IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

A.1101/83

BETWEEN LEON FREDERICK BUENO of Auckland, Commercial fisherman, and DAWN HEATHER BUENO of Auckland, married woman

Plaintiffs

AND MARAC FIRE AND GENERAL INSURANCE LIMITED a duly incorporated company having its registered office at Auckland and carrying on business as an insurer.

Defendant

Hearing: 22, 23 August 1984

Counsel: Lange for Plaintiffs
Black and Boyle for Defendant

Judgment: ~~August 1984~~
3 SEP 1984

JUDGMENT OF PRICHARD, J.

During a blow on the night of 9 July 1983, the 35ft. launch "Abalone" came off her moorings in Hobson Bay and was wrecked against the roadside sea wall. Her owners, Mr and Mrs Bueno, had insured her with Marac Fire and General Insurance Limited for $40,000, which was close to her real value. They claim under the policy the sum of $35,750 being the alleged pre-accident value, $40,000,

less $4,250 realised by sale of salvaged items. The insurers resist the claim on the ground that, in breach of a policy stipulation, the launch was left "unattended" for more than 24 hours on a mooring which had not been "approved" - there is a dispute as to what is meant by the terms "unattended" and "approved" - and on the further ground that the owners had not, as the policy required, "exercised due diligence and care". An amended statement of defence further alleges that the insurers are entitled to avoid liability on grounds of innocent misrepresentation and non-disclosure as to the identity of the mooring used at the relevant time. And the insurers counterclaim for salvage expenditure totalling $3,667.55 incurred before the company knew the situation with regard to the moorings.

The Plaintiffs say that if there was any breach of the terms of the policy (which they do not admit), then the insurer is precluded by waiver or estoppel from avoiding liability. As to the allegation of misrepresentation or non-disclosure, the Plaintiffs say that there was no representation with regard to moorings when the policy was issued and that any subsequent misrepresentation was not material.

The "Abalone" was a heavy displacement launch built in 1943 for use by the Government Tourist Bureau as a passenger launch on Lake Rotoma, licensed for 47

passengers. In 1977 she was converted to a deep sea fishing trawler and, in 1980, to a commercial long line fishing boat. Mr and Mrs Bueno acquired the "Abalone" in April 1981. Until early 1982, Mr Bueno used her as a commercial fishing vessel. When not at sea she was tied up at the Freeman's Bay viaduct.

Early in 1982, Mr Bueno acquired another fishing vessel, the "Christina" and converted "Abalone" to a pleasure boat with the intention of selling her. This involved quite extensive renovations, including new flooring and the complete reconstruction of the internal accommodation.

On or about 7 April 1982, when the work was finished, Mrs Bueno, who seems to be the business head of the Bueno family, telephoned Marac to enquire about insurance. She was told that the company would insure the vessel provided it was not used for commercial fishing. A proposal was completed by Mr Bueno on 26 April 1982: a policy was issued on 12 May 1982 to have effect from 22 April 1982 to 22 April 1983. At the date of the proposal the "Abalone" was still tied up at the Freeman's Bay viaduct.

The policy contained the following terms:-

"GENERAL CONDITIONS AND WARRANTIES:

1. Warranted no cover if left unattended on other than approved moorings for more than 24 hours whilst afloat;

2. Warranted that the insured shall exercise due diligence and care and that the insured vessel shall be seaworthy at all times."

The Freeman's Bay viaduct is a berth for work boats and commercial fishing vessels; it is no place to keep a pleasure launch. Mr Bueno advertised for moorings and arranged to rent a suitable mooring in Hobson Bay from a Mr Hall, who answered the advertisement. Mr Hall showed Mr Bueno his "Mooring Permit" issued by the Auckland Harbour Board, a report from the Board's contractor on the condition of the mooring as inspected on 12 January 1981 and an invoice dated February 1982 showing that certain work indicated by the report had been carried out by a firm specialising in the servicing of moorings. The inspection report in conjunction with the invoice indicated that the mooring was in a sound condition and suitable for a craft such as the "Abalone". To assist him in locating the mooring, Mr Hall supplied Mr Bueno with a chart of a section of the Harbour Board moorings in Hobson Bay.

Mr Hall's mooring is designated by the Auckland Harbour Board as Mooring HB6. On a date which is not clearly established in evidence - but it must have been shortly after the date of the proposal - Mr Bueno, in the

"Abalone", accompanied by his son and another person in the "Christina", set out to locate mooring HB6. By mistake, they wrongly identified another mooring, HB2, as the one they were looking for. This is understandable, not only because the mooring buoy of HB6 had, in all probability sunk, but also because the chart supplied by Mr Hall was misleading. It was, in fact, only a photocopy of one section of the Habour Board chart. At one edge there was a dark line (really a smudge) which appeared to be the position of the breakwater; mooring HB6 was shown as being one of a line of moorings nearest to the smudge - i.e. to the apparent position of the breakwater. Mr Bueno in "Abalone" and his son in "Christina" spent about three quarters of an hour cruising amongst the moorings and eventually decided that a mooring which was actually HB2 was the mooring they were looking for, although it was rather closer to the breakwater than they expected from Mr Hall's description. The figure "2" had once been painted on the mooring buoy but at the time of Mr Bueno's search for HB6 it was almost indecipherable - what was left of it could easily be mistaken for a "6".

A mooring, as used in the Auckland harbour area consists of two or more heavy weights (usually train wheels) linked together by a chain bridle to which is connected the mooring chain. The mooring chain is composed of three lengths of chain of different weights which are shackled

end to end and so arranged that the lightest chain is at the top and the heaviest chain at the bottom. The upper end of the top chain is shackled to a rope or a very light buoy chain to which the mooring buoy is attached. The lower end of the bottom chain is attached to the bridle by means of a heavy shackle. The purpose of using heavier components towards the lower end of the mooring chain is not related to the overall strength of the assembly - this, obviously, depends on the strength of the weakest link or the lightest chain - but using heavier chains towards the bottom causes a "sag" in the mooring chain and this acts rather like a spring preventing the moored vessel from jerking directly at the weights as the bow of the vessel rises and falls under the influence of waves.

Before leaving the "Abalone" on the mooring, Mr Bueno hauled up the buoy chain and several feet of the top chain. He examined the upper section of the chain. It was by no means new but appeared to be in reasonable although "rough" order. After attaching the launch to the top chain Mr Bueno observed the seamanlike precaution of backing off in reverse gear to ensure that the mooring was holding.

Mr Bueno then went to the Harbour Board office and obtained a permit (dated 1 May 1983) entitling him to moor the "Abalone" on mooring HB6.

Thus it came about that on the night of 9 July 1983, when it came up to blow, the "Abalone" was on the mooring HB2 but was believed by Mr Bueno to be on mooring HB6.

Mr Bueno, who is well versed in the ways of the sea, knew during the afternoon of 9 July that the wind was rising and he looked at the vessel (from the shore) several times during the day. The launch seemed to be riding safely. It was not until the morning that she was found sunk alongside the sea wall.

Before the "Abalone" was shifted to the Hobson Bay mooring, Mrs Bueno telephoned Marac to inform them that the boat was going on to moorings. She was told that the vessel would be covered but that she should furnish Marac with the mooring permit and the Harbour Board report on the mooring together with invoices relating to any work done to up-grade the mooring since the report - and that until these documents were submitted, the policy would be subject to a $2,000 excess in place of the $100 excess provided for in the policy. This was followd up by an endorsement dated 19 April 1983 which was sent by mail to Mr and Mrs Bueno, reading as follows:-

> "It is hereby declared and agreed that the company shall not be liable for the first $2,000.00 of each and every claim relating either directly or indirectly to the failure of the mooring to which the insured craft is attached. This excess is not cumulative upon the excess expressed in the schedule. Upon receipt of approved mooring certificates the $2,000.00 excess shall automatically be deleted."

The policy expired on 22 April 1983 and was duly renewed for a further twelve months.

There was some delay in obtaining the Harbour Board inspector's report on HB6, as Mr Hall had gone overseas immediately after the renting arrangement had been entered into. However, Mrs Bueno obtained the documents and forwarded them to Marac under cover of a letter dated 4 May 1983. The Buenos heard nothing further from the company.

The buoy and chain assembly of HB2 and the Harbour Board inspector's report on HB2 were produced in evidence. The Report, dated 16 September, 1981, reports all components as either "reasonable" or "satisfactory" with the exception of the top chain and the second chain, both of which are classed as "dangerous". The weights are described as "four railway wheels" and there is an observation that the bridle is "very light, 5/8" chain". The reason for reporting the two upper chains as "dangerous" was obvious to me on an examination of the two chains. Although both chains were, for the most part, in reasonable condition, several links at the lower end of the top chain and several links at the upper end of the second chain were worn to less than half their original thickness. The badly worn links were those closest to the shackle joining the two pieces of chain. This,

undoubtedly, was the weak point in the assembly and was the reason why the Inspector classed the two top chains as "dangerous". It would not be revealed by an examination of the top four or five feet of the top chain - that being the part examined by Mr Bueno before attaching his launch to the mooring.

As to the light bridle, an expert witness said that this had ample strength and that the inspector's comment reflected on the weight of the bridle chain - not, in the opinion of the witness, important in the case of HB2 because of the use of four train wheels in tandem instead of the usual two.

But it was not the worn links in the two upper chains which gave way on the night of 9 July 1983. When the "Abalone" came ashore she had all three chains still attached to her bow, and all were intact. The missing component was the shackle which had once connected the lower end of the bottom chain to the bridle. This particular shackle was described in the Harbour Board inspector's report as "reasonable". An expert witness gave evidence of having had previous experience of the failure of shackles under such conditions. He produced, by way of illustration, a shackle in which the thread of the shackle-pin had so corroded that the pin was loose and could be removed without unscrewing it. It was the expert

opinion of several witnesses that in the case of HB2 either the thread on the shackle pin had corroded away or alternatively, as can happen, that the pin had become unscrewed and fallen out of the shackle. Obviously, Mr Bueno could not have discovered the existence of this potential hazard without employing a diver or having the entire mooring lifted out of the water.

I turn then to consider the relevant terms of the policy.

The stipulation relating to approved moorings is expressed to be a warranty. However, that term, as it is used in insurance policies, is susceptible of a wide variety of meanings. The authors of MacGillivray & Parkington on "Insurance Law", 7th Ed., para. 525, have this to say:-

> "The reader should be warned that any attempt to explain the meaning of "warranty" in insurance law is complicated by the often indiscriminate use of the term to denote clauses in policies with widely varying functions, and by variation in legal vocabulary attributable in part to changes in legal terminology over the years and in part simply to judicial idiosyncrasy. The key to an understanding of the term, however, is to realise that a warranty is what in other contracts is known as a condition of the contract, that is, a term the breach of which does not merely entitle the wronged party to damages for breach of contract but also entitles him to repudiate his entire liability under the contract if he so elects."

Moreover, the fact that the policy attaches a particular

appellation to a stipulation does not necessarily determine the legal effect of that stipulation: "... there is no magic in the word "warranted" which is frequently used with considerable ambiguity in policies". (MacGillivray supra cit at para. 530).

The essential characteristic of a true warranty is that once the condition imposed by the warranty is breached, the policy is avoided - the insurer is discharged from all further liability under the policy as from the date of the breach, and this is so whether the warranty is material to the risk or not and regardless of whether the breach is remedied before the loss occurs. The consequences of a promissory warranty are so defined by s.34 of the Marine Insurance Act, 1908. But before those rules are applied, it must first be ascertained that the stipulation in question is indeed a true warranty.

Another type of condition attached to policies of insurance (preferably referred to as a "suspensive condition") has the effect of temporarily suspending the cover until the breach of condition is remedied. Because the risk is thus limited to periods when the condition is being complied with, a clause of this kind is sometimes called a "warranty delimiting the risk" - but this, strictly speaking, is a misnomer as the concept of a suspensive condition is the antithesis of that of a true warranty.

Which of these two intentions is to be attributed to a particular stipulation is a matter of construction. The use of the word "warranted" is certainly not determinative. As MacKinnon, J. said in Roberts v. Anglo-Saxon Insurance Co. (1926) 26 Ll.L.R.154, "Now nothing turns upon the use of the word "warranted"; the word warranted is always used with the greatest possible ambiguity in a policy". In that case it was held that the words "warranted used only for the following purposes - commercial travelling" had the effect of a suspensive condition. As MacKinnon, J. observed, if the Anglo-Saxon Insurance company desired to put in a condition that the validity of the whole policy should at once cease if ever the car was used for a purpose other than commercial travelling, then it should have lived up to its name and done so "in perfectly clear Anglo-Saxon, the result of which I should suppose would be that an increasingly small number of people would desire to insure with them."

Ivamy "General Principles of Insurance Law" 4th Ed. p.324 deals with the question as follows:-

> "A policy which is intended to cover accidents happening only in a particular locality or in particular circumstances, necessarily ceases to attach upon a change of locality or circumstances, as the case may be.
>
> If, subsequently, the original position is restored, a question may arise, in the event of an accident happening in the original locality or in the original circumstances, whether the alteration has put an end to the policy or merely

> suspended it during the continuance of the alteration. The answer to the question depends upon the construction to be placed upon the language of the particular policy.
>
> If the language used amounts to a condition against alteration, the policy is avoided and does not reattach when the original position is restored. In some cases, however, it is clear from the nature of the subject-matter that the alteration must have been within the contemplation of the parties, and the policy accordingly reattaches. Thus, if horses are insured whilst in a stable, their removal from the stable suspends the operation of the policy, but it reattaches upon their return." (Citing Gorman v. Hand in Hand Insurance Co. (1877) Ir. R.11 C.L. 224).

In de Maurier (Jewels) Ltd v. Bastion Insurance Co. Ltd (1967) 2 Lloyd's Rep. 550, 558, 559, Donaldson, J. referred to the distinction between a condition delimiting the risk and a promissory warranty and went on to say:-

> "The commercial reasoning behind this legal distinction is clear, namely, that breach of the former type of warranty does not affect the nature or extent of the risks falling outside the terms of the warranty."

Applying that reasoning, and because it must have been contemplated that the insured vessel would not always be on her home moorings, I am left in no doubt that a breach of the mooring stipulation would not invalidate the policy but would preclude the assured from recovering any loss sustained in consequence of any mishap which should occur while the breach existed.

The meaning of "left unattended" was considered in Starfire Diamond Rings Lrd v. Angel (1962) 2 Lloyd's Rep. 217. The policy covered jewellery against theft and contained a clause excluding theft from a vehicle "which not being garaged is left unattended". The driver went 37 yards away from it to relieve himself. It was held that the vehicle was "left unattended". Lord Denning, M.R. considered that "attended" means "that someone is able to keep the vehicle under observation, that is, in a position to observe an attempt by anyone to interfere with it, and who is so placed as to have a reasonable prospect of preventing any unauthorised interference with it". I would not go so far as to say that a vessel on moorings is necessarily "left unattended" when there is no one on board: but for the stipulation to have any practical value, I think the expression must mean that a vessel in that situation is unattended if there is no one in a position to perceive quickly when the moored vessel is in trouble and then to have a reasonable prospect of taking steps to avert damage. In my view, an occasional inspection from the roadside from a point at a considerable distance from where the vessel was lying was not sufficient to comply with this stipulation.

As to what is meant by "approved moorings", there are several possible interpretations. It might mean approved by the appropriate Harbour Authority: or approved by some third party such as a marine surveyor: or that the

mooring must be of a type which would generally be approved by marine underwriters: or that the condition of the mooring must be such that it would generally be approved marine underwriters: or it might simply mean approved by the insurer.

Approval by a third party can hardly have been contemplated in the absence of any nomination of the third party.

So far as the Harbour Board is concerned, the Board approves only the site, not the construction or condition of moorings under its jurisdiction. The mooring HB2 would meet the criterion of Harbour Authority approval.

I have no direct evidence as to what type of moorings would generally be approved by marine underwriters, but there is no reason to suppose that HB2 was a type of mooring which would not be so approved.

According to the Harbour Board's Inspector of Moorings and two other experts who gave evidence, HB2 would not be approved by them as a safe mooring because of the condition of some of the links near the bottom of the upper chain and near the top of the second chain. This evidence suffices to show that the condition of HB2 was such that the mooring would not be approved by the general body of marine underwriters.

If "approved" means "approved by Marac Fire and General Insurance Ltd" then, of course, there was no such approval given. The Defendant contends that this is the true meaning of the stipulation. I do not agree. In de Maurier (Jewels) Ltd v. Bastion Insurance Co. this interpretation was rejected by Donaldson, J. in favour of the meaning "of such a character as would meet with the approval of at least the general body of underwriters in this field". Similarly in Compania Naviera Maropan S.A. v. Bowaters Lloyd Pulp and Paper Mills Limited (1955) 2 All.E.R. 241, 244, Singleton, L.J. said, with reference to the words "approved loading place" in a charterparty:-

> "The word "approved" must mean approved generally in the trade or business. To say that it means no more than approved by the parties, or, in other words, agreed between them, has the effect of depriving the word of any meaning in this setting."

The expression "approved moorings" being thus ambiguous, the contra proferentum rule would warrant the adoption of the meaning most favourable to the policyholder - i.e. that the situation of the mooring be approved by the appropriate Habour Authority. However, if "approved" means "such as would be approved by at least the general body of marine underwriters, then I must conclude that at the time when "Abalone" came adrift, she had been left unattended on other than "approved moorings" for more than 24 hours; the mooring was approved (as to its situation)

by the Harbour Board but had not been approved by the insurers and its condition was such that it would not be approved by marine underwriters in general.

However, I do not need to determine the precise meaning to be accorded to the expression "approved moorings" because it is my view that whatever its meaning, compliance with Condition 1 of the policy was waived by the Defendant company when, with knowledge that the vessel was on moorings which had not been approved, the company agreed, on its own terms, to cover the risk subject to a $2,000 policy excess. The indorsement says that until the receipt of "approved mooring certificates" the company will not be liable for the first $2,000 of each and any claim relating either directly or indirectly to the failure of "the mooring" to which the insured craft is in fact attached. This is a radical departure from the original terms of the policy. It substitutes for the requirement that the vessel be on "approved moorings" - whatever that means - a different stipulation altogether. In effect the company is saying "We know the vessel will be on a mooring which we have not approved. Nevertheless, we will keep you covered subject to a $2,000 policy excess which will cease to apply when you have furnished mooring certificates of which we approve".

To my mind there is only one intention to be gathered from the indorsement: that despite the non-approval of the mooring - any mooring - to which the vessel is attached, the company agrees to be liable for all save the first $2,000 - provided that the excess will cease to apply if and when the company is furnished with relevant mooring certificates of which it approves. This is quite inconsistent with an intention that the original policy condition should continue in force. If the original stipulation remained in force the company would not be liable for any loss sustained while an unapproved mooring was used for a period exceeding 24 hours - so the imposition of a $2,000 excess would be pointless.

With full knowledge of the fact that the vessel would be using a mooring which had not been approved - the identity of which was not even specified - the company elected not to exact compliance with the original stipulation and to introduce a different criterion and a different limitation of its liability under the policy. In my view, this was a waiver of the original policy condition.

That is how matters stood when the policy was renewed on 22 April 1983. And that, in my view, is how matters stood when the mooring failed on the night of 9 July 1983. In the meantime, of course, Mrs Bueno had sent in documents relating to another mooring. However, those documents

were never acknowledged by the company. There was no indication from the company that HB6 was "approved" for the purposes of the original policy condition or that the certificates were approved for the purposes of the indorsement. Nor was there a stipulation that only HB6 was to be used. The indorsement did not stipulate that any particular mooring be used - merely that unless and until certificates pertaining to whatever mooring which was used were approved, there would be a policy excess of $2,000.

For these reasons, I find that the company waived compliance with condition 1 of the policy and that such waiver was effective at the time of the loss.

The stipulation in Clause 2 of the "General Conditions and Warranties" is "Warranted that the insured shall exercise due diligence and care". This, again, is a stipulation expressed in the form of a warranty. But, in my view, it is another condition delimiting the risk, not a true warranty.

In determining the standard of diligence and care required to comply with this condition, an overriding consideration is that here is a policy which is intended to afford indemnity not only against loss of or damage to the insured vessel "in respect of perils of the sea" but also, in terms of Clause 13(c) of the contract, in respect of:-

> "loss of or damage to the Vessel caused by the negligence of any person whatsoever."

The condition is not to be given a meaning repugnant to the commercial purpose of the contract. It cannot be read to mean "I will insure your vessel against the consequences of your own negligence on condition that you are not negligent - heads I win, tails you lose".

The effect of the judgments in Fraser v. Furman (Productions) Ltd (1967) 1 W.L.R. 898; Mason v. Century Insurance Co. Ltd (1973) 2 N.Z.L.R. 216, 222; Roberts v. State Insurance General Manager (1974) 2 N.Z.L.R. 312, 315 is to resolve the dilemma by reading a condition of this kind in a policy purporting to insure against the policyholder's own negligence as a condition avoiding the cover only on proof of reckless conduct on the part of the insured. In Roberts v. State Insurance, McMullin, J. held that recklessness in this context, means objective recklessness - not necessarily, as Lord Diplock held in Fraser v. Furman (Productions) Limited, confined to cases where there is deliberate courting of a danger actually recognised by the insured. McMullin, J. said:-

> "In my opinion a construction which excepts from the indemnity acts or omissions which the insured either knows of but chooses to disregard or which ought to be so obvious to the ordinary man as to be inescapable is a proper one. It gives some meaning to the requirement that the insured shall

> take reasonable care to avoid loss but at the same time does not enable an insurer to withdraw the umbrella of indemnity on a rainy day."

I do not consider that Mr Bueno's mistake in identifying the mooring was reckless, in any sense of that word. He was misled by the part chart which he had been given. In the end, he was satisfied that he had found the right mooring in a position which corresponded to the position of mooring HB6 in relation to what appeared on the chart to be the breakwater. Nor was he reckless in making use of the mooring which he believed to be HB6. He had a report which indicated that HB6 was a sound mooring suitable for his vessel. He inspected as much of the chain as he could reasonably be expected to lift out of the water - and it seemed adequate. He observed the precaution of testing the mooring under reverse power. Obviously nothing he could have done short of engaging a diver to inspect the lower components of the mooring or employing a contractor to lift the whole assembly clear of the sea would have disclosed to him the actual cause of the failure, which was almost certainly due to the pin of the shackle attaching the bottom length of chain to the bridle coming loose.

The misrepresentation alleged in the amended statement of defence is the representation that the "Abalone" was moored, either on HB6 or on approved moorings - that the

non-disclosure was failure to disclose that she was moored on HB2 or on moorings which were not approved. If any such representation (or non-disclosure) had been made before the contract was concluded or as the basis of renewal of the policy then, if it was material and was not substantially correct, it would of course entitle the insurers to avoid the contract. The operative conditions of such pre-contractual misrepresentations are codified in s.20 of the Marine Insurance Act, 1908 and s.5 of the Insurance Law Reform Act, 1977.

But the representation was not an inducement to either the issue of the policy or its subsequent indorsement. On 4 May 1983 Mrs Bueno forwarded to the Defendant company the inspector's report and other documents relating to HB6. This, no doubt, was a representation that the vessel was moored on HB6. But this was after the policy was issued, after it was renewed, and after the date of the indorsement of 19 April 1983. So it was not a representation on the faith of which the contract was entered into, either on its issue or renewal. Moreover, it was not a representation that the "Abalone" would never tie up to moorings other than HB6.

The policy does not require that the "Abalone" never be moored except on one specified mooring - she is a sea-going vessel and it must be in the contemplation of both parties that from time to time she will be away from home and will use moorings other than one particular

mooring in Hobson Bay. What the policy did require by its original terms as a condition of the insurer being at risk is that the vessel not be left unattended for more than 24 hours on other than "approved moorings". The penalty for not complying with that original stipulation, as I have interpreted the provision, was that the company would not be liable in respect of any damage sustained through any mishap which occurred when the vessel was so moored. But the company chose to vary those terms by the indorsement of 19 April 1983. In full knowledge that "Abalone" was to go on to a mooring which was not, in the company's view, an approved mooring and without any precise identification of the mooring which was to be used, the company agreed that the only penalty for using such a mooring would be that unless and until it had received and approved the relevant mooring certificate, it would impose a policy excess of $2,000. If the company had agreed to vary the contractual stipulation in this way on the faith of a representation that the vessel would be moored on HB6 as it was described in the inspector's report, then it might be argued that the indorsement would apply only if and when mooring HB6 was used. But that was not the case. The indorsement was not related to HB6 - the company knew nothing of HB6 on 19 April 1983. It follows that the subsequent mistaken representation that the vessel was using HB6 did not affect the risk which the company had already agreed to accept.

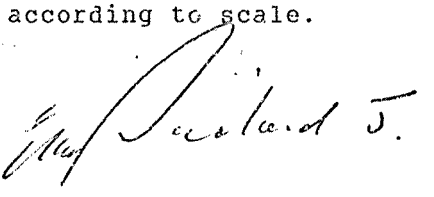
It is my view that on 9 July 1983, the Defendant company was at risk under the policy on its own terms, which included the imposition of a $2,000 policy excess if the loss was sustained as the result of a mishap occurring when the insured vessel was on moorings in respect of which the company hd not received and approved a mooring certificate.

Both parties called valuers; but there was little dispute between them. I find the value of the vessel (including depth sounder, auto-pilot and radio) to be $38,000. The loss for which the Plaintiffs are entitled to be indemnified is:-

Value of insured vessel		$38,000.00
Less: salvaged items	$4,250.00	
policy excess	2,000.00	6,250.00
		$31,750.00

On the claim there will be judgment for the Plaintiffs for the sum of $31,750 with costs according to scale and witnesses expenses and disbursements as fixed by the Registrar.

The Plaintiffs are entitled to judgment on the counterclaim with costs according to scale.



Solicitors:

Messrs Simpson Grierson, Auckland, Solicitors for Plaintiffs;

Messrs Rudd Garland Horrocks Stewart& Johnston, Auckland, Solicitors for Defendant.