UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 1:24-cv-23179-KMM

ANTONIO RODRIGUEZ,

Plaintiff,

v.

CARNIVAL CORPORATION,

Defendant.
_____/

ORDER

THIS CAUSE came before the Court upon Defendant Carnival Corporation's ("Defendant") Motion to Dismiss for Failure to State a Claim. ("Motion" or "Mot.") (ECF No. 24). Plaintiff Antonio Rodriguez ("Plaintiff") filed a response in opposition. ("Resp.") (ECF No. 25). Thereafter, Defendant filed a reply in support. ("Reply") (ECF No. 26). The Motion is now ripe for review.

I. BACKGROUND[1]

On June 1, 2024, Plaintiff who was a guest aboard Defendant's cruise ship, "was walking down the exterior staircase from Deck 11 to Deck 10 on the Carnival Dream." Am. Compl. ¶ 14. As Plaintiff "stepped on the third step, which was wet, he suddenly slipped on the metal edging of the step and fell down the entire staircase." *Id.* Plaintiff alleges that "[a]t all relevant times, the risk-creating and/or dangerous condition was the subject stairs [that Plaintiff] slipped on." *Id.* ¶ 16. Thereafter, Plaintiff brought the instant action and alleges five counts against Defendant: (1)

[1] The following facts are taken from the Amended Complaint ("Am. Compl.") (ECF No. 23) and are accepted as true for purposes of ruling on the Motion to Dismiss. *See MSP Recovery Claims, Series LLC v. Metro. Gen. Ins. Co.*, 40 F.4th 1295, 1302 (11th Cir. 2022).

"negligent failure to remedy[,]" (2) "negligent failure to warn of dangerous condition[,]" (3) "negligent design, installation, and/or approval of the subject stairs and the vicinity[,]" (4) "negligence for the acts of Carnival's crew, staff, employees, and/or agents based on vicarious liability" ("Count IV"), and (5) "vicarious liability for the negligent design, installation, and/or approval of the subject stairs and the vicinity against Carnival" ("Count V"). *See generally* Am. Compl. Now before this Court is Defendant's Motion to Dismiss, which argues dismissal of Count IV and V is appropriate. *See generally* Mot.

II. LEGAL STANDARD

Federal Rule of Civil Procedure 12(b)(6) provides that a court may dismiss a complaint for failing 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 to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citation and internal quotation marks omitted). This requirement "give[s] the defendant fair notice of what the claim is and the grounds upon which it rests." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (internal citation and alterations omitted). The court takes the plaintiff's factual allegations as true and construes them in the light most favorable to the plaintiff. *Pielage v. McConnell*, 516 F.3d 1282, 1284 (11th Cir. 2008).

A complaint must contain enough facts to plausibly allege the required elements. *Watts v. Fla. Int'l Univ.*, 495 F.3d 1289, 1295–96 (11th Cir. 2007). A pleading that offers "a formulaic recitation of the elements of a cause of action will not do." *Iqbal*, 556 U.S. at 678 (quoting *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).

III. DISCUSSION

In its Motion, Defendant argues Counts IV and V of the Amended Complaint should be dismissed as an "improper attempt to avoid the notice requirement for maritime torts." Mot. at 4–12. In response, Plaintiff contends that Counts IV and V of the Amended Complaint state a claim for vicarious liability. *See generally* Resp. In reply, Defendant argues that Plaintiff fails to address this Court's rulings in *Britt v. Carnival Corp.*, 580 F. Supp. 3d 1211 (S.D. Fla. Dec. 29, 2021), and *Quashen v. Carnival Corp.*, 576 F. Supp. 3d 1275 (S.D. Fla. 2021). Reply at 1.

First, Defendant argues that Count IV should be dismissed as an "improper attempt to avoid the notice requirement for maritime torts." Mot. at 4. Count IV asserts a cause of "negligence for the acts of Carnival's crew, staff, employees, and/or agents, based on vicarious liability." Am. Compl. at 15. In response, Plaintiff contends that "he actually named one of the negligent crewmembers involved in his incident, and that this is above and beyond the level of factual detail that is required in this district to adequately plead vicarious liability." Resp. at 6 (emphasis omitted). In reply, Defendant argues that dismissing Count IV is supported by this Court's prior holdings. Reply at 4 (citing *Quashen*, 576 F. Supp. 3d 1275; *Britt*, 580 F. Supp. 3d 1211).

As an initial matter, Plaintiff's negligence claims arise under general maritime law "because the alleged tort was committed aboard a ship sailing in navigable waters." *Keefe v. Bahama Cruise Line, Inc.*, 867 F.2d 1318, 1320 (11th Cir. 1989) (citations omitted). "In analyzing a maritime tort case, [the Court] relies on general principles of negligence law." *Chapparro v. Carnival Corp.*, 693 F.3d 1333, 1336 (11th Cir. 2012) (internal quotations omitted). In the maritime context, a plaintiff must also demonstrate that "the [shipowner] [] had actual or constructive notice of [a] risk-creating condition." *Keefe*, 867 F.2d at 1322. Actual notice exists when the Defendant knows about the dangerous condition. *See Holland v. Carnival Corp.*, 50

F.4th 1088, 1095 (11th Cir. 2022). In contrast, constructive notice exists where "the shipowner ought to have known of the peril to its passengers" because the "hazard [had] been present for a period of time so lengthy as to invite corrective measures." *Keefe*, 867 F.2d at 1322.

Importantly, however, "the Eleventh Circuit, in *Yusko v. NCL (Bahamas), Ltd.*, 4 F.4th 1164 (11th Cir. 2021), made clear that 'a passenger need not establish that a shipowner had actual or constructive notice of a risk-creating condition to hold a shipowner liable for the negligent acts of its employees.'" *Britt*, 580 F. Supp. 3d at 1214 (quoting *Yusko*, 4 F.4th at 1170). Or, in other words, "notice is not required for negligence claims under a vicarious liability theory." *Id.* Nevertheless, in *Holland v. Carnival Corporation*, the Eleventh Circuit held that "although we stated in *Yusko* that a plaintiff 'may choose to proceed under a theory of direct liability, vicarious liability, or both,' we noted that "common sense suggests that there will be just as many occasions where passengers are limited to a theory of direct liability[.]" 50 F.4th 1088, 1097 (11th Cir. 2022). Here, Plaintiff alleges the following:

> [Defendant] either knew or should have known of this risk-creating and/or dangerous condition, due to reasons that include, but are not limited to, the following: a. A Carnival crewmember named "Troy" who was working at the bar witnessed [Plaintiff's] fall and immediately approached him to ask if he was okay. These crewmembers were there approximately five minutes prior to when [Plaintiff] traversed this exact spot, and this crewmember was in the immediate vicinity, was in viewing distance with direct line of sight to the subject stairs. A reasonable fact finder can infer that these crewmembers were or should have been aware of the dangerous condition and should have warned of and/or removed this condition. These crewmembers knew or should have known of the dangerous condition because the crewmembers saw the water on the subject stairs before [Plaintiff's] incident but did not clean up the area where the incident occurred until after [Plaintiff's] incident.

Am. Compl. ¶ 18(a). Plaintiff further alleges, that Defendant "is vicariously liable for the failure of the crewmembers who were in the vicinity of [Plaintiff] when he fell to warn him or to remove the liquid, as discussed in paragraph 18(a)." *Id.* ¶ 86. In response, Defendant argues that "[a]

cruise ship has thousands of crewmembers at any given time. Any one of them could be near the 'subject area' of a slip-and-fall." Mot. at 10–11.

Relatedly, Plaintiff began Paragraph 18 with the following description "[Defendant] either knew or should have known of this risk-creating and/or dangerous condition[,]" which is indicative of direct, rather than vicarious liability. *Id.* ¶ 18; *see also Holland*, 50 F.4th at 1094–95 ("[I]n each count, Holland alleged . . . that Carnival 'had actual and/or constructive notice of the dangerous condition' on the glass staircase. [Which is not] is relevant to a claim based on vicarious liability, but [is] relevant to a claim based on Carnival's direct liability for its own negligence."). Moreover, as the Eleventh Circuit previously noted, Plaintiff is not permitted to "avoid pleading the elements necessary to allege Carnival's direct liability for negligent maintenance and failure to warn by titling his claims as claims for vicarious liability and asserting in a conclusory allegation that Carnival was vicariously liable for any negligent action by any of its crewmembers." *Holland*, 50 F.4th at 1097. In this case, Plaintiff's conclusory allegations are insufficient to state a claim for vicarious liability. *See id.*; Am. Compl. ¶ 32 ("The crewmembers, including the medical staff, were employees and agents of [Defendant], and acted within the course and scope of their employment and/or agency agreement and/or relationship."); *id.* ¶ 86 ("CARNIVAL is vicariously liable for the failure of the crewmembers who were in the vicinity of RODRIGUEZ when he fell to warn him or to remove the liquid, as discussed in paragraph 18(a)"); *see also Oxford Asset Mgmt.*, 297 F.3d at 1188 (noting that conclusory allegations are insufficient to overcome a motion to dismiss). Likewise, Plaintiff's argument that naming "one of the negligent crewmembers" is "above and beyond the level of factual detail that is required in this district to adequately plead vicarious liability[,]" is unavailing where the remainder of Plaintiff's allegations regarding "Troy" are vague and conclusory. Resp. at 6; *see also* Reply at 3 (citations omitted) ("*Yusko* stated that

the no-notice, vicarious liability theories were limited to 'employee-caused torts' . . . If Plaintiff is permitted to pursue no-notice vicarious liability claims in this case, then any of the limitations announced in *Yusko* would be meaningless."). Consequently, the Court finds dismissal of Count IV appropriate here.

The Court further finds dismissal of Count V appropriate. Count V of the Amended Complaint asserts "an action against [Defendant] for its vicarious liability for the active negligence of its employees for their negligent design, construction and selection of the subject area." Am. Compl. ¶ 93. In its Motion, Defendant argues:

> Plaintiff's claim makes no sense. Plaintiff contends that employees from the "New Build Department" and the "Refurbishment Departments" along with the entire vessel crew were negligent in the design of the stair case. [ECF No. 18 ¶¶ 95-96]. Plaintiff is not pointing to any specific employee that was negligent, but wide swaths of Carnival's corporate personnel. This is essentially saying that Carnival itself is directly negligent as is already pled in Count III. "In contrast to an individual, a corporation cannot act except through its officers, agents, and employees. Thus, a corporate defendant acting through its officers, agents, and employees is simply a corporation." *Ray v. Spirit Airlines, Inc.*, 836 F.3d 1340, 1357 (11th Cir. 2016). Arguing that an entire department at Carnival was negligent is not a proper claim for vicarious liability.

Mot. at 11. In response, Plaintiff asserts that the "allegations in Count V of [Plaintiff's] amended complaint have explicitly been held to be appropriate by numerous courts in this district." Resp. at 8 (citations omitted). Nevertheless, even if a claim for vicarious liability for negligent design was legally sound, Count V of the complaint contains conclusory, boilerplate accusations insufficient to state a claim upon which relief could be granted. *See* Am. Compl. ¶ 97 ("[Defendant's] employees participated in and/or approved of the design of the subject area including the unreasonably slippery stairs."); *see also Yusko v*, 4 F.4th at 1170 ("But common sense suggests that there will be just as many occasions where passengers are limited to a theory of direct liability. Sometimes, as in *Keefe*, a passenger will not be able to identify any specific

employee whose negligence caused her injury."). Here, Plaintiff has failed to allege that a specific individual or group of individuals was responsible for the design or installation of the allegedly hazardous staircase. *See generally* Am. Compl.; *see also* Mot. at 11. Moreover, the Court agrees with Defendant and finds that a negligent design claim is ill-suited to be brought under a vicarious liability theory. *See* Reply at 4 ("Plaintiff does not address the issue of attempting to impose vicarious liability on Carnival for the alleged misconduct of its 'crew' and 'departments of employees.' The ship is obviously not designed by a single, offending crewmember. Vicarious liability typically arises in the context of a single employee acting within the course and scope of his employment."). Accordingly, the Court finds dismissal of Count V appropriate.

IV. CONCLUSION

UPON CONSIDERATION of the Motion, the pertinent portions of the record, and being otherwise fully advised in the premises, it is hereby ORDERED AND ADJUDGED that Defendants' Motion to Dismiss for Failure to State a Claim is GRANTED. Counts IV and V of the Amended Complaint are DISMISSED.

DONE AND ORDERED in Chambers at Miami, Florida this 28th day of May 2025.

K. MICHAEL MOORE
UNITED STATES DISTRICT JUDGE

c: All counsel of record