UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION

CASE NO. 20-61474-CIV-CANNON/Hunt

NORMA REYNES,

Plaintiff,

v.

PARADISE CRUISE LINE OPERATOR, LTD., INC.

Defendant.
_________________________________/

ORDER GRANTING IN PART AND DENYING IN PART DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

THIS CAUSE comes before the Court upon Defendant's Motion for Summary Judgment (the "Motion") [ECF No. 81], filed on June 15, 2021. Plaintiff filed a Response in Opposition to Defendant's Motion [ECF No. 100], to which Defendant Replied [ECF No. 108]. The Court has considered the Motion, the parties' Joint Statement of Undisputed Facts [ECF No. 88], Defendant's Statement of Material Facts [ECF No. 80], Plaintiff's Statement of Material Facts [ECF No. 101], Defendant's Response to Plaintiff's Additional Statement of Material Facts [ECF No. 109], and the full record. For the reasons set forth herein, Defendant's Motion is **GRANTED IN PART AND DENIED IN PART**.

FACTUAL BACKGROUND[1]

This case is a personal injury tort action involving allegations of negligence arising from a slip and fall accident on a cruise ship. The material facts viewed in the light most favorable to Plaintiff as the non-moving party are as follows.

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[1] These facts are drawn from the parties' Joint Statement of Undisputed Facts [ECF No. 88], Plaintiff's Statement of Material Facts [ECF No. 101], and supporting exhibits. Wherever there is a factual dispute, the Court construes the record in a light most favorable to Plaintiff.

On August 3, 2019, Plaintiff Norma Reynes slipped and fell while stepping on marble flooring aboard the *GRAND CELEBRATION* cruise ship [ECF No. 88 ¶1; ECF No. 1 ¶¶10, 14]. Plaintiff alleges that the cruise ship operator, Defendant Paradise Cruise Line Operator, Ltd., Inc. ("PCL"), acted negligently by, among other things, failing to warn her of the dangerous condition that caused her accident and injuries [ECF No. 25 ¶¶9–51].

Plaintiff's slip and fall occurred on Deck 9 of the *GRAND CELEBRATION* at approximately 8:10 a.m. [ECF No. 101-1, pp. 20:8, 42:2–6; ECF No. 57 at 8:10 a.m.]. According to Plaintiff's deposition testimony, around the time of the accident, she was walking around the deck with her daughter, exploring the ship [ECF No. 101-4, p. 78:5–21]. As Plaintiff was about to go inside the casino, she stepped onto an oval-shaped patch of marble flooring and slipped on what she describes as a "wet surface" [ECF No. 101-4, p. 80:22–25; ECF No. 101 ¶¶23, 25]. Plaintiff testified that she did not see any liquid prior to her accident, but that after she fell, she saw a puddle and had liquid on the back of her shirt [ECF No. 101-4, pp. 81:23–83:8]. She described the liquid as "clear" and the puddle as "circular" with an estimated diameter of "[m]aybe a foot" [ECF No. 88 ¶10; ECF No. 101-4, p. 83:11–16]. Plaintiff further testified that she did not know what caused the puddle to form or how long the liquid had been on the floor [ECF No. 101- 4, pp. 85:20–22, 86:4–6].

PCL's closed-circuit television ("CCTV") video footage shows the area where the accident occurred [ECF No. 57]. The footage shows that, during a period of seventy minutes prior to Plaintiff's fall, numerous people including crewmembers walked across the marble floor in close proximity to where Plaintiff slipped [ECF No. 88 ¶4; ECF No. 57]. More specifically, the footage shows crewmembers traversing the area near where the accident occurred at least twenty times [ECF No. 101 ¶44]. The alleged puddle is not visible on the CCTV footage [ECF No. 80 ¶18; ECF No. 57].

Following Plaintiff's slip and fall, the Safety Officer aboard the *GRAND CELEBRATION*, Publio Franco, investigated the accident [ECF No. 88 ¶¶6–7]. Franco searched the area for dangerous conditions that could have caused Plaintiff's slip and fall but could not find any liquid on the floor [ECF No. 101-1, p. 22:2–14]. Also, as part of his investigation, Officer Franco reviewed the ship's accident reports, dating back to 2016 when PCL acquired the ship, to see if there had been any similar slip and falls on that part of the marble [ECF No. 80 ¶12]. Franco's review of PCL's records did not find any documents indicating a prior similar accident [ECF No. 80 ¶13].

PROCEDURAL HISTORY

Plaintiff filed her initial complaint in this action on July 21, 2020 [ECF No. 1]. Plaintiff then filed the operative First Amended Complaint on October 16, 2020 [ECF No. 25], asserting the following four causes of action against PCL: (1) **Count I**: Negligent Failure to Provide a Reasonably Safe Vessel; (2) **Count II**: Negligent Failure to Warn; (3) **Count III**: Negligent Failure to Maintain; and (4) **Count IV**: Negligent Creation/Design. Plaintiff asserts admiralty jurisdiction under 28 U.S.C. § 1333 and seeks relief in the form of damages, costs, and interest [ECF No. 25, pp. 1, 13]. On June 15, 2021, Defendant moved for summary judgment on all counts [ECF No. 75]. The motion is ripe for adjudication.

LEGAL STANDARD

Summary judgment is appropriate where there is "no genuine issue as to any material fact [such] that the moving party is entitled to judgment as a matter of law." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); Fed R. Civ. P. 56(a). An issue of fact is "material" if it might affect the outcome of the case under the governing law. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). It is "genuine" if the evidence could lead a reasonable jury to find for the non-moving

party. *See id.*; *see also Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

At summary judgment, the moving party has the burden of proving the absence of a genuine issue of material fact, and all factual inferences are drawn in favor of the non-moving party. *See Allen v. Tyson Foods Inc.*, 121 F.3d 642, 646 (11th Cir. 1997). The Court, in ruling on a motion for summary judgment, "need consider only the cited materials, but it may consider other materials in the record." Fed. R. Civ. P. 56(c)(3). The non-moving party's presentation of a "mere existence of a scintilla of evidence" in support of its position is insufficient to overcome summary judgment. *Anderson*, 477 U.S. at 252.

"For factual issues to be considered genuine, they must have a real basis in the record." *Mann v. Taser Int'l, Inc.*, 588 F.3d 1291, 1303 (11th Cir. 2009) (internal quotation marks omitted). Speculation or conjecture cannot create a genuine issue of material fact. *Cordoba v. Dillard's, Inc.*, 419 F.3d 1169, 1181 (11th Cir. 2005). The moving party has the initial burden of showing the absence of a genuine issue as to any material fact. *Clark v. Coats & Clark, Inc.*, 929 F.2d 604, 608 (11th Cir. 1991). In assessing whether the moving party has met this burden, the court must view the movant's evidence and all factual inferences arising from it in the light most favorable to the non-moving party. *Denney v. City of Albany*, 247 F.3d 1172, 1181 (11th Cir. 2001). Once the moving party satisfies its initial burden, the burden shifts to the non-moving party to come forward with evidence showing a genuine issue of material fact that precludes summary judgment. *Bailey v. Allgas, Inc.*, 284 F.3d 1237, 1243 (11th Cir. 2002); Fed. R. Civ. P. 56(e).

DISCUSSION

PCL asserts that it is entitled to summary judgment on all negligence claims because it did not have actual or constructive notice of the alleged liquid on the floor [ECF No. 81, pp. 4–7].

PCL also argues that summary judgment is warranted on Count IV for negligent creation/design because it did not select, install, or design the ship's marble flooring [ECF No. 81, pp. 7–9].

General Maritime Law

General maritime law governs actions arising from alleged torts committed aboard a ship sailing in navigable waters. *Guevara v. NCL (Bahamas) Ltd.*, 920 F.3d 710, 720 (11th Cir. 2019) (citing *Keefe v. Bahama Cruise Line, Inc.*, 867 F.2d 1318, 1320–21 (11th Cir. 1989)). Under maritime law, the owner of a ship in navigable waters owes to passengers "the duty of exercising reasonable care under the circumstances." *Kermarec v. Compagnie Generale Transatlantique*, 358 U.S. 625, 632 (1959). To prevail on a negligence claim, a plaintiff must prove 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. *See Sorrels v. NCL (Bahamas) Ltd.*, 796 F.3d 1275, 1280 (11th Cir. 2015).

The standard of reasonable care requires, "as a prerequisite to imposing liability, that the carrier 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*, 867 F.2d at 1322. Thus, a cruise-ship operator's liability often "hinges on whether it knew or should have known about the dangerous condition." *Guevara*, 920 F.3d at 720; *see also D'Antonio v. Royal Caribbean Cruise Line, Ltd.*, 785 F. App'x 794, 797 (11th Cir. 2019). However, courts "need not even reach the defendant's actual or constructive notice of a risk-creating condition if they determine that condition was an open and obvious danger." *Smith v. Royal Caribbean Cruises, Ltd.*, 620 F. App'x 727, 730 (11th Cir. 2015).

In this case, Defendant does not argue that the dangerous condition was open and obvious [ECF No. 81, pp. 3–7]. The sole issue is whether Defendant had actual or constructive notice of the dangerous condition. Actual notice exists when the defendant knows of the risk-creating

condition, while constructive notice exists when "the shipowner ought to have known of the peril to its passengers, the hazard having been present for a period of time so lengthy as to invite corrective measures." *Id.*

Actual Notice

PCL argues it did not have actual notice because there is no evidence in the record to show that it knew of the alleged liquid on the floor at the time of the accident [ECF No. 81, p. 4]. Plaintiff responds that it has proffered sufficient evidence to create a triable issue on actual notice based on PCL's general knowledge that the marble floor would become slippery when wet combined with the "real and foreseeable" risk of spills [ECF No. 100, p. 7]. Plaintiff also points to a warning sign that says "watch your step" on the marble floor and PCL's policy of taping off the area if it were to become wet [ECF No. 100, p. 14]. Defendant replies that the warnings on the *GRAND CELEBRATION*, including the "watch your step" sign and general awareness that the marble floor would be slippery if it were to become wet, do not demonstrate actual notice under maritime law.

The Court agrees with Defendant that this record does not contain sufficient evidence to create an issue of material fact as to PCL's actual notice of the dangerous condition. Plaintiff relies heavily on *Sorrels v. NCL (Bahamas) Ltd.*, 796 F.3d 1275 (11th Cir. 2015), for the proposition that a plaintiff can demonstrate actual notice by merely showing that a surface *could* be slippery when wet. In *Sorrels*, a plaintiff slipped on the deck of a cruise ship that was wet from rain. *Id.* at 1279. Because of the rain, the crew would have known that the deck was wet, and thus the only remaining question was whether it knew that the pool surface was slippery when wet. *Id.* at 1288. On that narrower question, the court held that evidence that the ship sometimes posted "slippery when wet" warning signs was enough to withstand summary judgment. *Id.* at 1289. In this case, by contrast, Plaintiff has alleged that a specific wet spot on an interior floor of the cruise ship caused her to slip and fall [ECF No. 101-4, p. 82:13]. There is no evidence that PCL knew of the

existence of this puddle in the way the crew in *Sorrels* knew that the cruise deck was wet after rain. Instead, the most this record contains on that subject is testimony by the ship's Safety Officer that he was aware the marble floor *would* become slippery if it were wet [ECF No. 101-1, p. 38 ("Q. And this marble, when it got wet with liquids it would be very slippery, correct? A. Oh, yeah, absolutely")]. This does not show that PCL had actual notice of the puddle that caused Plaintiff's slip and fall. *See Brady v. Carnival Corp.*, 19-22989-CIV, 2020 WL 8836063, at *3 (S.D. Fla. Dec. 31, 2020) (distinguishing *Sorrels* and finding that a "slippery when wet" warning sign did not "create an inference that Carnival knew of the existence of the puddle of water alleged to have caused Plaintiff's accident").

Nor does the "watch your step" sign demonstrate actual notice of the dangerous condition in this case. The Eleventh Circuit has clarified that "[n]ot all warning signs will be evidence of notice; there must also be a connection between the warning and the danger." *Guevara*, 920 F.3d at 720 (citing *Taiariol v. MSC Crociere S.A.*, 677 F. App'x 599 (11th Cir. 2017)). In *Taiariol*, for example, the Eleventh Circuit held that a "watch your step" warning sign did not show notice of a slippery condition because the sign was intended to warn of a different kind of risk, namely that of tripping due to the uneven surface. 677 F. App'x at 602. The warning sign here is no different. Grant Plummer, Vice President of Human Resources, Ethics, and Compliance for PCL, testified in his deposition that the reason the "watch your step" sign is there is "[j]ust to indicate there's a transition in the type of flooring" [ECF No. 101- 2, pp. 92:23–93:1]. When specifically asked whether the sign was meant to warn that the floor could be slippery when wet, Plummer testified: "No, I don't believe that's the intention of that sign" [ECF No. 101-2, p. 98:3]. Plaintiff does not provide any contrary evidence showing that the "watch your step" sign was intended to warn of any slipping risk. On this record, therefore, there is an insufficient connection between the "watch your step" sign and the dangerous condition (i.e., slippery marble). *See Taiariol*, 677 F. App'x. at

602 ("Even viewed in the light most favorable to [the plaintiff], we cannot see how [a "watch your step" sign] provides any evidence that the defendant had notice that the step's nosing was dangerously slippery."); *Rios v. MSC Cruises, SA*, No. 20-14811, 2021 WL 4100378, at *2 (11th Cir. Sept. 9, 2021) (affirming summary judgment in favor of cruise ship because of insufficient connection between warning and the dangerous condition). Plaintiff has failed to present evidence to create an issue of material fact as to whether PCL had actual notice of the dangerous condition.

Constructive Notice

"A maritime plaintiff can establish constructive notice with evidence that the defective condition existed for a sufficient period of time to invite corrective measures." *Guevara*, 920 F.3d at 720 (internal citations and alterations omitted). "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." *Id.* (internal quotation marks omitted). Courts have denied summary judgment on the issue of constructive notice where a crewmember was in the "immediate vicinity" of the dangerous condition. *See Aponte v. Royal Caribbean Cruise Lines Ltd.*, 739 F. App'x 531, 536 (11th Cir. 2018) (reversing grant of summary judgment because a reasonable factfinder could conclude that crewmember in immediate vicinity of dangerous condition knew or should have known about condition); *Haiser v. MSC Cruises (USA) Inc.*, 18-CV-60964-RS, 2019 WL 4693200, at *5 (S.D. Fla. Aug. 9, 2019) (denying summary judgment in favor of cruise ship in part because crewmembers were in close vicinity to spilled water).

Defendant argues that it did not have constructive notice of the dangerous condition because Plaintiff has not shown that the liquid was detectable or that the liquid was on the floor for a long enough period of time [ECF No. 81, pp. 4–7]. Defendant further observes that: (1) the CCTV footage does not show any liquid on the floor; (2) Plaintiff testified that the liquid was clear;

and (3) Plaintiff did not see the puddle prior to her fall [ECF No. 81, p. 5]. Plaintiff does not dispute those points but offers two reasons in support of constructive notice, both based on the CCTV footage—first, that the footage shows numerous crewmembers in close proximity to the location of the slip and fall, and second, that no one is seen spilling any liquid in the area during the seventy-minute recording, thus raising an inference that the liquid was on the floor for at least that amount of time [ECF No. 100, pp. 15–18].

The Court has reviewed the CCTV footage and the full record and agrees with Plaintiff that summary judgment is not warranted on Plaintiff's negligence claims. Drawing all reasonable inferences in Plaintiff's favor, a reasonable jury could find that PCL should have known about the puddle. Plaintiff testified that after she fell, she could see the puddle, describing it as roughly a square foot in size [ECF No. 101- 4, pp. 83:11–16, 85:16–17]. Additionally, the CCTV video shows numerous crewmembers in the immediate vicinity of the alleged puddle prior to Plaintiff's fall [ECF No. 57]. By Plaintiff's count, the video shows crewmembers traverse the area near where the accident occurred at least twenty times [ECF No. 101 ¶44]. The video also shows that a crewmember was stationed handing out towels approximately twelve meters away from the spot where Plaintiff fell [ECF No. 57; ECF No. 101- 1, p. 41:11]. Finally, the video is seventy minutes long and does not show anyone spill or otherwise create the puddle, thus supporting an inference that PCL had constructive notice for a long enough period of time to take corrective measures [ECF No. 101 ¶22]. On these facts, drawing all reasonable inferences in Plaintiff's favor, a factfinder could conclude that PCL had constructive notice of the dangerous condition. Summary judgment is not warranted on Counts I, II, or III.

Negligent Design

Defendant also moves for summary judgment on Count IV, Plaintiff's negligent creation/design claim, arguing that summary judgment is warranted because it did not select, install, or design the ship's marble flooring [ECF No. 81, pp. 7–9].

"Liability based on negligent design requires proof that the ship-owner or operator 'actually created, participated in or approved' the alleged improper design." *Diczok v. Celebrity Cruises, Inc.*, 263 F. Supp. 3d 1261, 1264 (S.D. Fla. 2017) (quoting *Groves v. Royal Caribbean Cruises, Ltd.*, 463 F. App'x 837, 837 (11th Cir. 2012)). The Eleventh Circuit has upheld summary judgement in circumstances where there was no evidence that a defendant actually created, participated in, or approved an alleged improper design. *Rodgers v. Costa Crociere, S.P.A.*, 410 F. App'x 210, 212 (11th Cir. 2010); *Groves*, 463 F. App'x at 837.

Here, Defendant is entitled to summary judgement with respect to Plaintiff's negligent design because there is no record evidence that Defendant created, participated in, or approved the alleged improper design. *See Rodgers*, 410 F. App'x at 212. The record indicates that the marble floor at issue was already installed on the ship when PCL bought it and that PCL had not materially altered the marble since its purchase [ECF No. 80 ¶¶ 4–5].

Plaintiff argues that PCL did participate in the marble floor design based on evidence suggesting that PCL removed one of the two "watch your step" warning signs on the marble floor [ECF No. 100, p. 18]. Specifically, Plaintiff points to deposition testimony from PCL's representative, Grant Plummer, in which he recalled a "watch your step" sign on the border of the marble where it meets the carpet but did not see the sign in that place in photographs taken at the time of Plaintiff's accident [ECF No. 101-2, pp. 122:18–123:18]. That fact does not support an inference that PCL participated in the improper design at issue in this case. The specific breach alleged in Count IV is "an unreasonably dangerous marble flooring surface in the area of the

incident that failed to contain an adequate [coefficient of friction] sufficient for the safety of its passengers" [ECF No. 25 ¶50]. Although Count IV does generically reference "[o]ther acts of fault and negligence that will be proven at trial," it does not include anything related to removing a warning sign [ECF No. 25 ¶50].

In any event, the record demonstrates that the purpose of the "watch your step" sign was to mitigate the risk of the uneven surface transition from carpet to marble to prevent tripping—not to warn of a slippery floor. Thus, for the same reasons previously discussed, the "watch your step" warning sign design lacks sufficient connection to Plaintiff's accident—which was a slip on wet marble, not a trip from carpet to marble. Defendant is entitled to summary judgment with respect to Count IV.

CONCLUSION

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

1. Defendant's Motion for Summary Judgment [ECF No. 81] is **GRANTED** as to Count IV. Summary judgment is hereby **ENTERED** in favor of the Defendant on Count IV.
2. Defendant's Motion for Summary Judgment [ECF No. 81] is **DENIED** as to Counts I, II, and III. Plaintiff may proceed to trial on Counts I, II, and III only.

DONE AND ORDERED in Chambers at Fort Pierce, Florida this 23rd day of September 2021.

AILEEN M. CANNON
UNITED STATES DISTRICT JUDGE

cc: counsel of record