SUPREME COURT OF QUEENSLAND

CITATION:	*Pix v Suncoast Marine Pty Ltd & Anor* [2019] QSC 45
PARTIES:	**TREVOR KEITH PIX** **(plaintiff)** **v** **SUNCOAST MARINE PTY LTD (ABN 41 091 644 101)** **(first defendant)** **and** **MICHAEL JOHN RIDER and KATE RIDER** **(second defendants)**
FILE NO:	SC No 12976 of 2009
DIVISION:	Trial
PROCEEDING:	Trial
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED ON:	8 March 2019
DELIVERED AT:	Brisbane
HEARING DATES:	5 – 7 March 2018; 12 – 13 June 2018
JUDGE:	Holmes CJ
ORDER:	**Judgment for the plaintiff against the second defendants in the sum of $988,458.**
CATCHWORDS:	DAMAGES – GENERAL PRINCIPLES – MEASURE OF DAMAGES IN ACTIONS FOR BREACH OF CONTRACT – BASIS OF ASSESSMENT OF DAMAGES – DIMINUTION IN VALUE – LOSS OF USE – where the plaintiff purchased a catamaran from the second defendants – where the second defendants were found to have breached a term implied by s 17 of the *Sale of Goods Act 1896* (Qld) that the vessel would be of merchantable quality – where damages remain to be assessed – where the second defendants contend that the plaintiff has failed to adduce evidence of any loss in value of the vessel attributable to their breach – where the plaintiff claims that damages should be assessed by reference to the costs of the repairs required to bring the vessel up to merchantable quality – where the second defendants dispute that some charges for repair work arise from their breach – where the plaintiff claims damages for loss of use while the vessel was under repair – where the second defendants contend that damages for loss of use are not applicable and that there was in any case no evidence of the use to which the

vessel would be put – whether damages for diminution in value of the vessel should be assessed by reference to repair costs in the absence of evidence of its market value at delivery – whether charges for repair work necessitated by defects attributable to the second defendants' breach can be distinguished from the costs of work required for other reasons – whether the plaintiff is entitled to damages for loss of use for the period of time the vessel was under repair

Competition and Consumer Act 2010 (Cth) sch 2, ss 54, 55, 259(4)
Sale of Goods Act 1896 (Qld), s 54
Trade Practices Act 1974 (Cth), s 52

Admiralty Commissioners v SS Susquehanna [1926] AC 655, cited
Anthanasopoulos v Moseley (2001) 52 NSWLR 262, cited
BHP Coal Pty Ltd and Ors v O & K Orenstein & Koppel AG and Ors [2008] QSC 141, considered
Commissioner for Railways v Luya Julius Ltd [1977] Qd R 395, considered
Dimond v Lovell [2002] 1 AC 384, considered
GEC Marconi Systems v BHP Information Technology (2003) 128 FCR 1, considered
Lord Citrine (Owners) v Hebridean Coast (Owners) [1961] AC 545, cited
Mersey Docks and Harbour Board v Owners of the SS Marpessa [1907] AC 241, cited
Minster Trust, Ltd. v Traps Trackers, Ltd [1954] 3 Q.B.D 136, applied
Pix v Suncoast Marine Pty Ltd [2018] QSC 235, cited
Placer (Granny Smith) Pty Ltd v Thiess Contractors Pty Ltd (2003) 77 ALJR 768, distinguished
The Owners of No. 7 Steam Sand Pump Dredger v The Owners of SS "Greta Holme" [1897] A C 596, cited
The Owners of the Steamship "Mediana" v The Owners, Master and Crew of the Lightship "Comet" [1900] AC 113, applied
Vautin v By Winddown, Inc (formerly Bertram Yachts) and Anor (No.4) (2018) 362 ALR 702, considered
Yates v Mobile Marine Repairs Pty Ltd & Anor [2007] NSWSC 1463, considered

COUNSEL: S R Grant for the plaintiff
A W Duffy QC for the first and second defendants

SOLICITORS: Hall & Wilcox for the plaintiff
Thynne & Macartney for the first and second defendants

[1] On 12 October 2018, I found for the plaintiff against the second defendants in his action for breach of an implied condition as to merchantable quality in a contract for the sale of a vessel, the *Jalun*.[1] That breach arose because of defects in the way fairing compound was mixed and applied to the boat during its construction, so that its paintwork developed cracking and blistering and it required repair. What remains to be determined is the quantum of damages. The first issue for determination is the appropriate measure of the plaintiff's loss: in particular whether, and, if so, how, it should be assessed by reference to the cost of the vessel's repair. A second issue is whether charges for repair work necessitated by defects attributable to the second defendants' breach can be distinguished from the costs of work required for other reasons, and, in any event, whether the charges made are reasonable. A third issue is whether the plaintiff is entitled to damages for loss of use of the vessel during the 270 days when it was under repair.

The appropriate measure of the plaintiff's loss

[2] As I recorded in my earlier decision, s 54 of the *Sale of Goods Act* 1896 provides the usual measure of damages for a breach of warranty:

> **Remedy for breach of warranty**
>
> …
>
> (2) The measure of damages for breach of warranty is the estimated loss directly and naturally resulting, in the ordinary course of events, from the breach of warranty.
>
> (3) In the case of breach of warranty of quality such loss is prima facie the difference between the value of the goods at the time of delivery to the buyer and the value which they would have had if they had answered to the warranty.

[3] The contract price for the *Jalun* was $2,450,000, although the plaintiff actually paid $2,430,000 for it. His recall was that the $20,000 discount was given for cash; the second defendants did not offer any clear account of the reason for it. As to the value of the vessel at the time of its delivery, there was no evidence of its market value in its defective state. The second defendants contended that there was, in consequence, no evidence that its actual value was any less than the price paid for it. The plaintiff could, they said, have led

---

[1] *Pix v Suncoast Marine Pty Ltd* [2018] QSC 235.

retrospective valuation evidence, and no reason had been given for not doing so. This was not a case where because the plaintiff was unable to adduce precise evidence of loss, the Court ought to estimate the damages as best it could.[2] The only evidence of value was a shipbrokers' 2012 valuation at $2,250,000, tendered in cross-examination of the plaintiff. If one were to depreciate the contract price by 1.5% per annum (which was considerably less than the 5% depreciation rate adopted by the Australian Taxation Office for charter vessels) for the period from the time of sale in 2007 to 2012, when the valuation was undertaken, one would arrive at no difference in value.

[4] The plaintiff contended that the Court was entitled to rely on the contract price of the *Jalun* at $2,450,000 as establishing the value of the vessel had it answered the warranty, and, in the absence of evidence of market value, to award damages on the basis of what it would cost to bring the vessel up to merchantable quality at the time of its sale in 2007. He pointed to *Minster Trust, Ltd. v Traps Trackers, Ltd*[3] as an instance of such an approach. In that case, fully re-conditioned excavating machines were contracted for but not provided, the machinery instead having various defects. The Court accepted the contract price as evidence of the value the machinery would have had if it were fully re-conditioned, there being no other evidence of value; and, finding that it was not possible to arrive at a market value figure for the machinery in its delivered condition, instead proceeded on a broad estimate of the value by reference to the cost of the work needed to fully re-condition the machines. A purchaser buying the machinery in its defective state would deduct from the purchase price an amount sufficient to cover the cost of repairs and the loss of hire while they were being undertaken.[4]

[5] I accept that the *Jalun's* contract price of $2,450,000 (the discount for cash being irrelevant in this regard) can reasonably be taken as the value of the boat had it been of merchantable quality as warranted. The vessel was a one-off construction exercise, built, the male second defendant said, to demonstrate the design and build capability of the second defendants' company. It was sold new to the plaintiff, on an arm's length contract. The second defendants did not suggest that there was some identifiable market for bespoke vessels of this type, or that the contract price was not a proper reflection of its value had it answered its description.

---

2 *Placer (Granny Smith) Pty Ltd v Thiess Contractors Pty Ltd* (2003) 77 ALJR 768 at [38].
3 [1954] 3 Q.B.D 136 ('*Minster Trust*').
4 At 156.

[6] As to its value as delivered, the plaintiff submitted that the information within and about the 2012 valuation of the boat was too sparse to allow reliance on it. I accept that submission; I am not prepared to give any weight to it. It is a one page document which contains the words

> "approximate valuation of [the *Jalun*] as on 06/04/2012 $2.250M based on as is where [sic]".

The questioning of the plaintiff about it was limited to his being asked whether he had obtained a valuation of the vessel and whether this was it, to both of which he replied in the affirmative. There was no evidence as to the circumstances in which, or the purposes for which, the valuation was undertaken; as to the qualifications of the person signing the valuation; as to whether the ramifications of the defects in the fairing process were appreciated by its author; or as to any evidence, by way, for example, of sales of comparable vessels, on which the valuation was based. It seems to me properly to be disregarded.

[7] The *Minster Trust* approach is appropriate in the present case. Retrospective valuation was not feasible. It is most improbable that there would be any market for a defectively finished boat, the consequent flaws in which were yet to be manifested. In this case, the best way of estimating the value of the boat at delivery is to consider what a buyer would have been prepared to pay for it with knowledge not only of its defective state but how its incipient problems would become manifest. The obvious answer is that what the notional buyer would be prepared to pay would depend on what it would cost to fix it.

The repairs necessary to bring the Jalun to merchantable quality

[8] The plaintiff's loss is thus properly assessed by reference to the cost of putting the *Jalun* into the condition in which the second defendants had warranted it to be at sale. The repairs which were undertaken on it involved peeling, filling, fairing and painting the vessel and took place over a period of 270 days between 10 May 2012 and 4 February 2013. The plaintiff provided a schedule of costs which allocated expenditure as between that work, on the one hand, and, on the other, maintenance work and repair of other non-compensable defects (primarily, problems arising from water ingress, as to which the plaintiff's claim failed). The amount the plaintiff arrived at for the repair of the

fairing-related defects was $524,819.60. These, of course, were expenses incurred five years after the yacht was bought, and the second defendants protested that there was no evidence as to what the cost of repairs at the time of sale might have been. The plaintiff's solution was to propose a discount in accordance with consumer price index figures to arrive at a figure representing the cost of such repairs in March 2007: $443,841.57.

[9] In addition to their point that there was no evidence as to the cost of repairs at the time of sale, the second defendants contended that it was not possible to arrive at a precise apportionment between the costs of repairing the fairing and painting defects and those of remedying other problems; and there was no expert evidence that the amounts charged were reasonable. Again (it was submitted), these matters were within the plaintiff's power to prove, and it was not necessary for the Court to remedy the gaps in the evidence by making a broad-brush estimate.

[10] The plaintiff's proposed method of discounting the repair costs seems to me an acceptable method of arriving at an estimate of what a prospective buyer would have been contemplating in 2007 as expenditure to bring the *Jalun* up to its warranted state. No expert evidence was given in relation to the reasonableness of the extent of the work done or the charges for it, but it was not suggested to either Mr Behan, the marine surveyor who acted as a consultant for the repairer, SprayTime Marine Services, or Mr Garlick, the boat builder who supervised the work, that any of the work done was unnecessary, the time taken in it excessive or the charges for it out of the ordinary for their respective undertakings. Nor was it suggested that SprayTime Marine Services and Mr Behan were not reputable providers of the relevant services. Cross-examination was directed, rather, to distinguishing between various items of work according to whether they were necessitated by the fairing and paintwork problem; or were the result of some distinct defect; or were simply a matter of maintenance work. I see no reason not to act on the basis that the charges made were proper and reasonable, and am satisfied in that regard.

[11] The second defendants do, however, make some valid points about whether all amounts which the plaintiff claimed as attributable to the inadequate fairing work and its consequences are properly to be regarded as arising from them. Importantly, Mr Garlick gave evidence that the work done included removal and replacement of carpet on the fly

bridge deck in connection with reinforcement of the floor, and repair of the cockpit floor because it had been inadequately laminated in the first instance. Neither, then, involved rectification of a warranty-related defect. In addition, the stanchions, or uprights, of the handrails were removed and refitted to prevent water ingress. Other matters claimed appear to have involved replacement of items because of wear and tear unrelated to the plaintiff's allowed claim.

[12] The items of repair which the plaintiff has claimed which are not, in my view, properly regarded as relating to the breach of warranty are as follows:

- removal of teak pads from the cockpit floor to improve repairs, the cost of which was not specifically itemised, but might reasonably be assumed to have been not more than $2,000;[5]
- other itemised amounts for repairs to the cockpit floor, for which the plaintiff had claimed some $1,500;[6]
- work on the stanchion bases, at about $11,400;[7]
- the cost of replacing deteriorated hatches at about $300;[8]
- half (my estimate) of the final detailing and cleaning costs since they extended to cleaning the storage compartments, lockers, engine rooms and internal living areas, at $1,300;[9]
- half the charged amount (again, my estimate) for repairs and application of non-slip coatings into a variety of areas, including the swim platform, at $2,600;[10]
- the cost of removing and replacing carpet on the fly bridge deck at $3,500;[11]
- the cost of replacing items such as lifelines and anchor ropes, at $1,500.[12]

---

5 This item is claimed in the invoice which is exhibit 20.
6 Exhibit 20.
7 Exhibits 23 and 24.
8 Exhibit 26.
9 Exhibit 26.
10 Exhibit 26.
11 Exhibit 27.
12 Exhibit 27.

Those amounts total $24,100, to be deducted from the plaintiff's tally of relevant repair charges.

[13] Another of the second defendants' submissions concerned the absence of evidence as to what proportion of the costs of hiring, erecting and dismantling scaffolding around the boat was attributable to the fairing and painting processes. Mr Garlick said that the scaffolding was needed for safety reasons for all the work done by his business, not just the fairing and painting. The scaffolding charges amount, by my calculation, to $43,250. Of the roughly $527,000 invoiced by the business for work done apart from that relating to scaffolding, about $73,000 related to work which did not arise from the breach of warranty. As most of the work charged related to labour costs, with materials being a minor component, it is reasonable to infer that the charges broadly reflect the time and effort applied respectively to compensable and non-compensable work. On the basis that roughly 15% of the work done was unrelated to the second defendants' breach, I would attribute 85% of the scaffolding figure to necessary repairs; that is to say, $36,700.

[14] I have not deducted other amounts which were the subject of submission by the second defendants. One invoiced amount was described as relating to labour and materials required to repair areas of water damage on the bows. The second defendant said that this appeared to relate to water ingress. On its face, that would appear correct; but it seems probable that the description of the work as relating to water damage represented Mr Garlick's opinion, expressed in evidence, that water ingress was responsible for the boat's delamination. Mr Garlick was not giving evidence as an expert, and that was not the view of the experts (Mr Slinger and Professor Will) whose evidence I did accept as to the causes of delamination on the hulls. Consequently, I find that these repair costs are attributable to the breach of warranty.

[15] Another disputed item was a charge for removal of the rigging system from the forward main spar so that it could be prepared and topcoated to match the hulls. The invoice noted that this would

> "also enable the fittings that had been removed to be resealed and secured to prevent water ingress into the spar and hull connection areas".

The latter purpose, however, seems to me incidental to the primary purpose of re-coating the spar consistently with the hulls. Nor have I thought it appropriate to disallow claims for work done to reinstate the water line, since Mr Garlick explained that it had been lost in the repainting process, or in relation to the fitting of the sails, which Mr Garlick said had to be removed in order to move the vessel into a shed where the fairing and painting work could be carried out.

[16] The plaintiff calculated the recoverable cost of repairs by Mr Garlick's business, together with some charges by Mr Behan at $5,280, as totalling $524,819.60. With the reductions I have made, that figure is now $494,169.60. Applying the process proposed by the plaintiff, of using the Bureau of Statistics calculator to adjust the amount to its 2007 equivalent by reference to the consumer price index, I arrive at a figure of $418,000. That is the amount a notional purchaser would have been contemplating as the cost of restoring the *Jalun* to its warranted state, and represents the difference between the vessel's actual value at delivery and its value had it been properly faired so as to be, as warranted, of merchantable quality.

Damages for loss of use

[17] The plaintiff claimed $166,325.40 for the loss of use of the *Jalun* during the 270 days from 10 May 2012 to 4 February 2013 when it was under repair. He relied on three House of Lords decisions, *The Owners of No. 7 Steam Sand Pump Dredger v The Owners of SS "Greta Holme"*,[13] *The Owners of the Steamship "Mediana" v The Owners, Master and Crew of the Lightship "Comet"*[14] and *Mersey Docks and Harbour Board v Owners of the SS Marpessa*,[15] which had been followed by Australian trial judges in *BHP Coal Pty Ltd and Ors v O & K Orenstein & Koppel AG and Ors*[16] and *Yates v Mobile Marine Repairs Pty Ltd & Anor*.[17] All three of the House of Lords decisions concerned damage negligently caused to vessels owned by the Mersey Harbour Board. In all three, general damages were awarded for loss of use of the relevant vessel while it was under repair. Lord Herschell explained the damages

---

13 [1897] A C 596.
14 [1900] AC 113.
15 [1907] AC 241.
16 [2008] QSC 141.
17 [2007] NSWSC 1463.

awarded in *The Greta Holme* as the equivalent of the interest, for the relevant period, on the money invested in the vessel.[18]

[18] The second defendants argued that damages for loss of use of the vessel while it was under repair should not be recoverable where the proper measure of loss was the reduction in its value. They sought to distinguish the three House of Lords cases on the basis that in each of them a valuable chattel was, on the evidence, unable to be used, with particular consequences: in each of *The Greta Holme* and *The Marpessa*, a dredger, with a resulting delay in operations to reduce silt or sand; and in *The Mediana*, a lightship which the Harbour Board had to replace for the period it was under repair with another which it had on standby. In any event, they submitted, there was no evidence as to the extent to which the plaintiff would have used the vessel; it clearly would not have been full time, because he was, on his evidence, working. There was no evidence as to the amount of time taken up by repairs relating to the fairing and painting work, as opposed to the other work required, and it could not be assumed that the period of time taken was reasonable.

[19] Reliance was placed on this passage from Lord Halsbury LC's judgment in *The Mediana* in relation to the awarding of general damages for the loss of the use of a chattel:

> "There is no doubt in many cases a jury would say there really has been no damage at all: "We will give the plaintiff a trifling amount" – not nominal damages, be it observed, but a trifling amount; in other cases it would be more serious."[19]

This was, the second defendants submitted, a case of the first kind.

[20] However, it is necessary to note that Lord Halsbury continued by saying that the Law Lords in *The Greta Holme* had pointed out

> "…that the unlawful keeping back of what belongs to another person is of itself, a ground for real damages, not nominal damages at all."[20]

In using the expression "unlawful keeping back", the Lord Chancellor made clear, he was not confining his discussion to detinue cases; he was speaking of any instance where a plaintiff was deprived of his vessel's use through the defendant's wrong. The

---

18 [1897] A C 596 at 605.
19 At 118.
20 At 118.

principle that damages were recoverable did not depend on the form of action,[21] or on what use the plaintiff had intended to make of the vessel.[22] In a similar vein, Viscount Dunedin in *Admiralty Commissioners v SS Susquehanna*,[23] in considering the availability of general damages for the detention for repairs of a damaged ship observed that there was no difference between the position in Admiralty law and the common law or as between the damages payable for breach of contract or tort, both being intended to compensate for the wrongful act and its natural and direct consequences.[24]

[21] In *Lord Citrine (Owners) v Hebridean Coast (Owners)*[25] Devlin LJ described it as "well established" that the owner of a ship which was damaged and detained for repairs could, if he did not hire a substitute, recover by way of general damages compensation for the loss of the use of the vessel during the period of detention.[26] There were not, his Lordship observed, different rules for ships of different types, whether

> "…trading or profit-earning vessels, pleasure vessels, warships, utility vessels such as dredgers and light ships."[27]

The owner might receive

> "…substantial, and not merely nominal, damages notwithstanding that he cannot show any loss of profit. He has lost the use of his vessel and whether he would have used her for pleasure or business or some other form of service, such a dredging, he is entitled for compensation for the loss of use."[28]

Lord Devlin shed some light on the "exceptional" case where only nominal damages were recoverable; an example would be the situation where before the damage occurred the vessel was already unusable for profit or pleasure.[29] In the same case, Willmer LJ described the quantification of damages by applying an appropriate rate of interest to the vessel's capital value as designed to remedy

> "..the loss due to the capital invested in the vessel being rendered temporarily infructuous".[30]

---

21 At 118.
22 At 117.
23 [1926] AC 655.
24 At 661.
25 [1961] AC 545.
26 At 560.
27 At 562.
28 At 563.
29 At 564.
30 At 559.

[22] The House of Lords has recognised that damages may on the same principle be awarded to the loss of use of other chattels, such as a motor vehicle: *Dimond v Lovell.*[31] The New South Wales Court of Appeal has similarly held that damages could be awarded (although they were not assessed) for loss of use of a motor vehicle; it was irrelevant that a third party had provided the plaintiff with a substitute vehicle: see *Anthanasopoulos v Moseley.*[32] In Queensland, the principle has been applied as the basis for an award of general damages representing interest on the depreciated value of a damaged railway locomotive during the period it was being repaired: *Commissioner for Railways v Luya Julius Ltd*.[33] And in *BHP Coal Pty Ltd and Ors v O & K Orenstein & Koppel AG and Ors*,[34] one of the two Australian cases relied on by the plaintiff, PD McMurdo J (as he then was), having found negligence, breach of contract and breach of s 52 of the *Trade Practices Act*, ordered general damages for the loss of use of an excavator in circumstances where the plaintiff was unable to prove a loss of earnings. His Honour assessed damages by applying a ten per cent rate of interest to the value of the excavator at the relevant time for the period during which it was unable to be operated.

[23] A similar approach was applied to real property in *GEC Marconi Systems v BHP Information Technology*.[35] Finn J had to consider a case where the Commonwealth, as a result of the respondent's breach of contract, was obliged to continue to use premises which it owned to accommodate another party, in order to meet its own contractual obligations, and in that way suffered a loss of use of its property. It was not using the building for income-earning purposes, but was, his Honour held, entitled to damages, in that case set by reference to a fair rental. Finn J described the *Mediana* principle as "clearly part of Australian law", observing that different methods of assessing damages for loss of use of property had been applied, interest on capital value being one.[36]

[24] There are (at least) two Australian first instance decisions in which the principle has been accepted as applying to a vessel used for pleasure. The first is the authority to which the plaintiff referred, *Yates v Mobile Marine Repairs & Anor*.[37] In that case,

---

31 [2002] 1 AC 384.
32 (2001) 52 NSWLR 262 at 274.
33 [1977] Qd R 395 at 398.
34 [2008] QSC 141.
35 (2003) 128 FCR 1.
36 At 338.
37 [2007] NSWC 1463.

Palmer J awarded damages for negligent repair work on a game fishing vessel which included an allowance for a loss of the vessel's use while it was non-operational. His Honour allowed the Supreme Court rate of interest on the vessel's value for the relevant period. The second is *Vautin v By Winddown, Inc (formerly Bertram Yachts) and Anor (No.4)*,[38] which, like the present case, concerned a defectively manufactured yacht. Derrington J found breaches of the statutory guarantees of acceptable quality and fitness for purpose in ss 54 and 55 of the *Australian Consumer Law*. Under that legislation, a consumer was entitled to recover reasonably foreseeable loss suffered "because of" a failure to comply with such a guarantee.[39] His Honour accepted that general damages, designed to represent the unusable capital value of the vessel, could be awarded for loss of its use. They would properly be assessed on the basis that it would depreciate at a rate of 10% of its original purchase price per annum over the period (of some years) during which it was unusable. However, because the purchaser had rejected the vessel and become entitled to a refund of the full purchase price, no award was made.

[25] The principle which emerges from the cases is that the owner of a vessel deprived of its use for a period by the wrongful act of another is entitled to general damages, whether that act is a tort or a breach of contract. It does not matter that the vessel was not being used in profit-making or that its owner has not been put to any expenditure to replace it. It is not necessary for a plaintiff to establish what particular use he or she would have made of a chattel in order to recover damages for the loss of its use. The point is made in *The Mediana* that it is the deprivation of the chattel which gives rise to the right to damages, and the defendant cannot diminish that right by showing that the plaintiff did not usually use the item.[40] (It was unnecessary, then, for the plaintiff here to prove that he would have made any particular use of the vessel during the period it was under repair.) Calculating interest on the capital invested in the chattel (after depreciation) is a suitable method of assessing damages; the point is that an investment has been made in the item which is capable of yielding nothing by way of return in terms of profit or, in this case, enjoyment, during the period it is incapable of being used.

[26] I accept, then, the plaintiff's submission that he is entitled to general damages assessed by reference to interest on the (depreciated) value of the *Jalun* for the period it was

---

38 (2018) 362 ALR 702.
39 Section 259(4).
40 [1900] AC 113 at 117.

unavailable to him by reason of the fairing and painting work. That was not the entirety of the repair period; once again, I will proceed on the basis that about 85% of the time taken was attributable to the breach-related work: 230 days. And again, I see no reason to suppose that there was anything untoward about the time taken in the work.

[27] That brings me to consideration of what figure I should adopt as the *Jalun's* value during the repair period, once allowance is made for depreciation. The plaintiff proposed, with considerable chutzpah, that I should rely on the 2012 shipbroker's valuation; the same valuation he had submitted was unreliable for the purpose of considering diminution in value. I do not consider, however, that the difference in context lends the valuation any additional weight. The second defendants had suggested that it would, in assessing diminution in value, be reasonable to adopt the Australian Taxation Office's rate for charter vessels, of 5%. However, that may be too high, given that one would expect greater wear and tear on a charter vessel than a privately owned and used craft. In the absence of better information, I will proceed on a depreciation rate for the *Jalun* of 4%. At that rate, applied over the five years between the execution of the contract for its purchase and the commencement of the repairs, the *Jalun*'s value in May 2012 would be approximately $1,997,000. Allowing interest at 10% (the practice direction rate) for 230 days, the plaintiff is entitled to $126,000 for this head of damages.

Interest on damages

[28] The second defendants argued that if damages were awarded by reference to the cost of repair, interest should run only from the time when those repairs were undertaken. On the logic which I have adopted however, the repairs are relevant only as an aid in arriving at a figure for the value of the vessel as delivered, and interest on the loss should be awarded from the date of delivery, 27 April 2007. At the relevant practice direction rates for the period of 11.87 years to the date of this judgment, that gives a figure of $397,256. Interest on the loss of use component is properly awarded from the date on which the plaintiff's loss was complete, 4 February 2013, until the date of judgment, a period of 6.09 years; giving a figure of $47,202.

[29] I award damages, then as follows:

Damages for diminution in value	$418,000

Damages for loss of use	$126,000
Interest on damages for diminution in value	$397,256
Interest on damages for loss of use	$47,202
	$988,458

[30] I give judgment for the plaintiff against the second defendants in the amount of $988,458. I will hear the parties as to costs.