UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA
Miami Division

Case Number: 20-22761-CIV-MORENO

ROMMEL BALDOZA,

Plaintiff,

vs.

ROYAL CARIBBEAN CRUISES, LTD.,

Defendant.

_______________________________________/

ORDER GRANTING PARTIAL MOTION TO DISMISS

THIS CAUSE came before the Court upon Defendant's Motion to Dismiss **(D.E. 37)**, filed on **March 15, 2021**.

THE COURT has considered the motion, the response, the reply pertinent portions of the record, and being otherwise fully advised in the premises, it is

ADJUDGED that the motion is **GRANTED**.

Rommel Baldoza and his wife Nelia assert a variety of negligence claims against Royal Caribbean Cruise Lines and FlowRider, Inc. for injuries that occurred while on the vessel. Mr. Baldoza, a Canadian citizen, used a surfing simulator provided by Defendant FlowRider on board his Royal Caribbean Cruise. He alleges he was knocked backwards by excessive force from the water jets and now suffers severe injury, including permanent paralysis.

This Court dismissed one count in a previous version of the complaint but gave leave to amend.[1] D.E. 16. That order has additional details about the nature of Plaintiff's injury. In the

[1] The Court denied RCCL's motion to dismiss Counts 2, 3, and 4 and also denied its motion to strike the demand for punitive damages.

Third Amended Complaint, Plaintiffs added Nelia Baldoza as a plaintiff and FlowRider as a defendant. FlowRider has answered the complaint, but Royal Caribbean Cruise Line has filed a partial motion to dismiss on its own behalf and on behalf of FlowRider. Plaintiffs respond that 1) Royal Caribbean Cruise Line does not have standing to move to dismiss the claims against FlowRider and 2) Royal Caribbean Cruise Line's 12(b)(6) arguments fail. In short, Royal Caribbean Cruise Line has standing to challenge the claims against FlowRider because Royal Caribbean Cruise Line would be jointly and severally liable for successful claims against FlowRider and the Court agrees with its arguments that certain counts detailed below fail to state a claim.

Standing and Loss of Consortium

Royal Caribbean Cruise Line moves to dismiss claims against itself, but also claims against FlowRider, for failure to state a claim. It argues the claims against FlowRider fail because Nelia Baldoza brings claims for loss of consortium, which is not recognized under maritime law. *In re Amtrak Sunset Ltd. Train Crash in Bayou Canot, Ala. on Sept. 22, 1993*, 121 F.3d 1421, 1429 (11th Cir. 1997). Plaintiffs say this is no matter because it has labeled the claims against FlowRider as state law claims brought under this Court's *diversity* jurisdiction. But RCL correctly argues that the entire action is governed by maritime law, not state law, when this Court exercises its *admiralty* jurisdiction.

The requirements for a tort claim to fall within a federal court's admiralty jurisdiction are (1) the incident must have taken place on navigable water or the injury must have been caused by a vessel on navigable water; and (2) the incident must have been connected with maritime activity. An incident qualifies as "connected with maritime activity" if, when we evaluate the general features of the type of incident involved, we determine that that variety of occurrence has a

potentially disruptive impact on maritime commerce and that the general character of the activity giving rise to the incident shows a substantial relationship to traditional maritime activity.

DeRoy v. Carnival Corp., 963 F.3d 1302, 1311–12 (11th Cir. 2020) (internal quotations and citation omitted).

The injury here, a physical injury while using one of the cruise ship's entertainment attractions, occurred on navigable water and clearly meets the Eleventh Circuit's test for admiralty jurisdiction. In *DeRoy*, the Eleventh Circuit panel went on to say

> DeRoy's negligence claim here meets both of these criteria. First, the incident precipitating DeRoy's claim occurred while the *Valor* was traveling at sea. Second, unchecked personal injuries allegedly resulting from a cruise-ship operator's negligence have the potential to disrupt maritime commerce, and DeRoy suffered her injury while participating as a passenger on a cruise, which is a traditional maritime activity.

DeRoy, 963 F.3d at 1312. It is abundantly clear Plaintiffs here find themselves in the same situation, and thus the Court's admiralty jurisdiction is triggered.

Next, the Court must consider whether, even if a claim *can* be brought under the Court's admiralty jurisdiction, the plaintiff can nonetheless elect to proceed under the Court's diversity jurisdiction and apply state law instead. Plaintiffs prefer this because state law allows a loss of consortium claim. Unfortunately for them, the answer is a clear "no." *Misener Marine Const., Inc. v. Norfolk Dredging Co.*, 594 F.3d 832, 837 (11th Cir. 2010) ("Norfolk has argued that they pleaded diversity jurisdiction in their counterclaim, thus Georgia law and the GPPA should apply. Even if this case were filed under diversity, substantive maritime law would still apply.") (citing *Pope & Talbot, Inc. v. Hawn,* 346 U.S. 406 (1953)); *see Pope & Talbot, Inc. v. Hawn,* 346 U.S. 406, 411 (1953) ("[T]he substantial rights of an injured person are not to be determined differently whether his case is labelled 'law side' or 'admiralty side' on a district court's docket."). "With

admiralty jurisdiction comes the application of substantive admiralty law." *E. River S.S. Corp. v. Transamerica Delaval, Inc.*, 476 U.S. 858, 864 (1986).

Thus, maritime law applies to all claims stemming from this maritime tort brought under the Court's admiralty jurisdiction. Because co-defendants can be held jointly and severally liable for each other's actions under maritime law, Royal Caribbean Cruise Line has standing to move to dismiss the claims against FlowRider. And all of Nelia Baldoza's claims are dismissed because maritime law does not recognize loss of consortium claims.

But Royal Caribbean Cruise Line wants the Court to dismiss even Rommel Baldoza's claims against FlowRider because they are labeled as "state law" claims. Royal Caribbean Cruise Line cannot have it both ways—it cannot argue that maritime law governs the entire case, such that it can be held jointly and severally liable and thus has standing, but also argue that the claims should be dismissed because the Plaintiffs improperly attempt to bring them as state law claims. If the Court holds that maritime law governs the whole action because this Court is exercising its admiralty jurisdiction, then it can exercise that jurisdiction over Plaintiffs' claims no matter what they are labeled (as long as they are recognized in maritime law). Thus, only Nelia Baldoza's claims for loss of consortium are dismissed on this basis.

Counts 5, 7, and 8—Failure to State a Claim

Royal Caribbean Cruise Line also moves to dismiss Counts 5 (negligent selection and hiring), 7 (negligent supervision), and 8 (negligent retention) for failure to state a claim.

Count 5 is for negligent hiring. To state a claim for negligent hiring or retention, a plaintiff must allege that "(1) the agent/employee/contractor was incompetent or unfit to perform the work; (2) the employer knew or reasonably should have known of the particular incompetence or unfitness; and (3) the incompetence or unfitness was a proximate cause of the plaintiff's injury."

Witover v. Celebrity Cruises, Inc., 161 F. Supp. 3d 1139, 1148 (S.D. Fla. 2016) (Lenard, J.) (citations and quotations omitted). In contrast with negligent retention, negligent hiring "primarily focuses upon the adequacy of the employer's pre-employment investigation into the employee's background." *Id.*

In the complaint here, Plaintiffs offer a couple paragraphs in support of their negligent hiring claim. First, they allege Royal Caribbean Cruise Line "failed to make a proper investigation as to the fitness and competency of the employees/crewmembers . . ." and that Royal Caribbean Cruise Line hired and retained employees "without performing a thorough background and qualifications check . . ." Compl. ¶ 65. Next, Plaintiffs write "In the alternative, Royal Caribbean Cruise Line breached its duty **by continuing** to offer the subject activity . . ." Compl. ¶ 66 (emphasis added). That is the all the Plaintiffs offer with respect to Defendant's breach of duty.

Paragraph 66 is legally irrelevant because, as stated above, the negligent hiring inquiry focuses on *pre-hiring* conduct. That paragraph of the complaint discusses *post-hiring* conduct, namely the Royal Caribbean Cruise Line's retention of the unfit employees or agents. For its part, paragraph 65 offers no more than a conclusory recitation of the elements. *See Bell Atlantic Corp. v. Twombly,* 550 U.S. 544, 555 (2007) (Although a plaintiff need not provide "detailed factual allegations," a plaintiff's complaint must provide "more than labels and conclusions."). Thus, Count 5 is **dismissed** for failure to state a claim.

Count 8 alleges negligent retention. This claim has the same elements recounted above. "The only difference between negligent selection and negligent retention claims is the time at which the principle is charged with knowledge of the [employee/agent's] unfitness. *McLaren v. Celebrity Cruises, Inc.*, No. 11-23924-CIV, 2012 WL 1792632, at *4 (S.D. Fla. May 16, 2012) (cleaned up) (Altonaga, J.). The complaint offers another conclusory recitation of the elements,

but also alleges that Royal Caribbean Cruise Line continued to offer FlowRider's services despite its knowledge that other passengers were injured, despite having received passenger complaints, and despite being told by the passengers of said injuries. Compl. ¶ 93. This paragraph offers no names of passengers, no names of Royal Caribbean Cruise Line employees, no recorded complaints, nor any other factual evidence that meets Rule 8's pleading standard. Notably, Plaintiffs' response in opposition to Royal Caribbean Cruise Line's motion to dismiss does not cite any case law in support of their argument that their complaint is sufficient—it merely copies and pastes the relevant paragraphs of the complaint. Count 8 is **dismissed** for failure to state a claim.

Count 7 alleges negligent supervision. A negligent monitoring or supervision claim occurs when, during the course of employment, the employer becomes aware or should have become aware of problems indicating his unfitness, and the employer fails to take further action, including investigating or discharge. *Nielsen v. MSC Crociere, S.A.*, No. 10-62548-CIV, 2011 WL 12882693, at *6 (S.D. Fla. June 24, 2011). This Court's previous order dismissing Plaintiffs' claim for negligent supervision highlighted the need for additional factual allegations, specifically, "factual allegations showing how Royal Caribbean was on actual or constructive notice of its employees' incompetence." In the allegations that accompany Count 7, Plaintiffs adduce no facts that show notice. Instead, Plaintiffs do again what they did above—allege that Royal Caribbean Cruise Line continued to offer FlowRider's services despite its knowledge that other passengers were injured, despite having received passenger complaints, and despite being told by the passengers of said injuries. But once again, these allegations offer no names of passengers, no names of Royal Caribbean Cruise Line employees, no recorded complaints, nor any other factual evidence that meets Rule 8's pleading standard. Count 7 is **dismissed** for failure to state a claim.

DONE AND ORDERED in Chambers at Miami, Florida, this 21st of July 2021.

FEDERICO A. MORENO
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel of Record