

BLACK WATER CRUISING

General Information

Background

Two years ago Mick and Melba Smith sold up their house and business in the UK and started a life of cruising in the Mediterranean. They supplemented their savings with occasional charters when they crewed for wealthy families wanting an exclusive luxury cruise without the need to do any work. Mick and Melba were keen sailors and they were happy to live on the boat all year, moving moorings whenever they wished, enjoying a life of sun and tavernas with only a few weeks of work when their home was taken over by anything up to another eight people.

Whilst they were planning this dramatic change in their life, Mick and Melba obtained quotations for a 25 metre cruiser and chose Ace Cruisers to build it for them at a price of £750,000. Ace are a long-established boatbuilders (although the actual building is now done in Indonesia) and have a worthy reputation for quality and service. Mick negotiated several significant improvements to the basic design and the end result was a unique and well-admired boat. The first year produced six charters, the second nine, and their budgets assumed twelve in the current year.

Over the two years since taking delivery of the boat there have been several problems. Some, such as shrinkage of deck timbers, peeling paint and the occasional engine breakdown, were sorted out, either by Ace Cruisers flying people out to the Mediterranean, or by Ace arranging for local yards to rectify the problems at their cost. However, there were three problems that Ace refused to rectify and Mick and Melba have had complaints, and even given refunds, from several charter families. The three problems are:

- Rolling. Even in minor winds the boat tends to roll uncomfortably. Ace say that the reason is Mick changed the standard mast from a grp to a longer stainless steel one, thus incurring additional weight and leverage compared with the standard 25 metre craft. Ace say they warned Mick at the time but he was so intent on having the smarter, brighter “never-to-be-seen-on-another-25-metre-boat” mast that he ignored their warnings. In their view it is therefore his problem and he must pay for any alterations that may be required. Mick is now suggesting that the boat has the wrong hull and that there should have been a keel to counter-balance the top load.
- Windlass (the pulley that operates the anchor). Frequently jams and often Mick and Melba have to get their guests to help manhandle the anchor. One guest strained his back and is now threatening to sue the Smiths. Mick feels that such basic problems make him look amateurish. Ace responded to say that he opted for a heavier Type Y anchor but did not want to spend the extra on a heavy duty windlass to suit the Type Y.

- Black water tank capacity (black water is sewage, grey water is sink/shower waste). This is the most embarrassing of all. When the boat has a full charter (eight plus two crew) the tanks fill up and have to be emptied at a mooring every 24 hours. This means that the normal meander around the islands is not possible when the cruiser is full. Ace responded to this issue by pointing out that it is the standard size tank for the 25 metre craft, and no-one else has complained. Mick has responded by pointing out that all the other 25 metre craft owners are weekend users and so the demand is much less. Ace responded to that by pointing out that weekend users tend to be heavy boozers and so the black water storage need is greater.

Mick and Melba commissioned an expert to fly out to Greece, where the boat was then moored, and his 30-page report listed numerous defects and design faults, which he costed out at £250,000 (plus VAT....but that's another issue). One of his criticisms was that the boat had a 'planing hull' which was totally unsuitable for this particular boat (a planing hull has no keel - bits projecting from the bottom of the boat to counter top structure leverage - and is designed for speed). Of course, Mick and Melba now accuse Ace of putting the wrong hull onto their boat and see this as the real reason for the rolling problem.

The dispute

Mick and Melba are claiming the following from Ace:

- A new 25 metre craft (which will take a year to construct) and compensation of £100,000 for this next years lost charter, plus
 - £75,000 for refunds and/or lost charter for the past two years, plus
 - accommodation costs when they are unable to live on the boat, plus
 - legal costs to date of £35,000 including £15,000 expert's fees.

The Smith's will return the existing boat to Ace at the end of the next charter season (say, end-November).

Or:

- £250,000 for the Smith's to carry out the repairs themselves, plus
 - £75,000 as before, plus
 - accommodation as before, plus
 - legal costs as before

on the assumption that the repairs can be carried out before the next charter season, and so there will be no loss of trade.

Or:

- £400,000 damages in full and final settlement of all claims (and the Smith's keep the boat).

Or:

- Ace buy back the existing boat for £1 million and the Smith's will waive all other claims and costs.

For the purposes of this mediation it should be assumed that the existing boat can be resold in good condition for £650,000/£700,000 and that a new equivalent boat would now retail at £900,000.

Attending the mediation

Mick and/or Melba Smith
Expert
Smith's lawyer
Ace Cruisers Managing Director
Ace lawyer

Note

There is a VAT issue which may be significant in the mediation. If a boat is bought on a 'sail away' basis (as this one), the purchaser does not have to pay VAT in the country of purchase (in this case the UK). But if it trades in the European Community the owner must state the country of its nominal residence, which would usually be the country with the lowest level of VAT at the time. This has to be done within two years of trading.

However, the Smith's declared that their nominal residence would be Turkey, which is currently outside the EU and so levies no VAT. Ace are sure that the Smith's have never registered residence in Turkey and that they trade solely in and around Greece and so are vulnerable to the authorities raising a VAT charge and default penalty against them. Whilst Ace do not intend 'whistleblowing' on the Smith's, this will be an issue if Ace buy back the boat as they may become liable for any VAT the Smith's should have paid.

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