



Henderson Reeves
Connell Rishworth
creating *smart legal* solutions

Refer: Jeremy Browne (84414/1)

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Mr P & Mrs H Wiedekamm
Flores
Indonesia

By email: peter@wiedekamm.com

Dear Peter and Heidi

FAULTY REPAIRS ON THE *STORMVOGEL*

- 1 Thank you for sending through the documents which we have now reviewed. We are very impressed with your organisation!
- 2 You have asked for advice as to your possible claim against Norsand Limited ("**Norsand**"). You allege that Norsand Limited undertook faulty repairs on your yacht *Stormvogel* between December 2013 and March 2014. This resulted in a mayday situation on the high seas and repair costs of AUD 16,251.68 (approximately NZD 17,800) incurred in Cairns, Australia.

Where claim could be pursued?

- 3 You would wish to recover the repair costs from Norsand. To date, Norsand and its insurer have denied any liability to you.
- 4 There are a number of different ways that your claim could be resolved:
 - (a) Arbitration - Arbitration involves a decision maker generally appointed by the parties (an arbitrator) making a binding ruling after a hearing. Arbitration is confidential and generally cheaper and quicker than court proceedings, although in this situation the costs of arbitration would be out of proportion to the amount at stake.

Many contracts may have an arbitration clause, requiring disputes to be resolved by way of arbitration. Did you have a written contract with Norsand? If so, please provide us with a copy. Even if there is no arbitration clause, the parties to a dispute can always agree to refer the dispute to arbitration. However, we would not recommend that here for the above reason.

- (b) Court action – The claim could be pursued in the District Court at Whangarei for the full repair costs, plus interest, plus costs. The case would be heard by a judge after a hearing has taken place where oral

evidence would be led and the witnesses cross-examined. There is a court fee of \$200 to start a claim and further court fees of \$1,800 for every day of hearing time. The court process is fairly slow. It could take 12-18 months for the case to be heard. Like with arbitration, we consider the costs of pursuing court action to be out of proportion with the amount at stake.

- (c) Disputes Tribunal – This is a tribunal set up to hear low value claims for certain types of dispute (including breach of contract claims). It can hear cases up to \$15,000 in value or, with the agreement of the parties, up to \$20,000 in value. A decision maker (called a referee) makes a decision after a hearing. Some referees have legal training, others do not. Lawyers are not permitted at the hearing although can be involved in the preparation of the paperwork. The case will be heard a lot quicker than with court action. There is a fee of \$180 to start the case. There are very limited rights of appeal so if referee comes to the wrong answer, you are basically stuck with it.
- (d) Mediation – Mediation is a voluntary process in which the parties attempt to negotiate their own settlement with the assistance of a mediator. The mediator does not impose any decision on the parties and so if they do not agree a settlement, there will be no outcome. Mediation is usually significantly cheaper than court action.

- 5 In the circumstances, our recommendation is to pursue your claim in the Disputes Tribunal. Your claim will be limited to \$15,000 unless Norsand agrees to extend the jurisdiction to \$20,000.
- 6 We also recommend that you engage us to assist with the preparation of the paperwork for the case.

Next steps

- 7 We consider the first thing that you need to do is to gather further evidence for your case. In particular, we recommend that you ask Norsand for a copy of all information that they hold. We suggest that you could send them an email along the following lines:

Dear Mr Palmer

Please send me a copy of your complete file on the work done on the Stormvogel including emails, other correspondence, job sheets, invoices etc. Since we are the clients and have paid for all work done, I believe I am entitled to a copy of this file under the Privacy Act 1993. Sending a scan of all the documents by email would be fine.

Regards

Peter Wiedekamm

- 8 This case is, to some extent, going to be a contest between expert witnesses. At the moment, Norsand / Vero has a marine surveyor who will say that Norsand has done nothing wrong. You can point to various problems in the surveyor's report. However, we consider that without having your own marine surveyor, there is a real risk that a court or tribunal will simply decide the case on the basis of the Howells Maritime Services report. We therefore consider that you should engage your own surveyor to examine the vessel, examine the file of the work done in Cairns, examine Norsand's file (when that arrives), and comment on the Howells report. We suggest that we be involved in the instructions given to the marine surveyor.
- 9 In summary, we consider that you should:
- (a) Request a copy of Norsand's full file.
 - (b) Engage a surveyor to examine all relevant information and comment on the Howells report.
 - (c) Prepare all the evidence for the claim.
 - (d) Seek Norsand's agreement to extend the jurisdiction of the Disputes Tribunal to \$20,000. There is a form for them to sign to extend the jurisdiction.
 - (e) Submit a claim in the Disputes Tribunal.
- 10 We suggest that we discuss the above at 2pm on Thursday, 25 September 2014 (NZ time). If that suits you, you can telephone the writer on 0064 9 430 4344.
- 11 We look forward to discussing the matter with you.

Yours faithfully

HENDERSON REEVES CONNELL RISHWORTH



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