

IN THE HIGH COURT OF NEW ZEALAND  
AUCKLAND REGISTRY

C.P. 259/88

646

IN THE MATTER of the Earthquake  
 & War Damage Act 1944

BETWEEN EARTHQUAKE & WAR  
DAMAGE COMMISSION

Plaintiff

AND APTERYX INSURANCE CO  
LIMITED

Defendant

**LOW  
 PRIORITY**

Hearing: 1 February, 15 April 1991  
Counsel: K. Robinson for plaintiff  
 Miss B.J. Hunt for defendant  
Judgment: 15 April 1991

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(ORAL) JUDGMENT OF BARKER J

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On 3 October 1990, Master Gambrill delivered a reserved decision on an application by the plaintiff for leave to issue interrogatories and for further particulars. Both parties were unhappy with the decision; the plaintiff sought to review it within the appropriate time. In the application for review was reference only to interrogatory 2(d) and to interrogatory 6. The defendant, however, wished to review more features of the Master's decision.

The plaintiff's application for review was filed in time,

although it did not specifically state the grounds on which the review was sought, as required by Practice Note. Because the plaintiff's quarrel with the Master's decision was very minor, of greater concern is that the defendant did not, within the specified time, file an application to review the Master's decision; it merely filed a consent to the plaintiff's review application with a statement as to ways in which the defendant wished the Master's decision to be reviewed. I have not found it necessary in the way things have transpired, to rule on whether the defendant could have filed an application for review because I consider it desirable for the parties to get on with the litigation. There have been years of interrogatory applications and I think the time has long since come when the parties should face up to the litigation.

The difficulties of the plaintiff, however, are understood and were articulated by the Master; namely, the plaintiff is seeking to recover earthquake and war damage premiums from the defendant in respect of insurances on property in New Zealand, which insurances were apparently effected in the Cayman Islands.

The question for determination was whether in terms of S.14(1) of the Earthquake & War Damage Act 1944 any property was insured "under any contract of fire insurance made in New Zealand". The difficulties in the way of the plaintiff are obvious if the relevant contracts of

insurance were not made in this country.

At the end of the first hearing on 1 February 1991, counsel thought that it might be possible to obtain agreement on the issues being raised. Even though this was technically a review of the Master's decision, I did note that the Master had reserved leave to renew the application before her. It seemed to me, that because of this reservation I do have power in her stead to consider the application myself.

I indicated to counsel the matters where I thought both suggested interrogatories could be improved and where further particulars might be appropriate. After further discussion today, the interrogatories have now come to a stage where I think it is proper for them to be administered; there is one area of further particulars which should be supplied. I might say that I agree, with respect, with the views of the Master as to the scope of interrogatories and as to the changes made by the new Rules.

Accordingly, the proper order for me to make is -

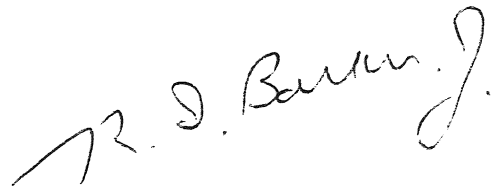
- (a) To vacate the order made by the Master on 3 October 1990;
- (b) To order the defendant to answer the interrogatories now produced within 42 days;

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- (c) Interrogatory 1(a) before the Master is to be answered also;
  
- (d) Further particulars as in paragraph (1) in the amended application of the plaintiff are to be provided within 42 days. The amendment in paragraph 1(e) should merely read "specify the relevant terms thereof";

The question of costs is reserved.

Once the interrogatories have been supplied, the parties should now set this matter down for trial.

A handwritten signature in black ink, appearing to read "R. D. Barker". The signature is written in a cursive style and is located in the lower right quadrant of the page.

Solicitors: Crown Law Office, Wellington, for plaintiff  
Russell McVeagh McKenzie Bartleet & Co,  
Auckland, for defendant