

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

**CIV-2015-409-500
[2015] NZHC 3307**

IN THE MATTER of an appeal against a decision of the
District Court at Christchurch dated
24 July 2015 relating to section 256(1)(c)
of the Fisheries Act 1996

BETWEEN RUDI HARTONO

25 OTHER FOREIGN FISHING CREW
SEEKING RELIEF FROM THE
EFFECTS OF FORFEITURE AS LISTED
IN SCHEDULE "A" (ATTACHED)
Appellants

AND THE MINISTRY FOR PRIMARY
INDUSTRIES
First Respondent

SAJO OYANG CORPORATION
Second Respondent

continued...

Hearing: 8 September 2015

Appearances: RB Squire QC and KA van Wijngaarden and MS Sullivan for
the Appellant (CIV-2015-409-302) and for the Second
Respondent (CIV-2015-409-500)
CJ Lange for the First Respondent (CIV-2015-409-302) and
(CIV-2015-409-500)
KK Harding for the Second to Twentyseventh Respondents
(CIV-2015-409-302) and for the (Cross) Appellants
(CIV-2015-409-500)

Judgment: 18 December 2015

Reissued: 22 February 2016

JUDGMENT OF NICHOLAS DAVIDSON J

Introduction

[1] This case involves the crews of three foreign owned vessels which were fishing in New Zealand waters.

HARTONO v THE MINISTRY FOR PRIMARY INDUSTRIES [2015] NZHC 3307 [18 December 2015 re-issued 22 February 2016]

CIV-2015-409-302

IN THE MATTER of an appeal against a decision of the
District Court at Christchurch

BETWEEN SAJO OYANG CORPORATION
Appellant

AND THE DIRECTOR GENERAL OF THE
MINISTRY FOR PRIMARY
INDUSTRIES
Respondent

[2] The foreign owner is Sajo Oyang Corporation (Sajo), incorporated in the Republic of Korea. It owned three vessels, the Oyang 70, 75 and 77.

[3] The 26 crew members involved in the appeal and the second (“cross-appeal”) claim for unpaid wages and other entitlements. The appeal and cross-appeal address the legal pathway for the crew’s claim to wages, and whether that includes relief against vessels now forfeit to the Crown. Their right in admiralty to claim against the ships for wages was lost through sinking of one vessel and forfeiture of two vessels.

[4] On 18 August 2010, the Oyang 70 sank. Six members of her crew perished. On 3 September 2014, Oyang 77 became forfeit to the Crown after convictions were entered in the Christchurch District Court for offences committed by her Master under the Fisheries Act 1996. On 4 November 2014, the Oyang 75 was also forfeit to the Crown, for offences committed by her Master and four officers.

[5] The crew members in these proceedings all worked for Sajo, on the Oyang 70 or the Oyang 77, but none of them had worked on the Oyang 75. All are Indonesian nationals. They allege that they are owed substantial sums by Sajo, arising from wage and holiday pay entitlements. The named appellant in the cross-appeal, a Mr Hartono, was a crew member on the Oyang 70.

[6] Sajo and others applied to the District Court for relief against forfeiture under s 256 of the Fisheries Act 1996 (the Act), set out at para [44] below. Crew members claimed an interest for unpaid wages. There were three primary questions for determination:

- (i) Whether the claim for wages had to be determined by the Employment Relations Authority (ERA) or another and different Court, before the crew could claim or be ordered to have an interest in the forfeit vessels. The only way for the crew to establish an interest is by an ERA or other judicial determination as to unpaid wages;¹

¹ As provided by the Fisheries Act 1996, s 256(1)(b)(ii).

- (ii) Whether the crew members' claims are within the jurisdiction of the District Court; and
- (iii) Whether the crew members had an interest in either or both of the Oyang 75 and Oyang 77, as forfeit property, for the purposes of s 256 of the Act, regardless of whether they had worked on those vessels.

[7] The wage claims are made pursuant to contracts made by Sajo with each of the 26 crew members in Indonesia, where New Zealand employment law does not apply. The crew allege that Sajo sought to circumvent many of the employment protections that New Zealand law offers workers. They allege that their employment was subject to conditions which fall foul of New Zealand employment law. They were allegedly placed "on call" for the duration of their employment, and were forced to work between 12 and 20 hours per day.

The first District Court judgment

[8] His Honour Judge Kellar delivered his first judgment on 22 April 2015. He held that:²

[47] Where no other court has already determined the interest of any fishing crew in unpaid wages the District Court may make that determination in the course of determining the nature, extent and value of that interest - s 256(1)(b)(ii) and s 256(6)(b) of the Fisheries Act 1996. No prior determination of that interest by the Employment Relations Authority or any court is necessary.

[9] Sajo appeals to this Court against that judgment. It does not accept that the merits of the wage claim can be determined in the proceedings which determine whether the crew members have an interest in the forfeit property, and if so to what extent.

[10] Further, Sajo appeals against His Honour's decision as to the jurisdiction of the District Court under s 256 of the Fisheries Act. His Honour held:

² *Sajo Oyang Corporation of Korea v Ministry for Primary Industries* [2015] NZDC 6726 [*Sajo (No. 1)*].

[48] The District Court may determine the value of the interest of any crew member and is not limited in that determination by s 29(1) of the District Courts Act 1947.

[11] This jurisdictional issue arose because crew members collectively claim more than \$200,000; the limit for a claim in the District Court (in the absence of agreement between the parties). Sajo submits that the District Court was without jurisdiction, and could not circumvent the District Courts Act 1947 by purporting to act under the Fisheries Act.³

The second District Court judgment

[12] This judgment was delivered on 24 July 2015.⁴

[13] The first judgment did not address whether the crew members could all claim an interest in the Oyang 75 and 77, when two of the crew had only worked on the Oyang 70, and the other 24 on the forfeited Oyang 77.

[14] The crew submitted that s 256 of the Fisheries Act should be interpreted to mean they all had an interest in both forfeit vessels, without needing to have worked on them.

[15] The Judge held that the crew could only hold an interest in respect of the ship on which they had worked. The term “forfeit property” in s 256(1)(b), was held to mean “property used in the commission of the offence”, thus linking the vessel involved in the offence to that against which the relief is sought.⁵

[16] This means that the crew have no interest in the Oyang 75 as “other forfeit property” under s 256(1)(c) of the Fisheries Act 1996. The crew members cross-appeal against this finding.

[17] The Judge said further:

³ District Courts Act 1947, s 29.

⁴ *Sajo Oyang Corporation of Korea v Ministry of Primary Industries (No. 2)* [2015] NZDC 13876.

⁵ At [13].

[20] The statutory right of action or statutory in rem claim arises when a proceeding in rem has been issued and may be brought only in the High Court.

[21] Any maritime lien the fishing crew have in respect of wages is extinguished upon forfeiture. The right to obtain relief against forfeiture may however be a legal or equitable interest in the forfeit property.

The Appeal – CIV-2015-409-302

Where and when the wages claim must be heard

[18] Sajo’s position is that in order to calculate the claimed “interest” under s 256 with the necessary precision, the predicate for that interest must be determined. That means that before the crew members can establish an interest in forfeit property, they must have their wage claim conclusively determined, including quantum. Without that, Sajo submits the crew members have no foundation for a claim to an interest.

[19] Counsel for Sajo, Mr Squire QC, said that this result follows a straightforward interpretation of s 256. That section, he said, acts as a code which governs forfeiture proceedings under the Fisheries Act, and hence it is unlikely that a Court, acting under s 256, is also entitled to determine the foundation of the claim to an interest. Thus, Mr Squire submitted that the Court acting under s 256 is competent to decide the forfeiture claim, but is not competent to undertake an assessment of the antecedent wage claim. Mr Squire employed the expression “forfeiture Court” to address the distinction he draws.

[20] Mr Squire buttressed this submission by a thorough analysis of s 256. Section 256(4) provides that the application for relief must contain “sufficient information” to identify the claimed interest in the property. It would therefore be insufficient if the application did not stand on a final determination of the predicate wage claim. Section 256(8) requires that the Court must satisfy itself of the necessity of granting an Order for Relief. The Order must be “necessary” to avoid “manifest injustice or to satisfy an interest referred to in paragraph (b)(ii)... of the definition of interest in subsection (1)”.⁶ Counsel submitted that the interest in forfeit property could not be

⁶ Fisheries Act 1996, s 256(8)(a).

sufficiently well-defined for the Court to undertake an assessment of the necessity of making an Order, if the claim to wages was undetermined.

[21] Counsel submitted that this conclusion fits the reference to s 256(1)(b)(ii), where “interest” is defined to include that which is “determined by the Employment Relations Authority or any court... in unpaid wages”. The past tense, “determined”, was submitted to be instructive.

[22] Further, Mr Squire says that the reference to the ERA indicates that it is the primary forum for determination of wage claims, with the detailed procedures in the Employment Relations Act 2000 regulating such claims. Since it is the primary forum for claims to wages, it is reasonable to infer that the Fisheries legislation conforms to practice. This makes it inappropriate for the District Court or High Court to determine the merits of the wage claim.

The District Court jurisdiction

[23] Sajo challenges the finding that the District Court was acting within jurisdiction when determining claims for relief against forfeiture under s 256, even though the total amount claimed might exceed \$200,000. The Judge reasoned that since the District Court was competent to value the interest of the owner of the forfeit property (even where that interest is in excess of \$200,000), it would be “unworkable, impracticable and anomalous” for it not to determine the extent of other interests in that property, regardless of their value.⁷

[24] Sajo submitted that the Fisheries Act does not carve out an exception to the District Court’s jurisdictional boundary. The determination of the claim for wages involved, contrary to the Judge’s finding, a procedure involving a “debt, demand or damages” and as such is only within the Court’s jurisdiction if the amount involved is less than \$200,000.⁸ Mr Squire emphasised the fundamental difference between a wage claim and the ascertainment of an interest. As a demand for a debt, the wage claim in this case is caught by s 29 and the total sum claimed means it is not justiciable in the District Court.

⁷ *Sajo (No.1)*, above n 2, at [37].

⁸ District Courts Act 1947, s 29.

[25] Sajo says that the Judge erred in concluding that Sajo's interpretation of "court" in s 2 of the Fisheries Act effectively undermined that provision, by depriving the District Court of jurisdiction under the Fisheries Act. Mr Squire said that the District Court could not determine the 'interest' before the ERA or a Court has determined the merit and quantum of a claim to wages. On that approach, the Court can still exercise authority under s 256 of the Act, but only when the merit and quantum of a wages claim are finalised.

[26] Much rests on Mr Squire's submission that s 256 is a code and as such precludes the Court from simultaneously or sequentially acting under other authority. The contrary view is that even if s 256 is a code, that suggests that all matters relevant to forfeiture may be determined in the same proceedings if not addressed elsewhere. Thus it would be odd if the "code" precluded a determination of the basis for a claimed interest, but not of the interest itself. Hence, I will set out below why I consider Sajo's interpretation of this provision to be incorrect.

The respondents' position on appeal

[27] Mr Lange for the Ministry for Primary Industries (the Ministry), opposed Sajo's appeal and placed weight on the statutory language, including s 256(4)(d), which provides that an applicant need only give an "estimate" of the value of the claimed interest, indicating that absolute precision is not required in the application. Counsel submits this implies that the Act contemplates relief against forfeiture claims being made without final determination of the merit and quantum of a claim to wages.

[28] Further, s 256(6)(b) requires that the Court determine the nature, extent and "if possible" the value of the interest, which led Mr Lange to submit that the Act contemplates a contingent decision in forfeiture proceedings. That is, the Act permits the Court to make orders in its forfeiture jurisdiction with knowledge that a final decision as to the predicate wage claim might alter or displace the valuation of the interest. A wage claim may have succeeded before the ERA, but be lost on appeal. The parties may agree on a minimum sum of wages owing, but disagree on the total sum owed. The Court, acting under s 256, could make an order to the extent of the

agreed amount, and then alter that award if the subsequently decided wage proceedings so required. The exact interest in the forfeit property is, after all, the product of an entitlement to wages as finally determined.

[29] As to Sajo's reliance on the past tense "determined", Mr Lange submitted that is of no moment given the other language used, and it is wrong to anchor an argument on the tense of a word. He submitted that use of the past tense simply implies that the wage claim at some stage must be determined, but the Act should be taken to refer to a determination made at *any* time, even after forfeiture proceedings have been commenced.

[30] Mr Lange observed that requiring foreign crew members to pursue proceedings against their employers in the ERA could sometimes mean that they had no standing in forfeiture proceedings. Where the crew members' employer ceased to exist as an entity against which proceedings could be brought in the ERA, or where the crew members had neither the time nor the money to undertake lengthy legal proceedings in a foreign country, they would be unable to seek relief against forfeiture. This led Mr Lange to submit that the forfeiture claim need not wait until wage-specific proceedings had been completed, and requiring such a wait cannot have been the legislative intent.

[31] The Ministry also contested Sajo's position that the District Court was without jurisdiction in determining the nature and extent of an interest which in total exceeded \$200,000. Since the Ministry's position was that the District Court could determine the nature of an interest, and grant forfeiture relief, it followed that the Court must be entitled to make the prior determination as to the merit and quantum of the wage claim. Otherwise, the Court could not be assured of the necessity of making an order, as required by s 256(7).

[32] For the crew members, Ms Harding was content to adopt these submissions for the Ministry.

The "cross-appeal" – CIV-2015-409-500

[33] The crew members filed what I describe as a cross-appeal against the second District Court judgment, which held that they could hold an interest in a forfeit vessel for unpaid wages only if they had worked on that vessel. Ms Harding submitted that the Judge's construction of s 256 of the Act was too narrow. To interpret the term "forfeit property" to include only the physical property directly associated with employment was submitted too restrictive, as the wage obligation here may be that of an employer who owned other forfeit property. The interest in "forfeit property" should be interpreted to include the employer's sister ships forfeit to the Crown.

[34] Ms Harding made a spirited challenge, stressing what she submitted were public policy principles, including the proposition that it would be unfair for foreign crew to be deprived of their interest in wages attaching to a ship simply because that ship had sunk. She acknowledged that any construction that a Court decided to give to s 256 would not impede in personam claims that the crew members might have against Sajo, but urged the Court to realise that it might, and probably would, prove difficult to bring that claim in New Zealand. The thrust of this submission is that justice requires the Court to interpret s 256 in a manner consistent with mitigating the plight of the crew members, so far as possible.

[35] While stressing the unfortunate circumstances of the crew members, Ms Harding's submissions did not rely on a simple appeal to justice to stimulate the Court's thinking. She referred to the Fisheries (Foreign Fishing Crew) Amendment Act 2002, which amended s 256 of the Fisheries Act. Before that amendment, s 256 of the 1996 Act gave standing in forfeiture proceedings only to those who had ownership rights in respect of foreign vessels at the time of forfeiture; nothing less would suffice. The 2002 Act provided standing to those who could establish one of the interests now included in s 256(1)(b) of the 1996 Act. One of those interests is in unpaid wages.

[36] Ms Harding says the Parliamentary intention was to give standing to the crew of foreign vessels not simply where the ship on which they worked was forfeit, but more generally where their entitlement to wages was at large. The 2002 legislation, she submitted, was designed to remedy the generally disadvantaged position of

foreign crew, who for reasons of language, nationality and money, or rather lack of it, would find it difficult to pursue their employer under the employment contract. The warrant for the 2002 Act should be reflected in its practical effect. She submitted its purpose was to liberally grant standing to foreign crew in New Zealand forfeiture proceedings.

[37] While not taken far in argument, Ms Harding canvassed the issue of maritime liens in her written submissions. A lien for unpaid wages in favour of crew (attaching to the ship on which they worked) is well entrenched in law. For the Ministry (as respondent to the cross-appeal), Mr Lange acknowledged this.

[38] Ms Harding employed the uncontroversial existence of such liens to argue that as a maritime lien for unpaid wages attaches to the ship on which a crew member worked, but could be transferred to a sister ship, the analogous entitlement of crew members to wages which gives rise to an interest in forfeit property should be transferrable to sister ships. The analogy was reasonably drawn because the same factual circumstances underlie the interests. The maritime lien and the forfeiture interest may both be based on a crew member's entitlement to wages. The Court is asked to import the operation of the maritime lien into its consideration of s 256, to allow the forfeiture interest to attach to sister ships. The remedies of maritime lien and forfeiture claim would in that respect be in sync.

[39] The Ministry did not regard that submission as sound. Mr Lange submitted that the only manner in which a lien could attach to a ship other than that on which a crew member worked was under the Admiralty Act 1973. Section 5(2)(b) of that Act provides:

- (b) in questions and claims specified in paragraphs (d) to (r) of subsection (1) of section 4 arising in connection with a ship where the person who would be liable on the claim in an action *in personam* was, when the cause of action arose, the owner or charterer of, or in possession or in control of, the ship, the jurisdiction of the High Court may (whether the claim gives rise to a maritime lien on the ship or not) be invoked by an action *in rem* against—
 - (i) that ship if, at the time when the action is brought, it is beneficially owned as respects all the shares therein by, or is on charter by demise to, that person; or

- (ii) any other ship which, at the time when the action is brought, is beneficially owned or on charter by demise as aforesaid.

[40] One of those “questions and claims” is that of unpaid wages.⁹ Sounding the loudest in that section for this element of the cross-appeal is subsection (b)(ii). Combined with the first paragraph of (b), it allows a crew member who has a cause of action for wages in personam to proceed in rem against property of that person. The crew member can also invoke the in rem claim against any other property which was in the beneficial ownership of the other party at the time of the action.

[41] The crew members who bring the cross-appeal would have been entitled to bring in rem proceedings against any of the Oyang vessels under the Admiralty Act, had those vessels been in the beneficial ownership of Sajo. Their problem was that one vessel had sunk and the other vessels were forfeit, and therefore owned by the Crown. The Crown took the vessels free of all encumbrances under s 255E(1) of the Fisheries Act and a claim in rem is barred.

[42] Mr Lange submitted that since the crew members had not taken advantage of this route to enforce their wage claim against other property of Sajo, their options in that regard were spent.

[43] As second respondents to the cross-appeal, Sajo submitted that nothing in ss 255A to 255D, nor in s 256, gives the Court reason to interpret ss 256(1)(b) (as to “forfeit property”) or 256(1)(c) (as to “interest”) other than pursuant to the specific definitions given to those words. The definitions given in s 256 were submitted exhaustive.

Section 256 Fisheries Act 1996

[44] This (relevantly) provides:

- (1) In this section, unless the context otherwise requires,—

forfeit property means any—

- (a) fish and any proceeds from the sale of such fish; or
- (b) property used in the commission of the offence; or

⁹ Admiralty Act 1973, s 4(1)(o).

(c) quota—

forfeit to the Crown under any of sections 255A to 255D

interest means,—

(a) ...

(b) in the case of a foreign vessel, a foreign-owned New Zealand fishing vessel, or a foreign-operated fish carrier,—

(i) ownership; and

(ii) an interest, as determined by the Employment Relations Authority or any court, that any fishing crew have in unpaid wages; and

(iii) an interest in costs incurred by a third party (other than the employer) to provide for the support and repatriation of foreign crew employed on the vessel:

(c) in the case of other forfeit property, a legal or equitable interest in that forfeit property that existed at the time of the forfeiture; but does not include any interest (other than an interest referred to in paragraph (b)) in a foreign vessel, a foreign-owned New Zealand fishing vessel, or a foreign-operated fish carrier.

(2) Where—

(a) the forfeiture occurs under any of sections 255B to 255D; and

(b) the forfeit property has a total estimated value of \$200 or more,—

the chief executive must, within 10 working days after the date of the forfeiture, publicly notify the details of the forfeit property, and the right of any person to apply to the court for relief from the effects of forfeiture.

(3) Any person claiming an interest in any forfeit property may, within 35 working days after the date of the forfeiture or within such further period before the property is disposed of as the court may allow, apply to the court for relief from the effect of forfeiture on that interest.

(4) Every application under subsection (3) shall contain sufficient information to identify the interest and the property in which it is claimed, and shall include—

(a) a full description of the forfeit property in which the interest is claimed, including reference to any registration or serial number; and

(b) full details of the interest or interests claimed, including—

- (i) whether the interest is legal or equitable; and
 - (ii) whether the interest is by way of security or otherwise; and
 - (iii) if the interest is by way of security, details of the security arrangement and any other property included in that arrangement; and
 - (iv) whether the interest is noted on any register maintained pursuant to statute; and
 - (v) any other interests in the property known to the applicant; and
 - (c) [Repealed]
 - (d) the applicant's estimate of the value of the forfeit property and of the value of the claimed interest.
- (5) The court shall hear all applications in respect of the same property together, unless it considers that it would not be in the interests of justice to do so.
- (6) The court shall, in respect of every application made under subsection (3),—
- (a) determine the value of the forfeit property, being the amount the property would realise if sold at public auction in New Zealand; and
 - (b) determine the nature, extent, and, if possible, the value of any applicant's interest in the property; and
 - (c) [Repealed]
 - (d) determine the cost to the Ministry of the prosecution of the offence which resulted in the forfeiture, and the seizure, holding, and anticipated cost of disposal of the forfeit property, including the court proceedings in respect of that seizure, holding, and disposal.
- (7) Having determined the matters specified in subsection (6), the court may, after having regard to—
- (a) the purpose of this Act; and
 - (b) the effect of the offence from which the forfeiture arose on the aquatic environment from which the fish, aquatic life, or seaweed was taken or in which the vessel was operating; and
 - (c) the effect of the offence from which the forfeiture arose on other fishers (whether commercial or otherwise) fishing in the area or for the stock in respect of which the offence occurred; and

- (d) the effect of offending of the type from which the forfeiture arose on the relevant aquatic environment; and
- (e) the effect of offending of the type from which the forfeiture arose on other fishers (whether commercial or otherwise) fishing in the area or for the stock in respect of which the offence occurred; and
- (f) the social and economic effects on the person who owned the property or quota, and on persons employed by that person, of non-release of the property or quota; and
- (g) the effect of offending of the type from which the forfeiture arose on fisheries management and administration systems (including the keeping of records and the providing of returns); and
- (h) the previous offending history (if any) of the person from whose conviction the forfeiture arose; and
- (i) the economic benefits that accrued or might have accrued to the owners of the property or quota through the commission of the offence; and
- (j) the prevalence of offending of the type from which the forfeiture arose; and
- (k) the cost to the Ministry of the prosecution of the offence which resulted in the forfeiture, and the seizure, holding, and anticipated cost of disposal of the property or quota, including the court proceedings in respect of that seizure, holding, and disposal,—

and, subject to subsection (8), make an order or orders providing relief (either in whole or part) from the effect of forfeiture on any of the interests determined under subsection (6).

- (8) No order shall be made under subsection (7) unless—
 - (a) it is necessary to avoid manifest injustice or to satisfy an interest referred to in paragraph (b)(ii) or (iii) of the definition of interest in subsection (1).

The (first) appeal - discussion

[45] The competing positions have been outlined on the appeal. Two questions fall for judgment. The first is whether the crew members must have had their wage claim determined other than in the “forfeiture Court” before they can claim an interest in forfeit property under the Fisheries Act. The second is whether the District Court has jurisdiction to determine the wage claim in this instance.

Wage claim and 'forfeiture claim' - concurrent or sequential? – which Courts or Tribunals?

[46] The relevant provisions of s 256(1) provide:

interest means,—

- (a) ...
- (b) in the case of a foreign vessel, a foreign-owned New Zealand fishing vessel, or a foreign-operated fish carrier,—
 - (i) ownership; and
 - (ii) an interest, as determined by the Employment Relations Authority or any court, that any fishing crew have in unpaid wages; and
 - (iii) an interest in costs incurred by a third party (other than the employer) to provide for the support and repatriation of foreign crew employed on the vessel:
- (c) in the case of other forfeit property, a legal or equitable interest in that forfeit property that existed at the time of the forfeiture; but does not include any interest (other than an interest referred to in paragraph (b)) in a foreign vessel, a foreign-owned New Zealand fishing vessel, or a foreign-operated fish carrier.

(Emphasis added)

[47] A range of potential answers is immediately identifiable. “Determined” may mean “determined in distinct proceedings, before the forfeiture proceedings”, or “determined somewhere before any interest in forfeit property can be finally determined”, or it may mean “determined at some time, not necessarily before establishing an interest in forfeit property”. Mr Squire argued for the first of these interpretations, while the first and second respondents argued for the third. I regard the second as correct for the following reasons.

[48] It would be too speculative to find that an interest exists in unpaid wages so as to compel the Crown to allocate part of the proceeds of sale of forfeit property, without any settled legal basis for that interest. A finding that a crew member has a legal interest in forfeit property rests on a finding that wages are owing. An interest cannot be established on the basis of a mere allegation of being owed wages. Otherwise the Crown would be compelled to pay money to crew who simply allege

(with some, but not necessarily much, specificity) that they are entitled to wages arising from their work on a ship. No legal entitlement would need to be proved before relief was ordered. The claim could be wholly without merit and the estimate of quantum could be wholly misplaced.

[49] The nature of payments ordered in forfeiture proceedings in my view compels reading s 256 as requiring a prior determination of the wage claim before relief can be *finally* ordered. Forfeiture proceedings can be launched against the Crown in lieu of proceedings against the former owner of that property. Relief may be ordered when an interest is established in the former owner's property, not when an interest is simply asserted. If the property had not been forfeit, the crew members would have had to establish their claim to wages against Sajo before receiving any money. The mere act of forfeiture cannot advance their position. Claims to unpaid wages and other breaches of employment law remain just that, claims.

[50] I do not accept the submission that the expressions "if possible" and "estimate" in relation to the valuation of the claimant's interest are signals that s 256 contemplated contingent claims to an interest in forfeiture (that is, before the basis for an interest is made out). Sections 256(4)(d) and 256(6)(b), in which these expressions appear, relate to *any* claims made under s 256(3), not simply to claims where the interest is founded on unpaid wages. Those qualifying expressions "if possible" and "estimate" will apply in many cases involving interests arising from forfeit fishing quotas (s 256(1)(a)), legal or equitable interests in other forfeit property (s 256(1)(c)) and "interest[s] in costs incurred by a third party... to provide for the support and repatriation of foreign crew employed on the vessel" (s 256(1)(b)(iii)).

[51] Where such interests are engaged, there may be a minimum sum to which the applicant is undoubtedly entitled, perhaps based on the parties' agreement. This amount can properly be paid out. Where the parties disagree over whether more money is due, the Court will be unable to quantify the entire interest. Rather, it may recognise some entitlement and await further argument and evidence as to any residual entitlement. Orders preserving property may be made pending final

determination. It is with reference to such situations that the phrase “if possible” qualifies the Court’s obligation to value the interest.

[52] The use of “estimate” in s 256(4)(d) relates to the application in forfeiture proceedings, and not the judgment of the Court. All that subsection requires is that the value of the interest be given as precisely as possible. Where the value at the time of forfeiture is indeterminate, there can only be estimates of value. That does not mean that the Court can make an order for relief despite uncertainty as to whether a valid claim lies (as the crew members suggest), but simply that an applicant may not be able to definitively prove the value of the interest claimed.

[53] Finally, a Court is obliged by s 256(7) and s 256(8) to make an order only if necessary to avoid manifest injustice or to satisfy an interest as defined. As the appellant observes, a Court would be sailing into the fog if it were to make that appraisal without a final decision about the wage claim. It would be manifestly unjust to deny relief from forfeiture to those owed wages, but there is nothing unjust about withholding relief from people who simply allege they are owed a sum of money. A Court could not be satisfied of the necessity of relief where the interest has simply been claimed for the purpose of forfeiture proceedings.

[54] It is clear then that money will be paid out as the result of forfeiture proceedings only where the applicant has established a definitive legal entitlement to a sum of money. The Court must be satisfied that money is due. Interim orders may allow that process to reach fruition.

[55] This conclusion does not answer Mr Squire’s proposition that determination of an entitlement to wages must be made in proceedings separate from those in which the Court is asked to determine an interest, if any, under s 256. In my view, nothing compels the conclusion that proceedings to decide any wage entitlement must be distinct from the proceedings for forfeiture relief. All that is required is that they be chronologically sequential in their outcomes. Mr Squire submitted strongly that s 256 established a code and as a code the Court cannot determine any matters which lie outside that remit. However, nothing in the section stipulates that these two exercises cannot be undertaken by the same Court. A Court seized of a dispute as to

the crew members' wages might find in their favour and proceed to quantify their entitlement, if they thus have a relevant interest. The section prescribes a detailed procedure for forfeiture proceedings, but that does not preclude the Court acting under other jurisdiction in the same case. Further, the High Court's jurisdiction is inherent, and should not be constrained by a putative implied effect.

[56] Other than by a limited reading of s 256, with no regard to its purpose, could the Court be precluded from deciding the forfeiture claim unless the wages were determined elsewhere or in a separate Court or Tribunal. That would be the antithesis of interpretation by remedial legislation and a very compelling reason would be needed to found such a conclusion.

Does the District Court have jurisdiction?

[57] The District Court derives its civil jurisdiction from s 29 of the District Courts Act:

General jurisdiction in respect of proceedings

- (1) The courts shall have jurisdiction to hear and determine any proceeding where the debt, demand, or damages, or the value of the chattels claimed, is not more than \$200,000, whether on balance of account or otherwise:

provided that the courts shall not, except as in this Act provided, have jurisdiction to hear and determine—

- (a) any proceeding for the recovery of land; or
 - (b) any proceeding in which the title to any franchise is in question.
- (2) The courts shall have jurisdiction to hear and determine any proceeding where the debt or demand claimed consists of a balance not exceeding \$200,000, after a set-off of any debt or demand claimed or recoverable by the defendant from the plaintiff, being a set-off admitted by the plaintiff in the particulars of the plaintiff's claim or demand.

[58] The Judge doubted whether the wage claim was a claim for a “debt, demand or damages” within the meaning of that section. He found it hard to accept that the District Court is precluded from deciding a wage claim which exceeded \$200,000, yet is competent to determine an ownership interest in a vessel in forfeiture

proceedings. The District Court could undoubtedly adjudicate on the latter, and the Judge thought that the former was logically justiciable, for the purpose of s 256.

[59] It is instructive to delineate the various steps towards determining an interest in forfeiture proceedings. First, there must be a determination of the predicate claim. The phrase “predicate claim” refers to a claim which is established in order to found an interest under s 256.

[60] If the predicate claim falls within the meaning of s 29 of the District Courts Act, then it is governed by that provision.

[61] The Court will then undertake an inquiry into whether the criteria under s 256 are satisfied. This second stage does not, by definition, involve a “debt, demand or damages” (it involves an interest arising from the predicate claim) and the District Court is able to determine this issue, regardless of the value of the interest which is claimed.

[62] The District Court would routinely outflank the \$200,000 jurisdictional limit if it treated proceedings in two “stages” as being within jurisdiction, whatever the sum in issue, by regarding the dispute as primarily about the second stage of those proceedings.

[63] In this case, an interest in the forfeit property requires a valid claim to unpaid wages. Before the District Court Judge this claim remained undecided. For the Judge to inquire into the merit of the wage claim, each claim (not the cumulative amount of all the claims) had to conform to the District Court’s jurisdiction under s 29. The claim for unpaid wages is a “debt or demand” against Sajo. If any one claim by an individual crew member exceeded \$200,000 then the excess can be conceded, or the claim can be brought in a Court or Tribunal with jurisdiction. Provided that the claim does so conform, the District Court can decide it, and then proceed to determine whether the crew members have an interest in the ships as forfeit property.

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[64] The crew members' claims to unpaid wages may be made in the same Court in which the application for relief from forfeiture is made. The claim to an interest may be made, but not finally determined, before the claim to wages is determined. The appeal is dismissed in these respects.

[65] The appeal is allowed to the extent that the District Court may not determine any one claim for unpaid wages where the value of that claim exceeds \$200,000. It may otherwise make a determination as to whether an interest based on an established entitlement which exceeds \$200,000 is an interest in forfeit property under s 256 of the Fisheries Act. Appeal allowed in part.

The cross-appeal by the crew members – CIV-2015-409-500

[66] The cross-appeal is solely concerned with whether the crew members can claim relief in forfeiture proceedings under s 256 against any Oyang vessel, not just the vessel on which they worked.

[67] Part of the argument centred on whether the crew members could succeed simply by construing the word "interest" to include a wage entitlement arising from one Oyang vessel, but held in respect of another vessel. This argument did not advance matters, because before an interest can found a claim for relief, it must be that which may attach to certain property. The question is whether vessels on which crew members did not work, but were owned by the same employer, "sister ships" are such property.

[68] The relevant argument addresses the reasons for and against the Oyang 75 and 77 being included in the concept of "forfeit property" for the purpose of the crew members' claims, rather than whether "interest" should be interpreted in an expansive manner. The Oyang 75 is said to have real value and the Oyang 77 is of limited value. Put another way, the question is whether Oyang 75 and 77 are forfeit

property in the context of the circumstances with which this appeal is concerned. That is defined, and repeated here as follows:¹⁰

(1) In this section, unless the context otherwise requires,—

forfeit property means any—

- (a) fish and any proceeds from the sale of such fish; or
- (b) property used in the commission of the offence; or
- (c) quota—

forfeit to the Crown under any of sections 255A to 255D.

[69] Paragraphs (a), (b) and (c) give specific examples of such property, but these examples are plainly not exhaustive, as “forfeit property” means those things “unless the context otherwise requires”. Judge Kellar regarded the phrase “property used in the commission of the offence” as confining the relevant property in which an interest may be claimed to property used in the commission *of the very offence which resulted in forfeiture*. Oyang 75 and 77 were not such vessels, as nearly all of the crew members’ wage claims arose from a ship which was associated with the commission of other offences, or was sunk.

[70] I agree with the Judge that an interest should not be taken to attach to another forfeit ship by a simple reading of paragraph (b). The ship out of which the interest arose is not property “used in the commission of the offence”, because *the* offence was committed by another ship which was forfeit. The use of the definite article constrains that property which falls under s 256(1)(b).

[71] However, that is not dispositive of the crew members’ submission. The Court must determine whether the context requires a different interpretation of “forfeit property” than that specifically given to it by the subsections. The expression “unless the context requires otherwise” is of such generality that its application may properly take account of all circumstances surrounding the particular s 256 claim.

Does the context require otherwise?

¹⁰ Fisheries Act 1996, s 256(1).

[72] It was common ground on appeal that if Oyang 75 and 77 had not been forfeit, the crew members of Oyang 70 could assert their right to be paid wages against those vessels. Their ability to do so would have arisen by operation of a statutory lien under the Admiralty Act 1973, s 5:

5 Actions *in rem*

- (1) In any case in which there is a maritime lien or other charge on any ship, aircraft, or other property for the amount claimed, the admiralty jurisdiction of the High Court may be invoked by an action *in rem* against that ship, aircraft, or property.
- (2) In addition to the rights conferred by subsection (1), the admiralty jurisdiction of the High Court may be invoked by an action *in rem* in respect of all questions and claims specified in subsection (1) of section 4:

provided that—

- (a) in questions and claims specified in paragraphs (a), (b), (c), and (s) of subsection (1) of section 4 the admiralty jurisdiction *in rem* may be invoked against only the particular ship or property in respect of which the questions or claims arose:
- (b) in questions and claims specified in paragraphs (d) to (r) of subsection (1) of section 4 arising in connection with a ship where the person who would be liable on the claim in an action *in personam* was, when the cause of action arose, the owner or charterer of, or in possession or in control of, the ship, the jurisdiction of the High Court may (whether the claim gives rise to a maritime lien on the ship or not) be invoked by an action *in rem* against—
 - (i) that ship if, at the time when the action is brought, it is beneficially owned as respects all the shares therein by, or is on charter by demise to, that person; or
 - (ii) any other ship which, at the time when the action is brought, is beneficially owned or on charter by demise as aforesaid.

[73] Section 4 Admiralty Act 1973 (relevantly) provides:

4. Extent of admiralty jurisdiction

- (1) The court shall have jurisdiction in respect of the following questions or claims:

...

(f) any claim for loss of life or personal injury sustained in consequence of any defect in a ship or in her apparel or equipment, or of the wrongful act, neglect, or default of the owners, charterers, or persons in possession or control of a ship or of the master or crew thereof or of any other person for whose wrongful acts, neglects, or defaults the owners, charterers, or persons in possession or control of a ship are responsible, being an act, neglect, or default in the navigation or management of the ship, in the loading, carriage, or discharge of goods on, in, or from the ship or in the embarkation, carriage, or disembarkation of persons on, in, or from the ship:

...

(o) any claim by a master or member of the crew of a ship for wages, and any claim by or in respect of a master or member of the crew of a ship for any money or property which, under any of the provisions of the Maritime Transport Act 1994, is recoverable as wages or in the court and in the manner in which wages may be recovered:

...

(2) In addition to the jurisdiction specified in subsection (1), the High Court shall continue to have any other admiralty jurisdiction which was vested in it immediately before the commencement of this Act, and when exercising its admiralty jurisdiction shall also have any other jurisdiction connected with ships or aircraft which is vested in the court under any other Act.

””

(4) The provisions of this section apply—

- (a) in relation to all ships or aircraft, whether New Zealand ships or aircraft or not, and whether registered or not, and whatever the nationality or residence or domicile of their owners may be:
- (b) in relation to all claims, wheresoever arising (including, in the case of cargo or wreck salvage, claims in respect of cargo or wreck found on land):
- (c) so far as they relate to mortgages and charges, to all mortgages or charges, whether registered or not, and whether legal or equitable, and whether fixed or floating, including mortgages and charges created under the law of any other country:

provided that nothing in this subsection shall be construed as extending the cases in which money or property is recoverable under any of the provisions of the Maritime Transport Act 1994.

[74] A crew member's claim to unpaid wages is a classic example of the role in law of a maritime lien.¹¹ That lien arises at the time at which the constituent facts of the claim obtain.¹² As s 5(1) provides, the existence of a maritime lien in respect of the listed property allows its holder to invoke the High Court's admiralty jurisdiction. The holder can proceed in rem against "that" property in respect of which the lien arises.

[75] Subsection 5(2) supplements s 5(1) by providing that certain claims can invoke the admiralty jurisdiction only in respect of the particular ship or property from which the claim arose. Such claims are specified in ss 4(1)(a), (b), (c) and (s). However, if a claim is made under ss 4(1)(d) to (r), a claimant can proceed in rem against property of the person liable on an action in personam, provided that property was in the beneficial ownership of that person at the time the action was brought. Subsection 5(2)(b)(ii) allows such in rem proceedings to be brought against "any other ship" within the aforementioned boundaries.

[76] Mr Hartono and the remaining crew would have been able to bring a claim under s 4(1)(o) (above) which reads:

- (o) any claim by a master or member of the crew of a ship for wages, and any claim by or in respect of a master or member of the crew of a ship for any money or property which, under any of the provisions of the Maritime Transport Act 1994, is recoverable as wages or in the court and in the manner in which wages may be recovered:

[77] Since some of the crew members could not have proceeded in rem under s 5(1) (as the Oyang 70 on which they worked had sunk), they could have pursued a claim under s 5(2)(b)(ii) against the other Oyang vessels.

[78] The only reason said to stand in their way is that the Oyang vessels are forfeit, thus the Oyang 75 and 77 were not in the beneficial ownership of Sajo. The Crown took those vessels free of all encumbrances.¹³

¹¹ *Bankers Trust International Limited v Todd Shipyard Corporation, the Halcyon Isle* [1981] AC 221 (PC) at 224 per Lord Diplock.

¹² *Kareltrust v Wallace and Cooper Engineering (Lyttelton) Ltd* [2001] 1 NZLR 401 (CA).

¹³ Fisheries Act 1996, s 255E.

[79] The question is reasonably put as to whether the act of forfeiture should defeat claims by crew members whether of the Oyang 70 or Oyang 77 which would lie but for the forfeiture. Specifically, can and should the crew members inability to pursue a claim in rem against Sajo be brought to bear when interpreting the term “forfeit property” in the Fisheries Act?

[80] The statutory permit to invoke context for interpretation allows the Court a wide canvas, as authority demonstrates.

[81] In *Police v Thompson*, the Court of Appeal considered the word “bar”, in s 2 of the Sale of Liquor Act 1962.¹⁴ It had to decide whether that word should be given a meaning other than those prescribed by s 2, for the purposes of s 259(7) of that Act. As here, the ability to construe “bar” in a manner other than was specifically provided for, arose from the expression “unless the context requires otherwise”.¹⁵

[82] In articulating the correct approach for a Court undertaking this enterprise, Turner J regarded “context” as:¹⁶

... the policy of the Act and the history of the legislation, and the consequences of a given interpretation, as well as the text surrounding the provision under examination.

[83] In the event, neither Turner J nor the other members of the Court could find anything in the Act or otherwise to displace the construction of the word “bar” as limited to the instances specified in s 2 of the Act.

[84] In *Kirk v Electoral Commission* the High Court addressed whether a non-natural person should be regarded as a “person” for the purposes of s 13(2)(f)(i) of the Electoral Finance Act 2007, and so avoid the requirement to register under s 13 of that Act as a “third party” for the general election campaign.¹⁷ Reference was made to s 29 of the Interpretation Act 1999, which provides that “person” includes a corporation sole, body corporate and an unincorporated body. If that definition was operative, then the respondent trade union would be a “person” under the Electoral

¹⁴ *Police v Thompson* [1966] NZLR 813 (CA).

¹⁵ At 820 per Turner J.

¹⁶ At 820-1 per Turner J.

¹⁷ *Kirk v Electoral Commission* [2008] 3 NZLR 125 (HC).

Finance Act. The Union argued that s 29 of the Interpretation Act must be read against s 4 of that Act, which provides:

4 Application

- (1) This Act applies to an enactment that is part of the law of New Zealand and that is passed either before or after the commencement of this Act unless—
 - (a) the enactment provides otherwise; or
 - (b) the context of the enactment requires a different interpretation.
- (2) The provisions of this Act also apply to the interpretation of this Act.

[85] The Union contended that s 4(1)(b) required that “person” should be confined to its use in normal parlance, so that it would not be classified as a third party under s 13.¹⁸ MacKenzie J rejected that but said, citing *Police v Thompson*:

[16] The “context” of an act, for the purposes of an interpretation section, can include the policy of the Act, the history of the legislation and the consequences of a given interpretation, as well as the surrounding text.

[86] “Unless the context otherwise requires” was considered in *Barr v Police*, as to whether someone who had been convicted of driving with excess blood alcohol was obliged to pay the medical fee for analysis of blood.¹⁹ Section 2 of the Costs in Criminal Cases Act 1967 provided that “unless the context otherwise required”, “blood test” was to be defined as taking of a specimen for analysis. Mr Barr contended that “the taking” of the blood did not include its subsequent analysis and he could be charged only with the cost of its being taken and not its analysis. The Court agreed.²⁰ The question was whether the qualification that “the context might require otherwise” displaced that interpretation. On the facts it did not.²¹ Blanchard

¹⁸ At [13].

¹⁹ *Barr v Police* [2009] NZSC 109, [2010] 2 NZLR 1. See also *Allenby v H* [2012] NZSC 33, [2012] 3 NZLR 425 at [93]-[94] per Tipping J, where context required that the definition of “accident” in s 25 of the Accident Compensation Act 2001 be altered to require that in cases of pregnancy, an “accident” had to involve force *without consent* so as to exclude persons impregnated after consensual sex from claiming under the ACC scheme. Parliament’s intention compelled this conclusion.

²⁰ At [10].

²¹ At [10].

J, giving judgment for the Court, referred to Burrows and Carter *Statute Law in New Zealand* to the effect that:²²

A statutory definition is only displaced where there are strong indications to the contrary in the context. That is particularly so where the definition is the stipulative kind that extends the meaning of the word.

[87] Burrows and Carter note that a stipulative definition, one which uses a word in a meaning beyond its usual use, involves “an element of creation”.²³ The reason that stipulative definitions are less easily displaced (by context) is that in specifying that a word or phrase is to be used in an unusual context, Parliament implies that its use should be confined to that context. In using a word in its ordinary sense, Parliament can be taken to intend that its application reflects its use in common parlance. By stipulating for a specific and unusual definition, Parliament intends to narrow or otherwise alter its application; many of the instances of general use become irrelevant. A Court respects that specific expressed intention and proceeds cautiously before employing another meaning.

[88] However, the definition of “forfeit property” is not stipulative. The meaning of the word “forfeit” in this context is construed by the legal concept of forfeiture. There is no “forfeit property” other than that which the Court determines to be such. The present case is therefore different to *Barr* and less weighty contextual factors may displace the otherwise prescribed meaning of the phrase.

[89] The authorities reflect a commonsense proposition that where context requires another meaning be given to a word or phrase, this involves consideration of matters internal and external to the Act, including the consequences of the putative interpretation. Authority is helpful in reaching this point, but a straightforward reading of the expression, “unless the context requires otherwise”, of itself allows for that.

The statutory context

²² At [11], citing JF Burrows and RI Carter *Statute Law in New Zealand* (4th ed, Lexis Nexis, Wellington, 2009) at 422.

²³ JF Burrows and RI Carter *Statute Law in New Zealand* (5th ed, LexisNexis, Wellington, 2015) at 430.

[90] Section 256 of the Fisheries Act does not internally provide an obvious lead that “forfeit property” either should, or should not, be interpreted to allow the crew members’ argument that their interest extends to vessels other than that, or those, on which they worked.

[91] While counsel could not advance any strong statutory indications about the scope of forfeit property, various arguments were made. Mr Squire repeated that s 256 is a code and extraneous aids to its interpretation are therefore limited. Ms Harding’s contention is that s 256 is not a code, and has been amended by the 2002 Act, so ought to facilitate (so far as its wording allows) the crew members’ claims in this case. Mr Lange adopted Mr Squire’s submissions.

[92] As foreshadowed, I do not accept Mr Squire’s contention that s 256 is a code which thus provides a ready answer. If all that is meant by describing s 256 as a code is that it provides a relatively detailed procedure for forfeiture claims in fisheries cases, then I agree. However, if a “code” is to be regarded as a discrete provision, insulated from extraneous interpretative aids and the sole governor of forfeiture claims, then I do not regard s 256 as a code. A detailed procedure in an Act does not entail (as if logic somehow required it) that the lens of the Court must narrow to exclude other provisions when dealing with that claim.

[93] Even if Sajo convinced me that s 256 provided a discrete code in cases such as this, it would still face a further problem. Section 256(1) expressly contemplates that the context might require its terms to be interpreted in ways not set out in the Act. Establishing s 256 as a code still requires account to be taken of this proviso, so it would be a code which expressly contemplated extraneous aids in its interpretation; not much of a code.

[94] Mr Lange adopted Mr Squire’s submissions on this point.

[95] For her part, Ms Harding placed emphasis on the 2002 Act which amended s 256 of the Fisheries Act. The purport of the 2002 Act, she argued, was to create a remedial path to obtain and recover unpaid wages for workers of foreign ships. The impetus for the 2002 Act arose as a consequence of the costly and lengthy litigation undertaken by foreign shipping workers against their employer in the *Udovenko*

case.²⁴ She argued that the 2002 Act was remedial, not only to the extent that it gave standing to foreign fishing workers in forfeiture proceedings, but that it intended that such workers should not be adversely affected by the forfeiture of their employer's ships.

[96] As a general observation, it is difficult to argue that an amending Act goes beyond the express wording of its amendments. I am conscious that the facts of this case at first blush may seem unusual, in that a ship has sunk and the only other property (it seems) against which the crew members could claim an interest in admiralty is forfeit to the Crown. However, the 2002 Act is not so compelling in its wording as to embrace the crew members' claims without context being brought to bear. While a generally benevolent attitude towards crew members on foreign vessels underlies the 2002 Act, that benevolence of itself is insufficient to anchor Ms Harding's argument that forfeit property should therefore be read to include Oyang 75 and 77.

[97] The crew members stand on firmer ground when they highlight the divergent consequences of a narrow interpretation of "forfeit property". If Oyang 75 and 77 are included, then the crew members may yet satisfy their (at this point alleged) entitlements to considerable sums for unpaid wages. If those vessels are not so included, the only permissible route for redress will be to pursue in personam claims against Sajo. That route is less promising as there may be problems enforcing judgment in New Zealand and the crew members may incur more legal fees depending on the terms of legal engagement.

[98] Certainty in interpretation is a paramount consideration in commercial cases. However, an adherence to interpretative certainty does not justify the Court taking a rigid approach when justice cries out to recognise the plight of the crew members. This is especially so where the reasons for that plight are weighty and not of their making; indeed quite the opposite. These considerations do not support a narrow interpretation of forfeit property.

²⁴ *Udovenko v Karelrybflot* HC Christchurch AD90/98, 27 April 1999.

[99] I recognise the force in Mr Squire’s well developed argument. I have however reached the view that the context compels a wider reading of s 256(1)(b). That means “forfeit property” includes property forfeit to the Crown which immediately before forfeiture was in the beneficial ownership of the party who, but for the forfeiture, would have been liable under a claim in rem.

[100] Forfeiture of property should not absolve a former owner of a liability which would have attached to that property. That a party can seek relief from forfeiture demonstrates that it is unthinkable that all claims attaching to property are extinguished on forfeiture.²⁵ Forfeiture will always be the result of some wrong perpetrated by or on behalf of the property owner, and people innocent of the wrong that led to forfeiture should not be defeated by it.

[101] That interpretation of forfeit property beyond those definitions expressly provided by s 256(1) does not, in my view, do more than reflect the legislative intent that there may be circumstances requiring an expansive interpretation of “forfeit property”. I consider that the facts of this case provide a clear example.

[102] Any other result would be in a sense rewarding Sajo's violations of New Zealand law, and the Crown holding in forfeit. Neither deserve such reward. The employer’s wrongdoing would shield it from liability otherwise attaching to those vessels. The Crown would profit at the crew’s expense. That result would be more than ironic, against the background of the 2002 Act and one of its purposes; namely, to widen the opportunity for the crew to seek and obtain relief.

[103] The justice of this case compels quite the opposite conclusion. The wording of s 256 gives the Court interpretative room to manoeuvre. Where the circumstances so dictate, an extension or contraction of the meaning of a term can be used to prevent a manifest injustice, such as that which would result here. Once the context of this case is properly understood, it ought to become clear that the construction given to the statute by this judgment is not heretical. It simply reflects the Court's

²⁵ Although forfeiture relief is claimed against the Crown rather than the former owner, the principles subsist. The Crown should not receive a windfall profit at the expense of those whose claims would otherwise have attached to the property and who are not at fault.

jurisdiction to give meaning to words in the context at hand, to accord with the legislative scheme, and to avoid manifest injustice.

Formal disposition

[104] I dispose of the appeal and cross-appeal as follows.

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[105] In terms of paras [64] and [65] of this judgment, the appeal is allowed in part to the extent that the District Court may not determine any claim for unpaid wages where the value of that claim exceeds \$200,000. It may otherwise make a determination as to whether an interest based on an established entitlement which exceeds \$200,000 is an interest in forfeit property under s 256 of the Fisheries Act. In all other respects, the appeal is dismissed.

(Cross)-appeal – CIV-2015-409-500

[106] (Cross)-appeal allowed. A crew member may establish an interest against a vessel under s 256 of the Fisheries Act, where but for forfeiture, the vessel would be in the beneficial ownership of a party liable to that crew member in respect of that vessel. The entitlement to an interest extends to the crew members who claim for relief against forfeiture against the Oyang 75 and Oyang 77, regardless of whether they worked on those vessels.

Conclusion

[107] The substance of the appeal and cross-appeal has been determined by this judgment. The parties should file memoranda as to any further orders or directions which are required, and as to costs. No time is imposed for this and leave is reserved to bring any residual issue before this Court by arrangement with the Registry.

.....
Nicholas Davidson J

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cc: Bruce Squire QC, Featherston Chambers, Wellington

SCHEDULE 'A' parties

THE DIRECTOR GENERAL OF THE
MINISTRY FOR PRIMARY
INDUSTRIES
First Respondent

FAJAR ADI NUGROHO
Second Respondent

AGUS SULISTYO
Third Respondent

ROPI'I
Fourth Respondent

SARIDAH TARSIDI
Fifth Respondent

WILLY FRANSISKA
Sixth Respondent

MOH HERI SETIANTO
Seventh Respondent

HADI PRAWOTO
Eighth Respondent

CARWADI KARSO
Ninth Respondent

RADIYAH
Tenth Respondent

WARSILA
Eleventh Respondent

MADRAIS
Twelfth respondent

CAHYONO
Thirteenth Respondent

AKMADI
Fourteenth Respondent

WAHYONO
Fifteenth Respondent

RUDI HARTONO
Sixteenth Respondent

HADI WASITO
Seventeenth Respondent

SANTOSO
Eighteenth Respondent

UNWANULLOH
Nineteenth Respondent

NASRUI HIDAYAH
Twentieth Respondent

ABUDULADIS
Twentyfirst Respondent

SOBIRIN
Twentysecond Respondent

EKO SUSANTO
Twentythird Respondent

CARKUM
Twentyfourth Respondent

SAPTONO
Twentyfifth Respondent

SUSANTO
Twentysixth Respondent

AGUS KUSYANTO
Twentyseventh Respondent