[DO NOT PUBLISH]

In the United States Court of Appeals

For the Eleventh Circuit

No. 21-10668

GLF CONSTRUCTION CORPORATION,
a Florida profit corporation,

Plaintiff-Counter Defendant
-Appellee-Cross Appellant,

versus

FEDCON JOINT VENTURE,
a Florida joint venture,

Defendant-Counter Claimant
-Appellant-Cross Appellee,

DAVID BOLAND, INC.,
a Florida profit corporation,
JT CONSTRUCTION ENTERPRISES CORPORATION,

a Florida profit corporation,

Defendants-Appellants
-Cross Appellee,

WESTERN SURETY COMPANY,

Defendant,

FIDELITY AND DEPOSIT COMPANY OF MARYLAND,

Counter Defendant.

Appeals from the United States District Court
for the Middle District of Florida
D.C. Docket Nos. 8:17-cv-01932-CEH-AAS,
8:17-cv-02650-CEH-TGW

Before BRANCH, LUCK, Circuit Judges, and SMITH, District Judge.*

PER CURIAM:

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* Honorable Rodney Smith, United States District Judge for the Southern District of Florida, sitting by designation.

This consolidated case arises out of a project to repair and reinforce a levee along a section of the Mississippi River in the state of Louisiana. The project was led by the U.S. Army Corps of Engineers (the "Corps"). The case involves two subcontracts between Appellants (jointly, "FEDCON"), the general contractor on the project, and Appellee, GLF Construction Corporation ("GLF"), a subcontractor on the project. After a thirteen-day bench trial, the district court issued a lengthy Opinion and Order, with detailed factual findings and conclusions of law. Both sides have appealed aspects of the district court's Opinion and Order. As explained below, we affirm in part and reverse and remand in part for further proceedings consistent with this Opinion.

I.

The district court's 192-page order contains nearly 142 pages of detailed factual findings. Neither side has appealed any of these findings; thus, we will only summarize the factual findings here.

In 2013, FEDCON entered two written contracts with the Corps. Each contract covered a different section of the levee project, referred to as the 2.2 Project and the 1.2a Project. In January and April 2014, FEDCON entered two subcontracts with GLF, one to perform certain work on the 2.2 Project and one to perform certain work on the 1.2a Project (the "2.2 Subcontract" and the "1.2a Subcontract," respectively, and collectively, the "Subcontracts"). The Subcontracts state that they are governed by Florida law.

Under the Subcontracts, GLF was to provide work on two work fronts for each project. In accordance with FEDCON's

coordination and scheduling of the work to be performed by its subcontractors, another FEDCON subcontractor, HDB Construction ("HDB"), was to construct access roads, construct temporary flood protection, degrade the levee, and construct work platforms. HDB's work needed to be done before GLF could do its work of driving sheet pilings, driving pipe pilings, and forming and pouring the concrete T-walls. Prior to the bench trial, FEDCON stipulated that:

> In accordance with FEDCON's coordination and scheduling of the work to be performed by its subcontractors, construction of the access road, construction of temporary flood protection, and degrading of the levee and construction of the work platform, all of which was to be performed by FEDCON's subcontractor, HDB Construction, were predecessor work activities to GLF's performance of its work activities[.]

The quality of HDB's predecessor work led to many of the disputes between FEDCON and GLF.

The temporary access road, which HDB was to construct and maintain, would allow GLF to access the work sites. The 2.2 Subcontract required "a temporary access road approximately 12' wide extending the length of the levee, located adjacent to the temporary work platform on the protected side of the levee." The 1.2a Subcontract required a "a temporary access road approximately 15' wide." The roads that were constructed held up poorly and became muddy and rutted. There were days when FEDCON closed

the roads because of their poor condition, which prevented GLF from working on those days. These closures occurred when it rained. Sometimes the roads remained closed for a day or more after the rain so that the roads could dry out. Consequently, FEDCON issued GLF non-compensable time extensions for the days GLF could not work because of the road conditions.

GLF repeatedly expressed concern about the conditions of the roads and the safety concerns the poor conditions created. In June and July 2014, FEDCON reached out to an engineer to discuss the access road for the 1.2a Project. The engineer issued several design recommendations to improve the road. Despite these recommendations, FEDCON did not make any changes to HDB's subcontract. Nor did FEDCON provide HDB with any engineering data or recommendations to improve the access road for the 2.2 Project. In the fall of 2014, FEDCON communicated with several engineers and companies to explore solutions for the access roads. After receiving proposals for engineering options to improve the access roads, FEDCON decided that any of the recommended upgrades would be cost prohibitive.

In the fall of 2015, GLF notified FEDCON of the continuing impact caused by the conditions of the access roads. In a November 3, 2015 letter, GLF notified FEDCON that GLF would be left with no option but to demobilize from the Projects until FEDCON "provides the proper access in accordance with the contract." On November 13, 2015, after GLF's notice, FEDCON issued change orders to HDB for both Projects to perform some reconstruction

work on the access roads. Despite the reconstruction by HDB, GLF continued to be impacted by the conditions of the access roads on both Projects.

As a result of the issues with the access roads, GLF submitted damage claims regarding the access roads in accordance with paragraph 13.B. of the Subcontracts, which sets out the process for GLF to make claims arising out of the Subcontracts. GLF's damage claims sought the costs it had incurred for the time its workers and equipment were idled due to the conditions of the access roads.

On August 7, 2015, GLF advised FEDCON that GLF would be removing all resources from work front two on the 2.2 Project beginning Monday, August 10, 2015, until FEDCON had a fully accepted access plan approved by the Corps.

In addition to issues with the access roads, GLF also encountered problems with the work platforms. The 2.2 and 1.2a Subcontracts between FEDCON and GLF required the construction and maintenance of temporary work platforms at each of the work fronts, which were required to be approximately 30 feet wide and 600 feet long. The platforms, made of compacted earth, were needed to allow GLF to position its cranes and other equipment. The platforms that were not sufficiently compacted yielded to the weight of the cranes, causing the cranes to list and shut off. HDB was to construct the work platforms.

As a result of FEDCON's failure to provide a sufficiently compacted work platform, GLF's performance was impacted on both Projects. To compensate for the trouble with the work

platforms, GLF bought approximately 180 extra crane mats, which GLF needed to try to stabilize the cranes. Because of the often-wet conditions, the crane mats would sink in the mud, creating a labor and time intensive process to move them as work progressed. On April 29, 2016, GLF submitted damage claims for the work platforms.

Both Subcontracts required GLF to have sufficient manpower, equipment, and materials to work on two work fronts simultaneously, for a total of four work fronts. In September 2015, after a work stoppage due to the river level, GLF claimed it was unable to resume work on the second work front of the 2.2 Project ("work front two"). The delay was mainly due to a nearby Chevron plant that made accessing work front two difficult. The location of the Chevron plant affected both the access road and the work platform at work front two.

As a result of the issues caused by the Chevron plant, FEDCON made a claim with the Corps to account for the differing site conditions caused by the Chevron plant. The presence of the Chevron plant affected the width of the work platform at work front two, causing it to be considerably less than thirty feet in width, as required by the 2.2 Subcontract. FEDCON worked with the Corps to come up with a new access plan for work front two on the 2.2 Project. The Corps recognized FEDCON's differing site condition claim. On April 11, 2016, FEDCON notified GLF about the new access plan and directed GLF to promptly recommence work at work front two. FEDCON committed to providing a

minimum twenty-eight-foot-wide engineered work platform, where space limitations prevented a thirty-foot wide platform. GLF did not feel comfortable restarting work at work front two. GLF sent FEDCON a memo raising concerns about the changes in access and work platform width. GLF also argued that these changes were changes to the 2.2 Subcontract and required a change order.

Paragraph 8.A. of the 2.2 Subcontract permits FEDCON to terminate GLF under certain circumstances, after FEDCON gives written notice of an alleged deficiency that GLF fails to cure within 72-hours of receipt of the notice. These circumstances include GLF "[f]ailing to proceed with the Work in the sequence directed by [FEDCON]"; "[c]ausing stoppage, delay, or interference to the work of [FEDCON] or another subcontractor"; and "[f]ailing to perform the Work in compliance with the Contract Documents." Pursuant to Paragraph 8.A. of the 2.2 Subcontract, on May 23, 2016, FEDCON issued a Notice of Default to GLF and directed GLF to submit a plan setting forth how it intended to proceed with work at the second work front on the 2.2 Project. The Notice of Default advised GLF that a failure to cure its default within 72 hours would lead to a declaration that GLF was in material breach and would result in termination of GLF.[1] On May 24, 2016, GLF responded that FEDCON had failed to provide GLF with an

[1] Specifically, FEDCON required GLF provide a written plan demonstrating and committing to the recommencement of work at work front two at the earliest reasonable time.

acceptable engineering plan that demonstrated how FEDCON planned to resolve the access road and work platform issues. GLF sent a follow-up letter stating that it would recommence work at work front two as soon as FEDCON fulfilled its contractual responsibilities that were conditions precedent to GLF recommencing work. On May 27, 2016, FEDCON terminated GLF's 2.2 Subcontract stating that GLF's refusal to recommence work was a material breach of the 2.2 Subcontract and ordered GLF to commence the removal of its equipment and personnel from the project site.

GLF sued FEDCON in two separate actions, alleging claims under the Miller Act and for breach of the 2.2 and 1.2a Subcontracts. FEDCON brought counterclaims for breach of the Subcontracts by GLF. The cases were consolidated, and a bench trial was held. At trial, GLF maintained that it could not perform under the Subcontracts because FEDCON had failed to perform its predecessor obligations of constructing access roads and work platforms.

In its nearly 200-page decision, the district court ruled that FEDCON breached the Subcontracts with GLF by failing to provide the necessary predecessor work, i.e., proper construction of the access roads; that FEDCON improperly terminated GLF for default; and that FEDCON's counterclaims were without merit. GLF was awarded $577,246.93 on its breach of contract claim for the 1.2a Project and $2,416,798.71 on its breach of contract claim for the 2.2 Project. Included in the damages awarded to GLF on its claim for breach of the 2.2 Subcontract was $880,000 for

demobilization costs and expenses incurred after FEDCON improperly terminated GLF under the 2.2 Subcontract.

The district court found that FEDCON breached the 1.2a and 2.2 Subcontracts by actively interfering with GLF's performance. Specifically, the district court found that FEDCON failed to construct and provide access roads in accordance with the requirements of the Subcontracts. The district court went on to conclude that FEDCON actively interfered because the design for the access roads was insufficient; the roads were not engineered, as required; and because FEDCON explored engineering solutions but chose not to take any actions because of the costs involved. The district court concluded that, because FEDCON actively interfered with GLF's performance, GLF was entitled to damages despite both Subcontracts having no-damages-for-delay provisions, because the evidence demonstrated a "knowing delay" on behalf of FEDCON that was "sufficiently egregious."

The district court also found that GLF's breach of contract claim based on FEDCON's failure to properly construct the work platforms failed. The failure to properly construct the work platforms led to delays in GLF's performance. The district court found that while FEDCON's failure may have led to delays and may have hindered GLF's performance, any damages fell within the no-damages-for-delay provisions of the Subcontracts because there was no evidence of active interference by FEDCON with regards to the work platforms, in contrast to the active interference the court found with the access roads.

The district court found that GLF's breach of contract claim based on FEDCON's failure to provide two work fronts also failed because of the no-damages-for-delay provisions. The district court found no evidence of active interference as to this claim.

Thereafter, FEDCON appealed and GLF filed a cross-appeal. FEDCON appeals the district court's finding that FEDCON improperly terminated GLF. FEDCON also appeals the award of damages, arguing that any award is barred by the no-damages-for-delay provisions in the Subcontracts. GLF cross-appeals the amount of damages awarded by the district court, arguing that the district court erred by finding that the no-damages-for delay provisions barred recovery of damages related to FEDCON's failure to provide two work fronts and failure to provide properly constructed work platforms.

II.

"The interpretation of a contract is a question of law that we review de novo." *Dear v. Q Club Hotel, LLC*, 933 F.3d 1286, 1293 (11th Cir. 2019) (emphasis omitted). But we review for clear error all the district court's factual findings related to that contract. *See Compulife Software Inc. v. Newman*, 959 F.3d 1288, 1301 (11th Cir. 2020). "A finding of fact is clearly erroneous when the entirety of the evidence leads the reviewing court to a definite and firm conviction that a mistake has been committed." *Sea Byte, Inc. v. Hudson Marine Mgmt. Servs., Inc.*, 565 F.3d 1293, 1298 (11th Cir. 2009) (quotation omitted).

We review the district court's determination of the proper legal standard to compute damages de novo and factual findings for clear error. *A. A. Profiles, Inc. v. City of Fort Lauderdale*, 253 F.3d 576, 581 (11th Cir. 2001). As to assessing damages, district courts are given "[g]reat latitude" in fashioning monetary awards. *Ramada Inns, Inc. v. Gadsden Motel Co.*, 804 F.2d 1562, 1564 (11th Cir. 1986) (quotation omitted). We won't set aside an award based on the proper legal standard unless it's "clearly inadequate." *Id.*

III.

There are two main issues on appeal: (1) whether the district court erred in determining that FEDCON breached the 2.2 Subcontract by improperly terminating GLF and (2) whether the district court erred in its award of damages to GLF. In addressing these issues, we keep the following rules of contract interpretation in mind. Words used in a contract must be given their plain and ordinary meaning. *Beans v. Chohonis*, 740 So. 2d 65, 67 (Fla. Dist. Ct. App. 1999). Thus, when a word in a contract is undefined, "courts may look to legal and non-legal dictionary definitions to determine [its] meaning." *Gov't Emps. Ins. Co. v. Macedo*, 228 So. 3d 1111, 1113 (Fla. 2017).

Applying these rules of contract interpretation to the Subcontracts, we find that the district court did not err in finding that FEDCON breached the 2.2 Subcontract by improperly terminating GLF because, at the time of termination, GLF had not breached the 2.2 Subcontract. We also find that the district court did not err in determining GLF was entitled to damages under the contract, but did err in its determination that GLF was entitled to its

demobilization costs as part of its recovery. We further find that the district court erred in ruling that the no-damages-for-delay provisions barred GLF's recovery of the cost of the additional crane mats GLF was required to purchase due to the poor conditions of the work platforms.

A. Termination of GLF

The district court awarded GLF damages after finding that FEDCON improperly terminated GLF from the 2.2 Subcontract. FEDCON maintains that this was error because, under the 2.2 Subcontract, FEDCON properly terminated GLF after GLF refused to proceed with the work or provide FEDCON with reassurances as to when GLF would proceed with the work.

In making this argument, FEDCON ignores a key fact—FEDCON's pretrial stipulation that construction of the access roads, work platforms, temporary flood protection, and degrading of the levee were all predecessor work activities to GLF's performance of its work.[2] Based on this stipulation, at the time FEDCON sent the Notice of Default, GLF was not in default. GLF had not failed to perform the work in the sequence directed by FEDCON. Pursuant to the stipulation, GLF was not to perform its work until HDB had performed specific predecessor work. The record is clear that HDB had not properly or fully performed its predecessor work activities—construction of adequate access roads and work

[2] While FEDCON contends that the district court rewrote the Subcontract by finding that predecessor work had to be completed before GLF could perform under the Subcontract, FEDCON stipulated to this fact.

platforms. Thus, at the time FEDCON gave Notice of Default and at the time GLF was terminated, GLF was still waiting for the predecessor work to take place that would enable GLF to do its work.

The 2.2 Subcontract allowed FEDCON to terminate GLF if GLF failed to proceed with the work in the sequence directed by FEDCON; if GLF caused stoppage, delay, or interference with the work of FEDCON or another subcontractor; or if GLF failed to perform the work in compliance with the contract documents. Because the predecessor work had not been properly completed, GLF did not fail to proceed with the work in the sequence directed by FEDCON; GLF did not cause stoppage, delay, or interference with FEDCON's or another subcontractor's work; and GLF did not fail to perform the work in compliance with the contract documents. Consequently, when GLF received the Notice of Default from FEDCON, GLF was not in breach of the 2.2 Subcontract. Therefore, FEDCON's termination of GLF was improper because FEDCON had no basis on which to terminate GLF.

FEDCON also maintains that GLF breached the 2.2 Subcontract by failing to comply with the dispute resolution mechanism in paragraph 10.B. of the Subcontract. According to FEDCON, if GLF believed that FEDCON's demand that GLF resume work was improper, GLF should have used the dispute mechanism set out in paragraph 10.B. of the Subcontract. Paragraph 10.B. states:

> Any claim of the Subcontractor for adjustment for changes in the Work, or for additional time or compensation, must be made in writing and delivered to the Contractor within ten (10) days from the date of

> receipt by the Subcontractor of the notification of a change or of the requirement to perform specific Work . . . . If the Owner or the parties fa[i]l to agree upon the adjustment to be made, the dispute shall be determined as provided in Paragraph 13 herein; but nothing provided in this clause shall excuse the Subcontractor from proceeding with the prosecution of the Work . . . .

However, paragraph 10.B. does not apply to the circumstances faced by GLF.

The language of paragraph 10.B. states that it applies to a "claim *of the Subcontractor* for adjustment for changes in the Work." (emphasis added). However, GLF was not the one seeking a change to the work. The claims for changes to the work were made by FEDCON, to the Corps, to address the access issues created by the location of the Chevron plant. FEDCON told GLF what those changes were, including the smaller platforms. GLF did not want those changes and, in fact, wanted FEDCON to perform as required under the Subcontract. Thus, because GLF was not the one seeking a change in the work, paragraph 10.B. did not apply.

If paragraph 10.B. did not apply, GLF was entitled to turn to paragraph 13 for dispute resolution, which does not require GLF to seek an adjustment for the work under the procedure set out in paragraph 10.B. Moreover, unlike paragraph 10.B., paragraph 13 does not require GLF to continue to perform under the Subcontract during the dispute resolution process. Thus, GLF did not breach the Subcontract by failing to comply with paragraph 10.B.

of the Subcontract. Consequently, the district court did not err in finding that FEDCON breached the 2.2 Subcontract by improperly terminating GLF and in finding that GLF did not breach the 2.2. Subcontract by failing to follow the dispute resolution process set out in paragraph 10.B. of the Subcontract.

B. Damages

The District Court awarded GLF breach of contract damages for breach of both the 1.2a Subcontract and the 2.2. Subcontract. The damages awarded for breach of the 1.2a Subcontract arise from the problems caused by the access roads. The damages awarded for breach of the 2.2 Subcontract include damages for the problems caused by the access roads and damages for the improper termination of the 2.2 Subcontract. GLF maintains that the district court erred by failing to award it additional damages for disruptions to its work under both Subcontracts. FEDCON maintains that the district court erred by awarding GLF any damages related to the access roads and certain damages awarded to GLF for the improper termination of the 2.2 Subcontract.

i. Damages for the Access Roads

Based on the Subcontracts' no-damages-for-delay provisions, FEDCON contests the award of damages for the issues caused by the access roads. Specifically, the no-damages-for-delay provisions, paragraph 12.B. of the Subcontracts,[3] states:

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[3] The wording of the no-damages-for-delay provision is the same in both Subcontracts.

> The Subcontractor expressly agrees that the Contractor shall not be liable to the Subcontractor for any damages or additional costs, whether foreseeable or unforeseeable, resulting in whole or in part from a delay, hindrance, suspension, or acceleration of the commencement or execution of the Work, caused in whole or in part by the acts or omissions, whether negligent or not, of the Contractor . . . . The Subcontractor's sole remedy for any such delay, hindrance, suspension, or acceleration shall be a noncompensable time extension.

Generally, such clauses are enforceable under Florida law. *Marriott Corp. v. Dasta Const. Co.*, 26 F.3d 1057, 1067 n.17 (11th Cir. 1994). However, "such a clause does not preclude recovery for delays resulting from a party's fraud, concealment, or active interference with performance under the contract." *Newberry Square Dev. Corp. v. S. Landmark, Inc.*, 578 So. 2d 750, 752 (Fla. 1st DCA 1991). Despite a no-damages-for-delay clause, "damages may be awarded upon a 'knowing delay' which is sufficiently egregious." *Id.* (citing *S. Gulf Utils. Inc. v. Boca Ciega Sanitary Dist.*, 238 So. 2d 458 (Fla. 2d DCA 1972)). "These exceptions to the no damages clause are generally predicated upon an implied promise and obligation not to hinder or impede performance." *Id.*

The district court found that FEDCON's actions related to the access roads amounted to active interference with GLF's performance under the Subcontracts. The Court agrees. FEDCON knew there were issues with the access roads throughout the term of the Subcontracts, in part, because GLF complained about the

state of the access roads numerous times. FEDCON knew those issues were causing delays on good and bad weather days because of the conditions of the access roads during and after rain. FEDCON engaged engineers to recommend solutions, but FEDCON chose not to implement any solution because of the expense involved, thereby allowing the weather delays to continue interfering with GLF's ability to perform. Therefore, FEDCON created a knowing delay, which was sufficiently egregious to overcome the no-damages-for-delay provision. Consequently, FEDCON's actions, or inactions, by knowingly choosing to do nothing about the issues with the access roads despite actively looking for solutions, amounted to active interference. Accordingly, the district court did not err in awarding GLF damages for FEDCON's breach of the Subcontracts arising from FEDCON's failure to provide adequate access roads.

ii. Damages for Disruption

In its cross-appeal, GLF argues that the district court erred by not awarding GLF damages for additional disruptions to its work caused by FEDCON's material breaches of the Subcontracts. GLF maintains that disruption damages are distinguishable from delay damages that are barred by the Subcontracts' no-damages-for-delay clauses, which preclude damages for "a delay, hindrance, [or] suspension . . . of the commencement or execution of the

Work" caused by FEDCON.[4] GLF distinguishes between delay damages, which arise when the performance of the contract has been extended over a greater period of time, and disruption damages, which arise when it becomes more expensive to perform the same subcontract work. Under these definitions, disruption does not necessarily lead to an extension of the completion date of the project.

As examples of the disruptions it faced, GLF points to (1) FEDCON's failure to have two work fronts available on each project, (2) GLF's need for additional crane mats because the work platforms were not properly constructed, and (3) the additional time and labor it took GLF's employees to move the crane mats because the work platforms were not properly constructed. While we affirm the district court's holding that GLF's claim for damages based on the failure to have two work fronts available and claim for damages based on the additional time and labor it took to move the crane mats fall within the no-damages-for-delay provisions, we reverse and remand to the district court on GLF's claim for the costs of the additional crane mats.

The improper construction of the work platforms led to GLF purchasing an additional 180 crane mats to compensate for their improper construction and required extra labor for GLF to move the crane mats. The additional costs of the crane mats did

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[4] "Hindrance" is commonly defined as "the state of being hindered" or an "impediment." *Hindrance*, Merriam Webster's Collegiate Dictionary (10th ed. 1997). "Hinder" is defined as "to delay, impede, or prevent action." *Id*.

not arise because of a delay or hindrance caused by FEDCON; these costs arose because of FEDCON's failure to construct the work platforms to contract specifications. Had GLF not purchased the additional crane mats, it would have been unable to do its work. Thus, the improperly constructed work platforms were more than a mere hindrance because GLF could not perform its work using the platforms as constructed. In other words, without the additional crane mats, the state of the work platforms not only hindered GLF's performance, it prevented it. As such, the additional costs of the crane mats GLF had to purchase to make the work platforms usable for its purpose are not barred by the no-damages-for-delay provisions. Thus, we reverse the district court on this issue and remand for a determination as to whether such damages were appropriate under the contract and, if so, the amount of such damages.

While it might seem that the no-damages-for-delay provisions also would not bar the additional labor costs involved in moving the crane mats, which would sink into the muddy, non-compacted surface of the work platforms, these labor costs fall within the no-damages-for-delay provisions. These provisions exclude damages for more than just mere delay; they also exclude damages caused by a hindrance, suspension, or acceleration of the work. The extra labor required to move the crane mats because of the muddy conditions amounts to a "hindrance." As noted, a "hindrance" is an "impediment," which is defined as something that impedes. *Impediment*, Merriam Webster's Collegiate Dictionary (10th ed. 1997). "Impede" is defined as "to interfere with or slow the

progress of." *Id.* Based on these definitions, the muddy conditions that made moving the crane mats more difficult and time consuming constitute a hindrance under the no-damages-for-delay provisions. Unlike the purchase of the additional crane mats, which were needed to make the work platforms usable, the additional time and labor to move the crane mats amounted to an impediment or hindrance to GLF performing its work under the Subcontract. Consequently, we affirm the district court's finding that these additional labor costs are not recoverable.

The damages GLF seeks for the time its workers and equipment sat idle because of its inability to work on two work fronts also fall within the no-damages-for-delay provisions of the Subcontracts. FEDCON's failure to have two work fronts available constitutes a hindrance that caused a delay in GLF's ability to do its work. The express terms of the Subcontracts preclude GLF from recovering any damages for FEDCON's hindrance of GLF in the execution of GLF's work. GLF incurred these costs because of FEDCON's failure to timely and properly complete the predecessor work—preparing two work fronts. Thus, GLF's inability to work was directly the result of the acts or omissions of FEDCON and these damages are explicitly excluded under the no-damages-for-delay provisions of the Subcontracts.[5] Consequently, we affirm

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[5] GLF points to *Safeco Insurance Co. of America v. City of Jacksonville*, No. 3:08-CV-338-J-25 JRK, 2011 WL 13176636, at *1-2 (M.D. Fla. Sept. 27, 2011), for the proposition that Florida courts recognize the difference between delay and disruption damages and a no-damages-for-delay provision does not prevent recovery for disruption damages. However, in *Safeco*, the court recognized

the district court's holding that the no-damages-for-delay clauses preclude GLF from recovering these damages.

iii. Damages for Demobilization Costs

Included in the damages awarded by the district court for improper termination of the 2.2 Subcontract is $880,000 for demobilization costs, which GLF incurred after FEDCON terminated GLF. Section 11.B. of the 2.2 Subcontract states:

> If this Subcontract Agreement is terminated for convenience, the Subcontractor shall be entitled, as its sole compensation, to be paid that portion of the total price provided in this Subcontract Agreement that is equal to the reasonable value of the *Work performed*, plus the reasonable value of properly authorized materials fabricated and properly stored . . . *prior to the termination*. . . . *The Contractor shall not be liable to the Subcontractor for any other costs*[,] nor for prospective or anticipated profits on Work not performed.

(emphasis added). The demobilization costs were included in the 2.2 Subcontract as a line item for mobilization and demobilization costs.

The language of the Subcontract is not ambiguous. Upon termination, GLF was entitled to payment for the work it had

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that provisions in the contract at issue may allow for disruption damages. *Id.* at *2. GLF has not pointed to any such provisions in the instant case. Additionally, "[w]e are unmoved by [GLF's] creative attempt to label its way around the no damage for delay clause." *Marriott Corp. v. Dasta Const. Co.*, 26 F.3d 1057, 1070 n.26.

performed up until termination. The Subcontract expressly excluded costs incurred after termination. At the time GLF was terminated, it had not demobilized. While GLF would have to demobilize regardless of whether it was terminated or it completed the Project, the language of the Subcontract does not take this into consideration. At the time GLF was terminated, it had not performed demobilization work. Thus, under the express terms of the Subcontract, GLF was not entitled to its demobilization costs.

The persuasive authority relied on by GLF, *Orion Marine Contractors, Inc. v. City of Seward*, 747 F. App'x 510 (9th Cir. 2018), and *Steenberg Construction Co. v. Prepakt Concrete Co.*, 381 F.2d 768 (10th Cir. 1967), do not change this outcome. In *Orion*, the contract at issue expressly addressed payment of mobilization and demobilization costs and permitted full payment of these costs, including upon a termination for convenience, upon the contractor's remittance of "all submittals required under the Contract" to the city. 747 F. App'x at 512. The court found that the contractor had remitted all the required submittals to the city and was, therefore, entitled to full payment for mobilization and demobilization costs. *Id.* at 513. Here, the 2.2 Subcontract does not expressly address payment of demobilization costs upon early termination. Thus, *Orion* is inapposite. *Steenberg* is also inapposite. In *Steenberg*, the court addressed whether the subcontractor's demobilization, after its abandonment of the project, constituted "labor" for purposes of the Miller Act's one-year statute of limitations. 381 F.2d at 774. The court found that, because the contract included a lump sum price for mobilization and demobilization, the subcontractor's

demobilization constituted "labor" on the project. *Id.* The *Steenberg* court did not address the issue currently before this Court regarding whether uncompleted demobilization qualified as "work performed" under the contract as interpreted by Florida law. Therefore, neither of the cases relied upon by GLF nor the express language of the 2.2 Subcontract permit recovery of demobilization costs under the circumstances in the instant case. Here, based on the language of the 2.2 Subcontract, GLF is not entitled to its demobilization costs. Consequently, the district court's award of the demobilization costs is reversed.

IV.

The district court's finding that FEDCON improperly terminated GLF is affirmed. The district court's award of damages is affirmed in part and reversed in part. This matter is remanded to the district court for any further proceedings necessary for a determination as to whether GLF's claim for the cost of the extra crane mats should be awarded under the Subcontracts and, if so, the amount of such damages and to reduce the judgment by the $880,000 in demobilization costs.

JUDGMENT AFFIRMED in part, REVERSED in part, and REMANDED for further proceedings.