IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY

A. No. 179/82

BETWEEN MINET NEW ZEALAND LIMITED a duly incoprorated company having its registered office at 181 Willis Street, Wellington, and carrying on business as International Insurance Brokers and Risk Managers

Plaintiff

A N D HAROLD GEORGE COCKBURN of Main Road, Rotherham, North Canterbury, Weed Sprayer

Defendant

Hearing: 14 March 1984

Counsel: J.S. Fairclough for Plaintiff
P.H.B. Hall for Defendant

Judgment: 12 Apr 1984

JUDGMENT OF QUILLIAM J

This is a claim by an insurance broker for the premium alleged to be payable by the defendant for insurance cover arranged on a helicopter.

Certain matters are not in dispute and these enable the general sequence of events to be stated. The plaintiff is a company engaged in insurance broking and dealing extensively in aircraft insurance. In this capacity it has regular business with a firm of underwriters in Australia to which I refer as Forsaith.

In June 1980 the plaintiff's Christchurch manager, Mr Rattray, made an enquiry of Forsaiths for a quotation of the premium which would be payable on a helicopter which had been purchased by the defendant. Mr Rattray had never met the defendant but the defendant had been recommended to him by someone else and Mr Rattray was content to accept that as a sufficient introduction. Indeed, it may well have been the defendant's friend who made the enquiry of Mr Rattray on the defendant's behalf. The reply received to that enquiry was that Forsaiths were not prepared to quote in the circumstances which had been put to them. Presumably the defendant was informed of this.

Nothing further occurred until 30 December 1980 when the defendant asked Mr Rattray to obtain a quotation for insurance cover on the helicopter which was to be used in circumstances different from those contemplated in June. The matter was one of some urgency and so Mr Rattray sent a telex to Forsaiths with the necessary details. He received a reply next morning giving the basis on which the premium would be calculated. This worked out at a premium of $16,560. There was during that day at least one telephone conversation between Mr Rattray and the defendant regarding this proposed insurance. Later in the day Mr Rattray rang Forsaiths and ordered the cover for the defendant. That was accepted and the insurance commenced that day for a period of twelve months.

On 9 February 1981 a statement was prepared for despatch to the defendant in respect of that insurance. It showed the premium and the details of the cover. It is the defendant's case that he never received this document.

The premium has never been paid by the defendant. In accordance with an internal arrangement between brokers

and underwriters the premium was required to be paid by the plaintiff to Forsaiths within 80 days after the commencement of the risk, namely, 31 December 1980. This is a kind of guarantee which is observed in practice as part of the normal business relationship. In accordance with that arrangement the premium was duly paid by the plaintiff on 24 March 1981 by means of a settlement of the account between them and as the result of a routine accounting process. Some attempt was made to argue that there was no proper evidence of payment of this premium but I am satisfied on the balance of probabilities that it was indeed paid. Regular monthly accounts rendered were sent to the defendant but he did not pay them and made no query as to why he was receiving them.

On the basis of this background the plaintiff, in August 1982, issued a writ for the unpaid premium. The principal defence is that no liability to pay the premium ever arose because it was not shown that the defendant had agreed to take the insurance. The resolution of this issue depends upon a decision as to the communications between Mr Rattray and the defendant on 31 December 1980. On behalf of the plaintiff Mr Rattray gave evidence of what had occurred. He gave his evidence in a conscientious and restrained manner and did not at any stage attempt to overstate the position. His difficulty was that he was required to rely very largely upon memory. It is a matter of some surprise to find a large organisation such as the plaintiff purporting to have concluded a transaction with so little in the way of documents or records. No doubt it has found this method satisfactory in the majority of cases but it is obviously vulnerable when something goes wrong.

Mr Rattray's evidence was that although he was vague as to the precise occasion and content of his conversations with the defendant, nevertheless it was clear

that he told the dfendant of the amount of the quotation and received instructions to conclude the cover.

The defendant's evidence was that he told Mr Rattray he was not able to pay the premium quoted and that all he wanted was cover for one month from 3 January 1981 during a period when the helicopter would be operated by a licensed pilot on agricultural work.

Mr Rattray acknowledged that in the course of their discussions there had been some reference to a period of one month, during which there was to be a temporary licence. He also acknowledged that in the way matters were arranged it could have happened that he and the defendant were at cross purposes. It was argued that the defendant was altogether inexperienced in the field of helicopter operations and could well have failed to understand properly what was involved.

There are a number of unsatisfactory features about the evidence on both sides. Although the details of the placing of the insurance with Forsaiths are clear, and there is no doubt that Mr Rattray believed he had authority from the defendant to conclude a contract of insurance, it is much less clear whether there was ever an agreement made between the two of them. It needs to be remembered that Mr Rattray and the defendant never met. Their only contact was by telephone. One might have thought that in such circumstances Mr Rattray would have been at pains to have reduced to writing the transaction which he believed had been made and to have that acknowledged by the defendant. It is true that he had a statement prepared and it may well be that this was, in the course of normal office routine, posted to the defendant. But both the defendant and his wife (who handled virtually all his mail) denied ever having received the statement. Certainly nothing was done to obtain a written acknowledgment from the defendant and no attempt was made to

follow the matter up. Another curious circumstance is that the policy of insurance, when received by the plaintiff from Forsaiths, was, in accordance with the plaintiff's normal practice, retained and no copy of it was sent to the defendant. It is not clear how the defendant was expected to become aware of the terms of the policy which he was said to have taken out. If a copy had been sent to him then this must have alerted him to the transaction into which the plaintiff considered he had entered.

Even when Mr Rattray had occasion to follow up the transaction, namely, in June 1981, all he did was to write a brief letter enquiring as to the present position regarding the pilot of the helicopter. There was no suggestion that the defendant was considered to be in default of payment. A further letter sent on 11 August 1981 made enquiry as to the uses to which the helicopter was being put and again made no reference to any question of unpaid premium. There were, of course, the monthly accounts rendered. In the absence of any other suggestion that he was expected to pay the amount shown on the accounts, the defendant regarded them as no more than some kind of mysterious office routine probably intended to remind him that if he wished to complete insurance on the helicopter the premium would be the amount shown on the accounts.

The defendant was altogether unversed in business affairs and of limited intellectual capacity. He is no doubt an excellent worker but he demonstrated in the witness box his ability to become thoroughly confused with business matters. It may be that a more alert person would have realised that he was in danger of committing himself to a financial transaction but I doubt whether the defendant ever appreciated what was happening. If, of course, the transaction had been clearly evidenced in some way then the defendant's imperfect grasp of business matters would not

have excused him. The question, however, is whether there was ever a real meeting of minds and I am unable to conclude that it has been shown on the balance of probabilities that there was.

The defendant's evidence was that he made two enquiries of Mr Rattray. He was unable to indicate whether these were made on the same or on separate occasions. He said he wished to know what the premium would be for insurance cover for one month, this being the period of the temporary licence he had obtained. He also wanted to know what a year's premium would be because he was proposing to apply for a permanent licence (having failed previously on such an application), and his accountant was compiling a case to present in support of that application which would need to include all the likely expenses to be incurred. I have little doubt that there is some confusion in the defendant's mind on this but it is undoubtedly the case that he made known to Mr Rattray that his immediate need was for insurance cover for one month. Mr Rattray acknowledges as much. Mr Rattray's evidence was that he had told the defendant there was no such thing in respect of aircraft insurance as a cover for any period less than twelve months, but I am not able to feel satisfied that the defendant ever grasped this.

I also accept that Mr Rattray rang the defendant's home to tell him what the annual premium would be and spoke to the defendant's wife. She rang the defendant at his work to tell him and then rang Mr Rattray back. She left a message for him to ring the defendant at his work and Mr Rattray did so. All this was done as a matter of urgency. Following his conversation with the defendant Mr Rattray rang Forsaiths in Australia to place the insurance. The problem is whether he correctly understood the defendant's reaction to the information which had been passed to him through his wife. I am unable to conclude that he did. I can well

believe, having seen and listened to the defendant, that he may have failed to convey his wishes in a telephone conversation. He has said that the amount of the premium, as conveyed to him, was far beyond his means and that he had no intention of committing himself to payment of it. I accept his evidence on this and am satisfied that in the end there was never a clear understanding reached between the two of them. This was no doubt materially contributed to by the defendant's confusion of mind and inability to express himself. But if Mr Rattray was prepared to transact business in this informal way then he had an obligation to ensure that there was no misunderstanding. He has conceded that he himself was vague as to some of the details of what occurred and that it may be he and the defendant were at cross purposes.

It is possible to look at later events in order to see whether there is any evidence that a contract was ever concluded. In this case the later events do not support that it was. During the course of 1981 the helicopter suffered considerable damage in an accident. The cost of repairs was about $8,000. No claim was made on the insurer for this and the plaintiff met part of it himself. The rest was paid by the pilot in charge of the helicopter at the time of the accident. Not too much significance should be attached to this particularly as the amount of the claim was barely half the amount of the premium, but it is at least possible that it is consistent with the attitude of the defendant that he did not at any stage regard himself as holding any insurance cover on the helicopter.

The fact that the premium was paid by the plaintiff to Forsaiths is not, of course, a matter of relevance to the present enquiry. The defendant could have had no knowledge of it. What is surprising is that the plaintiff had been prepared to pay that premium under its obligation as a

guarantor without having first made any attempt to extract payment from the defendant.

However that may be, I am not prepared to hold that the plaintiff has established that a contract was ever concuded and the plaintiff's claim must accordingly fail.

There will be judgment for the defendant with costs according to scale and disbursements and witnesses' expenses as fixed by the Registrar.

Solicitors: Cavell, Leitch, Pringle & Boyle, CHRISTCHURCH, for Plaintiff

Wood, Hall & Co., CHRISTCHURCH, for Defendant