

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION
CASE NO. 21-CIV-20148-DLG

JOSEPH HENRY,

Plaintiff,

vs.

CELEBRITY CRUISES, INC.,

Defendant.

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ORDER

THIS CAUSE comes before the Court upon Defendant Celebrity Cruise Inc.'s Motion to Dismiss Counts III and IV of Plaintiff's Amended Complaint. [ECF. No. 29].

THE COURT has considered the Motion, Response, pertinent portions of the record, and is otherwise fully advised in the premises.

I. FACTUAL & PROCEDURAL BACKGROUND

As alleged in Plaintiff's Amended Complaint, Plaintiff was a passenger aboard Defendant's vessel, "Reflection," when he slipped on the wet gangway and suffered tibia and fibula fractures. On January 14, 2021, Plaintiff filed the instant action, and on September 8, 2021, he filed an Amended Complaint alleging the Defendant's negligent maintenance of the gangway (Count I), negligent failure to warn (Count II), common carrier failure to maintain gangway (Count III), and failure to warn by common carrier (Count IV).

II. LEGAL STANDARD

Allegations within a complaint must contain a "short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). "The statement need only give the defendant fair notice of what the claim is and the ground upon which it rests." Thomason v. Alabama Home Builders Licensure Bd., 741 F. App'x 638, 641 (11th Cir. 2018) (citing Erickson v. Pardus, 551 U.S. 89, 93, 127 S.Ct. 2197, 167 L.Ed.2d 1081 (2007)).

"For the purposes of a motion to dismiss, the Court must view the allegations of the complaint in the light most favorable to Plaintiff, consider allegations of the complaint as true, and accept all reasonable inferences." Omar ex rel. Cannon v. Lindsey, 334 F.3d 1246, 1247 (11th Cir. 2003) (citations omitted). "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quotations and citations omitted). Accordingly, for a claim to have facial plausibility, a Plaintiff must plead "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Id. The plausibility standard "asks for more than a sheer possibility that a defendant has acted unlawfully." Id. Therefore, "[a] pleading that offers labels and conclusions or a formulaic recitation of the elements of a cause of action will not do." Id. Moreover, the Court's review of a Rule 12(b)(6) motion is ordinarily limited to the face of the complaint

and any attachments thereto. Brooks v. Blue Cross & Blue Shield of Fla., Inc., 116 F.3d 1364, 1368 (11th Cir. 1997) (citations omitted).

III. DISCUSSION

Plaintiff's Amended Complaint asserts claims for negligent maintenance of the gangway and failure to warn under two different standards of care - ordinary reasonable care (Counts I, II), and a heightened standard of care applicable to common carriers (Counts III, IV). Defendant argues Counts III and IV should be dismissed because the heightened "common carrier" standard of care is not recognized in maritime law. The Court agrees. As stated by the Supreme Court, "[i]t is a settled principle of maritime law that a shipowner owes the duty of exercising reasonable care towards those lawfully aboard the vessel who are not members of the crew." Kermarec v. Compagnie Generale Transatlantique, 358 U.S. 625, 630, 79 S. Ct. 406, 409, 3 L. Ed. 2d 550 (1959).

Plaintiff argues a heightened standard of care is applicable, citing a 1984 opinion by the Eleventh Circuit which held, "[a] ship, as a common carrier, owes a special duty to its passengers." Kornberg v. Carnival Cruise Lines, Inc., 741 F.2d 1332, 1334 (11th Cir. 1984). Plaintiff also cites Vierling v. Celebrity Cruises, Inc., 339 F.3d 1309 (11th Cir.2003), an Eleventh Circuit opinion citing Kornberg, for the same proposition. However, despite classifying the defendant cruise lines as "common carriers", both opinions applied a standard of reasonable care. See Kornberg, 741 F.2d at 1334 ("the carrier must subject his passengers to no suffering or inconvenience which can be

avoided by reasonable care and effort."); Vierling, 339 F.3d at 1319 (holding, the defendant had a "duty to maintain reasonable, safe means for passengers to board and disembark."). The Court in Kornberg further held, "[a] carrier by sea... is not liable to passengers as an insurer, but only for its negligence." 741 F.2d at 1334 (citing Kermarec, 358 U.S. at 630).

Subsequently, in 1989, the Eleventh Circuit cited Kornberg to support the proposition that, "the benchmark against which a shipowner's behavior must be measured is ordinary reasonable care under the circumstances." Keefe v. Bahama Cruise Line, Inc., 867 F.2d 1318, 1322 (11th Cir. 1989). The Eleventh Circuit has applied the same ordinary standard of care in several subsequent opinions. See Everett v. Carnival Cruise Lines, 912 F.2d 1355, 1358 (11th Cir. 1990) (the "benchmark against which a shipowner's behavior must be measured is ordinary reasonable care under the circumstances, a standard which requires, as a prerequisite to imposing liability, that the carrier have had actual or constructive notice of the risk-creating condition.") Sorrels v. NCL (Bah.) Ltd., 796 F.3d 1275, 1279 (11th Cir. 2015) ("[u]nder maritime law, the owner of a ship in navigable waters owes passengers a duty of reasonable care under the circumstances."); Carroll v. Carnival Corp., 955 F.3d 1260, 1264 (11th Cir. 2020) ("a cruise line like Carnival owes its passengers "a 'duty of reasonable care' under the circumstances.").

Courts within this district have, on several occasions, rejected arguments in favor of reading the Eleventh Circuit decisions as

applying a heightened standard of care in cases against cruise lines. See Holderbaum v. Carnival Corp., 87 F. Supp. 3d 1345, 1351 (S.D. Fla. 2015) (rejecting passenger's argument that a heightened standard of care applied, reasoning, "this Court is bound by Eleventh Circuit precedent which clearly establishes that the duty of care a cruise ship owes its passengers is ordinary reasonable care under the circumstances, a standard which requires, as a prerequisite to imposing liability, that the carrier have had actual or constructive notice of the risk-creating condition"); Bahr v. NCL (Bahamas) Ltd., No. 19-CV-22973, 2021 WL 4034575, at *6 (S.D. Fla. Sept. 3, 2021), ("[a]bsent a clear statement from the Eleventh Circuit that the standards generally applicable to maritime negligence claims are different in cases involving a gangway, this Court declines to hold that notice is not required in this case").

Most recently, the Eleventh Circuit recognized an exception to the general rule that shipowners are held to a standard of ordinary care where the plaintiff's claim is based on vicarious liability. See Yusko v. NCL (Bahamas), Ltd., 4 F.4th 1164, 1170 (11th Cir. 2021). However, the court stated, where a passenger's claim is based on the direct negligence of the cruise line itself, the ordinary reasonable standard of care applies. Id. The Court provided two examples of such claims - where the plaintiff seeks to hold a shipowner liable for maintaining dangerous premises and for failing to warn of dangerous conditions. Id. In Bahr, a Southern District of Florida case citing Yusko, the Court held, the ordinary standard of reasonable care

applied where "the Complaint sa[id] nothing about [defendant's] negligence arising through its agents and employees." Bahr, No. 19-CV-22973, 2021 WL 4034575, at *5.

Here, Plaintiff's claims for failure to maintain the gangway and failure to warn are based upon the conduct of the cruise line itself, and none of the allegations indicate that Plaintiff intended to assert a claim for vicarious liability. Accordingly, the ordinary standard of care applies, and Plaintiff's claims based on a heightened standard of care must be dismissed. It is therefore

ORDERED AND ADJUDGED that Defendant's Motion to Dismiss Counts III and IV of Plaintiff's Amended Complaint is hereby **GRANTED**.

DONE AND ORDERED in Chambers at Miami, Florida, this 15th day of December, 2021.

s/ Donald L. Graham

DONALD L. GRAHAM
UNITED STATES DISTRICT JUDGE

cc: All Counsel of Record