UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 20-14223-CV-MIDDLEBROOKS/Maynard

MIRO HOLDINGS, LLC,

Plaintiff,

v.

GYRO-GALE CORPORATION,

Defendant.
_____/

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Miro Holdings, LLC initiated this admiralty action against Gyro-Gale Corp. on July 6, 2020 (DE 1), and on August 10, 2020, Gyro-Gale Corp. counterclaimed against Miro Holdings, LLC (DE 6 at 5–8). On May 14, 2021 and May 17, 2021, I held a bench trial, at which the Parties presented documentary and testimonial evidence. (DE 73; DE 74). Upon careful consideration of the entire record, including the evidence adduced at trial, I make the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. Plaintiff/Counter-Defendant Miro Holdings, LLC ("Plaintiff") owns the vessel that is the subject of this dispute, *Ramblin' Rose*, a 76-foot 2000 Lazzara motor yacht. ("the Vessel"). (DE 50, Joint Pretrial Stipulation ("JPS") at 6 ¶¶ (a)–(b)).
2. Plaintiff's managing member is Michael Hartley ("Mr. Hartley"). (*Id.* at ¶¶ (c)–(d)).
3. Defendant/Counter-Plaintiff Gyro-Gale Corp. ("Defendant") designs, manufactures, sells, and installs gyroscopic stabilizers, control systems whose intended purpose is to reduce tilting movement on boats. (*Id.* at 2 ¶ 1).
4. Defendant's vice president is Zeyad Metwally ("Mr. Metwally"). (*Id.* at 6–7 ¶¶ (c)–(d)).

5. On March 31, 2019, the Parties entered into a contract for the installation of Gyro-Gale stabilizers on the Vessel. (*Id.* at 7 ¶ (e)).
6. Prior to entering into the contract, on March 5, 2019, Mr. Metwally sent an email to Mr. Hartley, stating, in relevant part, as follows:

   1) All upgrading equipment (Complete Fin assembly & Electronics) – 2 year warranty

   . . .

   3) If you are not satisfied with equipment – we will refund you your full payment

   (*Id.* at 6–7 ¶ (d); DE 68-2, March 5, 2019 Email Correspondence Between Mr. Metwally and Mr. Hartley).
7. In June 2019, Defendant replaced the Vessel's original manufacturer-installed Gyro-Gale brand stabilizers with new ones for $61,471.80. (Testimony of Michael Hartley; DE 68-3, March 31, 2019 Invoice).
8. In July 2019, the new stabilizers underwent a successful sea trial. (Testimony of Michael Hartley).
9. Thereafter, also in July 2019, Mr. Hartley, his wife, Roseanne Hartley, and two captains, traveled on the Vessel from Stuart, Florida to the Chesapeake Bay off the coast of Maryland. (Testimony of Michael Hartley).
10. On the second night of the voyage to the Chesapeake, while the Vessel was about 100 to 150 miles offshore, Mr. and Mrs. Hartley and the two captains heard a violent banging sound coming from the starboard aft that continued for a half hour to an hour. (Testimony of Roseanne Hartley; Testimony of Michael Hartley).
11. Once at port in North Carolina the following morning, a diver inspected the hull and found all four stabilizers intact and an approximately two-foot-long piece of thin rope on the prop.

(Testimony of Roseanne Hartley; Testimony of Michael Hartley).

12. On July 17, 2019, Mr. Hartley posted on "YachtForums.com" that he was "thoroughly impressed" with the performance of the Gyro-Gale stabilizers at "[e]liminat[ing] the body roll dramatically." (DE 70-14, Mr. Hartley's Posting on YachtForums.com).
13. In late October 2019, while Captain Paul Denton Jr. ("Mr. Denton") was operating the Vessel in the Chesapeake Bay on the return voyage to Florida, Mr. Denton and Mr. and Mrs. Hartley, heard a loud bang, the bow dipped down into the water one to two feet, and the Vessel suddenly lurched and pulled to one side. (Testimony of Michael Hartley; Testimony of Paul Denton; JPS at 7 ¶ (f)).
14. The incident caused the Vessel to slow down, but it did not bring the Vessel to a complete stop. (Testimony of Michael Hartley; Testimony of Paul Denton).
15. Mr. Denton and Mr. Hartley checked the engine room and bilge hatches for water intrusion and did not find any, nor did they observe a debris field behind the Vessel. (Testimony of Paul Denton). No diver was sent into the water to inspect the hull, and thus no one was unable to observe the condition of the stabilizers immediately after this incident. (*Id.*).
16. Plaintiff's Expert Witness Brig Burgess ("Mr. Burgess") testified that a vessel pulling to one side could be consistent with a collision or allision, but Mr. Burgess concluded that there was no evidence of a collision or allision with anything other than the force of water because he found no damage to the hull. (Testimony of Brig Burgess).
17. The Vessel arrived back in Stuart, Florida in November 2019. (Testimony of Michael Hartley).
18. In December 2019, while troubleshooting the Vessel's stabilizers due to complaints that they were not operating optimally, Mr. Metwally discovered that three stabilizer fins were missing from the hull, and the one stabilizer fin that remained attached exhibited significant damage,

including that the fin's fiberglass casing was mostly gone, and the stainless steel subframe was exposed. (Testimony of Zeyad Metwally).

19. At this point, although Defendant was unaware as to the cause of the damage to the stabilizers, Defendant wanted to get the Vessel operating for Plaintiff, as Mr. and Mrs. Hartley lived aboard the Vessel while they were in Florida. (Testimony of Zeyad Metwally).
20. Mr. Metwally testified that his father spoke with Mr. Hartley about entering into an agreement whereby Defendant would install another set of stabilizers and charge Plaintiff 50% of the cost of the replacement stabilizers, on the condition that the parties continue to investigate and determine the source of the destruction of the stabilizers. (Testimony of Zeyad Metwally).
21. Mr. Hartley testified that he never had a discussion with any representative of Defendant regarding an agreement to pay 50 percent of the cost of replacement stabilizers for the Vessel, nor did he ever enter into such an agreement, either verbally or in writing. (Testimony of Michael Hartley).
22. The December 23, 2019 invoice for the second set of stabilizers indicates the total sales price for the replacement stabilizers was $26,407.00, compared to $61,471.80 for the original installation. (DE 68-3, March 31, 2019 Invoice; DE 68-7, December 23, 2019 Invoice).
23. In December 2019, Defendant installed the second set of stabilizers on the Vessel. (Testimony of Paul Denton).
24. Thereafter, Mr. Hartley refused to pay for the replacement set of stabilizers. (Testimony of Michael Hartley).
25. Around this time, Defendant hired an independent metallurgist to examine pieces of the stabilizer hardware that had been removed from the Vessel upon installing the second set of stabilizers to ascertain whether the apparent corrosion damage was the result of the materials

used by Defendant. (Testimony of Zeyad Metwally).

26. The metallurgist concluded that the hardware exhibited signs of abnormal corrosion, such as "[t]he presence of copper in the black areas at the base of the pits," which was "indicative of extensive stray current from one or more sources." (DE 68-16, Metallurgical Report). The metallurgist continued that "[s]tray current is usually from a DC source and stray current strengths may be much higher than those produced by galvanic cells and, as a consequence, corrosion may be much more rapid." (*Id.*). He recommended that Plaintiff "hire a professional to investigate any and all electrical problems that could lead to a stray current occurring." (*Id.*).
27. During late December 2019 and January 2020, Trinity Marine Electric ("Trinity Marine") inspected and began extensive repair work to the Vessel's cathodic bonding system. (Testimony of Yves Denault).
28. In or about April or May 2020, after Trinity Marine had repaired the Vessel's bonding system, Plaintiff hired its expert, Mr. Burgess, to inspect the bonding system. (Testimony of Brig Burgess).
29. The timing of Mr. Burgess' inspection prevented him from rendering a conclusive report as to the condition of the Vessel when the stabilizers were destroyed in 2019. (Testimony of Brig Burgess).
30. Mr. Burgess opined that the quality of certain welds and/or the choice and application of paint applied to underwater metal components to protect against corrosion could have potentially contributed to the loss of the stabilizers, though he could not determine such cause definitively. (Testimony of Brig Burgess).
31. Mr. Burgess testified that to render a conclusive finding, he would have done a lot more testing himself and would have requested additional testing from other experts, including the

preparation of an engineering report to determine how much force the stabilizer shafts could take, but Mr. Hartley did not authorize him to conduct further testing or to order additional testing from other experts. (Testimony of Brig Burgess).

32. Mr. Hartley, on behalf of Plaintiff, paid Trinity Marine $23,000 to repair the Vessel's bonding system. (Testimony of Mr. Hartley).

33. In a March 1, 2019 pre-purchase survey for the Vessel, conducted before Defendant installed the first set of subject stabilizers, the surveyor found "[b]roken bonding wire [] at starboard generator sea valve" and recommended "[a]ttach and check bonding" and "[b]roken bonding wire at starboard shaft brush and recommended "[r]epair and prove bonding." (DE 68-1 at 22 ¶¶ 8, 15, Pre-Purchase Survey).

34. Defendant's expert, James Coté, concluded in his report that "[t]he detachment of three of the four stabilizer fin outer tubes in 2019 and patterns of severe damage to the one stabilizer fin that was still installed in December of 2019 are consistent with what would be expected from collisions or allisions with submerged objects, structures and/or a soft grounding." (DE 68-18 at 4 ¶ 3, Defendant's Expert's Report).

35. Mr. Coté also concluded that "[t]he corrosion damage that was observed on the stabilizer fin assemblies does not appear to have significantly compromised the structural integrity of the plates, tubes or welds, does not appear to have materially contributed to the detachment of the outer tubes or caused the damage to the remaining stabilizer fin fiberglass reinforced epoxy covering." (DE 68-18 at 25 ¶ 3, Defendant's Expert's Report). He continued that "[t]he high copper content in the pit may have been due to the cuprous oxide anti-fouling paint that had been applied to the hull plates rather than stray current corrosion." (*Id.* at 26 ¶ 8.a.).

36. Regarding the corrosion, Mr. Coté opined that "[t]here was no visual evidence to indicate that

corrosion damage was the proximate cause of the detachment of the stabilizer fin outer rods from the outer hull plates." (DE 68-18 at 26 ¶ 10).

37. Mr. Coté testified that, in his opinion, the rods holding the stabilizer fins themselves broke off, likely in one sudden lateral movement involving a significant amount of force on the fins. (Testimony of James Coté).

38. Mr. Coté also noted that the one remaining fin was bent, a distortion that could only be caused by forceful contact. (*Id.*).

39. Gyro-Gale stabilizers are designed to break off upon impact in a manner that does not cause the entire apparatus to be ripped from the hull in order to preserve the seaworthiness of the Vessel. (Testimony of Zeyad Metwally).

40. On June 10, 2020, Mr. Metwally emailed Mr. Hartley, communicating that he was "willing to work with [him] to attain a resolution" but "to make an informed decision [Defendant] will need to see all the reports pertaining [to] this matter," including Mr. Burgess' report, which allegedly concluded that the stabilizers were defective. (DE 70-22, June 10, 2020 Email from Mr. Metwally to Mr. Hartley).

41. Mr. Hartley refused to provide "any further documentation." (DE 70-23, June 10, 2020 Email from Mr. Hartley to Mr. Metwally).

42. Instead, on July 6, 2020, Plaintiff filed the instant lawsuit. (*See* DE 1).

43. On January 23, 2021, Ray Rossknect ("Mr. Rossknect"), an underwater diver who performs routine maintenance on the Vessel, observed on a dive that the port side aft stabilizer track was off its pivot knob. (Testimony of Ray Rossknect). Mr. Rosnick manually snapped the track back on the knob using a crowbar, which required considerable force and caused a loud sound akin to a gunshot under water. (*Id.*).

CONCLUSIONS OF LAW

This action arises under the Court's admiralty jurisdiction. Plaintiff brings three counts against Defendant: Breach of Maritime Contract (Count I); Breach of Maritime Implied Warranty of Workmanlike Performance (Count II); and Breach of Warranty (Count III). (*See generally* DE 1). Defendant has counterclaimed against Plaintiff for Breach of Contract (Count I) and Unjust Enrichment (Count II). (*See generally* DE 6).

A. Breach of Maritime Contract

Maritime jurisdiction arises when a vessel undergoes repairs. *Hatteras of Lauderdale, Inc. v. Gemini Lady*, 853 F.2d 848, 850–51 (11th Cir. 1988). To recover damages on a breach of maritime contract claim, "a plaintiff must prove (1) the terms of a maritime contract; (2) that the contract was breached; and (3) the reasonable value of the purported damages." *Sweet Pea Marine, Ltd. v. APJ Marine, Inc.*, 411 F.3d 1242, 1249 (11th Cir. 2005).

The Parties agree that they entered into a maritime contract for the installation of the first set of stabilizers. Plaintiff alleges that Defendant breached the Parties' contract by (1) installing "substandard stabilizers which failed shortly after they were installed" and (2) installing a second set of substandard stabilizers "that failed in the same manner as the first set." (DE 1 at 19–20). Plaintiff avers that it has suffered damages of $84,000 due to these breaches. (*Id.* ¶ 22).

Plaintiff has failed to meet its evidentiary burden of showing that Defendant's workmanship was inconsistent with the South Florida marine industry or that the design of the stabilizers was defective, such that the loss of the stabilizers constitutes a breach on the part of Defendant. In fact, there really was no showing of what such workmanlike standards even are or of the nature of the design of the stabilizers, let alone a showing of breach in the form of a subpar installation or a flawed design. At bottom, Plaintiff has relied on the circumstances and timing of the stabilizer

failures, rather than pointing to specific evidence of a faulty installation or an actual defect in the design. This is not enough to establish breach. Accordingly, Defendant is entitled to judgment in its favor on Plaintiff's Breach of Maritime Contract claim.

B. Breach of Maritime Implied Warranty of Workmanlike Performance

A warranty of workmanlike service is implied in all maritime repair contracts. *Parfait v. Jahncke Serv., Inc.*, 484 F.2d 296, 301 (5th Cir. 1973). The implied warranty of workmanlike performance obligates every contractor "to perform services with a reasonable level of '[c]ompetency and safety.'" *See Vierling v. Celebrity Cruises, Inc.*, 339 F.3d 1309, 1315 (11th Cir. 2003). "The failure to do so constitutes a breach of contract and provides shipowners with a right to indemnification for foreseeable loss resulting therefrom." *Id.* Breach of the implied warranty must proximately cause the claimed damage. *Parfait*, 484 F.3d at 302. The plaintiff bears the burden of proof as to each element of its claim for breach of the warranty of workmanlike performance. *See Garner v. Cities Service Tankers Corp.*, 456 F.2d 476, 481 (5th Cir. 1971).

The maritime implied warranty of workmanlike performance required Defendant to design, manufacture, and install the gyroscopic stabilizers aboard the Vessel competently and safely. Like with the breach of maritime contract claim, Plaintiff has failed to carry its evidentiary burden of showing that Defendant incompetently or unsafely installed the stabilizers and that the stabilizers, or the manner in which Defendant installed them, proximately caused Plaintiff's damages. Plaintiff has not shown by a preponderance of the evidence that any supposed breach by Defendant caused the loss of the first set of stabilizers. Indeed, the cause appears unknown, and all possibilities proffered by Plaintiff are merely speculative. Was it the type of paint used? Was it the integrity, or lack thereof, of the welds? Was it an improper design? Again, as to the latter, Plaintiff proffered no testimony or documentary evidence to support that theory. Thus, Plaintiff has not affirmatively

shown, through evidence, that Defendant's installation of the stabilizers was somehow improper, incompetent, or unsafe, and that such an unworkmanlike installation caused the stabilizer fins to be sheared off the Vessel a few months after their installation. As such, I conclude that Defendant is entitled to judgment on Plaintiff's Breach of Implied Warranty of Workmanlike Performance claim.

C. Breach of Warranty (Satisfaction Guarantee and Two-Year Warranty)

To prevail on a claim for breach of express warranty, a plaintiff must prove (1) the sale of goods; (2) the express warranty; (3) breach of the warranty; (4) notice to the seller of the breach; and (5) the injuries sustained by the buyer as a result of the breach of the express warranty. *See Dunham–Bush, Inc. v. Thermo–Air Serv., Inc.*, 351 So. 2d 351, 353 (Fla. 4th DCA 1977).

Plaintiff maintains that Defendant breached the two-year warranty and satisfaction guarantee refund terms because it failed to provide Plaintiff a full refund when the stabilizers failed. (DE 1 ¶¶ 26–30). Given the course of conduct between the Parties, including the exchange of emails, I do not find that by offering a "satisfaction guarantee," Defendant agreed to refund Plaintiff for the stabilizers *ad infinitum*. Rather, though the record could be more exacting, the satisfaction guarantee clearly appears to have been tied to a trial period, wherein Plaintiff could express dissatisfaction with the product as delivered and demand a refund. Based on the evidence adduced at trial, I cannot discern the precise nature of the satisfaction guarantee—that is, whether the duration of this trial period was 30 days or another period of time—but I do find that the duration was not to be indefinite. Moreover, and importantly, Plaintiff expressed its satisfaction with the initial set of stabilizers when Mr. Hartley posted the favorable testimonial on YachtForums.com after taking the Vessel on a fairly significant voyage from Florida to Maryland. For these reasons, I conclude that Defendant did not breach the satisfaction guarantee provision of

the Parties' contract when it did not refund Plaintiff for the cost of the first set of stabilizers after finding that three were missing from the hull, and one was badly damaged. Therefore, judgment is entered in favor of Defendant as to Plaintiff's Breach of Warranty claim based on the satisfaction guarantee.

Additionally, I do not find a breach of the two-year warranty. While the evidence establishes that a loss occurred in the form of three stabilizers breaking off, and the one remaining stabilizer exhibiting significant damage, the cause of the loss of the first set of stabilizer fins is inconclusive. The Parties' experts testified extensively about the Vessel's bonding system, but Defendant's expert, Mr. Coté, ultimately concluded that the bonding system was not the cause of the loss of the first set of stabilizers. Thus, while it appears that there was and still may be a bonding issue on the Vessel, it is unlikely to have caused the loss of the stabilizers. Instead, Mr. Coté opined that the loss resulted from a significant amount of force being applied to the shafts upon which the fins were mounted due to a collision or allision. The record contains some evidence that seems to support that theory. For instance, there was a traumatic event at sea when the bow dipped substantially, and the Vessel suddenly lurched to one side; however, the evidence presented does not conclusively illuminate what happened to cause such movement. Witnesses offered the following possibilities: the stabilizers became ensnared in the netting of a crab trap or some other contraption in the Chesapeake Bay; the Vessel had a forceful grounding in mud or sand; or the Vessel was moored in shallow water. Given the level of speculation surrounding the cause of the loss of the stabilizers, I conclude that Plaintiff has not adequately demonstrated that the damage was attributable to Defendant in a manner that would trigger coverage of the loss under the two-year warranty. Accordingly, Plaintiff is entitled to judgment as to Plaintiff's Breach of Warranty claim based on the two-year warranty.

D. Plaintiff's Counterclaims for Breach of Contract and Unjust Enrichment

In its Counterclaim, Defendant asserts that Plaintiff breached the Parties' oral contract with respect to the installation of the second set of stabilizers and, alternatively, has been unjustly enriched because Plaintiff received the second set of stabilizers without paying the agreed-upon amount for them. (DE 6 ¶¶ 19–26).

The elements of an action for breach of contract are: (1) the existence of a contract, (2) a breach of the contract, and (3) damages resulting from the breach. *See Knowles v. C.I.T. Corp.*, 346 So. 2d 1042, 1043 (Fla. 1st DCA 1977). To maintain an action for breach of contract, a claimant must also prove performance of its obligations under the contract or a legal excuse for its nonperformance. *See Old Republic Ins. Co. v. Von Onweller Constr. Co.*, 239 So. 2d 503, 505 (Fla. 2d DCA 1970); *Marshall Constr., Ltd. v. Coastal Sheet Metal & Roofing, Inc.*, 569 So. 2d 845, 848 (Fla. 1st DCA 1990). The essential elements of a claim for unjust enrichment are: (1) a benefit conferred upon a defendant by the plaintiff, (2) the defendant's appreciation of the benefit, and (3) the defendant's acceptance and retention of the benefit under circumstances that make it inequitable for him to retain it without paying the value thereof. *See Swindell v. Crowson*, 712 So. 2d 1162, 1163 (Fla. 2d DCA 1998). *Rollins, Inc. v. Butland*, 951 So. 2d 860, 876 (Fla. 2d DCA 2007).

As to the breach of contract claim, the Parties offered conflicting testimony regarding the existence of a verbal contract for the installation of the second set of stabilizer fins. Mr. Metwally testified that his father and Mr. Hartley entered into a verbal agreement whereby Defendant would install another set of stabilizers and charge Plaintiff 50% of the cost of the replacement stabilizers, on the condition that the Parties continue to investigate and determine the source of the destruction of the stabilizers. Mr. Hartley testified that he never spoke with Mr. Metwally's father about the

installation of the second set of stabilizers and certainly never discussed any partial payment plan contingent on the outcome of the continued investigation.

I find that Mr. Metwally's father's purported verbal agreement with Mr. Hartley was sufficiently indefinite to entitle Defendant to judgment on this claim. Mr. Metwally testified that pursuant to their agreement, Plaintiff would only be charged the cost of the second set of stabilizers, but also that Plaintiff would be charged 50% of the total for the replacement stabilizers if the loss of the first set was attributable to any cause other than the stabilizers themselves or their installation. Taken together, it is unclear to me whether this meant the costs associated with 50% of the replacement stabilizers or something else, but in any event, it is too indefinite to be enforceable. Also, such payment was also contingent upon a determination as to the cause of the loss—that is, whether it was attributable to Defendant or not. As explained, *supra*, the cause of the loss is inconclusive, so it appears that the triggering condition for payment under this purported oral contract has not occurred. Moreover, this claim also suffers from an evidentiary deficit in that the individual who supposedly entered into the agreement with Mr. Hartley, Mr. Metwally's father, did not testify at trial. As such, I find that Plaintiff does not owe Defendant an amount of money for the second set of stabilizers and therefore conclude that Plaintiff is entitled to judgment on Defendant's Breach of Contract claim.

As to Defendant's unjust enrichment claim, I find that there has been insufficient evidence as to what benefit was conferred upon Plaintiff. If the benefit were the second set of stabilizers, whether they conferred a benefit upon Defendant such that equity requires that benefit to be disgorged is inconclusive, given that Plaintiff presented evidence that the second set of stabilizers began to exhibit signs of defectiveness shortly after their installation. I thus conclude that Defendant has not shown by a preponderance of the evidence that it conferred a benefit on Plaintiff

by installing the second set of stabilizers without payment from Plaintiff. Accordingly, Plaintiff is entitled to judgment on Defendant's Unjust Enrichment claim.

E. Attorney's Fees and Costs

In its Answer, Affirmative Defenses, and Counterclaims to the Complaint (DE 6), Defendant requested attorney's fees and costs incurred in defending against this action pursuant to Fla. Stat. § 57.105. Section 57.105 authorizes a court to award attorney's fees to a prevailing party, to be paid in equal parts by the losing party and the losing party's attorney, where the losing party or the losing party's attorney

> knew or should have known that a claim or defense when initially presented to the court or at any time before trial: (a) Was not supported by the material facts necessary to establish the claim or defense; or (b) Would not be supported by the application of then-existing law to those material facts.

Fla. Stat. § 57.105. On the record at trial, I ruled that Defendant was not entitled to § 57.105 attorney's fees, as I did not find that Plaintiff raised claims that were factually or legally unsupported so as to trigger an award of fees under that provision. That ruling stands.

In addition, at trial, Defendant's counsel raised the issue of taxation of costs. Rule 54(d)(1) provides that "[u]nless a federal statute, these rules, or a court order provides otherwise, costs—other than attorney's fees—should be allowed to the prevailing party." Fed. R. Civ. P. 54(d)(1). The particular items that may be taxed as costs are set forth in 28 U.S.C. § 1920. Although the decision to award costs is discretionary with the court, it may only tax those items specifically enumerated in § 1920, absent alternative statutory authority. *Crawford Fitting Co. v. J.T. Gibbons, Inc.*, 482 U.S.437, 441–42 (1987).

In the context of awarding costs under Rule 54(d)(1), the Eleventh Circuit has provided the following guidance regarding the “prevailing party” determination:

> To be a prevailing party [a] party need not prevail on all issues to justify a full award of costs, however. Usually the litigant in whose favor judgment is rendered is the prevailing party for purposes of rule 54(d). . . . A party who has obtained some relief usually will be regarded as the prevailing party even though he has not sustained all his claims. . . . Cases from this and other circuits consistently support shifting costs if the prevailing party obtains judgment on even a fraction of the claims advanced.

Head v. Medford, 62 F.3d 351, 354 (11th Cir. 1995) (alterations in original) (citations omitted). Stated differently, "a prevailing party need not have prevailed on all issues; it is sufficient that plaintiffs prevail on the main issue." *Best v. Boswell*, 696 F.2d 1282, 1289 (11th Cir. 1983) (citation omitted). Therefore, courts "look to the central issues in the case, not the periphery." *Sherry Mfg. Co. v. Towel King of Fla., Inc.*, 822 F.2d 1031, 1035 n.5 (11th Cir. 1987) (citation omitted).

Thus, Defendant's entitlement to costs turns on whether Defendant was the prevailing party in this action on the main issues presented. The central issues to this lawsuit were whether Defendant breached its maritime contract with Plaintiff by creating and installing defective stabilizers; whether Defendant's workmanship fell below a level of competency and safety so as to violate the implied maritime warranty of workmanlike performance; and whether Defendant breached the two-year warranty or satisfaction guarantee by failing to refund Plaintiff the purchase price for the first set of stabilizers. Defendant prevailed on all three of Plaintiff's claims. More of a peripheral issue in my view are the claims raised by Defendant against Plaintiff for breach of the oral contract related to the second set of stabilizers and the alternative claim of unjust enrichment. As such, I find that Defendant has prevailed on the main issues presented, and although it has lost on the less central claims it raised, for purposes of awarding costs, I am inclined without deciding, to deem Defendant a prevailing party to this action.

Because the prevailing party bears the burden of establishing its prevailing party status, submitting a request for costs that establishes the costs incurred, and demonstrating that the

prevailing party is entitled to those costs, if Defendant still desires to pursue costs, it shall do so by way of a proper written motion.

CONCLUSION

Accordingly, it is **ORDERED AND ADJUDGED** that:

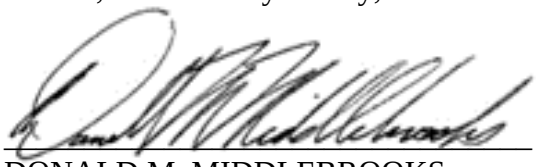
(1) Defendant is entitled to judgment in its favor on Counts I, II and III of Plaintiff's Complaint.

(2) Plaintiff is entitled to judgment in its favor on Counts I and II of Defendant's Counterclaim.

(3) Final judgment will be entered by way of separate order pursuant to Federal Rule of Civil Procedure 54(b).

(4) The Clerk of Court shall **CLOSE THIS CASE** and **DENY AS MOOT** all pending motions.

SIGNED in Chambers at West Palm Beach, Florida, this 30th day of July, 2021.



DONALD M. MIDDLEBROOKS
UNITED STATES DISTRICT JUDGE

cc: Counsel of Record