

JERSEY / JUDGMENT

The Attorney General v Malco Developments Limited

COURT

ROYAL COURT

BEFORE

Sir Philip Bailhache, Bailiff, and Jurats Quérée
and Tibbo.

The Attorney General

-v-

Malco Developments Limited

1 count of:

Contravening Article 21(1)(a) of the Health
and Safety at Work (Jersey) Law 1989, by failing as an employer, to
conduct undertaking in such a way as to ensure, so far as reasonably
practicable, that persons not in its employment were not thereby exposed to
risks to their safety.

Plea: Facts
admitted.

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[2004]JRC023

ROYAL COURT

(Samedi Division)

6th February 2004

Before:

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and Tibbo.

The Attorney General

-v-

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1 count of:

Contravening Article 21(1)(a) of the Health
and Safety at Work (Jersey) Law 1989, by failing as an employer, to
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practicable, that persons not in its employment were not thereby exposed to
risks to their safety.

Plea: Facts
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Details of Offence:	Malco was engaged as the main contractor for a new development on the Old Town Park Hotel site on Lewis Street. Malco carried out much of the work itself but also employed sub-contractors for; inter alia, the “ground works” (work up to the ground floor slab level.) Malco, however, retained responsibility for overseeing all works on site and had engaged a site foreman for this purpose. When sub-contractors arrived on site to continue work on 29th April 2002, they noticed that, as a result of the ongoing excavations on site, rubble was falling out from underneath the boundary wall of the adjacent Occupational Therapy Centre (“OTC”) building. Malco’s site foreman gave instructions as to how to make the building safe prior to works continuing and then returned to his office. Those instructions were not followed and, when Malco’s foreman came out of his office some three and a half hours later, he discovered that work had continued, exacerbating the problem and causing a large crack to appear in the front and side walls of the OTC building. As the building was in danger of collapse (putting at risk the health and safety of workers on site and members of public in the road), Malco’s foreman ordered that workers in the area cease working and that the diggers on site be used to support the walls of the building.
Details of Mitigation:	Malco accepted that this was an offence of “failing to supervise.” Had engaged sub-contractors to carry out the relevant work and had satisfied themselves that they were capable of doing so. Admitted the infraction at the earliest opportunity and subsequently co-operated fully. Delay in bringing the matter to a conclusion (12 months had passed between Malco having admitted the infraction and the date of sentencing) was no fault of Malco’s but due to the prosecution against the co-defendant (one of the sub-contractors) having been abandoned at a late stage. Impeccable health and safety record (no previous convictions). OTC building not insured. Because of non-continuance of the prosecution of the sub-contractor, Malco facing an extremely hefty bill for repair of OTC building. Due to resultant cash-flow problems, request that any financial penalty be payable in instalments.
Previous Convictions:	None.
Conclusions:	£8,000 fine; £2,000 costs.

Sentence and Observations of Court:	Conclusions granted. Mitigation advance had, no doubt, motivated low fine moved for by the Crown. C.M.M. Yates, Esq., Crown Advocate. Advocate N.S.H. Benest for the Defendant Company.
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JUDGMENT

THE BAILIFF: 1. As the Court has said on many previous occasions, compliance with Health and Safety legislation is of the first importance. In this case the failure by the Defendant Company to provide adequate supervision of the work for which they were responsible resulted in a situation where considerable risk of injury to passers-by or indeed to employees was present. 2. There is, however, much to be said in mitigation, and, as defence counsel has rightly emphasised, the defendant company acknowledged its failure to supervise adequately at a very early stage and admitted the infraction at the first opportunity. Despite the desire to bring these proceedings to a conclusion in short order, the prosecution of a co-defendant has prolonged the criminal proceedings considerably, with the result that over a year has passed since the Company's admission was first made to the Court. 3. We also accept that the defendant company is a relatively small family undertaking, and that it has in the past carried out a number of projects in the Island successfully and without any difficulties so far as Health and Safety legislation is concerned. 4. The Company was co-operative with Health and Safety Officers and has done everything that it could to put right the wrong that it had committed. 5. Those factors motivated the Crown Advocate to move for a relatively modest fine to be imposed. We think that proper allowance has been made by the Crown Advocate for the mitigating circumstances, without which a much higher fine would have been appropriate. 6. We, therefore, grant the conclusions and impose a fine of £8,000 on the defendant Company and order it to pay £2,000 towards the costs of the prosecution. The fine and costs will be paid at a rate of £2,000 per month and payment must be satisfactorily concluded within 5 months. Authorities A.G. -v- Ernest Farley & Son, Limited (14th April, 2000) Jersey Unreported; [2000/70]. A.G. -v- Beaufort Hotel (3rd November 2000) Jersey Unreported; [2000/216]. A.G. -v- Camerons Limited and GH Limited (24th November, 2000) Jersey Unreported; [2000/235]. A.G. -v- Brenwal Limited [2003] JRC041.

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