UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION

EUNICE PILETTE	CIVIL ACTION NO. 6:17-CV-01672 LEAD
VERSUS	JUDGE JUNEAU
UNITED MARINE OFFSHORE LLC ET AL	MAGISTRATE JUDGE HANNA

MEMORANDUM RULING & JUDGMENT

Before the Court is a Motion for Summary Judgment, Rec. Doc. [66], filed by Third Party Defendant, Sewart Supply LLC ("Sewart"). The relevant background of this case is straightforward. Plaintiff, Eunice Pilette, was allegedly injured during a collision between the M/V MISS ALLIE and the LB SUPERIOR RESULT. Plaintiff, a tank cleaner aboard the LB SUPERIOR RESULT, brought suit against Defendant, United Marine Offshore LLC ("United Marine") owner of the M/V MISS ALLIE, under general maritime law. United Marine brought a third-party demand against Sewart Supply ("Sewart") who had performed repairs and inspection on the M/V MISS ALLIE before the accident. United Marine seeks to recover in contribution from Sewart Supply should United Marine be cast in judgment. After review of the parties' submitted briefs and the relevant law, the Court **DENIES** the motion for the following reasons.

Law & Analysis

The Court is tasked with deciding an unsettled question of law in this Circuit. The sole issue before the court is whether a third-party joint tortfeasor can be held liable to a Defendant in contribution when Plaintiff's claim against the third-party joint tortfeasor is prescribed.

A. Sewart's Argument

Sewart argues for the application of a rule in *Simeon v. T. Smith and Son, Inc.*, 452 F.2d 1421 (5th Cir. 1988) which is the Fifth Circuit's only guidance on the present issue. In addition, Sewart contends that *Hasty v. Trans Atlas Boats, Inc.*, 2005 WL 3541039, at *1 (E.D. La. Oct. 20, 2005) stands for the principle that prescription bars an action in contribution in the maritime context. Finally, Sewart argues that *In re Two-J Ranch, Inc.*, 534 F. Supp. 2d 671, 688 (W.D. La. 2008), which allowed contribution even when the original action was prescribed, should not be followed.

B. United Marine's Argument

United Marine argues that contribution is allowed as a general rule under maritime law. United Marine contends that *Simeon* is an exception to this general rule and should not be expanded. In addition, United Marine argues that this Court should follow *In re Two-J Ranch* and *Loeber v. United States*, 803 F.Supp. 1154 (E.D. La. 1992) to allow it to seek contribution against Sewart.

C. Summary Judgment Standard

Federal Rule of Civil Procedure 56 instructs that summary judgment is proper if the record discloses no genuine issue as to any material fact such that the moving party is entitled to judgment as a matter of law. No genuine issue of fact exists if the record taken as a whole could not lead a rational trier of fact to find for the non-moving party. *See Matsushita Elec. Indus. Co. v. Zenith Radio.*, 475 U.S. 574, 586 - 587 (1986). A genuine issue of fact exists only "if the evidence is such that a reasonable jury could return a verdict for the non-moving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). The mere argued existence of a factual dispute does not defeat an otherwise properly supported motion. *See id*. Therefore, "[i]f the evidence is merely colorable, or is not significantly probative," summary judgment is appropriate. *Id*. at 249-50 (citations omitted). Summary judgment is also proper if the party opposing the motion fails to establish an essential element of her case. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986). In this regard, the non-moving party must do more than simply deny the allegations raised by the moving party. *See Donaghey v. Ocean Drilling & Exploration Co.*, 974 F.2d 646, 649 (5th Cir. 1992). Rather, he must come forward with competent evidence, such as affidavits or depositions, to buttress his claims. *Id*. *Martin v. John W. Stone Oil Distrib., Inc.*, 819 F.2d 547, 549 (5th Cir. 1987). Finally, in evaluating the summary judgment motion, the Court must read the facts in the light most favorable to the non-moving party. *Anderson*, 477 U.S. at 255.

As previously stated, Sewart and United Marine both argue legal positions with regard to the law of contribution in a maritime context. The Court finds no factual issues presented, and thus, no genuine issue of material fact exists.

D. The Law on Contribution

General maritime law is the applicable law in this case. Under general maritime law, joint tortfeasors are held jointly and severally liable to a plaintiff. *Shell Offshore, Inc. v. Tesla Offshore, LLC*, 2017 WL 1108351, at *3 (E.D. La. Mar. 24, 2017) (citing *McDermott, Inc. v AmClyde*, 511 U.S. 202 at 220 (1994)). However, the joint tortfeasors' liability is established through principles of comparative or proportionate fault. *Id*. (citing *United States v. Reliable Transfer Co.*, 421 U.S. 397, 411 (1975)). Despite this general rule, if there was never liability against the party cast in contribution such as through a statutory bar of the action, then there is no right to contribution. *Simeon v. T. Smith & Son, Inc.*, 852 F.2d 1421, 1434 (5th Cir. 1988).

This case requires an examination of the *Simeon* exception and the general common law of contribution in order to determine the merits of Sewart's motion.[1] In *Simeon*, the Fifth Circuit held that a defendant vessel owner could not seek contribution from the plaintiff's Jones Act employer for loss of consortium damages.

[1] In the context of maritime law, courts are to look to the general common law in absence of federal cases or federal admiralty rules rather than state law to promote uniformity in maritime law. *See Marastro Compania Naviera, S.A. v. Canadian Mar. Carriers, Ltd.*, 959 F.2d 49, 53 (5th Cir. 1992).

Simeon, 852 F. 2d at 1434. Relying on W. Prosser & P. Keeton, *Prosser & Keeton on the Law of Torts* § 50 at 339–40 (1984) and F. Harper, F. James, O. Gray, 3 *The Law of Torts* § 10.2 at 46 (2d ed. 1986), the Fifth Circuit recognized, "The traditional view is that there can be no contribution between concurrent tort-feasors unless they share a 'common legal liability' toward the plaintiff." *Id*. at Furthermore, "If there was never any such liability, as where the contribution defendant has the defense of family immunity, assumption of risk, or the application of an automobile guest statute, or the substitution of workers' compensation for common law liability, then there is no liability for contribution." *Id*. Applying these principles, the court found that the Jones Act employer could not be liable in contribution since a Jones Act employer has no liability for loss of consortium damages under maritime law. *Id*.

The treatises relied upon by the Fifth Circuit in *Simeon* also shed light on the issue of prescription or statute of limitations in the present case. "[T]he contribution claim is not extinguished by the expiration of the limitations period on the tort claim against the co-tortfeasor, provided that common liability existed when the torts occurred, i.e., when the victim was injured." F. Harper, F. James, O. Gray, 3 *The Law of Torts* § 10.2 at 56 (3d ed. 2007). "It is generally agreed that the fact that the statute of limitations has run against the original plaintiff's action does not bar a suit for contribution, since that cause of action does not arise until payment." W. Prosser

& P. Keeton, *Prosser & Keeton on the Law of Torts* § 50 at 340 (1984); *See also Keleket X-Ray Corp. v. United States*, 275 F.2d 167, 169 (D.C. Cir. 1960).

These treatises accord with what has been termed the "inchoate right theory" of contribution which permits contribution after the original action is prescribed. Martin Turck, *Contribution Between Tortfeasors in American and German Law – A Comparative Study*, 41 Tul. L. Rev. 1, 21–22 (1966). Under this theory, contribution first arises when liability is created by the tortious conduct and is then perfected when one of multiple tortfeasors pays the plaintiff. *Sea-Land Serv., Inc. v. United States*, 874 F.2d 169, 172 (3d Cir. 1989) ("[I]f the plaintiffs had a wrongful death claim against the City immediately following the decedents' deaths, ... the [defendant], at that point, had an *inchoate* claim for contribution against the City under federal maritime law which would mature when it paid more than its share of the joint liability.").

Indeed, the *Simeon* court acknowledged this theory when it said, "The contribution action arises from the original obligation that the party cast in contribution owed to the plaintiff." *Simeon*, 852 F. 2d at 1434. Thus, when joint tortfeasors share a "common legal liability" prescription or the statute of limitations

does not bar contribution.[2] In this case, United Marine and Sewart share a common legal liability. Both United Marine's and Sewart's liabilities stem from failures and omissions regarding the M/V MISS ALLIE which resulted in Plaintiff's injuries.

Based on the above analysis, this Court agrees with *In re Two-J Ranch, Inc.*, 534 F. Supp. 2d 671, 688 (W.D. La. 2008) ("[T]he time-bar of Ms. King's claim against Tower Rock has no effect on Two–J/VD & S's contribution claim against Tower Rock."). *In re Two-J Ranch, Inc.* relied on the Restatement of Torts which also accords with the analysis rendered here. Restatement (Third) of Torts: Apportionment Liab. § 23 cmt. k (2000) (Notwithstanding Comment *j*, a person is not protected from contribution by the fact that the plaintiff would be precluded from recovery because of a statute of limitation).

The Court disagrees with the limited commentary to the contrary. *Hasty v. Trans Atlas Boats, Inc.*, No. CIV.A. 02-1542, 2005 WL 3541039, at *6 (E.D. La. Oct. 20, 2005) is unpersuasive. *Hasty* dealt with contribution under Louisiana state law rather than general maritime law. Although the *Hasty* court mentioned in a footnote that contribution would be unavailable under general maritime law because of prescription of the original action, that issue was not directly before the court, and

[2] The exception in *Simeon* applies when the defendant in contribution has a statutory or legal immunity that relieves his tort *duty* as recognized in *Loeber v. United States*, 803 F. Supp. 1154, 1156 (E.D. La. 1992) ("That [plaintiff] failed to timely do so, and as a result, their claim was found time barred, is a far cry from the circumstances presented by a third-party demand against a potential tortfeasor who owes no duty in tort to an injured plaintiff."). The statute of limitations has no bearing on Sewart's maritime tort duties in this case.

this Court finds the note unpersuasive.[3] Additionally, the Court finds the critique of *In re Two-J Ranch* in Sean Wion, *Claiming Contribution Against Time-Barred Joint Tortfeasors: Does A McDermott Proportionate Share Approach to Damage Allocation Offer the Most Equitable Solution?*, 34 Tul. Mar. L.J. 657 (2010) unpersuasive. This Court is not willing to expand the settlement-contribution rule in *McDermott, Inc. v. AmClyde*, 511 U.S. 202, 211-12, 1994 AMC 1521, 1527-28 (1994) to statutes of limitation.

Conclusion

Based on the foregoing analysis, Sewart's Motion for Summary Judgment, Rec. Doc. [66], is **DENIED**. Sewart and United Marine share a common legal liability. The prevailing theory of contribution and the theory used in this Circuit does not prevent a defendant from seeking contribution from a third party even if the statute of limitations on the original plaintiff's action has run against the third party.

[3] "Even if Trans Atlas Boats' third party claim against the GLPC was based on general maritime law, the court finds under the 'traditional view' of contribution adopted by the Fifth Circuit in *Simeon*, Trans Atlas Boats may not be entitled to contribution from the GLPC, because the GLPC was immune from direct suit by the Plaintiff based on prescription, and there has been no suggestion that the GLPC owed Trans Atlas 'some independent duty, or has made some express or implied promise to [Trans Atlas] so that a "contribution" action is permissible.'" *Simeon*, 852 F.2d at 1434-35. *Hasty v. Trans Atlas Boats, Inc.*, No. CIV.A.02-1542, 2005 WL 3541039, at *6 note 5 (E.D. La. Oct. 20, 2005).

THUS DONE AND SIGNED in Lafayette, Louisiana, on this 23rd day of March, 2020.

MICHAEL J. JUNEAU
UNITED STATES DISTRICT JUDGE