

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION**

CASE NO. 1:21-cv-23324-JLK

ISABELLA MARINE CORP.,
OCEAN RESPORT, LLC, and
PETER JOACHIM ALBANO,

Plaintiffs,

v.

PATRICK J. PERIH,

Defendant.

ORDER GRANTING DEFENDANT’S MOTION FOR SUMMARY JUDGMENT

THIS CAUSE is before the Court on Defendant Patrick J. Perih’s (“Defendant”) Motion for Summary Judgment as to Counts I, II, and III of Plaintiff’s Amended Complaint (DE 50) (the “Motion”), filed August 24, 2023. The Court has also considered Plaintiff’s Response (DE 66), filed September 29, 2023, and Defendant’s Reply (DE 70), filed October 6, 2023. Additionally, the Court has considered the parties’ Statements of Material Facts (DEs 49, 68, and 69) (“SMF”). The Court being otherwise fully advised finds that the Motion is granted for the reasons stated herein.

I. BACKGROUND

On September 14, 2021, Plaintiffs Isabella Marine Corp, and Ocean Resort, LLC, filed their single count Complaint for negligence alleging that Defendant recklessly operated his boat damaging Plaintiffs’ docked vessels. *See* Compl., DE 1. Before Defendant filed a responsive pleading, on November 16, 2021, Plaintiffs amended their Complaint as a matter of course to add Plaintiff Peter Joachim Albano and to add separate counts of negligence on behalf of each Plaintiff.

DE 8. On December 1, 2021, Defendant filed his Answer (DE 11), and the Court then, as is its normal practice, issued its scheduling order (DE 12) setting discovery and motion practice cutoff dates of March 1, 2023, and March 6, 2023, respectively. DE 12. The Court also set dates for both the pretrial conference on May 5, 2023, and trial, on July 10, 2023. DE 12. Then, on June 20, 2022, Plaintiffs filed a motion for summary judgment (DE 13) which the Court denied because Defendant lacked the requisite information needed to oppose Plaintiffs' motion at that time. DE 29. After further engaging in discovery and motion practice, the parties twice moved the Court for extensions to the deadlines set in the Court's respective scheduling orders. DEs 31, 39. Both requests were granted (DEs 32, 42) and the Court entered an Amended Scheduling Order setting discovery and motion practice to close on August 9, 2023, and August 14, 2023, respectively. DE 43. The pretrial conference and trial were reset for October 13, 2023, and December 4, 2023. DE 43. Ultimately, the Court continued the pretrial conference and trial dates to consider the instant Motion. DE 81.

The following facts are undisputed:

On June 17, 2019, Defendant piloted his vessel from the waters of Coconut Grove north towards Aventura. Def's. SMF ¶ 1. While underway, Defendant passed through Haulover Inlet. *Id.* ¶ 2. Before passing under the Haulover Inlet Bridge, Defendant slowed the speed of his vessel. *Id.* ¶ 3. After passing under the Haulover Inlet Bridge, Defendant observed a sign that read "resume normal safe operation" and Defendant resumed operating his vessel at a speed of less than 10 knots. *Id.* ¶ 3. Defendant continued to operate his vessel consistent with posted signage. *Id.* ¶ 5.¹ Then, Defendant proceeded north past the Bill Bird Marina. *Id.* ¶ 6. After passing the Bill Bird

¹ Federal Rule of Civil Procedure Rule 56(e) states that when a party disputes a fact, it must be supported by record evidence. Although Plaintiffs may dispute this fact in their response statement of material facts, they failed to accompany their dispute with any record citations. The Court therefore deems the fact as undisputed.

Marina, Defendant observed another vessel on his port side travelling in the opposite direction. *Id.* ¶ 6. A video was later posted to Facebook evidencing a vessel passing the Bill Bird Marina and depicting a wake being created by the passing vessel. *Id.* ¶ 7.

On or about June 27, 2019, Florida Fish and Wildlife Conservation Commission (“FWC”) Officer David Moschiano responded to a boating incident at the Bill Bird Marina. *Id.* ¶ 9. During the course of his investigation, Officer Moschiano was unable to establish the condition of the damaged vessels prior to the alleged incident. Def’s SMF *Id.* ¶ 11. Further, Officer Moschiano did not speak with anyone that actually witnessed the alleged damage occur. *Id.* ¶ 13. Officer Maschiano did speak with Plaintiff Albano, who was inside his vessel at the time of the alleged incident. *Id.* Ultimately, Officer Maschiano did not issue a citation in connection with the alleged incident. *Id.* ¶ 14.

Plaintiff Albano appeared for deposition on behalf of himself, and as corporate representative of Isabella Marine. *Id.* ¶ 16. Mr. Albano was unable to testify as to the exact date or time of the alleged incident. *Id.* Mr. Albano was able to testify, however, as to the events surrounding the alleged incident. *Id.* After having felt the wake hit the vessel, the M/Y Isabella, Mr. Albano ran to the exterior of the M/Y Isabella, where he observed the purportedly offending vessel, which was nearly a half-mile away at that point. *Id.* Plaintiff Albano testified that he heard individuals standing on the fuel dock screaming, and that “[t]he fuel dock got smashed.” *Id.*

Plaintiff attached to their Amended Complaint a series of invoices and estimates for future repairs. *See generally* DE 8. The invoices bore the company name of Ft. Lauderdale Finishes, and the personal name of Jim Edwards. Def’s. SMF ¶ 17. Mr. Edwards testified during his deposition that he had never been aboard the 2001 Wellcraft vessel, owned by Plaintiff Albano, for which he had purportedly generated an estimate for future repairs. *Id.* ¶ 21. Mr. Edwards also testified that

he had yet to be paid for any of the purported emergency repairs performed on Plaintiff Ocean Resort, LLC's vessel, the M/Y Audacity. *Id.* ¶ 22. During discovery, Defendant made certain public records requests to Miami-Dade County pertaining to the alleged incident. *Id.* ¶ 17. The County issued a response to the requests stating that there was no record of vessels having been damaged on or about June 17, 2019. *Id.* Defendant also sent additional records requests to Miami-Dade County, and the County responded by stating that there was no record of Ft. Lauderdale Finishes or Jim Edwards having entered or exited the Bill Bird Marina from the alleged date of the incident (June 17, 2019), to the present. *Id.* ¶ 24.

Randall Postma was produced as the corporate representative for Plaintiff Ocean Resort, LLC. *Id.* ¶ 26. Mr. Postma was the managing member of Ocean Resort, LLC at the time of the alleged incident. William Hubner Aff., DE 49-15 ¶ 4. Mr. Postma testified during his deposition that Ocean Resort, LLC's vessel, the M/Y Audacity, did not require future repairs, and thus the damages Ocean Resort, LLC was seeking in this matter was limited to \$15,300. Def's. SMF ¶ 26. However, in March of 2021, Mr. Postma was removed as the managing member of Ocean Resort, LLC. DE 49-15 ¶ 7. William Hubner was then appointed as the authorized agent of Ocean Resort, LLC. Def's. SMF ¶ 27. Importantly, Mr. Hubner submitted an affidavit indicating that M/Y Audacity was sold in May of 2021. DE 49-15 ¶ 8. Once sold, Ocean Resort, LLC's affairs were wound up, and any outstanding debts were paid. Def's. SMF ¶ 27. Mr. Hubner was unable to substantiate the claim for damages in this case and that neither he nor the managing member had any knowledge of this case until June 2023. *Id.* ¶ 27.

A marine survey was performed in 2020 for the M/Y Isabella and the 2001 Wellcraft of Plaintiff Albano. *Id.* ¶ 29. The survey indicated that neither the M/Y Isabella nor the Wellcraft required any repairs to make the vessels seaworthy. *Id.* As Isabella Marine's corporate

representative, Mr. Albano testified that the estimates for unperformed work were to correct an aesthetic issue that had no implications on the seaworthiness of the vessel. *Id.* ¶ 30. Mr. Albano also testified, in his personal capacity, that he was not seeking any amount of damages for his alleged personal injuries. *Id.*

II. LEGAL STANDARD

Summary judgment is appropriate where there is “no genuine issue as to any material fact and [] the moving party is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247–48 (1986). An issue is genuine if a reasonable jury could return a verdict for the nonmoving party. *Mize v. Jefferson City Bd. of Educ.*, 93 F.3d 739, 742 (11th Cir. 1996). A fact is material if it may affect the outcome of the case under the applicable substantive law. *Allen v. Tyson Foods, Inc.*, 121 F.3d 642, 646 (11th Cir. 1997).

If a reasonable fact finder could draw more than one inference from the facts, creating a genuine issue of material fact, summary judgment should not be granted. *Samples ex rel. Samples v. City of Atlanta*, 846 F.2d 1328, 1330 (11th Cir. 1988). The moving party has the burden of establishing both the absence of a genuine issue of material fact and that it is entitled to judgment as a matter of law. *See Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 586–87 (1986). On a motion for summary judgment, the court views the evidence and all reasonable inferences in the light most favorable to the non-moving party. *Davis v. Williams*, 451 F.3d 759, 763 (11th Cir. 2006).

III. DISCUSSION

As an initial matter, Defendant argues that based on Plaintiffs’ burden at trial and the lack of sufficient evidence, Plaintiffs should not be allowed to proceed to trial in this cause. Mot. at 3. Where the non-moving party bears the burden of proof at trial, summary judgment may be entered

in the moving party's favor where the movant "[points] out to the district court that there is an absence of evidence to support the nonmoving party's case." *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). Once the movant has complied with its burden under Rule 56(c), the burden then shifts to the non-moving party. *Medina v. State Farm Automobile Insurance Co.*, No. 22-CV-14433, 2023 WL 9472286 *2 (S.D. Fla. Dec. 12, 2023).

To survive the movant's motion for summary judgment, the non-moving party must prove that there exists a genuine issue of material fact. *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 585 (1986). To do so, "[t]he non-movant's response must be tailored to the method by which the movant carried its initial burden." *Hinson v. United States*, 55 F. Supp. 2d 1376, 1380 (S.D. Ga. 1998), *aff'd*, 180 F.3d 275 (11th Cir. 1999). Where the movant presented "evidence affirmatively negating [a] material fact," the non-moving party "must respond with evidence sufficient to withstand a directed verdict motion at trial on the material fact sought to be negated." *Fitzpatrick v. City of Atlanta*, 2 F.3d 1112, 1116 (11th Cir. 1993). If the moving party "demonstrated an absence of evidence on the issue," the non-moving party must show either the record does contain evidence regarding the disputed fact or may bring forward "additional evidence sufficient to withstand a directed verdict motion at trial based on the alleged evidentiary deficiency." *Id.* at 1116–17. The Court will address each of the Defendant's arguments in turn.

a. Ocean Resort LLC's Negligence Claim

In its Motion, Defendant argues it is entitled to Summary Judgment as to Plaintiff Ocean Resort, LLC's claim of Negligence (Count II) because Plaintiff lacks evidence to show causation and damages for their negligence claim. Mot. at 6–8. More specifically, Defendant argues that Plaintiff Ocean Resort, LLC, has abandoned its claim for unperformed repairs, the invoices supporting the claim for past repairs are a sham, and there is no evidence that any work was actually

done to the vessel after the alleged date of the incident. *Id.* at 6–9. In its Response, instead of rebutting Defendant’s abandonment of claim arguments, Plaintiffs merely argue that genuine issues of fact exist as to the breach, causation, and harm elements of its respective claim. Resp. at 4–6. In Reply, Defendant argues that Plaintiff Ocean Resort, LLC failed to address the Defendant’s argument and evidence cited in support. Reply at 4–6. The Court agrees with Defendant that Plaintiff Ocean Resort, LLC will be unable to prove both the causation and damage elements of its negligence claim, and thus shifted the burden to Plaintiff Ocean Resort, LLC. *See supra* at 5–6.

“In analyzing a maritime tort case, we rely on general principles of negligence law.” *Daigle v. Point Landing, Inc.*, 616 F.2d 825, 827 (5th Cir.1980).² “To plead negligence in a maritime case, a plaintiff must allege that (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.” *Franza v. Royal Caribbean Cruises, Ltd.*, 772 F.3d 1225, 1253 (11th Cir. 2014) (citation omitted). However, Plaintiff must demonstrate “that the Defendant was negligent and that such negligence was the proximate cause of Plaintiff’s damages,” since “[a] finding of proximate cause may not be based on speculation or conjecture.” *Valentine v. United States*, 630 F. Supp. 1126, 1132 (S.D. Fla. 1986) (alteration added).

i. There is insufficient record evidence to support a finding of causation as to Ocean Resort, LLC’s negligence claim.

“To prove causation, a plaintiff must establish ‘a cause and effect relationship . . . between the alleged tortious conduct and the injury’—that is, cause in fact (or ‘actual’ or ‘but-for causation’)—as well as the ‘foreseeab[ility]’ of the ‘conduct in question’ producing the alleged

² Decisions rendered by the Fifth Circuit prior to October 1, 1981, are considered binding precedent upon the Eleventh Circuit. *See Bonner v. City of Prichard*, 661 F.2d 1206, 1207 (11th Cir.1981) (en banc).

harm—i.e., ‘proximate causation.’” *Bell v. Beyel Bros., Inc.*, No. 2:16-CV-14461, 2017 WL 1337267, at *3 (S.D. Fla. Apr. 7, 2017) (quoting *Smith v. United States*, 497 F.3d 500, 506 (5th Cir. 1974)). The Court agrees with Defendant and finds that no such causal relationship exists here as Plaintiff Ocean Resort, LLC has failed to direct this Court to any record evidence creating a genuine issue of material fact.

Defendant produced an affidavit from FWC Officer Seth M. Wagner. *See* Seth Wagner Aff., DE 49-9. Therein, Officer Wagner declared that the Boating Accident Report completed by Officer Moschiano (DE 49-7) “does not reflect any factual determination, nor does it reflect any determination of fault or liability.” *Id.* ¶ 5. It is undisputed that Defendant’s operation of his vessel was consistent with posted signage. *Perih* Aff., DE 49-1 ¶ 2; Moschiano Dep., DE 49-4 at 124: 3–20. More so, a review of the record in this case reveals that Officer Moschiano did not speak with anyone that witnessed the alleged damages Plaintiffs suffered. Def’s. SMF ¶ 13; DE 49-4 at 41:15–20.

Importantly, Ocean Resort, LLC’s Response points to Officer Moschiano’s deposition testimony wherein Officer Moschiano testified that the damage “to the fire boat is a prime example of the power that came off of the wake from [Defendant’s vessel].” Resp. at 5; DE 49-4 at 145:5–8. The Response also argues that “Defendant admitted at his deposition that he caused the damage to the fireboat.” Resp. at 5. This, however, is a mischaracterization of Defendant’s deposition testimony wherein Defendant stated that “he may have caused” the damage to the Miami-Dade Fire boat. *Perih* Dep., DE 49-2 at 85:4–18. Plaintiff’s causation argument goes on to state that “the evidence shows the wake caused [sic] by Defendant’s vessel could have caused the damage observed to Plaintiffs’ vessels” Resp. at 6.

Plaintiffs' ultimate conclusion, that Defendant could have caused the alleged damages, is the very sort of speculation which cannot withstand a properly supported motion for summary judgment. *Evers v. Gen. Motors Corp.*, 770 F.2d 984, 986 (11th Cir. 1985) (the Eleventh Circuit "has consistently held that conclusory allegations without specific supporting facts have no probative value."); *see also Cordoba v. Dillard's Inc.*, 419 F.3d 1169, 1181 (11th Cir. 2005) ("Speculation does not create a genuine issue of fact; instead, it creates a false issue, the demolition of which is a primary goal of summary judgment."). Importantly, when asked, Officer Moschiano testified that it was entirely possible that another vessel could have caused the damage to Plaintiffs' vessels. DE 49-4 at 59:25–16:4. More so, a public records request was made by Defendant to Miami-Dade County as the operator of the Bill Bird Marina. DE 49-10. The County responded by stating that "[t]here are no records of vessels that were damaged by a wake on or about June 17, 2019." DE 49-10. The County responded to an additional request and stated that "Parks, Recreation and Open Spaced did not have records showing wake damage to the fuel dock located at the Bill Bird Marina in Haulover Park on or about June 17, 2019." DE 49-11.

Considering both, it is clear that Ocean Resort, LLC's negligence claim lacks sufficient record evidence regarding the causation element. *Kellner v. NCL (Bahamas), Ltd.*, No. 15-23002-CIV, 2016 WL 4440510, at *1 (S.D. Fla. Aug. 22, 2016), *aff'd*, 753 F. App'x 662 (11th Cir. 2018) ("Each element, including causation, is essential to Plaintiff's negligence claim.") citing *Isbell v. Carnival Corp.*, 462 F. Supp. 2d 1232, 1238 (S.D. Fla. 2006). The record evidence merely supports that a boat passing Plaintiffs' vessels may have caused damage, but it certainly does not show that it was Defendant's boat that caused the damage. Plaintiff Ocean Resort, LLC has thus failed to provide this Court with any evidence by which Defendant's Motion should be denied.

ii. Plaintiff Ocean Resort's claims for damages are not compensable under applicable maritime law.

Next, Defendant argues that Plaintiff Ocean Resort, LLC has abandoned their claim for future repair damages because there is no need for future repairs, and the remaining invoice regarding emergency repairs is a sham. Mot. at 7–8. In Response, Plaintiff Ocean Resort, LLC points to the invoices and estimates for repairs attached to their Amended Complaint as support for denying Defendant's Motion. Resp. at 7. In Reply, Defendant argues that the invoices themselves are insufficient to create a genuine issue of material fact overcoming Defendant's Motion. Reply at 6–7.

In maritime collision cases not resulting in the total loss of a vessel, recovery may only be made for reasonable costs incurred which are necessary to repair the vessel and which avoid leaving the vessel essentially depreciated in market value or "inferior for practical use." *Dominican Maritime, S.A. v. M/V Inagua Beach*, 572 F.2d 892, 893 (1st Cir. 1978). The Second Circuit has explained:

Any award must be calculated with recognition of the customary obligation of the injured party to minimize damages. In other words, he is only entitled to an award that would give him a boat as seaworthy and practically serviceable as before and not to an award, often much larger, sufficient to restore her to the identical condition she was in before the injury.

The general effect of the authorities has been a denial of damages based upon replacement of an injured portion of a vessel in cases where repairs made at a substantially lower cost would render her as serviceable as before.

Zeller Marine Corp. v. Nessa Corp., 166 F.2d 32, 34 (2d Cir. 1948).

Plaintiff Ocean Resort, LLC seeks recovery for over \$170,000 in damages, which include: (1) repairs made to the M/Y Audacity; (2) a ship to shore ladder; and (3) the cost of future repairs to the M/Y Audacity. DE 8-3. Plaintiff Ocean Resort, LLC's corporate representative, Mr. Postma, testified during his deposition that the initial cost of repainting the M/Y Audacity due to paint

damage was no longer applicable because “they were able to buff it out. It does not need repainting.” Postma Dep., DE 49-3 at 87:2–5. As a result of no longer requiring repainting—which accounted for a majority of the damages initially sought—Mr. Postma testified that the damages Ocean Resort, LLC was seeking was limited to \$15,300. DE 49-3 at 88:7–12. Because the record evidence indicates that the alleged repairs were no longer needed, the Court agrees with Defendant that Ocean Resort, LLC has effectively dropped the majority of the damages it seeks.

Plaintiff Ocean Resort, LLC maintains it is due \$15,300 to recover for the ship to shore ladder that was allegedly damaged. Attached to Plaintiffs’ Amended Complaint are emergency repair invoices and estimates from Jim Edwards of Ft. Lauderdale Finishes for the M/Y Audacity. DE 8-3. The veracity of these invoices has also come into question during litigation.³ The invoice for emergency repairs was dated June 19, 2019. DE 8-3 at 1. Importantly, Defendant sent records requests to the Bill Bird Marina seeking information regarding Jim Edwards and Ft. Lauderdale Finishes’ presence at the Marina following the alleged incident. DE 49-13; DE 49-14. In response to these records requests, the County stated that they did not have any records of either Jim Edwards or Ft. Lauderdale Finishes checking into or out of the Bill Bird Marina from on or about June 17, 2019, to the present. DE 49-13; DE 49-14. Further questioning the truthfulness of Plaintiff’s claims, Mr. Edwards testified during his deposition that he did not prepare any of the invoices. Edwards Dep., DE 49-12 at 91:23–92:2. Mr. Edwards was also unable to testify as to when he had done the emergency repairs on the M/Y Audacity. DE 49-12 at 94:6–13.

Record evidence surrounding the alleged repair invoices do not indicate that repairs were made to Plaintiffs’ vessels. Plaintiff Ocean Resort, LLC’s reference to the invoices attached to the Amended Complaint do not themselves prove a genuine issue of material fact exists for trial

³ The admissibility is subject to Defendant’s Motion for Sanctions. DE 52.

because they have abandoned their claim for future repairs, and the invoices for emergency repairs are unsupported. Based on Plaintiff's inability to show evidence sufficient to withstand a directed verdict motion as to Ocean Resort's damages, Defendant is entitled to summary judgment.

b. Isabella Marine has failed to provide this Court with sufficient evidence creating a genuine issue of fact as to the causation element of its negligence claim.

Plaintiff Isabella Marine's claim for damages includes \$10,165 for emergency repairs allegedly performed by Jim Edwards, as well as \$192,024 for future repairs, arising out of Defendant's supposed negligence. DE 8-2. Defendant argues that Isabella Marine is unable to prove the causation element of its negligence claim because the record evidence indicates the damage to the M/Y Isabella was caused by another event other than Defendant's passage of the Bill Bird Marina. Mot. at 14–15. In Response, Isabella Marine argues genuine issues of fact exist as to the breach, causation, and harm elements of its claim. Resp. at 4–6. Defendant argues in its Reply that the evidence Plaintiff Isabella Marine proclaims creates a genuine issue of fact as to the causation element of its negligence claim is speculative at best. Reply at 4–6.

Again, “[t]o prove causation, a plaintiff must establish ‘a cause and effect relationship . . . between the alleged tortious conduct and the injury’—that is, cause in fact (or ‘actual’ or ‘but-for causation’)—as well as the ‘foreseeab[ility]’ of the ‘conduct in question’ producing the alleged harm—i.e., ‘proximate causation.’” *Bell*, No. 2:16-CV-14461, 2017 WL 1337267, at *3 (quoting *Smith*, 497 F.3d at 506. Plaintiff Isabella Marine must provide this Court with evidence establishing the causation element of its negligence claim to survive Defendant's Motion. *See supra* at 5–6. However, Plaintiff Isabella Marine is unable to do so. Mr. Albano, Isabella Marine's corporate representative, could not testify as to when the damage occurred to the M/Y Isabella. Albano Dep., DE 49-8, at 82:15–84:11. However, Mr. Albano did testify that when the damage

occurred, he emerged from the M/Y Isabella and saw many people on the dock screaming, and that there was damage to the fuel dock. DE 49-8, at 114:3–16. The video in evidence taken by Chad Raney refutes this testimony, as it shows nobody was on the fuel dock at the time. DE 49-5. Moreover, the responses to the public records request made by Defendant support that the damage to the M/Y Isabella was caused by some event other than Defendant’s passage by the Bill Bird Marina. In its response to the public records requests, Miami-Dade County indicated that there was no record of damage caused by a wake occurring to the either the fuel dock or any vessels in the Bill Bird Marina on or about June 17, 2019. DE 49-10; DE 49-11. As such, Plaintiff has failed to carry its burden to demonstrate a genuine issue of fact exists to causation. Defendant is thus entitled to summary judgment on Isabella Marine’s negligence claim.

i. Isabella Marine’s claim for damages is non-compensable under governing maritime law.

Defendant also argues that Isabella Marine is unable to prove it is entitled to any damages for any supposed emergency repairs to the vessel because those damages are unsupported by record evidence. Mot. 12–13. Specifically, Defendant argues that the damages for future repairs Isabella Marine seeks is not compensable because the M/Y Isabella only suffered minor cosmetic damage. Mot. at 13–14. In Response, Plaintiff Isabella Marine again argues genuine issues of fact exist as to the breach, causation, and harm elements of its respective claim. Resp. at 4–6. In its Reply, Defendant argues that neither the emergency repairs, or future estimates, are supported by record evidence, nor are they compensable under governing maritime law. Reply at 6–7.

Defendant is entitled to summary judgment on Isabella Marine’s claim for damages because no genuine issue of fact exists. Isabella Marine seeks over \$202,000 for damage to the M/Y Isabella. DE 8 at 3–4. This figure includes both the cost of alleged emergency repairs, and

for future repairs. DE 8-2. Both the invoice for emergency repairs, and for future repairs bear the name of Ft. Lauderdale Finishes and Jim Edwards. DE 8-2.

The Court begins with the claimed damages for emergency repairs. As mentioned above, there is no record of Jim Edwards, or anyone from Ft. Lauderdale Finishes, accessing the Bill Bird Marina from June 17, 2019 to the present. DE 49-13; DE 49-14. Furthermore, Jim Edwards testified during his deposition that he did not create the invoices that were attached to Plaintiffs' Amended Complaint. DE 49-12 at 91:23–92:2. Lastly, though Mr. Edwards did testify during his deposition that he was paid the equivalent of \$3,500 for work that he performed on the M/Y Isabella, Mr. Edwards was unable to testify to having done that work after June 17, 2019, the alleged date of the incident. *Id.* at 108:14–16; 96:22–94:7; 110:15–23; 93:9–94:13. Plaintiff has failed to provide this Court with any evidence to the contrary that would create a genuine issue of material fact. Therefore, because Mr. Edwards did not create the invoices for repair, did not testify that he worked on the M/Y Isabella after the alleged incident, and the County has no record of him being at the Bill Bird Marina from June 17, 2019, to the present, Plaintiff has failed to establish a genuine issue of material fact exists regarding the whole of its damages claimed for the alleged emergency repairs. Again, Defendant has shifted the burden of proof to Plaintiff, and Plaintiff failed to provide this Court with any evidence that would withstand a directed verdict. *See supra* at 5–6. Defendant is thus entitled to summary judgment on Plaintiff Isabella Marine's claim of negligence.

As to Plaintiff Isabella Marine's claim for future repairs, Plaintiff Isabella Marine alleges it is due damages in excess of \$192,024 for estimated future repairs to the M/Y Isabella. DE 8-2. Defendant argues in its Motion that these damages are not recoverable under governing maritime law. Mot. at 13–15. Primarily, Defendant argues that these damages are not compensable because

the alleged damages did not impact the seaworthiness of the M/Y Isabella. Mot. at 13–14. In Response, Plaintiff argues that it has provided the estimates for future repairs and an expert report which substantiates their claim for damages. Resp. at 6–7. In Reply, Defendant asserts that the expert report does not indicate that the repairs would be for damages impacting the seaworthiness of the M/Y Isabella. Reply at 7. The Court is satisfied with Defendant’s showing that there is a lack of evidence to support the damages element of Plaintiff Isabella Marine’s negligence claim. The burden has thus shifted to Plaintiff Isabella Marine to provide this Court with some evidence to survive a directed verdict at trial. *See supra* 5–6.

In maritime collision cases, the damaged party is “only entitled to an award that would give him a boat as seaworthy and practically serviceable as before and not an award, often much larger, sufficient to restore her to the identical condition she was in before the injury.” *Zeller Marine Corp.*, 166 F.2d at 34.

Officer Moschiano’s full Boating Accident Report is accompanied by a narrative of what transpired on the alleged date, as well as pictures detailing the damage to all of the vessel impacted by Defendant’s alleged negligence. *See generally* DE 49-12. As listed in the narrative, the M/Y Isabella had damage to the “rub rail, the paint was scraped off where it made contact with the pilons on the port side of the vessel, and the ship to shore ladder was bent.” *Id.* at 4. The pictures attached to Officer Moschiano’s report depict this minor damage. *Id.* at 14–17. Additionally, Isabella Marine’s Corporate Representative testified during his deposition that the future repair estimates were for aesthetic issues. Albano Dep., DE 49-8 at 158:8–159:7. The testimony also included an unequivocal answer stating that the outstanding repairs have in no way impacted the functioning of the vessel. *Id.* 158:19–21.

Nothing contained within Officer Moschiano's report indicates that the M/Y Isabella suffered damage rendering it unseaworthy. *See generally* DE 49. More so, Plaintiff Isabella Marine's corporate representative testified that the vessels seaworthiness was in no way impacted by the alleged damages. DE 49-8 at 158:19–21. Thus, without the repairs, the boat remains as seaworthy and practicable as it was prior to the alleged incident. Plaintiff Isabella Marine has failed to direct this Court to any portion of the record which would contradict these facts. As such, Plaintiff has failed to establish that a genuine issue of material fact exists as to its damage claim for future repairs. Accordingly, Plaintiff is not entitled to over \$192,024 where the record evidence shows the alleged damage was cosmetic at most. The costs for future repairs Plaintiff Isabella Marine seeks to recover for the alleged damages suffered are therefore not compensable and Defendant is entitled to summary judgment in its favor.

In summation, Plaintiff Isabella Marine has failed to present this Court with evidence that creates a genuine issue of fact regarding either the alleged emergency repairs, or the estimate for future repairs. Defendant's Motion for summary judgment as to Isabella Marine's claim for negligence is therefore granted.

c. Peter Albano's Negligence Claim

Plaintiff Peter Albano seeks damages in excess of \$100,000 for personal injuries and over \$24,000 for damages to his Wellcraft vessel. DE 8-3. To begin, the record reflects that Plaintiff Albano testified during his deposition that he abandoned his claim for personal injuries. Albano Dep., DE 49-4 at 107:3–11; Def's SMF ¶ 32. Therefore, the Court finds Plaintiff Albano would not be able to prove these damages at trial. Thus, the only damages claim remaining for Plaintiff Albano are those for the damages to his 2001 Wellcraft vessel.

Defendant argues in its Motion that Plaintiff Albano has no evidence as to the causation element of his negligence claim as it pertains to the Wellcraft. Mot. at 10–12. In its Response, Plaintiffs argue that genuine issues of fact exist as to the breach, causation, and harm elements of its respective claim. Resp. 4–7. Defendant, in its Reply, argues that the evidence Plaintiffs cites in their Response is speculative and insufficiently probative, such that it does not create a genuine issue of fact for trial. Reply at 2, 4–6.

The Court is satisfied that Defendant has proved that Plaintiff Albano is unable to meet the causation element of his negligence claim for the damage to the Wellcraft. Thus, Plaintiff Albano has the burden of demonstrating that there is sufficient causation evidence to withstand a motion for directed verdict at trial. *See Supra* at 5–6.

Once more, Plaintiff Albano relies on Officer Moschiano’s testimony regarding the damage to the Miami-Dade County fire boat to demonstrate sufficient evidence to withstand Defendant’s Motion. Resp. at 5–6. But the responses to the public records requests made by Defendant foreclose that argument. Miami-Dade County responded to the public records request by stating that “[t]here are no records of vessels that were damaged by a wake on or about June 17, 2019.” DE 49-11.

Insofar as Plaintiff Albano attempts to create an issue regarding the damage to the Miami-Dade County fire boat, it is too speculative as it is unsupported by the evidence. Officer Moschiano’s report states that he spoke with Lt. George Izquierdo of Miami-Dade Fire Rescue on July 11, 2019. DE 49-7 at 4. The report goes on to state that Lt. Izquierdo conducted an inspection of the Miami-Dade County fire boat at 7:00 a.m. on the date of the alleged incident. *Id.* at 5. After that initial inspection, no damage to the fire boat was noted. *Id.* However, Officer Moschiano’s report then states that damage was discovered to the vessel at 1:45 p.m. *Id.* Importantly, this part

of the narrative also states that nobody was aboard the vessel at the time of the incident causing the damage. *Id.*

Considering both, Plaintiff Albano is inviting this Court to engage in the very sort of speculation and inference drawing that is improper at the summary judgment stage. *Cordoba*, 419 F.3d at 1181 (explaining that “[s]peculation does not create a genuine issue of fact; instead it creates a false issue, the demolition of which is a primary goal of summary judgment”). The speculative inference that Defendant could have caused the damage to Plaintiff Albano’s vessels because the Miami-Dade County fire boat was damaged at some point over a near 6-hour period on June 17, 2019, is insufficient to overcome summary judgment. *See Olbek v. City of Wildwood, Fla.*, 850 F. App’x 714, 722 (11th Cir. 2021) (“Because speculation cannot create a genuine issue of material fact, it cannot defeat summary judgment.”); *Cendan v. Sch. Bd. of Broward Cty., Fla.*, 628 F. Supp. 3d 1191, 1206 (S.D. Fla. 2022) (noting that a juror cannot draw a reasonable inference from the evidence if that evidence is merely speculation).

Furthermore, Officer Moschiano’s inspection revealed “gelcoat damage on the port side of the vessel and the transom bracket on the vessel seems to be taking on water.” DE 49-7 at 4. Furthermore, a marine survey was conducted of the Wellcraft. DE 49-17. The survey concluded that the Wellcraft was in “average condition” and made no mention of any damages that would render the Wellcraft unseaworthy. *See generally* DE 49-17. Plaintiff Albano purchased the Wellcraft vessel in May of 2019 for \$10,500. DE 49-18. However, Plaintiff Albano is claiming damages “in excess of \$24,000” for the Wellcraft, and attached a repair estimate to substantiate these damages to the Amended Complaint. DE 8 at ¶ 29; DE 8-4. These estimates also bear the name of Jim Edwards of Ft. Lauderdale Finishes. DE 8-4.

Once more, the public records requests made to Miami-Dade County revealed that no person by the name of Jim Edwards, or anyone under the company name of Ft. Lauderdale Finishes, entered or exited to the Bill Bird Marina on June 17, 2019, or afterwards. DE 49-13; DE 49-14. Furthermore, Mr. Edwards not only testified that he did not create the estimates for future repairs that are attached to the Amended Complaint, but he also stated that he had never been aboard the Wellcraft. Edwards Dep., DE 49-12, at 71:14–16, 37:19–23. Lastly, the marine survey conducted on the Wellcraft does not provide any indication that the Wellcraft is unseaworthy. DE 49-17. Because Plaintiffs have failed to point this Court to any evidence which could withstand Defendant’s Motion, Plaintiffs have failed to carry their burden. Defendant is thus entitled to summary judgment on the whole of Mr. Albano’s negligence claim.

IV. CONCLUSION

Accordingly, it is **ORDERED, ADJUDGED, and DECREED** that

1. Defendant’s Motion for Summary Judgment (**DE 50**) be, and the same is, hereby **GRANTED**.
2. All pending motions are **DENIED** as moot.
3. Pursuant to Rule 58(a) of the Federal Rules of Civil Procedure, final judgment in favor of Defendant will be set out in a separate Order.
4. Defendant shall have 30 days from the date of the entry of this Order to file its Motion for Attorneys’ Fees in light of Final Judgment.

DONE AND ORDERED in Chambers at the James Lawrence King Federal Justice Building and United States Courthouse, Miami, Florida this 28th day of March, 2024.



JAMES LAWRENCE KING
UNITED STATES DISTRICT JUDGE

cc: **All counsel of record**