

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION

KEYSTONE TERMINAL HOLDINGS OF  
FLORIDA, LLC, KEYSTONE  
TERMINAL HOLDINGS, LLC and  
KEYSTONE TERMINAL PROPERTIES,  
LLC,

Cross Claimants,

v.

Case No.: 3:24-cv-175-WWB-MCR

PATRICK WILLIAM HARDIE, JEFFERY  
MAY and SIMS CRANE & EQUIPMENT  
COMPANY,

Cross Defendants/  
Third-Party Plaintiffs,

v.

KEYSTONE PROPERTIES, LLC,

Third-Party Defendant.

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**ORDER**

THIS CAUSE is before the Court on Sims Crane & Equipment Company, Jeffery May, and Patrick William Hardie's ("**Crane Defendants**") Motion for Final Summary Judgment (Doc. 138), Keystone Terminal Holdings of Florida, LLC, Keystone Terminal Holdings, LLC, and Keystone Properties, LLC's ("**Keystone**") Response in Opposition (Doc. 153), and the Crane Defendants' Reply (Doc. 156) thereto.<sup>1</sup> For the reasons set forth below, the Motion will be denied.

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<sup>1</sup> The parties' filings fail to comply with this Court's January 13, 2021 Standing Order. In the interests of justice, the Court will consider the filings because this matter is

## I. BACKGROUND

This case arises from a wrongful death action, in which Keystone<sup>2</sup> and the Crane Defendants were codefendants. On January 2, 2022, Salih Bebek (“**Decedent**”), a bosun working aboard the *M/V Maple*, was crushed to death by a 20,000-pound crane bucket. (Doc. 70 at 2). Maple Marine Co. owned the *M/V Maple* and contracted with Keystone, a marine terminal operator with a facility to handle discharging and loading vessels, to charter the *M/V Maple*. (Doc. 138-1 at 4–5; Doc. 153-1 at 16:21–17:2). Keystone, in turn, contracted with Logistec Gulf Coast, LLC (“**Logistec**”), a stevedore who provided the crane at issue; Fiber Marine Ship Management & Trading Co., Decedent’s employer who purportedly operated the *M/V Maple* in some fashion; and Sims Crane & Equipment Company (“**Sims Crane**”), who provided equipment and workers to assist in unloading the *M/V Maple* from December 30, 2021 to January 2, 2022. (Doc. 138-1 at 5).<sup>3</sup> Specifically, Sims Crane provided Keystone with a crane, crane operator (Cross-Defendant Jeffery May), and signalman (Cross-Defendant Patrick William Hardie). (Doc. 138-6 at 4–5).

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fully briefed and ripe for resolution on the merits, but the parties are cautioned that future failures to comply with all applicable rules and orders of this Court may result in the striking or denial of filings without notice or leave to refile.

<sup>2</sup> Although not initially a party, Keystone Properties, LLC was impleaded in by the Crane Defendants and now joins the other Keystone entities.

<sup>3</sup> Keystone Properties, LLC was the specific Keystone entity that contracted with Sims Crane. (See, e.g., Doc. 138-5 at 2).

Before May and Hardie began work each day, a Keystone representative—either Mike Yaeger or Phil Hetzner—would sign May and Hardie’s Daily Job Tickets<sup>4</sup> on a tablet. (Doc. 138-11 at 65:20–67:13; *see generally* Doc. 138-8). However, the parties dispute whether a Keystone representative signed them the day of the incident. Above the line requiring an “Authorized Signature” is text stating: “The following terms and conditions governing this rental are understood and agreed to :[.]” (Doc. 138-8 at 25; *see also* Doc. 153-2 at 24:12–25:19). Scrolling below the line indicates the additional “Terms & Conditions of Contract (FL),” which include an indemnity clause and a provision proscribing that the “Contractor” maintained exclusive control over operations. (Doc. 138-5 at 3; *see also* Doc. 153-2 at 24:12–25:19).

Hardie testified that he did not clock in for his and May’s 7:00 a.m. to 7:00 p.m. shift on the date of the incident. (Doc. 138-11 at 69:6–9). Yet, Yeager’s signature was added at 1:42 p.m.—*after* Decedent was struck at 1:00 p.m. and declared deceased at 1:15 p.m. (See Doc. 138-8 at 25; Doc. 153-5 at 10).

As a result of the incident, the personal representative of Decedent’s estate, Fatma Bebek, sued the following entities and individuals: the Crane Defendants, Keystone, Logistec, Maple Marine Co., and Fiber Marine Ship Management & Trading Co. (See Doc. 70). Bebek alleged that Defendant Hardie, the crane operator, could not see on the deck while lowering the crane bucket and relied on his spotter, Defendant May, to signal the appropriate direction. (*Id.* at 9). Defendant May purportedly had a clear line of sight of the crane grab’s path but failed to warn Decedent or Defendant Hardie that Decedent

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<sup>4</sup> The Crane Defendants characterize the Daily Job Tickets containing the additional terms and conditions as “Rental Contracts.” (See Doc. 138 at 4).

was below its path. (*Id.*). Accordingly, Bebek asserted claims for negligence, negligent hiring or retention, unseaworthiness, wrongful death negligence, and negligence under the Jones Act, 46 U.S.C. § 30104. (*Id.* at 10–37). Bebek has settled her claims with all Defendants and is no longer a party to this action. (Doc. 157 at 2; Doc. 170 at 1).

As pertinent to the current status of this case, the Crane Defendants filed a Third-Party Complaint for contractual indemnification against Keystone Properties, LLC, a separate Keystone entity that then joined the other Keystone Defendants. (Doc. 68 at 5–6). Therein, the Crane Defendants allege that Sims Crane contracted with Keystone Properties, LLC for Sims Crane to assist in unloading the *M/V Maple* and that pursuant to that contract, Keystone must indemnify Sims Crane for the cost of their defense and the potential unfavorable judgment on Bebek’s claims. (*Id.* at 3–6). Keystone filed crossclaims for tort-based equitable indemnity, equitable contribution, and declaratory judgment against all Crane Defendants, and breach of contract and unfair and deceptive business practices against Sims Crane alone. (Doc. 105 at 34–72). Keystone similarly alleges that it contracted with Sims Crane to assist in unloading the *M/V Maple* but that the Crane Defendants, collectively, were the ones to breach their duties in unloading the vessel. (*Id.* at 33–34).<sup>5</sup> The Crane Defendants move for summary judgment on Keystone’s crossclaims, their own third-party claim, and Bebek’s claims.<sup>6</sup>

## II. LEGAL STANDARD

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<sup>5</sup> The Crane Defendants have also asserted counterclaims against Keystone for contribution and breach of implied warranty of workmanlike performance, (Doc. 194 at 21–23), that are not the subject of the instant Motion.

<sup>6</sup> Bebek has settled with the Crane Defendants, (Doc. 157 at 2), and thus summary judgment as to Bebek’s claims is denied as moot.

Summary judgment is appropriate when the moving party demonstrates “that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). A dispute is genuine “if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A fact is material if it may “affect the outcome of the suit under the governing law.” *Id.* “The moving party bears the initial burden of showing the court, by reference to materials on file, that there are no genuine issues of material fact that should be decided at trial.” *Allen v. Bd. of Pub. Educ.*, 495 F.3d 1306, 1313–14 (11th Cir. 2007). Stated differently, the moving party discharges its burden by showing “that there is an absence of evidence to support the nonmoving party’s case.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986).

However, once the moving party has discharged its burden, “Rule 56(e) . . . requires the nonmoving party to go beyond the pleadings and by her own affidavits, or by the depositions, answers to interrogatories, and admissions on file, designate specific facts showing that there is a genuine issue for trial.” *Id.* at 324 (quotation omitted). The nonmoving party may not rely solely on “conclusory allegations without specific supporting facts.” *Evers v. Gen. Motors Corp.*, 770 F.2d 984, 986 (11th Cir. 1985). Nevertheless, “[i]f there is a conflict between the parties’ allegations or evidence, the [nonmoving] party’s evidence is presumed to be true and all reasonable inferences must be drawn in the non-moving party’s favor.” *Allen*, 495 F.3d at 1314.

### **III. DISCUSSION**

Because this case arises under the Court’s admiralty jurisdiction, the Court applies substantive admiralty law. *Misener Marine Const., Inc. v. Norfolk Dredging Co.*, 594 F.3d

832, 837–38 (11th Cir. 2010) (“With admiralty jurisdiction comes the application of substantive admiralty law.” (quoting *E. River S.S. Corp. v. Transamerica Delaval, Inc.*, 476 U.S. 858, 864 (1986))).

#### **A. The Crane Defendants’ Contractual Indemnification Claim**

The parties do not dispute that Keystone Properties, LLC and Sims Crane entered into an agreement for Sims Crane to assist in unloading the *M/V Maple* but do dispute whether the Daily Job Tickets incorporate additional terms and conditions, including the indemnity clause and the provision that Keystone had exclusive control over operations, into their agreement. The Crane Defendants argue that the indemnity clause is clear and enforceable. Keystone argues its fraud in the factum and fraud in the inducement affirmative defenses. Specifically, it argues that there exists a genuine dispute of material fact as to whether Keystone assented to the terms and conditions because (1) the signature on the January 2, 2022 Daily Job Ticket was forged, (2) even if it was a Keystone representative’s signature, Keystone was unaware of the terms, and (3) the Daily Job Tickets and indemnity clause do not reference Keystone in a consistent manner, rendering the indemnity clause ambiguous.

“Construction of an indemnity agreement generally is a question of law for the court applying generalized principles of contract construction.” *BankAtlantic v. Blythe Eastman Paine Webber, Inc.*, 955 F.2d 1467, 1477 (11th Cir. 1992) (citing *Gibbs v. Air Can.*, 810 F.2d 1529, 1533 (11th Cir. 1987)). As such, there must be an “(1) offer; (2) acceptance; (3) consideration; and (4) sufficient specification of the essential terms.” *Kolodziej v. Mason*, 774 F.3d 736, 740 (11th Cir. 2014) (quoting *Vega v. T-Mobile USA, Inc.*, 564 F.3d 1256, 1272 (11th Cir. 2009)). “[M]utual assent is a prerequisite for the formation of any contract.” *Id.* at 741 (collecting cases).

In the maritime context, “contracts will hold an indemnitee harmless against its own negligence only when the intent to so indemnify is expressed in plain, clear, and unequivocal terms.” *In re Leeward Marine Ventures, Ltd.*, No. 12-21600-CIV, 2013 WL 12383462, at \*3 (S.D. Fla. Jan. 29, 2013) (quoting *Natco Ltd. P’ship v. Moran Towing of Fla., Inc.*, 267 F.3d 1190, 1196 (11th Cir. 2001)). “In determining this intent, contract provisions should be given their natural and most commonly understood meaning in light of the subject matter and circumstances, and the language should be read in common with the other provisions of the contract.” *Natco Ltd. P’ship*, 267 F.3d at 1193 (quoting *BankAtlantic*, 955 F.2d at 1477).

The Court concludes that there exists a genuine dispute of material fact as to whether Keystone and Sims Crane entered into a valid indemnity contract. The Crane Defendants carried their initial burden on their claim by producing a signed Daily Job Ticket dated January 2, 2022, which does indeed contain an indemnity clause below the signature line. (Doc. 138-8 at 25). However, in support of its fraud affirmative defenses, Keystone presents evidence that it did not assent to the terms or conditions.<sup>7</sup>

As to fraud in the factum, Keystone directs the Court to Yeager’s deposition testimony that the signature indicating approval of the start shift was not his. (Doc. 153-

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<sup>7</sup> As a threshold matter, contrary to Keystone’s contention, the Crane Defendants’ failure to address Keystone’s affirmative defenses in their Motion does not warrant denying summary judgment on the contractual indemnification claim because “the burden of establishing an affirmative defense lies on the *defendant*, not on the plaintiff.” *Singleton v. Dep’t of Corr.*, 277 F. App’x 921, 923 (11th Cir. 2008); *see also James River Ins. Co. v. R.I.C., Inc.*, No. 23-cv-22907, 2024 WL 4381230, at \*14 (S.D. Fla. Oct. 3, 2024) (“Because Defendant bears the burden of proof on its affirmative defenses at trial, Defendant, as the nonmovant [at summary judgment], also bears the initial burden of showing that the affirmative defense is applicable.” (quotation omitted)).

2 at 24:8–10 (“No, . . . [the signature has] too many ups and downs . . . for it to be mine.”)). Moreover, the signature was added at 1:42 p.m.—*after* Hardie and May started their shifts and *after* Decedent was struck at 1:00 p.m. and declared deceased at 1:15 p.m. (See Doc. 138-8 at 25; Doc. 153-5 at 10). Yeager additionally testified that some crane operators informed him that they would sign Yeager’s name to their Daily Job Ticket when Yeager was unavailable. (Doc. 153-2 at 36:13–17). In their Reply, the Crane Defendants do not rebut Keystone’s evidence that the signature was forged.

Keystone further argues that even if the signature was not forged, it was not aware of the additional terms and conditions and, therefore, there was no meeting of the minds as to the indemnity clause, or any other added term. The Court finds that evidence supports Keystone’s fraud in the inducement defense, namely, Yeager’s testimony that he did not see the additional terms and conditions when he would routinely sign the Daily Job Tickets. (*Id.* at 24:13–26:6). Yeager testified that when presented with the tablets to sign, he only saw “a place to sign [his] name.” (*Id.* at 25:14–15). As such, Yeager believed he was only signing off on Hardie and May’s timesheets. (*Id.* at 27:17–19 (“I thought I was signing this time sheet thing showing that they [were] there and they’d get paid. That’s all I thought I was signing.”)). If he knew he was agreeing to additional terms and conditions, Yeager testified that he probably would have scrolled down to see what those conditions were. (*Id.* at 25:6–21).

“Mutual assent is an absolute condition precedent to the formation of the contract.” *Gibson v. Courtois*, 539 So. 2d 459, 460 (Fla. 1989). Indeed, as the Crane Defendants point out, “[a] party who signs an instrument is presumed to know its contents.” *State Farm Mut. Auto. Ins. Co. v. Lewin*, No. 8:20-cv-2428, 2021 WL 7186770, at \*4 (M.D. Fla.



Apr. 30, 2021) (quotation omitted). However, in *Lewin*, the signer knew he was signing an agreement pertaining to his rights and obligations. See *id.* at \*1–2. Distinct from *Lewin*, Keystone argues that Yeager did not know and had no reason to know that signing the Daily Job Tickets was binding Keystone to additional terms and conditions because “all [he] was seeing [was] just a place to sign [his] name.” (Doc. 153-2 at 25:14–15). Upon review, Keystone has sufficiently presented evidence as to whether the parties mutually assented to the added terms in the Daily Job Tickets “such that a reasonable jury could return a verdict” in its favor. *Anderson*, 477 U.S. at 248.<sup>8</sup>

Because there is a genuine dispute of material fact, the Court need not address Keystone’s argument regarding the indemnity clause’s purported ambiguity. Summary judgment as to the Crane Defendants’ third-party claim against Keystone Properties, LLC will therefore be denied.

### **B. Keystone’s Crossclaims**

The Crane Defendants also seek summary judgment on Keystone’s crossclaims for equitable indemnity and equitable contribution against all Crane Defendants, and breach of contract against Sims Crane alone. The claims are based on the purported negligent acts of Hardie and May and Sims Crane’s failure to supervise Hardie and May. In their Motion, the Crane Defendants do not argue that the elements of the asserted claims are not met but only that the borrowed servant doctrine precludes liability on all of Keystone’s claims. Keystone responds that the elements for the borrowed servant

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<sup>8</sup> The Crane Defendants argue that Keystone did not adequately plead its affirmative defenses with particularity under Federal Rule of Civil Procedure 9(b). (Doc. 156 at 4–5). This argument is appropriate at the motion to dismiss stage, at which the Crane Defendants made no such assertion. See Fed. R. Civ. P. 12(f). The Court will not permit the Crane Defendants a second bite of the apple as to pleading sufficiency.

doctrine are not met, or at the very least, there is a genuine dispute of material fact as to whether Keystone exercised control over Hardie and May.

“The [borrowed servant] doctrine declares that an employee directed or permitted by his employer to perform services for another principal may become the employee—i.e., the ‘borrowed servant’—of the borrowing principal in performing those services.” *Langfitt v. Fed. Marine Terminals, Inc.*, 647 F.3d 1116, 1122 (11th Cir. 2011). “When this is found to be the case, the borrowing principal is considered the ‘borrowing employer’ and it is he, and not the employee’s general employer, that is held vicariously liable to third parties injured on account of the borrowed servant’s negligence in the scope of the borrowed-employment relationship.” *Id.* (footnote omitted).

Courts rely on nine factors in the maritime context to determine whether an employee is a borrowed servant:

. . . (1) who has control over the employee and the work he or she is performing, beyond mere suggestion of details or cooperation?; (2) whose work is being performed?; (3) was there an agreement, understanding, or meeting of the minds between the original and the borrowing employer?; (4) did the employee acquiesce in the new work situation?; (5) did the original employer terminate his relationship with the employees?; (6) who furnished tools and place for performance?; (7) was the new employment over a considerable length of time?; (8) who had the right to discharge the employee?; and (9) who had the obligation to pay the employee?

*Usme v. CMI Leisure Mgmt., Inc.*, 106 F.4th 1079, 1089 n.8 (11th Cir. 2024); *see also Wai v. Rainbow Holdings*, 350 F. Supp. 2d 1019, 1025 (S.D. Fla. 2004) (applying the nine factors).

The Crane Defendants’ only argument as to the borrowed servant doctrine is that the additional terms and conditions incorporated through the Daily Job Tickets sets forth that Keystone has exclusive control. However, this argument is premised on a finding that the parties entered into the contract with these added terms. For reasons already

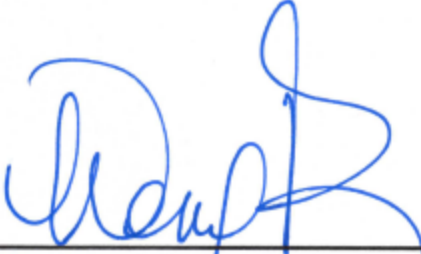
stated above, there is a genuine dispute of material fact on this matter. The Crane Defendants identify no facts beyond the disputed contractual provision as evidence of Keystone's direct control over Hardie and May, nor any other criteria. Conversely, Keystone argues that the borrowed servant doctrine was not satisfied because (1) Keystone did not dictate how Hardie and May performed their unloading work; (2) Keystone paid Sims Crane, not Hardie and May, for their work; (3) Hardie and May were hired, trained, supervised, and paid by Sims Crane to operate Sims Crane's equipment; (4) Hardie and May were not aware that Sims Crane "wanted" them to be Keystone's employees; and (5) Logistec was responsible for managing the discharge operations. (Doc. 153 at 5, 15–16).

Because there is a genuine issue of material fact as to whether Hardie and May were borrowed servants and the Crane Defendants submit no additional argument as to Keystone's claims, the Court will deny summary judgment on Keystone's crossclaims. *See Daughtry v. Jenny G. LLC*, 703 F. App'x 883, 886 (11th Cir. 2017) (denying summary judgment on maritime claims under the borrowed servant doctrine where the movant did not identify facts "that suggest he was under the direct control of [the non-movant]").

#### IV. CONCLUSION

Accordingly, it is **ORDERED** and **ADJUDGED** that the Defendants' Motion for Final Summary Judgment (Doc. 138) is **DENIED**.

**DONE AND ORDERED** in Jacksonville, Florida on September 18, 2025.



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WENDY W. BERGER  
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel of Record