

Application concerning the existence of a concluded Contract between the parties and whether a breach and/or negligent performance of the terms of said Contract occurred.

[2021]GRC052

IN THE ROYAL COURT OF GUERNSEY

(ORDINARY DIVISION)

Civil No. 2182

Between:

JON SANDILANDS

Plaintiff

-AND-

SUN YACHTS LIMITED

Defendant

Dates of hearing: 17, 18, 19, 20 & 26 May 2021

Judgment handed down: 19th October 2021

**Before: Jessica E Roland, Deputy Bailiff and
Jurats: J G Hooley, D J Mortimer and S M Crisp**

**Counsel for the Plaintiff: Advocate G S K Dawes
Counsel for Defendant: Advocate M G Ferbrache**

Cases, texts & legislation referred to:

The Royal Court (Reform) (Guernsey) Law, 2008
Woodbourne Trustees Limited v Generali Worldwide Insurance Company Limited [2009-10]
Musa Holdings Limited v Newmarket Holdings (Guernsey) Limited 2014 GLR41

Introduction

1. This is a judgment of the Royal Court following a hearing during which the Court heard evidence and legal arguments. The judgment has been prepared in accordance with the provisions of section 16(5) of The Royal Court (Reform) (Guernsey) Law, 2008. The Deputy Bailiff did not sum up to the Jurats in open court, but instead retired with them as she is permitted to do under section 14(2) of the 2008 Law.
2. The Deputy Bailiff reminded the Jurats of their respective roles. The Deputy Bailiff is the sole judge of questions of law and procedure and the Jurats are the sole judges of questions of fact. The Jurats must accept her directions on the Law and follow them. She directed the Jurats to have regard to the whole of the evidence presented to the Court and to form their own judgment about the witnesses and which evidence is reliable and which is not. The Deputy Bailiff directed that the facts of the case are the Jurats' responsibility. They may take account of the

arguments in speeches they heard but are not bound to accept them. Equally, if at any time the Deputy Bailiff appeared to express any views concerning the facts or emphasized a particular aspect of the evidence, the Jurats were not to adopt these views unless they agreed with them. When it comes to the facts of this case, it is the Jurats' judgment alone that counts.

3. In this judgment the findings of fact are the unanimous findings of the Jurats.
4. In addition to witness statements, oral evidence was given by Jonathan Sandilands and Andrew Heaume on behalf of the Plaintiff; and Jonathan Le Conte and John Webster on behalf of the Defendant. There was expert evidence on behalf of both parties. The expert for Mr Sandilands was Mr A C White, marine surveyor and the expert for the Defendant was Mr D Cannell, naval architect and marine surveyor. There were four reports from Mr White, in addition to questions posed by the Defendant and responded to by Mr White in April of this year. Mr Cannell filed three reports. There were also two joint expert reports. Both experts gave oral evidence. In addition, at the request of the Jurats there was a *vue de justice* to see the boat that was the subject of the claim ("Bluest Blues" or the "Boat") at Beaucette marina. Counsel also provided a series of questions to assist the Jurats in their deliberations. The questions were not agreed but were nonetheless of assistance as were the submissions by counsel in opening and closing their client's case.

Background

5. Mr Sandilands is the owner of a Sabre 34 hard-top express boat named Bluest Blues. The Defendant is and was at all material times a yacht broker and dealership company. The Defendant acted at all times through one of its directors, Jonathan Le Conte.
6. Mr Sandilands bought Bluest Blues on 3 July 2007 for £239,714.93. Initially he kept the Boat in St Sampson's marina.
7. As the years went on, Mr Sandilands's busy work life and then the arrival of a new baby, meant that boating was put on a 'back burner'. In August 2015, he asked John Webster, an experienced skipper (as well as offering other services to boat owners) to move Bluest Blues to Beaucette marina, to be lifted out of the water. Although initially not the plan, by October of that year, Mr Sandilands had made the decision to keep the Boat ashore at Beaucette for the time being. As the Boat was ashore it was not serviced.
8. Mr Sandilands and Mr Le Conte knew each other due to previous business dealings and in February 2018 Mr Le Conte had expressed an interest in selling Bluest Blues on behalf of Mr Sandilands.
9. Mr Le Conte contacted Mr Sandilands by email on 27 February 2018 asking whether he was interested in selling his boat as he had a client who was buying a Sabre 38 from the manufacturers and whilst he was waiting for delivery was looking for a Sabre to buy and use in the interim. At the bottom of the email dated 27 February making this enquiry Mr Le Conte states "*Our terms would be 5% brokerage for sole agency*".
10. By the time of the approach Bluest Blues had been sitting on blocks on the hard at Beaucette marina for over 2½ years for which Mr Sandilands was charged a monthly fee. As Bluest Blues was not in the water Mr Sandilands had reduced the insurance cover to "laid up ashore" cover.
11. The email was followed by a telephone call between Mr Le Conte and Mr Sandilands on 27 February 2018 when it was agreed that Mr Le Conte would have a look at the boat and propose a figure for marketing it.
12. On 2 March 2018, Mr Le Conte emailed Mr Sandilands:

“With regards to your boat, I popped up and had a look in week (sic) and have done some research. I hope you decide to list the boat with us as we do have an interested party for the boat who is awaiting a new Sabre 38 for mid-2019. Sun Yachts will also be the appointed Sabre agents for the UK.

With regards to value – very difficult s (sic) I am sure you can imagine but we suggest you market the boat for £149,500. In its current condition I would hope that you will achieve £135,000. Let me know what you think.”

13. In response to this email Mr Sandilands replied by email on 3 March: *“Do you mean there is £15K of work to be done?? Not sure that’s the case, please confirm.”*
14. There was a telephone call on 6 March 2018 where Mr Le Conte informed Mr Sandilands that the purchaser had offered to pay £120,000, but this was inclusive of a finder’s fee and therefore Mr Sandilands would not need to pay any commission. There was further discussion about the arrangements for sale process but what was agreed is disputed.
15. Mr Sandilands said that he felt the offer of £120,000 was too low, given the original suggested sale price by Mr Le Conte. Mr Le Conte ran through a list of items that would need to be done to bring the Boat up to the £135,000 price, but nevertheless, Mr Sandilands said that he suggested that the potential buyer could pay nearer £127,500 and he would then consider it further. Mr Le Conte agreed to go back to the purchaser to seek a higher offer.
16. On 9 March, there was a further telephone call from Mr Le Conte, advising Mr Sandilands that the potential purchaser had made a further offer of £122,000, subject to sea trial and survey. This was the final figure and there would be no other costs payable by Mr Sandilands, including commission to the Defendant.
17. On 12 March 2018, Mr Sandilands texted Mr Le Conte and said, *“Hi Jon, £122,000 is acceptable, subject to sea trial and survey. That will go fine I am sure. Any questions on paperwork please let me know. Regards, Jon.”* Mr Le Conte, following a brief text, phoned Mr Sandilands. What was said in this call, in terms of the Defendant’s ongoing role, is disputed.
18. On 14 March 2018 Mr Le Conte emailed Mr Sandilands. The email which, amongst other things confirmed that, the purchaser *“has paid into the Sun Yachts client account a 10% deposit for the purchase of your Sabre 34 “Bluest Bluess (sic)”*. Also, that he had *“signed 3 copies of the Sale and Purchase agreement for the boat which I also need you to sign now”*. Mr Le Conte then set out options about how these could be signed and then set out that the sale was subject to survey and sea trial. He then set out the documentation that was needed that was not on the Boat, asking Mr Sandilands to see if he had those documents. He then set out the following:

“With regards to the launch, sea trial, survey etc. I can advise that the boat is now plugged into shore power and the batteries appear to be charging. [The Purchaser] has arranged for an engineer to attend to the engines over the weekend to ensure they will run etc. when the boat is launched.

Ricky at Beaucette is away this week, but we hope to launch the boat next week. Have you spoken to your insurance company about this? We need to launch and do the sea trial before bringing over the surveyor as Beaucette can never guarantee launch dates or times. Once the boat is launched it will be brought to St Peter Port where [the Purchaser] will moor the boat at his expense. The boat will then be surveyed afloat and then lifted ashore at Boatworks for the completion of the survey. It will be kept ashore there until the completion of the purchase. If, for any reason, the boat fails its survey [the Purchaser] will relaunch the boat and then have it lifted again at Beaucette for you. We have allowed 3

weeks in the contract to get the boat launch tested and surveyed, but we hope to be able to complete much sooner than that.”

I think the above covers everything at this time but if I think of anything else I will let you know.

If you have any questions please ask.

I will also need at some point a 1 line email, authorising Andy Heaume to move the boat from Beaucette to St Peter Port and carry out a sea trial. The boat needs to be covered by your insurance as the boat still belongs to you until completion, so maybe you could call them to advise cover needs to be in place from next week for a sea trial and being kept afloat in a marina in St Peter Port.

Let me know about signing the agreements.”

19. Mr Sandilands responded with a brief email stating he would locate the registration documents and speak to the insurance about getting the required cover. Mr Sandilands sent a further email on 15 March 2018 to Mr Le Conte with a photograph of the registration documents, with a covering email stating:

“The insurers will need a days (sic) notice to insure the boat – please let me know asap. Happy to meet at my office to sign the sale docs and handover these to you.”

20. Unfortunately, this was sent to an old email address belonging to Mr Le Conte and not the email address Mr Le Conte has for his work with the Defendant.
21. On 20 March 2018, there was a telephone call between Mr Sandilands and Mr Le Conte, where Mr Le Conte informed Mr Sandilands that outstanding fees at Beaucette needed to be paid before Beaucette would relaunch the boat, which in turn would delay the sea trial. Mr Le Conte and Mr Sandilands had different recollections of the remainder of this call.
22. Later that day Mr Sandilands then called Beaucette marina and paid the outstanding fees, following this up with a text message to Mr Le Conte on the same day: *“Hi Jon. The lady at beaucette said to press Ricky about boat moving as he’s really busy – sure you’re on it but a heads up anyway!”* Then another short text: *“All paid up to date Btw.”*
23. Mr Le Conte replied soon thereafter with a quick, *“that’s great, thank you”* message.
24. On 26 March 2018, Mr Sandilands telephoned Mr Le Conte. Again, the recollections of this call differ but both agree that Mr Le Conte told Mr Sandilands about an issue with one of the engines. He told Mr Sandilands that he was liaising with Andy Heaume of Northern Marine Services to fix the issue.
25. On 26 March 2018, Bluest Blues was launched by Beaucette marina. Mr Sandilands was not present, Mr Le Conte was not present, but Andy Heaume of Northern Marine Services happened to be at Beaucette marina at the time and having been asked to give a hand by the person launching the Boat, he tied up the Boat on the visitors’ pontoon.
26. On 27 March, Mr Sandilands sent Mr Le Conte a text saying the following:

“Hi Jon: Regarding boat insurance I can get from 8am until the following day at 5pm for demonstration use included in my policy. I just need to know when that will be with 1 hours

(sic) notice. So call me the minute you know it's all happening so I can ring my insurer. Thanks, Jon"

27. On 29 March 2018, he sent a further chasing text asking for further information, to which Mr Le Conte replied, *"I will talk to Andy Heaume later ref edc unit and let you know. That is only issue stopping sea trial and survey"*. The response from Mr Sandilands was a brief *"ok. Apart from tides and weather I suppose!"*
28. On 4 April 2018, Mr Sandilands chased for an update by text, *"Hi John (sic). Any update on trial date? Cheers. Jon"*. Mr Le Conte responded, *"Hi, Andy Heaume was, trying to fix edc yesterday for sea trial this week"*.
29. On 5 April 2018, the Boat was found partially submerged at the visitor's mooring. Mr Sandilands had not been informed that Bluest Blues had been launched. The Boat was hauled out, first aid was administered to the Boat and it remains at Beaucette marina blocked ashore on oil drums. It was not in dispute that the Boat sank because a water hose connected to the generator had perished, leading to a leak. The seacock to the generator had been left open and it would appear that the bilge pumps and bilge alarms were not operating.
30. It is agreed that the sale and purchase agreements did not get signed by Mr Sandilands.
31. The sale of the Boat was aborted.
32. The quantum of the damage caused by the Boat submerging was largely dealt with by Mr White and Mr Cannell in their reports and in oral evidence.
33. It was accepted by the Plaintiff that if he failed to prove the existence of the pleaded contract, then his claim failed.
34. The Deputy Bailiff directed the Jurats that if they did find that there was such a contract then it was necessary for them to consider in detail the evidence on the alleged breach of the contract and quantum of damages.

The Dispute in relation to the contract

35. It is Mr Sandilands's case that there is a series of emails, text messages and orally, that a contract was concluded and that there were expressed and implied terms of the contract ("the Contract") between Mr Sandilands and the Defendant as follows:
 - (1) That the Boat was under the care and control of the Defendant.
 - (2) That the Defendant would make any arrangements necessary to ensure that the Boat was in seaworthy condition prior to relaunch.
 - (3) That Mr Le Conte would notify Mr Sandilands with advanced notice of the relaunch date.
 - (4) Upon Mr Le Conte notifying Mr Sandilands of the date of the relaunch, Mr Sandilands would duly arrange (temporary) 'afloat insurance coverage' (which was additional to the existing insurance coverage).
 - (5) The Defendant would obtain Mr Sandilands's prior written authorisation to relaunch the Boat – such authorisation was sought in the form of a one-line email, authorising a Mr Andy Heaume, to move the Boat to carry out a sea trial.
 - (6) The Defendant would not, whether by itself or through instructing others to act on its behalf, relaunch the boat until Mr Le Conte had received confirmation from Mr

Sandilands that he had the correct afloat insurance in place. It was a further implied term of the contract that whilst the boat was under its care and control, the Defendant would exercise all reasonable care and skill to be expected of an experienced, skilled and competent yacht broker and dealer. The Defendant also owed Mr Sandilands a duty to exercise such care and skill. The Defendant's duties included:

- 1) Ensuring in accordance with the parties' agreement that the Boat was seaworthy before relaunch and;
- 2) providing in accordance with the parties' agreement Mr Sandilands's advanced notice of the relaunch.

36. Mr Sandilands argues that the launching of the Boat on 26 March 2018 was in breach of the terms of the Contract. Further, that it was as a consequence of the Defendant's breach of those terms and/or the Defendant's negligent performance of those terms, that the Boat sank.

37. In response the Defendant says that a contract as described above was not concluded. Further, that at all material times Mr Sandilands remained responsible for ensuring that the Boat was in good and seaworthy condition. Whilst the Defendant assisted Mr Sandilands with arrangements in relation to sorting out an engineer, for example, this did not mean that a contract of the type alleged by Mr Sandilands, had been agreed between the parties. He was acting at all times as a yacht broker. The Defendant did not owe the obligations or duties to the Plaintiff which the Plaintiff argues that he did.

The Disputed Evidence in relation to the contract

38. Before August 2015, whilst the Boat was in the water, Mr Sandilands had the Boat serviced annually by marine engineers. In his written evidence Mr Sandilands described the upkeep of Bluest Blues before it was taken out of the water as "*meticulous*" although on cross-examination he demurred from this to a limited extent. He said that Mr Webster had told him in August 2015 that it was an issue with one of the batteries which had led him to move the Boat from St Peter Port to Beaucette marina on one engine and not to do with the engines themselves.

39. Mr Sandilands's evidence was that in the conversation of 27 February he explained to Mr Le Conte that Bluest Blues had been laid up ashore and would need to be recommissioned before it could be launched. Further that in the conversation of 6 March 2018 Mr Le Conte said that he would take charge of all the necessary arrangements to ensure that the Boat was in a seaworthy condition prior to the relaunching and that was part of the service he offered. Mr Le Conte said that the boat batteries would need to be charged up and the engines would need to be run whilst ashore to check that everything worked well. Mr Sandilands said that Mr Le Conte agreed that Mr Le Conte would oversee all the works involved and organise any other works that arose in order to make the Boat '*sea ready*'. Apart from the batteries and engines there was not an agreed list of items to attend to. Mr Sandilands said that Mr Le Conte had said that the purchaser would cover all recommissioning expenses.

40. It was Mr Sandilands's evidence that during the phone call on 12 March, Mr Le Conte informed Mr Sandilands that he would ensure that the Boat was in good order for the sea trial and that he would engage an engineer to charge the batteries and run the Boat's engines ashore and that he was "*an expert in the care and control of all aspects of boat sales and part of his role in the sale was to liaise with all parties to ensure that the sale went smoothly*". It was also during this conversation, that Mr Le Conte said he would liaise with an engineer to identify work required and ensure that the Boat was ready to relaunch and trial. He said he would liaise with Beaucette to arrange the launch.

41. With regard to insurance, Mr Sandilands's evidence was that he informed Mr Le Conte that there was only '*laid-up*' cover. He would need to ask his insurance for an extension to cover the Boat being afloat before the Boat could be launched and that he told Mr Le Conte "*the boat*

was not to be launched until he had confirmed that the insurance cover was in place.” Mr Sandilands’s case was that the “we” in the email of 14 March supports his argument that the Defendant had taken contractual responsibility for the launching of Bluest Blues including that it was in a seaworthy state.

42. In the telephone conversation of 20 March Mr Sandilands told Mr Le Conte he would pay the fees due so the Boat could be launched. During this conversation, Mr Sandilands said that he reminded Mr Le Conte that the Boat was not insured to be afloat and that Mr Le Conte would need to advise Mr Sandilands of a firm date in order for him to obtain insurance cover. Mr Le Conte said that he would. During this conversation, Mr Le Conte also told Mr Sandilands that once the Boat was ready it would be taken on a sea trial to St Peter Port, where it would be lifted out of the water by Boatworks+ for a survey and if it was successful then the Boat ownership would change then, but if unsuccessful it would be returned to Beaucette.
43. In the telephone call on 26 March 2018, Mr Sandilands says that Mr Le Conte asked him if he had got the temporary insurance for the launch, to which Mr Sandilands replied, *“he had not”*. Mr Sandilands said he would enquire with Rossborough about temporary cover and that *“until I confirm the arrangements of this with him, the boat was to remain ashore”*.
44. Mr Sandilands gave evidence that as a consequence of the conversations he had had with Mr Le Conte, he thought the insurance cover needed was only for a brief period. Therefore, having spoken with Rossborough using this information, he had established that he could get additional cover limited to 33 hours. All that was required was that once he knew the time of launching he would activate this with a call to Rossborough and it would be in place within one hour. This was why he sent the message on 27 March and he was adamant that it was evident from this message that he had not sorted out the temporary insurance cover at this point and the cover was still limited to laid up ashore.
45. Mr Andrew Heaume gave evidence on behalf of Mr Sandilands. He is the owner of Northern Marine Services who are marine engine and outboard motor specialists. He met with Mr Le Conte on 12 March 2018 to discuss the work required in preparation for Bluest Blues to be sold and the timescales. Further, Mr Le Conte instructed him to forward all invoices for the work carried out to Sun Yachts. Mr Le Conte subsequently agreed with this in evidence and explained it was because the invoices were deducted from the 10% deposit held by a broker from the purchaser. Mr Heaume says he was never aware of who was to be the purchaser of Bluest Blues, but the work asked of him was to get both engines running to enable sea trial and delivery to Boatworks+ and to carry out work required once inside at Boatworks+, but not to clean or work on the stern gear until the sale was completed. Mr Heaume’s evidence was that he was aware Bluest Blues had been laid up in Beaucette marina yard for a while as he had seen it there. In his evidence, *“he expected Sun Yachts to take responsibility to ensure it was seaworthy, as they were giving me the instructions as to what was required”*. He did not accept that he had any obligation to make the Boat seaworthy as alleged by Mr Le Conte. His instructions were limited to dealing with the engines. Also, he said he would have expected the main contractor, who he thought to be Sun Yachts, to have contacted the owner to confirm the agreement of launch.
46. By 21 March 2018, he had undertaken various works on the engine and in his witness statement stated, *“All was okay apart from starboard edc power supply from the control head as there was no electronic throttle”*. Mr Heaume was asked by Mr Le Conte if his insurance policy covered sea trials and Mr Heaume confirmed it was, but only if the vessel was fully insured. However, it was his evidence that he was never actually asked to undertake the sea trial itself. As it happened, Mr Heaume was at the Beaucette marina launching another customer’s boat when the Marine Manager asked him to assist launching Bluest Blues because he knew that Mr Heaume had worked on the vessel and had access to the keys for ropes etc. Mr Heaume’s

evidence was that “[Mr Le Conte] *had requested relaunch direct with* [Beaucette marina]”. However, there was no indication of how Mr Heaume knew this to be the case.

47. Mr Heaume pulled the vessel to the visitor berth, secured the ropes and fenders, connected the shore power, (as this had been connected whilst in the yard) and left the keys in the starboard locker as had been agreed with Mr Le Conte in relation to what to do with them when he was working on the Boat. Whilst he walked away from the gangway, he called Mr Le Conte to tell him that the Boat had been launched. He said, in terms, any reference to seacocks he made to Mr Le Conte, was to the engine seacocks, not to any other seacocks. A full inspection of the Boat would have taken several hours. Bilge pumps were not part of his schedule of work. Mr Heaume visited the Boat on 3 April 2018 and turned on the power. At that time Mr Heaume said that the compartment was dry as the engine hatch, situated in the floor within the cabin was open and everything seemed normal. He visually checked the ropes and fenders. Mr Le Conte texted him on 4 April asking for an update however, Mr Heaume was unable to return to the Boat as he had a busy work schedule. On 5 April, Mr Heaume was called by Beaucette marina asking for assistance as Bluest Blues was sinking.
48. Mr Le Conte gave evidence on behalf of the Defendant. Although the Defendant did undertake other services for boat owners (this is now a separate company) and Mr Le Conte has extensive boating skills and qualifications as well as being someone who has worked for a long time in the boating industry, he was clear that the only agreement with Mr Sandilands was to act as a yacht broker. Mr Le Conte agreed that he approached Mr Sandilands in relation to the sale of the boat and during the first conversation he had with Mr Sandilands in February 2018, Mr Sandilands had explained that the Boat had been ashore at Beaucette marina since the autumn of 2015 and that Mr Webster had looked after the Boat on behalf of Mr Sandilands.
49. In evidence in chief, Mr Le Conte said he had asked Mr Sandilands whether there was anything he should know about the Boat that might affect the sale survey and that the answer was effectively no. He accepted in cross examination that this was not in his statement but said it was unlikely that he didn't ask this question. Also in cross examination whilst he did not directly answer the question whether or not the word “recommissioning” was used in the conversation of 27 February 2018 he accepted that any boat that had been out of the water for the length of time that Bluest Blues had, would need recommissioning before launch.
50. Mr Le Conte said he took comfort Mr Sandilands comments that Mr Webster was involved and took from them that the Boat had been well maintained. However, when Mr Le Conte attended at the Boat, he said it did not appear to him to have been well maintained.
51. In accordance with the email of 2 March 2018, he did suggest marketing the boat for £149,500 with a view to achieving “*a striking price*” of £135,000.
52. Mr Le Conte set out what he believed was the extent of the agreement reached between him and Mr Sandilands:
 - (1) That Mr Sandilands had appointed Sun Yachts to act as yacht broker in the sale of the Boat to the prospective purchaser.
 - (2) That rather than paying Mr Sandilands 5% commission, in fact the purchaser would pay a ‘finder’s fee’ and that this would be taken into account for when the offer was made.
 - (3) To negotiate the sale price with the purchaser.
 - (4) To show the purchaser and/or his representative over the Boat.
 - (5) To provide a sale and purchase Agreement to Mr Sandilands and the purchaser.
 - (6) To obtain the relevant paperwork.

53. Mr Le Conte agreed that during the telephone conversation of 6 March he had told Mr Sandilands that the purchaser would cover the recommissioning expenses, however Mr Sandilands had said he hadn't got time to make arrangements to recommission the Boat. Mr Le Conte had agreed to make various arrangements, for example with regard finding an engineer to look at the engines, in doing so he was not taking on the responsibility to ensure that the Boat was in fact seaworthy or sea ready, he was organising the sale of the Boat on behalf of Mr Sandilands. He was clear that the obligation for ensuring that Bluest Blues was seaworthy was that of Mr Sandilands, the owner.
54. The text that Mr Sandilands sent on 12 March 2018 accepting the offer and saying in relation to the survey and sea trial, "*That will go fine I am sure*" gave Mr Le Conte further confidence that there would be no issues with the Boat as he would expect Mr Sandilands to have knowledge of any problems.
55. Mr Le Conte's evidence was that when he and Mr Sandilands spoke on 12 March 2018, he discussed with Mr Sandilands the arrangements to get the Boat running and afloat ready for the sea trial. Mr Sandilands authorised him to speak to Beaucette marina to confirm he wanted the Boat launched at the earliest opportunity. Further, he was authorised to liaise between Mr Sandilands and the purchaser to arrange for a marine engineer to run up the engines in readiness for the sea trial. He thought it was this conversation where he identified Mr Heaume as the engineer in order to ensure that Mr Sandilands was happy with this choice as Mr Heaume would be doing the work for Mr Sandilands (but paid for by the purchaser). By this time, he had shown the purchaser Bluest Blues, so the purchaser had built into the offer price the cost of the work that was needed to Bluest Blues.
56. There were discussions between Mr Sandilands and Mr Le Conte about Mr Sandilands instructing Mr Le Conte to ascertain if Mr Heaume could act as skipper for the sea trial and Mr Le Conte's evidence was that he reiterated to Mr Sandilands that it was important that he liaise with his insurers to ensure that he had appropriate insurance in place. Mr Le Conte said it was not intended that he would be present at the launching of the Boat. His evidence was, "*that the boat was to be launched in accordance with a prior agreement between Mr Sandilands and the Beaucette*". He was also clear in his evidence that once the Boat was launched it was intended that the sea trial would take place between Beaucette marina and St Peter Port harbour and that the surveyor (who would be coming over from the UK at a date to be confirmed) would survey the Boat afloat and also ashore. In order to do, the Boat would be in a marina berth in St Peter Port until it was lifted out by Boatworks+ (at a date to be confirmed). He said he was always clear that this could take 3 weeks and therefore Mr Sandilands' insurance needed to cover this whole period. The 33 hours that Mr Sandilands thought it was to take was not possible. He was clear that he had not said it would take 33 hours, although he acknowledged the purchaser wanted to buy the Boat as soon as possible.
57. The last time Mr Le Conte was on the Boat was 12 March 2018 when he met with Mr Heaume to discuss the work he would do on the Boat.
58. In terms of when Bluest Blues might be launched, Mr Le Conte placed much reliance on the email of 14 March 2018, although the email does not specifically mention a date, there is a reference to "*we hope to launch the boat next week*". This, Mr Le Conte said, meant that Mr Sandilands knew it was likely that the Boat was going to be launched in the week commencing 19 March hence the first reference in the email to calling his insurers "*to advise cover needs to be in place from next week for a sea trial and being kept afloat in a marina in St Peter Port*". Then after a further reference to the Boat being needing to be covered by Mr Sandilands's insurance "*we need to launch and do the sea trial before bringing over the surveyor as Beaucette can never guarantee launch dates or times*". The "*we*" did not mean he was taking responsibility for it.

59. He said he had not read the email of 15 March 2018 addressed to his old email address although he believed it did exist in March 2018, but he was not using it.
60. On 20 March after he had spoken to Mr Sandilands about the payment of the outstanding Beaucette fees, he received the texts from Mr Sandilands telling him the fees were paid and to press "Ricky", i.e. Mr Richard Stephens, of Beaucette Marina to launch the Boat. Mr Le Conte took this to mean that there was no impediment, including a lack of temporary insurance, to the Boat being launched. In his witness statement he said, "*There is no doubt in my mind that [Mr Sandilands's] instructions were that the boat was to be launched as soon as possible so as to avoid any delay to the sale. Further, [Mr Sandilands] was aware that Beaucette could not and would not provide a date or time for the launch of the boat*". He maintained this view during cross examination.
61. He did not have any recollection of Mr Sandilands telling him the Boat was not insured to be afloat and that he would need to advise Mr Sandilands of a firm date for him to obtain insurance cover.
62. The person whom Mr Le Conte considered was now responsible for ensuring that Bluest Blues was safe to go into the water was Mr Heaume. If the Boat should not have been launched it was up to Mr Heaume to stop it. His instructions were to get the Boat ready for launch and therefore it was his responsibility to ensure that it was safe to do so.
63. In the conversation Mr Le Conte and Mr Sandilands had on 26 March 2018 in relation to the insurance status of Bluest Blues, Mr Le Conte's recollection was that he asked Mr Sandilands whether he made the arrangements to have insurance in place to cover the sea trial and the Boat being moored in St Peter Port marina etc. but Mr Sandilands said that he had not yet done so but that he would do so straightaway.
64. Launch at Beaucette marina was at all times subject to tide and weather. Mr Le Conte thought that he had asked for a time and that he was told by Beaucette marina that no date or time was possible because the person who operated the launching equipment was away until 19 March 2018.
65. When the issue with the engine was identified by Mr Heaume, Mr Le Conte was told by Mr Sandilands to get Mr Heaume to sort out the problem although if possible, the cost would be borne by the purchaser. Mr Le Conte was adamant that Mr Heaume's brief went beyond just looking at the engines. Whilst he had instructed him not to undertake certain jobs that would normally be done, but to do what was necessary on the mechanical side as he was the engineer, he would not have expected Mr Heaume, as the person whom he expected to undertake the sea trial (whilst moving the Boat from St Sampsons to Beaucette marina) to take a Boat out that was unseaworthy. Further, it was Mr Heaume who had responsibility for checking that all the sea cocks were closed as part of his instructions and that when he left the Boat on 26 March he had told Mr Le Conte that the Boat was "safe and secure".
66. John Webster in his evidence was clear that in his view Bluest Blues was not well maintained from his observations of dealing with his own boat nearby. He described it as "very dirty" due to its position in St Sampson's marina. In August 2015 John Webster moved Bluest Blues from St Sampson's marina to Beaucette marina on one engine due to the other not starting. Mr Webster did not agree that he had informed Mr Sandilands that the issue with the engine was battery related but he had said in a telephone call to Mr Sandilands that there was an issue with one engine but not what the cause was.
67. Mr Webster gave evidence that he arranged for the Boat to be lifted out of the water in August 2015. He left it on the visitor's pontoon at Beaucette marina but was not there when it was lifted out of the water. There was no fixed time given by Beaucette marina. He believed it was

lifted out the following day. He said if he had asked Beaucette marina to call once it was lifted out, they would have called him but that he did not.

68. He received the invoice for the hauling out and first month's ground rent which he copied onto his own invoice plus his own rate and sent it to Mr Sandilands. The accounts from Beaucette marina continued to be sent to Mr Webster until he spoke with their office requesting them to send them to Mr Sandilands. He said it was common knowledge that the cost to haul out a boat would also cover a boat going back in the water. His work with the Boat ceased after moving it. The seacock to the generator was not touched by him because it was not needed for the task of moving the Boat.
69. There was a dispute between Mr Sandilands and Mr Webster about the extent of Mr Webster's obligations in relation to the Boat. It was Mr Sandilands's evidence that Mr Webster was asked to undertake annual servicing whereas it was Mr Webster's evidence that his role was limited to moving the Boat and arranging it be lifted out by Beaucette and positioned on hard standing. On cross-examination he appeared to accept that the original discussion had been about servicing although it was not for him to service the Boat but rather to arrange for it to be serviced as he is not a marine engineer. He says he was never asked to organise annual servicing on the Boat whilst it was ashore at Beaucette marina.
70. Both experts gave their respective opinions on the obligations of a yacht broker. Mr Cannell in his report sets out what he considered the standard terms of a yacht broker would be and opines that this would not include checking that the vessel is sound and seaworthy. He said that in his years of experience, he would not expect a yacht broker to carry out physical checks aboard for leaks and closing seacocks. In very many cases, like this one the broker is not on the boatyard site, is not present when launching the boat and leaves matters such as the security of the vessel to others. He accepted in cross-examination that what in fact were the duties and obligations of a party did not depend on the label the party was given but would be dependent on the terms of contract.
71. Mr White deals with this in a different way in his report. The Defendant is a marine trader and a member of the Guernsey Marine Traders Association. He therefore opines that the yacht broker has the same duty of care as a marine trader and a marine trader or yacht broker has responsibility to ensure that the boat was seaworthy before it was launched. In cross examination he accepted Guernsey Marine Traders Association included retailers as well as brokers and marine engineers. He accepted that he had not opined in his report on what were the duties of a yacht broker. He agreed with Mr Cannell's description in his report of what the duties and obligations of a yacht broker were. He also agreed with Mr Cannell's opinion in his report that a yacht broker never undertakes to check that the boat is sound and seaworthy, and they do not have sufficient training or professional indemnity insurance to undertake such work although he did say some Guernsey brokers do sea trials. He accepted he relied on what Mr Sandilands had told him i.e. that Mr Le Conte was supposed to tell Mr Sandilands before the Boat was launched so Mr Sandilands could put the insurance in place.

Discussion

72. The Deputy Bailiff directed the Jurats that the burden of proof is on Mr Sandilands as Plaintiff throughout. The standard of proof is the civil standard of the balance of probabilities. For the Plaintiff to establish something on the balance of probabilities is to prove that something is more likely so than not so.
73. The Deputy Bailiff directed the Jurats to the customary law principle that "*la convention fait la loi des parties*" and to the principles governing implied terms by reference to Chitty paragraphs 13-006 -13-007 and *Musa Holdings Limited v Newmarket Holdings (Guernsey) Limited* 2014 GLR41 where Sir Michael Beloff held at paragraph 24: -

“24. The classic exposition of the relevant principles is found in Attorney General of Belize and Others v Belize Telecom Ltd and Another [2009] UKPC 10 at paragraphs 16 to 27 in the judgment of Lord Hoffman, applied in the Bailiwick the case of Woodbourne Trustees Limited v Generali Worldwide Insurance Company Limited 2011-12 GLR, Note 5 (Southwell LB and Jurats). From the Note I extract the following observations (citations omitted):

“(c) the issue as to whether any further term were to be implied could arise only if there were something missing or not dealt with in express terms, or if the express terms required an implied term to make sense;

(d) the necessity for implying a term had to arise from the construction of the express terms; it was not to be considered in isolation from or in contradiction of, the express terms, and it had to be required in order to make real sense (commercially or otherwise) of the express terms – not merely to add what the parties might reasonably have added if they had so decided; and

(e) a term was only to be implied if it would be necessary to give business efficacy to the contract; it had to be so obvious that it went without saying; it had to be capable of clear expression, and it was not to contradict any express term of the contract.”

See further Chitty op cit Vol 1. Para 13-006 – 13-007.”

74. Given that there was no one document containing a written agreement it is necessary for the Jurats to conclude what was agreed between Mr Sandilands and Mr Le Conte on behalf of the Defendant concerning the sale of Bluest Blues. It is necessary for the Plaintiff to prove what was intended to be incorporated as terms of the contract or to have contractual effect.
75. Further, it was necessary for the Jurats to ask themselves did Mr Le Conte expressly or impliedly agree that the Defendant was responsible for the Boat being seaworthy when it was placed back in the water. This responsibility, the Plaintiff says, included the Defendant taking responsibility for closing all sea cocks and ensuring that the bilge pumps and alarms were operating.
76. The Jurats found that the agreement between Mr Sandilands and the Defendant was for the Defendant to act as a yacht broker for Mr Sandilands to sell the Boat. The Jurats found that Mr Sandilands has failed to establish on the balance of probabilities that in the emails, texts and conversations which occurred between Mr Sandilands and the Defendant through Mr Le Conte that the Contract as alleged by Mr Sandilands had been created.
77. The Jurats were not persuaded that the parties had expressly agreed that the Defendant would take responsibility for ensuring that the Boat was seaworthy. Further, the Jurats were not persuaded that it was an implied term.
78. The Jurats accepted the evidence of Mr Le Conte that his role was to manage or organise the sale of the Boat as a yacht broker. This case is characterised by a lack of clear communication despite the fact that the plaintiff is an experienced man of business and Mr Le Conte an experienced yacht broker, however the Jurats found that Mr Le Conte’s evidence was supported by the documents and preferred the evidence of Mr Le Conte as to what had been agreed between the parties. They did not agree that Mr Le Conte acknowledging that he could have done a better job was a concession of liability. Mr Le Conte knew what needed to be done and who to speak to in order to sell a boat. By offering to help with the arrangements he did not

take on responsibility for the seaworthiness of the Boat. Mr Le Conte was at all times acting as a yacht broker. He undertook the arrangements to facilitate the sale and therefore have the opportunity to earn his “finder’s fee” of 5% of the purchase price, which was to be paid by the purchaser.

79. The Jurats’ conclusion was that this explains why Mr Le Conte did what he did and not the terms of the Contract, whether express or implied, which Mr Sandilands has sought to argue existed. The Jurats were not persuaded that the express or the implied terms which Mr Sandilands argued form part of the Contract were the terms of the contact between the parties.
80. Further, the Jurats found that Bluest Blues was not under the care and control of the Defendant.
81. To the extent that the evidence of the experts was different in relation to the standard terms of a yacht broker, the Jurats preferred the evidence of Mr Cannell over Mr White. The Jurats found that before the terms changed, Mr Le Conte had proposed 5% commission on the basis of sole agency. This was sole agency as a yacht broker. Following negotiations this was changed to a finder’s fee i.e. the fee was paid by the purchaser rather than the seller out of the sale price. The Jurats found that this was on the basis of the terms as set out in Mr Le Conte’s evidence. The Plaintiff in his claim was asserting that the Defendant had agreed to take on a substantially greater contractual burden and onerous responsibilities on the basis of the Defendant’s standard arrangement fee to act as a broker. The Jurats came to the conclusion that the Plaintiff had failed to show that this was the case.
82. Further, having concluded that Mr Le Conte’s description of the obligations and duties of a yacht broker were as he described, the Jurats came to conclusion they did not include the terms of the Contract pleaded by the Plaintiff nor the duties or obligations contained therein.
83. The Jurats do not find that there was an express representation by Mr Sandilands that the Boat was seaworthy nor was it necessary to find such a representation was made.
84. Mr Le Conte was facilitating the sale, doing what he could to get the deal done. Whilst he helped organise Mr Heaume and the launching of the Boat, he did not take responsibility for it. He was the middleman to keep the negotiations and the arrangements moving through to what was hoped to be a successful conclusion.
85. Both parties liaised with Beaucette marina. The Defendant had made clear to Mr Sandilands in the email of 14 March 2018 that Beaucette marina would not give times and dates for launching the Boat. Following the call on 20 March from Mr Le Conte to Mr Sandilands, Mr Sandilands paid the fees to Beaucette marina. Mr Le Conte’s initial discussions with Beaucette marina started the process but it was Mr Sandilands paying the fees which triggered the Boat being launched by Beaucette marina, as once the fees were paid neither party informed Beaucette marina that there were works or checks or insurance put in place which should be done before Bluest Blues could be launched.
86. It was not a term of a contract between the Plaintiff and the Defendant that Mr Le Conte would obtain Mr Sandilands’s authority prior to the relaunch of the Boat in the form of a one-line email, authorising Andy Heaume to move the Boat to carry out a sea trial. The relaunch of Bluest Blues and the sea trial (anticipated to be the move from Beaucette marina to St Peter Port harbour) were two separate steps. The email of 14 March 2021 is clear that the one-line email was required to authorise Mr Heaume to use the Boat to conduct a sea-trial and does not relate to the launch of the Boat which in any event could only be undertaken by Beaucette marina.
87. Mr Le Conte liaised with the engineer Mr Heaume. At the time Mr Heaume undertook the work, this was on the engine and ensuring that that this was in running order. This accords with

the invoice that was issued by Mr Heaume in May 2018 and Mr Le Conte's email to Mr Sandilands on 14 March when he refers to an arrangement for "*an engineer to attend to the engines over the weekend to ensure they will run etc. when the boat is launched*". In the course of the submissions and in evidence, the Defendant sought to redirect the "blame" for the sinking towards Mr Heaume on the basis that he was to prepare the Boat and that the closing of all the seacocks should have been undertaken by Mr Heaume. The Plaintiff's case is not against Mr Heaume (nor is the allegation made against Mr Heaume in the defences or duplique), the Deputy Bailiff directed the Jurats they were not required to make a finding against him and the Jurats did not make a finding. Whilst noting that Mr Heaume commented that he expected the Defendant to check Bluest Blues' seaworthiness, nevertheless the Jurats do not consider that the Plaintiff has shown that it was the Defendant's responsibility so to do.

88. Whilst the issue of insurance is in many respects a side issue, there was clearly confusion and miscommunication about the insurance position. The parties were communicating at cross purposes including with Mr Sandilands's reference to "*demonstration*" which Mr Le Conte took to mean the sea trial which had not yet happened. In Mr Le Conte's experience it was possible to get insurance that covered the launch and different insurance that covered a boat being at sea (where the risk was greater). Mr Sandilands' reticence in sorting out his insurance to cover the minimum amount of time and only to be activated at the very last minute of when he thought it was needed is in many ways a red herring save that he knew at all times that it was he who had to insure the boat and therefore the "risk" was still his.
89. Mr Le Conte made it clear in the email 14 March that timing of the launch could not be guaranteed and advised Mr Sandilands to speak to his insurer. The message to Mr Le Conte (after the payment of the fees to Beaucette marina) did not indicate that Mr Le Conte was to contact Mr Sandilands again before the launch, or that the Boat still required insuring before it was launched, rather it was encouraging Mr Le Conte to press "Ricky" who launched the boats to get on with it. Further, the text supports Mr Le Conte's recollection of what was said 20 March 2018.

Conclusion

90. In the light of the Jurats' conclusions on the Contract it was not necessary for them to consider whether the Contract or any of its terms had been breached by the Defendant or to consider quantum. The Court dismisses the Plaintiff's claim.
91. In relation to costs, these will normally follow the event. If the appropriate costs order is capable of being agreed between the parties, that order can then be put before the Court in the form of a Consent Order. However, if there is any dispute about the costs order that should follow from this judgment, either party will be able to seek an appointment through the Greffe for a hearing before the Deputy Bailiff, possibly at a suitable Interlocutory Court, to address the proper incidence of costs.