

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

Case No. 1:23-cv-24599-KMM

WINNIE FRAZIER,

Plaintiff,

v.

CARNIVAL CORPORATION,
A Foreign Profit Corporation,

Defendant.

ORDER

THIS CAUSE came before the Court upon Defendant Carnival Corporation's ("Defendant") Motion to Dismiss Plaintiff's Amended Complaint. ("Motion" or "Mot.") (ECF No. 21). Plaintiff Winnie Frazier ("Plaintiff") filed a response. ("Resp.") (ECF No. 23). Defendant filed a reply. ("Reply") (ECF No. 24). Because the Court finds that Plaintiff does not state a claim upon which relief can be granted, the Court GRANTS Defendant's Motion and DISMISSES Plaintiff's Amended Complaint WITHOUT PREJUDICE. ("Am. Compl.") (ECF No. 18).

I. FACTUAL BACKGROUND

On December 12, 2022, Plaintiff was on board the Carnival "Elation" vessel as a fare paying passenger. Am. Compl. ¶ 5. While waiting in line for pizza on Lido Deck 10, Plaintiff "placed her hand on a tabletop, which was not secure and came off the table, striking the Plaintiff and knocking her to the ground, suffering severe injuries." *Id.* ¶ 6. According to Plaintiff, the tabletop was not secure and there were no warning signs on the table. *Id.* Plaintiff further alleges that Defendant was the solely responsible for selecting the ship's furniture, elected not to secure

the heavy marble or stone top to the small pedestal base of the table, and failed to inspect the furniture even though it knew the furniture would be used by passengers such as Plaintiff. *Id.* ¶¶ 10, 14. As a result of the tabletop falling on her, Plaintiff alleges that she sustained injuries including “pain, swelling, and bruising to her lower back and knees” and that she will continue to incur medical expenses and “suffer physical, mental and emotional pain, permanent and significant disability and disfigurement.” *Id.* ¶ 19.

Plaintiff brings three claims based on Defendant’s alleged negligence: (1) failure to maintain (Count I), *id.* ¶¶ 7–12; (2) failure to inspect (Count II), *id.* ¶¶ 13–16; and (3) duty to warn (Count III), *id.* ¶¶ 17–19. Defendant seeks dismissal of each claim. *See generally* Mot.

II. LEGAL STANDARD

Federal Rule of Civil Procedure 12(b)(6) permits a court to dismiss a complaint for failing 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 to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citation and internal quotation marks omitted). This requirement “give[s] the defendant fair notice of what the claim is and the grounds upon which it rests.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (internal citation and alterations omitted). The court takes the plaintiff’s factual allegations as true and construes them in the light most favorable to the plaintiff. *Pielage v. McConnell*, 516 F.3d 1282, 1284 (11th Cir. 2008).

A complaint must contain enough facts to plausibly allege the required elements. *Watts v. Fla. Int’l Univ.*, 495 F.3d 1289, 1295–96 (11th Cir. 2007). A pleading that offers “a formulaic recitation of the elements of a cause of action will not do.” *Iqbal*, 556 U.S. at 678 (quoting *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).

III. DISCUSSION

Defendant argues that the Amended Complaint should be dismissed in its entirety because Plaintiff has not sufficiently alleged that Defendant had actual or constructive notice of the allegedly dangerous condition. Mot. at 4–10. Plaintiff disputes Defendant’s argument and avers that she has properly pled sufficient facts to support her claims. *See generally* Resp. For the following reasons, the Court agrees that Plaintiff has failed to properly plead her negligence claims and grants Defendant’s Motion to Dismiss.

As an initial matter, Plaintiff’s negligence claims arise under general maritime law “because the alleged tort was committed aboard a ship sailing in navigable waters.” *Keefe v. Bahama Cruise Line, Inc.*, 867 F.2d 1318, 1320 (11th Cir. 1989) (citations omitted). “In analyzing a maritime tort case, [the Court] relies on general principles of negligence law.” *Chapparro v. Carnival Corp.*, 693 F.3d 1333, 1336 (11th Cir. 2012) (internal quotations omitted). At the motion to dismiss stage, a plaintiff must plead facts sufficient to plausibly 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.” *See id.*; *see also Guevara v. NCL (Bahamas) Ltd.*, 920 F.3d 710, 720 (11th Cir. 2019).

In the maritime context, a plaintiff must also demonstrate that “the [shipowner] [] had actual or constructive notice of [a] risk-creating condition.” *Keefe*, 867 F.2d at 1322. Actual notice exists when the Defendant knows about the dangerous condition. *Holland v. Carnival Corp.*, 50 F.4th 1088, 1095 (11th Cir. 2022). In contrast, constructive notice exists where “the shipowner

ought to have known of the peril to its passengers” because the “hazard [had] been present for a period of time so lengthy as to invite corrective measures.” *Keefe*, 867 F.2d at 1322. Constructive notice may also exist where a plaintiff demonstrates that substantially similar incidents occurred under substantially similar conditions. *Guevara*, 920 F.3d at 720.

Here, Defendant argues that Plaintiff merely makes vague and conclusory statements about the existence of a dangerous condition, which are not enough to establish that Defendant had actual or constructive notice of the alleged dangerous condition. Mot. at 7. Indeed, the Amended Complaint contains almost no facts tending to demonstrate notice of the unstable table. *See generally* Am. Compl. Plaintiff alleges that Defendant “was the sole entity responsible for selecting the furniture” and “elected not to secure the large heavy marble or stone top to the small pedestal base with any nuts or bolts to ensure that it would not become dislodged or fall off the small pedestal base.” *Id.* ¶ 10. These threadbare allegations regarding Defendant’s alleged notice of the faulty table are insufficient. When a plaintiff makes conclusory legal allegations but fails to “include factual allegations that plausibly suggest [a defendant] had constructive notice of the dangerous condition,” the plaintiff “has failed to satisfy the pleading standard set forth in *Iqbal* and *Twombly*.” *Holland*, 50 F. 4th, at 1095. For example, Plaintiff makes no allegations about whether the table overturning is a recurring issue, whether the table was loose for a sufficient period of time to create constructive notice, or whether there were employees nearby who observed the hazard and failed to take corrective action. *See Newbauer v. Carnival Corp.*, 26 F.4th 931, 936 (11th Cir. 2022) (affirming dismissal of complaint because it did not allege any facts supporting the conclusions that the allegedly dangerous condition had existed 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).

Accordingly, because each Count of Plaintiff's Amended Complaint requires that Defendant had either actual or constructive notice, the instant Motion is granted.

IV. CONCLUSION

UPON CONSIDERATION of the Motion, the pertinent portions of the record, and being otherwise fully advised in the premises, it is hereby ORDERED AND ADJUDGED that Defendant's Motion to Dismiss Plaintiff's Amended Complaint (ECF No. 21) is GRANTED. Plaintiff's Amended Complaint (ECF No. 18) is DISMISSED WITHOUT PREJUDICE. Plaintiff may amend her Complaint to address the aforementioned deficiencies by May 22, 2024.

DONE AND ORDERED in Chambers at Miami, Florida, this 1st day of May, 2024.

K. M. Moore

K. MICHAEL MOORE
UNITED STATES DISTRICT JUDGE

c: All counsel of record