JS-6

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WALLACE PETREY,

Plaintiff,

v.

PRINCESS CRUISE LINES, LTD. and ALASKA HOTEL PROPERTIES, LLC,

Defendants.

CASE NO. 2:23-cv-03401-JLS-AJR

ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT (DOC. 25)

Before the Court is a motion for summary judgment filed by Defendants Princess Cruise Lines, Ltd. and Alaska Hotel Properties, LLC. (Mot., Doc. 25; Mem., Doc. 25-1.) Plaintiff Wallace Petrey opposed, and Defendants replied. (Opp., Doc. 28; Reply, Doc. 29.) The Court finds this matter appropriate for disposition without oral argument. Fed. R. Civ. P. 78(b); C.D. Cal. R. 7-15. Accordingly, the hearing set for June 21, 2024, at 10:30 a.m. is VACATED. Having considered the parties' briefs and evidence, the Court GRANTS Defendants' motion for summary judgment.

I. BACKGROUND

Plaintiff Wallace Petrey purchased a sea/land package from Defendant Princess Cruise Lines, Ltd. (Pl.'s Sep. Statement, Doc. 28-1 ¶ 1.) The package included a two-night stay at the Denali Princess Wilderness Lodge. (*Id.* ¶ 2.) Defendant Alaska Hotel Properties LLC owns and operates the Lodge. (*Id.* ¶ 3.) Petrey stood up from the toilet in the bathroom of his room at the Lodge, turned ninety degrees to pull up his shorts, fell backwards over the shower ledge, and hit the back of his head. (Defs.' Resp. to P.'s Sep. Statement, Doc. 29-2 ¶¶ 8–10.) Petrey contends that the bathroom "was configured in a manner that placed the toilet too close to the ledge of the open shower stall so that the user of the toilet was likely to stumble or trip on the raised ledge of the open shower stall." (Pl.'s Sep. Statement ¶ 11.)

Petrey filed this action, invoking this Court's diversity jurisdiction and asserting a single claim for negligence. (*See* Amended Compl., Doc. 10 ¶¶ 1, 15–22.) The parties agree that maritime law governs this action pursuant to a choice-of-law provision in the land/sea package that Petrey purchased. (*See* Pl.'s Sep. Statement ¶¶ 4–8; Mot. at 4–5; Opp. at 6); *see generally Great Lakes Ins. SE v. Raiders Retreat Realty Co., LLC*, 601 U.S. 65, 71 (2024) ("choice-of-law provisions in maritime contracts are presumptively enforceable as a matter of federal maritime law," subject to narrow exceptions).

Defendants moved for summary judgment. First, Defendants argue that it is undisputed that Defendants lacked actual or constructive notice of the alleged dangerous

condition that caused Petrey's injury: the shower ledge that was allegedly too closely placed to the toilet. (Mem. at 5–7.) Second, Defendants argue that, to the extent Petrey asserts a negligence-per-se theory of liability, it fails as a matter of law because there is no evidence in the record that would permit a reasonable jury to find that a building code violation caused Petrey's injury. (*Id.* at 7; Reply at 5–9.)

II. LEGAL STANDARD

Summary judgment is appropriate only if "the movant shows that there is no genuine dispute as to any material fact," such that "the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). In deciding a motion for summary judgment, the Court views the evidence in the light most favorable to the nonmoving party and draws all justifiable inferences in that party's favor. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). A dispute is "material" if its resolution would "affect the outcome of the suit under the governing law." *Id.* at 248. And a dispute is "genuine" if the nonmoving party presents "evidence . . . such that a reasonable jury could return a verdict for the nonmoving party." *Id.*; *see* Fed. R. Civ. P 56(c)(1) (a party disputing a factual assertion "must support the assertion" by "citing to particular parts of materials in the record" or "showing that the materials cited [by the other party] do not establish" the assertion).

III. ANALYSIS

The Court GRANTS Defendants' motion for summary judgment.

A. Negligence

Petrey's traditional theory of negligence—that is, without reliance on negligence per se—fails as a matter of law because Petrey has proffered no evidence that Defendants had actual or constructive notice of the alleged dangerous condition.

The parties largely agree on the legal framework that governs Petrey's traditional-negligence theory. Important here, Petrey can survive summary judgment under maritime law only if a reasonable factfinder could conclude that Defendants had actual or constructive notice of the risk-creating condition: a shower ledge that was allegedly too

close to the toilet. (Mem. at 5 ("a plaintiff is required to demonstrate that the maritime defendant had actual or constructive notice of the risk-creating condition"); Opp. at 11 (acknowledging "the notice requirement"); *Samuels v. Holland Am. Line-USA Inc.*, 656 F.3d 948, 953 (9th Cir. 2011) ("[w]here the condition constituting the basis of the plaintiff's claim is not unique to the maritime context, a carrier must have actual or constructive notice of the risk-creating condition" (cleaned up).)

Here, it is undisputed that a record search revealed no similar incidents at the Lodge (Pl.'s Sep. Statement ¶ 13) and that the four current or former Lodge employees deposed on the topic were not aware of any similar incidents (*id.* ¶¶ 14–17). In opposition, Petrey argues: "Where a cruise ship operator create[s] the unsafe or foreseeably hazardous condition, a plaintiff *need not* prove notice in order to show negligence." (Opp. at 11–12 (quotation omitted).) As an initial matter, it seems that Petrey's purported exception to the notice requirement would almost entirely swallow the rule—rendering the notice requirement inapplicable wherever a maritime defendant (or its agent) had a role in creating the alleged dangerous condition. Moreover, the only two maritime decisions Petrey cites in support of his purported exception to the notice requirement are Southern District of Florida decisions that have been recognized as "wrongly decided" by the Eleventh Circuit. (*See id.* (citing *Rockey v. Royal Caribbean Cruises, Ltd.*, 2001 WL 420993 (S.D. Fla. 2001); *Long v. Celebrity Cruises, Inc.*, 982 F. Supp. 2d 1313 (S.D. Fla. 2013)); *Pizzino v. NCL (Bahamas) Ltd.*, 709 F. App'x 563, 567 (11th Cir. 2017) (concluding that "*Rockey* and its progeny" ran counter to a prior published decision, *Everett v. Carnival Cruise Lines*, 912 F.2d 1355 (11th Cir. 1990)). Therefore, the Court concludes that federal maritime law does not recognize such an exception to the requirement that a defendant must have had actual or constructive notice for a plaintiff to prevail on a negligence claim like this one.

B. Negligence Per Se

Petrey's negligence-per-se theory of liability fails as a matter of law because a reasonable jury could not find that a violation of an applicable building code provision caused Petrey's injury.

There is not a "well-developed" theory of negligence per se under federal maritime law, so the parties here look to California law for the theory's contours. *See Garcia v. Vitus Energy, LLC*, 605 F. Supp. 3d 1188, 1205 & n.138 (D. Alaska 2022) (collecting cases taking different approaches); (Opp. at 13 (citing California law); Reply at 6 (same).) In any event, Petrey fails to meet the basic requirements of negligence per se, so the Court need not precisely define the theory's contours under federal maritime law.[1]

The doctrine of negligence per se allows a plaintiff to establish or obtain a rebuttable presumption on the duty and/or breach elements of a negligence claim by showing that the defendant violated an applicable statute or regulation. *See* Restatement (Second) of Torts § 286; Cal. Evid. Code § 669. Reliance on a negligence-per-se theory does not excuse a plaintiff from having to prove that the breach caused his or her injury to prevail on the claim. *See, e.g.*, *Bureerong v. Uvawas*, 959 F. Supp. 1231, 1236 (C.D. Cal. 1997) (the plaintiff must show "the violation was the proximate cause of [his] injury").

Here, Petrey raises his negligence-per-se theory in just two sentences in his opposition:

> The negligence per se doctrine applies in this case because the evidence shows that Defendants violated building codes and regulations requiring a minimum distance between the toilet and the adjacent obstruction and sufficient space for the shower entry. Plaintiff's experts will testify that those code violations caused or contributed to the dangerous condition that injured Plaintiff.

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[1] The briefing does not make clear whether the parties assume that federal maritime law's notice requirement is displaced when a plaintiff proceeds under a negligence-per-se theory. (*See* Mem. at 7; Opp. at 13–14; Reply at 5–9.) Because Petrey's negligence-per-se theory fails on its own terms, the Court need not decide that question.

(Opp. at 13–14.) Petrey does not specify in his opposition what the purported "obstruction" is that he is relying on for his negligence-per-se theory; nor does Petrey identify which particular building code provisions were violated. But the Court discerns two options from the evidence Petrey cites in his separate statement of undisputed facts: (1) the placement of the shower ledge, and (2) the placement of the shower curtain. [2]

To the extent Petrey relies on the placement of the shower ledge, there is no genuine dispute of material fact that its placement complied with relevant building code provisions. Petrey contends that applicable building code provisions require that there be at least 15 inches from the center of a toilet to a side wall or obstruction.[3] (*E.g.*, Pl.'s Sep. Statement ¶ 52.) Petrey nowhere contends, however, that the shower ledge over which he tripped was closer than 15 inches to the center of the toilet. (*See generally id*; *see* Reply at 6–7 (the parties' experts testified that the shower ledge was between 16.75 and 17 inches away).) Because there is no evidence that the shower ledge's placement violated a code provision, it cannot support a negligence-per-se theory of liability.

To the extent Petrey relies on the shower curtain being fewer than 15 inches from the center of the toilet, there is no evidence in the record on which a reasonable jury could find that the shower curtain's placement caused his injury. Petrey himself states that he "fell *due to* the shower ledge," not the shower curtain. (Pl.'s Sep. Statement ¶ 9.) Indeed, Plaintiff further states that he stepped "backward . . . and his left foot came into contact with the shower ledge." (*Id.* ¶ 10 (Pl.'s Further Statement).) Moreover, the portions of his separate statement that Petrey cites in support of causation simply do not speak to

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[2] Petrey also notes, without explanation, that the International Residential Code requires at least 24 inches of shower entryway space—before noting Petrey's room at the Lodge provided about 30 inches of entryway space. (Pl.'s Sep. Statement ¶ 42.)

[3] The parties disagree over which building code applies to the Lodge. (*See, e.g.*, Reply at 6.) Because the codes' requirements are similar and Petrey's theory fails even under the codes he identifies, the Court need not decide that question.

whether placing the curtain fewer than 15 inches from the toilet center caused Petrey to trip. (*See* Opp. at 13–14 (citing Pl.'s Sep. Statement ¶¶ 21–22, 36–43, 52–53).)

The only curtain-specific causation contention the Court could discern is Plaintiff's contention that, "had [a] shower door been installed" instead of a shower curtain, "Plaintiff would not have fallen" because "Plaintiff's slight lean backward would have been interrupted by the shower door." (Pl.'s Sep. Statement ¶ 45.) But that contention is irrelevant to this action. Petrey does not contend that the *use* of a shower curtain (instead of a solid shower door) violated a building code provision; without a regulatory violation, there is no negligence per se. And the fact that the Lodge could have installed a shower door does not bear at all on whether the *placement* of the shower curtain about 13 inches from the toilet (instead of at least 15 inches) caused Petrey to fall. Without any evidence that the shower curtain's placement fewer than 15 inches from the toilet's center caused Petrey's injury, he cannot prevail on his negligence claim.

IV. CONCLUSION

For the foregoing reasons, the Court GRANTS Defendants' motion for summary judgment. Within **five days** of the date of this Order, Defendants shall file a proposed final judgment.

DATED: June 19, 2024

JOSEPHINE L. STATON

HON. JOSEPHINE L. STATON
UNITED STATES DISTRICT JUDGE