

**IN THE HIGH COURT OF NEW ZEALAND  
AUCKLAND REGISTRY**

**I TE KŌTI MATUA O AOTEAROA  
TĀMAKI MAKĀURAU ROHE**

**CIV-2019-404-002622  
[2024] NZHC 3069**

UNDER the Criminal Proceeds (Recovery) Act 2009

BETWEEN COMMISSIONER OF POLICE  
Applicant

AND RONALD THOMAS SALTER  
First Respondent

NATALIE MITCHELL SALTER  
Second Respondent

SALTERS CARTAGE LIMITED  
Third Respondent

RONALD THOMAS SALTER and AKL  
TRUSTEE LIMITED as trustees of the  
Bolderwood Trust  
Fourth Respondents

RONALD THOMAS SALTER, NATALIE  
MITCHELL SALTER and AKL TRUSTEE  
LIMITED as trustees of the Salter Family  
Trust  
Fifth Respondents

Hearing: 14, 15, 18 and 21 October 2024

Counsel: MR Harborow, SM Earl and AF Mackenzie for Applicant  
RM Mansfield KC, SL Cogan and JP Cundy for Respondents

Judgment: 21 October 2024

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**ORAL JUDGMENT OF DOWNS J**

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## **Issue**

[1] This judgment approves a significant settlement agreement under the Criminal Proceeds (Recovery) Act 2009, or more simply, the Act.

## **Background**

[2] Salters Cartage Ltd, which I call the company, collects and processes used oil; supplies fuel oil produced from used oil; and stores hazardous substances. Ronald Salter is the company's founder, managing director, and chief executive. Mr Salter owns half of the shares. Natalie Salter, Mr Salter's wife, owns the other half and is also a director. The company operates from Bolderwood Place in Wiri, Auckland.

[3] On 15 September 2015, a large tank exploded at the company's premises. Jamey Bowring, a 24-year-old working near the top of the tank, was killed.

[4] In the wake of Mr Bowring's death, WorkSafe commenced an investigation. Mr Salter and the company were subsequently prosecuted for breaching: (a) the Health and Safety in Employment Act 1992, and (b) the Hazardous Substances and New Organisms Act 1996 (the Hazardous Substances Act). Each pleaded guilty to six charges, three under each Act:

- (a) Being a principal, failed to take all practicable steps to ensure that no contractor, subcontractor or employee of the contractor (Race Works Ltd) was harmed while doing any work that the contractor was engaged to do, knowing that failure was reasonably likely to cause serious harm to any person.<sup>1</sup>
- (b) Being a person who controls a place of work, failed to take all practicable steps to ensure no hazard was or arose in the place (ignition of flammable vapours in Tank 20) that harmed people in the vicinity of the place and people lawfully at work in the place, knowing that failure

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<sup>1</sup> Health and Safety in Employment Act 1992, ss 19(1) and 49(2).

to take action was reasonably likely to cause serious harm to any person.<sup>2</sup>

- (c) Being a person to whom a prohibition notice dated 16 October 2015 issued under s 41 of the Health and Safety in Employment Act was given, failed to ensure that no action was taken in contravention of the notice.<sup>3</sup>
- (d) Being a person in charge of in excess of 100 kilograms of LPG, a Class 2.1.1A hazardous substance, failed to comply with the requirement to obtain a hazardous substance location test certificate specified in regs 77 and 81 of the Hazardous Substances (Classes 1 to 5 Controls) Regulations 2001 (representative charge).<sup>4</sup>
- (e) Being a person in charge of a stationary container system (Tank 20), with a capacity greater than 2,500 litres which was used or intended to be used to contain a Class 3.1A hazardous substance (petrol), failed to ensure that Tank 20 was certified in accordance with the approval for petrol (HRC000003), as required by clause 91 and 92 of the Hazardous Substances (Dangerous Goods and Scheduled Toxic Substances) Transfer Notice 2004.<sup>5</sup>
- (f) Being a person in charge of a Class 3.1B hazardous substance (the contents of Tank 20), failed to comply with a control specified in regulations, namely reg 7(b) of the Hazard Substances (Identification) Regulations 2001 which requires that there was not on the packaging (of Tank 20) information that suggests it belongs to a class or subclass that it does not in fact belong to (a label asserting the contents of the tank was diesel, a Class 3.1D hazardous substance).<sup>6</sup>

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<sup>2</sup> Health and Safety in Employment Act, ss 16(1)(a) and (b) and 49(2).

<sup>3</sup> Health and Safety in Employment, ss 43 and 50.

<sup>4</sup> Hazardous Substances and New Organisms Act 1996, s 109(1)(e)(iii).

<sup>5</sup> Hazardous Substances and New Organisms Act, s 109(1)(e)(i)

<sup>6</sup> Hazardous Substances and New Organisms Act, s 109(1)(e)(ii).

[5] Mr Salter received a sentence of four and a half months' home detention. He was fined \$25,000. The company was fined \$258,750. Mr Salter and the company were ordered to pay reparation of more than \$128,000.

[6] The Commissioner of Police, whom I refer to as the Commissioner, also investigated the company. That investigation resulted in the Commissioner obtaining restraining orders against the Bolderwood property; two properties in Burr Road, Paerata; and a fourth property on Waiheke Island. All four are held by trusts.

[7] The Commissioner was later required to provide an undertaking concerning damages in relation to the respondents;<sup>7</sup> an undertaking upheld by the Court of Appeal.<sup>8</sup>

[8] On 22 September 2022, the Commissioner applied for sweeping civil forfeiture orders against the respondents totalling \$10.928 million.

[9] The trial of the Commissioner's application began Monday, 14 October 2024; exactly a week ago. Seven weeks were set aside.

[10] On day two of the trial, I was told the parties were in constructive dialogue and an agreement "in-principle" was likely. I granted an adjournment to facilitate settlement. On Friday, 18 October 2024, the parties filed a joint memorandum identifying the conditions of the proposed settlement. I say "proposed" as settlement under the Act must be authorised by the High Court.<sup>9</sup>

### **The competing cases**

[11] The Commissioner's case for civil forfeiture orders was multi-faceted. He alleged the company:

- (a) Manufactured hazardous substances without approval under, hence contrary to, the Hazardous Substances Act.

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<sup>7</sup> *Commissioner of Police v Salter* [2021] NZHC 1531.

<sup>8</sup> *Commissioner of Police v Salter* [2024] NZCA 6.

<sup>9</sup> Criminal Proceeds (Recovery) Act 2009, s 95.

- (b) Failed to comply with regulations and controls governing the storage and handling of hazardous substances.
- (c) Breached a prohibition notice issued by WorkSafe on 16 October 2015 concerning the operation of the company's distillation plant. This alleged breach was cited as evidence by the Commissioner of Mr Salter's "derisory" attitude towards his legal responsibilities in connection with the Hazardous Substances Act and health and safety more generally.

[12] The Commissioner alleged the Salters knowingly derived benefits totalling \$10.928 million from the significant criminal activity mentioned above.

[13] The company and Salters denied all wrongdoing beyond that already captured by convictions. They argued the Commissioner was prosecuting a test case and seeking to extend the Act to situations beyond those contemplated by Parliament. They also argued the rules in connection with hazardous substances are complex, but rules they complied with. Mr and Mrs Salter denied deriving benefits from criminal activity, let alone significant criminal activity, or knowingly doing so.

[14] The respondents also argued the four properties targeted by the Commissioner were not under the effective control of the company or the Salters, hence not within reach of the Act. Relief on hardship grounds was also sought.

### **Proposed terms of settlement**

[15] Under the proposed settlement agreement:

- (a) A profit forfeiture order would be made, by consent, against the company and Mr Salter.
- (b) The value of benefits derived from significant criminal activity — and caught by the profit forfeiture order — would be \$4 million.

- (c) The Commissioner would be released from the undertaking concerning damages.
- (d) Costs would “lie where they fall”, meaning each party would bear their own legal costs.

[16] The significant criminal activity governed by the settlement agreement is *not* that alleged by the Commissioner, at least not that alleged in full. Rather, the company and Mr Salter accept they have benefited from: (a) the offending under the Hazardous Substances Act for which they already have convictions in consequence of the WorkSafe prosecution, and (b) breaching the 16 October 2015 prohibition notice concerning the operation of the company’s distillation plant.

### **Approval under the Act**

[17] Section 95 of the Act reads:

**95 High Court must approve settlement between Commissioner and other party**

- (1) The Commissioner may enter into a settlement with any person as to the property or any sum of money to be forfeited to the Crown.
- (2) A settlement does not bind the parties unless the High Court approves it.
- (3) The High Court must approve the settlement if it is satisfied that it is consistent with—
  - (a) the purposes of this Act; and
  - (b) the overall interests of justice.

[18] Section 95 had no predecessor under the former legislation, the Proceeds of Crime Act 1991.

[19] The section reflects a supervisory jurisdiction; Parliament has entrusted the Court with ensuring settlements are consistent with the purposes of the Act, and the

overall interests of justice.<sup>10</sup> Approval of a proposed settlement is not a rubberstamping exercise.<sup>11</sup>

[20] The primary purpose of the Act is contained in s 3(1): the establishment of a regime for forfeiture of property that has been derived directly or indirectly from significant criminal activity, or that represents the value of a person's unlawfully derived income. Ancillary purposes are to "eliminate the chance" for persons to profit from undertaking or being associated with significant criminal activity (s 3(2)(a)) and to "deter" significant criminal activity (s 3(2)(b)). The Court of Appeal has said the Act has a "strongly expressed statutory purpose".<sup>12</sup> The Supreme Court has said the language of s 3(2)(a) is "aspirational" and that it provides a "clear and emphatic signal as to the legislative purpose".<sup>13</sup>

[21] The statutory phrase "overall interests of justice" suggests a broad inquiry is required. The Court has recognised the decision to settle proceedings under the Act may reflect a "common sense compromise".<sup>14</sup> The Court has cautioned against interpreting the "absolutist" language of "eliminating the chance to profit" as meaning settlements must "achieve total elimination of profit", holding such a requirement would "be unlikely to adequately recognise the justice interests of prompt and cost-efficient determination".<sup>15</sup>

[22] If the Court is satisfied of the two matters set out in s 95(3), settlement must be approved.

### **The parties' contentions in relation to settlement**

[23] The parties contend the proposed settlement agreement meets s 95's requirements. They observe settlement would save time and cost. It would also achieve certainty.

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<sup>10</sup> *Commissioner of Police v Know-All Group Ltd* HC Auckland CIV-2010-404-403, 7 November 2011 at [11].

<sup>11</sup> *Commissioner of Police v Bradley* [2012] NZHC 1594 at [9]; *Commissioner of Police v Veevers* [2017] NZHC 80 at [10].

<sup>12</sup> *Hayward v Commissioner of Police* [2014] NZCA 625.

<sup>13</sup> *Marwood v Commissioner of Police* [2016] NZSC 139, [2017] 1 NZLR 260 at [12].

<sup>14</sup> *Commissioner of Police v Douglas* [2015] NZHC 1293 at [6]; *Commissioner of Police v Venn* [2014] NZHC 361.

<sup>15</sup> *Commissioner of Police v Cavanagh* [2023] NZHC 3311 at [9].

[24] The Commissioner acknowledges:<sup>16</sup>

... he would likely have faced difficulties proving Mrs Salter's knowledge of much of the significant criminal activity. If he fails to prove her knowledge, Mrs Salter's relief claim to exclude property would likely succeed. Given the Commissioner's position as to effective control, it is accepted that Mrs Salter has a relationship property interest in the property.

[25] The Commissioner adds:<sup>17</sup>

The proposed agreement involves the forfeiture of \$4 million, an amount the Commissioner considers serves the Act's purposes of eliminating the chance to profit and deterring significant criminal activity, while representing a fair compromise between the strength of his case and the risks inherent in litigation.

[26] I pause to note the amount to be forfeited is broadly equivalent to the property the Commissioner considers would have been available to meet a profit forfeiture order if the Commissioner had been successful against Mr Salter alone.

[27] The respondents acknowledge:<sup>18</sup>

... there was non-compliance that amounts to "significant criminal activity" from which they could be found to have benefitted and, if so, the properties may be found to be tainted (even if only marginally), and forfeiture could result (with catastrophic impacts for SCL and the beneficiaries of the trusts). The proposed agreement represents a reasonable recognition of that risk and the risks inherent in any litigation.

## **Assessment**

[28] I am satisfied the proposed settlement agreement is consistent with the purposes of the Act and the overall interests of justice for the reasons identified by the parties. I also consider the proposed agreement reflects a mature appreciation of the evidence and the risks inherent to litigation.

[29] I, therefore, approve settlement.

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<sup>16</sup> Joint memorandum of counsel seeking approval of settlement, 18 October 2024 at para 6.1(e).

<sup>17</sup> Joint memorandum of counsel seeking approval of settlement, 18 October 2024 at para 6.1(f).

<sup>18</sup> Joint memorandum of counsel seeking approval of settlement, 18 October 2024 at para 6.1(h).

## Orders

[30] I make these orders by agreement:

(a) *A profit forfeiture order against Salters Cartage Ltd and Ronald Thomas Salter, jointly and severally, under s 55 of the Act:*

- (i) The value of the benefit determined in accordance with s 53 of the Act is \$4 million (settlement sum).
- (ii) The maximum recoverable amount is \$4 million.
- (iii) The property to be disposed of in accordance with s 83(1) of the Act is the settlement sum, being a payment to the Official Assignee by 5 pm on the date falling six months after the date this settlement is approved by the Court (due date), to be raised in accordance with paragraph (b) below.

(b) *Variation of restraining orders pursuant to s 35 of the Act:* The restraining orders of Palmer J dated 25 June 2021 remain in full effect over the following properties (properties) such that they are not to be disposed of, or dealt with:

- (i) 5 Bolderwood Place, Wiri, Auckland.<sup>19</sup>
- (ii) 77B Burt Road, Paerata, Auckland.<sup>20</sup>
- (iii) 269 Burt Road, Paerata, Auckland.<sup>21</sup>
- (iv) Unit 27/141 The Strand, Onetangi, Waiheke Island. Auckland.<sup>22</sup>

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<sup>19</sup> Record of title unique identifier NA131D/742.

<sup>20</sup> Record of title unique identifier 591231.

<sup>21</sup> Record of title unique identifier NA56C/1481.

<sup>22</sup> Record of title unique identifier 49892.

But those orders are varied to allow:

- (v) The respondents to sell any or all of the properties for the exclusive purpose of raising the settlement sum; and
  - (vi) The respondents to request the Official Assignee to remove the notations of the restraining orders from the records of titles for one or more of the properties to facilitate the marketing and sale of them (and upon such request, the Official Assignee must remove those notations).
- (c) *Additional orders necessary and convenient for giving effect to the profit forfeiture order made in respect of the settlement sum under s 59 of the Act:*
- (i) Upon the Official Assignee providing written confirmation to the parties that the settlement sum has been paid, the restraining orders over the properties that have not been sold are rescinded and the Official Assignee is directed to remove the restraining orders from the records of title of any of the remaining properties.
  - (ii) In the event the settlement sum is not paid in full to the Official Assignee by the due date:
    - (A) The Official Assignee shall sell whichever of the properties he considers necessary to raise the settlement sum (or the amount of the settlement sum outstanding) at its fair market value and hold the proceeds of those sales, after paying all associated costs.
    - (B) For the purposes of effecting a sale of any of the properties under these orders, the Official Assignee (including a person delegated his functions and powers

under the Act) has the power to execute any deed or instrument in the name of the registered proprietor(s) of the relevant property, and to do anything necessary to give validity and operation to the deed or instrument.

- (d) The Commissioner is released from the undertaking as to damages and costs dated 17 December 2021 (given on behalf of the Crown).

[31] For completeness, I record the other terms of the settlement agreement:

- (a) The respondents must provide any information in relation to any sale of the properties to the Official Assignee when requested by him (including any real estate agent engaged for the sale of the properties to provide the same).
- (b) An undertaking is to be provided by the respondents' conveyancing solicitor and the same is provided to the Official Assignee, being an undertaking by the conveyancing solicitor to deal with the proceeds of any sale in the following way:
  - (i) First, deduct the reasonable costs and disbursements associated with the sale (including but not limited to real estate agent costs, legal costs, outstanding land and water rates) as approved by the Official Assignee.
  - (ii) Second, repay any secured loan(s) to Bank of New Zealand Ltd.
  - (iii) Third, pay the Official Assignee an amount equal to the outstanding balance of the settlement sum so it can be forfeited, in accordance with paragraph (a) above; and
  - (iv) Finally, return the balance of the sale proceeds (if any) to a bank account nominated by the respondents.

- (c) The respondents abandon all claims they may have, under the Act or otherwise, to the settlement sum to be forfeited under this settlement.
- (d) The settlement is in full and final settlement of the question of civil forfeiture of the properties on the basis of the significant criminal activity evidenced or alleged in the affidavits filed in this proceeding to date.
- (e) The respondents will not at any time make any call on the undertaking as to damages and costs given by the Commissioner (on behalf of the Crown) on 17 December 2021 (given a forfeiture order is being made).
- (f) Costs lie where they fall.

.....  
**Downs J**

Solicitors/Counsel:  
Meredith Connell, Auckland.  
RM Mansfield KC, Auckland.  
SL Cogan, Auckland.  
JP Cundy, Auckland.