

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA
Miami Division

Case Number: 20-22259-CIV-MORENO

LINDA CAVITT,

Plaintiff,

vs.

CARNIVAL CORPORATION,

Defendant.

**ORDER GRANTING IN PART MOTION TO DISMISS AND GRANTING LEAVE TO
FILE AN AMENDED COMPLAINT**

Plaintiff, Linda Cavitt, brings this negligence case against Defendant Carnival Corporation stemming from a slip and fall on the gangway of the M/S Fascination. Defendant filed a motion to dismiss arguing the complaint is an impermissible shotgun pleading, the complaint fails to adequately allege that Defendant was on notice, and there is no viable claim for operational negligence. The Court grants the motion in part to the extent it argues the complaint fails to properly allege notice.

THIS CAUSE came before the Court upon Defendant's Motion to Dismiss (**D.E. 7**), filed on **October 19, 2020**.

THE COURT has considered the motion, the response, the pertinent portions of the record, and being otherwise fully advised in the premises, it is

ADJUDGED that the motion is GRANTED and the Court grants Plaintiff leave to file an amended complaint consistent with this Order by March 9, 2021.

I. Background

Plaintiff, Linda Cavitt, was a passenger onboard Defendant's cruise ship, the Carnival M/S "Fascination." She alleges that on March 10, 2019, she was descending the ship's gangway to disembark in Puerto Rico when she slipped and fell on a wet and slippery section of the gangway. She alleges she sustained a bone fracture requiring surgery and insertion of hardware.

Count 1 asserts a claim for negligent inspection and maintenance of the gangway. Plaintiff asserts the Defendant owed a duty of reasonable care and the duty to take reasonable steps to maintain the gangway surface in an even, safely leveled, dry and non-slippery condition. The complaint adds that the gangway surface where the Plaintiff fell was in a high traffic area specifically designated for ingress and egress of cruise ship passengers. She alleges the gangway was dangerously uneven, unleveled, wet and slippery. The complaint adds the Defendant knew or should have known of the dangerous condition and failed to take reasonable measures to maintain the gangway in a reasonably safe condition.

Count 2 asserts a claim for negligent failure to warn. Plaintiff asserts the Defendant owed a duty of reasonable care, including the duty to take reasonable steps to warn passengers including the Plaintiff of any slip and fall risks created by the condition of the gangway. The complaint alleges that Defendant had actual or constructive knowledge based on prior slip and falls in the gangway, its knowledge of the weather conditions that day, and industry standards for gangways. Notwithstanding this knowledge, the Defendant failed to warn Plaintiff of the dangerous condition, which resulted in Plaintiff's fall and her damages.

Count 3 is a claim for operational negligence. In this count, the Plaintiff claims the Defendant owed the Plaintiff a duty of reasonable care to offer necessary assistance to passengers boarding Defendant's vessel through gangways. Again, Plaintiff asserts the Defendant had actual or constructive notice of the dangerous condition due to the length of time

the condition existed, its recurring nature, and its knowledge of the weather conditions. The complaint asserts the Defendant accordingly owed a duty to Plaintiff to offer assistance in boarding the vessel or to halt the process of entering and exiting the vessel to account for or correct the condition. Because the Defendant failed to meet its duty of reasonable care, Plaintiff alleges she fell and sustained injuries.

Defendant moves to dismiss arguing that the complaint constitutes an impermissible shotgun pleading. Defendant also moves to dismiss arguing the complaint contains only conclusory allegations. Finally, the Defendant argues that there is no viable claim for operational negligence.

II. Legal Standard

“To survive a motion to dismiss, plaintiffs must do more than merely state legal conclusions,” instead plaintiffs must “allege some specific factual basis for those conclusions or face dismissal of their claims.” *Jackson v. BellSouth Telecomm.*, 372 F.3d 1250, 1263 (11th Cir. 2004). When ruling on a motion to dismiss, a court must view the complaint in the light most favorable to the plaintiff and accept the plaintiff’s well-pleaded facts as true. *See St. Joseph's Hosp., Inc. v. Hosp. Corp. of Am.*, 795 F.2d 948, 953 (11th Cir. 1986). This tenet, however, does not apply to legal conclusions. *See Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009). Moreover, “[w]hile legal conclusions can provide the framework of a complaint, they must be supported by factual allegations.” *Id.* at 1950. Those “[f]actual allegations must be enough to raise a right to relief above the speculative level on the assumption that all of the complaint’s allegations are true.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 545 (2007). In short, the complaint must not merely allege a misconduct, but must demonstrate that the pleader is entitled to relief. *See Iqbal*, 129 S. Ct. at 1950.

III. Legal Analysis

The Eleventh Circuit has explained the characteristics of shotgun pleadings, which are subject to dismissal. In *Weiland v. Palm Beach County Sheriff's Office*, 792 F.3d 1313, 1321-23 (11th Cir. 2015), the Eleventh Circuit identified four categories of impermissible shotgun pleadings. The first is a complaint where each count adopts the allegations of all preceding counts. The second is a complaint replete with conclusory allegations. The third type is a complaint that fails to separate each cause of action into a separate count and the fourth type combines multiple claims against multiple defendants in one count.

This complaint separates out the claims into separate counts. There are three separate breaches that Plaintiff asserts and one per count. The first claim is a failure to maintain the gangway in a safe manner, the second claim is for a failure to warn passengers of the dangerous condition, and the third claim is for a failure to provide passengers with assistance in embarking and disembarking given Defendant's knowledge of the dangerous condition. The Court does not find that these claims are impermissibly pled or commingled. Rather, each claim is properly raised in a separate count.

Defendant's motion asserts the complaint is a mere recitation of the elements of the cause of action. Specifically, the motion argues Plaintiff fails to plead notice because the complaint lacks factual allegations as to this element. This Court recently noted in *Navarro v. Carnival Corp.*, 19-21072-CIV, 2020 WL 7480861, *3 (S.D. Fla. Dec. 18, 2020) that the bare conclusory allegations of notice were insufficient especially in light of the Eleventh Circuit's holding in *Tesoriero v. Carnival Corp.*, 965 F.3d 1170 (11th Cir. 2020), where it highlighted the importance of notice. In *Navarro*, the plaintiff attempted to bypass the notice requirement by pleading the case as one of vicarious liability.

“Under maritime law, the duty of care owed by a cruise operator to its passengers is ordinary reasonable care under the circumstances, ‘which requires, as a prerequisite to imposing liability, that the carrier have actual or constructive notice of the risk-creating condition.’” *Harding v. NCL (Bahamas) Ltd.*, 90 F. Supp. 3d 1305, 1307 (S.D. Fla. 2015). Actual notice exists when “the defendant knows of the risk creating condition.” *Bujarski v. NCL (Bahamas) Ltd.*, 209 F. Supp. 3d 1248, 1250 (S.D. Fla. 2016) (citing *Keefe v. Bahama Cruise Line, Inc.*, 867 F.2d 1318, 1322 (11th Cir. 1989)). Constructive notice arises when “a dangerous condition has existed for such a period of time that the shipowner must have known the condition was present and thus would have been invited to correct it.” *Id.* at 1250-51. Embedded in the counts of the complaint, Plaintiff asserts that Defendant knew or should have known of the dangerous condition based on prior falls, industry standards, and the weather. There are no factual allegations to support this threadbare conclusion. She does not allege that the weather caused rain to leak onto the gangway, how long the water could have been there, whether the Defendant’s staff was onsite to monitor the gangway such that they would have notice, or factual allegations regarding prior incidents. *Harding v. NCL (Bahamas) Ltd.*, 90 F. Supp. 3d 1305, 1308 (S.D. Fla. 2015) (citing *Gayou v. Celebrity Cruises, Inc.*, No. 11-23359-CIV, 2012 WL 2049431, at *5 n.1 (S.D. Fla. June 5, 2012)). Without supporting facts demonstrating that it was plausible that Defendant knew or reasonably should have known of the risk-creating conditions, Plaintiff’s complaint does not suffice to establish notice. *See Holland v. Carnival Corp.*, No. 20-21789-CIV, 2021 WL 86877, *3 (S.D. Fla. Jan. 11, 2021). Accordingly, the Court grants the motion to dismiss and grants Plaintiff leave to amend the complaint to sufficiently allege notice.

Defendant’s final argument is that Count 3 is not a viable cause of action under maritime law. The count asserts a negligence claim premised on Defendant’s failure to provide Plaintiff

assistance. The standard of care in maritime torts against a cruise ship operator is that of ordinary reasonable care under the circumstances. *Keefe*, 867 F.2d at 1322. A breach of the duty of care occurs when a cruise ship operator does something a reasonable operator would not do or when it fails to do something that a reasonable careful operator would do. *Crouch v. Carnival Corp.*, No. 06-22660, 2007 WL 9702149, *7 (S.D. Fla. Oct. 30, 2007). In *Crouch*, a claim premised on whether a reasonable cruise ship operator would have assisted passengers, rather than wait for passengers to request it, survived summary judgment. The Court finds that the claim can proceed provided the Plaintiff properly alleges that the cruise line had actual or constructive notice such that a reasonable cruise operator would have assisted passengers embarking or disembarking on the gangway.

DONE AND ORDERED in Chambers at Miami, Florida, this 2nd of March 2021.

A handwritten signature in black ink that reads "Federico A. Moreno". The signature is written in a cursive style and is underlined with a single horizontal line.

FEDERICO A. MORENO
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel of Record