UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 25-CV-81340-MIDDLEBROOKS

IN THE MATTER OF:
WILLIAM LYNAM and JUSTIN BURNS, as Owners, of *Rowdy One*, a 2024 37' Axopar with Mercury Twin 350hp gas engine bearing Hull Identification No.: AXO7C056E424, its Engines, Tackle, Appurtenances, Equipment, Etc., in a cause for Exoneration from or Limitation of Liability.

Petitioners,

v.

MAXWELL HARTZMAN,

Claimant.
_______________________________________/

ORDER GRANTING PETITONERS' AMENDED MOTION FOR SUMMARY JUDGMENT

THIS CAUSE is before the Court on the Petitioners' Amended Motion for Summary Judgment, filed on July 7, 2026. (DE 61). Claimant filed his Response on July 21, 2026. (DE 63). And Petitioners filed their Reply on the same day. (DE 65). For the following reasons, the Petitioners' Motion is granted.

BACKGROUND

This matter arises from a boating incident following Claimant's rental of Petitioners' Vessel. Petitioners, William Lynam and Justin Burns, listed their Vessel, *Rowdy One*,[1] for charter on Boatsetter, a website that allows users to book charters on a vessel owner's vessel. (DE 62 at ¶ 1). As a requirement to charter a vessel, Petitioners listed the vessel on Boatsetter's platform and

---

[1] The Rowdy One is described as a 2024 37' Axopar with Mercury Twin 350hp gas engine bearing Hull Identification No.: AXO7C056E424, its Engines, Tackle, Appurtenances, Equipment, etc.

advertised it for "captained" charters only. (*Id.* at ¶ 2, DE 64 at ¶ 2). Notably, the Parties dispute the extent to which Claimant was able to meaningfully provide his own captain. When the Parties were discussing a viable Captain for the charter, they exchanged messages over the Boatsetter app. Claimant suggests that Petitioner maintained control over the selection of the Captain because there was a shortage of available captains due to high demand in light of Floatopia (an annual boating event). Claimant also states that Petitioner contacted the potential captains and ultimately selected Captain McKinney for Claimant. (DE 64 at ¶ 6, DE 63 at 3). Petitioner, on the other hand, suggests that Claimant could have selected his own captain at any point, and could have refused to engage Captain McKinney. (DE 62 at ¶ 8).

The facts surrounding Claimant's booking of the *Rowdy One,* and the contractual arrangement between Claimant and Petitioner, are therefore of critical importance. Claimant wanted to charter a boat for the Floatopia event, scheduled for April 13, 2025. (DE 62 at ¶ 3). Accordingly, on April 9, 2026, Claimant requested to charter Petitioners' Vessel (*Rowdy One*) via Boatsetter. (*Id.* at ¶ 4). Claimant ultimately booked the charter with Petitioners through Boatsetter. (*Id.* at ¶ 5, DE 64 at ¶ 5). At this point, Petitioners suggest that Claimant, as the charterer, was required to check a box confirming that he had read, understood, and agreed to the Terms of Service and Charter Agreement, which were hyperlinked on the checkout page. (DE 62 at ¶ 11). Claimant, however, states that, although he clicked the box to proceed, he did not click any links or read the purported agreements. (DE 64 at 11). As a result of this dispute, Claimant also disputes the relevant language included in the Bareboat Charter Agreement, which reads, among other relevant provisions, that "[t]his charter is a full and complete demise of the Boat to the Renter, which shall, at its own expense man, navigate and operate the Boat. Renter shall have exclusive control over the Boat during the Charter Period." (DE 62 at ¶ 14).

The "Charter Period" was confirmed for April 13, 2025, from 11:00 a.m. When it came time to commence the charter, the Parties further dispute the nature of the relationship. First, the Parties dispute the context surrounding an additional fee payment to the Captain McKinney, who demanded an additional $800.00 due to the nature of the Floatopia event. (DE 62 at ¶ 7). In a similar vein, Claimant suggests that this additional fee was "negotiated" by Petitioner Lynam. (DE 64 at ¶ 7). Meanwhile, although Petitioners suggest that they were not present on the Vessel at any point during the charter, Claimants contend that Petitioner Lynam "personally saw McKinney off on the morning of the charter and was present when the vessel returned." (*Id.* at ¶ 3). Likewise, where Petitioners suggest that they did not provide any drinks, food, or other provisions for the charter (DE 62 at ¶ 21), Claimants state that Petitioners provided fuel and ice. (DE 64 at ¶ 21).

Ultimately, while on board the Vessel, Claimant suffered an injury wherein he claims that the Captain, who operated the vessel, instructed and directed Claimant into the water, and then later engaged the engines while Claimant was in or near the water and working near the stern. (DE 63 at 7, 16).

LEGAL STANDARD

"The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). "Genuine disputes are those in which the evidence is such that a reasonable jury could return a verdict for the non-movant." *Ellis v. England*, 432 F.3d 1321, 1325–26 (11th Cir. 2005). "For factual issues to be considered genuine, they must have a real basis in the record." *Id.* at 1326 (internal citation omitted). "For instance, mere conclusions and unsupported factual allegations are legally insufficient to defeat a summary judgment motion." *Id.* (internal citation omitted). The movant "always bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of 'the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any,' which it believes demonstrate the absence of a genuine issue of material fact." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986) (quoting Fed. R. Civ. P. 56(c)(1)(A)).

When the nonmoving party bears the burden of proof on an issue at trial, the movant may "point[] out to the district court [] that there is an absence of evidence to support the nonmoving party's case." *Id.* at 325. After the movant has met its burden under Rule 56(c), the burden shifts to the nonmoving party to establish that there is a genuine issue of material fact. *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 585 (1986). "The non-movant's response must be tailored to the method by which the movant carried its initial burden." *Hinson v. United States*, 55 F. Supp. 2d 1376, 1380 (S.D. Ga. 1998), *aff'd,* 180 F.3d 275 (11th Cir. 1999). "If the movant present[s] evidence affirmatively negating a material fact, the non-movant 'must respond with evidence sufficient to withstand a directed verdict motion at trial on the material fact sought to be negated.'" *Id.* (citing *Fitzpatrick v. City of Altanta*, 2 F. 3d 1112, 1116 (11th Cir. 1993)). "If the movant demonstrate[s] an absence of evidence on a material fact, the non-movant must either show that the record contains evidence that was 'overlooked or ignored' by the movant, or 'come forward with additional evidence sufficient to withstand a directed verdict motion at trial based on the alleged evidentiary deficiency.'" *Id.* (citing *Fitzpatrick*, 2 F. 3d at 1116). However, "factual disputes that are irrelevant or unnecessary will not be counted" as disputes of material fact and will not preclude summary judgment. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

DISCUSSION

A vessel may be chartered for a single voyage or for a fixed period of time. *Agrico Chemical Company v. M/V Ben W. Martin,* 664 F.2d 85, 91 (5th Cir.1981). "Typically in the case of conventional vessels, the owner remains in control during such charters, and provides the master and crew." *Id.* "[I]f the owner retains control, he remains liable for all damages arising out of its operation whether the charter be only for a single voyage or for a fixed time." *Id.*

This is opposed to a "bareboat" or "demise" charter, which instead requires "complete transfer of possession, command, and navigation of the vessel from the owner to the charterer." *Agrico,* 664 F.2d at 91 (citing *Gaspard v. Diamond M. Drilling Co.,* 593 F.2d 605, 606 (5th Cir.1979)). "A demise is 'tantamont to, though just short of, an outright transfer of ownership.'" *Id.* (quoting *Guzman v. Pichirilo,* 369 U.S. 698, 700 (1962); *see also Gaspard v. Diamond M. Drilling Co.,* 593 F.d 605, 606 (5th Cir.1979) ("[a] complete transfer of possession, command, and navigation of the vessel from the owner to the charterer is required in order to constitute a demise charter"). Under a bareboat charter, the charterer, as the owner *pro hac vice* of the vessel during the term of the charter agreement, as opposed to the owner, is liable for any injuries or damages to third parties. *Forrester v. Ocean Marine Indem. Co.,* 11 F.3d 1213, 1215 (5th Cir.1993) ("the bareboat charterer as a demise charterer is the owner *pro hac vice* of the vessel for the duration of the contract ... [and] is therefore responsible in personam for the negligence of the crew and the unseaworthiness of the vessel").

Petitioners point to the "Bareboat Charter Agreement" purportedly signed by the Claimant in order to contend that the charter at issue was in fact a bareboat charter, relinquishing control of the vessel to the Claimant and thereby establishing that Claimant, alone, is liable for his injuries. (DE 61 at 4). Indemnity clauses in maritime contracts are generally enforceable, and the interpretation of such an indemnity clause is ordinarily governed by principles of federal maritime law. *Corbitt v. Diamond Drilling Co.,* 654 F.2d 329, 332 (5th Cir.1981). Under either federal maritime law or state law, "a court may not look beyond the written language of the document to determine the intent of the parties unless the disputed contract provision is ambiguous." *Id.* at 333–34.

To rebut the Agreement's application, and presumably manufacture a genuine issue of fact with respect to contract formation or the contract's enforceability, Claimant suggests that he "did not click any links or read the purported agreements." (DE 64 at ¶ 11). He did, however, click the box to proceed (*Id.*), which Petitioners suggest affirmed that Claimant read, understood, and agreed to the Terms of Service and the Charter Agreement. (DE 62 at ¶ 15). *See Matter of Wilson Yachts, LLC*, 605 F. Supp. 3d 695 (D. Md. 2022), *aff'd sub nom. In re Wilson Yachts, LLC*, No. 22-1766, 2024 WL 1171207 (4th Cir. Mar. 19, 2024) ("Surely, Mr. Brew would not be the first person to enter a contract of this sort without examining it very closely. And it may well be that Mr. Brew did not fully appreciate the effect or meaning of its individual provisions. But these conditions do not render the contract ambiguous or entitle a contracting party to avoid its terms.").[2] Claimant's argument, therefore, falls short, and the terms of the Agreement may bear on the Parties' respective liability.

The Agreement contained various provisions that would inform the intent of the Parties. Clause 2, for example, explicitly states that "Renter desires to bareboat charter the Boat from Owner…. This charter is a full and complete demise of the Boat to Renter, which shall, at its own expense man, navigate and operate the Boat. Renter shall have exclusive control over the Boat during the Charter Period." (DE 62 at ¶ 14). The Agreement also contemplates the "renter agrees

[2] Claimant challenges whether the hyperlinked checkbox leading to the Bareboat Charter Agreement constituted adequate notice of click wrap terms, relying on *Vitacost.com, Inc. v. McCants*, 210 So. 3d 761, 762—63 (Fla. 4th DCA 2017). The facts set forth in *Vitacost* materially differ from the hyperlink in the instant action. *Viacost*, 210 So. 3d at 765 ("[N]one of the webpages made the plaintiff's purchase subject to the 'terms and conditions of sale.' The seller's website allowed a purchaser to select a product and proceed to check-out without seeing the hyperlink to the 'terms and conditions' because the hyperlink would not be visible unless the purchaser scrolled to the bottom of the page. Once on the check-out webpage, the hyperlink is only labeled 'terms and conditions,' and the page contains no statement that the sale is subject to those 'terms and conditions.'"). Moreover, Claimant's suggestion that whether a consumer received reasonable notice of clickwrap terms is a jury question is nowhere to be found in *Viacost*, which merely concerned a motion to compel arbitration and ultimately affirmed the trial court's finding on whether the hyperlink was conspicuous.

to pay all running expenses during the Charter Period" including but not limited to "the operating costs of the Boat during the Charter Period, including expenses for fuel, food, water, electricity, laundry, daily maintenance and repair, consumables stores of the boat, pilotage, diver's fees, port charges, customs fees, local taxes as applicable, and provisions and supplies for the Renter's use and enjoyment…." (*Id.*). These terms expressly suggest that the Agreement rendered the charter a demise charter.

In response, Claimant seems to suggest that the terms of the Agreement did not align with the Parties' conduct. On this point, Claimant relies on the general principle that the factor of control is important in distinguishing the demise charter from the time/voyage charter, and that a bareboat charter requires that the "owner of the vessel… completely and exclusively relinquish possession, command, and navigation thereof to the demise." *Guzman v. Pichirilo*, 369 U.S. 698, 82 S. Ct. 1095, 8 L. Ed. 2d 205 (1962) (internal quotation and citation omitted). (DE 63 at 2, 7). Claimant's central argument, therefore, is that "[e]ven an executed 'Bareboat Charter Agreement" does not establish a demise (bareboat) if the parties' actual conduct does not effect a complete transfer of possession and control." (DE 63 at 9). As a result, so the argument goes, Petitioner would still be liable for Claimant's injuries. But Claimant provides no authority for this proposition—one that would call into question the very purpose of indemnification contracts to begin with. Nevertheless, the undisputed facts during the Charter Period further establish that the Parties' contemplated a bareboat charter, in line with the Bareboat Charter Agreement.

As an initial matter, I find several of Claimants attempts to create a triable issue concerning control of the vessel to be dubious because the undisputed facts reflect that Petitioners' purported show of control was *de minimis* at best. For example, it can hardly be said that the mere presence of the vessel owner at the pickup and drop off of the vessel constitutes a level of control that would meaningfully shift the nature of the relationship of the Parties. *See e.g., Forrester v. Ocean Marine*

Indem. Co., 11 F. 3d 1213, 1217 ("Smith's gesture to the passengers is at best minimal participation in disembarkment."). Additionally, even if the Petitioners were present at pickup and drop of the vessel (a fact which Petitioners dispute), this would not contradict Petitioners' statement that the Vessel owners "were not present on their Vessel at any point during the Charter," which in my view would be a more compelling fact indicative of the vessel owner's control. (DE 62 at ¶ 20). Likewise, Claimant attempts to suggest that because Petitioner supplied the fuel for the charter and may have provided ice, Petitioners therefore maintained a substantial level of control over the Vessel. But including ice amounts to nothing more than a mere courtesy. It is much more significant that the Petitioners did not provide drinks or food, which would fall more in line with "operating expenses of the vessel," the provision of which might create a reasonable inference of control. *See e.g.*, *Rountree v. A. P. Moller S. S. Co.*, 218 So. 2d 771, 775 (Fla. 1st DCA 1969). As it relates to fuel, this is clearly an "operating expense." But supplying fuel alone can hardly suggest that Petitioner assumed meaningful control over the vessel—particularly where, as Petitioner contends, Claimant simply reimbursed Petitioners for the fuel used during the charter. (DE 61 at 14). And in any event, a registered owner retaining some level of oversight of the vessel in a bareboat charter is unproblematic, since a bareboat charter is, after all, a lease and not a complete transfer of title.

Whether Petitioners retained control over the vessel when identifying Captain McKinney, however, is a different matter. "Under a bareboat or demise charter the vessel is transferred without crew, provisions, fuel or supplies, i.e. 'bareboat'; and when, and if, the charterer operates the vessel he must supply also such essential operating expenses. Because the charter's personnel operate and man the vessel during a demise charter, the charterer has liability for any and all casualties resulting from such operation and therefore provides insurance for such liability." *Walker v. Braus*, 995 F.2d

77 (5th Cir. 1993). Given the logic set forth in *Braus*, whether Captain McKinney could be considered Claimant's "personnel" is a crucial inquiry.

As it played out, Claimant reached out to Petitioners just four days before the Floatopia event, leaving only a small selection of available captains. Any captain would either have to have been on Boatsetter's pre-approved captains list or selected by the Claimant and approved by "underwriters." (DE 62 at ¶ 2, DE 64 at ¶ 2). The facts further suggest that Petitioners had difficulty finding a captain before identifying Captain McKinney. Claimant contends, however, that he was never told that he was allowed to provide a different captain (i.e. that it was *he* who controlled this decision). While these considerations might suggest that Petitioners "chose" Captain McKinney, no facts whatsoever have been demonstrated to suggest that Claimant preferred to engage another captain or that he preferred not to engage Captain McKinney. Petitioners' identification of McKinney amounts to no more than modest assistance in selecting who would serve as captain during Claimant's charter, but that does not change the fact that Claimant was not bound to Captain McKinney's service, regardless of whether Claimant was aware that he was not bound. *See e.g., Matter of Wilson Yachts, LLC*, 605 F. Supp. 3d 695, 701 (2022) ("Reservation of a small degree of control by the owner over the ship, however, does not preclude the finding of a bareboat charter, as an "owner properly may retain some modicum of oversight of the vessel ... since a bareboat charter is, after all, a lease and not a complete transfer of title.") (internal citations omitted).

Furthermore, the operation and management of the vessel during the Charter Period is the crucial conceptual distinction between a bareboat charter and a time/voyage charter. And the facts clearly establish that Claimant maintained such control. First, claimant does not supply any evidence to suggest that he did not have control over the central logistics concerning the charter event. The mere fact that Claimant and Petitioners discussed logistics about where the pickup would be is immaterial to the issue of Claimant's control over the charter. I am also not persuaded that Petitioners' act of relaying to Claimant the Captain's increased pricing due to the Floatopia event creates a genuine dispute of fact over control of the vessel. Moreover, Captain McKinney's testimony presents a salient piece of the puzzle, to which Claimants offer no testimony to refute: Claimant had control over the general plan and how the charter would proceed. Specifically, Captain McKinney explained that "As far as I know, I'm hired there to do whatever he wants" and that "I was completely at his discretion where we went, when we went, where we parked. The only thing I had a say in was this is a safe spot to put this boat." (DE 65 at 3). Likewise, no facts suggest that Claimant ever attempted to exercise his contractual authority but was prevented from doing so by the Captain. Given all of these considerations, no reasonable jury could find that the authority and control of the vessel during the Charter Period rested with anyone other than Claimant.

As a result, both the contract's express terms and the facts as they played out during the Charter Period establish that the Parties contemplated a bareboat charter and, indeed, the charter operated as a bareboat charter, relieving Petitioners of liability.

CONCLUSION

Accordingly, it is **ORDERED AND ADJUDGED** that the Petitioners' Amended Motion for Summary Judgment (DE 61) is **GRANTED**. Final Judgment for Defendant will be entered by separate order.

SIGNED in Chambers at West Palm Beach, Florida this 13th day of August, 2026.

Donald M. Middlebrooks
United States District Judge

cc.

Counsel of Record