

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA**

<b>NORMAN PAUL TRAHAN</b>	*	<b>CIVIL ACTION</b>
<b>VERSUS</b>	*	<b>NO. 05-6381</b>
<b>LABORDE MARINE LIFTS, INC.</b>	*	<b>SECTION: "A"(4)</b>
	*	<b>HON. JAY C. ZAINEY</b>
*   *   *   *   *   *	*	<b>MAG. JUDGE KAREN WELLS ROBY</b>

**MEMORANDUM IN OPPOSITION TO  
MOTION FOR SUMMARY JUDGMENT**

**MAY IT PLEASE THE COURT:**

Defendant/Third-Party Plaintiff Laborde Marine Lifts, LLC (hereinafter "LML") submits the following Memorandum in Opposition to Third Party Defendant Major Equipment and Remediation Services, Inc's (hereinafter "Major") Motion for Summary Judgment.

**I. FACTUAL BACKGROUND**

This litigation arises out of what can only be described as an ill-advised practical joke. By way of background, Plaintiff Norman Paul Trahan (hereinafter "Plaintiff") was employed by LML as a deckhand/crane operator aboard the L/B LAB LIFT IV in November 2004. During that period, the vessel was serving as a work base and living quarters in the Gulf of Mexico for several other companies, including Halliburton Energy Services, Inc., Eagle Consulting, LLC, Brand Scaffold Builders, LLC, Weatherford Artificial Lift Systems, Inc., and Major. These

companies were contracted to, and working for, the vessel's time charterer BP. None of the companies were contracted to, or working for, LML.

In late November 2004, and while present aboard the vessel on his regular hitch, Plaintiff claims that he posted his "profile" onto the heterosexual portion of an internet dating website called "Hotornot.com."<sup>1</sup> As noted in Plaintiff's discovery responses, this "posting" allegedly was created with the assistance of Halliburton employee Ben Griffin (hereinafter "Griffin"), and uploaded in the presence of (amongst other individuals) Major employee Brad Sanner, (hereinafter "Sanner").<sup>2</sup> Obviously, the act of posting such a website had nothing whatsoever to do with Plaintiff's assigned duties aboard the vessel, and in no way served the interests of the vessel or his employer LML.

Plaintiff alleges that during his subsequent days off, Sanner was present when Griffin jokingly modified Plaintiff's profile to state that he was a homosexual crack addict.<sup>3</sup> When Plaintiff returned to the vessel for his next hitch, he claims he was subjected to ridicule and unsavory comments as a result of this "prank." These taunts apparently escalated into rumors that Plaintiff was seeking to use illegal drugs aboard the vessel. Indeed, a December 8, 2004 LML statement form submitted by LML Captain Gary Eaton stated that an unidentified individual "had been told by Majors Equipment man Brad Sanner that Norman Trahan had asked Brad where a good place to get high on the boat was."<sup>4</sup> Because of this very serious allegation (as apparently expressed by Sanner), the entire crew of the vessel was tested for illegal drugs.

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<sup>1</sup> See Exhibit "A" – Plaintiff's Louisiana State Court discovery responses pg 11-12, and Exhibit "B" – Plaintiff's Answers to LML's Interrogatories, pgs. 13-15.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> See Exhibit "C" - Laborde Marine Lifts, Inc. December 8, 2004 Statement of Gary Eaton.

All results were negative, and Plaintiff was transferred off the vessel upon his request shortly thereafter.

Plaintiff sued LML in this litigation for alleged “injuries” that he sustained arising out of the aforesaid “prank.”<sup>5</sup> As a result of that lawsuit, LML filed a Third-Party Complaint against Major and the other named entities for their alleged involvement in the matter, and tendered those third-party defendants to Plaintiff pursuant to Rule 14(c) of the Federal Rules of Civil Procedure.

## II. ARGUMENT

As your Honor stated in *Bridgestone/Firestone, Inc. v. M/V FU YUAN*, 2002 WL 31741236 (E.D. La. 2002), “[i]n determining whether a party is entitled to summary judgment, the court views the evidence in the light most favorable to the non-moving party.” Citing *Littlefield v. Forney Indep. School Dist.*, 268 F. 3d 275, 282 (5<sup>th</sup> Cir 2001). Further, summary judgment is appropriate “if the pleadings, depositions, answers to interrogatories, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. *Bridgestone/Firestone, Inc, supra*, citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 106 S. Ct. 2548 (1986). To that end, the moving party bears the burden, as an initial matter, of showing the district court that there is an absence of evidence to support the nonmoving party’s case. *Celotex*, 477 U.S. at 235. If the moving party fails to meet this initial burden, the motion must be denied regardless of the nonmoving party’s response. *Id.*

Simply put, the level of Major and Mr. Sanner’s involvement in the aforesaid prank is a material issue currently in dispute which precludes summary judgment at this stage. Indeed,

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<sup>5</sup> Plaintiff also has pending a state suit which is virtually identical to this litigation, with the exception that LML and Major are not parties to that state court claim.

there are numerous issues of material fact in dispute between Plaintiff and Major/Sanner on this point. As the aforesaid evidence suggests, Sanner was present during both the creation and modification of Plaintiff's website, and he was the first person to relate the rumor that Plaintiff wanted to "get high" aboard the vessel. Obviously, Major takes a different stance on these "facts," but this difference in opinion highlights that there are obviously facts in dispute between the parties. Indeed, it could very well be that Sanner was initially involved in changing Plaintiff's website, even though he never actually used a computer to do so. At a minimum, Plaintiff's assertions that Sanner was present during the aforesaid events call into question Sanner's affidavit that he "never visited the website claimed by plaintiff to be the cause of his damages."<sup>6</sup> As a result of such divergent contentions, LML respectfully suggests that summary judgment is inappropriate at this juncture.

This rationale equally applies to Major's "foreseeability" argument. There are genuine issues as to whether Sanner may have participated in the creation of the prank, even though he himself may not personally have a computer at his disposal. Until both Plaintiff and Sanner can be deposed on this issue, we respectfully submit the Court has insufficient evidence to conclusively hold that it was not foreseeable for Major employees to have caused the damages alleged by Plaintiff – as a matter of law.

LML in no way desires to "shotgun" third parties into this dispute. Indeed, LML believes Plaintiff's claims against it are both factually and legally deficient. However, LML has been forced to assert third party demands against Major and others because Plaintiff has made specific allegations that those third-party defendants were involved in the prank which is alleged to have caused his "injury."

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<sup>6</sup> See Affidavit of Brad Sanner, attached as Exhibit "B" to Major's Memorandum in Support.

Discovery in this matter has been significantly hampered because of plaintiff's repeated failures in corresponding with his counsel of record, his delays in responding to discovery, as well as the fact that plaintiff currently is incarcerated in Terrebonne Parish prison. It is anticipated that the issue of each party's respective involvement will be understood in greater detail after plaintiff can be deposed. Until then, LML respectfully submits that summary judgment in favor of Major (or any other party) would be premature and inappropriate, given that there are clear issues of material fact in dispute as to the level of Major's involvement in the prank.

For the foregoing reasons, LML respectfully prays this Honorable Court to deny Major's Motion for Summary Judgment.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 21<sup>st</sup> day of May, 2007, I electronically filed the foregoing with the Clerk of Court by using the CM/ECF system which will send a notice of electronic filing to the following:

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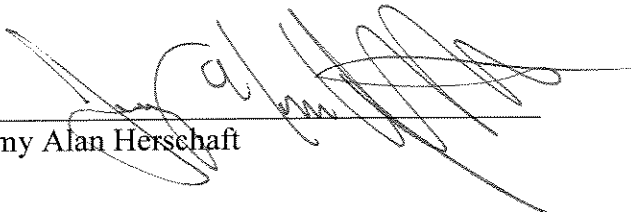
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