STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

NEWPORT, SC. **SUPERIOR COURT**

(FILED: November 4, 2016)

MAINSTAY FISHERIES, INC. AND RICHARD F. MUDD, SR.	:	
v.	:	
	:	**C.A. No. NC-2009-0382**
NORTHERN WATERFRONT ASSOCIATES, L.P. and NORTHERN WATERFRONT ASSOCIATES CO., LLC	:	
v.	:	
KANE AND KANE, INC.; EAST PASSAGE REAL ESTATE ASSOCIATES, L.P.; MT. HOPE MARINE CONTRACTORS, INC.; MICHAEL VIERA; SHELTOW I, INC.; JOHN SHELTON; CONTINENTAL INSURANCE COMPANY; AND CAN FINANCIAL CORPORATION	:	

DECISION

STONE, J. Before the Court is Plaintiff Mainstay Fisheries, Inc.'s (Plaintiff) Motion for Partial Summary Judgment and Requests for Jury Instructions on the issue of the duty of care owed to Plaintiff by Defendants Northern Waterfront Associates, L.P. and Northern Waterfront Associates, Co., LLC (jointly, Defendants). In response, Defendants filed a timely objection. This Court heard arguments from the parties on October 3, 2016.[1] Jurisdiction is pursuant to Rule 56 of the Rhode Island Superior Court Rules of Civil Procedure. For the reasoning set forth in further detail below, the Plaintiff's Motion is denied.

[1] Following the hearing, and pursuant to the Court's instructions, Plaintiff filed a supplemental memorandum of law in support of its Motion on October 4, 2016, and Defendants filed a timely reply on October 11, 2016.

I

Background

The following facts are undisputed by the parties. Plaintiff is a Rhode Island corporation which at all times material hereto had a principal place of business in Portsmouth, Rhode Island. Plaintiff Richard F. Mudd, Sr. is a resident of Tiverton, Rhode Island and was the sole shareholder and officer of Plaintiff. The F/V KISMET, a 65-foot, single-crew, offshore, wooden lobster boat, was built in 1981 and was owned by Plaintiff. Plaintiff Richard F. Mudd, Sr. was the Captain of the F/V KISMET. Throughout its service, the F/V KISMET was operated as an offshore lobster/gillnet[2] fishing vessel for Plaintiff.

Defendant Northern Waterfront Associates, L.P. is a Delaware Limited Partnership with a principal place of business in Pennsylvania. Defendant Northern Waterfront Associates, Co., LLC is a Delaware Limited Liability Company and is the general partner of Northern Waterfront Associates, L.P. Defendant Northern Waterfront Associates, L.P. was the owner of the Mount Hope Marine Terminal Dock (the Pier) in Portsmouth, Rhode Island at all relevant times. Defendant/Third-Party Defendant John Shelton (Mr. Shelton) is a resident of Tiverton, Rhode Island and the President of Defendant/Third-Party Defendant Sheltow I, Inc. (Sheltow). Sheltow consisted of a tugboat, the HOPE, and a barge, which were used for tasks like taking fresh water out to vessels. Sheltow was doing business out of the Pier until it could locate a more permanent base of operations.

[2] "A gillnet is a wall of netting that hangs in the water column, typically made of monofilament or multifilament nylon. Mesh sizes are designed to allow fish to get only their head through the netting, but not their body. The fish's gills then get caught in the mesh as the fish tries to back out of the net. As the fish struggles to free itself, it becomes more and more entangled. A variety of regulations and factors determine the mesh size, length, and height of commercial gillnets, including area fished and target species." Gillnets: Fishing Gear and Risks to Protected Species, Nat'l Oceanic & Atmospheric Admin. (Feb. 18, 2014), http://www.nmfs.noaa.gov/pr/interactions/gear/gillnet.htm.

Sheltow had purchased a crane and other equipment from Defendant Mt. Hope Marine Contractors. On July 3, 2007, Mr. Shelton was on the Pier working on the crane. On that day, there was a great deal of activity happening on the Pier; there were adolescents in the area preparing a bonfire,[3] there were individuals walking on the beach, including Sarah Edelstein (Ms. Edelstein), and there were laborers working, including Mr. Shelton and Mike Kelly (Mr. Kelly). According to Mr. Shelton, both he and Mr. Kelly worked on the Pier until approximately 4:00 pm. At that time, Mr. Shelton left for a meeting in Tiverton, Rhode Island.

Sometime later that evening, the Pier caught fire. Mr. Viera and Ms. Edelstein—two eyewitnesses—were talking when Mr. Viera observed smoke on the Pier, in the vicinity of the pump and crane. Ms. Edelstein proceeded to take pictures, fully documenting the fire from its onset. At some point, the F/V KISMET, which was docked on the Pier, caught fire and drifted out into the waters surrounding the Pier. The F/V KISMET became a total loss from the damages sustained in the fire. As a result, on July 24, 2009, Plaintiffs filed a Complaint alleging negligence on the part of various defendants in Newport County Superior Court.

II

Standard of Review

As a threshold matter, this Court will address whether maritime or state law is applicable to Plaintiff's motion. We previously held that maritime law would govern all substantive issues relating to Plaintiff's claims, while procedural matters would be decided according to the law of Rhode Island. See Mainstay Fisheries, Inc. v. N. Waterfront Assocs., L.P., 2016 WL 878739 (R.I. Super. Mar. 2, 2016). "Rule 56 of the Superior Court Rules of Civil Procedure constitutes a procedural device that, in the proper circumstances, plays an appropriate role in separating the

[3] A permit had been obtained for the fire in the vicinity of the Pier.

wheat from the chaff in the litigation process." Young v. Warwick Rollermagic Skating Ctr., Inc., 973 A.2d 553, 557 (R.I. 2009); see also Sharkey v. Prescott, 19 A.3d 62, 66 (R.I. 2011) (explaining the procedural rule's utility in identifying issues appropriate for trial); Rotelli v. Catanzaro, 686 A.2d 91 (R.I. 1996) (clarifying that the purpose of the summary judgment procedure was to identify issues for trial, not to resolve the issues); Benner v. J.H. Lynch & Sons, Inc., 641 A.2d 332, 334-35 (R.I. 1994) (addressing whether summary judgment was the appropriate procedural vehicle for determining whether discovery rules apply). Thus, state law governs the standard of review, and the well-settled procedure for deciding summary judgment motions will guide this Court's analysis.

"Summary judgment is an extreme remedy that should be applied cautiously." Sjogren v. Metro. Prop. & Cas. Ins. Co., 703 A.2d 608, 610 (R.I. 1997) (citation omitted). This Court will grant a party's motion for summary judgment only if it finds, "'after viewing the evidence in the light most favorable to the nonmoving party, that there is no genuine issue of material fact to be decided and that the moving party is entitled to judgment as a matter of law[.]'" Pereira v. Fitzgerald, 21 A.3d 369, 372 (R.I. 2011) (quoting Lacey v. Reitsma, 899 A.2d 455, 457 (R.I. 2006); see also Lynch v. Spirit Rent–A–Car, Inc., 965 A.2d 417, 424 (R.I. 2009). "It is important to bear in mind that the 'purpose of the summary judgment procedure is issue finding, not issue determination.'" Estate of Giuliano v. Giuliano, 949 A.2d 386, 391 (R.I. 2008) (quoting Indus. Nat'l. Bank v. Peloso, 121 R.I. 305, 307, 397 A.2d 1312, 1313 (R.I. 1979)). The trial justice views the evidence in a light most favorable to the nonmoving party, drawing from that evidence all reasonable inferences in support of the nonmoving party's claim but without resolving any factual disputes. Holliston Mills, Inc. v. Citizens Trust Co., 604 A.2d 331, 334 (R.I. 1992).

"[T]he nonmoving party carries the burden of proving by competent evidence the existence of a disputed issue of material fact and 'cannot rest on allegations or denials in the pleadings or on conclusions or legal opinions.'" Classic Entm't & Sports, Inc. v. Pemberton, 988 A.2d 847, 849 (R.I. 2010) (quoting Accent Store Design, Inc. v. Marathon House, Inc., 674 A.2d 1223, 1225 (R.I. 1996)). "Rather, the nonmoving party must affirmatively assert facts that raise a genuine issue to be resolved." Hydro-Mfg. Inc. v. Kayser-Roth Corp., 640 A.2d 950, 954 (R.I. 1994); see also Super. R. Civ. P. 56(e).

III

Analysis

Plaintiff moves for partial summary judgment on the issue of duty, arguing that Defendants, as the owners of the Pier, were obligated to comply with the Rhode Island Fire Safety Code (the Fire Safety Code) and NFPA 307. Plaintiff argues that pursuant to the Fire Safety Code and NFPA 307, this Court should impose seven specific statutory duties upon the Defendants. Additionally, Plaintiff requests jury instructions regarding the applicability of the Fire Safety Code and NFPA 307.

A

Statutory Duty

The Rhode Island Supreme Court has held that "in an admiralty action in state court, issues which would be considered 'substantive' are governed by federal maritime law." King v. Huntress, Inc., 94 A.3d 467, 499 (R.I. 2014). As the issue of liability is decidedly substantive, general maritime law will control. In deciding whether Plaintiff is entitled to judgment as a matter of law, the Court will consider Plaintiff's Motion in light of federal precedent on maritime negligence. See Pereira, 21 A.3d at 372 (explaining summary judgment should only be granted

if the moving party is entitled to judgment as a matter of law); see also La Esperanza de P.R., Inc. v. Perez y Cia. de P.R., Inc., 124 F.3d 10, 16 (1st Cir. 1997) (stating a negligence cause of action in admiralty invokes maritime negligence principles and not those of the common law). When necessary, the Court will supplement with state law. See Fairest-Knight v. Marine World Distribs., Inc., 652 F.3d 94, 99 (1st Cir. 2011) (explaining that state law may supplement federal maritime law when the latter is silent on a specific issue or where a local matter is at issue).

The Court begins with a brief overview of the law on maritime negligence. "'Admiralty jurisdiction brings with it a body of federal jurisprudence, largely uncodified, known as maritime law.'" Fairest-Knight, 652 F.3d at 98 (quoting Ballard Shipping Co. v. Beach Shellfish, 32 F.3d 623, 625 (1st Cir. 1994)). In the absence of statute, "the judicially-developed norms of the general maritime law, 'an amalgam of traditional common-law rules, modifications of those rules, and newly created rules,' govern actions in admiralty." La Esperanza de P.R., 124 F.3d at 16 (quoting E. River S.S. Corp. v. Transamerica Delaval, 476 U.S. 858, 865 (1986)). "[N]egligence causes of action in admiralty invoke the principles of maritime negligence, [and] not those of the common law." Id. at 17 (citing to Pope & Talbot, Inc. v. Hawn, 346 U.S. 406, 408-09 (1953)). However, when precedent is otherwise lacking, courts rely on general negligence principles to decide issues. See Spiller v. Thomas M. Lowe, Jr., & Assocs., Inc., 466 F.2d 903, 910 n.9 (8th Cir. 1972) ("it has long been held that even though admiralty suits are governed by federal substantive and procedural law, courts applying maritime law may adopt state law by express or implied reference or by virtue of the interstitial nature of federal law").

Maritime negligence requires proof by a preponderance that "a duty [was] owed by the defendant to the plaintiff, breach of that duty, injury sustained by [the] plaintiff, and a causal connection between the defendant's conduct and the plaintiff's injury." Canal Barge Co. v.

Torco Oil Co., 220 F.3d 370, 376 (5th Cir. 2000) (quoting In re Cooper/T. Smith, 929 F.2d 1073, 1077 (5th Cir. 1991)). A party owes a duty of care "when injury is foreseeable or when contractual or other relations between the parties impose it." Thomas J. Schoenbaum, Admiralty and Maritime Law, § 5-2 (5th ed. 2011). A breach of the standard of care "consists of doing that which a person of reasonable prudence would not have done, or of failing to do that which a person of reasonable prudence would have done under like circumstances." Schulz v. Pa. R.R. Co., 350 U.S. 523, 525 (1956). "'The extent to which the circumstances surrounding maritime travel are different from those encountered in daily life and involve more danger . . . will determine how high a degree of care is reasonable in each case.'" Monteleone v. Bahama Cruise Line, Inc., 838 F.2d 63, 65 (2d Cir. 1988) (quoting Rainey v. Paquet Cruises, Inc., 709 F.2d 169, 172 (2d Cir. 1983)). Thus, under general maritime law, parties are charged with acting reasonable under the circumstances, and determining what is reasonable requires a case-by-case assessment of the immediate circumstances. See Muratore v. M/S Scotia Prince, 845 F.2d 347, 353 (1st Cir. 1988).

Plaintiff moves for summary judgment on the issue of duty, requesting the Court impose upon Defendants a statutory duty pursuant to the Fire Safety Code and NFPA 307. Plaintiff's request, however, is inapposite in light of its supporting argument. Plaintiff argues, "[i]t is well established by law, both in Rhode Island and nationally, that owners of piers owe a duty of reasonable care to permitted users and entrants who berth vessels at the pier." (Pl.'s Mem. 6-7). Plaintiff also argues that statutory violations serve as prima facie evidence of liability, creating a presumption of negligence rebuttable by a defendant. Plaintiff does not, however, argue that Defendants owe a statutory duty pursuant to the Fire Safety Code and NFPA 307; and the cases Plaintiff cites to do not support such a position. See Kay v. Menard, 754 A.2d 760, 768 (R.I.

2000) (characterizing a landlord's failure to maintain an elevator in good working condition, as required by G.L. 1956 § 34-18-22(a)(4), as evidence of negligence that "d[id] not relieve a jury of its responsibility to find a breach of a duty of care . . . but rather serve[d] as prima facie evidence of liability"); Errico v. LaMountain, 713 A.2d 791, 794 (R.I. 1998) (finding appropriate the instructions to a jury that "[w]ith respect to [a] landlords' specific duty to repair and to keep the leased premises in a fit and habitable condition . . . if [the jury] found that defendants had violated this duty imposed by the act, it 'may' consider such violations as 'evidence of their negligence'"); Sitko v. Jastrzebski, 27 A.2d 178, 179 (R.I. 1942) (stating the general rule in Rhode Island is that "the violation of a statute of general application is a circumstance to be considered in connection with all the other facts and circumstances in evidence on the question of negligence") (citation omitted); Corvello v. New England Gas Co., 460 F. Supp. 2d 314, 321 (D.R.I. 2006) (explaining that, under Rhode Island law, "violation of a statute is evidence of negligence") (citation omitted).

Defendants' argument is near identical to Plaintiff's, even citing to the same cases to support its position. The gravamen of Defendants' argument is that negligence actions contemplate a duty to exercise reasonable care under the circumstances, and that evidence of a statutory violation is "to be used by the trier of the facts merely as an aid in determining that issue on consideration of all the evidence." (Defs.' Supplemental Mem. 2) (quoting Falcone v. Bottomley, 85 R.I. 264, 267, 129 A.2d 635, 637 (1957)). Defendants assert that while the Fire Safety Code and NFPA 307 may be admissible as evidence of negligence,[4] they do not, in and of themselves, establish the standard of care.

[4] Defendants note that they do not concede the admissibility of either the Rhode Island Fire Safety Code or NFPA 307 as evidence of its allegedly negligent conduct. (Defs.' Supplemental Mem. 2-3).

Under federal maritime law,[5] the standard of care in a negligence action is that of reasonable care under the circumstances. See Schulz, 350 U.S. at 525 (holding that "negligence cannot be established by direct, precise evidence," but instead requires an assessment of whether a "person of reasonable prudence" would have acted similarly under the same circumstances). A line of cases known as the "safe berth" cases addresses the specific standard of care a wharfinger owes to vessels visiting its facilities.[6] Those cases hold that "[i]t is well settled, of course, that a wharfinger is under a duty to exercise reasonable care to furnish a safe berth and to warn a ship of any unexpected hazard or deficiency known to the wharfinger, or which, in the exercise of reasonable care, he should have known." Medomsley Steam Shipping Co. v. Elizabeth River Terminals, Inc., 354 F.2d 476, 480 (4th Cir. 1966) (emphasis added); see also Smith v. Burnett, 173 U.S. 430 (1899); Pan Am. Grain Mfg. Co. v. P.R. Ports Auth., 295 F.3d 108, 114-15 (1st Cir. 2002); U.S. Trucking Corp. v. City of New York, 18 F.2d 775, 776 (2d Cir. 1927). That a wharfinger's duty is to use "reasonable care to furnish a safe berth is beyond dispute." U.S. Trucking Corp., 18 F.2d at 776 (citation omitted). Indeed, these cases make clear that Defendants owed to Plaintiff a duty to exercise reasonable care under the circumstances in preventing damage to Plaintiff's vessel, not a statutory duty pursuant to the Fire Safety Code and NFPA 307.

In the instant matter, the application of the Fire Safety Code and NFPA 307 is immaterial to the duty Defendants owed Plaintiff. Whether the regulations were applicable to Defendants is a fact to be considered in light of Defendants' duty to exercise care and diligence under the

[5] The Court notes that neither party cites to federal maritime law to support its position; however, on the particular issue of duty, Rhode Island law is consistent with federal maritime law.

[6] A wharf is defined as a "landing place or pier where ships may tie up and load or unload"; a wharfinger is one who owns a wharf. Wharf, The American Heritage Dictionary of the English Language (4th ed. 2000).

circumstances. M. & J. Tracy v. Marks, Lissberger & Son, Inc., 283 F. 100, 102 (2d Cir. 1922) (holding that a wharfinger's "standards of duty" do not change according to its relationship with the libellant, and instead are consistently understood to be the exercise of reasonable care). Under a narrow set of circumstances, evidence of a statutory violation will "shift the burden of proof on the issue of causation once a claimant has established that a vessel has violated a statute or regulation." Cont'l Grain Co. v. P.R. Mar. Shipping Auth., 972 F.2d 426, 436 (1st Cir. 1992) (citing Schoenbaum, Admiralty and Maritime Law § 13-2, at 452 (1987); Grant Gilmore & Charles L. Black, Jr., The Law of Admiralty § 7-5, at 494 (2d ed. 1975)). This rule is known as the "Pennsylvania Rule," and has historically been limited in application to cases involving open water collisions.[7] Whether or not the Pennsylvania Rule applies in the instant matter—Plaintiff has not argued its application—its effect is limited to burden shifting; it does not advocate imposing a statutory duty.

Under general maritime law, a wharfinger's duty is to exercise reasonable care under the circumstances, and a statutory violation may provide evidence of negligence for a jury to consider. See Medomsley Steam Shipping Co., 354 F.2d at 480; see also Marshall v. Isthmian Lines, Inc., 334 F.2d 131, 135 (5th Cir. 1964) (declining to apply a negligence per se standard, and citing to the general negligence principle that "where the statute does set standard precautions, although only for the protection of others, or the prevention of a distinct risk, it would seem that it may be a relevant fact, having some bearing on the conduct of a reasonable

[7] The Pennsylvania rule was first established by the Supreme Court in The Pennsylvania, 86 U.S. 125 (1873). In Cont'l Grain Co., 972 F.2d at 436, the court explained that the Pennsylvania Rule has been applied beyond open water collisions, to cases involving allisions, collisions between vessels and stationary objects, and vessel strandings. The trend among the circuits appears to be applying the rule so long as three elements exist: (1) proof by a preponderance of evidence of violation of a statute or regulation that imposes a mandatory duty; (2) the statute or regulation must involve marine safety or navigation; and (3) the injury suffered must be of a nature that the statute or regulation was intended to prevent.

man under the circumstances, which the jury should be permitted to consider") (citation omitted). At most, a statutory violation shifts the burden of proof on causation, in limited circumstances, to the party that violated the statute. See Folkstone Mar., Ltd. v. CSX Corp., 64 F.3d 1037, 1047 (7th Cir. 1995).

Generally, the nonmoving party "carries the burden of proving by competent evidence the existence of a disputed issue of material fact and 'cannot rest on allegations or denials in the pleadings or on conclusions or legal opinions.'" Classic Entm't & Sports, Inc., 988 A.2d at 849 (citation omitted). Here, Defendants have not provided any evidence in support of their position, and rely merely on legal opinions.[8] However, despite the shortcomings in Defendants' papers, Plaintiff's primary contention was not supported by federal maritime law. Indeed, Plaintiff failed to cite a single case which contemplated principles of maritime negligence, despite this Court's prior ruling on its application to Plaintiff's claims. See Mainstay Fisheries, Inc., 2016 WL 878739. As such, this Court finds Plaintiff is not entitled to judgment as a matter of law and declines to impose a statutory duty on Defendants pursuant to the Fire Safety Code and NFPA 307.

B

Jury Instructions

Plaintiff's Motion for Partial Summary Judgment also included a perfunctory request for jury instructions. At this time, the Court will exercise its discretion and deny Plaintiff's request. Pursuant to Super. R. Civ. P. 51(b), at the close of evidence the Court will instruct the parties to submit written requests for jury instructions on the law of the case.

[8] Plaintiff raised this issue in its reply memorandum.

IV

Conclusion

For the reasons set forth above, Plaintiff's Motion for Partial Summary Judgment and Requests for Jury Instructions is denied. The Court cannot conclude that Plaintiff is entitled to judgment as a matter of law, as the law does not support Plaintiff's position. Additionally, the Court will not provide jury instructions until the close of evidence, at which time it will instruct counsel to submit their written recommendations pursuant to Super. R. Civ. P. 51(b). Counsel shall confer and submit an order for entry that is in accordance with this Decision.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	**Mainstay Fisheries, Inc. v. Northern Waterfront Assocs.**
CASE NO:	**NC-2009-0382**
COURT:	**Newport County Superior Court**
DATE DECISION FILED:	**November 4, 2016**
JUSTICE/MAGISTRATE:	**Stone, J.**
ATTORNEYS:	
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