UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 24-21617-CIV-COHN/VALLE

VENITA MICHEL,

Plaintiff,

vs.

CARNIVAL CORPORATION d/b/a
CARNIVAL CRUISE LINES, INC.,

Defendant.

_____/

ORDER GRANTING IN PART MOTION TO DISMISS AMENDED COMPLAINT

THIS CAUSE is before the Court upon Defendant's Motion to Dismiss Plaintiff's Amended Complaint [DE 18] ("Motion"). The Court has considered the Motion, Plaintiff's Response [DE 22], Defendant's Reply [DE 23], and is otherwise fully advised in the premises.

I. Background

In this maritime personal injury action, Plaintiff Venita Michel alleges that she was injured aboard the Carnival Conquest on April 29, 2023. See DE 17. She claims that while she was descending the ladder attached to the top bunk in her cabin, "[s]uddenly and without warning, the ladder shifted violently to one side causing [her] to fall off the ladder." Id. ¶ 12. Her Amended Complaint contains three claims. Count I asserts a vicarious liability claim based on the active negligence of Defendant's crewmember in "improperly and insufficiently securing the bunkbeds [sic] ladder to the bunk bed." Id. ¶ 26. Counts II and III, respectively, assert direct claims of negligent failure to warn and

failure to maintain. Id. ¶¶ 30-54. Defendant seeks dismissal of all claims pursuant to Fed. R. Civ. P. 12(b)(6). See DE 18.

Defendant's primary argument is that Counts II and III should be dismissed for Plaintiff's failure to plead Defendant's actual or constructive notice of the allegedly dangerous condition in Plaintiff's cabin. In its June 17, 2024 Order Granting in Part Motion to Dismiss Complaint, the Court found that Plaintiff had failed to adequately plead notice in her original Complaint, but granted Plaintiff's request for leave to amend to attempt to cure this deficiency. See DE 16 (the "Prior Order").[1] For the reasons set forth below, the Court finds that the allegations in Plaintiff's Amended Complaint are still insufficient to adequately plead notice.

II. Legal Standard

Under Federal Rule of Civil Procedure 12(b)(6), a court shall grant a motion to dismiss where, based upon a dispositive issue of law, the factual allegations of the complaint cannot support the asserted cause of action. Glover v. Liggett Grp., Inc., 459 F.3d 1304, 1308 (11th Cir. 2006). Indeed, "[f]actual allegations must be enough to raise a right to relief above the speculative level." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007). Thus, 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) (quoting Twombly, 550 U.S. at 570).

Nonetheless, a complaint must be liberally construed, assuming the facts alleged therein as true and drawing all reasonable inferences from those facts in the plaintiff's favor. Twombly, 550 U.S. at 555. A complaint should not be dismissed simply because

[1] The Court also explained in the Prior Order that Plaintiff is not required to plead Defendant's notice of the hazard with respect to her vicarious liability claim (Count I). Id. at 3.

the court is doubtful that the plaintiff will be able to prove all of the necessary factual allegations. Id. Accordingly, a well-pleaded complaint will survive a motion to dismiss "even if it appears that a recovery is very remote and unlikely." Id. at 556.

III. Analysis

The Court will not rehash its entire discussion of the notice issue from the Prior Order, but rather will focus on the new allegations that Plaintiff has added to her Amended Complaint related to notice. First, Plaintiff has added some detail to her allegation that Defendant should have noticed the hazard during its inspections of the cabin, alleging that such inspections are conducted "at the beginning of each cruise . . . therefore [Defendant] was on notice of the dangerous conditions in Plaintiff's cabin for no less than 12 hours." DE 17 at ¶ 36. Plaintiff also now alleges that Defendant should be charged with notice because of "a prior similar accident with an unsecured bunk bed ladder [that] occurred on May 11, 2019" on another of Defendant's vessels. Id. ¶ 37. Finally, Plaintiff alleges that:

> Defendant further knew or should have known of the dangerous conditions because the Defendant instructs its crew on how to properly set up their cabins, including how to use the bunk beds and where to attach and secure the ladders, and because Defendant emphasizes the need to identify, recognize, and remedy dangerous conditions like improper bedding configuration and ladder placement.

Id. ¶ 38. Defendant argues that, despite these additions, Plaintiff still "fails to allege with sufficient particularity that Defendant had actual or constructive notice of the risk creating condition." DE 18 at 6.

To plead constructive notice,[2] Plaintiff is required to plausibly allege that either (1) the dangerous condition existed for a sufficient length of time, or (2) "substantially similar incidents occurred in which 'conditions substantially similar to the occurrence in question must have caused the prior accident.'" Holland v. Carnival Corp., 50 F.4th 1088, 1096 (11th Cir. 2022) (quoting Guevara v. NCL (Bahamas) Ltd., 920 F.3d 710, 720 (11th Cir. 2019)). Plaintiff fails to plausibly allege constructive notice under either of these theories.

First, as noted above, Plaintiff now alleges that Defendant should have been on notice of the hazard because Defendant inspected the cabin at the beginning of the cruise and "therefore was on notice of the dangerous conditions in Plaintiff's cabin for no less than 12 hours." DE 17 at ¶ 36. In arguing that this allegation sufficiently pleads notice, Plaintiff, as she did in opposition to Defendant's original Motion to Dismiss, again relies on Hunter v. Carnival Corp., 609 F. Supp. 3d 1305 (S.D. Fla. 2022). See DE 22 at 5 ("[t]he Amended Complaint in this case tracks the complaint in the analogous case of Hunter"). In the Prior Order, the Court found Hunter to be "easily distinguishable" from the facts at hand. DE 16 at 5. The new allegations in Plaintiff's Amended Complaint fail to solve the underlying problem for Plaintiff—that, although Hunter is also a bunk bed case, the relevant facts of Hunter are fundamentally different from those set forth in the Amended Complaint.

As explained in the Prior Order, in Hunter, the plaintiff alleged "that Defendant approved [the addition of a fifth bed to the cabin] despite knowing the size of its cruise cabins, and thus knew that adding an additional bed to a cabin would require moving

[2] Plaintiff does not allege any facts supporting a reasonable inference that Defendant had actual notice of the hazard.

the bunk bed ladder to a place where it would not be secured." Hunter, 609 F. Supp. 3d at 1313. While the plaintiff in Hunter, like Plaintiff here, also alleged that Defendant's crewmembers inspected the cabin at least 12 hours in advance of the cruise, the Hunter court found that plaintiff's allegations regarding the inspection was sufficient to plead notice because it showed that "Defendant knew (or should have known) of the ladder's placement well in advance of the accident." Id. at 1314. Here, because Plaintiff does not allege that an additional bed was added to her cabin—causing the placement of the ladder to be altered—the Court cannot reasonably infer that Defendant knew, or should have known, of the ladder's allegedly improper installation due to its crewmember's inspection. In other words, while it is plausible that a crewmember should have noticed that a ladder was placed in a different position to accommodate an extra bed in a cabin, Plaintiff's theory that a crewmember should have noticed that a ladder—in its usual location within the cabin—"was not stabilized by the grommets and slots" that attach it to the top bunk does not cross the line from "conceivable to plausible." Twombly, 550 U.S. at 570.

For the same reasons set forth above, the Court also finds that Plaintiff cannot use the Hunter incident as a prior similar incident that establishes constructive notice because she has not shown that "conditions substantially similar to the occurrence in question . . . caused the prior accident." Guevara v. NCL (Bahamas) Ltd., 920 F.3d 710, 720 (11th Cir. 2019).

Plaintiff's remaining argument as to notice also relies on caselaw that the Court distinguished in the Prior Order: Fadraga v. Carnival Corp., 23-23503-CIV, 2024 WL 1908980 (S.D. Fla. Apr. 30, 2024). As the Court previously explained, "[c]ritical to the

Fadraga court's analysis . . . was the fact that the 'risk-creating condition—the high temperature of the soup—was presumably readily observable by whoever prepared or served it.'" DE 16 at 6 (citing Fadraga, 2024 WL 1908980 at *3). Plaintiff has failed to include any new factual allegations in her Amended Complaint that plausibly show that the risk-creating condition here—the allegedly improperly secured ladder—was so readily observable to whichever crewmember had direct contact with it that the Court can infer that Defendant had notice of it. As such, Counts II and III will be dismissed with prejudice due to Plaintiff's failure to adequately plead notice.

Defendant's only remaining argument is that Plaintiff's Amended Complaint should be dismissed as a shotgun pleading. Many of the concerns raised by Defendant relate to Counts II and III and are therefore now mooted by the Court's dismissal of same. As to Count I, Defendant argues that it is improperly pled because it mentions the duty that Defendant owed to Plaintiff, which is irrelevant in a vicarious liability claim. In the Prior Order, the Court credited this argument and ordered Plaintiff to file "an Amended Complaint that does not . . . commingle theories of liability by alleging Defendant's duty in a claim for vicarious liability." DE 16 at 8. Plaintiff failed to do so, and in its Response argues that this reference should simply be stricken. Rule 12(f) gives the Court discretion to "strike from a pleading . . . any redundant [or] immaterial . . . matter." Rather than requiring a Second Amended Complaint, the Court finds it more efficient to simply strike the reference to Defendant's duty in Count I pursuant to Rule 12(f).

IV. Conclusion

In light of the foregoing, it is **ORDERED and ADJUDGED** as follows:

1. Defendant's Motion to Dismiss Plaintiff's Amended Complaint [DE 18] is **GRANTED in part and DENIED in part** as set forth above.

2. Defendant shall file an answer to Count I by **August 30, 2024**.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida, this 15th day of August, 2024.

JAMES I. COHN
United States District Judge

Copies provided to counsel of record via CM/ECF