UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLOIRDA
MIAMI DIVISION

Case Number: 21-23661-CIV-MARTINEZ-BECERRA

CARLOS SEGARRA,

Plaintiff,

v.

CARNIVAL CORPORATION,
a Panamanian Corporation d/b/a
CARNIVAL CRUISE LINES,

Defendant.

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ORDER ON MOTION TO DISMISS

THIS CAUSE comes before the Court on Defendant Carnival Corporation's Motion to Dismiss. (ECF No. 7). After careful consideration of the Complaint and briefing, the Court **GRANTS** the Motion to Dismiss.

BACKGROUND

Plaintiff Carlos Segarra was a passenger aboard the *Sunrise* vessel owned and operated by Defendant Carnival Corporation. (Compl. ¶ 12, ECF No. 1). On June 11, 2019, Plaintiff was on the Lido deck of the *Sunrise*, near where the Lido Marketplace serves food and beverages. (*Id.* ¶ 13). When Plaintiff bent down to tie his shoelace, he was struck from behind by a trolley cart pushed by an alleged Carnival crewmember. (*Id.*). The crewmember's view of the deck was obscured because the trolley cart was taller than the crewmember pushing it. (*Id.*). Plaintiff did not see the trolley cart before being struck because his back was turned away from the cart. (*Id.* ¶ 14). As a result, Plaintiff fell forward and broke his fall with his hands. (*Id.*). He alleges damages

from the fall and that he reported his injury to the vessel's crew shortly after the incident occurred. (*Id.* ¶¶ 10, 14).

Plaintiff alleges that Carnival owed Plaintiff a duty of reasonable care, that Carnival is vicariously liable for its crewmember's acts or omissions in furtherance of the vessel's business, and that the crewmember was acting in furtherance of Carnival's business when operating the trolley cart. (Compl. ¶¶ 17–19, 23–25, 30). He alleges that the crewmember was negligent in operating the trolley and failing to warn passengers about the danger posed by the cart. (*Id.* ¶¶ 20, 26–27). He also alleges that Carnival was negligent for failing to warn of the dangerous condition created by a trolley cart being pushed on the deck by a crewmember who did not have adequate visibility of the deck or of the passengers in front of or near the cart. (*Id.* ¶ 31). Plaintiff alleges that Carnival had notice of the dangerous condition "due to prior similar incidents of collision between crewmember operated trolley carts and passengers on the 'SUNRISE' and vessels of a similar class, or otherwise." (*Id.* ¶ 32).

Plaintiff asserts three negligence claims against Carnival: (I) vicarious liability for negligent operation of trolley cart; (II) vicarious liability for negligent failure to warn; and (III) direct liability for negligent failure to warn. (Compl. ¶¶ 16–34). Carnival now moves to dismiss, arguing that Plaintiff fails to state a claim upon which relief can be granted. (ECF No. 7). The Motion to Dismiss is now ripe for review.

LEGAL STANDARD & RELEVANT LAW

Federal Rule of Civil Procedure 8(a)(2) states that a complaint must provide "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). A defendant may move to dismiss a complaint that "fail[s] to state a claim upon which relief can be granted." *See* Fed. R. Civ. P. 12(b)(6). 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. When determining plausibility, the Court "eliminate[s] any allegations in the complaint that are merely legal conclusions" and "assume[s] the veracity of well-pleaded factual allegations." *Newbauer v. Carnival Corp.* 26 F.4th 931, 934–35 (11th Cir. 2022). In addition, the Court construes the factual allegations "in the light most favorable to the plaintiff." *Speaker v. U.S. HHS CDC & Prevention*, 623 F.3d 1371, 1379 (11th Cir. 2010).

"Maritime law governs actions arising from alleged torts committed aboard a ship sailing in navigable waters," and the Court follows "general principles of negligence law" when evaluating a maritime tort case. *Guevara v. NCL (Bahamas) Ltd.*, 920 F.3d 710, 721 (11th Cir. 2019) (internal quotation marks and citations omitted). To state a claim for negligence, a plaintiff must adequately 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." *Chaparro v. Carnival Corp.*, 693 F.3d 1333, 1336 (11th Cir. 2012). A shipowner's duty of reasonable care "requires, as a prerequisite to imposing liability, that the carrier have had actual or constructive notice of the risk-creating condition." *Keefe v. Bahama Cruise Line, Inc.*, 867 F.2d 1318, 1322 (11th Cir. 1989). In other words, Plaintiff must allege that Carnival had "actual notice of the danger," or that the "shipowner ought to have known of the peril to its passengers" due to "the hazard having been present for a period of time so lengthy as to invite corrective measures." *Id.* at 1323.

Vicarious liability allows an employer to be held liable for the torts of its employees if the tort was committed within the scope of employment. *Yusko v. NCL (Bah.), Ltd.*, 4 F.4th 1164, 1169 (11th Cir. 2021). Recently, the Eleventh Circuit made clear in *Yusko* that unlike with direct liability claims, a passenger need not establish "that a shipowner had actual or constructive notice of the risk-creating condition to hold a shipowner liable for the negligent acts of its employees." *Id.* at 1170. With these principles in mind, the Court turns to the allegations set forth in the Complaint.

DISCUSSION

A. Vicarious Liability Claims (Counts I & II)

Plaintiff asserts two vicarious liability counts against Carnival for (I) negligent operation of a trolley cart, and (II) negligent failure to warn. (Compl. ¶¶ 16–28). Carnival contends that Plaintiff has disguised these counts as vicarious liability claims to bypass the notice requirement in direct liability claims. (Reply at 4–5, ECF No. 12). In addition, Carnival argues these counts must be dismissed because Plaintiff cannot identify the name or title of the crewmember who caused the accident. (Mot. at 2). In response, Plaintiff asserts that identifying the crewmember by his job description and role is enough to survive dismissal and that Plaintiff has adequately pled vicarious liability claims under *Yusko*. (Resp., ECF No. 10 at 3).

In support of dismissal, Defendant cites to cases decided in this District after *Yusko*, which concluded that certain vicarious liability claims were direct liability claims in disguise, *see Quashen v. Carnival Corp.*, 576 F. Supp. 3d 1275, 1279 (S.D. Fla. 2021); *Britt v. Carnival Corp.*, No. 21-cv-22726, 2021 U.S. Dist. LEXIS 248263, at *9 (S.D. Fla. Dec. 29, 2021). There is some disagreement as to whether those cases were rightly decided. *See Hunter v. Carnival*, No. 22-cv-20236, 2022 U.S. Dist. LEXIS 121279, at *10–15 (S.D. Fla. July 1, 2022). Regardless of their

holdings, *Britt* and *Quashen* are distinguishable. In those cases, the vessel itself contained the dangerous condition—a wet, slippery floor (*Britt*), or a door stopper (*Quahsen*). In contrast, here, like in *Yusko*, the employee directly created the risk through his own conduct. At this stage of the case, the Court finds that Count I and II can be pled vicariously.

As to Carnival's argument that Plaintiff has failed to allege adequate facts as to the identity of the crewmember, Carnival does not proffer any case law, and the Court is aware of none, requiring Plaintiff allege the name of the crewmember or his title. *See Green v. Carnival Corp.*, No. 22-cv-20192, 2022 Dist. LEXIS 122478, at *18–19 (S.D. Fla. July 11, 2022) (declining to require plaintiff allege the name or title of the crewmember to state a vicarious liability claim against the crewmember). Rather, Plaintiff must allege that Defendant either (1) "assented for its employees to act on its behalf and that the employees were subject to Defendant's control under classic agency principles," or (2) "made a manifestation that caused a third party to reasonably believe that the employees had the authority to act for the benefit of Defendant under a theory of apparent agency." *Id.* While Plaintiff "does not make clear whether he is proceeding under classic agency principles or a theory of apparent agency," *see id.*, his allegations that the crewmember was employed by Carnival and acting on Carnival's behalf are enough to allege agency at this stage.

Next, the Court evaluates whether Plaintiff has adequately alleged the crewmember's negligent operation of the trolly cart and failure to warn. A review of the Complaint reveals that Plaintiff does not allege that the crewmember had a duty of care to Carnival, only that Carnival owed a duty of care to Plaintiff. (Compl. ¶¶ 17, 23). In a vicarious liability claim, Carnival is only liable to Plaintiff based on "the negligent acts of that employee acting within the scope of employment." *Yusko*, 4 F.4th at 1169 (alteration adopted; citation omitted). Stated differently,

the shipowner's duty to Plaintiff is not relevant in a vicarious liability claim. *See id.* Because Plaintiff does not allege that the crewmember owed a duty of care to Plaintiff, his vicarious liability claims must be dismissed.

B. <u>Direct Liability Negligence Claim (Count III)</u>

Plaintiff also asserts a direct liability claim against Carnival for negligent failure to warn. (Compl. ¶¶ 29–34). He alleges that Carnival knew or should have known about the danger posed by crewmembers pushing trolley carts on the deck who did not have adequate visibility. (*Id.* ¶ 32). He contends that Carnival knew or should have known of the dangerous condition "due to prior similar incidents of collisions between crewmember operated carts and passengers on the 'SUNRISE' and vessels of a similar class, or otherwise." (Compl. ¶ 32). Carnival argues that Plaintiff has not alleged adequate facts as to its notice of the risk-creating condition and that Plaintiff's references to prior similar incidents are conclusory. (Resp. at 12–13).

Carnival has a duty to warn of only "*specific*, known dangers particular to the places where passengers are invited or reasonably expected to visit, not to general hazards." *Aronson v. Celebrity Cruises, Inc.*, 30 F. Supp. 3d 1379, 1392-3 (S.D. Fla. May 9, 2014). Here, the Complaint only vaguely references "prior similar incidents." (Compl. ¶ 32). This allegation is conclusory. Without more facts, Plaintiff does not plead notice and, thus, cannot state a claim for negligence against Carnival. *See Holland v. Carnival Corp.*, No. 20-cv-21789, 2021 U.S. Dist. LEXIS 4322, at *7 (S.D. Fla. Jan. 11, 2021) (dismissing complaint and concluding that plaintiff's allegation of "prior slip and fall incidents is conclusory" because it contained "no facts"); *Sanlu Zhang v. Royal Caribbean Cruises, Ltd.*, 2019 U.S. Dist. LEXIS 199362, at *10 (S.D. Fla. Nov. 15, 2019) (holding that shipowner did not have notice based on ten prior incidents because they had "no apparent connection to the incident" in that case); *Serra-Cruz v. Carnival Corp.*, No. 18-cv-23033, 2019

U.S. Dist. LEXIS 23591, *23–24 (S.D. Fla. Feb. 11, 2019) (noting that prior accidents did not put shipowner on notice because "there is no explanation as to *how* these incidents put Carnival on notice"); *Polanco v. Carnival Corp.*, 10-cv-21716, 2010 U.S. Dist. LEXIS 150857, at *7 (S.D. Fla. Aug. 10, 2010) (Jordan, J.) (holding that plaintiff failed to allege notice based on prior incidents because there were "no details about the similar past incidents that Carnival allegedly failed to investigate"). The Complaint is devoid of allegations regarding how the prior incidents relate to what happened in this case and how those incidents put Carnival on notice of the risk-creating condition. Accordingly, Count III must be dismissed.

CONCLUSION

For the foregoing reasons, it is hereby **ORDERED AND ADJUDGED** that Defendant's Motion to Dismiss, (ECF No. 7), is **GRANTED**. Plaintiff may file an amended complaint on or before **September 20, 2022**, that cures the deficiencies identified in this Order. The failure to file an amended complaint by this deadline will result in the dismissal of this case without prejudice and without further notice.

DONE AND ORDERED in Miami, Florida, this 6 of September, 2022.

JOSE E. MARTINEZ
UNITED STATES DISTRICT JUDGE

Copies provided to:
All Counsel of Record