UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 19-60636-CIV-SINGHAL

AMERICAN MARINE TECH., INC.,

Plaintiff,

v.

M/Y ALCHEMIST, a 1995 105' Mangusta recreational vessel, her boats, engines, generators, tackle, rigging, apparel, furniture, furnishings, equipment, contents and appurtenances, etc., *in rem*; and WORLD GROUP YACHTING, INC., *in personam*,

Defendants.
_____/

FINDINGS OF FACT AND CONCLUSIONS OF LAW FOLLOWING NON-JURY TRIAL

THIS CAUSE is before the Court on a non-jury trial held July 27, 2020, through July 29, 2020, and August 11, 2020. Plaintiff American Marine Tech., Inc. ("Plaintiff") filed this lawsuit against the Defendants/Counter-Plaintiffs, M/Y Alchemist, a vessel (the "Vessel"), and her owner, World Group Yachting, Inc. ("Defendant") (collectively "Defendants"), asserting claims for (i) enforcement of lien for necessaries provided pursuant to a maritime contract against M/Y Alchemist (Count I), (ii) breach of a maritime contract against M/Y Alchemist (Count II), and (iii) breach of a maritime contract against World Group Yachting, Inc. (Count III). M/Y Alchemist, through its owner, World Group Yachting, Inc., countersued Plaintiff for (i) negligence (Count I), (ii) breach of the implied warranty of workmanlike performance (Count II), and (iii) breach of contract (Count III).

On July 20, 2020, Defendants' counterclaim for negligence (Count I) was dismissed without objection. *See* (Order (DE [123]), entered July 20, 2020). By agreement of the parties, this Court also now considers the Defendants' Motion for Rule 11 Sanctions (DE [97]) and Plaintiff's Motion for Sanctions Against Defendants (DE [152]).

The Court presided over a bench trial, which appeared to grow in scope, and considered the testimony of the witnesses, the evidence presented, the arguments of counsel, the parties' pre-trial stipulation and trial briefs.[1] This Court had the opportunity to consider the demeanor and testimony of each witness and their individual memories and recitations of the facts.[2] After the bench trial concluded, Plaintiff moved to dismiss Defendant's counterclaims for lack of standing. *See* (Mot. to Dis. (DE [150]), Aug. 13, 2020).[3] In Defendant's Second Amended Answer and Counterclaim ("Counterclaim") (DE [49]), Defendant asserts a claim for negligence (Count I), breach of implied warranty of workmanlike performance (Count II), and breach of contract (Count III). Defendant's claim for negligence has already been dismissed by the Court as barred under the maritime economic loss rule. In accordance with Federal Rule of Civil Procedure 52(a), the Court now makes the following findings of fact and conclusions of law:

I. FINDINGS OF FACT

1. Plaintiff, American Marine Tech., Inc., is a corporation organized under the laws of the State of Florida, and at all times material hereto was doing business as

[1] This Court has reviewed all of the evidence submitted, both in advance of trial and during the proceedings, and will make citations to the evidence with reference to the List of Exhibits Admitted into Evidence (DE [156]), filed on August 20, 2020.
[2] The Transcript of the Bench Trial held via Zoom video conference will be cited by docket entry as (Tr. Witness Name (DE [##]) at page number).
[3] The motion only addresses Defendant's Count III for breach of contract regarding Defendant's standing, or lack thereof, to recover monies for any alleged overpayment to Plaintiff.

a vessel repair and service facility and parts provider in Palm Beach County, Florida.

2. The Vessel, M/Y Alchemist, is a 1995 105' Mangusta recreational vessel, MMSI 368017950, call sign WDJ8591.
3. Defendant, World Group Yachting, Inc. d/b/a Yacht Charter Group, is the Vessel's current owner.
4. Defendant is and was at all times material hereto, a Florida corporation with its principal place of business in Palm Beach County, Florida.
5. This Court has federal jurisdiction over this matter under Admiralty and Maritime Jurisdiction of the United States District Court, pursuant to 28 U.S.C. § 1333.
6. Defendant bought the Vessel for approximately $150,000.
7. Initially, the Vessel had two original Deutz 16 V616 engines. Defendant, as owner of the vessel, and through its employee and authorized representative, Gary Blonder, had the goal to perform engine work and ultimately resell the Vessel.
8. At the time of purchase, the Vessel had been removed from the water and was being stored on land. One Deutz engine had been removed from the Vessel by Plaintiff at the direction of her former owner. The other engine remained installed on the Vessel.
9. Defendant hired Plaintiff to perform engine work because Plaintiff had performed work on the Vessel for the prior owner, including the removal of one original Deutz engine.

10. Plaintiff recommended Defendant repair or replace the existing port and install engines of the same size as the original Deutz engines to avoid a much more complicated and custom installation.
11. Instead, Defendant purchased two used MTU 2000 V-16 M91 engines, which were much larger than the original Deutz engines, did not fit inside the Vessel without modification, and had approximately 6,900 hours on them prior to Defendant's purchase.
12. The MTU 2000 V-16 M91 engines had reported fuel leaks prior to installation on the Vessel.
13. Plaintiff recommended Defendant replace the fuel lines; however, Defendant elected to keep the original fuel lines.
14. With full knowledge and understanding of Plaintiff's recommendations, Defendant elected to proceed with its plans to have the used MTU 2000 V-16 M91 engines installed, which required significant modifications to fit into the Vessel.
15. After various communications about the nature of the desired engine work, the parties undertook an exchange of a series of work estimates, the most concrete of which came together on June 24, 2016, and referenced work order number 3368-R2.
16. Plaintiff sent Defendant a fax, which included: (a) a price estimate and recommendations, with an express disclaimer excluding numerous items from the price estimate and noting that the cost of the job could increase given many unknown variables for the custom installation; (b) an estimate for an oil pan

modification needed to accommodate the larger, used engines; (c) an estimate for the recommended work by a company called Datum Rotating Machine Services to evaluate the vessel's propeller shaft to transmission alignment and running gear, and perform a vibration analysis, and (d) the front and back side of a two-page work order, the back side of which contains Plaintiff's standard terms and conditions titled "Service Contract" (the "Service Contract"). *See* (DE [156-20], AMT 26).

17. The same was e-mailed to Defendant on June 27, 2016.

18. Defendant requested changes including modifying the payment schedule and reducing the price of the estimate by separating the work for the driver safe couplings.

19. Defendant also rejected Plaintiff's recommendation to check the Vessel's drive line and have the Vessel and her propeller shafts aligned by a professional drive line company, Datum Rotating Machinery Services, along with a vibration analysis and other related services prior to the installation of the two used MTU 2000 V-16 M91 engines.

20. On July 1, 2016, Plaintiff sent the same estimate, however, the coupling work was no longer incorporated into the price estimate. Instead, this e-mail separated the estimate for the driver safe coupling work, which included three options for pricing.

    a. The first option: Defendant would take its chances with the original coupling units at no cost.

    b. The second option: Defendant would purchase new coupling elements.

c. The third option: Plaintiff would install used coupling elements at a cheaper price than option two.

21. The option ultimately selected was option three for Plaintiff to provide and install used couplings at an estimated additional cost of $11,000.00.

22. On July 7, 2016, Gary Blonder, on behalf of Defendant, signed the second page of the estimate and faxed only the first two pages and the signed page.

    a. The first page referenced work order number 3368-R4.

    b. The second page included Gary Blonder's hand-written addition that any work performed by Defendant's staff would be subtracted from the total outstanding amount to help reduce the cost of the job.

    c. The signed page referenced work order 3368-R3, which included the oil pan modification.

23. In the Joint Pretrial Stipulation (DE [79]), the parties stipulate these negotiations culminated into a contractual maritime agreement (the "Agreement") in July of 2016, wherein Defendant through its agent and representative, Gary Blonder, entered into a contract with Plaintiff "to provide materials and services to the Vessel, including but not limited to a total engine repower from the remaining Deutz engine to two MTU 2000 V-16 M91 engines, and associated and additional materials and services, including mechanical work, electrical work, as further detailed in the Service Agreement." (Joint Pretrial Stip. (DE [79]), ¶ 5–9).

24. Under the terms of the Agreement, Defendant was required to make four timely weekly deposit payments of $15,000.00 totaling $60,000.00.

25. The terms of the Agreement provide the $86,020.42 cost estimate is just an estimate, subject to a 10% permitted increase.
26. Under the terms of the Agreement, the cost estimate is subject to change, based on separately agreed work, which in this case includes Plaintiff's work for oil pan modifications, drive couplings, use of chockfast for the stringer caps, and for display cables.
27. Additional work was requested by Defendant through its representative Gary Blonder or by Daniel Nelson, another authorized representative, on behalf of Defendant, and was subsequently provided by Plaintiff.
28. Ultimately, Plaintiff performed under the Agreement and installed the two used MTU 2000 V-16 M91 engines and modified oil pan, used drive couplings, chockfast, and display cables on the Vessel.
29. All work performed by Plaintiff aboard the Vessel under the Agreement occurred in Palm Beach County, Florida.
30. After Plaintiff's installation of the two used MTU 2000 V-16 M91 engines, the Vessel was launched and the Vessel was operational and able to run under her own power.
31. The total amount invoiced by Plaintiff for materials, labor, and modifications to the Agreement was $166,829.58.
32. Defendant paid a total of $111,184.38 for materials and labor for the Vessel under the Agreement.
33. The amount currently outstanding for the work under the Agreement is $55,645.20.

34. On October 2, 2017, the Vessel went on a partial sea trial and operated under her own power in the intracoastal waterway from Palm Harbor, Florida to Delray Beach, Florida.

35. In an attempt to show the Vessel for resale, the Vessel was taken from Plaintiff's custody by Defendant to the Miami Boat Show in Miami Beach, Florida on February 9, 2018.

36. During this showing, Defendant admits it damaged the bottom of the Vessel during a "grounding incident," which resulted in Defendant removing and repairing the Vessel's propellers.

37. On February 19, 2019, the Vessel had a striking and/or grounding incident which resulted in damage to the Vessel, including to the Vessel's hull, propellers, and propeller shafts.

38. Defendant filed an insurance claim for benefits with its hull insurance carrier.

39. The Vessel was towed to marine repair shipyard, Rolly Marine Service, Inc., which resulted in repairs including: hull repairs, propeller replacement, and straightening of her propeller shafts.

40. At this time, the Vessel's two propellers were replaced with new propellers purchased from Strike Marine Salvage Sales, Inc. for $27,500.00. The new propellers are different dimensions than the original propellers installed on the Vessel.

41. On March 11, 2019, Plaintiff filed the Complaint (DE [1]) asserting claims for (i) enforcement of lien for necessaries provided pursuant to a maritime contract against M/Y Alchemist (Count I), (ii) breach of a maritime contract against M/Y

Alchemist (Count II), and (iii) breach of a maritime contract against World Group Yachting, Inc. (Count III) following Defendant's failure to pay the outstanding invoices.

42. The total amount invoiced by Plaintiff for materials, labor, and modifications to the Agreement was $166,829.58, which can be broken into two categories: items within the cost estimate and items outside the cost estimate.

    a. The items within the cost estimate were invoiced for a total amount of $106,858.68.

        i. The initial cost estimate was $86,020.42.

        ii. The cost estimate was expressly modified to be increased by $12,000 for the oil pan modification increasing the cost estimate to $98,020.42.

        iii. Both estimates provide for a 10% permitted increase, which totals $107,822.46.

    b. The items outside the cost estimate were invoiced for a total amount of $59,970.90.

        i. Plaintiff insists the items outside the cost estimate are permitted under the Agreement, which was signed by Gary Blonder, and is referenced on the first page as work order number 3368-R4.

        ii. Not included is: Anything not mentioned above. Any problems with vessel, hookups to engine exhaust, water inlet, and electrical support systems not working properly, taxes, transportation of engines, shipyard services, engine repair parts, gaskets, or freight. Installation of vessel structure, floor, ceiling to be paid or supplied by customer.

. . .

> The above estimate doesn't include any overtime; nor does it cover any excessive time for the removal or tapping of broken or rusted bolts, or for any unforeseen problems such as machining, which may arise. Major castings, shafts, housings, taxes, freight, and "other charges" for consumable items are not included in this estimate.
>
> (DE [156-1], AMT 1-2).

43. The Vessel was arrested and released upon the posting of substitute security in the form of a bond in the amount of $94,469.13 to satisfy a judgment in this action.

44. The total amount of substitute custodial costs from Rolly Marine Service, Inc. following the arrest of the Vessel is $6,956.43.

45. Plaintiff asserts it is entitled to foreclose on its lien against the Vessels for necessaries for $55,645.20 in unpaid invoicing and for breach of maritime contract in the same amount, plus custodial costs in the amount of $6,956.43, plus additional taxable costs, attorneys' fees, and prejudgment interest in this action.

46. On October 18, 2019, the Vessel, M/Y Alchemist, through its owner, World Group Yachting, Inc., filed its Counterclaim (DE [49]) against Plaintiff for (i) negligence (Count I), (ii) breach of the implied warranty of workmanlike performance (Count II), and (iii) breach of contract (Count III).

47. Defendant asserts it is entitled to recover the cost of remediating and correcting alleged substandard work performed by Plaintiff as well as fees and costs.

48. Defendant also claims it is entitled to recover the overage amount it paid above the cost estimate. Defendant paid $96,184.38 and argues Plaintiff was overpaid $1,561.92.

II. CONCLUSIONS OF LAW

This is an action within the admiralty and maritime jurisdiction of this Court pursuant to the provisions of 28 U.S.C. § 1333 and Federal Rule of Civil Procedure 9(h). General Maritime Law applies to Counts I-III in the Complaint (DE [1]) and the remaining Counts II-III of Defendants' Counterclaim (DE [49]). The burden of proof in civil cases is the same regardless of whether the finder of fact is a judge in a bench trial or a jury. *See Cabrera v. Jakabovitz*, 24 F.3d 372, 380 (2d Cir. 1994). That is, the parties have the burden to prove every element of their claim by a preponderance of the evidence. A preponderance of the evidence means such evidence as, when considered with that opposed to it, has more convincing force, and demonstrates that what is sought to be proved "is more likely true than not true." *See* Pattern Jury Instructions (Civil Cases) of the District Judges Assoc. of the Eleventh Circuit, Basic Instruction No. 6.1 (1990).

In bench trials, the judge serves as the sole fact-finder and, thus, assumes the role of the jury. In this capacity, the judge's function includes weighing the evidence, evaluating the credibility of witnesses, and deciding questions of fact, as well as issues of law. *See Childrey v. Bennett*, 997 F.2d 830, 834 (11th Cir. 1993) (holding that "it is the exclusive province of the judge in non-jury trials to assess the credibility of witnesses and to assign weight to their testimony"). Moreover, "a trial judge sitting without a jury is entitled to even greater latitude concerning the admission or exclusion of evidence." *Goodman v. Highlands Ins. Co.*, 607 F.2d 665, 668 (5th Cir. 1979) (citing *Wright v. Southwest Bank*, 554 F.2d 661 (5th Cir. 1977)).

A. COMPLAINT (DE [1])

1. Count I: Enforcement of Lien for Necessaries

Under the Federal Maritime Lien Act, a person providing 'necessaries' to a vessel has a maritime lien on the vessel. *See* 46 U.S.C. § 31342(a). "The statute's language states clearly that one acquires a maritime lien by '*providing* necessaries to a vessel,' not by issuing an invoice. Thus, the federal courts have consistently held that a maritime lien arises when the necessary is *provided* to the vessel." *Dresdner Bank AG v. M/V Olympia Voyager*, 465 F.3d 1267, 1276 (11th Cir. 2006) (quoting 46 U.S.C. § 31342) (internal citations omitted) (emphasis in original). "To establish a maritime lien on a vessel pursuant to 46 U.S.C. § 31342 in an *in rem* action, a plaintiff must prove: (1) it provided 'necessaries' (2) at a reasonable price (3) to the vessel (4) at the direction of the vessel's owner or agent." *Sweet Pea Marine, Ltd. v. APJ Marine, Inc.*, 411 F.3d 1242, 1249 (11th Cir. 2005) (citing *S.E.L. Maduro (Florida), Inc. v. M/V Antonio De Gastaneta*, 833 F.2d 1477, 1482 (11th Cir. 1987)). "'[N]ecessaries' includes repairs, supplies, towage, and the use of a dry dock or marine railway[.]" 46 U.S.C. § 31301(4). "The term has been liberally construed to include 'what is reasonably needed in the ship's business,' such as 'goods or services that are useful to the vessel, keep her out of danger, and enable her to perform her particular function.'" *Bradford Marine v. M/V "Sea Falcon"*, 64 F.3d 585, 589 (11th Cir. 1995) (internal citations omitted).

In this case, the materials and services Plaintiff provided to the Vessel were necessaries. Plaintiff did a full repower on a vessel that was sitting on dry dock with one, non-operational engine. Plaintiff installed the two used MTU 2000 V-16 M91 engines in place of the existing original Deutz 16 V616 engines. After Defendant took custody of the

Vessel from Plaintiff, the Vessel was operational under the Vessel's own power. In fact, Defendant does not argue against the parts and labor provided meeting the statutory requirement of 'necessaries,' instead, Defendant argues Plaintiff's lien was barred by the reasonable price requirement in the Agreement. As discussed below, this Court does not find that argument persuasive.[4]

Defendant argues Plaintiff cannot claim additional amounts through its necessaries claim that were not set forth in the Agreement. The most significant problem with Defendant's position stems from the fact that when Plaintiff accepted the Vessel for work, she was sitting on dry dock with one, non-operational engine. Put simply, the Vessel was entirely non-functional at that time; it could not have been used in that state even in a partially functional capacity. As of October 2, 2017, the Vessel went on a partial sea trial and operated under her own power in the intracoastal waterway from Palm Harbor, Florida to Delray Beach, Florida. Then later in 2018, Defendant took the Vessel to the Miami Boat Show in an effort to resell. Despite whatever else may have been wrong with the Vessel after it was no longer in Plaintiff's custody, the two used MTU 2000 V-16 M91 engines both worked well enough to allow the Vessel to launch. This is not something that could have occurred under any scenario with respect to the one nonoperational original Deutz 16 V616 engine. Thus, the services that Plaintiff provided to the Vessel fit the statutory definition of 'necessaries' in its most basic form: "repairs, supplies, ..." 46 U.S.C. § 31301(4).

As for the other elements of a maritime lien, Defendant does not assert that Plaintiff has failed to meet its burden. This Court agrees. Reviewing the remaining considerations

[4] *See infra* II. CONCLUSIONS OF LAW, A. COMPLAINT (DE [1]), 2. Count II & III: Breach of Contract.

out of turn, the third and fourth elements are satisfied because no question exists that the services Plaintiff provided were to the Vessel at Defendant's direction. With regard to the final element—that of a reasonable price—Defendant did not hire Plaintiff for a limited purpose; Defendant accepted the Vessel, and Defendant issued partial payment. In view of this well-established principle of law, this Court finds Plaintiff possessed a maritime lien before the Vessel's arrest, which Plaintiff was entitled to foreclose for the unpaid balance, plus the custodial costs of $6,956.43.

2. Count II & III: Breach of Contract

"It is well-established that a contract . . . to repair a vessel is a federal maritime contract." *F.W.F., Inc. v. Detroit Diesel Corp.*, 308 Fed. Appx. 389, 391 (11th Cir. 2009). The elements of a breach of contract claim under Florida law and admiralty law are the same: "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) (citations omitted); *see also Sulkin v. All Fla. Pain Mgm't Inc.*, 932 So. 2d 485, 486 (Fla. 4th DCA 2006). "Under Florida law, contract formation requires the following elements: '(1) offer; (2) acceptance; (3) consideration; and (4) sufficient specification of the essential terms.'" *Barfield v. APRO Int'l, Inc.*, 781 Fed. Appx. 900, 904 (11th Cir. 2019) (quoting *Vega v. T-Mobile USA, Inc.*, 564 F.3d 1256, 1272 (11th Cir. 2009)). There is no dispute that a valid and enforceable maritime contract existed between Plaintiff and Defendant for the engine repower of the Vessel and related work. The issue before this Court is which iteration of the estimate constitutes the Agreement. Defendant insists only the two pages identified as estimate work order number 3368-R4, which were signed and returned on July 1, 2016,

constitute the full terms of the Agreement. Additionally, Defendant maintains Plaintiff misrepresented the controlling documents to this Court.

Maritime contracts "must be construed like any other contracts: by their terms and consistent with the intent of the parties." *Norfolk S. Ry. v. James N. Kirby, Pty Ltd.*, 543 U.S. 14, 31 (2004). Under general principles of contract interpretation, "[t]he plain meaning of a contract's language governs its interpretation." *In re FFS Data, Inc.*, 776 F.3d 1299, 1305 (11th Cir. 2015) (internal quotation marks omitted). "[A] document should be read to give effect to all its provisions and to render them consistent with each other." *Id.* (citing Restatement (Second) of Contracts § 203(a) (Am. Law. Inst. 1981)). "The elementary canon of interpretation is, not that particular words may be isolatedly considered, but that the whole contract must be brought into view and interpreted with reference to the nature of the obligations between the parties, and the intention which they have manifested in forming them." *O'Brien v. Miller*, 168 U.S. 287, 297 (1897) (citations omitted). "Thus, courts look to 'the contract as a whole to determine whether it unambiguously states the parties' intentions.'" *Davis v. Valsamis, Inc.*, 752 Fed. Appx. 688, 692 (11th Cir. 2018) (quoting *Sander v. Alexander Richardson Invs.*, 334 F.3d 712, 716 (8th Cir. 2003)); *see also Feaz v. Wells Fargo Bank, N.A.*, 745 F.3d 1098, 1104 (11th Cir. 2014) ("Traditional contract-interpretation principles make contract interpretation a question of law, decided by reading the words of a contract in the context of the entire contract and construing the contract to effectuate the parties' intent."). A contract provision is ambiguous if it "is susceptible to two or more reasonable interpretations that can fairly be made." *Dahl-Eimers v. Mut. of Omaha Life Ins. Co.*, 986 F.2d 1379, 1381 (11th Cir. 1993). An ambiguous provision in a maritime contract is interpreted against the

drafter. *See Edward Leasing Corp. v. Uhlig & Assoc., Inc.*, 785 F.2d 877, 889 (11th Cir. 1986). "Moreover, [this Court notes] where parties act as though a contract exists, there is a contract, even though no formal writing exists." *Roberts & Schaefer Co. v. Hardaway Co.*, 152 F.3d 1283, 1295 (11th Cir. 1998) (citing *Block v. Drucker*, 212 So. 2d 890, 891 (Fla. 3d DCA1968).

Plaintiff argues Defendant agreed to the work performed as evidenced by the estimate signed by Defendant, the modifications made by Defendant, the handwritten addition to the estimate identified as work order number 3368-R4 by Defendant, the invoices accepted by Defendant, and the partial payments made on the invoices. There were multiple changes made to the estimates following Defendant's requests. Plaintiff further asserts Defendant was subject to its terms and conditions, despite not signing that page because the Service Contract was included in all communications throughout the negotiations and Defendant never objected to the Service Contract therein despite making multiple other changes. This Court agrees and finds Plaintiff's testimony, through Fred Brunn, more credible and reliable on this issue.

Under the governing general maritime law principles, "it is an established rule of ancient respectability that oral contracts are generally regarded as valid." *Kossick v. United Fruit Co.*, 365 U.S. 731, 734 (1961); *see also Steelmet, Inc. v. Caribe Towing Corp.*, 779 F.2d 1485, 1488 (11th Cir. 1986). "To prove the existence of a contract under Florida law, a plaintiff must plead: (1) offer; (2) acceptance; (3) consideration; and (4) sufficient specification of the essential terms . . . . The same requirements apply to oral contracts." *HTC Leleu Fam. Tr. v. Piper Aircraft, Inc.*, 571 Fed. Appx. 772, 776 (11th Cir. 2014) (citation omitted). Here, modifications made during negotiations resulted in several

changes to the Agreement per Defendant's request. Ultimately, the parties shared the same goal: the total repower of the Vessel using the two used MTU 2000 V-16 M91 engines, which would allow Defendant to sell the Vessel for a profit.

Additionally, under maritime law, "[u]nsigned agreements are held enforceable where the parties have a meeting of the minds on the essential terms of their agreement." *Sea-Land Serv. v. Sellan*, 64 F. Supp. 2d 1255, 1262 (S.D. Fla. 1999) (citing *E.A.S.T Inc. of Stamford, Conn. V. M/V ALAIA*, 673 F. Supp. 796, 799 (E.D.La. 1987) (finding an unsigned charter legally binding and enforceable under promissory estoppel principles). Similarly, here, Defendant's failure to sign the Service Contract does not invalidate the Agreement as Plaintiff completed the total engine repower from the remaining Deutz engine to the two MTU 2000 V-16 M91 engines. This was the expressed intent of the parties. Furthermore, the physical act of signing a document is a mere formality where the parties clearly intend to be bound by it. *See Reed v. United States*, 717 F. Supp. 1511, 1516–17 (S.D. Fla. 1988) (citations omitted). Terms incorporated by reference will be valid so long as it is clear the parties to the agreement had knowledge of and assented to the incorporated terms. *See Architectural Ingenieria Siglo XXI, Ltd. Liab. Co. v. Dominican Republic*, 788 F.3d 1329, 1340 n.9 (11th Cir. 2015); *see also* 11 Williston on Contracts § 30:25 (4th ed.) ("So long as the contract makes clear reference to the document and describes it in such terms that its identity may be ascertained beyond doubt, the parties to a contract may incorporate contractual terms by reference to a separate, non-contemporaneous document . . . ."). The parties are sophisticated business entities which admit to having read, negotiated, and modified the contract over the course of several weeks of discussion. Here, Plaintiff's intent to incorporate the

Service Contract is clear from its inclusion in communications during negotiations for the engine repower. Defendant's decision to omit the Service Contract when returning the Agreement with handwritten amendment and signature does not mean it was not incorporated by reference vis-à-vis the work order number 3368-R4.

In the second and third count of its Complaint (DE [1]), Plaintiff alleges Defendant breached the terms of the Agreement by failing to pay outstanding invoicing for services rendered and goods provided in the amount of $55,645.20, which remain due and owing. Defendant alleges Plaintiff breached the written agreement by invoicing above the $86,020.42 cost estimate under the Agreement because that figure is just an estimate, subject to a 10% permitted increase. Plaintiff contradicts the assertion, however, claiming the cost estimate was subject to change based on separately agreed work, which in this case includes Plaintiff's work for oil pan modifications, drive couplings, use of chockfast for the stringer caps, and for display cables. In its Counterclaim (DE [49]), Defendant alleges there were numerous problems with the quality of Plaintiff's workmanship and the work was also delayed far beyond the 8-10 weeks estimated. Defendant, however, did not take custody of the Vessel until the engine repower was complete and the Vessel could launch under her own power.

Defendant alleges the estimate should be reduced per the hand-written addition to the Agreement because Dan Nelson performed a substantial amount of work on the Vessel in order to lower the costs. This Court does not find such allegations credible, particularly because Defendant failed to provide any detailed timesheets or records of such work performed in accordance with the Agreement. Further, Dan Nelson was

unable to specify what work was completed by which employee or which hourly rate was applicable.

"To constitute a vital or material breach, a party's nonperformance must 'go to the essence of the contract.'" *MDS (Can.), Inc. v. RAD Source Techs., Inc.*, 720 F.3d 833, 849 (11th Cir. 2013) (quoting *Beefy Trail, Inc. v. Beefy King Int'l, Inc.*, 267 So. 2d 853, 857 (Fla. 4th DCA 1972)). Here, Plaintiff has performed under the Agreement by installing the two used MTU 2000 V-16 M91 engines in place of the existing original Deutz 16 V616 engines. Following the engine repower, the Vessel was operational under her own power. *See* (Tr. Dan Nelson (DE [145]) at 151–53) (answering that the motors ran fine on the way to the Miami Boat Show. Dan Nelson testified: "Yeah, no major issues. No overheating or things that were extremely noticeable."). Defendant's failure to pay the outstanding balance constitutes a material breach. Under the terms of the Agreement, Defendant was required to issue payment within "five (5) days after the engines are running . . . ." (DE [156-1], AMT 1-2). Plaintiff remains unpaid for services rendered and parts provided in excess of two years. Accordingly, Plaintiff's entitlement to recover damages from Defendant for breach of contract is shown by a preponderance of the evidence.

B. COUNTERCLAIM (DE [49])

1. Count II: Breach of Implied Warranty of Workmanlike Performance

"Claims for breach of warranty of workmanlike performance sound in contract." *Kol B'Seder, Inc. v. Certain Underwriters at Lloyd's of London*, 766 Fed. Appx. 795, 801–02 (11th Cir. 2019) (citation omitted). The warranty of workmanlike performance is an

implied warranty imposed on a maritime service contractor which requires services to be performed with reasonable care, skill, and safety. *See Vierling v. Celebrity Cruises, Inc.*, 339 F.3d 1309, 1315 (11th Cir. 2003) ("Every contract involving the rendering of services includes the implied promise to perform those services with reasonable care, skill, and safety."). Further, this duty to perform in a workmanlike manner is the same as the duty to exercise reasonable care under negligence law. *See id.*

This Court finds Defendant has not met its burden to establish that Plaintiff failed to "perform those services with reasonable care, skill, and safety." *Vierling*, 339 F.3d at 1315. Dan Nelson testified the Vessel was operational when taken to the Miami Boat Show on February 9, 2018. After the Vessel left Plaintiff's custody, the Vessel was operational and able to run under her own power. Defendant took the Vessel on several voyages, including to boat shows to resell the Vessel. This Court finds if the Vessel was in condition for showings and resale, Plaintiff could not have breached its duty to perform. Furthermore, the issues alleged could have reasonably been caused as a result of multiple traumatic incidents on the Vessel, which occurred after Plaintiff no longer had possession of the Vessel.

2. Count III: Breach of Contract

Standing to bring and maintain a lawsuit is a fundamental component of a federal court's subject matter jurisdiction. *See Clapper v. Amnesty Int'l USA*, 133 S. Ct. 1138, 1146 (2013). Federal Rule of Civil Procedure ("Rule") 12(b)(1) applies to challenges of a court's subject matter jurisdiction. *See* Fed. R. Civ. P. 12(b)(1). "A case is properly dismissed for lack of subject matter jurisdiction when the court lacks the statutory or constitutional power to adjudicate the case." *Home Builders Ass'n of Miss., Inc. v. City of*

Madison, 143 F.3d 1006, 1010 (5th Cir. 1998). Generally, the plaintiff must allege, with particularity, facts necessary to establish jurisdiction and must support his allegation if challenged to do so. *Morrison v. Allstate Indem. Co.*, 228 F.3d 1255, 1273 (11th Cir. 2000). "Typically, where standing is lacking, a court must dismiss the plaintiff's claim without prejudice." *McGee v. Solicitor General of Richmond Cty., Ga.*, 727 F.3d 1322, 1326 (11th Cir. 2013).

In Plaintiff's Motion to Dismiss Defendants' Claims Pursuant to Rule 12(B)(1) for Lack of Standing Under Article III of the U.S. Constitution (DE [150]), Plaintiff argues Defendant's Counterclaim should be dismissed for lack of standing because at trial it was revealed that Defendant has not made any payments to Plaintiff for the work performed. Instead, Gary Blonder testified the checks were from Auto Sport Group, Inc. and, as a result, Defendant is financially responsible to Auto Sport Group, Inc. (Tr. Gary Blonder (DE [145]) at 12; 21–22). Gary Blonder further testified that at some point Defendant would have to repay Auto Sport Group, Inc. for the payments made to Plaintiff, however, Auto Sport Group, Inc. is not a party to this case. *Id.* This Court finds Gary Blonder's testimony, neither credible nor reliable on this issue. Particularly in the absence of any documentary support, this is purely conjectural and not sufficiently particularized to establish Defendant's obligation to repay for checks made and cleared almost four years ago. Additionally, there is no evidence or testimony on record to indicate Defendant has reimbursed Auto Sport Group, Inc. or that Auto Sport Group, Inc. has made such request. Auto Sport Group, Inc. is not mentioned in any pleadings, not listed as a witness, and not included in the disclosures.

In its Counterclaim (DE [49]), Defendant has two remaining claims against Plaintiff: (1) breach of implied warranty of workmanlike performance (Count II) and (2) breach of contract (Count III). Both claims incorporate the allegation that Plaintiff was paid $96,184.38. In its breach of contract claim, Defendant alleges it performed its obligations under the Agreement by paying a sum more than it was required to pay. In other words, Defendant countersued Plaintiff arguing Plaintiff was not entitled to payment for the outstanding invoice as Defendant had purportedly paid too much. Now, in this motion to dismiss, Plaintiff asserts the claim should be dismissed for lack of standing because the payments were actually made by non-party Auto Sport Group, Inc. Certainly, this very issue should have been clear to the parties during the discovery process and even before, when invoices were issued and payments tendered. But, it was not raised until trial had concluded. Nonetheless, on this point this Court agrees with Defendant, given this matter has already been tried, with the proper individuals before the Court, the motion has no practical effect. Defendant's claim for breach fails on the merits as discussed above because this Court has found Defendant to be in breach for failing to pay the outstanding invoices. Accordingly, the motion to dismiss is denied as moot.

C. MOTIONS FOR SANCTIONS

1. Motion for Rule 11 Sanctions (DE [97])

"Rule 11 sanctions are proper: (1) when a party files a pleading that has no reasonable factual basis; (2) when the party files a pleading that is based on a legal theory that has no reasonable chance of success and that cannot be advanced as a reasonable argument to change existing law; or (3) when the party files a pleading in bad faith for an

improper purpose." *Lee v. Mid-State Land & Timber Co.*, 285 Fed. Appx. 601, 608 (11th Cir. 2008) (citing *Worldwide Primates, Inc. v. McGreal*, 87 F.3d 1252, 1254 (11th Cir. 1996)). "The selection of the type of sanction to be imposed lies within the district court's sound exercise of discretion." *Donaldson v. Clark*, 819 F.2d 1551, 1557 (11th Cir. 1987). "The purpose of Rule 11 is to 'discourage dilatory or abusive tactics and help to streamline the litigation process by lessening frivolous claims or defenses.'" *Thomas v. Evans*, 880 F.2d 1235, 1239 (11th Cir. 1989) (quoting Fed. R. Civ. P. 11, advisory committee note).

Defendants' Motion for Rule 11 Sanctions (DE [97]), which was brought under the Court's inherent powers and 28 U.S.C. § 1927, asserts the Agreement attached as an Exhibit (DE [1-1]) to the Complaint (DE [1]) was doctored, Plaintiff's breach of contract claim is baseless because Defendants submitted full payment under the terms of the Agreement, and Plaintiff's claim for necessaries is covered under the Agreement. Plaintiff argues the motion was filed in bad faith and in violation of the Agreed Order (DE [64]) entered by United States District Judge Beth Bloom on December 17, 2019. The Agreed Order (DE [64]) compelled Defendant World Group Yachting, Inc. and its authorized representative, Gary Blonder, to attend the deposition on December 23, 2019, and "to have with them the items listed in the duces tecum requests in Plaintiff's December 16, 2019 Notices of Deposition Duces Tecum." (Order (DE [64], ¶ 2); *see also* (Mot. (DE [61]). Additionally, this is the second nearly identical motion for sanctions filed by Defendants. "[T]he imposition of Rule 11 sanctions is not a judgment on the merits of an action. Rather, it requires a determination of a collateral issue: whether the attorney has abused the judicial process, and if so, what sanction would be appropriate." *Cooler v. Hartmarx Corp.*, 496 U.S. 384, 405 (1990). Accordingly, this motion is denied.

2. American Marine Tech, Inc.'s Motion for Sanctions Against Defendants (DE [152])

The Federal Rules of Civil Procedure provide the Court with the authority to impose a variety of sanctions on a party who fails to comply with a discovery order. *See* Fed. R. Civ. P. 37(b)(2)(A). The Court enjoys "broad discretion to fashion appropriate sanctions for violation of discovery orders[.]" *Malautea v. Suzuki Motor Co.*, 987 F.2d 1536, 1542 (11th Cir. 1993). At the same time, that discretion is not unlimited, and an extreme sanction requires "a willful or bad faith failure to obey a discovery order." *Id.* "Rule 37 sanctions are intended to prevent unfair prejudice to the litigants and insure the integrity of the discovery process." *Gratton v. Great Am. Commc'ns*, 178 F.3d 1373, 1374–75 (11th Cir. 1999) (citation omitted).

To put it simply, Defendant argues this motion is brought in retaliation to Defendants' pending motion for sanctions. Plaintiff does in fact posit some of the same arguments asserted in opposition to Defendants' motion and asserts Defendants have filed multiple frivolous motions in bad faith. In this case, the parties stipulated to bench trial and, as stated on the record, the parties were afforded all the time necessary to come to a full resolution of this case. As such, this motion is also denied.

III. CONCLUSION

Having reviewed the testimony of the witnesses, exhibits admitted in evidence, the parties' written submissions, applicable law, and record, it is hereby

ORDERED AND ADJUDGED as follows:

1. Under Count I of Plaintiff's Complaint (DE [1]), Plaintiff demonstrated by a preponderance of the evidence that it is entitled to a maritime lien because "(1) it provided 'necessaries' (2) at a reasonable price (3) to the Vessel (4) at the direction of Defendant." *See Sweet Pea Marine, Ltd.*, 411 F.3d at 1249.
2. Under Counts II and III of Plaintiff's Complaint (DE [1]), a valid and enforceable contract existed between Plaintiff and Defendant under the Agreement, which was breached by Defendant's failure to pay the outstanding balance.
3. Under Count II of Defendants' Counterclaim Complaint (DE [49]), the services were performed with reasonable care, skill, and safety.
4. Under Count III of Defendants' Counterclaim Complaint (DE [49]), a valid and enforceable contract existed between Plaintiff and Defendant under the Agreement, which was breached by Defendant's failure to pay the outstanding balance.
5. Therefore, this Court finds in favor of Plaintiff American Marine Tech., Inc. on all counts.
6. Final Judgment for Plaintiff American Marine Tech., Inc. will be entered separately, pursuant to Federal Rule of Civil Procedure 58, in accordance with the Court's findings of fact and conclusions of law.

IT IS FURTHER ORDERED AND ADJUDGED as follows:

1. Plaintiff's Motion to Dismiss Defendants' Claims Pursuant to Rule 12(B)(1) for Lack of Standing Under Article III of the U.S. Constitution (DE [150]) is **DENIED AS MOOT**.
2. Defendants' Motion for Rule 11 Sanctions (DE [97]) is **DENIED**.
3. Plaintiff's Motion for Sanctions Against Defendants (DE [152]) is **DENIED**.

DONE AND ORDERED in Chambers, Fort Lauderdale, Florida, this 16th day of March 2021.

RAAG SINGHAL
UNITED STATES DISTRICT JUDGE

Copies furnished to counsel of record via CM/ECF