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

Case Number: 24-20497-CIV-MARTINEZ

LARIANA POLLARD,

Plaintiff,

v.

CARNIVAL CORPORATION,

Defendant.
_____/

ORDER GRANTING MOTION TO DISMISS

THIS CAUSE came before the Court upon Defendant Carnival Corporation's Motion to Dismiss Plaintiff's Amended Complaint ("Motion"), (ECF No. 27). Plaintiff filed a response in opposition, (ECF No. 30), and Defendant filed a reply, (ECF No. 31). After considering the briefing, the record, and being otherwise fully advised in the premises, the Motion is **GRANTED**.

BACKGROUND

Plaintiff alleges that she "slipped and fell due to a foreign, wet, slippery, and/or transitory substance present on the gangway" while disembarking Carnival's vessel, "CONQUEST." (Am. Compl., ECF No. 26 ¶ 13). Plaintiff claims that Defendant was negligent in the inspection and maintenance of the gangway, negligent in its failure to warn her of the slipping hazard, and negligent in its failure to offer assistance. (*See generally* Am. Compl.). The Court dismissed Plaintiff's initial complaint, holding that Plaintiff failed to sufficiently allege that Defendant was on notice of the alleged danger. (ECF No. 25). Defendant argues that Plaintiff's Amended Complaint should be dismissed as it still fails to sufficiently allege notice. (*See* Mot.).

LEGAL STANDARD

Under Federal Rule of Civil Procedure 12(b)(6), the Court will grant a motion to dismiss if the complaint fails to state a claim for which relief can be granted. At this stage of the case, "the question is whether the complaint 'contains sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.'" *Worthy v. Phenix City*, 930 F.3d 1206, 1217 (11th Cir. 2019) (alteration adopted) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678 (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). When ruling on a motion to dismiss, "the Court accepts the factual allegations in the complaint as true and construes them in the light most favorable to the plaintiff." *Speaker v. U.S. Dep't of Health and Human Servs. For Disease Control and Prevention*, 623 F.3d 1371, 1379 (11th Cir. 2010). Although a complaint need not include detailed factual allegations, a plaintiff must offer "more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Twombly*, 550 U.S. at 555. "[C]onclusory allegations, unwarranted deductions of facts or legal conclusions masquerading as facts will not prevent dismissal." *Oxford Asset Mgmt., Ltd. v. Jaharis*, 297 F.3d 1182, 1188 (11th Cir. 2002).

DISCUSSION

Maritime law governs Plaintiff's negligence claim because the alleged tort was committed aboard a ship sailing navigable waters. *Keefe v. Bahama Cruise Line, Inc.*, 867 F.2d 1318, 1320 (11th Cir. 1989). At the motion to dismiss stage, a plaintiff must plead facts sufficient to plausibly establish 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." *Chaparro v. Carnival Corp.*, 693 F.3d 1333, 1336 (11th Cir. 2012). Notably, plaintiffs in maritime negligence cases must also assert enough factual allegations to allow the court to draw the reasonable inference that the defendant vessel owner had actual or constructive notice of the risk-creating condition. *Keefe*, 867 F.2d at 1322.

Plaintiff presents three theories to establish Defendant's notice of the alleged danger. First, Plaintiff lists four slip and fall cases filed against Defendant to establish that Defendant had "constructive knowledge of the slipping hazard that caused Plaintiff to slip and fall." (Am. Compl. ¶ 14). Second, Plaintiff alleges that Defendant's policies and procedures to ensure safe ingress and egress in the event of rain establish notice of the potential slipped hazard. (*Id.* ¶ 15). Third, Plaintiff alleges that Defendant was on notice that the specific gangway upon which Plaintiff fell was wet because it had rained the morning of Plaintiff's fall, stopping "approximately an hour prior to the Plaintiff's fall." (*Id.* ¶ 16).

Even though the Amended Complaint corrects several flaws from the original Complaint, Plaintiff fails to adequately allege what the specific hazard was that caused her injury. While Plaintiff alleges that it rained earlier in the day, stopping approximately an hour prior to her slip and fall, Plaintiff does not allege that she slipped and fell on rainwater or a puddle of water. (*See* Am. Compl.). Plaintiff alleges that she slipped and fell "due to a foreign, wet, slippery, and/or transitory substance present on the gangway." (Am. Compl. ¶ 13). Plaintiff argues that "[i]t is a reasonable inference that rain is a slippery substance, and a gangway not properly dried after rainfall would be wet." (ECF No. 30 at 4). However, this is not an accurate representation of the inferential leap that Plaintiff is asking the Court to make. The Court would need to assume that it rained enough that day to create puddles of rain, puddles of rain had not dried up naturally by the time Plaintiff disembarked the vessel, and that rainwater had puddled up on the gangway. Further,

the Court would have to infer that rainwater was the "foreign, wet, slippery, and/or transitory substance present on the gangway" that Plaintiff slipped on, rather than a spilled soda or sunblock or some other "foreign, wet, slippery, and/or transitory substance." This is far too big of an inferential leap for the Court to make. While it is *possible* that Plaintiff slipped and fell on rainwater on the gangway, the facts alleged in Plaintiff's complaint do not push the line into *plausible*. *See Twombly*, 550 U.S. at 555 (explaining that while a complaint "does not need detailed factual allegations," it must provide "more than labels and conclusions").

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

1. The Motion to Dismiss, (ECF No. 27), is **GRANTED**.
2. Plaintiff's Amended Complaint, (ECF No. 26), is **DISMISSED without prejudice**.
3. Plaintiff may file a second amended complaint that cures the deficiencies identified in this Order on or before May 16, 2025. Failure to do so may be grounds for **final dismissal without further warning.**

DONE AND ORDERED in Chambers at Miami, Florida, this 25 day of April 2025.

JOSE E. MARTINEZ
UNITED STATES DISTRICT JUDGE

Copies provided to:
All Counsel of Record