UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

KENNETH ANDERSON	*	
	*	**CIVIL ACTION**
VERSUS	*	
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GLOBALSANTAFE OFFSHORE SERVICE, TRANSOCEAN OFFSHORE USA, INC., TRANSOCEAN DEEPWATER DRILLING, INC., AND THE CONSORTIUM OF TRANSOCEAN OFFSHORE DEEPWATER DRILLING (TODDI), USA & SCHLUMBERGER ASIA SERVICES LTD (SASL), HONG KONG	*	**NO. 11-00812 "R" (4)**
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	*	**JUDGE SARAH VANCE**
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	*	**MAG. KAREN WELLS ROBY**
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OPPOSITION TO PLAINTIFF'S MOTION
FOR SUMMARY JUDGMENT ON EMPLOYMENT STATUS

Defendants, GlobalSantaFe Offshore Services Inc. and Transocean Offshore USA Inc. respectfully suggest that this Honorable Court should deny the plaintiff Kenneth Anderson's ("Plaintiff") Motion for Summary Judgment because numerous significant genuine issues of material fact exist with regard to the plaintiff's claims, including: (1) the fact that GlobalSantaFe meets almost none of the criteria of an employer for purposes of recovery under the Jones Act; (2) the attached 28 U.S.C. § 1746 Declarations establish that Plaintiff was employed by Transocean Offshore International Ventures Limited – India ("TOIVL") at the time of the alleged incident; and (3) GlobalSantaFe is only an entity tasked to be a payroll processor for TOIVL and is reimbursed by TOIVL for payments made to TOIVL's employees, exercised no control whatsoever over Mr. Anderson, and was not a payroll employer as Plaintiff contends.

FACTUAL BACKGROUND

The Plaintiff filed the above lawsuit alleging personal injuries stemming from an alleged incident during travel on a bus between Gadimoga and Rajahmundry, India on August 10, 2010. At the time, plaintiff was employed as an offshore installation manager (OIM) for Transocean Offshore International Ventures Limited – India ("**TOIVL**"), and working off the coast of India (near Gadimoga) on the DEEPWATER FRONTIER. The bus departed from a facility maintained by Reliance Industries Limited ("RIL"), an Indian Oil Enterprise. The drilling contract related to the DEEPWATER FRONTIER for exploration off the coast of Gadimoga was between RIL and **TOIVL**.[1]

Transportation for the ongoing crew change, including the Plaintiff's journey of August 10, 2010, was provided by SRI SAI Oilfield Equipment & Marine Services ("SRI SAI") pursuant to a contract between SRI SAI and **TOIVL**.[2] Plaintiff's ultimate destination on the journey from Gadimoga was Mumbai, India, where he filled in for his superior, Geoff Murch, then an employee of **TOIVL**,[3] in the position of rig manager. Mr. Murch, in turn, reported to other employees of **TOIVL** who ultimately reported to employees in Geneva, Switzerland.[4] Timothy Cox, chief electrician on the DEEPWATER FRONTIER and another passenger on the crew-change journey with Plaintiff on August 10, 2010, testified that during the time that he was working off the coast of India he was employed by TOIVL.[5]

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[1] See attached Drilling Contract.
[2] See attached Transportation Contract.
[3] See attached 28 U.S.C. § 1746 Declaration of Geoffrey Murch.
[4] *Id.*; See Deposition of Kenneth Anderson pp. 39-41 explaining the chain of command above him, which only included individuals then living in India or Geneva.
[5] See Deposition of Timothy Cox, p. 26.

At the time of the alleged incident, Mr. Anderson received his checks from a paymaster (or payroll processing service), as did a number of other U.S. citizens working in foreign countries.[6] That paymaster entity, GlobalSantaFe Offshore Services Inc. ("GSF"), is a Cayman Island corporation with its bank account maintained in that country. GSF exercises no control over payroll recipients and has no authority to hire and fire those recipients.[7] GSF is reimbursed by companies like TOIVL for payments made by GSF to TOIVL's employees, including payment of Indian taxes (GSF did not withhold monies for U.S. FICA or Social Security, as Plaintiff was an employee of an Indian, not American, company). It is not uncommon in the corporate world for related corporations to perform services for affiliates and to account for the costs associated with those services.

LAW AND ARGUMENT

A. SUMMARY JUDGMENT STANDARD

Summary judgment is only appropriate when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law."[8] A fact is "material" if its resolution in favor of one party might affect the outcome of the action under governing law, and an issue is "genuine" if the evidence is sufficient for a rational trier of fact to return a verdict for the nonmoving

[6] See attached 28 U.S.C. § 1746 Declaration of Bradley McKenzie.
[7] See attached 28 U.S.C. § 1746 Declaration of Geoffrey Murch.
[8] Fed. R. Civ. P. 56(c); *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23, 106 S.Ct. 2548, 91 L.Ed.2d 256 (1986), *cert. denied,* 484 U.S. 1066 (1988).

party.[9] "Disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment."[10]

The plaintiff's motion for summary judgment on the issue of employment status is patently inappropriate. Numerous genuine issues of material fact exist that will affect the outcome of this case, including (1) the fact that GlobalSantaFe meets almost none of the criteria of an employer for purposes of recovery under the Jones Act; (2) the attached 28 U.S.C. § 1746 Declarations establish that Plaintiff was employed by Transocean Offshore International Ventures Limited – India ("TOIVL") at the time of the alleged incident; and (3) GlobalSantaFe is only an entity tasked to be a payroll processor for TOIVL, with no control over TOIVL employees, and is reimbursed by TOIVL for payments made to TOIVL's employees. For these reasons, the plaintiff's motion for summary judgment should be denied.

B. THE EXISTENCE OF NUMEROUS ISSUES OF MATERIAL FACT PRECLUDE THE ENTRY OF SUMMARY JUDGMENT

Plaintiff has cited two borrowed servant cases urging that they are analogous to the instant circumstances. Both cases are distinguishable and arguing that they apply to the case at bar shows a misunderstanding of the relationship between TOIVL and GSF.

Plaintiff cites *Smalls v. Global Industries, Ltd.*, 1999 WL 225444 (E.D. La. 4/15/1999) and *Spinks v. Chevron*, 507 F.2d 216 (5th Cir. 1975) (incorrectly cited by Plaintiff as *Spinks v. Texaco*). Both cases deal with relationships among a payroll employer, a borrowing employer, and a plaintiff. Neither deals with relationships like

[9] *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S.Ct. 2505, 2510, 91 L.Ed.2d 202 (1986); *Hamilton v. Segure Software, Inc.*, 232 F.3d 473, 477 (5th Cir. 2000).
[10] *Anderson*, 477 U.S. at 248.

those at issue: among a payroll processor, an employer, and an employee. Both cases cited by Plaintiff ask whether the payroll employer (both were labor contractors, neither was a payroll processor) severed its employer/employee relationship with the plaintiff to justify a finding that the labor contractor was not the plaintiff's employer. Both *Smalls* and *Spinks* assume, correctly, that the labor contractor was the individual's payroll employee. But the same cannot be assumed for the case at bar.

GSF is not and has never been Plaintiff's payroll employer. As stated above and in the attached 28 U.S.C. § 1746 Declaration of Bradley McKenzie, GSF had no control over the Plaintiff. GSF serves only as paymaster for U.S. citizens and ex-pats working for foreign companies. GSF is reimbursed by companies like TOIVL for payments made by GSF to TOIVL's employees, including payment of Indian taxes. GSF does not "lend out" individuals to a borrowing employer because GSF has no employees working in positions like Mr. Anderson's that it could lend out.

Further, TOIVL is not a borrowing employer. On August 10, 2010, TOIVL was the only employer with any control whatsoever over the crew of the DEEPWATER FRONTIER, including Mr. Anderson. Only TOIVL could issue directives to Mr. Anderson or exercise control over his employment. Mr. Anderson reported to Mr. Murch, who was also an employee of TOIVL. As Plaintiff explained in his deposition, the chain of command above him only included individuals then living in India or Geneva.[11]

[11] See Deposition of Kenneth Anderson, pp. 39-42.

TOIVL contracted with Reliance Industries to explore for oil and contracted with SRI SAI to transport its employees. TOIVL reimbursed its payroll processor for all payments made to its employees.[12]

Cases discussing Jones Act employer status routinely require that the entity paying a plaintiff have "control" over the plaintiff in order to be considered a Jones Act employer.

> In determining who is an employer for recovery under the Jones Act, control is the critical inquiry. The Fifth Circuit has established that the "factors indicating control over an employee include payment, direction, and supervision of the employee. Also relevant is the source of the power to hire and fire." *Volyrakis v. M/V Isabelle*, 688 F.2d 863, 866 (5th Cir. 1982).[13] Further the Fifth Circuit has reasoned that control which is exercised must be substantial; the mere possibility of some control over the actions of an employee will not suffice to define an employer-employee relationship." *Id.*

Cordova v. Crowley Marine Services, Inc., 2003 WL 21790195 (E.D. La. 2003). In *Cordova*, defendant Marine Transportation Corporation ("MTC") filed a summary judgment seeking dismissal of all plaintiff's claims against it because on the date of the incident it was neither the Jones Act employer of the plaintiff nor the owner of the vessel on which plaintiff was injured.[14]

In support of the summary judgment, MTC attached the affidavit of MTC's Vice-President for Marine Insurance, who made determinations regarding the plaintiff's medical care and was in possession of documents relating to his injury and claim. The affidavit explained that, on the date of the incident, plaintiff was not employed by MTC and was employed by a different entity, and, on the date of the injury, the vessel was not

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[12] See attached 28 U.S.C. § 1746 Declaration of Bradley McKenzie.
[13] Note that the law on *forum non conveniens* established in *Volyrakis* was overruled by *In re Air Crash Disaster Near New Orleans, La. On July 9,* 1982, 821 F.2d 1147 (5th Cir. 1987), though the case is still good law on the Jones Act employer issue.
[14] *Id.* at *1.

owned by MTC and was owned by a third entity.[15] Ultimately, the court found that the failure to meet the *Volyrakis* factors and the Vice-President's affidavit proved that MTC was not the plaintiff's Jones Act employer.

Among other findings, the Court determined that the plaintiff's perception that MTC was his employer was found not to be dispositive on the issue of employer status. Further, the Court explained that, with regard to the right of a plaintiff to sue multiple entities on the basis that any one of them may be his Jones Act employer, it has been allowed only when a) there was substance to the allegation that the plaintiff had more than one employer, or b) one of the alleged employers ostensibly qualified as an employer under the borrowed servant doctrine. (Neither of which existed in that case.)[16]

Ultimately, the court concluded, "MTC communicated with the master of the vessel and maintained the maintenance and cure claims. However, this is not the amount of control sufficient [sic] convince a trier of fact that an employer-employee relationship existed between MTC and [plaintiff]."[17]

It is clear that GSF is not a labor contractor and there is no borrowing servant under the instant circumstances. It is also clear that there is no substance to Paintiff's allegation that he has more than one offshore employer. Even the slight degree of control present in the *Cordova* case far out-shadows the total lack of control and supervision in the instant case. Nonetheless that degree of control was enough to dismiss the plaintiff's claims against MTC in that lawsuit. In the case at bar, Defendants need not meet the high standard of the movant in proving a motion for summary judgment. Instead, Defendants need only show that there is a genuine issue as to any material fact. The above case law,

[15] *Id.* at *2.
[16] *Id.* at *3.
[17] *Id.* at *4.

GSF's role as payroll processor with no control or supervision over TOIVL's employees including Mr. Anderson, the failure to satisfy the *Volyrakis* Jones-Act-Employer Test, along with the attached affidavits establish that there is at least a genuine issue as to the material issue of employment status. Indeed, they prove that GSF is not Plaintiff's employer.

CONCLUSION

For the foregoing reasons, Defendants, GlobalSantaFe Offshore Services Inc. and Transocean Offshore USA Inc. respectfully suggest that this Honorable Court should deny the Plaintiff's Motion for Summary Judgment because numerous significant genuine issues of material fact exist with regard to the plaintiff's claims, including: (1) the fact that GlobalSantaFe meets almost none of the criteria of an employer for purposes of recovery under the Jones Act; (2) the attached 28 U.S.C. § 1746 Declarations establish that Plaintiff was employed by Transocean Offshore International Ventures Limited – India ("TOIVL") at the time of the alleged incident; and (3) that GlobalSantaFe is only an entity tasked to be a payroll processor for TOIVL and is reimbursed by TOIVL for payments made to TOIVL's employees, and is not a payroll employee as Plaintiff contends.

Respectfully submitted,

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Attorneys for Transocean Offshore USA Inc.
and GlobalSantaFe Offshore Services Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing pleading has been filed with the Clerk of Court by using the CM/ECF system; that the foregoing pleading has been mailed electronically by the Clerk of Court to all parties who have registered to receive electronic notification; and, that notice of the filing of the foregoing pleading has been delivered by other means by the Clerk of Court to all parties who have not registered to receive electronic notification on this 10th day of July, 2012.

/s/ *Hal C. Welch*
HAL C. WELCH