UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

Case Number: 24- 20497-CIV-MARTINEZ

LARIANA POLLARD,

Plaintiff,

v.

CARNIVAL CORPORATION,

Defendant.
_____/

ORDER GRANTING MOTION TO DISMISS

THIS CAUSE came before the Court upon Defendant Carnival Corporation's Motion to Dismiss Plaintiff's Complaint ("Motion"), (ECF No. 9). Plaintiff filed a response in opposition, (ECF No. 16), and Defendant filed a reply, (ECF No. 19). After considering the relevant briefing, the record, and being otherwise fully advised in the premises, the Motion is **GRANTED**.

BACKGROUND

Plaintiff alleges that she "slipped and fell due to a foreign, wet, slippery, and/or transitory substance present on the gangway" while disembarking Carnival's vessel, "CONQUEST." (Compl., ECF No. 1 ¶ 13). Plaintiff claims that Defendant was negligent in the inspection and maintenance of the gangway, negligent in its failure to warn her of the slipping hazard, and negligent in its failure to offer assistance. (*See generally* Compl.). Defendant argues that the Complaint "does not provide sufficient facts to establish that Carnival had notice of the alleged risk-creating condition and the three alleged counts against Defendant are duplicative and rest upon the same unsubstantiated allegations." (Mot. at 2).

LEGAL STANDARD

Under Federal Rule of Civil Procedure 12(b)(6), the Court will grant a motion to dismiss if the complaint fails to state a claim for which relief can be granted. 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 (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). When ruling on a motion to dismiss, "the Court accepts the factual allegations in the complaint as true and construes them in the light most favorable to the plaintiff." *Speaker v. U.S. Dep't of Health and Human Servs. For Disease Control and Prevention*, 623 F.3d 1371, 1379 (11th Cir. 2010). Although a complaint need not include detailed factual allegations, a plaintiff must offer "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. "[C]onclusory allegations, unwarranted deductions of facts or legal conclusions masquerading as facts will not prevent dismissal." *Oxford Asset Mgmt., Ltd. v. Jaharis*, 297 F.3d 1182, 1188 (11th Cir. 2002).

DISCUSSION

Maritime law governs Plaintiff's negligence claim because the alleged tort was committed aboard a ship sailing navigable waters. *Keefe v. Bahama Cruise Line, Inc.*, 867 F.2d 1318, 1320 (11th Cir. 1989). At the motion to dismiss stage, a plaintiff must plead facts sufficient to plausibly establish 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). Notably, plaintiffs in maritime negligence cases must also assert enough factual allegations to allow the court to draw the reasonable inference that the defendant vessel owner had actual or constructive notice of the risk-creating condition. *Keefe*, 867 F.2d at 1322.

Plaintiff presents two theories to establish Defendant's notice of the alleged danger. First, "in the fact that it had been raining earlier that day and sufficient time had passed from the rain to the disembarkation to invite correct measures." (Compl. ¶ 16). Second, Plaintiff lists three slip and fall cases filed against Defendant[1] to establish that Defendant had "constructive knowledge of the slipping hazard that caused Plaintiff to slip and fall." (*Id.* ¶ 15).

I. Sufficient Length of Time

Constructive notice is established if the defendant "ought to have known of the peril to its passengers" because the hazard was "present for a period of time so lengthy as to invite corrective measures." *Keefe*, 867 F.2d at 1322. A plaintiff must "demonstrate specific facts pertaining to how long the dangerous condition existed or that the dangerous condition existed for a sufficient period of time to create constructive notice." *Kendall v. Carnival Corp.*, No. 1:23-cv-22921, 2023 WL 8593669, at *3 (S.D. Fla. Dec. 7, 2023); *see also Newbauer v. Carnival Corp.*, 26 F.4th 931, 936 (11th Cir. 2022) ("Newbauer's argument is unpersuasive because she failed to allege any facts suggesting the amount of time the hazard existed on the deck before she fell or that there were crewmembers monitoring the area.").

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[1] *Wilkerson v. Carnival Corp.*, No. 1:23-cv-24050 (Feb. 5, 2024) (Second Amended Compl.); *Reason v. Carnival Corp. & PLC*, No. 1:22-cv-22868 (Jan. 13, 2023) (Second Amended Compl.); and *Cavitt v. Carnival Corp.*, 20-22259-CIV, 2021 WL 1998368 (S.D. Fla. May 19, 2021).

Plaintiff asserts that "actual and/or constructive knowledge can be found in the fact that it had been raining earlier that day and sufficient time had passed . . . to invite correct measures." (Compl. ¶ 16). Plaintiff's assertion is a legal conclusion that the Court will not take as true. *See Twombly*, 550 U.S. at 555 (explaining that while a complaint "does not need detailed factual allegations," it must provide "more than labels and conclusions"). Plaintiff's complaint is devoid of facts to support the conclusion that sufficient time had passed to invite corrective measures. Plaintiff fails to identify the length of time the substance was present, what the substance was, whether any anti-slip protections were in place, or whether crewmembers were present. While it is *possible* that a wet and/or slippery substance existed on a gangway for a sufficient period of time, the facts alleged in Plaintiff's complaint do not push the line into *plausible*. *See Newbauer*, 26 F.4th at 936 (affirming trial court's dismissal because the complaint "did not allege any facts supporting the conclusions that the substance had been on the floor for a sufficient period of time to create constructive notice, that this was a recurring issue, or that there may have been employees in the area who observed the hazard and failed to take corrective action."). Plaintiff fails to establish constructive notice under this theory.

II. Substantial Similarity

Constructive notice may also be established if a plaintiff can "point to previous injuries or show that the defendant previously warned of the danger." *Malley v. Royal Caribbean Cruises Ltd.*, 713 F. App'x 905, 908 (11th Cir. 2017). "Indeed, a party may 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." *Kendall*, 2023 WL 8593669, at *3 (internal quotations omitted). "The substantial similarity standard does not require identical factual circumstances among the accidents; instead, the accidents must only be similar enough to allow

the jury to draw a reasonable inference regarding the cruise ship operator's ability to foresee the accident at hand." *Id.* at *5–6 (citing *Cogburn v. Carnival Corp.*, No. 21-11579, 2022 WL 1215196, at * 4 (11th Cir. 2022)) (internal quotations omitted).

Plaintiff presents three cases that she asserts are substantially similar and put Defendant on notice of the dangerous condition on the gangway:

a. On October 11, 2022, C.W. was walking on the gangway to disembark at a destination port while aboard the CARNIVAL "GLORY," a vessel within the same class as the "CONQUEST," when a slippery substance present on the gangway caused her to slip and fall. *Wilkerson v. Carnival*, 1:23-cv-24050.

b. On March 15, 2022, J.R. was walking on the gangway to disembark at a destination port while aboard the CARNIVAL "SPIRIT," when she slipped and fell due to an unreasonably slippery substance on the gangway. *Reason v. Carnival*, 1:22-cv-22868.

c. On March 10, 2019, L.C. was walking on the gangway to disembark at a destination port while aboard the CARNIVAL "FASCINATION," when a wet and slippery substance present on the gangway caused her to slip and fall. *Cavitt v. Carnival*, 20-22259-CIV.

(Compl. ¶ 15).

Plaintiff fails to allege facts that make the connection between her alleged accident and the cited incidents beyond the fact that all the incidents were slip and falls on the gangway of a Carnival ship. Plaintiff does not allege sufficient facts that make the incidents substantially similar such as the type of substance she fell on, similar weather conditions, the length of time the substance was present, whether crew members were present, whether the gangway was equipped with non-slip strips, or whether the gangway was uneven. (*See* Compl.). Without specific factual allegations, the Court cannot conclude that these incidents were substantially similar to the accident alleged by Plaintiff. Thus, the Court finds that Plaintiff failed to plead facts showing that the prior incidents on other vessels were sufficient to provide Defendant constructive notice of the allegedly dangerous condition.

Accordingly, it is **ORDERED AND ADJUDGED** that:

1. The Motion to Dismiss, (ECF No. 9), is **GRANTED**.
2. The Complaint, (ECF No. 1), is **DISMISSED without prejudice**.
3. Plaintiff may file an amended complaint that cures the deficiencies identified in this Order on or before November 1, 2024. Failure to do so may be grounds for **final dismissal without further warning.**

DONE AND ORDERED in Chambers at Miami, Florida, this 11 day of October 2024.

JOSE E. MARTINEZ
UNITED STATES DISTRICT JUDGE

Copies provided to:
Magistrate Judge Sanchez
All Counsel of Record