UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

Case Number: 24-cv-22914-MARTINEZ

LINDA THOMAS,

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 Complaint ("Motion"), (ECF No. 9). Plaintiff filed a Response in Opposition ("Response"), (ECF No. 12), and Defendant filed a Reply, (ECF No. 13). This Court has reviewed the relevant briefings and pertinent portions of the record and is otherwise fully advised of the premises. After careful consideration, and for the reasons set forth herein, Defendant's Motion to Dismiss, (ECF No. 9), is **GRANTED**.

I. FACTUAL BACKGROUND

Plaintiff, Linda Thomas, was a fare-paying passenger aboard the cruise ship *Conquest*. (Compl. ¶ 12, ECF No. 1). Defendant, Carnival Cruise Lines, operated, managed, maintained, and controlled the Conquest throughout the alleged events. (*Id.* at ¶ 11.) On June 1, 2023, Plaintiff began entering an elevator on Deck 9 when the automatic doors prematurely closed without warning, resulting in injuries to her right forearm, right leg, right knee, left leg, left hand, and back. (*Id.* at ¶ 13.) Plaintiff alleges Defendant had notice of the risk posed by the elevator for two reasons: (1) crew members and passengers were present near the subject elevator with sufficient time to

invite corrective measures prior to Plaintiff's injury, and (2) a similar case of a passenger being struck by elevator doors occurred on the Carnival ship *Sensation* in 2018. (*Id.* at ¶ 14.) Consequently, Plaintiff claims Defendant was negligent in its maintenance of the elevator and in its failure to warn of the malfunction. (*Id.* at ¶¶ 19, 25.) Defendant seeks dismissal of Plaintiff's Complaint, arguing it fails to state a claim upon which relief can be granted for lack of facts plausibly showing Defendant had actual or constructive notice. (Mot. at 1, ECF No. 9).

II. LEGAL STANDARD

Under Federal Rule of Civil Procedure 12(b)(6), the Court may dismiss a complaint that fails to state a claim upon which relief can be granted. To survive a motion to dismiss, a plaintiff must allege sufficient facts, accepted as true, to state a claim that is plausible on its face. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). Factual allegations must be enough to raise a right to relief above the level of speculation or mere possibility. *Id.* at 555. Thus, "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." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). While detailed factual allegations are not required, a pleading that offers labels and conclusions, naked assertations devoid of further factual development, or a formulaic recitation of the elements of a cause of action will not suffice to prevent dismissal. *Id.* at 662. This determination of plausibility is context-specific and requires the reviewing court to draw on its judicial experience and common sense. *Id.* at 679.

III. DISCUSSION

Maritime law governs cases, such as this one, arising from alleged torts committed aboard a cruise ship sailing in navigable waters, and general principles of negligence law will apply. *Newbauer v. Carnival Corp.*, 26 F.4th 931, 935 (11th Cir. 2022). To adequately plead negligence,

a plaintiff must plausibly allege (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.* Regarding the duty element in a maritime context, a shipowner owes a duty of reasonable care toward fare-paying passengers. *Holland v. Carnival Corp.*, 50 F.4th 1088, 1094 (11th Cir. 2022). When the alleged hazard is one commonly encountered on land, as in this case, this standard imposes liability only if the cruise line had actual or constructive notice of the risk. *Id.*

To survive a motion to dismiss, a passenger therefore must plead sufficient facts to support each element of her claim, including that the cruise line had actual or constructive notice of the hazard. *Newbauer*, 26 F.4th at 935. Actual notice exists when the defendant knows about the risk-creating condition, whereas constructive notice exists when the defendant should have known about the risk-creating condition. *Id.* A plaintiff can establish constructive notice by alleging the defective condition existed for a sufficient period to invite corrective measures. *Holland*, 50 F.4th at 1095. Alternatively, a plaintiff can allege that substantially similar incidents have occurred in which conditions substantially similar to the occurrence in question also caused the prior accident. *Id.* Here, Plaintiff fails to plausibly allege notice under either theory.

A. Sufficient Length of Time

Regarding the first theory, a plaintiff "must demonstrate specific facts pertaining to how long the dangerous condition existed or that the dangerous condition existed for a sufficient period to create constructive notice." *Kendall v. Carnival Corp.*, No. 1:23-cv-22921, 2023 U.S. Dist. LEXIS 222188, at *9 (S.D. Fla. Dec. 7, 2023). In *Kendall*, the plaintiff concluded that a cruise line had constructive notice of a tripping hazard because of the length of time it had existed in a high traffic area of the ship. *Id.* at *8. However, because the plaintiff neglected to provide any facts

regarding how long the dangerous condition had been present prior to the incident, her theory of constructive notice failed. *Id.* at *9. *See also Newbauer*, 26 F.4th at 936 (holding that without any facts suggesting the amount of time the hazard existed or that crew members were actively monitoring the area, the plaintiff's argument was unpersuasive); *Worley v. Carnival Corp.*, No. 21-CIV-23501, 2023 U.S. Dist. LEXIS 18534, at *20 (S.D. Fla. Feb. 1, 2023), *report and recommendation adopted*, No. 21-23501-CIV, 2023 U.S. Dist. LEXIS 35966 (S.D. Fla. Mar. 2, 2023) (holding that constructive notice is not plausibly alleged based on the mere existence of the condition).

Here, Plaintiff's Complaint fails to plausibly allege that the risk-creating condition existed for a sufficient time to establish constructive notice. Like in *Kendall* and *Newbauer*, Plaintiff concludes that the elevator malfunction was present for a sufficient period with no further factual development beyond the assertion that the area was highly trafficked. The inference Plaintiff would like the Court to make, that nearby crew members would have seen the elevator malfunctioning prior to the incident, is unfounded without facts suggesting that the malfunction had existed for any length of time beforehand. Thus, this argument merely creates the *possibility* that Defendant had notice, but it does not amount to being *plausible*. *See Newbauer*, 26 F.4th at 933-34. Additionally, Plaintiff maintains in her opposition that the presence of a malfunction, in and of itself, supports the allegation that the hazard had existed for a sufficient time. This argument is circular and does not support an allegation of constructive notice because, as the court reasoned in *Worley*, the mere existence of a condition does not mean Defendant knew about it. *See* 2023 U.S. Dist. LEXIS 18534, at *20.

B. Substantial Similarity

To allege constructive notice through substantial similarity, a plaintiff must demonstrate a previous incident that is similar enough to the current incident to allow the court to draw a reasonable inference regarding the cruise line's ability to foresee the hazard. *Cogburn v. Carnival Corp.*, No. 21-11579, 2022 U.S. App. LEXIS 11177, at *11 (11th Cir. Apr. 25, 2022). In *Cogburn*, the plaintiff alleged the cruise line had notice based on a slip-and-fall at the same location and on the same vessel less than four months prior, in addition to dozens of similar incidents on sister ships. *Id.* at *6-7. The court held that the incident from four months earlier was substantially similar because it had occurred in the same location as the incident at issue. *Id.* at *11-12. *But see Kendall*, 2023 U.S. Dist. LEXIS 222188, at *7-8 (holding none of the six prior incidents the plaintiff relied on were substantially similar enough to allege notice because the facts provided were too vague to allow a reasonable inference of foreseeability).

Plaintiff's Complaint relies on a prior incident that is not substantially similar to the current case to create the reasonable inference that Defendant had constructive notice of the hazard. Although Plaintiff relies on *Cogburn* in her opposition to the motion, *Cogburn* is distinguishable. Unlike in *Cogburn*, where the plaintiff identifies dozens of previous incidents on sister ships, Plaintiff here provides just one incident from 2018. *See* 2022 U.S. App. LEXIS 11177, at *6. Additionally, the court in *Cogburn* reasoned that only one of the incidents mentioned was substantially similar to plausibly allege notice because it had taken place on the same ship and in the same location as the plaintiff's injury. *Id.* at *11-12. Here, Plaintiff's injury took place on Deck 9 of the ship *Conquest* while the previous incident happened on the Lido Deck of the ship *Sensation*. (Compl. ¶ 13, ECF No. 1).

Likewise, in *Worley*, the incident deemed substantially similar occurred just six months earlier and involved a nearly identical sink to the one that injured the plaintiff. 2023 U.S. Dist. LEXIS 18534, at *10-11. However, in this case, the incident Plaintiff relies on took place more than six years ago, and Plaintiff provides no facts to suggest the elevator involved then was similar to the elevator that allegedly injured her. Plaintiff's Complaint neglects to allege details of the previous incident such as the type of elevator involved, its manufacturer, or any additional circumstances surrounding the injured passenger. Like the court reasoned in *Kendall*, Plaintiff's vague assertions cannot amount to plausible constructive notice. *See* 2023 U.S. Dist. LEXIS 222188, at *7-8.

IV. CONCLUSION

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

1. Defendant's Motion to Dismiss, (ECF No. 9), is **GRANTED**.
2. Plaintiff's Complaint, (ECF No. 1), is **DISMISSED** without prejudice.
3. If Plaintiff chooses to file an amended complaint, she must do so on or before July 8, 2025, and any such amended complaint must cure the deficiencies identified in this Order. If Plaintiff fails to do so, the case will be *dismissed with prejudice without further warning.*
4. The Clerk of Court is **DIRECTED** to **ADMINISTRATIVELY CLOSE** this case for statistical purposes only pending an amended complaint. This shall not affect the substantive rights of the parties.

DONE AND ORDERED in Chambers at Miami, Florida, this 17 day of June, 2025.

JOSE E. MARTINEZ
UNITED STATES DISTRICT JUDGE

Copies provided to:
All Counsel of Record