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Indexed as:
Murrant v. Cross Investments Ltd.

Between
Lexine Murrant and Robert Murrant carrying on business
as Lex Amissa Yachts, Plaintiffs
and
Cross Investments Limited, a body corporate, Defendant

Nova Scotia Judgments: [1986] N.S.J. No. 290

Action 1985 S.H. No. 53372

74 N.S.R. (2d) 419

Supreme Court of Nova Scotia - Trial Division
Halifax, Nova Scotia

Tidman J.

Heard: February 10, 11, March 20, 21, April 1, 2, 1986

Judgment: August 20, 1986

Sale of goods -- Statutory warranties -- Contracting out -- Vendor not permitted to contract out of warranties of Consumer Protection Act -- Warranty of fitness of purpose -- S. 20c(3) Consumer Protection Act -- Requirement of reliance on seller's skill and judgement -- Fundamental breach -- S. 20c(3) (f) of Act -- Numerous minor defects in new sailboat not constituting fundamental breach of contract justifying rescission -- Warranty of durability -- S. 20c(3)(j) of Act -- Supply of defective mast for sailboat by defendant constituting breach of warranty of durability -- Consumer Protection Act, R.S.N.S. 1967, c. 53, ss. 20c(3)(e), 20c(3)(f), 20c(3)(j) -- Sale of Goods Act, R.S.N.S. 1967, c. 274, s. 16.

This was an action for rescission of a contract for the purchase of a yacht and in the alternative, for damages for breach of warranty. On August 31, 1984, the plaintiff purchased from the defendant a sailboat for the stated purposes of racing and family cruising for the price of \$111,224. The plaintiff had complained of a number of minor deficiencies in the manufacture of the boat. On June 28, 1985, the boat's main mast broke and fell. The only written contract between the parties was a conditional sale contract. There were no terms or warranties in the contract concerning the quantity of the goods purchased. Neither were there express verbal warranties given by the defendant concerning the quality of goods. Furthermore, the contract specifically provided that there were no repre-

sentations, collateral agreements, warranties or guarantees whatsoever except those in the agreement and there were no such guarantees. The contract also excluded every implied condition, warranty, and guarantee provided to buyers under the Sale of Goods Act. The plaintiff contended that it was entitled to rescission of the contract because the boat was not of merchantable quality and was not suitable for the purpose intended by the buyer.

HELD: Judgment for the plaintiff in part. Because there was an express term in the agreement that no warranties were given the defendant vendor, the plaintiff was not entitled to the benefit of the implied warranties set out in the Sale of Goods Act. However because the Consumer Protection Act prohibited contracting out of its provisions, that part of the contract which excluded warranties implied by provincial law was invalid. Accordingly s. 29(c) of the Consumer Protection Act applied and the plaintiff was entitled to the benefit of the warranties provided by it. There was no doubt that the plaintiff made known the purposes for which he was purchasing the boat to the vendor. However, as the plaintiff was himself a skilled mariner, he could not be held to have relied upon the skill and judgment of the vendor and was therefore not entitled to the remedy of rescission because of a violation of s. 20c(2) (e) of the Act. Nor was there a total failure of consideration amounting to a breach of s. 20c(3)(f) of the Act. The vendor supplied essentially what it agreed to supply. There were deficiencies in the boat, however they were not sufficient in total to justify a repudiation of the agreement and there was not a fundamental breach of the contract by the defendant justifying rescission. The defendant did however supply a defective mast and thereby committed a breach of condition within the meaning of s. 20c(3)(j) of the Act. Accordingly the plaintiff should succeed in its claim for damages caused by the demasting in the amount of \$17,550.

Mr. M.J. Ritch and Mr. Peter Darling, for the Plaintiffs.

Mr. R. Cragg, Q.C., for the Defendant.

TIDMAN, J.: -- This is an action for rescission of a contract for the purchase of a yacht and in the alternative for damages for breach of warranty.

On or about August 31, 1984 the plaintiff, Lexine Murrant and Robert Murrant carrying on business as Lex Amissa Yachts (Lex) purchased from the defendant, Cross Investments Limited (Cross) a 39' **Regatta** model Jenneau Sailboat for \$111,224.70. The plaintiff complained of a number of relatively small deficiencies in the manufacture of the boat which Lex alleges were not remedied promptly and efficiently by Cross. On June 28, 1985 on the way by sea to a yacht race out of Marblehead, Mass., the boat's main mast broke and fell.

Lex submits that the boat is not the product it contracted to purchase and therefore it is entitled to rescind the contract and recover the purchase price. If not entitled to rescission it claims the cost of replacing the main mast and correcting the other deficiencies. It also claims general damages for expenses and inconvenience.

In the early part of 1984 Robert Murrant approached Mr. Angus Cross, the general manager of the defendant, for the purpose of purchasing a vessel. Some discussion ensued as to which model of

boat Murrant wished to purchase. In the result the plaintiff decided to purchase a 12 metre Jenneau **Regatta** Sailing sloop. Jenneau is a French Company and its boats are manufactured in France.

In pre-contract discussions Mr. Murrant told Mr. Cross that he wished to purchase a vessel which was suitable for both racing and family cruising. A deposit on the vessel was paid in July or August of 1984. The delivery time was longer than anticipated by either party and Cross received the boat in late August of 1984. Because it required additional work before use the plaintiff took delivery on Labour Day, 1984.

Certain deficiencies were found in the boat's construction which are alleged in the plaintiff's statement of claim.

In the latter part of June, 1985 the boat was tuned in preparation for a sea trip to Marblehead, Mass., to compete in the annual Marblehead Yacht race. On June 29, 1985 while on route to Marblehead, the boat's main mast collapsed in a fourteen knot wind. A new mast was ordered and installed approximately 2 months later. On August 23, 1985 Murrant told Cross the plaintiff rejected the boat and demanded repayment of the purchase price as well as payment for certain expenses incurred.

Counsel for the plaintiff argues that the plaintiff is entitled to rescind the contract because the goods purchased were not merchantable or, in other words, not suitable for use for the purposes intended by the buyer.

He says Mr. Murrant ordered a boat suitable for racing and family cruising but the boat received was not suitable for family cruising. He says the boat was too highly technical to be handled by a family crew.

He lists 23 deficiencies found in the manufacturing and servicing of the boat. He says further that the plaintiff did not receive prompt and efficient service from Cross in attempting to remedy the deficiencies. He submits that all of those complaints coupled with the demasting, rendered the boat unsuitable for the use intended. He says the boat's sails were not even ordered when the boat was delivered to Lex.

The plaintiff borrowed from National Bank of Canada (National), to assist in the purchase. The only written contract between the parties is a conditional sales contract on National's standard form which was assigned by Cross to National.

There were no terms or warranties in the contract concerning the quality of the goods purchased. Neither were there express verbal warranties given by Cross concerning the quality of the goods. Clause 12 of the contract expressly provides that there are no representations, collateral agreements, warranties or guarantees whatsoever except those specifically set forth in the agreement. There are none so set forth. The contract also excludes every implied condition, warranty and guarantee provided to buyers under the Sale of Goods Act or other laws of every province.

Section 16 of the Sale of Goods Act, R.S.N.S. 1967, c. 274 provides:

"16. Subject to this Act, and any statute in that behalf, there is no implied warranty or condition as to the quality or fitness, for any particular purpose, of goods supplied under a contract of sale, except as follows:

(a) where the buyer, expressly or by implication, makes known to the seller the particular purpose for which the goods are required, so as to show that the buyer relies on the seller's skill or judgment and the goods are of a description which it is in the course of the seller's business to supply (whether he be the manufacturer or not) there is an implied condition that the goods shall be reasonably fit for such purpose; provided that, in the case of a contract for the sale of a specified article under its patent or other trade-name, there is no implied condition as to its fitness for any particular purpose;

(b) where goods are bought by description from a seller who deals in goods of that description (whether he be the manufacturer or not), there is an implied condition that the goods shall be of merchantable quality; provided that, if the buyer has examined the goods, there shall be no implied condition as regards defects which such examination ought to have revealed;

(c) an implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade;

(d) an express warranty or condition does not negative a warranty or condition implied by this Act, unless inconsistent therewith."

Because there is an express term in the agreement that no warranties are given by the vendor Cross, the plaintiff, in my opinion, is not entitled to the benefit of implied warranties set out in Section 16.

Subsection (3) of Section 20(c) of the Consumer Protection Act, R.S.N.S., 1967, c. 53 provides in part as follows:

"20C (3) Notwithstanding any agreement to the contrary,(my emphasis) the following conditions or warranties on the part of the seller are implied in every consumer sale;

...

(e) where the purchaser, expressly or by implication, makes known to the seller the particular purpose for which the goods are required, so as to show that the purchaser relies on the seller's skill or judgment and the goods are of a description which it is in the course of the seller's business to supply (whether he be the manufacturer or not), a condition that the goods are reasonably fit for such purpose; provided that, in the case of a contract for the sale of a specified article under its patent or other trade name, there is no implied condition as to its fitness for any particular purpose;

(f) where goods are bought by description from a seller who deals in goods of that description (whether he be the manufacturer or not), a condition that the goods shall be merchantable quality; provided that, if the purchaser has examined the goods, there shall be no implied condition as regards defects which such examination ought to have revealed;"

Because the Consumer Protection Act prohibits a contracting out of its provisions I find that part of the contract excluding warranties implied by provincial laws to be invalid. Therefore Section 29(C) of the Consumer Protection Act applies and the plaintiff is entitled to the benefit of the warranties provided by it.

The evidence shows that when Mr. Murrant ordered the boat he told Cross he wanted it "for racing and family cruising, with the emphasis on racing". He thereby made it known to Cross the particular purpose for which the goods were intended to be used as required by Section 20C(3)(e). Plaintiff's counsel says that the plaintiff instead received a "high tech" boat requiring a full crew complement of the highest technical expertise and experience to sail it.

The next question for determination under Section 20C (3)(e) is whether the plaintiff relied on the seller's skill or judgment to provide a boat reasonably fit for racing and family cruising. Plaintiff's counsel refers to Mr. Murrant as a nonmariner who relied on Cross to supply a boat fitting those specifications. I cannot accept that such was the case.

Mr. Murrant, aged 38, in his evidence says that he began sailing at age 10. He had been taught sailing and studied sailing textbooks. He says he read "everything I could get my hands on about sailing". He owned a 35' Northstar 1500 sail boat from 1980 to 1985. He has participated with that Northstar in two Marblehead races as well as in many other yacht races.

In February 1984 at the Halifax Boat Show he saw a presentation of the Jenneau boats and became interested in purchasing one. He said he was interested in the boat because of the speed of which it was capable and because it was comfortable.

He approached Mr. Angus Cross of the defendant company and said he was interested in purchasing a Jenneau sailboat. Angus Cross and Murrant had known each other for about 5 years and Murrant knew when he purchased the boat that Cross had been a dealer for Jenneau for a very short time. I believe he also knew that Cross had sold only one Jenneau boat and that to Mr. Scott MacCulloch. Murrant had seen that sailboat although it was not exactly like the one ordered by Murrant. I believe Murrant was far from a sailing neophyte, but rather was a knowledgeable sailor. In fact, Murrant had nearly as much information about the Jenneau line of boats as did Angus Cross and I believe Murrant knew that to be so at the time he ordered the boat.

Consequently I am not satisfied that Murrant relied on Cross's skill and judgment to provide a yacht suitable for both racing and family cruising. I believe Mr. Murrant received not only the boat he ordered but also the boat he knew he was ordering. In fact he said he was pleased with the boat when he received it and with the way it sailed. It is my belief that even if Murrant did rely on Cross's skill and judgment the plaintiff did in fact receive a boat suitable for racing and family cruising with the emphasis on racing.

I find that the plaintiff is not entitled to the remedy of rescission because of a violation by the defendant of Section 20C(3)(e) of the Consumer Protection Act.

I now proceed to determine whether the alleged deficiencies set out in the statement of claim and the boat's demasting amounted to a breach of warranty implied by Section 20C(3)(f) and if so whether the breach is so fundamental to the contract to justify its rescission.

The alleged deficiencies as set out in the statement of claim are:

1. The keel was rough and not properly primed or painted;
2. Decorating stripes were rough and improperly applied;
3. Upon initial delivery, the straps to tied down the deck were not available so that the vessel could not be sailed;
4. The main halyard sheaves broke making it impossible to change the head-sails;
5. The headfoil broke making it impossible to change the headsails;
6. There was no masthead light, hence inadequate running lights;
7. Floor boards were warped and spring;
8. The boat was constantly stained by its engine exhaust;
9. The mainsail fit improperly and it would come loose from the mast;
10. A large headsail ripped within one half hour of use;
11. Wiring was loose throughout the boat including in the engine compartment;
12. Bunks broke during the first use;
13. Stove was not converted for use with liquid propane gas thus making it unusable;
14. Toilet seat broke;
15. Certain halyards were missing;
16. Numerous parts and fittings were not received with the boat;
17. The batteries were improperly installed causing a drain of voltage;
18. The Windex instrument was smashed;
19. The rudder pins were bent;
20. A tiller fitting broke immediately upon use;
21. Teak trim in the cockpit came loose and had to be re-glued;
22. The boat contained no cockpit bilge pump thus violating fundamental safety standards;
23. Certain electronic equipment failed including the depth sounder and log; and
24. Such further and other defects as may appear. David Archibald the owner of Ocean Yacht Sales Ltd., Chester, N.S., gave evidence on behalf of the defendant. He says he has operated his business since 1977 and has been involved with sailing vessels since he was 6 or 7 years old. He is now 39 years old. He sells sailing boats and is a competitor of the defendant. Mr. Archibald was examined and cross-examined about the listed deficiencies. He gave his evidence in a straightforward and knowledgeable manner. In dealing with the listed deficiencies I shall refer to Mr. Archibald's evidence and to that extent, I accept it.

I shall deal now with each one of the alleged deficiencies.

1. Mr. Murrant said the left side of the keel was rough and one of his crew spent two days filling and sanding in order to smooth that side of the keel. Cross was not informed of this defect until after the work was completed. Mr. Archibald says that keels on most new boats are not finished perfectly. He says a racer would usually want to sand the keel of a new boat before racing.

2. Mr. Murrant says the decorating stripes on the boat were rough and of two different colours. Cross was not informed of this and therefore could not remedy it.

3. Mr. Cross said he was not made aware of the absence of deck straps immediately. He says that the boat could have sailed without them. He says only about 10% of all sailboats are equipped with deck straps. Mr. Archibald agrees that some boats do not have deck straps and the boat could be sailed without them. The deck straps were provided to Lex in September of 1984.

4. The broken main halyard sheaves were replaced by Lex. Mr. Cross says he gave Murrant material to make new sheaves. Mr. Archibald says these are made usually of aluminum alloy or plastic and can be custom made locally for \$20-\$25.00.

5. The plaintiff alleges that a broken head foil made it impossible to change head sails. The head foil broke while Murrant was racing in Bedford Basin. From the evidence I am unable to determine if the head foil was broken by the fault of the crew while racing or because of a defect in its manufacture. In any event the purpose of the head foil is to provide another runner so a new sail can be hoisted while the sail in use is still up. Therefore, the boat could still be sailed without the head foil. Mr. Archibald points out that head foils on cruising yachts have only one groove or runner so that the head sail must be lowered before putting up another.

6. The masthead light was fixed by one of Murrant's crew by the installation of a new bulb.

7. Mr. Archibald says that floor boards often warp simply because water warps wood. The normal remedy is to screw down the warped area - a relatively simple procedure. This alleged defect was not reported to Cross.

8. Mr. Archibald says that boats are usually stained in the exhaust area.

9 & 10. Mr. Cross says that the defendant did not sell the boat's sails to the plaintiff and therefore is not responsible for any problems with them. I accept Mr. Cross's evidence in this regard as the written price quotation given by the defendant to the plaintiff did not include sails.

Also, Mr. Alex Watters of Ulmer Sails who gave evidence says that Mr. Murrant approached him in August of 1984 to purchase sails for the boat. I find that the defendant not having sold the sails to the plaintiff is not responsible for any problems the plaintiff had with them.

11. It seems to me that the loose wiring cords could have been tidied up by a few minutes of stapling or clipping. Cross was not informed of this problem.

12. The evidence indicates that the bunks did not break but rather that a clip, which held up an end of the bunk, broke. Cross was not informed of this problem and Mr. Cross says that this would be a \$10.00 job. Mr. Murrant says it was fixed for no cost.

13. Mr. Cross could not recall Mr. Murrant specifically ordering a propane stove but says that when the boat arrived Murrant wanted a propane rather than the butane stove which was supplied. He said it was only a one minute job to convert the stove from butane use to propane use. He admitted that he overlooked having this done when requested.

14. Cross was not informed of the broken toilet seat and Mr. Cross says he would have replaced it if he had known it was broken.

15. Mr. Murrant says there were halyards missing for the jib and spinnaker which were replaced by he and Mr. Robson, one of his crew. He says that they were difficult to install.

16. I find that any parts and fittings which did not come with the boat were supplied by Cross when requested.

17. There was no proof that the batteries were improperly installed but the evidence indicates that the voltage drain could have been the result of the crews' failure to properly recharge the batteries after use.

18. From the evidence it is not clear when or how the windex instrument was smashed. Both Mr. Cross and Mr. Archibald says that a windex is a fragile instrument that often breaks. Mr. Cross says he sells 400 to 500 of them during the yacht racing season.

19. It appears from the evidence that the bent rudder pins would not interfere with the sailing of the boat. The rudder pins could have been bent by improper use by the plaintiff.

20. Mr. Cross was not informed of the broken tiller fitting but likened the fitting to a broom holder which would cost approximately \$0.50.

21. This was a small area which was reglued by Mr. Murrant. It was not reported to Cross.

22. According to the evidence, in France, where the boat was manufactured, cockpit bilge pumps are not government mandated equipment as is the case in Canada. It was not ordered specifically by the plaintiff.

23. The depth sounder and log were repaired by Gabriels at a cost of \$41.80 which was paid by Mr. Murrant. Efforts were made by Cross technicians to effect these repairs but they were not effected quickly enough to suit Mr. Murrant.

Mr. Archibald says that rarely is a new boat received in perfect order. He says that usually there are bits and pieces which do not arrive with the boat and some repairs and alterations usually have to be made. He says that the number and type of problems experienced in this case is not unusual. He says on occasion he would have the same number of problems with a new boat.

Mr. Watters was more succinct when asked about the alleged deficiencies. He says "they don't amount to a hill of beans".

Mr. Murrant describes how the demasting of the boat occurred. His description was confirmed by the evidence of other crew members and the defendant does not take issue with Mr. Murrant's evidence of the demasting.

Mr. Murrant says that on June 29, 1984 while on the way to Marblehead, Mass., the aluminum main mast came down. He says they were changing course at the time and while pulling in the main sail he felt a bump and could see the mast breaking. It came down toward him and another crew member. He said it "floated" down straight over the back of the boat. He says the wind strength was 14 knots at the time the mast broke.

The main mast broke in two places; one break is located 18" below deck at the point of a splice in the mast construction and the other about 1/3 of the way up from its base at the lower spreaders.

Evidence was adduced as to the cause of the mast failure.

The plaintiff called as an expert witness, P.J. (Jack) Hobbs, B. Sc. P. Eng., a metallurgical engineer. Mr. Hobbs prepared a written report on the mast failure which was put in evidence.

The following are excerpts from his report:

"...a limited investigation was undertaken to determine the cause of failure and assess the integrity of a splice connection in the main mast of the above noted yacht. It was reported that the yacht was new with approximately 50-100 hrs. of sailing time recorded. The mast was manufactured from an aluminum alloy extrusion and failed at the splice connection on June 29, 1985 whilst sailing in 14 knot wind conditions.

...

The mast had failed at a splice location, 146 cm from the butt end. Figures 1A and 1B detail the failed splice location of the mast, but the investigation was concentrated on assessing the failure of the splice region. ... The mast and inner sleeve appeared to be fabricated from an aluminum alloy. Failure of the splice had occurred by circumferential fracture of the inner sleeve at the abutment location of the two mast section ends."

The plaintiff called also as an expert witness, William J. Goman who had completed 2 1/2 years of a 3 years course leading to a diploma in Architectural Technology from Ryerson Polytechnical Institute in Toronto. He works as a yacht designer with Steve Killing Yacht Design Group Ltd. and has worked as a yacht designer with various companies, including his own since 1972. Mr. Goman also prepared a written report which was placed in evidence. The following are excerpts from Mr. Goman's report:

"The mast failed in two places; at the lower spreader attachment and approximately 18 inches below deck at the location of a splice.

From the appearance of the broken sections and the nature of the tear the spar failed in a fore and aft direction such that the top section above the lower spreaders would have fallen aft. The failure at this point would have started to tear the spar from the leading edge to the trailing edge, towards the bolt rope groove.

The section of spar between the lower spreaders and the splice would have moved forward at the top and; being restrained at the splice started at the aft face of the insert piece in the splice and proceeded to tear forward. While tearing forward it would appear that the mast may have twisted off to one side causing the remaining material in the splice to bend off to one side.

The direction of movement of these sections and the nature of the failure were consistent with the expected directions and forces on the spar in normal sailing

conditions. There was nothing to suggest that loads were being improperly applied to the spar.

There was no evidence to suggest which of the two failures occurred first."

The defendant called as an expert witness, Michael L. Vollmer, B.Sc. Mechanical Engineering (Queens). Mr. Vollmer is Director of Technical Services for the Allied Boating Association of Canada and has worked in yacht design and maintenance since 1974. In 1978 he worked as a plant manager and mast designer for an aluminum mast manufacturing company. Mr. Vollmer also prepared a report which was put in evidence. The following is an excerpt from it:

"... It is quite clear from even a cursory examination that the failed mast has a permanent bend of a substantial nature. In addition this bend is not uniform in character but varies widely in nature depending on the panel in question. This, I believe, indicates that the mast has, at some point, been allowed out of column enough that the elastic limit of the material has been exceeded. I would suggest that this may have occurred at almost anytime in the history of this rig, probably in a heavy weather situation, and this led to permanent damage which in turn led to the failure of this spar ..."

There is, however, agreement among the three experts that the mast's splice design and construction is poor. They also agree that the placement of the splice at a point of high stress, as in the case here, was ill advised. They disagree as to what was the ultimate cause of the demasting.

Mr. Vollmer says that he detected a permanent bend in the mast which was caused, in his opinion, by improper use by the crew of the running back and check stays while sailing. He says that if it were not for this bend the mast probably would not have broken.

Mr. Vollmer said there was a pronounced bend in the mast. Mr. Goman says he did not detect a bend in the mast. Mr. Riche while cross-examining Mr. Vollmer indicated he could see no bend in the lower part of the mast (Exhibits 34 and 35). Mr. Vollmer says the bend in the lower part of the mast is slight and would be difficult to notice if one was not competent. I also examined the lower part of the mast and could detect no bend in it.

Mr. Goman says that, in his opinion, the crew of the True North, Canada's premier racing sail boat, could not have prevented the mast from breaking.

Most of the members of the crew who were on board the boat at the time of the demasting gave evidence. I am satisfied from their evidence that they were a competent sailing crew.

Following the demasting a new mast was ordered from the manufacturer. Mr. Murrant wanted Cross to provide him with a replacement boat to compete in the Marblehead race. Mr. Murrant said he and his crew had diligently and painstakingly prepared for the race and wanted to compete in it. Mr. Cross said he would provide a replacement for a fee which Mr. Murrant said he would not pay. Consequently Mr. Murrant and his crew did not compete in the race.

The new mast was installed 55 days after the demasting. Some of the rigging from the original mast was placed on the new mast, contrary to Mr. Murrant's request. The new mast was not installed and ready for use as quickly as Mr. Murrant wished. The new mast was manufactured in

France. At the time of ordering or shortly thereafter the mast manufacturer closed down for a holiday period.

Mr. Murrant was scheduled to race the boat on a Friday. He told Cross if the mast was not ready for the race "you can have the damn boat". However, on the Thursday evening before his imposed deadline Mr. Murrant, during a telephone conversation, told Mr. Cross to take the boat back. Mr. Cross had telephoned to tell Mr. Murrant the boat would be ready for the race. On that Friday Mr. Murrant took his belongings off the boat and told Mr. Cross it was his responsibility. Cross has looked after the boat at its shipyard since that time.

Plaintiff's counsel submits that, because of all the defects, the boat was not of merchantable quality and accordingly his client is entitled to reject it and have its money back.

He says the courts have decided similar cases by granting rescission where there has been a total failure of consideration because the seller has failed to supply what he had agreed. He cites as one authority for this proposition the case of *Winnipeg Fish Company v. Whitman Fish Company* (1909) 41 S.C.R. 453.

I cannot agree, however, that there was a total failure of consideration in the case at bar. I believe Cross supplied essentially what it agreed to supply and what the plaintiff ordered. There were some deficiencies in the boat but a large number of those alleged in the statement of claim were not even reported to Cross at the time they were discovered. The balance of them for which Cross was responsible were of a minor nature and are not, in my opinion, even coupled with the demasting, sufficient in total to justify a repudiation of the agreement. There was not, in my opinion, a fundamental breach of the contract by the defendant justifying rescission. Indeed, even if it did so justify rescission, the plaintiff, in my opinion, was too late in repudiating the contract. It had the boat in its possession for approximately a year before it was rejected and had used it on several occasions during that time.

I do believe, however, that the defendant supplied a defective mast and thereby committed a breach of condition. Section 20C(3)(j) of the Consumer Protection Act provides that, notwithstanding any agreement to the contrary, the following condition or warranty on the part of the seller is implied

"20C(3)(j)...that the goods shall be durable for a reasonable period of time having regard to the use which they would normally be put and to all the surrounding circumstances of the sale."

I find that the demasting was caused by an improperly constructed mast. It was not durable for a reasonable period of time having regard to the use to which the boat would normally be put. I can find nothing in the evidence to indicate that the boat's crew was responsible for the demasting. They were in my opinion using the boat in a way a boat would normally be used.

The plaintiff succeeds in its claim for damages caused by the demasting.

I award damages occasioned by the demasting in the amount of \$17,550.00, being the cost of replacing the boat's mast. The plaintiff shall have its taxed costs of the action.

I also award the plaintiff pre-judgment interest at the rate of 11% per annum on \$17,550.94 from September 3, 1985 (invoice date) to the date of judgment.

If Nova Scotia Health Services Tax is payable on the sale of the boat I order that it be paid by the plaintiff.

No evidence was submitted that the plaintiff, Lex Amissa Yachts, suffered general damages. It may be that the crew members of the boat, including Mr. Murrant, in his personal capacity, suffered general damages as a result of the demasting. However, since those damages, if any, were not suffered by the plaintiff itself, I award no general damages to the plaintiff.

TIDMAN, J.