UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

SHERRY GETCHELL,

Plaintiff,

v. **Case No: 6:25-cv-00711-PGB-DCI**

TYNDA HOLDINGS, LLC,

Defendant.
_____/

ORDER

This cause comes before the Court on Defendant Tynda Holdings, LLC's ("**Defendant**") Motion for Summary Judgment. (Doc. 62 (the **"Motion**")). Plaintiff Sherry Getchell ("**Plaintiff**") responded in opposition (Doc. 64 (the "**Response**")) and Defendant replied (Doc. 67 (the "**Reply**")). The parties filed a Joint Stipulation of Agreed Material Facts. (Doc. 56 (the "**Joint Stipulation**")). Upon consideration, the Motion is due to be granted.

I. BACKGROUND

This action arises out of a "trip and fall" incident (the "**Incident**") wherein Plaintiff was allegedly injured on a cruise ship owned and operated by Defendant (the "**Vessel**"). (Doc. 1 (the "**Complaint**"), ¶¶ 5, 9–12, 22, 30). The relevant facts of the Incident are as follows.

On March 26, 2024, Plaintiff took a charter bus from Haines City, Florida to Port Canaveral, Florida, where she boarded the Vessel around 10:00 a.m. for a

"recreational casino cruise." (Doc. 56, ¶ 2). This was not Plaintiff's first time on one of Defendant's cruises. (*Id.* ¶ 20). Once at the terminal and prior to boarding the Vessel, Plaintiff received a boarding pass (the "**Boarding Pass**"), which Plaintiff admits she did not read. (*Id.* ¶¶ 4–5). Notably, the Boarding Pass warned passengers on the Vessel that travel by sea may present certain risks and "[e]ach Passenger agrees to assume responsibility for all risks, whether known or unknown, inherent to maritime travel and transportation by sea." (Doc. 56-2).

Prior to the Incident, Plaintiff "used the Vessel's stairs and elevators and had traversed the [Vessel's four] decks" for over three hours. (*Id.* ¶¶ 9–11). Plaintiff did not have any issues moving between the decks during this time. (*Id.* ¶ 11). Around 2:30pm, Plaintiff was on the fourth deck of the Vessel walking towards the front of the Vessel on the starboard (right) side. (*Id.* ¶¶ 12–14). The Incident occurred at a threshold of a doorway (the "**Threshold**") on the front starboard (right) side of the Vessel. (*Id.* ¶¶ 15–16, 18).

The Threshold was covered by a raised plastic structure, which was marked by black and yellow caution tape and included the capitalized and bolded phrase "WATCH YOUR STEP," as pictured below:

(Doc. 59-4).

Further, the doorway leading up to the Threshold included an additional warning sign that likewise notified passengers to watch their step:

(Doc. 59-5).

According to the parties' briefings and Plaintiff's sworn testimony (Doc. 62-1 ("**Plaintiff's Deposition**")), Plaintiff acknowledges that she saw the Threshold, along with its warning label, prior to crossing it. (Doc. 62, pp. 7–8; Doc. 64, pp. 3–4; Doc. 62-1, 202:18–203:4, 210:1–7). Ultimately, Plaintiff stepped onto the Threshold and fell, allegedly injuring her left wrist and right knee.[1] (Doc. 56, ¶ 18; *see also* Doc. 62-1, 205:9–20). Two of Defendant's employees David Fargnioli ("**Mr. Farginoli**") and Donna Fialho ("**Ms. Fialho**") responded to the Incident by offering Plaintiff basic first aid assistance. (Doc. 56, ¶ 19). While Mr. Farginoli and Ms. Fialho offered to call a rescue boat to bring Plaintiff to shore for medical treatment, Plaintiff declined. (Doc. 62-1, 174:7–22). One hour after the Incident, the Vessell docked, Plaintiff deboarded the Vessel, and took an hour-and-a-half charter bus ride back to Haines City, Florida. (*Id.* 174:7–22, 233:25–235:11). When she finally arrived back in Haines City, Plaintiff did not call 911 or request an ambulance to take her to a hospital for her alleged injuries, instead she got into her car and went to an urgent care center. (*Id.* 233:25–235:11).

Now, in the instant Motion, Defendant asks the Court to enter summary judgment in its favor because the Threshold was not a dangerous condition. (Doc. 62, p. 2). Instead, Defendant asserts that the Threshold was "open and obvious" such that Defendant owed no duty to warn to Plaintiff. (*Id.* at pp. 13–17).

[1] The parties "attach" video footage of the subject Incident to their Joint Stipulation, however, the Court was unable to access the file due to the link for the video being expired. (See Doc. 56-6). Nevertheless, the Court finds that it can resolve the instant Motion without reviewing the video.

Additionally, Defendant asserts that, even if the Threshold was considered a dangerous condition, Plaintiff cannot establish that Defendant had actual or constructive notice. (*Id.* at pp. 17–19). In her Response, Plaintiff claims that the extent of the danger posed by the Threshold was not obvious to a reasonable person. (Doc. 64, pp. 12–13). Further, Plaintiff contends that "there is a genuine issue of material fact that Defendant had both actual and constructive notice" of the danger the Threshold posed. (*Id.* at pp. 13–15). Defendant replied, and the matter is ripe for the Court's review. (Doc. 67).

II. LEGAL STANDARD

To prevail on a summary judgment motion on any claim or issue, the movant must show "that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." FED. R. CIV. P. 56(a); *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). "An issue of fact is 'material' if, under the applicable substantive law, it might affect the outcome of the case," and "[a]n issue of fact is 'genuine' if the record taken as a whole could lead a rational trier of fact to find for the nonmoving party." *Harrison v. Culliver*, 746 F.3d 1288, 1298 (11th Cir. 2014).

The movant bears the initial burden of proving that no genuine factual dispute exists. *Celotex*, 477 U.S. at 323; *Hickson Corp. v. N. Crossarm Co.*, 357 F.3d 1256, 1260 (11th Cir. 2004). Where the nonmovant bears the burden of proving the issue at trial, the moving party will satisfy this initial burden "merely by pointing out to the district court that there is an absence of evidence to support

an essential element of the non-moving party's case." *Thurmon v. Ga. Pac., LLC*, 650 F. App'x 752, 756 (11th Cir. 2016)[2] (citing *Celotex*, 477 U.S. at 325).

Once the movant shows there is no genuine dispute of material fact, the burden shifts to the non-movant to prove that a genuine factual dispute exists which would preclude entry of summary judgment. *Porter v. Ray*, 461 F.3d 1315, 1320 (11th Cir. 2006). To survive summary judgment, the non-moving party "must go beyond the pleadings, and present affirmative evidence to show that a genuine issue of material fact exists." *Id.* The non-movant must support its position by "citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations . . . , admissions, interrogatories, or other materials." FED. R. CIV. P. 56(c)(1)(A). If the non-moving party fails to identify specific record evidence supporting its position, the court must enter summary judgment. FED. R. CIV. P. 56(a).

Importantly, the Court must "view the evidence and all factual inferences therefrom in the light most favorable to the non-moving party and resolve all reasonable doubts about the facts in favor of the non-movant." *Davila v. Gladden*, 777 F.3d 1198, 1203 (11th Cir. 2015) (quoting *Carter v. City of Melbourne*, 731 F.3d 1161, 1166 (11th Cir. 2013)). At the same time, "[a] mere 'scintilla' of evidence supporting the opposing party's position will not suffice; there must be enough of

[2] "Unpublished opinions are not controlling authority and are persuasive only insofar as their legal analysis warrants." *Bonilla v. Baker Concrete Const., Inc.*, 487 F.3d 1340, 1345 (11th Cir. 2007).

a showing that the jury could reasonably find for that party." *Brooks v. Cnty. Comm'n of Jefferson Cnty.*, 446 F.3d 1160, 1162 (11th Cir. 2006) (quoting *Walker v. Darby*, 911 F.2d 1573, 1577 (11th Cir. 1990)). Ultimately, summary judgment should only be granted "[w]here the record taken as a whole could not lead a rational trier of fact to find for the non-moving party." *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

III. DISCUSSION

As a preliminary matter, the Court exercises its original jurisdiction over this case pursuant to "admiralty or maritime jurisdiction[.]" *See* 28 U.S.C. § 1333(a). Consequently, the Court will apply maritime law.[3] *Shore v. Magical Cruise Co., Ltd.*, No. 6:14-CV-358-ORL-31, 2014 WL 3687100, at *2 (M.D. Fla. July 24, 2014) ("Where a tort occurs on navigable waters, federal maritime law governs the substantive issues in the case."); *Everett v. Carnival Cruise Lines*, 912 F.2d 1355, 1358 (11th Cir. 1990) (same).

When confronted with issues of maritime tort law, courts in the Eleventh Circuit "rely on general principles of negligence law." *Carroll v. Carnival Corp.*, 955 F.3d 1260, 1264 (11th Cir. 2020) (quoting *Chaparro v. Carnival Corp.*, 693 F.3d 1333, 1336 (11th Cir. 2012) (citation omitted)). Thus, to succeed on her negligence claims, Plaintiff must prove that "(1) [Defendant] had a duty to protect her from a particular injury; (2) [Defendant] breached that duty; (3) the breach

[3] The Court notes separately that Defendant asserts that this case is governed by maritime law standard in its Motion, and Plaintiff does not appear to dispute this argument. (*See* Doc. 62, pp. 12–13).

actually and proximately caused her injury; and (4) she suffered actual harm." *Id.* Here, Plaintiff asserts two different theories of negligence in her Complaint: failure to maintain and failure to warn. (Doc. 1, ¶¶ 19–30). In its Motion, Defendant seeks summary judgment as to both counts. (Doc. 62, pp. 2, 23). Accordingly, the Court will address each in turn.

A. Failure to Maintain

In Count I, Plaintiff asserts a claim for negligent failure to maintain against Defendant because Defendant failed "to take reasonable precautions to keep the [T]hreshold . . . in a safe condition, causing the threshold to be unsafe for Plaintiff." (Doc. 1, ¶ 21(b)). "To succeed on a failure to maintain claim, there must be evidence that a defendant had actual or constructive notice of a dangerous condition." *Quashen v. Carnival Corp.*, 576 F. Supp. 3d 1275, 1296 (S.D. Fla. 2021). In the Motion, Defendant contends that Plaintiff cannot establish Defendant "had actual or constructive knowledge of the alleged danger" such that Defendant cannot be liable for a failure to maintain the Threshold.[4] (Doc. 62, pp. 17–19). In her Response, Plaintiff argues that Defendant had both actual and constructive notice that the Threshold was dangerous. (Doc. 64, pp. 13–15).

Concerning actual notice, Plaintiff asserts that "Defendant's own employee admitted they did not 'know why [Defendant hadn't] fixed [the Threshold] because

[4] Defendant also claims that that the Vessel and the Threshold are in full compliance with directives of the United States Coast Guard ("**USCG**") because the Vessel received initial approval from the USCG and routinely passed the USCG's annual and quarterly inspections. (Doc. 62, pp. 19–23).

'it's a dangerous situation for both staff and clientele.'" (Doc. 64, p. 13). However, Plaintiff's sole evidence of this conversation is Plaintiff's Deposition attached to Defendant's Motion.[5] (Doc. 62-1, 228:13–17, 246:17–247:3). Plaintiff does not corroborate this conversation with any other record evidence. More notably, it appears to the Court that the testimony in Plaintiff's Deposition concerning her conversation with Defendant's employee is self-serving, in addition to being unsupported. (Doc. 63, pp. 9, 13). "Conclusory, self serving, or uncorroborated allegations in an affidavit or deposition will not create an issue of fact for trial sufficient to defeat a well supported summary judgment or directed verdict." *Bancale v. Cox Lumber Co., Inc.*, No. 97-113-CIV-FTM-25D, 1998 WL 469863 (M.D. Fla. May 18, 1998), *aff'd sub nom. Bancale v. Cox Lumber Co.*, 170 F.3d 188 (11th Cir. 1999).

Furthermore, Plaintiff cannot establish that Defendant had constructive notice that the Threshold was dangerous. To establish constructive notice, a plaintiff can show that either (1) a "defective condition existed for a sufficient period of time to invite corrective measures" or (2) there was "evidence of 'substantially similar incidents in which conditions substantially similar to the occurrence in question must have caused the prior accident.'"[6] *Tesoriero v.*

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[5] Without an exception, Plaintiff's statements arguably constitute hearsay and should not be considered on a motion for summary judgment. *Jones v. UPS Ground Freight*, 683 F.3d 1283, 1293 (11th Cir. 2012) ("The general rule is that inadmissible hearsay cannot be considered on a motion for summary judgment." (quoting *Macuba v. Deboer*, 193 F.3d 1316, 1322 (11th Cir. 1999))).

[6] Plaintiff does not point to any evidence that the Threshold was dangerous "for a significant period of time to invite corrective measures." *Tesoriero*, 965 F.3d at 1778–79. Accordingly,

Carnival Corp., 965 F.3d 1170, 1778–79 (11th Cir. 2020) (citing *Guevara v. NCL (Bahamas) Ltd.*, 920 F.3d 710, 720 (11th Cir. 2019)). Here, Plaintiff relies solely on evidence of substantially similar incidents. (Doc. 64, pp. 9, 13–15). In applying the "substantially similar" standard, courts consider "whether 'the two incidents were similar enough to allow the jury to draw a reasonable inference' concerning the cruise ship operator's 'ability to foresee' the incident at issue." *Worley v. Carnival Corp.*, No. 21-CIV-23501, 2023 WL 1833840, at *9 (S.D. Fla. Feb. 1, 2023) (quoting *Sorrels v. NCL (Bahamas) Ltd.*, 796 F.3d 1275, 1288 (11th Cir. 2015)), *report and recommendation adopted*, No. 21-23501-CIV, 2023 WL 2346338 (S.D. Fla. Mar. 3, 2023).

While Plaintiff provides examples of "four prior tripping incidents pertaining to the very same [T]hreshold," Plaintiff once again fails to corroborate her statement with detailed supporting record evidence. (*Id.*). Indeed, the only evidence Plaintiff cites to in her Response is Defendant's answer to Plaintiff's ninth interrogatory. (*See* Doc. 64-3, pp. 2–3). Plaintiff does not supplement the record with "any accident reports, passenger comment reviews or forms, or reports from safety inspections alerting [Defendant] of any potential safety concern" with the Threshold. C*ohen v. Carnival Corp.*, 945 F. Supp. 2d 1351, 1355 (S.D. Fla. 2013). Additionally, Defendant's answer to the interrogatory specifies that, of the four alleged tripping incidents, only one passenger complained of any pain or injuries,

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the Court will only address whether Plaintiff adequately establishes the Defendant had constructive notice by virtue of substantially similar incidents. *Id.*

the severity of which was never provided. (*See* Doc. 64-3, pp. 2–3). Based on the scant and conclusory evidence provided, Plaintiff has not provided sufficient factual detail for the Court to infer that the Incident is substantially similar to the four incidents she cites in her Response. *See Roberts v. Carnival Corp.*, No. 21-11792, 2022 WL 2188010, at *5 (11th Cir. June 17, 2022) (holding plaintiff did not demonstrate constructive notice because "the record contains no details concerning the circumstances of the April 1, 2017 incident, so we cannot conclude that this prior incident is 'substantially similar'"); *Tuite v. Carnival Corp.*, 713 F. Supp. 3d 1338, 1345 (S.D. Fla. 2024) (finding the plaintiff failed to adequately establish constructive notice because the plaintiff "fail[ed] to supply any details from which the Court could possibly infer substantial similarity."), *appeal dismissed*, No. 24-10665-FF, 2024 WL 3964617 (11th Cir. Aug. 13, 2024). Thus, Plaintiff has not demonstrated a genuine dispute of material fact over whether Defendant had constructive notice of the Threshold's danger.

Furthermore, considering the photographs attached to the Joint Stipulation and Defendant's adherence to the USCG's safety requirements,[7] the Court is unsure what, if anything, Defendant could have done differently to "maintain" the Threshold to make it safer for Plaintiff and other passengers. (*See* Doc. 56-4; Doc. 56-5; Doc. 62, pp. 19–23). As discussed in more detail below, Defendant marked the Threshold, and the door to the Threshold, with clear warnings in black and

[7] Indeed, the Threshold was "inspected by the USCG and affirmatively approved" and "[s]ince that time, the same doorway and [T]hreshold have been subjected to—and have passed—regular USCG inspections, including annual and quarterly inspections." (Doc. 62, p. 20).

yellow text. (*See* Docs. 56-4, 56-5). Plaintiff does not suggest any ways Defendant could have maintained the Threshold in a "safer" manner. As such, the Court concludes that a rational trier of fact could not find in Plaintiff's favor, and summary judgment as to Count I is due to be granted in Defendant's favor.

B. Failure to Warn

In her second count, Plaintiff asserts a cause of action for negligent failure to warn. (Doc. 1, ¶ 26). Plaintiff alleges that Defendant "failed to adequately warn of the state of damage and disrepair of the [T]hreshold." (*Id.*). In the Motion, Defendant argues that Plaintiff's claim should fail because the Threshold was an "open and obvious" danger, and as such, Defendant owed no duty of care to Plaintiff. (Doc. 62, pp. 13–17). Plaintiff counters that "the extent of the danger posed by the [] [T]hreshold" was not open and obvious to a reasonable person. (Doc. 64, pp. 12–13). Instead, Plaintiff contends the Threshold had "an exposed metal piece above the ramps" that was "imperceivable from standing height." (*Id.*). Upon review of the record evidence, the Court concludes that no rational trier of fact could find for Plaintiff.

Under maritime tort law, "a shipowner owes a duty of exercising reasonable care towards those lawfully aboard the vessel who are not members of the crew." *Smith v. Royal Caribbean Cruises, Ltd.*, 620 F. App'x 727, 729 (11th Cir. 2015) (quoting *Doe v. Celebrity Cruises, Inc.*, 394 F.3d 891, 908 (11th Cir.2004)). Usually, the "ordinary-reasonable-care-under-the-circumstances standard. . . requires that the shipowner have had actual or constructive notice of the risk-

creating condition[.]" *Id.* at 730. However, courts need not consider a defendant's actual or constructive notice if the court "determine[s] that [the] condition was an *open and obvious danger*. The duty to warn in the maritime tort context extends to only known dangers which are not apparent and obvious." *Id.* (citing *Cohen*, 945 F. Supp. 2d at 1357) (emphasis added). In determining whether a condition is an open and obvious danger, courts ask "whether a reasonable person would have observed the condition and appreciated the nature of the condition." *Malley v. Royal Caribbean Cruises Ltd*, 713 F. App'x 905, 908 (11th Cir. 2017). This inquiry "focuses on what an objectively reasonable person would observe and does not take into account the plaintiff's subjective perceptions." *Id.*

Here, the "risk-creating condition", the Threshold, was open and obvious to an objective reasonable person. For one, the Threshold is clearly marked by black and yellow lines and includes the warning label: "WATCH YOUR STEP." (*See* Docs. 56-4, 56-5). Likewise, there is a warning sign posted on the door where the Threshold is located. (*See* Doc. 56-5). During Plaintiff's Deposition, she testified that she was looking where she was going — which was forward and down — while she was walking toward the Threshold. (Doc. 62-1, 202:18–24). Notably, when asked by Defense counsel if she saw the Threshold, Plaintiff answered: "I saw the black piece that I stepped up onto." (*Id.* 202:25–203:4; *accord id.* 204:19–22 ("Q. That's the black threshold that you saw before you stepped onto it, right? A. Yes. I stepped onto it.")). Given the clarity and placement of these warning signs and Plaintiff's acknowledgement that she was looking at the Threshold, an objective

reasonable person would have seen these signs and appreciated the risk of walking over the Threshold. *See Quashen*, 576 F. Supp. 3d at 1301–02 ("A rational trier of fact could not find that an individual who saw this sign was not warned of risks posed by wind and summary judgment is, therefore, proper.").

Furthermore, although Plaintiff attempts to argue that the "extent of the danger" of the Threshold was unknown because there "was an exposed metal piece above the ramps," the images of the Threshold attached to the Joint Stipulation — one of which Plaintiff attaches to her Response – make clear there was no "metal piece." (*See* Docs. 56-4, 56-5; *see also* Doc. 64-2). Indeed, as Defendant's expert, Elisabeth Anderson, P.E. ("**Ms. Anderson**"), makes clear in her expert report and supporting declaration:

> There is no protruding metal piece in the area of the [T]hreshold. . . . the highest elevation of the [T]hreshold arrangement is the yellow and black striped tape on the forward side of the door sealing surface, which is 3 inches above the deck. As depicted below, transition ramps are equipped between the deck and the [T]hreshold.

(Doc. 67-1, pp. 2, 15–16). Ms. Anderson expresses that the "highest elevation of the [T]hreshold [] is a yellow and black striped tape on the forward side of the door sealing surface, which is 3 inches above the deck." (*Id.* at p. 15). Plaintiff has not presented any evidence to refute Ms. Anderson's opinion, nor does Plaintiff challenge the findings of Ms. Anderson in any *Daubert*[8] motion. Consequently, without any evidence to demonstrate a "metal piece" was in fact protruding from

[8] Along with Federal Rule of Evidence 702, *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579 (1993) governs the admissibility of expert testimony in federal cases.

the Threshold, the Court finds, as other courts in this Circuit have, that a rational trier of fact could not find in Plaintiff's favor. *See, e.g., Roberts v. Carnival Corp.*, No. 1:19-CV-25281-KMM, 2021 WL 3887819, at *6 (S.D. Fla. May 25, 2021), *aff'd*, No. 21-11792, 2022 WL 2188010 (11th Cir. June 17, 2022) (finding that a threshold was an open and obvious danger although Plaintiff claimed that she could not "ascertain its height, size, and shape" and thus did not appreciate the risk it posed); *Malley*, 713 F. App'x at 909 ("In short, the coaming's height was open and obvious to a reasonable person. We therefore conclude that Defendant had no duty to warn of the height."). Accordingly, finding that Defendant had no duty to warn of the open and obvious danger of the Threshold, summary judgment as to Count II in Defendant's favor is warranted.

IV. CONCLUSION

For the aforementioned reasons, it is **ORDERED AND ADJUDGED** as follows:

1. Defendant's Motion for Summary Judgment (Doc. 62) is **GRANTED**.
2. The Clerk of Court is **DIRECTED** to terminate all pending motions and, thereafter, to close the file.

DONE AND ORDERED in Orlando, Florida on May 29, 2026.

PAUL G. BYRON
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel of Record
Unrepresented Parties