UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 1:24-cv-20279-JLK

WINIFRED SPITZA,

Plaintiff,
v.

CARNIVAL CORPORATION, a Panamanian Corporation d/b/a CARNIVAL CRUISE LINES,

Defendant.
_____/

ORDER GRANTING DEFENDANT'S MOTION TO DISMISS

THIS MATTER is before the Court on Defendant CARNIVAL CORPORATION's Motion to Dismiss Plaintiff's Complaint (the "Motion") (DE 7), filed on April 29, 2024. The Court has also considered Plaintiff's Response (DE 10), filed May 13, 2024, and Defendant's Reply (DE 11), filed May 20, 2024. This matter is ripe for review.

I. BACKGROUND

On January 24, 2024, Plaintiff filed her Complaint alleging: 1) Negligent Maintenance, 2) Negligent Failure to Correct, and 3) Negligent Failure to Warn, stemming from her trip and fall on Defendant's cruise ship. *See* Compl., DE 1. Specifically, Plaintiff alleges that on January 6, 2023, she was a fare-paying passenger aboard Defendant's ship the *Mardi Gras*. *Id.* at 13. While walking to her cabin in the mid-ship common passenger walkway on Deck 9, Plaintiff alleges that she tripped and fell on an unmarked or concealed bulge or change in the elevation of the carpeted floor surface causing injuries, including a severely torn rotator cuff which required surgical repair. *Id.* ¶¶ 13–14. Now, Defendant moves to Dismiss Plaintiff's Complaint in its entirety, arguing that Plaintiff fails to plead actual or constructive notice of the risk creating condition. *See* Mot.

II. LEGAL STANDARD

Under Federal Rule of Civil Procedure 8(a)(2), "[t]o 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) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). To meet this standard, a plaintiff must plead "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. A complaint must contain "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.

III. DISCUSSION

"Maritime law governs actions arising from alleged torts committed aboard a ship sailing in navigable waters." *Guevara v. NCL (Bah.) Ltd.*, 920 F.3d 710, 720 (11th Cir. 2019) (citing *Keefe v. Bah. Cruise Line, Inc.*, 867 F.2d 1318, 1320–21 (11th Cir. 1989)). "In analyzing a maritime tort case, [courts] rely on general principles of negligence law." *Chaparro v. Carnival Corp.*, 693 F.3d 1333, 1336 (11th Cir. 2012) (quoting *Daigle v. Point Landing, Inc.*, 616 F.2d 825, 827 (5th Cir. 1980)). "To prevail on a negligence claim, a plaintiff must show 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.'" *Guevara*, 920 F.3d at 720 (quoting *Chaparro*, 693 F.3d at 1336). "Each element is essential to Plaintiff's negligence claim and Plaintiff cannot rest on the allegations of her complaint in making a sufficient showing on each element for the purposes of defeating summary judgment." *Isbell v. Carnival Corp.*, 462 F. Supp. 2d 1232, 1236–37 (S.D. Fla. Nov. 20, 2006).

Defendant argues that "for a plaintiff to prevail on a negligence claim, the plaintiff must prove that the defendant breached its duty 'by creating a dangerous condition of which it was

actually or constructively aware.'" Mot. at 4 (citing *Torres v. Carnival Corp.*, 635 F. App'x 595, 601 (11th Cir. 2015)) (additional citation omitted). However, according to Defendant, Plaintiff's Complaint fails to properly plead actual or constructive notice because Plaintiff's factual allegations are extremely vague and merely mentions prior slip and fall incidents. *See* Mot.

The following prior incidents are alleged in Plaintiff's Complaint:

a. On June 27, 2016, cruise passenger M.R. tripped and fell while traversing the carpeted common hallway of a passenger cabin deck onboard the CARNIVAL "SUNSHINE" due to a sudden concealed and inadequately marked change in elevation of the carpeted floor surface. *Rembert v. Carnival Corporation*, Case No. 1:17-cv-22074.
b. On September 4, 2016, cruise passenger J.R. tripped and fell over a bulge in the carpeted floor surface while traversing the common hallway of a passenger cabin deck onboard the CARNIVAL "VISTA" due to the sudden concealed or inadequately marked change in elevation of the carpeted floor surface. *Robinson v. Carnival Corporation*. Case No. 1:17-cv-22920.
c. On January 12, 2019, cruise passenger J.C. tripped and fell over an unmarked, concealed bulge in the carpeted floor surface while traversing the common hallway of a passenger cabin deck onboard the CARNIVAL "HORIZON" due to the sudden change in elevation of the carpeted floor surface. *Corgiat v. Carnival Corporation*, Case No. 1:19-cv-20577.
d. On April 1, 2019, cruise passenger A.H. tripped and fell over an unmarked, hidden bulge in the carpeted floor surface while traversing the common hallway of a passenger cabin deck onboard the M/S "VICTORY" (now known as the M/S "RADIANCE") due to the sudden change in elevation of the carpeted floor surface. *Hoddor v. Carnival Corporation*, Case No. 1:20-cv-21065.
e. On August 24, 2019, cruise passenger W.C. tripped and fell over an uneven floor surface while traversing the common hallway of a passenger cabin deck onboard the CARNIVAL "DREAM" due to the sudden change in incline of the carpeted floor surface, which was indistinguishable from the surrounding flooring, just as the change of elevation in this case was indistinguishable from the surrounding flooring from the viewpoint of reasonable passengers. There were no warnings, handrails, or any signs to illustrate the change in elevation to passengers traversing the area. *Cook v. Carnival Corporation*, Case No. 1:20-cv-21803.
f. On June 6, 2022, cruise passenger J.K. tripped and fell while traversing the common hallway of a passenger cabin deck onboard the CARNIVAL "SUNRISE" due to an unmarked, uneven, and unexpected incline in the elevation of the carpeted floor surface. There were no signs or markings to warn passengers, including J.K., of the sudden change in elevation. *Kendall v. Carnival Corporation*, Case No. 1:23-cv-22921.

> g. On September 10, 2022, cruise passenger M.M. tripped and fell while traversing the common hallway of a passenger cabin deck onboard the CARNIVAL "RADIANCE" due to the unexpected and unmarked/concealed change in elevation of the carpeted floor surface. The change in elevation was difficult to perceive due to the pattern of the carpet selected by CARNIVAL, and there were no warnings or other indications that would have reasonably communicated the sudden change of elevation/slope to passengers traversing the area. *Maglanque v. Carnival Corporation*, Case No. 1:23-cv-23386.

Compl. ¶ 18 at 4–6; Mot. at 11–12. It is true that, in addition to the risk creating condition existing for a sufficient period of time, it is well established that "a plaintiff can 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." *Newbauer v. Carnival Corp.*, 26 F. 4th 931, 935 (11th Cir. 2022) (citations omitted). The main issue here, is whether the prior incidents on Carnival ships included in paragraph 18 of Plaintiff's Complaint are "substantially similar" to Plaintiff's trip and fall and therefore give notice.

Defendant maintains that Plaintiff has not alleged prior incidents that are substantially similar to her injuries. Mot. at 4–16. Defendant points out that Plaintiff fails to state whether her trip and fall was similar to: (1) the configuration of the other ships, (2) the location of the other trips and falls, (3) the construction and material of the other floors, (4) the conditions of the common passenger walkway on the day of the incident, or (5) addressing the remoteness in time to be considered substantially similar. *Id.* at 13.

Plaintiff responds that the "'substantial similarity' doctrine does not require identical circumstances, and allows for some play in the joints depending on the scenario presented and the desired use of the evidence." Resp. at 2 (citing *Sorrels v. NCL (Bahamas) Ltd.*, 796 F.3d 1275, 1287 (11th Cir. 2015)). And since, Plaintiff argues, "[a]ll of the listed prior incidents involved passengers traversing common passenger hallways on passenger decks, just as [Plaintiff] was doing when she tripped and fell" and "[i]n all seven incidents, the passenger tripped over a bulge

or other change in elevation of a carpeted floor surface," Plaintiff's allegations more than suffice to establish their substantial similarity to Plaintiff's incident. Resp. at 5–6.

Here, Plaintiff does not allege actual notice, in fact Plaintiff alleges the risk creating condition was "concealed." Compl., ¶¶ 14–15, 23, 31, 39. Therefore, the Court will not rule on actual notice. Next, the Court turns to analyzing constructive notice. The Court notes it is true that the substantial similarity doctrine does not require identical circumstances. *Sorrels*, 796 F.3d at 1287. However, the Court finds that the prior incidents alleged are not "substantially similar" to Plaintiff's trip and fall. Therefore, the prior incidents alleged in paragraph 18 of Plaintiff's Complaint do not adequately allege Defendant's notice of the risk creating condition of a concealed bulge or change in the elevation of the carpeted floor surface of Defendant's ship.

All of the prior incidents alleged took place on different ships. Plaintiff was a fare-paying passenger on the *Mardi Gras* (compl. ¶ 13), and none of the other alleged incidents took place on the same ship Plaintiff was aboard. Further, only two of the alleged incidents happened within a year of Plaintiff's trip and fall. The most recent prior incident took place on September 10, 2022, almost four (4) months before Plaintiff's alleged January 6, 2023, trip and fall. Plaintiff explains the gap in consecutive incidents due to the COVID epidemic of 2020, which led to the suspension of most cruising for over a year. Resp. at 6. However, considering the timely nature of constructive notice, the Court finds the prior incidents are too remote to infer Defendant's notice. *See id.* There are no further allegations that the prior incidents were similar other than that they also took place on a carpeted surface on different ships owned by Defendant Carnival.

In a cruise ship negligence case, when comparing allegations of prior incidents, the Court considers whether "the two incidents were similar enough to allow the jury to draw a reasonable inference concerning the cruise ship operator's ability to foresee the incident at issue." *Sorrels*,

796 F.3d at 1288 (quoting *Borden, Inc. v. Fla. E. Coast Ry. Co*., 772 F.2d 750, 755 (11th Cir. 1985)). Here, the prior incidents were not similar enough to draw an inference that Defendant had the ability to foresee Plaintiff's trip and fall.

In *Kendall*, Judge Moore dismissed plaintiff's complaint for listing six purported incidents, only one of which took place on the same ship, because plaintiff failed to make specific factual allegations.[1] *Kendall v. Carnival Corp*., No. 1:23-cv-22921, 2023 U.S. Dist. LEXIS 222188, at *1 (S.D. Fla. Dec. 7, 2023). In that case, the Court held that "[t]o accept Plaintiff's argument would require this Court to hold that a cruise ship operator has constructive notice of a dangerous condition when, over the course of seven years and across multiple vessels, six individual suffered injuries when they fell due to an uneven and/or sloped cruise ship hallway." *Id.* at *8. Here, Plaintiff's alleged similar incidents show that over the course of seven years and on different ships, seven individuals suffered injuries due to a change in the elevation of the carpeted floor surface. The Court here agrees with the *Kendall* holding and declines to find that Defendant had constructive notice.

The Eleventh Circuit's "substantial similarity doctrine" requires a party to provide evidence of "conditions substantially similar to the occurrence in question" that "caused the prior accident." *Jones v. Otis Elevator Co*., 861 F.2d 655, 661–62 (11th Cir. 1988). "Courts have found that prior falls are not substantially similar under this doctrine where those falls did not occur at the same place where the plaintiff at issue fell or otherwise sufficiently identified similar conditions to the ones at issue in the case before the court." *Lebron v. Royal Caribbean Cruises, Ltd.*, No. 16-24687, 2018 U.S. Dist. LEXIS 138929, at *23–24 (Williams, J.) (citing *Sorrels*, 796 F.3d at 1287–88 (affirming district court's ruling that "evidence of 22 other slip and fall incidents"

[1] *Kendall v. Carnival* is one of Plaintiff's alleged prior incidents. See Compl. ¶ 18(f). Defendant's motion to dismiss plaintiff's amended complaint is currently pending before Judge Damian. *See* 1:23-cv-22921, DE 39.

aboard defendant's vessel did not meet the "substantial similarity doctrine" as none of the falls occurred where plaintiff fell, other injured passengers wore varying styles of footwear, and additional factors were involved)). None of the prior incidents alleged by the instant Plaintiff were in the same place, nor even on the same ship. Therefore, Plaintiff has not pleaded constructive notice.

Defendant also takes issue with another portion of Plaintiff's Complaint:

> Further, as a result of the high traffic nature of this passenger walkway, its status as a designated evacuation route, and the possible hazards flowing therefrom, a number of agencies have developed safety standards and regulations applicable to this or similar passenger walkways, specifically related to changes of elevation and the required warnings near their presence. The standards in and of themselves constitute supplemental constructive notice that conditions in violation of the standards are hazardous, a fact which is exacerbated by prior incidents revealing to CARNIVAL that the change of elevation was in fact deficient in these areas.

Compl. ¶ 19. Defendant argues that Plaintiff fails to provide any information on how these agency safety standards and regulations convey that Carnival had actual or constructive notice and the Court agrees. *See* Mot. at 11. It is true that "evidence that an allegedly dangerous condition failed to comply with industry safety standards, together with other evidence of notice, can be used to establish constructive notice." *Andersen v. Royal Caribbean Cruises Ltd.*, 543 F. Supp. 3d 1346, 1357 (Bloom, J.) (other citations omitted) (where "other evidence of notice" included multiple crewmembers' actual knowledge that water had been puddling on a vinyl floor.) Here, there is no additional evidence other than the conclusory "safety standards and regulations" Plaintiff references. Therefore, Plaintiffs allegations in paragraph 19 of her Complaint, taken alone or with the rest of her Complaint insufficiently alleges Defendant's notice.

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

1) Defendant's Motion to Dismiss **(DE 7)** be, and the same hereby is, **GRANTED**; and

2) Plaintiff's Complaint (DE 1) is hereby **DISMISSED without prejudice.**

DONE AND ORDERED in Chambers at the James Lawrence King Federal Justice Building and United States Courthouse, Miami, Florida this 17th day of June, 2024.

JAMES LAWRENCE KING
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF FLORIDA

cc: All counsel of record