



Parkman v. W&T Offshore, Inc. et al

2021 | Cited 0 times | M.D. Louisiana | June 21, 2021

UNITED STATES DISTRICT COURT MIDDLE DISTRICT OF LOUISIANA JASON PARKMAN
CIVIL ACTION VERSUS

NO. 20-883-JWD-EWD W&T OFFSHORE, INC., ET AL.

SUMMARY JUDGMENT ON TIMELINESS Before the Court is the Motion for Partial Summary Judgment on Timeliness (Doc. 30) . It is opposed by Baker

Hughes Energy Services LLC and Baker Hughes Oilfield Operations LLC (collectively, Baker Hughes Energy Services, Inc. (collectively, (Doc. 44) . Plaintiff filed a reply. (Doc. 45.) The Court has carefully considered the law, facts

in the record, and the arguments and submissions of the parties and is prepared to rule. For the following reasons, the Motion is GRANTED.

I. BACKGROUND Plaintiff alleges that on August 25, 2018, he sustained serious injuries while working for H&P 1

on an H&P Louisiana. (Doc. 1-1 at 4, ¶ 1; 7-8, ¶¶ 18, 21 (Petition); Doc. 1-1 at 16, ¶ 1 (affidavit of Plaintiff); Doc. 30-2 at 1, ¶ of (no. 107) was a fixed platform on

the Ship Shoal block of the Outer Continental Shelf -2 at 1, ¶ 2,

1 Among the Helmerich & Payne International Drilling Co., Helmerich & Payne Offshore, LLC, and Helmerich & Payne, Inc. -1 at 4 et seq.), all three defendants -1 at 8, ¶ 21 n.3.) Therefore, the Court will refer to these defendants collectively . (citing Doc. 18-2 at 2 (accident report from incident) and Doc. 18-3 (exhibit showing Ship Shoals on the Outer Continental Shelf)); see also Doc. 38 at 1 (Joint Status Report).) Therefore, he s under Louisiana law under the 2

(Doc. 1-1 at 5, ¶ 2.) However, he that his claims should be brought under the Jones Act 3

and general maritime law because whether Plaintiff is a Jones Act seaman is a factual issue for the jury to decide. Id.) Plaintiff also contributing to the mission of the vessel in question. The vessel in question was in navigation at



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all relevant times. Plaintiff spent more than one third of his time working offshore on the same Id. at 8, ¶ 25.) However, Plaintiff does not name the vessel, does not give its location (other than to say it was in navigable waters), and does not state, how he contributed to its mission, or how the vessel contributed to the accident.

Plaintiff filed a tort suit in state court on November 20, 2020, against various defendants. (Doc 1-1 at 4.) On December 29, 2020, the case was removed to this Court. (Doc. 1.)

II. SUMMARY OF ARGUMENTS OF THE PARTIES In his Motion, Plaintiff Cormier v. Clemco Services Corp (Doc. 30 at 1.) When an accident, such as this one, occurs on a fixed platform on the Outer Continental Shelf, OCSLA will borrow the law of the adjacent state here, Louisiana to control such claims. (Doc. 30-1 at 3, citing Fontenot v. Dual Drilling Co., 179 F.3d 969, 975-978 (5th Cir. 1999).) Plaintiff acknowledges that

2 43 U.S.C. § 1331, et seq. 3 46 U.S.C. § 30104 et seq. . (Id.) Plaintiff concedes his suit was filed on November 20, 2020, more than two years after his accident of August 25, 2018. (Id. at 1-2.)

[t]he undisputed evidence shows that Mr. Parkman started receiving weekly payments under the LHWCA 4

within one month of his paralyzing accident and Id. at 4 citing Doc 1-1 at 16-17, Parkma .) The Fifth Circuit in Cormier v. Clemco Services Corp. held that when an injured employee receives payments under the LHWCA, those payments serve to (Id. at 3.) Thus, insists Plaintiff, his Id. at 4.)

Baker Hughes argues that Cormier and Billizon v. Conoco, Inc., 864 F. Supp. 571 (E.D. La. 1994) (relied upon by the court in Cormier), are distinguishable in that, in those cases, (1) the plaintiffs filed suit within a year of the accident; (2) it is not clear in Billizon whether the plaintiff filed a formal claim for LHWCA benefits within a year; (3) unlike the present case, the equities in Cormier ; and (4) in Billizon, he issue of interruption only arose because the original four (4) defendants were dismissed via summary (Doc. 42 at 2-3.) In thi , against anyone, within one (1) year of his accident he Id. at 4.) Finally, Baker Hughes urges that if the Court rejects these arguments, Cormier Id. at 4-7.)

W&T concedes t , plaintiffs are permitted to file suit against third party tortfeasors outside of prescriptive period, based solely on the notion that such payments constitute an

4 Longshore and Harbor Workers Compensation Act, 33 U.S.C. § 901, et seq. -7.) It points out that the rule permitting interruption of prescription against

solidary tortfeasors state workers compensation scheme, making it a procedural outlier (Id. at 8, citing La. R.S. 23: 1204; La. Civ. Code art. 3464; Gary v. Camden Fire Ins., 676 So.2d 553 (La. 1996).) Finally, W&T argues that details of when Plaintiff s LHWCA benefits began and whether and when



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they were discontinued is unknown. (Id. at 5.) Therefore, under Federal Rule of Civil Procedure 56(d). (Id. at 4-5.)

Halliburton concedes that Cormier but insists that, in light of observation that when years old compens , [were] provided to defendants

Id.) The lack of other information (like whether [his] [compensation] payments also makes this Motion premature. (Id. at 5.)

Plaintiff replies that Cormier and, alternatively, to declare it Cormier is controlling, and this Court is bound to follow it. (Doc. 45 at 2 3, citing Guillory v. Weatherford US, Inc., 1995 WL 581682 (5th Cir. 1995).) It points to six relatively recent district court opinions applying Cormier in a manner consistent with that advocated by Plaintiff. (Id., citations omitted.) It notes that in motions filed by other defendants in this case, these defendants argue for the application of OCSLA so as to deprive Plaintiff of certain remedies but nonetheless, in response to those motions, Plaintiff argues only for the consistent and simultaneous application of the law in ruling on those motions and the present Motion. (Id. at 1, citing Docs. 18, 19, 24 and 26.) He argues that Baker Hughes, W&T and acknowledge declares that he began receiving these

LHWCA benefits within [a] month of the accident and has continued to receive them presently but nonetheless, they want additional discovery. (Id. at 4.) Plaintiff does not object to discovery as long the Court makes ruling on OCSLA that is applied at the same time. (Id. at 4- 5.)

III. STANDARD Civ. P. 56(a). If the mover bears his burden of showing that there is n opponent must do more than simply show that there is some metaphysical doubt as to the material

facts. . . . See Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S.

574, 586 87, 106 S. Ct. 1348 (1986) (internal citations omitted). The non-mover's burden is not Little v. Liquid Air Corp., 37 F.3d 1069, 1075 (5th Cir. 1994) (citations and internal

find for the non- Matsushita Elec. Indus. Co.,

Ltd., 475 U.S. at 587. Further:

In resolving the motion, the court may not undertake to evaluate the credibility of the witnesses, weigh the evidence, or resolve factual disputes; so long as the evidence in the record is such that a reasonable jury drawing all inferences in favor deny the motion.

Int Shortstop, Inc. v. Rally's, Inc., 939 F.2d 1257, 1263 (5th Cir. 1991).



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IV. DISCUSSION

A. Jurisdiction and Governing Law This case was originally filed in state court and removed to this Court grant of original jurisdiction as well as diversity of citizenship jurisdiction. (Doc. 1 at 2; Doc. 38

at 1-2.) s -1 at 5, ¶ 2.) According to Plaintiff, a fixed platform on the Ship Shoal block of the Outer -1 at 1, ¶ 2, citing Doc. 18-2 at 2 (accident report from incident); Doc. 18-3 (exhibit showing Ship Shoal block of the Outer Continental Shelf)); 5

see also Doc. 38 at 1 (Joint Status Report).) Baker Hughes, W&T and Halliburton all concede that Plaintiff was injured while working on a fixed platform on the Outer Continental Shelf. (See , number 2, Doc. 30-2 and responses, Docs. 42, 6

43 and 44; see also Doc. 38 at 1-2.)

In their motions to dismiss, the H&P Defendants contend the same, i.e., that this was a fixed platform related accident on the Outer Continental Shelf and therefore it is governed by the OCSLA LHWCA the exclusive remedy against H&P to the exclusion of the Jones Act and general maritime

law. (Doc. 18 at 1-2; Doc. 19 at 2; and Doc. 24 at 2.) Halliburton argues the same in its Motion to Dismiss. (Doc. 26 at 2.)

5 The Accident Report clarifies that the fixed platform where the accident occurred was located on Ship Shoal Block 349-A (Mahogany). (Doc. 18-2 at 1-2.) 6 -1 at 1, ¶ 2.)

The facts in the record, scant though they are, demonstrate that Plaintiff was injured while working as a floor hand for H&P on H&P drilling rig 107, attached to (Mahogany) Fixed Platform on the Outer Continental Shelf, Ship Shoal Block 349. He was injured

when, as he was being hoisted upwards [,] the three-eighths inch safety static line became snagged on one of the fingers -2 at 2.) According to the accident report, the snagging of the safety static Id.)

Although he pleads in the alternative that his claims brought under the Jones Act and general maritime law because whether Plaintiff is a Jones Act seaman is a factual issue for the jury to decide, Doc, 1-1 at 5), none of the facts alleged in his Petition support maritime jurisdiction or Jones Act coverage and he has not moved to remand the case to state court on this or any other basis. (Doc. 38 at 1.) Without explanation or elaboration, Plaintiff alleges in his Petition all relevant times Plaintiff was assigned to and contributing to the mission of the vessel in question.

The vessel in question was in navigation at all relevant times. Plaintiff spent more than one third of his time working offshore on the same vessel or vessels under common contro Doc. 1-1 at 8, ¶ 25.) But



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Plaintiff does not name the vessel, does not give its location (other than to say it was , how he contributed to its mission, or how the alleged vessel contributed to his accident.

In sum, Plaintiff provides no factual support for this alternative allegation of maritime/Jones Act jurisdiction in connection with the present Motion or in his oppositions to the motions to dismiss filed by the H&P Defendants and Halliburton. (Docs. 28, 29, 32, and 33.) By on a fixed platform at the time of his accident. If there was any doubt about the status of -A (Mahogany) Fixed Platform as a fixed platform and not a vessel (and this Court has none), this was a specific finding in *Ross v. W&T Offshore, Inc.*, 357 F. Supp. 3d 554, 563 (E.D. La. 2018) [This Platform] cannot be classified as a vessel under Fifth Circuit *prec* *Ross v. W&T Offshore, Inc.*, No. 17-8689, 2019 WL 186670, at *2 (E.D. La. Jan. 14, 2019) (applying OCSLA to W&T Ship Shoal 349-A platform [p]laintiff was injured while working on an oil and gas platform located on the Outer Continental Shel .

The result is that this case is governed by the OCSLA which dictates that LHWCA is the workers compensation remedy accorded to Plaintiff against his employer. 43 U.S.C. § 1333(b); *Ross*, 2019 WL 186670, at *1 Section 1333(b) of the OCSLA makes workers' compensation coverage under the LHWCA an injured employee's exclusive remedy against an employer for injuries occurring on a fixed platform on the Outer Continental Shelf. . The tort law is that of the adjoining state (in this case, Louisiana) unless there is an inconsistent federal law. 43 U.S.C. § 1333(a)(2)(A); *Bloodsaw v. Helmerich & Payne, Inc.*, 177 F.3d 978, No. 98-30536, 1999 WL 197115, at *1 (5th Cir. 1999) coast of Louisiana, and under the Outer Continental Shelf Lands Act, 43 U.S.C. § 1331 et seq., his

claim against Vastar is governed by Louisiana's tort law.) (citing *Cormier v. Clemco Servs. Corp.*, 48 F.3d 179, 181 (5th Cir. 1995)). -year tort prescriptive period applies. *Id.* at 2 3.

B. Tim In short, Plaintiff is correct that the issue is controlled *Cormier* which held that s 48 F.3d at 183. Here, the uncontradicted affidavit of Parkman shows he began receiving LHWCA benefits within a month of his accident and was receiving them at least until the date his affidavit was signed, the same day his lawsuit was filed. 7

In an affidavit of the Claims Examiner handling compensation claim (Nikki Flatowicz of Sedgwick Claims Management Services, Inc.) filed on

June 2, 2021, y received voluntary payments of benefits from Helmerich & Payne (through Sedgwick) u Compensation Act from the date of the accident and injury on August 25, 2018, with payments

having continued to be made to present. - been continuous and without inte *Id.*)

Cormier continues to be controlling in the Fifth Circuit. See, e.g. *Guillory v. Weatherford US, Inc.*, 68 F.3d 468, No. 95-30228, 1995 WL 581682 controlled by *Cormier v. Clemco Services Corp.*, 48 F.3d 179 (5th Cir. 1995), which was decided



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after the district court ruled that Guillory's action is time barred. We therefore vacate the judgment of the district court and remand for further proceedings ; Bloodsaw, 1999 WL 197115, at *1 2 (recognizing that Cormier held that the voluntary payment of workers' compensation benefits by an employer under the [LHWCA] operated to interrupt the prescriptive period Cormier inapplicable where no LHWCA payments had been made for over a year before suit was

filed.); Raynes v. McMoran Expl. Co., No. 10-1730, 2010 WL 4364109, at *4 (E.D. La. Oct. 26, 2010) ([u]nder Louisiana law, a worker's compensation insurer and a third-party tortfeasor are solidary obligors to an injured employee. (quoting Cormier, 48 F.3d at 181.); Ross v. W&T Offshore, Inc., No. 17-8689, 2018 WL 3970679, at *4 (E.D. La. July 17, 2018) (holding that where

7 Accord -1 at 17.) The affidavit was signed on November 20, 2020, the same day as the filing of his suit. (Id. at 4.) The Opposing Defendants have offered no payment occurred within a month of the accident restarted the one-year prescriptive period, as to all solidary obligors, ying motion for summary judgment based on prescription.).

Cormier (Doc. 42 at 2-3) since the distinctions it points to make no legal difference. The fact that in Billizon, the plaintiff may have filed a formal claim for LHWCA benefits within a year is irrelevant since Cormier held it was the voluntary payment of benefits which tolled prescription. unlike the present case, the equities in Cormier is of no moment because Cormier did not base it s ruling on equities. The fact that in Cormier, the plaintiffs filed suit within a year of the accident is irrelevant since it was the defendant sued after a year which moved for summary judgment and the court based its rejection of that motion on the voluntary payments of LHWCA benefits. Finally, the fact that in Billizon he issue of interruption only arose because the four (4) original defendants were dismissed via summary

(Doc. 42 at 3.)

The next argument raised by the Opposing Defendants is that Cormier and this Court should overturn it. The Court disagrees that Cormier was wrongly decided

but, even i , this Court is bound to follow binding Fifth Circuit precedent. United States v. Avelar-Castro, 27 F. Supp. 3d 686, 694 (E.D. La. 2014), aff'd, 637 F. App'x 177 (5th Cir. 2016) The Court declines the defendant's invitation to disregard Fifth Circuit precedent; U.S. Fifth Circuit precedent is binding on this Court. . compensation scheme treats this issue differently from LHWCA and Cormier is also irrelevant.

Finally, the Opposing Defendants argue that, under Federal Rules of Civil Procedure 56(d), additional discovery is warranted establishing that Plaintiff has received - .) W&T [is needed] to establish that Plaintiff began receiving LHWCA benefits within a year of the accident and has consistently received such benefits within the year prior to his initiation of the lawsuit against Defendants. Id.)



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At a status conference held via Zoom on May 26, 2020 (Doc. 51), the Court asked the Opposing Defendants specifically what information necessary for the Court to rule on the present Motion was lacking in the record. Counsel for not clear as to whether he has received benefits continuously since the benefits began or whether

the payments were interrupted for some period of time. Counsel for Plaintiff responded that Plaintiff has continuously received benefits since the initial payment until today. The Court ordered Plaintiff to file a supplemental affidavit or other documentary proof that LHWCA payments have been continuously [made] from with a month of Plaintiff (Doc. 51 at 1.)

In his initial affidavit, Plaintiff stated voluntary payments under the LHWCA starting [and] [t]hose LHWCA benefits are still being (Doc. 1-1 at 17.) The suit was filed the same day as his affidavit. (Doc. 1-1 at 4.) Plaintiff filed two supplemental affidavits on June 2, 2021 in One was from [t]he voluntary LHWCA payments were paid to me continuously from within a month of the incident up to 1.) compensation adjuster confirming that the payments to Plaintiff have been continuous and

JUDGE JOHN W. deGRAVELLES UNITED STATES DISTRICT COURT MIDDLE DISTRICT OF LOUISIANA uninterrupted during this period. (Doc. 52-1 at 2.) The Opposing Defendants have offered no evidence to contradict or challenge in any way the information provided in the three affidavits.

The fact that affidavits may be self-serving does not gainsay (in this case) their unchallenged truth.

- court] do[es] not exclude it knowledge and containing factual assertions suffices to create a fact issue, even if it is self- - useful to the court. In a lawsuit, where each party is attempting to advance his own cause and protect his own interests, we are scarcely shocked when a party produces - Hardy v. Wood Grp. PSN, Inc., No. 13-775, 2014 WL 1664236, at *3 (W.D. La. Apr. 25, 2014) (quoting Dean v. Ford Motor Credit Co., 885 F.2d 300, 306 (5th Cir. 1989)). As the Fifth Circuit has noted, -serving testimony were excluded from trials, C.R. Pittman Constr. Co., Inc. Ins. Co. of Hartford, 453 , 443 (5th Cir. 2011).

The burden is on Opposing Defendants to come forward with competent summary judgment evidence to raise an issue of material fact if they can. [T]he nonmoving party must See Matsushita Elec. Indus. Co., 475 U.S. at 568 87 (internal citations omitted). They have not done so.

V. CONCLUSION Motion for Partial Summary Judgment on Timeliness (Doc. 30) is granted and the Court holds that, pursuant to Cormier v. Clemco Services Corp., 48 F.3d 179 (5th Cir. 1995), the claims filed in his Petition for Damages on November 20, 2020 were timely filed.

Signed in Baton Rouge, Louisiana, on June 21, 2021.



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