Willis v Barry Graham Oil Service L L C

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UNITED STATES DISTRICT COURT WESTERN DISTRICT OF LOUISIANA

LAKE CHARLES DIVISION

JON WILLIS

CASE NO. 2:19-CV-00165 VERSUS

JUDGE TERRY A. DOUGHTY BARRY GRAHAM OIL SERVICE L L C MAGISTRATE JUDGE KAY

MEMORANDUM RULING filed by Third-Party Defendant W -

Party 154], and Wood Group filed a reply [Doc. No. 180] to the opposition.

For the following reasons, the Motion is GRANTED. I. BACKGROUND AND PROCEDURAL HISTORY

maritime jurisdiction under 28 U.S.C. § 1333(1) and diversity under 28 U.S.C. § 1332. 1

Willis claims he sustained personal injuries on February 10, 2018, on an offshore platform owned by BGOS. 2

On January 13, 2021, BGOS filed a Third-Party Complaint 3

and on August 3, 2021, filed an Amended Third-Party Complaint. 4

In the Amended Third-Party Complaint, BGOS named the following as Third-Party Defendants: (1) Wood Group, (2) Expeditors and Production Services (3) Shamrock Management, LLC doing business as Shamrock Energy

1 2 [Doc. No. 50, ¶ 4] 3 [Doc. No. 55] 4 [Doc. No. 79] (4) hird-Party Defendants. 5

The events leading up to the suit are as follows. The incident occurred while Willis was , owned by BGOS. 6 Mexico known as the VR- Willis was injured when a tagline came

off of a grocery box as it was being lowered to the platform on which he was working off of the coast of Louisiana. 7

The facility was located in Block 261 of the Vermillion area on the Outer Continental Shelf , due south of the Louisiana coast. 8

At the time of the incident, the platform was manned by three peopl 9

Cantrell operated the crane involved in the incident and was an employee of Wood Group. 10

Broussard was the designated person-in- employed by Fieldwood. Willis was a production operator and payroll employee of Shamrock. 11

Willis contends that during a cargo transfer, a grocery box was being lowered from the Tami to the platform by Cantrell. 12

Willis grabbed the tag line and began to use the line to guide the box to its landing spot on the platform. 13

The tag line connected the grocery box to the crane, and the crane was located on the platform. 14

While using the tag line to guide the grocery box, the

5 [Id. at ¶ 1] 6 [Id. at ¶ 4] 7 [Doc. No. 50] 8 [Doc. Nos. 50, ¶¶ 3 and 4, 79, ¶ 3, and 134- 9 [Doc. Nos 134-5, 134- 10 [Id.] 11 [Id.] 12 [Doc. Nos. 50, 79, and 134-5] 13 [Id.] 14 [Doc. Nos. 134-5, 134-6, 134-7] line came loose, and Willis fell onto the platform. 15

Willis contends that the fall resulted in personal injuries.

BGOS contends that Wood Group is liable for the occurrence of the alleged accident he crane that performed the lift of the subject 16

to the extent BGOS in the 17

Wood Group contends that BGOS has no claim for tort contribution or indemnity under Louisiana law and that there is no factual evidence of negligence. 18

BGOS argues in response that maritime law applies and that there is a genuine issue 19

II. LAW AND ANALYSIS

A. Summary Judgment Standard

identifying each claim or defense--or the part of each claim or defense--on which summary judgment is sought. 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. The court shou

material fact, the burden shifts to the nonmoving party to produce evidence or designate specific

Distribuidora Mari Jose, S.A. de C.V. v.

15 [Doc. Nos. 50, 79, and 134-5] 16 [Doc. No. 79, ¶ 8] 17 [Id. at ¶ 9] 18 [Doc. No. 134-2] 19 [Doc. No. 154] Transmaritime, Inc., 738 F.3d 703, 706 (5th Cir. 2013) (internal quotation marks and citation omitted).; see also FED. R. CIV. P. 56(c)(1).

of the lawsuit under applicable law in the case. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, evidence is such that a reasonable fact finder could render a verdict for the nonmoving party. Id.

Turner v. Baylor Richardson Med. Ctr., 476 F.3d 337,

343 (5th Cir. 2007) (citing Anderson, 477 U.S. at 248). However, in evaluating the evidence tendered by the parties, the Court must accept the evidence of the nonmovant as credible and draw all justifiable inferences in its favor. Anderson -conclusory affidavit can create genuine issues of material fact that preclude summary judgment, even if the affidavit is self- Lester v. Wells Fargo Bank, N.A., 805 F. App'x 288, 291 (5th Cir. 2020) (citations omitted).

urt has somewhat greater discretion to consider what weight it will Matter of Placid Oil Co., 932 F.2d 394, 397 (5th Cir. 1991); see also Nunez v. Superior Oil Co., 572 F.2d 1119, 1124 (5th Cir. decision is to be reached by the court, and there are no issues of witness credibility, the court may

conclude on the basis of the affidavits, depositions, and stipulations before it, that there are no genuine issues of material fact, even though decision may depend on inferences to be drawn from what has been incontrovertibly proved . . . . The judge, as trier of fact, is in a position to and ought

B. Analysis Wood Group contends that the third-party demand against it must be dismissed for two chief reasons: (1) , as an alternative basis for summary judgment that, (2) because there is no testimony showing negligence on the part of Cantrell (the crane operator employed by Wood Group). At issue in is whether the third-party claim against Wood Group arises under OCSLA, and, if it does, whether the choice of law provisions in OCSLA require application of

claims against Wood Group in the third-party demand would not be barred as a matter of law. If

Louisiana law applies, however, Wood Group contends contends that there is no factual evidence to support a finding of negligence or fault on the part of

Cantrell.

The Court agrees with Wood Group that, as a matter of law, BGOS does not have claims for contribution and/or indemnity. However, because a question of fact still exists as to the comparative fault of Cantrell, BGOS may still be allowed to present evidence comparative fault at trial even though Wood Group will no longer be a named third-party defendant. The Court will address each argument below.

1. Applicable Law The choice of law question in the context of torts occurring on offshore platforms requires See Barker v. Hercules Offshore, Inc., 713 F.3d 208, 213 (5th Cir. 2013). If that threshold is met, the determine whether adjacent state law applies as See Union Texas Petroleum Corp. v. PLT Eng'g, Inc., 895 F.2d 1043, 1047 (5th Cir. 1990). An adjacent issue to the analysis is whether the Admiralty Extension Act, U.S.C. § 30101(a), applies. If the Admiralty Extension Act does apply, then an injury on land caused by a vessel on navigable water will be governed by maritime law. See Delozier v. S2 Energy Operating, LLC, 498 F. Supp. 3d 884, 891- 92 (E.D. La. 2020). If it does not, then such an injury would be covered by adjacent state law under so long as the claim also involves traditional maritime activity. See Hicks v. BP Expl. & Prod., Inc., 308 F. Supp. 3d 878 (E.D. La. 2018). The distinction between fault regime.

a. The Outer Continental Shelf Lands Act Gulf Offshore Co. v. Mobil Oil Corp., 453 U.S. 473, 479 (1981) (citing 43 U.S.C. §1333(a)(1)). OCSLA extends and seabed of the Outer Co discovery, extraction, and transportation of minerals. Id. at 480 (citing 43 U.S.C. § 1333(a)(1)).

All law applicable to the OCS n the coverage of surrogate federal law. Id. (citing § 1333(a)(2); Rodrigue v. Aetna Cas. & Sur. Co., 395 U.S. 352,

355 359, 89 S. Ct. 1835, 23 L. Ed. 2d 360 (1969)).

i. The Claim Arises Under OCSLA

The Fifth Circuit applies a three- action arises under OCSLA:

Barker, 713 F.3d at 213. Willis was

injured on a fixed platform located in the OCS adjacent to the coast of Louisiana. OCSLA 43 U.S.C. § 1333(a)(2)(A). Therefore, the first element is satisfied. The second and third elements are also satisfied. Willis sustained his injuries while working as an oilfield production operator in ts to produce oil and gas.

According to BGOS, the instant case is distinguishable from cases where courts found that OCSLA covered claims against crane operators. See Henson v. Odyssea Vessels, Inc., No. CIV.A. 07-613, 2008 WL 544184 (E.D. La. Feb. 25, 2008) (where the court found that a claim of a plaintiff who worked on a fixed platform off the coast of Louisiana arose under OCSLA.); see also Debellefeuille v. Vastar Offshore, Inc., 139 F. Supp. 2d 821 (S.D. Tex. 2001) (where the plaintiff was injured in a personnel basket transfer from the vessel to a platform and the court found that the claims arose under OCSLA.) BGOS contends that because Willis did not file any claims against Wood Group in the principal demand, there is no claim against Wood Group to be governed by OCSLA. Wood Group cited no authority in support of this argument, and the Court was unable to find any authority supporting such an argument.

ii. Louisiana Law Applies three-part test determines whether state law applies:

(1) The controversy must arise on a situs covered by OCSLA (i.e. the subsoil, seabed, or artificial structures permanently or temporarily attached thereto). (2) Federal maritime law must not apply of its own force. (3) The state law must not be inconsistent with Federal law. Union Texas Petroleum Corp., 895 F.2d at 1047. Here, the first and third parts of the test are clearly satisfied. The controversy took place on an artificial structure located in the OCS of Louisiana. Therefore, the first part of the test is satisfied because the controversy arose on a situs explicitly covered by OCSLA.

Additionally, Louisiana law is not inconsistent with federal law. The Longshore and sets out a loss allocation scheme based on the rule of joint and several liability. scheme of comparative fault is inconsistent with scheme allocating the costs of accident injuries, the Fifth Circuit has rejected that argument. In Fontenot v. Dual Drilling Co., 179 F.3d 969 (5th Cir. 1999), the Fifth Circuit noted that:

Obviously, it is not inconsistent with OCSLA or LHWCA for Louisiana to impose third-party liability; § 933 [of LHWCA] expressly contemplates such an external law. If the scope of the third-party liability, as well as defenses to it, are established by state law, state law governs the question of whether a proportionate- liability rule applies. Cf. Ferri v. Ackerman, 444 U.S. 193, 198, to define the defenses to that claim, including the defense of immunity, unless, of course, the state law is in conflict with federal art. VI, cl. 2)). More importantly, however, the proportionate-liability scheme imposed by Louisiana law cannot be inconsistent with federal law because there would be no third- party cause of action in this case had Louisiana not provided one. at 976 (emphasis in original). The court also noted that § 905 (b) of LHWCA could not be inconsistent with Louisiana law because § 905(b) involves negligence or harm caused by a vessel. Id. (Distinguishing the facts of Fontenot from Edmonds v. Compagnie Generale Transatlantique, 443 U.S. 256 (1979) because Edmonds involved a third-

Additionally, even if Louisiana law were inconsistent with § 905(b) of LHWCA, § 905(b) does not apply to this case because there is no basis for admiralty jurisdiction or the application of general maritime law. See Dupre v. Palfinger Marine USA Inc., No. 6:20-CV-00756, 2022 WL 885867, at *2

(W.D. La. Mar. 24, 2022) and is only cognizable in admiralty; accordingly, maritime law must apply for Plaintiffs to properly bring a section 905(b) action against [defendant]. Maritime law does not apply and, hence, a section 905(b) claim is not cognizable if state law applies through OCSLA. state law through OCSLA is discussed below.

1) Maritime Law Does Not Apply of Its Own Force F maritime location and (2) a connection to traditional maritime activity. Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co., 513 U.S. 527, 534 (1995); see also Petrobras Am., Inc. v. Vicinay Cadenas, S.A., 815 F.3d 211 (5th Cir.), order clarified on reh'g, 829 F.3d 770 (5th Cir. 2016).

i. The Location Prong of Grubart is Not Satisfied The location prong is satisfied if either 1) a tort occurred on navigable water, or 2) an injury occurred on land that was caused by a vessel on navigable water. Grubart, 513 U.S. at 553. The Admiralty Extension Act states that the admiralty and maritime jurisdiction of the United States navigable waters, even though the injury § 30101(a). The Admiralty Extension Act is meant to apply to the vessel and her appurtenances

Dahlen v. Gulf Crews, Inc., 281 F.3d 487, 493 (5th Cir. 2002); quoting Egorov, Puchinsky, Afanasiev & Juring v. Terriberry, Carroll & Yancey, 183 F.3d 453 (5th Cir. 1999). A grocery box is considered an appurtenance of the vessel. See Dahlen 281 F.3d, at 494 (5th Cir. 2002) (where the court was discussing Erogov, 183. F.3d at 456 and its requirement of a defect in an appurtenance and stated What is alleged in the present case is not a defect in the grocery box but in the manner in which groceries were loaded into the box. Egorov clearly indicates that the Extension Act should not apply to such a case.

In Delozier, 498 F. Supp. 3d 884, the plaintiff sustained injuries on a platform due to Act, the court held:

Extension Act is meant to apply to the vessel and her appurtenances must be the proximate

vessel or its appurtenances. The location prong of the admiralty jurisdiction inquiry is not satisfied and general maritime law does not apply. Delozier, 498 F.Supp.3d at 891-92 (quoting Dahlen, 281 F.3d at 494, and Margin v. Sea-Land Servs., Inc., 812 F.2d 973, 975 (5th Cir. 1987)). Wood Group cites Delozier to support its argument that s allegations of negligence by the Tami crew do not invoke the Extension Act, and do not satisfy the location requirement needed for admiralty jurisdiction. Wood Group fails to mention that in the principal demand, Willis asserts that 20

This is arguably an assertion that a defective appurtenance of the Tami was the

The issue is that, in its third-party demand against Wood Group, BGOS does not claim that the Tami itself or a defect in one of her appurtenances caused an injury on the platform for which Wood Group could be liable. In the third-party demand, BGOS contends that Wood group is liable control of the

crane operator, whose negligent actions caused and/or contributed to the occurrence of the alleged accident complete custody and control, and the failure to properly position the cargo onto the platform

[required] Plaintiff to exert more force on the tagline than should have been necessary in order to attempt to properly position the cargo. 21

BGOS argues further in the third-party demand that

22 Nowhere in the third party demand against Wood Group does BGOS claim that the tag line or grocery box was defective.

Choice of laws in tort matters is determined separately with respect to each issue. Marathon Pipe Line Co. v. Drilling Rig Rowan/Odessa, 761 F.2d 229, 234 35 (5th Cir.1985). In Marathon, maritime law applied to the original tort, but the court applied Louisiana law to the claims of a third-party demand seeking indemnity. The court noted that:

The sovereignty of maritime over the original tort does not necessarily make that body of law control [the third-party liability to [the third-party plaintiff]. Logic and consistency point in the direction of using a single doctrine to cover

20 [Doc. No. 50, ¶ 4] 21 [Doc. No. 79, ¶ 8] 22 [Doc. No. 79, ¶ 8]

all aspects of these interrelated claims. But statutes may dictate departure from neat doctrinal symmetry. Id -party demand, the laws of Louisiana as the adjacent state applied. Id. at 234-35.

BGOS cites to Debellefeuille and Henson to support its argument that maritime law applies. In each of these cases, the courts applied maritime law to injury claims by platform workers. In Henson vessel and that the vessel was operating in rough seas. Henson, WL 544184 at *1. In Debellefeuille, the plaintiff was aboard a vessel and preparing to be transferred by a personnel basket to an offshore platform. Debellefeuille, 139 F. Supp. 2d at 822. During the ensuing transfer, the plaintiff was allegedly injured when his basket struck a different metal basket on board another vessel. Id.

Here, the underlying tort is the tag line coming loose, and Willis falling onto the platform. Maritime law arguably could apply to the underlying tort because Willis alleges that the tag line -party demand against Wood Group does not contain any allegations of defective appurtenances. Rather, it only asserts that Cantrell negligently operated the crane. The Fifth Circuit has made clear that the Admiralty Extension Act does not apply when the source of harm is a crewmate performing actions for the vessel. The negligence of Cantrell is the only source of harm in -party demand against Wood Group. Additionally, the instant case is distinguishable from Debellefeuille and Henson because in those cases the injuries occurred on a vessel rather than on the fixed platform itself. Therefore, the

location prong of the Grubart test is not satisfied, provide that Louisiana law controls the claims of BGOS against Wood Group.

ii. The Traditional Maritime Activity Prong of

Grubart is Not Satisfied Although the Court finds that the location prong is not satisfied, the Court will nonetheless examine whether the second prong of the Grubart test is satisfied. In Hicks, 308 F. Supp. 3d 878, the court held that an injury to a platform worker during a personnel basket transfer between an offshore platform and a vessel in navigable waters did not satisfy the traditional maritime activity prong of Grubart. The Hicks court noted that:

Fixed drilling platforms do not exist for any purpose related to traditional maritime navigation or commerce. Indeed, they are not even suggestive of traditional maritime affairs. Rather, offshore platforms exist solely to obtain minerals from the OCS in the Gulf of Mexico. Exploration and development of the OCS are not themselves maritime commerce, and there is nothing inherently maritime about the tasks performed by offshore platform workers. Moreover, to the extent that maritime activities may surround personnel basket transfers to and from offshore platforms, any connection to maritime law is eclipsed by their connection to the development of the Outer Continental Shelf. Id. at 890 (internal citations and quotes omitted). Because the activities performed on offshore platforms by platform workers fell outside the purview of maritime navigational or commercial activities, the injuries to platform workers during personnel basket transfers on offshore platforms did not relate to traditional maritime activity. Id governed by federal maritime law. Id. at 891.

Here, Willis was a platform worker and was injured when he fell onto an offshore platform. These events do not bear a substantial relation to traditional maritime activity, nor do they pose a potential disruption to maritime commerce. Accordingly, the injury to Willis fails to satisfy the second part of the Grubart test for admiralty jurisdiction a connection to traditional maritime activity.

2. Indemnity

The 1996 amendments of Louisiana Civil Code Articles 2323 and 2324 established a system of pure comparative fault and abolished solidary liability among non-intentional tortfeasors. Dumas v. State ex rel. Dep't of Culture, Recreation & Tourism, 2002-0563 (La. 10/15/02), 828 So. 2d 530, 535. As amended, A clearly and unambiguously provide[] that comparative fault principles apply in any action for damages and apply to any claim Thompson v. Winn-Dixie Montgomery, Inc., 2015-0477, (La. 10/14/15), 181 So. 3d 656, 664. Each non-intentional tortfeasor is liable only for his share of fault, which is to be quantified by the court or jury pursuant to Article 2323. Snyder v. Asercion, No. CIV.A. 13-4752, 2013 WL 6004052, at *4 (E.D. La. Nov. 13, 2013).

In Nat'l R.R. Passenger Corp. v. Textron, Inc., No. CIV.A. 11-1507, 2013 WL 139809 (E.D. La. Jan. 10,

2013) the court noted that the introduction of pure comparative fault in Louisiana eliminated the right of contribution among non-intentional tortfeasors. That court held:

Together, these Articles eliminate the need to seek contribution for tortfeasors may only be held responsible for their percentage of fault. Consequently, the right of contribution among non-intentional tortf Id. at * 3 (quoting Dumas, 828 So. 2d at 538). Thus, if judgment is entered in favor of a plaintiff, third-party plaintiffs can only be liable for their own degree of fault. Id. Accordingly, the court found that there was no legal basis for contribution. Here, Louisiana law applies. If a judgment is entered in favor of Willis against BGOS, BGOS could only be liable for its own degree of fault. Therefore, BGOS has no basis for tort contribution against Wood Group as a matter of law because each can only be held liable for its own degree of fault.

In Snyder, 2013 WL 6004052, the court noted that the advent of pure comparative fault in Louisiana limited the right to seek tort indemnity to a certain set of limited situations. It held:

[T]he Louisiana Supreme Court in Dumas did not hold that the amendment of the comparative fault articles eliminated the right to seek indemnification. This is because indemnity is based on the concept of unjust enrichment and "may lie when one party discharges a liability which another rightfully should have assumed." Except in situations where there is an express contractual provision, tort "indemnity arises only where the liability of the person seeking indemnification is solely constructive or derivative." Accordingly, if the fault alleged against the would-be indemnitee is actual or active, tort indemnity is unavailable. Snyder, 2013 WL 6004052, at *4 (internal citations omitted). Thus, to qualify for indemnity, a party must be free of actual fault. See Fucich Contracting, Inc. v. Shread-Kuyrkendall & Assocs., Inc., No. CV 18-2885, 2019 WL 6877646, at *8 (E.D. La. Dec. 17, 2019). Tort indemnity is -be indemnit , 2013 WL 139809, at *3.

Here, Willis contends that BGOS is liable due to the negligence of the crew of the Tami. Specifically, Willis alleges that the crew failed to properly inspect and secure the tag line on the grocery box, and the training and implementation of procedures by BGOS management was

Willis against BGOS would not be solely constructive or derivative. Therefore, BGOS has no legal basis for tort indemnity against Wood Group as a matter of law.

3. There Still Exists a Question of Fact as to Whether Wood Group can be

As an alternative basis for summary judgment, Wood Group argues that summary judgment is appropriate because there is no factual evidence of negligent conduct by Cantrell. In support, Wood Group cites Blacklege v. Font, 06-1092 (La. App. 1st Cir. 3/23/07), 960 So.2d 99, 102 where the court stated that [a]n issue of negligence or fault can be decided on a motion for summary judgment, provided that the evidence leaves no relevant, genuine issue of fact, and reasonable minds must inevitably conclude that the mover is entitled to judgment based on the facts before the court."

BGOS argues in response report implicates Cantrell for being responsible for all phases of the subject lifting operation, ensuring that all rigging was inspected prior to the lift being conducted. Plaintiff claims that the tagline that allegedly came off the grocery box at issue was neither properly attached to the grocery box nor properly inspected before the lifting operation 23

The Court agrees with BGOS on this point. Expert testimony can serve as the basis for establishing the existence of genuine issues of material fact, which, in turn, precludes summary judgment. See Operaciones Tecnicas Marinas, S.A.S. v. Diversified Marine Services, L.L.C., 658 Fed.Appx. 732 (5th Cir. 2016). Here, the expert opinion of Broussard creates a genuine issue concerning the potential negligence of Wood Group through its employee who operated the crane Because a genuine issue of material fact as to the potential negligence of Wood Group remains, summary judgment is inappropriate on the basis of a lack of evidentiary support.

Although the Court agrees with Wood Group that BGOS does not have claims against Wood Group for contribution and/or indemnity as a matter of law, the Court finds that there still exists a genuine issue of material fact as to whether Wood Group can be allocated a portion of fault for the underlying accident. Therefore, at trial, although Wood Group will no longer be a third-party defendant, contributory negligence on part of Cantrell.

23 [Doc. No. 154 (citing Doc. No. 50, ¶¶ 4 and 6)]

III. CONCLUSION

For the reasons set forth herein, IT IS ORDERED, ADJUDGED, AND DECREED that Summary Judgment [Doc. No. 134] is GRANTED.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that any claim set forth in the Amended Third-Party Complaint [Doc. No 79] by BGOS against Wood Group is DISMISSED WITH PREJUDICE.

MONROE, LOUISIANA, this 20 th

day of October 2022.

Terry A. Doughty

United States District Judge