

IN THE SUPREME COURT OF NEW ZEALAND

SC 35/2014
[2014] NZSC 73

BETWEEN

SAJO OYANG CORPORATION
First Applicant

SOUTHERN STORM FISHING (2007)
LIMITED
Second Applicant

AND

THE MINISTRY FOR PRIMARY
INDUSTRIES
First Respondent

THE DIRECTOR-GENERAL OF THE
MINISTRY FOR PRIMARY
INDUSTRIES
Second Respondent

THE DISTRICT COURT AT
CHRISTCHURCH
Third Respondent

Court: Elias CJ, Glazebrook and Arnold JJ

Counsel: R B Squire QC and J L Inns for Applicants
J C Pike QC and M J Lillico for First and Second Respondents

Judgment: 17 June 2014

JUDGMENT OF THE COURT

- A The application for leave to appeal is dismissed.**
- B The applicants are jointly and severally liable to pay costs of \$2,500 to the first and second respondents.**
-

REASONS

[1] The applicants are respectively the owner and charterer of a fishing vessel. The captain of the vessel, together with four other officers, was charged with various

offences against the Fisheries Act 1996 (the Act). Neither of the applicants was charged, however. The defendants did not appear or give instructions as to the defence of the charges, so that the matter proceeded by way of formal proof. The Judge made findings of fact and found all charges proved.

[2] The Act requires that, on conviction, the vessel be forfeited to the Crown “unless the court for special reasons relating to the offence orders otherwise”.¹ It also provides a process for relief against forfeiture if forfeiture is ordered.²

[3] The applicants wished to be heard at the penalty phase of the proceedings against the defendants, essentially on the issue of whether there were special reasons for the Court not to order forfeiture. The District Court held that only the prosecutor and the defendants had standing at that stage, and declined leave. The Judge indicated, however, that he would not be focussing on forfeiture or relief from forfeiture at that stage.

[4] One of the defendants then indicated that he wished to advance a special reasons application and filed various affidavits in support. These went to the owner’s efforts to ensure that its employees did not breach the law. The Judge indicated that he would deal with the defendant’s special reasons application, and with the issue of relief against forfeiture under s 256, at a later hearing. The applicants then issued judicial review proceedings challenging the Judge’s standing decision.

[5] Dobson J granted the application for judicial review, holding in particular that the applicants were entitled to be heard on the issue of special reasons for non-forfeiture prior to the entry of convictions against the defendants.³ The Crown appears to have accepted in the High Court that it would be more difficult to obtain relief against forfeiture than to establish special reasons not to order forfeiture.⁴

¹ Fisheries Act 1996, s 255C(2).

² Section 256.

³ *Sajo Oyang Corporation v Ministry for Primary Industries* [2013] NZHC 161.

⁴ At [58].

[6] The Court of Appeal allowed the Ministry's appeal.⁵ It held that the applicants had no standing to be heard on the special reasons issue but were limited to seeking relief against forfeiture under s 256. The Court also considered that there was a higher threshold for relief under s 256 than on a special reasons application,⁶ but accepted that the factors listed in s 256 are not exhaustive.⁷

[7] The applicants submit that someone in their position is entitled to be heard on a special reasons application, for natural justice and other reasons. However, the applicants nowhere explain why an application for relief against forfeiture would not sufficiently meet their legitimate interests. We appreciate that the Crown accepts that the standard applicable to an application for relief against forfeiture is more difficult to meet than that applying on a special reasons application. Presumably this is because the relevant subsections in s 255C provide that items are forfeit to the Crown in certain circumstances "unless the court for special reasons relating to the offence orders otherwise" whereas s 256(8) provides that no order for relief against forfeiture shall be made under s 256(7) unless it is necessary "to avoid manifest injustice" or to satisfy certain interests (which are irrelevant for present purposes). We do not necessarily accept this proposition, but, more importantly, do not see that the applicants in the present case are precluded from raising any matter on a relief against forfeiture application that they could legitimately raise on a special reasons application.

[8] Accordingly, we do not consider that it is necessary in the interests of justice that the Court hear and determine the appeal. We do not accept that any issue of general or public importance is raised, nor do we accept that there is any risk of a substantial miscarriage of justice.

[9] The application for leave to appeal is dismissed. The applicants are jointly and severally liable to pay costs of \$2,500 to the first and second respondents.

Solicitors:
Oceanlaw New Zealand, Nelson for Applicants
Crown Law Office, Wellington for Respondents

⁵ *Ministry for Primary Industries v Sajo Oyang Corporation* [2014] NZCA 46.

⁶ At [47].

⁷ At [48].