NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2005 CA 1423

ALBERT DALE BUCHANAN

VERSUS

J. RAY McDERMOTT, INC. AND SIGNET MARINE CORPORATION

On Appeal from the 16th Judicial District Court
Parish of St. Mary, Louisiana
Docket No. 107,731, Division "F"
Honorable Edward M. Leonard, Jr., Judge Presiding

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J. Ray McDermott, Inc. and
Crowley Marine Services, Inc.

BEFORE: PARRO, McDONALD, AND HUGHES, JJ.

Judgment rendered SEP 0 1 2006

PARRO, J.

Albert Dale Buchanan appeals from a summary judgment, which was granted in favor of Crowley Marine Services, Inc. (Crowley) and J. Ray McDermott, Inc. (McDermott), dismissing his claims against them.

Buchanan was injured while tying a chain tow bridle to the forward rails on the bow of a steel deck barge. The barge was owned by Crowley and chartered to McDermott; Buchanan worked for Allison Marine Contractors, Inc., which had a contract with McDermott for clean-off or reinstatement of the barge to on-charter condition. In his maritime personal injury suit, Buchanan brought claims against Crowley and McDermott, who eventually filed a motion for summary judgment. After considering the evidence presented by both sides, the court granted the motion and dismissed Buchanan's claims against those defendants.

Our "de novo" review of the record reveals that the evidence submitted by the defendants in support of their motion pointed out that there was an absence of factual support for elements essential to Buchanan's claims, on which he would bear the burden of proof at trial. He did not produce factual support sufficient to establish that he would be able to satisfy his evidentiary burden of proof at trial on those issues. See LSA-C.C.P. art. 966(C); Gisclair v. Bonneval, 04-2474 (La. App. 1st Cir. 12/22/05), 928 So.2d 39, 41-42. The reasons assigned by the district court judge fully and accurately describe the facts underlying Buchanan's claims, the evidence presented in support of and in opposition to the defendants' motion, the arguments and relevant legal principles, and the court's analysis and conclusions of law. We attach those written reasons and make them a part of this opinion. See Appendix. We find no error in the district court's analysis of the facts and law, and conclude that no genuine issues of material fact are in dispute. Therefore, summary judgment in favor of Crowley and McDermott was appropriate.

Accordingly, we affirm the judgment in accordance with Uniform Court of Appeal Rules 2-16.2(A)(5) and (6). All costs of this appeal are assessed to Buchanan.

AFFIRMED.

APPENDIX

ALBERT DALE BUCHANAN	16TH JUDICIAL DISTRICT COURT
VS. (DOCKET NO. 107,731)	PARISH OF ST. MARY
J. RAY McDERMOTT, INC. And SIGNET MARINE CORPORATION	STATE OF LOUISIANA

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REASONS FOR JUDGMENT

This matter came before the Court for hearing on January 4, 2005 on a Motion for Summary Judgment filed by CROWLEY MARINE SERVICES, INC., ("CROWLEY"), and J. RAY McDERMOTT, INC., ("McDERMOTT"). The suit arises from an accident suffered by Plaintiff on June 10, 1998. On that date, Plaintiff, who was employed by Allison Marine was assisting in a clean up operation on the *ISLA del SOL*, (barge). As he and others were readying the barge reinstate it to "on charter" status, they were attempting to loop the tow bridle around the rails along the bow of the barge. Because there was no winch on the tow bridle, they were using a nylon rope which was tied to the shackle and slings of the crane. The nylon rope broke and the crane slings and shackle popped hitting the Plaintiff and causing him to be injured

The barge was owned by CROWLEY and was under charter to McDERMOTT, INC. from May 22, 1998, until June 11, 1998, under a charter agreement which required McDERMOTT to return the barge in its pre-hire condition. Allison had been contracted to restore the barge to this condition by McDERMOTT. Pursuant to this agreement, McDERMOTT had the tug towed by Lee's towing to Allison Marine's shipyard on June 7, 1998, for clean-off and reinstatement to charter condition.

At the time of the accident, the Allison employees were engaged in restoring the tow bridle to its proper position. The tow bridle consisted of a heavy chain which was to be looped along each side of the rails of the barge and tied off with a rope. When the work began, there was no rope tied to tow bridle and the Allison workers needed a rope to lift the tow bridle with the crane slings. The crane operator asked for a rope and his supervisor called the Allison office asking for a rope. The Allison office told them that they were not going to buy a rope at which time, Plaintiff instructed two contract workers of Mexican nationality to find a rope. The Allison supervisor, by affidavit, stated that he knows that the Allison contract workers did not leave the barge because he was standing by the gangplank and no one got off of the barge. A rope was brought to Plaintiff by the contract workers. Plaintiff tied off the rope to the tow bridle and the crane. As the crane began lifting the

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tow bridle, the rope broke causing the shackle and crane slings to hit Plaintiff in the upper back/shoulder area knocking him into the forward bulkhead or breakwater.

Plaintiff in his petition asserts the following allegations of negligence against McDERMOTT and/or CROWLEY a cause of the damages suffered by him:

1) By the maintenance of rusty, broken cable winch that had fallen apart and had been replaced by a rope;

2) By using nylon rope instead of a cable winch which would have been the preferred equipment;

3) The master, owners, lessees and charterers failed to have the cable winch repaired and instead used nylon rope in its place;

4) The master, owners, lessees and charterers of Barge No. 574363 as the **M/V SIGNET HERCULES** improperly directed Plaintiff, Albert Dale Buchanan, to work in an unreasonably defective, and dangerous place where he was exposed to extreme danger of being struck as occurred in this case.

In their Motion for Summary Judgment, CROWLEY and McDERMOTT assert that the barge had never been equipped with a winch; the law does not require one; that they did not own, nor do they know who owned the rope in question; and that no CROWLEY or McDERMOTT employees were present nor did they ever directed MR. BUCHANAN in any way.

In support of its Motion, CROWLEY and McDERMOTT submit CROWLEY's responses to Plaintiff's interrogatories stating that the barge was never equipped with a winch. They also submit a pre-charter survey ("Exhibit E"), dated May 20, 1998 by Dufour, Laskay and Strouse, Inc. to establish that no winch was present on the barge as of that date. In an affidavit from the CEO of Allison Marine ("Exhibit G"), Don Orlando states that an overwhelming majority of barges as the *ISLA del SOL* are not equipped with an A-frame or electric winch to lift the tow bridle. He also states that tying off the tow bridle with a nylon rope and the use of a crane is commonplace in the marine outfitting industry.

Both CROWLEY and McDERMOTT in answers to interrogatories stated that they were not the owner of the rope in question. In his affidavit, ("Exhibit F"), Randy Percle, the Allison Marine superintendent of the cleanup job, cannot identify either CROWLEY or McDERMOTT as the owner of the rope in question. In his deposition, MR. BUCHANAN states that he does not know where the tie off ropes came from.

Finally, Randy Percle, states that no representatives from CROWLEY or McDERMOTT were present on site during the clean off job and that MR. BUCHANAN was typically given his

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instructions only from Randy Percle or Red Couvier, MR. BUCHANAN's foreman at Allison. Further, Plaintiff in his deposition, states that he was instructed to perform the tie-off operation either by the Allison Marine crane operator, Jeff Mayon, or his foreman, Red Couvier. Both Randy Percle and Don Orlando state in their affidavits that using a nylon rope to hoist a tow bridle is a common procedure in the marine outfitting business.

Plaintiff, in opposition, counters by producing the affidavits of Jeff Mayon, the crane operator and Red Couvier, the foreman. Both men state that a call was placed to the Allison Marine office to request a rope and it was refused. At that time, contract workers were instructed to obtain a rope and they did. Both verified that the contract workers did not leave the barge. Both indicated that after the rope broke, Jeff Mayon was sent by the Allison Marine office, to the hardware store to buy a nylon rope. Plaintiff also submits the report of his expert to the effect that ideally a winch would be present but it is not uncommon for this type of barge not to have a winch; that the rope used was not suitable for the tie-off operation; and that McDERMOTT and/or CROWLEY should be responsible if it was owned by McDERMOTT and/or CROWLEY. Plaintiff argues that because the contract laborers did not leave the barge, the rope was gotten off the barge and was owned by either McDERMOTT or CROWLEY.

The Court is mindful of the fact that this barge was delivered to Allison Marine for clean-off operations and to restore it to its pre-hire "on charter" condition.

> The courts have long recognized that the vessel owner has no duty to deliver his ship to the shipyard in a hazard-free condition, when the requested repairs would remedy the hazards which cause the injury. *See, e.g., West v. United States*, 361 U.S. 118, 80 S.Ct. 189, 4 L.Ed.2d 161 (1959).
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> Stass v. American Commercial Lines, Inc. 720 F.2d 879, *882 (C.A.La.,1983).
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> *Scindia* teaches that the ship is entitled to assume that the independent contractor aboard ship will act reasonably with a view towards the safety of its employees. 101 S.Ct. at 1624. Were this not so, the LHWCA's imposition of a negligence standard rather than a seaworthiness standard on the vessel's conduct towards the harborworkers would mean nothing.
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> Stass v. American Commercial Lines, Inc. 720 F.2d 879, *883 (C.A.La.,1983).

The barge was at the Allison Marine yard for three days before this accident happened. Plaintiff has introduced no evidence that Allison Marine performed no other work on the barge prior to this date. The rope could have been brought onto the barge by Allison personnel for other reasons prior to the time that this operation commenced.

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Regardless of ownership of the rope however, it is clear to the Court from the evidence submitted that 1) the barge was not required to be outfitted with a winch; 2) no one from McDERMOTT or CROWLEY directed plaintiff in his actions in any way and they were not present at any time during the clean-off of the barge; 3) Allison Marine had been contracted to restore the barge to its pre-hire "on-charter" condition by McDERMOTT and in conducting the operation, regardless of who was the owner of the rope, (which Plaintiff has not established to be either McDERMOTT or CROWLEY), it was ultimately the responsibility of the Allison employees to use a rope which was capable of safely lifting the tow bridle to complete the the tie-off operation and proper attachment of the tow bridle to the barge; and 4) Allison Marine refused to provide a rope to its employees to perform the job, telling them to find one and only furnishing a suitable rope after the injury to the plaintiff.

Considering the fact that it was the responsibility of Allison Marine to insure that its employees could perform this clean-off operation safely, that the employees asked the Allison Marine office for a rope and were refused and that Plaintiff is unable to prove that McDERMOTT or CROWLEY owned the rope in question, or that McDERMOTT or CROWLEY knew that MR. BUCHANAN was going to use that particular rope for that particular tie-off operation and failed to warn him of the danger thereof, the Court cannot find any liability on the part of McDERMOTT or CROWLEY.

As such, the Court finds that there is no genuine issue of fact and that McDERMOTT and CROWLEY are entitled to the Motion for Summary Judgment as a matter of law.

Judgment to be submitted accordingly.

Costs to be assessed to Plaintiff.

Done and signed in Franklin, this 10 day of January, 2005.

EDWARD M. LEONARD, JR.
DISTRICT JUDGE

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Dy. Clerk of Court