IN THE COURT OF APPEAL OF NEW ZEALAND

CA116/2016
[2017] NZCA 182

BETWEEN	SAJO OYANG CORPORATION Appellant
AND	MINISTRY FOR PRIMARY INDUSTRIES First Respondent
	RUDI HARTONO AND OTHERS Second Respondents

Hearing:	12 October 2016
Court:	French, Cooper and Winkelmann JJ
Counsel:	R B Squire QC and M S Sullivan for Appellant C J Lange for First Respondent K K Harding and C B Hirschfeld for Second Respondents
Judgment:	15 May 2017 at 2 pm

JUDGMENT OF THE COURT

A The appeal is allowed.

B All applications filed in the District Court are to be transferred to the High Court.

C The matter is remitted to the High Court for such further proceedings in accordance with this judgment as may be appropriate.

D There is no order for costs.

REASONS OF THE COURT

(Given by Cooper J)

Introduction

[1] The appellant Sajo Oyang Corporation (Sajo Oyang) owned and operated three fishing vessels in New Zealand waters under charter to a New Zealand company, Southern Storm Fishing (2007) Ltd. The three vessels were the FV Oyang 70 (Oyang 70), the FV Oyang 75 (Oyang 75) and the FV Oyang 77 (Oyang 77).

[2] Oyang 70 sank on 18 August 2010. On 21 September 2012, following conviction of four officers and the master for offences against the Fisheries Act 1996, Oyang 75 and its fishing gear became forfeit to the Crown under s 255C of the Fisheries Act.

[3] Following the conviction of the master of Oyang 77 for offences against the Fisheries Act, the vessel became forfeit to the Crown under s 255C of the Fisheries Act on 3 September 2014.

[4] Sajo Oyang made applications for relief from the effect of forfeiture under s 256 of the Fisheries Act, in respect of both Oyang 75 and Oyang 77. The applications were made respectively on 7 November 2012 and 15 September 2014. They were advanced on the basis of the corporation's ownership interest in the vessels.

[5] On 10 April 2015, 26 crew members applied for relief against forfeiture in respect of both Oyang 75 and Oyang 77. They are the second respondents to this appeal. Twenty-four of them were crew of Oyang 77. Two had worked on Oyang 70. None of the 26 had been employed on Oyang 75.

[6] The 24 who worked on Oyang 77 asserted in their application that they were owed NZD 4,727,317.80 for unpaid wages. The claim was filed in the District Court, with the consequence that 18 of them, whose claims exceeded NZD 200,000, were affected by the jurisdictional limit of the District Court.[1] If the jurisdictional limit was applied, the total claim of those 24 crew members would reduce to NZD 4,102,585.

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1 District Courts Act 1947, s 29.

[7] The remaining two who worked on Oyang 70 claimed NZD 453,726.72 in unpaid wages. Again, applying the jurisdictional limit would reduce the claim to NZD 400,000.

[8] It is common ground that the estimated value of Oyang 75 is USD 8,000,000 and the estimated value of Oyang 77 is NZD 1,500,000.

[9] In a judgment delivered on 24 July 2015, Judge Kellar held that the crew members did not have an interest under the relevant statutory provisions in Oyang 75.[2] The crew members appealed to the High Court. In his judgment of 18 December 2015, Davidson J held:[3]

> 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.

[10] The present appeal is against that determination.[4]

The issues

[11] The ultimate issue is whether the 26 crew members from Oyang 70 and Oyang 77 who were not employed on Oyang 75 have an interest in the latter vessel in respect of unpaid wages.

[12] Resolution of that issue turns principally on the proper interpretation of the definitions of "forfeit property" and "interest" in s 256(1) of the Fisheries Act. Other parts of that subsection are also relevant to the argument, and it will be convenient now to set it out:

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2 *Sajo Oyang Corporation of Korea v Ministry for Primary Industries* [2015] NZDC 13876.

3 *Hartono v The Ministry for Primary Industries* [2015] NZHC 3307 at [63]. The paragraphs in this High Court judgment go from [1]–[43] and then begin at [1] again. All of the pinpoints to which we refer relate to the second set of paragraphs.

4 The necessary leave to bring a second appeal was granted by Davidson J on 22 February 2016: *Hartono v The Ministry for Primary Industries* HC Christchurch CIV-2015-409-500, 22 February 2016 (Minute of Davidson J).

256 Provisions relating to forfeit property

(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

interest means,—

(a) in the case of quota, an interest in the quota that is recorded on the Quota Register at the time of the forfeiture:

(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.

[13] Also relevant is s 256(3). It provides:

(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.

[14] These provisions have to be applied in this case in the context of s 255E(1) of the Fisheries Act:

> **255E General provisions relating to forfeiture**
>
> (1) If any property, fish, aquatic life, seaweed, or quota is forfeited to the Crown under this Act, such property, fish, aquatic life, seaweed, or quota, despite section 168, vests in the Crown absolutely and free of all encumbrances.

On the face of it, this section implies that where a vessel is forfeit to the Crown, it will not be subject to pre-existing claims such as those now made.

District Court judgment

[15] In the District Court, the crew members argued that the definition of "forfeit property" in s 256(1) is not exhaustive, because of the reference in para (c) of the definition of "interest" to "other forfeit property". They claimed "other forfeit property" means property that has been forfeited to the Crown, such as another foreign vessel. Here, Oyang 75 was "other forfeit property" and not covered by para (b) of the definition. The crew members argued that they had an interest in unpaid wages at the time of forfeiture of Oyang 75. Alternatively, it was contended for the crew that they had a maritime lien for unpaid wages in a sister ship under ss 4(1)(o) and 5(2)(b) of the Admiralty Act 1973.

[16] The Judge rejected these arguments. He noted that para (b) of the definition of "forfeit property" refers to "property used in the commission of the offence". Under s 256(3), the interest able to be claimed is an interest in such property, and the application is for relief from the effect of forfeiture of an interest claimed in that property. He considered the statutory intent was that crew members could apply for relief where they claimed an interest in unpaid wages in property used in the commission of the offence that had resulted in the forfeiture. He also held that the only interest a person could have in a foreign vessel was an interest covered by the definition of "interest" in s 256(1)(b).

[17] As to the issue of whether or not the crew members could enforce a maritime lien, the Judge pointed out that the lien could not be exercised in rem in the District Court, since that Court's jurisdiction was confined to in personam claims.[5]

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5 Admiralty Act 1973, s 3(1)(b).

Further, he concluded that any maritime lien that might have been asserted would have been extinguished upon forfeiture of the vessel.

The High Court judgment

[18] On appeal by the crew members Davidson J took a different approach to that of the District Court. He agreed with Judge Kellar's approach to para (b) of the definition of "interest" stating:[6]

> 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).

[19] However, that did not dispose of the crew members' argument because the definitions in s 256(1) were to be applied "unless the context otherwise requires". He saw this as mandating an approach to the interpretation of "forfeit property" that took account of "all circumstances surrounding the particular s 256 claim".[7]

[20] He then reasoned that the crew members could have pursued a claim in admiralty asserting a maritime lien for unpaid wages. That claim could have been brought in rem against Oyang 75 and Oyang 77 under s 5(2)(b)(ii) of the Admiralty Act, but for the fact that those ships had been forfeited to the Crown under s 255E of the Fisheries Act, free of all encumbrances. The Judge considered this was an important contextual consideration for the interpretation of "forfeit property" in s 256.

[21] He then discussed cases on which he relied as illustrating the "wide canvas" allowed by a contextual approach to interpretation.[8] He expressed a view that s 256 did 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 work".[9] He rejected an argument advanced by Mr Squire QC on behalf of Sajo Oyang that s 256 is a code,

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6 *Hartono v The Ministry for Primary Industries*, above n 3, at [27].

7 At [28].

8 At [37], referring to *Police v Thompson* [1966] NZLR 813 (CA); *Kirk v Electoral Commission* [2008] 3 NZLR 125 (HC); *Barr v Police* [2009] NZSC 109, [2010] 2 NZLR 1; and *Allenby v H* [2012] NZSC 33, [2012] 3 NZLR 425.

9 *Hartono v The Ministry for Primary Industries*, above n 3, at [47].

holding further that s 256(1) expressly contemplates that the context might require its terms "to be interpreted in ways not set out in the [Fisheries] Act".[10]

[22] The Judge recorded his view that what he described as "adherence to interpretative certainty" did not justify the Court taking a rigid approach when "justice cries out to recognise the plight of the crew members".[11] He continued:[12]

> 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.

[23] He concluded that the context compelled a wider reading of the definition of "forfeit property" so that it included 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".[13] He thought that any other approach would unfairly benefit the Crown at the crew's expense.

[24] On this basis, he allowed the crew members' appeal. He formally disposed of the appeal by stating:[14]

> A crew member may establish an interest against a vessel under s 256 of the Fisheries Act, where but for the 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 Oyang 75 and Oyang 77, regardless of whether they worked on those vessels.

Submissions on appeal

[25] Both Mr Squire for Sajo Oyang and Mr Lange for the first respondent Ministry for Primary Industries argued that the High Court's interpretation of "forfeit property" was incorrect. Their arguments proceeded along similar lines.

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10 At [50].
11 At [55].
12 At [55].
13 At [56].
14 At [63].

[26] Mr Squire submitted the effect of the High Court judgment was to add words to the definition of "forfeit property". In accordance with the judgment, the definition would read:[15]

> **256 Provisions relating to forfeit property**
>
> (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 *and includes any 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.*

[27] Mr Squire characterised this as a substantial rewriting of the definition. Both he and Mr Lange argued that could not be justified on the basis set out in the High Court judgment. Mr Squire summarised the judgment as proceeding on the basis of the Judge's perception of an unjust result if the definition section was read and applied according to its terms. Although the Judge apparently thought that the drafting of the statute failed sufficiently or properly to give effect to Parliament's intention, the Judge had not identified any clear or unequivocal legislative intent that the relief from forfeiture provision in s 256 should be expanded in the way that he thought appropriate.

[28] Mr Squire submitted that the Judge's approach was based on an apparent misapprehension of the limited purpose for which the Fisheries Act had been amended in 2002 to substitute a new definition of "interest". Prior to the enactment of the Fisheries (Foreign Fishing Crew) Amendment Act 2002 (the 2002 Amendment) the only interests specified as sufficient to support a claim for relief from the effect of forfeiture were an interest in quota or a legal or equitable interest in the forfeit property that existed at the time of forfeiture. In the case of foreign vessels, the only interest that could found a claim for relief was an ownership

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[15] The italicised words denote those that are submitted to be added by the High Court judgment.

interest. With the enactment of the 2002 Amendment, the definition of "interest" was extended to include other interests in addition to ownership, those in sub-paras (b)(ii) and (iii). Mr Squire submitted that the limited change made by the 2002 Amendment evinced a legislative intent to closely confine the interests that would support an application for relief from the effects of forfeiture. That intent was also shown by the wording of para (c) of the definition of interest with its exclusion, in the case of foreign vessels, of interests other than those referred to in para (b).

[29] For the crew members, Ms Harding initially advanced the argument rejected in both the District Court and High Court that, in terms of s 256(1)(c), the crew had an "interest" in a sister ship as "other forfeit property". Ms Harding submitted that "property" included a vessel and the crew members had a legal or equitable interest in the forfeited vessel Oyang 75 under para (c), because it was "other forfeit property".

[30] Alternatively, Ms Harding sought to support the reasoning in the High Court judgment. She submitted that the purpose of the legislation was to enable claims to be made avoiding procedural difficulties and in an inexpensive statutory process. She emphasised the fact that the three vessels were in common ownership, and the injustice that would arise if crew members were not entitled to seek relief against forfeiture under the Fisheries Act.

The statutory scheme

[31] We have already set out s 256(1) and (3) of the Fisheries Act. Before addressing the rival arguments, it is appropriate to note some of the other subsections of s 256 that contribute to the statutory scheme:

> **256 Provisions relating to forfeit property**
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> …
>
> (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—
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> (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.

…

(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.

[32] Section 256(7) provides that, having determined the matters specified in subs (6), the Court may make orders providing relief from the effect of forfeiture on any of the interests so determined. Subsection (7) sets out, in paras (a) to (k), matters to which the Court must have regard in deciding whether or not to make an order providing relief. Matters include the effect of the offence and the offending as well as para (f), which refers to:

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.

[33] Subsection (8) then provides:

> (8) No order shall be made under subsection (7) unless—
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> (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).
>
> (b) *[Repealed]*

Analysis

[34] There is no issue on appeal that the 24 crew members who worked on Oyang 77 have an interest in that vessel for unpaid wages, although the quantum of that interest has yet to be determined. Under the process envisaged by s 256(6)(b), the relevant court would determine the "nature, extent, and, if possible, the value of that interest." In a decision not now subject to appeal, Judge Kellar decided, contrary to a submission made by Sajo Oyang, that the Court could determine the extent of any interest claimed as part of resolving an application made for relief under s 256(3).[16] In other words, the extent of the applicant's interest did not have to be determined prior to the making of the application for relief.

[35] We think it significant that the application under s 256(3) is to be made by any person "claiming an interest in any forfeit property." And the application is for relief from the effect of forfeiture on that interest. Just as the interest claimed must be "in any forfeit property", the application is for relief from the effect of forfeiture on that interest, that is, the interest in the forfeit property.[17] By reference to the definition of "forfeit property" in s 256(1), the statutory language provides that the forfeit property in which the interest is claimed must be property used in the commission of the offence. It should be noted in this respect that the definition of "forfeit property" applies without regard to whether the property in question is owned in New Zealand or by New Zealand interests, or is a foreign vessel, a foreign-owned New Zealand fishing vessel, or a foreign-operated fish carrier, these

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16 *Sajo Oyang Corporation of Korea v Ministry for Primary Industries* [2015] NZDC 6726.
17 Fisheries Act 1996, s 256(3).

being the various classes of vessel identified in para (b) of the definition of "interest".

[36] As Mr Lange submitted, the starting point in the present case is that both Oyang 75 and Oyang 77 are "forfeit property" within para (b) of the definition of that term. It was because they were "property used in the commission of the offence" that they were forfeited to the Crown under s 255C. We consider that both the High Court and the District Court were correct when they held that an interest referred to in s 256(1)(b)(ii) must be an interest relating to the forfeit property, that is the property used in the commission of the offence.

[37] We have not been persuaded that there is any basis for expanding the definition of "forfeit property" to arrive at an interpretation that avoids the apparently plain meaning of the words used in the statute. While we accept that s 256(1) introduces the relevant definitions by setting out meanings that are to apply "unless the context otherwise requires", we think it clear that any reliance on context to give the defined words a different meaning must relate to the words when used in provisions other than s 256(1). We think it is axiomatic that a defined term cannot be given a different meaning within the very provision that contains the definition, that is, s 256(1) itself. It appears from the judgment that Davidson J thought the relevant "context" for this purpose was what he regarded as the unjust circumstance that would arise if the crew members were not able to assert claims in respect of the Oyang 75. But a factual context ought not to influence the meaning to be given to defined terms. As has been seen, the way in which the High Court judgment takes effect is by adding extensively to the definition of "forfeit property". It may be noted also that the words used by the Judge are not limited to foreign vessels or foreign owned New Zealand vessels.

[38] Although the Judge referred to various authorities to support his interpretative approach, none of those involved facts analogous to the present and in none of them was a contextual approach applied to a defined term to alter the defined term itself. We consider the appeal must succeed on this basis.

[39] However, putting that conclusion to one side, we are not persuaded that the contextual matters on which the Judge relied were such as required supplementing the plain words of the statute. The contextual matters the Judge relied on included the consequences of a "narrow" interpretation of forfeit property, the fact that the crew members would be victims of a situation not of their making, that the statutory provision provided for relief against forfeiture and his view that it was "unthinkable" all claims attaching to property would be extinguished on forfeiture. The last consequence, however, flows directly from s 255E, the meaning of which is not in doubt. And we do not consider the other considerations, arising out of the facts of this case can alter the interpretation of the relevant terms in s 256(1).

[40] A reading of the judgment as a whole shows that the Judge was also significantly influenced by the fact that, but for the forfeiture to the Crown, the crew members would have had means of redress, potentially extending to vessels on which they had not worked.

[41] In this respect, the Judge referred to and discussed ss 4 and 5 of the Admiralty Act. A crew member has a maritime lien in respect of unpaid wages.[18] Section 5(1) of the Admiralty Act provides that, in any case where there is a maritime lien or other charge on any ship, the admiralty jurisdiction of the High Court may be invoked by an action in rem against that ship. The maritime lien is against the ship in which the crew member worked.[19] It carries with it a right of arrest of that ship.[20] The lien arises on the occurrence of the event which creates it.[21]

[42] Claims in rem may be advanced only in the High Court and in this case such a proceeding was not brought prior to the forfeiture of Oyang 75. Nor was there any claim in personam. An in personam claim in admiralty is contemplated by s 4(1)(o) of the Admiralty Act, which provides that the District Court or High Court (according to the quantum of the claim) may have jurisdiction in respect of claims by a master or crew member of a ship for wages.

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18 The term "maritime lien" is defined as including a lien in respect of seamen's wages: Admiralty Act, s 2.

19 *Karelrybflot AO v Udovenko* [2000] 2 NZLR 24 (CA) at [75].

20 *The Banko* [1971] 1 All ER 524 (CA) at 531.

21 *Kareltrust v Wallace and Cooper Engineering (Lyttelton) Ltd* [2000] 1 NZLR 401 (CA) at [63], citing *The Heinrich Bjorn* (1885) 10 PD 44 (CA) at 54.

[43] Section 5(2) of the Admiralty Act provides:

> **5 Actions *in rem***
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> …
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> (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:
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> 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—
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> (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.
>
> (3) Where in the exercise of its admiralty jurisdiction the court orders any ship or other property to be sold, the court shall have jurisdiction to hear and determine any question arising as to the title to the proceeds of sale.

[44] A claim by crew members for wages under s 4(1)(o) would therefore fall within s 5(2)(b). Section 5(2)(b)(ii) would allow a claim in rem against another ship owned by the party liable under an in personam claim for the wages. Taking this case as an example, it would enable a proceeding to be brought against Oyang 75 in respect of wages owed to crew members who served on Oyang 70 and Oyang 77. It may be noted that the rights conferred by s 5(2)(b)(i) and (ii) are alternatives. That is to say, the in rem proceeding must be against the ship in respect of which the debt is owed, or another ship owned by the same party, but not both.

As Lord Denning MR said in *The Banko*, referring to the English equivalent of s 5(2)(b):[22]

> The important word in that subjection is the word "or". It is used to express an alternative as in the phrase "one *or* the other". It means that the Admiralty jurisdiction in rem may be invoked *either* against the offending ship *or* against any other ship in the same ownership, but not against both. This is the natural meaning of the word "or" in this context. It is the meaning which carries into effect the international convention.

[45] In *Kareltrust v Wallace & Cooper Engineering (Lyttelton) Ltd*, Blanchard J writing for a court of five said that there were three conditions that must be met before a person could invoke the admiralty jurisdiction of the High Court by an action in rem in respect of claims set out in s 4(1) of the Admiralty Act (which he referred to as "statutory claims in rem"):[23]

(a) he or she must have an in personam claim of a kind specified in s 4(1)(d) to (r) against the defendant;

(b) the defendant had to have been the owner or charterer of, or was in possession or control of, the ship in respect of which the in personam claim arose at the time it arose; and

(c) when the in rem proceeding is brought the defendant must be the beneficial owner or charterer or on demise of the ship against which the in rem claim is made (not necessarily being the ship in (b)).

[46] It is clear from this that the admiralty jurisdiction cannot be invoked while the vessels remain forfeited to the Crown. Davidson J considered that the ability to bring these claims in admiralty prior to forfeiture was relevant context to the meaning that ought to be given to the definition of "forfeit property" in s 256(1) of the Fisheries Act, effectively extending it to refer to any vessel in the beneficial ownership of a party liable to that crew member in respect of unpaid wages. However, we do not consider the legislation or the legislative history justifies that approach.

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22 *The Banko*, above n 20, at 533.
23 *Kareltrust*, above n 21, at [60].

[47] As we have seen, prior to the 2002 Amendment, s 256(1) of the Fisheries Act defined "interest" so as to exclude interests in foreign vessels other than ownership interests. The amendment expanded the kinds of interest that might be the subject of applications for relief in the case of foreign vessels. It is clear from the relevant legislative history that the amendment, which began life as a Private Member's Bill was a response to concerns in the community about the plight of the Russian seamen employed on fishing vessels owned by the Russian company Karelrybflot and the litigation that followed.[24]

[48] In its report on the Bill, the Primary Production Committee stated:[25]

> … we believe the existing legal mechanisms under minimum wage legislation and the Admiralty Act 1973 provide adequate means to allow foreign fishing crews to address wage disputes.
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> …
>
> We consider it appropriate that the courts should have the opportunity to consider wages, support and repatriation costs when disposing of forfeited vessels. This will increase the likelihood of crews being able to recover their wages under the Admiralty Act 1973 and allow the opportunity for third parties (other than the employer) to recover any support and repatriation costs for foreign crews that may be incurred.

[49] And, as Mr Squire emphasised, the legislature did not, when expanding the definition of "interest" in para (b) of the s 256(1) definition, widen the exception in para (c): the inclusion of interests in foreign vessels was maintained, except for the interest referred to in para (b).

[50] We conclude that the statutory scheme set forth in s 256 does not set out to replace the existing law relating to claims in admiralty. Rather, it provides tailored relief against the consequences of forfeiture, tied to the property that has been forfeited.

[51] For these reasons, we do not consider the contextual matters to which the Judge referred justify the interpretation of "forfeit property" at which he arrived. Overall, we consider that s 256 is to be construed so as to allow applications for

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[24] See *Karelrybflot AO v Udovenko*, above n 19; and *Kareltrust*, above n 21.

[25] Foreign Fishing Crew Wages and Repatriation Bond Bill 2000 (42-2) (select committee report) at 5–6.

relief to be made and considered in relation to a foreign vessel on which crew members work. In other words, crew members who worked on Oyang 75 may advance claims for relief in respect of that vessel, and those who worked on Oyang 77 may do the same in respect of that vessel. Crew members from Oyang 70 may not make claims for relief under s 256 in respect of either vessel.

[52] That does not mean that crew members whose wages claims are not able to be accommodated under s 256 are without a remedy. The effect of this Court's decision in *Kareltrust* is that the ability for the crew members to make a statutory claim in rem would revive on the release of a vessel from forfeiture.[26] If considered appropriate, the jurisdiction of the High Court could be invoked by an action in rem, pursuant to s 5(2)(b)(ii) against any other ship that, at the time when the action is brought, is then beneficially owned by Sajo Oyang.

[53] However, for the reasons given, the appeal must be allowed.

Further issues

[54] Having reached that point, we need to discuss two further issues.

[55] First, concerning jurisdiction, we mentioned earlier that some individual claims exceeded the NZD 200,000 limit applicable to District Court proceedings at the time the applications were made. We were told that, perhaps influenced by s 256(5) of the Fisheries Act, which provides that the Court shall hear all applications in respect of the same property together, a practice had developed in which the District Court deals with applications for forfeiture without regard to the jurisdictional limit that might otherwise apply to claims by individual persons by virtue of the ordinary jurisdictional limit.

[56] "Court" is defined in s 2(1) of the Fisheries Act as meaning "the District Court or, where proceedings are commenced in the High Court, the High Court". Judge Kellar thought the definition was wide enough to enable the District Court to deal with all matters arising under s 256(1) and did not think the

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[26] *Kareltrust*, above n 21, at [61].

Court would be limited by the jurisdictional limit in s 29 of the District Courts Act 1947.[27] He thought it would be anomalous if the District Court could determine that Sajo Oyang had an ownership interest in vessels under s 256(1)(b)(i) of the Fisheries Act, and also the value of that interest under s 256(6)(b), but be unable to determine the value of a crew member's interest in unpaid wages to be beyond the sum of NZD 200,000.[28]

[57] Davidson J concluded however that the monetary limit should apply. He held that the District Court could not determine any one claim for unpaid wages where the value of that claim exceeded NZD 200,000. It could, however, make a determination as to whether an interest based on an established entitlement exceeding NZD 200,000 is an interest in forfeit property under s 256 of the Fisheries Act. In other words, it would simply determine whether the interest in forfeit property exists, without making any determination as to entitlement. That part of the decision is not subject to appeal.

[58] Ms Harding told us that, although the question of the jurisdictional limit had been considered, including the possibility of abandoning the parts of any individual claims exceeding NZD 200,000, no decision had been made by the affected crew members. The possibility would be to waive the claim in relation to the excess or alternatively seek to transfer the matter to the High Court. In the end she asked that the applications be transferred to the High Court.

[59] On this issue, Mr Squire took the view that the matter should be remitted to the District Court and that the jurisdictional limit would apply. Mr Squire noted that the crew were in effect claiming a debt, and there had been no agreement to extend the District Court's jurisdiction. Mr Lange abided the decision of the Court.

[60] We are satisfied that the appropriate course to follow on allowing the appeal is to provide that any further proceedings should take place in the High Court. That would avoid any issue concerning jurisdiction and the further potential complication of applications for only some of the claims to be transferred to the High Court. All

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[27] Notwithstanding this Act being repealed, it will continue to apply to these proceedings: District Court Act 2016, sch 3, cl 5.

[28] *Sajo Oyang Corporation v Ministry for Primary Industries*, above n 16, at [42].

of the applications filed in the District Court should be transferred to the High Court accordingly. This will also enable the High Court to deal expeditiously with any claim based on its admiralty jurisdiction in the event the vessels are returned to the ownership of Sajo Oyang.

[61] Finally, Mr Squire and Mr Lange sought costs against the crew members. Ms Harding opposed a costs order, pointing out that the crew members had succeeded in the High Court.

[62] Under r 53 of the Court of Appeal (Civil) Rules 2005, this Court may in its discretion make any orders that seem just concerning costs of an appeal. The principles set out in r 53A are subject to that overriding discretion. While the Court will normally be guided by those principles, we are influenced in this case by the fact that it was commenced as an application under s 256 of the Fisheries Act in an attempt by crew members to obtain the payment of unpaid wages. There is no doubt that there are monies owing to them, even if the quantum is not agreed. In our view costs should lie where they fall.

Result

[63] For reasons we have given, the appeal is allowed.

[64] All applications filed in the District Court are to be transferred to the High Court.

[65] The matter is remitted to the High Court for such further proceedings in accordance with this judgment as may be appropriate.

[66] There is no order for costs.

Solicitors:
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