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*Judgment: approved by the Court for handing down
(subject to editorial corrections)**

Delivered: **28/01/2016**

THE CROWN COURT IN NORTHERN IRELAND
SITTING AT ANTRIM CROWN COURT

REGINA

-V-

A DIAMOND & SON (TIMBER) LIMITED

BEFORE

HIS HONOUR JUDGE MARRINAN

ON

28TH JANUARY 2015

A P P E A R A N C E S

On behalf of the Prosecution:

Mr C Murphy, QC
Mr N Connor, BL

On behalf of the Defendant:

Mr G Berry, QC
Mr C O'Kane, BL

Sentencing Remarks

It would be wrong to try and use clichéd language to describe what happened here. It clearly is a complete disaster for the unfortunate deceased, Mr Lennon and his family. They are clearly a close and loving family and I have already commented and I say again how sorry the Court is for their loss, which I am sure is as raw today as it was when this news was brought by the police to Mrs Lennon.

This man died long before his time, he died due to a gross failure to protect his life, sadly by his employers and I don't say that, I take no pleasure in saying that, they have pleaded guilty to corporate manslaughter and the definition of corporate manslaughter includes a gross breach of duty.

The events that have been, the explanation that has been put before me is even sadder, I have no doubt that the directors and the other senior employees, and indeed all the employees of this company, are decent, hardworking people doing their best in a very difficult economic climate to make a living for themselves and for their families and the fact that so many of their employees who I don't believe were, as it were, dragooned into providing references, the fact that so many of them have described the company and the individuals because a company is only really seen properly when you look at the people like the Diamonds and the McAuleys and others, they describe them as good employers, people who care about their staff and people who are horrified and remorseful at what has happened in this case. But as anyone who has listened to some of the questions that have been posed by Prosecution and the Defence counsel I am staggered that a machine of this complexity, of this cost could be handed over in 2010 and no one either explained apparently to the company that there was a maintenance mode, or that no one asked was there a maintenance mode because in maintenance mode this accident could not have occurred. Even more bizarre is the fact that if one does not know about maintenance mode you can not actually carry out the repair that Mr Lennon was faithfully and honourably trying to do without the machinery being switched back on because if the machine cannot be moved slightly then you don't get access to the

pin and I don't understand how that was missed for so long. The introduction after Mr Coburn's report, or earlier perhaps, of the gating system I think is a red herring, it certainly is helpful to have a gating system but if in the end of the day the machine has to be in working mode before you can carry out the repair then that exposes the employee to real and deadly risk, which unfortunately was realised on this particular occasion. It seems to me that, I have not formed the view hostile to the company that they did this to maximise profits, if I thought that for a moment the fine would be very significantly more than it is going to be, indeed it might even threaten the viability of the company because people should not operate companies with the eye to profit only and not concerning about the safety of their employees.

I think there was a succession of errors made here that are almost unbelievable to my untutored ears, I don't understand how a proper, efficient and correct safety system was handed over which because, let's assume for the moment that the MEM engineer left the wire in place which he had used in commissioning, that's understandable, it's wrong if it happened, it's very wrong but how no one would have been told that there was a maintenance system with the appropriate button to press I just find, I find no answer, no credible answer to that particular line of enquiry and I think therein lies the complete tragedy of this case. The company directors doing their best to run a difficult business in a difficult economic climate, no obvious evidence to me of a lack of care for their employees, but amazingly unfortunately no specialist electrical knowledge sufficient to identify that a system which could have protected this man's life and other people's lives could by the removal of a simple wire have been made active, I don't understand how that arose. But that is perhaps the nature of being human to make mistakes and it is a lot less culpable than a deliberate ignorance of people's rights and people's entitlement to be protected and therefore I think in that sense, ironically though it is, the company are less culpable than perhaps I originally thought from reading the papers.

The aggravating features in this case, I suppose one could look at the victim impact statements to show the great damage done to the lives of a number, many people, the wife, the children, the three children who had all been put through university

through Mr Lennon's hard work, their children and the incalculable loss of someone who was a treasured and much loved member of a family, that unfortunately is true in every case of sudden death, should it be on the roads or should it be in factories.

When Mr Coburn examined the situation in February 2012 he was not happy that the machine could be operated with the power still in operation. He didn't identify apparently the particular problem that has led to the failure to use the maintenance mode. He looked at a failure to operate the gating system properly so in fairness to the defendant even he did not pick that up, nor was it picked up during a Health and Safety inspection although it is right to say that that inspection may well have been a general inspection as opposed to something as specific as this. He did, however, warn the company at that time that this was, what he had noticed in the failure to operate the interlocking gating system, a serious breach in direct contravention of regulations and that it needed to be dealt with immediately. The company's response to that was not helpful, in my view, it took a further two months before the production manager e-mailed the MEM company and it would appear that despite phone calls the MEM company, Mr Berry says, were not helpful, did not respond, I don't know whether that's right or not but that's certainly the unchallenged explanation. It still does not explain why the company did not engage, for example, another risk assessment to identify the particular problem.

Anyway, I think I have said enough about liability, it is a case of serious culpability but also a case where I do not think that profit was the, I am satisfied that profit was not the driving force and that takes some, a little bit of the sting out of the gross failure to protect Mr Lennon's life.

It is bizarre that this repair could not have been carried out if the maintenance mode was not understood, unless the machine was operational and that is presumably why the machine was operational at the time. As Mr Murphy has eloquently said the method by which the movements of the machine were carried out were a recipe for disaster, particularly when you think that the man in the operating room which was separate from Mr Lennon's operation keeping in touch with radio had to move a

control when he couldn't even see fully where he was, the area in which he was controlling.

I am told that a great deal of money has been spent since in trying to improve, far beyond the statutory requirements, the health and safety of other people and that's all to the good. I am also told this company has no previous convictions although it has been in operation for 75 years and it is a family run company. It has a good record. There have been incidents, as there are in factories from time to time, but there is no criminal record, no breach sufficient to engage the interests of the Health and Safety Executive to bring them to court, for example, and that is to the good. It is clear from their references that have been provided not only by the employees but by other people who deal with these people, these gentlemen, the directors, that this is a well-run company in general terms with a good record until this dreadful incident occurred and a good record since. I have acknowledged the remedial steps that have been taken, I can see and I have read and I understand that there is very considerable remorse on the part of the company directors and, furthermore, no attempt was made to prolong the agony, as it were, by contesting this matter, it is not a case I think could have been easily contested but nevertheless it shows a responsible attitude on the part of the company in this particular case.

One then turns to the Court's powers and as counsel has pointed out the Court's powers are limited by statute to imposing a fine and that is understandable. I have already commented briefly on the liability issues, the seriousness issues, I have had the advantage of a very helpful case summary and appendix, appendices provided by Prosecuting counsel which look at and deal with a number of the features that have been the subject of earlier sentencing authorities. I don't propose to weary anyone with a lengthy exposé of that, except to say in broad terms I agree with the Prosecution's argument in relation to that, indeed I don't think there is any serious dispute between Prosecution and Defence as to the level of culpability.

One then looks at the question of the company's financial viability and I have been presented with financial information from the company accountants. It does show

that the company is heavily indebted with no doubt hopefully a good relationship with its bank, but that those debts are in the order of £1.8 million pounds. The company accountants also point out and they are giving an expert report to the Court, so I expect complete clarity and also honesty in their reports, and I don't doubt for a moment that that has been the case. The company's financial health is described in December 2014 by the statutory auditor for the company as 'average to poor with any potential increase in the bank rate making the company's potential for the future difficult'. The company has obviously invested in plant, not just this plant, but requires a very substantial input of capital of the order of half a million to £600,000 over the next two or three years to keep it competitive and in the real world I also have to bear in mind that this company employs over 50 employees with families and they, in a time of huge financial crisis, this is something the Court should bear in mind. So I bear all of those factors in mind and in my view the fine that I have decided is reasonable and fair in this particular scenario is one of £75,000. I also award the agreed figure for the Prosecution's costs of £13,194 plus VAT at 20%, no doubt that can be worked out if it hadn't already been.

In terms of time to pay, the case law indicates that each case should be looked at naturally enough on its own merits. I think that a period of five years would not be unreasonable given the financial pressures on this company and given the various mitigating features that I have identified. So I allow a period of five years and the penalty should be paid not at the end of that period but divided equally over the five year period. No doubt, Mr Murphy, a simple calculation of the amount per annum can be made and provided to the court clerk for entering into the record.

Finally I would like to just say again how sad and sorry I am to the family who have attended court assiduously in all these various Hearings. Nothing I can say can do anything to help but I hope you feel that the matter has been carefully ventilated in court and that all relevant issues have been put before me. Thank you very much. Very well.

MR MURPHY: Obligated, your Honour.

MR BERRY: Obligated.

