IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 92-3140

RICHARD MURLA

Plaintiff-Appellant,

versus

MOBIL OIL CORPORATION,

Defendant-Appellee.

Appeal from the United States District Court
for the Eastern District of Louisiana
CA 90 4877 "L"

June 28, 1993

Before GARZA, REYNALDO G., HIGGINBOTHAM, and DeMOSS, Circuit Judges.

PER CURIAM*:

Plaintiff Richard Murla appeals from a summary judgment in favor of Mobil Oil Corporation, arguing that the district court erred in holding that his claims against Mobil were barred by the "two-contract" doctrine. While the question is very close, we agree with Murla that Louisiana courts have not yet recognized the particular application of this doctrine urged by Mobil. We

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*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

therefore reverse the district court's judgment and remand for further proceedings.

I.

On August 16, 1988, Tenneco Oil Company hired Bechtel, Inc. to work on its Chalmette, Louisiana refinery. In December 1988, Tenneco sold the refinery and assigned its contracts to Mobil, including the Bechtel contract. Bechtel subcontracted with Ebasco Constructors to perform some of the heavy crude construction work in May 1989. Two months later, Bechtel assigned Mobil "all rights, interests and obligations" it possessed under its subcontract with Ebasco. Murla, an employee of Ebasco, was injured while working at the Mobil refinery on November 14, 1989.

Murla sued Mobil in Louisiana state court under theories of negligence and strict liability. Mobil removed the case to the U.S. District Court for the Eastern District of Louisiana, and then moved for summary judgment. The district court granted the motion, concluding that Mobil was protected from tort liability under Louisiana's workers' compensation scheme. Murla has appealed.

II.

Louisiana law provides that an injured employee has no remedy beyond workers' compensation against either "his employer or any principal." LSA-R.S. 23:1032 (emphasis added). A "principal" is "any person who undertakes to execute any work [1] which is part of his trade, business or occupation in which he was engaged at the time of the injury, or [2] which he had contracted to perform and contracts with any person for the execution thereof." Id.;

23:1061. Mobil maintains that it is a "principal" under either [1] the three-tier framework established in Berry v. Holston Well Service, 488 So.2d 934 (La. 1986), or [2] the two-contract theory found persuasive by the district court. Murla challenges the district court's application of the two-contract theory to the facts of this case.

> Defendants are responsible for workers' compensation and

immune from tort liability if it is established that:

1) defendant entered into a contract with a third party;

2) pursuant to the contract, work must be performed;

3) in order for defendant to fulfill its contractual obligation to perform the work, defendant entered into a subcontract for all or part of the work performed.

Beddingfield v. Standard Construction Co., 560 So.2d 490, 491-92 (La. App. 1st Cir. 1990); Duncan v. Balcor Property Management, Inc., 615 So.2d 985, 989 (La. App. 1st Cir. 1993). Murla maintains that this defense is not available to Mobil, for only those defendants who personally entered into the relevant two contracts may rely on it. Mobil concedes that it was Bechtel that signed the agreements, but argues that it received through assignment whatever rights and obligations possessed by Bechtel.

We have been unable to locate any Louisiana decisions that speak directly to the special circumstances of this case. We are persuaded, however, that Murla's argument finds greater support in existing state precedent, and therefore cannot affirm the district court's reliance on the two-contract doctrine. Because analysis

under the alternative Berry test requires additional facts, we must reverse the district court's judgment. We remand the case to the district court for additional proceddings, including a consideration of whether Mobil is Murla's statutory employer under Berry.

REVERSED AND REMANDED.