UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 22-22358-CIV-ALTONAGA/Torres

RAUL CALVOZ,

Plaintiff,

v.

CHAMONIX, INC.; *et al.*,

Defendants.
_____/

ORDER

THIS CAUSE came before the Court on Defendants, Chamonix, Inc. and Ivan Blumenfeld's Motion to Dismiss Amended Complaint [ECF No. 38]. Plaintiff, Raul Calvoz filed a Response [ECF No. 39], to which Defendants filed a Reply [ECF No. 40]. Having reviewed the parties' written submissions and applicable law, the Court grants in part and denies in part Defendants' Motion.

I. BACKGROUND

This contract dispute was brought under the Court's admiralty jurisdiction. (*See* Am. Compl. [ECF No. 37] ¶ 1); 28 U.S.C. § 1333. Plaintiff is the owner of a "2016 — 60' Sunseeker" (the "Vessel"), insured by ACE American Insurance Company ("ACE"). (Am. Compl. ¶ 2). Plaintiff "had a written and or oral contract with Chamonix to operate, manage, oversee repairs and control [the Vessel]." (*Id.* ¶ 5 (alteration added)). As part of that arrangement, Chamonix "was to select contractors to make repairs and/or do maintenance on the [V]essel and to select Captains to operate the [V]essel in a safe manner, that did not cause damages to the [V]essel." (*Id.* (alterations added)). Chamonix selected Blumenfeld to captain the Vessel. (*See id.*).

On November 18, 2020, Defendants were allegedly negligent and/or broke the contract, damaging the Vessel in Grove Harbour Marina[1] while it was "being lifted out of the water by use of a travel lift[,]" thereby affecting a vessel that "was in navigation, on navigable waters, doing a traditional maritime activity, with the potential for affecting maritime commerce once." (*Id.* ¶¶ 2–4 (alteration added)). Plaintiff claims that Chamonix had a duty to intervene if it saw that the Vessel was in danger and is liable for any negligence caused by its selected contractors and captain. (*See id.* ¶ 5). Plaintiff's Amended Complaint states five claims against Defendants: negligence against Chamonix (Count I) (*see* Am. Compl. ¶¶ 7–9); breach of contract against Chamonix (Count II) (*see id.* ¶¶ 10–12); negligence against Blumenfeld (Count III) (*see id.* ¶¶ 13–15); bailment against Chamonix (Count IV) (*see id.* ¶¶ 16–18); and bailment against Blumenfeld (Count V) (*see id.* ¶¶ 19–21).

Defendants assert that Plaintiff's own "authorized agent and broker, Robert Lama, President/CEO of Miami International Yacht Sales[,]" hired Grove Harbour Marina to lift the Vessel, which caused the damage at issue, thereby making both Lama and Grove Harbour Marina indispensable parties. (Mot. ¶¶ 8, 10 (alteration added)). Defendants move to dismiss the Amended Complaint for lack of subject-matter jurisdiction, failure to state claims for relief, and failure to join indispensable parties. (*See id.* 4–9).[2]

[1] Plaintiff refers to the Grove Harbour Marina as the "Grove Harbor Marine" (Am. Compl. ¶ 3), and Defendants partially repeat the misspelling (*see* Mot. ¶ 10).

[2] The Court relies on the pagination generated by the Case Management/Electronic Case Files system, which appears in the header on all filings.

II. LEGAL STANDARDS

A. Subject Matter Jurisdiction

A motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(1) may present a facial or a factual attack to subject-matter jurisdiction. *McElmurray v. Consol. Gov't of Augusta–Richmond Cnty.*, 501 F.3d 1244, 1251 (11th Cir.2007). Defendants bring a facial attack, challenging the sufficiency of Plaintiff's allegations of subject-matter jurisdiction. (*See* Mot. 4–5).[3] "Facial attacks" on the complaint "require[ ] the court merely to look and see if [the] plaintiff has sufficiently alleged a basis of subject matter jurisdiction, and the allegations in his complaint are taken as true for the purposes of the motion." *Lawrence v. Dunbar*, 919 F.2d 1525, 1529 (11th Cir. 1990) (alterations in original; quoting *Menchaca v. Chrysler Credit Corp.*, 613 F.2d 507, 511 (5th Cir.)). "On a facial attack, a plaintiff is afforded safeguards similar to those provided in opposing a Rule 12(b)(6) motion — the court must consider the allegations of the complaint to be true." *Id.* (citation omitted).

B. Failure to State Claims

"To survive a motion to dismiss [under Federal Rule of Civil Procedure 12(b)(6)], a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (alteration added; quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). Although this pleading standard "does not

[3] In the Reply — but not the Motion — Defendants make a factual attack, challenging the existence of subject-matter jurisdiction in fact. (*See id.* 2). Defendants argue that the relevant contract, which is not attached to the Amended Complaint but included with the Motion (*see* Mot. 5–6), had already expired at the time of the incident and thus cannot implicate admiralty law. (*See* Reply 2). This argument fails for two reasons. First, the Court need not consider arguments raised for the first time in a reply. *See SEC v. Keener*, No. 1:20-cv-21254, 2020 WL 4736205, at *6 n.4 (S.D. Fla. Aug. 14, 2020) ("It is improper to raise an argument for the first time in a reply." (citations omitted)). Second, as explained, Plaintiff's invocation of admiralty law is based on a maritime contract *other* than the expired contract. Accordingly, the Court only evaluates Defendants' facial attack to subject matter jurisdiction.

require 'detailed factual allegations,' . . . it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Id*. (alteration added; quoting *Twombly*, 550 U.S. at 555). Pleadings must contain "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 (alteration added; citation omitted). "[O]nly a complaint that states a plausible claim for relief survives a motion to dismiss." *Iqbal*, 556 U.S. at 679 (alteration added; citing *Twombly*, 550 U.S. at 556).

To meet this "plausibility standard," a plaintiff must "plead[] factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id*. at 678 (alteration added; citing *Twombly*, 550 U.S. at 556). "The mere possibility the defendant acted unlawfully is insufficient to survive a motion to dismiss." *Sinaltrainal v. Coca-Cola Co.*, 578 F.3d 1252, 1261 (11th Cir. 2009) (citation omitted), *abrogated on other grounds by Mohamad v. Palestinian Auth.*, 566 U.S. 449 (2012). When considering a motion to dismiss, a court must construe the complaint in the light most favorable to the plaintiff and take its factual allegations as true. *See Brooks v. Blue Cross & Blue Shield of Fla., Inc.*, 116 F.3d 1364, 1369 (11th Cir. 1997) (citing *SEC v. ESM Grp., Inc.*, 835 F.2d 270, 272 (11th Cir. 1988)).

C. Indispensable Parties

Federal Rule of Civil Procedure 12(b)(7) allows a party to move for dismissal for "failure to join a party under Rule 19." Fed. R. Civ. P. 12(b)(7). Rule 19 requires the joinder of parties who are indispensable to the litigation and whose joinder does not divest the Court of subject-matter jurisdiction. *See Focus on the Family v. Pinellas Suncoast Transit Auth.*, 344 F.3d 1263, 1279–80 (11th Cir. 2003) (citations omitted). A party is considered indispensable to the litigation when "in that person's absence, the court cannot accord complete relief among existing parties." Fed. R. Civ. P. 19(a)(1)(A).

III. DISCUSSION

Defendants argue the Amended Complaint should be dismissed because (1) the present action lacks a "significant relationship to maritime activity to warrant subject matter jurisdiction" (Mot. 4–5); (2) the contract at issue — which Plaintiff does not attach to the Amended Complaint — has expired and thereby nullifies the breach-of-contract, bailment, and negligence claims (*see id.* 5–7); and (3) Plaintiff has failed to join indispensable parties, namely Robert Lama — Plaintiff's registered agent — and Grove Harbour Marina, which was hired by Lama to lift the Vessel and caused the alleged damage (*see id.* 7–9). Plaintiff asserts that (1) admiralty jurisdiction applies because the matter "relates to a vessel, in navigation, on navigable waters, during the course of traditional maritime activity, with the potential for affecting maritime commerce" and involves a maritime contract (Resp. ¶¶ 1–5); (2) despite there being an expired written contract, Plaintiff alternatively pleads the existence of another written or oral maritime contract that Defendants violated (*see id.* ¶ 6); and (3) no indispensable parties exist because admiralty law is governed by joint and several liability (*see id.* ¶ 8). The Court reviews each argument in turn.

A. Subject Matter Jurisdiction

Defendants argue that Plaintiff's vague allegations in his negligence case against Chamonix (Count I) "are silent as to where and how the alleged incident and purported damages occurred." (Mot. 5). Therefore, Defendants assert that Plaintiff has not shown that the action has a "significant relationship to maritime activity to warrant subject matter jurisdiction as to admiralty." (*Id.*). According to Plaintiff, admiralty jurisdiction exists because the matter "relates to a vessel, in navigation, on navigable waters, during the course of traditional maritime activity, with the potential for affecting maritime commerce" and involves a maritime contract (*see* Resp. ¶¶ 1–5). Plaintiff is correct.

Plaintiff alleges that Defendants "performed a negligent act and/or breached a contract that damaged Plaintiff Calvoz'[s] vessel at Grove Harbor Marine [sic] in Coconut Grove, Florida, while the vessel was in the water being lifted out of the water by use of a travel lift." (Am. Compl. ¶¶ 3–4 (alteration added)). Plaintiff further alleges the Vessel "was damaged [when it] was in navigation, on navigable waters, doing a traditional maritime activity, with the potential for affecting maritime commerce." (*Id.* (alteration added)).

The Court has "primary jurisdiction of maritime issues[,]" including maritime contracts. *Misener Marine Const., Inc. v. Norfolk Dredging Co.*, 594 F.3d 832, 837 (11th Cir. 2010) (alteration added; footnote call number omitted). "It is well-established that a contract . . . to *repair* a vessel is a federal maritime contract[,]" *F.W.F., Inc. v. Detroit Diesel Corp.*, 308 F. App'x 389, 391 (11th Cir. 2009) (alterations added; emphasis in original), even if that contract is an oral contract, *see Sweet Pea Marine, Ltd. v. APJ Marine, Inc.*, 411 F.3d 1242, 1249 (11th Cir. 2005). The purported contract at issue — being "written and[/]or oral" — falls under admiralty jurisdiction because it involved "select[ing] contractors to make repairs and/or do maintenance on the [V]essel and to select Captains to operate the vessel in a safe manner, that did not cause damages to the [V]essel" (Am. Compl. ¶ 5 (alterations added)); *see also Sweet Pea Marine, Ltd.*, 411 F.3d at 1249. The alleged conduct and/or contract at issue certainly fall within the Court's admiralty jurisdiction; it is disingenuous and a waste of the parties' and the Court's resources to have to consider Defendants' unsupported position otherwise.

B. Failure to State Claims

Defendants argue that the contract at issue — attached to the original Complaint [ECF No. 1] — had already expired at the time of the incident, thereby nullifying Plaintiff's claims, which are all based on a contract and the duties it created. (*See* Compl., Ex. 1, Contract [ECF No. 1-1] 1

(showing a contract termination date of March 21, 2020); Mot. 2, 5–7; Reply 2–3 (discussing the expired contract)). Notably, the Amended Complaint does not include the expired written contract and instead alleges the existence of a "written and[/]or oral contract . . . to operate, manage, oversee repairs and control . . . [the Vessel]. (*See* Am. Compl. ¶ 5 (alterations added)). Based on that allegation, Plaintiff argues that despite the existence of an "out of date" written contract, he sufficiently pleads the existence of another written or oral maritime contract that Defendants violated. (Resp. ¶ 6).

While Plaintiff's allegations are sufficient to state a claim for breach of contract in Count II, and bailment in Counts IV and V, he has not sufficiently alleged negligence claims. The Court explains.

A claim for breach of contract requires that a plaintiff allege: "(1) the existence of a contract; (2) a material breach of that contract; and (3) damages resulting from the breach." *Vega v. T-Mobile USA, Inc.*, 564 F.3d 1256, 1272 (11th Cir. 2009) (citation omitted); *see also Goodloe Marine, Inc. v. Caillou Island Towing Co., Inc.*, No. 8:20-cv-679, 2020 WL 4582742, at *2 (M.D. Fla. Aug. 10, 2020) ("The elements of a breach of contract claim under Florida law and admiralty law are the same: existence of a valid contract, a material breach, and damages." (quotation marks and citations omitted)). A bailment "is generally a contractual relationship among parties in which the subject matter of the relationship is delivered temporarily to and accepted by one other than the owner." *S & W Air Vac Sys., Inc. v. Dep't of Rev., State of Fla.*, 697 So. 2d 1313, 1315 (Fla. 5th DCA 1997) (citation omitted).

Plaintiff's breach-of-contract and bailment claims are plausibly based on a written or oral contract *other than* the written contract attached to the initial Complaint. (*See* Am. Compl. ¶¶ 3–6, 10, 16, 19 (describing terms of a written or oral contract involving control and delivery of the

Vessel that was in effect at time of incident, a material breach of the contract, and Plaintiff's resulting damages)); *Steelmet, Inc. v. Caribe Towing Corp.*, 779 F.2d 1485, 1488 (11th Cir. 1986) (noting the "established rule of ancient respectability that oral contracts are regarded as valid by maritime law" (quotation marks omitted; quoting *Kossick v. United Fruit Co.*, 365 U.S. 731, 734 (1961))).

Defendants insist that Plaintiff is relying "upon a vague 'oral contract' with no terms alleged[,]" and thus they have not been given adequate notice of the claims against them. (Reply 3 (alteration added)). In fact, Plaintiff alleges that Defendants breached a contract (*see* Am. Compl ¶¶ 3–4) and lists several material terms of this contract, including that Chamonix was "to operate, manage, oversee repairs and control" the Vessel; and "select contractors to make repairs and/or do maintenance on the [V]essel and to select captains to operate the [V]essel in a safe manner, that did not cause damages to the [V]essel." (Am. Compl. ¶ 5 (alterations added). These allegations minimally satisfy Federal Rule of Civil Procedure Rule 8(a)(2), which requires only "a short and plain statement of the claim showing that the pleader is entitled to relief" such that Defendants have sufficient notice of the breach-of-contract and bailment claims against them.

In contrast, Plaintiff's negligence claims fail. To properly state a negligence claim under federal maritime law, a plaintiff must allege four elements: "(1) a legal duty on the defendant to protect the plaintiff from particular injuries; (2) the defendant's breach of that duty; (3) the plaintiff's injury being actually and proximately caused by the breach; and (4) the plaintiff suffering actual harm from the injury." *Heller v. Carnival Corp.*, 191 F. Supp. 3d 1352, 1357 (S.D. Fla. 2016) (quotation marks and citation omitted). Plaintiff's negligence claim against Blumenfeld fails to plausibly allege the first element, and Plaintiff's negligence claim against Chamonix fails to plausibly allege the second element. Furthermore, the negligence claims

impermissibly incorporate the allegations pertaining to the existence of a contract covering the same obligations and event and thus fail under the independent tort doctrine.

First, as to the negligence claim against Blumenfeld in Count III, Plaintiff simply states that Blumenfeld "owed a duty of reasonable care" to Plaintiff. (Am. Compl. ¶ 13). Plaintiff otherwise provides no factual allegations regarding how that duty arose. (*See generally id.*). The conclusory assertion that Blumenfeld owed a duty of reasonable care is, standing alone, insufficient to state a negligence claim. *See Brown v. Carnival Corp.*, 202 F. Supp. 3d 1332, 1338 (S.D. Fla. 2016) (finding that a conclusory allegation that a duty of reasonable care exists is insufficient to state a negligence claim under maritime law).

Second, with respect to the negligence claim against Chamonix in Count I, Plaintiff fails to plausibly explain how Chamonix breached its duty of reasonable care. While Plaintiff's negligence claim states that Chamonix breached a duty of care by "not making sure that the [V]essel was properly positioned on the travel lift straps before allowing the travel lift operators to remove the [V]essel from the water[,]" that allegation is conclusory and fails to explain why Chamonix owes Plaintiff a duty of reasonable care and how it was breached. (Am. Compl. ¶ 7–9 (alterations added)). Certainly, Plaintiff alleges that the contract at issue imposed on Chamonix "a duty to intervene if its employees and/or contractors saw that the [V]essel was in danger of being damaged." (Am. Compl. ¶ 5 (alteration added)). Yet, Plaintiff fails to allege that any of Chamonix's employees or contractors were present during the incident such that they "saw" that the Vessel was in danger. As Defendants note, Plaintiff's description of the incident is vague and fails to mention any present parties. (*See id.* ¶¶ 2–4; Mot. 5). In sum, given the dearth of supporting allegations, Plaintiff's negligence claims against Blumenfeld and Chamonix are due to be dismissed.

Finally, even if Plaintiff had sufficiently explained how the contract imposed a duty of reasonable care on Defendants that they subsequently breached, Plaintiff's negligence claims would still fail under the independent tort doctrine.[4] "Under Florida's independent tort doctrine, it is well settled that a plaintiff may not recast causes of action that are otherwise breach-of-contract claims as tort claims." *BluestarExpo, Inc. v. Enis*, 568 F. Supp. 3d 1332, 1353 (citation and quotation marks omitted). The doctrine's impetus stems from "[f]undamental contractual principles . . . [that] bar a tort claim where the offending party has committed no breach of duty independent of a breach of its contractual obligations." *Freeman v. Sharpe Res. Corp.*, No. 6:12-cv-1584, 2013 WL 2151723, at *8 (M.D. Fla. May 16, 2013) (alterations added; citing *Tiara Condo. Association, Inc. v. Marsh & McLennan Cos., Inc.*, 110 So. 3d 399, 408 (Fla. 2013)); *see also Island Travel & Tours, Ltd., Co. v. MYR Indep., Inc.*, 300 So. 3d 1236, 1239 (Fla. 3d DCA 2020) ("It is a fundamental, long-standing common law principle that a plaintiff may not recover in tort for a contract dispute unless the tort is independent of any breach of contract.") (citation omitted); *Sutton v. Royal Caribbean Cruises Ltd.*, 774 F. App'x 508, 511 (11th Cir. 2019) ("We apply general principles of negligence to maritime tort cases.") (citation omitted); *Marine Diesel Specialists, Inc. v. M/Y "BG3"*, No. 18-60037-Civ, 2020 WL 2929839, at *10 (S.D. Fla. Jan. 17, 2020) (applying independent tort doctrine to case brought under the court's admiralty jurisdiction).

Here, Plaintiff's negligence claims arise from the same conduct as that alleged in the breach-of-contract and bailment claims; and the relevant duty of reasonable care, if any, arises from the contract at issue. (*See* Am. Compl. ¶¶ 3–5, 8, 11, 14, 17, 20). Indeed, Plaintiff incorporates the paragraphs of the Amended Complaint supporting the existence of a written or oral contract into the negligence counts. (*See id.* ¶ 5; Counts I and II). Because the breach of duty

[4] Notably, Defendants fails to raise the independent tort doctrine in their Motion or Reply. (*See generally* Mot.; Reply).

in the negligence claims is not independent of any contractual breach, Plaintiff's negligence claims are due to be dismissed under the independent tort doctrine.

C. Indispensable Parties

Finally, Defendants argue the case must be dismissed because Plaintiff has failed to join Lama, Plaintiff's registered agent, and Grove Harbour Marina, which was hired by Lama to lift the Vessel and caused the alleged damage. (*See* Mot. 7–9). Plaintiff states that there are no indispensable parties because admiralty law is governed by the doctrine of joint and several liability. (*See* Resp. ¶ 8). Defendants do not refute this point. (*See generally* Mot.; Reply). The Court agrees with Plaintiff.

As explained, this case is governed by admiralty law. And under admiralty law, the principles of joint and several liability are binding. *See Wiegand v. Royal Caribbean Cruises Ltd.*, 473 F. Supp. 3d 1348, 1351 (S.D. Fla. 2020). In turn, "under a joint and several obligation the obligee can sue either or both obligors." *Twentieth Century-Fox Film Corp. v. Teas*, 286 F.2d 373, 380 (5th Cir. 1961) ("The privilege of suing one without joining the other is a substantial benefit to the obligee which we think cannot be frustrated by holding that the other several obligor must be joined as an indispensable party."). Accordingly, other possible parties that owe Plaintiff an obligation in this action — such as Lama and the Marina — are not indispensable parties, and dismissal for a failure to join them is not warranted.

IV. CONCLUSION

For the foregoing reasons, it is **ORDERED AND ADJUDGED** that Defendants, Chamonix, Inc. and Ivan Blumenfeld's Motion to Dismiss Amended Complaint **[ECF No. 38]** is **GRANTED in part** and **DENIED in part**. Count I (negligence against Chamonix) and Count III

(negligence against Blumenfeld) of the Amended Complaint **[ECF No. 37]** are **DISMISSED**. Counts II, IV, and V remain.

DONE AND ORDERED in Miami, Florida, this 20th day of April, 2023.

CECILIA M. ALTONAGA
CHIEF UNITED STATES DISTRICT JUDGE

cc: counsel of record