

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 23-60616-CIV-SINGHAL

LEAH RAGER,

Plaintiff,

v.

MSC CRUISES, S.A.,
f/k/a MSC CRUISES (USA) INC.,

Defendant.

ORDER

THIS CAUSE is before the Court upon Defendant MSC Cruises' ("Defendant" or MSC") Motion to Dismiss (DE [11]). For the reasons discussed below, the Defendant's Motion to Dismiss is granted and Plaintiff Leah Rager's ("Plaintiff" or "Rager") Complaint (DE [1]) is dismissed without prejudice.

I. INTRODUCTION

On May 5, 2022, Plaintiff was a passenger on Defendant's vessel, MSC Seashore, which was traveling in navigable waters. (DE [1] at 2). At all times relevant to this action, Defendant was the exclusive owner of the vessel and had exclusive control over the vessel. (DE [1] at 2). While Plaintiff was a passenger on Defendant's vessel and was traveling in navigable waters, she severely injured herself when she tripped and fell on, what she calls, an "unreasonably uneven, unexpected, hazardous, and/or dangerous flooring surface had a metal rise that was raised almost two inches." (DE [1] at 2). Plaintiff alleges that the hazardous condition was "in an area and under conditions that the Defendant knew or should have known had they used reasonable care under the circumstances." (DE [1] at 2). Finally, according to Plaintiff, the hazardous condition was

not open and obvious, and Plaintiff had no way of becoming aware of its existence. (DE [1] at 3).

On March 30, 2023, Plaintiff proceeded to file a three-count complaint against Defendant with all three claims based on theories of negligence. (DE [1]). On June 20, 2023, Defendant filed a motion to dismiss seeking to dismiss Plaintiff's complaint with prejudice. (DE [11]).

II. LEGAL STANDARD

At the pleading stage, a complaint must contain "a short and plain statement of the claim showing the [plaintiff] is entitled to relief." Fed. R. Civ. P. 8(a). Rule 8's pleading standard, however, demands more than "an unadorned, the defendant unlawfully harmed me accusation," *Iqbal*, 556 U.S. at 678, and "threadbare recitals" of the elements of a cause of action. *Holland v. Carnival Corp.*, 50 F.4th 1088 (11th Cir. 2022) (citations omitted). Rather, "factual allegations must be enough to raise a right to relief above the speculative level" and must be sufficient "to state a claim for relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). "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." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). "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), *abrogated on other grounds by Mohamad v. Palestinian Authority*, 566 U.S. 449 (2012).

In considering a Rule 12(b)(6) motion to dismiss, the court's review is generally "limited to the four corners of the complaint." *Wilchombe v. TeeVee Toons, Inc.*, 555 F.3d 949, 959 (11th Cir. 2009) (quoting *St. George v. Pinellas Cty.*, 285 F.3d 1334, 1337 (11th

Cir. 2002)). The court must review the complaint in the light most favorable to the plaintiff, and it must generally accept the plaintiff's well-pleaded facts as true. See *Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984). But "[c]onclusory allegations, unwarranted deductions of facts or legal conclusions masquerading as facts will not prevent dismissal." *Jackson v. BellSouth Telecommunications*, 372 F.3d 1250, 1262 (11th Cir. 2004) (citation omitted); see also *Iqbal*, 129 S. Ct. at 1949 ("[T]he tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions.").

III. DISCUSSION

Defendant seeks to dismiss Plaintiff's complaint because, it argues, Plaintiff has failed to properly plead any negligence claim under *Twombly* and *Iqbal's* "plausibility" pleading standards. For the reasons discussed below, the Court agrees.

To state a cause of action for negligence, a plaintiff must 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). "With respect to the duty element in a maritime context, 'a shipowner owes the duty of exercising reasonable care towards those lawfully aboard the vessel who are not members of the crew.'" *Guevara*, 920 F.3d at 720 (quoting *Kermarec v. Compagnie Generale Transatlantique*, 358 U.S. 625, 630 (1959)). For a shipowner to have breached its duty to exercise reasonable care when there is a hazardous or dangerous condition on its vessel, it must have actual or constructive notice of this condition. *Id.* Actual notice is how it sounds; when the defendant knew or was aware of the hazardous or dangerous condition. *Id.* at 1095. To demonstrate that a defendant had constructive notice, a plaintiff must allege that either (1) the hazardous condition existed

for a sufficient length of time so as to invite corrective measures or (2) other incidents occurred in which “conditions substantially similar to the occurrence in question must have caused the prior accidents.” *Id.*

In this case, Plaintiff has not sufficiently alleged that Defendant has breached a duty with respect to any of its negligence claims. The only factual support in the complaint relevant to a cause of action for negligence consists of conclusory allegations. The following allegations are just two of the many examples:

10. On or about May 5, 2022, Plaintiff was severely injured when she tripped and fell on an unreasonably uneven, unexpected, hazardous, and/or dangerous flooring surface had a metal rise that was raised almost two inches in an area and under conditions that the Defendant knew or should have known had they used reasonable care under the circumstances.


11. The unreasonably uneven, unexpected hazardous and/or dangerous nature of the flooring surface was not open and obvious, and the Plaintiff had no way of knowing the existence of the hazardous condition(s).

(DE [1] at 2-3). Paragraph 10 is conclusory because Plaintiff does not describe the circumstances of her fall and where it happened on the boat, leaving the Court to guess about the events that led to her fall. It is also not clear how Defendant “knew or should have known” about the alleged hazardous condition. Plaintiff simply makes a blanket assertion without explaining why Defendant would have known about it. Paragraph 11 is conclusory because it does not explain how the hazardous condition was not open and obvious; Plaintiff merely asserts that it is. Without any factual support to back up Plaintiff’s allegations, her Complaint amounts to an amalgamation of conclusory allegations that are insufficient to survive a motion to dismiss. *See Jackson*, 372 F.3d at 1262. Accordingly, it is hereby

ORDERED AND ADJUDGED that Defendant’s Motion to Dismiss (DE [11]) is **GRANTED**. Plaintiff’s Complaint (DE [1]) is **DISMISSED WITHOUT PREJUDICE**.

Plaintiff has fourteen (14) days from entry of this order to file an amended complaint.

DONE AND ORDERED in Chambers, Fort Lauderdale, Florida, this 25th day of
October 2023.



RAAG SINGHAL
UNITED STATES DISTRICT JUDGE

Copies furnished counsel via CM/ECF