IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

SHANON ROY SANTEE,	§	
	§	
Plaintiff,	§	
	§	
v.	§	Civil Action No. H-21-3489
	§	
OCEANEERING	§	
INTERNATIONAL, INC., *et al.*,	§	
	§	
Defendants.	§	

ORDER

Pending before the Court are Defendant Chevron U.S.A. Inc.'s Motion for Summary Judgment (Document No. 43) and Defendant Transocean Offshore Deepwater Drilling Inc.'s Motion for Summary Judgment (Document No. 44). Having considered the motions, submissions, and appliable law, the Court determines Chevron's motion should be granted and Transocean's motion should be granted.

I. BACKGROUND

This case arises out of a personal injury which occurred on a vessel. Since at least 2004, Plaintiff Shanon Roy Santee ("Santee") has been employed by Defendant Oceaneering International, Inc. ("Oceaneering") as a remote operated vehicle ("ROV") technician. Oceaneering provides subsea products and services to companies focused on the exploration and development of oil and gas resources. On

January 11, 2021, Santee was working on the *M/V Deepwater Conqueror* (the "*Deepwater Conqueror*") as a ROV supervisor pursuant to Oceaneering's contract with Defendant Chevron U.S.A. Inc. ("Chevron") when he suffered a shoulder and back injury while performing maintenance work.[1] At the time, the *Deepwater Conqueror* was performing drilling operations in the Gulf of Mexico pursuant to the terms of an agreement between Defendant Transocean Offshore Holdings, Ltd. ("Transocean"), an offshore drilling contractor, and Chevron. Neither Oceaneering, Transocean, nor Chevron (collectively, "Defendants") owned or operated the *Deepwater Conqueror*.[2] On January 13, 2021, Santee reported his alleged injury to Transocean which was documented in an incident report form.

Based on the foregoing, on September 14, 2021, Plaintiff commenced this action in the Harris County District Court for the 165th Judicial District, asserting: (1) a negligence cause of action under the Jones Act against Defendants; (2) unseaworthiness against Defendants; and (3) failure to pay maintenance and cure

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[1] Santee's original petition alleges he sustained his injuries on January 1, 2021. However, Oceaneering and Defendant Transocean Offshore Holdings, Ltd. show Santee was not aboard the *Deepwater Conqueror* on January 1, 2021, and the incident report Santee completed regarding the alleged accident states he sustained the injury on January 11, 2021. Therefore, the Court assumes for the purposes of this Order the alleged accident occurred on January 11, 2021 and not on January 1, 2021.

[2] The owner and operator of the *Deepwater Conqueror* was Triton Conqueror GmbH, who has not been named in this suit.

against Oceaneering. On October 22, 2021, Chevron removed this action with the consent of Transocean and Oceaneering on the basis of federal question jurisdiction under the Outer Continental Shelf Lands Act ("OCSLA"). On November 19, 2021, Santee moved to remand. On January 27, 2022, the Court denied Santee's motion for remand, finding Santee was not a Jones Act seaman. On April 7, 2022, Oceaneering moved for summary judgment. On April 29, 2022, Santee moved for reconsideration of its motion to remand. On April 29, 2022, the Court denied Santee's motion for reconsideration. On July 21, 2022, the Court granted Oceaneering's motion for summary judgment. On November 11, 2022, Chevron moved for summary judgment. On November 15, 2022, Transocean moved for summary judgment.

II. STANDARD OF REVIEW

Summary judgment is proper when "there is no genuine dispute as to any material fact and the movant is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(a). The Court must view the evidence in a light most favorable to the nonmovant. *Coleman v. Hous. Indep. Sch. Dist.*, 113 F.3d 528, 533 (5th Cir. 1997). Initially, the movant bears the burden of presenting the basis for the motion and the elements of the causes of action upon which the nonmovant will be unable to establish a genuine dispute of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). The burden then shifts to the nonmovant to come forward with specific

facts showing there is a genuine dispute for trial. *See* Fed. R. Civ. P. 56(c); *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586–87 (1986). "A dispute about a material fact is 'genuine' if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Bodenheimer v. PPG Indus., Inc.*, 5 F.3d 955, 956 (5th Cir. 1993) (citation omitted).

But the nonmoving party's bare allegations, standing alone, are insufficient to create a material dispute of fact and defeat a motion for summary. If a reasonable jury could not return a verdict for the nonmoving party, then summary judgment is appropriate. *Liberty Lobby, Inc.*, 477 U.S. at 248. The nonmovant's burden cannot be satisfied by "conclusory allegations, unsubstantiated assertions, or 'only a scintilla of evidence.' " *Turner v. Baylor Richardson Med. Ctr.*, 476 F.3d 337, 343 (5th Cir. 2007) (quoting *Little v. Liquid Air Corp.*, 37 F.3d 1069, 1075 (5th Cir. 1994)). Uncorroborated self-serving testimony cannot prevent summary judgment, especially if the overwhelming documentary evidence supports the opposite scenario. *Vais Arms, Inc. v. Vais*, 383 F.3d 287, 294 (5th Cir. 2004). Furthermore, it is not the function of the Court to search the record on the nonmovant's behalf for evidence which may raise a fact issue. *Topalian v. Ehrman*, 954 F.2d 1125, 1137 n.30 (5th Cir. 1992). Therefore, "[a]lthough we consider the evidence and all reasonable inferences to be drawn therefrom in the light most favorable to the nonmovant, the nonmoving party may not rest on the mere allegations or denials of

its pleadings, but must respond by setting forth specific facts indicating a genuine issue for trial." *Goodson v. City of Corpus Christi*, 202 F.3d 730, 735 (5th Cir. 2000).

III. LAW & ANALYSIS

Chevron contends: (1) Santee's negligence claims against Chevron fails as a matter of law because it does not owe Santee a duty of care; and (2) Santee's unseaworthiness claim against Chevron fails as a matter of law because Chevron did not own or operate the *Deepwater Conqueror*. Transocean contends: (1) Santee's negligence claim against it fails because Transocean did not breach any of its duties owed to Santee; and (2) Santee cannot maintain an unseaworthiness claim against Transocean because it is barred as a matter of law. Santee contends: (1) both Chevron and Transocean owed him a duty of care and also breached that duty; and (2) both Chevron and Transocean are liable for failing to maintain a seaworthy vessel causing to his injury. The Court will first address Chevron's motion before turning to Transocean's motion.

A. Chevron's Motion for Summary Judgment

Chevron contends: (1) Chevron does not owe Santee a duty of care because Santee, his employer, and Transocean were independent contractors of Chevron at the time of Santee's alleged injury, and therefore, Santee's negligence claims fail; and (2) Chevron did not own or operate the *Deepwater Conqueror*, so Santee's unseaworthiness claim against Chevron must fail. Santee contends: (1) by having a

company representative present on the *Deepwater Conqueror*, Chevron retained enough control over Santee and his work to impose a duty of care; and (2) Chevron is at least partially responsible for the Vessel's alleged unseaworthiness. The Court first turns to Santee's negligence claims before evaluating his unseaworthiness claim.

1. Negligence Claims

Chevron contends Santee was an independent contractor and as such, Chevron did not exercise sufficient operational control over his work to impose vicarious liability on Chevron. Chevron further contends Santee's remaining tort claims are traditional maritime claims, and as such, maritime law applies rather than Louisiana state law as prescribed by OCSLA. Santee contends Louisiana law applies and under such law, Chevron retained operational control over his work thus imposing vicarious liability on Chevron.[3]

A principal is vicariously liable for the tortious actions of its independent contractors when the principal exercises operational control over its independent

[3] Chevron contends maritime law applies in this case as Santee's claims are traditional maritime torts. Santee contends Louisiana law applies, not maritime law. Under OCSLA, the state law of the adjacent state applies unless maritime law "applies of its own force." *Petrobas America, Inc. v. Vicinay Cadena, S.A.*, 815 F.3d 211, 216 (5th Cir. 2016). However, the Court finds an analysis of this issue is unnecessary as, under either body of law, the result would be the same.

contractors. *Wilkins v. P.M.B. Systems Eng'g, Inc.*, 741 F.2d 795, 800 (5th Cir. 1984) (applying maritime law); *Fruge v. Parker Drilling Co.*, 337 F.3d 558, 561 (5th Cir. 2003) (applying Louisiana state law under OCSLA). "Operational control exists only if the principal has direct supervision over the step-by-step process of accomplishing the work such that the contractor is not entirely free to do the work his own way." *Fruge*, 337 F.3d at 561; *Wilkins*, 741 F.2d at 800 ("There must be such a retention of a right of supervision that the contractor is not entirely free to do the work in his own way."). The principal's reservation of the right to monitor a contractor's performance and have a "company man" who observes the contractor's work does not mean the principal retains the control of the methods or detail of the contractor's work. *Coulter v. Texaco, Inc.*, 117 F.3d 909, 912 (5th Cir. 1997). Essentially, without an "express or implied order to the contractor to engage in unsafe work practice leading to an injury, a principal . . . cannot be liable under the operational control exception." *Coulter*, 117 F.3d at 912.

Here, the contract governing the relationship between Chevron and Santee's employer, Oceaneering, reads as follows:

> The Services are provided by [Oceaneering] as an independent contractor, and [Oceaneering] and the members of the Contractor Group are not employees, agents or representatives of [Chevron] or [Chevron's Affiliates]. [Oceaneering] has complete control, supervision and direction over its equipment and personnel and over the manner and method of the performance of the Services. Any instructions or directions of any kind given by [Chevron] do not relieve

> [Oceaneering] of its duties and obligations as an independent contractor.[4]

Therefore, by the terms of the governing agreement, Oceaneering (and its employees) are independent contractors of Chevron, and Chevron does not have the right to exercise any supervision or control over Oceaneering's employees. Though, Santee contends Chevron did, in fact, retain some operational control over Oceaneering as Oceaneering reported to Chevron regarding the work performed, and Chevron "required" Oceaneering to follow Chevron policies and procedures in performing under their contract.[5] Santee also contends Chevron required Oceaneering to submit a safety plan for review and approval.[6] However, assuming without deciding Santee's allegations are true, the record does not show Chevron directed Santee to perform the activity that lead to the injury nor does it show Chevron dictated *how* Santee was to perform that activity. Instead, the record shows Chevron and Oceaneering had a contract which clearly described Oceaneering as an

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[4] *Defendant Chevron U.S.A. Inc.'s Motion for Summary Judgment*, Document No. 42, Exhibit A-2, ¶ 14.1 (*Master Agreement Between Chevron U.S.A. Inc. and Oceaneering International, Inc.*).

[5] *Plaintiff's Response to Defendant Chevron U.S.A. Inc.'s Motion for Summary Judgment*, Document No. 50 at 5; *Plaintiff's Response to Defendant Chevron U.S.A. Inc.'s Motion for Summary Judgment*, Document No. 50, Exhibit 2 at 118:5–13.

[6] *See Plaintiff's Response to Defendant Chevron U.S.A. Inc.'s Motion for Summary Judgment*, Document No. 50, Exhibit 4.

independent contractor, and Oceaneering merely had to report to Chevron on the work it was contracted to perform and follow Chevron's general safety requirements.[7] Even taken as a whole, these facts do not indicate Chevron retained the level of control over Oceaneering's, and consequently Santee's, work to the level that Santee was not "free to do the work his own way." *Fruge*, 337 F.3d at 561. In fact, Santee was the acting supervisor for Oceaneering employees and was the one who was responsible for directing the work of Oceaneering employees.[8] Therefore, the Court finds Santee's negligence claims against Chevron fail as a matter of law. Thus, the Court finds summary judgment on Santee's negligence claims is proper. Accordingly, summary judgment on Santee's negligence claims against Chevron is granted. The Court now turns to Santee's unseaworthiness claim.

2. Unseaworthiness Claim

Chevron contends Santee's unseaworthiness claim fails as a matter of law because Chevron does not own the Vessel. Santee contends Chevron's operational control over the Vessel is sufficient to raise a question of material fact sufficient to preclude summary judgment.

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[7] *See Plaintiff's Response to Defendant Chevron U.S.A. Inc.'s Motion for Summary Judgment*, Document No. 50, Exhibit 4.

[8] *Defendant Chevron U.S.A. Inc.'s Motion for Summary Judgment*, Document No. 42, Exhibit B at 23:22–24:7.

"A vessel's owner is duty bound to furnish a vessel reasonably fit for its intended purpose." Terrel River Serv. Inc. v. SCF Marine Inc., 20 F.4th 1015, 1018 (5th Cir. 2021) (citing *Morales v. City of Galveston*, 370 U.S. 165, 169 (1962)). However, a charterer may be treated as a vessel's owner, and thus liable for the unseaworthiness of a vessel, if "the vessel owner transfers full possession and control to the charterer, who in turn furnishes the crew and maintenance for the vessel." *Forrester v. Ocean Marine Indem. Co.*, 11 F.3d 1213, 1215 (5th Cir. 1993).

Santee contends Chevron's "control of the vessel's operations and navigation" are sufficient to show Chevron, who did not own the Vessel,[9] should be liable for the alleged unseaworthiness of the Vessel. However, Santee fails to present any evidence Chevron was transferred full possession or control of the Vessel and that it furnished its own crew for the Vessel. Rather, Chevron had only a superintendent on the Vessel to oversee the drilling operations—not a full crew who operated the Vessel.[10] Therefore, the Court finds Santee's unseaworthiness claim against Chevron fails as a matter of law. The Court further finds summary judgment is

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[9] *Defendants Chevron U.S.A. Inc.'s and Transocean Offshore Deepwater Drilling Inc.'s Joint Opposition to Plaintiff's Motion to Remand*, Document No. 9, Exhibit A, ¶ 13 (*Declaration of David Mitchell*).

[10] *Plaintiff's Response to Defendant Chevron U.S.A. Inc.'s Motion for Summary Judgment*, Document No. 50, Exhibit 3 at 17:17–18:13.

proper. Accordingly, summary judgment as to Santee's unseaworthiness claim against Chevron is granted.

B. Transocean's Motion for Summary Judgment

Transocean contends summary judgment is proper with respect to Santee's negligence claims because he fails to show Transocean breached any duties it owed to him. Transocean further contends it is entitled to summary judgment as a matter of law as to Santee's unseaworthiness claim against it because the LHWCA expressly bars such an action in this case. Santee contends there is a genuine issue of material fact precluding summary judgment on his negligence claims and the LHWCA does not preclude his unseaworthiness claim. The Court first addresses the negligence claims before turning to the unseaworthiness claim.

a. Negligence Claims

Transocean contends it did not breach any of its *Scindia* duties it owed to Santee and further contends it does not owe a general duty to guarantee the safety of every person on board the Vessel. Santee contends he has sufficiently created a genuine issue of material fact as to whether Transocean breached it duties owed to Santee sufficient to preclude summary judgment.

The LHWCA states the exclusive remedy for an injured person covered by the LHWCA is against the vessel. 33 U.S.C. § 905(b). A "vessel" as defined by the LHWCA includes the "vessel's owner, owner *pro hac vice*, agent, operator, charterer

or bare boat charterer, master, officer, or crew member." 33 U.S.C. § 902(21). The Supreme Court has held a vessel owes limited and narrow duties to maritime workers under 33 U.S.C. § 905(b). *See Scindia Steam Nav. Co., Ltd. v. De Los Santos*, 451 U.S. 156 (1981). Those duties are: (1) the turnover duty; (2) the active control duty; and (3) the duty to intervene. *Kirksey v. Tonhai Mar.*, 535 F.3d 388, 392 (5th Cir. 2008); *Scindia*, 451 U.S. at 167; *Greenwood v. Societe Francaise De*, 111 F.3d 1239, 1248 (5th Cir. 1997). Transocean concedes it meets the statutory definition of "vessel," and thus owed Santee certain duties under *Scindia*. The Court first analyzes whether Transocean breached its turnover duty before addressing whether it breached its other *Scindia* duties.

1. Turnover Duty

"The turnover duty applies to the shipowner's obligation before or at the commencement of the [maritime employee's] activities[,]" and imposes two duties on the vessel owner. *Kirksey*, 535 F.3d at 392. First, the vessel owner must "exercise ordinary care under the circumstances to turn over the ship and its equipment in such condition that an expert [maritime employee] can carry on [his] operations with reasonable safety." *Id.* (citing *Fed. Marine Terminals, Inc. v. Burnside Shipping Co.*, 394 U.S. 404, 416–17 & n. 18 (1969)). The vessel owner must also "warn the [maritime employee] of latent or hidden dangers which are known to the vessel or should have been known to it; however, a vessel owner need not provide a warning

for "open and obvious" dangers or "dangers a reasonably competent [maritime employee] should anticipate encountering." *Kirksey*, 535 F.3d at 392 (citing *Howlett v. Birkdale Shipping Co., S.A.*, 512 U.S. 92, 99–100 (1994)).

Here, Transocean contends it did not breach its turnover duty because it did not turnover any equipment to Santee. Indeed, the ROV equipment Santee was using and performing maintenance on when he was allegedly injured was owned by Oceaneering.[11] While he does not specifically respond to Transocean's argument regarding the turnover duty, Santee contends Transocean failed to provide a safe work environment because the area on the Vessel where Santee performed his work was inadequate for that work. Specifically, Santee contends he was made to work in an area on the Vessel that made his work more difficult and, consequently, more dangerous. However, Santee fails to show Transocean knew or should have known the Vessel's Lars deck, the area where Santee was performing the work when he was allegedly injured, was large enough to accommodate Oceaneering's ROV equipment. Therefore, the Court finds Santee fails create a genuine issue of material fact as to whether Transocean breached its turnover duty. Thus, the Court finds summary judgment is proper. Accordingly, summary judgment as to Santee's claim

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[11] *Motion for Summary Judgment*, Document No. 44, Exhibit B at 39:21–24.

against Transocean based on a breach of the turnover duty is granted. The Court now turns to whether Transocean breached its active control duty owed to Santee.

2. Active Control Duty

The active control duty applies if the vessel "actively involves itself in the cargo operations and negligently injuries" a maritime employee, or if the vessel "fails to exercise due care to avoid exposing [the maritime employee] to harm from hazards [he] may encounter in areas, or from equipment, under the active control of the vessel" during the maritime employee's work operations. *Scindia*, 451 U.S. at 167. Thus, "liability under the active control duty is premised on the presence or existence of a 'hazard' under the active control of the vessel." *Kitchens v. Stolt Tankers B.V.*, 657 F. App'x 248, 251 (5th Cir. 2016) (per curiam) (quoting *Pimental v. LTD Canadian Pac. Bul*, 965 F.2d 13, 16 (5th Cir. 1992)). While the active control duty is not "relieved when the hazard is open and obvious," if the vessel "has relinquished control over an area to the [maritime employee], then it is the primary responsibility of the [maritime employee] to remedy a hazard in that area." *Pimental*, 965 F.2d at 16 (citing *Masinter v. Tenneco Oil Co.*, 867 F.2d 892, 897 (5th Cir. 1989)).

Transocean contends Oceaneering, and Santee, had active control of both the equipment and the area in which Santee performed his work on the equipment, and thus it was Santee's responsibility to remedy any hazard in that area. While Santee

does not expressly respond to this contention, he generally contends Transocean had control over the Vessel, including the Lars deck where he was working at the time of his alleged injury, and failed to adequately warn Santee of or remedy the "hazard" created by the lack of space for Santee to perform maintenance on the ROV equipment. Assuming without deciding the alleged lack of adequate space to perform a specific maintenance task on Oceaneering's ROV equipment is a hazard, Santee fails to produce evidence showing the ROV equipment and the Lars deck where Santee performed his work at the time of his injury was within Transocean's active control. While the Lars deck and the ROV equipment were physically located on the Vessel at the time of the injury, it is undisputed Santee and the other Oceaneering employees on the Vessel were the ones using the Lars deck to perform their work.[12] Further, Santee was the supervising Oceaneering employee and had control over the ROV work performed on the Vessel. Thus, the Court finds Transocean did not have active control over either the ROV equipment or the Lars deck with the work and alleged injury occurred. Summary judgment is therefore proper. Accordingly, summary judgment as to Santee's claim against Transocean

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[12] *Plaintiff's Response to Defendant Transocean Offshore Deepwater Drilling Inc.'s Motion for Summary Judgment*, Document No. 51 at 6, 18, and 21.

based on a breach of the active control duty is granted. The Court now turns to whether Transocean breached its duty to intervene.

3. Duty to Intervene

"[A] vessel has a duty to intervene when it has actual knowledge of a dangerous condition and actual knowledge that the stevedore, in the exercise of 'obviously improvident' judgment, has failed to remedy it." *Greenwood*, 111 F.3d at 1248. This duty "is narrow and requires something more than mere shipowner knowledge of a dangerous condition." *Id.* at 1249 (quotations omitted).

Transocean contends the equipment at issue was not in a dangerous condition and was always within Oceaneering (and Santee's) control. While Santee does not address in detail how Transocean breached its duty to intervene, he essentially contends the location on Vessel where he was made to perform his ROV duties was not adequate and resulting in his alleged injury.[13] However, Santee does not allege nor does he show that Transocean had actual knowledge of the alleged dangerous condition, assuming without deciding the configuration of the Vessel in the area where Santee was working and/or with the equipment itself is considered a dangerous condition. Thus, the Court finds Santee fails to show Transocean

[13] *Plaintiff's Response to Defendant Transocean Offshore Deepwater Drilling Inc.'s Motion for Summary Judgment*, Document No. 51 at 17.

breached its duty to intervene. Therefore, summary judgment as to Santee's claim against Transocean based on a breach of the duty to intervene is proper. Accordingly, summary judgment as to Santee's claim against Transocean based on a breach of the duty to intervene is granted. The Court now turns its attention to Santee's unseaworthiness claim against Transocean.

b. Unseaworthiness Claim

Transocean contends Santee's unseaworthiness claim against it is barred as a matter of law by the LHWCA. Santee contends the LHWCA does bar its unseaworthiness claim against Transocean. The LHWCA states "[t]he liability of a vessel under this subsection shall not be based upon the warranty of seaworthiness or a breach thereof at the time the injury occurred." 33 U.S.C. § 905(b). Thus, "a longshoreman's unseaworthiness remedy against a vessel [has been] abolished, and he [is] limited to bringing a negligence claim against the vessel." *Tillman v. Lykes Bros. S.S. Co.*, Inc., F. Supp. 1402, 1404 (S.D. Tex. Feb. 23, 1990).

Here, as described above, the LHWCA applies to Santee's claims against Transocean. Therefore, Santee's unseaworthiness claim against Transocean is barred as a matter law due. Thus, the Court finds summary judgment is proper with respect to Santee's unseaworthiness claim against Transocean. Accordingly, summary judgment is granted as to Santee's unseaworthiness claim against Transocean.

IV. CONCLUSION

Based on the foregoing, the Court hereby

ORDERS that Defendant Chevron U.S.A. Inc.'s Motion for Summary Judgment (Document No. 43) is **GRANTED.** The Court further

ORDERS that Defendant Transocean Offshore Deepwater Drilling Inc.'s Motion for Summary Judgment (Document No. 44) is **GRANTED**.

THIS IS A FINAL JUDGMENT.

SIGNED at Houston, Texas, on this 16 day of February, 2023.

David Hittner

DAVID HITTNER
United States District Judge