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IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

A 1375/82

BETWEEN ERIC FOREMAN HANNA

Plaintiff

A N D MONARCH INSURANCE COMPANY OF NEW ZEALAND LIMITED

Defendant

Hearing: 3 February 1984

Counsel: M Rowe for Plaintiff
R W Worth for Defendant

Judgment: 3 February 1984

ORAL JUDGMENT OF THORP J

On 10 April 1982 the plaintiff had the misfortune to lose his yacht in a storm which occurred off the east coast of New Zealand. It is common ground that the vessel foundered at a point outside the "territorial waters of New Zealand", as those are defined by the Territorial Sea and Exclusive Economic Zone Act 1977, a territorial boundary which has been accepted for the purposes of interpretation of Acts, and all instruments directly affected by the Acts Interpretation Act 1924 by s 4 of that Act. That is to say, the yacht sank outside the twelve mile limit.

In this action the plaintiff claims against the defendant insurer the value of personal effects lost with the yacht.

Counsel filed at the commencement of this hearing an Agreed Statement of Facts which I was informed was the whole of the evidence on which the action could be determined. It enclosed a copy of a Homepak policy issued by the defendant to the plaintiff on 26 June 1981 and acknowledged by the defendant to be current at

the time of the loss. I was also advised by counsel that I was only required to determine liability and that if this was done they would be able to agree quantum.

The policy form is appropriate for granting cover over buildings, the contents of buildings, and for certain types of liability to third parties. In fact it was only completed in respect of the second class of cover, the contents cover. It is not contested by the defendant that property of the insured, which would have been insured had it been lost while in his house by reason of an insured risk, was lost at sea with the yacht.

However, the insurer has denied liability upon four grounds: first, that the policy was intended to provide cover only for losses occurring within the coastline; second, that in any event the policy is limited to cover loss to the property whilst it is "in New Zealand"; third, that the loss arose from the action of atmospheric or climatic conditions and accordingly was excluded from cover by Exception (5) of the policy; and fourth, that the policy had been permanently removed from the situation specified in the schedule and accordingly liability was excluded by Exception (3) of the policy.

I have little enthusiasm for the first, third and fourth of those propositions. However, I am quite unable to see how the plaintiff can overcome the territorial limitation contained in the principal section of the policy dealing with the type of cover granted to contents.

The relevant part of the policy reads:

> " SECTION 2 - CONTENTS
>
> This term means all Household Furniture, Furnishings and Personal Effects of every description all belonging to or hired by the Insured or to any member of the Insured's family, permanently residing with the Insured at the situation, specified in the Policy Schedule or while elsewhere in New Zealand . ..."

The punctuation of this provision is inept, but to my mind there is no sensible basis upon which it can be concluded that the word "specified" refers to "family" rather than its immediate predecessor "situation", as there is no information about the insured's family in the schedule.

The effect of the provision accordingly is to grant cover to an insured in respect of the stated classes of property while they are at the specified situation (or house) or elsewhere in New Zealand. The necessary corollary must be that cover does not extend to such property when it is not in New Zealand.

Mr Rowe for the insured urged me to keep in mind the statements and declarations in Anderson v Fitzgerald - that the insurer is always under an obligation to make clear to insured persons the extent of the cover being granted, and asked me to give a generous interpretation to the words "New Zealand".

Mr Worth reminded me of the views expressed by Beattie J in Techni-Chemicals Products Co Ltd v South British Insurance Co Ltd [1977] 1 NZLR 311, 318, to the effect that the Court's generosity must be limited to giving words a meaning which can be justified by the language actually used.

Despite Mr Worth's submissions in support of his first claim for exclusion of liability, that is that the policy was intended to provide that losses would only be covered if they occurred within the coastline, I prefer the alternative submission made by Mr Rowe, based in part on the language of Exception (4) of the policy, that some type of loss arising on water was within the contemplation of the parties. I should certainly have been willing to adopt the statutory definition in the Territorial Sea and Exclusive Economic Zone Act 1977 and read the term "elsewhere in New Zealand" to include territorial waters. What I cannot accept is there is any wider definition which one can believe from a reading of the policy was intended by the parties to apply in this case.

Mr Rowe suggested that I pay regard to the limitation expressed in s 33 of the Accident Compensation Act 1982 upon cover under that Act granted to persons travelling between places in New Zealand. That section grants cover to persons who are travelling from one place in New Zealand to another place in New Zealand who do not go beyond a limit of three hundred nautical miles from any point or points in New Zealand, and declares that such persons shall, for the purposes of the Accident Compensation Act, "be deemed to have remained in New Zealand".

I was unable to read that section without drawing the inference that, but for the statutory deeming, the draftsman would have understood persons so travelling to be outside New Zealand. That view was consolidated by noting the definition of "New Zealand" which is contained in s 2 of the Accident Compensation Act 1982, which in general terms is the twelve mile limit. There are, of course, special provisions in the Accident Compensation Act which in a number of special situations extend cover to persons outside New Zealand. But so far as one can gain assistance from that statute, to use the term used by Mr Rowe, as "a statutory insurance scheme", it accepts the twelve mile limit as the basis of cover unless for special and limited purposes.

Clearly the term "elsewhere in New Zealand" must be given a recognisable commercial meaning. I know of no broader definition than that adopted in the Acts Interpretation Act which can be applied in the present case. For that reason, of necessity, judgment must be for the defendant.

Judgment is accordingly given for the defendant together with costs at scale and disbursements to be fixed by the Registrar.

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Solicitors

McElroy Duncan and Preddle, Auckland for Plaintiff

Butler White & Hanna, Auckland for Defendant

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