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

Case Number: 24-22811-CIV-MARTINEZ

KATRINIA PARKER,

Plaintiff,

v.

NCL (BAHAMAS) LTD.,

Defendant.
_______________________________________/

ORDER GRANTING DEFENDANT'S MOTION TO DISMISS

THIS CAUSE is before the Court upon Defendant NCL (Bahamas) LTD.'s Motion to Dismiss Plaintiff's Complaint ("Motion"), (ECF No. 7). This Court has reviewed the Motion; Plaintiff's Response, (ECF No. 10); Defendant's Reply, (ECF No. 12); and pertinent portions of the record and is otherwise fully advised of the premises. After careful consideration, and for the reasons set forth herein, the Motion, (ECF No. 7), is **GRANTED**.

I. Brief Factual Background

Plaintiff was a passenger aboard the *M/V Norwegian Jade* cruise ship operated by the Defendant. (Compl. ¶ 2, ECF No. 1). Plaintiff alleges that "a foreign slippery substance on the dance floor caused her to slip and fall." (*Id.* ¶ 8). The incident occurred in the Spinnaker Lounge, where passengers were encouraged to dance and enjoy beverages, however, Plaintiff contends that Defendant implemented a policy prohibiting drinks on the dance floor to prevent slipping hazards but failed to enforce it. (*Id.* ¶¶ 6–7). Additionally, Plaintiff alleges that shortly after the fall, a member of the ship's crew wiped up the spill and therefore knew or should have known what foreign substance caused her to fall. (*Id.* ¶ 8).

Plaintiff seeks to recover damages for her injuries arising from the fall. Plaintiff claims that Defendant's rule of prohibiting drinks on the dance floor, coupled with its failure to enforce this rule, established that the Defendant knew or should have known of the increased risk of slippery foreign substances on the dance floor. (*Id.* ¶ 10). As a result, Plaintiff claims Defendant's negligence is a direct, efficient, and proximate cause of Plaintiff's injuries. (*Id.* ¶ 12).

II. LEGAL STANDARD

Under Federal Rule of Civil Procedure 12(b)(6), the Court may dismiss a complaint based on the failure to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim for relief that is plausible on its face.'" *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). When reviewing a motion to dismiss, the plaintiff should receive the benefit of all favorable inferences that can be drawn from the facts alleged in the complaint. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Courts, nevertheless, "are not bound to accept as true a legal conclusion couched as a factual allegation." *Papasan v. Allain*, 478 U.S. 265, 286 (1986) (quoting *Briscoe v. LaHue*, 663 F.2d 713, 723 (7th Cir. 1981)).

A court considering a Rule 12(b)(6) motion is generally limited to the facts contained in the complaint and the exhibits attached thereto, including "documents referred to in the complaint that are central to the claim." *Wilchombe v. TeeVee Toons, Inc.*, 555 F.3d 949, 959 (11th Cir. 2009) (citing *Brooks v. Blue Cross & Blue Shield of Fla., Inc.*, 116 F.3d 1364, 1369 (11th Cir. 1997) (per curiam)). However, when a complaint fails to meet federal pleading standards, it may be dismissed as a "shotgun pleading." *Weiland v. Palm Beach Cnty. Sheriff's Office*, 792 F.3d 1313, 1321–23 (11th Cir. 2015). A shotgun pleading is a complaint that violates either Federal Rule of Civil Procedure 8(a)(2), Rule 10(b), or both. *Id.* at 1320. There are four general types of shotgun

pleadings. *See Weiland,* 792 F.3d at 1321. The first is "a complaint containing multiple counts where each count adopts the allegations of all preceding counts, causing each successive count to carry all that came before and the last count to be a combination of the entire complaint." *Id.* The second is a complaint that is "replete with conclusory, vague, and immaterial facts not obviously connected to any particular cause of action." *Id.* at 1322. The third is a complaint that does not separate "each cause of action or claim for relief" into a different count. *Id.* at 1323. And the fourth and final type of shotgun pleading is a complaint that "assert[s] multiple claims against multiple defendants without specifying which of the defendants are responsible for which acts or omissions, or which of the defendants the claim is brought against." *Id.* "The unifying characteristic of all types of shotgun pleadings is that they fail to one degree or another, and in one way or another, to give the defendants adequate notice of the claims against them and the grounds upon which each claim rests." *Id.*

III. Discussion

Defendant moves to dismiss Plaintiff's Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6), arguing that Plaintiff's Complaint constitutes a shotgun pleading and Plaintiff's Complaint failed to sufficiently allege actual or constructive notice of the alleged dangerous condition. (Mot. at 2-3). This Court shall address each argument in turn.

Defendant asserts that the Complaint falls into the second and/or third type of a shotgun pleading recognized by the Eleventh Circuit: those "replete with conclusory, vague, and immaterial facts not obviously connected to any particular cause of action," or those that improperly combine multiple claims into a single count without clear delineation. *Weiland,* 792 F.3d at 1322–23; (Mot. at 3). Defendant notes that Complaint contains only one count, but it contains claims for "failing to enforce the rule prohibiting drinks on the dance floor," "failing to have proper staff monitoring

the dance floor," "failing to timely inspect the condition of the dance floor at reasonable intervals," and "failing to give any warnings regarding the hazardous slippery substance on the dance floor." (Mot. at 3; Compl. ¶¶ 11(a) – (d)). This Court agrees that the Complaint is a shotgun pleading and should be dismissed. *See Barmapov v. Amuial*, 986 F.3d 1321, 1326 (11th Cir. 2021).

Next, Defendant moves to dismiss the Complaint for failure to sufficiently allege notice. (Mot. at 3). This Court employs general principles of negligence law when evaluating maritime tort cases. *See Chaparro v. Carnival Corp.*, 693 F.3d 1333, 1336 (11th Cir. 2012). To state a negligence claim under general maritime law, a plaintiff must assert 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." *Id.* Plaintiffs in maritime negligence cases also must adequately plead notice on the part of a vessel owner, as "a cruise line owes its passengers a duty to warn of known dangers beyond the point of debarkation in places where passengers are invited or reasonably expected to visit." *Id.* (citing *Carlisle v. Ulysses Line Ltd.*, 475 So. 2d 248, 251 (Fla. 3d DCA 1985)). The duty to warn "encompasses only dangers of which the carrier knows, or reasonably should have known." *Carlisle*, 475 So. 2d at 251.

Accordingly, liability can be imposed only on carriers who have "actual or constructive notice of [the alleged] risk-creating condition." *Keefe v. Bahama Cruise Line, Inc.*, 867 F.2d 1318, 1322 (11th Cir. 1989). A plaintiff can establish constructive notice by alleging "that the 'defective condition exist[ed] for a sufficient period of time to invite corrective measures.'" *Guevara v. NCL (Bahamas) Ltd.*, 920 F.3d 710, 720 (11th Cir. 2019) (quoting *Monteleone v. Bahama Cruise Line, Inc.*, 838 F.2d 63, 65 (2d Cir. 1988)). A plaintiff can also establish constructive notice by alleging "substantially similar incidents in which 'conditions substantially similar to the occurrence in

question must have caused the prior accident.'" *Id.* (quoting *Jones v. Otis Elevator Co.*, 861 F.2d 655, 661–62 (11th Cir. 1988)).

Plaintiff alleges that because Defendant failed to enforce the rule of prohibiting passengers from being on the dance floor with drinks, Defendant "knew or should have known" of the increased risk of slippery foreign substances on the dance floor. (Compl. ¶ 10). However, to establish notice by alleging a dangerous condition existed long enough for the defendant to have discovered and corrected it, 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-KMM, 2023 WL 8593669, at *3 (S.D. Fla. Dec. 8, 2023); *see also Newbauer v. Carnival Corp.*, 26 F.4th 931, 936 (11th Cir. 2022) ("[Plaintiff'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.").

Here, Plaintiff failed to allege any details about when the alleged risk-creating condition came into existence or how long the risk-creating condition was present. (*See generally* Compl.). Plaintiff only alleges that "[s]hortly after the fall, a member of the ship's crew wiped up the spill and therefore knew or should have known what foreign substance caused [Plaintiff] to fall." (*Id.* ¶ 8). The Complaint lacks references to prior complaints by passengers, inspection logs, or statements from crew members indicating awareness of the hazard. Additionally, the Complaint fails to provide any facts to support the claim that it was a spilled drink on which Plaintiff slipped on. Without specific allegations of how Defendant gained actual or constructive knowledge of the hazard, Plaintiff's claims fail to meet the pleading standard required under *Twombly* and *Iqbal*.

Thus, without a sufficient factual basis, this conclusory allegation of constructive notice cannot succeed. *See Kendall*, 2023 WL 8593669, at *3.

Further, Plaintiff contends that the existence of Defendant's "no drinks on the dance floor" policy inherently demonstrates that Defendant knew passengers carrying uncovered drinks onto the dance floor would create a dangerous condition due to the high probability of spills. (Resp. at 2). Plaintiff then argues that it is highly unlikely the liquid she slipped on came from any other source, such as saliva, sweat, bodily fluids, or a passenger with wet hair. (*Id.*). However, Plaintiff's argument relies on unwarranted inferences and deductions, which the Court is not obligated to accept. As the Eleventh Circuit in *Warren* has explained, "[i]n evaluating the sufficiency of a plaintiff's pleadings, [the court] make[s] reasonable inferences in Plaintiff's favor, but the Court is not required to draw Plaintiff's inference." *Warren Tech*, 962 F.3d at 1328; *see also Holland v. Carnival Corp.*, 2022 U.S. App. LEXIS 27733, at *12 (11th Cir. Oct. 4, 2022) (finding allegations insufficient to survive a motion to dismiss when a plaintiff failed to plausibly allege the defendant had actual or constructive notice of a dangerous condition, crossing only the line of possibility, not plausibility).

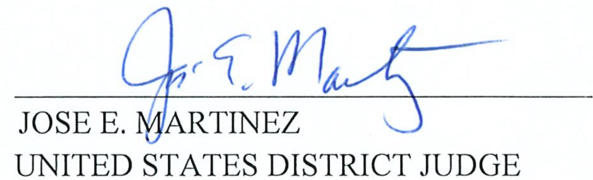
Here, Plaintiff's Complaint fails to provide any factual support for her claim that the substance on which she slipped was a spilled drink or that Defendant had actual or constructive notice of the hazard. Plaintiff merely makes conclusory statements without alleging how long the hazardous condition existed, whether it had been reported, or whether any inspections or monitoring by Defendant were inadequate.

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

1. Defendant's Motion to Dismiss, (ECF No. 7), 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 January 3, 2025**. Failure to do so may be grounds for **final dismissal without further warning**.

DONE AND ORDERED in Chambers at Miami, Florida, this 4 day of December 2024.



JOSE E. MARTINEZ
UNITED STATES DISTRICT JUDGE

Copies furnished to:
All Counsel of Record