

UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION

Case Number: 25-22517-CIV-MARTINEZ

RETIA GIBSON,

Plaintiff,

v.

MSC CRUISES S.A.,

Defendant.

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**ORDER GRANTING MOTION TO DISMISS**

**THIS CAUSE** came before the Court upon Defendant MSC Cruises S.A.’s (“MSC”) Motion to Dismiss Plaintiff’s Amended Complaint (“Motion”), (ECF No. 10). Plaintiff filed a response in opposition, (ECF No. 11), and Defendant filed a reply, (ECF No. 12). After considering the relevant briefing, the record, and being otherwise fully advised in the premises, the Motion is **GRANTED**.

**BACKGROUND**

Plaintiff alleges that she “slipped and fell on a liquid substance on the floor near [an] unattended beverage stand” while aboard MSC’s vessel, *MSC Divina*. (Am. Compl., ECF No. 9 ¶¶ 14, 16). Plaintiff claims that MSC was negligent in the design and construction of the ship’s flooring, negligent in its failure to warn Plaintiff of the slipping hazard, and negligent in its maintenance of the subject area. (*See generally* Am. Compl.). Defendant argues that Plaintiff’s Amended Complaint must be dismissed because “Plaintiff has failed to plausibly plead MSC’s actual or constructive notice.” (ECF No. 10 at 4).

### LEGAL STANDARD

Under Federal Rule of Civil Procedure 12(b)(6), the Court will grant a motion to dismiss if the complaint fails to state a claim for which relief can be granted. At this stage of the case, “the question is whether the complaint ‘contains sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.’” *Worthy v. Phenix City*, 930 F.3d 1206, 1217 (11th Cir. 2019) (alteration adopted) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). “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.” *Iqbal*, 556 U.S. at 678 (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)).

When ruling on a motion to dismiss, “the Court accepts the factual allegations in the complaint as true and construes them in the light most favorable to the plaintiff.” *Speaker v. U.S. Dep’t of Health and Human Servs. For Disease Control and Prevention*, 623 F.3d 1371, 1379 (11th Cir. 2010). Although a complaint need not include detailed factual allegations, a plaintiff must offer “more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.” *Twombly*, 550 U.S. at 555. “[C]onclusory allegations, unwarranted deductions of facts or legal conclusions masquerading as facts will not prevent dismissal.” *Oxford Asset Mgmt., Ltd. v. Jaharis*, 297 F.3d 1182, 1188 (11th Cir. 2002).

### DISCUSSION

Maritime law governs Plaintiff’s negligence claim because the alleged tort was committed aboard a ship sailing navigable waters. *Keefe v. Bahama Cruise Line, Inc.*, 867 F.2d 1318, 1320 (11th Cir. 1989). At the motion to dismiss stage, a plaintiff must plead facts sufficient to plausibly establish 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). Notably, plaintiffs in maritime negligence cases must also assert enough factual allegations to allow the court to draw the reasonable inference that the defendant vessel owner had actual or constructive notice of the risk-creating condition. *Keefe*, 867 F.2d at 1322.

Actual notice is established “when the defendant knows about the dangerous condition.” *Newbauer v. Carnival Corp.*, 26 F.4th 931, 935 (11th Cir. 2022). Constructive notice is established when the defendant “ought to have known of the peril to its passengers” because the hazard was “present for a period of time so lengthy as to invite corrective measures.” *Keefe*, 867 F.2d at 1322. A plaintiff must “demonstrate specific facts pertaining to how long the dangerous condition existed or that the dangerous condition existed for a sufficient period of time to create constructive notice.” *Kendall v. Carnival Corp.*, No. 1:23-cv-22921, 2023 WL 8593669, at \*3 (S.D. Fla. Dec. 7, 2023). Constructive notice may also be established if a plaintiff can “point to previous injuries or show that the defendant previously warned of the danger.” *Malley v. Royal Caribbean Cruises Ltd.*, 713 F. App’x 905, 908 (11th Cir. 2017). “Indeed, a party may 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.” *Kendall*, 2023 WL 8593669, at \*3 (internal quotations omitted).

Plaintiff presents five theories to establish Defendant’s notice of the alleged hazard. First, Plaintiff alleges that “the liquid on the ground appeared previously walked through and dirty, indicating that it had been present on the ground for a long period of time, sufficient to prompt MSC’s notice.” (Am. Compl. ¶ 21). Apart from this single conclusory statement, Plaintiff fails to plead any facts to support her allegation that the puddle was dirty. Plaintiff fails to cite any authority standing for the proposition that a single conclusory statement is sufficient for a plaintiff

to establish constructive notice at the motion to dismiss stage. (*See* ECF No. 11). This Court finds that the barebones allegation that the water was dirty, accepted as true and viewed in the light most favorable to Plaintiff, without more, is insufficient to establish constructive notice at this stage of the proceedings. *See Mattera v. MSC Cruises, S.A.*, No. 24-60907-CIV, 2024 U.S. Dist. LEXIS 153711, at \*15–16 (S.D. Fla. Aug. 26, 2024).

Second, Plaintiff alleges that a crewmember was in the subject area when Plaintiff fell. (Am. Compl. ¶ 22). Plaintiff alleges that “[t]he Beverage Crewmember was near enough to the liquid that caused Plaintiff’s fall that they should have seen it.” (*Id.*). However, this is the kind of allegation that courts find conclusory and insufficient to establish that a defendant cruise line was aware of the dangerous condition such that it should have corrected the condition or warned the plaintiff. *See, e.g., Benson v. Carnival Corp.*, No. 23-23408-Civ, 2024 U.S. Dist. LEXIS 39094, at \*8–9 (S.D. Fla. Mar. 5, 2024) (“Simply alleging that employees were in the bus’s ‘immediate vicinity’ is tantamount to a legal conclusion . . .”); *Solano v. Carnival Corp.*, No. 25-cv-20535, 2025 U.S. Dist. LEXIS 75859, at \*9–10 (S.D. Fla. Apr. 21, 2025) (“Indeed, Plaintiff fails to articulate when the employees acquired actual notice of the dangerous condition and merely asserting that employees were nearby is insufficient to establish that Carnival was aware of the dangerous condition such that Carnival should have corrected the condition or warned Plaintiff of the danger.”); *White v. Royal Caribbean Cruises, Ltd.*, No. 23-cv-24522, 2024 U.S. Dist. LEXIS 107117, at \*7–8 (S.D. Fla. June 17, 2024) (“White’s allegations that Royal Caribbean’s ‘crewmembers were standing within a close distance to the subject area and/or were actively monitoring same for slipping hazards’ is similarly inadequate to plausibly allege that Royal Caribbean had constructive notice of a slipping hazard because White omits any facts that show the crewmembers could have observed the hazard.”).

Third, Plaintiff alleges that “MSC operates many public areas onboard its other ships that are substantially similar to the Subject Area, and MSC knows that passengers frequently traverse these public areas, causing water, and other dangerously slippery substances to accumulate on the floor.” (Am. Compl. ¶ 23). However, general notice of a potential hazard is not enough to establish that MSC was on notice on the spill that caused Plaintiff’s injuries. *See Navarro v. Carnival Corp.*, 19-21072-CIV, 2020 WL 1307185, at \*3 (S.D. Fla. Mar. 19, 2020) (“As currently alleged, it appears that [plaintiff] mistakenly conflates foreseeability with actual or constructive notice.”).

Fourth, Plaintiff alleges that “MSC has received complaints and reports regarding substantially similar passenger slipping incidents caused by liquid on the ground in areas near beverage stands on the *MSC Divina*, and its other ships, in the three (3) years prior to Plaintiff’s fall.” (Am. Compl. ¶ 24). Plaintiff does not allege sufficient facts that make the incidents substantially similar such as the type of substance she fell on, the length of time the substance was present, whether crew members were present, whether the beverage stand was open or closed, or whether it was at the same beverage stand. (*See Am. Compl.*). Without specific factual allegations, the Court cannot conclude that these incidents were substantially similar to the incident alleged by Plaintiff.

Fifth, Plaintiff alleges that “MSC created, supervised, participated in, and/or approved the negligent design of the flooring in the Subject Area, knowing that it was unreasonably dangerous when wet since it would become unreasonably slippery.” (Am. Compl. ¶ 25). Similar to Plaintiff’s third theory of notice, general notice that floors become slippery when wet is not sufficient to establish that MSC had actual or constructive notice of the spill that caused Plaintiff’s injury. Simply because a hazard is foreseeable does not mean that a defendant is on notice of that potential hazard. *See Navarro*, 2020 WL 1307185, at \*3.

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

1. Defendant's Motion to Dismiss, (ECF No. 10), is **GRANTED**.
2. Plaintiff's Amended Complaint, (ECF No. 9), is **DISMISSED without prejudice**.
3. Plaintiff may file an amended complaint that cures the deficiencies identified in this Order on or before November 3, 2025. Failure to do so may be grounds for **final dismissal without further warning**.
4. The Clerk is **DIRECTED to ADMINISTRATIVELY CLOSE** this case pending the filing of Plaintiff's Second Amended Complaint. This shall not affect the substantive rights of the parties. All pending motions are **DENIED as moot**.

**DONE AND ORDERED** in Chambers at Miami, Florida, this 6 day of October 2025.

  
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JOSE E. MARTINEZ  
UNITED STATES DISTRICT JUDGE

Copies provided to:  
All Counsel of Record