UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 25-CIV-20674-SMITH

LINDA J. BROWN,

Plaintiff,

v.

MSC CRUISES, S.A.,

Defendant.
_____/

ORDER GRANTING DEFENDANT'S MOTION TO DISMISS

This matter is before the Court on Defendant, MSC Cruises, S.A.'s Motion to Dismiss [DE 15], Plaintiff's Response [DE 16], and Defendant's Reply [DE 17]. For the following reasons, the Motion is granted.

I. BACKGROUND

This case arises from a March 6, 2024, incident aboard MSC Cruises S.A.'s ("Defendant") vessel, MSC Divina, where Linda Brown ("Plaintiff") was plunged to the bottom of a pool after a wooden rung on a ladder used to enter the pool broke beneath her foot. The splintered wood and fall left Plaintiff with multiple injuries (DE 11 at ¶ 11.) On February 13, 2025, Plaintiff filed a Complaint [DE 1] and prior to Defendant's response, Plaintiff filed an Amended Complaint on May 19, 2025 [DE 11]. The Amended Complaint features a single count for negligence alleging that Defendant breached a duty of care by failing to maintain the ladder rung or warn Plaintiff of its dangerous condition. (DE 11 at ¶¶ 15-16, 19.) Defendant now seeks to dismiss Plaintiff's Amended Complaint for failure to state a claim.

II. LEGAL STANDARD

In deciding a motion to dismiss, the district court is required to view the complaint in the light most favorable to the plaintiff. *Murphy v. Fed. Deposit Ins. Corp.*, 208 F.3d 959, 962 (11th Cir. 2000) (citing *Kirby v. Siegelman*, 195 F.3d 1285, 1289 (11th Cir. 1999)). The Federal

Rules of Civil Procedure do not require a claimant to set out in detail the facts upon which they base their claim. Instead, Rule 8(a)(2) requires a short and plain statement of the claim showing that the pleader is entitled to relief in order to give 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) (citation omitted). However, courts are not "bound to accept as true a legal conclusion couched as a factual allegation." *Papasan v. Allain*, 478 U.S. 265, 286 (1986). 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). As such, a plaintiff is required to allege "more than labels and conclusions, and a formulaic recitation of the elements of a cause of action." *Twombly*, 550 U.S. at 555 (citation omitted). While the court must assume that all of the allegations in the complaint are true, dismissal is appropriate if the allegations do not "raise [the plaintiff's] right to relief above the speculative level." *Id.* (citation omitted). The standard on a 12(b)(6) motion is not whether the plaintiff will ultimately prevail on his or her theories, but whether the allegations are sufficient to allow the plaintiff to conduct discovery to prove the allegations. *See Durham v. Whitney Info. Network, Inc.*, No. 06-CV-00687, 2009 WL 3783375, at *5 (M.D. Fla. Nov. 10, 2009).

III. DISCUSSION

Because this case arises from an incident that occurred on navigable waters, the standard for a negligence action is established by maritime law. *Keefe v. Bahama Cruise Line, Inc.*, 867 F.2d 1318, 1320-21 (11th Cir. 1989). To bring a negligence claim under maritime law, the 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 v. Carnival Corp.*, 693 F.3d 1333, 1336 (11th Cir. 2012). Additionally, in maritime cases, a shipowner has a duty to exercise reasonable care to protect individuals lawfully on board who are not crew

members. *Guevara v. NCL (Bahamas) Ltd.*, 920 F.3d 710, 720 (11th Cir. 2019) (quoting *Kermarec v. Compagnie Generale Transatlantique*, 358 U.S. 625, 630 (1959)).

Here, Defendant contends that dismissal of Plaintiff's Amended Complaint is warranted because Plaintiff has not established that Defendant had notice of the hazardous condition of the ladder rung. In response, Plaintiff argues that her broad allegations that Defendant knew or should have known of the dangerous condition satisfy the breach of duty of care element of her negligence claim. The Court finds Plaintiff's argument unpersuasive.

To hold a shipowner liable for negligence, the standard of ordinary reasonable care under the circumstances is used, particularly when the hazard is one commonly encountered on land and not specific to sea travel. *Keefe v. Bahama Cruise Line, Inc.*, 867 F.2d 1318, 1322 (11th Cir. 1989). This means the plaintiff must demonstrate that the shipowner had actual or constructive notice of the dangerous condition. *Id.* To establish actual notice, the plaintiff must demonstrate that the defendant knew about the hazardous condition. *Holland v. Carnival Corp.*, 50 F.4th 1088, 1095 (11th Cir. 2022) (citations omitted). Constructive notice can be shown through factual allegations that the hazardous condition existed long enough to be discovered and corrected, that crew members were present and could have prevented the harm, or that prior incidents occurred under substantially similar conditions. *Id.*; *Aponte v. Royal Caribbean Cruise Lines Ltd.*, 739 F. App'x 531, 536 (11th Cir. 2018).

Regarding actual notice, Plaintiff has failed to sufficiently allege that Defendant knew the wooden rung was not suitable for use by passengers. *See Guerra v. MSC Cruises, S.A.*, 23-23366-CIV, 2024 U.S. Dist. LEXIS 67207 at *8 (S.D. Fla. Apr. 12, 2024) (holding actual notice can be imputed to a defendant when factual allegations identify clear examples of the defendant's notice); *see also Reyes v. Royal Caribbean Cruises Ltd.*, No. 24-CV-20542, 2025 U.S. Dist. LEXIS 32322, at (S.D. Fla. Feb. 7, 2025) (holding "[a] district court cannot and will not" construct arguments on Plaintiff's behalf to establish notice when the pleadings are not

adequately developed). Plaintiff's allegations of "[n]egligently allowing the existence of dangerous conditions" or "[n]egligently failing to maintain . . . the pool ladders" are not developed enough to show actual notice by Defendant of the risk-creating condition (DE 11 at ¶¶ 19a, 19c.) Thus, actual notice cannot be imputed.

As to constructive notice, as noted above, there are three ways courts typically determine if constructive notice may be imputed to a defendant. Here, Plaintiff does not allege facts that could lead the Court to conclude the allegedly compromised rung existed for a "sufficient period of time to invite corrective measures" or facts showing there had been "substantially similar incidents in which conditions substantially similar to the occurrence in question must have caused the prior accident." *Guevara*, 920 F.3d at 720. Plaintiff's claim also does not include any facts indicating that a crew member knew or should have known of the allegedly compromised rung and did nothing to prevent harm. *Aponte*, 739 F. App'x at 536-7. Therefore, constructive notice cannot be imputed.

IV. CONCLUSION

Even viewing the allegations as true and considering them in the light most favorable to Plaintiff, Plaintiff has failed to show Defendant had actual or constructive notice. Thus, Plaintiff failed to adequately plead the elements of her negligence claim. Plaintiff will receive a final opportunity to amend to correct the deficiencies outlined in this order. Should Plaintiff decide to amend the Amended Complaint she should ensure it complies with Federal Rule of Civil Procedure 11.

Accordingly, it is

ORDERED that:

1. Defendant's Motion to Dismiss [DE 15] is **GRANTED**.

2. Plaintiff shall file an amended complaint **by August 8, 2025**. Failure to file an amended complaint will result in the Court dismissing this action without further notice.

DONE and ORDERED in Fort Lauderdale, Florida, this 18th day of July, 2025.

Cc: counsel of record

RODNEY SMITH
UNITED STATES DISTRICT JUDGE