, and for the company between \$35,000 and \$45,000, the company's maximum penalty \$600, individual \$200. Obviously, there was an agreement that the Crimes Act charge not proceed, and that carried a maximum prison sentence of seven years being a defence category 3.

[9] There is not a huge amount of remorse that I have seen from reading the files. Ms Kim may suggest I am being a bit ungenerous with that comment, but I certainly do not see a lot at this stage, possibly regret, but not remorse. It is a pity, as I said earlier, that restorative justice was not ordered. At the same time, I certainly understand that it would have been a bit of a nightmare for the provider of restorative justice services in the area to contact the complainants, as it may be something of a nightmare for the Commissioner to work out on a pro rata basis payment of emotional harm.

[10] As I say, the victim impact statements, all of them read in a very similar vein, people who were just so disappointed with what happened, upset, concerned, and worried.

[11] As far as a discount is concerned from that starting point, no real issue with the plea and the discount relevant to the plea. The Crown has suggested the 15 percent relevant to the timing of the plea. Ms Dyhrberg and Ms Kim are looking for the

25 percent total which was the plea, they are taking no issue with the submission of 15 percent for the guilty plea with the rest totality, least restrictive, and something around about the 25 percent they are looking for in total.

[12] There is an updated memorandum, submissions from Ms Dyrberg, which Ms Kim has spoken to, and that suggests that from their point of view they have \$30,000 able to pay for the company immediately, in the next couple of days, and \$20,000 each for the individuals which can be paid at a total of \$250 a week. That is a fairly hefty amount for anyone to pay for on a weekly basis and I think it is quite reasonable.

[13] The emotional harm payment that I think should be paid is \$10,000 from each, and that is a payment which can partially reduce the fines to an amount of \$15,000 each for the individuals. That is from an end point of a \$20,000 fine, but it will mean that each will pay \$25,000. The reparation will take priority over the fines and will be paid on a pro rata basis to the complainants which number around 20 or 30 and which the Commissioner can reasonably easily identify.

[14] The payment for the company, \$30,000, to be paid by 10 June. Obviously, we have to look at things like deterrence, Mr Singh, Mrs Singh. This is not the way that we want to do business in the world these days, to take advantage of people who are vulnerable, who have a small business and perhaps are not as sophisticated, not so much naïve, but are just inexperienced in these sorts of things, and it has to be marked by a fairly substantial fine.

[15] Just lastly, I reserve the right to amend this decision as to form, but not as to substance.

[16] So that is fines for the two individuals to be paid after the emotional harm. These payments are to be made at \$125 per individual, \$250 in total, per week. The first payment 10 June, so that is in a week's time.


P Recordon
District Court Judge