



Neutral Citation Number: [2008] EWHC 1518 (TCC)

Case No: HT-07-185

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
TECHNOLOGY AND CONSTRUCTION COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 02/07/2008

Before :

HIS HONOUR JUDGE DAVID WILCOX

Between :

MARTIN NICOLLE AND FIONA NICOLLE

Claimants

- and -

SAUNDERS MORGAN HARRIS LIMITED

Defendants

Mr James Leabeater (instructed by **Wilson Solicitors LLP**) for the **Claimants**

Mr Ben Olbourne (instructed by **Davis & Co.**) for the **Defendants**

Hearing dates: 4th – 6th June 2008

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.

.....
HIS HONOUR JUDGE DAVID WILCOX

His Honour Judge David Wilcox :

1. The Claimants live on the island of Bryher in the Isles of Scilly. They have business interests on the South Cornish coast at and in the vicinity of Polperro, where they let holiday accommodation.
2. For the purpose of their business and for leisure use they originally decided to purchase a Parker 7.5 Rigid Inflatable Boat (RIB) with twin diesel inboard engines to be built in Poland. Parker's English agent was Paul Lemmer.
3. There were disputes about the specification and build. The RIB was sent back to Poland by Mr Lemmer, who became insolvent, and the Nicolles were left substantially out of pocket and without a boat.
4. Mr Saunders, now of the Defendants, conducted a preliminary Maritime and Coastguard Agency (MCA) inspection on the boat, reporting to the Claimants and to Mr Lemmer.
5. In May 2005 the Claimants decided to have a RIB built by Pro Sports in Guernsey, a small firm run by Mr Jason Norman. Guernsey is outside the European Union.
6. There was an agreement between the Claimants and the builder for the construction of the new boat.
7. It was a standard Marine Federation contract which contained so far as is relevant to these proceedings, the following provisions:-

“1. AGREEMENT AND SPECIFICATION OF THE BOAT

1.1. The Builders agree to construct and the Purchaser agrees to buy the Boat described in the Specification set out in Schedule 1, together with any drawings and plans, all of which shall be signed by the Parties (“the Boat”) and in accordance with the terms of this Agreement.

1.4 The Builders shall build the Boat in compliance with all applicable statutory requirements and regulations relating to the construction and sale of the Boat in the European Union or in the other requirements or regulations which may be agreed in writing between the Parties.

8. WARRANTIES

8.1 In addition to the Purchaser's statutory rights the following warranties shall apply:

8.2 Subject to the conditions set out at clause 8.3, the Builders warrant to the Purchaser that the Boat will be of satisfactory quality and reasonably fit for the purpose made known to the Builders prior to the date of this Agreement whether or not such purpose is one for which the Boat is

commonly supplied and that it will correspond with the Specification and any agreed variation, addition or modification thereto. The Builders further warrant that the Boat will be free from defects in materials and workmanship for a period of twelve months from delivery.

8.3 The Builders warrant to the Purchaser that on delivery the Boat will comply with:

8.3.1 All legislative requirements and regulations relating to the sale of the Boat in the European Union for any purposes made known under 8.2 above ...”

8. The Nicolles made it known to the Builder that the boat was to be used for survey work and as a general work boat as well as for leisure use.
9. The contract, Schedule 1, contained specifications including, inter alia, provision for underdeck trunking for wiring and cables, adjustment of the deck height and a sealed and insulated engine box, Sampson posts for lifting and the installation of twin counter-rotating Volvo D3 160 SX engines with the appropriate drives and stainless Volvo props. Importantly, Schedule 1 provides that the hull and fittings should be to MCA approval ready for coding.
10. The price agreed for the package was £42,049.
11. The delivery date was appointed as 18 July 2005.
12. There was substantial delay. Volvo delivered the wrong parts. The Builders’ stainless steel contractors were unable to procure and fit a keel band, or to provide D rings on the Sampson posts which would be suitable for lifting the craft.
13. It is apparent that the co-ordination of the build process left much to be desired and that the procurement of essential parts did not coincide with the demands for stage payments based upon their incorporation into the build. The Builder appeared to be living hand to mouth.
14. By September 2005 the position was reached whereby the Builder had threatened to terminate the agreement and sell the boat. These threats, designed to put commercial pressure upon the Claimants, were in part the brain child of Dominic Palmeri, who worked with Jason Norman on the RIB construction and in the procurement process, and who gave evidence before me at the trial.
15. By mid-September Mr Norman was insisting upon further payments from the Claimants, saying that in order to proceed to a sea trial he needed outstanding payments as per the contract. On 14 September 2005 the Claimants replied saying that they could not pay the full contract price before sea trials, where there were definite and substantial areas where the specification had not been met or information given to enable assessment as to whether the specification had been met.

16. The suggestion was made that the contractual dispute resolution procedure be invoked and Mr Nicolle made an offer to put monies into an escrow account subject to adjudication by an independent surveyor.
17. This came to nothing because of the difficulties in setting up a joint escrow account.
18. It was then that the Defendants came on to the scene. On 21 September the Claimants' son Chris Nicolle wrote to the Defendants saying

“We would like you to carry out a similar inspection to what you carried out on the Parker boat last year. The specs are very similar.

“Would you be able to put a costing together for getting the boat done in Guernsey. Also a costing to get it done in Southampton ... hopefully we can get this MCA done asap.”
19. Mr Morgan Harris wrote to Mr Palmeri on 21 September, who was handling Mr Norman's business correspondence at this time, that his inspection was to include a general survey of the hull to check for compliance of the vessel and to inspect the RIB to specification and saying that he would wish to carry out a swamp test and stability freeboard test. These are all relevant to the requirements for MCA coding.
20. The letter contained the following significant passage:

“It would be a huge benefit if we could see the vessel's technical construction file so that we can see exactly which standards have been used in the construction. So if you could bring some copies of the standards used etc. this will save us time later.”
21. On the same day he confirmed to the Claimants that the fee for the professional work to be undertaken was £600 plus VAT and that would:

“ ... include our involvement with the coding requirements.”
22. He enclosed an application form for the registration with the MCA certifying authority, the Yacht Designers and Surveyors Association (YDSA) authorised by the Maritime and Coastguard agency.
23. On 22 September 2005 the Claimants completed the Defendants' survey order form to put in hand the inspection.
24. The relevant parts of this are:

“Please attend to the following special instructions. Build to MCA coding standard. Additional equipment, life raft etc. to be provided later and checked at that time.

It is understood and agreed that the surveyor's report will be a factual examination carried out within the stated limitations and with opinions given in good faith as far as seen at time of

inspection. It implies no guarantee against faulty design, latent defects, general safety or suitability of the vessel for any particular purpose. The survey will not include examination in respect of performance or otherwise to the Recreational Craft Directive 94/25/EU, the EMC Directive 89/336/EEC and the Machinery Directive 98/37/EC.”

25. The scope of the inspection obligation undertaken at that time is clearly set out.
26. Mr Morgan Harris used YDSA’s compliance document SCV 2A (Small Commercial Vessels) as his check list and aide memoire when carrying out his inspection.
27. It is a useful document insofar as it presents in summary form references to the MCA Marine Guidance Note (MGN), the standard for (inter alia) the construction of inflatable boats.
28. Thus under Inflatable Boats there is reference to paragraph 4.5.1.2 of the Code:

“An inflatable boat or rigid inflatable boat, of less than 8 metres in length, which it is intended to operate as an independent vessel in Area Category 4, 5 or 6 should be of a design or construction which would meet the requirements of ISO 6185 part 2 or 3.

Paragraph 4.5.1.3: The structure of the rigid hull in a rigid inflatable boat may alternatively be assessed in accordance with Section 4.2.2.”

29. The relevant parts of section 4.2.2 are:

“4.2.2.3: The hull of a vessel which has been surveyed and certificated by UK Load Line Assigning Authority should be acceptable, subject to presentation of a Certificate of Construction.

4.2.2.5: A vessel which has not been built under the survey of a UK Load Line Assigning Authority will be considered to be of adequate strength after a satisfactory examination by an authorised person and, if it has been built:-

.1 in accordance with the hull certification standards for small vessels, recognised by one of the Authorities; or

.2 in general accord with the standard of a vessel which has a record of at least five years’ history of safe operation in an area where the sea and weather conditions are no less severe than those likely to be encountered in the intended area of operation.

4.2.2.6: A vessel not built in accordance with either Section 4.2.2.3 or 4.2.2.5 may be specially considered, provided that full information (including calculations, drawings, details of

materials of construction) is presented to and approved by the Certifying Authority.”

30. Mr Morgan Harris chose to classify this boat as a standard production boat and noted that it was built to ISO 6185 Part 2 or 3 categories 4, 5 and 6.
31. In his report to the Claimants dated 30 September 2005, he indicated a number of instances where the RIB did not conform with the specification schedule but noted at item 8 CE marking (Recreational Craft Directive) that

“as the vessel is to be delivered within the EEA and will be used for pleasure use as well as commercial, the boat must be CE marked. Pro Sport has stated that the Boat is built to meet the requirements under CAT C of the Recreational Craft Directive. Agreed that for the Boat to be CE compliant the vessel should have: a CE plate in the cockpit and be provided with an owners’ handbook and Pro Sport should have the TCF (Technical Construction File) and store it for the next ten years.”
32. Under the heading “Standard of Construction” Mr Morgan Harris reported that the vessel was built to standard ISO 6185 and “should be okay if CE marked CAT C”.
33. Following his inspection on 27 September 2005 at the Guernsey yard he noted that the vessel was built under the requirements of the Recreational Craft Directive but that no CE plate had been fitted. Mr Jason Norman, the Builder, reported his confusion as to the requirements of MCA or RCD. The Defendants queried whether there was an owner’s handbook showing conformity with the requirements of RCD or a declaration of conformity.
34. A sea trial on 27 September impressed the Claimants and on 29 September Mr Nicolle expressed the view that the boat’s performance was to expectation.
35. He also sought to establish agreement as to the way forward in relation to the payment of outstanding monies and the completion of work on the boat. The balance of £7,850 was to be paid by way of an instalment of £4,500, £2,350 when the steering and engine snagging was sorted out and £1,000 upon safe delivery of the boat to the Isles of Scilly.
36. The Builders failed to complete the boat and the relationship between the Builders and the Claimants broke down. Mr Morgan Harris became the intermediary as well as representing the Claimants’ interests.
37. On 11 December 2005 Mr Morgan Harris was asked to receive and inspect the boat on delivery at Southampton and check that the outstanding work was properly done.
38. On 14 December 2005 the Builders sent photographs of the RIB to Mr Morgan Harris purporting to show that it was satisfactorily completed. One such photograph depicted a CE plate.

39. The Claimants queried the appearance of this plate and on 15 December sought Mr Morgan Harris's assurance:

“The CE plate looks different to others that we have seen but leave this for you to ascertain that the formal/legal requirements have been met.”
40. It was not a CE plate. It had no such letters incorporated upon it.
41. Nonetheless Mr Morgan Harris assured the Claimants that it was in fact a compliant CE plate, as required by the Recreational Craft Directive (now enacted into the law of England and Wales by virtue of the Recreational Craft Regulations 2004 SI 1464.)
42. The RIB was duly delivered to Southampton, where it was received and inspected by Mr Morgan Harris who, following inspection negotiated a small discount in the balance of monies owing and paid what he agreed was due to the Builder.
43. Mr Morgan Harris had the opportunity to contact the Claimants contemporaneously with the handover. Furthermore the Claimants' two sons were present at the harbour. Mr Morgan Harris received what purported to be an Owner's Manual and a Declaration of Conformity. The Declaration of Conformity did not list the relevant standard. What should have been apparent to Mr Morgan Harris was that the hull identification number on the Declaration of Conformity did not match that of the boat. He had been alerted prior to the inspection that the CE plate was not RCD compliant and would have had a further opportunity to check that out on delivery. He knew that the Owner's Manual should have been RCD compliant and would have had sufficient knowledge to check, since he advised the Builder as to the requirements.
44. Mr Morgan Harris contends that his role was to achieve a handover of the boat and in evidence he sought to explain that in the fraught circumstances of the handover it was not practical to conduct any meaningful inspection.
45. I reject that evidence. I accept that his role was difficult, given the relationship between the Builder and the Claimants family, but he had accepted and assumed obligations in relation to the inspection of the boat. I am satisfied that in the meantime he had full opportunity to conscientiously advise as to the effectiveness of the Builder's plate including the CE mark and the adequacy of the Owner's Manual and to advise the Claimants as to the shortcomings of both. Furthermore, on inspection on 20 December 2005 and receipt of the Declaration of Conformity he would have been in a position to notice that the hull identification number did not correspond with that on the boat.
46. The RIB was laid up in Southampton during the winter and taken to the Isles of Scilly in the spring, where it was found to have water leaking into the engine box and serious damage to the transom caused by the failure of the Builder to seal the grain ends of the transom where the draining port pipes went through. Neither did he properly laminate the transom together during manufacture.
47. The Builder has now gone out of business. The successor proprietors of Pro Sports have no obligation to the Claimants.

48. Two experts have given evidence before me as to the duties of a surveyor in the position of the Defendants and as to whether the RIB can be MCA coded or made RCD compliant. They have also given evidence as to the present value of the RIB.
49. It is submitted by the Defendants that the Claimants and their family had owned RIBs before and “cannot be regarded as lay persons when it comes to the design, manufacture etc of RIBs and coding requirements”.
50. They were certainly lay persons who were particular as to their requirements but were informed lay persons, who properly relied upon the knowledge, skill and care of Mr Morgan Harris, and the competence of the boat builder in the design and construction of the boat. The implication of the submission that no reliance was placed upon Mr Morgan Harris’s professional advice is without merit.
51. The agreed scope of the Defendants’ inspection on 27 September 2005 is contained in the survey order form and the schedule to the contract. The Boat was not going to be coded as a result of that inspection. The obligation of the Defendants was to see whether it complied with the provisions of the MCA code relating to construction and structural strength and whether it was codable at a later date when final works were completed. Mr Morgan Harris on 27 September 2005 visually inspected the boat out of the water and conducted a hammer test. Before the inspection he had e-mailed the Builder asking for sight of the technical file, saying:

“It would be a huge benefit if we could see the vessel’s technical construction file so that we can see exactly which standards have been used in the construction.”
52. He was told that there was such a file. He did not inspect it. No technical file has ever been produced save for a lamination schedule describing the material used in the hull.
53. In addition to the hull inspection Mr Morgan Harris inspected the Boat and went through the list of the Claimants’ concerns in his warranty and to do list of things remaining to be done. He advised the Claimants that the Boat was ISO 6815 compliant and therefore complied with paragraph 4.2.2.5 of the MGN (Marine Guidance Note) by relying upon the Builders’ self-certification that the Boat complied with the RCD.
54. A prudent surveyor was obliged to consider whether the Builder had complied with the RCD as part of his obligation to check whether the Boat complied with paragraph 4.2.2.5 of the MGN.
55. Mr Morgan Harris in so doing voluntarily went beyond the limitation he had placed upon his obligations in the original terms of business in the survey order form and chose to advise on RCD compliance matters. He clearly had a duty of care in so doing, as he did when he was expressly instructed by the Claimants to advise as to the form and effect of the CE plate in December 2005.
56. The Boat was the first 7.5 metre RIB built by the Builder with twin inboard engines.

57. I accept the evidence of Mr Greening, the naval architect and expert marine surveying expert, who gave evidence on behalf of the Defendant that the boat was the first of this type built by Mr Norman with a twin stern drive installation and that such an installation would have necessitated new tests being completed due to the different weight distribution, construction arrangements and handling characteristics compared to a boat propelled by one inboard engine or one or two outboard motors.
58. Significantly, the Builder in August 2006 wrote:

“... The specifications of the layout and construction were mostly of your design and requirements and built as such therefore (using) the specification that were detailed on our website have no relevance here as the boat built for you was not in conjunction with the boat specification given on the internet, as the boat was completely different.”
59. I do not accept the evidence of Mr Temple, the naval architect and marine surveying expert who gave evidence on behalf of the Defendants upon this issue.
60. This boat was a prototype and the Defendants should have made prudent enquiries by pressing to examine any technical file offered by the Builder. Its absence or examination would have put Mr Morgan Harris on enquiry and set alarm bells ringing or confirmed the Builder’s assertions in his letter of 3 September 2006.
61. The boat was not a standard production boat and to be MCA codable in respect of construction and strength it would have to be shown to comply with the other criteria of paragraph 4.2 of MGN.
62. Since it was not a standard production boat it was incumbent upon the Defendants to ascertain that the boat was capable of being MCA coded or was in compliance with the RCD.
63. If not, he should have told the Claimants that it was not capable of being coded or CE plated under the RCD.
64. Since the boat was not a standard production boat it would only be possible to confirm that it had adequate construction and structural strength for the purposes of MCA coding or RCD compliance by ensuring that there were proper calculations, drawings, specifications and construction methods followed.
65. It is evident that the Defendants for the purposes of the preliminary MCA coding inspection relied upon the Builder’s self-certification or promises to self certify under ISO 6185-3. That standard contains onerous test requirements including the drop tests at paragraph 7.2 and the in-water performance tests at paragraph 7.3 in addition to sampling tests of the constituent materials used in the boat’s construction. It is clear that these stringent requirements are principally directed to the testing of prototype boats rather than of individual boats offered for sale as envisaged in MGN 4.5.1.3.

66. The scheme under paragraphs 4.2 and 4.5 provides that, leaving aside those situations where the hull has been surveyed and certificated by a UK Load Line Assigning Authority, it may only be coded if
- (a) it is a boat which is a standard production boat and that sort of boat has been used successfully in like conditions for at least five years. In that event there is presumed to be sufficient evidence that its construction and structural strength are adequate;
- (b) if a boat is built to ISO 6185 in that it can be shown that it or a prototype has passed the rigorous ISO 6185 testing,
- then that is regarded as sufficient evidence that its construction and structural strength are adequate.
67. If neither (a) or (b) applies then full information including calculations, drawings, details of materials and construction must be presented to and approved by the certifying authority.
68. This boat was not a standard production boat and there is no evidence of ISO compliance, save the vague assurance of a builder who produced no technical file and informed the Defendants that he was vague as to the requirements of the certifying standards.
69. Indeed, on 15 December in an interchange of e-mails the builder confessed that he did not provide Owner's Manuals and candidly asked the Defendants, "Can you give me an idea what we need for a Manual?"
70. The Defendants helpfully put together some suggestions based on RCD requirements for inclusion in such a manual.
71. The exchange of e-mails evidences the state of ignorance displayed by the Builder as to the prescriptive RCD requirements and the lax reaction of the Defendant who in consequence was to unwittingly represent that there was RCD compliance.
72. Mr Morgan Harris was supposed to be exercising his own independent professional judgment as to the build quality of the boat.
73. He should have insisted on inspecting the technical file. Had he done so he would have learnt that there was no such file. He should have followed his first instinct which prompted his requirement to see the file:
- “... so that we can see exactly which standards have been used in the construction ...”
74. Mr Morgan Harris contends that it was not within his competence to check structural specifications. There is no question of him being required to do so. The ambit of his enquiry would be to peruse what standards were used to satisfy himself that there was a technical file containing the standards that he identified as being appropriate to look at in order to see whether the Builder's assertions were properly to be relied upon.

75. A prudent surveyor would not fail to inspect the technical file in circumstances such as these and could not have concluded that this RIB was a standard production boat on the basis of that assurance or in the light of his anecdotal evidence that several friends had Pro Sport 7.5 RIBs, particularly since the engine specification and layout was in no sensible manner comparable with this RIB. There is an issue as to the Defendants role given the breakdown in the relationship between the Builder and the Claimants.
76. The Defendant pleads that his role was limited to negotiating whatever discount was available from that part of the purchase price withheld by the Claimant on account of work that was incomplete. He drew my attention to a number of e-mails that went between him and the Claimants before the delivery in December 2005. I accept that his role as an intermediary was difficult and that in all good faith he was endeavouring to make things easier for both the Builder and the Claimants.
77. This, however, should not have masked his clear obligation to his clients, the Claimants, to ensure that the boat that was delivered was indeed codable or RCD compliant.
78. Mr Morgan Harris gave his evidence before me with the candour and honesty one would expect.
79. Mr Martin Nicolle, his client, was very particular as to what he wanted and may not have been the easiest client to work for. I found his evidence clear and impressive.
80. His requirements as to Mr Morgan Harris's services were also clear and unambiguous.
81. The obligations of Mr Morgan Harris to the Claimants were expanded from the initial inspection services, in part evidenced in the survey order form, were voluntarily expanded by Mr Morgan Harris as evidenced in his report of 30 September and the correspondence between that date and the date that the boat was handed over in Southampton. His duty was to exercise the reasonable skill and care which would be attained by reasonably competent members of the marine surveying profession.
82. On 26 August 2005 an FRM 900 9.1 metre RIB with 12 passengers on board, six of whom were children heading back to St Ives Harbour came to an abrupt stop as the forward section of the hull split open, immediately flooding the boat and the front bench seat was torn from its deck mountings, throwing two of the children into the water. All were rescued and none suffered serious injury. A most careful investigation upon the hull failure was carried out by the Marine Accident Investigation Branch, who reported in March 2006 that the original MCA coding had been carried out according to the predecessor's standard to the MGN 280. According to the evidence of both Mr Morgan Harris and his expert witness, this occurrence and the careful analysis of the events leading up to the MCA certification and the accident was salutary so far as the marine surveyor's approach to inspections for MCA coding or the application of the Recreational Craft Directive.
83. It may well be the case that after the "Big Yellow" accident some marine surveyors were more assiduous in complying with their obligations.

84. Mr Temple who gave evidence on behalf of the Defendants was clearly not wholly familiar with the obligations of an expert witness. He represented contentious matters as being fact, and failed to correct errors in his report until cross-examined. He also represented that he agreed with calculations put forward by a third party presented to the court in a wholly illegible form, which he confirmed he agreed with, but when asked about them said they related to matters outside his expertise. On this occasion, he was not an impressive witness and where his evidence conflicted with that of Mr Greening I was constrained to accept that of Mr Greening. Under cross-examination Mr Temple accepted that having asked for the technical report, a competent marine surveyor should have insisted upon seeing it.
85. He also gave evidence that the boat in question was a standard boat, notwithstanding that he had not been able to examine any literature or even the website of Pro Sport. He was not convincing when he sought to contend that the twin inboard engine layout was of no real significance in the design.
86. Equally, when he asserted in his report that it was appropriate to accept the Builder's assertion that there had been compliance with such standards as ISO 6185 without any further enquiry.
87. It seems that there is a school of thought to which Mr Temple belongs and also Mr Morgan Harris, that the "Big Yellow" accident and subsequent investigation gave rise to a change in the rigour with which MCA/RCD inspections were to be carried out.
88. Its occurrence and fallout may well have caused some practitioners to re-appraise the degree of conscientiousness with which they approach their duties but I am satisfied that the Defendant was negligent when he advised the Claimants that the RIB was capable of being MCA coded and that ISO 6185 standards had been complied with in the build of the boat and that he further failed to comply with his duty of care in representing to the Claimants that the boat was RCD compliant.
89. The reality is that the boat is incapable of being coded because it was not a standard boat and that no technical file exists.
90. Without it being able to be rendered MCA codable at an economic cost the boat is worthless, save for the resale value of its component parts.
91. Mr Greenling gave evidence that the drop tests and the in-water rigorous testing would be a prelude to a very careful examination of the structure and the hull which would only be feasible if the inside of the hull were to be examined. At paragraph 2.8.3 of the "Big Yellow" investigation report there is the following "impression of hull condition":

"Both authorised surveyors/examiners commented that the outward appearance of the hull was particularly good. Whilst this may have been the case it is not necessarily representative of the inboard condition of the hull. Such an assessment can only be done by examining the areas under the deck. This was not possible because in common with many other RIBs no deck accesses were fitted. It therefore follows that it is important to closely examine drawings, construction photographs and

calculations when assessing the status of hulls for which there are no under-deck access facilities.”

92. Such is the case in relation to this RIB. Mr Temple proffers the expert view that it would suffice to conduct the drop tests and the sea tests and then merely to consider the state of the boat without disturbing the deck. I reject that view. I prefer the evidence of Mr Greening and accept that in order to consider MCA codability in the absence of technical files there would have to be a conscientious and rigorous examination of the inner part of the hull following the ISO 6185 drop and sea tests. Mr Greening adopted the view of Mr David Cox, a respected marine surveyor, who was privy to the Big Yellow report and investigation to which I have made reference. Absent drawings, construction photographs and calculations, a destructive investigation is the only possible one.
93. Mr Martin Nicolle was clear in his evidence that there was no way in which he would have authorised acceptance of the boat from Mr Norman the Builder had he known that the CE plate was not compliant and that it was not MCA codable or compliant with RCD. Mr Morgan Harris expressed his understanding of the position that Mr Nicolle was anxious to get the boat into his possession at any cost. I accept that Mr Nicolle was anxious to get possession of the boat, but in the belief that it was MCA codable and had a valid CE plate which was RCD compliant.
94. I accept Mr Nicolle’s evidence that he would not have accepted the boat and would have permitted Mr Norman to take the boat back to Guernsey as he threatened. It is significant, in my view, and corroborative, that Mr Nicolle’s expressed understanding was that Mr Norman was willing to take back the boat and to sell it, retaining the deposit and returning the balance to Mr Nicolle. I note that on 13 September 2005, Mr Norman threatened that in terms and Mr Dominic Palmeri confirmed that would have been his intent.
95. By reason of Mr Morgan Harris’s failure to advise him of the true position as to the CE plate and RCD compliance and that the boat was MCA codable, he was led to accept a boat that in the event has turned out to be of little economic value.
96. Such examination as has taken place of the boat has shown that it leaks water, the transom did not even accord with the limited lamination specification laid down by the Builder and that there are serious misgivings as to the safety of the boat, and in particular the risk that it may hinge forward of the engine compartment due to inadequate reinforcement.
97. As to this matter I accepted the evidence of Mr Greening, confirmed as it was by that of Mr Cox. I reject the evidence of Mr Temple as to this issue. Mr Greening has taken core samples of the structure of the boat and the samples that he has taken indicate that a number of these are too thin.
98. Of course matters beneath the deck and the thickness of the lamination are not matters that would be readily visible to even a reasonably competent marine surveyor. These are matters that are relevant to the value of the boat and to issues of damages that flow from the negligence failures of the Defendants. The starting point is what would Mr Nicolle have done in September had he been told that the boat was not MCA codable unless compliant with ISO 6185 and it could be demonstrated that there was no

technical file. I have little doubt that he would have terminated the contract and that the boat would have been sold on by Mr Norman subject to the deduction of the deposit.

99. The events that were subsequent indicated that Mr Nicolle accepted that the boat was MCA codable and indeed could be made RCD compliant, and that ultimately it was made RCD compliant. The Claimants are entitled to recover:

“(1) The price paid to Pro Sports,	£47,742.00
(2) Storage and insurance	5,982.88
(3) Investigation of transom by Challenger	1,461.75
(4) Delivery trip Southampton to Scilly to Falmouth	1,033.00
(5) Engine parts to Challenger	274.00
(6) Repair work and modifications by RK Marine	3,126.77
(7) Investigation by Mr Carter and Mr Cox	3,198.00
(8) Less the present value of the boat	- £10,000.00
	Total £52,818.40”