

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

Case Number: 23-cv-24692-MARTINEZ

MILDRED ORTIZ CRUZ,

Plaintiff,

v.

CARNIVAL CORPORATION,

Defendant.

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ORDER ON DEFENDANT'S MOTION TO DISMISS

THIS CAUSE is before the Court upon Defendant Carnival Corporation's ("Defendant"), Motion to Dismiss Plaintiff's Complaint ("Motion"), (ECF No. 4). This Court has reviewed the Motion; Plaintiff's Response, (ECF No. 8); Defendant's Reply, (ECF No. 9); and pertinent portions of the record and is otherwise fully advised of the premises. After careful consideration, and for the reasons set forth herein, the Motion, (ECF No. 4), is **GRANTED**.

I. BRIEF FACTUAL BACKGROUND

Plaintiff was a passenger aboard the Carnival *Mardi Gras* cruise ship operated by the Defendant. (ECF No. 1, ¶¶ 3, 6). Plaintiff alleges that she slipped and fell on water on the floor of Deck 18. (*Id.* ¶ 7). Plaintiff contends that she had no knowledge that the floor was wet. (*Id.* ¶ 8). Plaintiff seeks to recover damages for injuries arising from the fall, claiming that Defendant negligently maintained the premises, failed to inspect the floors, and failed to warn passengers of the alleged dangerous condition. (*Id.* ¶ 9). Plaintiff further claims that the dangerous condition was created by Defendant or had existed for a sufficient length of time such that Defendant knew or should have known of its existence. (*Id.* ¶ 12).

Defendant moved to dismiss the Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6). (ECF No. 4). Defendant argues that Plaintiff offers only conclusory allegations of notice and fails to sufficiently plead Defendant's actual or constructive notice of the alleged defect, a required element to prevail on a negligence claim. (*Id.* at 4–8).

In response, Plaintiff argues that the Complaint sufficiently alleges notice, contending that Defendant knew or should have known of the dangerous condition through regular inspections and prior similar incidents. (ECF No. 8). Plaintiff alternatively requests leave to amend the Complaint if the Court grants the Motion to Dismiss. (*Id.*). Defendant's Reply emphasizes that Plaintiff's reliance on general assertions of notice fails to satisfy the pleading requirements for a maritime negligence claim. (ECF No. 9). Defendant further contends that Plaintiff's boilerplate allegations lack the factual specificity required to infer actual or constructive notice. (*Id.*).

II. LEGAL STANDARD

Under Federal Rule of Civil Procedure 12(b)(6), the Court may dismiss a complaint based on the failure to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). “To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim for relief that is plausible on its face.’” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). When reviewing a motion to dismiss, the plaintiff should receive the benefit of all favorable inferences that can be drawn from the facts alleged in the complaint. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Courts, nevertheless, “are not bound to accept as true a legal conclusion couched as a factual allegation.” *Papasan v. Allain*, 478 U.S. 265, 286 (1986) (quoting *Briscoe v. LaHue*, 663 F.2d 713, 723 (7th Cir. 1981)). A court considering a Rule 12(b)(6) motion is generally limited to the facts contained in the complaint and the exhibits attached thereto, including “documents referred to in the complaint that are central to the claim.” *Wilchombe v. TeeVee Toons, Inc.*, 555

F.3d 949, 959 (11th Cir. 2009) (citing *Brooks v. Blue Cross & Blue Shield of Fla., Inc.*, 116 F.3d 1364, 1369 (11th Cir. 1997)).

III. DISCUSSION

This Court employs general principles of negligence law when evaluating maritime tort cases. *See Chaparro v. Carnival Corp.*, 693 F.3d 1333, 1336 (11th Cir. 2012). To state a negligence claim under general maritime law, a plaintiff must assert that “(1) the defendant had a duty to protect the plaintiff from a particular injury; (2) the defendant breached that duty; (3) the breach actually and proximately caused the plaintiff’s injury; and (4) the plaintiff suffered actual harm.” *Id.* Plaintiffs in maritime negligence cases also must adequately plead notice on the part of a vessel owner, as “a cruise line owes its passengers a duty to warn of known dangers beyond the point of debarkation in places where passengers are invited or reasonably expected to visit.” *Id.* (citing *Carlisle v. Ulysses Line Ltd.*, 475 So. 2d 248, 251 (Fla. 3d DCA 1985)). The duty to warn “encompasses only dangers of which the carrier knows, or reasonably should have known.” *Id.* Accordingly, liability can be imposed only on carriers who have “actual or constructive notice of [the alleged] risk-creating condition.” *Keefe v. Bahama Cruise Line, Inc.*, 867 F.2d 1318, 1322 (11th Cir. 1989). A plaintiff can establish constructive notice by alleging “that the ‘defective condition exist[ed] for a sufficient period of time to invite corrective measures.’” *Guevara v. NCL (Bahamas) Ltd.*, 920 F.3d 710, 720 (11th Cir. 2019) (quoting *Monteleone v. Bahama Cruise Line, Inc.*, 838 F.2d 63, 65 (2d Cir. 1988)). A plaintiff can also establish constructive notice by alleging “substantially similar incidents in which ‘conditions substantially similar to the occurrence in question must have caused the prior accident.’” *Id.* (quoting *Jones v. Otis Elevator Co.*, 861 F.2d 655, 661–62 (11th Cir. 1988)).

Defendant moves to dismiss Plaintiff's Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6), arguing that Plaintiff failed to sufficiently allege actual or constructive notice of the alleged dangerous condition. (ECF No. 4). To avoid a motion to dismiss, the plaintiff must assert enough factual allegations to allow the court to draw the reasonable inference that the defendant had actual or constructive notice of the risk-creating condition. *See Mayer v. Carnival Corp.*, No. 24-cv-20160, 2024 U.S. Dist. LEXIS 74543, at *5 (S.D. Fla. Apr. 24, 2024).

In the present case, Plaintiff alleges "[t]he [slippery floor condition] was created by the Defendant, CARNIVAL, or had existed for such a sufficient length of time that the Defendant, CARNIVAL, knew or should have known of the dangerous condition." (ECF No. 1, ¶ 12). However, notice cannot be imputed to a cruise ship operator even if the operator created the dangerous condition. *See Pizzino v. NCL (Bahamas) Ltd.*, 709 F. App'x 563, 565 (11th Cir. 2017); *Everett v. Carnival Cruise Lines*, 912 F.2d 1355, 1359 (11th Cir. 1990) (reversing the district court where jury instructions could have allowed a jury to find a ship operator negligent based only on its "mere creation or maintenance of a defect" without any finding of notice). Here, even if Plaintiff's conclusory statement that Defendant created the dangerous condition is accepted as true, it does not support Plaintiff's claim that Defendant had actual or constructive notice. *See Pizzino*, 709 F. App'x at 565–66.

Moreover, Plaintiff argued that the alleged risk-creating condition existed long enough for Defendant to have discovered and corrected it through reasonable care. (ECF No. 1, ¶ 12). However, to establish notice by alleging a dangerous condition existed long enough for the defendant to have discovered and corrected it, a plaintiff must "demonstrate specific facts pertaining to how long the dangerous condition existed or that the dangerous condition existed for a sufficient period of time to create constructive notice." *Kendall v. Carnival Corp.*, No. 1:23-CV-

22921-KMM, 2023 WL 8593669, at *3 (S.D. Fla. Dec. 8, 2023); *see also Newbauer v. Carnival Corp.*, 26 F.4th 931, 936 (11th Cir. 2022) (“[Plaintiff’s] argument is unpersuasive because she failed to allege any facts suggesting the amount of time the hazard existed on the deck before she fell or that there were crewmembers monitoring the area.”). This theory of notice is typically reserved for “incidents where a transitory substance has existed for some period of time.” *Kendall*, 2023 WL 8593669, at *3.

In the present case, Plaintiff failed to allege any details about when the alleged risk-creating condition came into existence or how long the risk-creating condition was present. (ECF No. 1). Plaintiff merely alleges that Defendant “knew or should have known” about the presence of water on Deck 18 of the *Mardi Gras* but does not provide specific factual details supporting this claim to allow the court to draw the reasonable inference that Defendant had actual or constructive notice of the risk-creating condition. (Compl. ¶ 12, ECF No. 1). The Complaint lacks references to prior complaints by passengers, inspection logs, or statements from crew members indicating awareness of the hazard. Without specific allegations of how Defendant gained actual or constructive knowledge of the hazard, Plaintiff’s claims fail to meet the pleading standard required under *Twombly* and *Iqbal*. Thus, without a sufficient factual basis, this conclusory allegation of constructive notice cannot succeed. *See Kendall*, 2023 WL 8593669, at *3.

Furthermore, Plaintiff contends that Defendant’s notice of the dangerous condition can be inferred from the ship’s routine inspection protocols and the condition’s alleged presence for a prolonged period. (ECF No. 8). However, the mere assertion that a dangerous condition “existed for a sufficient length of time” without any specification as to the duration or any description of how inspections were inadequate is insufficient to establish constructive notice. *See Newbauer*, 26 F.4th at 934.

Taking the allegations in the Complaint as true, Plaintiff did not sufficiently plead facts showing that Defendant had either actual or constructive notice of the hazardous condition, as required to sustain a maritime negligence claim. Thus, this Court finds that the Complaint fails to state a claim for relief that is plausible on its face, and therefore must be dismissed.

Accordingly, it is **ORDERED** and **ADJUDGED** that:

1. Defendant's Motion to Dismiss, (ECF No. 4), is **GRANTED**.
2. The Complaint, (ECF No. 1), is **DISMISSED without prejudice**.
3. Plaintiff may file an amended complaint that cures the deficiencies identified in this order on or before December 3, 2024. Failure to do so may be grounds for **final dismissal without further warning**.

DONE AND ORDERED in Chambers at Miami, Florida, this 18 day of November, 2024.



JOSE E. MARTINEZ
UNITED STATES DISTRICT JUDGE

Copies furnished to:
Magistrate Judge Sanchez
All Counsel of Record