

IN THE FEDERAL COURT)
OF AUSTRALIA)
WESTERN AUSTRALIA)
DISTRICT REGISTRY)
GENERAL DIVISION)

No W73 of 2004

On appeal from the Federal Court of Australia,
Western Australia District Registry, WAG No. W151 of 2002

BETWEEN:



OLBERS CO LTD Applicant

and

THE COMMONWEALTH OF AUSTRALIA First Respondent

and

AUSTRALIAN FISHERIES MANAGEMENT AUTHORITY
Second Respondent

NOTICE OF APPEAL

The Appellant appeals from the whole of the judgment of Justice French, delivered in WAG No. W151 of 2002, given on 12 March 2004, at Perth.

GROUNDS:

1. The learned Judge erred in law on the proper construction of the relevant provisions of ss.84, 87 and 106A-H of the Fisheries Management Act 1991 (Cth) ("the Act").
2. The learned Judge erred in failing to interpret the relevant provisions of the Act consistently with the international obligations of the First

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Reference:RLM:MS:1166377
rlm/42



Respondent, and in particular its obligations under article 111 of the United Nations Convention on the Law of the Sea, 1982 relating to hot pursuit.

3. On a proper interpretation of the relevant provisions of the Act, the *Volga*, its catch and equipment, was not automatically forfeit to the First Respondent, by operation of the Act upon the commission of any offence. The *Volga* was wrongfully seized without proper legal basis on the high seas by the Respondents, and this precludes any valid assertion of ownership in the vessel, its catch and equipment, or other rights by the Respondents as against the Appellant under the Act or otherwise. Alternatively, even if the vessel, its catch and equipment did become forfeit to the First Respondent, they should have been returned to the Appellant.
4. By reason of the learned Judge's approach to the proper interpretation of the Act, the learned Judge erred in dismissing the Appellant's claims in detinue, negligence and misfeasance in public office.
5. Further, or in the alternative, the learned Judge should have found that the Respondents acquired the *Volga*, its catch and equipment on unjust terms.
6. Further, or in the alternative, the learned Judge should have found that the scheme of forfeiture and condemnation of a foreign boat contained in ss. 106A – 106H of the Act is invalid and of no force in law because the scheme is:
 - (a) incompatible with the requirements of Chapter III of the Commonwealth Constitution; or
 - (b) beyond the legislative powers of Parliament to enact under ss. 51(x), (xxix), (xxxi) or any other kind of legislative power, or inconsistent with such powers.

ORDERS SOUGHT:

1. This appeal be allowed.
2. A declaration that the Respondents' seizure and detention of the *Volga*, its catch and equipment, was unlawful and that the vessel, catch and equipment are not forfeit.



3. An order that the proceeds of the sale of the catch be remitted to the Appellant.
4. An order that the Respondents pay damages to the Appellant in an amount determined by the Court, alternatively that the issue of damages be remitted to the learned trial Judge for assessment.
5. Further, or in the alternative, an order that the First and/or Second Respondents pay the Appellant reasonable compensation in an amount determined by the Court under s. 167A of the Act, alternatively, that the issue of assessing reasonable compensation be remitted to the learned trial Judge.
6. Further, or in the alternative, an order that the vessel and its equipment be delivered up and returned to the Appellant.
7. Further, or in the alternative, judgment for the return or alternatively the value of the Appellant's goods and damages for their detention, alternatively, that the issue of damages be remitted to the learned trial Judge for assessment.
8. An order that the Respondents pay interest to the Appellant in an amount or at a rate determined by the Court.
9. An order that the Respondents pay the Appellant's costs of this appeal and of proceeding WAG No. W151 of 2002.

To the Respondents and their solicitors, the Australian Government Solicitor,
Level 19 , Exchange Plaza, 2 The Esplanade, Perth, Western Australia 6000.

TAKE NOTICE

1. Before taking any step in the proceeding you must enter an appearance in the Registry, unless you have already entered an appearance pursuant to Order 52, rule 7.
2. The papers in the appeal will be settled before the Registrar at
10:30am on 20 April 2004.

The Appellant's address for service is Jackson McDonald, Level 9, 81 St Georges Terrace, Perth, Western Australia 6000

1 APR 2004

Alm Dagh
An officer acting with the authority of the District Registrar



Jackson McDonald
Jackson McDonald
Solicitors for the appellant

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