

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 16-81457-CIV-ZLOCH

UNITED STATES OF AMERICA for
the use and benefit of BRIGHT
FUTURE ELECTRIC, LLC,

Plaintiff,

vs.

O R D E R

TRAVELERS CASUALTY AND SURETY
COMPANY OF AMERICA,

Defendant.

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THIS MATTER is before the Court upon Travelers Casualty And Surety Company Of America's Motion For Stay Of Litigation Pending Arbitration (DE 19). The Court has carefully reviewed said Motion, the entire court file and is otherwise fully advised in the premises.

The above-styled cause concerns a payment dispute stemming from the design and construction of an Army Reserve Center in West Palm Beach, Florida. The United States Army Corps of Engineers hired Blackhawk-Jamco, J.V. ("Blackhawk") as the general contractor for the project. Defendant Travelers Casualty and Surety Company of America ("Travelers") served as Blackhawk's surety and issued a \$16 million payment bond on Blackhawk's behalf. Blackhawk retained Manhattan Construction ("Manhattan") to serve as a prime subcontractor for the project. In turn, Manhattan entered into a subcontract with Bright Future Electric, LLC ("Bright Future") to provide materials and labor for electrical, communications, electronic safety and security, and utilities systems for the project.

Although the project was slated for completion by September 26, 2013, it was not finished until over two years later. Bright Future's work faced numerous delays, which it blames on Blackhawk and Manhattan. Bright Future claims that the delays caused it to incur additional costs that it did not anticipate at the time it contracted with Manhattan.

Bright Future claims that it has not been paid nearly a million dollars for work performed under its subcontract, additional work performed at the request of Manhattan and Blackhawk, and costs associated with the project's delays. Bright Future demanded payment for the unpaid sums from Manhattan, Blackhawk, and Travelers, to no avail. Bright Future thus initiated the above-styled cause against Travelers pursuant to the Miller Act, 40 U.S.C. § 3133, for nonpayment under the \$16 million paymentbond.

As this litigation is pending, Manhattan and Blackhawk are locked in a dispute concerning the Army Reserve Center's construction. Manhattan claims that Blackhawk has not paid for various services Manhattan performed as a prime subcontractor. Blackhawk claims damages related to delays in the project's completion. Pursuant to their contract, Blackhawk and Manhattan have submitted their claims to arbitration, which will be held in October of 2017. Neither Travelers nor Bright Future is a party to that arbitration; neither Blackhawk nor Manhattan is a party to this case.

By the instant Motion (DE 19), Travelers requests that this Court stay the above-styled cause pending resolution of the

Blackhawk/Manhattan arbitration. Travelers contends the Blackhawk/Manhattan arbitration concerns the same core facts and claims as this case and that a stay will abate the risk of inconsistent judgments. Even assuming the claims in this case are entirely subsumed within the breach-of-contract arbitration between Blackhawk and Manhattan—a proposition the Parties dispute—a stay of the proceedings in this case is not warranted.

“The purpose of a Miller Act payment bond is to protect subcontractors and suppliers who provide labor and material for a federal project, because federally owned lands or buildings are exempt from the liens that would normally secure these parties’ rights under state law.” United States for use and benefit of Petun Const. Co. v. Harvesters Group, Inc., 918 F.2d 915, 917 (11th Cir. 1990). Despite its claim that “Federal Courts can and do stay Miller Act Claims pending the results of arbitration,” Travelers tellingly does not cite to a single Miller Act case. DE 23, at 1. The reason is clear: the law binding this Court cuts firmly against Travelers’ position. An action under the Miller Act for nonpayment arises separately and independently from a breach of contract claim. Indeed, a “plaintiff may successfully assert a Miller Act claim independent of any state law claims or simultaneously pursue state law claims with its Miller Act claim,” and “a subcontractor-plaintiff may pursue a Miller Act claim against the surety alone without joining the contractor or vice versa.” United States for the use of Trinity Indus. Servs., LLC v. Federal Insurance Company, Case No. 12-203, 2012 WL 4928907, *4 (M.D. Fla. Oct. 16, 2012). “[A] state judgment in a suit between a subcontractor and a prime

contractor does not bind the surety in the subcontractor's Miller Act suit against it." United States Fidelity and Guaranty Co. V. Hendry Corp., 391 F.2d 13, 20 (5th Cir. 1968).¹ Thus, because "[t]he remedy for one seeking to recover for labor and materials furnished on a government contract is under the Miller Act . . . the fact that a prime contractor has a claim for the same amounts pending under . . . the prime contract[] does not affect Miller Act cases." H.W. Caldwell & Son, Inc. v. United States for the use and benefit of John H. Moon & Sons, Inc., 407 F.2d 21, 24 (5th Cir. 1969). A stay of this case would therefore be inappropriate. See United States for the use and benefit of N.U., Inc. v. Gulf Ins. Co., 650 F. Supp. 557, 558 (S.D. Fla. 1986) (rejecting contention that surety would be subject to inconsistent results because Miller Act suits are not affected by disputes under a subcontract).

Accordingly, after due consideration, it is

ORDERED AND ADJUDGED that Travelers Casualty And Surety Company Of America's Motion For Stay Of Litigation Pending Arbitration (DE 19) be and the same is hereby **DENIED**.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida, this 14th day of June, 2017.



WILLIAM J. BLOCH
Sr. United States District Judge

Copies furnished:

All Counsel of Record

¹ In Bonner v. City of Prichard, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc), the Eleventh Circuit adopted as binding precedent all decisions of the former Fifth Circuit handed down prior to October 1, 1980.