

**IN THE DISTRICT COURT  
AT AUCKLAND**

**I TE KŌTI-Ā-ROHE  
KI TĀMAKI MAKĀURAU**

**CRI-2019-004-003176  
[2023] NZDC 11734**

**WORKSAFE**  
Prosecutor

v

**DONG SH AUCKLAND LIMITED**  
Defendant

Date of Ruling: 31 May 2023

Appearances: A Everett for the Prosecutor  
S Moore for the Defendant

Judgment: 31 May 2023

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**RULING OF JUDGE P WINTER**

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[1] The situation I am in at the moment is that this matter is for sentencing this morning. I have a reserved sentencing decision, it was prepared on the basis of the information I had as of last night. I can tell you that the decision indicates the level of liability and I have also, in that decision, made an order under s 151(2)(i) of the Health and Safety at Work Act 2015 for costs, as sought in the sum of \$18,678. That was prior to the receipt of the fresh information from the Receivers, provided to me in Court just now. That award was based on the law as set out in the decision in *Commerce Commission v Appenture Marketing Limited*.<sup>1</sup>

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<sup>1</sup> *Commerce Commission v Appenture Marketing Limited* [2018] NZDC 1853 [2 February 2018].

[2] I must say that I had some concerns as to whether or not costs should be awarded, given the state of the defendant's finances as I had them, until 9 o'clock this morning. I did not see any other course of action I could follow. As I understand it, the High Court has said that the normal processes must be followed, unless there is information to the contrary.

[3] I can tell you that the combined starting point fine for the 3 offences, that I found the defendant guilty of, is \$300,000. There is a 15 per cent discount from that, leaving, by my calculation, a fine of \$255,000 plus costs.

[4] Counsel now seeks that no costs order be imposed. On that basis, I am prepared to alter my judgment and there will be no order for costs. That is what is now sought. I will need to alter my decision. I will issue the reserved decision today or shortly thereafter, minus the order for costs.

[5] Counsel also seeks that there be no order for the payment of the fines

[6] I will simply note the file that the prosecutor does not seek payment. I will amend the judgment accordingly. That will be distributed in due course.

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Judge P Winter

District Court Judge | Kaiwhakawā o te Kōti ā-Rohe

Date of authentication | Rā motuhēhēnga: 14/06/2023