Neutral Citation Number: [2019] EWHC 3552 (Comm)

Case No: CL 2018 000288

**IN THE HIGH COURT OF JUSTICE**
**QUEEN'S BENCH DIVISION**
**COMMERCIAL COURT**

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 19/12/2019

**Before** :

**MR. JUSTICE TEARE**

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**Between :**

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| **(1) Andrew France** | **Claimants** |
| **(2) Elusive Yachting Limited** | |
| **- and -** | |
| **(1) Discovery Yacht Sales Limited** | **Defendants** |
| **(2) Discovery Yachts Group Limited** | |

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**N.G. Casey** (instructed by **MFB Solicitors**) for the **Claimants**
**The Defendants did not appear and were not represented**
Hearing dates: 11,12 and 16 December 2019

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# Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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The Honourable Mr Justice Teare

## Mr. Justice Teare :

Introduction

1. By a Purchase Agreement dated 21 October 2015 Mr. Andrew France, the First Claimant, agreed to buy and Discovery Yacht Sales Limited ("DYSL"), the First Defendant, agreed to sell a Yacht for the sum of £1,375,000. The Yacht was to be built by a related company, Discovery Yachts Limited ("DYL"). On 12 January 2017 the Second Claimant, a special purpose vehicle through which Mr. France owns the Yacht, took delivery of the Yacht in Guernsey. By reason of variations to the contract the purchase price had increased to £1,521,113. The Yacht was to be used for "global blue water cruising" and Mr. France intended to live on the Yacht, as he had informed the First Claimant. Delivery had no doubt been taken in an air of some optimism. But within a very short time a very large number of serious defects materialised.

2. In about April 2017 there was a management buy-out whereby the managing director of DYL, Mr. Sean Langdon, purchased, through his company, Tradewinds Marine Limited, the shares in DYSL and the assets and goodwill of DYL. An entity which described itself as Discovery Yachts Group assured Mr. France that it would support him. Many of the defects were repaired but some were never repaired, at any rate satisfactorily. Although an agreement was reached in September 2017 whereby it was agreed that the outstanding repairs would be carried out in return for Mr. France agreeing that the Yacht could be shown at the Annapolis Boat Show in October 2017, the repairs were not completed.

3. Mr. France received advice that the Yacht was unseaworthy and so the Yacht had to be transported back across the Atlantic to this country. The Defendants have failed to carry out the repairs and on 30 April 2018 Mr. France and his company began this action in which he claimed against DYSL, for breach of contract and in particular its obligations under the warranty clause in the Purchase Agreement, and against Discovery Yachts Group Limited ("DYGL") for breach of the September 2017 agreement.

4. Both DYSL and DYGL defended this action until shortly before the trial. But neither company appeared at the trial to pursue its defence. Shortly before the trial notice of an intention to place DYGL into administration was served. On the first day of the trial I ordered that the stay of the claim against DYGL which that notice had generated should be lifted and permitted the proceedings to proceed up to and including judgment. Notice of that order was given to DYSL and DYGL and the trial was adjourned until the following day so that the Defendants had a further opportunity to appear. But on the next day neither Defendant appeared. I was asked to strike out the Defence pursuant to CPR 39.3 and did so. The trial continued. The Claimants did not seek summary judgment in circumstances where the Defence had been struck out but sought to prove their claim. Counsel took me through the most relevant documents and Mr. France and other witnesses stated on oath that their statements were true. Submissions were made both as to liability and quantum.

The Purchase Agreement

5. Clause 1 stated that DYSL agreed to sell the Yacht. It did not state in terms that it also agreed to build the Yacht but it is clear from other clauses that the Yacht was to be built in accordance with a specification and that the price was to be paid by instalments due

at certain stages of the building; see clauses 1.2, 2 and Schedule 2. Clause 5 provided that the Yacht was to "be completed and ready for delivery" at the place and on the date stated in Schedule 3. Thus although the Purchase Agreement did not state expressly that DYSL was to build the Yacht it must have impliedly assumed an obligation to ensure that the Yacht was built in accordance with the Specification. Clause 7 concerned access to the Boat Builders' premises but extended to "those parts of the Sellers' premises necessary for the inspection" of the Yacht.

6. Clause 8 contained a warranty that the Yacht will be "of satisfactory quality and reasonably fit for the purpose(s) made known to the Sellers in writing". Clause 8.3.2 obliged the Sellers to "repair or replace any defect in the workmanship, materials or equipment". Although clause 8 did not refer to Schedule 5, that Schedule contained further details of the Sellers' warranty. It disclaimed responsibility for consequential damages including the cost of transporting the yacht. It also stated that all berthing fees were not covered.

7. Schedule 3 anticipated that delivery would be in October 2016 and that DYSL would provide a skipper/instructor for a period of 28 days for training and boat handling purposes.

8. The Purchase Contract also contained the terms implied by the Consumer Rights Act 2015, sections 9 and 10, that the Yacht would be of satisfactory quality and fit for purpose.

The events before and at delivery

9. It is apparent from emails internal to DYSL, the First Defendant, dated 16 December 2016 that there was concern as to whether the Yacht would be ready for delivery in early January 2017. In the event delivery took place on 12 January 2017. Mr. France noted in an email sent on that day that "we are now in reality commissioning the boat and snagging as we go" and that he had only signed the delivery and acceptance note on condition that the contracted skipper, Mr. Eustace, "would continue the commissioning and complete the extensive list of outstanding jobs".

Events after delivery

10. On the first day of her maiden voyage the mast collar began to leak and on 15 January 2017 the forward cabin was flooded with water because of an unfinished cable penetration in the watertight bulkhead. Repairs were required on 18 January 2017 in La Coruna but were not successful. On 30 January 2017, one day out from Las Palmas, the generator failed. Mr. Eustace, the skipper provided by DYSL, reported on 31 January 2017 that "we are suffering problems never experienced before and the general feeling is that the boat is not fit." Mr. Charnley, the former beneficial owner of Discovery Yachts, informed Mr. Eustace in an email drafted by Mr. Langdon that "with regard to the issues, there is a definite need for better checking of the yachts prior to them leaving, more likely even during construction and we all need to work together to find the best way to achieve this within our system."

11. Further problems developed in February and March when the Yacht crossed the Atlantic with the assistance of Mr. Eustace. He left the Yacht in Martinique on 6 March 2017. At that time Mr. France informed DYSL that he had "lost all confidence in the

boat" and felt that "it is not fit for purpose". He understood that the management buy-out had occurred and sought confirmation that that did not affect his rights and that the warranty was not compromised. In a reply either drafted or sent by Mr. Langdon, Mr. France was told that the "MBO in no way effects your rights and the company going forward, but rather secures its future in the hands of a new strong team going forward". The only way in which the MBO could not affect Mr. France's rights was if the new owners intended to ensure that DYSL would perform its obligations under the warranty. On 13 March 2017 Mr. Langdon gave Mr. France his "unequivocal apology for the issues that you have faced."

12. Having purchased the shares in DYSL and the assets and goodwill of DYL Mr. Langdon incorporated two new companies. One was Discovery Group Yacht Sales Limited and the other was Discovery Shipyard Limited which was to hold the assets and goodwill of DYL. Those companies were subsidiaries of the Second Defendant, DYGL, of which Mr. Langdon and others were the beneficial owners. At the same time it appears that Mr. Langdon was also acquiring other brands, namely, Southerly Yachts and Bluewater Yachts.

13. The Yacht was sailed to Antigua where Mr. France hoped that she would be repaired. On 17 April 2017 Mr. France provided a list of 45 defects. He received a reply which contained an apology for "so many problems and failures" and informed him that "we remain absolutely committed to resolving all the problems you are experiencing and we will try and do this as quickly as possible." On 25 April 2017 the emails to Mr. France began to be signed on behalf of "Discovery Yachts Group".

14. By 3 May 2017 Mr. France requested that the warranty work be expedited. In an internal email of 4 May Mr. Langdon said that he hoped that Mr. France would have been sent a plan by now of when and who will be fixing his boat. He said "put simply if he was to reject the boat we would be finished as a company".

15. By the end of May 2017 Mr. France had to sail north, for insurance purposes, to avoid the hurricane season. On or about 1 June 2017 he was told that "Discovery Yachts is as always firmly on your side".

16. On 1 July Mr. Langdon suggested that the repairs be carried out either in Mystic or in Annapolis. He added that he would welcome the opportunity to show the Yacht at the Annapolis Boat Show and that it was "our intent to make sure that your Yacht would be show ready….We will get everything sorted." This email was signed by Mr. Langdon as managing director of the Discovery Yachts Group.

17. By 15 August 2017 the Yacht had reached Chesapeake Bay. Mr. France's wife sent an email informing Mr. Langdon of a number of matters which drove her crazy on "this beautiful-to be boat".

18. On 19 August 2017 there was a telephone call between Mr. France and Mr. Langdon. It appears from an email dated 4 September 2017 that in this call Mr. Langdon said that we (Discovery Yachts Group) "are continuing to support Elusive" but that certain costs were "outside the normal warranty conditions". In the same email it was stated that "the new company could have walked away from this commitment." This indicates that in fact "the new company" (which must be the Second Defendant, DYGL) had not walked away from supporting Mr. France.

19. It appears that some repairs were carried out in Annapolis but by an email dated 14 September 2017 Mr. France noted that several items were outstanding (including the mast leak). He wanted to know ASAP how the remaining items were to be repaired. Meanwhile he was paying mooring fees.

The September 2017 Agreement

20. By an email dated 26 September 2017 from Mr. Bodine, the Sales and Marketing Director of the Discovery Yachts Group, Mr. Bodine requested Mr. France to permit the Yacht to appear in the Annapolis Boat Show in October 2017. He did so because

> "We are very excited to be returning to the US to introduce the new Discovery Yachts Group and Southerly by Discovery as well as have a fabulous example of a Discovery 58 to show off what the interiors will look like."

21. It is plain that he was making the request on behalf of "the new Discovery Yachts Group and Southerly by Discovery". He signed on behalf of Discovery Yachts Group which can only be a reference to the Second Defendant, DYGL, which held interests in the Discovery and Southerly brands. He was certainly not making the request on behalf of the First Defendant, DYSL, which had no connection with the Southerly brand. It would appear to be dormant, its role having been taken over by Discovery Yacht Group Sales Limited.

22. Mr. France replied saying that his initial reaction was to say "no to the Boat Show". He mentioned that defects remained to be repaired and that no one had explained what he should do whilst the Boat Show was on. The Yacht was his home.

23. On 27 September 2017 Mr. Bodine implored Mr. France to reconsider. The Yacht would provide a "valuable reference point for future Southerly builds. The USA is an important market for Discovery Yachts Group and we would like to take full advantage of our participation at the Annapolis Boat Show to boost sales for Discovery, Southerly and Bluewater all of which are built at Discovery Shipyard, now part of the Discovery Yachts Group."

24. On the same day Mr. France's wife wrote to Mr. Bodine. She said:

> "If you want the boat to be displayed, please come forward with the detailed offer. What's more important for us is the boat to be fixed once and forever."

25. There was then a telephone call between Mr. France and Mr. Bodine and also Mr. Gray (an employee of Discovery Yachts Group in the warranty and after sales department). It is clear from an internal email of Mr. Gray that in that call Mr. France had requested a "written document laying out everything so he knows what is happening".

26. Mr. Bodine sent a schedule for the Boat Show. Mrs. France replied saying:

> "Since the completion of the warranty jobs is top priority for us as I have mentioned before we need to get the detailed work schedule before considering taking part in the

> show……we need the assurance before we commit to anything today."

27. Later that day Mr. France emailed "the latest on the outstanding items". The "latest" was a 6 page schedule of outstanding repairs.

28. On 29 September 2019 there was a further call between, on the one hand, Mr. France and Mrs. France and on the other hand, Mr. Bodine and Mr. Gray. In the course of that call Mr. Bodine and Mr. Gray agreed that the work in the schedule of repairs prepared by Mr. France would be done. Following the call Mr. France stated by email that he requested:

> "…the written confirmation either in the form of the attachment to an email with the list of outstanding warranty jobs signed by Sean or Chris or in the form of an email directly from Sean Langdon with the same contents.
>
> As soon as I we get that confirmation we'll be happy to confirm in written that we're ok for Elusive to be displayed on the Boat Show."

29. Mr. Bodine replied that day stating:

> "As promised, I would like to assure you that the items on your list will be completed as quickly as practicable given the constraints of obtaining parts and working with outside contractors. Gary has assured me that he has no problems with your list and will continue to push on with jobs at hand with the aim of completing the work as soon as possible
>
> I hope that this puts your and Masha's mind at ease regarding our commitment."

30. That email containing "our commitment" was signed on behalf of Discovery Yachts Group.

31. On the same date Mr. Bodine agreed to pay $2,500 to Mr. France for accommodation and travel.

32. Assessing the matter objectively it is plain that an agreement had been reached whereby in return for the Yacht being exhibited at the Boat Show, the outstanding items of repair would be carried out. I do not consider that the obligation to repair was subject to "the constraints of obtaining parts and working with outside contractors". Mr. Bodine was merely saying that although the repairs would be completed as quickly as practicable the timing of the repairs was dependent upon the obtaining of spare parts and the need to work with outside contractors.

Later events

33. Mr. and Mrs. France honoured their part of the bargain. They moved into temporary accommodation. But the defects on the Yacht had not been rectified. On 17 October 2017 the Yacht left for the Caribbean in the company of other yachts in the Salty Dawg

Rally. Mr. France expected that the repairs would be carried out in Antigua. However, that did not take place.

34. In November 2017 Mr. France's brother (who had been on the Salty Dawg Rally) visited Discovery Yachts. His understanding was that Mr. Gray had accepted responsibility for the outstanding defects though there was some concern as to how best that could be done with the Yacht in the Caribbean.

35. However, by 10 January 2018 Mr. Gray said that "the new company" would provide the necessary parts but not the labour costs. This was contrary to the September 2017 Agreement.

36. Mr. France then decided to seek legal advice. He was advised by a naval architect that the Yacht was unseaworthy and that no voyages out of sight of land should be undertaken. He arranged for the Yacht to be transported back to England where it remains.

Liability of DYSL

37. There can be no doubt that the First Claimant, DYSL, is liable for its failure to honour the Warranty in the Purchase Agreement and for breach of the terms implied by the Consumer Rights Act 2015. It is clear from the contemporaneous evidence, and in particular the views of Mr. Eustace, that the faults and defects which developed on the Yacht so soon after delivery were caused by the failure of DYSL to ensure that the Yacht complied with the specification, was of satisfactory quality and was fit for its intended purpose. The Yacht appears to have been delivered hurriedly and before it was ready to be delivered. It was delivered without an adequate sea trial or commissioning. That was admitted by Mr. Charnley to Mr. Eustace on 31 January 2017 in an email drafted by Mr. Langdon.

Liability of DYGL

38. The question to be resolved is whether Mr. Bodine, when he entered the September Agreement, did so on behalf of the Second Defendant.

39. In the first email in the most relevant exchange beginning on 26 September 2017 Mr. Bodine made it plain that the object of showing the Yacht at the Boat Show was to "introduce the new Discovery Yachts Group and Southerly by Discovery". This was confirmed by Mr. Bodine in his email on 27 September when he said:

> "The USA is an important market for Discovery Yachts Group and we would like to take full advantage of our participation at the Annapolis Boat Show to boost sales for Discovery, Southerly and Bluewater all of which are built at Discovery Shipyard, now a part of the Discovery Yachts Group."

40. The Second Defendant, DYGL, was a company of Mr. Langdon which held, directly or indirectly, the interests which he had bought in April 2017 from Mr. Charnley. It seems that it also held his interests in Southerly and Bluewater. It was the holding company for the Discovery Yachts Group. It seems probable, viewed objectively, that the company seeking Mr. France's permission to exhibit the Yacht was therefore

DYGL. That was the company with all to gain from attracting orders from the Discovery Yachts Group. Certainly it cannot have been the First Defendant, DYSL, because that company was not involved in selling yachts built by the "new Discovery Yachts Group". Its role appears to have been taken over by Discovery Yacht Group Sales Limited. Thus when Mr. Bodine agreed that "the items on your list will be completed as quickly as practicable" he did so on behalf of DYGL, the Second Defendant.

41. The fact that it was Discovery Shipyard Limited (the company which had taken over the role and assets of DYL) that paid Mr. France the sum of $2500 as agreed for accommodation in Annapolis during the boat show might suggest that it was that company on whose behalf Mr. Bodine was acting. But that has not been suggested by Mr. Bodine. His evidence in a witness statement was that he was a director of DYSL, that his service agreement was with that company and that when he participated in the telephone call on 29 September 2017 he did so as sales director of DYSL. That is deeply improbable. The Defendants were ordered to provide disclosure of Mr. Bodine's service contact and they have failed to do so. It is likely that the explanation for the use of Discovery Shipyard Limited to pay the agreed sum of $2500 was that it was the company within the Discovery Yachts Group which dealt with such payments.

42. It might be asked why the Second Defendant DYGL would assume a liability for the repairs when the original liability was that of the First Defendant, a company which had no role within the new Discovery Yachts Group. The answer is to be found in an email sent on 27 September 2017 by Mr. Bodine to Mr. Malatich (who was Discovery's agent or contact in Annapolis). Mr. Bodine referred to the outstanding repairs and described them as

> "a legacy of the previous company whose business was purchased in an MBO by the Discovery Yachts Group. We have no obligation to carry out the work, but are doing so for the sake of goodwill and market perception. In the transition to the new company, the problems of the past are being rectified with a new Technical/Production Director who has changed our methodology to ensure continued improvement and a focused pursuit of excellence in manufacturing."

43. Thus DYGL had a commercial reason for agreeing to do the repairs. The commitment which DYGL made on 29 September 2017 was entirely in keeping with its assurances to Mr. France throughout 2017 that it would support him.

44. I am therefore satisfied that the Second Defendant, DYGL, agreed to ensure that the repairs outstanding in September 2017 would be completed

Damages

45. The remedy sought by counsel for Mr. France against both DYSL and DYGL is the remedy of damages. Expert evidence has been given both as to the cost of repairing the outstanding defects and of the market value of the yacht. I accept that evidence but it is apparent that there is difficulty in costing the necessary repairs and in valuing the Yacht. Thus the measurement of damages is not an easy exercise in this case. I have been much assisted by the supplementary submissions of counsel on the subject of damages and

the schedules provided of outstanding defects, their costs of repair, whether they were included within the September 2017 schedule and the additional expenses incurred by Mr. France.

46. The following matters of expert opinion should be noted. First, Mr. Quinlan, a yacht broker, estimated the current value of the Yacht (effectively in sound condition) without inspecting her, at about £1 million. Mr. Quinlan inspected the Yacht in September 2019 and before doing so read a report on the Yacht by Mr. Towler, a marine consultant. Having noted her current condition, her styling and appearance and the fact that she had a feeling of being slightly neglected, he assessed her value at between £825,000 and £875,000. That valuation assumed that all the faults mentioned in Mr. Towler's report had been carried out. Since those faults were not rectified the costs of so doing must be subtracted from, say, £850,000. But there was a further factor to bear in mind. That factor is "the negative effect on value of the yacht's history of faults. A potential buyer might look for a sizeable discount." Mr. Quinlan said that is was very difficult to put a figure on this but said that it could be between 5 and 30%. The correlation between this possible discount and the discount Mr. Quinlan had already made to discount the value of the Yacht from £1 million to £850,000 was not discussed. I suspect there is some overlap.

47. Mr. Towler, a marine consultant, inspected the Yacht on her return to England in June 2018 and again in January 2019. He also accompanied Mr. Bramble of Discovery Yachts Group when water and electrical testing was carried out in January 2019 and he also accompanied the Defendants' expert on his inspection in June 2019. He has considered each of the many defects which were outstanding. He described the Yacht as a large luxury sailing yacht with numerous significant defects outstanding 2.5 years after delivery. He described the work required to regain the standard contracted at delivery as extensive and the cost very high. The Yacht was not in condition to undertake "blue water" sailing and needed repairs for it to proceed safely to sea. The deck hatches leaked, allowing lockers to fill with water and to impact stability. Other leaks exposed equipment, especially electrical equipment to damage and reduced habitability. The lack of a reliable electrical supply compromised the Yacht's ability to navigate safely, to make water and to store provisions. The inaccuracy of gauges rendered it difficult to predict endurance range in planning passages. Chain plate bolts required replacement and the integrity of the deck structure required to be checked. Engine testing was required.

48. Quotations for the costs of repairs had been received which totalled £120,058 which in Mr. Towler's opinion were reasonable. But in addition it would be necessary to coat or seal the end grain of the wood laminate. It was difficult to estimate the cost of doing so. It could double the cost of repairs to £240,000 with a margin of error of plus or minus 20%. In addition there was a risk, when repairing, of damaging the hull flange and flexing the hull which could crack the laminate. If that occurred a fresh hull would be required and the potential cost could exceed that of a replacement yacht.

49. Counsel submitted that the damages payable by the First Defendant should be measured by the difference between the purchase price of the Yacht and her current value. On the estimated values and costs of repair in the reports of Mr. Quinlan and Mr. Towler this measure produced a mid-point current market value of £646,000 (as particularised in paragraph 7 of counsel's additional written submissions on remedies). On that basis the loss was £875,113.

50. As counsel accepted this measure of damage transfers the risk of depreciation from January 2017 to December 2019 onto the Defendants. That depreciation is substantial as is apparent from the drop in value from the sale price in January 2017 to December 2019, of the order of £500,000. In circumstances where Mr. France has not rejected the Yacht it is arguable that he should bear the risk of depreciation. Counsel submitted that this measure is nevertheless appropriate because Mr. France never received the Yacht for which he paid and because he has not had any material benefit from the Yacht. It may also be said that in circumstances where the Defendants maintained that they would carry out the appropriate repairs until January 2018 it hardly lies in their mouth to rely upon the fact that Mr. France had not rejected the Yacht. Indeed in an email dated 3 May 2017 Mr. Langdon appreciated that the last thing he wanted to happen was that Mr. France would reject the Yacht. It can therefore be argued that Mr. France should not bear the risk of depreciation at least until June 2018 when the Yacht had been brought back to this country. Thereafter, it could be said that he should bear the risk of depreciation but by then he might well have lost the right to reject.

51. Counsel suggested two alternative measures of damage. The first alternative measure of damage was the difference between the current market value of the Yacht in sound condition and her actual value. The second alternative measure of damage was the cost of repair. In theory there ought not to be a difference between these two measures since the costs of repair should be good evidence of the difference between the Yacht's current value in sound condition and her actual value. Counsel suggested that there was a difference on the facts of this case but he did so by adopting £1 million as the value of the vessel in sound condition. I was not persuaded that this was the correct figure to be adopted given that it was discounted by Mr. Quinlan. I appreciate that the determination of value and costs of repair is difficult in this case but I consider that if there is an alternative measure of damage to the primary measure of damage sought by counsel it is the cost of repair. This was indeed the approach taken by counsel in his opening skeleton argument at paragraph 204.

52. I have reached the conclusion that the proper measure of loss recoverable from the First Defendant is the primary measure for which counsel contended. Mr. France suffered the depreciation in value because, as a result of the First Defendant's expressed intention to repair the faults, he did not reject the Yacht. Thus the First Defendant's breach of warranty and acceptance of liability therefor was an effective cause of Mr. France suffering the loss by depreciation. Had he not received promises of support it is likely that he would have rejected the Yacht and would have been entitled to recover the purchase price. Mr. Langdon, as I have noted, wished to avoid that happening and succeeded. Thus Mr. France lost the opportunity to reject and is left with the Yacht whose actual value is much less than the purchase price. It might be said that he could have mitigated his loss by rejecting the Yacht in June 2018 once the Yacht was back in this country. But he may by then have lost the right to reject and in any event the First Defendant, when it was defending this claim, did not suggest that there had been a failure to mitigate.

53. I will therefore award damages against the First Defendant on the basis of the first measure of loss contended for by counsel. The sum of £875,113 was claimed for the reasons set out in his supplementary skeleton argument at paragraph 7 and 8. I think this slightly underestimates the loss. The price paid was £1,521,113. The actual value of the Yacht is the unrepaired value of the yacht assessed by Mr. Quinlan in the sum of

£850,000 less the costs of repair as assessed by Mr. Towler in the sum of £240,000. Whilst that figure could be more by 20% it could also be less by 20% and so it is fair to use the figure of £240,000. That gives a current actual value of £610,000. £1,521,113 less £610,000 is £911,113. That is the sum in which I assess the damages payable by the First Defendant.

54. I have considered whether credit should be given for the use or benefit which Mr. France has had from the Yacht by reason of not having rejected the Yacht. However, although he had the "benefit" of sailing the Yacht across the Atlantic and took part in the Salty Dawg Rally and lived on the Yacht, his use of the Yacht was so very different from what he had hoped. He did not have the enjoyment and pleasure which he had justifiably expected. A very large number of days was spent waiting in marinas for repairs to be done. I consider that to describe the use he had of the yacht as a benefit would be an abuse of language. No credit need be given on that account. If there were any quantifiable benefit it would have been outweighed by the disappointment, frustration and anger which Mr. France must have experienced when the First Defendant, having failed to deliver the Yacht in the contracted condition, then not only failed to honour its obligations with regard to the outstanding defects but continually said that it would honour that obligation.

55. So far as the damages payable by the Second Defendant are concerned they cannot be assessed on the same basis. The Second Defendant was not party to the Purchase Agreement and so damages based upon the loss of the right to reject are not appropriate. The Second Defendant's liability arises out of the legally binding commitment it made on 29 September 2017 to ensure that the outstanding repairs were carried out. It failed to honour that commitment and the appropriate measure of damage must be the costs of those repairs together with such further costs which Mr. France incurred as a result of the breach of that commitment.

56. The cost of the repairs has been assessed by Mr. Towler in the sum of about £240,000. However, that is based upon the identifiable costs being approximately £120,000 and doubling that to account for the costs of coating or sealing the end grain of the wood laminate. Most but not all of the outstanding repairs were included in the September 2017 schedule sent by Mr. France to Mr. Bodine and accepted by him. Thus the identifiable costs of the September 2017 schedule are a little less at £114,757. It follows that the total estimated costs of those repairs would be about £229,500. In addition the damages must include the cost of repatriating the Yacht which was reasonably undertaken by Mr. France after the Second Defendant had failed to honour its commitment. The quotation from P&M Carrier was in the sum of US$29,612 which, I am told, equates to £22,215. The cost of the naval architect's advice in the sum of £750 is also recoverable on the same basis. Storage and maintenance costs were incurred in this country from 15 June 2018 in the sum of £19,879.45. That sum has been claimed by way of a re-amendment of the Particulars of Claim. I accept that such costs can be claimed for a reasonable period after the Yacht's return to this country. But at some stage Mr. France must determine what to do with the Yacht since he has not rejected it. The Second Defendant cannot be liable indefinitely for the storage and maintenance costs. I consider that a reasonable period would have elapsed by the end of December 2018. I therefore allow £8,992 (based on Schedule 4 to counsel's supplementary skeleton, ignoring the costs of meter reading, dehumidifier, sail removal and registration). Finally there is a sum claimed in respect of berthing fees in Annapolis.

There is evidence that the Second Defendant agreed to pay $2000 in respect of the claim. Mr France asked for berthing fees to be paid in the telephone conversation on 29 September 2017, and Mr Grey had authority from Mr. Langdon to offer $2000 in respect of berthing fees. This has not been paid and so the sterling equivalent, £1500, should therefore be paid by the Second Defendant. The damages assessed on this basis therefore amount to £262,957.

57. In respect of the risk that the work of repair will cause further damage leading to further repairs (as explained by Mr. Towler) counsel submitted that there should in addition be a declaration to the effect that the Second Defendant is liable to indemnify Mr. France in respect of the reasonable costs of such further repairs. I accept that such declaration should be granted.

Conclusion

58. Judgment is given to Mr. France against the First Defendant in the sum of £911,113 and against the Second Defendant in the sum of £262,957. In addition the Second Defendant is liable to indemnify Mr. France in respect of the reasonable costs of any further repairs necessary because of damage caused by the known repairs.

59. The Second Claimant has no additional claim because Mr. France was and remained party to the Purchase Agreement and was party to the September Agreement.

60. The Defendants should pay Mr. France's costs of the action. I was told that Mr. France's costs of the hearing on 8 November 2019 when additional disclosure was sought and (in the main) granted were reserved to the trial judge. I have noted the documents ordered to be disclosed. They all related to issues in the action in which Mr. France has succeeded. There is no reason why he should not have his costs of that application. I will hear counsel as to what sum should be ordered to be paid by way on interim payment on account of the costs of the action.