



**Supreme Court of New Zealand
Te Kōti Mana Nui**

2 MARCH 2018

MEDIA RELEASE – FOR IMMEDIATE PUBLICATION

**RUDI HARTONO AND OTHERS v MINISTRY FOR PRIMARY
INDUSTRIES AND SAJO OYANG CORPORATION**

(SC 61/2017) [2018] NZSC 17

PRESS SUMMARY

This summary is provided to assist in the understanding of the Court’s judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at Judicial Decisions of Public Interest www.courtsofnz.govt.nz

The appellants were crew members of foreign-owned vessels which were owned by Sajo Oyang Corporation (Sajo Oyang). One of these vessels sank and the other two were forfeited to the Crown as a result of convictions for offences against the Fisheries Act 1996 (the Act).

A person able to establish “an interest” in the forfeited property (as defined in s 256(1) of the Act) may apply for relief against the effect of forfeiture on that interest.

The appellants claimed interests in respect of unpaid wages. The Ministry for Primary Industries (the first respondent) and Sajo Oyang (the second respondent) disputed the appellants’ entitlement to claim interests in respect of some, but not all, of their wages claims.

Under the Act the definition of “interest”, as it applies to foreign vessels, includes any unpaid wages, as determined by the Employment Relations Authority or any court (see sub-para b(ii)) and also extends to costs incurred by a third party (other than the employer) to “provide for the support and repatriation of foreign crew employed on the vessel” (see sub-para (b)(iii) of the definition).

The key issue in the case was whether the appellants' interest under the Act was: (a) limited to the vessel or vessels on which they had worked and to wages earned on those vessels; or (b) extended to claims for wages in respect of forfeited vessels also owned by Sajo Oyang but on which the wages were not earned.

In determining this issue the Court was required to consider the inter-relationship between the provisions of the Fisheries Act and the Admiralty Act 1973 with respect to crew members' entitlement to make claims for unpaid wages.

The position of the Ministry and Sajo Oyang was that a claim for unpaid wages constitutes an "interest" under sub-para (b)(ii) only if under the law of admiralty there was an interest in the vessel concerned before forfeiture. The crew members had interests in the vessels on which they worked in respect of any unpaid wages earned on those vessels. This is because at admiralty law, such claims for wages give rise to maritime liens over the vessel on which they were earned. The Ministry and Sajo Oyang accepted that claims which would have given rise to maritime liens give rise to interests under sub-para (b)(ii) of the definition but denied that the appellants have interests in vessels on which they did not work. In the judgment these are referred to as "other vessel claims".

Under the Admiralty Act statutory claims in rem are available to crew members for unpaid wages against vessels in the same ownership as the vessel on which the wages were earned. Such claims become crystallised interests only when proceedings under that Act are commenced. No such proceedings having been commenced against the forfeited vessels before forfeiture, the crew members' other vessel claims did not, prior to forfeiture, give rise to interests for the purposes of the law of admiralty. Accordingly, the respondents maintained that the other vessel claims ought not to be recognised as interests for the purposes of s 256.

The crew members' other vessel claims were dismissed in the District Court on what was in effect a preliminary question. That decision was reversed by the High Court but restored by the Court of Appeal.

The Supreme Court has unanimously allowed the crew members' appeal, concluding that claims for unpaid wages constitute an "interest" under sub-para (b)(ii) of the s 256(1) definition irrespective of whether (a) the wages were earned on the vessel in question or, if not, (b) proceedings under the Admiralty Act had been commenced before forfeiture. The other vessel claims are thus capable of giving rise to interests under s 256.

In reaching this view the Court paid particular attention to the language of sub-para (b)(ii) which it saw as supporting the position of the crew members. It also considered the context provided by the corresponding principles of admiralty law and the legislative history of sub-paras (b)(ii) and (iii) of the definition of interest. Sub-para b(iii) provides for recognition of claims which, given that legislative history, could not have been seen by the legislature as giving rise to pre-forfeiture interests in the vessels. That

being so, there is no reason to regard sub-para (b)(ii) as engaged only by unpaid wages claims which, independently of s 256, gave rise to pre-forfeiture interests in the vessels in issue.

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