

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 1:19-cv-22203-UU

SHEILA KISSINGER,

Plaintiff,

v.

CARNIVAL CORP.,

Defendant.

ORDER

THIS CAUSE is before the Court *sua sponte*. The Court has considered the pertinent portions of the record and is otherwise fully advised in the premises. Plaintiff filed the action with this Court on May 30, 2019, alleging a single count of negligence “at law and *in personam*” against Defendant arising out of a slip and fall that occurred on Defendant’s ship. D.E. 1. The Complaint also takes the unorthodox approach of asserting that the Court lacks subject-matter jurisdiction to adjudicate the case.

On June 12, 2019, the Court, noting the similarity between this case and another case previously before the Court, *DeRoy v. Carnival Corp.*, No. 1:18-CV-20653-UU, 2018 WL 2316643 (S.D. Fla. May 22, 2018), ordered the parties to show cause as to why this case should not be dismissed for lack of subject-matter jurisdiction by June 21, 2019. D.E. 4. In that order, the Court warned that: **“FAILURE TO ADHERE TO THIS ORDER WILL RESULT IN SANCTIONS.”** *Id.* (emphasis in original).

Federal Rule of Civil Procedure 41(b) permits a Court to dismiss a case for failure to prosecute or to comply with a Court order. Fed. R. Civ. P. 41(b); *Link v. Wabash R. Co.*, 370 U.S. 626, 630 (1962) (clarifying that Rule 41(b) permits a Court to dismiss an action *sua sponte* for failure to

comply with court order). On June 21, 2019, Plaintiff responded to the order, informing the Court that it agreed that the case should be dismissed for want of subject-matter jurisdiction per the Court's reasoning in *DeRoy*. D.E. 7. As of the date of this order, Defendant has neither responded to the complaint nor to the Court's order. Accordingly, the Court will dismiss the action without prejudice. *See Link*, 370 U.S. at 630.

Moreover, as in *Deroy*, it appears that the Court lacks subject-matter jurisdiction over this action. Federal courts are courts of limited jurisdiction. *See, e.g., S. Florida Equitable Fund, LLC v. City of Miami, Fla.*, 770 F. Supp. 2d 1269, 1277 (S.D. Fla. 2011). As courts of limited jurisdiction, federal courts may only exercise jurisdiction pursuant to the Article III of the United States Constitution or a statutory grant of authority to adjudicate the asserted claim. *Office of Thrift Supervision v. Paul*, 985 F. Supp. 1465, 1470 (S.D. Fla. 1997). “[B]ecause a federal court is powerless to act beyond its statutory grant of subject matter jurisdiction, a court must zealously insure that jurisdiction exists over a case, and should itself raise the question of subject matter jurisdiction at any point in the litigation where a doubt about jurisdiction arises.” *Smith v. GTE Corp.*, 236 F.3d 1292, 1299 (11th Cir. 2001). “Simply put, once a federal court determines that it is without subject matter jurisdiction, the court is powerless to continue.” *Bochese v. Town of Ponce Inlet*, 405 F.3d 964, 974–75 (11th Cir. 2005) (quoting *Univ. of S. Alabama v. Am. Tobacco Co.*, 168 F.3d 405, 410 (11th Cir. 1999)).

Here, Plaintiff brought her action *solely* at law and *in personam*, and pursuant to the Savings to Suitors Clause of 28 U.S.C. § 1333, a Plaintiff has the right to bring her claims in state Court and is not obligated to bring maritime tort claims in federal court in admiralty. *See generally, DeRoy v. Carnival Corp.*, No. 1:18-CV-20653-UU, 2018 WL 2316643 (S.D. Fla. May 22, 2018); *Palmer v. Georgia Ports Auth.*, No. CV 416-199, 2016 WL 5030372 (S.D. Ga. Sept. 19, 2016)

(“Under the saving to suitors clause, a plaintiff in a maritime case alleging an *in personam* claim has three options: (1) file suit in federal court under admiralty jurisdiction; (2) file suit in federal court under diversity jurisdiction (or some other applicable jurisdictional basis); or (3) file suit in state court pursuing common law remedies.”) (citing *St. Paul Fire & Marine Ins. Co. v. Lago Canyon, Inc.*, 2009 AMC 2794, 2801, 561 F.3d 1181, 1187 n. 13 (11 Cir. 2009)).

Here, Plaintiff brought his complaint at law and *in personam*, not in admiralty. See D.E. 1. There is no other basis for the Court to exercise subject-matter jurisdiction: there is no diversity jurisdiction under 28 U.S.C. § 1332 as the parties are not diverse because both Plaintiff and Defendant are Florida Citizens, D.E. 1 ¶ 31, and Plaintiff’s claims are negligence claims which do not form a basis for Federal Question Jurisdiction under 28 U.S.C. § 1331. See *In re Chimenti*, 79 F.3d 534, 537 (6th Cir. 1996) (“[P]laintiff also may sue at law in a state court or in a United States district court. However, to pursue the latter choice, the requirements of diversity of citizenship and jurisdictional amount must be satisfied.”) (quoting Charles A. Wright, Arthur R. Miller & Edward H. Cooper, *Federal Practice and Procedure: Jurisdiction* § 3672, at 430-433 (1985)); see also *Romero v. Int’l Terminal Operating Co.*, 358 U.S. 354, 402 (1959) (Explaining that it is well-settled that maritime claims that could be brought in admiralty do not confer federal question jurisdiction.).

Thus, as the Court lacks subject-matter jurisdiction and as Defendant has failed to respond to the Court’s order to show cause, the Court will dismiss the action without prejudice. Accordingly, it is

ORDERED AND ADJUDGED that the action is DISMISSED WITHOUT PREJUDICE. The Clerk of Court SHALL administratively close this case. All future hearings are CANCELLED and all pending motions are DENIED AS MOOT.

DONE AND ORDERED in Chambers at Miami, Florida, this 24th day of June,
2019.


URSULA UNGARO
UNITED STATES DISTRICT JUDGE

copies provided: counsel of record