

IN THE FEDERAL COURT OF AUSTRALIA  
WESTERN AUSTRALIA DISTRICT REGISTRY

No. W15 ) of 2002

BETWEEN:

**OLBERS CO LTD**

Applicant

- and -

**AUSTRALIAN FISHERIES  
MANAGEMENT AUTHORITY**

Respondent

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**STATEMENT OF CLAIM**

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1. The Applicant is a company incorporated in Russia and is entitled to sue and be sued in its own name.
2. The Respondent is an agency of the Commonwealth of Australia established pursuant to s5 of the *Fisheries Administration Act, 1991*.
3. The Applicant is the owner of:
  - (a) the vessel the *Volga* ("the Vessel");
  - (b) the nets and equipment that were at all material times on the Vessel ("the Equipment"); and
  - (c) the fish that were on board the Vessel on 7 February 2002 ("the Catch").
4. The Vessel is registered in the ship registry of the Russian Federation and is entitled to fly the Russian flag.
5. On 7 February 2002, the Vessel was boarded by Australian Fisheries officers and Navy personnel from an Australian military helicopter in the Southern Ocean ("the Boarding").

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6. When the Vessel was boarded, it was in international waters in the Southern Ocean outside the Australian Fishing Zone as that expression is defined by s4(1) of the Act ("the AFZ").
7. At no time prior to the Boarding did:
  - (a) the said military helicopter or any Australian military ship require or order the Vessel to stop while the Vessel was in the AFZ; or
  - (b) the Vessel receive any communication from the military helicopter or from any Australian military ship.
8. Shortly after the Boarding on 7 February 2002, the Master of the Vessel was served with a notice of apprehension purporting to be issued under the *Fisheries Management Act, 1991* ("the Act").
9. The said notice of apprehension claimed, *inter alia*, that the Vessel was apprehended under the Act and set out the grounds for apprehension relied upon by the Respondent.
10. The said notice of apprehension did not:
  - (a) inform the Master that the Catch had been apprehended or seized; or
  - (b) give any grounds as to the basis for the seizure of the Catch.
11. The Vessel was taken to the port of Fremantle in Australia under Australian Navy escort and arrived on 19 February 2002.
12. On 20 February 2002, the Master of the Vessel was served by the Respondent with a notice under s106C of the Act.
13. On 21 March 2002, by letter from its legal representatives, Wilson Harle, the Applicant notified the managing director of the Respondent that the Applicant claimed the Vessel, its nets, traps, equipment and the Catch.

14. On 21 March 2002, the Respondent served notice on the Applicant under s106F of the Act stating that the Vessel, its nets and equipment and Catch were to be condemned as forfeited to the Defendant unless proceedings were issued against the Respondent within two months of the receipt of the notice ("the s106F Notice").
15. These proceedings were issued on 21 May 2002 pursuant to s106G of the Act. The proceedings are issued without prejudice to any rights and remedies available to the Russian Federation under the United Nations Convention on the Law of the Sea, 1982 ("UNCLOS") in the International Tribunal for the Law of the Sea.
16. On or about the date of issue of these proceedings, the Catch was sold by or on behalf of the Respondent and the Respondent has retained the proceeds of sale.
17. Under the Act, a foreign flagged ship may be boarded outside the AFZ provided the requirements for the exercise of the powers under ss84 and 87 of the Act are fulfilled.
18. Any exercise of powers by the Respondent, its servants or agents over the Vessel and Catch was invalid and unlawful because there was no pursuit falling within s87(1)(a) of the Act for either or both of the following reasons:
  - (a) no order to stop was issued to the vessel while within the AFZ;
  - (b) the purported pursuit was not commenced inside the AFZ as required by s87(1) of the Act.
19. In the alternative, any exercise of powers by the Respondent, its servants or agents over the Vessel and Catch was invalid and unlawful because any purported pursuit was terminated or interrupted so that the requirements of s87(1)(b) of the Act for the exercise of powers of pursuit under the Act outside the AFZ were not met.
20. Further, any exercise of powers by the Respondent, its servants or agents over the Vessel, the Equipment and Catch was invalid and unlawful because there were no reasonable grounds to believe that the Vessel had been used, was being used or was intended to be used for fishing in the AFZ as required by s84(1)(a) of the Act.

21. Further, any exercise of powers by the Respondent, its servants or agents over the Catch was invalid and unlawful because no notice was served in respect of the Catch in accordance with s84(1A) of the Act.
22. As a result of the matters set out in paras 17 – 21 above, the Respondent can establish no legal basis whether under the Act or otherwise at law for the seizure and detention of the Vessel and the Equipment or the Catch and such seizure and detention was and is illegal.
23. Accordingly, the Applicant claims the relief specified in the Application.

This pleading was prepared by David Leask, solicitor for the Applicant.

Dated: 21 May 2002



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David Leask