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NORTHERN TERRITORY OF AUSTRALIA

LOCAL COURT

No: 21705786

WORK HEALTH AUTHORITY

and

TOP DEVELOPMENTS (NT) PTY LTD

(Sentencing remarks)

JUDGE FONG LIM

TRANSCRIPT OF PROCEEDINGS

AT DARWIN ON 12 MAY 2017

Transcribed by:  
DTI

HER HONOUR: First of all, I am going to make an order for the suppression of the publication of the financial information. I know that there's no press here but they have been known to get transcripts.

MR ANDERSON: I did mention a couple of figures so I appreciate that, your Honour.

HER HONOUR: So I am going to make an order of the suppression of the publication of financial information of the defendant.

I am not going to ask Mr and Mr Hay to stand up because I'm going to be reading something out which may take a little bit of time.

So file 21705786, which is Work Health Authority v Top Developments (NT) Pty Ltd. The defendant has pleaded guilty to two charges, charges 1 and 4 in contravention of s 32 Work Health and Safety (National Uniform and Legislation) Act.

Work Safety is a public issue. Employers are required by legislation to operate safely for the sake of their workers and the public around those work sites. Regulation of the operation of tower cranes is strict and that is for obvious reasons. And that is for the risk of injury from people falling or objects falling from the crane is substantial risk and with the possibility of consequences of death or serious injury.

The defendant is a family company which has been involved in the construction industry of the Northern Territory over 20 years. They have been involved in many of the major projects in Darwin and Palmerston and over that time have not been subject to any work health claims or complaints and the references support that. References in criminal history, lack of criminal history. Nonetheless a good history does not effect the objective seriousness of the offending.

The action of Mr Hay, Junior, which constitute the offending in charge 1 is such that it caused a member of the public to be very concerned for his safety enough to report it to the appropriate authorities. Lawyers put to the court that Mr Hay was only outside of the cage of the tower for less than a minute. It only takes a couple of seconds for a slip to happen and the possible results being dire.

The second offending was, again, in disregard to regulation when Mr Hay was well aware but chose not to comply with the regulation. He says he did not realise how the risk was increased by the way the safety rope had been tethered. However, there is no explanation as why he chose not to tether the rope in a proper manner.

In my view, that did show a disregard for the necessary standards. In his actions, Mr Hay, Junior, has, as a Director of the company, a supervisor and a worker placed himself, only placed himself at risk when climbing outside of the cage. However, as an experienced operator, he has provided a very bad example and foolhardiness for his other workers who were present at the time. And in having the rope tethered, the second offence, incorrectly he has provided an unsafe working

environment for his workers should they have been required to use that particular set-up.

I accept that Mr Hay, Junior and his company were, prior to this offending, a company of good character and I accept the offending that constitutes charge 1 was a spontaneous decision. However, it does show a mindset that it was relatively safe to do so and it was not.

A clear message must be sent to other corporations out in the community as well as their directors that the lives and safety of their workers and the surrounding public rely on their strict adherence to the regulations set out for those inherently dangerous pieces of equipment.

Nonetheless, I do accept that this offending was in short compass. This is an early plea. The defender comes before the court with prior good character and the defendant presents with a limited ability to pay a substantial fine given the commercial circumstances in which it has found itself because of the downturn in the activity in their particular industry.

Any find should take that into account and should take all those circumstances into account.

The maximum penalty for this offending is \$1.5 million for a corporation and while I do accept there was substantial risk to Mr Hay in those circumstances, it's my view that this offending is not necessarily at the higher end of that scale. I also give the company a discount for its early plea.

Having said all of that, the company will be convicted and it is important that a conviction is entered. This sort of offending is not necessarily easy to detect and once it is detected and brought to the attention of the public, the public should know, as do workers, should know that this court and the community take their safety seriously.

So there will be a conviction against the company.

On charge 1, had there not be a plea of guilty, the fine would have been \$8000. It will be \$5000.

And on charge 2, had there not been a plea of guilty, the fine would have been \$9000 and so the fine is \$6800.

Victims levies will be \$2000 and the defendant will pay the complainant's costs of \$1500.

Mr Hay, do you have any questions?

THE DEFENDANT: No.

HER HONOUR: Thank you.

Mr Anderson?

MR ANDERSON: No, your Honour, thank you.

HER HONOUR: Ms Blundell?

MS BLUNDELL: No, your Honour, thank you.

HER HONOUR: Thank you.

ADJOURNED