UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION
IN ADMIRALTY

IN RE PALAFOX MARINA HURRICANE SALLY LITIGATION

Case No. 3:20cv5943-TKW-MJF (and consolidated cases)

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ORDER ON CROSS-MOTIONS FOR SUMMARY JUDGMENT

This case is before the Court based on the cross-motions for summary judgment filed by the boat owners[1] (Doc. 194) and Marina Management Corp. (MMC) (Doc. 217) on the causation element of MMC's breach of contract claims against the boat owners. Upon due consideration of the motions, the responses (Docs. 217, 232), the replies (Docs. 232, 234), the attachments to those filings, and the entire case file, the Court finds that the boat owners' motion is due to be denied and MMC's motion is due to be granted.

Facts[2]

MMC owns and operates the Palafox Pier Yacht Harbor ("the marina")[3] in downtown Pensacola on property that it leases from the City of Pensacola. The

[1] *See* Doc. 194-1 (listing the boat owners on whose behalf the motion was filed).

[2] The facts set forth in the orders on the parties' prior cross-motions for summary judgment (Docs. 57, 165) are incorporated by reference into this order, but only the facts most pertinent to the issue framed by the parties' current cross-motions are set forth below.

[3] MMC also owns and operates the Baylen Slips Marina in the same marina basin, but the claims related to that marina were settled. *See* Docs. 196, 205, 206, 208, 209, 210.

waters in the marina are separated from Pensacola Bay by a protective "breakwater" that was constructed in 1997.

The dock system at the marina was installed in 2005 or 2006, after Hurricane Ivan, and was comprised primarily of floating docks affixed to pilings. The record contains conflicting evidence about the condition of the docks in 2020 and how much of their expected useful life remained at that time.

Floating docks can typically withstand the forces exerted by "minor wave events" when they are unoccupied. The marina's dock system was designed and engineered to withstand 2-to-3-foot waves when unoccupied.

On September 16, 2020, Hurricane Sally made landfall west of Pensacola near Gulf Shores, Alabama, as a strong Category 2 storm. It had maximum sustained winds of 110 mph, which is only 1 mph below Category 3.

The marina suffered substantial damage (it was "a total loss") from the hurricane. MMC claims that the damage was caused, at least in part, by the boat owners' failure to remove their boats from the marina before the hurricane as they were contractually obligated to do under their dockage agreements with MMC.

The dockage agreements required the boat owners to remove their boats from the marina when MMC issued an evacuation order or when a tropical storm or hurricane watch was issued within 100 miles of the marina. The agreements also required the boat owners to keep informed about the weather conditions and warnings.

MMC did not order an evacuation of the marina, but the removal requirement in the dockage agreement was triggered on September 11, 2020, at 10:00 p.m., when a tropical storm watch was issued within 100 miles of the marina. The boat owners could have safely removed their boats from the marina between then and when a hurricane warning was issued for the Pensacola area on September 14 at 4:00 p.m., but they did not do so.

The dockage agreement provided that the boat owner would be liable for all damages "caused by the [owner's] boat" to MMC's property, including the marina's docks and pilings. *See* Doc. 40-1 at ¶¶26, 26.A.9. The agreement explained that "damages include all damages … regardless of whether the damage is aggravated or incurred in whole or in part by the negligence of … [an]other person, firm, or entity …." *Id.* at ¶26 (emphasis in original).

Each boat owner "acknowledge[d]" in their dockage agreement that "the effects of a tropical storm or hurricane on the waters of the marina will be greatly exacerbated and compounded if the boat is left at the marina," *id.* at ¶ 26.A.10, and "agree[d]" that "if the vessel remains in the slip during any named storm, then its natural, expected and assumed that, notwithstanding all efforts to secure the vessel, its presence in the marina will cause serious and substantial damage to the marina property," *id.* at ¶ 26.A.9 (emphasis added). More specifically, each boat owner "agree[d]" that "a boat moored to the marina piers will cause the piers to be

destroyed … while experiencing the effects of a tropical storm or hurricane." *Id.* at ¶ 26.A.2 (emphasis added).

It is undisputed that no single boat, by itself, would have caused the entirety of the damages suffered by the marina—or even caused all of the damage to the dock to which the boat was moored. However, there is testimony from MMC's experts from which a reasonable factfinder could find that each boat left in the marina was a "substantial factor" (meaning that it was "something of high significance," "not insignificant," and "not just trivial") in the damage to the marina. Specifically, the experts explained that each boat left in the marina "impose[d] significant loads on the dock to which [it] was attached" and "when each boat's significant load is added to the loads imposed by other boats, such loads would be exponentially greater than the loads those docks would have experienced if the docks had been unoccupied."

MMC's experts did not attempt to identify what specific damage was caused by each boat, and they conceded that they could not determine what sequence the docks failed during the hurricane and what, if anything, each individual boat hit when it and/or the docks broke free.[4] Instead, the experts calculated the additional

[4] This is not surprising because MMC and the boat owners "acknowledge[d] and agree[d]" in the dockage agreements that it would be "impossible and impracticable to attempt to measure damages, allocate responsibility, or establish cause and effect relationship or consequences" as a result of the "perils to which a boat and a marina facility are exposed during a tropical storm or hurricane." Doc. 40-1 at ¶26.A.10; *see also* Doc. 216-8 at 154, 158-59 (testimony of the City's expert that there were too many variables involved for anyone to determine the precise sequence of events that led to the "big mess of boats at the north end of the harbor"); Doc. 40-4 (photos showing the jumbled mess of boats and docks after the hurricane).

force that the boats individually and collectively exerted on the docks during the storm and opined that the docks would have survived the hurricane were it not for that increased force.[5]

The boat owners did not proffer any contrary evidence, and consistent with the opinions of MMC's experts, the boat owners' expert testified that the docks were subject to greater loads because of the boats left in the marina than they would have been if the docks were unoccupied; the docks would have had a better chance of surviving if they were unoccupied; and the boats left in the marina were one of the factors that contributed to the damage suffered by the marina because "the wind pushed the boats and the [docks] came loose or broke." Moreover, although the boat owners' expert was equivocal about how significant of a factor the boats were to the damage suffered by the marina ("it may or may not be the most significant"), he conceded that it was not a "trivial" factor.[6]

None of the experts were able to quantify the extent to which other factors, such as the hurricane itself or the allegedly defective breakwater, contributed to the damage suffered by the marina. Nor were they able to quantify the extent to which

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[5] The City's expert had essentially the same opinion. *See, e.g.*, Doc. 216-8 at 31-32, 39-41, 143-45, 172.

[6] The boat owners' expert was critical of the design, engineering, and maintenance of the marina's docks, but his opinions on those issues were excluded. *See* Doc. 214 at ¶2.

each boat contributed to the damages in relation to the other boats and/or the marina's floating office and fuel dock that also broke free during the storm.

The water in the marina was higher than usual during the hurricane because of the storm surge, and the marina manager testified that there were waves/swells in some areas of the marina during the hurricane that he estimated to be 4 to 6 feet high.[7] The rough water conditions exacerbated the force exerted on the docks by the boats during the hurricane, but there are factual disputes as to whether breakwater should have prevented (or at least reduced) the rough water conditions in the marina and whether (and the extent to which) the boats themselves contributed to the rough water conditions as they pitched, rolled, and yawed during the storm.

A nearby marina that was empty of boats during the hurricane suffered only minor damage, which supports an inference that the boats left in MMC's marina contributed to the destruction of the marina. However, the weight of that inference is mitigated somewhat by the fact that the record contains very little evidence about how comparable the two marinas were in terms of their layout, quality of

[7] The Court is skeptical that the waves/swells were that high based on the qualifications and limitations that went along with the marina manager's estimate, but the Court is required to view the estimate in the light most favorable to the boat owners at this stage of the case. That said, if it turns out that the waves/swells impacting the docks were not as high as the manager estimated, then it would be less likely that they (or the allegedly defective breakwater) could have independently caused the damage suffered by the marina because it is undisputed that marina's floating docks were designed to withstand 2 to 3 foot waves and that the docks would have suffered only "minimal" damage if the marina was empty of boats during the hurricane.

construction, etc., and how similar the wind and water conditions were in the marinas during the hurricane.

Procedural Background

Starting in November 2020, the owners of 29 of the boats that were left in the marina when the hurricane made landfall filed separate actions for exoneration or limitation of liability under 46 U.S.C. § 30529. Those 29 cases were consolidated, *see* Docs. 22, 30, 32, 33, 35, and in due course, MMC asserted counterclaims for negligence and breach of contract against the boat owners in those cases. Discovery was stayed at the parties' request while the boat owners and MMC briefed several potentially dispositive issues. *See* Doc. 27.

In August 2021, after full briefing, the Court ruled on the first round of cross-motions for summary judgment filed by the boat owners and MMC. *See* Doc. 57.[8] Most pertinent to the issues framed by the parties' current motions, the Court ruled that that the boat owners had a contractual obligation to remove their boats from the marina that was triggered on September 11 at 10:00 p.m. and the removal requirement did not violate public policy.

In September 2021, a scheduling order was entered and the boat owners and MMC commenced discovery. *See* Doc. 61. Two months later, MMC filed a separate

[8] The boat owners and MMC appealed this order, but the appeals were voluntarily dismissed. *See* Doc. 95.

action asserting claims for negligence and breach of contract against 40+ other boat owners and claims against the City of Pensacola related to the breakwater. *See* Case No. 3:21cv2122. That case was consolidated with the 29 cases initiated by the boat owners under the case number and case style reflected above. *See* Docs. 82, 106. The parties thereafter requested—and were granted—multiple extensions of the discovery period. *See* Docs. 98, 107.

In November 2022, the City brought third-party claims against the companies that designed and constructed the breakwater. *See* Case No. 3:21cv2122, ECF Doc. 200. The Court denied a motion to dismiss those claims on statute of repose grounds, *see* Doc. 116, and the parties thereafter requested—and were granted—multiple additional extensions of the discovery period, *see* Docs. 147, 151, 162, 178.

In October 2023, after full briefing and oral argument, the Court ruled on the second round of cross-motions for summary judgment filed by the boat owners and MMC. *See* Doc. 165. Most pertinent to the issues framed by the parties' current motions, the Court ruled that MMC did not waive (and is not estopped from enforcing) the removal requirement in the boat owners' dockage agreements; that causation for the breach of contract claim is governed by the "substantial factor" test in *Cedar Hills Prop. Corp. v. E. Fed. Corp.*, 575 So. 2d 673 (Fla. 1st DCA 1991); and that test does not require MMC to show what specific damage was caused by

each boat or the proportionate part played by each boat owner's breach of his or her dockage agreement among all of the factors that contributed to marina's damage.[9]

Discovery closed on May 29, 2024, except for four depositions the parties were allowed to complete after that date. *See* Doc. 188. The boat owners and MMC thereafter filed their third round of cross-motions for summary judgment.[10] The motions are fully briefed and are ripe for rulings. No hearing is needed to rule on the motions.

Standard of Review

"The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). An issue of fact is "material" if it would change the outcome of the litigation, and a dispute about a material fact is "genuine" if the record evidence could lead a reasonable jury to find in favor of the non-moving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). These same standards apply when reviewing cross-motions for summary judgment, although

[9] The Court also granted summary judgment for the boat owners on MMC's negligence claims.

[10] Three other motions for summary judgment were filed—one by the company that designed the breakwater, Moffit & Nichol, Inc. (M&N) (Doc. 191), and two by the City of Pensacola (Docs. 218, 220)—but those motions pertain to different issues than the cross-motions filed by the boat owners and MMC. Briefing on M&N's motion was tolled based on a pending settlement between M&N and the City, *see* Doc. 227, and the briefing schedule for the City's motions was extended to accommodate ongoing settlement discussions between the City and MMC on the issues raised in those motions, *see* Docs. 225, 239.

"cross-motions may be probative of the non-existence of factual dispute." *United States v. Oakley*, 744 F.2d 1553, 1555-56 (11th Cir. 1984) (quoting *Bricklayers, Masons & Plasterers Int'l Union of Am., Loc. Union No. 15, Orlando, Fla. v. Stuart Plastering Co.*, 512 F.2d 1017, 1023 (5th Cir. 1975)).

The Court's role at the summary judgment stage is not to weigh the evidence and resolve any factual disputes but rather to determine whether a reasonable factfinder could resolve the disputes in favor of the nonmoving party. *Anderson*, 477 U.S. at 252; *see also Turner v. Phillips*, 2022 WL 458238, at *4 (11th Cir. Feb. 15, 2022) (explaining that the court's role at the summary judgment stage is not to weigh the evidence but rather to assess whether the evidence "is so one-sided that the result of any trial is inevitable"). The Court is generally required to draw all inferences in favor of the non-moving party, but the Court has greater latitude to draw inferences in favor of the moving party where the Court will be the factfinder (as it will be in this case[11]) and "there are no issues of witness credibility" and "[a] trial on the merits would reveal no additional data." *Coats & Clark, Inc. v. Gay*, 755 F.2d 1506, 1509 (11th Cir. 1985) (quoting *Nunez v. Superior Oil Co.*, 572 F.2d 1119, 1123-24 (5th Cir. 1978)).

[11] The dockage agreement is a maritime contract, *see N. Ins. Co. of New York v. Pelican Point Harbor, Inc.*, 2006 WL 1285078, at *3 (N.D. Fla. May 5, 2006); *Burklow & Assoc., Inc. v. Belcher*, 719 So. 2d 31, 35 (Fla. 1st DCA 1998), and because MMC's breach of contract claims are based solely on the Court's admiralty jurisdiction, there is no right to a jury trial on those claims, s*ee St. Paul Fire & Marine Ins. Co. v. Lago Canyon, Inc.*, 561 F.3d 1181, 1188-89 (11th Cir. 2009). *See also* Doc. 40-1 at ¶37 (boat owner's waiver of trial by jury for claims arising out of the dockage agreement).

Analysis

Under Florida law,[12] to establish a claim for breach of contract, the plaintiff must prove "(1) the existence of a contract; (2) a breach of the contract; and (3) causation of damages as a result of the breach." *Cole v. Plantation Palms Homeowners Ass'n, Inc.*, 371 So. 3d 413, 415 n.2 (Fla. 2d DCA 2023). The elements are the same under federal admiralty law. *See Sweet Pea Marine, Ltd. v. APJ Marine, Inc.*, 411 F.3d 1242, 1249 (11th Cir. 2005).

The first element is met because the dockage agreements between the boat owners and MMC are valid and enforceable contracts. The second element is met based on the boat owners' failure to remove their boats from the marina before Hurricane Sally after the contractual removal requirement in their dockage agreements was triggered. *See generally Seven Seas Cruises S. De R.L. v. V. Ships Leisure SAM*, 2011 WL 13220299, at *38 (S.D. Fla. June 21, 2011) (citing *Ogea v. Loffland Bros. Co.*, 622 F.2d 186, 189 (5th Cir. 1980), for the proposition that "[w]here a person neglects to do what is obligated, he has committed a breach of contract"). The third element—causation—is disputed and is the focus of the cross-motions filed by the boat owners and MMC.[13]

[12] The dockage agreements contain a Florida choice-of-law provision. *See* Doc. 40-1 at ¶35(a).

[13] The amount of MMC's damages is also presumably disputed, but that issue is beyond the scope of the current motions.

To prove causation, the plaintiff must show that its damages "flow[ed] from" and were "a proximate result of the breach." *See Chipman v. Chonin*, 597 So. 2d 363, 364 (Fla. 3d DCA 1992); *Knowles v. C.I.T. Corp.*, 346 So. 2d 1042, 1043 (Fla. 1st DCA 1977). The plaintiff is not required to prove that the breach was the *sole* cause of its damages, and where (as here) there is evidence that there were multiple causes that may have contributed to the damages, the plaintiff must only show that the breach was a "substantial factor" in the damages.[14] *Cedar Hills*, 575 So. 2d at 678; *see also N. Ins. Co. of New York*, 2006 WL 1285078, at *5 (stating in a breach of contract case arising out of the removal of a boat from a marina before a hurricane that "it is well established that a plaintiff must show the defendants' breach was a substantial factor in causing the damage alleged"). A "substantial factor" is an important or significant contributor to the plaintiff's damages. *See* Doc. 228 at 8 n.6 (quoting *Black's Law Dictionary*).

Here, the boat owners "agree[d]" in their dockage agreements that a boat left in the marina during a hurricane "will cause serious and substantial damage to the marina property" and "will cause the [docks] to be destroyed." Those admissions, coupled with the uncontradicted testimony of MMC's experts that all of the boats left in the marina during the hurricane contributed in a substantial way to the

[14] The boat owners concede in their reply (for the first time in this case) that "the 'substantial factor' test is likely the appropriate test for causation," although they continue to disagree with MMC's argument about how the test applies to the facts of this case. *See* Doc. 232 at 8 n.5.

destruction of the marina because they individually and collectively increased the amount of force exerted on the dock to which the boat was moored during the storm, is more than sufficient to establish that each boat owner's breach of their dockage agreement was a "substantial factor" in the damages suffered by the marina. Indeed, there no record evidence from which a reasonable factfinder could find otherwise.

The Court did not overlook the boat owners' argument that what they acknowledged and agreed to in their dockage agreements about what would happen if they left their boats in the marina during a hurricane did not relieve MMC of its obligation to prove that each individual boat did, in fact, cause damage. However, that argument begs the question as to what MMC had to show to establish that individual causation—did MMC have to show what specific damage was caused by each boat or did it have to only show that each boat being left in the marina was a substantial factor in the damage attributed to that boat by the marina? The Court has previously ruled that MMC only had to show the latter, *see* Doc. 228 at 9; Doc. 165 at 3, and to that end, MMC's experts provided uncontradicted testimony that each boat left in the marina contributed in a substantial way to the damage suffered by the marina. The fact that the experts could not say precisely what damage each boat caused was not necessary (or particularly surprising based on the parties' agreement in the dockage agreement that it would be "impossible and impracticable" to do so), nor does that undermine the experts' commonsensical (and mathematically supported) testimony that the increased force that the boats individually and

collectively exerted on the dock to which they were moored contributed in a substantial, non-trivial way to that dock's failure.

The Court also did not overlook the boat owners' argument that *Cedar Hills* merely stands for the proposition that a plaintiff will not be barred from recovering from a defendant whose breach of contract was a substantial factor in causing the plaintiff's damages when other things also contributed to the damages. However, that argument is unpersuasive because the rule adopted by the court in *Cedar Hills* also specifically addresses (1) whether "the defendant [must] pay damages equivalent to the total harm suffered" and (2) whether "the plaintiff [must] show the proportionate part played by the defendant's breach of contract among all the contributing factors causing the injury, and must his loss be segregated proportionately," answering the first question in the affirmative and the second question in the negative. *See* 575 So. 2d at 678 (quoting 5 *Corbin on Contracts* §999 (1964)). Thus, where (as here) the other factors that contributed to the plaintiff's damages included contractual breaches by other parties, *Cedar Hills* supports the conclusion that the breaching parties are effectively jointly and severally liable for the plaintiff's damages.[15] *See also Gulf Building LLC v. Philadelphia Indem. Ins.*

[15] An analogy helps show why this rule makes sense. If 100 people had contracts with a camel owner providing that they could not put their straw on the camel's back, the fact that the camel's back did not break when the first 99 people put their straw on the camel's back in breach of their contracts does not mean that those breaches were not a "substantial factor" in the camel owner's damage when the camel's back broke when the 100th person put his straw on the camel's back in breach of his contract. Moreover, it would be patently unfair to relieve the first 99 contract breachers of any liability for the damage suffered by the camel owner simply because their

Co., 689 F. Supp. 3d 1183, 1240 (S.D. Fla. 2023) (concluding in a case involving multiple defendants who allegedly breached separate contracts with the plaintiff that "[i]f one of the defendant's breaches was a substantial factor in the plaintiff's damages, that defendant can be liable for the total harm" (citing *Cedar Hills*, 575 So. 2d at 678)).

The Court also did not overlook the boat owners' related argument that imposing what amounts to joint and several liability on the boat owners in this case would effectively re-write the dockage agreements. However, as MMC persuasively points out, the agreements state that "[a]s used herein, damages include all damages which [MMC] may suffer including, but not limited to, property damage … regardless of whether the damage is aggravated or incurred in whole or in part by the negligence of … [an]other person, firm, or entity …." Doc. 40-1 at ¶26 (emphasis in original). Thus, even though *Cedar Hills* does not embrace what other courts have described as the "concurrent breach doctrine," *see Johnson Lasky Kindelin Architects, Inc. v. United States*, 151 Fed. Cl. 642, 654 (Fed. Cl. 2020), the boat owners' dockage agreements do.

Finally, the Court did not overlook the boat owners' argument that the "substantial factor" test articulated in *Cedar Hills* contravenes the "proportionate share rule" that applies under federal maritime law. However, the Court finds that

individual breaches (just like the 100th person's breach) would not have broken the camel's back on their own.

argument unpersuasive for the reasons stated in MMC's reply. *See* Doc. 234 at 9-14.

Conclusion

In sum, for the reasons stated above, it is **ORDERED** that:

1. The boat owners' motion for summary judgment (Doc. 194) is **DENIED**.

2. MMC's cross-motion for summary judgment (Doc. 217) is **GRANTED** insofar as the Court finds that MMC has established the causation element of its breach of contract claims against the boat owners.

3. Within 7 days from the date of this Order, the parties shall file a joint notice identifying several mutually agreeable dates and times over the following two weeks to set what remains of this case for trial.

DONE and ORDERED this 16th day of September, 2024.

T. KENT WETHERELL, II
UNITED STATES DISTRICT JUDGE