UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 25-60633-CIV-SMITH

CLAUDIA DELGADO,

Plaintiff,

vs.

MSC CRUISES S.A.,

Defendant.
_____/

ORDER GRANTING MOTION TO DISMISS

This matter is before the Court on Defendant's Motion to Dismiss Plaintiff's Amended Complaint [DE 16], Plaintiff's Response [DE 23], and Defendant's Reply [DE 24]. Plaintiff's Amended Complaint [DE 4] arises from a slip and fall aboard one of Defendant's ship. The Amended Complaint alleges a single count of premises liability. Pursuant to Federal Rule of Civil Procedure 12(b)(6), Defendant seeks to dismiss the Amended Complaint. For the reasons set forth below, the Motion is granted with leave to replead.

I. ALLEGATIONS IN THE AMENDED COMPLAINT

On September 2, 2024, Plaintiff was a ticketed passenger aboard Defendant's ship. Plaintiff slipped and fell while walking on a pedestrian ramp with no handles or handrails. At the time, the ramp was wet or slippery. The substance had been on the floor long enough that Defendant knew or should have known that it was there and should have remedied it. The absence of handrails on the ramp prevented Plaintiff from being able to catch herself before falling to the floor. As a result of the fall, Plaintiff has suffered permanent and significant bodily injuries.

According to Plaintiff, Defendant breached the duty owed to her by: (1) negligently

creating and/or allowing a hazardous condition to exist on its premises which was reasonably foreseeable to cause injury to Plaintiff; (2) negligently failing to maintain or adequately maintain the premises to prevent Plaintiff from encountering a hazardous condition; (3) negligently failing to inspect or adequately inspect the premises to ascertain whether the aforesaid condition constituted a hazard to Plaintiff; (4) negligently failing to correct or adequately correct a dangerous and hazardous condition which was and/or should have been known to Defendant; (5) negligently failing to warn Plaintiff of the dangerous condition when the condition was either known to Defendant or had existed for a sufficient length of time that Defendant should have known of it had Defendant exercised reasonable care; and (6) negligently failing to barricade, restrict, or otherwise prevent persons such as Plaintiff from encountering the hazardous condition.

II. MOTION TO DISMISS STANDARD

The purpose of a motion to dismiss filed pursuant to Federal Rule of Civil Procedure 12(b)(6) is to test the facial sufficiency of a complaint. The rule permits dismissal of a complaint that fails to state a claim upon which relief can be granted. It should be read alongside Federal Rule of Civil Procedure 8(a)(2), which requires a "short and plain statement of the claim showing that the pleader is entitled to relief." Although a complaint challenged by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff is still obligated to provide the "grounds" for his entitlement to relief, and a "formulaic recitation of the elements of a cause of action will not do." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007).

When a complaint is challenged under Rule 12(b)(6), a court will presume that all well-pleaded allegations are true and view the pleadings in the light most favorable to the plaintiff. *Am. United Life Ins. Co. v. Martinez*, 480 F.3d 1043, 1066 (11th Cir. 2007). However, once a court "identif[ies] pleadings that, because they are no more than conclusions, are not entitled to the

assumption of truth," it must determine whether the well-pled facts "state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678–79 (2009). A complaint can only survive a 12(b)(6) motion to dismiss if it contains factual allegations that are "enough to raise a right to relief above the speculative level, on the assumption that all the [factual] allegations in the complaint are true." *Twombly*, 550 U.S. at 555. However, a well-pled complaint survives a motion to dismiss "even if it strikes a savvy judge that actual proof of these facts is improbable, and 'that a recovery is very remote and unlikely.'" *Id.* at 556.

III. DISCUSSION

Defendant seeks to dismiss Plaintiff's Amended Complaint because (1) Plaintiff fails to properly plead a direct negligence claim against Defendant; (2) Plaintiff fails to properly plead notice; and (3) the Amended Complaint is an impermissible shotgun pleading. The Court will address these arguments in turn.

To state a maritime claim for direct negligence against a defendant, "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) (citation omitted). A defendant breaches its duty by failing to exercise reasonable care under the circumstances, which requires the defendant to "have had actual or constructive notice of the risk-creating condition, at least where, as here, 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). The Eleventh Circuit has explained:

> A maritime plaintiff can establish constructive notice with evidence that the "defective condition exist[ed] for a sufficient period of time to invite corrective measures." *Monteleone v. Bahama Cruise Line, Inc.*, 838 F.2d 63, 65 (2d Cir. 1988); *see Keefe*, 867 F.2d at 1322; *Rodgers v. Costa Crociere, S.p.A.*, No. 08-60233, 2009 WL 10666976, at *3 (S.D. Fla. July 6, 2009). Alternatively, a plaintiff can establish constructive notice with evidence of substantially similar incidents in which "conditions substantially similar to the occurrence in question must have caused the prior accident." *Jones v. Otis Elevator Co.*, 861 F.2d 655, 661–62 (11th Cir. 1988).

Guevara v. NCL (Bahamas) Ltd., 920 F.3d 710, 720 (11th Cir. 2019). Defendant seeks dismissal of the Amended Complaint because Plaintiff has failed to allege a direct negligence claim and has not alleged sufficient facts to establish that Defendant had actual or constructive knowledge of the risk-creating condition.

Defendant first seeks to dismiss Plaintiff's Amended Complaint because Plaintiff's single count is named "Premises Liability" and alleges that Defendant owes a duty to Plaintiff as a business invitee. Premises liability, however, is a claim based on Florida law, not a claim under maritime law, which applies in this case. Thus, Defendant maintains that Plaintiff should have brought a claim for direct negligence, not premises liability. Regardless of the title Plaintiff has given her claim, the Court must look at the actual allegations pled. Based on the allegations in the Amended Complaint, Plaintiff has pled the elements of a maritime negligence claim.

Defendant next maintains that Plaintiff has not sufficiently alleged one of the elements of a direct negligence claim. Defendant contends that Plaintiff has not adequately pled that Defendant had actual or constructive notice of the risk creating condition. Defendant argues that simply alleging that Defendant knew or should have known of the risk creating condition is insufficient under *Iqbal* and *Twombly*. Plaintiff responds that she need not allege notice when she has alleged that Defendant created the dangerous condition. Nonetheless, Plaintiff maintains that she has adequately pled notice and that Defendant had notice based on prior similar incidents.

First, the Court notes that Plaintiff has not pled any prior similar incidents in her Amended Complaint. Second, Plaintiff has not pled that Defendant created the dangerous condition. In her response, Plaintiff asserts that Defendant created the dangerous condition by making a design choice that excluded handrails on the ramp. The Amended Complaint, however, alleges that the dangerous condition was the "unreasonably wet, slippery and/or hazardous condition while walking on a pedestrian ramp with no handles or handrails." (Am. Compl. ¶ 10.) Thus, according to the Amended Complaint, the dangerous condition was a combination of the wet, slippery substance on the ramp and the lack of handrails. Thus, Plaintiff has not adequately pled that Defendant created the dangerous condition. Moreover, alleging that Defendant knew or should have known of the dangerous condition, without more, is insufficient to meet the requirements of *Iqbal* and *Twombly*. Consequently, Plaintiff has not adequately pled notice.

Finally, Defendant argues that Plaintiff's Amended Complaint should be dismissed because it is a shotgun pleading. Defendant contends that the single negligence count contains claims for negligent failure to maintain, negligent failure to warn, and negligent design. Plaintiff responds that, while separate counts may be preferable, she can allege different theories of negligence in a single theory because Defendant is able to adequately respond to the allegations. Regardless, because the Court is granting the Motion based on other reasons, when Plaintiff files her amended complaint she should address this issue as well.

Accordingly, it is

ORDERED that:

1. Defendant's Motion to Dismiss Plaintiff's Amended Complaint [DE 16] is **GRANTED.**

2. Plaintiff shall file her amended complaint, in accordance with this order, by **October 9, 2025.**

DONE and ORDERED in Fort Lauderdale, Florida, this 1st day of October, 2025.

RODNEY SMITH
UNITED STATES DISTRICT JUDGE

cc: All Counsel of Record