

JERSEY / JUDGMENT

AG v Smith [2005] JRC 076 (03 June 2005)

[2005] JRC 076

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JUDGMENT

THE DEPUTY BAILIFF: 1. Asbestos is a dangerous substance which can be very injurious to health. We were told during the course of this hearing by defence counsel that until recently there was no course available in Jersey in which people can be trained in recognising asbestos and the dangers associated with it. If that is correct we have to express our surprise and we urge the authorities to ensure that courses are available so that people in the construction industry can be trained to recognise and protect themselves against this very dangerous substance. 2. Because of the dangers that arise from the substance we think that in cases of reckless disregard of the danger the Court should impose substantial fines. All of the cases so far to which we have been referred had very specific mitigating features. In our judgment the fines in cases where such mitigation is not available should be much higher than in those cases. 3. However, in this case too there is specific and unusual mitigation and that arises from how this incident occurred. The defendant agreed to supervise some works to the main house in this case and there he undertook a survey for asbestos as one would expect. There was no plan for any work to the outbuildings. However, during the course of the works an electrician requested that the ceiling of the outbuildings be taken down so that he could inspect matters. 4. The defendant's workmen simply went ahead and acted upon that request and that was where the asbestos was discovered. The defendant's failure therefore was to ensure that his workmen were properly briefed on the need to check for asbestos before undertaking any work of this nature. 5. The defendant has already been punished in a way quite substantially because he has incurred costs, we are told of some £7,500, in dealing with and disposing of this asbestos and he cannot reclaim this from the client, because this was not work which was ever intended to be done. He has in addition mitigation available in that he has pleaded guilty. He was extremely co-operative, he has a good previous record and we have read all the references. 6. Furthermore, a private company has, since this incident, apparently started to offer courses on asbestos and he has arranged for his employees and for various sub-contractors that he regularly uses to go on such a course at his expense. 7. We take all that into account and in the circumstances we think we can reduce the fine because of the specific circumstances. 8. The fine will, therefore be, a total of £6,000, divided as to £3,000 on each count with 1 month's imprisonment in default, consecutive on each count. Fourteen days to pay. No Authorities Page Last Updated: 18 Aug 2015 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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