UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

IN ADMIRALTY

CASE NO. 0:23-CV-62315-WPD

In the Matter of the Complaint of

PORT EVERGLADES LAUNCH SERVICE, INC.
d/b/a CAPE ANN TOWING, as owner of
the M/V TUG 1 Bearing Hull Identification
No. DLZ09699D603 and M/V TUG 2
Bearing Hull Identification No.
DUS600141276, for Exoneration
from or Limitation of Liability,
_____/

FINDINGS OF FACT AND CONCLUSIONS OF LAW

THIS CAUSE is before the Court on the bench trial held November 12, 13, and 14, 2025. The Court has considered the testimony from all witnesses, the arguments presented by counsel, the Parties' Joint Pretrial Stipulation, and the admitted exhibits.

At the bench trial, the following fact witnesses testified: Denis Wayne Brandon, the beneficial owner of the Vessel; Captain John See, the tug captain; Captain Osmany Hernandez, the second tug captain; Michael Munson, the dockmaster at Bradford; Robert Franks, the project manager at Bradford; and Thomas Krigger, the general manager at Bradford. The following expert witnesses testified: Revel Hartwell Boulon, a surveyor at Sedgwick, Roland E. Santos Jr., a surveyor; Captain Christopher Karentz, a senior maritime consultant; Anthony Beveridge, a surveyor for Bradford; and Matthew Knoll, a surveyor. Parties also submitted deposition designations from Captain Shaun Mehaffey, towing operations manager, and Roland Santos, Sr., a surveyor.

The Court has weighed the evidence and made credibility determinations. In accordance with Rule 52 of the Federal Rules of Civil Procedure, the Court makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

Introduction

1. This action concerns a failed towing operation. A yacht was towed a short distance from one canal and around the corner into a neighboring canal. During the tow, the yacht took on water and began to list. There was so much damage it was considered a total loss.

2. This happened on March 20, 2023, at the Bradford Marina, located off the New River in Fort Lauderdale.

3. The Vessel at issue is the *M/Y Selah*, a 2005 116-foot Azimut motor yacht bearing Hull Identification No. XAX11615A505. (the "Vessel").

4. This action began when the tow company, Port Everglades Launch Service, Inc, also known as Cape Ann Towing ("Cape Ann" or "Petitioner") initiated this action for limitation of liability or exoneration, seeking limitation of their liability to the value of the tugboats. [DE 1].

5. At the time of the towing operation at issue, TUG 1 had a value of $48,725 and TUG 2 had a value of $28,725. [DE 1] ¶ 7.

6. Once Cape Ann initiated the action, the Vessel owner, DWB Asset Management, LLC ("DWB") and its insurance company, Accelerant Specialty Insurance Co. ("Accelerant") as subrogee, (collectively, "Claimants") appeared as Claimants. [DEs 7, 20].

7. Claimants brought counts against the Cape Ann for negligence and breach of workmanlike services.

8. Claimants also brought third party claims against FLYH OpCo, LLC, doing business as Bradford Marine, Inc. ("Bradford"), the marina where the Vessel was docked for

service and repair for negligence, breach of workmanlike services, and vicarious liability. *See* [DEs 8, 21].

9. At the time of trial, the counts remaining for adjudication were Cape Ann's limited liability or exoneration claims, Claimants' negligence and breach of workmanlike services counts against Petitioner and Bradford, and Claimants' vicarious liability count against Bradford.[1] *See* [DEs 8, 21].

Background

10. Denis Wayne Brandon purchased the Vessel via his company DWB in 2022 for 3.1 million dollars. The owner invested about another $900,000 to fit the Vessel for charter.

11. Captain Anthony DeBeer was hired by DWB (through a management company) to captain the Vessel.

12. The Vessel was brought to Bradford Marine pursuant to a "Dockage and Repair Contract," executed on March 10, 2023, for the purpose of repair and maintenance. *See* Bradford Ex. 2.

13. The Vessel had been neglected for three years prior to the tow; there was a ten-page list of repairs to be completed at Bradford, including repairing leaks on the Vessel.

14. Prior to being docked at Bradford Marine, the Vessel was docked in a private slip in Lauderdale by the Sea.

15. The Vessel had undergone several repairs, including the removal and reinstallation of the Vessel's propellers and the removal four turbochargers from the Vessel's two main engines to be overhauled – which required the disassembly of the Vessel's exhaust system.

[1] Cape Ann and Bradford stipulated to the dismissal of Bradford's claim against Cape Ann. *See* [DEs 37, 130].

16. To arrive at Bradford, the Vessel was towed stern first from Lauderdale by the Sea about ten to fifteen miles. It arrived at Bradford Marine without issue.

The Tug Captains

17. Bradford hired Cape Ann to complete the tow; Bradford routinely relies on Cape Ann for towing services.

18. Cape Ann sent Captain John See and Captain Osmany Hernandez (the "tug captains") to execute the tow. The tug captains are hourly contractors working for Cape Ann.

19. The tug captains were both properly credentialed and held all proper towing licenses.

20. Captain See is a head captain at Cape Ann. He had sixteen years of experience as a tugboat captain at the time of the incident. Captain Hernandez been a captain for about twelve years and has been a tugboat captain for about two years.

21. Captain See was the lead captain of the operation. He executes about 1,000 tows per year, with about 300-400 to or from Bradford.

22. Captain See has never had a vessel take on water under his care.

23. The tug captains regularly tow boats backwards; likewise, 116-foot Azimut Yachts are routinely towed backwards.

The Tow

24. The Vessel was to be towed from slip F17 in at the West Dock in Bradford Marina, into the New River and around the corner into the Billfish Canal to the 150-ton travel lift so that its propellers could be reinstalled and its bottom painted.

25. The tow was rescheduled about four times before the Vessel was towed; the Vessel sat in the Bradford Marina for a week before it was towed out to the travel lift.

26. On the day of the tow, there had been engineers working on the boat in the engine room. It is not known what work they were doing. When the tugboats arrived for the tow, the engineers were out to lunch.

27. The engineers did not testify, and it was unclear whether they were aware of the impending tug before leaving for lunch.

28. There were four people on the ship at time of tow. Captain DeBeer, the Vessel's captain, Denis Brandon, the beneficial owner, Bob Franks, the project manager at Bradford, and a teak contractor hired by DWB. Only Brandon and Franks were called to testify.

29. The day before the towing operation, Captain DeBeer was alerted the Vessel would soon be towed.

30. On the morning of the subject tow, about fifteen to twenty minutes before the tugs arrived, Bradford again contacted Captain DeBeer advising him the tow would occur that morning.

31. When the tug captains arrived, they conducted a limited visual inspection of the Vessel prior to tow. Nothing about the Vessel looked unusual or unseaworthy to the tug captains; everything appeared to be sealed from their visual inspection.

32. The Vessel was "dead ship": it was not under its own power.

33. No one told Cape Ann or the tug captains any special instructions for the tow, nor about the condition of the Vessel prior to tow. The tug captains knew that the Vessel was not under its own power.

34. Very soon after the tug captains arrived, but before the tug lines were attached, Michael Munson, the Bradford Dockmaster, released the dock lines.

35. Munson reasonably believed that Captain DeBeer instructed him to release the lines.

36. The premature release of the dock lines caused the Vessel to go adrift for a few moments—around 30 seconds to a minute—before the tug captains attached their lines to stabilize the swing.

37. The tug captains successfully stabilized the Vessel and prevented a crash.

38. They did so by sending up two lines to the port side of the Vessel which were received by the people on board.

39. The tug captains then brought the Vessel safely into the Bradford canal. Once in the canal and the Vessel stabilized, the tug captains sent up two more lines to the starboard side, which were again received by the people on board.

40. The people on board followed the direction of the tug captains and attached the tug lines without protest, both before the Vessel was stabilized and after the Vessel had been stabilized and safely brought into the canal. This indicated to the tug captains that the Vessel was ready for tow.

41. Tug Captain Hernandez directed someone aboard to get on radio channel 67, but no one came on the radio. The tug captains also monitored other local radio stations but received no communication from anyone aboard the Vessel for the duration of the tow.

42. The tug captains received no indication from Captain DeBeer that the Vessel was not ready for tow.

43. The tug captains began towing stern first—backwards—north towards the New River.

44. The Vessel needed to be towed backwards because there was no other way to tow the Vessel, given the space constraints in the shipyard around the F17 slip. The tow could not be completed bow first. The Vessel also needed to be towed stern first into the Billfish Canal, to maneuver the Vessel to go bow first into the 150-ton travel lift. The Vessel was towed stern first the entire way and was not turned around at any point.

45. The tugs used most of their power to maneuver, not pull, the Vessel.

46. The Vessel was towed at an average rate of about a knot to a knot and a half.

47. As the Vessel approached the New River, Captain DeBeer called out that the Vessel was listing and ran into the engine room door.

48. Captain DeBeer emerged from the engine room wet from the waist down.

49. The tug captains did not hear Captain DeBeer say anything and received no communication over the radio. They continued to the tow to the travel lift.

50. Only once the tow was nearly completed did Captain See notice the boat listing; he called out and asked if the boat was taking on water. He did not receive a verbal response but saw someone aboard the Vessel go into the engine room. He saw the engine room door shutter and make a noise.

51. Once the Bradford crew at the travel lift understood the boat was taking on water, they secured the Vessel into the travel lift. At that point the tug captains left, as there was nothing more they could do.

52. It was not raining, and the weather did not impact the tow or the conditions on the water.

Cause of the Damage

53. Although parties floated some theories as to the cause of the accident, there was insufficient testimony to determine the exact cause.

54. Cape Ann and Bradford advanced the theory that the water came in through either the garage door or the engine room door, which were not properly sealed before tow. DWB and Accelerant suggested the water came in through the exhaust pipes.

55. Some evidence was presented in support of each theory, but several witnesses and counsel admitted that no one knows the exact cause of how the water came to enter the Vessel.

56. Given the volume of water that entered the Vessel and remained in the Vessel during the short tow from slip F17 to the New River, the most plausible theory advanced was that the Vessel had taken on water prior to tow.

57. The water could have come through the exhaust pipes or garage door, which sat nine and twelve inches above the water line, respectively, or some other source.

58. There was some evidence that the exhaust pipes were left open from servicing.

59. Expert Captain Matthew Knoll found it reasonably likely that whatever the engineers were working on in the engine room caused the boat to take on water.

60. The engine room door was not properly closed; had it been closed, the water could not have moved from the garage to the engine room or vice versa.

61. Captain DeBeer had a loss record that was not disclosed to the insurance company.

62. After the incident Captain DeBeer was retroactively removed from the insurance policy for failure to disclose his loss history. He was also fired from his position as captain of the Vessel.

63. It was never satisfactorily explained to the Court why neither party called Captain DeBeer to testify.

CONCLUSIONS OF LAW

1. To determine whether a shipowner is entitled to exoneration or limitation of liability, a court must determine, first, what acts of negligence or conditions of unseaworthiness caused the accident; second, whether the shipowner had knowledge or privity of those same acts of negligence or conditions of unseaworthiness. *See Hercules Carriers, Inc. v. Claimant State of Florida*, 768 F.2d 1558, 1563-64 (11th Cir. 1985) (citation omitted); 46 U.S.C. § 30505(b).

2. Claimants bear the burden of proving their claims, of proving Cape Ann is not exonerated, *Petition of M/V Sunshine*, *II*, 808 F.2d 762, 764 (11th Cir. 1987), and of proving negligence or unseaworthiness as the first prong of the limitation action. *See Hercules Carriers, Inc*, 768 F.2d 1558 at 1563–64.

3. For limitation of liability, only once Claimants meet their burden of proving negligence does "the burden of proof shift[] to the shipowner to prove the lack of privity or knowledge." *Id.*

Cape Ann Was Not Negligent

4. To succeed on a claim of negligence under federal maritime law, Claimants must show, "(1) the defendant had a duty to protect the plaintiff from a particular injury; (2) the defendant breached that duty; (3) the breach actually and proximately caused the plaintiff's injury; and (4) the plaintiff suffered actual harm." *Chaparro v. Carnival Corp.*, 693 F.3d 1333, 1336 (11th Cir. 2012).

5. "In a contract of towage, the owner of the tow is responsible for the seaworthiness of his vessel and the owner of the tug for its safe navigation." *In re Jersey Shore Boat Towing & Salvage, Inc.*, No. 24-13009, 2025 WL 1938678, at *3 (11th Cir. July 15, 2025) (quoting *Nat G. Harrison Overseas Corp. v. Am. Tug Titan*, 516 F.2d 89, 94 (5th Cir. 1975)); *Hart v. Blakemore*, 410 F.2d 218, 221 (5th Cir. 1969) [2] ("When the owner of a tug contracts to transport a tow and to take entire charge of its navigation, the owner of the tow is liable for its seaworthiness and the owner of the tug for its safe navigation."); *King Fisher Marine Service, Inc. v. NP Sunbonnet*, 724 F.2d 1181, 1183 (5th Cir. 1984).

6. The Supreme Court has explained:

> The tug does not have exclusive control over the tow, but only so far as is necessary to enable the tug and those in charge of her to fulfill the engagement. They do not have control such as belongs to common carriers and other bailees. They have no authority over the master or hands of the towed vessel beyond such as is required to govern the movement of the flotilla. In all other respects and for all other purposes the vessel in tow, its cargo and crew, remain under the authority of its master; and, in emergency, the duty is upon him to determine what shall be done for the safety of his vessel and her cargo. In all such cases the right of decision belongs to the master of the tow and not to the master of the tug. A contract merely for towage does not require or contemplate such a delivery as is ordinarily deemed essential to bailment.

Stevens v. The White City, 285 U.S. 195, 200 (1932).; *In re Jersey Shore Boat Towing & Salvage, Inc*., 2025 WL 1938678, at *3.

7. An owner's duty includes the duty to "prepare the vessel, including its appurtenances, in such a way that the tug operator will be able to successfully negotiate the

[2] In *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc), this Court adopted as binding precedent all decisions of the former Fifth Circuit handed down prior to close of business on September 30, 1981.

conditions and obstacles that the tow will encounter." *Ark. State Highway Comm'n*, 271 F.3d 753, 760 (8th Cir. 2001).

8. Captain Roland Santos Jr., Captain Osmany Hernandez, Captain John See, Captain Shaun Mcafferty, and Captain Christopher Karentz all testified that it is a captain's responsibility to secure a vessel and ready the vessel for tow.

9. A tug company owes "the duty to exercise such reasonable care and maritime skill as prudent navigators employed for the performance of similar service." *The White City*, 285 U.S. at 202.

10. The tug captains—and by extension, Cape Ann—did not breach their duty of reasonable care in executing the tow, and were not the proximate cause of the damage. The tug captains acted reasonably in every aspect of the tow and in accordance with the standard of care for a tug captain.

11. Indeed, the tug captains took action to prevent damage to the by quickly securing the Vessel once it was prematurely released from the dock lines.

12. The theories advanced against the tug captains were that they (1) failed to establish sufficient communication with the Vessel crew before tow, and (2) failed to establish a pre-tow plan; (3) they failed to conduct a sufficient visual inspection before tow; (4) towed the Vessel too quickly. The Court will address each, in turn.

(1) Communication

13. A tug's communication with its tow is typically limited to some indication that the tow is ready for tug. This can be a verbal indication or an indication by actions, such as by accepting the tug lines. "Hand signals are as good as anything, actions speak louder than words."

Capt. Karentz Testimony; *see also Hart v. Blakemore*, 410 F.2d at 221 (statement that the Vessel was "ready to go" was sufficient to indicate readiness).

14. The tug captains received confirmation that the Vessel was ready for tug when the crew twice accepted the lines thrown from the tug. First, when the crew accepted port side lines at the slip to stabilize the Vessel. Second, when they accepted two more lines for the starboard side when the Vessel moved into the canal, after any urgency had passed. The tug captains correctly interpreted these actions as indication that the Vessel was ready for tow.

15. Although they tried, the tug captains could not establish verbal communication with anyone on board for the entirety of the tow. Captain Hernandez told someone aboard to get on radio to communicate with the tug captains, but no one aboard the Vessel came onto any one of the multiple monitored local channels.

16. Captain DeBeer never indicated the Vessel was not ready for tow.

17. Captain DeBeer never indicated that the Vessel could not be towed backwards.

18. Captain DeBeer never indicated to the tug captains that the Vessel was listing.

19. Any failure to communicate was principally the fault of Captain DeBeer and not the tug captains.

20. In any case, any failure to communicate was not the actual or proximate cause of the damage; had communication been established, the Vessel likely would have still incurred the same degree of damage.

21. Any alleged communication from Captain DeBeer occurred halfway through the tow when the only available options were to continue towing to the travel lift or return the Vessel to its original slip.

22. With respect to Claimant's arguments that the tug captains failed to establish a pre-tow plan, the Court finds that an established pre-tow plan is not customary for this type of tow.

23. Instead, the tug captains discuss the tug plan between themselves before—or during—the tug. The tug captains are familiar with routine maneuvers and do not always—if ever—discuss the plan with a boat captain prior to tow.

24. A failure to establish a pre-tow plan does not amount to a breach of duty on the part of the tug captains.

(2) Visual Inspection

25. The tug captains owe a duty to notice only obvious conditions of unseaworthiness in a vessel to be towed; a tug company need not conduct a detailed inspection. *See Ark. State Highway Comm'n*., 271 F.3d at 760 ("Requiring a tug operator to notice obvious conditions of unseaworthiness imparts no obligation upon him to conduct a detailed inspection of the tow.") (citing *Nat. G. Harrison Overseas Corp. v. American Tug Titan*, 516 F.2d 89, 94 (5th Cir. 1975)); *In re Denet Towing Service, Inc*., 178 Fed. Appx 427, 428 (5th Cir. 2006) (tow company's visual inspection of the vessel sufficed to meet its duty; listing was caused by cracks and holes in the barge that were not apparent upon visual inspection); *Marina Mgt. Grp., Inc. v. Basic Towing, Inc*., 64 Fed. Appx. 532, 535 (6th Cir. 2003) (same).

26. The tug captains were forced to move quickly to secure the Vessel because the Vessel was sent adrift from the dock before the tug lines were attached, so their visual inspection was cursory. This was reasonable under the circumstances given the urgent need to prevent damage to the Vessel that could have resulted from the early release of the dock lines.

27. Nonetheless, the Court finds the tug captains did conduct a quick inspection of the Vessel prior to tow. The tug captains both testified that nothing looked unusual about the Vessel

from the exterior prior to tow. "It was enough that the [tug crew] visually inspected the barge before leaving [the marina]" *Cargill, Inc. v. C&P Towing Co., Inc*., 943 F.2d 48 (4th Cir. 1991).

28. In any case, a visual inspection was not likely to reveal any conditions of unseaworthiness because a boat sitting low on its lines may not have been readily apparent from the outside.

29. Captain DeBeer, and not the tug captains, was ultimately responsible for indicating if the Vessel was not ready for tow.

(3) Speed

30. The Court credits the testimony of the fact witnesses with respect to rate at which the Vessel was towed.

31. The Vessel was moving at an average rate of about one to one and a half knots (approximately 1.1 miles per hour over land).

32. The Vessel was moving with the current and the tugs provided minimal, if any, additional speed. The tugs primarily served to guide the Vessel.

33. This rate was not unusual and was not the cause of damage to the Vessel.

Cape Ann Did Not Breach its Duty of Workmanlike Services

34. There is some disagreement in authority over whether a breach of workmanlike services is available in a tug arrangement.

35. Some authority suggests that "a warranty of workmanlike service is not applicable to a towage situation[.]" *Hercules, Inc. v. Stevens Shipping Co., Inc.*, 698 F.2d 726, 738 n. 25 (5th Cir. 1983); *Cargill*, *Inc*, 943 F.2d 48. This is because a warranty of workmanlike performance "consists of the contractual obligation to perform duties under a contract with reasonable safety"

Garner v. Cities Serv. Tankers Corp., 456 F.2d 476, 481 (5th Cir. 1972), whereas tug-tow liability sounds in negligence. *The White City*, 285 U.S. at 201.

36. However, there are a line of cases in which courts have held a tug company to a warranty of workmanlike performance. These are typically cases where there existed a contract to tow. *See S. C. Loveland, Inc. v. E. W. Towing, Inc*., 415 F. Supp. 596, 604 (S.D. Fla. 1976), aff'd, 608 F.2d 160 (5th Cir. 1979) (tug that contracted to tow owed an "implied warranty of workmanlike service; that is, a duty to perform its towing services properly and safely, once having undertaken the responsibility."); *Dillingham Tug & Barge Corp. v. Collier Carbon & Chem. Corp*., 707 F.2d 1086, 1091 (9th Cir. 1983) (affirming trial court's finding that the towage contract contained an implied warranty to perform the services required in a workmanlike manner); *Fairmont Shipping Corp. v. Chevron Int'l Oil Co*., 371 F. Supp. 1191, 1194 (S.D.N.Y. 1974), aff'd, 511 F.2d 1252 (2d Cir. 1975) ("A contract of towage also gives rise to an implied warranty of workmanlike service.") (collecting cases).

37. Here, there was no contract between Cape Ann and DWB to tow, so the warranty of workmanlike services appears not to apply.

38. To the extent this cause of action is available, Claimants failed to show that the tug captains, and in turn, Cape Ann, did not fulfill its "duty to perform its towing services properly and safely, once having undertaken the responsibility." *See S. C. Loveland, Inc*, 415 F. Supp. at 604. *See supra.*

Bradford Marine Was Not Negligent

39. Bradford employees, and by extension, Bradford, acted reasonably at all times and did not breach its duty of care.

40. Claimants advance the following theories against Bradford: that they (1) failed to alert the tug captains of the Vessel's ongoing repairs; (2) failed to transition the Vessel into the slings of the travel lift as it continued to take on water; (3) prematurely released the dock lines before the Vessel was attached to the tug lines.

41. In general, Bradford Marine's role was very limited.

42. Although true that Bradford did not provide Cape Ann with any information about the Vessel's state prior to the tug, this role fell to Captain DeBeer and not Bradford.

43. And apart from a general awareness that there was a long work list to be completed on the Vessel, and that the Vessel had been neglected for three years, Bradford was not aware of the specific condition of the Vessel prior to tow. Captain DeBeer had not yet sent over a work list to Bradford at the time of tow. *See* Bradford Ex. 32. (Bradford's internal record on the Vessel indicating, "Captain said the vessel has been neglected for 3 years and has a long work list which he is working on and will email to us."). Bradford had not begun any work on the Vessel prior to the tow; the engineers working on the Vessel prior to tow were not Bradford employees but private contractors hired by DWB. Bradford did not know that the engineers were working on the Vessel.

44. Certainly, Bradford would have had no reason to believe the Vessel would be unseaworthy to survive a short tow to the travel lift, especially given that the Vessel had just recently been towed into the marina from a much farther distance.

45. It was Captain DeBeer's duty to indicate to Cape Ann if the Vessel was unseaworthy for tow. At all times, Captain DeBeer's was primarily responsible for the Vessel and was on the Vessel on the day of the incident and at the time of the tow. This is especially true because Captain DeBeer was present on the Vessel on the day of the tow.

46. Regarding the delay at the travel lift, there was no evidence to suggest that any slight delay at the travel lift was the actual and proximate cause of additional damage to the tug.

47. Finally, any suggestion that the Dockmaster Michael Munson prematurely untied the lines on his own, without direction from Captain DeBeer, does not support a finding of negligence, because even if true (and the Court finds it was not), this conduct was not the actual cause of the damage.

48. Accordingly, none of the actions of Bradford or any of its employees were the actual or proximate cause of the damage.

Bradford Did Not Breach its Duty to Perform Workmanlike Services

49. "Where the defendant has a contractual duty to perform a service, it must perform that service 'in a workmanlike manner,' which generally means properly, safely, and competently." *See Kol B'Seder, Inc. v. Certain Underwriters at Lloyd's of London*, 766 Fed. Appx. 795, 801 (11th Cir. 2019) (internal citation omitted).

50. Admiralty law recognizes an implied warranty of workmanlike service which arises from contractual relationships. *See Taylor v. Carey's Diesel, Inc*., No. 07-80106-CIV, 2007 WL 9701773, at *2 (S.D. Fla. May 24, 2007); *Tai-Pan, Inc. v. Keith Marine, Inc.*, 1997 AMC 2447, 2453 (M.D. Fla. 1997); *Little Beaver Enter. v. Humphreys Rys, Inc.,* 719 F.2d 75, 77–78 (4th Cir. 1983); *Coffman v. Hawkins & Hawkins Drilling Co., Inc*., 594 F.2d 152, 154 (5th Cir. 1979).

51. "This warranty need not be express to bind the ship repairer to use the degree of diligence, attention and skill adequate to complete the task" *Little Beaver Enter*, 719 F.2d at 78.

52. The Vessel was docked at Bradford pursuant to a Dockage and Repair Contract between Bradford and DWB, which was executed on March 10, 2023. *See* Bradford Ex. 2.

53. Although Claimants point to no specific contractual duty contained within the Dockage and Marine Contract that Bradford supposedly breached, the Court finds for the same reasons as above that Bradford performed all its responsibilities in a workmanlike fashion and did not breach its duty to perform services in a workmanlike manner. *Taylor*, 2007 WL 9701773, at *2 ("Despite arising in a contractual relationship, the doctrine of workmanlike performance is based on negligence principles."); *Union Marine & Gen. Ins. Co. v. Am. Exp. Lines, Inc.,* 274 F. Supp. 123, 128 (S.D.N.Y. 1966) ("breach of warranty under these circumstances is predicated on the normal tort standard of negligence.").

Bradford is Not Liable Under a Vicarious Liability Theory

54. Claimants argue Bradford is vicariously liable for the negligence of Cape Ann, with whom they contracted to provide the tow.

55. Vicarious liability attaches where an agency relationship exists. *See Franza v. Royal Caribbean Cruises, Ltd.*, 772 F.3d 1225, 1235–36 (11th Cir. 2014). These rules apply to maritime cases. *Id.*

56. An agency relationship requires: "(1) the principal to acknowledge that the agent will act for it; (2) the agent to manifest an acceptance of the undertaking; and (3) control by the principal over the actions of the agent." *Whetstone Candy Co. v. Kraft Foods, Inc.,* 351 F.3d 1067, 1077 (11th Cir. 2003). "[A]bsent any statutory mandate to the contrary, the existence of an agency relationship is a question of fact under the general maritime law." *Franza*, 772 F.3d at 1235–36.

57. To the extent an agency relationship existed, as discussed, Cape Ann bears no liability for the damage; as such, Bradford is not liable under this theory.

The Court Does Not Address Limitation of Liability

58. Because the Court finds Claimants have failed to meet their burden of showing that Cape Ann was negligent, Cape Ann is exonerated from liability. The burden does not shift to Cape Ann to show the absence of privity for their limitation action.

Based on the foregoing, it is **ORDERED AND ADJUDGED** as follows:

1. Judgment will be entered in favor of Cape Ann and Bradford and against DWB and Accelerant.
2. The Court will enter a separate final judgment pursuant to Rule 58.

DONE AND ORDERED in Chambers at Fort Lauderdale, Florida, this 19th day of November, 2025.

WILLIAM P. DIMITROULEAS
United States District Judge

Copies to:

Counsel of record