

JERSEY / JUDGMENT

AG -v- Deerglen [2009]

JRC 134 (26 June 2009)

[2009] JRC 134

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JUDGMENT

THE bailiff: 1. The defendant company has admitted three breaches of the Health and Safety at Work (Jersey) Law 1989 . The charges relate to continued failures to pay due regard to the safety of employees by exposing them to the risks of falling from great heights while working on the Liberty Wharf development in St Helier. What is particularly disturbing is that the intervention and warnings issued by the Health and Safety Inspectorate were not heeded so that the dangerous practices continued to the knowledge of the defendant company. 2. Counsel for the defendant has realistically and properly conceded that the conduct of her client was reckless. We were unable to accept her further submission that the defendant company had an excellent safety record; the fact that no employee has been injured in the last ten years owes much more to good luck than to anything else. 3. In the context of this development the defendant did not employ competent staff to supervise the work nor did they heed the advice of an independent consultant. Ordinarily the conclusions of the Crown in a case such as this where there is, on the face of it, a previous conviction for similar offences, would have been fully justified. 4. In mitigation however, the defendant company has admitted the infractions, real steps appear now to have been taken to ensure that the company meets its obligations under the Health and Safety legislation in future, an experienced and respected Health and Safety Director has been appointed and as a result, effective cooperation with the Health and Safety Inspectorate has begun. A wholly revised Health and Safety manual has been prepared by the defendant company and new procedures have been introduced to vet the practices of sub-contractors before they are taken on. 5. The defendant company was fined £25,000 in February 2009, for similar offences at another building site in St Helier. Those offences took place between 2005 and 2007 whereas the offences on this Billet took place between July and September 2008. They pre-date therefore the conviction which was recorded on 9 th February, 2009, and might have been dealt with at the same time. We understand why that was not possible but it seems to us nonetheless that defence counsel's submission that we should apply the totality principle is correct. These are different offences relating to a different building site and unrelated in time but we have tried to ask ourselves what we might have done had all these matters been dealt with at the same time. 6. We take account of all the mitigating factors of which we have referred and we will sentence the defendant company as follows; on Count 1; it will be fined £15,000, on Count 2; £15,000 and Count

3; £20,000, making a total of £50,000 and it will pay costs not exceeding £5,000 and the company will have three months to pay. Authorities Health and Safety at Work (Jersey) Law 1989. AG-v-Deerglen (Jersey) Limited and Bauunternehmung E. Heitkamp Gmb

[2009] JRC 019 . R-v-F. Howe and Son (Engineers) Limited

[1999] 2 Cr App R (S) 37 . R-v-Board of Trustees of the Science Museum [1993] 3 All ER 853. Page
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