UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN THE MATTER OF THE COMPLAINT OF D & S MARINE SERVICE, L.L.C., AS OWNER AND OPERATOR OF THE M/V BRIANNA ELIZABETH, PETITIONING FOR EXONERATION FROM OR LIMITATION OF LIABILITY	§ § § § § §	CIVIL ACTION NO. 4:24-CV-03575

MEMORANDUM AND RECOMMENDATION

Before the Court is Petitioner D&S Marine Management, LLC's Motion to Dismiss.[1] ECF 26. After considering the parties' arguments and the applicable law, the Court RECOMMENDS that D&S Marine Management, LLC's Motion (ECF 26) be DENIED.

I. Factual and Procedural Background.

Claimant Javen Lott suffered a serious injury to his leg while working as a crewmember aboard the M/V BRIANNA ELIZABETH (the "Vessel"). ECF 1. On August 21, 2024, Lott filed a Jones Act personal injury suit in state court in the 80th Judicial District Court of Harris County, Texas, against D&S Marine Service, LLC ("DMS") and D&S Marine Management, LLC ("DMM"). ECF 23-1 at 2. Both DMS and DMM filed Answers in the state court suit. ECF 23-2; ECF 23-3. DMS

[1] The District Judge referred this case to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(A) and (B), the Cost and Delay Reduction Plan under the Civil Justice Reform Act, and Federal Rule of Civil Procedure 72. ECF 11.

and DMM, as Limitation Petitioners, filed their Original Complaint for Exoneration or Limitation of Liability on September 23, 2024. ECF 1. On October 14, 2024, Lott filed his Answer and Claims against DMM. ECF 8, 9. On October 31, 2025, the Court issued its Initial Order (ECF 14) and Monition (ECF 15). On February 18, 2025, the Court granted DMM's Ex Parte Motion for Default against all claimants who had not filed a claim by October 31, 2024. ECF 35.

On January 21, 2025, DMM filed a Motion to Dismiss pursuant to Rule 12(b)(6) (ECF 26), to which Lott responded (ECF 32).

II. Legal Standards.

To survive a Rule 12(b)(6) motion to dismiss, the plaintiff must plead "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the conduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Gonzalez v. Kay*, 577 F.3d 600, 603 (5th Cir. 2009). In reviewing a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), this Court "accepts all well-pleaded facts as true, viewing them in the light most favorable to the plaintiff." *Alexander v. AmeriPro Funding, Inc.*, 848 F.3d 698, 701 (5th Cir. 2017) (citing *Martin K. Eby Constr. Co. v. Dallas Area Rapid Transit*, 369 F.3d 464, 467 (5th Cir.

2004)). However, the court does not apply the same presumption to conclusory statements or legal conclusions. *Iqbal*, 556 U.S. at 678-79.

III. Analysis.

DMM raises three arguments as to why Lott has failed to state a claim for which relief may be granted. First, DMM argues that Lott's Jones Act claim fails to allege facts to support the conclusion that DMM was his Jones Act employer. Second, and for the same reason, DMM argues that Lott's maintenance and cure claims fail. Third, DMM argues that Lott's claim for unseaworthiness fails to allege facts that support the conclusion that DMM owned or operated the Vessel. Lott responds that his claim against DMM alleges facts sufficient to overcome the 12(b)(6) pleading standards.

A. Lott has alleged facts sufficient to support the allegation that DMM was his employer.

DMM makes essentially the same argument for dismissal with respect to Lott's Jones Act and maintenance and cure claims—that Lott has not sufficiently alleged that DMM was his Jones Act employer.[2] First, DMM argues that Lott can only have one Jones Act employer, and DMS has judicially admitted that it was Lott's employer. *See* ECF 1 at ¶ 7 ("On June 24, 2024, Lott was employed by D&S

[2] For both his Jones Act and maintenance and cure claims, Lott must allege that DMM was his employer. *See Procell v. ENSCO Inc.*, No. CV 20-526, 2020 WL 2563548, at *2 (S.D. Tex. May 20, 2020) (finding that a claimant must establish the defendant was his Jones Act employer and that a seaman may claim maintenance and cure only from his employer).

Marine as a deckhand …"). Second, DMM argues the allegation that DMM was his Jones Act employer is merely an unsupported legal conclusion. The Court addresses each argument in turn.

1. Lott may have more than one Jones Act employer.

It is well-settled that to state a claim under the Jones Act, a claimant must establish that the defendant was his employer. *Thomas v. Chevron U.S.A., Inc.*, 832 F.3d 586, 59 n.3 (5th Cir. 2016) (citing 46 U.S.C. § 30104). DMM cites to *Cosmopolitan Shipping Co. v. McAllister* for the proposition that, according to settled law, a plaintiff may only have one Jones Act employer. *See* 337 U.S. 783, 791 (1949) ("We have no doubt that, under the Jones Act, only one person, firm or corporation can be sued as employer."). However, this dictum in *McCallister* was later rejected by the Fifth Circuit in *Spinks v. Chevron Oil Co.*, where the court found that "[i]t would seem reasonable therefore that a seaman may have more than one Jones Act employer." 507 F.2d 216, 225 (5th Cir. 1975), *decision clarified*, 546 F.2d 675 (5th Cir. 1977), and *overruled in part by Gautreaux v. Scurlock Marine, Inc.*, 107 F.3d 331 (5th Cir. 1997). Moreover, the Fifth Circuit, and Southern District of Texas, have consistently found that a Jones Act claimant may have more than one Jones Act employer. *Guidry v. South Louisiana Contractors, Inc.*, 614 F.2d 447, 452 (5th Cir. 1980) ("It may also be possible for a seaman to have more than one Jones Act employer."); *See also Ghio v. Jambon*, 23 F. Supp. 2d 724, 728 (S.D. Tex. 1998)

(same); *Richardson v. Bolivar Offshore Servs., LLC*, No. 3:18-CV-00247, 2020 WL 4679577, at *2 (S.D. Tex. July 14, 2020), report and recommendation adopted, No. 3:18-CV-00247, 2020 WL 5260391 (S.D. Tex. Sept. 3, 2020) (same); *Cannon v. Shelf Drilling Holdings, Ltd*, No. 4:22-CV-3748, 2023 WL 6138546, at *12 (S.D. Tex. July 31, 2023), report and recommendation adopted, No. 4:22-CV-3748, 2023 WL 6174411 (S.D. Tex. Sept. 22, 2023) (same).[3] Because Fifth Circuit precedent allows a seaman to have more than one Jones Act employer, DMS' admission that it was Lott's employer does not preclude Lott's claim.[4]

2. Lott has sufficiently alleged that DMM was his employer.

DMM asserts that Lott's claim consists of only conclusory allegations. In relevant part, Lott's claim states: "On or about June 24, 2024 … Plaintiff was employed by [DMM] on the M/V BRIANNA ELIZABETH…" ECF 8 at 11, ¶ 4. A court has previously found that these allegations are sufficient to survive a 12(b)(6) Motion regrading a Jones Act claim. *See De Bree v. Pac. Drilling Servs., Inc.*, No. CV H-18-4711, 2019 WL 3814995, at *2 (S.D. Tex. July 1, 2019) (finding

[3] Other courts within the Fifth Circuit have found the same. *E.g., Ogden v. GlobalSantaFe Offshore Servs.*, 31 F. Supp. 3d 832, 842 (E.D. La. 2014); *Delozier v. S2 Energy Operating, LLC*, 491 F. Supp. 3d 149, 155 (E.D. La. 2020); *In re Weeks Marine*, Inc., 88 F. Supp. 3d 593, 596 (M.D. La. 2015).

[4] While DMM claims it is not an "owner" for Jones Act purposes, the Court notes that DMM filed a petition for exoneration from or limitation of liability (ECF 1 at ¶ 4) as an "owner." "These benefits of the [Limitations] Act, however, are, by their plain terms, conferred on ship *owners* only." *Zapata Haynie Corp. v. Arthur*, 926 F.2d 484, 485 (5th Cir. 1991) (emphasis in original); *See* 46 U.S.C. § 30529(a) ("The owner of a vessel may bring a civil action in a district court of the United States for limitation of liability under this chapter.").

that the allegation "was employed by Pacific" sufficient to state a claim under the Jones Act).[5] Lott has alleged that DMM was his employer at the time of his alleged injury. ECF 8 at 11, ¶ 4. Therefore, Lott's Jones Act and maintenance and cure claims should not be dismissed.

B. Lott has alleged sufficient facts to support the allegation that DMM owned or operated the Vessel.

DMM argues that Lott has failed to sufficiently allege facts to support a finding that DMM owned or operated the Vessel. "General maritime law imposes a duty upon shipowners to provide a seaworthy vessel." *Luwisch v. Am. Marine Corp.*, 956 F.3d 320, 326 (5th Cir. 2020). "To be held liable for [an unseaworthiness claim], the defendant must be in the relationship of an owner or operator of a vessel." *Baker v. Raymond Int'l, Inc.*, 656 F.2d 173, 181 (5th Cir. 1981) (internal quotations omitted). Lott's claim alleges "[O]n or about June 24, 202 … Plaintiff was employed by [DMM] on the M/V BRIANNA ELIZABETH which was owned, operated and/or

[5] The *De Bree* plaintiff's First Amended Complaint stated the following:

> On or about May 26, 2018, Plaintiff, who is a Jones Act seaman, was employed by Pacific and assigned to the PACIFIC SANTA ANA, which was owned, operated, and/or managed by Pacific Drilling Services, Inc., Defendant Pacific Drilling, Inc., Defendant Pacific Santa Ana Sarl and Defendant Pacific Drilling Manpower, Ltd. (jointly referred to as "Pacific Defendants"). Upon information and belief, the PACIFIC SANTA ANA was bareboat charted to Defendant Pacific Drilling, Inc. when Plaintiff was injured.

De Bree, 2019 WL 3814995, at *2 n.2. These allegations are nearly identical to Lott's. *Compare* ECF 8 at 11, ¶ 4.

managed by [DMM] … At all relevant times, [DMM's] vessel was unseaworthy." ECF 8 at 11–12, ¶¶ 4, 6.

"By alleging that [DMM was] the owner[] or operator[] of the [Vessel] at the time of his alleged injury, [Lott] has stated a plausible unseaworthiness claim against [DMM]." *De Bree*, 2019 WL 3814995, at *2. As in *De Bree*, the Court finds Lott has alleged sufficient facts to support the conclusion that DMM owned and/or operated the Vessel. Therefore, his claim for unseaworthiness should not be dismissed.

IV. Conclusion and Recommendation.

For the reasons stated above, the Court RECOMMENDS that Petitioner D&S Marine Management, LLC's Motion to Dismiss (ECF 26) be DENIED.

The Clerk of the Court shall send copies of the memorandum and recommendation to the respective parties, who will then have fourteen days to file written objections, pursuant to 28 U.S.C. § 636(b)(1)(C). Failure to file written objections within the time period provided will bar an aggrieved party from attacking the factual findings and legal conclusions on appeal. *Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1428-29 (5th Cir. 1996) (en banc), superseded by statute on other grounds.

Signed on June 04, 2025, at Houston, Texas.

Christina A. Bryan
United States Magistrate Judge