

EDITORIAL NOTE: CHANGES MADE TO THIS JUDGMENT APPEAR IN
[SQUARE BRACKETS].

**IN THE DISTRICT COURT
AT NORTH SHORE**

**I TE KŌTI-Ā-ROHE
KI ŌKAHUKURA**

**CRI-2019-090-006014
[2020] NZDC 21735**

PLUMBERS GASFITTERS AND DRAINLAYERS BOARD

Prosecutor

v

SHOUYI WANG

Defendant

Hearing: 21 October 2020

Appearances: R Belcher for the Prosecutor
Respondent appears in Person
V Tamatea – Duty Lawyer

Judgment: 21 October 2020

NOTES OF JUDGE J D LARGE ON SENTENCING

[1] Shouyi Wang appears today in respect of two charges laid under the Plumbers Gasfitters and Drainlayers Act 2006.

[2] The first of those charges is CR1406 that between 1 May 2018 and 31 July 2018 at [address deleted], Henderson, being an unauthorised person did or assisted in doing sanitary plumbing in breach of s 8(1) of the Plumbers Gasfitters and Drainlayers Act.

[3] The second charge CR1407 is that between 1 January 2018 and 31 August 2019 at [the Henderson address], being a person who was not registered or licensed under part 2 of the Plumbers Gasfitters and Drainlayers Act 2006 to carry out sanitary

plumbing work, used or caused or permitted to be used in connection with any business any written words that were intended to cause or may reasonably cause any other person to believe he was so registered or licensed.

[4] Mr Wang pleaded not guilty to those charges and the Judge alone trial started yesterday, 20 October. Having heard from the complainant, who shares the same surname but is not related to Mr Wang, the evidence of the two Board employees Mr Wood and Mr Tiernan, Mr Wang acknowledged that the statement he made to Mr Tiernan was true and he did not wish to challenge that statement.

[5] At that point I advised Mr Wang, who I should note is assisted in court by an interpreter, that he really should talk to a duty lawyer and receive some legal advice given he was effectively acknowledging the basis of the charges that were before the Court.

[6] The hearing was adjourned, and Mr Tamatea was able to be brought on board as duty lawyer to assist Mr Wang and also the Court.

[7] To be fair to Mr Tamatea, he was not here during the evidence but nonetheless has picked it up pretty quickly and identified the relevant issues.

[8] Subsequent to his involvement, the Court reconvened, and Mr Tamatea indicated that Mr Wang wished to withdraw his not guilty pleas and enter pleas of guilty to the two charges.

[9] The issue then became one of the summary of facts and what parts of the prosecution summary were disputed by Mr Wang.

[10] A summary was prepared with amendments which Mr Belcher (for the Board) indicated were amendments sought following the evidence given in court. The summary is three pages long and I need to really recite /include that in my decision.

[11] Under the Plumbers Gasfitters and Drainlayers Act sanitary plumbing is restricted work. The prosecutor's role is to protect public health and safety by ensuring

people who do this work are competent and authorised and properly subject to the regulatory requirements of the Act through registration and licensing.

Background

[12] The defendant does not hold any registration, licence or authorisation to do restricted sanitary plumbing work.

[13] In May 2018 [the complainant] contacted the defendant about various kitchen and bathroom renovations she wanted to carry out at her property at [Henderson].

[14] [The complainant] had seen an advertisement by the defendant in a Chinese newspaper that said: “Professional tiling, builder/carpenter, plumber, and repair project work.” The defendant went to the property and met with [the complainant] who explained to him the work she wanted completed.

[15] Mr Wang told her he had done this type of work in New Zealand for many years. After this meeting Mr Wang provided a quote for the work which the complainant accepted.

[16] The newspaper advertisements are the basis for the charge contained in CR1407.

[17] The second charge, 1406, related to Mr Wang doing restricted work without authorisation.

[18] Between 18 May and 16 July 2018 Mr Wang completed the following sanitary plumbing work at the property. Removal of the existing toilet and installation of a new toilet. Changing the wastewater pipes in the bathroom, moving the waterpipes in the kitchen, removing the old shower and plumbing a new shower, including a mixer tap, and plumbing two new vanity cabinets.

[19] There was then a dispute that arose between the defendant and the complainant about payment for the work and Mr Wang left the site. That is a part that is disputed by Mr Wang.

[20] On 21 July Mr Wang returned to the property without her permission at a time when none of the occupants were present. The complainant received a message on WeChat informing her that he had come to the property to collect payment and to check the pipework.

[21] That night when she returned home the complainant discovered the water pressure in the shower was extremely low, such that it was not possible to take a shower.

[22] Mr Wang, in his cross-examination of the complainant, put the proposition forward that the flow reduction items were attached to the pipe at her request.

[23] [The complainant] in her evidence was clear that she had not asked for that type of device to be attached but rather one which would allow the waterflow to be cut off to enable any maintenance work to be done without the mains being turned off at the street.

[24] That is one area of dispute. I will come back to that area shortly.

[25] Subsequently, on 22 July 2018, she engaged a registered plumber to attend the property and inspect the shower. He tested the shower and confirmed that the pressure was very low. He then inspected the pipes under the house and directly beneath the shower he found the flow restricting nipples had been connected to the waterpipes and that these had been installed very recently.

[26] He said there was no legitimate reason for flow restrictors to be put in place in the pipes but as I said a moment ago, Mr Wang put to [the complainant], the complainant, that those were the devices that she instructed him to attach after she had purchased those devices. That was disputed by the complainant.

[27] The plumber who did attend, Mr Patterson, removed the flow restrictors and tested the shower pressure which had then returned to normal.

[28] The complainant then contacted the defendant by WeChat and told him he could not access her property again. He replied saying: “Pay us in full after work we will never come again.”

[29] The issues that were of concern relating to the work performed by Mr Wang included:

- (1) The hot and cold pipes in the bathroom had been connected the wrong way around to the shower, the evidence came in that that is contrary to industry standard. The standard is that hot water is plumbed to the left side of the wingback and cold water to the right. Consequently, when the defendant connected taps to the wingback, the hot and cold went to the wrong taps. That latter part is disputed by Mr Wang.
- (2) The hot and cold pipes in the kitchen had been connected the wrong way around to the kitchen tap.
- (3) The larger vanity in the bathroom had been put in the wrong location.
- (4) The buttons on the new toilet cistern did not work properly. And finally, the lining in the new shower was not fitted correctly and the shower leaked around the base.

[30] As a consequence of the defects or concerns of the complainant, she had remedial work done at a cost to her of \$1,784.57.

[31] Initially Mr Wang invoiced the complainant for \$4,750 for the work he had completed, however he later issued a new invoice for the same work totalling \$12,727.97 and Ms Wang, the complainant, has paid approximately \$2,500 to date.

[32] The matter has been before the Disputes Tribunal and there has been a resolution in that forum.

[33] I advised Mr Wang during the hearing yesterday that this court is dealing with a criminal prosecution and could not interfere nor be influenced by the outcome of the

civil jurisdiction. To do so would be for this court to effectively be an unofficial or inappropriate appeal body in respect of the Disputes Tribunal ruling.

[34] I explained to Mr Wang a number of times yesterday and again today that my function is to determine whether or not the ingredients or the elements of these offences have been proved.

[35] Mr Tamatea has been able to assist Mr Wang to understand and accept what this court is obliged to assess and as a consequence of that advice, the not guilty pleas were withdrawn and pleas of guilty were entered.

[36] The final part of the summary of facts indicated that when Mr Wang was contacted by the Board, he said he did not realise it was unlawful for him to carry out the plumbing work without authorisation. He acknowledged that he had installed semi-finished products of water supply pipelines and sewers to the shower room, two washbasins and a kitchen basin as well as the toilet bowl together with its water supply pipeline and installed semi-finished products to the shower room. Mr Wang said he was going to engage a New Zealand licensed plumber to complete all the renovation work.

[37] He said to the Board's investigator that [the complainant] had forced him to install the flow restrictors and that she had purchased those. He also advised that he has only done plumbing work at the complainant's address and his own home since coming to New Zealand in 2014.

[38] Given the pleas of guilty to the charges, I do not have to make any specific findings in respect of the facts, but I am obliged I think to comment on certain parts of the evidence I heard when I impose a sentence.

[39] Mr Belcher has referred me to a case from Christchurch *Plumber Gasfitter and Drainlayer Board v Maitland*.¹

¹ *Plumber Gasfitter and Drainlayer Board v Maitland* [2019] NZDC 6211.

[40] Briefly, that was a case where Mr Maitland, who had been a builder, had undertaken plumbing work when he should not have done so. He had replaced old for new in a new shower unit over the bath, replacement of a vanity unit, replacement of a toilet, tiling gib stopping and painting. Mr Maitland's situation is a little different from Mr Wang's in that Mr Maitland had been a licensed building practitioner and had been held to account before the Licensed Building Practitioners tribunal and had been fined \$2,000 in that forum and ordered to pay \$1,000 in costs. The judge took that into account when he got to his end result.

[41] Mr Wang however is different. He is a person who is newly arrived in New Zealand in 2014 having had, on the instructions he gave to Mr Tamatea, some 40 years in the building industry in China prior to his arrival in New Zealand. He said through Mr Tamatea that he did not know the requirements of New Zealand law but of course ignorance of the law is no defence, nor can it properly be taken into account when it comes to mitigation.

[42] The purpose of this legislation is to ensure that persons who undertake this type of work are properly competent, authorised and subject to the regulatory requirements of the Act. The legislation provides for registration and licencing. Unlicensed persons who undertake this work must face a consequence.

[43] In imposing a sentence today, I have to approach it in the principled way under the Sentencing Act 2002 and impose a sentence that holds Mr Wang accountable for what he did, impose a sentence that denounces his conduct and impose a sentence that will act as a deterrent to him and to others who might be minded to undertake work which breaches the licencing and regulatory requirements of the Act.

[44] Mr Belcher has approached it on a global start point, highlighting that this case of holding out, that is the advertising, would be one of the worst examples because it is in print and offering to supply services to the newspaper audience that he is able to undertake the range of work earlier referred to, which included plumbing.

[45] The specific words do not say he is a licensed plumber but in the context of the advertisement, there is a clear inference that that is the impression the advertiser is

wanting to make upon the persons who are reading the advertisement in an endeavour to attract work from the advertisements. That is an aggravating factor. The maximum penalty for that is a fine of \$10,000.

[46] The other charge is a little different in that he did undertake the work which was clearly not up to standard. Mr Belcher submits that the inference I should properly draw from the use of the flow restrictor was in effect to use that as a weapon to ensure payment from [the complainant] to the defendant.

[47] As I have said Mr Wang rejects that inference, saying he installed that because he was requested to by [the complainant] after she had purchased the flow restrictors.

[48] That proposition was put to [the complainant] yesterday when she gave evidence and she was very clear that she did not purchase the flow restrictors that were attached, indicating clearly to me at least twice that the device she wished to have attached was a valve which would allow her to stop the flow of water to enable maintenance work to be done without the need to turn off water at the main street inlet.

[49] I recall clearly her actions of moving her hand from a straight line to a 90 degree downwards, indicating moving of a lever to close a valve to stop water.

[50] A photo of the flow restrictor was attached to the bundle of documents given yesterday and clearly shows it is a device which reduces water flow from a larger diameter pipe to a smaller diameter pipe by a screwing junction.

[51] There was no lever that could operate with that device and when I reflect and look back at [the complainant]'s evidence and the specific detail she gave, I accept her evidence and reject the defendant's proposition that she caused the device which stopped her shower from working to be attached to her pipe.

[52] The other piece of evidence which supports that conclusion is that those devices were attached after the dispute had arisen, and it makes no sense for a tradesperson or a worker to go back to a site to do extra work when there is a dispute for work done to date.

[53] The logical conclusion I draw is that [the complainant]'s evidence is credible and acceptable and as I say, I reject Mr Wang's explanation. That finding I think is important because it is another aggravating factor in relation to his actions.

[54] The Board has submitted that a global starting point for both charges should be \$6,000. I think I need to properly nominate a starting point for each charge, I should indicate how I reached the initial start point and will do so in respect of each of the two charges.

[55] Mr Tamatea on behalf of the defendant submits that a start point of \$4,000 again globally should be applied.

[56] In my view, the start point for the holding out charge should be one of \$2,000 and the start point for the charge of undertaking the sanitary plumbing start point should be \$3,000.

[57] In setting that start point I have really distinguished *Maitland* because Mr Maitland was a New Zealand building practitioner and while I say ignorance of the law is no defence, knowledge of the law must be an aggravating factor which is present in *Maitland* but not present here.

[58] The Board says that there should be a credit for Mr Wang's previous good character and that he has no previous convictions and I accept that and allow 10 per cent for that. The major issue is what discount should be available for the guilty plea.

[59] Mr Tamatea submits that a more appropriate credit would be 20 per cent, given the situation of the guilty arose after Mr Wang received legal advice indicating the elements of the offence that the Court had to consider and on receipt of that advice, entered a guilty plea.

[60] Mr Belcher submits that a credit in the vicinity of five to 10 per cent should be appropriate because the guilty plea came after the trial had been going for a day and a quarter and evidence had been completed.

[61] What I intend to do is to adopt the global starting point of \$5,000, deduct \$500 for previous good character, from that deduct \$750 for guilty pleas which is in the vicinity of 15 per cent, accepting that the full credit should not be given partway through a hearing but there should be some acknowledgement by the court that the hearing was able to be concluded short of a two to three day hearing, which is where it was heading.

[62] It may be, as Mr Belcher has properly put forward, that Mr Wang chose earlier not to seek legal advice but today he clearly was open to that suggestion and on receipt of the advice acted in a way that I think was appropriate.

[63] As a consequence, the fines will total \$3,750. I do it this way. The fine I intend to impose in respect of the holding out, CR1407, was initially \$1,500 and in respect of doing the unlawful work, a fine of \$2,325 together with Solicitor's costs \$904 and court costs \$260.

[64] I acknowledged my initial calculations were wrong and adjusted the fines to an end result of \$1,250 in respect of the 1407 and \$2,500 for 1406. That still totals the same, it is adjusted, but the net result is the same. The costs and Solicitors fee remain.

[65] I should add no emotional harm payment is appropriate in these particular circumstances because the liability of Mr Wang to [the complainant] or vice versa was heard and aired in the Disputes Tribunal and it would be inappropriate for me to impose any monetary order which would in some way adjust or interfere with that process which is completed.

[66] I do not take into account the fact that [the complainant] advised the Board not to pursue her complainant until the outcome of the Disputes Tribunal hearing was known but I cannot help feeling that given that [the complainant] was involved in that forum and an inference I could draw is that because the outcome was not to her benefit, the complaint proceeded. But to be fair, I heard no evidence about that but given the division of jurisdictions I think it appropriate that the civil jurisdiction be left to deal with any outstanding issues of reparation or the like.

[67] It may be that that has already been determined but I do not intend to interfere with that process. I will leave it there.

Judge J D Large
District Court Judge

Date of authentication: 22/10/2020

In an electronic form, authenticated pursuant to Rule 2.2(2)(b) Criminal Procedure Rules 2012.