**UNITED STATES DISTRICT COURT**
**SOUTHERN DISTRICT OF FLORIDA**

Case No. 19-cv-21188-UU

LAURA BENDER,

Plaintiff,

v.

ROYAL CARIBBEAN CRUISES LTD,

Defendant.
_____/

**ORDER**

THIS CAUSE comes before the Court upon Defendant's Motion to Dismiss Count II of Plaintiff's Complaint. D.E. 6.

THE COURT has considered the Motion, the pertinent portions of the record and is otherwise fully advised in the premises.

## I. Background

In July 2018, Plaintiff was a passenger on *Harmony of the Seas*, a cruise ship owned and operated by Defendant. D.E. 1 ¶¶ 10, 11. While onboard the ship, Plaintiff made use of the complimentary ice-skating rink. *Id*. ¶ 12. The floor of the ice-skating rink was made up of ice, instead of solid concrete or metal. *Id*. ¶ 38. Unlike traditional ice-skating rinks, the ice floor and any person on it move along with the movements of the ship. *Id*. ¶ 39. Plaintiff alleges that the conditions of the ice floor, and the deficient warnings or instructions on how to safely skate on this floor, caused her to lose her balance and fall. *Id*. ¶¶ 12, 40, 43. The resulting injuries required surgery and caused permanent losses and impairment. *Id*. ¶¶ 12, 45. Plaintiff asserts that Defendant was a manufacturer, designer, installer, utilizer, and distributor of the ice-skating rink.

*Id*. ¶¶ 36, 37; *see also id*. ¶ 22 ("Defendant participated in the design and/or approved the design of the ice-skating rink in conjunction with their business partner[.]").

In the complaint, Plaintiff brings claims for negligence and strict products liability. D.E. 1. On April 26, 2019, Defendant moved to dismiss Plaintiff's cause of action based on strict products liability (Count I) under Federal Rule of Civil Procedure 12(b)(6).[1] D.E. 6. In the motion to dismiss, Defendant argues that Plaintiff has failed to state a claim upon which relief can be granted because (i) a passenger's claims sounding in negligence cannot be brought against a ship owner under a theory of strict products liability, and (ii) Defendant did not manufacture or sell the ice-skating rink. *Id*. In addition, Defendant contends that the strict products liability claim should be dismissed as a shotgun pleading. *Id*. On May 10, 2019, Plaintiff filed a response in opposition to the motion to dismiss. D.E. 10. On May 16, 2019, Defendant filed a reply memorandum. D.E. 12. For the reasons discussed below, the Court agrees that Plaintiff has failed to state a cause of action for strict products liability.

## II. Legal Standard

In order to state a claim, Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement of the claim showing that the pleader is entitled to relief." While a court, at this stage of the litigation, must consider the allegations contained in the plaintiff's complaint as true, this rule "is inapplicable to legal conclusions." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). In addition, the complaint's allegations must include "more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Id*. (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555

[1] On April 26, 2019, Defendant filed the answer and affirmative defenses to Plaintiff's cause of action based on negligence (Count I). D.E. 7.

(2007)). Thus, "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Id*. (citing *Twombly*, 550 U.S. at 555).

In practice, to 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.'" *Id*. (quoting *Twombly*, 550 U.S. at 570). 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. *Id*. The plausibility standard requires more than a sheer possibility that a defendant has acted unlawfully. *Id*. Where a complaint pleads facts that are merely consistent with a defendant's liability, it stops short of the line between possibility and plausibility of entitlement to relief. *Id.* Determining whether a complaint states a plausible claim for relief is a context-specific undertaking that requires the court to draw on its judicial experience and common sense. *Id*. at 679.

**III. Analysis**

First, Defendant argues there is no authority for the proposition that strict liability for defective products extends to the owner or operator of a vessel. In response, Plaintiff explains that the strict products liability claim is directed towards Defendant as the manufacturer of the ice-skating rink, rather than as the owner or operator of the vessel. Indeed, in the complaint, Plaintiff asserts that Defendant was a manufacturer, designer, installer, utilizer, and/or distributor of the ice-skating rink. *See* D.E. 1 ¶¶ 36, 37. Moreover, both parties acknowledge that the Supreme Court has "recogniz[ed] products liability, including strict liability, as part of the general maritime law." *E. River S.S. Corp. v. Transamerica Delaval, Inc.*, 476 U.S. 858, 865–66, 106 S. Ct. 2295 (1986). Thus, the Court will turn to Defendant's next argument—whether Plaintiff has presented a plausible claim for strict products liability demonstrating entitlement to relief.

Defendant contends that Plaintiff has failed to plausibly allege or plead facts sufficient to demonstrate that Defendant manufactured the ice-skating rink and is engaged in the business of selling ice-skating rinks. As such, Defendant argues that Plaintiff has failed to state a claim upon which relief can be granted. Plaintiff responds that because Defendant modified an attraction on its vessel, it may be held liable under strict products liability law. Plaintiff draws the Court's attention to *Morris v. Royal Caribbean Cruises, Ltd.*, which held that by modifying the original design of an attraction on a cruise ship, the defendant became more than merely its owner or operator. Case No. 11-23206-CIV-GRAHAM, 2012 WL 13013187 (S.D. Fla. Feb. 7, 2012) (denying the motion to dismiss). In the reply memorandum, Defendant cites to *Lalonde v. Royal Caribbean Cruises, Ltd.*, which involved the same defendant and cruise ship onboard attraction as in *Morris*. 1:18-CV-20809-JLK, 2019 WL 144129 (S.D. Fla. Jan. 1, 2019). In dismissing the strict products liability claim with prejudice, the court expressly distinguished the *Morris* decision on the grounds that it relied on a single case from the Louisiana Supreme Court, which was premised on the Louisiana Civil Code articles pertaining to general liability for damages and negligence, and did not discuss the common law claim of strict products liability. *Id*. at *3. The court further held that the plaintiff failed to allege sufficient facts to support his allegation that the defendant was engaged in the business of selling the product after modifying it, which is an essential element in a strict products liability claim regardless of whether the defendant is a co-designer or co-manufacturer of the product by virtue of modifying it. *Id*. at *2 (citations omitted). Although it is not binding authority, the Court agrees with the reasoning in the *Lalonde* decision.

The Restatement (Second) of Torts Section 402A defines the claim of strict products liability as follows:

> (1) One who sells any product in a defective condition unreasonably dangerous to the user or consumer or to his property is subject to liability for physical harm thereby caused to the ultimate user or consumer, or to his property, if
>
> > **(a) the seller is engaged in the business of selling such a product**, and
> >
> > (b) it is expected to and does reach the user or consumer without substantial change in the condition in which it is sold.

Restatement (Second) of Torts § 402A (Am. Law Inst. 1965) (emphasis added). It is well-settled that "entities upstream from the seller, including manufacturers and entities within the distribution chain which profit from its sale, are liable." *Lalonde*, 2019 WL 144129, at *2 (citing *Aubin v. Union Carbide Corp.*, 177 So. 3d 489, 510–11 (Fla. 2015)); *see also* Restatement (Second) of Torts § 402A cmt. f (Am. Law Inst. 1965) ("The rule stated in this Section applies to any person engaged in the business of selling products for use or consumption. It therefore applies to any manufacturer of such a product, . . .").

Here, Plaintiff does not plausibly allege or plead facts sufficient to show that Defendant sold or manufactured the product with a defective design. Plaintiff does not allege in the complaint, or otherwise argue, that Defendant sold the ice-skating rink. Instead, Plaintiff's strict liability theory is based solely on its contention that Defendant manufactured the ice-skating rink with a defective design and deficient warnings. The complaint, however, contains unsupported and conclusory allegations that Defendant is "a manufacturer" of the ice-skating rink. Plaintiff does not identify any other manufacturers, nor specify Defendant's role in manufacturing the product. In short, Plaintiff is unable to show that Defendant manufactured the ice-skating rink. Furthermore, the complaint is completely devoid of any allegation that Defendant is engaged in

the business of selling the ice-skating rink for use or consumption. Since Defendant is not engaged in the business of selling such a product, it cannot be liable under strict products liability law.[2]

**IV. Conclusion**

Because Plaintiff has failed to plausibly allege that Defendant manufactured the ice-skating rink and is in the business of selling such a product, it cannot state a cause of action for strict products liability. Accordingly, it is hereby

ORDERED AND ADJUDGED that the Motion (D.E. 6) is GRANTED. Plaintiff's cause of action based on strict products liability (Count II) is DISMISSED WITH PREJUDICE for the failure to state a claim.

DONE AND ORDERED in Chambers at Miami, Florida, this _31st_ day of May, 2019.

_____
UNITED STATES DISTRICT JUDGE

cc: counsel of record via cm/ecf

[2] Because Plaintiff failed to state a claim for strict products liability, the Court need not address Defendant's argument that this claim is comingled with allegations of negligence and, therefore, should be dismissed as a shotgun pleading.