UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

KEYSTONE TERMINAL HOLDINGS OF FLORIDA, LLC, KEYSTONE TERMINAL HOLDINGS, LLC and KEYSTONE TERMINAL PROPERTIES, LLC,

Cross Claimants,

v. Case No.: 3:24-cv-175-WWB-MCR

PATRICK WILLIAM HARDIE, JEFFERY MAY and SIMS CRANE & EQUIPMENT COMPANY,

Cross Defendants/Third Party Plaintiffs,

v.

KEYSTONE PROPERTIES, LLC,

Third Party Defendant.
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ORDER

THIS CAUSE is before the Court on Cross-Defendants Sims Crane & Equipment Company, Jeffery May, and Patrick William Hardie's ("**Crane Defendants**") Motion to Dismiss Keystone's Crossclaims Against Co-Defendants and Cross Defendants (Doc. 106) and Keystone Terminal Holdings of Florida, LLC, Keystone Terminal Holdings, LLC, and Keystone Properties, LLC's ("**Keystone**") Response in Opposition (Doc. 119).[1]

[1] The parties' filings fail to comply with this Court's January 13, 2021 Standing Order. In the interests of justice, the Court will consider the filings because this matter is ripe for resolution on the merits, but the parties are cautioned that future failures to comply

I. BACKGROUND

This case arises out of a wrongful death action, in which Keystone and the Crane Defendants were co-Defendants. On January 2, 2022, Salih Bebek ("**Decedent**"), a bosun working aboard the *M/V Maple*, was crushed to death by a 20,000-pound crane bucket. (Doc. 70 at 2). As a result, the personal representative of Decedent's estate, Fatma Bebek, sued the following entities and individuals: (1) Sims Crane & Equipment, which was hired to assist with unloading cargo, (*id.* at 6); (2) Keystone, collectively, which chartered the *M/V Maple* and was involved in its unloading, (*id.* at 8); (3) Logistec Gulf Coast, LLC, which provided the crane at issue and assisted in unloading, (*id.*); (4) Maple Marine Co., which owned the *M/V Maple*, (*id.* at 7); (5) Fiber Marine Ship Management & Trading Co., which employed Decedent and allegedly operated the *M/V Maple* in some fashion, (*id.*); (6) Jeffery May, whom Sims Crane employed as the crane signal man, (*id.* at 6); and (7) Patrick William Hardie, whom Sims Crane employed as the crane operator, (*id.*). Bebek alleged that Defendant Hardie, the crane operator, could not see on the deck as he lowered the crane bucket and relied on his spotter, Defendant May to signal the appropriate direction. (*Id.* at 9). Defendant May purportedly had a clear line of sight of the crane grab's path but failed to warn Decedent or Defendant Hardie that Decedent was below its path. (*Id.*). Accordingly, Bebek asserted claims for negligence, negligent hiring or retention, unseaworthiness, wrongful death negligence, and negligence under the Jones Act, 46 U.S.C. § 30104. (*Id.* at 10–37).

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with all applicable rules and orders of this Court may result in the striking or denial of filings without notice or leave to refile.

As pertinent to the current status of this case, the Crane Defendants filed a crossclaim against Keystone for contractual indemnification. (Doc. 68 at 6–7). Therein, the Crane Defendants allege that Sims Crane contracted with Keystone Properties, LLC for Sims Crane to assist in unloading cargo from the *M/V Maple*, and that pursuant to that contract, Keystone must indemnify Sims Crane for the cost of their defense and the potential unfavorable judgment on Bebek's claims. (*Id.* at 3–6). Keystone filed a number of crossclaims for tort-based equitable indemnity, equitable contribution, and declaratory judgment against all Crane Defendants, and breach of contract and unfair and deceptive business practices against Sims Crane alone. (Doc. 105 at 34–72). Keystone similarly alleges that it contracted with Sims Crane to assist with unloading cargo from the *M/V Maple* and that the Crane Defendants collectively breached their duties to perform their job safely, competently, and professionally in a number of ways. (*Id.* at 33–34).

Plaintiff has since settled her claims with all Defendants. (Doc. 157 at 2). The only remaining claims before this Court are crossclaims between Keystone and the Crane Defendants. (Doc. Nos. 160, 162).

II. LEGAL STANDARD

"A pleading that states a claim for relief must contain . . . a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). Pursuant to Federal Rule of Civil Procedure 12(b)(6), a party may move to dismiss a complaint for "failure to state a claim upon which relief can be granted." In determining whether to dismiss under Rule 12(b)(6), a court accepts the factual allegations in the complaint as true and construes them in a light most favorable to the non-moving party. *See United Techs. Corp. v. Mazer*, 556 F.3d 1260, 1269 (11th Cir.

2009). Nonetheless, "the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions," and "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Furthermore, "[t]o 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.'" *Id.* (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). "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." *Id.*

III. DISCUSSION

Beginning with Keystone's claims for tort-based equitable indemnity (Counts One, Five, and Six), the Crane Defendants argue the claims fail because the cause of action in the context of maritime law is available only when that party paid damages based on vicarious liability. So it goes, because Bebek's initial (and now-settled) claims against Keystone were for direct negligence rather than based on vicarious liability, Keystone cannot seek tort-based equitable indemnity. Keystone responds that it nonetheless successfully pleads its claims under the *Ryan* doctrine theory of indemnity, available because Bebek also asserted a claim for unseaworthiness against Keystone.

At the time the instant motion was filed, Bebek's claims against Keystone and the Crane Defendants were still pending. Although the parties have now settled with Bebek, the status of Keystone's indemnity claims has not been briefed since. Nonetheless, the Court will construe them as seeking indemnification for Keystone's settlement with Bebek.

See Weissman v. Boating Mag., 946 F.2d 811, 813–14 (11th Cir. 1991) (analyzing indemnity claims in maritime case where the original plaintiff settled).

"[T]hree theories of indemnity are available under maritime law: (1) contractual indemnity; (2) the *Ryan* doctrine indemnity . . . ; and (3) non-negligent or vicariously liable tortfeasor indemnity." *Arnold v. Heritage Enters. of St. Lucie, LLC*, No. 13-14447-CIV, 2015 WL 12906557, at *2 (S.D. Fla. Apr. 30, 2015); *see also Madison v. Jack Link Assocs. Stage Lighting & Prods., Inc.*, No. 12-61417-CIV, 2013 WL 6478891, at *3 (S.D. Fla. Dec. 10, 2013). At its inception, the *Ryan* doctrine—cemented in *Ryan Stevedoring Co. v. Pan-Atlantic S.S. Corp.*, 350 U.S. 124 (1956)—provided indemnification for a shipowner where a stevedore[2] breached its implied warranty of workmanlike services. *See Arcure v. McCabe*, No. 2:11-cv-266-FtM, 2012 WL 12915488, at *2 (M.D. Fla. Aug. 3, 2012). In other words, under a maritime service contract, there is "an implicit warranty that . . . services will be performed in a 'workmanlike' manner" which "obligates stevedores and other contractors to perform services with a reasonable level of '[c]ompetency and safety.'" *Vierling*, *v. Celebrity Cruises, Inc.*, 339 F.3d 1309, 1316 (11th Cir. 2003) (quotation omitted). Failure to execute duties in compliance with this implicit warranty "constitutes a breach of contract and provides shipowners with a right to indemnification for foreseeable loss resulting therefrom." *Id.* at 1315–16.

The doctrine was subsequently chipped away by legislative amendments to the Longshoremen's and Harbor Workers' Compensation Act in 1972. *See Edmonds v. Compagnie Generale Transatlantique*, 443 U.S. 256, 263–64 (1979) ("This first sentence

[2] "Generally, a stevedore is a 'person or company that hires longshore and harbor workers to load and unload ships.'" *Madison*, 2013 WL 6478891, at *3 n.2 (quoting *Stevedore*, BLACK'S LAW DICTIONARY (9th ed.2009)).

[of 33 U.S.C. § 905(b)] overrules *Ryan* and prevents the vessel from recouping from the stevedore any of the damages that the longshoreman may recover from the vessel."). Nonetheless, *Ryan* remains a viable—although limited and sparsely addressed—theory of indemnity in the Eleventh Circuit. *See Vierling*, 339 F.3d at 1315–19 (applying the *Ryan* doctrine).

33 U.S.C. § 905(b) precludes a vessel from claiming indemnification from the employer of an injured maritime employee. *See* § 905(b) ("[T]he employer shall not be liable to the vessel for such damages directly or indirectly and any agreements or warranties to the contrary shall be void."); *Smith v. United States*, 980 F.2d 1379, 1381 (11th Cir. 1993) ("§ 905(b) prohibit[s] indemnity actions by vessels only," but "this prohibition [does not extend] to non-vessels."). Keystone alleges that it contracted to charter the *M/V Maple*. (Doc. 105 at 32). As such, it falls within the statutory definition of a "vessel" that would typically be barred from obtaining indemnification. *See* 33 U.S.C. § 902(21) (defining "vessel" to include the "vessel's owner, owner pro hac vice, agent, operator, charter or bare boat charterer, master, officer, or crew member."). However, the Crane Defendants did not employ Decedent and therefore do not constitute the "employer" that is contemplated by the statute. *See Trotti & Thompson v. Crawford*, 631 F.2d 1214, 1216 n.5 (5th Cir. 1980). Thus, § 905(b) does not bar Keystone's claims.

Having reviewed the case law and Keystone's crossclaims, the Court concludes that Keystone has sufficiently pled its indemnity claim against Sims Crane under the *Ryan* doctrine. Keystone alleges that it entered into a contract with Sims Crane for "stevedoring services in the unloading of the *M/V Maple*'s cargo with a crane and two of their agents/employees." (Doc. 105 at 32). Keystone asserts that the stevedoring services

"came with an implied warranty of workmanlike performance, implicitly promising that [Sims Crane] and its agents/employees would perform their services competently and safely." (*Id.* at 35). Subsequently, the Crane Defendants purportedly breached their warranty "by failing to properly supervise and direct others in the unloading and by failing to provide for the safety of others during this process." (*Id.* at 40). On these allegations, Keystone has sufficiently pled that Sims Crane had a duty to perform stevedoring services with an implied warranty of workmanlike performance, and that it breached those duties. *Cf. Goodloe Marine, Inc. v. Caillou Island Towing Co.*, No. 8:20-cv-679, 2021 WL 5051983, at *2–3 (M.D. Fla. Nov. 1, 2021). Thus, the Court will deny the Crane Defendants' motion as to the indemnity claim against Sims Crane.

As to the indemnity claims against Defendants May and Hardie, it is unclear whether such claims are permitted as a matter of law. Under the facts pled by Keystone, Defendants May and Hardie did not enter into a maritime services contract with Keystone—Sims Crane did. The Court cannot locate any authority permitting (or rejecting) *Ryan* indemnity claims asserted against employees not party to the service contract. Consequently, the Court is wary of imposing a duty on the non-contracting parties. Drawing all inferences in Keystone's favor, *see United Techs. Corp.*, 556 F.3d at 1269, the Court will deny the Crane Defendants' Motion to Dismiss the indemnity claims against Defendants May and Hardie. However, the parties are ordered to file supplemental briefing on this issue, not to exceed five pages, no later than seven days of the date of this Order.

Next, with respect to Keystone's breach of contract claim against Sims Crane (Count Seven), the Crane Defendants argue that Sims Crane did not enter into any oral

or written contracts with the three Keystone parties in this suit but rather a different Keystone entity. The Crane Defendants also argue that Keystone failed to state a claim for breach of contract because it neither attached a copy of any written agreements with Sims Crane, nor alleged specific provisions of the agreements or what the contracts pertain to.

It appears there is ambiguity as to whether Sims Crane contracted with Keystone or with a different Keystone entity, and Keystone is non-responsive to this argument. But assuming arguendo that Sims Crane is correct on this point, a potentially different contract does not undermine whether Keystone carried its burden at this stage. To state a claim for breach of contract, a plaintiff must allege: "(1) a valid contract; (2) a material breach; and (3) damages." *Beck v. Lazard Freres & Co., LLC*, 175 F.3d 913, 914 (11th Cir. 1999). The Crane Defendants contest whether Keystone pled the existence of a valid contract.

In its crossclaims, Keystone alleges that it and Sims Crane "entered into oral and written agreements (the 'agreements') which provided, among other things, that they would safely, competently and professionally manage and conduct" a plethora of activities that Keystone lists, such as cargo operations of the vessel and offloading cargo. (Doc. 105 at 43). Under the Federal Rules of Civil Procedure, Keystone need not attach a copy of the alleged contracts. *Yencarelli v. USAA Cas. Ins. Co.*, No. 8:17-cv-2029-T, 2017 WL 6559999, at *2 (M.D. Fla. Dec. 22, 2017). Nor must Keystone cite to specific provisions in the contracts to sufficiently plead its breach of contract claim.

While Keystone could have provided greater detail, the Court finds that in this particular case, a claim for breach of contract was sufficiently alleged. *See Green v. Dr. Kelly Malinoski, LLC*, No. 2:19-cv-556-FtM, 2019 WL 6173175, at *2 (M.D. Fla. Nov. 20,

2019); *Westfield Ins. Co. v. Accessibility Specialists, Inc.*, No. 3:10-cv-1140-J, 2011 WL 2911528, at *3 (M.D. Fla. July 19, 2011). The Crane Defendants have further sufficient notice of the breach of contract claim because the parties have uncovered further information through discovery and the Crane Defendants' Motion for Summary Judgment (Doc. 138) is fully briefed and ripe for resolution. *See Green*, 2019 WL 6173175, at *1 ("Any remaining inquiries which defendants may have concerning the specific terms of the alleged contracts may be resolved through the discovery process." (quoting *Pals Grp., Inc. v. Quiskeya Trading Corp.*, No. 16-23905-CIV, 2017 WL 3840359, at *3 (S.D. Fla. Sept. 1, 2017))). Accordingly, the Court will deny the Crane Defendants' Motion to Dismiss as to the breach of contract claim.

Next, the Crane Defendants move to dismiss Keystone's equitable contribution claims (Counts Eleven, Fifteen, and Sixteen) for failure to state a claim because the contribution can only be based on common liability and Keystone alleges that the Crane Defendants are solely liable for Bebek's injuries. The Crane Defendants also argue that Keystone fails to specify what duties the Crane Defendants purportedly owe Keystone as required by a contribution claim.

Like the indemnity claims, the Court construes Keystone's equitable contribution claims as seeking contribution for Keystone's settlement with Bebek. Traditionally in general maritime law, "no claim for contribution will lie where concurrent tortfeasors do not share a 'common legal liability' toward the plaintiff." *Nova Info. Sys., Inc. v. Greenwich Ins. Co.*, No. 6:00CV1703ORL, 2002 WL 32075792, at *10 (M.D. Fla. Dec. 13, 2002) (quoting *Columbus-McKinnon Corp. v. Ocean Prods. Rsch., Inc.*, 792 F. Supp. 786, 789 (M.D. Fla. 1992)). However, Keystone pled this claim in the alternative in the instance

that Keystone is found to be a joint tortfeasor with the Crane Defendants, thus rendering the argument meritless.

The Crane Defendants' argument that Keystone's claim should be dismissed because it did not plead what duties the Crane Defendants owed Decedent similarly fails. Keystone incorporated by reference its general allegations that the Crane Defendants, among others, owed and breached a plethora of duties to Decedent: safely offloading the vessel's cargo, training and managing the crew, manning crane operations, providing spotters and safety personnel, and adhering to all relevant safety rules, regulations, and statutes. (Doc. 105 at 49, 58, 61; *see also id.* at 33–34). While Keystone could have provided greater specificity, the Court is satisfied that Keystone sufficiently pled the duties owed at this stage of proceedings. *Cf. Columbus-McKinnon Corp.*, 792 F. Supp. at 789 (dismissing a claim for contribution in the maritime context because the complaint did not "allege that Defendant owed a duty to the injured seamen or Plaintiff; nor [did] it allege how Defendant breached whatever duty was owed"). The Court will therefore deny the Motion in this respect.

Next, the Crane Defendants seek dismissal of Keystone's claim against Sims Crane for unfair and deceptive business practices (Count Seventeen) because Keystone did not plead its claim with specificity pursuant to Federal Rule of Civil Procedure 9(b). Courts have noted that district courts in the Eleventh Circuit are split on the question of whether claims under Florida's Deceptive and Unfair Trade Practices Act ("**FDUTPA**") must meet the Rule 9(b) heightened pleading standard. *See, e.g.*, *Inouye v. Adidas Am., Inc.*, No. 8:22-cv-416, 2023 WL 2351654, at *3 (M.D. Fla. Mar. 3, 2023). But the existence of a split appears to be overstated. Many district courts' adoption of the heightened

pleading standard bears the caveat that the "FDUTPA claims sound in fraud." *Altamonte Pediatric Assocs., P.A. v. Greenway Health, LLC*, No. 8:20-cv-604-T, 2020 WL 5350303, at *3 (M.D. Fla. Sept. 4, 2020); *see also Pop v. Lulifama.com LLC*, No. 8:22-cv-2698, 2023 WL 4661977, at *3 (M.D. Fla. July 20, 2023) (applying Rule 9(b) "pleading standards to FDUTPA allegations sounding in fraud"); *Blair v. Wachovia Mortg. Corp.*, No. 5:11-CV-566-Oc, 2012 WL 868878, at *3 (M.D. Fla. Mar. 14, 2012) (applying Rule 9(b) pleading standard "where the gravamen of the claim sounds in fraud"); *cf. Allstate Ins. Co. v. Auto Glass Am., LLC*, 418 F. Supp. 3d 1009, 1021 n.12 (M.D. Fla. 2019) ("The FDUTPA claims here do not sound in fraud, so Rule 9(b)'s heightened pleading standard will not be applied.").[3]

In this case, Keystone alleges that Sims Crane "breached . . . their duties of good faith and fair dealing, and acted and are acting in bad faith and in an unfair and deceptive manner[.]" (Doc. 105 at 63). While Keystone includes the term "deceptive" in its claim, the allegations' substance do not amount to deceptive conduct; they consist of a failure to adequately supervise operations, failure to ensure safety, and a failure to advise Keystone of certain loading details. (*Id.* at 64). "Absent an allegation of fraudulent conduct, . . . courts typically do not apply the heightened pleading requirement." *Altamonte Pediatric Assocs., P.A.*, 2020 WL 5350303 at *3 (quotation omitted). Thus, the heightened pleading standard under Rule 9(b) does not apply.

[3] Several courts in the Southern District of Florida, however, have held that Rule 9(b) heightened pleading is wholly inapplicable to FDUPTA claims. *See, e.g.*, *Eli Lilly & Co. v. Tyco Integrated Sec., LLC*, No. 13-80371-CIV, 2015 WL 11251732, at *2–3 (S.D. Fla. Feb. 10, 2015).

Turning to whether Keystone adequately pled its FDUTPA claim under Federal Rule of Civil Procedure 8(a), the Court concludes it has not. A FDUTPA claim has three elements: "(1) deceptive act or unfair practice; (2) causation; and (3) actual damages." *Westgate Resorts, Ltd. v. Sussman*, 387 F. Supp. 3d 1318, 1363 (M.D. Fla. 2019) (quotation omitted). "Under FDUTPA, a 'deceptive act' is 'one that is likely to mislead consumers and an unfair practice is one that offends established public policy and one that is immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers.'" *Hennegan Co. v. Arriola*, 855 F. Supp. 2d 1354, 1360–61 (S.D. Fla. 2012) (quoting *Washington v. LaSalle Bank Nat'l Ass'n*, 817 F. Supp. 2d 1345, 1350 (S.D. Fla. 2011)). "To satisfy the first element, the plaintiff must show that 'the alleged practice was likely to deceive a consumer acting reasonably in the same circumstances.'" *Carriuolo v. Gen. Motors Co.*, 823 F.3d 977, 983–84 (11th Cir. 2016) (quoting *State, Off. of the Att'y Gen. v. Com. Com. Leasing, LLC*, 946 So. 2d 1253, 1258 (1st DCA 2007)). As previously stated, Keystone alleges that Sims Crane failed to adequately supervise the unloading of the *Maple M/V* and advise Keystone of loading details.[4] The Court fails to see how these allegations resemble deception on Sims Crane's part or an offense to established public policy. Rather, they are more akin to omissions constituting negligence. Accordingly, the Court will grant the Crane Defendants' Motion to Dismiss as to Keystone's FDUTPA claim.

[4] Keystone also alleges that Sims Crane violated FDUPTA by "[r]epeatedly putting their own financial interests ahead of the interests of Keystone." (Doc. 105 at 64). The allegation is threadbare, conclusory, provides no factual basis, and therefore does not lend Keystone's claim any support under Rule 8(a). *See Ashcroft*, 556 U.S. at 678.

Lastly, the Crane Defendants move to dismiss Keystone's claims for declaratory judgment (Count Twenty-One) because resolution of Bebek's claims would render a declaratory judgment redundant and because the claims constitute a shotgun pleading. Bebek's claims against all Defendants have since been settled, rendering the Crane Defendants' first argument moot. Nonetheless, the Court finds Keystone has failed to state a claim for declaratory relief. Keystone asks this Court to "adjudicate and declare the rights, duties and obligations of the Cross Defendants, the Plaintiff and Keystone." (Doc. 105 at 72). Keystone does not specify what rights, duties, and obligations of which it seeks adjudication. As such, the "request for general declaratory relief is insufficient at the motion-to-dismiss stage." *Bencomo Enters. v. United Specialty Ins. Co.*, 345 F. Supp. 3d 1401, 1406 (S.D. Fla. 2018) (citing *Great Am. Ins. Co. v. Pino Kaoba & Assocs., Inc.*, No. 08-20847-CIV, 2008 WL 11333253, at *2 (S.D. Fla. Dec. 8, 2008) (dismissing claim for declaratory relief because it is "unclear" and amounts to a "request for a declaration as to the rights of [the] parties [which] is overly general and does [not] indicate precisely what rights it pertains to[.]")).[5] The Court will grant the Crane Defendants' Motion as to the declaratory judgment claims.

IV. CONCLUSION

Accordingly, it is hereby **ORDERED** and **ADJUDGED** as follows:

1. Cross-Defendants Sims Crane & Equipment Company, Jeffery May, and Patrick William Hardie's Motion to Dismiss Keystone's Crossclaims Against

[5] Keystone's declaratory judgment claims also present a shotgun pleading concern, but the Court need not address it.

Co-Defendants and Cross Defendants (Doc. 106) is **GRANTED in part** as set forth in this Order and **DENIED** in all other respects.

2. The parties are directed to file supplemental briefing, not to exceed **five pages**, no later than **seven days** of this Order as to whether Defendants May and Hardie can be held liable under the *Ryan* doctrine despite being non-parties to the alleged maritime service contract.
3. Cross-Defendants Sims Crane & Equipment Company, Jeffery May, and Patrick William Hardie must file their answer within fourteen days of the date of this Order pursuant to Federal Rule of Civil Procedure 12(a)(4)(A).

DONE AND ORDERED in Jacksonville, Florida on August 12, 2025.

WENDY W. BERGER
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel of Record