UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 1:24-cv-21140-JLK

VICTORIA BURNS,

Plaintiff,

v.

CARNIVAL CORPORATION, a Panamanian Corporation d/b/a Carnival Cruise Line

Defendant.
_____/

ORDER GRANTING DEFENDANT'S MOTION TO DISMISS

THIS MATTER is before the Court on Defendant's Motion to Dismiss Plaintiff's Complaint (the "Motion") (DE 8), filed on May 31, 2024. The Court has also considered Plaintiff's Response (DE 9) and Defendant's Reply (DE 10). This matter is ripe for review.

I. BACKGROUND

On March 26, 2024, Plaintiff filed her Complaint alleging two counts of negligence against Defendant. Compl., DE 1. This action stems from Plaintiff's fall on a slippery surface while a passenger aboard the cruise ship, the Carnival *Paradise*, which was owned and operated by Defendant. *See id.* Plaintiff alleges she was walking near the Burrito Restaurant and Guy's Burger Joint Restaurant when she slipped and fell, sustaining lumbar and cervical spine injuries. *Id.* ¶¶ 14, 17. Now, Defendant moves to dismiss Plaintiff's Complaint for failure to state a claim, arguing Plaintiff has not sufficiently alleged actual or constructive notice. *See* DE 8.

II. LEGAL STANDARD

Under Federal Rule of Procedure 8(a)(2), "[t]o survive a motion to dismiss, 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 *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). To meet this 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." *Iqbal*, 556 U.S. at 678. A complaint 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.

III. DISCUSSION

Defendant's Motion argues Plaintiff has not sufficiently plead that Defendant had actual or constructive notice of the alleged dangerous condition. *See* Mot. In response, Plaintiff argues that she has adequately plead actual or constructive notice since her Complaint alleges that Defendant's employees created the dangerous condition by mopping/squeegeeing the floors just prior to the incident. *See* Resp.

This action is governed by general maritime law as are all tort claims that arise on ships sailing in navigable waters. *Keefe v. Bahama Cruise Line, Inc*., 867 F.2d 1318, 1320 (11th Cir. 1989) (citations omitted). It is established that "[t]o plead 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. 2021).

Under federal maritime law, the duty of care owed by a cruise operator to its passengers is ordinary reasonable care under the circumstances, "which requires, as a prerequisite to imposing liability, that the carrier have actual or constructive notice of the risk-creating condition." *See Thompson v. Carnival Corp.*, 174 F.Supp.3d 1327, 1340 (S.D. Fla. 2016) (quoting *Keefe*, 867 F.2d at 1322). "Actual notice exists when the defendant knows about the dangerous condition, and

constructive notice exists where the shipowner ought to have known of the peril to its passengers." *Newbauer v. Carnival Corp.*, 26 F.4th 931, 935 (11th Cir. 2022) (internal quotations omitted). "A plaintiff can establish constructive notice with evidence that the defective condition existed for a sufficient period of time to invite corrective measures." *Id.* (internal quotations 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 quotations omitted).

Regarding notice, Plaintiff's Complaint alleges that:

> At all material times, the Defendant, CARNIVAL, had actual and/or constructive notice of . . . the foreign substance . . . because it had employees mopping and squeegeeing the floors at or near this location at or about and just prior to the time that [Plaintiff] was injured. Further this is and was one of the most highly trafficked areas of the ship with several hundred passengers and crewmembers traverse this area every day, many of whom are carrying food and drinks on their way to and from the bars and restaurants and the swimming pool area such that the Defendant by and through its agents and/or employees either knew or should have known prior to the plaintiff's fall, or, in fact its agents and/or employees in fact caused the wet, foreign or transitory substance upon which the Plaintiff slipped and fell upon.

Compl. ¶ 15. This Court finds that Plaintiff's Complaint does not contain sufficient factual allegations to satisfy the pleading standard set forth in *Iqbal* and *Twombly* such that it is facially plausible that Defendant had actual or constructive notice of the dangerous condition. Plaintiff's Complaint alleges that Defendant's employee was present at or around the time of Plaintiff's incident and created the hazardous condition by mopping or squeegeeing the floors at or near Plaintiff's slip and fall location. Compl. ¶ 15. This allegation is insufficient to impute actual or constructive notice as it is a conclusory and lacking specificity.

It is true that "actual knowledge of a dangerous condition exists when the [defendant's] employees or one of its agents knows of or creates the dangerous condition. *See Barbour v. Brinker Florida, Inc.*, 801 So. 2d 953, 957 (Fla. Dist. Ct. App. 2001) (citing *Food Fair Stores, Inc. v.*

Trusell, 131 So. 2d 730, 732 (Fla. 1961)). However, Plaintiff's allegation does not clearly state that Defendant's employee created the condition. Instead, Plaintiff's boilerplate allegation states that "it had employees mopping and squeegeeing the floors *at or near* this location *at or about and just prior* to the time that [Plaintiff] was injured." Compl. ¶ 15 (emphasis added). Plaintiff goes on to say that because the area where Plaintiff fell was a "highly trafficked area" that Defendant knew or should have known of the condition *or* that Defendants employee caused the condition. *Id.*

Failure to plead factual allegations supporting that the cruise line had notice of the danger raises no more than a "mere possibility of misconduct" which is insufficient to withstand a motion to dismiss. *Moseley v. Carnival Corp.*, 593 Fed. Appx. 890, 893 (11th Cir. 2014); *see also Iqbal*, 129 S. Ct. at 1950 ("While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations."); *Navarro v. Carnival Corp.*, No. 19-cv-21072, 2020 WL 1307185, at *3 (S.D. Fla. Mar. 19, 2020) ("[A]side from the conclusory allegation that Carnival 'was or should have been aware' of the risk creating condition—there are no factual allegations supporting conclusion that Carnival knew of this risk creating condition . . .").

Plaintiff's allegation as written requires the Court to make a number of assumptions in order to satisfy the notice requirement. For example, Plaintiff does not state where Defendant's employee was mopping, only that it was at or near the area where Plaintiff was injured. Further, Plaintiff does not state with certainty that Defendant's employee created the condition, the allegation is that Defendant should have known of the condition, *or* alternatively an employee created it. As such, the Court finds that Plaintiff's Complaint fails to allege actual notice.

Likewise, Plaintiff's Complaint fails to sufficiently allege constructive notice. Plaintiff does not allege how long the condition lasted or provide any prior similar incidents. Plaintiff instead alleges that Defendant should have known of the hazardous condition because Plaintiff

slipped and fell in a "highly trafficked area." Compl. ¶ 15. The Eleventh Circuit has held that general allegations of a hazard existing in a "highly trafficked area" are insufficient to satisfy constructive notice. In *Holland*, the plaintiff "alleged that a hazard occurred on a highly trafficked staircase that was potentially visible to many crewmembers and was subject to the regulation of safety agencies." *Holland v. Carnival Corp.*, 50 F.4th 1093, 1095–96 (11th Cir. 2022). The Eleventh Circuit held that the plaintiff "failed to plausibly allege that [the defendant] had actual or constructive notice of the alleged hazardous condition." *Id.* at 1095. Similarly, in *Newbauer*, the Eleventh Circuit held that the plaintiff there failed to properly allege notice with enough specificity where she alleged that Carnival was on constructive notice of a wet substance on the deck because it was in a "high traffic dining area," but failed to provide any factual allegations supporting the notion that high traffic in the area gave Carnival notice of the condition. *Newbauer v. Carnival Corp.*, 26 F.4th 931, 935–36 (11th Cir.), cert. denied, 143 S. Ct. 212, 214 L. Ed. 2d 83 (2022).

The allegations in the instant case are analogous. Plaintiff generally alleges that Defendant should have been on notice of the slippery surface because "this [area] is and was one of the most highly trafficked areas of the ship with several hundred passengers and crewmembers traverse this area every day, many of whom are carrying food and drinks on their way to and from the bars and restaurants and the swimming pool area . . ." Compl. ¶15. This allegation lacks factual support that Defendant had constructive notice of the hazardous condition. As such, the Court finds that Plaintiff has failed to adequately allege actual or constructive notice.

Accordingly, it is **ORDERED, ADJUDGED and DECREED** that Defendant's Motion to Dismiss **(DE 8)** be, and the same hereby is, **GRANTED**. Plaintiff may, if she so chooses, amend her Complaint within **twenty (20) days** from the date of this Order to remedy the deficiencies in the Complaint.

DONE AND ORDERED in Chambers at the James Lawrence King Federal Justice Building and United States Courthouse, Miami, Florida this 22nd day of October, 2024.

JAMES LAWRENCE KING
UNITED STATES DISTRICT JUDGE

cc: All counsel of record