

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 23-CV-23136-KMW

DEBRA LAND,

Plaintiff,

v.

CARNIVAL CORPORATION, a Panamanian  
Corporation d/b/a CARNIVAL CRUISE  
LINES,

Defendant.

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**REPORT AND RECOMMENDATION ON  
DEFENDANT’S MOTION FOR SUMMARY JUDGMENT**

This matter is before the Court on Defendant Carnival Corporation’s (“Carnival”) Motion for Summary Judgment (“the Motion”). [ECF No. 60]. United States District Court Judge Kathleen M. Williams referred the motion to the Undersigned for a report and recommendation. [ECF No. 63]. The Court has carefully considered the Complaint [ECF No. 1], Carnival’s Motion and statement of material facts [ECF Nos. 60, 62], Plaintiff’s Response to the Motion and to Carnival’s statement of material facts [ECF Nos. 70, 71], Carnival’s Reply in support of its Motion and response to Plaintiff’s statement of material facts [ECF Nos. 74, 75], and the applicable law. For the reasons discussed below, it is **RECOMMENDED** that Carnival’s Motion for Summary Judgment [ECF No. 60] be **DENIED**.

**I. BACKGROUND**

This tort action arises from injuries Plaintiff Debra Land (“Plaintiff”) sustained while a passenger aboard Carnival’s cruise ship, the *Valor*. [ECF No. 1, ¶¶ 9–13]. The following facts are

undisputed.<sup>1</sup> On July 12, 2022, Plaintiff was wearing flip flops while walking on the open aft portion of the Lido Deck on Deck 9 and slipped and fell. [ECF No. 1 ¶ 13; ECF No. 62 ¶¶ 1–2]. Before the incident, Plaintiff and her travel companions stated that they saw water falling off a retractable roof in the area. [ECF No. 62 ¶ 3]. The parties agree that there had been previous slips and falls on the Lido Deck of Carnival’s vessels; however, they disagree as to the similarities between those incidents and Plaintiff’s incident. [ECF No. 62 ¶ 6; ECF No. 70 ¶¶ 6, 10; ECF No. 74 ¶¶ 6, 10]. Every other fact regarding when Plaintiff noticed the substance on the floor and whether Carnival had notice of the alleged condition is disputed by the parties. [ECF Nos. 62, 70, 74].

The Complaint asserts three counts: Count 1, negligent maintenance; Count 2, negligent failure to correct; Count 3, negligent failure to warn. [ECF No. 1 at 4–11]. First, in Count 1, Plaintiff alleges Carnival: (1) owed a duty of reasonable care; (2) breached that duty by “failing to take reasonable safety measures to maintain the deck surface where Plaintiff slipped and fell in a reasonably safe condition;” and (3) had notice of the dangerous condition. [*Id.* at 4–5]. Second, Plaintiff argues in Count 2 that Carnival: (1) owed a duty “to warn passengers of hazards of which it knew or should have known in the exercise of reasonable care its passengers may reasonably be expected to encounter on the vessel;” (2) breached that duty by, among other things, failing to dry the area where Plaintiff slipped and fell; and (3) had notice of the dangerous condition. [*Id.* at 7–9]. Lastly, in Count 3, Plaintiff asserts Carnival: (1) had notice of the dangerous condition; (2) owed “a duty to warn passengers of hazards of which it knew or should have known in the exercise

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<sup>1</sup> The Court has determined the facts, which are undisputed unless otherwise noted, based on the parties’ submissions, including Carnival’s Statement of Material Facts, Plaintiff’s Response to Statement of Material Facts, and Carnival’s Reply to Plaintiff’s Statement of Additional Material Facts [ECF Nos. 62, 70, 74], deposition transcripts and other evidence in the record.

of reasonable care its passengers may reasonably be expected to encounter on the vessel;” and (3) breached that duty by:

Failing to warn of the dangerous condition described in Paragraphs 13 and 14 above through written or orally delivered warnings.

b. Failing to cordon off the floor surface in the area where Plaintiff slipped and fell pending its cleaning and/or drying to prevent slip and falls from occurring.

c. Failing timely to redirect passengers away from the dangerous condition on the floor surface described in Paragraphs 13 and 14 above, to prevent slips and falls from occurring.

d. Failing to place appropriate signage, markings, and/or cones near the dangerous condition on the deck area where Plaintiff fell.

[*Id.* at 9–11].

Plaintiff alleges permanent or continuing injuries from the slip and fall. [ECF No. 1 ¶ 18].

### **Carnival’s Summary Judgment Motion**

Carnival contends that Plaintiff has not met her burden of establishing a genuine issue of material fact. [ECF No. 60 at 3]. First, Carnival argues that the substance that Plaintiff slipped on was an open and obvious condition because Plaintiff testified in her deposition that she saw water coming down from the retractable roof and noticed wetness on the floor. [*Id.* at 5]. Carnival maintains it “did not breach its duty of reasonable care by failing to warn Plaintiff of a condition of which she, or a reasonable person in [her] position, would be aware, simply by reasonable use of [her] senses.” [*Id.* at 9].

Second, with respect to the issue of notice, Carnival contends “Plaintiff offers nothing more than speculation as to whether Defendant had any notice of the alleged substance or wet spot on the lido deck’s flooring,” which is insufficient to sustain a cause of action for negligent failure to warn. [*Id.* at 7]. Carnival argues that it had neither actual nor constructive notice. [*Id.*]. Carnival claims there is no evidence that anyone complained to Carnival regarding water coming down the retractable roof nor “accidents involving retractable roofs or the potential of it creating an alleged

dangerous condition.” [*Id.* at 11]. Therefore, it is Carnival’s position that constructive notice cannot be established because there are no prior substantially similar incidents, and Plaintiff fails to show that Carnival knew about “any risk-creating condition posed by ‘water coming down from the retractable roof.’” [*Id.* at 12–13]. Carnival also argues that Plaintiff fails to show that Carnival had notice because she offers no evidence to establish how long the dangerous condition existed. [*Id.* at 13]. Additionally, Carnival argues that the flooring surface used in the Lido Deck is designed to be wet since it is slip-resistant. [*Id.* at 11–12].

In sum, Carnival contends that it is entitled to summary judgment because Plaintiff fails to establish that Carnival breached its duty owed to passengers because “Plaintiff has no evidence to support her allegation that the ‘water coming down off the retractable roof’ constituted a danger.” [*Id.* at 14]. Nonetheless, Carnival argues that even if the “water coming down off the retractable roof” rose to a level of danger, there is no evidence that [Carnival] had actual or constructive notice of the alleged risk-creating condition.” [*Id.*].

### **Plaintiff’s Response**

On the other hand, Plaintiff argues that the dangerous condition was not open and obvious. [ECF No. 71]. During her deposition, she explained that she only noticed the deck was wet when she started to slip. [*Id.* at 3]. And, even if the condition was open and obvious, it would only support an entry of summary judgment as to Count 3. [*Id.* at 2]. Moreover, even if was obvious that the floor was wet, that does not equate to a reasonable person knowing that the condition is dangerous. [*Id.* at 2–3]. Plaintiff maintains she purposely chose a path that she perceived to be dry on her way to and from the pizza station; therefore, “[u]nder the circumstances, wetness invading a path of travel previously observed and experienced to be dry would not be a condition that was open or obvious to a reasonable passenger.” [*Id.* at 3].

She maintains Carnival had notice of the danger. [*Id.* at 3–8]. Carnival disclosed in discovery at least six prior similar incidents that occurred in a period of less than five years in the same area where Plaintiff slipped and fell. [*Id.* at 5]. Plaintiff contends that the previous incidents are substantially similar because they “involve slips by passengers on a wet deck surface on the aft portion of Deck 9, thus involving the same deck surface . . . upon which [Plaintiff] slipped, the same hazard (water or a wet deck) and an event in approximately the same area in which [Plaintiff] slipped.” [*Id.* at 5–6]. Plaintiff also notes that Carnival had safety meetings discussing water accumulation concerns in the aft portion of Deck 9. [*Id.* at 6]. Carnival’s former operational manager testified that the area was “very prone to water accumulation,” either from water spillage from the jacuzzi and pool or rain. [*Id.*]. Plaintiff claims that Carnival misconstrues the notice requirement since the water coming from the retractable roof is only one source causing the water accumulation in the area. [*Id.* at 7]. Thus, “Carnival had actual or constructive notice that the aft portion of Deck 9 was frequently dangerously wet and slippery, due to any combination of the multiple relevant water sources. Knowledge of the wetness and slipperiness issues does not require knowledge of the particular source of the water.” [*Id.*]. Plaintiff points to Carnival’s “corrective policy to deal proactively with the hazard of water spillage from the retractable roof, [which] provides further circumstantial evidence that Carnival knew of the danger posed by such spillage.” [*Id.* at 8–9].

### **Carnival’s Reply**

In its reply, Carnival argues that Plaintiff has not met her burden regarding notice because Plaintiff’s evidence is purely speculative and rebutted by Carnival’s corporate representative, who testified that the floor surface was slip-resistant; thus, a dangerous condition did not even exist in the first place. [ECF No. 75 at 2–4]. Moreover, Carnival contends that none of the prior incidents

cited by Plaintiff to allege constructive notice are substantially similar to Plaintiff's. [*Id.* at 4–7]. Lastly, Carnival asserts that the testimony of its former employee is irrelevant as he left the company two years before Plaintiff's incident and has no knowledge of Carnival's conduct after he left. [*Id.* at 7, 8–10]. Carnival then argues that the dangerous condition, if any, was open and obvious to Plaintiff as she testified that she saw water coming down the retractable roof and, on the way back to her table, she noticed water on the floor. [*Id.* at 7–8].

## II. LEGAL STANDARD

Summary judgment is appropriate when there is “no genuine issue as to any material fact [such] that the moving party is entitled to judgment as a matter of law.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); *see also* Fed. R. Civ. P. 56. “An issue of fact is ‘material’ if it is a legal element of the claim under the applicable substantive law which might affect the outcome of the case.” *Feijoo v. Geico Gen. Ins. Co.*, 137 F. Supp. 3d 1320, 1325–26 (S.D. Fla. 2015) (citing *Allen v. Tyson Foods, Inc.*, 121 F.3d 642, 646 (11th Cir.1997)). “An issue of fact is ‘genuine’ if the record, taken as a whole, could lead a rational trier of fact to find for the non-moving party.” *Id.* at 1326.

The moving party has the initial burden of showing that no genuine issue remains as to any material fact. *Id.* “In assessing whether the moving party has met this burden, the court must view the movant's evidence and all factual inferences arising from it in the light most favorable to the non-moving party.” *Id.* (citing *Denney v. City of Albany*, 247 F.3d 1172, 1181 (11th Cir. 2001)). Once the moving party satisfies its initial burden, the burden shifts to the non-moving party to come forward with evidence showing a genuine issue of material fact that precludes summary judgment. *Bailey v. Allgas, Inc.*, 284 F.3d 1237, 1243 (11th Cir. 2002); *see also* Fed. R. Civ. P. 56(e).

“The mere existence of a scintilla of evidence in support of the non-moving party’s position will be insufficient; there must be evidence on which the jury could reasonably find for the non-movant.” *Feijoo*, 137 F. Supp. 3d at 1326 (cleaned up) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252 (1986)). “If reasonable minds could differ on the inferences arising from undisputed facts, then a court should deny summary judgment.” *Miranda v. B & B Cash Grocery Store, Inc.*, 975 F.2d 1518, 1534 (11th Cir. 1992). But if the record, taken as a whole, cannot lead a rational trier of fact to find for the non-moving party, there is no genuine issue for trial, and summary judgment is proper. *Feijoo*, 137 F. Supp. 3d at 1326 (citing *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986)).

“General maritime law governs tort claims, like this one, that arise on ships sailing in navigable waters.” *Yusko v. NCL (Bahamas), Ltd.*, 4 F.4th 1164, 1167 (11th Cir. 2021). When Congress has not spoken on a maritime matter, federal courts rely on common law principles. *Id.* To prove negligence under common law, a plaintiff must show that (1) the tortfeasor had a duty to protect the plaintiff from a particular injury, (2) the tortfeasor breached that duty, (3) the breach actually and proximately caused the plaintiff’s injury, and (4) the plaintiff suffered actual harm. *Id.* at 1167–68. “With respect to the duty element in a maritime context, ‘a shipowner owes the duty of exercising reasonable care towards those lawfully aboard the vessel who are not members of the crew.’” *Holland v. Carnival Corp.*, 50 F.4th 1088, 1094 (11th Cir. 2022) (quoting *Guevara v. NCL (Bahamas) Ltd.*, 920 F.3d 710, 720 (11th Cir. 2019)). As a prerequisite to imposing liability, this standard requires that the carrier have had actual or constructive notice of a risk-creating condition. *Id.* “Thus, a shipowner’s actual or constructive knowledge of the hazardous condition arises as part of the duty element in a claim seeking to hold the shipowner directly liable for its own negligence.” *Id.*

### III. ANALYSIS

#### A. Open and Obvious

Carnival has failed to sustain its burden to establish there is no genuine issue of material fact regarding whether the danger posed by water on the deck coming from the retractable roof is open and obvious.

A cruise ship only has a duty to warn of dangers that are not open and obvious. *Krug v. Celebrity Cruises*, 745 F. App'x 863, 866 (11th Cir. 2018). "An open and obvious condition is one that should be obvious by the ordinary use of one's senses." *Id.* Whether a danger is open and obvious is determined from an objective, rather than a subjective, point of view. *Id.* "[C]ourts have ... held that a dangerous condition is not open and obvious where a reasonable person may be aware of the dangerous condition, but the extent of the danger is unreasonable or unforeseeable." *Yusko v. NCL*, No. 19-cv-20479, 424 F.Supp.3d 1231, 1236 (S.D. Fla. Jan. 3, 2020).

*Taylor v. Royal Caribbean Cruises Ltd.*, 437 F. Supp. 3d 1255, 1260 (S.D. Fla. 2020).

Here, although Plaintiff observed water coming down from the retractable roof [ECF No. 62-1 at 10] and wetness on the floor [*Id.* at 12], there is a genuine issue of material fact as to whether the water on the floor was unreasonably and dangerously slippery. *See Wieters v. Carnival Corp.*, Civil Action No. 16-25284-Civ-Scola, 2018 U.S. Dist. LEXIS 167709, at \*9 (S.D. Fla. Sep. 28, 2018) (citing *Frasca v. NCL (Bahamas), Ltd.*, 654 F. App'x 949, 953 (11th Cir. 2016)) ("[E]ven if [plaintiff] had seen the water and ice, this does not necessarily mean she should have also appreciated just how slippery it made the floor."). Additionally, there is contradictory evidence regarding whether the water created a dangerous condition. For example, Carnival's corporate representative testified that the floor surface was made of slip-resistant material [ECF No. 62-2 at 10]; however, Carnival produced prior incidents where people have slipped on the Lido Deck, which tends to show that the danger posed by the water may not be so open and obvious.

Thus, viewing the evidence in the light most favorable to the Plaintiff, a reasonable factfinder could conclude that the dangerous nature of the floor was not necessarily so open and obvious as to preclude Carnival's duty to warn Plaintiff of any dangerous condition.

### **B. Notice**

Carnival's claim that that there are no genuine issues of material issues of fact with regard to notice also fails. "Plaintiff can establish notice by showing that Defendant knew about or had constructive notice of the purported risk-creating condition." *Taylor*, 437 F. Supp. 3d at 1259–60 (citing *Sutton v. Royal Caribbean Cruises Ltd.*, 774 F. App'x 508, 511 (11th Cir. 2019)). Plaintiff may show constructive notice by submitting evidence (1) that the risk-creating condition "existed for a sufficient period of time to invite corrective measures" or (2) "of substantially similar incidents in which conditions substantially similar to the occurrence in question must have caused the prior incident." *Sutton*, 774 F. App'x at 511.

For a prior incident to be substantially similar, "[t]he conditions surrounding the . . . incidents' need only be 'similar enough to allow . . . a reasonable inference concerning [Defendant's] ability to foresee this type of [accident] and its results.'" *Williford v. Carnival Corp.*, No. 17-21922-CIV-Cooke, 2019 WL 6250824, at \* 3 (S.D. Fla. Nov. 22, 2019) (quoting *Sorrels v. NCL (Bahamas) Ltd.*, 796 F.3d 1275, 1280 (11th Cir. 2015)). "The substantial similarity doctrine does not require identical circumstances." *Sorrels*, 796 F.3d at 1287.

*Taylor*, 437 F. Supp. 3d at 1260.

Here, Carnival disclosed six similar incidents that occurred between October 22, 2018, and May 21, 2022, on Deck 9. [ECF Nos. 70-1, 70-2, 70-3, 70-4, 70-5, 75-6]. Passengers reported walking on the Lido Deck when they slipped on wet flooring. [ECF Nos. 70-2, 70-3, 70-4, 70-5, 75-6]. Carnival argues these incidents are not substantially similar because the passengers either slipped near a food station, coming down a hot tub or descending stairs. [ECF No. 75 at 5–6]. Plaintiff slipped and fell near her table, and none of the other passenger's incidents were in the

same exact area. But, as the Eleventh Circuit has explained, the substantial similarity doctrine does not require identical circumstances. *Sorrels*, 796 F.3d at 1287. The doctrine “allows for some play in the joints depending on the scenario presented and the desired use of the evidence.” *Id.*

The conditions surrounding the incidents need only be similar enough to allow a reasonable inference regarding Carnival’s ability to foresee this type of accident and its results. *See id.* The Court finds that the conditions surrounding the incidents are similar enough to allow Carnival to foresee that the Lido Deck on Deck 9 is prone to water accumulation that can make the floor slippery. The fact that the water that Plaintiff slipped on came from the retractable roof and not a food station or the pool/jacuzzi does not negate the fact that Carnival knew its passengers had slipped and fallen due to water on the surface of the Lido Deck. Plaintiff, in her complaint, alleges that the dangerous condition “is a wet, slippery, transitory, and/or foreign substance on the floor surface of the deck,” without regard to whether the substance came from the retractable roof. Thus, Carnival’s argument that it did not know about the alleged dangerous condition because there are “no reports or records of water coming down from the retractable roofs; nor [are] there any complaints or accidents involving retractable roofs or the potential of it creating an alleged dangerous condition,” is does not end the inquiry.

Additionally, during discovery, it was disclosed that Carnival has several meetings due to the floor surface being slippery on the Lido Deck. [ECF 70-7 at 3; ECF No. 7-8 at 8; ECF No. 70-9 at 6]. Moreover, Carnival’s former occupational safety manager testified at deposition that the Lido Deck was prone to accumulating water from various sources, including rainwater, which made it very slippery, thus contradicting the statement from Carnival’s corporate representative that the floor surface is slip-resistant. [ECF No. 70-10 at 6; ECF No. 62-2 at 10]. Carnival argues that this Court should not include this testimony of its former employee when determining whether

Carnival is entitled to summary judgment; however, Carnival's argument is not appropriately raised in a summary judgment motion and will not be addressed. *See City of Tuscaloosa v. Harcross Chems., Inc.*, 158 F.3d 548, 564 (11th Cir. 1998) (holding that courts should avoid "the confusion and conflation of admissibility issues with issues regarding the sufficiency of the plaintiff's evidence to survive summary judgment."). Therefore, based on the record, a reasonable factfinder could conclude that Carnival had constructive notice of the risk-creating condition and did not take measures to maintain the deck and/or warn Plaintiff about the slippery conditions; thus, summary judgment is improper.

The Court respectfully **RECOMMENDS** that Carnival's Motion for Summary Judgment, [ECF No. 60] be **DENIED**.

#### **OBJECTIONS**

Pursuant to 28 U.S.C. § 636(b)(1) and Local Magistrate Rule 4(a), Plaintiff has **FOURTEEN** days from the date of this Report and Recommendation to serve and file written objections, if any, with the District Judge. *See generally Jeffrey S. by Ernest S. v. State Bd. of Educ. of State of Ga.*, 896 F.2d 507 (11th Cir. 1990). Failure to timely file objections will bar a *de novo* determination by the district judge of anything in this Report and shall constitute a waiver of a party's "right to challenge on appeal the District Court's order based on unobjected-to factual and legal conclusions." 11th Cir. R. 3-1; *see also Harrigan v. Metro-Dade Police Dep't Station #4*, 977 F.3d 1185, 1191–92 (11th Cir. 2020); 28 U.S.C. § 636(b)(1)(C).

**SIGNED** this 29th day of July, 2024.



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LISETTE M. REID  
UNITED STATES MAGISTRATE JUDGE

**cc: U.S. District Court Judge Kathleen M. Williams**

**All Counsel of Record**