Docket #0089 Date Filed: 1/23/2025

UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE: ZACHRY INDUSTRIAL, INC., Debtor.	§ § § § §	Case No. 24-90377 (MI) Chapter 11

FLNG LIQUEFACTION, LLC; FLNG LIQUEFACTION 2, LLC; and FLNG LIQUEFACTION 3, LLC, Plaintiffs, v. CB&I INC.; ZACHRY INDUSTRIAL, INC.; and CHIYODA INTERNATIONAL CORPORATION, Defendants.	§ § § § § § § § § § § § § § §	Adversary No. 24-03195

ZACHRY INDUSTRIAL, INC.'S ORIGINAL ANSWER TO PLAINTIFFS' FIRST AMENDED COMPLAINT

Defendant Zachry Industrial, Inc. ("Zachry") files this Original Answer to Plaintiffs FLNG Liquefaction, LLC; FLNG Liquefaction 2, LLC; and FLNG Liquefaction 3, LLC's ("Plaintiffs") First Amended Complaint [Adv. P. Doc. No. 60].

ANSWER

Pursuant to Federal Rule of Civil Procedure 8(b), Zachry asserts the following admissions and denials. The headings used in Plaintiffs' First Amended Complaint are reproduced below for ease of reference only, rather than as an admission or denial of any

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factual allegation. To the extent that any headings may be construed as a factual allegation, that allegation is denied.

I. PRELIMINARY STATEMENT

1. Zachry admits that it contracted with Defendants under fixed price, turnkey, engineering, procurement, and construction agreements for the construction of a natural gas liquefaction and liquified natural gas ("LNG") export facility. Zachry denies the remaining allegations contained in this paragraph.

II. PARTIES

2. Admitted.

3. Admitted.

4. Admitted.

5. Admitted.

6. Admitted.

7. Admitted.

III. JURISDICTION & VENUE

8. Admitted.

9. Admitted.

10. Zachry admits that the Court has personal jurisdiction over Zachry, but Zachry is without knowledge or information sufficient to form a belief as to the remaining allegations in this paragraph.

IV. FACTUAL BACKGROUND

A. Freeport LNG's Quintana Island Facility

11. Zachry is without knowledge or information sufficient to form a belief regarding the allegations of this paragraph.

12. Zachry is without knowledge or information sufficient to form a belief regarding the allegations of this paragraph.

13. Zachry is without knowledge or information sufficient to form a belief regarding the allegations of this paragraph.

14. Admitted.

15. Zachry admits the allegations in the second and third sentences of this paragraph regarding the commencement of operations of Train 1, 2, and 3. Zachry is without knowledge or information sufficient to form a belief regarding the remainder of the allegations of this paragraph.

16. Zachry admits the allegations in the first sentence of this paragraph. Zachry is without knowledge or information sufficient to form a belief regarding the remaining allegations of this paragraph.

B. The EPC Contracts

17. Zachry is without knowledge or information sufficient to form a belief regarding the allegations of this paragraph.

18. Admitted.

19. Zachry denies that it was selected "through joint venture arrangement" to provide the referenced services. Zachry admits the remainder of Paragraph 22.

20. Admitted.

21. Admitted.

22. Zachry denies that it was selected "through joint venture arrangement" to provide the referenced services. Zachry admits the remainder of Paragraph 22.

23. Admitted.

24. In response to Paragraph 24 of the Firs Amended Complaint, Zachry states that the terms and provisions of the EPC Contracts speak for themselves and no responsive pleading is required in response to definitions used in the pleading itself.

C. Defendants' Obligations Under the EPC Contracts

25. Zachry admits that it was a party to the EPC Contracts. Zachry denies the characterizations of the EPC Contracts contained in this paragraph, as the EPC Contracts speak for themselves. Zachry denies the remaining allegations of this paragraph.

26. Zachry admits that Section 2.3 of the EPC Contracts contains the language quoted in this paragraph. Zachry denies that the language quoted in this paragraph is a full and complete recitation of Section 2.3, which speaks for itself. Zachry denies the remaining allegations of this paragraph.

27. Zachry admits that Section 2.5C of the EPC Contracts contains the language quoted in this paragraph. Zachry denies that the language quoted in this paragraph is a full and complete recitation of Section 2.5C.

28. Zachry admits that Section 3.1A of the EPC Contracts contains the language quoted in this paragraph. Zachry denies that the language quoted in this paragraph is a full and complete recitation of Section 3.1A.

29. Zachry admits that Section 3.1A of the EPC Contracts contains the language quoted in this paragraph. Zachry denies that the language quoted in this paragraph is a full and complete recitation of Section 3.1A.

30. Zachry admits that the definition of "Good Engineering and Construction Practices" or "GECP" in the EPC Contracts contains the language quoted in this paragraph. Zachry denies that the language quoted in this paragraph is a full and complete recitation of the definition of "Good Engineering and Construction Practices" or "GECP."

31. Zachry admits that Section 3.2A of the EPC Contracts contains the language quoted in this paragraph. Zachry denies that the language quoted in this paragraph is a full and complete recitation of Section 3.2A, which includes a preamble.

32. Zachry admits that Section 3.2B of the EPC Contracts contains the language quoted in this paragraph. Zachry denies that the language quoted in this paragraph is a full and complete recitation of Section 3.2B, which includes a preamble and speaks for itself.

33. Zachry admits that Section 3.2D of the EPC Contracts contains the language quoted in this paragraph. Zachry denies that the language quoted in this paragraph is a full and complete recitation of Section 3.2B, which includes a preamble and speaks for itself. Zachry denies Plaintiffs' characterization of Sections 2.3, 3.18, 3.2D and Attachment EE of the EPC Contracts, which speak for themselves.

34. Zachry admits that Section 3.2R of the EPC Contracts contains the language quoted in this paragraph. Zachry denies that the language quoted in this paragraph is a full and complete recitation of Section 3.2R, which includes a preamble and speaks for itself.

35. Admitted.

36. Denied.

37. Zachry admits that Section 3.3D of the EPC Contracts contains the language quoted in this paragraph. Zachry denies that the language quoted in this paragraph is a full and complete recitation of Section 3.3D, which speaks for itself.

38. Admitted.

39. Zachry admits that Section 8.2B of the EPC Contracts contains the language quoted in this paragraph. Zachry denies Plaintiffs' characterization of Section 8.2B, which speaks for itself.

40. Zachry admits that Section 12.1B of the EPC Contracts contains the language quoted in this paragraph. Zachry denies that the language quoted in this paragraph is a full and complete recitation of Section 12.1B of the EPC Contracts. Zachry denies Plaintiffs' characterization of Section 12, which speaks for itself.

41. Zachry admits that Section 12.1C of the EPC Contracts contains the language quoted in this paragraph. Zachry denies that the language quoted in this paragraph is a full and complete recitation of Section 12.1C of the EPC Contracts. Zachry denies all other characterizations of Section 12.1C, which speaks for itself.

42. Zachry admits that Section 12.1C of the EPC Contracts contains the language quoted in this paragraph. Zachry denies that the language quoted in this paragraph is a full and complete recitation of Section 12.1C of the EPC Contracts, which speaks for itself.

43. Zachry admits that Section 12.1C of the EPC Contracts contains the language quoted in this paragraph. Zachry denies that the language quoted in this paragraph is a full and complete recitation of Section 12.1C of the EPC Contracts, which speaks for itself.

44. Zachry admits that Section 12.3D of the EPC Contracts contains the language quoted in this paragraph. Zachry denies the remaining allegations of this paragraph, including allegations regarding Section 12.3 as a whole and the definition of the "Defect Correction Period," which speak for themselves.

D. Defects in the Train's Motors

45. Zachry lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in this paragraph.

46. Zachry lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in this paragraph.

47. Zachry lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in this paragraph.

48. Zachry lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in this paragraph.

49. Zachry lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in this paragraph.

50. Zachry lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in this paragraph.

51. Zachry lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in this paragraph.

52. Zachry lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in this paragraph.

53. Zachry lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in this paragraph.

E. Contractor's Gross Negligence in Connection with the Motor Defects

54. Zachry admits that the December 19, 2023 Engineering Evaluation Letter contains the language quoted in this paragraph. Zachry denies that the language quoted is a full and complete recitation of the December 19, 2023 Engineering Evaluation Letter. Zachry denies the remaining allegations contained in this paragraph.

55. Zachry admits that the December 19, 2013 (not 2023) Engineering Evaluation Letter contains the language quoted in this paragraph. Zachry denies that the language quoted is a full and complete recitation of the December 19, 2013 Engineering Evaluation Letter. Zachry denies the remaining allegations contained in this paragraph.

56. Zachry admits the allegations in the first sentence of this paragraph. Zachry denies the remaining allegations contained in this paragraph.

57. Denied.

58. Denied.

59. Zachry admits that the February 14, 2014 letter contains the language quoted in this paragraph. Zachry denies that the quoted language is a full and complete recitation of the February 14, 2014 letter. Zachry denies the remaining allegations contained in this paragraph.

60. Zachry admits that on March 27, 2014, the parties entered into a change order to increase the Contract Price by $5,956,090. Zachry denies the remaining allegations contained in this paragraph.

61. Zachry lacks knowledge or information sufficient to form a belief regarding the recommendations of the Nord lock washer manufacturer, or how locking washers were actually installed in this instance. Zachry denies the remaining allegations contained in this paragraph.

62. Denied.

63. Zachry lacks knowledge or information sufficient to form a belief regarding the allegations in the first three sentences of this paragraph. Zachry denies the remaining allegations contained in this paragraph.

64. Zachry admits the allegations in the first sentence of this paragraph. Zachry lacks knowledge or information sufficient to form a belief regarding the second sentence of this paragraph. Zachry denies the remaining allegations contained in this paragraph.

65. Zachry lacks knowledge or information sufficient to form a belief regarding the allegations in the first sentence of this paragraph. Zachry denies the remaining allegations contained in this paragraph.

66. Denied.

67. Denied.

F. Plaintiffs' Damages

68. Zachry denies all allegations in this paragraph that it failed to comply with obligations and warranties under the Parties' agreements. Zachry lacks knowledge or information sufficient to form a belief regarding the remainder of the allegations of this paragraph.

69. Denied.

70. Denied.

71. Denied.

V. CAUSES OF ACTION

A. Breach of the EPC Contracts

72. Zachry incorporates its prior admissions and denials by reference.

73. Zachry admits that it entered into the EPC Contracts with Plaintiffs. The remaining allegations of this paragraph state legal conclusions for which no response is required. To the extent that a response may be required, the allegations of this paragraph are denied.

74. This paragraph states legal conclusions to which no response is required. To the extent that a response may be required, the allegations of this paragraph are denied.

75. This paragraph states legal conclusions to which no response is required. To the extent that a response may be required, the allegations of this paragraph are denied.

76. This paragraph states legal conclusions to which no response is required. To the extent that a response may be required, the allegations of this paragraph are denied.

77. This paragraph states legal conclusions to which no response is required. To the extent that a response may be required, the allegations of this paragraph are denied.

78. This paragraph states legal conclusions to which no response is required. To the extent that a response may be required, the allegations of this paragraph are denied.

VI. REQUEST FOR RELIEF

79. This paragraph and its subparagraphs are a prayer for relief to which no response is required. To the extent that a response may be required, denied.

AFFIRMATIVE DEFENSES

Zachry states the following defenses. Zachry reserves the right to assert additional defenses should they become known through the course of discovery.

1. Plaintiffs' claims are barred, in whole or in part, by the applicable statutes of limitations.

2. Plaintiff claims are barred, in whole or in part by the doctrine of res judicata and collateral estoppel. The court has dismissed FLNG's claims for consequential damages per the order at Docket No. 083.

3. Plaintiffs' claims are barred, in whole or in part, because Plaintiffs failed to exercise reasonable care to mitigate, prevent, or avoid any alleged damages.

4. Plaintiffs' claims are barred, in whole or in part, because the Plaintiffs' own acts or omissions caused or contributed to Plaintiffs' alleged injury.

5. Third parties outside the control of Zachry were the sole proximate cause of the alleged incident(s) made the basis of Plaintiffs' claims and or the damages for which Plaintiffs seek recovery.

6. Plaintiffs have failed to fulfill the mandatory conditions precedent to recovery of attorney's fees under Chapter 38 of the Texas Civil Practice & Remedies Code.

7. Plaintiffs' claims are barred, in whole or in part, by the doctrine of estoppel, in all its forms.

8. Plaintiffs' claims are barred, in whole or in part, based on any exculpatory clauses in the parties' agreements.

9. Plaintiffs' damages, if any, are limited by various provisions of the EPC Contracts including the damage limitations set forth in Article 20.2 and 20.5 of such contracts.

10. Plaintiffs' claims are barred, in whole or in part, based on the recovery for such damages from responsible third parties who caused the damages sought herein.

11. Zachry is entitled to offset any damages sought by the Plaintiffs based on any recovery for such loss obtained from a third party.

12. The Plaintiffs' damages sought are not causally connected with Zachry's conduct that is the basis for the breach of contract allegations set forth in the First Amended Complaint.

13. Zachry reserves the right to plead such other defenses and/or affirmative defenses which may become apparent and applicable during the pendency of this lawsuit.

WHEREFORE, Zachry requests the Court dismiss Plaintiffs' First Amended Complaint with prejudice, enter judgment in favor of Zachry and against Plaintiffs, and for any other relief, at law or in equity, to which it may be entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on this 23rd day of January, 2025, a copy of the foregoing document was filed electronically with the Clerk of the Court using the CM/ECF system. Notice of this filing will be sent to all counsel of record by operation of the court's electronic filing system.

/s/ John B. Thomas
John B. Thomas