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

Case Number: 24-20773-CIV-MARTINEZ

DANIELLE OHANLON,

Plaintiff,

v.

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

Defendant.
_____/

ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

THIS CAUSE came before this Court on Defendant Carnival Corporation's Motion for Summary Judgment ("Motion"), (ECF No. 39). This Court has reviewed the Motion, Plaintiff's Response, (ECF No. 48), Defendant's Reply, (ECF No. 51), pertinent portions of the record, and applicable law and is otherwise fully advised of the premises. Accordingly, after careful consideration, the Motion is **GRANTED** for the reasons set forth herein.

I. BACKGROUND[1]

The instant action arises from a slip and fall that occurred while Plaintiff was a passenger onboard Defendant Carnival Corporation's vessel *Sunshine*. (Defendant's Statement of Facts ("Def.'s SOF") ¶ 1, ECF No. 38.) On March 2, 2023, Plaintiff attended the Mega Deck Party on the Lido Deck where she "slipped and fell due to a foreign, wet, slippery, and/or transitory

[1] The following pertinent facts are undisputed unless otherwise noted. When the facts are in dispute, they are taken in the light most favorable to the nonmovant. *See Chapman v. Am. Cyanamid Co.*, 861 F.2d 1515, 1518 (11th Cir. 1988).

substance" while dancing. (*Id.* ¶ 2.) Plaintiff did not look down to the floor where she was dancing prior to her fall. (*Id.* ¶¶ 8, 28.) Plaintiff did not realize the floor was wet until she had to crawl to get through the crowd after the fall. (Plaintiff's Deposition Transcript ("Pl.'s Depo. Tr.") at 46:16–47:11, ECF No. 38-1.) Plaintiff believed the substance she slipped on to be water. (Def.'s SOF ¶ 9.) She testified that "[i]t felt like water" and that "[i]t didn't seem sticky to [her]." (Pl.'s Depo. Tr. at 47:8–9.) There is no record evidence of how long the alleged foreign, wet, slippery, and/or transitory substance was present on the deck surface prior to Plaintiff's fall. (*Id.* ¶ 15.) Plaintiff testified that she did not know where the alleged substance came from and how long it had been there prior to her fall. (Pl.'s Depo. Tr. at 73:18-23.) Plaintiff claims that she sustained multiple injuries. (Def.'s SOF ¶ 34.)

Plaintiff filed this action on February 28, 2024, asserting causes of action for Negligent Maintenance (Count I), Negligent Failure to Correct (Count II), and Negligent Failure to Warn (Count III). (*Id.* ¶ 3; ECF No. 1). Defendant moves for summary judgment on the following grounds: first, there is no record evidence establishing the existence of a dangerous condition in the location where Plaintiff claims she fell; second, there is no evidence that Defendant had actual or constructive notice of the alleged dangerous condition; third, Defendant had no duty to warn of the alleged dangerous condition as it was open and obvious; finally, there is no evidence of any negligence by Defendant that proximately caused Plaintiff's injuries (*See generally* Mot.)

II. LEGAL STANDARD

Under Federal Rule of Civil Procedure 56, a court must grant summary judgment "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). A movant may show that there is no genuine dispute as to any material fact by "citing to particular parts of materials in the record, including

depositions, documents, electronically stored information, affidavits or declarations, stipulations . . . , or other materials . . . . Fed. R. Civ. P. 56(c)(1)(A). Rule 56 requires granting summary judgment "after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). The movant is entitled to a judgment as a matter of law when the "nonmoving party has failed to make a sufficient showing on an essential element of [their] case." *Id.*

"The moving party bears the initial burden to show, by reference to materials on file, that there are no genuine issues of material fact that should be decided at trial." *Clark v. Coats & Clark, Inc.*, 929 F.2d 604, 608 (11th Cir. 1991); *accord Kol B'Seder, Inc. v. Certain Underwriters at Lloyd's of London Subscribing to Certificate No. 154766 Under Cont. No. B0621MASRSWV15BND*, 766 F. App'x 795, 798 (11th Cir. 2019). "Only when that burden has been met does the burden shift to the non-moving party to demonstrate that there is indeed a material issue of fact that precludes summary judgment." *Clark*, 929 F.2d at 608.

When the moving party has carried its burden, the party opposing summary judgment must do more than show that there is "metaphysical doubt" as to any material fact. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). Indeed, Rule 56 "requires the nonmoving party to go beyond the pleadings and, by her own affidavits, or by the depositions, answers to interrogatories, and admissions on file, designate *specific facts showing that there is a genuine issue for trial*." *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986) (emphasis added) (cleaned up). "[C]onclusory allegations without specific supporting facts have no probative value." *Myers v. Bowman*, 713 F.3d 1319, 1327 (11th Cir. 2013) (citing *Evers v. Gen. Motors Corp.*, 770 F.2d 984, 986 (11th Cir. 1985)).

At summary judgment, this Court must view the evidence and draw inferences in the light most favorable to the nonmoving party. *See Matsushita Elec. Indus.*, 475 U.S. at 586; *Chapman*, 861 F.2d at 1518. "All reasonable inferences arising from the undisputed facts should be made in favor of the nonmovant." *Chapman*, 861 F.2d at 1518. "However, an inference based on speculation and conjecture is not reasonable." *Id.* (citing *Blackston v. Shook & Fletcher Insulation Co.*, 764 F.2d 1480, 1482 (11th Cir. 1985)). "Speculation does not create a *genuine* issue of fact; instead, it creates a false issue, the demolition of which is a primary goal of summary judgment." *Cordoba v. Dillard's, Inc.*, 419 F.3d 1169, 1181 (11th Cir. 2005). "Where the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no 'genuine issue for trial.'" *Matsushita Elec. Indus.*, 475 U.S. at 587 (quoting *First Nat'l Bank of Ariz. v. Cities Servs. Co.*, 391 U.S. 253, 270 (1968)).

III. DISCUSSION

Maritime law governs Plaintiff's negligence claims 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). "In analyzing a maritime tort case, [courts] rely on general principles of negligence law." *Chaparro v. Carnival Corp.*, 693 F.3d 1333, 1336 (11th Cir. 2012) (quoting *Daigle v. Point Landing, Inc.*, 616 F.2d 825, 827 (5th Cir. 1980)). "To plead negligence, a plaintiff must allege 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*, 693 F.3d at 1336.

"A cruise-ship operator 'is not liable to passengers as an insurer, but only for its negligence.' The mere fact of an accident causing injury is insufficient to establish that a dangerous condition existed." *D'Antonio v. Royal Caribbean Cruise Line, Ltd.*, 785 F. App'x 794, 796-97

(11th Cir. 2019) (quoting *Keefe*, 867 F.2d at 1322); *see also Looney v. Metro. R.R. Co.*, 200 U.S. 480, 486 (1906) ("A defect cannot be inferred from the mere fact of an injury. There must be some proof of the negligence."); *Miller v. NCL (Bah.) Ltd.*, No. 15-cv-22254, 2016 WL 4809347, at *4 (S.D. Fla. Apr. 6, 2016) ("Generally, ship owners and operators do not owe a heightened or special duty of care to their passengers." (citing *Kermarec v. Compagnie Generale Transatlantique*, 358 U.S. 625, 630 (1959))), *aff'd*, 679 F. App'x 981 (11th Cir. 2017). Rather, "[u]nder maritime law, the owner of a ship in navigable waters owes passengers a duty of reasonable care under the circumstances." *Sorrels v. NCL (Bah.) Ltd.*, 796 F.3d 1275, 1279 (11th Cir. 2015).

The duty of reasonable care requires, "as a prerequisite to imposing liability, that the carrier have had actual or constructive notice of the risk-creating condition." *Keefe*, 867 F.2d at 1322. "In other words, a cruise ship operator's duty is to shield passengers from known dangers (and from dangers that should be known), whether by eliminating the risk or warning of it." *Tesoriero v. Carnival Corp.*, 965 F.3d 1170, 1178 (11th Cir. 2020). Thus, a cruise-ship operator's liability often "hinges on whether it knew or should have known about the dangerous condition." *Guevara v. NCL (Bah.) Ltd.*, 920 F.3d 710, 720 (11th Cir. 2019); *see also D'Antonio*, 785 F. App'x at 797.

Therefore, to prove Defendant's duty of care, Plaintiff must first establish that Defendant had actual or constructive notice of the dangerous condition. Defendant argues there is no record evidence that it had actual knowledge of a foreign, wet, slippery, and/or transitory substance present on the deck surface where Plaintiff fell. (Mot. at 8.) For example, there is no evidence that there were any crewmembers in the area mopping prior to the fall. This lack of record evidence establishes that there is no genuine issue of material fact as to Defendant's actual notice.

As to constructive notice, there are two ways it can be proven. First, if the defendant "ought to have known of the peril to its passengers" because the hazard was "present for a period of time

so lengthy as to invite corrective measures." *Keefe*, 867 F.2d at 1322. Second, "a party may establish constructive notice with evidence of substantially similar incidents in which conditions substantially similar to the occurrence in question must have caused the prior accident." *Kendall v. Carnival Corp.*, No. 1:23-cv-22921, 2023 WL 8593669, at *3 (S.D. Fla. Dec. 7, 2023).

As to the first method, Defendant argues there is no record evidence that Carnival should have known that a foreign, wet, slippery, and/or transitory substance present on the deck surface where Plaintiff fell would render the deck unreasonably slippery. (Mot. at 9.) There is no record evidence establishing how long the substance was present on the deck surface prior to Plaintiff's fall. (Def.'s SOF ¶ 15.) Both Plaintiff and her friend who was with her when the incident occurred, testified that they did not see anything on the floor prior to the fall. (Pl.'s Depo. Tr. at 46: 8-10; ECF No. 38-2 at 32:9-11.) Plaintiff further testified that she did not know where the alleged substance came from and how long it had been there prior to her fall. (Def.'s SOF ¶ 16; Pl.'s Depo. Tr. at 73; 18-23.) Accordingly, Plaintiff fails to proffer any facts to establish that sufficient time had passed to invite corrective measures.

Next, as to substantially similar incidents, Defendant notes that during discovery, Carnival disclosed 53 prior incidents involving passenger slips and falls on the exterior areas of the Lido Deck having API Syntheteak flooring from November 18, 2018, through the date of the incident on the Carnival *Sunshine* and its sister-class ships. (Mot. at 10; ECF No. 39-3.) Of the 53 incidents, 27 occurred on the sister-class ships, Carnival *Sunrise* and Carnival *Radiance* while the other 26 incidents occurred on the subject ship, Carnival *Sunshine*. *Id.* Defendant argues that none of these prior incidents can be considered substantially similar. Of the 26 incidents on the subject ship, Carnival *Sunshine*, only one involves a passenger slipping and falling while dancing and occurred almost five years prior to Plaintiff's incident. (ECF No. 38-3, p. 4-9). The other 25 incidents

involve passengers slipping and falling while walking or doing some other activity besides dancing during a deck party. *Id.* Therefore, none of those incidents occurred under substantially similar circumstances.

The Complaint also references four prior incidents but are distinguishable from the instant case and are not substantially similar. *See Erie Reid v. Carnival Corporation*, Case No. 23-cv-23008 (passenger reported slipping on the floor while waiting for pizza at the pizzeria counter on Lido Deck aft); *Tittle v. Carnival Corp.*, Case No. 21-cv-23647 (passenger slipped and fell on a transitory substance while walking through glass doors on the Lido Deck toward the elevators); *Brady v. Carnival Corp.*, 33 F.4th 1278, 1280 (11th Cir. 2022) (passenger was walking on the exterior portion of the Lido Deck during the day when she slipped and fell due to a patch of colorless liquid present on the deck surface); *Kristina Kurtz v. Carnival Corporation*, Case No. 19-cv-25293 (passenger reported that while walking towards the aft of the ship coming from the marketplace by Guy's Burger, she slipped on the wet API floor and sustained injuries). (Compl. ¶ 15(a)–(d), ECF No. 1.) None of these prior incidents are substantially similar to this case as none of them occurred in the same location as Plaintiff's fall, the passengers involved in those incidents were wearing different types of footwear than the sneakers worn by Plaintiff at the time of her fall, and the passengers were engaged in activities completely different from what Plaintiff in this case was doing when she fell.

Because Plaintiff does not present any evidence that Defendant was on notice, there is no genuine dispute of material fact, and summary judgment must be granted in favor of Defendant on all Counts.

IV. CONCLUSION

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

1. The Motion, (ECF No. 39), is **GRANTED**.

2. The Clerk is **DIRECTED** to **CLOSE** this case and **DENY** all pending motions as **MOOT**.

3. Final judgment shall enter via separate order.

DONE AND ORDERED in Chambers at Miami, Florida, this 16 day of May 2025.

JOSE E. MARTINEZ
UNITED STATES DISTRICT JUDGE

Copies provided to:
All Counsel of Record