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NORTHERN TERRITORY OF AUSTRALIA

LOCAL COURT

No: 21605342

STEPHEN HUGH GELDING

and

THE ROCK TOUR PTY LTD

BAMBER J

TRANSCRIPT OF PROCEEDINGS

AT ALICE SPRINGS ON 23 JUNE 2016

Transcribed by:
DTI

HIS HONOUR: Yes, this is a matter where the defendant company, it plead guilty to a breach of s 32 of the Work Health and Safety Act. That was a failure to comply with its duties under the Act and in so doing exposed Zoey Woolmer(?) to a risk of death or serious injury or illness.

The company, through its worker, failed to ensure compliance with the warning signs and failed to comply with the conditions of their permit. That if they had complied would have ensured that Ms Woolmer stayed a safe distance away from the cliff edge.

In fact the tour guide employed by the company encouraged Ms Woolmer and others to go over the edge of the cliff onto a rock ledge in order to take a photo opportunity. On getting down onto the rock ledge Ms Woolmer stumbled backwards and fell 30 metres onto rocks below. She suffered catastrophic injuries and died a short time later.

The Directors of the company, who appear before me in court on behalf of the defendant company, denied knowledge of the practice occurring whereby their guides not only allowed but encouraged the dangerous behaviour. However, they acknowledge they should have been aware of it and prevented its occurrence.

I note the company had previously been given a warning in relation to tour guides breaching conditions of their permit. Obviously the breach resulted in a tragedy of a death of a young woman tourist that continues to impact on her family. However, it is important to note that the occurrence of the death is not an element of the offence charged.

And the defendant company is to be punished according to the gravity of the breach of duty owed under the Act and not for the death that resulted. The gravity of the breach is measured by the extent to which the defendant has departed from their statutory duties, its statutory duty and the extent of the foreseeable risk.

In determining the gravity of the breach I take into account that The Tour Company was responsible for the safety of its customers. It was clearly dangerous to allow tour party members to get too close to the cliff edge given the obvious danger from falling that could occur.

There were clear warning signs. To disregard those signs and allow and even more encourage persons to move off the marked track and go over the edge and drop one metre onto a rock ledge below for the purposes of a photo opportunity was clearly a significant breach.

How great the immediate risk was, how likely it was that someone was to fall or stumble over the edge, it is somewhat hard for me to judge. I haven't seen pictures of the ledge or looked being given an insight into how inherently dangerously it was. But clearly it was marked and quite obvious that persons were to stay away from the edge.

It's just common sense that individuals vary according to their way of being able to deal with things like height. They vary in the way of their balance, their ability to clamber up or down the rock. Young people are adventurous and do go on tours with a spirit of adventure.

However, to me it seems to encourage persons you really don't know, to breach park rules and put themselves at risk that if there was a fall or stumble would obviously have catastrophic circumstances is an egregious breach. It's a breach against the obvious rules. It's a breach against the conditions of their permit. Ms Woolmer did the act after being given a demonstration by the tour guide. The height of the fall was obvious.

I don't know how obvious it was to the individual tour guide as to how great a risk she was putting her tour party through. But clearly anyone who was to thought sensibly about it would not have allowed this to occur. And certainly not encouraged it. And as I'll say again, some young tourists no doubt readily take on risk as part of the adventure of an outback holiday.

It is incumbent though on tour companies to ensure compliance with rules both of the parks and places that they visit and the general Work, Health and Safety Act to ensure that they keep their clients and members of the public safe from any foreseeable harm. Particularly where the risk undertaken if there was any mishap would obviously result in death or catastrophic injury.

So obviously this is an offence which calls for the need for general deterrents to deter others from this sort of lack of compliance with the law. I take into account the objective seriousness of the offending and the maximum penalty that applies. I also take into account the mitigating factors. They have been laid out to me by the counsel for the defendant.

I have also taken note of those sentencing submissions by the prosecutor for the Work Health Authority. Obviously I take into account the plea of guilty. Although there was a number of mentions I will treat it as an early plea. The matter never actually went to, be subject to direction and was never set down for hearing so I will give the defendant company the full discount which is usually a 25 percent discount.

I have received material from the defence that despite the submission by the prosecutor I do accept represents genuine remorse. I accept the Directors have been personally impacted by the tragedy and have shown appropriate remorse which I can reflect in the discount I give to the company.

Although the deep and tragic effects of the family of the deceased were displayed through the victim impact statements that were read out and received by the court for sentencing purposes, it seems their relevance to me are for my purposes in sentencing are that it extends to the fact that it is foreseeable if there is a breach.

And that breach results in likely danger of death or serious injury persons beyond the immediate person killed or injured are necessarily or usually seriously impacted too. And that was the case in this particular case where the deceased family are obviously going to have ongoing impact throughout the rest of their life.

Given the objective seriousness of the facts of the breach, given the defendant and also taking into account the fact that the defending company has no priors whatsoever, its directors have no priors personally, the company has a good record of conducting its business, has conducted a large number of tours without incident.

It's also a good corporate citizen beyond its immediate business and has been involved in charitable contributions. I obviously have to take into account the maximum penalty that applies which is \$1.5m. If it was not for the plea of guilty I would have imposed a fine of \$200,000.

I will reduce that by 25 percent for the discount for early plea. And I give a further discount given that the defendant has agreed to pay the significant costs sought by the prosecution to pay for the Work Health Authority prosecution. I will also signify the seriousness of the matter by imposing a conviction on the company.

So my formal order is that the company is convicted and fined \$140,000 and it's ordered to pay costs to the Work Health Authority in the sum of \$12,290.

And I believe the usual victim levy applies in these matters?

MS TRUMAN: That's my understanding, your Honour.

HIS HONOUR: Yes. So \$150 victim levy.

Nothing arising?

A SPEAKER UNKNOWN: No, your Honour.

HIS HONOUR: Yes, thanks.

MS TRUMAN: No, your Honour.

HIS HONOUR: Thank you. I'll close the link.

ADJOURNED