No. _____

In the Supreme Court of the United States

HARLEY MARINE SERVICES, INCORPORATED,
PETITIONER,

v.

CONRAD SHIPYARD, L.L.C., FRANCO MARINE 1, L.L.C.;
FRANCO MARINE 2, L.L.C., AND HARLEY FRANCO
RESPONDENTS.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

KEVIN H. MARINO
Counsel of Record
MARINO, TORTORELLA & BOYLE, P.C.
437 Southern Boulevard
Chatham, NJ 07928
kmarino@khmarino.com
(973) 824-9300

Counsel for Petitioner

QUESTION PRESENTED

Whether the Fifth Circuit violated the fundamental principle of appellate review that a finding of fact is clearly erroneous if there is no evidentiary support for it in the record by affirming the trial court's reimbursement and indemnification rulings even though there was no evidence that Franco Marine 1, L.L.C., Franco Marine 2, L.L.C. and Harley Franco had actual agency authority to bind Harley Marine Services, Inc. to the obligations in the subject vessel construction contracts with Conrad Shipyard, L.L.C.?

PARTIES TO THE PROCEEDING

The caption contains the names of all the parties to the proceeding below.

RULE 29.6 STATEMENT

Petitioner Harley Marine Services, Inc., now known as Centerline Logistics Corporation, is owned 100% by Alimpik Tug & Barge Holdco 1, LLC, a privately held limited liability company. Alimpik Tug & Barge Holdco 1, LLC's ultimate parent is Alimpik Tug & Barge Holdco 3, LLC, a privately held limited liability company. Alimpik Tug & Barge Holdco 3, LLC has no parent and no publicly held corporation owns 10% or more of its stock.

RELATED PROCEEDINGS

Pursuant to Supreme Court Rule 14.1, Petitioner states that the following proceedings are directly related to the action that is the subject of this Petition.

United States District Court (E.D. La.):

Conrad Shipyard, L.L.C. v. Franco Marine 1, L.L.C., et al., No. 2:19-cv-10864-CJB-JVM (Dec. 16, 2022) (jury verdict in favor of Conrad Shipyard, L.L.C.)

Conrad Shipyard, L.L.C. v. Franco Marine 1, L.L.C., et al., No. 2:19-cv-10864-CJB-JVM (Feb. 2, 2023) (findings of fact and conclusions of law in favor of Franco Marine 1, L.L.C., Franco Marine 2, L.L.C. and Harley Franco on reimbursement and indemnification claims)

Conrad Shipyard, L.L.C. v. Franco Marine 1, L.L.C., et al., No. 2:19-cv-10864-CJB-JVM (Feb. 2, 2023) (judgment in favor of Conrad Shipyard, L.L.C., Franco Marine 1, L.L.C., Franco Marine 2, L.L.C. and Harley Franco)

Conrad Shipyard, L.L.C. v. Franco Marine 1, L.L.C., et al., No. 2:19-cv-10864-CJB-JVM (Feb. 15, 2023) (amended judgment in favor of Conrad Shipyard, L.L.C., Franco Marine 1, L.L.C., Franco Marine 2, L.L.C. and Harley Franco)

Conrad Shipyard, L.L.C. v. Franco Marine 1, L.L.C., et al., No. 2:19-cv-10864-CJB-JVM (Apr. 24, 2023) (order and reasons denying Harley Marine Service, Inc.'s renewed motion for judgment as a matter law pursuant to Rule 50(b) or, alternatively, for a new trial pursuant to Rule 59)

United States Court of Appeals (5th Cir.):

Conrad Shipyard, L.L.C. v. Franco Marine 1, L.L.C., et al., No. 23-30286 (Feb. 23, 2024) (affirming judgment in favor of Conrad Shipyard, L.L.C., Franco Marine 1, L.L.C., Franco Marine 2, L.L.C. and Harley Franco)

Conrad Shipyard, L.L.C. v. Franco Marine 1, L.L.C., et al., No. 23-30286 (June 4, 2024) (order denying petition for panel rehearing)

Conrad Shipyard, L.L.C. v. Franco Marine 1, L.L.C., et al., No. 23-30286 (July 2, 2024) (order denying motion to stay mandate pending filing and adjudication of petition for a writ of certiorari)

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The opinion of the court of appeals is unreported and is reproduced at App. 1a–2a. The opinions of the district court are unreported and are reproduced at App. 3a–18a, App. 25a–34a.

JURISDICTION

After a jury verdict on December 16, 2022, the trial court entered a Judgment on February 2, 2023, as amended by an Amended Judgment on February 15, 2023, awarding damages against Harley Marine Service, Inc. as follows: (i) $7,494,930.00 to Conrad Shipyard, L.L.C.; (ii) $2,000,000.00 to Franco Marine 1, L.L.C. plus prejudgment interest from May 24, 2018 to the date of the Amended Judgment; and (iii) $1,096,897.88 to Harley Franco. In an Opinion dated February 23, 2024, the court of appeals affirmed the trial court's Judgment and Amended Judgment in their entirety. App. 19a–24a. On June 4, 2024, the court of appeals denied Harley Marine Services, Inc.'s petition for panel rehearing. This Court has jurisdiction under 28 U.S.C. § 1254. App.36a–37a.

STATEMENT OF THE CASE

A. Introduction.

This petition was prompted by the Fifth Circuit's disregard of the fundamental principle of appellate review that a factual finding constitutes clear error and must be reversed when there is no evidence in the trial record to support it. In the district court, a jury rendered a verdict finding Harley Marine Services, Inc. ("HMS") liable, based on agency principles, to Conrad Shipyard, L.L.C. ("Conrad") for breach of contracts to build two tugboats, although HMS was neither a party to nor a signatory of those contracts and was not even mentioned in them.

Rather, the construction contracts were between Conrad and Franco Marine 1, L.L.C. ("FM1") and Franco Marine 2, L.L.C. ("FM2" and, together with FM1, the "Franco LLCs") and were signed by the Franco LLCs' manager, Harley Franco (together, the "Franco Parties"), who was at the time HMS's majority owner, Chairman and CEO. After the jury rendered its verdict, the district court found that HMS is obligated under agency law to reimburse FM1 for the $2,000,000 down payment it made to Conrad and that the Franco Parties were not obligated to indemnify HMS for its liability to Conrad.

On February 23, 2024, a panel of the Fifth Circuit issued a two-paragraph opinion (the "Opinion") affirming the judgment below, including the district court's findings on the reimbursement and indemnification issues. The Opinion thus affirmed the district court's findings that HMS is required to reimburse FM1 for its $2 million down payment and is not entitled to be indemnified by the Franco Parties for the damages it owes to Conrad in connection with the construction contracts between Conrad and the Franco LLCs. Those findings can only stand if the Franco Parties had actual authority—as opposed to apparent authority—to bind HMS to the obligations in the vessel construction contracts with Conrad. There was, however, no record evidence at trial that the Franco Parties had such authority. The district court instead relied entirely on its finding that the Franco Parties had apparent authority as a result of HMS's dealings with Conrad.

As a result, the panel's affirmance of the trial court's judgment conflicts with decisions of the Fifth Circuit and every other court of appeals standing for the settled principle that a factual finding is clearly erroneous when there is no evidence in the record to support it. The panel's disregard of that fundamental principle of appellate review

departs so significantly from the accepted and usual course of judicial proceedings, and sanctions such a departure by the trial court, as to call for an exercise of this Court's supervisory power. Absent review and correction by this Court, the Opinion would conflict with numerous decisions by every Court of Appeals that refuse to allow factual findings to stand where they lack record support. Because the principle of appellate review the Fifth Circuit ignored arises frequently in a broad range of legal settings, this Court's intervention is required to restore uniformity in the application of law. As a result, HMS's petition for writ of certiorari should be granted.

B. The Construction Contracts Between Conrad And The Franco LLCs.

HMS is a marine transport company headquartered in Seattle. Record on Appeal ("ROA"), ECF No. 27, ROA.4993.[1] Harley Franco formed HMS in 1987 and was its majority owner, Chairman and CEO until HMS's board terminated him for cause in March 2019. App. 4a; ROA.293, 363, 4702, 5269, 5302–03, 8022.

During his tenure as HMS's CEO, Franco routinely bought vessels in his individual capacity and sold or leased them to HMS for profit. To do so, Franco would create and finance personally-owned LLCs to contract with and pay shipyards—including Conrad in south Louisiana—to build vessels that Franco believed HMS needed. ROA.4986–89, 5125, 5370, 7805–8021. Occasionally, HMS or one of its subsidiaries would assume liability for a vessel contract mid-construction by taking a contract assignment from the Franco-owned LLC. ROA.4842. Otherwise,

[1] Unless otherwise indicated, all docket citations refer to Case No. 23-30286 in the proceeding before the Fifth Circuit below.

Franco's LLC would remain obligated to the shipbuilder on the construction contract, take ownership of the vessel upon completion of its construction, and then sell/lease the vessel to HMS in a follow-on transaction. ROA.4986–89, 5125, 5370, 7805–8021.

Following that practice, Franco created FM1 and FM2 to contract with Conrad for construction of the two tugboats at issue in this case. App. 4a; ROA.5267–68, 6969–76. In September 2017, FM1 and FM2 executed the vessel construction contracts with Conrad, with Franco signing as manager of each LLC. App. 4a; ROA.5962–6003. Eventually, Franco personally funded FM1's down payment to Conrad, which Conrad knew was Franco's personal obligation; Franco authorized the deposit of $2 million from his personal credit line into FM1's account, and FM1 paid Conrad with those funds. ROA.168, 5297, 5378–79, 7741–42.

HMS's board never agreed to assume the construction contracts executed by FM1 and FM2. ROA.5242, 5250. Ultimately, FM1 and FM2 were unable to obtain construction financing, failed to pay most of the sums due to Conrad for the vessels, and defaulted on the construction contracts. ROA.165.

C. The Parties' Claims, Crossclaims And Counterclaims.

In mid-2019, Conrad sued FM1, FM2 and HMS for damages caused by FM1 and FM2's breach of the vessel construction contracts. App. 4a; ROA.39–41. Conrad contended that Louisiana law made HMS liable for the breach—even though it was not a party to either contract—because (a) HMS and the Franco Entities were a single business enterprise; and/or (b) HMS vested Franco and the Franco LLCs with agency authority to contract

with Conrad on HMS's behalf. App. 4a; ROA.39–41. Conrad also brought a claim for detrimental reliance against HMS, alleging that Conrad executed the contracts in reliance on HMS's representations that it would pay Conrad. App. 4a; ROA.41–43.

HMS brought crossclaims against FM1 and FM2 and a third-party claim against Franco for indemnification. App. 4a; ROA.83–85. HMS contended that if it were held liable to Conrad under an agency theory for FM1 and FM2's breach of the contracts, the Franco Parties must indemnify HMS because they had no actual authority to bind HMS to the contracts. *Id.*

The Franco Parties also brought claims against HMS. FM1 and FM2 brought an agent-reimbursement claim, alleging that HMS actually authorized them to execute the contracts for HMS and must therefore reimburse the $2 million down payment FM1 paid Conrad. App. 4a–5a; ROA.168–69. FM1 and FM2 also brought a detrimental-reliance claim, alleging that they entered the contracts relying on HMS promises that it was the real party responsible for FM1 and FM2's contractual obligations to Conrad. App. 4a–5a; ROA.169. For his part, Franco brought a corporate-director indemnity claim under Washington law, contending that HMS must pay his legal fees to defend against HMS's action. App. 5a; ROA.590.

D. The Jury's Verdict And The District Court's Judgment Against HMS.

Shortly before trial, HMS and the Franco Parties agreed that the district court, rather than the jury, would decide the indemnification claims between HMS and the Franco Parties and the jury would therefore only render a verdict on Conrad's claims and the Franco LLCs' reimbursement claim against HMS. ROA.5157–58. After trial,

the jury found for Conrad on its breach-of-contract and detrimental-reliance claims against HMS. App. 5a; ROA.2754–56. The jury did not find that FM1, FM2 and HMS were a single business enterprise, ROA.2755, but it did find that FM1 and FM2 dealt with Conrad as HMS's agents within the scope of their actual or apparent authority. App. 5a; ROA.2754–55. The jury awarded $7,494,930 in breach-of-contract damages against HMS but was not asked to award—and did not award—any damages for detrimental reliance. App. 5a; ROA.2756.

Although it found for Conrad as between Conrad and HMS, the jury did not find for FM1 and FM2 on their claims against HMS. ROA.2756–57. Rather, the jury reached no verdict on FM1 and FM2's detrimental-reliance claim. App. 5a; ROA.2756. And as for the Franco LLCs' agent-reimbursement claim, the jury found that FM1's $2 million payment to Conrad was within its agency authority, but that HMS never agreed explicitly or implicitly to reimburse that payment and that HMS owed no reimbursement to the Franco LLCs. App. 5a–6a. The jury answered "None" in response to a question on the verdict form asking, "what amount, if any, does HMS owe to FM1 and/or FM2 related to down payments to Conrad for construction of the vessels." ROA.2756–57.

The district court then issued findings of fact and conclusions of law on HMS's and the Franco Parties' indemnification claims, ruling against HMS. App. 3a–18a. The court concluded that (1) the Franco Parties had apparent authority to bind HMS to the vessel construction contracts; and thus (2) the Franco Parties were not obligated to indemnify HMS for the breach-of-contract damages it owed Conrad. App. 7a–18a; ROA.3432–33, 3437. The court also held that Washington law required HMS to indemnify Franco for his legal fees to successfully defend

against HMS's indemnification claim. App. 16a–18a; ROA.3437–39. The court further ruled—despite the jury answering "None" when asked what amount, if any, HMS owed to the Franco LLCs in connection with the down payment—that because of the Franco Parties' apparent authority, HMS must reimburse FM1's $2 million down payment as a matter of law. App. 11a–12a; ROA.3434.

The district court later denied HMS's motion for judgment as a matter of law on Conrad's breach-of-contract and detrimental-reliance claims, finding there was sufficient evidence to support the jury's verdict. App. 31a; ROA.4567. The district court then entered final judgment against HMS on all claims, awarding $7,494,930 to Conrad for breach of contract, $2,000,000 to FM1 for reimbursement of its down payment, and $1,096,897.88 to Franco for his legal fees, plus interest and costs. App. 19a–24a; ROA.3447–48.

E. The Fifth Circuit Affirmed The Judgment And Denied HMS's Petition For Panel Rehearing.

In an Opinion dated February 23, 2024, a panel of the Fifth Circuit affirmed the district court's judgment against HMS in its entirety. (Higginbotham, Smith and Higginson, J.J.) The panel did not set forth its own analysis, but rather stated that it was affirming the judgment "essentially for the reasons stated in the district court's February 2, 2023 'Findings of Fact and Conclusions of Law' and its April 24, 2023 'Order and Reasons' denying HMS's requested relief." App. 2a. On June 4, 2024, this Court denied HMS's motion for panel rehearing.

REASONS FOR GRANTING THE PETITION

A. The Court Should Grant Certiorari Because The Fifth Circuit's Ruling Conflicts With Substantial Federal Precedent Regarding A Fundamental Principle Of Appellate Review.

The factors this Court considers in deciding whether to grant a petition for writ of certiorari include whether the court of appeals (1) "has entered a decision in conflict with the decision of another United States court of appeals on the same important matter;" and/or (2) "has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of [the Supreme] Court's supervisory power." S. Ct. R. 10(a). Both of those factors are present here and warrant granting HMS's petition for writ of certiorari because, in affirming the district court's judgment in favor of the Franco Parties, the Fifth Circuit ignored and contradicted the bedrock principle of appellate review—which has been embraced by every federal court of appeals, including the Fifth Circuit—that a factual finding is clear error when there is no record evidence to support it. *See, e.g., Kristensen v. United States*, 993 F.3d 363, 367 (5th Cir. 2021) ("A finding of fact is clearly erroneous if it is without substantial evidence to support it.…") (cleaned up).[2] Because that principle is implicated in

[2] *See also, e.g., United States v. Rico*, 3 F.4th 1236, 1238 (10th Cir. 2021) ("Clear error exists when a factual finding lacks any factual support in the record…."); *Nat'l Wildlife Fed'n v. Nat'l Marine Fisheries Serv.*, 886 F.3d 803, 820 (9th Cir. 2018) ("A finding of fact is clearly erroneous … if the record contains no evidence to support it."); *Ghahan, LLC v. Palm Steak House, LLC*, 745 F. App'x 302, 306 (11th Cir. 2018) ("A finding is clearly erroneous if the record lacks substantial evidence to support it.") (cleaned up); *Lin v. Lynch*, 813 F.3d 122, 127

innumerable cases and arises in every conceivable legal context, this Court's intervention is required to restore uniformity and consistency.

Here, following entry of the jury's verdict, the district court found that (1) HMS must reimburse FM1 for the $2 million down payment as an agent expense, (2) the Franco Parties are not obligated to indemnify HMS for its liability to Conrad, and (3) HMS must pay Franco's legal fees because he prevailed on HMS's indemnification claim. App. 7a–18a; ROA.3425–3439, 3447–48. These reimbursement and indemnification rulings are only valid if there was evidence at trial that the Franco Parties had actual agency authority—not just apparent authority—to bind HMS to the vessel construction contracts that they executed with Conrad. As demonstrated below, however, there was no evidence in the record that the Franco Parties had such actual authority. Thus, to allow the trial court's reimbursement and indemnity rulings to stand would contravene fundamental principles of federal appellate law.

This conclusion cannot be altered by the district court's finding that FM1 and FM2 had apparent—as opposed to actual—authority to bind HMS. Louisiana law, which applied to the claims at issue here, firmly distinguishes between actual and apparent agency authority. An agent has actual authority to bind a corporation to an acquisition only if the corporation's board or bylaws expressly convey that authority to the agent. *See, e.g.*, LA.

(2d Cir. 2016) (explaining that district courts commit clear error when there is "no evidence at all to support a finding of fact"); *Gold v. First Tenn. Bank Nat'l Ass'n (In re Taneja)*, 743 F.3d 423, 435 (4th Cir. 2014) ("A finding is clearly erroneous if no evidence in the record supports it.") (cleaned up).

CIV. CODE ARTS. 2989, 2996; LA. REV. STAT. § 12:1–841; *Bridges v. X Commc'ns, Inc.*, 861 So.2d 592, 598 (La. App. 5 Cir. 2003); *Stokes v. Bruno*, 720 So. 2d 388 (La. App. 3 Cir. 1998); *Credit Alliance Corp. v. Centenary College*, 136 So. 130 (La. App. 2 Cir. 1931).[3] By contrast, apparent authority exists when there is no actual authority, yet the corporation acts toward third parties in ways that reasonably suggest agency authority. *See, e.g.*, LA. CIV. CODE ART. 3021; *Boulos v. Morrison*, 503 So. 2d 1, 3 (La. 1987); *AAA Tire & Export v. Big Chief Truck Lines, Inc.*, 385 So. 2d 426, 429 (La. App. 1 Cir. 1980).

Only agents acting within the scope of their actual authority are entitled to reimbursement of their expenses. *See* LA. CIV. CODE ARTS. 3008, 3012; *Eylers v. Roby Motors Co.*, 123 So. 477, 478 (La. App. 2 Cir. 1929); *Interstate Elec. Co. v. Neugas*, 3 La. App. 353, 356 (1925); *accord* RESTATEMENT (THIRD) OF AGENCY § 8.14 cmt. b. And when an agent acts without actual authority, it must indemnify the principal for the resulting amounts the principal owes third parties, even if the principal's manifestations of apparent authority led to its liability to those third parties. LA. CIV. CODE ART. 3008; *Analab, Inc. v. Bank of S.*, 271 So. 2d 73, 76 (La. App. 4 Cir. 1972); *Harepour v. A.C. Collins Ford*, 363 So. 2d 1261, 1263 (La. App. 4 Cir. 1978); *accord* RESTATEMENT (THIRD) OF AGENCY § 8.09 cmt. b. The Franco Parties have never disputed these governing legal rules.

The district court's reimbursement and indemnity decisions overlooked these distinctions between actual and apparent authority under Louisiana law. The court's

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[3] *See also In re DeRosia*, 2015 WL 3819595 (Bankr. E.D. La. June 18, 2015) (Louisiana law); *Marsh Inv. Corp. v. Langford*, 490 F. Supp. 1320 (E.D. La. 1980) (Louisiana law).

decision expressly rested on its view that HMS's dealings with Conrad suggested the Franco Parties had "apparent authority." App. 11a–12a; ROA.3432–33. But as explained above, apparent authority is legally insufficient to trigger an HMS reimbursement obligation or to defeat HMS's right to indemnity from the Franco Parties. Evidence of actual authority is required. The district court cited no such evidence because none was adduced.

The Franco Parties never disputed below that, if Harley Franco had actual authority to bind HMS to the vessel construction contracts with Conrad, that authority had to come from either HMS's board or bylaws. The Franco Parties could not and did not contend at trial that HMS's bylaws conveyed such authority, for the bylaws state that HMS's president (then Harley Franco) could only sign agreements for the corporation if the board specifically authorized him to do so. ROA.6596. Thus, Franco testified at trial that the source of his authority was the HMS board's approval of the Board Approval Memorandum (the "BAM") for the tugboats at issue. ROA.5271–72, 5276, 5291. On appeal, Franco retreated from his exclusive reliance on the BAM for authority, suggesting that an "indicative" or "build" letter the Board approved was an independent source of authority to bind HMS to the Conrad contracts. But the record forecloses any conclusion that, in approving the indicative letter, the Board approved something different than the deal outlined in the BAM; Franco himself testified the indicative letter was "part and parcel to," "tied together" with, and not a different deal from the BAM. ROA.5278, 5311, 5318–19.

As a result, whether there was evidence of actual authority turns on what the HMS board approved in the BAM (assuming arguendo that the board approved the BAM in its entirety). Given the BAM's plain language, no

one disputes what the board approved: Harley Franco (through the Franco LLCs) would contract with Conrad to build and purchase the vessels (and obtain financing for that purpose), and upon the completion of construction of the vessels, Franco would have the option to sell or lease them to HMS. ROA.5932, 5935–36. The BAM's "Proposed Structure" expressly provided that "Harley Franco, as an individual, would start the build process in one of his personal asset owning entities, come up with and provide initial downstroke to get the shipyard started, and procure both construction and take-out financing" and, "[u]pon completion of construction, … would (a) have the option to … lease back to HMS division of Olympic Tug & Barge … or (b) sell assets to Olympic Tug and Barge." ROA.5935. Indeed, Harley Franco repeatedly affirmed at trial that he, through his LLCs, was going to sell or lease the boats to HMS. ROA.5271–72, 5318–19, 5339, 5356–57, 5414.

These undisputed facts foreclosed a finding that by approving the BAM, HMS's board authorized an agency transaction and vested the Franco Parties with actual authority to bind HMS to the obligations imposed by the construction contracts. An agent is not a party to a contract that it executes for a principal, so the agent acquires no rights under the contract; the principal is the sole contractual party from the start. *See* LA. CIV. CODE ARTS. 3010, 3016; *Guidry v. Tarver Motor Co., Inc.*, 923 So. 2d 839 (La. App. 3 Cir. 2006). Had Franco been vested with authority to contract with Conrad as HMS's agent, he would have acquired no boats from Conrad that he could later sell or lease to HMS; HMS as principal would have acquired the boats from Conrad under the contracts, and HMS could not buy or lease boats from Franco that it already owned. That, of course, is not what the BAM contemplated. In approving the BAM, the HMS board authorized an HMS

acquisition from Franco that was contingent upon Franco's acquisition of the vessels from Conrad after completion of construction. That is not agency under Louisiana law.

And what the HMS board agreed to never changed. After the Franco Parties began defaulting on their obligations under the construction contracts, Franco and Conrad asked HMS to accept assignment of those contracts from Franco. ROA.7303; *see also* ROA.5150, 7301, 7307–08, 7325–26, 7331–32, 7346, 7348–49, 7746. As a threshold matter, these assignment requests further confirm that the BAM did not propose an agency transaction or vest the Franco Parties with actual authority because an agent has no contracts to assign to its principal; the contract is the principal's already. LA. CIV. CODE ARTS. 3010, 3016. Moreover, the board unequivocally refused to agree to HMS assuming Franco's obligations to Conrad. ROA.5242, 5250, 7312–18, 7325–26, 7348–51, 8039–40. And this meant that HMS's obligation to acquire the boats continued to be, as the BAM said, a contingent obligation to buy or lease the boats from Franco if, and only if, he procured financing for the boats, paid all sums due for their construction, and then acquired them from Conrad after construction was completed—none of which ever happened.

Thus, even if a factfinder could reasonably hold HMS liable to Conrad on apparent-authority grounds because HMS employees acted in ways that suggested the Franco Parties were agents, there is no evidence that HMS's board ever agreed that Harley Franco could bind HMS to purchase the boats directly from Conrad and thus no evidence that he had actual authority to do so. As a result, it was legal error to require HMS to reimburse the Franco Parties' contractual down payment and to deny HMS

indemnity from the Franco Parties for their unauthorized acts.

Further, the absence of any evidentiary support for the trial court's indemnification ruling cannot be remedied by the jury's detrimental-reliance finding. Specifically, relying on common-law indemnity rules that require an indemnitee to be without fault, the district court held that HMS was at fault and thus could not recover indemnification from the Franco Parties because the jury found that HMS had caused Conrad to detrimentally rely on HMS promises that it would pay for the boats. But the court ignored the fact that HMS is entitled to indemnification from the Franco Parties under settled principles of agency law that are entirely distinct from common-law indemnification and do not require the principal to be free from fault. Indeed, as noted above, a principal is entitled to indemnification from its agent for amounts owed to third parties based on apparent authority even when the principal's representations create the apparent authority—*i.e.*, the third party detrimentally relies on the principal's representations. See LA. CIV. CODE ART. 3008; *Analab, Inc.*, 271 So. 2d at 76; *Harepour*, 363 So. 2d at 1263; *accord* RESTATEMENT (THIRD) OF AGENCY § 8.09 cmt. b.

Further, HMS's alleged promises did not harm Conrad as a matter of law because Conrad's reliance was legally unjustified. Louisiana law "does not favor" detrimental-reliance liability, *Koerner v. CMR Constr. & Roofing, LLC*, 910 F.3d 221, 232 (5th Cir. 2018), and requires "stric[t]" and "carefu[l]" examination of such claims. *Harris v. Bd. of Supervisors*, 340 So. 3d 1121, 1126 (La. App. 1 Cir. 2022). A party's reliance on a promise must be justified, *Koerner*, 910 F.3d at 231, and when "the person claiming detrimental reliance is a sophisticated businessperson," like Conrad, "the bar for reasonable reliance is

higher." *Schoonover v. Hallwood Fin. Ltd.*, 590 B.R. 134, 146 (W.D. La. 2018) (Louisiana law). Further, reliance on a promise is unjustified if the promise contradicts an unambiguous contract. *Cenac v. Orkin, L.L.C.*, 941 F.3d 182, 198 (5th Cir. 2019). Indeed, when a contract has an integration clause, reliance on "alleged promises made outside of the integrated agreements" is "unreasonable as a matter of law." *DLN Holdings, L.L.C. v. Guglielmo*, 2022 WL 2339094, at *18 (La. App. 4 Cir. June 29, 2022).

Here, it is indisputable that Conrad's contracts—which it drafted as a sophisticated shipyard owner with decades of contracting experience—stated unequivocally that the Franco Parties were the obligors paying Conrad for the boats. ROA.5962, 5982, 5983, 6003. The contracts' integration clauses further emphasized that no other agreements about the contracts' subject matter existed—such as an HMS guaranty of the Franco Parties' obligations to purchase the tugs. ROA.5979, 6000. Therefore, to the extent Conrad detrimentally relied on purported HMS promises that, despite what Conrad's contracts said, HMS was going to pay Conrad for the boats, that reliance was legally unjustified (and commercially unreasonable).

The district court's opinions summarily declared Conrad's reliance justified without analyzing HMS's argument that Louisiana law barred Conrad from relying on promises that contradicted its contracts. App. 11a–15a, App. 29a–30a; ROA.3437, 4571–72. The court then compounded its error by using the jury's legally irrelevant and unsound detrimental-reliance finding to deny HMS the indemnity due it from the Franco Parties under agency law for their unauthorized acts.

In sum, because the district court's indemnification and reimbursement rulings were, as a matter of settled law, dependent on the existence of actual agency authority

and could not be based on apparent agency authority, they could only be affirmed on appeal if there was evidence that FM1 and FM2 had such actual authority to act on HMS's behalf. But as demonstrated above, the trial record was devoid of any evidence of actual authority. As a result, the Opinion's affirmance of the district court's judgment on these issues conflicts with settled federal appellate law holding that a factual finding is clear error when there is no record evidence to support it.[4]

Indeed, the Fifth Circuit's manifest disregard of this bedrock principle of appellate review so departs from the accepted and usual course of judicial proceedings as to warrant exercise of the Supreme Court's supervisory power. Appellate courts have an absolute duty to ensure that trial courts properly apply the correct legal standards and to correct any failure to do so. *Engebretsen v. Fairchild Aircraft Corp.*, 21 F.3d 721, 728 (6th Cir. 1994)

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[4] *See, e.g., Nat'l Wildlife Fed'n*, 886 F.3d at 820 ("A finding of fact is clearly erroneous … if the record contains no evidence to support it."); *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1119 (9th Cir. 2009) ("We consider a finding of fact to be clearly erroneous … if the record contains no evidence to support it.") (cleaned up); *Holmes v. Miller*, 768 Fed. Appx. 781, 784 (9th Cir. 2019) ("A district court's factual finding is clearly erroneous if it is … without support in inferences that may be drawn from facts in the record.'"); *Rico*, 3 F.4d at 1238 ("Clear error exists when a factual finding lacks any factual support in the record….") (citation and quotation omitted); *Ghahan, LLC*, 745 F. App'x at 306 ("A finding is clearly erroneous if the record lacks substantial evidence to support it") (citation and quotation omitted); *Kristensen*, 993 F.3d at 367 ("'A finding of fact is clearly erroneous if it is without substantial evidence to support it….'") (quoting *Becker v. Tidewater, Inc.*, 586 F.3d 358, 365 (5th Cir. 2009)); *Wu Lin v. Lynch*, 813 F.3d 122, 127 (2d Cir. 2016) (explaining that district courts commit clear error when there is "no evidence at all to support a finding of fact"); *Gold*, 743 F.3d at 435 ("A finding is clearly erroneous if no evidence in the record supports it.") (cleaned up).

(stating that "'it is the duty and right of appellate courts to determine whether, in the exercise of the discretion committed to it, the trial judge applied correct legal standards'") (quoting *Mannino v. International Mfg. Co.*, 650 F.2d 846, 849 (6th Cir. 1981)); *United States v. Johnson*, 318 F.3d 821, 826-27 (8th Cir. 2003) (stating that the court's discretion "must be exercised on the basis of a finding fairly supported by facts in the record, … and when that factual support is lacking we on the appellate courts have a duty to correct what we perceive to be error"). Further, "[i]t is important for [courts of appeals] to apply the clearly erroneous standard properly and consistently when [they] are called upon to review factual findings." *Libman Co. v. Vining Indus.*, 69 F.3d 1360, 1367 (7th Cir. 1995) (dissent, Coffey, J.).

The legal principle the Fifth Circuit disregarded is fundamental to appellate review. Accordingly, the Court should grant HMS's petition for writ of certiorari and reinforce that core principle.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

KEVIN H. MARINO
Counsel of Record
MARINO, TORTORELLA & BOYLE, P.C.
437 Southern Boulevard
Chatham, NJ 07928
kmarino@khmarino.com
(973) 824-9300
Counsel for Petitioner

SEPTEMBER 3, 2024

APPENDIX

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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 23-30286

CONRAD SHIPYARD, L.L.C.,
RESPONDENT-APPELLEE,

v.

FRANCO MARINE 1, L.L.C.; FRANCO MARINE 2, L.L.C.,
RESPONDENTS-APPELLEES,

v.

HARLEY MARINE SERVICES, INCORPORATED,
PETITIONER-APPELLANT,

v.

HARLEY FRANCO,
RESPONDENT-APPELLEE.

February 23, 2024

Appeal from the United States District Court for the
Eastern District of Louisiana, USDC No. 2:19-CV-10864
(Barbier, *D.J.*)

Before: HIGGINBOTHAM, SMITH, AND HIGGINSON, Circuit Judges. Per Curiam:

Appellant Harley Marine Services, Inc. appeals the district court's order denying its renewed motion for judgment as a matter of law, finding that sufficient evidence supported the jury's verdict against HMS and that HMS must indemnify Appellee Franco Marine 1 for its $2 million down payment and indemnify Appellee Harley Franco for his legal fees.

We have reviewed the briefs, the applicable law, and pertinent parts of the record, and heard oral argument. The judgment is AFFIRMED, essentially for the reasons stated in the district court's February 2, 2023 "Findings of Fact and Conclusions of Law" and its April 24, 2023 "Order and Reasons" denying HMS's requested relief.

APPENDIX B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

No. 19-10864

CONRAD SHIPYARD, L.L.C.,
PLAINTIFF-APPELLEE,

v.

FRANCO MARINE 1, L.L.C.; FRANCO MARINE 2, L.L.C.,
DEFENDANTS-APPELLEES,

v.

HARLEY MARINE SERVICES, INCORPORATED,
DEFENDANT-THIRD PARTY PLAINTIFF-APPELLANT,

v.

HARLEY FRANCO,
THIRD PARTY DEFENDANT-APPELLEE.

February 2, 2023

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Barbier, District Judge:

This case involves a breach of contract claim brought by Conrad Shipyard, LLC, located in Morgan City, Louisiana, against Harley Marine Services (HMS), a marine transportation company located in the State of

Washington. Conrad alleged that it built two offshore vessels for HMS, which then refused to pay, resulting in Conrad having to sell the vessels to another party at a financial loss.

Harley Franco is the founder of HMS and, until March 2019, was its Chairman, President, and CEO. In 2017, Harley Franco wished to build two new vessels to service a marine transportation contract with an existing customer, Phillips 66. By that time, the HMS board did not want the additional cost of two new vessels on its balance sheet because it was in the process of negotiating securitization. After discussions, Harley Franco formed two LLCs, Franco Marine 1 ("FM1") and Franco Marine 2 ("FM2"), in July 2017 for the sole purpose of being the contracting parties for the construction of the two vessels by Conrad. Harley Franco, on behalf of FM1, FM2, and HMS, executed the Vessel Construction Contracts on September 12, 2017, for a total amount of $19,652,000.00.

When the HMS/Franco Parties (Harley Franco, FM1, and FM2) ceased making required payments, Conrad was forced to sell the vessels to another party at a reduced price. Conrad then commenced the present action against the Franco LLCs and HMS for breach of contract, under the single business enterprise theory. Conrad also brought a detrimental reliance claim against HMS. HMS counterclaimed for conversion[1] against Conrad, brought a cross-claim for indemnity against FM1 and FM2, and brought a third-party indemnity claim against Harley Franco. FM1 and FM2 filed cross-claims against HMS

[1] HMS dismissed their conversion claim at trial. HMS had alleged that Conrad converted two tow winches that belonged to HMS because Conrad sold the tow winches after it did not receive payment for the vessels.

seeking reimbursement of the $2 million that FM1 paid to Conrad for the Vessels, and Franco filed a counterclaim against HMS seeking indemnification.

A jury trial took place from December 12, 2022 to December 16, 2022. At the close of the trial, the jury rendered a verdict, answering eleven of fourteen questions on the verdict form. The jury was unable to agree on answers to questions 6 (regarding the single business enterprise theory), 12, and 13 (regarding the Franco LLCs' detrimental reliance claims against HMS). However, the Court found that the jury's answers sufficiently resolved the claims in the trial, excluding the indemnification issues that the parties had previously reserved for the Court's determination. The jury found in favor of Conrad and against HMS, awarding the full $7,494,930.00 sought for breach of contract based on two theories: first, that the Franco Parties had actual or apparent authority to transact with Conrad as HMS's agents and, second, that Conrad detrimentally relied on promises made by HMS employees when making its decision to build the two vessels.[2]

As to the Franco Parties' claims, the jury found that the Franco Parties' $2 million down payment and expenses related to the Conrad vessels were incurred within the scope of their authority as HMS's agents, but that HMS did not agree, implicitly or explicitly, to reimburse them

[2] At trial, HMS also moved for a directed verdict on the single business enterprise issue. The jury was unable to resolve whether HMS and the Franco LLCs operated as a single business enterprise. After the jury rendered the verdict for Conrad, HMS re-urged the motion, and the Court granted it, dismissing the single business enterprise claim.

for the $2 million.[3] Finally, the jury found that HMS owes no damages to the Franco LLCs related to down payments to Conrad for construction of the vessels.

Shortly before trial began, the Franco Parties and HMS agreed that the Court, rather than the jury, should decide all indemnification issues after the jury's verdict. At the close of trial, the Court ordered the parties to submit briefing on the remaining indemnity issues between HMS and the Franco Parties.

On January 17, 2023, the Franco Parties moved for indemnification, arguing that HMS's implied indemnification claims should be dismissed, and that the Court should rule in Franco's favor on his own indemnification claim. (Rec. Doc. 146). HMS also moved for indemnification, arguing that the Court should enter judgment in HMS's favor on its indemnification claims against the Franco Parties for $7,464,930 and dismiss Franco's claim for indemnification under HMS's by-laws. (Rec. Doc. 148). In essence, HMS acknowledges its liability to Conrad on the breach of contract claim based on the jury's findings that FM1 and FM2, in signing the contracts with Conrad, were acting pursuant to actual or apparent authority as fully disclosed agents of HMS. However, HMS contends that it is only constructively or vicariously liable to Conrad because the Franco parties breached their obligations to HMS and exceeded the authority given to them by HMS. HMS seeks indemnification from the Franco entities for the full amount of the judgment in favor of Conrad. At the same time, the Franco entities seek reimbursement or

[3] The jury was also unable to determine the outcome of the Franco Parties' detrimental reliance claim. The Court determined that this claim did not affect the completeness of the jury verdict, so the Court accepted the jury verdict.

indemnification from HMS for the expenditures made as agents for HMS, and for attorney's fees in defending the claims by HMS.

DISCUSSION:

I. REIMBURSEMENT OF THE $2 MILLION DOWN PAYMENT

The Franco Parties assert that HMS must reimburse them for the $2 million down payment for the vessels because the jury found that FM1 and FM2 were acting within the scope of their authority as agents when they made the down payment. (Rec. Doc. 145-1, at 2-3). In response, HMS argues that the Franco parties failed to timely object to the verdict form,[4] which indicates that HMS is not required reimburse the Franco LLCs and also that the Franco Parties were not entitled to damages based on the verdict form and jury instructions on agency. (Rec. Doc. 147)

An agency relationship is formed when a person, the principal, confers authority on another person, the agent (or mandatary in Louisiana law), to transact affairs for the principal. La. Civ. Code art. 2989; Restatement (Third) Of Agency §§ 1.01–03 (2006). An agent who contracts in the name of a disclosed principal within the limits of his

[4] HMS contends that the Franco Parties failed to object to alleged inconsistencies between a general verdict and answers to verdict questions, thus waiving the arguments in their motion. (Rec. Doc. 147, at 5). The Court disagrees with HMS's framing that the Franco Parties' motion for an interim judgment (Rec. Doc. 145) is an objection to inconsistencies in the verdict form. In fact, the Franco Parties' motion contends the opposite: that the jury's answers are both internally consistent and consistent with agency law. Thus, the Court finds that the Franco Parties did not waive their argument by not objecting at the time the verdict was read.

authority does not bind himself personally for the performance of the contract. La. Civ. Code art. 3016; Restatement (Third) Of Agency § 6.01 (2006). An agent may disclose the principal's identity in actual written or verbal communication to the party with whom the agent is dealing, or if the circumstances surrounding the transaction and knowledge of the contracting party put them on notice of the agency relationship. *J.T. Doiron, Inc. v. Lundin*, 385 So.2d 450, 452–453 (La. App. 1st Cir. 1980). A principal is bound to reimburse an agent for the expenses the agent incurs in performance of their duties as an agent, plus interest from the date of the expenditure. La. Civ. Code. art. 3012-14; Restatement (Third) Of Agency § 8.14 (2006) ("A principal has a duty to indemnify an agent in accordance with the terms of any contract between them and unless otherwise agreed when the agent makes a payment. . . or when the agent suffers a loss that fairly should be borne by the principal in light of their relationship.").

As the Court provided in its legal instructions to the jury, if FM1 and FM2 were acting within the scope of their actual or apparent authority to bind HMS when they contracted with Conrad to build the vessels, then HMS is bound by those contracts. (Rec. Doc. 133, at 11). Further, the LLCs are not liable for any contracts with Conrad that the LLCs made within the limits of their authority on behalf of a fully disclosed principal, such as HMS.[5] *Id.* at 12. Finally, if FM1 and FM2 were acting as HMS's agents in executing the contract with Conrad and those contracts

[5] The parties do not dispute whether or not the Franco LLCs disclosed the principal-agent relationship with HMS, and the jury answered "YES" to the question of whether Conrad was aware of the agency relationship between HMS and the Franco LLCs. (Rec. Doc. 135, at 2).

and related payments were within the scope of their authority as agents, then HMS has a duty to reimburse them. *Id.* at 13.

The jury found that FM1 and FM2 were HMS's agents and, with respect to their dealings with Conrad, were acting within the scope of their actual or apparent authority. The jury also found that Conrad was aware of the principal/agent relationship between HMS and FM1 and FM2. Finally, the jury found that FM1 and FM2 paid the $2 million down payment to Conrad within the scope of their authority as agents of HMS. (Rec. Doc. 135).

Because the jury answered "yes" to question 11, that that FM1 and FM2's $2 million down payment and the expenses were within the scope of their authority as agents of HMS, the Franco Parties argue that, as a matter of law, they are entitled to recover those amounts. (Rec. Doc. 145-1, at 3). In response, HMS argues that the jury's answer to Question 11 simply means the Franco LLCs were authorized to make the down payment, but that the "NONE" answer to Question 14 indicates a finding that LLCs were entering the contract without any expectation that HMS would reimburse them for that payment, based on the Vessel Investment Agreement. (Rec. Doc. 147, at 3-4).

HMS contends that the Vessel Investment Agreement ("VIA") between Harley Franco and HMS not only shifted to Franco the financial risks when building a vessel in his individual capacity, but also formed the basis of the agency relationship between the Franco LLCs and HMS. Harley Franco and HMS entered into the VIA in January 2014 and subsequently amended and restated the agreement in June 2015 and again in May 2017. (Rec. Doc. 138-9, at 2). The purpose of the VIA, as outlined in the contract, is to:

> (i) establish a preference among all of the parties for

> all capital investments to be completed through HMS;
>
> (ii) limit management distractions;
>
> (iii) institute a process by which proposals for new vessel acquisitions by the Company are presented to the Company's Board of Managers for approval, or if not approved, a process by which Franco may, subject to the limitations set forth herein, move forward with such proposals at his own risk outside HMS; and
>
> (iv) establish procedures by which HMS shall have the exclusive right to purchase vessels from Franco.

Id. at 3. The "Proposal Process" in the VIA requires, first, HMS management to present proposals for new vessel construction or acquisition to HMS's board of managers. *Id.* Second, the HMS board submits the proposal to each member of the company, and upon unanimous approval, the Board can vote on the proposal. *Id.* at 4. The VIA also provides that if the members of HMS do not approve the proposal, Harley Franco may fund the project at his own risk as long as the total amount of vessels he owns outside HMS does not exceed $15 million. *Id.* It also explains that HMS has the right, but not the obligation, to purchase vessels from Franco at any time for an amount equal to his costs plus 18% or enter an operating lease for the vessel along with Franco. *Id.*

However, HMS's singular focus on the Vessel Investment Agreement is misguided. As outlined above and in the Court's jury instructions, an agency relationship allows a principal to authorize an agent to perform services for the principal, and the agent shall be reimbursed for their expenses in performing those services. The VIA, however, is a contract inapposite for creating an agency

relationship; the VIA was essentially an option contract allowing HMS the right, but not the obligation, to purchase or lease a vessel from Harley Franco after he undertook a vessel construction opportunity. (Rec. Doc. 147, at 9). It does not provide an authorization for Franco to act on behalf of HMS as its agent. HMS argues that, simply because none of the parties objected to its closing argument that the VIA controlled the entire circumstances of Franco's dealings with Conrad, the VIA would preempt an agency relationship (along with its incumbent reimbursement requirements). *Id.* at 11. HMS further contends that "the jury's finding that the Franco Entities acted within the scope of their agency when making the down payment is entirely consistent with a finding that they did so at their own risk." *Id.* at 12.

The Court is not persuaded that the VIA created the agency relationship between HMS and Franco or FM1 and FM2. HMS's argument, that the VIA both created an agency with Harley Franco and only allowed him to contract at his own risk, is contradictory. Instead, as the evidence at trial showed, the agency relationship found by the jury was created over time through the parties' course of dealings with Conrad. Evidence presented during the trial established that HMS was actively and directly involved in all of its and its agents' dealings with Conrad. First, HMS contracted directly with a marine architect to design the vessels and negotiated with financers by communicating that the vessels were HMS's. (Rec. Docs. 138-7, 138-14). Second, in connection with the sale, HMS paid directly to Conrad $491,300 in cash and $1.1 million worth of tow winches, in addition to credits it had accrued with Conrad. (Rec. Docs. 138-28; 140-32; 153-5, at 6-8). Third, HMS employees also negotiated the contracts and communicated directly with Conrad, and HMS had its own company

representative physically present at the Conrad Shipyard to oversee the construction of the vessels. (Rec. Docs. 138-5, 138-6, 138-20, 138-30). Moreover, evidence at trial showed that the use of the two Franco LLCs as signatories to the construction contracts was consistent with the manner in which HMS and Conrad had done business for a number of other vessels over a number of years. *See* (Rec. Docs. 138-1, 138-9, 138-46).

HMS intended the new Conrad vessels to be supplied to its customer, Phillips 66, which had requested new tugs as a condition to extending its contract. However, HMS lost another large customer, Tesoro/Marathon, who returned approximately 15 vessels to HMS. Once HMS was able to provide two of the Tesoro tugs to Phillips 66, it apparently then decided that it no longer wanted the new Conrad vessels. (Rec. Doc. 139-32)

In addition to the apparent authority Conrad understood the Franco LLCs to have, the jury also found against HMS on Conrad's detrimental reliance claims. (Rec. Doc. 135, at 2). Specifically, the jury found that HMS made promises to Conrad that Conrad justifiably relied upon when deciding to build the vessels, resulting in damages to Conrad. *Id.* This jury finding, that HMS made affirmative statements to Conrad regarding the status of the vessel construction, undermines HMS's argument that the VIA governed the extent of the Franco LLCs authority. Instead, the LLCs' authority was governed by principles of agency law. Thus, as a matter of law, HMS is responsible for reimbursing its agents' expenses including the $2 million down payment plus interest from the time of payment.

Finally, the parties disagree on the jury's reasoning for answering "NONE" for Question 14. On first impression, saying that HMS owes no damages related to down payments may contradict the finding that HMS owes $2

million in reimbursement. However, Question 14 refers to the damages for both of the Franco Parties' theories: (1) detrimental reliance and (2) reimbursement of agent expenses. (Rec. Doc. 135, at 3-4). A logical reading of the verdict form indicates that the "damages" referred to in Question 14 are those related to the $2 million down payment, outside of or in addition to the reimbursement of expenses. The Court is not persuaded by HMS's dissection of the jury's understanding of agency law buttressed by the VIA nor by their argument that Franco's agency is comparable to a lawyer representing a client on a contingent-fee basis. (Rec. Doc. 147, at 12-13). Therefore, the most reasonable reconciliation of the jury's responses is that HMS owes the Franco LLCs reimbursement for their down payment as agents, but no additional damages resulting from the detrimental reliance theory.

II. HMS'S IMPLIED INDEMNIFICATION CLAIMS

HMS's implied indemnity claims allege that the Franco Parties are liable to HMS for the damages it owes Conrad, reasoning that HMS has been found vicariously liable to Conrad because the Franco Parties breached their obligations to HMS and exceeded the authority HMS granted them. (Rec. Doc. 148, at 11). The Franco Parties argue that HMS's claim for indemnity against FM1 and FM2 fails because (1) even if HMS were only vicariously liable for the breach of contract, the jury found that HMS is actually at fault for harming Conrad under a theory of detrimental reliance, and (2) because the jury found the Franco Parties to be agents of HMS, HMS alone was bound to the contracts with Conrad. (Rec. Doc. 146-1, at 2). In response, HMS argues that the Franco Parties had apparent authority to enter the contracts, but only had actual authority under the VIA to enter the contracts at their own risk, plus make down payments and secure financing.

(Rec. Doc. 152, at 3). That distinction in authority, HMS argues, confirms its entitlement to indemnification because the jury must have understood that Conrad's detrimental reliance was based only on the Franco Parties' apparent authority to enter the contracts on behalf of the HMS, but not actual authority, which would necessitate HMS's liability. *Id.* at 5-7.

HMS claims that, to the extent HMS is found liable to Conrad, Harley Franco should indemnify HMS because he committed HMS to agreements in defiance of directions from HMS's board of directors. (Rec. Doc. 146-1, at 2). The Franco Parties respond that this claim for indemnity also fails because the jury found HMS to be at fault for detrimental reliance and breach of contract and because HMS failed to offer evidence at trial of Franco's breach of fiduciary duty to justify the tort-based indemnification claim. *Id.* at 3. In reply, HMS reiterates its position that Harley Franco breached duties he owed to Conrad by failing to obtain financing, and that its entitlement to indemnification does not depend on whether Harley Franco breached his fiduciary duties to HMS. (Rec. Doc. 152, at 7-8).

"It has long been held in Louisiana that a party not actually at fault, whose liability results from the faults of others, may recover by way of indemnity from such others." *Martco Ltd. P'ship v. Bruks Inc.*, 430 F. App'x 332, 335 (5th Cir. 2011) (quoting *Bewley Furniture Co. v. Maryland Cas. Co.*, 285 So.2d 216, 219 (La.1973)). The obligation to indemnify can be contractual or implied, even in the absence of an indemnity agreement. *Nassif v. Sunrise Homes, Inc.*, 739 So.2d 183, 185 (La.1999). Because there is no indemnity agreement between HMS and the Franco Parties, HMS's indemnity claims are for implied indemnification.

Implied indemnity claims are equitable claims that arise only where "the liability of the person seeking indemnification is solely constructive or derivative and only against one who, because of his act, has caused such constructive liability to be imposed." *Martco*, 430 F. App'x at 335; *see also Nassif*, 739 So. 2d at 186 (holding that equitable principle of restitution applies in indemnity action to allow defendant to recover from the party actually at fault, even in absence of s contract of indemnification). Thus, a party who is actually negligent or at fault cannot recover implied indemnity. *Martco*, 430 F. App'x at 335 (citing Hamway v. Braud, 838 So.2d 803, 806 (La. App. 1st Cir. 2002)).

As explained above, the Court concludes that the VIA did not create the agency relationship between HMS and the Franco Parties. Further, the jury's finding that HMS itself was at fault for Conrad's detrimental reliance undercuts HMS's argument that it was without fault for breaching the contracts with Conrad—a requirement for implied indemnification. As the Court explained in its instructions to the jury, to prevail on a detrimental reliance claim, Conrad must prove that HMS made representations by conduct or word that Conrad justifiably relied upon, and that Conrad changed its position to its detriment. (Rec. Doc. 133, at 16). The jury, tasked with considering the evidence presented at trial, found that HMS, through its employees and representatives, made promises to Conrad that Conrad justifiably relied upon when deciding to build the vessels, and the reliance resulted in damages to Conrad. (Rec. Doc. 135, at 2). The jury's finding, that HMS's promises to Conrad caused damage to Conrad, necessarily demonstrates that HMS was actually at fault in forming and then breaching the contracts with Conrad. Thus, the jury findings demonstrate that HMS was not merely technically or

constructively liable for Conrad's loss. HMS was actually at fault for the breach of contract and cannot recover implied indemnity from the Franco LLCs or from Harley Franco.

III. HARLEY FRANCO'S CLAIM FOR INDEMNIFICATION

The Franco Parties argue that, because HMS's indemnification claim cannot succeed, Harley Franco is entitled to mandatory indemnification pursuant to Washington statute and HMS's governing documents. (Rec. Doc. 146-1, at 2). HMS contends that Franco is barred from obtaining indemnification because of its entitlement to a judgment against Franco. (Rec. Doc. 152, at 9).

Washington's Business Corporation Act states that, "unless limited by its articles of incorporation, a corporation shall indemnify a director who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which the director was a party because of being a director of the corporation against reasonable expenses incurred by the director in connection with the proceeding." Wash. Rev. Code Ann. § 23B.08.520. HMS's bylaws and articles of incorporation state that the corporation shall indemnify its directors and officers to the full extent permitted by the Washington Business Corporation Act, except in the case of (1) a final adjudication of intentional misconduct or knowing violation of the law, (2) a final adjudication related to unlawful distributions, or (3) a final adjudication that the director or officer personally received money, property, or services to which they were not legally entitled. (Rec. Doc. 146-1, at 24).

Because the Court concludes that HMS's claim against Harley Franco fails, HMS is obligated to indemnify Mr. Franco as a director of the corporation defending this

proceeding because of his status as a director, unless one of the three exceptions in HMS's governing documents applies. HMS argues that the first and third exceptions apply because Harley Franco engaged in intentional misconduct and engaged in transactions from which he received a personal benefit to which he was not entitled. (Rec. Docs. 148, at 25, 152, at 9). However, the exceptions outlined in HMS's bylaws and articles of incorporation require "final adjudication" of that misconduct, which did not occur in this case. Therefore, HMS must indemnify Harley Franco for his costs in connection with defending HMS's indemnification claim against him.

CONCLUSION

To summarize the Court's findings and conclusions on the indemnity issues that were reserved to the court:

1. HMS must reimburse FM1 for the $2 million down payment to Conrad;

2. HMS is not entitled to indemnification from the Franco Parties (Harley Franco, FM1 or FM2); and

3. Harley Franco is entitled to indemnity from HMS for his successful defense of the third-party claim by HMS.

A final judgment will be issued on all claims in this case based upon the jury's verdict and the court's findings and conclusions on the indemnity issues.[6]

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[6] In light of these findings and the final judgment being issued,

IT IS HEREBY ORDERED that the Franco Parties' Motion for Indemnification (Rec. Doc. 146) is GRANTED.

IT IS FURTHER ORDERED that HMS's Memorandum of Law Regarding Indemnification Claims (Rec. Doc. 148), which the court construes as a motion for indemnification, is DENIED.

New Orleans, Louisiana, this 2nd day of February, 2023.

/s/ Carl J. Barbier
CARL J. BARBIER
UNITED STATES DISTRICT JUDGE

IT IS FURTHER ORDERED that Conrad's Motion for Entry of Judgment under Rule 54(b) (Rec. Doc. 136) is DENIED as moot.

IT IS FURTHER ORDERED that the Franco Parties' Motion for Entry of Interim Judgment (Rec. Doc.145) is DENIED as moot.

APPENDIX C

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

No. 19-10864

CONRAD SHIPYARD, L.L.C.,
PLAINTIFF-APPELLEE,

v.

FRANCO MARINE 1, L.L.C.; FRANCO MARINE 2, L.L.C.,
DEFENDANTS-APPELLEES,

v.

HARLEY MARINE SERVICES, INCORPORATED,
DEFENDANT-THIRD PARTY PLAINTIFF-APPELLANT,

v.

HARLEY FRANCO,
THIRD PARTY DEFENDANT-APPELLEE.

February 2, 2023

FINAL JUDGMENT

The above-captioned case came for jury trial on December 12-16, 2022, before District Judge Carl J. Barbier.

Considering the answers of the jury to the interrogatories propounded by the Court at the trial of this matter;

and the post-trial findings of fact and conclusions of law issued by the Court, further considering the direction of the Court as to entry of judgment,

IT IS ORDERED, ADJUDGED, AND DECREED that there be judgment in favor of Plaintiff, CONRAD SHIPYARD, LLC, and against Defendant HARLEY MARINE SERVICES (HMS), in the total amount of $7,494,930.00, together with legal interest from the date of judgment plus taxable court costs;

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that there be judgment in favor of Defendant FRANCO MARINE 1, LLC in the amount of $2,000,000, plus prejudgment interest at the Louisiana legal rate running from May 24, 2018 until the date of this judgment, and post judgment legal interest until paid.

IT IS FURTHER ORDERED ADJUDGED AND DECREED that HMS shall indemnify and reimburse HARLEY FRANCO for his reasonable attorneys' fees and expenses in connection with defending HMS's third-party indemnification claim.[1]

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the cross claims and third-party claims brought by HMS against the HARLEY FRANCO, FM1 and FM2 are DISMISSED with prejudice.

All taxable court costs are taxed against HMS.

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[1] The Motion for Fees and Costs should be filed within 21 days from the date of this Judgment. Any opposition should be filed ten days thereafter. The motion should comply with F. R. Civ. P. Rule 54(d) and Local Rule 54.2.

New Orleans, Louisiana, this 2nd day of February, 2023.

/s/ Carl J. Barbier
CARL J. BARBIER
UNITED STATES DISTRICT JUDGE

APPENDIX D

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

No. 19-10864

CONRAD SHIPYARD, L.L.C.,
PLAINTIFF-APPELLEE,

v.

FRANCO MARINE 1, L.L.C.; FRANCO MARINE 2, L.L.C.,
DEFENDANTS-APPELLEES,

v.

HARLEY MARINE SERVICES, INCORPORATED,
DEFENDANT-THIRD PARTY PLAINTIFF-APPELLANT,

v.

HARLEY FRANCO,
THIRD PARTY DEFENDANT-APPELLEE.

February 15, 2023

AMENDED FINAL JUDGMENT[1]

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[1] The previous version of the Final Judgment in this case did not contain the amount of Harley Franco's reasonable attorneys' fees and expenses. The Court has amended the Judgment to include the amount to which the parties stipulated.

The above-captioned case came for jury trial on December 12-16, 2022, before District Judge Carl J. Barbier.

Considering the answers of the jury to the interrogatories propounded by the Court at the trial of this matter, the post-trial findings of fact and conclusions of law issued by the Court, further considering the direction of the Court as to entry of judgment, and the parties' *Joint Stipulation as to Reasonableness of Franco's Fees and Expenses* (Rec. Doc. 156)

IT IS ORDERED, ADJUDGED, AND DECREED that there be judgment in favor of Plaintiff, CONRAD SHIPYARD, LLC, and against Defendant HARLEY MARINE SERVICES (HMS), in the total amount of $7,494,930.00, together with legal interest from the date of judgment plus taxable court costs;

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that there be judgment in favor of Defendant FRANCO MARINE 1, LLC in the amount of $2,000,000, plus prejudgment interest at the Louisiana legal rate running from May 24, 2018 until the date of this judgment, and post judgment legal interest until paid.

IT IS FURTHER ORDERED ADJUDGED AND DECREED that HMS shall indemnify and reimburse HARLEY FRANCO for his reasonable attorneys' fees and expenses in connection with defending HMS's third-party indemnification claim in the amount of $1,096,897.88.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the cross claims and third-party claims brought by HMS against the HARLEY FRANCO, FM1 and FM2 are DISMISSED with prejudice.

All taxable court costs are taxed against HMS.

New Orleans, Louisiana, this 15th day of February, 2023.

/s/ Carl J. Barbier
CARL J. BARBIER
UNITED STATES DISTRICT JUDGE

APPENDIX E

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

No. 19-10864

CONRAD SHIPYARD, L.L.C.,
PLAINTIFF-APPELLEE,

v.

FRANCO MARINE 1, L.L.C.; FRANCO MARINE 2, L.L.C.,
DEFENDANTS-APPELLEES,

v.

HARLEY MARINE SERVICES, INCORPORATED,
DEFENDANT-THIRD PARTY PLAINTIFF-APPELLANT,

v.

HARLEY FRANCO,
THIRD PARTY DEFENDANT-APPELLEE.

April 24, 2023

ORDER AND REASONS

Before the Court is a *Renewed Motion for Judgment as a Matter of Law Pursuant to Rule 50(B) Or, Alternatively, for a New Trial Pursuant to Rule 59* (Rec. Doc. 158) filed by Harley Marine Services, Inc. ("HMS"). Conrad Shipyard, L.L.C. ("Conrad") filed an opposition

memorandum, (Rec. Doc. 167) as did Franco Marine 1, LLC ("FM1"), Franco Marine 2, LLC ("FM2"), and Harley Franco ("Franco") (collectively, the "Franco Parties") (Rec. Doc. 166). HMS filed a reply memorandum as well. (Rec. Doc. 169). Having considered the motion and memoranda, the record, and the applicable law, the Court finds that the motion should be DENIED.

The Court assumes the reader is familiar with the facts of this case, which went to a jury trial from December 12-16, 2022. Among other findings, the jury found that (1) FM1 and FM2 (collectively, the "Franco Entities") were HMS's agents acting in the scope of their actual or apparent authority; (2) HMS made promises to Conrad that Conrad justifiably relied upon when deciding to build the two vessels, resulting in damage to Conrad; and (3) HMS did not agree to reimburse the Franco Entities for the $2 million down payment and expenses, but that payment was in the scope of the Franco Entities' authority as agents of HMS. (Verdict Form, Rec. Doc. 135).

After the Final Judgment in favor of Conrad and the Franco Parties, the Court issued Findings of Fact and Conclusions of Law on the issues reserved to the Court after trial, finding, inter alia, that HMS must reimburse FM1 the down payment because the evidence at trial showed that the Franco Parties acted as agents for HMS in executing the contracts with Conrad.[1] (Rec. Doc. 154). HMS now renews its motion for judgment as a matter of law (JMOL) to dismiss (1) Conrad's agency claim, (2) Conrad's detrimental reliance claim, and (3) FM1 and FM2's reimbursement claim. HMS argues that it is entitled to JMOL because, based on the evidence presented at trial,

[1] The Court also provided findings of fact and conclusions of law as to indemnification claims, which are not at issue in the present motion.

no reasonable jury could have reached the conclusions that the jury in this case reached. HMS also moves in the alternative for a new trial, arguing that the Court's jury instructions included two prejudicial errors. In response, Conrad and the Franco Parties present evidence from the trial such that a reasonable jury could find against HMS in each of those claims and argue that the Court properly refused HMS's requested jury instructions.

1. HMS's Renewed Motion for Judgment as a Matter of Law

Pursuant to Rule 50(b), if the court does not grant a motion for judgment as a matter of law during a jury trial, the movant may file a renewed motion for judgment as a matter of law. In considering a Rule 50(b) motion, "the court is to view the entire record in the light most favorable to the non-movant, drawing all factual inferences in favor of ... the non-moving party, and leaving credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts to the jury." *Conkling v. Turner*, 18 F.3d 1285, 1300 (5th Cir. 1994). A Rule 50(b) motion for judgment as a matter of law should be granted only if

> the facts and inferences point so strongly and overwhelmingly in favor of one party that the court believes that reasonable men could not arrive at a contrary verdict.... On the other hand, if there is substantial evidence opposed to the motions, that is, evidence of such quality and weight that reasonable and fair-minded men in the exercise of impartial judgment might reach different conclusions, the motions should be denied.

Brown v. Bryan County, 219 F.3d 450, 456 (5th Cir. 2000) (internal quotation marks and citations omitted).

Granting a Rule 50(b) motion "is not a matter of discretion, but a conclusion of law based upon a finding that there is insufficient evidence to create a fact question for the jury." *In re Litterman Bros. Energy Sec. Litig.*, 799 F.2d 967, 972 (5th Cir. 1986). Thus, "a jury verdict must be upheld unless there is no legally sufficient evidentiary basis for a reasonable jury to find as the jury did." *Heck v. Triche*, 775 F.3d 265, 273 (5th Cir. 2014) (quoting *Foradori v. Harris*, 523 F.3d 477, 485 (5th Cir. 2008)).

An opponent of a Rule 50 motion "must at least establish a conflict in substantial evidence on each essential element on their claim." *N. Cypress Med. Ctr. Operating Co., Ltd. v. Aetna Life Ins. Co.*, 898 F.3d 461, 473 (5th Cir. 2018) (quoting *Goodner v. Hyundai Motor Co.*, 650 F.3d 1034, 1039 (5th Cir. 2011)). "Substantial evidence is more than a scintilla, less than a preponderance, and is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Id.* (quoting *Conn. Gen. Life Ins. Co. v. Humble Surgical Hosp., L.L.C.*, 878 F.3d 478, 485 (5th Cir. 2017)).

In this case, HMS made a Rule 50(a) motion after Conrad and the Franco Parties rested their cases, and the Court deferred ruling on the motion. (Rec. Doc. 131). In the present motion under Rule 50(b), HMS has not demonstrated, considering the evidence introduced at trial, that no reasonable jury could have found (1) that the Franco Parties had actual or apparent authority to enter the contracts on HMS's behalf; (2) that Conrad reasonably relied on promises by HMS employees that HMS would bear financial responsibility for the vessels; and (3) that the Franco Entities were entitled to reimbursement of the $2 million down payment.

First, in terms of HMS's argument that the Vessel Investment Agreement exclusively defined the scope of

Franco's authority to act as an agent for HMS, the Court previously noted evidence presented at trial such that a jury could reasonably conclude the agency relationship was created over time through the parties' course of dealings with Conrad. (Findings of Fact and Conclusions of Law, Rec. Doc. 154, at 8-9). Further, "when evaluating the sufficiency of the evidence, [courts] view all evidence and draw all reasonable inferences in the light most favorable to the verdict." *Bryant v. Compass Grp. USA Inc.*, 413 F.3d 471, 475 (5th Cir. 2005). Drawing all reasonable inferences in the light most favorable to the jury's verdict, both Conrad and the Franco Parties provided sufficient trial evidence of an agency relationship to create a fact question for the jury. For example, HMS's board members proposed the transaction, committed to obtain construction financing, assured Conrad they would pay, negotiated the contracts, oversaw the design and construction of the vessels, and contributed cash and tow winches to the project. (Rec. Docs. 166, at 4; 167, at 4-8). The parties also presented conflicting evidence on whether the HMS board approved the transaction. After hearing this evidence, the jury found that the evidence supported a finding that FM1 and FM2 were HMS's agents acting within the scope of their authority, and Conrad was aware of the principal/agent relationship. (Rec. Doc. 135, at 1-2). The evidence here does not strongly and overwhelmingly indicate that the Franco Parties did not have actual or apparent authority. Therefore, the Court will not disturb the jury's verdict on Conrad's agency claim.

Second, HMS asserts that the jury's detrimental reliance finding is unsound, in part because at trial, Conrad identified no pre-contract statements or conduct by HMS that it would make the payments due under the contracts. (Rec. Doc. 158-1, at 15). However, Conrad and the Franco

Parties again provided substantial evidence at trial to support the jury's finding that Conrad sustained damages because of its justifiable reliance on HMS's promises regarding the construction contracts. For example, HMS and Conrad entered a Build Letter before the contracts were signed, HMS's VP of Contract Administration initialed the payment schedule, Conrad and HMS issued a joint press release that the vessels were built on HMS's behalf, HMS made payments to Conrad for the Vessels, and HMS had a history of using Franco-owned build companies to contract with Conrad to build twenty-two vessels for HMS. (Rec. Docs. 166, at 11; 167, at 15-16). The Court finds this evidence sufficient to support a jury finding that Conrad justifiably relied on HMS's promises, causing damages to Conrad. Therefore, there is no basis to enter a judgment as a matter of law on the issue of detrimental reliance.

Third, HMS argues it is entitled to JMOL on the Franco Entities' reimbursement claim because the Vessel Investment Agreement (VIA) or Board Approval Memo (BAM) both made clear that the Franco Entities were not entitled to reimbursement of the down payment. Regarding the Franco Entities' reimbursement claim, the jury answered "No" to the question, "Do you find by a preponderance of the evidence that HMS agreed, implicitly or explicitly to reimburse FM1 and FM2 for the $2 million down payment and the expenses they incurred in connection with the Conrad vessels?" (Rec. Doc. 135, at 3). However, the jury answered "Yes" to the question, "Do you find by a preponderance of the evidence that FM1 and FM2's $2 million down payment and the expenses they incurred with the Conrad vessels were within the scope of their authority as agents of HMS?" *Id.* This jury finding is supported by the evidence of the agents' actual or apparent authority presented at trial and outlined above. HMS asks the Court

to ignore this evidence on agency that was presented to the jury and instead rule that the VIA or BAM controlled the parties' agency relationship. The Court notes that evidence of the VIA and BAM was presented at trial. The jury weighed the evidence to determine that, despite any limitations to reimbursement included in the VIA or BAM, the Franco Parties were acting within the scope of their authority in making that down payment. The Court finds that the trial evidence supports the jury's verdict that the down payment and expenses were within the Franco Parties' scope of authority, and therefore judgment as a matter of law may not be granted.

2. HMS's Motion for a New Trial

In the alternative to judgment as a matter of law, HMS requests a new trial based on alleged prejudicial errors in the Court's jury instructions. Specifically, HMS contends that the Court erred by refusing to include an agency instruction that if the jury finds that the construction contracts intentionally excluded HMS (the principal) as a party, HMS is not bound by or liable for breach of those contracts. (Rec. Doc. 158-1, at 22). HMS also argues that the Court erred in refusing to give HMS's requested instruction that, if the jury found the Franco Entities' claims contravene the VIA by allowing for recovery when that contract does not provide for it, then it must find against the Franco Entities and in favor of HMS on those claims. *Id.* at 24.

Federal Rule of Civil Procedure 59(a) provides a district court discretion to grant a new trial after a jury trial for any reason for which a new trial has heretofore been granted in an action at law in federal court. Fed. R. Civ. P. 59(a). A new trial may be granted, for example, if the district court finds the verdict is against the weight of the evidence, the damages awarded are excessive, the trial

was unfair, or prejudicial error was committed in its course. *Smith v. Transworld Drilling Co.*, 773 F.2d 610, 613 (5th Cir. 1985) (internal citations omitted). "A new trial is the appropriate remedy for prejudicial errors in jury instructions." *Aero Int'l, Inc. v. U.S. Fire Ins. Co.*, 713 F.2d 1106, 1113 (5th Cir. 1983). However, courts have "considerable latitude in fashioning jury instructions," unless the instructions leave "substantial and ineradicable doubt [on] whether the jury was properly guided in its deliberations." *Horton v. Buhrke, a Div. of Klein Tools, Inc.*, 926 F.2d 456, 460 (5th Cir. 1991) (internal citations and quotations omitted). Thus, "a district court's refusal to give a requested jury instruction constitutes reversible error only if the instruction 1) was a substantially correct statement of law, 2) was not substantially covered in the charge as a whole, and 3) concerned an important point in the trial such that the failure to instruct the jury on the issue seriously impaired the [party's] ability to present a given [claim]." *Kanida v. Gulf Coast Med. Pers. LP*, 363 F.3d 568, 578 (5th Cir. 2004) (internal citations and quotations omitted).

HMS contends that the Court erred in refusing to include an instruction essentially stating that, if a contract excludes the principal as a party, the contract is not binding on the principal, and no specific language is required in the contract to exclude the principal. (Rec. Doc. 158-1, at 22). The Court finds that this statement is not a substantially correct statement of Louisiana agency law principles, and HMS has not provided a citation to binding precedent indicating otherwise.[2] Indeed, an agency

[2] In its motion, HMS cites to *Trina Solar Us, Inc. v Jasmin Solar Pty Ltd*, 954 F.3d 567 (2d Cir. 2020), in which the Second Circuit found a principal excluded as a party to a contract although the contract did

relationship or mandate is a contract "by which a person, the principal, confers authority on another person, the mandatary, to transact one or more affairs for the principal." La. Civ. Code. art. 2989. The principal may be either disclosed or undisclosed. *Id.* cmt (c). The principal is bound to perform the contract that the agent, acting within the limits of his authority, makes with a third person, whether the principal is disclosed or undisclosed. *Id.* art. 3020; *id.* cmt (b). A third person who contracts with the agent has a cause of action directly against the principal, whether disclosed or undisclosed. *Id.* cmt (c). When an agent discloses the agency relationship and the identity of the principal in forming a contract with a third party, the agent does not bind himself personally for the performance of the contract unless the agent "expressly promises" the performance of the contract. *Id.* art. 3016; *id.* cmt (c). However, for an undisclosed agency relationship, the agent who contracts in his own name without disclosing his status as an agent binds himself personally for the contract. *Id.* art. 3017. Thus, for an agent acting within the scope of their authority contracting for a disclosed principal, Louisiana law does not allow the principal to escape its obligations under the contract, even if the contract excludes the principal as a party.

HMS also argues that the Court erred in refusing to include an instruction to find in favor of HMS if the Franco Entities claims contravene the VIA by allowing for recovery when the contract does not provide for it. (Rec. Doc.

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not expressly say so. The Court finds that *Trina Solar*, which concerned whether to enforce an arbitration clause against a nonsignatory, is distinguishable from the facts in this case. Further, the Second Circuit's analysis of the contract in that case is not relevant to the principles of Louisiana Civil Law at issue in this case, nor is its holding binding on this Court.

158-1, at 24). The Franco Parties note that this proposed instruction was meant to apply to the Franco Parties' claims for unjust enrichment, detrimental reliance, and reimbursement. (Rec. Doc. 166, at 23). The Court dismissed the unjust enrichment claim, and the jury did not reach a verdict on the Franco Parties' detrimental reliance claim. (Rec. Doc. 135, at 3). The Court noted during trial that, whether the VIA applied to this transaction was one of the main issues in the case for the jury to decide. *Id.* (citing Tr. 949:14-950:3). Although this instruction may be a correct statement of law, the Court finds that this instruction was substantially covered in the jury charge on agency as a whole, which provided for reimbursement only if the Franco Entities were acting within the scope of their authority as agents. (Rec. Doc. 133, at 13). If the jury considered that the VIA limited the scope of the Franco Parties' authority such that reimbursement was not necessary, as HMS argues, then the Court's jury instruction that "if you find that FM1 and FM2 acted beyond their authority when purporting to act on behalf of HMS, then FM1 and FM2 were bound by the contracts and HMS has no duty to reimburse" substantially covered HMS's requested instruction. *Id.* Therefore, the Court finds that declining HMS's proposed jury instructions was not error justifying a new trial.

Accordingly,

IT IS HEREBY ORDERED that the Renewed Motion for Judgment as a Matter of Law Pursuant to Rule 50(B) Or, Alternatively, for a New Trial Pursuant to Rule 59 (Rec. Doc. 158) is DENIED.

New Orleans, Louisiana, this 24th day of April, 2023.

/s/ Carl J. Barbier
CARL J. BARBIER
UNITED STATES DISTRICT JUDGE

APPENDIX F

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 23-30286

CONRAD SHIPYARD, L.L.C.,
RESPONDENT-APPELLEE,

v.

FRANCO MARINE 1, L.L.C.; FRANCO MARINE 2, L.L.C.,
RESPONDENTS-APPELLEES,

v.

HARLEY MARINE SERVICES, INCORPORATED,
PETITIONER-APPELLANT,

v.

HARLEY FRANCO,
RESPONDENT-APPELLEE.

June 4, 2024

Appeal from the United States District Court for the
Eastern District of Louisiana, USDC No. 2:19-CV-10864
(Barbier, *D.J.*)

ON PETITION FOR REHEARING

Before HIGGINBOTHAM, SMITH, AND HIGGINSON, *Circuit Judges.* PER CURIAM.

IT IS ORDERED that the petition for rehearing is DENIED.