In the United States District Court for the Southern District of Texas

GALVESTON DIVISION

No. 3:21-cv-253

DIAMOND SERVICES CORPORATION, *PLAINTIFF*,

v.

RLB CONTRACTING, INC., *ET AL.*, *DEFENDANTS*.

MEMORANDUM OPINION AND ORDER

JEFFREY VINCENT BROWN, *UNITED STATES DISTRICT JUDGE*:

Before the court are three motions for summary judgment filed by Harbor Dredging and RLB Contracting; a motion for judgment on the pleadings and a motion to strike filed by Travelers Casualty and Surety Company of America; and a motion to strike filed by RLB Contracting. Dkts. 46; 49; 50; 63; 65; 73. The court grants Harbor's motion for summary judgment (Dkt. 46), grants RLB's first motion for summary judgment (Dkt. 49), grants in part and denies in part RLB's second motion for summary judgment (Dkt. 50), grants the motions to strike, (Dkts. 65; 73) and denies the motion for judgment on the pleadings as moot (Dkt. 63).

I. BACKGROUND

On September 4, 2019, the U.S. Army Corps of Engineers, Galveston Division, awarded RLB Contracting, Inc., a contract for pipeline dredging in the Houston Ship Channel. Dkt. 46 at 1. As required by the contract and the Miller Act, RLB furnished a surety bond which it obtained from Travelers. Dkts. 49 at 5; 49-3. To assist it in dredging the volume called for by the Corps, RLB contracted with Harbor Dredging. Dkt. 46-2. Harbor, in turn, contracted with the plaintiff, Diamond, for the dredge work. Dkt. 46-3.

As the project progressed, RLB, Harbor, and Diamond "encountered conditions that differed materially from those represented" by the Corps in its project specifications. Dkt. 46 at 2. The unanticipated presence of tires in the channel, as well as other issues, "slowed down the job considerably." Dkt. 51 at 6. Diamond determined that it would not be able to continue the project profitably. *Id.* Agents of RLB, Harbor, and Diamond met to discuss the situation, and Diamond threatened to leave the project absent changes. *Id.* at 6–7. RLB later pursued a request for equitable adjustment (REA) of the prime contract from the Corps. Dkts. 51 at 6; 49 at 6. In Diamond's view, RLB and Harbor had agreed to compensate Diamond out of the REA using a measured-mile calculation, though in what proportion or for "how much was left unsaid because it was, at the time, unknowable." Dkts. 51 at 8, 17; 51-2 at

49–50. As explained by the parties, a measured-mile calculation in this context involves comparing dredging costs incurred during a set period where differing site conditions interrupted operations to dredging costs completed during the same period where differing site conditions did not interrupt operations. Dkts. 54 at 14; 54-2 at 78.

> The contractor compares the best time period, which sets the benchmark. Then that time period is compared to the other time on the contract where the contractor faced delays. The percentage difference is assumed to be on account of the delay and the contractor (and its subcontractors) are entitled to the difference.

Dkts. 51 at 16–17; 51-1 at 87–89.

Diamond, allegedly relying on these representations, continued working and stepped up operations, dredging twenty-four hours a day to build a favorable benchmark for its anticipated measured-mile calculations. *Id.* at 6–7. In October 2020, RLB submitted an REA to the Corps, but Diamond expressed unhappiness with the request because it failed to fully account for Diamond's losses. Dkts. 46-4; 51-6. Diamond demanded the right to participate in the drafting and negotiating of any future REAs, a request that RLB seemingly ignored. *See* Dkts. 51-6; 51-7. RLB ultimately withdrew its October 2020 REA. Dkt. 49 at 6.

After project completion, RLB prepared to submit a second amended REA and asked Harbor to certify and submit its total project costs, including

direct costs, overhead, and profit, and corresponding numbers from Diamond. Dkts. 46 at 3; 49 at 6. On March 5, 2021, Diamond executive James Furlette sent Harbor executive Roland Maturin an email stating "this is where we are at." Dkt. 46-8. Attached to the email was a chart, with the sums "$1530,323.09 [sic] Outstanding + 500,000.00 Extra work" scribbled by hand at the bottom. *Id*. The sums totaled $2,030,323.09. *Id*.

On March 30, 2021, Harbor submitted to RLB its certified total costs in the amount of $3,179,169, which included Diamond's certified total costs of $2,362,344. Dkts. 46 at 3–4; 46-5; 46-6. On April 6, 2021, RLB re-submitted its amended REA to the Corps, calculating total excess costs of $8,867,212. Dkt. 46-7. The Corps offered to negotiate a settlement. Dkt. 46 at 4. RLB asked Harbor to determine the amounts that Harbor and Diamond "would accept in satisfaction of their claims for a share of the excess costs recovered by RLB from the [Corps] in a settlement of the amended REA." *Id*.

Here, the parties' accounts diverge. Harbor claims that Diamond agreed, in subsequent conversations between Furlette and Maturin, to accept $950,000 "to resolve its claim for a share of excess costs recovered by RLB in an REA associated with differing site conditions." *Id*. at 6. Diamond insists that "when Harbor asked Diamond if Diamond would accept $950,000. [sic] Diamond responded not with 'yes' but with 'maybe': Diamond said that it

could, but only if that's what the US Army Corps of Engineers was willing to pay . . . its accession to this request by Harbor was conditional," and depended on how the REA was derived and what it included. Dkts. 51 at 3; 51-2 at 70–71. RLB did not communicate with Diamond during the REA negotiation process. Dkts. 51 at 10; 49-14 at 126.

For its part, Harbor determined it would accept $500,000 in resolution of its claims and communicated a total settlement sum of $1,450,000—including the $950,000 allegedly agreed to by Diamond—to RLB. Dkts. 46 at 6; 49-14 at 114. On July 9, 2021, RLB and the Corps negotiated. Dkt. 51-9. Ultimately, the Corps and RLB reached a settlement of the amended REA in the amount of $6,000,000. Dkts. 46 at 7; 46-14. RLB issued a joint check to Harbor and Diamond in the amount of $950,000. Dkt. 49-8.

On September 16, 2021, Diamond filed this suit against RLB, Harbor, and Travelers. Dkt. 1. Against Harbor and RLB, Diamond brought claims for breach of contract, implied contract, and quasi-contract; against RLB and Travelers, Diamond also brought Miller Act claims. Dkt. 1 ¶¶ 43–53.

Harbor endorsed and tendered RLB's check to Diamond on October 29, 2021. Dkt. 46-15. Diamond initially refused to accept the check marked "FULL AND FINAL PAYMENT," but did so after RLB agreed to permit

Diamond to disregard the notation. Dkts. 46 at 8; 46-17.

At some point after RLB and the Corps reached a settlement,[1] Maturin placed a recorded phone call to Furlette and remarked that he "got a call from Randy saying that you're not going to sign the agreement that we had for the $950,000." Dkts. 55 at 6–7; 46-16, 00:51-01:06. Furlette replied that he would ask Diamond executive Stephen Swiber about it. *Id.* at 01:24. Later in the conversation, when Maturin brought up the issue again, Furlette responded by inquiring "950 still good"? *Id.* at 04:45.

RLB and Travelers filed motions to dismiss. Dkts. 22; 30. On May 13, 2022, Diamond filed its First Amended Complaint, designating the case as an admiralty claim under Fed. R. Civ. P. 9(h) and otherwise repleading its original complaint in full; RLB subsequently filed a responsive pleading with counterclaims for certain declaratory judgments, promissory estoppel, and money had and received. Dkts. 41; 48. Harbor filed a motion for summary judgment on September 19, 2022; RLB subsequently filed motions for summary judgment against Diamond's claims and in favor of its own claims. Dkts. 46; 49; 50. Diamond timely responded. Dkts. 51; 54.

On November 14, 2022, the court issued a memorandum opinion and

[1] Harbor has not provided the court with the date on which Maturin made this phone call.

order granting in part and denying in part RLB's motion to dismiss and denying Travelers's motion to dismiss. Dkt. 62. The court dismissed Diamond's unjust-enrichment cause of action and Diamond's express contractual claims against RLB, but preserved Diamond's claim for equitable-adjustment expenses under a theory of quantum meruit. *Id.* at 28. The court denied Travelers's motion to dismiss Diamond's Miller Act claims but ordered Diamond to file an amended complaint within 14 days incorporating allegations that it gave proper Miller Act notice. *Id.* But this deadline passed without Diamond filing an amended complaint. On December 5, 2022, Travelers filed a motion for judgment on the pleadings under Federal Rule of Civil Procedure 12(c). Dkt. 63. On December 6, 2022, Diamond filed its second amended complaint, which Travelers and RLB moved to strike. Dkts. 64; 65; 73. On December 28, 2022, Diamond filed an answer to RLB's counterclaims. Dkt. 75. Diamond filed a second answer to RLB's counterclaims on January 3, 2023. Dkts. 77.

II. LEGAL STANDARD

Summary judgment is proper when "there is no genuine dispute as to any material fact and the movant is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(a). The court must view the evidence in the light most favorable to the nonmovant. *Coleman v. Houston Indep. Sch. Dist.*, 113 F.3d

528, 533 (5th Cir. 1997). For each cause of action moved on, the movant must set forth those elements for which it contends no genuine dispute of material fact exists. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). The burden then shifts to the nonmovant to offer specific facts showing a genuine dispute for trial. *See* Fed. R. Civ. P. 56(c); *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586–87 (1986). "A dispute about a material fact is 'genuine' if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Bodenheimer v. PPG Indus., Inc.*, 5 F.3d 955, 956 (5th Cir. 1993) (citation omitted).

The court "may not make credibility determinations or weigh the evidence" in ruling on a summary-judgment motion. *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 150 (2000). But when the nonmoving party has failed "to address or respond to a fact raised by the moving party and supported by evidence," then the fact is undisputed. *Broad. Music, Inc. v. Bentley*, No. SA-16-CV-394-XR, 2017 WL 782932, at *2 (W.D. Tex. Feb. 28, 2017). "Such undisputed facts may form the basis for summary judgment." *Id.*

A motion for summary judgment "cannot be granted simply because there is no opposition." *Hetzel v. Bethlehem Steel Corp.*, 50 F.3d 360, 362 n.3 (5th Cir. 1995). When no response is filed, the court may accept as

undisputed the facts set forth in support of the unopposed motion and grant summary judgment when a *prima facie* showing for entitlement to judgment is made. *See Eversley v. Mbank Dallas*, 843 F.2d 172, 174 (5th Cir. 1988); *Rayha v. United Parcel Serv., Inc.*, 940 F. Supp. 1066, 1068 (S.D. Tex. 1996). The court may grant summary judgment on any ground supported by the record, even if the ground is not raised by the movant. *United States v. Houston Pipeline Co.*, 37 F.3d 224, 227 (5th Cir. 1994).

III. ANALYSIS

A. Harbor's Motion for Summary Judgment

Harbor argues that Diamond's purported agreement to accept $950,000 in "full and final settlement for its share of the proceeds of the settlement of the REA" bars it from seeking additional compensation from Harbor or RLB. Dkt. 46 at 11–12. Diamond responds that the offer to accept $950,000 in satisfaction of its claims was always conditioned on how the amended REA was calculated and that "very clearly as part and parcel of this agreement, Diamond had to be made aware of what the Corps was in fact willing to pay." Dkt. 51 at 3, 13–14. Because Diamond maintains it was excluded from the REA calculations and not provided with the relevant information, it insists it never actually agreed to $950,000 as a settlement figure. *Id.*

Harbor also argues that Diamond "submitted no summary[-]judgment evidence of actual costs it incurred due to differing site conditions or extra work or delays for which it was not compensated and no competent summary judgment evidence that Harbor owes Diamond any further amounts under the Sub-subcontract or otherwise." Dkt. 55 at 10. Harbor observes that Diamond's own estimates placed its excess costs at $500,000, as demonstrated by Furlette's handwritten note listing the value of Diamond's "extra work" on the project at $500,000. Dkts. 46 at 17; 46-8. As Harbor paid Diamond $950,000 above the contract price—a sum large enough to satisfy the $500,000 claim for "extra work," as well as the $414,934.59 associated with the use of the tug *M/V Miss Kerrilynn*[2]—it argues Diamond has no basis to seek additional compensation. Dkt. 46 at 17–18.

In response, Diamond states that its costs exceeded $950,000. Dkt. 51 at 15. But it identifies no specific unpaid costs. Instead, Diamond argues that Harbor, via "a modification of an oral modification to the preexisting contract," and RLB, promised to provide compensation using a "measured[-

[2] Diamond has argued that it agreed to split the costs of using the tug with RLB. Dkt. 51 at 1. In its previous opinion, the court found that "a plain reading of the Harbor-Diamond Subcontract shows that Diamond had a preexisting obligation to furnish the equipment necessary to complete the work, including providing a tug in order to traverse the hopper barges." Dkt. 62 at 20. The court dismissed Diamond's claims for tug expenses against RLB. *Id.*

]mile analysis," which is "not a function of adding up hard costs." Dkt. 51 at 16, 17. And Furlette's $500,000 notation for extra work "was a number on a page. It was not a measured[-]mile analysis." *Id.* at 16. Diamond also points to testimony from Furlette attempting to cast doubt on the notion that $500,000 represented all of Diamond's additional costs. Dkt. 51-13 at 49.

Diamond and Harbor had a contract. And as the court has explained in its previous opinion, Article 4 of that contract is "the only relevant contractual provision to make formal changes to the work required in the contract." Dkts. 62 at 16; 46-3. Article 4 provides that Harbor may direct Diamond in writing to make changes to its work, and corresponding adjustments to the contract price resulting from such changes shall be set forth in a change order. Dkts. 46-3; 62 at 19. As there is no evidence either party ever submitted a change order, Harbor's payment of the contract price satisfied its underlying contractual obligations to Diamond.

Diamond does not dispute that Harbor met its obligations under the original contract, but submits that Harbor orally modified the contract to ensure that Diamond would be compensated out of the REA using a measured-mile analysis. Dkt. 51 at 8, 17. This argument appears to be raised for the first time in response to Harbor's motion for summary judgment. Diamond's complaint states that the measure of its outstanding obligation is

"in no event less 54% of the REA," a figure that represents not a measured-mile analysis but its ratio of the unit rate set out in RLB's contract with the Corps.[3] Dkt. 1 ¶ 51; *see also* Dkt. 41 ¶ 2.

Regardless, in the face of a properly supported motion for summary judgment, Diamond has not produced evidence demonstrating the existence of an oral contract modification. Indeed, at the meeting where RLB executive Randy Boyd allegedly promised to compensate Diamond on a measured-mile basis, Swiber testified that Harbor's agent, Roland Maturin, "did not say much." Dkt. 51-2 at 49. Diamond's complaint does not seem to allege that Harbor made any agreements related to Diamond's compensation from the REA, instead alleging that RLB did so. *See* Dkt. 1 ¶ 20. Nor is there evidence that Harbor and Diamond ever agreed to compensate Diamond with payment equal to 54% of the second amended REA. Accordingly, Harbor is entitled to summary judgment on Diamond's breach-of-contract claim.

The only remaining claim Diamond has against Harbor is quasi-contractual—under a theory of quantum meruit. "Quantum meruit is an equitable theory which permits a 'right to cover . . . based upon a promise implied by law to pay for beneficial services rendered and knowingly

[3] The prime contract paid RLB $12 for every cubic yard dredged; Diamond's unit rate was $6.50 for every cubic yard dredged, i.e. 54%. Dkt. 51 at 2.

accepted.'" *Leasehold Expense Recovery, Inc. v. Mothers Work, Inc.*, 331 F.3d 452, 462 (5th Cir. 2003) (quoting *Black Lake Pipe Line Co. v. Union Constr. Co.*, 538 S.W.2d 80, 86 (Tex. 1976)). Recovery on an express contract and on quantum meruit are inconsistent. *Woodard v. Sw. States, Inc.*, 384 S.W.2d 674, 675 (Tex. 1964). Though Diamond and Harbor did have an express contract, a quantum meruit theory remains viable where, as is the case here, extra work is performed outside of the contract. *See Black Lake*, 538 S.W.2d at 89–90; Dkt. 62 at 16–18. Nevertheless, Diamond may not pursue tug-related expenses under quantum meruit, as the contract covers such expenses. *Id.* at 19–20.

To survive a properly supported motion for summary judgment, Diamond must introduce evidence as to the reasonable value of the work it performed or the materials it furnished. *M.J. Sheridan & Son Co., Inc. v. Seminole Pipeline Co.*, 731 S.W.2d 620, 624–25 (Tex. App.—Houston [1st Dist.] 1987, no writ). Diamond has not done so. In response to Harbor's evidence, including Diamond's notation of $500,000 as the amount it was owed for "extra work," Diamond presents testimony from Furlette stating that he had "no idea" what that number represented, while acknowledging it could have represented Diamond's outstanding costs related to differing site conditions or "the entirety of the extra work" completed by Diamond on the

project. Dkt. 46-9 at 47, 49, 93. This fails to create a fact issue. And while Diamond's complaint seems to express that the measure of its quantum meruit damages is "in no event less than 54% of the REA," Diamond does not present evidence that this figure bears a resemblance to the reasonable value of the work it performed or the services it rendered. Accordingly, Harbor is entitled to summary judgment against Diamond's quantum meruit claim.

B. RLB's Motion for Summary Judgment Against Diamond's Claims

RLB has moved for summary judgment on Diamond's breach-of-contract, implied-contract, and quasi-contract claims, as well as its Miller Act claims. Dkt. 49 at 10. The court has already dismissed Diamond's breach-of-contract and unjust-enrichment claims against RLB. Dkt. 62 at 10–12 n.2. And the court has also held that any quantum meruit damages against RLB for tug expenses or underpayment for total cubic yardage dredged "are barred as a matter of law." *Id.* at 19, 21.[4]

[4] In response to Diamond's motions for summary judgment, RLB argues that "to the extent the facts at trial would show that RLB was not a party to that contract, but that RLB separately contracted with Diamond for the KERRILYNN, and that RLB separately contracted with Diamond as part of the REA, then maritime law would apply to those contracts of its own force." Dkt. 54 at 10. The court notes that its previous opinion and memorandum order held that Diamond's claims for tug expenses against RLB failed to state a claim upon which relief could be granted. Dkt. 62 at 20. The court also held that no express contract existed between RLB and Diamond. *Id.* at 21.

The court grants RLB's motion for summary judgment regarding Diamond's quantum meruit claims. Under Texas law, "the measure of damages for recovery under a quantum-meruit theory is the reasonable value of the work performed and the materials furnished." *Hill v. Shamoun & Norman, LLP*, 544 S.W.3d 724, 733 (Tex. 2018). In response to RLB's motion for summary judgment, Diamond has not produced evidence demonstrating what the reasonable value of the work it performed or the services it rendered, for which it has not already been paid.

RLB is also entitled to summary judgment on Diamond's Miller Act claims. The Miller Act protects subcontractors on government projects by requiring contractors to obtain payment bonds to protect "all persons supplying labor and material in carrying out the work provided for in the contract." *United States ex rel. Am. Civ. Constr., LLC v. Hirani Eng'g & Land Surveying, PC*, 26 F.4th 952, 956 (D.C. Cir. 2022) (quoting 40 U.S.C. § 3131(b)). It also allows subcontractors to "recover increased out-of-pocket costs for labor and materials furnished in the course of performing its subcontract caused by contractor or government delay." *United States ex rel. T.M.S. Mechanical Contractors, Inc. v. Millers Mutual Fire Ins. Co.*, 942 F.2d 946, 951 (5th Cir. 1991). However, the Miller Act does not permit recovery of "profits on out-of-pocket expenditures attributable to delay." *Id.*

at 953. Claims that do not involve "actual outlay" of funds are also excluded from Miller Act recovery. *See id.* (citation omitted); *see also Consol. Elec. & Mech., Inc. v. Biggs Gen. Contracting, Inc.*, 167 F.3d 432, 436 (8th Cir. 1999) ("lost profits . . . are not within the scope of remedies provided under the Miller Act.").

Here, Diamond's Miller Act claims involve the REA award RLB allegedly misallocated. But that award incorporates sums that Diamond never actually expended, including overhead and profits. *See* Dkt. 46-6. Neither are recoverable under the Miller Act. Even more fatally, Diamond has failed to meet its summary-judgment burden in response to RLB's argument that the amended REA "did not segregate out delay costs, much less any delay costs of Diamond." Dkt. 49 at 24. Accordingly, RLB is entitled to summary judgment on Diamond's Miller Act claims.

C. RLB's Motion for Summary Judgment on RLB's Counterclaims

RLB has also moved for summary judgment on its declaratory-judgment claims. Dkt. 50 at 12. The court takes these up in turn.

1. Declaration that RLB does not have a direct or indirect contractual relationship with Diamond.

Based on the motion, response, and reply; the record; and the applicable law, the court grants summary judgment on RLB's counterclaim

for declaratory relief and declares that RLB does not have a direct or indirect contractual relationship with Diamond. *See* Dkt. 50 at 19. The accompanying relief RLB has sought—the dismissal of Diamond's breach-of-contract claims—has already been granted. *See* Dkt. 62.

2. Declaration that RLB was entitled to rely on Diamond's representations as to the amount Diamond would accept in connection with the settlement of the Amended REA.

RLB asks the court to grant summary judgment on its declaratory-judgment counterclaim to the effect that RLB was entitled to rely on Diamond's representations as to the amount Diamond would accept in connection with the settlement of the amended REA. Dkt. 50 at 19. The court denies that motion.

3. Declaration that Diamond's agreement to accept, and/or acceptance of, the $950,000 constitutes an accord and satisfaction of its claim for any amounts allegedly owed from the proceeds of RLB's settlement of the amended REA

RLB asks the court to grant summary judgment on its declaratory-judgment counterclaim to the effect that Diamond's agreement to accept, and or acceptance of, the $950,000 constitutes an accord and satisfaction. *Id.* at 21. The court denies that motion.

4. Declaration that Diamond does not have a valid Miller Act claim against RLB or Travelers

RLB asks the court to grant summary judgment on its declaratory-judgment counterclaim to the effect that Diamond does not have a valid Miller Act claim against RLB or Travelers. *Id.* at 23. Based on the motion, response, and reply; the record; and the applicable law, the court grants summary judgment on RLB's counterclaim for declaratory relief and declares that Diamond does not have a valid Miller Act claim against RLB or Travelers.

5. Promissory-Estoppel Counterclaim

RLB asks the court to grant summary judgment on its promissory-estoppel counterclaim. *Id.* at 26. The court denies RLB's motion.

6. Money Had and Received Counterclaim

RLB asks the court to grant summary judgment on its money-had-and-received counterclaim. *Id.* at 28. The court denies RLB's motion.

D. Travelers's Motion for Judgment on the Pleadings/Motion to Strike

Travelers has moved for judgment on the pleadings pursuant to Fed. R. Civ. P. 12(c). Dkt. 63. Travelers argues that in the court's November 12 memorandum opinion and order, the court gave Diamond 14 days to amend its complaint to incorporate allegations that it gave proper Miller Act notice pursuant to 40 U.S.C. § 3133(b)(2). *See* Dkts. 62; 63 at 2. Diamond failed to

do so; consequently, its Miller Act claims are deficient, and the court should enter judgment dismissing those claims. Dkt. 63 at 4. In the alternative, Travelers argues that Diamond failed to meet the standards of Fed. R. Civ. P. 15 in amending its complaint. *Id.* Travelers and RLB also move to strike the untimely amended complaint. Dkts. 65; 73.

The court authorized Diamond to file an amended pleading for one purpose: to cure deficiencies in pleading notice of its Miller Act claim. The court finds that RLB is entitled to summary judgment on Diamond's Miller Act claims for other reasons, so the attempted amendment no longer serves any purpose. Additionally, the late filing was not accompanied by a motion for leave to file. *See* Galveston District Court Rule of Practice 5(i); Fed. R. Civ. P. 15(a); *Klein v. Marvin Lumber & Cedar Co.*, 575 Fed. App'x 347, 349–50 (5th Cir. 2014) (holding a district court did not abuse its discretion in striking a late-filed complaint where no leave of court was sought before the filing, and where no prejudice would result from the court striking the complaint). Moreover, Diamond has not filed a response to RLB's motion to strike. Dkt. 73. The motions to strike the amended complaint are granted. But Travelers's 12(c) motion for judgment on the pleadings is denied as moot as the court has already disposed of Diamond's Miller Act claims.

* * *

The court grants Harbor's motion for summary judgment. Dkt. 46. RLB's motion for summary judgment against Diamond's claims is also granted. Dkt. 49. RLB's motion for summary judgment on its counterclaims is granted in part and denied in part. Dkt. 50. Travelers's and RLB's motions to strike are granted and its motion for judgment on the pleadings is denied as moot. Dkts. 63; 65; 73. The only live claims remaining in this case are RLB's counterclaims. RLB's claims for attorney's fees are carried with the case.

Signed on Galveston Island this 14th day of February, 2023.

JEFFREY VINCENT BROWN
UNITED STATES DISTRICT JUDGE