In the United States District Court for the Southern District of Georgia Brunswick Division

INTERNATIONAL AUTO LOGISTICS, LLC,

Plaintiff,

v.

VEHICLE PROCESSING CENTER OF FAYETTEVILLE, INC.; BRETT HARRIS; and BRETT HARRIS CONSULTING;

Defendants.

2:16-CV-10

ORDER

Plaintiff International Auto Logistics, LLC ("IAL") was within its rights when it terminated Defendant Vehicle Processing Center of Fayetteville, Inc.'s ("VPCF") Subcontract after VPCF violated the Service Contract Act, and IAL correctly calculated how much it owed VPCF. Summary judgment will be granted to IAL.

BACKGROUND

IAL Subcontracts with VPCF to Process and Store Vehicles

IAL is a government contractor that transports and stores the personal vehicles of Department of Defense personnel. Dkt. No. 44-3 ¶¶ 3-4. In early 2013, IAL approached VPCF to run a vehicle-processing and -storage center. Dkt. No. 44-2 ¶

8; Dkt. No. 44-4 at 26:14-22, 32:9-11. According to VPCF, IAL offered to pay it 90-95% of what the government paid IAL for storing vehicles. Id. at 38:20-39:16, 42:5-44:24. VPCF does not present any documents as a memorial of this other than the parties' Subcontract. Id. at 42:5-44:24.

The parties signed that Subcontract on different days: VPCF on March 28, 2014, and IAL on April 9, 2014. Dkt. No. 44-5 at 12. The Subcontract, "including any and all Exhibits [t]hereto which [we]re incorporated [t]herein by reference, constitute[d] the entire agreement and understanding between the Parties." Id. ¶ 24. Because the Subcontract was for government work, it obligated VPCF to adhere to "the labor practices and wage determinations . . . [of] the Service Contract Act." Id. at 13. More generally, it bound VPCF to obey all federal laws, dkt. no. 44-5 ¶ 27, and authorized IAL to terminate the Subcontract for default if VPCF "fail[ed] to perform any of the . . . provisions of [the Subcontract] or so fail[ed] to make progress as to endanger performance of the [underlying government] contract." Id. ¶ 16(a)(ii).

VPCF's contractual duty was to "[p]erform the necessary functions to establish, staff and operate" the vehicle center. Dkt. No. 44-5 at 13. It was burdened with "[a]ll necessary cost to fulfill [its] obligations." Id. at 15.

Its compensation was detailed in Exhibit B, completed sometime between April 9, 2014 and May 1, 2014. Id. at 16; Dkt. No. 44-4 at 42:2-44:24; Dkt. No. 45 ¶¶ 16-17, 24. Exhibit B had a page dated April 9, 2014, named "VPCF Rates." Dkt. No. 44-5 at 17. It specified that IAL would pay VPCF $73.41 per vehicle for storage. Id. The next page summarized VPCF's anticipated "costs" as of April 9, 2014, including 5% for contingency and $425,000 in profit. Id. at 18. The total came out to $3,597,484. Id. Following that was a page labeled "VPCF Rate Calculations," also dated April 9, 2014. Id. at 19. Halfway down the page was a breakdown of how VPCF's rates were calculated (included in full because of its significance to the present dispute):

CLINS 200 & 201 (Processed In & Processed Out)	
4.5% Storage Processing In/Out	$161,887
Annual Processed Vehicles	3,900
Amount/Vehicle Processed In or Processed Out (Initial Sub [unclear])	$41.51[1]
Per Unit Rate (Cost excluding Facilities Lease)	$14.70
Per Unit Rate (Contingency)	$0.56
Per Unit Rate (Facilities Lease)*	$21.35
Per Unit Rate (Profit)	$4.90
Per Unit Rate Check Total	**$41.51**
CLIN 202 (Monthly Rate)	
95.5% to Vehicle/Month Rate	$3,435,598
Car/Months (3900*12)	46,800
Monthly Rate	$73.41
Per Unit Rate (Cost excluding Facilities Lease)	$25.99
Per Unit Rate (Contingency)	$1.00

[1] IAL later adjusted this rate upward to $50.41. Dkt. No. 44-3 ¶ 29 & n.3.

Per Unit Rate (Facilities Lease)* $37.75[2]	
Per Unit Rate (Profit)	$8.67
Per Unit Rate Check Total	**$73.41**

Id. (emphases added); see also Dkt. No. 44-4 at 95:7-16 (stating vehicle estimates were historical and never guaranteed), 96:15-97:18 (identifying meaning of "CLINs"). The Court notes that the $161,887 beside "4.5% Storage Processing In/Out" is 4.5% of VPCF's anticipated "costs"; likewise, the $3,435,598 for "95.5% to Vehicle/Month Rate" is 95.5% of the cost-contingency-profit total.

IAL Terminates VPCF's Subcontract for Labor Violations

VPCF started operating the center on May 1, 2014. Dkt. No. 45 ¶ 24; Dkt. No. 51-1 ¶ 24. It did not pay its employees fringe benefits mandated by the Service Contract Act. Dkt. No. 44-4 at 107:22-08:12 (attributing this to ignorance). IAL sent a cure notice on October 9, 2014, noting also that employees were not being timely paid. Dkt. No. 44-6 at 2; see also Dkt. No. 45 ¶ 32 n.4 (noting internal concern because "IAL . . . had paid VPCF $544,934.26 . . . [a]nd yet VPCF still was not paying its employees or its vendors."). VPCF responded by admitting that July payroll was briefly delayed,

[2] This rate is miswritten as $37.35 in one of IAL's declarations; nevertheless, the declaration's conclusion that $35.66 was the listed per-unit rate minus the facilities lease is correct. See Dkt. No. 44-3 ¶ 30.

but October 15's was not,[3] and conceding its failure to pay fringe benefits. Dkt. No. 44-7 at 2, 4-6.

IAL sent out an auditor. Dkt. No. 44-9 at 2. On November 4, 2014, IAL expressed continued concern about VPCF's payroll delays, initial misunderstanding of its fringe-benefit duties, failure to properly maintain the vehicles in its care, and possible misuse of funds. Id. at 2-3; see also Dkt. No. 44-4 at 73:16-75:25 (claiming maintenance was "impossible" due to IAL's choice of an inadequate facility), 112:5-6 (calling wage violations "an oversight on our part."). IAL warned that it was considering terminating the Subcontract. Id. at 4. VPCF replied on November 14, 2014, claiming to have corrected its labor-law violations. Dkt. No. 44-10 at 2-3. It also said it had made maintenance-related hires. Id. at 3-4.[4]

On December 3, 2014, IAL terminated the Subcontract. Dkt. No. 44-11 at 2. It identified the causes as improper personnel payments and payroll delays, plus IAL's "continu[ing] to receive complaints that while checks [were] being distributed timely, employees [were being] asked to hold

[3] VPCF eventually admitted that August payroll had also been late. Dkt. No. 44-4 at 117:9-19.

[4] At that time, VPCF complained that IAL had not been paying it. Id. at 4. But Exhibit B says that IAL would only pay VPCF "[u]pon successful billing to [the government] and payment to [IAL]," dkt. no. 44-5 at 16, and IAL presented undisputed evidence that the government "owed IAL approximately $12 million in past-due invoices" as of November 26, 2014. Dkt. No. 44-3 ¶ 33 n.5; cf. Dkt. No. 44-5 at 16 ("The [government] closes its books September 30. It is not unusual for [it] to not pay any invoices for approximately a 2-3 week period[.] ***Subcontractor must plan accordingly to manage anticipated cash flow requirements***[.]" (emphasis in original)).

checks because they [would not] clear and those that refuse[d] to do so ha[d] had the checks returned for non-sufficient funds." Id. at 4-5; see also Dkt. No. 44-4 at 121:21-22:8 (admitting to asking employees to hold paychecks and having paychecks bounce, but blaming IAL for not paying VPCF), 124:9-24 (admitting IAL had paid VPCF about $545,000). IAL also complained about vehicle maintenance and records. Id. at 5.

IAL and VPCF Disagree as to VPCF's Due

Upon termination, IAL estimated that it would pay VPCF $130,147.93 for debt owed through November 30, 2014, plus "a pro rata basis" determined by "the monthly rate identified in . . . Exhibit B" for debt through December 5, 2014. Id. at 5-6. On October 13, 2015, IAL characterized its final amount due as $56,446.58. Dkt. No. 44-3 ¶¶ 29-37; Dkt. No. 44-12 at 2-74. (It has since adjusted that amount upward to $59,446.58. Dkt. No. 44-3 ¶ 42; Dkt. No. 45 ¶ 38.)

VPCF contested this on December 15, 2015. Dkt. No. 44-13. It claimed a storage-compensation rate of "95.5% of the total monies that IAL was to receive for storage" from the government, based on alleged agreements as of October 25, 2013 and March 28, 2014. Id. at 2-3. VPCF claimed IAL wrongly altered this rate when IAL signed the Subcontract on April 9, 2014. Id. at 3. VPCF demanded $3,144,450.70. Id. at 6. It also complained about IAL's facility selection and said its

ability to cure its fringe-benefit violation was hindered by IAL's withholding a monthly payment. Id. at 4-6.

The Parties Come to Court

On January 15, 2016, IAL sought declaratory judgment as to the debt. Dkt. No. 1 ¶¶ 22-25. VPCF counterclaimed breach of contract on March 11, 2016. Dkt. No. 18 ¶¶ 36-39. IAL moved for summary judgment on October 31, 2016. Dkt. No. 44. That motion has been fully briefed and is now ripe for disposition. Dkt. Nos. 45-46, 51, 57-58, 62, 66.

LEGAL STANDARD

Summary judgment is required where "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). A fact is "material" if it "might affect the outcome of the suit." FindWhat Inv'r Grp. v. FindWhat.com, 658 F.3d 1282, 1307 (11th Cir. 2011) (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986)). A dispute is "genuine" if the "evidence is such that a reasonable jury could return a verdict for the nonmoving party." Id. The court must view the evidence most favorably to the nonmovant and draw all reasonable inferences in its favor. Johnson v. Booker T. Washington Broad. Serv., Inc., 234 F.3d 501, 507 (11th Cir. 2000).

The movant must establish that there is no genuine issue of material fact by showing that the nonmovant's case lacks supporting evidence. Celotex Corp. v. Catrett, 477 U.S. 317, 323, 325 (1986). If it does, then the nonmovant can show "that the record in fact contains [such] evidence, sufficient to withstand a directed verdict motion, which was 'overlooked or ignored' by the [movant], who has thus failed to meet [its] initial burden." Anderson, 477 U.S. at 257; Fitzpatrick v. City of Atlanta, 2 F.3d 1112, 1116 (11th Cir. 1993) (quoting Celotex, 477 U.S. at 332 (Brennan, J., dissenting)). Or, the nonmovant can present "additional evidence sufficient to withstand a directed verdict motion at trial based on the alleged evidentiary deficiency." Id. at 1117.

If the nonmovant instead brings forward "nothing more than a repetition of [its] conclusory allegations, the district court must enter summary judgment." Peppers v. Coates, 887 F.2d 1493, 1498 (11th Cir. 1989).

DISCUSSION

VPCF undisputedly breached the Subcontract and there is no genuine factual dispute as to IAL's calculations, so IAL is entitled to summary judgment. The Court will first partially disregard[5] VPCF's principal Terry Johnson's testimony.

[5] A motion to strike a declaration is procedurally improper, as a declaration is not a pleading. The Court therefore denies IAL's motion to strike and instead "consider[s] [it] insofar as it is a notice of

I. JOHNSON'S DECLARATION IS PARTIALLY DISREGARDED.

Johnson's declaration will be disregarded insofar as it raises previously undisclosed expenses.[6] "When a party has given clear answers to unambiguous questions which negate the existence of any genuine issue of material fact, that party cannot thereafter create such an issue with an affidavit that merely contradicts, without explanation, previously given clear testimony." Van T. Junkins & Assocs., Inc. v. U.S. Indus., Inc., 736 F.2d 656, 657 (11th Cir. 1984). Johnson's declaration contradicts his clear deposition testimony. IAL's deposition notice informed VPCF that damages would be a topic for examination. Dkt. No. 57-1 at 26; Dkt. No. 57-2 at 3. Following a series of calculations, Johnson testified that "the last of [his] damages calculation[s]" was $4,041,433, based on certain compensation-rate formulae. Dkt. No. 44-4 at 313:21-314:6. He concluded, "That's what I'll testify [to] in trial." Id. at 316:14; see also id. at 280:4-7 ("[Q.] [I]f there's something else you claim you're owed, I want to know that. . . . A. Okay."). Contradictory portions of Johnson's declaration will be disregarded.

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objection." Hawk v. Atlanta Peach Movers, Inc., No. 1:10-CV-0239, 2011 WL 1533024, at *2 (N.D. Ga. Apr. 21, 2011), aff'd, 469 F. App'x 783 (11th Cir. 2012) (per curiam); see also Zottola v. Anesthesia Consultants of Savannah, P.C., 169 F. Supp. 3d 1348, 1357 (S.D. Ga. 2013) ("[C]ourts tend to treat motions to strike as objections . . . .").

[6] The Court need not reach the portion of the declaration concerning VPCF's alleged lost profits, given that it is awarding IAL summary judgment as to VPCF's counterclaim for breach of contract.

VPCF's arguments for considering the new testimony are unpersuasive. It first argues that the Court cannot "exclude matters that supposedly contradict the deposition testimony when the entire deposition has not been submitted." Dkt. No. 62 at 1. This is irreconcilable with Local Rule of Civil Procedure 32.1, which ordinarily allows a party to file a partial transcript deposition "in connection with any motion."

VPCF then claims, without further elaboration, that an IAL declaration submitted in support of its motion "should not be considered." Dkt. No. 62 at 2. But "a 'litigant who fails to press a point by supporting it with pertinent authority, or by showing why it is sound despite a lack of supporting authority or in the face of contrary authority, forfeits the point. The court will not do his research for him.'" Perez v. Bureaus Inv. Grp. No. II, LLC, No. 1:09-CV-20784, 2009 WL 1973476, at *2 (S.D. Fla. July 8, 2009) (quoting Phillips v. Hillcrest Med. Ctr., 244 F.3d 790, 800 n.10 (10th Cir. 2001) (quoting Pelfresne v. Vill. of Williams Bay, 917 F.2d 1017, 1023 (7th Cir. 1990) (per Posner, J.) (citations omitted))).[7]

Lastly, VPCF argues that it is too late for IAL to ask the Court to disregard Johnson's declaration, as the deadline for filing motions relating to discovery has passed. Dkt. No. 62 at 1. This argument would completely immunize anything

[7] VPCF's brief also asserts that VPCF "did disclosures." Dkt. No. 62 at 2. This unsupported claim merits no consideration.

VPCF filed after the motions deadline from scrutiny, no matter how improper. Such an argument lacks merit. Johnson's declaration is disregarded insofar as it raises undisclosed expenses.

II. VPCF BREACHED THE SUBCONTRACT.

Turning to the main issues, VPCF undisputedly breached the Subcontract. It admits to not paying mandatory fringe benefits, being late on payroll, and instructing employees not to cash their checks because it did not have the money to pay them. Dkt. No. 44-4 at 107:22-108:12, 112:5-6, 121:21-122:8. These actions violated the Service Contract Act. 41 U.S.C. § 6703(2); 29 C.F.R. §§ 4.6(h), 4.65(b). They thus violated the Subcontract. Dkt. No. 44-5 ¶ 27 & p. 13. This authorized IAL to terminate for default. Id. ¶ 16(a)(ii); see also Dkt. No. 44-4 at 111:25-112:3 (acknowledging awareness of risk VPCF's actions posed to government contract: "[W]e . . . went to the federal unemployment office to self-report . . . because one of the things that was said to us in our cure notice, [was] that we will put the contract at jeopardy."). IAL properly did so.

VPCF does not effectively contest this. It claims IAL did not notify it of problems. Dkt. No. 62-1 at 3. But IAL gave VPCF seven weeks to cure, while the Subcontract only required a fifth as long. Dkt. Nos. 44-5 ¶ 16(a)(ii), 44-6,

44-11. VPCF then contends that it "took steps to pay the fringe benefits that were owed." Dkt. No. 62-1 at 3. But, while "VPCF had issued checks as back pay for the fringe component . . . several employees were asked to hold their checks and not negotiate them," and "[r]egular payroll checks were also issued with instructions that they be held, and even then the checks were often late." Dkt. No. 44-3 ¶ 18; see also Dkt. No. 44-4 at 121:21-122:8 (admitting this). VPCF's "cure" was as bad as the disease. Compare What Drove Russian Tsar Ivan the Terrible Mad?, QUIRKY SCI., http://www.quirkyscience.com/what-drove-ivan-the-terrible-mad/ (accessed Mar. 8, 2017) (describing use of mercury to treat syphilis); Matthew Lively, "The Most Fatal of All Acute Diseases:" Pneumonia and the Death of Stonewall Jackson, CIV. WAR MONITOR (May 13, 2013), http://www.civilwarmonitor.com/blogs/the-most-fatal-of-all-acute-diseases-pneumonia-and-the-death-of-stonewall-jackson (describing use of purgatives to treat pneumonia).

Lastly,[8] VPCF claims IAL forced the inadequate facility upon it. Dkt. No. 51 at 8-11; Dkt. No. 62-1 at 3. But VPCF nowhere frames this as a prior breach by IAL, so the Court will not analyze it as such. See Resolution Tr. Corp. v.

[8] VPCF also complains that the vehicles were in such terrible shape upon arrival that adequate maintenance was impossible. Dkt. No. 51 at 9; Dkt. No. 62-1 at 3. This is irrelevant, given that the Court is basing its holding on VPCF's Service Contract Act violations.

Dunmar Corp., 43 F.3d 587, 599 (11th Cir. 1995) ("There is no burden upon the district court to distill every potential argument that could be made based upon the materials before it on summary judgment. Rather, the onus is upon the parties to formulate arguments . . . ."). This decision is guided by the fact that VPCF only raises these troubles in the vehicle-maintenance context. See, e.g., Dkt. No. 51 at 10 ("Because the building . . . had leaks, mold and mildew was a significant problem. . . . Because of the inadequate ventilation, it was not possible to leave the vehicles idling in the building . . . ."). VPCF breached the Subcontract.[9]

III. IAL CORRECTLY CALCULATED WHAT IT OWED VPCF.

IAL's debt calculation was undisputedly proper. IAL was correct to use the rate it did and deduct certain expenses.

A. IAL Used the Correct Rate.

IAL's properly used a fixed per-vehicle rate in calculating what it owed VPCF, rather than handing over 95.5% of its government revenue. The first question is whether

[9] Therefore, even before turning to IAL's debt calculation, the Court **GRANTS** summary judgment to IAL on VPCF's counterclaim for breach of contract. Dkt. No. 18 ¶¶ 36-39.

The Court pauses to note briefly VPCF's contention that IAL unlawfully converted VPCF property and barred VPCF from the facility. Dkt. No. 51-1 ¶ 35. VPCF does not identify the property at issue, so there is nothing the Court can do. As for IAL's barring VPCF from the site, the lease was in IAL's name. Dkt. No. 44-3 ¶ 10. The Court will not hold that IAL had to let VPCF continue possession without some sort of argument as to why. Cf. Dkt. No. 44-5 ¶ 16(d) ("[IAL] shall have no obligations to [VPCF] with respect to [a] terminated part of this Agreement except as herein provided.").

Exhibit B governs, and the second is whether the controlling rate for vehicle storage is $73.41 per vehicle or 95.5% of IAL's storage income from the government. Dkt. No. 44-4 at 38:20-39:16; Dkt. No. 46 at 13-16; Dkt. No. 51 at 6-7, 14-15; Dkt. No. 62 at 2-3. There is no genuine issue of material fact as to either issue.

Exhibit B governs VPCF's compensation. The Subcontract identifies "all Exhibits hereto which are incorporated herein by reference" as part of the parties' agreement. Dkt. No. 44-5 ¶ 24. It references Exhibit B as the sole basis for VPCF's "right to any reimbursement, payment or compensation of any kind" from IAL. Id. ¶ 5. There is an Exhibit B, entitled "Compensation". Id. at 16 *et seq.* Most decisively, VPCF itself relies on Exhibit B as the basis for its compensation. Dkt. No. 44-4 at 42:2-44:24 (discussing exhibit containing Bates No. 2005); Dkt. No. 44-5 at 19 (showing Bates No. 2005 to be Exhibit B's rate calculation sheet).[10] For VPCF to claim Exhibit B was not part of the Subcontract is disingenuous.

Equally unavailing is VPCF's contention that Exhibit B means it should be paid 95.5% of IAL's storage revenue from the government, rather than $73.41/vehicle/month. Contract construction "is a question of law for the court," and in the

[10] For this reason, the Court disregards the portion of Johnson's declaration conclusorily denying Exhibit B's validity. See Dkt. No. 51-2 ¶ 9; Van T. Junkins & Assocs., Inc. v. U.S. Indus., Inc., 736 F.2d 656, 657 (11th Cir. 1984).

absence of an ambiguity, "[t]he construction of a contract is particularly well suited for disposition by summary judgment." O.C.G.A. § 13-2-1; Tucker Maters. (Ga.), Inc. v. Devito Contracting & Supply, Inc., 535 S.E.2d 858, 859 (Ga. Ct. App. 2000). The first—and if satisfied, only—step of contract construction is to "determine whether the language therein is clear and unambiguous"; "if it is, the contract is to be enforced according to its clear terms; the contract alone is looked to for its meaning." Atlanta Dev. Auth. v. Clark Atlanta Univ., Inc., 784 S.E.2d 353, 357 (Ga. 2016).

That step is the only one the Court must take here. Exhibit B clearly and unambiguously sets VPCF's storage-compensation rate as $73.41/vehicle/month. The first sheet, describing VPCF's "Rate/Element of Expense," plainly states $73.41 to be VPCF's "Per Unit Rate Check Total." Dkt. No. 44-5 at 17. The next sheet then details VPCF's costs, contingency (5%), and profit ($425,000). Id. at 18. The third sheet relates the two, divvying up the costs-contingency-profit total ($3,597,484) into two blocks. Id. at 19. The one relating to storage mentions "95.5% to Vehicle/Month Rate" in connection with a number that is 95.5% of $3,597,484, while the processing block mentions "4.5% Storage Processing In/Out" beside a number equaling 4.5% of that amount. Id. Each of those numbers is then divided by

the anticipated number of vehicles per year to arrive at the "Per Unit Rate Check Total" ($73.41 for storage). Id.

In short, a flat $73.41/vehicle/month rate is listed twice, the first time totally unaccompanied by any suggestion of 95.5%. Id. at 17, 19. As IAL claims, 95.5% is clearly and unambiguously the percentage of VPCF's total compensation that it would derive from providing storage, complemented by 4.5% from processing. See Dkt. No. 44-3 ¶ 39. The two numbers added together equal 100%, and when multiplied by the number of vehicles in question, the rates add up to 100% of VPCF's costs-contingency-profit. 95.5%, then, is patently not a promise that VPCF would receive virtually all of IAL's government revenue. Indeed, nothing in Exhibit B even references IAL's expected take from the government.[11]

IAL's reading of Exhibit B "is the common sense of the contract, and so, under [Georgia] law, ought [the Subcontract] to be interpreted." Booth v. Saffold, 46 Ga. 278, 281 (1872). IAL properly measured VPCF's compensation.

B. IAL Properly Deducted Expenses.

IAL also calculated offsets correctly:

- VPCF claims nothing in the Subcontract burdened it with paying for the facility's lease. Dkt. No. 51 at 11. This is false. Dkt. No. 44-5 at 18.

[11] Johnson testified that that amount was in an email, but the email is not apparent anywhere in the record evidence. Dkt. No. 44-4 at 9-20.

- VPCF objects that it was not contractually responsible for utility costs. Dkt. No. 51 at 11. This is also false. Dkt. No. 44-5 at 18, 23.

- VPCF complains that it should not be debited for vehicle-repair costs or auto batteries, as the underlying problems were caused by a third party. Dkt. No. 51 at 11-12. But the Subcontract specifically saddled VPCF with "[a]ll necessary cost to fulfill [its] obligations," dkt. no. 44-5 at 15, and VPCF acknowledged that one of its obligations was to keep vehicles in good condition. Dkt. No. 44-4 at 73:3-75:9. VPCF's failure to implead whatever party it thinks should be responsible does not mean IAL has to absorb the cost.

- VPCF does not want an offset for tree service, as this "had to be done and was approved by IAL or was the expense of the landlord," or for pest control, as "this was required." Dkt. No. 51 at 11. These costs were well within the "necessary cost to fulfill [VPCF's] obligations" of "[p]erform[ing] the necessary functions to establish . . . and operate" the facility. Dkt. No. 44-5 at 13, 15.

- VPCF claims it should not be charged for a gate because "[t]he landlord was responsible for it" and much of the fee was for security boxes required by the local fire marshal. Dkt. No. 51 at 11-12. IAL concedes that the landlord approved fence installation "and that cost was paid

separately," but presented evidence that VPCF "approv[ed] the installation of an unnecessary," unapproved, unpaid-for electronic gate. Dkt. No. 44-3 ¶ 34(f). This gave the contractor "the right to assert a lien"—something that would violate IAL's lease—so IAL paid. Id. VPCF does not give the Court any reason to doubt this, and even appears to concede the point by arguing that the amount offset "was not the difference between a manual gate and an electronic gate." Dkt. No. 51 at 11. But VPCF does not present any evidence or even guess as to what cost IAL *should* have owed, so the Court will not upset this offset.

- VPCF contends that it only had to buy wireless radios because the facility lacked electricity. Id. at 12. The Court does not see any relevance to this.

- VPCF claims it improved the site at IAL's request. But the Subcontract clearly and unambiguously burdened VPCF with establishing and operating the facility. Dkt. No. 51 at 12. As for VPCF's claim that the landlord should have paid, VPCF did not implead it. Dkt. No. 44-3 ¶ 34(h).

- Lastly, VPCF argues that it never agreed to an offset for rent. Id. at 13. The parties had first anticipated the facility lease being in VPCF's name, but it ended up being in IAL's. Dkt. No. 44-3 ¶ 10. As, again, the

Subcontract required VPCF to pay the lease, this deduction was permissible. IAL's offsets were proper.[12]

CONCLUSION

For the reasons above, IAL's Motion for Summary Judgment, dkt. no. 44, is **GRANTED**. IAL owes VPCF **$59,446.58**. IAL shall have **7 days** from today's Order to submit documentation and arguments supporting its request for attorneys' fees. VPCF shall have **7 days** thereafter to file any opposition thereto.

SO ORDERED, this 16th day of May, 2017.

LISA GODBEY WOOD, DISTRICT JUDGE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA

[12] VPCF may have tried to object to a charge for water service, but it only managed to say: "With regard to the bill to the City of Chester for Water Service." Dkt. No. 51 at 12. The Court will not disturb this offset.