UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 25- 60877-WPD

KATHLEEN BILICKI,

Plaintiff,

v.

MSC CRUISES, S.A.,

Defendant.

_____/

ORDER GRANTING DEFENDANT'S MOTION TO DISMISS; DSIMISSING AMENDED COMPLAINT WITHOUT PREJUDICE

THIS CAUSE is before the Court upon Defendant MSC Cruises, S.A., ("Defendant" or "MSC")'s Motion to Dismiss [DE 9], filed herein on July 14, 2025. The Court has carefully considered the Motion [DE 9], Plaintiff's Response, filed July 16, 2025 [DE 10], and Defendant's Reply, filed July 23, 2025 [DE 13] and is otherwise fully advised in the premises.

I. BACKGROUND

This is a maritime personal injury action wherein Kathleen Bilicki, ("Plaintiff" or "Bilicki") alleges she tripped and fell on Deck 15 of the MSC *Meraviglia*. Plaintiff's Amended Complaint [DE 4] alleges as follows.

On May 29, 2024, while the MSC *Meraviglia* was approaching the Port of Bahamas, Plaintiff was using a lounge chair on the wood floor portion of Deck 15. [DE 4] ¶ 16. Plaintiff decided to use the pool and walked from the wood portion of the deck up the two steps and then down one step onto the 12in x 12in tiles. *Id.* Plaintiff was watching where she was walking.

However, the change in elevation between the 12in x 12 in tile floor and the 1in x 1in tile floor was not readily apparent to her. *Id.* As Plaintiff walked from the 12in x 12in tile onto the 1in x 1in tile to go into the pool, she missed the step and fell and was severely injured while trying to enter the pool on Deck 15. *Id.* The lounge beds and the colors of the tiles created an optical illusion such that passengers can and do miss the change in elevation between the 12in x 12 in tile floor and the 1in x 1in tile floor. *Id.* ¶ 14. Because of her fall, Plaintiff sustained severe and permanent injuries. *Id.* ¶ 17. X-Rays revealed injuries including a proximal humerus fracture with anterior dislocation of the left shoulder and nerve damage in Plaintiff's arm and hand due to the trauma. *Id.* MSC failed to install anything that would alert passengers about the change in elevation between the 12in x 12 in tile floor and the 1in x 1in tile floor. *Id.* ¶ 16.

Plaintiff asserts four tort-based counts against MSC: negligent maintenance (Count I), negligent failure to warn (Count II), negligent training personnel (Count III), and negligent design, construction, and selection of materials (Count IV).

II. STANDARD OF LAW

To adequately plead a claim for relief, Rule 8(a)(2) requires "a short and plain statement of the claim showing that the pleader is entitled to relief," to "give fair notice of what the . . . claim is and the grounds upon which it rests." *Conley v. Gibson*, 355 U.S. 41, 47 (1957). Under Rule 12(b)(6), a motion to dismiss should be granted only if the plaintiff is unable to articulate "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007) (abrogating *Conley*, 355 U.S. at 41). "A claim has facial plausibility when the pleaded factual content 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) (citing *Twombly*, 550 U.S. at 556). The allegations of the claim must be taken as true and must be read to include

any theory on which the plaintiff may recover. *See Linder v. Portocarrero*, 963 F. 2d 332, 334–36 (11th Cir. 1992) (citing *Robertson v. Johnston*, 376 F. 2d 43 (5th Cir. 1967)).

Nevertheless, the Court need not take allegations as true if they are merely "threadbare recitals of a cause of *action's* elements, supported by mere conclusory statements . . ." *Iqbal*, 556 U.S. at 663. In sum, "a district court weighing a motion to dismiss asks 'not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims.'" *Twombly*, 550 U.S. at n. 8 (quoting *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974), *overruled on other grounds*, *Davis v. Scherer*, 468 U.S. 183 (1984)).

III. DISCUSSION

As an initial matter, "the substantive law applicable to this action, which involves an alleged tort committed aboard a ship sailing in navigable waters, is the general maritime law, the rules of which are developed by the federal courts." *Keefe v. Bahama Cruise Line, Inc*., 867 F.2d 1318, 1320–21 (11th Cir. 1989) (citation omitted)).

All Plaintiff's counts are based in negligence. To state a negligence claim based on a shipowner's direct liability for its own 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." *Holland v. Carnival Corp.*, 50 F.4th 1088, 1094 (11th Cir. 2022) (quotation omitted).

"This standard requires, as a prerequisite to imposing liability, that the carrier have had actual or constructive notice of a *risk-creating condition*, at least where. . . the menace is one commonly encountered on land and not clearly linked to nautical adventure." *Keefe v. Bahama Cruise Line, Inc*., 867 F.2d 1318, 1322 (11th Cir. 1989). "Actual notice exists when the defendant knows about the dangerous condition." *Holland v. Carnival Corp.*, 50 F.4th 1088, 1095 (11th Cir.

2022) A plaintiff establishes constructive notice either by alleging the "defective condition exist[ed] for a sufficient period of time to invite corrective measures" or by alleging "substantially similar incidents in which conditions substantially similar to the occurrence in question must have caused the prior accident." *Guevara v. NCL (Bahamas) Ltd.,* 920 F.3d 710, 720 (11th Cir. 2019) (quotations omitted).

Defendant argues for dismissal of all counts, arguing Plaintiff fails to allege the threshold issue of notice. Plaintiff makes the following allegations regarding notice. First, Plaintiff alleges the following "examples of prior similar incidents":

> (a) On December 1, 2021, passenger Gail Nelson was walking on deck fourteen (14) of the MSC Divina at an outdoor pool area called the "Aqua Park" when her foot suddenly slipped off a single step change in elevation located on an elevated sunbathing platform causing her to fall and suffer injuries. Gail Nelson v. MSC Cruises S.A., Case No.: 1:23-cv-20767.
> (b) On October 29, 2017, passenger Barbara Glatter suddenly tripped and fell due to a substantially similar inconspicuous change in elevation on the MSC Divina, fracturing her hip and requiring a hip replacement surgery; during the Glatter case it was revealed in discovery that there were at least eight (8) such similar falls on the MSC Divina between 2014 and 2017.
> (c) On May 29, 2017, passenger Zoila Pons was severely injured when she fell on a substantially similar inconspicuous change in elevation on the MSC Divina.
> (d) On April 10, 2016, passenger Mary Gossett was severely injured when she fell on a substantially similar inconspicuous change in elevation on the MSC Divina.

[DE 4] ¶ 18 (a)-(d). Plaintiff also alleges MSC was on constructive notice because the "dangerous condition has existed since the ship was first put into service in 2016," [DE 4] ¶ 19, "MSC routinely posts caution signs in other areas of the deck," *Id.* ¶ 20, "this is an on-going, repetitive problem," *Id.* ¶ 21, "While BILICKI was still in the subject area sitting in a wheelchair, she observed an MSC crewmember squeegeeing the subject area where her incident occurred" *Id.* ¶¶ 22-23, "the cruise line has policies and procedures applicable to the subject area. MSC requires and trains crew members to warn passengers of any hazards and/or dangerous conditions." *Id.* ¶ 24, and MSC was

"under a legal duty to comply with mandatory international vessel safety regulations that are promulgated by the International Maritime Organization (IMO) under authority expressly conferred by the U.S. Senate-ratified international Safety of Life at Sea (SOLAS) treaty." *Id.* ¶ 25.

Upon careful review of the record, the Court agrees with Defendant and finds Plaintiff fails to allege notice at this juncture. In an attempt plead constructive notice, Plaintiff lists four instances she alleges are substantially similar to the condition here. In each case an injured party tripped on a threshold. None of the relied upon instances occurred on the instant ship. *Compare Fawcett v. Carnival Corp.,* 682 F. Supp. 3d 1106, 1111 (S.D. Fla. 2023) (instances on the same ship sufficed to plausibly plead defendant had notice of the dangerous condition). Nor has Plaintiff alleged that MSC *Divinia* is "a similarly configured vessel" to the MSC *Meraviglia*, at issue here. *Id.*

Further, Plaintiff's factual allegations as to each instance are extremely limited. In instances (b)-(d) above, Plaintiff only alleges injured party tripped on a "substantially similar inconspicuous change in elevation." In instance (a), Plaintiff alleges the plaintiff was injured "when her foot suddenly slipped off a single step change in elevation located on an elevated sunbathing platform causing her to fall and suffer injuries." With only these limited and cursory allegations, the Court "cannot conclude that any of these incidents were substantially similar to the accident in this case," *Kendall v. Carnival Corp*., No. 1:23-CV-22921-KMM, 2023 WL 8593669, at *3 (S.D. Fla. Dec. 8, 2023) such that MSC was on notice that the optical illusion at issue created a dangerous condition. *Malley v. Royal Caribbean Cruises Ltd*, 713 F. App'x 905, 908 (11th Cir. 2017) ("Knowledge that the condition exists is not sufficient, the defendant must also know that the condition is dangerous.").

Moreover, the Court is not persuaded MSC was on notice because defendant "routinely posts caution signs in other areas of the deck." [DE 4] ¶ 20. "Not all warning signs will be evidence

of notice; there must also be a connection between the warning and the danger." *Guevara v. NCL (Bahamas) Ltd.,* 920 F.3d 710, 721 (11th Cir. 2019) (citation omitted). Here, there is no allegation of any particular warning sign in the area, nor that any sign was directed at the optical illusion step at issue here. In fact, Plaintiff expressly asserts in her Amended Complaint that "MSC failed to install anything that would alert passengers like BILICKI about the change in elevation between the 12in x 12 in tile floor and the 1in x 1in tile floor." [DE 4] ¶16. Nor, too, does an employee mopping in a nearby area establish notice of the optical illusion. Obviously, mopping is a corrective measure for a slippery surface and was not directed to the complained-of danger—the optical illusion created by the step.

As for the remaining allegations of notice, "this is an on-going, repetitive problem," [DE 4] ¶ 21, "the cruise line has policies and procedures applicable to the subject area," *Id.* ¶ 24, "MSC requires and trains crew members to warn passengers of any hazards and/or dangerous conditions," *Id.* and MSC was "required to comply with international vessel safety regulations," *Id.* ¶ 25, such allegations are either entirely conclusory or fail to comport with the two established methods for alleging constructive notice. *See Guevara v. NCL (Bahamas) Ltd.,* 920 F.3d 710, 720 (11th Cir. 2019).

IV. CONCLUSION

Accordingly, and for the reasons stated herein, it is **ORDERED AND ADJUDGED** as follows:

1. Defendant's Motion [DE 9] is **GRANTED**;
2. Plaintiff is afforded one opportunity to file a second amended complaint by September 2, 2025. Failure to file a second amended complaint will result in the Court closing this case.

3. If any second amended complaint does not cure deficiencies identified in this Order, it will be subject to dismissal with prejudice.

DONE AND ORDERED in Chambers at Fort Lauderdale, Florida, this 19th day of August, 2025.

WILLIAM P. DIMITROULEAS
United States District Judge

Copies to

Counsel of record