

**IN THE DISTRICT COURT
AT HAMILTON**

**I TE KŌTI-Ā-ROHE
KI KIRIKIROA**

**CRI-2022-019-000830
[2023] NZDC 23253**

WORKSAFE NZ
Prosecutor

v

CLARKIN GOAT COMPANY LIMITED
Defendant

Hearing: 6 June 2023

Appearances: K Opetaiia for the Prosecutor
J Gurnick for the Defendant

Judgment: 6 June 2023

NOTES OF JUDGE K B F SAUNDERS ON SENTENCING

[1] Clarkin Goat Company is for sentence on one charge of failing to ensure so far as is reasonably practicable the health and safety of a worker, Colin Austin, while he was at work by exposing him to risk of death or injury arising from falling from a height.

[2] I acknowledge today the presence of Mr Austin and his partner and I also acknowledge Mr Clarkin is here on behalf of the company.

[3] The company accepted a sentence indication given by Judge Cooper on 31 January this year. Ordinarily Judge Cooper should be the judge sitting where I am today imposing sentence, but he has retired. I do not take any issue with the sentence

indication that he provided and accordingly I will sentence the company in accordance with it.

[4] The facts that governed the indication are set out in Judge Cooper's notes on sentencing indication. Those notes, because I am imposing sentence in his stead, will form part of this sentencing exercise because there is little to be gained by repeating the factors that led to his Honour's indication but I do need to say that without doubt Mr Austin's life changed on 1 March 2020 when he fell 2.4 metres and landed on his head. That fall occurred as he was climbing to the top of a bunker that contained wood shavings used for goat bedding, trying to put a tarpaulin over the top of it.

[5] He suffered significant injuries. They are detailed in Judge Cooper's sentence indication notes and I have also read the harm he has detailed in a victim impact statement dated 23 February this year.

[6] I will repeat, without doubt the last two years have been devastating for him, for his partner and two children. The accident has affected every single aspect of your life Mr Austin, family life, your personal life, your physical life, your psychological and your financial life. I cannot understate the impact on you, and as you so starkly put it in your victim impact statement, the future is your main concern and you do not know whether you will ever work again, farming you tell me was your life and the frustration of not knowing I suspect simply adds to all of the other issues.

[7] Currently I have a medical certificate that says you are unfit to work until August and the nature of these things, they are good so to speak for only three months, and while you have made I think some progress, it is very limited progress and the bleak assessment in February of the frustration of not knowing I suspect will be with you for a significant period of time. I can only hope that with time you will be able to work again. I do not know to what degree but I can only express my hope that at some point in the future you can do so.

[8] The sentence indication given by Judge Cooper took into account the principles and the purposes of sentencing cases such as this. He also considered the financial means of the company. In his view the fine that he ultimately indicated was appropriate

acknowledging as it was that it was a notional exercise because the company was not in a position to pay a fine, reflected in his view the very significant departure from best practice guidelines of an employee working at height. In his view there was simply no assessment of the risks involved and how they might be managed. The obviousness of the hazard was clear with the risk of falling from a height of 2.4 metres but the corollary to that, in other words the opposite of that was in his view a relatively straight forward method to avoid the risk at modest cost and the company should have appreciated that.

[9] So, the indication that Judge Cooper gave was an appropriate fine of \$500,000. In mitigation 25 per cent for a guilty plea, lack of previous convictions five per cent, if reparation was paid 10 per cent and five per cent for cooperation with the authorities. So in total 45 per cent. He left remorse for today. Restorative justice did not occur and Mr Clarkin I hope you understand why Mr Austin was simply unable to attend a restorative justice conference with you - you are nodding your head.

[10] In the end Judge Cooper came to this. If all the company could afford was \$100,000 then he would order a nominal fine of \$50,000 with \$50,000 to be paid by way of reparation. As I have said since Judge Cooper gave that indication on 31 January further material has been provided by the prosecution in which it details consequential financial reparation which is in essence the shortfall of ACC payments made to Mr Austin from 1 March 2021 to today's date, 6 June 2023 and that is a total of \$25,068.82.

[11] I turn now to impose sentence on the company in accordance with the sentence indication and I do so as follows. The company is ordered to pay reparation to Mr Austin of \$50,000. In addition the company is ordered to make a consequential financial reparation payment of \$25,068.82. That sum is to be deducted from the nominal fine that was indicated of \$50,000 and that then leaves a fine of \$24,931.81.

[12] Mr Austin, I want to end today by saying to you that I appreciate that nothing I do, nothing this court does will ever repair matters for you or wind back the clock and money is often simply the only means by which some recompense can be made. But please let me acknowledge that I appreciate in the scheme of things it is a little

amount but it should I hope go some way to easing the financial burden on you to date and I can only express my sincere wish that in the future life will get better.

[13] Mr Clarkin, I acknowledge too that there are consequences to the company.

Judge KBF Saunders

District Court Judge | Kaiwhakawā o te Kōti ā-Rohe

Date of authentication | Rā motuhēhēnga: 27/10/2023