APPENDIX TABLE OF CONTENTS

CASE NO. 24-10148

OPINIONS AND ORDERS

REHEARING ORDER

APPENDIX TABLE OF CONTENTS (Cont.)

CASE NO. 20-14728

OPINIONS AND ORDERS

STATUTORY PROVISION

OPINION, U.S. COURT OF APPEALS FOR THE ELEVENTH CIRCUIT (AUGUST 19, 2025)

[PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

GLOBAL MARINE EXPLORATION, INC.,

Plaintiff-Appellant,

v.

REPUBLIC OF FRANCE,

Defendant-Appellee,

UNITED STATES OF AMERICA,

Intervenor.

No. 24-10148

Appeal from the United States District Court
for the Northern District of Florida
D.C. Docket No. 4:20-cv-00181-AW-MJF

Before: WILLIAM PRYOR, Chief Judge,
and LUCK and BRASHER, Circuit Judges.

WILLIAM PRYOR, Chief Judge:

This appeal requires us to decide whether the Sunken Military Craft Act bars a salvage claim

brought by Global Marine Exploration, Inc., against the Republic of France. In 1565, *la Trinité*—a French ship sent to resupply and defend a struggling French fort in Florida—sunk off the coast of Cape Canaveral during a hurricane. In 2016, Global Marine—an underwater exploration com-pany—discovered the remains of *la Trinité* on the ocean floor. After France claimed the ship and obtained a dismissal without prejudice of an *in rem* action filed by Global Marine, Global Marine brought an *in personam* action against France for the salvage value of its work. It also sued for unjust enrichment, misappropriation of trade secrets, and tortious interference. The district court granted summary judgment for France. We affirm.

I. Background

We describe the background of this appeal in four parts. We first review the record developed by the parties to describe the last voyage of *la Trinité* and the hurricane that sank it. We next describe the events that led to *la Trinité*'s discovery. We then describe the *in rem* action Global Marine brought against the ship. And we last recount the *in personam* action Global Marine brought against France.

A. In 1565, la Trinité Sinks Off the Coast of Florida.

Two 16th-century storylines set the stage for the sinking of *la Trinité* and France's doomed efforts to colonize Florida. The first is one of empire: France, England, Spain, Portugal, and the Netherlands all hungered for new lands, new trade routes, and new resources in the so-called New World. The second is one of religion: Europe, long united in faith under the

Catholic Church, fractured and descended into religious wars as the Protestant Reformation spread from kingdom to kingdom.

In 1562, France sat at the center of both storylines. For decades, the kingdom had disputed Spain's claim to all newly discovered lands in the Americas. And for decades, fleets of French ships had stalked Atlantic waters, raided Spanish colonies, and attacked Spanish ships. These fleets, carrying French mariners called corsairs, often were controlled by French nobles and merchants. And often the French monarch granted the ships' captains letters of marque, which allowed the corsairs to engage in privateering that would otherwise be called piracy.

The French corsairs' raiding and trading in the Americas ignited diplomatic flare-ups with Spain and eventually a war. The two kingdoms reached an uneasy truce in 1559, when they signed the Treaty of Cateau-Cambrésis. Although this treaty generally permitted merchants from France to conduct business in Spain's colonial territories, negotiations stalled over France's rights, if any, to lands in the New World.

As France addressed its geopolitical crisis abroad, it also faced a religious crisis at home. By the 1550s, the Protestant Reformation had attracted converts, eventually known as Huguenots, within the kingdom's borders. This religious schism threatened French national identity, destabilized the kingdom, and led to outbreaks of religious violence. But by 1561, despite religious persecution, approximately 10 percent of the French population had converted to Protestantism.

This geopolitical and domestic unrest set the stage for France's three ill-fated attempts to establish

a colony in Florida. The efforts were led by Gaspard de Coligny, Lord of Châtillon and Grand Admiral of France. King Henri II appointed Coligny Admiral of France in 1552. Coligny retained his position as Admiral even after he became a Huguenot. In this role, Coligny oversaw defense of the French coastline. He directed French missions to the Americas. He negotiated with Spain. And he used his position to advocate for religious tolerance.

In 1562, Coligny appointed Jean Ribault, another Huguenot, to lead the first French naval expedition to Florida. Ribault was more than qualified to take command. A storied seafarer, he had commanded French vessels in battles against the Spanish, English, and Flemish for years.

Under Ribault's command, two ships sailed from France on February 18, 1562, and made landfall in Florida two months later. Once ashore, the ships' crews erected a "piller or colume of hard stone, our kinges armes graven therin," near the mouth of the River May (known today as the St. Johns River). From there, the ships sailed north until they reached Parris Island, off the coast of present-day Georgia. Ribault ordered part of the crew to disembark, stay behind, and build a settlement, named Charlesfort. Ribault departed Charlesfort in June 1562 after promising to return the next year with supplies and reinforcements.

Ribault returned to a France at war with itself. In March 1562, only a month after he set sail for Florida, a massacre of Huguenots sparked the beginning of the first War of Religion. Ribault joined a Huguenot rebellion against the crown. When that rebellion failed, and its leadership surrendered to royalist forces, Ribault fled to England, where he was imprisoned in

the Tower of London as a suspected spy. Meanwhile, the settlers of Charlesfort, starved without reinforcements, abandoned the French outpost and set sail for Europe.

With Ribault confined in the Tower of London, Coligny needed a new leader for his second mission to Florida. He recommended René Goulaine de Laudonnière, a Huguenot and Ribault's second-in-command during the 1562 mission, to King Charles IX. After King Charles IX approved the commission and furnished ships and supplies for the voyage, Laudonnière set sail for the New World on April 22, 1564, taking with him soldiers, sailors, and Huguenot settlers. The fleet landed at the St. Johns River on June 22, 1564, and established a new settlement, called Fort Caroline, upriver.

The third and final French foray to Florida took place in 1565. Ribault, released from English custody, resumed service in the French naval forces. And Admiral Coligny again commissioned Ribault to command a fleet headed to Florida—this time, to resupply and reinforce Fort Caroline. As with the 1564 expedition, King Charles IX approved of and supported the mission. He summoned Ribault to "the court" and "honor[ed] him with the title of . . . lieutenant and leader of the troops which he had been commanded to raise." Mindful of the fragile peace with Spain, King Charles IX also "forbade [Ribault] from making a landfall in any other country or island, especially those which were under the dominion of the King of Spain."

By then, Spain had caught wind of France's encroachment in Florida. In 1564, King Philip II ordered his forces in Havana to investigate and eradicate any French presence. But when the first Spanish expedition

stumbled upon Charlesfort, the French settlers were gone.

King Philip II's second attempt to wrest Florida away from the French took on greater urgency when he learned about Fort Caroline and Ribault's upcoming 1565 expedition. On March 20, 1565, he gave Pedro Menéndez de Avilés—an experienced Captain General who had long commanded ships in Spain's treasure fleets—a royal appointment to settle and govern Florida. Days later, Spain learned of France's second settlement, Fort Caroline.

A Spanish spy at the French port of Dieppe sent news of Ribault's new fleet. The spy's report described "[seven] ships," "very well armed with artillery, people and munitions," including "[f]ive hundred soldiers." And he added that "the King of France released from his Rouen profits 100 thousand francs for this enterprise." In the light of this fresh intelligence, Spain bolstered Menéndez's forces, expanding the fleet to over 10 ships and 995 soldiers and sailors.

While Menéndez outfitted his armada, the French ambassador in Spain sent back news of Spain's planned attack on Fort Caroline. This intelligence changed the nature of Ribault's voyage from relief mission to military venture. As of April 1565, Ribault had focused his efforts on recruiting more Huguenot settlers and garnering supplies. But after word of Menéndez's armada reached the French on April 3, Ribault and Coligny expanded the scope of the expedition. Seven ships, instead of the planned five, prepared to go to Florida. Each ship was a heavily armed "galleass[]," and four weighed over 100 tons. At least 500 soldiers joined the civilian settlers, with the final headcount for the expedition numbering between 700 and 1,000.

French Registers of Artillery for May 1565 confirm that the "treasurer and guard of artillery and munitions of the Navy in Normandy" issued arms and equipment to "Ribault[,] ordinary captain of the Navy [and] chief and conductor of the ships and people of war that the King sends presently to the country of New France." Elsewhere, the armament records referred to la Trinité and another ship, l'Émérillon, as "belonging to the King." Both were armed with "artillery, both of bronze and wrought iron, powder, cannonballs, [and] artifices of war."

With both the Spanish and French fleets stocked and armed, the race to Florida began. On May 22, 1565, Ribault set sail on la Trinité, the flagship leading the seven French ships. Over a month later, on June 29, 1565, Menéndez followed Ribault to Florida on San Pelayo, one of Spain's largest warships.

Both fleets reached Florida on the same day. On August 28, 1565, Ribault's fleet made landfall south of Fort Caroline, and Menéndez grounded his armada near present-day Cape Canaveral. Ribault sent the three smaller ships upriver to Fort Caroline while the four larger ships—too large to sail over the sandbar—anchored offshore of the mouth of the St. Johns River. In the meantime, Menéndez sailed north in search of Ribault's fleet.

On September 4, 1565, the Spanish fleet spotted the four anchored French ships. Menéndez drew close to the ships under the cover of night, with plans to attack in the morning. But before dawn came, the fleets' crews traded escalating threats. Menéndez warned that he "had come to this coast to burn and hang the French Lutherans whom [he] should find . . . in the morning [when he] should board their vessels."

The Frenchmen urged him to "come on and not wait till morning." But before Menéndez could order an attack, Ribault's ships "cut their cables, and hoisted their sails, and all four of them took to flight." Menéndez gave chase but could not make ground on Ribault's ships.

Outpaced, Menéndez retreated and sailed south. He made landfall at a natural harbor, which he named St. Augustine and claimed in the name of King Philip II. From there, Menéndez began disembarking soldiers and armaments in preparation for a land invasion of Fort Caroline.

One of Ribault's ships tailed Menéndez to the newly christened St. Augustine. Reports that the Spanish fleet had anchored and set up base reached Ribault soon after. He decided to attack, and on September 8, 1565, his largest ships, reinforced with soldiers from Fort Caroline, sailed south.

Ribault descended on the Spanish fleet on September 10, 1565. But Menéndez's ships, protected by landed cannons, took shelter in the harbor before Ribault could overtake them. While Ribault's fleet lay in wait, a "hurricane and terrible storm came upon them." The French ships, caught in the hurricane, were driven south and sank off the coast of Cape Canaveral.

A few days later Menéndez—now sure that Ribault's fleet posed no further threat—marched Spanish troops northward. In quick succession, his forces stormed the depleted Fort Caroline, captured it, and then used the Fort's own cannons to sink one of the small French ships that remained. Captain Laudonnière, who had remained behind to defend

Fort Caroline, fled on the two remaining ships and sailed back to Europe.

As for Ribault, he did not go down with la Trinité. Instead, he swam ashore, along with many of the soldiers who sailed to attack the Spanish fleet. It took Menéndez only about a month to track down the French survivors. He beheaded almost all of them, including Ribault.

B. In 2016, Global Marine Discovers the Remains of la Trinité.

La Trinité rested undisturbed in its watery grave for more than four centuries. Then, in 2015, Global Marine applied for and received an exploration permit from the Florida Department of State, Division of Historical Resources. The permit gave Global Marine permission to explore a three-square-mile area offshore of Cape Canaveral. Under the permit's terms, Global Marine could "delineate the extent of historic shipwreck site(s)" and "[e]valuate the potential characteristics and significance of any historic shipwreck site in consultation with the Division."

The permit conditioned Global Marine's exploration activities on the submission of daily field notes and logs, interim reports, and final reports. Detailed regulations, promulgated by the Division of Historical Resources, provided the specifics of those reporting requirements. For example, one regulation required Global Marine to submit "Survey Log Sheets" with "topographic quadrangle map[s]," "site locations," and photos to the Division. FLA. ADMIN. CODE ANN. r. 1A-46.001 (2025). Another permit condition required Global Marine to "immediately contact" the Division upon the discovery of "a historic or prehistoric

archaeological site" so that the Division could help "coordinat[e] submission of new or revised Florida Master Site File site forms."

After more than a year of searching, Global Marine identified five shipwrecks at six sites off the coast of Cape Canaveral. Eager to cash in on the find, Global Marine's CEO and president, Robert Pritchett, first contacted France about the discoveries. In a May 30, 2016, email to the French Embassy in Washington, D.C., Pritchett stated, "I am working with the State of Florida in the Area of Cape Canaveral and we may have found French shipwreck related items from the 16-17th century." He also included a list of questions about "the Trinity," its cannons, anchors, coat of arms, and Ribault's fleet. And he offered to enter "an agreement" with France to "bring up" the discovered "items/artifacts."

Under the permit's requirements, Pritchett next submitted a "Notification of Find Report" to the Division on June 3, 2016. The report described the discovery of a cannon (marked with the French *fleur de lis*) and a stone monument (likely the one Ribault erected near St. Johns Bluff during his first voyage to the new world) at what it called Site #2. Weeks later, on June 30, 2016, Global Marine sent the Division its "Final Dig & Identify Report and Request for Rescue Recovery Permit." The report contained additional photos of bronze cannons on the ocean floor and the marble monument. The report also acknowledged "strong indications" that the artifacts belonged to *la Trinity*, and that "France, Spain, England and other countries must be contacted."

Instead of responding to Pritchett's outreach, France issued a diplomatic note to the United States

Department of State about *la Trinity* in July 2016. The note made clear that France would not enter a relationship with Global Marine. France stressed that "as part of a royal fleet of Charles IX, the sunken ship and all its contents are under the ownership of the French Republic." This position, the note explained, was consistent with France's formal notice, published in the Federal Register, that "every State craft (*e.g.* warship, naval auxiliary and other vessel . . . owned or operated by a state) enjoys sovereign immunities, regardless of its location and the period elapsed since it was reduced to wreckage." France categorically "oppose[d] any commercial exploration on the vessel discovered by Global [Marine]."

Pritchett followed up with the Division about his Final Report in mid-July 2016. A Division employee responded that Pritchett's final report was incomplete. Missing from its pages was "[l]ocation information," including the "coordinates of the archeological material," "[b]oundaries for potential sites, and coordinates of site components." Not only were these details "critical" for the Division's "potential assessment of the site," but they were "also necessary to advance the discussion with the appropriate French authorities." Pritchett explained that Global Marine did not include "specific coordinates in the reports due to the fact it would become public information." But in the end, he acquiesced and promised to send "the GPS coordinates." The Division employee, in turn, explained that the Division had "an exemption under Florida's public records law and [was] not required to divulge site location information as part of public records requests."

Pritchett followed up with France on July 21, 2016. He asked whether France's diplomatic note represented

the "position of France on [the] issue." He also emphasized that he "never said" that the shipwreck "was [F]rench"; instead he had asked to "make a[n] arrang[e]ment in the State of Florida" or otherwise "IF it turn[ed] out to be a Military French ship." An attaché at the French embassy in Washington, D.C., replied that France would permit "no commercial exploitation whatsoever." Pritchett responded that he "respect[ed] France's wish[es]."

C. Global Marine Brings an In Rem Salvage Claim Against la Trinité.

Despite Pritchett's assurance, Global Marine filed suit *in rem* against the sunken ship in the Middle District of Florida in October 2016. *See Glob. Marine Expl., Inc. v. The Unidentified, Wrecked & (for Finders-Right Purposes) Abandoned Sailing Vessel* (*Global Marine I*), 348 F. Supp. 3d 1221, 1223 (M.D. Fla. 2018). It now disputed whether the ship was, in fact, *la Trinité*. *Id.* at 1223–24, 1228. Global Marine brought a claim under the law of finds and sought a salvage award. *Id.* at 1224. It also asked for a declaratory judgment that "no government ha[d] the authority to interfere with" its "exploration and recovery" of the vessel and for a preliminary injunction that prohibited "rival salvors" from accessing the site. *Id.*

The Middle District issued a warrant of arrest *in rem* for the vessel. *Id.* To execute the warrant, United States Marshals seized several artifacts—including "3 cannon balls, 3 ballast stones, [and] one pick head"—that Global Marine had recovered from the site of *la Trinité*. *Id.* The Marshals then surrendered those artifacts back to Global Marine, which the Middle District appointed as custodian of the vessel. *Id.*

France then appeared in the suit, contested Global Marine's claim, and moved to dismiss for lack of jurisdiction. *Id.* The *res* in question, France asserted, was a ship from "the French Royal Fleet of 1565 commanded by Jean Ribault and sunk by a hurricane in the vicinity of what is now Cape Canaveral, Florida." *Id.* And the Middle District, France argued, lacked "subject matter jurisdiction because the *res* [was] the French Royal Vessel *la Trinité* and ha[d] immunity" from Global Marine's claims. *Id.* at 1225.

In the meantime, Florida learned about Global Marine's removal of artifacts from *la Trinité*. It determined that the artifacts "were illegally recovered in violation of" Global Marine's permit and Florida regulations. Not only had Global Marine used "methods beyond the scope of the permit" to recover artifacts not "authorized for recovery by the permit," but it had also failed to notify the "Project Archaeologist prior to recovery."

Florida responded to Global Marine's artifact recovery with legal and administrative action. On the legal side, the Middle District granted Florida's request to take over as custodian of the ship in the *in rem* action. *Id.* at 1224–25. On the administrative side, Florida "suspend[ed]" Global Marine's exploration permit. Then, after Global Marine failed to "return the artifacts," Florida notified Global Marine that it "intend[ed] to revoke" its permit. Later, Florida denied Global Marine's "application for recovery of materials in the permit area" because the company failed to comply with the terms of its previous permit.

The Middle District—after much jurisdictional discovery—granted France's motion to dismiss. *Id.* at 1226. It explained that "[a]lthough federal courts have

the exclusive power to adjudicate *in rem* suits against a vessel, that power is dependent on the court's jurisdiction over the *res*." *Id.* at 1227. "If the *res* at issue is the property of a foreign state," the court continued, "the federal courts only have jurisdiction to arrest the *res* if authorized by the Foreign Sovereign Immunities Act." *Id.* (alteration adopted) (citation and internal quotation marks omitted). Under that Act, France and its property "[were] presumptively immune from the jurisdiction of the United States courts; unless a specified statutory exception applie[d]." *Id.* (alteration adopted) (citation and internal quotation marks omitted). Global Marine did "not assert that any exception to the [Act] appl[ied]." *Id.* at 1228. So the "lone issue to be decided . . . [was] a question of fact: Is the *res la Trinité*?" *Id.*

After an exhaustive historical and geographic survey, the Middle District ruled that France "establish[ed] by a preponderance of the evidence that the *res* is *la Trinité*." *Id.* at 1242. It explained that Global Marine "ha[d] not come forward with sufficient evidence to undermine [that] conclusion." *Id.* Instead, Global Marine relied on "speculation" that "[m]aybe some unnamed non-French ship somehow gained control of cannons like those on *la Trinité* and a territorial monument like that on *la Trinité* and then happened to sink in the exact place that *la Trinité* is known to have sunk—all without leaving any documentary evidence." *Id.* Those arguments, the Middle District concluded, were "not persuasive." *Id.* Global Marine did not appeal this ruling.

With the identity of the vessel settled, France and Florida announced a joint venture to protect and recover *la Trinité*. This venture included the "recovery

of the shipwreck" *la Trinité* and "the other shipwrecks" from Ribault's fleet.

D. Global Marine Brings an In Personam Suit Against France.

Global Marine then filed this *in personam* action in the district court against France in April 2020. This suit no longer asserted any claims to the ship itself. Instead, Global Marine sued France for damages related to its efforts and the benefits those efforts conferred on France.

The operative complaint alleged four claims. First, it sought a "salvage and/or maritime lien" award "under federal admiralty law" to compensate Global Marine for "services in the discovery, location, identification, or mapping of the shipwreck sites being recovered by France." Second, it alleged a "quasi contract/unjust enrichment" claim to recover the value of "services benefitting France." Third, it alleged a claim for "misappropriation of trade secret information"—the secrets being "coordinate location data" for the shipwrecks. And fourth, it alleged tortious interference with Global Marine's relationship with the Florida Department of State.

France again moved to dismiss. It asserted that the district court lacked subject-matter jurisdiction under the Foreign Sovereign Immunities Act, 28 U.S.C. § 1604, and that the commercial-activity exception was inapplicable to its recovery of *la Trinité*. The district court agreed with France and dismissed the action.

We reversed. *Glob. Marine Expl., Inc. v. Republic of France*, 33 F.4th 1312, 1315 (11th Cir. 2022). We

held that the commercial-activity exception to sovereign immunity applied. *Id.* The "gravamen" or "core" of Global Marine's claims against France, we explained, was "France's failure to compensate" Global Marine for "the value of [its] salvaging services." *Id.* at 1324–25.

On remand, France moved for summary judgment. It argued that the Sunken Military Craft Act barred the complaint for a salvage award. *See* Pub. L. No. 108-375, §§ 1401–08, 118 Stat. 1811, 2094–98 (2004) (codified at 10 U.S.C. § 113 note). That Act provides that "[n]o salvage rights or awards shall be granted with respect to . . . any foreign sunken military craft located in United States waters without the express permission of the relevant foreign state." *Id.* § 1406 (d)(2). And it defines "sunken military craft" to mean "all or any portion of . . . any sunken warship, naval auxiliary, or other vessel that was owned or operated by a government on military noncommercial service when it sank." *Id.* § 1408(3)(A). France contended that the categorical bar on salvage awards applied to Global Marine's *in personam* claim.

Global Marine's response on salvage was twofold. First, it argued that the Sunken Military Craft Act barred only *in rem* salvage claims, not *in personam* salvage claims. Second, it asserted that *la Trinité* was not a "sunken military craft" under the Act because it was not "on military noncommercial service when it sank."

In support of its arguments, Global Marine cited the reports of two experts: Dr. Lubos Kordac and Dr. Robert H. Baer. Dr. Kordac, in his one-page report, argued that *la Trinité* "was not any military ship." Instead, *la Trinité* "was a cargo ship, bringing supplies,

civilians and money to the new French colony." He cited no sources to back up his assertion. Dr. Baer, who also submitted a one-page statement, also argued that the "assertion that the Huguenot supply vessel, the 'Triniti' was a military vessel on a military mission is erroneous." Instead, "the 'Triniti' was a civilian (Huguenot) resupply vessel dispatched to the Fort Caroline Huguenot outpost." Baer, unlike Kordac, included two pages that listed and briefly excerpted a few sources.

France replied to Global Marine with its own experts. The report of Dr. Frank Lestringant described Ribault's expeditions to Florida from the French perspective. His report explained the geopolitical and religious context that led to the voyages. It also detailed the military nature of the 1565 mission, describing Ribault's fleets as composed of "warships." Lestringant backed up his report with citations to nearly 250 pages of primary and secondary sources. The report of Dr. James P. Delgado did the same but from the Spanish perspective. He described the military confrontation between Spain and France in a long report supported by hundreds of pages of source material.

Global Marine, perhaps recognizing the gap between its two experts and those proffered by France, asked to submit two more expert reports and a surreply. Its first additional expert, Emmanuelle Lize, submitted an eight-page report intended "to refute the Lestringant Declaration." To that end, she asserted that France and Spain were at peace in 1565, so the "mission of Ribault's fleet cannot be military because it would have been a violation of the Treaty [of Cateau-Cambrésis]." She asserted that "Coligny was

not following the King's orders when he sailed *La Trinité* and had his own private agenda to establish a Protestant settlement." She also argued that Coligny had "close ties with privateers" and was the "main organiser of the privateering war" against Spain. Finally, she concluded that "Ribault's 1565 fleet was permitted by the King of France to transport Protestant dissenters to Fort Caroline and any activities of war or battle were beyond the scope of authority and were not official state actions." The body of her report contained no citations to primary or secondary sources. Instead, Lize attached 200 pages of documents, almost entirely in untranslated French.

Global Marine's final expert, James J. Sinclair, also responded to Dr. Lestringant's declaration and disputed its conclusions. Sinclair reviewed "the same source materials" cited by Dr. Lestringant but argued that "*La Trinité* was [on] a state-sanctioned voyage [that] permitted only the transport of families, farmers, and food to Fort Caroline." "*La Trinité* was not," he asserted, "on military noncommercial service when it sank—it sank in a hurricane, not because of a military attack or engagement." He also stated that "any military activity exceeded and countermanded the crown's directive to maintain peace and required [the] fleet [to] steer clear of Spain."

The district court granted summary judgment for France. It ruled that the bar on salvage awards, under the Sunken Military Craft Act, covered both *in rem* and *in personam* actions. It also ruled that France met its "initial summary-judgment burden" to establish that *la Trinité* was a "sunken military craft." Global Marine, it concluded, "point[ed] to no evidence contradicting the contention that *la Trinité* sank while on a

mission to attack the Spanish fleet." So Global Marine failed to create a genuine dispute of fact about whether the ship was on "military noncommercial . . . service when it sank." *See* § 1408(3)(A), 118 Stat. at 2098. For the "quasi contract/unjust enrichment claim," the district court ruled that Global Marine "pointed to no evidence that France knowingly accepted any benefit" from Global Marine. For the "misappropriation of trade secrets claim," it ruled that Global Marine "fail[ed] to show that the GPS coordinate information qualifie[d] as a trade secret because there is no evidence that [Global Marine] took reasonable efforts to protect the information." And for the "interference" claim, it ruled that the "privilege of interference" protected France's actions.

II. Standard of Review

We review a summary judgment *de novo*. *Bearden v. E.I. du Pont de Nemours & Co.*, 945 F.3d 1333, 1337 (11th Cir. 2019). We draw all reasonable inferences in favor of Global Marine and view the evidence in the light most favorable to it. *CSX Corp. v. United States*, 18 F.4th 672, 678 (11th Cir. 2021).

III. Discussion

We divide our discussion into two parts. First, we address Global Marine's salvage claim, and we reject the argument that the bar on salvage awards, under the Sunken Military Craft Act, extends only to *in rem* actions. And we explain that the bar applies to this suit because the undisputed record establishes that *la Trinité* was on military noncommercial service when it sank. Second, we explain that the record presents no genuine issues of fact about the claims for unjust

enrichment, trade-secret misappropriation, and tortious interference.

A. The Sunken Military Craft Act Bars Global Marine's In Personam Salvage Claim.

In 2004, Congress enacted the Sunken Military Craft Act. §§ 1401–08, 118 Stat. at 2094–98. The Act prohibits "any activity directed at a sunken military craft that disturbs, removes, or injures [it]" unless the activity is authorized by a permit or some other law. *Id.* § 1402. It also forecloses traditional maritime-law claims of salvage for sunken military craft. *Id.* § 1406(d) ("No salvage rights or awards shall be granted with respect to . . . any United States sunken military craft" or "any foreign sunken military craft located in United States waters without the express permission of the relevant . . . state."). And it defines "sunken military craft" as "any sunken warship, naval auxiliary, or other vessel that was owned or operated by a government on military noncommercial service when it sank." *Id.* § 1408(3)(A).

Global Marine contends that the Sunken Military Craft Act allows its *in personam* salvage claim against France for two reasons. First, it argues that the Act "preserves salvors' *in personam* claims because such claims are 'not directed at a sunken military craft,' but at the owner of the craft itself." Second, it argues that "*La Trinité* is not a 'sunken military craft'" under the Act. We reject both arguments.

1. The Sunken Military Craft Act Bars Salvage Awards for Both *In Rem* and *In Personam* Actions.

Global Marine argues that the Act's bar on salvage claims does not apply to *in personam* actions. We disagree. The plain language of the Act, considered in the context of traditional principles of admiralty, belies Global Marine's interpretation.

Traditionally, a salvor invoking admiralty jurisdiction could bring an *in rem* or an *in personam* action to recover a salvage award. *See* 2 THOMAS J. SCHOENBAUM, ADMIRALTY AND MARITIME LAW § 16.1 (6th ed. 2024) ("Under settled principles of admiralty jurisdiction, the federal district courts have subject matter jurisdiction in cases involving marine salvage. The salvage act gives rise to a right to a reward, and a maritime lien is created in the salved property. Accordingly, the courts may exercise jurisdiction both *in personam* and *in rem* under appropriate circumstances." (footnotes omitted)). The Supreme Court recognized this principle as early as 1880, when it explained that "[s]uits for salvage may be *in rem* against the property saved or the proceeds thereof, or *in personam* against the party at whose request and for whose benefit the salvage service was performed." *The Sabine*, 101 U.S. 384, 386 (1880). Venerable admiralty treatises echo that although "[g]enerally, a suit for a salvage award is one brought *in rem*," "[t]he salvor also has his remedy *in personam* against the owners of the salved property." *E.g.*, 3A BENEDICT ON ADMIRALTY § 288 (2025). And our predecessor circuit likewise affirmed that a federal court exercising its admiralty jurisdiction could grant salvage rights or awards *in rem* or *in personam*. *Treasure Salvors, Inc.*

v. The Unidentified Wrecked & Abandoned Sailing Vessel, 640 F.2d 560, 567 (5th Cir. Mar. 1981).

The Sunken Military Craft Act states that "[*n*]*o* salvage rights or awards shall be granted with respect to . . . any foreign sunken military craft located in United States waters without the express permission of the relevant foreign state." § 1406(d), 118 Stat. at 2097 (emphasis added). This plain language makes no distinction between *in rem* and *in personam* suits. And its failure to do so makes sense in the light of settled principles of admiralty regarding the movement of vessels in maritime commerce. *See* 1 SCHOENBAUM, *supra*, § 9:1 (discussing the relationship between *in rem* and *in personam* actions based on maritime liens).

Global Marine's counterargument invokes the structure of the Act. It points to section 1402, which generally prohibits "activity directed at a sunken military craft that disturbs, removes, or injures [it]." 118 Stat. at 2094. And it points to section 1406(a), which makes clear that nothing in the Act "is intended to affect" either "any activity that is not directed at a sunken military craft" or "the traditional high seas freedoms of navigation" like "the laying of submarine cables" or "fishing." 118 Stat. at 2096. Global Marine argues that we must read the ban on salvage awards in section 1406(d) in the light of sections 1402 and 1406(a), which focus on activities "directed at" sunken vessels. *In personam* claims, it posits, are not "directed at" sunken military craft. So section 1406(d)'s prohibition of salvage claims, it reasons, does not reach *in personam* claims.

We reject this strained interpretation. Section 1402(a) bans activities that could physically disturb a

sunken military craft. Penalties in sections 1404 and 1405 provide enforcement mechanisms for that ban. Section 1406(a) clarifies that the prohibition of section 1402 and the associated penalties do not apply if the relevant physical activity was "not directed" at the craft. It does not refer to salvage rights or litigation activity. Section 1406(d), by contrast, stands on its own. It lacks any limiting language—like "directed at"—that mirrors or references section 1402. Nor does its text hint at some other clue that suggests that its bar on "salvage rights or awards" is limited to *in rem* actions.

An *amici curiae* brief, submitted by two law professors, argues that the Sunken Military Craft Act, as construed by the district court, is "unconstitutional" because it "removes claims under both the law of salvage and the law of finds from the purview of Article III courts." They urge us to construe the Act to allow for "*in personam* [salvage] remedies" to avoid these constitutional concerns.

We decline to consider the law professors' argument. We discern no ambiguity in section 1406(d), and "our adversarial system of adjudication" follows "the principle of party presentation." *United States v. Sineneng-Smith*, 140 S. Ct. 1575, 1579 (2020). Under that principle, we rely on parties to litigation "to frame the issues for decision" and retain "the role of neutral arbiter of matters the parties present." *United States v. Campbell*, 26 F.4th 860, 872 (11th Cir. 2022) (en banc) (citation and internal quotation marks omitted). Here, no party raised a constitutional objection in the district court or this Court. And although the *amici* challenge the constitutionality of the Act, as applied, their non-party brief does not cure the party-present-

ation defect. Unless "exceptional circumstances" are present, "amici curiae may not expand the scope of an appeal to implicate issues not presented by the parties to the district court." *Richardson v. Ala. State Bd. of Educ.*, 935 F.2d 1240, 1247 (11th Cir. 1991). No exceptional circumstance warrants departure from that rule here.

2. *La Trinité* Is a Sunken Military Craft.

Global Marine contends that the Sunken Military Craft Act's bar on salvage claims does not apply to *la Trinité* because the vessel was not engaged in "military noncommercial service when it sank." We disagree. France presented evidence that the vessel was so engaged, and Global Marine's experts failed to create a genuine dispute of fact about the ship's mission when it sank. The Sunken Military Craft Act defines "sunken military craft" to mean "any sunken . . . vessel that was owned or operated by a government on military noncommercial service when it sank." § 1408(3)(A), 118 Stat. at 2098. No one disputes that France owned *la Trinité*. So we ask only whether *la Trinité* was "on military noncommercial service when it sank."

The undisputed record establishes that *la Trinité* was "on military noncommercial service when it sank." To be sure, Ribault was tasked with providing relief to Fort Caroline. To that end, he transported families, civilians, food, goods, livestock, and tradesmen to the settlement. But Ribault was also tasked with defending Fort Caroline from a potential Spanish attack. To that end, the French king armed him to the teeth with artillery and gave him around 500 French soldiers. And if we examine what *la Trinité* was doing

"*when* it sank," the answer is clear. On its way to attack the Spanish fleet—a mission that can only be described as "military noncommercial service"—*la Trinité* sank in a storm. On that basis alone, the undisputed record supports France's position.

Global Marine unpersuasively argues that *la Trinité* was not engaged in military service because Ribault attacked the Spanish Fleet in defiance of King Charles IX's orders. Even if the Act allows us to consider whether Ribault defied the King's orders, nothing in the record supports this argument. The only evidence that even comes close is the statement of one passenger, cited in the report by James Sinclair, that King Charles IX "forbade [Ribault] from making a landfall in any other country or island, especially those which were under the dominion of the King of Spain." That statement, at most, confirms that Ribault had no license to attack Spanish colonial lands. But it does nothing to undermine the evidence that Ribault was tasked with defending Fort Caroline from Spanish attack. And that defense was unquestionably "military noncommercial service."

Global Marine next maintains that the ships in Ribault's fleet were cargo ships, not military ships. But this argument misses the point of section 1408(3)(A). What matters is whether *la Trinité* was engaged in military noncommercial service when it sank. A cargo ship qualifies as a "sunken military craft" under the Act so long as it was "owned or operated by a government on military noncommercial service when it sank." § 1408(3)(A), 118 Stat. at 2098. Global Marine's assertion about Ribault's fleet, even if true, would not sway the outcome of this appeal.

B. Global Marine's Common-Law Claims Fail as a Matter of Law.

Global Marine argues that the district court erred when it granted summary judgment to France on its claims for unjust enrichment, trade-secret misappropriation, and interference. We take each claim in turn.

1. Global Marine's Unjust-Enrichment Claim Fails.

Global Marine argues that the district court erred when it granted summary judgment for France on its unjust-enrichment claim. It contends that "France took the benefit of [Global Marine]'s costs and risks with full knowledge that [Global Marine]'s services produced this benefit." And it accuses France of responding with "hauteur but no gratitude" when it accepted the "windfall" of Global Marine's work. These arguments fail on the facts and on the law.

To succeed on an unjust-enrichment claim under Florida law, a plaintiff must prove three elements: (1) he "conferred a benefit on the defendant, who has knowledge thereof"; (2) the "defendant voluntarily accepts and retains the benefit conferred"; and (3) "the circumstances are such that it would be inequitable for the defendant to retain the benefit without first paying the value thereof to the plaintiff." *Pincus v. Am. Traffic Sols., Inc.*, 333 So.3d 1095, 1097 (Fla. 2022) (citation and internal quotation marks omitted). Put another way, "[w]here unjust enrichment is asserted, a party is liable for services rendered only when he requests the other party to perform the services or knowingly and voluntarily accepts their benefits." *Coffee Pot Plaza P'ship v. Arrow Air Conditioning &*

Refrigeration, Inc., 412 So.2d 883, 884 (Fla. Dist. Ct. App. 1982).

The record contains no evidence that France requested Global Marine's services or that it knowingly and voluntarily accepted the benefits of Global Marine's efforts. Indeed, all signs from France would lead a reasonable party to conclude the opposite. Since 2004, France had publicly stated that it opposed any "intrusive action" directed at any French "warship, naval auxiliary [or] other vessel" without "the express consent of the French republic." 69 Fed. Reg. 5647 (Feb. 5, 2004). Then, in 2016, when Global Marine contacted France about the discovery of *la Trinité*, France refused the company's salvage services. Plus, far from "directly confer[ring] a benefit to [France]," as Global Marine must show to recover under Florida law, *Kopel v. Kopel*, 229 So.3d 812, 818 (Fla. 2017), Global Marine conducted its exploratory activity in the hopes of making a profit for itself. When those efforts failed, it brought a legal action, denied that it had located *la Trinité*, and even submitted an expert report contending that Global Marine "ha[d] not discovered a primary shipwreck site at all." *Global Marine I*, 348 F. Supp. 3d at 1234 n.8. No matter which way we look at it, Global Marine has failed to create a genuine dispute of fact that would warrant reversal for this claim.

2. Global Marine's Trade-Secret-Misappropriation Claim Fails.

Global Marine argues that the district court erred when it granted summary judgment for France on its misappropriation-of-trade-secrets claim. This claim proceeds under the Florida Uniform Trade Secrets Act. *Yellowfin Yachts, Inc. v. Barker Boatworks, LLC*,

898 F.3d 1279, 1297 (11th Cir. 2018). To prove liability under that Act, Global Marine must prove that "(1) it possessed a 'trade secret' and (2) the secret was misappropriated." *Id.* (citation and internal quotation marks omitted). Misappropriation occurs when a trade secret is acquired "by someone who knows or has reason to know that the secret was improperly obtained or who used improper means to obtain it." *Id.* (citation and internal quotation marks omitted).

No record evidence proves that France misappropriated the purported trade secrets—*i.e.*, the "precise locations" of Global Marine's "discovered shipwreck sites"—in question. Global Marine's exploratory permit required the company to turn over "Survey Log Sheets" with "topographic quadrangle maps" and "site locations" to the Florida Department of State. FLA. ADMIN. CODE ANN. r. 1A-46.001 (2025). Global Marine may believe that the Florida Department of State, through "coercion and deception," "induced" it to turn over this location data. But that alleged coercion has nothing to do with France. And Global Marine failed to bring forth any evidence proving that France knew that the precise location data "was improperly obtained" or that France itself "used improper means to obtain it." *Yellowfin Yachts*, 898 F.3d at 1297 (citation and internal quotation marks omitted).

3. Global Marine's Tortious-Interference Claim Fails.

Global Marine argues that the district court erred when it granted summary judgment for France on its claim of tortious interference. More specifically, Global Marine contends that France interfered with Global Marine's "rights and business relations" with the

Florida Department of State when France joined forces with the Department to explore and recover *la Trinité* and "the other shipwrecks" from Ribault's fleet. We disagree. Any interference was justified under Florida law.

To succeed on this claim, Global Marine must prove "(1) the existence of a business relationship[;] (2) knowledge of the relationship on the part of the defendant; (3) an intentional and unjustified interference with the relationship by the defendant; and (4) damage to the plaintiff as a result of the breach of the relationship." *Ethan Allen, Inc. v. Georgetown Manor, Inc.*, 647 So.2d 812, 814 (Fla. 1994) (alteration adopted) (citation and internal quotation marks omitted). The third element, most important here, requires the plaintiff to allege "that the defendant acted without justification." *Sec. Title Guarantee Corp. of Balt. v. McDill Columbus Corp.*, 543 So.2d 852, 855 (Fla. Dist. Ct. App. 1989). A defendant does not act "without justification," *id.*, if he has "the privilege of interference." *Wackenhut Corp. v. Maimone*, 389 So.2d 656, 658 (Fla. Dist. Ct. App. 1980).

Florida law provides a "protection privilege" against liability for tortious interference when a defendant "interfere[s] to protect [its] own financial and contractual interests." *Weisman v. S. Wine & Spirits of Am., Inc.*, 297 So.3d 646, 651 (Fla. Dist. Ct. App. 2020) (citing *Salit v. Ruden, McClosky, Smith Schuster & Russell, P.A.*, 742 So.2d 381 (Fla. Dist. Ct. App. 1999)). "To defend using this privilege requires only that the defendant show improper means were not employed." *Id.* "The burden to defeat the privilege then shifts to the party that brought the tortious interference claim to show improper means were employed." *Id.* Under

the protection privilege, a defendant cannot be liable for tortious interference for "'doing no more than insisting upon existent legal rights in a permissive way.'" *Id.* (alteration adopted) (quoting *Horizons Rehab., Inc. v. Health Care & Ret. Corp.*, 810 So.2d 958, 964 (Fla. Dist. Ct. App. 2002)). The "controlling principle is that so long as improper means are not employed, activities taken to safeguard or promote one's own financial [and contractual interests] are entirely non-actionable." *Sec. Title Guarantee Corp. of Balt.*, 543 So.2d at 855 (citation and internal quotation marks omitted).

France's interference related to *la Trinité* was justified under the protection privilege because France did nothing more than protect its economic and financial interests in a permissive way. *See Weisman*, 297 So.3d at 651. France established a relationship with the Florida Department of State and interfered (in the legal sense) in Global Marine's *in rem* action to protect its ownership of and sovereign interest in *la Trinité*. No evidence suggests that France protected its interests using improper means.

In response, Global Marine asks us to infer that France acted with a "malicious motive" because France and Florida's declaration of joint venture referred not only to *la Trinité* but also to other "sites within the state permit area previously awarded to" Global Marine. But the question under the protection privilege is whether France protected its rights without resorting to "improper means," *id.*, not whether France acted with a malicious motive. "[I]t is irrelevant whether the person who takes authorized steps to protect his own [economic] interests does so while also harboring some personal malice or ill-will towards the plaintiff." *Ethyl*

Corp. v. Balter, 386 So.2d 1220, 1225 (Fla. Dist. Ct. App. 1980) (citing *Chipley v. Atkinson*, 1 So. 934, 938 (Fla. 1887)).

The declaration of joint venture does not suggest that France acted improperly. The declaration outlines France's and Florida's intent to "[p]rotect the archeological site off the coast of Cape Canaveral, State of Florida, where the shipwreck of the *Trinité* and of other vessels from its fleet are located." It also describes efforts to study and preserve the "vestiges of the *Trinité*, which will include in particular the study and recovery of the shipwreck of the *Trinité* and of the other shipwrecks from its fleet and the related activities aiming to identify, preserve and commemorate this heritage." The declaration establishes that France and Florida plan to search for other ships from Ribault's fleet, but it makes no mention of the five additional sites identified in Global Marine's reports.

This omission makes sense. As Global Marine points out, there is little evidence that the five other sites contained shipwrecks of the French fleet. At a hearing, France's legal representative agreed with Global Marine on that point. He stated, the "record . . . show[s] that *la Trinité* is the only one of the Ribault fleet ships that was driven that far south. The others are somewhere to the north remaining to be found." He also clarified that France did not "make any claim as to those other[]" five sites.

France's lawful financial and contractual interests in recovering the other ships in Ribault's fleet are the same as its interests in recovering *la Trinité*. No evidence proves that France, in pursuit of these lawful interests, interfered with the five other sites identified by Global Marine in its reports. Global Marine's drive-

by request for an inference of "malicious motive" in its favor does not create a genuine dispute of material fact.

Moreover, though Global Marine faults France for the demise of its "business relations" with Florida, the record establishes that Global Marine's own conduct caused the fallout. "Imbedded within" the elements of tortious interference "is the requirement that the plaintiff establish that the defendant's conduct caused or induced the breach that resulted in the plaintiff's damages." *Chi. Title Ins. v. Alday–Donalson Title Co. of Fla.*, 832 So.2d 810, 814 (Fla. Dist. Ct. App. 2002). When Global Marine filed its *in rem* suit, it presented to the district court "3 cannon balls, 3 ballast stones, [and] one pick head" recovered from the site of *la Trinité*. Florida determined that those artifacts "were illegally recovered in violation of" Global Marine's permit. Florida then suspended the permit and later revoked it because Global Marine failed to "return the artifacts." Missing from this chain of causation is any evidence pointing to French interference. Instead, Global Marine's actions caused Florida to revoke its permit and deny its "application for recovery of materials in the permit area."

IV. Conclusion

We AFFIRM the judgment in favor of France.

WILLIAM PRYOR, CHIEF JUDGE, CONCURRING

I write separately to offer a comment about the initial and reply briefs filed by the *amici curiae*, Associate Professor of Law Annie Brett and Staff Attorney and Fellow Ryan L. Scott of the University of Florida, regarding the Sunken Military Craft Act. *See* Pub. L. No. 108-375, §§ 1401–08, 118 Stat. 1811, 2094–98 (2004) (codified at 10 U.S.C. § 113 note). The *amici* contend that the Act, as we and the district court have interpreted its plain text, is "likely unconstitutional as an impermissible repudiation of the federal courts['] admiralty and maritime jurisdiction." *See* U.S. CONST. art. III, § 2. Although the panel properly declines to address this argument because no party raised it either in the district court or on appeal, our silence should not be understood as implying that it has potential merit. The argument is, at best, dubious.

The *amici* maintain that the Act, as we have construed it, unconstitutionally "removes claims under both the law of salvage and the law of finds" from admiralty jurisdiction. They contend that because those claims have historically been allowed "against both sunken and floating military craft," Congress cannot remove any *in personam* claims for salvage from admiralty jurisdiction. And in support of that novel argument, they rely on the following often repeated but obscure passage from *Panama Railroad Co. v. Johnson*: "[T]here are boundaries to the maritime law and admiralty jurisdiction which inhere in those subjects and cannot be altered by legislation, as by excluding a thing falling clearly within them or

including a thing falling clearly without." 264 U.S. 375, 386 (1924).

Their argument, if meritorious, would also cast doubt on the constitutionality of the Abandoned Shipwreck Act of 1987, 43 U.S.C. §§ 2101–06, which likewise provides that the laws of salvage and finds "shall not apply to abandoned shipwrecks" in United States waters, *id.* §§ 2105(a), 2106(a). The issue is important: "An estimated fifty thousand shipwrecks lie in the territorial waters of the United States." Russell G. Murphy, *The Abandoned Shipwreck Act of 1987 in the New Millennium: Incentives to High Tech Piracy?*, 8 OCEAN & COASTAL L.J. 167, 167 (2002).

Respectfully, the *amici* misunderstand the breadth of congressional power to "alter, qualify or supplement" maritime law and jurisdiction. *Panama R.R. Co.*, 264 U.S. at 386. As the Supreme Court also stated in *Panama Railroad*, "[T]here is no room to doubt that the power of Congress extends to the entire subject and permits of the exercise of a wide discretion." *Id.* Indeed, several years earlier, the Court declared "as settled doctrine" that "Congress has paramount power to fix and determine the maritime law which shall prevail throughout the country." *S. Pac. Co. v. Jensen*, 244 U.S. 205, 215 (1917). And as for the broad grant of admiralty jurisdiction to the federal courts, U.S. CONST. art. III, § 2, the Court later explained, "There is *nothing* in that grant of jurisdiction—which sanctioned our adoption of the system of maritime law—to preclude Congress from modifying or supplementing the rules of that law as experience or changing conditions may require." *O'Donnell v. Great Lakes Dredge & Dock Co.*, 318 U.S. 36, 40–41 (1943) (emphasis added). Indeed, Supreme Court precedents on this

point lead the authors of one respected treatise "irresistibly" to conclude "that, while limitations do exist in theory, it is difficult to envisage circumstances which would call for any maritime legislation undertaken by the Congress, conforming to adequate standards of harmony of a national system, to be struck down by the courts." 1 BENEDICT ON ADMIRALTY § 110 (2025). Of course, Congress too enjoys plenary power to define the jurisdiction of the inferior courts that it creates. U.S. CONST. art. III, § 1; *Lockerty v. Phillips*, 319 U.S. 182, 187 (1943) ("The Congressional power to ordain and establish inferior courts includes the power . . . 'of withholding jurisdiction from them in the exact degrees and character which to Congress may seem proper for the public good.'" (quoting *Cary v. Curtis*, 44 U.S. (3 How.) 236, 245 (1845))); *Kline v. Burke Constr. Co.*, 260 U.S. 226, 234 (1922) (declaring that jurisdiction "conferred may, at the will of Congress, be taken away in whole or in part"); *Sheldon v. Sill*, 49 U.S. (8 How.) 441, 449 (1850) (stating that "Congress may withhold from any court of its creation jurisdiction" over any cases or controversies).

To be sure, some scholars debate whether the general maritime law should preempt state law after the demise of "federal general common law" in *Erie Railroad Co. v. Tompkins*, 304 U.S. 64, 78 (1938) ("There is no federal general common law."). *Compare* Ernest A. Young, *Preemption at Sea*, 67 GEO. WASH. L. REV. 273, 275, 277 (1999) (proposing that after *Erie* "there should be no special preemption doctrine in admiralty"), *and* Bradford R. Clark, *Federal Common Law: A Structural Reinterpretation*, 144 U. PA. L. REV. 1245, 1332–60 (1996) (critiquing the preemptive

nature of general maritime law for private claims), *with* Robert Force, *An Essay on Federal Common Law and Admiralty*, 43 ST. LOUIS U. L.J. 1367, 1367–68, 1377–82 (1999) (defending the doctrine of general maritime law preempting state law). The critics of treating general maritime law as federal law contend that "preemption is extremely difficult to justify in the absence of legislative action." Young, *supra*, at 277. *But see* Force, *supra*, at 1380 ("If the Supreme Court applied the *Erie* rationale to the general maritime law tomorrow, assuredly there would be chaos."). Yet both critics and defenders alike acknowledge the constitutionality and supremacy of federal maritime legislation. *See, e.g.*, Clark, *supra*, at 1259 (arguing that "the Court must point to some source, such as a statute, treaty, or constitutional provision, as authority for the creation of substantive federal law"); Force, *supra*, at 1377 ("When Congress enacts maritime legislation under the Commerce Clause or some other express power, there is no question that conflicting state law must yield to the Supremacy Clause.").

The breadth of the discretion of Congress to define the maritime law for sunken military craft must also be understood in the light of its other enumerated powers. The Constitution grants Congress several powers to effect the alteration of substantive maritime law made by section 1402(b), 118 Stat. at 2095 (providing that "[n]o person may possess, disturb, remove, or injure any sunken military craft," ancient or modern and domestic or foreign, except as otherwise permitted), and section 1406(d), 118 Stat. at 2097 (preempting the ordinary laws of salvage and finds for those craft), of the Act. These powers include the power "[t]o regulate Commerce with foreign Nations,

and among the several States"; "[t]o define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations"; "[t]o declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water"; "[t]o provide and maintain a Navy"; "[t]o make Rules for the Government and Regulation of the land and naval Forces"; and "[t]o make all Laws which shall be necessary and proper for carrying into execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States." U.S. CONST. art. I, § 8. Moreover, the Constitution grants Congress, among its "other Powers," *id.*, the authority "to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States," *id.* art. IV, § 3.

Any sunken military craft carries enormous significance to a nation. *See* Guidelines for Permitting Archaeological Investigations and Other Activities Directed at Sunken Military Craft and Terrestrial Military Craft Under the Jurisdiction of the Department of the Navy, 80 Fed. Reg. 52588, 52588 (Aug. 31, 2015) (codified at 32 C.F.R. § 767). For the sailors, pilots, or soldiers who drowned, the craft serves as a graveyard and a memorial to their service. *Id.* Its remaining ordnance represents a threat to public safety. *Id.* Its fuels, chemicals, or hazardous substances may cause environmental pollution. *Id.* An ancient craft will likely hold historical and cultural value for the nation that operated it. *Id.* And a modern craft may contain sensitive technologies and military secrets. *Id.*

The federal interests in preempting the general maritime laws of salvage and finds for sunken military craft and establishing a modern uniform law on this

subject are easy to comprehend. When Congress enacted, and President George W. Bush signed, this law as part of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, Pub. L. No. 108-375, 118 Stat. 1811 (2004), it permitted the federal government to protect not only its sunken military craft but also to promote our foreign relations and national security by respecting the military craft of other nations. 80 Fed. Reg. at 52589 ("As more than half of [the Navy's] sunken military craft rest beyond U.S. waters, the U.S. government has an interest in reaching understandings or agreements with foreign nations, . . . seeking assurances that U.S. sunken military craft will be respected and protected[,] and offering foreign nations reciprocal treatment."). The Act preserves title to our sunken military craft regardless of location or age, § 1401, 118 Stat. at 2094, and it protects any foreign military craft in United States waters from private disturbance, §§ 1402(a)–(b), 1408(3), 118 Stat. at 2094–95, 2098. It covers not only naval vessels but also sunken aircraft and spacecraft. § 1408(3)(B), 118 Stat. at 2098.

Contrary to the argument of the *amici* scholars, the Sunken Military Craft Act does not "remove[]" a maritime subject from its jurisdiction within the meaning of *Panama Railroad*. That is, it does not treat a maritime subject as the province of local law. It instead supplants general law derived from the ancient law of nations, *see, e.g.*, 1 EMER DE VATTEL, THE LAW OF NATIONS § 293, at 256 (Béla Kapossy & Richard Whatmore eds., Liberty Fund, Inc. 2008) (1758) (describing "the right to wrecks" in the law of the sea); *see generally* ANTHONY J. BELLIA JR. & BRADFORD R. CLARK, THE LAW OF NATIONS

AND THE UNITED STATES CONSTITUTION 41–134 (2017) (recounting the development of the law of state-state relations and the law maritime in relation to the Constitution), and fashions new uniform rules of maritime law for the changed conditions of our modern nation.

The Act creates a new regime for the salvage of a sunken military craft within admiralty jurisdiction. Under sections 1406(d)(1) and (2), 118 Stat. at 2097, a salvor must have "the express permission" of the nation that owns the craft to exercise any rights of salvage or to obtain an award of salvage. Sections 1404 and 1405, 118 Stat. at 2095–96, give the United States the authority to enforce the Act through steep civil penalties for violations and to obtain enforcement costs and damages for any injury. Section 1404(d), 118 Stat. at 2096, creates *in rem* liability for any vessel used to violate the Act. *See Am. Dredging Co. v. Miller*, 510 U.S. 443, 446–47 (1994) ("An *in rem* suit against a vessel is . . . distinctively an admiralty proceeding, and is hence within the exclusive province of federal courts."). And section 1406(f), 118 Stat. at 2097, excepts any violator of the Act from the benefit of the Limitation of Liability Act. *See* 46 U.S.C. §§ 30501–30.

Under the Act, the subject of ownership and recovery of sunken military craft remains both federal and maritime even as its substantive rules have been altered. Not surprisingly, when it sued *la Trinité* in its *in rem* action in the Middle District of Florida, Global Marine invoked maritime jurisdiction, 28 U.S.C. § 1333. *See* Complaint at 2, *Glob. Marine Expl., Inc. v. The Unidentified Wrecked & (for Finders-Right Purposes) Abandoned Sailing Vessel*, 348 F. Supp. 3d 1221 (M.D.

Fla. 2018) (No. 6:16-cv-1742-Orl-KRS). And when it sued France in this *in personam* action, it alleged that it sought to enforce a "maritime lien under federal admiralty law." The jurisdictional issues that later arose in both cases involved foreign sovereign immunity, *not* any question about admiralty jurisdiction. The subject of this controversy—a vessel in navigable waters—remains, of course, the province of maritime law. *See generally* 1 THOMAS J. SCHOENBAUM, ADMIRALTY AND MARITIME LAW §§ 3.3, 3.6 (6th ed. 2024) (explaining the importance of location and vessel status in determining jurisdiction); 1 BENEDICT, *supra*, § 106 (same). But Congress changed the substantive maritime law of salvage rights for sunken military craft, and under the Act, Global Marine enjoys no salvage rights. Congress knew what it was doing when it enacted this law. And under the Constitution, we are duty-bound to respect its judgment on this matter.

ERRATA

The opinion of the Court has been changed as follows:

On page 7, "1000" has been changed to "1,000".

On page 13, "a" has been inserted between "for" and "declaratory judgment".

On page 15, the "é" in "*la Trinité*" has been italicized.

On page 32, "*Weisman*, 297 So.3d at 651" has been replaced with "*id.*".

On page 32, italics have been removed from the comma following "*Salter*".

ORDER GRANTING MOTION OF THE UNITED STATES TO INTERVENE, U.S. COURT OF APPEALS FOR THE ELEVENTH CIRCUIT (MAY 27, 2025)

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

GLOBAL MARINE EXPLORATION, INC.,

Plaintiff-Appellant,

v.

REPUBLIC OF FRANCE,

Defendant-Appellee.

No. 24-10148

Appeal from the United States District Court
for the Northern District of Florida
D.C. Docket No. 4:20-cv-00181-AW-MJF

ORDER:

The motion of the United States to intervene to defend the constitutionality of the Sunken Military Craft Act is granted.

/s/ David J. Smith
Clerk of the United States Court of
Appeals for the Eleventh Circuit

ENTERED FOR THE COURT - BY DIRECTION

ORDER DENYING POSTJUDGMENT MOTION, U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA TALLAHASSEE DIVISION (DECEMBER 15, 2023)

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA TALLAHASSEE DIVISION

GLOBAL MARINE EXPLORATION, INC.,

Plaintiff,

v.

REPUBLIC OF FRANCE,

Defendant.

Case No. 4:20-cv-181-AW-MJF

Before: ALLEN WINSOR, U.S. District Judge.

ORDER DENYING POSTJUDGMENT MOTION

The court granted summary judgment against Plaintiff Global Marine Exploration (GME) on each of its four claims against the Republic of France. ECF No. 88. GME has moved to alter or amend under Federal Rules of Civil Procedure 52(b) and 59(e), or alternatively for relief from the judgment under Rule 60(b)(6). ECF No. 90. France filed a response in opposition. ECF No. 91. This order denies GME's motion.

First, GME has not shown any manifest errors that would justify amendment under Rule 52(b). *See Johnson v. New Destiny Christian Ctr. Church, Inc.*, 771 F. App'x 991, 995 n.5 (11th Cir. 2019) ("The purpose of [Rule 52(b) motions] is to correct manifest errors of law or fact or, in some limited situations, to present newly discovered evidence." (alteration in original) (quoting in parenthetical *Fontenot v. Mesa Petrol. Co.*, 791 F.2d 1207, 1219 (5th Cir. 1986))).

Similarly, "[t]he only grounds for granting [a Rule 59] motion are newly-discovered evidence or manifest errors of law or fact." *Arthur v. King*, 500 F.3d 1335, 1343 (11th Cir. 2007) (second alteration in original) (quoting *In re Kellogg*, 197 F.3d 1116, 1119 (11th Cir. 1999)). A "Rule 59(e) motion [cannot be used] to relitigate old matters, raise argument, or present evidence that could have been raised prior to the entry of judgment." *MacPhee v. MiMedx Grp., Inc.*, 73 F.4th 1220, 1250 (11th Cir. 2023) (alteration in original) (quoting *Michael Linet, Inc. v. Vill. of Wellington*, 408 F.3d 757, 763 (11th Cir. 2005)). GME's motion largely repeats the same arguments previously made. *See* ECF Nos. 63-65, 68-69, 77-78, 82-83, 87.

To the extent GME raises new arguments or cites historical contentions that it did not reference before, it has not shown that those arguments were previously unavailable. *See MacPhee*, 73 F.4th at 1250; *see also Stone v. Wall*, 135 F.3d 1438, 1442 (11th Cir. 1998) ("The purpose of a Rule 59(e) motion is not to raise an argument that was previously available, but not pressed.").

Third, "[r]elief from judgment under Rule 60(b)(6) . . . is an extraordinary remedy and requires a showing of 'extraordinary circumstances' to justify the reopening

of a final judgment." *MacPhee*, 73 F.4th at 1251 (quoting *Arthur v. Thomas*, 739 F.3d 611, 628 (11th Cir. 2014)). GME has not shown any extraordinary circumstances that would justify relief under Rule 60(b)(6).

In short, GME merely reargues its case and has not shown any reason to disturb the judgment. A few additional points, though, are worth mentioning. First, GME contends the court reached no conclusions regarding whether the ship was on noncommercial service. ECF No. 90 at 1 ("The order on summary judgment makes no findings that *La Trinité*'s activity at the time it sank was 'noncommercial.'"); *id.* at 7 ("The Court's Order ignores the condition that the vessel be in *noncommercial* service when it sank."). In fact, the court's order concluded that the cited portions of the summary judgment record showed it undisputed that the ship *was* in military noncommercial service. *See* ECF No. 88 at 11 ("While GME makes several tangential arguments concerning the broader history of Ribault's voyage, it ultimately does not point to any evidence that contradicts France's assertion that *la Trinité* was 'on military noncommercial service when it sank.'").

Second, GME argues (again) that the Sunken Military Craft Act (SMCA) does not preclude its state-law claims. It says "[t]he Court seems to acknowledge this but fails to directly make this ruling." ECF No. 90 at 9. Indeed, the court did not explicitly make a ruling regarding the SMCA's application to GME's state-law claims, concluding "I need not decide that issue because GME's other claims independently fail on the merits." ECF No. 88 at 16; *see also id.* ("I am doubtful that the SMCA would reach the state-law claims of

unjust enrichment, trade secret misappropriation, and tortious interference with a business relationship—even if the 'gravamen' or 'core' of GME's claims relate to the same facts."). To the extent GME now asks the court to make a ruling on an issue not necessary to the resolution of the case, I decline.

Third, regarding the court's conclusion that GME's trade-secret claim fails based on GME's failure to take reasonable steps to protect the purportedly secret information, ECF No. 88 at 20, GME argues that any "waiver" was not a knowing and voluntary waiver, ECF No. 90 at 11. It cites two inapposite cases for the proposition that courts must evaluate the totality of the circumstances to determine a knowing waiver. *See Chames v. DeMayo*, 972 So.2d 850, 861 (Fla. 2007) (holding that Florida's homestead exemption cannot be waived and noting that "waivers must be made knowingly, voluntarily, and intelligently"); *Jean-Louis v. Forfeiture of $203,595.00 in U.S. Currency*, 767 So.2d 595, 598 (Fla. 4th DCA 2000) ("The instant case involves appellants' constitutional right against deprivation of property without due process of law. Therefore, consideration of the validity of the waiver under the totality of circumstances . . . should be undertaken." (citations omitted)). But this is not a waiver issue. The issue is whether GME presented evidence from which a factfinder could conclude its information constituted a trade secret, and it did not.

The motion (ECF No. 90) is DENIED.

SO ORDERED on December 15, 2023.

/s/ Allen Winsor
U.S. District Judge

ORDER GRANTING SUMMARY JUDGMENT, U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA TALLAHASSEE DIVISION (SEPTEMBER 29, 2023)

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA TALLAHASSEE DIVISION

GLOBAL MARINE EXPLORATION, INC.,

Plaintiff,

v.

REPUBLIC OF FRANCE,

Defendant.

Case No. 4:20-cv-181-AW-MJF

Before: ALLEN WINSOR, U.S. District Judge.

ORDER GRANTING SUMMARY JUDGMENT

Global Marine Exploration, Inc. (GME), as its name suggests, is a marine exploration company. Several years ago, it discovered centuries-old shipwrecks off the coast of Cape Canaveral. Claiming ownership of the ships and any artifacts, GME brought an *in rem* admiralty action. *Glob. Marine Expl., Inc. v. Unidentified, Wrecked & (for Finders-Right Purposes) Abandoned Sailing Vessel* ("*GME I*"), 348 F. Supp. 3d

1221 (M.D. Fla. 2018). France and the Florida Department of State (FDOS) intervened, and the district court determined that one of the ships was *la Trinité*, a sixteenth century vessel that had served as the flagship of French Captain Jean Ribault's ill-fated mission to reinforce France's colonial presence in Florida. *Id.* at 1224-25, 1242.

The fact that the ship GME found was *la Trinité* meant it was France's sovereign property, which in turn meant the court lacked subject-matter jurisdiction. *Id.* at 1225-26. The court dismissed, and GME did not appeal that decision. Instead, it filed this *in personam* action against France. Here, conceding it has no *in rem* claim to *la Trinité*, ECF No. 69 (Resp.) at 20, GME presents four claims: (1) *in personam* lien award to compensate GME for finding *la Trinité*; (2) "quasi contract/unjust enrichment" to recover the value of services rendered; (3) trade secret misappropriation; and (4) tortious interference regarding GME's relationship with FDOS. ECF No. 3 (FAC) at 12-20.

This court previously granted France's motion to dismiss based on the Foreign Sovereign Immunities Act, 28 U.S.C. § 1602 *et seq*. ECF No. 29 at 3. The Eleventh Circuit reversed, though, concluding that the FSIA's commercial activity exception applied and that this court therefore had subject-matter jurisdiction. *Glob. Marine Expl., Inc. v. Republic of Fr.*, 33 F.4th 1312, 1315 (11th Cir. 2022).

On remand, France has moved for summary judgment. ECF No. 59 (Motion). After a hearing, and having carefully considered the record and the extensive briefing, I now conclude France is entitled to summary judgment.

BACKGROUND

The facts come from the record, viewing the evidence and making all reasonable inferences in the light most favorable to GME. *Essex Ins. Co. v. Barrett Moving & Storage, Inc.*, 885 F.3d 1292, 1299 (11th Cir. 2018). Under this standard, the "'facts', as accepted at the summary judgment stage of the proceedings, may not be the 'actual' facts of the case." *Priester v. City of Riviera Beach*, 208 F.3d 919, 925 n.3 (11th Cir. 2000). What follows are the facts as accepted at this stage.

In 2015, GME entered into an authorization agreement with the FDOS and obtained an exploration permit. *See* ECF No. 53-6. GME then discovered five shipwreck sites off the coast of Cape Canaveral. It suspected (correctly, as it turned out) that site #2 was *la Trinité*.

GME thought it might have found the remains of Ribault's fleet. As its authorization agreement required, GME informed the FDOS and the Florida Division of Historical Resources (FDHR) about its discovery. GME submitted a "Notification of Find Report," explaining that GME "discovered possibly 2 Bronze cannon[s]" it believed were of French origin and could be from Ribault's expedition. ECF No. 53-9 at 2-3, 8. GME asked the FDHR to approve a recovery permit so it could recover the artifacts. Tim Parsons, the State Historic Preservation Officer, responded to the request and explained that the FDHR had "reach[ed] out to the French government" because "[a]s [GME] pointed out, if these sites belong to Ribault's fleet they could be extremely significant to the history of Florida, and France." ECF No. 53-10 at 2.

In May 2016, GME emailed the French Embassy to inquire about making an agreement with France if the ship turned out to be *la Trinité*. ECF No. 53-12 at 2. In response, the French Embassy issued a Diplomatic Note stating France's opposition to "any commercial exploration on the vessel." ECF No. 53-4 at 11.

GME then filed a Final Dig & Identify Report and Request for Rescue Recovery Permit with the FDHR. ECF No. 53-2. In the report, GME acknowledged that "France, Spain, England and other countries must be contacted," and that "[e]ven though we do not know what these finds are, there should be an understanding with France and others." *Id.* at 6.

In mid-July 2016, GME followed up on its request for an FDHR recovery permit. Tim Parsons told GME that the FDHR needed more information, most importantly "the coordinates of the archaeological material and site features." ECF No. 63 at 5. This was "not only for [the FDHR]'s potential assessment of the site, but it [was] also necessary to advance the discussion with the appropriate French authorities." *Id.* GME explained to Parsons that it omitted the coordinates because it did not want them to "become public information" and "GME want[ed] to protect the site(s)." *Id.* at 6. Parsons responded and informed GME that the FDHR was exempt from Florida's public records law, so the coordinates would not be publicly divulged. *Id.* at 8. GME then provided the specific coordinates.

On July 21, 2016, GME emailed the French Embassy's press officer to confirm France's position on salvaging the ship. ECF No. 53-13 at 2-3. The officer stated that if the vessel "happens to be part of the Royal fleet then yes [France] want[s] to make sure

that no commercial exploitation whatsoever is operated in any way on what is a piece of cultural heritage." *Id.* at 4. GME responded that it "respect[s] France's wishes and the sovereign international law." *Id.* at 5.

GME never obtained a recovery permit from the FDHR. It later filed the *in rem* action described above. *GME I*, 348 F. Supp. 3d at 1223-24. It then filed this *in personam* action.

STANDARD

On a motion for summary judgment, the moving party bears the burden of showing "there is no genuine issue as to any material fact" and that it "is entitled to judgment as a matter of law." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986) (quoting Fed. R. Civ. Pro. 56(c)). France can meet its burden by showing that GME "has failed to make a sufficient showing on an essential element of [its] case with respect to which [it] has the burden of proof." *Id.* at 323. If France does so, "there can be 'no genuine issue as to any material fact,' since a complete failure of proof concerning an essential element of [GME's] case necessarily renders all other facts immaterial." *Id.*

DISCUSSION

GME seeks an *in personam* lien award based on federal admiralty law. It also advances Florida-law claims for "quasi contract/unjust enrichment"; trade secret misappropriation; and interference with rights and relations. FAC at 12-20. France's principal argument is that GME's claims are all barred by the Sunken Military Craft Act (SMCA), Pub. L. No. 108-375, §§ 1401-08, 118 Stat. 1811, 2094-98 (2004). Motion at 18. That law provides that "[n]o salvage rights or

awards shall be granted with respect to . . . any foreign sunken military craft located in United States waters without the express permission of the relevant foreign state." *Id.* § 1406(d)(2). In France's view, this statute precludes not only GME's federal admiralty claim but also all other claims because the Eleventh Circuit concluded the "gravamen" and "core" of GME's claims are "France's failure to compensate GME for the value of GME's salvage services." Motion at 3 (quoting *Glob. Marine Expl., Inc.*, 33 F.4th at 1324-25); *see also id.* at 20. GME offers two responses. It says first that the SMCA applies only to *in rem* actions. It alternatively argues that if the SMCA applies, there is a disputed fact about whether *la Trinité* was a "foreign sunken military craft."

The SMCA's Application is Not Limited to *In Rem* Actions.

First, GME argues that the SMCA does not apply to *in personam* actions. Resp. at 17. But that is inconsistent with both the statute's text and general principles of salvage law. The text makes no distinction between *in personam* and *in rem* actions. It prohibits granting "salvage rights or awards." § 1406(d). And salvage rights or awards can be granted in an *in rem* or an *in personam* action. *Treasure Salvors, Inc. v. Unidentified Wrecked & Abandoned Sailing Vessel*, 640 F.2d 560, 567 (5th Cir. 1981) ("[A] salvor may assert his right to a salvage award either in an in rem proceeding against the salved vessel or cargo or in an in personam proceeding against the owner of the salved property."); *see also* 3A *Benedict on Admiralty* § 288 (2023) ("Generally, a suit for a salvage award is one brought *in rem* against the ship. . . . The salvor also has his remedy *in personam* against the owners

of the salved property. . . . ").[1] In fact, the Supreme Court recognized that plaintiffs could bring *in rem* or *in personam* salvage award suits as early as 1879. *See The Sabine*, 101 U.S. 384, 386 (1879). Against this historical backdrop, there is no indication that Congress chose to limit the SMCA's application solely to *in rem* actions. It follows that the SMCA applies to bar salvage award claims whether *in rem* or *in personam*.

In arguing otherwise, GME points to language from § 1402(a), which generally prohibits engaging in "activity directed at a sunken military craft that disturbs, removes, or injures any sunken military craft." Resp. at 19. But as France notes, § 1402 is a separate provision that deals with the disruption of sunken military crafts. ECF No. 71 at 3. It is enforced by penalties in § 1404 and § 1405. In contrast, § 1406(d)'s broad prohibition against salvage awards falls under a heading titled "Relationship to Other Laws" and does not reference any of the proceeding sections. Thus, § 1402(a) should not be read to limit § 1406(d).

La Trinité is a Foreign Sunken Military Craft, and the SMCA Precludes GME's Claim for a Salvage Lien.

GME next argues that even if the statute applies to *in personam* actions, it does not apply here because *la Trinité* is not a "sunken military craft," which the SMCA defines as "any sunken warship, naval auxiliary, or other vessel that was owned or operated by a gov-

---

[1] Fifth Circuit decisions issued before October 1, 1981 are binding precedent. *See Bonner v. City of Pritchard*, 661 F.2d 1206, 1209 (11th Cir. 1981).

ernment on military noncommercial service when it sank." § 1408(3)(A). France disagrees, arguing first that the issue was resolved in *GME I* and second that the summary-judgment record shows indisputably that *la Trinité* was, in fact, a "sunken military craft." France is wrong on the first point but right on the second.

France focuses much of its argument on collateral estoppel. It contends that "it is *res judicata* and a matter of collateral estoppel that *la Trinité* was both a warship of France and a vessel owned and operated by France in military non-commercial service at the time of sinking." Motion at 5 (citing *GME I*, 348 F. Supp. 3d at 1242-43).[2] But in *GME I*, the court had no reason to decide whether *la Trinité* was a military craft or some other craft. It was "undisputed that *la Trinité* is the sovereign property of the Republic of France." 348 F. Supp. 3d at 1242. The "lone issue" was whether the ship GME found was *la Trinité*. *Id.* at 1228. The court concluded it was, and it dismissed the claim for lack of subject-matter jurisdiction.

It is true that in its detailed historical findings, the court concluded *la Trinité* was a military vessel, but this was not a necessary part of the claim that was "actually litigated." *See In re St. Laurent*, 991 F.2d 672, 676 (11th Cir. 1993), *as corrected on reh'g* (June 22, 1993) (noting that for issue preclusion to apply, the

---

[2] As France acknowledged at the hearing, claim preclusion would not apply here because the *GME I* was dismissed for lack of subject-matter jurisdiction and therefore was not an adjudication on the merits. Rough Trans. at 34; *see also Davila v. Delta Air Lines, Inc.*, 326 F.3d 1183, 1188 (11th Cir. 2003) (noting that jurisdictional dismissals cannot support claim preclusion). But issue preclusion can still apply in these circumstances.

issue must have been "actually litigated in the prior proceeding" and that "the prior determination of the issue must have been a critical and necessary part of the judgment in the earlier decision"); *see also B & B Hardware, Inc. v. Hargis Indus., Inc.*, 575 U.S. 138, 148 (2015). Because *la Trinité*'s status as a military vessel was not essential to, or actually litigated in, *GME I*, it cannot have a preclusive effect in this case.

France alternatively argues that the summary-judgment record shows *la Trinité* is a "sunken military craft." As noted above, the statute defines the term to include "any sunken . . . vessel that was owned or operated by a government on military noncommercial service when it sank." § 1408(3)(A). All agree that *la Trinité* is a sunken vessel that was owned by France. The question is whether it was "on military noncommercial service when it sank." On this point, France met its initial summary-judgment burden.[3]

France's historian, Dr. Frank Lestringant, states in his declaration that after Ribault arrived in Florida, the French had a close encounter with Pedro Menéndez

---

[3] France contends that the historical evidence relied upon by *GME I* to determine the vessel was *la Trinité* also supports that *la Trinité* was on military noncommercial service when it sank. ECF No. 71 (Reply) at 5. France has provided that same evidence here and supplemented its Reply brief with two declarations referenced in *GME I*. The declaration from Dr. Frank Lestringant, ECF No. 71-5, consists of the sixteenth century French reports and documents about *la Trinité* that *GME I* cited. *See* ECF No. 71-1 ¶ 9. The declaration from Dr. James Delgado, ECF No. 71-6, contains the 16th century Spanish reports about *la Trinité* that *GME I* cited. *See* ECF No. 71-1 ¶ 9.

de Aviles's Spanish fleet. ECF No. 71-5 at 16.[4] Menéndez, a Spanish captain, had been ordered by Spain to pursue Ribault and to eliminate Fort Caroline, France's nascent colony in Florida. *Id.* at 15-16. "During the night of September 4, 1565, the warships of the Menéndez fleet approached the Ribault warships anchored offshore, but the Ribault warships cut their anchor cables and sailed away." *Id.* at 16. Alerted to the Spanish threat and Menéndez's hostile intentions, Ribault sent a ship to follow the Spanish. *Id.* He learned that Menéndez was setting up a base along the St. Augustine Inlet to the south. *Id.* After docking at Fort Caroline, "Ribault decided to attack Menéndez at St. Augustine Inlet and began preparing to sail with *la Trinité* and three of his other larger ships." *Id.* He supplemented the strength of this expedition with additional "soldiers from the Fort Caroline garrison." *Id.* "On September 8, 1565, the Ribault warships left their anchorage and sailed south to attack Menéndez at St. Augustine Inlet." *Id*. On its way to attack the Spanish, *la Trinité* was caught in a massive hurricane and sank along with the rest of the French fleet. *Id*.

France's evidence thus asserts that *la Trinité* sank while on a military mission to attack Menéndez's Spanish forces. This falls within the SMCA definition of "military noncommercial service." § 1408(3)(A). To avoid summary judgment on Count One, then, GME

---

[4] This evidence was submitted with France's reply. At GME's request, the court allowed a surreply so that GME could respond with its own evidence, which it did. The court thus had the benefit of extensive briefing and multiple evidentiary submissions from both parties. ECF Nos. 59, 69, 71, 78. The court then held a hearing and permitted both parties to file additional briefing afterward. ECF Nos. 84, 87.

had to present evidence from which a reasonable factfinder could conclude otherwise. While GME makes several tangential arguments concerning the broader history of Ribault's voyage, it ultimately does not point to any evidence that contradicts France's assertion that *la Trinité* was "on military noncommercial service when it sank." § 1408(3)(A).

GME contends that *la Trinité* was a cargo ship, not a military ship, and that Ribault's mission to reinforce Fort Caroline was one of civilian resupply. Resp. at 4, 24. It cites the verified statements of Dr. Robert Baer and Dr. Lubos Kordac, which say as much. Dr. Kordac writes, "[*la Trinité*] was not any military ship, [it] was a cargo ship, bringing supplies, civilians and money to the new French colony." ECF No. 65 at 3. But for SMCA purposes, whether *la Trinité* was a cargo ship or a "military ship" is of no consequence. The Act covers "any sunken warship, naval auxiliary, *or other vessel* that was owned or operated by a government on military noncommercial service when it sank." § 1408(3)(A) (emphasis added). Similarly, the overall purpose of Ribault's mission is irrelevant; what matters is whether *la Trinité* was "on military noncommercial service." § 1408(3)(A). In this regard, neither Dr. Baer's nor Dr. Kodac's declaration contradicts France's evidence that *la Trinité* sank while on a mission to attack the Spanish fleet. *See* ECF Nos. 64, 65.

Dr. Baer's initial statement calls into question the existence of a French Royal Navy in 1565 and asserts that "the French Huguenot vessels, although armed with cannons for self-protection, were not 'Naval' vessels or 'Crown' vessels, they were cargo vessels on a re-supply mission to the Huguenot colony

on the Atlantic Coast of present north Florida." ECF No. 64 at 3-4; *accord id.* ("During the civil wars after 1560, the French Navy disappeared for all practical purposes. French maritime exploits of this period . . . were organized along private or quasi-private lines."). Baer's statement squares with France's evidence that Ribault's fleet sailed to Fort Caroline to provide supplies and reinforcements. Baer's statement does not discuss the circumstances surrounding *la Trinité*'s sinking, so it does not contradict France's evidence that *la Trinité* sank while sailing to the St. Augustine Inlet to attack the Spanish. It therefore does not create a dispute of material fact over *la Trinité*'s military noncommercial service.

Dr. Kordac's statement says Spain and France were not at war when *la Trinité* sank. ECF No. 65 at 3. This too is consistent with France's evidence, which shows France and Spain were competing to colonize Florida and makes no mention of their being at war. Kordac also acknowledges that Menéndez "attacked and destroyed Fort Caroline," admitting that while France and Spain might not have been formally at war, there remained a threat of conflict between the two nations. Kordac states that *la Trinité* sank because of a hurricane, not because of "a naval encounter with [Menéndez's] Spanish war fleet." *Id.* This is also consistent with France's evidence. And it is also immaterial. A "sunken military craft" need not sink *during* a naval encounter—or because of combat. Kordac does not specifically address where *la Trinité* was or what it was doing when it sank, so it does not meaningfully contradict France's evidence.

In its surreply, GME makes additional arguments that *la Trinité* was not performing military noncom-

mercial services when it sank. ECF No. 78 at 3. Relying heavily on historian John McGrath's work, *The French in Early Florida: in the Eye of the Hurricane*, GME contends that "the only *Crown-sanctioned* purpose for *La Trinité*'s voyage was [the] commercial transportation of people and cargo."[5] *Id.* At 3-6 (emphasis added). GME also presents the declarations of French historian Emmanuelle Lizé and archeologist James Sinclair to support the contention that Ribault's attack on the Spanish was not "Crown sanctioned."[6] Lizé concludes that "[t]he King of France permitted Ribault's 1565 journey only to transport Protestant dissenters to Fort Caroline; any war activities

---

[5] While repeatedly citing McGrath's historical analysis to support its argument that Ribault's mission was commercial, GME omits McGrath's conclusion about the nature of the voyage:

> It is difficult to conclude on the basis of this evidence that, by the time the French sailed, this was merely a civilian reinforcement intended to augment the workforce in Florida and establish "effective settlement." Whatever the composition of this fleet had been originally, by May it had become a heavily armed mission of war, intent upon defending Fort Caroline from an anticipated Spanish attack.

ECF No. 77-1 at 25. (GME cites this same page for other purposes.)

[6] Lizé's declaration includes no citations but attaches some 200 pages of source materials, largely in French. Parties must cite "particular parts of materials in the record" to support factual assertions. Fed. R. Civ. P. 56(c)(1)(A). And "[t]he court need consider only the cited materials." *Id.* 56(c)(3). In my discretion, I have declined to consider evidence that is not pinpoint cited in the parties' documents, except as otherwise addressed in this order. *See* N.D. Fla. Loc. R. 56.1(F). I have also not considered any untranslated materials.

were prohibited." *Id.* at 9 (summarizing Lizé statement). Sinclair echoes this finding, writing "*La Trinité* was a state-sanctioned voyage permitted [sic] only the transport of families, farmers, and food to Fort Caroline." ECF No. 77-4 ¶ 6. Ultimately though, this analysis misses the point. Even if Ribault lacked the King's permission to engage in war, and even if the mission included shipping Protestants, what matters is what *la Trinité* was doing when it sank. Sinclair asserts that "[*La Trinité*] sank in a hurricane, not because of a military attack or engagement." *Id.* ¶ 19. But, as explained with Dr. Kordac's similar assertion above, this is in accord with France's evidence. Nothing in the declarations of McGrath, Lizé, or Sinclair contradicts France's evidence that the *la Trinité* sank while on a mission to attack Menéndez's forces. *See* ECF Nos. 77-1, 77-3, 77-4, and 78.

GME does offer evidence directly contradicting some of Dr. Lestringant's historical assertions, but only on immaterial points. For example, relying on historian Charles Bennett's work, GME contends Lestringant was wrong to conclude that the French King sent a different French captain to avenge the Spanish destruction of Fort Caroline after *la Trinité*'s sinking. *Id.* at 6-7. Lizé's declaration pushes back on Lestringant's positions that *la Trinité* was a warship and that Ribault's voyage from France to Florida was ordered by the King as a "military exercise." *Id.* at 2, 8. But none of this contradicts Lestringant's assertion that *la Trinité* sank while sailing to attack the Spanish.

Because GME points to no evidence contradicting the contention that *la Trinité* sank while on a mission to attack the Spanish fleet, it has not disputed

France's showing that the ship was on "military noncommercial military service when it sank." § 1408(3)(A).

* * *

France has presented sufficient uncontested evidence to establish *la Trinité* sank while on military noncommercial service, meaning *la Trinité* is a "sunken military craft" under the SMCA. GME may not obtain a salvage award from France, so GME's Count One, which asserts entitlement "to a salvage and/or maritime lien," FAC ¶ 39, cannot succeed.

France contends that the SMCA should bar *all* GME's claims. ECF No. 59 at 18. I am doubtful that the SMCA would reach the state-law claims of unjust enrichment, trade secret misappropriation, and tortious interference with a business relationship—even if the "gravamen" or "core" of GME's claims relate to the same facts. But I need not decide that issue because GME's other claims independently fail on the merits.

France is Entitled to Summary Judgment on the "Quasi Contract/Unjust Enrichment" Claim.

GME's next claim is for "quasi contract/unjust enrichment."[7] FAC at 13-14. Under Florida law,

---

[7] The complaint alleges GME can "enforce a claim for unjust enrichment or *quantum meruit* against France, *i.e.*, by contract implied at law." FAC ¶ 47. This conflates unjust enrichment and quantum meruit claims. The "remedy of quantum meruit derives from contracts implied in fact," while an unjust enrichment claim derives from a contract implied at law. *Tooltrend, Inc. v. CMT Utensili, SRL*, 198 F.3d 802, 806 & n.4 (11th Cir. 1999) (cleaned up) (applying Florida law). As France notes (Motion at 25), to the extent GME intended to raise a quantum meruit claim, it cannot succeed because the parties did not have any sort of agreement.

unjust enrichment claims "prevent the wrongful retention of a benefit, or the retention of money or property of another in violation of good conscience and fundamental principles of justice or equity." *Marrache v. Bacardi U.S.A., Inc.*, 17 F.4th 1084, 1101 (11th Cir. 2021) (quoting *State Farm Fire & Cas. Co. v. Silver Star Health & Rehab.*, 739 F.3d 579, 584 (11th Cir. 2013)). For an unjust enrichment claim, a plaintiff must show "(1) [he] has conferred a benefit on the defendant, who has knowledge thereof; (2) the defendant has voluntarily accepted and retained the benefit conferred; and (3) the circumstances are such that it would be inequitable for the defendant to retain the benefit without paying the value thereof." *Tooltrend, Inc. v. CMT Utensili, SRL*, 198 F.3d 802, 805 (11th Cir. 1999) (citing *Greenfield v. Manor Care, Inc.*, 705 So.2d 926, 930-31 (Fla. 4th DCA 1997)); *see also Pincus v. Am. Traffic Sols., Inc.*, 333 So.3d 1095, 1097 (Fla. 2022).

GME contends France unjustly benefited from GME's efforts to discover, photograph, and locate France's property (*la Trinité*). Resp. at 26-27. But

---

Id. at 806 (explaining that quantum meruit is a remedy for contracts implied in fact, meaning contracts where "the parties have in fact entered into an agreement but without sufficient clarity"); *see also Com. P'ship 8098 Ltd. P'ship v. Equity Contracting Co.*, 695 So.2d 383, 387 (Fla. 4th DCA 1997) (en banc) ("[A] common form of contract implied in fact is where one party has performed services at the request of another without discussion of compensation. These circumstances justify the inference of a promise to pay a reasonable amount for the service. . . . [By contrast], where there is no enforceable express or implied in fact contract but where the defendant *has* received something of value, or has otherwise benefitted from the service supplied, recovery under a quasi contractual theory may be appropriate." (citation omitted)).

Florida courts hold that "[w]here unjust enrichment is asserted, a party is liable for services rendered only when he requests the other party to perform the services or knowingly and voluntarily accepts their benefits." *Coffee Pot Plaza P'ship v. Arrow Air Conditioning & Refrigeration, Inc.*, 412 So.2d 883, 884 (Fla. 2d DCA 1982) (citing *Nursing Care Servs. v. Dobos*, 380 So.2d 516 (Fla. 4th DCA 1980)). France never requested GME's services. Likewise, France did not knowingly and voluntarily accept the benefits of GME's services because "it did not come into control of [*la Trinité*] until after [GME] had completed the work." *Id.*; *see also id.* (explaining that landlord had not knowingly and voluntarily accepted the benefit of refrigerator repairs that former tenant hired defendant to perform because landlord repossessed apartment and refrigerator after defendant completed the work).

E & M Marine Corp. v. First Union Nat'l Bank, 783 So.2d 311 (Fla. 3d DCA 2001), is analogous. The plaintiff salvaged a sunken boat and repaired its electrical system. *Id.* at 312. The boat's owner never paid for the repairs and defaulted on her secured loan. *Id.* After the lender repossessed the boat, the plaintiff sued it for unjust enrichment. *Id.* But there was no claim because the lender neither requested the plaintiff's services nor knowingly accepted the benefit of the services:

> First Union did not request that E & M Marine repair the vessel. The engine repairs were made before [the owner] had defaulted on the loan and First Union had any right to seek possession. First Union had no knowledge of the vessel's whereabouts until more than three months after E & M Marine salvaged

> the vessel and made the electrical repairs. First Union only gained control of the vessel because it was forced to repossess it after [the owner] defaulted on the loan. . . . First Union did not knowingly and voluntarily accept the benefit of E & M Marine's repairs. Consequently, E & M cannot recover due to unjust enrichment.

Id. at 312-13 (citing *Coffee Pot*, 412 So.2d at 884).

Here, GME alleges it discovered *la Trinité* in 2016 and conducted "prolonged and expensive research, survey, reporting, and identification of shipwrecked sites and artifacts and contents." FAC ¶ 11. In May 2016, GME contacted France about the discovery, and France refused GME's salvage services. ECF No. 53-4 at 11. The evidence shows—and GME counsel confirmed at the hearing—that all services for which GME seeks compensation came *before* France ever received any benefit. Thus, GME has pointed to no evidence that France knowingly accepted any benefit.[8]

France is Entitled to Summary Judgment on the Misappropriation of Trade Secrets Claim.

Next, GME claims France misappropriated GME's trade secret in violation of the Florida Uniform Trade Secrets Act (FUTSA). FAC at 14-17. To succeed, GME "must show that '(1) it possessed a 'trade secret' and (2) the secret was misappropriated.'" *Fin. Info. Tech., LLC v. iControl Sys, USA, LLC*, 21 F.4th 1267, 1273 (11th Cir. 2021) (quoting *Yellowfin Yachts, Inc. v.*

---

[8] Separately, GME has not shown "how it would be 'inequitable' for [France] to retain the benefit [it] received." *Marrache*, 17 F.4th at 1102.

Barker Boatworks, LLC, 898 F.3d 1279, 1279 (11th Cir. 2018)). A "trade secret" is

> information, including a formula pattern, compilation, program, device, method, technique, or process that:
>
> (a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and
>
> (b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

Id. (quoting Fla. Stat. § 688.002(4)). And "[m]is-appropriation occurs when a trade secret is acquired 'by someone who knows or has reason to know that the secret was improperly obtained or who used improper means to obtain it.'" *Id.* (quoting *Yellowfin Yachts*, 898 F.3d at 1297).

GME claims the GPS coordinate information for the shipwreck sites was a trade secret. FAC ¶ 57. France argues GME made this information readily ascertainable by publicly filing Exhibit 1 (ECF No. 3-1) in this case and in *GME I*. Motion at 16-17. Exhibit 1 is a photographic map with the various shipwreck sites, and it has an arrow pointing to the location of *la Trinité*'s bronze cannon and monument. ECF No. 3-1. GME rejects that argument and insists the map only shows the general location of the shipwrecks and lacks the "precise pinpoint coordinates necessary to locate specific artifacts," or the precise pinpoint coordinates

for the shipwrecks, so it did not publicly disseminate its confidential information. Resp. at 30.

Regardless of whether the location was disclosed or not, GME fails to show that the GPS coordinate information qualifies as a trade secret because there is no evidence that GME took reasonable efforts to protect the information. After GME requested a recovery permit, the FDHR informed GME that it needed to provide the GPS coordinates for the shipwreck sites so the FDHR could assess the sites and advance discussions with France. ECF No. 63 at 5. GME told the FDHR that it did not want the GPS coordinates to be made public, and the FDHR responded that the information was exempt from public records disclosure. *Id.* GME then turned over the coordinates. It did so without giving the FDHR any instructions about how to protect the information. Essentially, all GME did to protect its information was tell the FDHR that it didn't want the coordinates to be publicly divulged. That is not enough. *See Yellowfin Yachts*, 898 F.3d at 1300-01 (upholding district court's determination that reasonable efforts were not made because "Yellowfin's efforts to secure [its confidential information] rest[ed] upon a purported 'implicit understanding' between Yellowfin and Barker that the information was to be kept confidential," and "Yellowfin relinquished the information to Barker, who refused to sign a confidentiality agreement, with no instruction to him as to how to secure the information on his cellphone or personal laptop"). GME "effectively abandoned all oversight in the security of the" GPS coordinate information, and thus "no reasonable jury could find that [GME] employed reasonable efforts to secure the informa-

tion."[9] *Id.* at 1300-01. That means GME has not established that the GPS coordinates are a trade secret, and France is entitled to summary judgment.

France is Entitled to Summary Judgment on the Interference with Rights and Relations Claim.

GME alleges France tortiously interfered with GME's rights and relations with the Florida Department of State. Resp. at 31; *see also* FAC ¶ 72. According to GME, after it provided the shipwrecks' pinpoint coordinates to the FDHR, France joined forces with the FDOS to recover all the shipwreck sites. Resp. at 32. GME says it had to "act[] quickly to protect its interests," so GME arrested site #2 and brought an *in rem* admiralty claim, which prompted the FDOS to refuse to grant GME a recovery permit. *Id.* at 31-32. GME insists that "[h]ad France not interfered with GME and [Florida's] relationship, GME would not have needed to arrest the ship and there would be no reason for the State to reconsider the recovery permit." *Id.*

To prove France tortiously interfered with the business relationship between GME and the FDOS, GME must show "(1) the existence of a business relationship; (2) knowledge of the relationship on the part of the defendant; (3) an intentional and unjustified interference with the relationship by the defendant; and (4) damage to the plaintiff as a result of the breach of the relationship." *Duty Free Ams., Inc. v.*

---

[9] GME says—without elaborating—that "France received GME's confidential information under a duty to maintain its confidentiality." Resp. at 29. It does not explain how this argument saves the claim from summary judgment.

Estee Lauder Cos., 797 F.3d 1248, 1279 (11th Cir. 2015) (quoting *Ethan Allen, Inc. v. Georgetown Manor, Inc.*, 647 So.2d 812, 814 (Fla. 1994)).

GME's claim fails on the third element, that "the defendant acted without justification." *Id.* at 1280 (quoting *Sec. Title Guarantee Corp. of Balt. v. McDill Columbus Corp.*, 543 So.2d 852, 855 (Fla. 1st DCA 1989)). Florida law "recognizes a 'privilege of interference,'" which France invokes here. *Id.* (quoting *Wackenhut Corp. v. Maimone*, 389 So.2d 656, 657-58 (Fla. 1st DCA 1980)). France explains that it invoked its ownership and sovereign immunity over *la Trinité*, as permitted by the privilege of interference. Motion at 29-30. Thus, France's "interference to protect its economic interests is privileged unless [GME] alleges a 'purely malicious motive' divorced from any 'legitimate competitive economic interest.'" *Duty Free*, 797 F.3d at 1280 (quoting *Heavener, Ogier Servs., Inc. v. R.W. Fla. Region, Inc.*, 418 So.2d 1074, 1077 (Fla. 5th DCA 1982)). And GME has not met its burden to do so.

In fact, GME does not address France's argument that the privilege of interference protects France's actions. Instead, GME seems to suggest that France improperly interfered by laying claim to all of the shipwreck sites, instead of just *la Trinité*'s site. France's Declaration of Intent stated its plans to work with FDOS to protect all of the shipwreck sites, and GME argues "France had no basis to justify its claim to the other shipwreck sites." Resp. at 32-33. According to GME, "[n]othing in the reports of discoveries gave any indication those sites were of French origin." *Id.* at 33. Yet GME provides no citation to these reports and points to no evidence showing how France acted

with a "purely malicious motive" when it asserted its claim to these sites.

GME Had Sufficient Opportunity for Discovery.

Finally, GME asserts that summary judgment should not be granted before GME has had sufficient opportunity for discovery. ECF No. 69 at 34. But the parties had months for discovery, and the court's earlier limitation on discovery allowed discovery on all issues raised in France's summary-judgment motion. ECF No. 60. On these issues, the parties have collectively assembled a record of well over a thousand pages of historical documents and expert opinion. GME has not explained what additional discovery it would seek or why it did not have adequate time to seek it already. It has thus not made any showing consistent with Rule 56(d).

The court allowed a surreply and additional evidence, along with post-hearing briefing. In short, GME has had an adequate opportunity for discovery. *See Jones v. City of Columbus*, 120 F.3d 248, 253 (11th Cir. 1997).

CONCLUSION

The motion for summary judgment (ECF No. 59) is GRANTED. The clerk will enter judgment that says, "This case was resolved on a motion for summary judgment. Plaintiff's claims are dismissed on the merits, and Plaintiff shall take nothing." The clerk will then close the file.

SO ORDERED on September 29, 2023.

/s/ Allen Winsor
U.S. District Judge

ORDER DENYING PETITION FOR REHEARING EN BANC, U.S. COURT OF APPEALS FOR THE ELEVENTH CIRCUIT (OCTOBER 6, 2025)

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

GLOBAL MARINE EXPLORATION, INC.,

Plaintiff-Appellant,

v.

REPUBLIC OF FRANCE,

Defendant-Appellee,

UNITED STATES OF AMERICA,

Intervenor.

No. 24-10148

Appeal from the United States District Court
for the Northern District of Florida
D.C. Docket No. 4:20-cv-00181-AW-MJF

Before: WILLIAM PRYOR, Chief Judge,
and LUCK and BRASHER, Circuit Judges.

ON PETITION FOR REHEARING AND PETITION FOR REHEARING EN BANC

PER CURIAM:

The Petition for Rehearing En Banc is DENIED, no judge in regular active service on the Court having requested that the Court be polled on rehearing en banc. FRAP 40. The Petition for Panel Rehearing also is DENIED. FRAP 40.

OPINION, U.S. COURT OF APPEALS FOR THE ELEVENTH CIRCUIT (MAY 12, 2022)

[PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

GLOBAL MARINE EXPLORATION, INC.,

Plaintiff-Appellant,

v.

REPUBLIC OF FRANCE,

Defendant-Appellee.

No. 20-14728

Appeal from the United States District Court
for the Northern District of Florida
D.C. Docket No. 4:20-cv-00181-AW-MJF

Before: LAGOA, BRASHER, and TJOFLAT,
Circuit Judges.

LAGOA, Circuit Judge:

This case arises out of the discovery of several shipwrecks found off the coast of Cape Canaveral, Florida, including *La Trinité,* the flagship of the 1565 fleet of the Royal Navy of France, which was captained by Jean Ribault. In 1565, Ribault was dispatched by the French Admiral Gaspard II de Coligny to reinforce

the French Huguenot settlement of Fort Caroline located on the St. Johns River near what is now Jacksonville, Florida. The Spanish, however, also laid claim to what they called La Florida, and Pedro Menéndez de Avilés had founded the Spanish settlement of St. Augustine near the French Fort Caroline. King Phillip II of Spain ordered Menéndez de Avilés to destroy the French settlement. Following a skirmish at the mouth of the St. Johns River with Spanish ships, Ribault left in pursuit of the Spanish flagship, the *San Pelayo*. Ribault encountered a hurricane which destroyed his fleet and drove Ribault and his surviving crew members ashore. That same hurricane allowed Menéndez de Avilés to succeed in capturing Fort Caroline after an overland expedition from St. Augustine. After Fort Caroline was destroyed, no further French settlements were established in Florida.

Global Marine Exploration, Inc. ("GME"), conducts marine salvage activities and discovers historic shipwreck sites in Florida's coastal waters. GME entered into authorization agreements with the Florida Department of State, Division of Historical Resources ("FDOS"), to conduct salvage activities in Florida coastal waters off Cape Canaveral. Following a 2015 agreement between GME and FDOS, GME discovered several shipwreck sites and informed FDOS of its discovery. Soon after, however, GME learned that FDOS was in contact with the Republic of France to recover the shipwreck sites, assuming that one of the sites was *La Trinité*. GME subsequently filed an *in rem* admiralty action against the "Unidentified, Wrecked and (for Finders-Right Purposes) Abandoned Sailing Vessel" in federal court. FDOS and France became parties to that action, and the Middle District of Florida

concluded that the identity of the *res* was *La Trinité* and that *La Trinité* is France's sovereign property. GME did not appeal the *in rem* action. *See Glob. Marine Expl., Inc. v. Unidentified, Wrecked & (for Finders-Right Purposes) Abandoned Sailing Vessel* ("*GME I*"), 348 F. Supp. 3d 1221 (M.D. Fla. 2018).

Following *GME I*, GME sued France, alleging claims for an *in personam* lien award, unjust enrichment, misappropriation of trade secret information, and interference with its rights and relations. France moved to dismiss GME's amended complaint under Federal Rule of Civil Procedure 12(b)(1), arguing that the district court lacked subject matter jurisdiction under the Foreign Sovereign Immunities Act ("FSIA"), 28 U.S.C. §§ 1602–11, and that the commercial activity exception to the FSIA, 28 U.S.C. § 1605(a)(2), was inapplicable. The district court agreed with France, finding that the FSIA's commercial activity exception did not apply, and dismissed GME's claims. GME now appeals the district court's dismissal, contending that France engaged in commercial activity such that the FSIA's commercial activity exception applies.

For the reasons discussed below, and with the benefit of oral argument, we conclude that the FSIA's commercial activity exception applies. Accordingly, we reverse the district court's Rule 12(b)(1) dismissal and remand for further proceedings.

I. Factual and Procedural Background

GME is a Florida corporation that conducts marine salvage activities and discovers historic shipwreck sites in Florida's coastal waters. GME conducts its salvage activities under authorization agreements with FDOS. In these agreements, Florida granted

GME a fixed-term "cultural resource recovery easement for salvage exploration and operational purposes" on Florida-owned submerged lands, as well as permits for GME to use those submerged lands and navigable waters for construction work. GME then "undertook prolonged and expensive research, survey, reporting, and identification of shipwrecked sites," including artifacts, "with reasonable investment-backed expectation[s] and program assurances that its salvage activity" would be fully compensated in line with the value of the discovered sites. In doing so, "GME expended millions of dollars and enormous time and effort."

In 2014, FDOS and GME entered into six agreements governing salvage activity for six different, three-square mile areas off the coast of Cape Canaveral. On August 14, 2015, FDOS and GME entered into a seventh agreement—designated as Permit No. 2015-03—authorizing GME to survey another designated three-square mile area off Cape Canaveral and to locate and report any shipwreck sites discovered. GME discovered five separate shipwrecks and six historic shipwreck sites in this designated area, and GME's mapped conclusions of the area were provided as part of its report and request to FDOS for approval to proceed with recovery. GME also excavated small artifact items (and took photos and videos as identification of other monuments) from one of the shipwreck sites. GME provided FDOS with the photos and videos. And FDOS directed GME to submit the location coordinate information incident to the agency's oversight and inventory of historical resources division. According to GME, the coordinate information would remain confidential and would be commercially used only by GME.

At some point, GME learned that FDOS was "collaborating and negotiating" with France to recover the shipwreck sites discovered by GME without its involvement, as FDOS and France believed that the shipwreck was France's *La Trinité*—the flagship of the 1565 fleet of the Royal Navy of France that sank during a hurricane off the coast of Florida. Concerned by this development, GME filed the *in rem* admiralty action—*GME I*—in September 2016, and FDOS and France became parties to that action. *See* 348 F. Supp. 3d at 1224. In connection with filing that *in rem* action, GME deposited with the district court several small artifacts (*e.g.*, ballast stones) from the site.

The next month, FDOS demanded GME turn over those same artifacts to it, suspended GME's salvage activity permit, and prohibited GME from proceeding with full recovery of the discovered shipwreck sites. The *GME I* district court later conferred temporary *in rem* custody to FDOS and precluded any shipwreck recovery pending its decision. Ultimately, the *GME I* district court granted France's motion to dismiss the action for lack of subject matter jurisdiction because it concluded that the *res* at issue was *La Trinité*, which was France's sovereign property. *See id.* at 1242. GME did not appeal that order.

Following *GME I*, France and FDOS entered into a "Declaration of Intention Between the State of Florida and the Republic of France On the shipwrecks of Jean Ribault's fleet"(the "Declaration of Intent"). The Declaration of Intent stated that, as a result of the district court's decision in *GME I*, France was authorized "to begin recovery operations" of *La Trinité* and that the signatories would cooperate "concerning research on, and protection and preservation of" *La*

Trinité. FDOS and France further agreed to: protect the shipwreck sites "to prevent any form of plundering"; recover the shipwreck sites and present those discoveries to the public in Florida, *e.g.*, through exhibitions or publications; (3) promote the common history of the United States and France in Florida; and (4) identify, evaluate, mobilize, and oversee resources and organizations to fulfill the Declaration of Intent's objectives. The Declaration of Intent also established a steering committee to implement the agreement.

In April 2020, GME sued France, alleging that "France is sending missions to Florida to oversee the project and provide scientific expertise" under the Declaration of Intent and that "work is on-going." GME also asserted that France was performing commercial activity in Florida through France's agreement with FDOS and others, "and by activities undertaken or to be undertaken, in relation to GME's discovered shipwreck sites for which GME claims rights and interest."

GME asserted four claims against France: (1) an *in personam* salvage lien; (2) "quasi contract/unjust enrichment"; (3) misappropriation of GME's trade secret information; and (4) interference with GME's rights and relations. As to its lien claim, GME alleged that it was entitled to compensation because without GME's services the shipwreck sites would not have been discovered and therefore GME's services significantly benefit any "full recovery of the historic shipwreck sites." In its count for unjust enrichment, GME asserted that it had conferred a substantial benefit to France based on its services related to the shipwreck sites. As to its misappropriation of trade secret claim, GME alleged that "[t]he precise locations

of GME's discovered shipwreck sites and the methods used to identify those locations were proprietary and confidential information owned by GME" and that France's use of that information was unauthorized and without GME's consent. And, as to its interference claim, GME alleged that France knew of GME's contractual rights and advantageous business and contractual relations with FDOS but intentionally acted to influence, induce, and collaborate with FDOS for the latter to abrogate its obligations to, and relations with, GME.

France moved to dismiss GME's amended complaint under Rule 12(b)(1), arguing that the district court lacked subject matter jurisdiction under the FSIA and that GME failed to show that the commercial activity exception to the FSIA applied. In particular, France contended that the core conduct at issue was its "intergovernmental cooperation for the historic preservation of [its] military vessel," which was manifestly a governmental function. France submitted a declaration from Florence Hermite, a "Magistrat de Liaison – Legal Attaché," who attested that France entered into the Declaration of Intent under the Heritage Code of France Section L522-1, which provides, as translated into English, that France "prescribes measures aimed at the detection, conservation of safeguarding by scientific study of the heritage archaeological, designates the scientific manager of any preventative archeology operation and carries out control and evaluation missions for these operations."

The district court granted France's motion to dismiss. The district court explained that the commercial activity exception had three components: whether "(1) the action is based upon (2) a commercial activity (3)

carried on in the United States by a foreign state." The district court concluded that the action at issue was "France's intergovernmental declaration with Florida—and its overall relationship with Florida regarding the shipwreck sites," which "lack[ed] . . . a commercial nature" because France was not involved in "the type of actions by which a private party engages in trade and traffic or commerce." While noting that private actors sometimes engage in marine exploration and shipwreck recovery and preservation efforts, the district court reasoned "that alone did not make France's activities commercial." The district court explained that "the nature of France's activity is the recovery and disposition of its own sovereign military property" and that its choice to recover or preserve the property was not like "entering a market and behaving as a private person would." The district court noted that the Declaration of Intent, signed by government actors, showed that France and FDOS were working together to protect and preserve *La Trinité* and that, as such, France had not entered the market or engaged in trade or commerce.

The district court also concluded that, even if France's activities were commercial in nature, GME's claims against France were not "based upon" those activities. The district court determined that "the foundation" for GME's alleged injuries was not France's intergovernmental declaration with Florida or activities related to that declaration, *i.e.*, GME was not injured by the fact that France sought to preserve its culture or recover its shipwreck's artifacts. Rather, the district court reasoned GME's injuries were based upon the fact that France took ownership of *La Trinité*, which occurred in *GME I*, and that GME could not claim

ownership of the *res*. The district court therefore concluded it lacked subject matter jurisdiction under the FSIA.

This timely appeal ensued.

II. Standard of Review

"When evaluating a district court's conclusions on a Rule 12(b)(1) motion, '[w]e review the district court's legal conclusions *de novo* and its factual findings for clear error.'" *Odyssey Marine Expl., Inc. v. Unidentified Shipwrecked Vessel*, 657 F.3d 1159, 1169 (11th Cir. 2011) (alteration in original) (quoting *Carmichael v. Kellogg, Brown & Root Servs., Inc.*, 572 F.3d 1271, 1279 (11th Cir. 2009)). And we review *de novo* a district court's determination of whether it had jurisdiction under the FSIA. *Devengoechea v. Bolivarian Republic of Venezuela*, 889 F.3d 1213, 1220 (11th Cir. 2018).

III. Analysis

On appeal, GME argues that the district court erred in dismissing its amended complaint for two reasons. First, GME asserts that the district court erroneously determined that the FSIA's commercial activity exception to foreign sovereign immunity did not apply to France's activities in the case. Second, GME contends that its action against France was "based upon" France's commercial activities such that subject matter jurisdiction existed under the FSIA. We address these arguments in turn.

A. Whether France's activities are "commercial activities" under the FSIA

The FSIA "supplies the ground rules for 'obtaining jurisdiction over a foreign state in the courts of this country.'" *Federal Republic of Germany v. Philipp*, 141 S. Ct. 703, 709 (2021) (quoting *Argentine Republic v. Amerada Hess Shipping Corp.*, 488 U.S. 428, 443 (1989)). The FSIA "creates a baseline of immunity from suit," *id.*; *accord* 28 U.S.C. § 1604, and "unless a specified exception applies, a federal court lacks subject-matter jurisdiction over a claim against a foreign state," *Saudi Arabia v. Nelson*, 507 U.S. 349, 355 (1993).

One such exception is the "commercial activity" exception contained in the first clause of 28 U.S.C. § 1605(a)(2). The exception provides that "[a] foreign state shall not be immune from the jurisdiction of courts of the United States or of the States in any case . . . in which the action is based upon a commercial activity carried on in the United States by the foreign state." § 1605(a)(2). Title 28 U.S.C. § 1603(d) defines "commercial activity" as "either a regular course of commercial conduct or a particular commercial transaction or act," and states that "[t]he commercial character of an activity shall be determined by reference to the nature of the course of conduct or particular transaction or act, rather than by reference to its purpose."

While the definition in § 1603(d) "leaves the critical term 'commercial' largely undefined," the Supreme Court has explained that "when a foreign government acts, not as regulator of a market, but in the manner of a private player within it, the foreign sovereign's actions are 'commercial' within the meaning of the

FSIA." *Republic of Argentina v. Weltover, Inc.*, 504 U.S. 607, 612, 614 (1992). Additionally, because the FSIA "provides that the commercial character of an act is to be determined by reference to its 'nature' rather than its 'purpose,' the question is not whether the foreign government is acting with a profit motive or instead with the aim of fulfilling uniquely sovereign objectives." *Id.* at 614 (quoting § 1603(d)). Instead, we must determine "whether the particular actions that the foreign state performs (whatever the motive behind them) are the *type* of actions by which a private party engages in 'trade and traffic or commerce.'" *Id.* (quoting Black's Law Dictionary 270 (6th ed. 1990)). Thus, whether a foreign state is acting in the manner of a private party "is a question of behavior, not motivation." *Nelson*, 507 U.S. at 360. For example, a foreign state's "issuance of regulations limiting foreign currency exchange is a sovereign activity, because such authoritative control of commerce cannot be exercised by a private party" while "a contract to buy army boots or even bullets is a 'commercial' activity, because private companies can similarly use sales contracts to acquire goods." *Weltover*, 504 U.S. at 614–15.

In *Weltover*, the Supreme Court concluded that Argentina's issuance of bonds as part of a plan to stabilize its currency was a commercial activity within the meaning of the FSIA. *Id.* at 620. The Court explained that the "commercial character" of the bonds was demonstrated by the fact that they were "in almost all respects garden-variety debt instruments," *e.g.*, "[t]hey [could] be held by private parties, they [were] negotiable and [could] be traded on the international market[,] . . . and they promise[d] a future stream of cash income." *Id.* at 615. And the Court rejected Argentina's argu-

ment that "the line between 'nature' and 'purpose' rests upon a 'formalistic distinction [that] simply is neither useful nor warranted'" because that argument was "squarely foreclosed by the language of the FSIA." *Id.* at 617. It was thus "irrelevant *why* Argentina participated in the bond market in the manner of a private actor; it matter[ed] only that it did so." *Id.*

Subsequently, in *Nelson*, the Supreme Court found that, unlike Argentina's activities in *Weltover*, the intentional conduct alleged by the plaintiffs—"wrongful arrest, imprisonment, and torture" by the Saudi Government—did not qualify as commercial activity because the conduct at issue "boil[ed] down to abuse of the power of its police by the Saudi Government" and "a foreign state's exercise of the power of its police has long been understood for purposes of the restrictive theory as peculiarly sovereign in nature." 507 U.S. at 361. The Court explained that "[s]uch acts as legislation, or the expulsion of an alien, or a denial of justice, cannot be performed by an individual acting in his own name," and "can be performed only by the state acting as such." *Id.* at 362 (quoting Hersch Lauterpacht, *The Problem of Jurisdictional Immunities of Foreign States*, 28 Brit. Y.B. Int'l L. 220, 225 (1952)). Thus, the Court concluded that the "[e]xercise of the powers of police and penal officers is not the sort of action by which private parties can engage in commerce." *Id.* And regardless of the Saudi Government's motivation for its allegedly abusive treatment of the plaintiff, *e.g.*, to resolve commercial disputes, the Court explained that argument went to the activity's purpose, which was "irrelevant to the question of an activity's commercial character" under the FSIA. *Id.* at 362–63; *accord Honduras Aircraft Registry, Ltd. v. Government*

of Honduras, 129 F.3d 543, 548 (11th Cir. 1997) ("[I]n ascertaining whether the FSIA commercial exception applies, it is irrelevant that Honduras may have had a possible profit motive or that Honduras may have intended only to fulfill its unique sovereign objectives.").

We have since applied the principles of *Weltover* and *Nelson* several times in analyzing whether a foreign state's activities are commercial activities under the FSIA. For example, in *Honduras Aircraft*, Honduras had decided to "upgrade and modernize" its "civil aeronautics program to comply with international aviation laws." 129 F.3d at 545. In so doing, Honduras contracted with the plaintiffs to provide goods and services to help Honduras achieve this goal, including setting up a data base for Honduras's aircraft registry, writing regulations, training government personnel, and providing "the other things needed to register, inspect and certify aircraft." *Id.* at 547. Ultimately, Honduras breached the contract, and plaintiffs sued. Honduras moved to dismiss for lack of subject matter jurisdiction, arguing that the FSIA's commercial activity exception did not apply because "the inspection and registration of aircraft are powers peculiar to sovereigns, as private persons cannot grant airworthiness certificates and register aircraft." *Id.* We disagreed, explaining that while "registering aircraft under the Honduras flag is an act peculiar to its sovereignty," plaintiffs were not contending that the contract at issue "gave them the right to register aircraft." *Id.* at 548. Rather, the plaintiffs sought to enforce their contract with Honduras, in which "they contracted to provide goods and services to Honduras in connection with its expanded civil air program by inspecting and certifying aircraft airworthiness so that Honduras would be able

to appropriately register the aircraft under its flag." *Id.* Indeed, the contract provided "only that plaintiffs would provide the means and do the technical work," and we reasoned that "[a]ny party, sovereign or not, could contract for those goods and services." *Id.* Thus, we explained that Honduras commercially entered the market as a private player to secure technical assistance and upgrades for its civil air program. *Id.* at 548–49.

Similarly, in *Guevara v. Republic of Peru*, 468 F.3d 1289 (11th Cir. 2006), we addressed "whether a foreign state's offer of a reward in return for information enabling it to locate and capture a fugitive" fell within FSIA's commercial activity exception and we concluded that it did so. *Id.* at 1292. We noted that "[t]he location and capture of a fugitive by law enforcement officials of a country may be a sovereign act." *Id.* at 1298. But we explained that the reward offer at issue "did not promise that in return for the information it was seeking Peru would locate and capture" the fugitive, and the plaintiff was not seeking to compel the fugitive's capture. *Id.* at 1298–99. Instead, the plaintiff sought the monetary reward that Peru offered in exchange to anyone who furnished information "that enabled Peru to capture" the fugitive. *Id.* at 1299. We found the facts in *Guevara* similar enough to those in *Honduras Aircraft* to compel the same result—instead of using its sovereign powers to search for the fugitive, Peru ventured into the marketplace to buy the information needed to locate the fugitive. *Id.* The plaintiff provided that information for a price—Peru's monetary reward offer. *Id.* Thus, we concluded that "[t]he underlying activity at issue—the exchange of money for information—[was] 'commercial in nature and of

the type negotiable among private parties.'" *Id.* (quoting *Honduras Aircraft*, 129 F.3d at 547); *see also Devengoechea*, 889 F.3d at 1221, 1224 (explaining that the plaintiff's claims based on Venezuela's failure to pay the plaintiff for artifacts was commercial activity because, similar to a private purchaser, Venezuela met with the seller, examined the artifacts, and negotiated to examine them further and to possibly purchase them). We also rejected Peru's argument that "commercial activity" only included activities "done for a profit motive," as "a 'motive' test tread[ed] too closely to an examination of 'purpose.'" *Guevara,* 468 F.3d at 1302.

By contrast, in *Beg v. Islamic Republic of Pakistan*, 353 F.3d 1323, 1326 (11th Cir. 2003), we concluded that the Pakistani government's alleged actions of expropriating Plaintiff's land involved the power of eminent domain—a sovereign power—and were therefore not commercial. We explained that "[c]onfiscation of real property is a public act because private actors are not allowed to engage in 'takings' in the manner that governments are" and that "[d]etermining whether or how to compensate property owners for takings is also a sovereign function, not a market transaction." *Id.* at 1326–27. Thus, even though the Pakistani government allegedly failed to provide the plaintiff with alternative property, "the *nature* of the foreign government's act is public and not commercial." *Id.* at 1327.

And, in *Odyssey*, a shipwreck recovery business, Odyssey, discovered the remains of a Spanish vessel in international waters and filed an *in rem* admiralty action against the vessel and its cargo. 657 F.3d at 1166. *Odyssey* did not concern the FSIA's commercial

activity exception in § 1605(a) but rather 28 U.S.C. § 1609, the section of the FSIA that provides that a foreign state's property in the United States "shall be immune from attachment[,] arrest[,] and execution except as provided in [28 U.S.C. §§] 1610 and 1611." *See Odyssey*, 657 F.3d at 1175–76. Odyssey, however, did not invoke the exceptions provided in §§ 1610 or 1611; instead, it argued for "a commercial activity exception to § 1609's immunity to arrest." *Id.* at 1176. This Court rejected Odyssey's argument, as the international treaty that Odyssey asserted was incorporated into § 1609 did not "appear to create a commercial activity exception to § 1609's immunity to arrest." *Id.* We also noted that, even if such an exception existed, the Spanish vessel at issue was not engaged in commercial activity, as defined by § 1603(d), because it was not acting like an ordinary private person in the marketplace. *See id.* at 1176–77. We explained that at the time it sank the ship "was 'act[ing] . . . like a sovereign' by transporting [Spanish coins and cargo] during a time of threatened war" as part of the Spanish Navy. *See id.* at 1177 (some alterations in original) (quoting *Guevara*, 468 F.3d at 1298).

With these precedents in mind, we turn to the case before us. In its dismissal order, the district court determined that France's activities in the case consisted of "France's intergovernmental declaration with Florida—and its overall relationship with Florida regarding the shipwreck sites"—and that these activities were not commercial in nature. While recognizing that private actors engage in marine exploration activities and shipwreck recovery efforts, the district court reasoned that those activities alone did not make the nature of France's activities commercial,

comparing the case to mail service, which can take both governmental and commercial forms. The district court construed "the nature of France's activity [as] the recovery and disposition of its own sovereign military property" and explained that, regardless of whether France chose to recover its property or work with Florida to preserve it, France was "not entering a market and behaving as a private person would." The district court also reasoned that it mattered "to some extent" that France's agreement was with Florida, not a private actor.

GME contends that the district court erred in finding that France's activities—a "marine archeological recovery project for recovery of six historical shipwreck sites in Florida"—did not constitute "commercial activity" under the FSIA. GME argues that the "what" of France's activity—effecting archaeological salvage recovery of historic shipwreck sites—and the "means" employed for the activity—*e.g.*, negotiating agreements with Florida and others; directing, coordinating, and participating in recovery efforts; securing private and grant source fundings; and conserving and arranging for the exhibition of artifacts—are commercial in nature. GME notes that similar types of activity are performed in commerce by private entities, including GME itself, "with which [FDOS] proposed to 'partner' for the same project." And GME asserts that the district court improperly looked to the "governmental direction or purpose" of France's activities, which is irrelevant to the question of an activity's commercial nature.

We agree with GME and conclude that the nature of France's activities here are commercial under the FSIA. As set forth by the Declaration of Intent,

France, in cooperation with FDOS, planned to engage in a marine archaeological recovery project of the shipwreck sites off the coast of Cape Canaveral. And the Declaration of Intent provides that, to conduct this project, France will identify, evaluate, mobilize, and oversee "public and/or private resources and organizations." In other words, France, along with FDOS, planned to acquire funding and to hire organizations or businesses to conduct its shipwreck recovery efforts. And, according to GME's amended complaint, France has performed actions and entered into agreements with FDOS and others in connection with the shipwreck recovery project. These actions—fundraising, contracting with organizations and businesses to carry out excavations of shipwreck sites (*i.e.*, asset recovery), and overseeing the logistics of the project—are "commercial in nature and of the type negotiable among private parties." *Guevara*, 468 F.3d at 1299 (quoting *Honduras Aircraft*, 129 F.3d at 547).

The district court focused on the fact that France had entered into the Declaration of Intent with another sovereign power (Florida) in order to recover and preserve the shipwreck sites, including *La Trinité*, and to promote the shared history of the United States and France in Florida. But the district court's analysis of France's activities was too narrow and "purpose" oriented. "[T]he question is not whether the foreign government is acting with a profit motive or . . . with the aim of fulfilling uniquely sovereign objectives." *Guevara*, 468 F.3d at 1298 (quoting *Weltover*, 504 U.S. at 614). "Rather the issue is whether the particular actions that the foreign state performs . . . are the *type* of actions by which a private party engages in 'trade and traffic or commerce.'" *Id.* (quoting *Weltover*, 504

U.S. at 614). Therefore, although the purpose of France's shipwreck recovery efforts may be to protect, recover, and preserve the shipwreck sites, and to promote its common history with the United States in Florida, "it is irrelevant *why* [France engaged in this shipwreck recovery project] in the manner of a private actor; it matters only that it did so." *Weltover*, 504 U.S. at 617.

France, however, argues that its activities are not commercial in nature because they are "required by the patrimony laws of France," as explained by the Hermite declaration it submitted in support of its motion to dismiss. In support of its position, France relies on the Second Circuit's decision in *Barnet v. Ministry of Culture & Sports of the Hellenic Republic*, 961 F.3d 193 (2d Cir. 2020), which the district court also relied on in dismissing GME's amended complaint. In *Barnet*, the Second Circuit faced the question of whether Greece's assertion of ownership over an ancient Greek artifact constituted commercial activity under the FSIA. *Id.* at 195. An auction house announced it planned to auction the Greek artifact on behalf of a trust. When Greek officials learned of the auction, they emailed the auction house a demand letter, stating that the artifact belonged to Greece under its "patrimony laws" that declared Greek artifacts to be Greece's property. *Id.* The auction house withdrew the artifact from the auction, and both the trust and auction house filed suit against Greece, seeking declaratory relief on the disputed issue of ownership and asserting that the commercial activity exception—specifically, the third clause of § 1605(a)(2)—to the FSIA applied. *Id.*; *see* § 1605(a)(2) ("A foreign state shall not be immune from the jurisdiction of courts of

the United States . . . in which the action is based . . . upon an act outside of the United States in connection with a commercial activity of the foreign state elsewhere and that act causes a direct effect in the United States.").

On appeal, the Second Circuit explained that Greece's predicate act—sending its demand letter to the auction house—was not taken "in connection with a commercial activity" by Greece outside of the United States. *Barnet*, 961 F.3d at 200 (quoting § 1605(a)(2)). The Second Circuit explained that "Greece undertook the act of sending the letter in connection with its claim of ownership over the figurine pursuant to its patrimony laws" and found that this act was sovereign in nature—Greece claimed ownership of the artifact "by adopting legislation that nationalizes historical artifacts and by enforcing those patrimony laws." *Id.* at 200–01. The Second Circuit reasoned that "[n]ationalizing property is a distinctly sovereign act" and that Greece was "acting in a sovereign capacity by enforcing laws that regulate ownership and export of nationalized artifacts." *Id.* at 201. And the Second Circuit found that Greece's "insistence on recognition of and obedience to its patrimony laws [were] not 'the *type* of actions by which a private party engages in trade and traffic or commerce,'" nor "analogous to a private commercial transaction." *Id.* (quoting *Weltover*, 504 U.S. at 614, 616). Thus, the Second Circuit concluded that the adoption and pursuit of compliance with patrimony laws established that the nature of Greece's "activity was sovereign rather than commercial." *Id.* at 201–02.

But France's activities here are not like Greece's activity in *Barnet*. Therefore, we do not find *Barnet*

persuasive here. To begin with, the activity at issue in *Barnet*—the sending of a letter claiming ownership of an artifact—is both narrower in scope and different in type than France's activities here, *i.e.*, planning and executing a shipwreck recovery project with FDOS. More critically, we find that focusing on the foreign state's "patrimony laws" in this case would be akin to the "motive" test we warned of in *Guevara* that "treads too closely to an examination of 'purpose.'" 468 F.3d at 1302. While France's motive in pursuing the shipwreck recovery project may be to comply with its patrimony laws, "the Supreme Court has instructed us that the FSIA 'unmistakably commands' that we consider the nature, rather than the purpose of a transaction." *Id.* at 1302. We must therefore look to the nature of underlying activity and determine whether it is commercial in nature, *e.g.*, the type of activity that is "negotiable among private parties." *Id.* at 1299 (quoting *Honduras Aircraft*, 129 F.3d at 547); *see Devengoechea*, 889 F.3d at 1221 ("[W]hether a foreign government acts out of a profit motive or out of a desire to fulfill 'uniquely sovereign objectives' is entirely irrelevant to the analysis of whether an activity qualifies as 'commercial.'" (quoting *Weltover*, 504 U.S. at 614)). And as we have already discussed, fundraising, entering into contracts with third parties to engage in marine excavation and asset recovery, and overseeing the logistics of that project are commercial in nature, as they are the type of activities that private parties (including GME) engage in.

France further relies on *Odyssey*, but that case is also distinguishable from the case before us. As explained above, in *Odyssey*, we faced an *in rem* action to determine ownership of a shipwreck and the appli-

cation of § 1609, not § 1605, of the FSIA. Odyssey asked us to create a commercial activities exception to § 1609's immunity to arrest, arguing that the Spanish ship was engaged in commercial activity when it sank. In rejecting this argument, we concluded that there was not "a commercial activity exception to § 1609's immunity to arrest." *Odyssey*, 657 F.3d at 1176. We also noted that, even if such an exception existed, Spain's activities in operating the ship, during the late 18th and early 19th centuries, were sovereign in nature. *Id.* at 1176–77. Unlike *Odyssey*, GME's claims concern France's current-day activities in pursuing recovery efforts with FDOS of the shipwreck sites—the same activities GME was pursuing with FDOS—not the military activities that France was pursuing when *La Trinité* and other ships of the Royal Navy of France sank in 1565. Thus, while *Odyssey* may have some relevance to *GME I*—the earlier *in rem* proceeding—it does not apply to this case where GME seeks damages based on the nature of France's present-day activities.

We therefore conclude that France's activities here are commercial activities under the FSIA.

B. Whether GME's action is "based upon" France's commercial activities

Although we conclude that France's activities are commercial under the FSIA, our inquiry under § 1605's commercial activity exception does not end there. Under § 1605(a)(2), we must also determine whether GME's action is "based upon" France's commercial activities. *See Nelson*, 507 U.S. at 356. To do so, "we must identify the conduct upon which the suit is based" by looking at "the 'particular conduct' that constitutes

the 'gravamen' of the suit," *i.e.*, "the 'core' of the suit." *Devengoechea*, 889 F.3d at 1222 (quoting *OBB Personenverkehr AG v. Sachs*, 577 U.S. 27, 35 (2015)); *see also Nelson*, 507 U.S. at 358 (explaining that the only reasonable reading of the term "based upon" is that it "calls for something more than a mere connection with, or relation to, commercial activity."). But we do not undertake an "exhaustive claim-by-claim, element-by-element analysis" of the plaintiff's cause of action. *Sachs*, 577 U.S. at 34.

For example, in *Devengoechea*, the plaintiff filed suit against Venezuela for failing to pay for or return to him artifacts belonging to Simón Bolívar. 889 F.3d at 1217. In determining whether the plaintiff's action was "based upon" Venezuela's commercial activity, we explained that the conduct that injured the plaintiff—and made up the gravamen of his suit—was Venezuela's failure to pay for or return the artifacts. *Id.* at 1223.

Here, the district court assumed, for the sake of this part of its analysis, that France's activities were commercial in nature and found that GME's injury was not "based on" the Declaration of Intent and that France's activities were not related to the Declaration, *i.e.*, the shipwreck recovery project. Rather, the district court found that GME's action was "based upon the fact that France took ownership of the ship," which "occurred the moment the [*GME I* district court] concluded that the *res* was *La Trinité* and belonged to France." GME contends that this characterization of its suit against France was in error. Rather, GME argues, the gravamen of its suit is France's activities related to the shipwreck recovery project and France's failure to compensate GME for a substantial benefit it conferred to France—the value of its services that led

to the discovery of the shipwreck sites including *La Trinité*. And GME argues that, without its services, France could not have undertaken the shipwreck recovery project.

While we pass no judgment on the merits of GME's claims, we find that the "gravamen" of GME's suit is France's activities in executing the shipwreck recovery project and its failure to compensate GME for the value of the services. Indeed, the core of GME's claims against France—claims for an *in personam* salvage lien award, unjust enrichment, misappropriation of trade secret information, and interference with its rights and relations—is France's failure to compensate GME for the value of GME's salvaging services. *See Devengoechea*, 889 F.3d at 1223 ("The conduct that actually injured Devengoechea—and therefore that makes up the gravamen of Devengoechea's lawsuit—is Venezuela's failure to return the Bolívar Collection to Devengoechea or to pay him for it."). GME's salvage services led to the discovery of *La Trinité* and the other shipwreck sites, which, in turn, led to France's joint shipwreck recovery project with FDOS, as set forth by the Declaration of Intent. And, as explained above, France's activities in planning and executing the shipwreck recovery project qualify as "commercial activity."

We therefore hold that the FSIA's commercial activity exception to foreign sovereign immunity applies because GME's action is "based upon" France's commercial activity in the United States. Accordingly, the district court had subject matter jurisdiction over GME's suit against France.

IV. Conclusion

For these reasons, we reverse the district court's order dismissing GME's amended complaint for lack of subject matter jurisdiction and remand for further proceedings.

REVERSED and REMANDED.

ERRATA

This opinion has been changed as follows:

On page 17, “FISA’s” is changed to “FSIA’s”

ORDER GRANTING MOTION TO DISMISS, U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA TALLAHASSEE DIVISION (NOVEMBER 16, 2020)

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA TALLAHASSEE DIVISION

GLOBAL MARINE EXPLORATION, INC.,

Plaintiff,

v.

REPUBLIC OF FRANCE,

Defendant.

Case No. 4:20-cv-181-AW-MJF

Before: ALLEN WINSOR, U.S. District Judge.

ORDER GRANTING MOTION TO DISMISS

In 1565, Jean Ribault led a French Royal Navy Fleet to resupply a fort near present-day Jacksonville. *Glob. Marine Expl., Inc. v. The Unidentified, Wrecked & (for Finders-Right Purposes) Abandoned Sailing Vessel* (*GME I*), 348 F. Supp. 3d 1221, 1228-33 (M.D. Fla. 2018). The flagship of Ribault's fleet was the vessel *la Trinité*. At the time, France was hoping to colonize Florida. Spain was too, and it sent a fleet to

find Ribault. The fleets encountered one another near St. Augustine inlet, and Spain drove Ribault's ships out to sea. With the French fleet anchored at sea, a hurricane struck, destroying the fleet and its flagship *la Trinité*. The *la Trinité* lay on the ocean floor for nearly 500 years before Plaintiff Global Marine Exploration, Inc., (GME) recently found it. *Id.*

GME, as its name would suggest, is in the business of marine exploration. In 2015, it secured a permit from the Florida Department of State to conduct salvage activities off the coast of Cape Canaveral. ECF No. 3 (FAC) ¶¶ 13-14. GME discovered several shipwrecks (*id.* ¶¶ 15-17) and filed an *in rem* action for possession of its discovery, claiming ownership and salvage rights. *GME I*, 348 F. Supp. at 1224, 1227-28. Based on earlier discussions with Florida, GME believed it would keep eighty percent of what it recovered, with Florida taking the rest. FAC ¶¶ 14, 21, 64. But France learned of GME's discovery and intervened in the *in rem* action, claiming the *res* was *la Trinité* and therefore sovereign French property. *GME I*, 348 F. Supp. at 1224. And after reviewing a substantial record of historical evidence, the district court agreed. It concluded that the *res* was indeed *la Trinité*, that France had the exclusive claim to it, and that the court thus lacked subject matter jurisdiction. *Id.* at 1242. It dismissed the case, and GME did not appeal.

France, meanwhile, entered a declaration of intention with the Florida Department of State to "[r]ecover this historical and cultural heritage"; "[p]romote the common history of the United States and France in Florida"; and study and preserve the vestiges of *la Trinité*. ECF No. 3-2 at 1-2. It did so con-

sistent with Section L522-1 of the Heritage Code of France, which makes such activities the responsibility of the Ministry of Culture. ECF No. 13-1 ¶ 4.[1] The idea was that France and Florida, working together, would protect, recover, preserve, and study *la Trinité*, and promote their shared history. *Id.*

That all led to this case, which involves many of the same facts as *GME I*, but which presents a different jurisdictional question. The earlier case was an *in rem* action against the property; this is an *in personam* action against France.[2] GME no longer asserts any claim to the ship itself; it has sued France for damages relating to its efforts and the benefits those efforts conferred on France. GME presents four claims: (1) *in personam* lien award, (2) quasi contract/unjust enrichment, (3) misappropriation of trade secrets, and (4) interference with rights and relations. FAC at 12-20. GME seeks to recover its investment in finding *la Trinité*. *Id.* ¶ 1.

France moved to dismiss, arguing that the court lacks jurisdiction. ECF No. 13. Having considered the evidence submitted and the parties' arguments, I conclude that France is correct. The Foreign Sovereign

---

[1] In addition, France is a party to the 2001 UNESCO Convention on the Protection of the Underwater Cultural Heritage, which precludes France from commercially exploiting its underwater cultural heritage. ECF No. 13-1 ¶ 5.

[2] An *in rem* action is "prosecuted to enforce a right to *things*." *R.M.S. Titanic, Inc. v. Haver*, 171 F.3d 943, 957 (4th Cir. 1999) (quoting *The Sabine*, 101 U.S. 384, 388 (1879)). An action is *in personam* if it charges an individual personally. *Id.* A judgment in an *in rem* action affects "only the property before the court," while *in personam* actions "adjudicate the rights and obligations of individual persons or entities." *Id.*

Immunities Act, 28 U.S.C. § 1602 *et seq.*, deprives this court of subject matter jurisdiction, so the case must be dismissed.

I.

France's jurisdictional challenge is a factual challenge, which means the court may consider matters outside of the pleadings. *Odyssey Marine Expl., Inc. v. Unidentified Shipwrecked Vessel*, 657 F.3d 1159, 1169 (11th Cir. 2011). The allegations in GME's complaint need not be accepted as true, and evidence is not viewed in the light most favorable to GME. *Id.*; *see also Carmichael v. Kellogg, Brown & Root Servs., Inc.*, 572 F.3d 1271, 1279 (11th Cir. 2009).

Both parties have submitted evidence. France filed a declaration from Florence Hermite, a Magistrate Judge of the Republic of France and Attaché for Legal Affairs of the Embassy of France to the United States of America. ECF No. 13-1. GME filed public website information about private marine archaeological recovery projects (ECF No. 16), emails and documents produced from a Florida public records request (ECF No. 17), GME's operating officer's affidavit (ECF No. 18), and a statement from Dr. Robert H. Baer, a professional archaeologist (ECF No. 19).

I considered all the documents. I also considered the attachments to GME's complaint, including the declaration of intention France and Florida entered (ECF No. 3-2). The parties confirmed at the telephonic hearing that there were no material factual disputes and that no evidentiary hearing was needed. *See also Odyssey*, 657 F.3d at 1170 (finding it within the court's discretion to determine if an evidentiary hearing is needed on a Rule 12(b)(1) factual challenge).

II.

The Foreign Sovereign Immunities Act (FSIA) "provides the sole basis for obtaining subject matter jurisdiction over a foreign sovereign in the United States." *Guevara v. Republic of Peru*, 468 F.3d 1289, 1294 (11th Cir. 2006). Under the FSIA, foreign states are generally immune from jurisdiction, 28 U.S.C. § 1604, but there are exceptions. Under the relevant exception here, there is no immunity if "the action is based upon a commercial activity carried on in the United States by the foreign state." *Id.* § 1605(a)(2).[3] GME says the exception applies and the court has jurisdiction. ECF No. 20 at 1-2. France says the exception does not apply and there is no jurisdiction. ECF No. 13 at 14-16.

For our purposes, the first clause of § 1605(a)(2) breaks down into three parts: whether (1) "the action is based upon" (2) "a commercial activity" (3) "carried on in the United States by the foreign state." The Supreme Court has provided guidance on the meaning of the first two parts (see below), and the third part is straightforward and not contested here. France has entered a declaration of intention with Florida. ECF No. 3-2. It is a foreign state carrying on activity in the United States. The

---

[3] There are three different commercial-activity exceptions in § 1605(a)(2). GME relies solely on the exception in the first clause, quoted above. *See* ECF No. 20 at 1, 5-6. questions, then, are (i) whether that activity is commercial in nature, and (ii) whether GME's action is based upon that activity. I find against GME on both.

A.

The crux of GME's argument is that France engaged in commercial activity through its "marine archeological recovery project in Florida, undertaken upon negotiation and agreement with the Florida Department of State, and involving agreements with others, fundraising, task coordination, etc., for recovery, study, conservation, and museum displays in Florida of valuable historical artifacts excavated from the historic shipwreck sites." ECF No. 20 at 2. The first question is whether this constitutes "commercial activity."

The FSIA defines "commercial activity" as "either a regular course of commercial conduct or a particular commercial transaction or act. " 28 U.S.C. § 1603(d). It further specifies that "[t]he commercial character of an activity shall be determined by reference to the nature of the course of conduct or particular transaction or act, rather than by reference to its purpose." *Id.* The statutory definition, though, "leaves the critical term 'commercial' largely undefined." *Republic of Argentina v. Weltover, Inc.*, 504 U.S. 607, 612 (1992). But in *Weltover*, the Court concluded that "the meaning of 'commercial' is the meaning generally attached to that term under the restrictive theory at the time [the FSIA] was enacted." *Id.* at 612-13. It held "that when a foreign government acts, not as regulator of a market, but in the manner of a private player within it, the foreign sovereign's actions are 'commercial' within the meaning of the FSIA." *Id.* at 614. It also cautioned against considering whether the sovereign's motives are profit driven or uniquely sovereign objectives, indicating instead that the "issue is whether the particular actions that the foreign state performs

(whatever the motive behind them) are the *type* of actions by which a private party engages in 'trade and traffic or commerce.'" *Id.*

Applying this standard, the Court concluded in *Weltover* that Argentina engaged in commercial activity by issuing bonds to private parties and then changing the terms of those bonds. *Id.* at 615, 620. The bonds were "garden-variety debt instruments" traded in international markets, and nothing about their issuance by a government changed their commercial nature. *Id.* at 615. Applying this same standard here, I conclude France's intergovernmental declaration with Florida—and its overall relationship with Florida regarding the shipwreck sites—lacks such a commercial nature.

France is not involved in "the *type* of actions by which a private party engages in 'trade and traffic or commerce'" *Id.* at 614. It is not interacting with markets or commerce the way a private actor would. *See Guevara*, 468 F.3d at 1298 ("We read *Weltover* to mean that a foreign state is commercially engaged when it acts like an ordinary private person, not like a sovereign, *in the market*." (cleaned up) (emphasis added)); *accord Odyssey*, 657 F.3d at 1177.

It is true, as GME argues, that private actors sometimes engage in marine exploration activities and shipwreck recovery and preservation efforts. But that alone does not make the nature of France's activities commercial. It is not that an act is commercial unless *only* a sovereign can do it at some abstract level. *Contra* ECF No. 20 at 2, 12, 14-15. GME, for example, acknowledges that mail delivery can take both a governmental and commercial form. *See id.* at 22 n.3. And "[o]ther activities undertaken by a foreign state, although generally resembling conduct routinely

engaged in by private parties, may also be labeled 'governmental' and immune from suit under the FSIA." *Rush-Presbyterian-St. Luke's Med. Ctr. v. Hellenic Republic*, 877 F.2d 574, 579 (7th Cir. 1989). As just one example, "although private entities often rehabilitate buildings to serve as office space, a foreign state's remodeling and operation of a chancery building is not a 'commercial' act, since the construction and operation of a diplomatic office are peculiarly sovereign activities." *Id.*

As another example, in *Saudi Arabia v. Nelson*, the Supreme Court found no commercial activity after government forces arrested and tortured the plaintiff, concluding this was an abusive exercise of state police powers. 507 U.S. 349, 361 (1993). At the same time, the concurrence noted that the plaintiff could have been arrested and tortured by private security personnel. *Id.* at 366 (White, J., concurring). There was a commercial way to achieve the same result, but Saudi Arabia's actions did not take that form, and that is what mattered. *Id.*; *see also Pablo Star Ltd. v. Welsh Gov't*, 961 F.3d 555, 562 & n.6 (2d Cir. 2020).

Here, the nature of France's activity is the recovery and disposition of its own sovereign military property. If it chooses to recover its property, or if it chooses to work with Florida to preserve it, France is not entering a market and behaving as a private person would. The declaration of intention shows that two government actors are working together to protect, recover, preserve, and study *la Trinité*, and to promote their shared history. ECF No. 3-2 at 1-2. The declaration is signed by government officials, and the individuals involved—such as the French ambassador in Washington, D.C., the French consul general in Miami, and

Florida's Secretary of State—are government officials. *See id.* at 2. No one has entered the market or engaged in trade or commerce.

Similarly, the public records GME filed show discussions about the "scientific and ethical investigation of the wreck(s)," the "protection of the site," and the "public education that accompanies such work." ECF No. 17-1 at 5. This sentiment is repeated in Hermite's declaration. *See* ECF No. 13-1 ¶¶ 4-6. There, Hermite notes that "[t]hese activities are undertaken as government functions that are within the responsibility of the Ministry of Culture under the Heritage Code of France Section L522-1." *Id.* ¶ 4. That law "prescribes measures aimed at the detection, conservation of safeguarding by scientific study of the heritage archaeological." *Id.* (translated).

It also matters to some extent that France's agreement is with Florida and not a private actor. *Cf. Guevara*, 468 F.3d at 1292, 1299-1300 (finding that Peru engaged in commercial activity when it offered to reward private parties for information relating to a fugitive); *Honduras Aircraft Registry, Ltd. v. Gov't of Honduras*, 129 F.3d 543, 547 (11th Cir. 1997) (finding that Honduras engaged in commercial activity when it "ventured into the marketplace" and contracted with private parties for their expertise in establishing a modern civil air program). By engaging with Florida, and not a private actor, France has not ventured out into the marketplace. *Cf. Guevara*, 468 F3.d at 1297 ("Commercial activities and private activities are often spoken of together and in a way that distinguishes them from sovereign or public acts.").

The conclusion that France's activities are not commercial finds further support in the Second Circuit's

recent conclusion that Greece did not engage in commercial activity when it claimed ownership of an ancient Greek figurine and sent a letter to Sotheby's to prevent the relic's sale. *Barnet as Tr. of the 2012 Saretta Barnet Revocable Tr. v. Ministry of Culture & Sports of the Hellenic Republic*, 961 F.3d 193, 195, 197-98 (2d Cir. 2020). In that case, the court found that Greece was acting pursuant to the country's patrimony laws in declaring the artifact Greek property. *Id.* at 195, 200-03. While sending a letter to Sotheby's "was an act that a private party may typically undertake in the marketplace," the letter could not rightly be characterized as commercial activity when its nature was based in the sovereign act of Greece's adopting and enforcing patrimony laws. *Id.* at 200-01. Likewise, though "claiming ownership or encouraging cultural heritage are not uniquely sovereign activities," they are when "connected to the sovereign activity of claiming ownership through nationalization and enforcement of patrimony laws." *Id.* at 202. Here too, while entering a contract relating to shipwreck recoveries *can* be a commercial activity, the nature of France's agreement with Florida lacks commercial characteristics.

Last, this case is unlike *Pablo Star*, on which GME relies.[4] *See* ECF No. 20 at 13. In *Pablo Star*, the plaintiff sued the Welsh Government for copyright infringement after it used the plaintiff's photos to

---

[4] GME cites a host of cases that reiterate *Weltover*'s commercial-activity analysis, but none have facts similar to our case. *See* ECF No. 20 at 11-15; *see also* ECF No. 26. For example, many involve contracts between private plaintiffs and government defendants. *See id.* The issues presented in *Pablo Star* are closest to those presented here.

promote tourism. 961 F.3d at 559. The court found Wales had engaged in commercial activity, notwithstanding the Welsh Government's argument that it was "acting to promote Welsh culture and tourism pursuant to its statutory mandate under the Government of Wales Act 2006." *Id.* at 562. The court determined that this broad framing of the Welsh Government's activities focused on its purpose, not its nature. *Id.* at 562. The nature of the Welsh Government's activities was advertising. It was reaching out into the market to encourage private actors to visit Wales. *See id.*

France has done nothing like what the Welsh Government did. Instead, it engaged with another state actor to perform activities pursuant to government mandates. It has not entered a market or engaged in trade or commerce, and its actions are not aimed at influencing the commercial activities of private parties like they were in *Pablo Star*.

In short, I conclude that France's activities are not commercial in nature.

B.

Next, though my conclusion that France's activities are not commercial is enough to end the jurisdictional inquiry, I also find that even if France's activities are commercial, GME's case is not "based upon" those activities.

In *Nelson*, the Court found that the statutory phrase "based upon" "denot[es] conduct that forms the 'basis,' or 'foundation,' for a claim." 507 U.S. at 357 (citing Black's Law Dictionary 151 (6th ed. 1990)). It said that "based upon" "is read most naturally to mean

those elements of a claim that, if proven, would entitle a plaintiff to relief under his theory of the case." *Id.* In that case, the plaintiff sued Saudi Arabia, contending the FSIA's commercial-activity exception applied because he was employed by a government hospital. *Id.* at 352-53, 358. But the Court concluded that the action was not *based upon* that employment. Rather, the plaintiff's action was based upon his arrest and torture, which arose from the state's exercise of its police powers—not the employment arrangement. *Id.* at 361. The commercial activity (his hospital employment) may have led to his injury, but his injury was ultimately based upon noncommercial activity (his arrest and torture by government police). *Id.* at 358.

Building on *Nelson*, the Court clarified in *OBB Personenverkehr AG v. Sachs* that in determining what an action is "based upon," courts should not do "an exhaustive claim-by-claim, element-by-element analysis" or consider matters like choice of law. 577 U.S. 27, 34 (2015). Instead, "an action is 'based upon' the 'particular conduct' that constitutes the 'gravamen' of the suit." *Id.* at 35. In other words, courts must zero in on the "core" of the suit. *See id.*

In *Sachs*, the plaintiff sued Austria after she was injured while boarding a train there. *Id.* at 30. As for commercial activity, she pointed to her purchasing a Eurail train pass in the United States. *Id.* at 35-36. But the Court found that her suit was not based on this activity. *Id.* Instead, it concluded that the gravamen of her suit occurred abroad; the "foundation" for her injury remained in Austria. *Id.*

Here, the foundation for GME's injury is not France's declaration with Florida, or activities related to that declaration. GME is not injured because

France wishes to preserve its culture or recover shipwreck artifacts. GME would be in the same position it is now regardless of France's agreement with Florida. GME's action is based upon the fact that France took ownership of the ship. But that loss (if there were any) occurred the moment the Middle District concluded that the *res* was *la Trinité* and belonged to France. It was at that moment that GME lost any rights to its own discovery.

At bottom, GME's action is based upon the fact that it did all the work to find the site and has nothing to show for it, while France enjoys the benefit of GME's discovery. *See* FAC ¶¶ 41-45, 47-49; *see also Williams v. Nat'l Gallery of Art, London*, No. 16-CV-6978 (VEC), 2017 WL 4221084, at *7 (S.D.N.Y. Sept. 21, 2017) (finding that the core of the suit was a title dispute over a painting and was not "based upon" the commercial activity of a refusal letter sent from London to New York), *aff'd sub nom. Williams v. Nat'l Gallery, London*, 749 F. App'x 13 (2d Cir. 2018). GME's asserted injury stems not from France's activities but from GME's inability to claim ownership of the *res*. This is an independent reason why the commercial-activity exception does not apply and why the case must be dismissed.

III.

The § 1605(a)(2) commercial-activity exception does not apply. This means the court lacks subject matter jurisdiction. France's Motion to Dismiss (ECF No. 13) is therefore GRANTED. The clerk will enter a judgment that says, "This case is dismissed without prejudice for lack of subject matter jurisdiction." The clerk will then close the file.

SO ORDERED on November 16, 2020.

/s/ Allen Winsor
U.S. District Judge

SUNKEN MILITARY CRAFT ACT

TITLE XIV—SUNKEN MILITARY CRAFT

Sec. 1401. Preservation of Title to Sunken Military Craft and Associated Contents.

Right, title, and interest of the United States in and to any United States sunken military craft—

(1) shall not be extinguished except by an express divestiture of title by the United States; and

(2) shall not be extinguished by the passage of time, regardless of when the sunken military craft sank.

Sec. 1402. Prohibitions.

(a) Unauthorized Activities Directed at Sunken Military Craft.—No person shall engage in or attempt to engage in any activity directed at a sunken military craft that disturbs, removes, or injures any sunken military craft, except—

(1) as authorized by a permit under this title;

(2) as authorized by regulations issued under this title; or

(3) as otherwise authorized by law.

(b) Possession of Sunken Military Craft.—No person may possess, disturb, remove, or injure any sunken military craft in violation of—

(1) this section; or

(2) any prohibition, rule, regulation, ordinance, or permit that applies under any other applicable law.

(c) Limitations On Application.—

(1) Actions by United States.—This section shall not apply to actions taken by, or at the direction of, the United States.

(2) Foreign Persons.—This section shall not apply to any action by a person who is not a citizen, national, or resident alien of the United States, except in accordance with—

(A) generally recognized principles of international law;

(B) an agreement between the United States and the foreign country of which the person is a citizen; or

(C) in the case of an individual who is a crew member or other individual on a foreign vessel or foreign aircraft, an agreement between the United States and the flag State of the foreign vessel or aircraft that applies to the individual.

(3) Loan of Sunken Military Craft.—This section does not prohibit the loan of United States sunken military craft in accordance with regulations issued by the Secretary concerned.

Sec. 1403. Permits.

(a) In General.—The Secretary concerned may issue a permit authorizing a person to engage in an activity otherwise prohibited by section 1402 with respect to a United States sunken military craft, for archaeological, historical, or educational

purposes, in accordance with regulations issued by such Secretary that implement this section.

(b) Consistency With Other Laws.—The Secretary concerned shall require that any activity carried out under a permit issued by such Secretary under this section must be consistent with all requirements and restrictions that apply under any other provision of Federal law.

(c) Consultation.—In carrying out this section (including the issuance after the date of the enactment of this Act of regulations implementing this section), the Secretary concerned shall consult with the head of each Federal agency having authority under Federal law with respect to activities directed at sunken military craft or the locations of such craft.

(d) Application To Foreign Craft.—At the request of any foreign State, the Secretary of the Navy, in consultation with the Secretary of State, may carry out this section (including regulations promulgated pursuant to this section) with respect to any foreign sunken military craft of that foreign State located in United States waters.

Sec. 1404. Penalties.

(a) In General.—Any person who violates this title, or any regulation or permit issued under this title, shall be liable to the United States for a civil penalty under this section.

(b) Assessment And Amount.—The Secretary concerned may assess a civil penalty under this section, after notice and an opportunity for a

hearing, of not more than $100,000 for each violation.

(c) Continuing Violations.—Each day of a continued violation of this title or a regulation or permit issued under this title shall constitute a separate violation for purposes of this section.

(d) In Rem Liability.—A vessel used to violate this title shall be liable in rem for a penalty under this section for such violation.

(e) Other Relief.—If the Secretary concerned determines that there is an imminent risk of disturbance of, removal of, or injury to any sunken military craft, or that there has been actual disturbance of, removal of, or injury to a sunken military craft, the Attorney General, upon request of the Secretary concerned, may seek such relief as may be necessary to abate such risk or actual disturbance, removal, or injury and to return or restore the sunken military craft. The district courts of the United States shall have jurisdiction in such a case to order such relief as the public interest and the equities of the case may require.

(f) Limitations.—An action to enforce a violation of section 1402 or any regulation or permit issued under this title may not be brought more than 8 years after the date on which—

(1) all facts material to the right of action are known or should have been known by the Secretary concerned; and

(2) the defendant is subject to the jurisdiction of the appropriate district court of the United States or administrative forum.

Sec. 1405. Liability for Damages.

(a) In General.—Any person who engages in an activity in violation of section 1402 or any regulation or permit issued under this title that disturbs, removes, or injures any United States sunken military craft shall pay the United States enforcement costs and damages resulting from such disturbance, removal, or injury.

(b) Included Damages.—Damages referred to in subsection (a) may include—

(1) the reasonable costs incurred in storage, restoration, care, maintenance, conservation, and curation of any sunken military craft that is disturbed, removed, or injured in violation of section 1402 or any regulation or permit issued under this title; and

(2) the cost of retrieving, from the site where the sunken military craft was disturbed, removed, or injured, any information of an archaeological, historical, or cultural nature.

Sec. 1406. Relationship to Other Laws.

(a) In General.—Except to the extent that an activity is undertaken as a subterfuge for activities prohibited by this title, nothing in this title is intended to affect—

(1) any activity that is not directed at a sunken military craft; or

(2) the traditional high seas freedoms of navigation, including—

(A) the laying of submarine cables and pipelines;

(B) operation of vessels;

(C) fishing; or

(D) other internationally lawful uses of the sea related to such freedoms.

(b) International Law.—This title and any regulations implementing this title shall be applied in accordance with generally recognized principles of international law and in accordance with the treaties, conventions, and other agreements to which the United States is a party.

(c) Law of Finds.—The law of finds shall not apply to—

(1) any United States sunken military craft, wherever located; or

(2) any foreign sunken military craft located in United States waters.

(d) Law of Salvage.—No salvage rights or awards shall be granted with respect to—

(1) any United States sunken military craft without the express permission of the United States; or

(2) any foreign sunken military craft located in United States waters without the express permission of the relevant foreign state.

(e) Law of Capture or Prize.—Nothing in this title is intended to alter the international law of capture or prize with respect to sunken military craft.

(f) Limitation of Liability.—Nothing in sections 4281 through 4287 and 4289 of the Revised Statutes (46 U.S.C. App. 181 et seq.) or section 3 of the Act

of February 13, 1893 (chapter 105; 27 Stat. 445; 46 U.S.C. App. 192), shall limit the liability of any person under this section.

(g) Authorities of the Commandant of the Coast Guard.—Nothing in this title is intended to preclude or limit the application of any other law enforcement authorities of the Commandant of the Coast Guard.

(h) Prior Delegations, Authorizations, and Related Regulations.—Nothing in this title shall invalidate any prior delegation, authorization, or related regulation that is consistent with this title.

(i) Criminal Law.—Nothing in this title is intended to prevent the United States from pursuing criminal sanctions for plundering of wrecks, larceny of Government property, or violation of any applicable criminal law.

Sec. 1407. Encouragement of Agreements with Foreign Countries.

The Secretary of State, in consultation with the Secretary of Defense, is encouraged to negotiate and conclude bilateral and multilateral agreements with foreign countries with regard to sunken military craft consistent with this title.

Sec. 1408. Definitions.

In this title:

(1) Associated Contents.—The term "associated contents" means—

(A) the equipment, cargo, and contents of a sunken military craft that are within its debris field; and

(B) the remains and personal effects of the crew and passengers of a sunken military craft that are within its debris field.

(2) Secretary Concerned.—The term "Secretary concerned" means—

(A) subject to subparagraph (B), the Secretary of a military department; and

(B) in the case of a Coast Guard vessel, the Secretary of the Department in which the Coast Guard is operating.

(3) Sunken Military Craft.—The term "sunken military craft" means all or any portion of—

(A) any sunken warship, naval auxiliary, or other vessel that was owned or operated by a government on military noncommercial service when it sank;

(B) any sunken military aircraft or military spacecraft that was owned or operated by a government when it sank; and

(C) the associated contents of a craft referred to in subparagraph (A) or (B),

if title thereto has not been abandoned or transferred by the government concerned.

(4) United States Contiguous Zone.—The term "United States contiguous zone" means the contiguous zone of the United States under

Presidential Proclamation 7219, dated September 2, 1999.

(5) United States Internal Waters.—The term "United States internal waters" means all waters of the United States on the landward side of the baseline from which the breadth of the United States territorial sea is measured.

(6) United States Territorial Sea.—The term "United States territorial sea" means the waters of the United States territorial sea under Presidential Proclamation 5928, dated December 27, 1988.

(7) United States Waters.—The term "United States waters" means United States internal waters, the United States territorial sea, and the United States contiguous zone.