

NOTE SUPPRESSION ORDERS IN PARAGRAPH [47](C)

**IN THE DISTRICT COURT
AT WAITAKERE**

**I TE KŌTI-Ā-ROHE
KI WAITĀKERE**

**CRI-2022-090-002539
[2024] NZDC 20001**

WORKSAFE NEW ZEALAND
Prosecutor

v

SCOTTY DOORS LIMITED NOW TRADING AS SDL LIMITED
Defendant

Hearing: 19 August 2024

Appearances: B Finn and A Simpson for the Prosecutor
J Cairney and N Lawrence for the Defendant

Judgment: 19 August 2024

NOTES OF JUDGE T SINGH ON SENTENCING

[1] This is a case of truly tragic proportions.

[2] It involved the loss of the life of Helen Verry, a much beloved wife, sister, mentor, and dear friend to so many, and who was and continues to be a shining light in her congregation.

[3] She is person who made an impact on me through the victim impact statements I read and from what I heard in Court. As I said to the people present, she was someone I would have liked to have known and learned from.

[4] Because of her strong faith, I thought it was appropriate that the sentencing process started with a prayer. With Helen Verry's husband Tim's agreement, Pastor Luka Robertson who officiated the marriage between Helen and Tim, said prayer. I considered it appropriate that he should have the very last words in the proceedings before it closed, and Mr Robertson kindly agreed to do that.

[5] With counsel's agreement and the practical compromises that were reached for which I am very grateful, the kaupapa of the sentencing process was about marshalling the overwhelming grief of those present across two courtrooms and by audio-visual link, to let those very close to Helen speak to what her loss has meant to them.¹

The charge and the summary of facts

[6] I was conscious that the reading of the summary of facts would cause further pain and grief but as I explained to those present, there are those that do not know of the facts and it was important for me to record what I was basing my decision on. It also forms the basis for lawyers to make the submissions on behalf of the parties for whom they act.

[7] The essence of the charge was that this was a failure by Scotty Doors now trading as SDL ("Scotty Doors") to comply with a duty to install a powered roller grille door, so it was safe for its intended use.

[8] Scotty Doors pleaded guilty to one charge brought by WorkSafe New Zealand ("WorkSafe") under ss 18A and 51A of the Health and Safety in Employment Act 1992. The maximum penalty for this offence is \$250,000.

[9] Scotty Doors is a manufacturer and supplier of specialist roller shutters, grilles, and folding closures. The current directors purchased the business in 2007. The West City Christian Centre Trust ("the Trust") operated a church campus at 3 Te Atatū Road in Glendene in Auckland.

¹ The parties agreed I would put into this the written decision. In court the justification for my orders avoided a discussion of cases relied upon.

[10] In 2008, the Trust engaged Skyward Construction Limited (Skyward”), a construction business, to build an extension to its main auditorium building at their Te Atatū Road campus. Construction by that company began in November 2008. Shortly after that Skyward sought a quote from Scotty Doors.

[11] On 17 February 2009, Scotty Doors provided quotes to Skyward to provide roller grilles for specified parts of the building extension. On 19 February 2009, Skyward completed a purchase order for the supply of a further motorised roller grille door to be installed in the hospitality lounge of the extension.

[12] On 13 March, the motorised roller grille door for the hospitality lounge was installed by an unknown person from Scotty Doors. It was secured to the timber stud wall of the lounge using two pairs of 10 by 75-millimetre galvanised coach screws. The roller door included a hand chain which meant it could be operated in the event of a power failure.

[13] The left-hand side of the roller door was attached to a surface on which an 18 by 80-millimetre piece of plywood had been secured to the gib board to correct pre-existing surface plane misalignments. The screws used had been driven through both the plywood and the gib board and the surface had then been painted.

[14] A registration form signed on behalf of Scotty Doors noted the roller door had been installed in the hospitality lounge and checks had been completed by them with the words: “Door attached to solid fixing.” The roller door remained in place.

[15] By December 2021, the roller door had begun to slump at the non-drive end as the fixing came away from the wall. On 30 January 2022, the Trust held a service in its main auditorium. The deceased victim Helen Verry, a pastor employed by the Trust, was preparing the hospitality lounge as an overflow for the service.

[16] Ms Verry tried to close the roller door separating the overflow space from the main lounge area using the hand chain as the motor was not working. As she pulled down the roller door, the roller door fell and struck her. She died of her injuries.

[17] Scotty Doors failed to ensure the appropriate type of fastener was used to secure the roller grille door. Further consideration should have been given to the type and length of screw being used, given the presence of the external plywood. The length of the coach screws at the non-motor end of the roller door failed to comply with the Building Code due to the plywood used. The installation failure was a contributing factor to the roller door failing.

[18] This court must follow decisions of the High Court and the Court of Appeal. They place limits and provide guidance on what this court can and must do.

[19] With those decisions in mind, I can make an order for emotional harm payment to the victims. Usually, that includes any payment directed for funeral costs. I can also fine Scotty Doors.

[20] WorkSafe conceded I cannot make any orders for ACC shortfalls because the law in 2009 did not allow for ACC shortfalls. That position changed in 2014.

Emotional harm payments

[21] Assessing previous cases and measuring them against the facts of this case enables the court to arrive at the appropriate level of emotional harm payment. In this case, Scotty Doors have agreed to the submissions made by WorkSafe. That was an emotional harm payment of \$140,000 to be divided as directed by the court to the victims. In addition, Scotty Doors agreed to cover the full funeral costs of \$17,000, rounded up from the figure provided of \$16,703.44.

[22] After discussion between the Court and parties, Scotty Doors agreed to pay the sum of \$145,000 in addition to the funeral expenses.

[23] I made the order for payment of emotional harm reparation as follows:

- (a) The sum of \$130,000 was ordered to be paid to Mr Tim Verry;
- (b) A payment of \$5,000 to each of the three siblings of Ms Verry who had filed victim impact statements;

- (c) An order for payment of \$17,000 was made to cover all funeral expenses.

[24] It is insensitive for me to say, as no amount of money can account for the loss of life, but the sum awarded is at the top end of the scale for emotional harm suffered. I did not need to go into the cases filed by WorkSafe, as that was done to justify the amount Scotty Doors should pay. The company agreed with the sums sought and agreed to a slight increase.

The starting point for the fine

[25] In terms of the appropriate fine, the decision of *Department of Labour v Hanham and Philip Contractors Ltd* is relevant as it establishes bands of culpability that applied at the time of the offence.² It should be noted that fines have increased since then.

[26] In this case, both parties consider the present offending to fall into the medium culpability, which sets the fine between \$50,000 and \$100,000.³

[27] I identified at the sentencing in Court that the start point should be one of \$75,000. The starting point is where I consider the offending to sit, before taking into account any aggravating and mitigating features which adjust that start point.

[28] The figure I adopted was the lowest point sought by the prosecution and the highest point conceded by the defence. It was reached by considering two decisions provided to me by the prosecution, both of which used start points of \$75,000. The most relevant of the two was the decision of *WorkSafe New Zealand and Shoreload & Propping Limited* decision.⁴

[29] In *Shoreload* the company created a temporary structure used to support a permanent structure while the permanent structure was not self-supporting. It failed and a 15 tonnes concrete panel fell and struck a young worker causing “life altering”

² *Department of Labour v Hanham and Philip Contractors Ltd* (2008) 6 NZELR 79 (HC).

³ Low culpability is a fine up to \$50,000. High culpability is a fine of between \$100,000 and \$175,000.

⁴ *WorkSafe New Zealand and Shoreload & Propping Limited* [2016] NZDC 5273.

injuries. While the design of the temporary structure was not inherently defective, the temporary structure was incorrectly installed and was a significant departure from industry standards. In that case the company that engaged *Shoreload* was also charged.

[30] The harm that resulted in the present case is more serious, but recognition must be made that the other potentially responsible company Skyward was unable to be held to account for any role it may have played as it had gone into liquidation. It left Scotty Doors to shoulder all the responsibility. On balance, I consider the same starting point should be adopted.

[31] WorkSafe did not identify any aggravating factors over and above those which contributed to the start point. Scotty Doors shared that view.

Matters which reduce the starting point for the fine

[32] Where it is demonstrated, every Court must consider and give credit for reparation and remorse. The Sentencing Act 2002 states I must give credit for a party wanting to go through the restorative justice process. Not every defendant or defendant company takes that courageous step. It is completely understandable why that has not occurred in this case. I understand this is a possibility for another day, and it is not for this Court to enter into that arena.

[33] Scotty Doors took the initial approach of considering whether it was responsible for the harm and filed an application to have the charge dismissed. It is understandable that taking that approach and the time this took caused pain to the victims.

[34] Once that process was completed however, Scotty Doors did not seek to avoid its responsibility. This ensured that discussions around what the appropriate emotional harm payment should be did not become a bargaining exercise. It is important to note that because, as Mr Cairney for Scotty Doors said, many companies shirk responsibility and make arguments to minimise responsibility for the harm caused. Scotty Doors did not do this.

[35] I just want to say a bit more about a defendant or defendant company seeking legal advice. The legal advisers cannot and should not give advice until they know the full picture and that includes whether their client is responsible for the harm caused. If insurers have an interest, then they would require steps to check responsibility are taken. This is a complicated issue because it compounds the stress, worry, and grief for victims. All of that is completely understandable and human.

[36] What has made this case more difficult is that the harm results from an event from 2009. A WorkSafe investigation and the giving of legal advice to assess responsibility is made more difficult with the passage of time.

[37] I considered these matters are best covered by me as when it comes from the defence team, it may seem like they are wanting to place their clients in a better light, and they have their clients' backs. They do, and that is proper, but they are persuasive factors for me when I look at the whole of the case.

[38] In terms of remorse and reparation I consider the Scotty Door's approach is more the exception than the rule. A discount of 15 per cent is available for remorse and reparation in this case.

[39] It would also be fair to say there would have been a significant amount of bewilderment within the company when the news of the tragedy struck. I think some of that comes through in the affidavit of Antonia Lam-Lietz a Director for Scotty Doors. She was significantly affected by this event in terms of her health but acknowledged that it paled in comparison to Tim Verry and whānau.

[40] I allow five per cent for a previous good safety record. There is no negative history which WorkSafe are aware of.

[41] The remedial steps which have been taken are relevant here. They include putting in place stricter installation requirements, compliance check lists for its installers and service agents, and requiring structural engineering sign off. A discount of five per cent is available for this.

[42] These are important because there are other people who need to come home safely to their whānau. That is a theme which has come through in the victim impact statements, that this should not happen to anyone else. That is a courageous thing for those who filed victim statements to say, because they are thinking of others. I think that is the way by which Helen Verry lived. To be in the service of others.

[43] The company has also dedicated a separate entity dealing with service and maintenance and they are pushing for greater regulation in the industry to ensure safer practices. These are all factors which I consider to be positive moves and ones which in my view warrant a five per cent discount.

[44] The guilty plea discount requires some assessment. I must consider that there was an application to have the charge dismissed, that the events were not clear cut given the event causing the harm took place in 2009 and Skyward was involved at that time, and that Scotty Doors acted quickly to take responsibility once the position was known. I consider 15 per cent is available as a discount, using an accepted maximum available discount of 25 per cent.

[45] Finally, a discount of five per cent is available for their co-operation with the WorkSafe investigation. This is acknowledged as relevant by WorkSafe.

[46] In total there are mitigating features warranting a 45 per cent discount. The end fine, after applying the discounts for mitigating features to the starting point of \$75,000, is one of \$41,250.

Other orders

[47] The other orders I have made in this case are as follows:

- (a) The agreed summary of facts is to be released to Tim Verry;
- (b) The sentencing decision is to be released to Tim Verry;
- (c) I suppress the contents of the victim statements of Tim Verry, Nesa Tuigamala Prasad, Toalua Tuigamala, Alan John Verry and

Elizabeth-Anne Fay Verry and make orders for non-publication of those statements under ss 27(1)(b) and (2)(e) of the Victim Rights Act 2002 on the basis that publication would affect their emotional welfare and to protect their privacy.

[48] To Tim Verry and whānau, and all those who were present, my hope is that the sentencing process and this decision provides dignity to Helen Verry and can be an avenue for closure. I say kia kaha to Tim Verry and whānau.

Judge T Singh

District Court Judge | Kaiwhakawā o te Kōti ā-Rohe

Date of authentication | Rā motuhēhēnga: 18/09/2024