

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 18-61821-CIV-DIMITROULEAS

LARRY BLOCH,

Plaintiff,

vs.

BEARD MARINE AIR CONDITIONING
& REFRIGERATION, INC., a Florida
For profit corporation,

Defendant.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter came before the Court for a bench trial. The Plaintiff, Larry Bloch (“Plaintiff” or “Bloch”), filed this lawsuit against the Defendant/Third-Party Plaintiff, Beard Marine Air Conditioning & Refrigeration, Inc. (“Defendant” or “Beard Marine”), asserting claims for (i) breach of a maritime contract, (ii) breach of warranty pursuant to the Magnusson Moss Warranty Act, 15 U.S.C. § 2301, *et seq.*, (iii) breach of the implied warranty of merchantability, (iv) breach of the implied warranty of workmanlike performance of services, and (v) negligence. [DE-1].

Beard Marine filed a Third-Party Complaint against Third Party Defendants Ophir Yacht Modifications, Inc., Clive Reid, William Steely, Comprehensive Yacht Advisors International, LLC d/b/a CYA For Refits and MMYC, LLC d/b/a Marina Mile Yachting Center. [DE-24]. The third-party action has been resolved as the Court granted MMYC, Reid and Ophir’s Motion for Summary Judgment. [DE-102]. In addition, Beard Marine voluntarily dismissed its third party claims against William Steely and CYA. [DE-99].

The Court presided over a nine (9) day non-jury trial, heard arguments of counsel, considered proposed findings of fact and conclusions of law [DE-152, 154], and determined credibility of witnesses. In accordance with Federal Rule of Civil Procedure 52(a), the Court now makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

The Plaintiff, Larry Bloch, is a citizen and resident of Australia and the owner of M/Y Tivoli, a 2001 Proteksan motor yacht (herein, “Tivoli,” “vessel” or “yacht”).

At all times material hereto, M/Y Tivoli was located in the State of Florida within the territorial limits of the United States District Court for the Southern District of Florida. Tivoli was designed by Vripack, as a Doggersbank, steel hull, long range offshore expedition yacht. It was made in Turkey in 2001. Bloch bought the Tivoli in May 2017 for \$900,000.

The Defendant, Beard Marine, is a Florida corporation with its principal place of business in Fort Lauderdale, Florida. All work performed by Beard Marine aboard M/Y Tivoli occurred in Broward County, Florida.

Beard Marine represents to the public that its “staff is experienced in the design and engineering of custom air conditioning, refrigeration and freezer systems,” and that their technicians are certified by the American Boat and Yacht Council (ABYC).

Larry Bloch and Beard Marine entered into a contractual agreement under which Beard Marine would supply, design and install a new air conditioning system aboard the M/Y Tivoli. The agreements provided that Beard Marine would warranty the installation for one year and expressly guaranteed that the system would function in a safe and reliable manner.

About noon on April 24, 2018 a fire broke out aboard M/Y Tivoli while she was berthed at Marina Mile Yachting Center awaiting the completion of an extensive refit. During the refit, all

fire protection devices, such as smoke detectors and fire alarms were disabled. However, the fire broke out when workers were on the Tivoli, and the fire department was quickly called. The main factual dispute in this case is the cause and origin of the fire. In what has turned out to be a very close decision, the Court determines that the fire originated inside the Dometic control box located in the V-berth cabinet in Tivoli's crew quarters which was supplied, installed, connected and wired by Beard Marine in January of 2018.

The preponderance of the evidence establishes that the cause of the fire was an exothermic event inside the control box caused by Beard Marine's improper temporary placement of a temperature sensor inside the control box. The exothermic event inside the controller likely blew a hole through the mounting plate installed inside the cabinet which caused a smoldering fire on the cabinet wall and spread throughout the crew cabin and other areas of the yacht from that point.

The fire caused significant damage to the Vessel. However, the Court finds that unauthorized welding was also likely occurring on the day of the fire. It is possible that embers or sparks from the welding penetrated the collision bulkhead, travel through an interstitial space, and were drawn into the air handler by ventilation effects. Moreover, contrary to procedure, no fire watch had been placed in the crew quarters. Nevertheless, the Court credits the control box cause as a more likely cause of the fire. The Court finds that Gabriel Gonzalez likely stored the sensor probe, through the grommets, in the control box, believing that the project manager, William Seely had been told not to use the handlers due to the dusty remodeling conditions. Gonzalez, who was not certified by ABYC, was to later return to properly place the sensor in front of the air handler, after the grills on the cabinet door were installed. The Court also discounts the port-side wiring bundle as a cause of the fire.

I. Beard Marine Contracts

Larry Bloch and Beard Marine had a contractual agreement wherein Beard Marine was to supply, design, and install a new air-conditioning system aboard Tivoli which included air handlers and air-handler controllers. The operative contracts between Beard Marine and Larry Bloch were the Revised Equipment Request dated August 11, 2017 (“Equipment Request”), the Labor Request dated December 7, 2017 (“Labor Request”) and Quote dated December 19, 2017 (“Quote”) (collectively, the “contracts”). The contracts were drafted by Beard Marine, and any ambiguity is construed against them.

Beard Marine’s “Product Specialist”, Arnaldo Correia, sent Mr. Bloch the contracts which set forth the terms and conditions of their agreement including the one-year warranty and guarantee of safety and reliability as well as the scope of work to be performed by Beard Marine. The contracts indicated all work would be performed based on the ABYC codes and guidelines.

The Equipment Request provided that Beard Marine was to purchase, install and commission the air handlers aboard Tivoli including the subject air handler installed in the crew quarters’ V-berth cabinet. The Equipment Request also included Beard Marine’s recommendation to relocate the air handler for the crew quarters into the V-berth cabinet to improve air quality, which Mr. Bloch approved.

The Equipment Request was accepted by Plaintiff via email and 4 days later Plaintiff wired the deposit required by the contract to Beard Marine.

Beard Marine chose the location and method used to install, wire and connect the air handlers and controllers aboard the yacht. All work related to the air handlers and controllers aboard Tivoli was performed by Beard Marine technicians.

The Quote provided that Beard Marine would supply and install the new Dometic air-handler controls and set forth the scope of work for controls which included installing the new

controls, performing all connections and testing the operation of the controls. The V-berth cabinet had no electrical equipment or wiring contained therein prior to Beard Marine relocating the air handler into the cabinet pursuant to the contract with Bloch. Bloch paid Beard Marine \$123,918.52 pursuant to the contract. Beard Marine did not commission the air conditioning system before the fire.

The Beard Marine contracts all contained the following one-year warranty and guarantee provided by Beard Marine:

WARRANTIES: Beard Marine will warranty the installation for one year on parts and labor. No warranty on existing equipment. Travel outside the Tri-county area is not included.

Beard Marine Air Conditioning and Refrigeration, Inc. is licensed, insured, and a member in good standing of the American Boat and Yacht Council and the Marine Industries Association.

We are dedicated to designing and producing high quality air conditioning, refrigeration and watermaker systems for the yachting industry. We guarantee that all systems designed and installed by our company will function in a safe and reliable manner...

All work performed by Beard Marine is performed based on the ABYC (American Boat and Yacht Council) codes and guidelines.

The Beard Marine contracts are not designated as Limited Warranties, and they do not disclaim express or implied warranties, and they do not contain any written warranty exclusions. In addition, the contracts do not limit the damages recoverable under the warranty, they do not limit damages to repair or replacement, they do not limit the warranty to 30 days, and they do not state that the warranty or guarantee are subject to the terms and conditions of the manufacturer's warranty.

The Beard Marine guarantee of safety and reliability means that the installations performed by Beard Marine will be safe for people and will function like they are supposed to, including that there will be no electrical faults. The Beard Marine guarantee for “design” refers to putting together components, choosing appropriately sized equipment and matching equipment and components including capacities, controls and control boxes.

Larry Bloch relied upon the warranty representations and guarantees stated in the Revised Equipment Request, Labor Request and Quote as to scope and duration of the warranty when agreeing to contract with Beard Marine for the supply, design and installation of the air handlers and air-handler controls aboard Tivoli.

The terms and conditions contained in the Equipment Request and Quote memorialized the agreement between Bloch and Beard Marine for the sale, supply, design and installation of twelve (12) new air handlers and controllers aboard the vessel. The language quoted above constitutes an express and implied warranty as to the installation of the air handlers and air-handler controls.

II. Beard Marine Installation of the Air Handler and Control Box

Beard Marine supplied, installed, designed, wired, and connected the air handler, control box, and component parts (including the air temperature probe). Beard Marine chose the location and installed the air temperature sensor inside the Dometic control box in the crew quarters.

The Dometic control box installed by Beard Marine in the crew quarters V-berth cabinet consisted of the control, printed circuit board, module, box, air temperature sensor and a keypad.

Beard Marine assigned Gabriel Gonzalez as the team leader for the air-conditioning project aboard M/Y Tivoli. As team leader, Mr. Gonzalez was responsible for inspecting the work done by other Beard Marine technicians aboard Tivoli including the installation, connections, wiring and operation of the air handlers and controls.

Beard Marine was in complete control of selecting the location for the air handlers and control boxes as well as the manner and method of installation. Beard Marine connected the control module and air handler in the forward crew quarters to the Vessel's electrical system, installed the control box to the side of the V-berth wood cabinet, connected the capacitor to the control box, wired the control box, attached the temperature probe to the control box and left the probe inside the control box.

The Dometic Installation Manuel states:

The application and installation must comply with the applicable standards of American Boat and Yacht Council (ABYC). All ABYC recommendations must be followed, but those sections dealing with breakers, branch circuit protection, circuit ampacity, grounding, and bonding are especially noteworthy.

The installation, electrical work and wiring for the air-conditioning system was performed by Beard Marine technicians who were not licensed electricians. None of the Beard Marine technicians who worked aboard Tivoli were ABYC certified.

The evidence establishes that Bloch did not abuse, neglect or modify the air handlers or air-handler controls aboard Tivoli. Plaintiff never refused any recommendation from Beard Marine that would affect the safety or reliability of the air conditioning system aboard the yacht.

Larry Bloch fully performed his obligations under the Beard Marine contracts.

Beard Marine was given an opportunity by Bloch to cure the breach by repairing M/Y Tivoli or to pay a sum to Bloch in lieu of repairing the vessel prior to Plaintiff filing suit. Beard Marine rejected this offer.

Beard Marine breached its obligations under the Equipment Request and Quote as the air-handler controls as installed were not safe and reliable and Beard Marine failed to repair the damage caused to M/Y Tivoli as a result of the fire that originated in the crew quarters' air-handler control box.

The corporate representative of Beard Marine, Arnaldo Correia, confirmed the Beard Marine Contracts did not use the term “limited warranty” and did not limit the warranty remedy in any way whatsoever.

Beard Marine was a warrantor as it provided a one-year express warranty to Bloch for installation of the air handlers and controllers as well as a guarantee that the installations would function safely and reliably.

The subject air-handler controller, as installed, was not safe or reliable as it caused the fire aboard the M/V Tivoli.

III. The Origin and Cause of the Fire

The Court finds credible the testimony of Plaintiff’s fire origin expert (Dennis Kerr) and fire causation expert (James Cote) regarding the origination and cause of the fire aboard the yacht. The Court considered the testimony of Beard Marine’s fire causation expert (Peter Layson) and fire origination expert (Mark Beavers) who concluded the cause and origin of the fire was undetermined. However, the Court finds Kerr and Cote’s testimony to be slightly more compelling.

The Court finds that the fire originated inside the Dometic air-handler control box that Beard Marine installed inside the V-berth cabinet in the crew quarters. The fire inside the Dometic control box then ignited the wood cabinet and traveled to areas outside of the wooden cabinet causing significant damage to the yacht. The evidence establishes that the cause of the fire was an exothermic event inside the crew quarters’ control box.

The evidence establishes that unauthorized hot work was probably performed aboard M/Y Tivoli on the date of the fire but that hot work probably did not cause or contribute to the fire aboard M/Y Tivoli on April 24, 2018. [DE-102].

The evidence proves that the wire bundle forward of the V-berth cabinet in the Vessel's crew quarters was not energized at the time of the fire and therefore did not cause or contribute to the fire. The melting observed on the wire bundle in the forward crew quarters was the result of the fire that originated inside the Dometic control box and the Court does not find that there was evidence of electrical activity found on the wire bundle.

Some of the twelve air handlers installed by Beard Marine contained installation errors when examined after the fire and did not comply with the ABYC standards. Nevertheless, the Court places little significance on that factor.

Beard Marine was aware that the air handler and controller in the crew quarters were in operation prior to the fire. The evidence establishes that the air handler and control in the crew quarters were in operation and energized on the day of the fire.

IV. Plaintiff's Damages

Larry Bloch purchased the vessel in May of 2017 for \$900,000. From July 2017 through April 24, 2018, Mr. Bloch spent approximately \$2.2 million refitting the yacht. He repainted the hull, refinished and re-varnished the interior, redesigned the interior, installed a hydraulic swim platform, removed a jacuzzi, replaced the top decking, and replaced the navigational gear and electronics.

The Court finds the pre-loss valuation testimony of Jason Dunbar to be credible. The fair market value of the yacht on the day of the fire was \$3,113,250 which was the average of the selling prices of 15 to 20-year-old yachts with expedition characteristics combined with the average selling price of Doggersbank yachts currently for sale with 50% of the replacement value. The Court did consider that the yacht was built in Turkey.

The Court finds the vessel was not a total loss as the reasonable and necessary repair costs do not exceed the fair market value of the yacht on the date of the fire.

The Court also finds credible the Plaintiff's repair cost analysis. Marine surveyor Allister Dredge created a scope of loss which consisted of a line item categorization and description of the materials and labor necessary to restore the yacht to her pre-loss condition.

Yacht specialist James Eden assisted with obtaining pricing from contractors and vendors to replace each line item component.

Robert Roscioli of Roscioli Yachting Center, a respected Fort Lauderdale Shipyard, reviewed the pricing and confirmed his facility would repair the yacht on a fixed price basis for the amount determined by Dredge and Eden.

The defense repair witness, Stuart Hutcheson, was not as persuasive as Bloch's witnesses.

The reasonable and necessary cost to restore the vessel to its pre-loss condition is \$2,332,216.25. The consequential loss resulting from the fire for storage of the yacht is at least \$96,896.19, the amount specified in Plaintiff's Final Proposed Findings of Fact and Conclusions of Law. *See* [DE 152].¹ The daily cost of storage for the yacht is \$255/day which includes: dockage (\$196/day), electricity (\$45/day), and yard services (\$14/day).

CONCLUSIONS OF LAW

A contract to repair a vessel is maritime in nature. *F.W.F., Inc. v. Detroit Diesel Corp.*, 494 F. Supp. 2d 1342, 1352 (S.D. Fla. 2007), *aff'd*, 308 Fed. Appx. 389 (11th Cir. 2009). Therefore, maritime law applies. This is an action within the admiralty jurisdiction of this Court pursuant to the provisions of 28 U.S.C. §1333 and Federal Rule of Civil Procedure 9(h).

¹ As the request for consequential damages from storage costs of the ship in Plaintiff's Final Proposed Findings of Fact and Conclusions of Law is \$96,896.19 the Court need not address whether a higher amount may be warranted. The Court finds that at a rate of \$255 per day, an award of \$96,896.19 in storage costs is supported by a preponderance of the evidence.

I. Applicability of the Magnuson-Moss Warranty Act

The Magnuson Moss Warranty Act (MMWA) does not apply to this case as the warranty at issue was a warranty for the installation of a product. *See Mount Sage, Ltd. v. Rolls-Royce Commercial Marine Inc.*, 635 F. App'x 833, 838 (11th Cir. 2016).

The MMWA is a federal statute that governs “consumer product” warranties. Applicable regulations define a “consumer product” as “any tangible personal property which is distributed in commerce and which is normally used for personal, family, or household purposes.” 15 U.S.C. § 2301 (1). “Warranties on services are not covered.” 16 C.F.R. § 700.1 (h).

While the MMWA does provide a cause of action for “a consumer who is damaged by the failure of a supplier, warrantor, or service contractor to comply with any obligation under this chapter, or under a written warranty, implied warranty, or service contract” the action here is not brought based on the failure of Beard to comply with an obligation for a warranty or service contract connected to a “consumer product.” This action is brought over a warranty on a service, the installation of the air-handler system, which is explicitly not covered by the MMWA. *See* 16 C.F.R. § 700.1 (h).

A service contract under the MMWA is “a contract in writing to perform, over a fixed period of time or for a specified duration, services relating to the maintenance or repair (or both) of a consumer product.” 15 U.S.C. § 2301 (8). Based on the evidence presented, the one-year “warrant” provided for by Bloch was not intended to be a “service contract”, or a contract to regularly service or maintain the air-handler system. The clear language in the warranty further supports this conclusion. The warranty Bloch relies on is specifically stated that Beard will “warranty the installation.” Further, the warranty is specifically labeled a warranty and not a service contract.

While the MMWA does cover agreements that warrant both the parts and labor for a repair, the warranty at issue here is also not such a contract. Agreements that warrant “replacement parts and components used to repair consumer products are covered,” including agreements that warrant “both the parts provided to effect a repair and the workmanship in making that repair.” 16 C.F.R. § 700.1. The warranty at issue in the present case was “for one year on parts and labor” related to the installation of a product. It was not a warranty for a repair on existing equipment.

Because the MMWA does not apply to the warranty of the installation at issue in this case, the Court need not revisit its previous holding regarding whether the MMWA is preempted by maritime law.

As the MMWA does not apply to this case, Plaintiff cannot prevail on its breach of warranty claim brought under the Magnuson Moss Warranty Act. The court need not address the applicability or possible preemption of Plaintiff’s implied warranty of merchantability claim under Florida Statute § 672.314, as neither the presence nor absence of this claim will affect the outcome of the suit.

II. Remaining Maritime Claims

The doctrine of warranty of workmanlike performance exists for every maritime contract under general maritime law. *Vierling v. Celebrity Cruises, Inc.*, 339 F.3d 1309, 1315-16 (11th Cir. 2003). The implied warranty of workman like performance “obligates... contractors to perform services with reasonable level of [c]ompetency and safety.” *Id.* (citing *Ryan Stevedoring Co. v. Pan-Atlantic Steamship Corp.*, 350 U.S. 124, 132–35 (1956)). The Court finds that Beard Marine made no disclaimers of express or implied warranties to Plaintiff.

“The implied warranty of workmanlike performance parallels a negligence standard.” *Arnold v. Heritage Enters. of St. Lucie LLC*, 2016 U.S. Dist. LEXIS 65517, *7, 2015 WL

10791990 (S.D. Fla. May 7, 2016) (internal citations omitted). *See also Travelers Ins. Co. v. Commercial Cool-Temp Corp.*, No. 11-61748-CIV, 2012 WL 13134024, at *s6 (S.D. Fla. Sept. 26, 2012) (holding that a tort-based claim of negligence is subsumed by a breach of implied warranty claim). Further, Bloch's claim for breach of an implied warranty of workmanlike performance simply restates in more specific terms its claim for breach of contract. *See, e.g. Travelers Ins. Co. v. Commercial Cool-Temp Corp.*, No. 11-61748-CIV, 2012 WL 13134024, at *6 (S.D. Fla. Sept. 26, 2012) (citing *Vierling v. Celebrity Cruises, Inc.*, 339 F.3d 1309, 1315 (11th Cir. 2003)). Therefore, the Court will analyze these three claims together.

As these claims are governed by general negligence principles, *Id.* at *5, to prevail Plaintiff must prove that: (1) Beard Marine owed him a duty to protect against a particular harm; (2) Beard Marine breached that duty; (3) the breach actually and proximately caused Plaintiff's damages; and (4) Plaintiff suffered actual harm. *Chaparro v. Carnival Corp.*, 693 F.3d 1333, 1336 (11th Cir. 2012).

Through the implied warranty of workman like performance, Beard owed Plaintiff a duty to properly, safely and competently install, wire and connect the air handlers and control boxes aboard Tivoli. The Court finds that Beard Marine breached that duty by not exercising reasonable care in installing and designing the air conditioning system including the subject controller, and that such negligence was the proximate cause of the fire aboard M/Y Tivoli and Plaintiff's resulting damages.

Plaintiff has demonstrated by a preponderance of the evidence that the fire started with an exothermic reaction in the air-handler controller caused by the improper installation and wiring of the Dometic control box by Beard Marine, specifically, the installation of the temperature probe inside the control box. Plaintiff proffered competent expert testimony as well as circumstantial

evidence on both the origin area and ultimate cause of the fire. *Cf. National Surety Corporation v. Georgia Power Company*, No. 2:17-CV-68, 2019 WL 4394403 *6 (N.D. Ga) (granting summary judgment after excluding a fire cause expert due to the lack of evidence available to support his conclusion).

III. Attorney's Fees


As the Magnuson Moss Warranty Act does not apply to this case, Plaintiff cannot recover attorney's fees. The general rule under maritime law is that each party will bear its own attorney's fees and litigation costs. *Misener Marine Const., Inc. v. Norfolk Dredging Co.*, 594 F.3d 832, 838 (11th Cir. 2010); *Natco Ltd. P'ship v. Moran Towing of Fla, Inc.*, 267 F.3d 1190, 1193 (11th Cir. 2001). There are three exceptions to this general rule, which allow for a prevailing party to recover attorney's fees if "1) they are provided by statute governing the claim; 2) the non-prevailing party acted in bad faith during the litigation; or (3) there is a contract providing indemnification for attorneys' fees." *Misener*, 594 F.3d at 838 (quoting *Natco*, 267 F.3d at 1193). Without a valid claim under the MMWA, there is no federal statute governing Plaintiff's claims that provide specifically for attorney's fees. The Court finds that there is not evidence that Defendant acted in bad faith during the litigation nor that the contracts at issue provided indemnification for attorney's fees.

CONCLUSION

The Court finds that Plaintiff was harmed by Beard Marine's failure to install a safe and reliable air-handler system aboard the yacht. This was a breach of the contractual terms, implied warranty of workmanlike performance, and duty owed to Larry Bloch by Beard Marine.

Plaintiff is entitled to recover from Beard Marine his direct, consequential, and incidental damages. The Court finds Plaintiff's direct damages amount to \$2,332,216.25. The Court finds Plaintiff's consequential damages, in the form of storage costs, amount to \$96,896.19.²

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida, this 23rd day of December, 2019.


WILLIAM P. DIMITROULEAS
United States District Judge

Copies furnished to:
All Counsel of Record

² The Court need not address whether prejudgment interest should be awarded as Plaintiff did not requested it.