UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No.: 1:19-cv-22863-UU

SHAHEENA AHMAD SIMMONS,

Plaintiff,

v.

ROYAL CARIBBEAN CRUISES, LTD.,

Defendant.
_____/

ORDER

THIS CAUSE is before the Court upon Defendant's self-styled "Motion to Dismiss Plaintiff's Prayer for Punitive Damages" (D.E. 9) (the "Motion"). The Court has reviewed the Motion and the pertinent portions of the record and is otherwise fully advised in the premises.

I. Background

On July 11, 2019, Plaintiff filed her one-count negligence complaint against Defendant.[1] D.E. 1 (the "Complaint"). Plaintiff alleges that, due to Defendant's negligence in constructing, maintaining, and operating a rock-climbing wall (the "Wall") on the cruise ship *Grandeur of the Seas*, Plaintiff—an experienced climber—fell while climbing the Wall and injured her knee. *See generally* Compl.

Plaintiff claims that Defendant failed to use human belayers to ensure a safe climb and descent; instead, the Wall was equipped with an allegedly unsafe and defective "auto-belay" mechanical system. Defendant's staff members did not instruct or train Plaintiff on how to use the auto-belayer or how to land safely if the auto-belay did not engage. For example, Plaintiff was not told that there was any minimum height she needed to climb in order to ensure the auto-belay

[1] Plaintiff also sued defendant Grandeur of the Seas Ltd., but voluntarily dismissed that defendant. D.E. 10; D.E. 11.

would engage. Rather, Defendant's employees simply told climbers to jump off the wall when they were done climbing and the auto-belay would catch them.

On July 15, 2018, Plaintiff, her husband Marco, and her daughter Leila climbed the Wall. During Marco and Leila's initial climbs, they were instructed to use the auto-belay system instead of down-climbing; they both noticed a delay between when they let go of the Wall—starting to fall quickly—and when the auto-belay engaged to lower them down more slowly. Subsequently, Plaintiff climbed part-way up the Wall but decided to descend instead of finishing her climb. Having heard the instruction not to down-climb, Plaintiff let go of the Wall, expecting the auto-belay to engage. But the auto-belay did not engage, and Plaintiff fell to the ground with full force. The ground below the Wall allegedly did not contain sufficient "crash padding," nor was Plaintiff trained on how to land safely on the allegedly-inadequately-cushioned floor. Plaintiff landed squarely on her feet, and the force of the fall caused two immediate "pops" in her left knee. Plaintiff claims she suffered serious injury, requiring surgery and physical therapy. As a result, Plaintiff seeks, in addition to compensatory damages, a Court order requiring Defendant to improve the safety of its climbing walls. *Id.* ¶ 67(a)–(b). "In the event that Defendant[] refuse[s] to make such improvements, or the Court declines to order them," Plaintiff also requests punitive damages. *Id.* ¶ 67(c).

On August 2, 2019, Defendant filed the instant Motion, arguing that the punitive damages claim should be "dismissed" because punitive damages are unavailable as a matter of law in non-seaman personal injury maritime claims. D.E. 9. Plaintiff responds that punitive damages are in fact available under maritime law and that Defendant's cited cases are distinguishable. D.E. 12. The Motion is briefed and ripe for disposition.

II. Legal Standard

As an initial matter, though Defendant styles its Motion as a "motion to dismiss" the punitive damages claim, Defendant actually seeks to strike the claim from the Complaint. Federal Rule of Civil Procedure 12(f) states: "the Court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter." Fed. R. Civ. P. 12(f). "'A motion to strike is a drastic remedy[,]' which is disfavored by the courts." *Thompson v. Kindred Nursing Ctrs. E.*, LLC, 211 F. Supp. 2d 1345, 1348 (M.D. Fla. 2002) (quoting *Augustus v. Bd. of Pub. Instruction of Escambia Cnty., Fla.*, 306 F.2d 862, 868 (5th Cir. 1962)). A motion to strike is often denied "unless the matter sought to be omitted has no possible relationship to the controversy, may confuse the issues, or otherwise prejudice a party." *Bank of Am., N.A. v. GREC Homes IX, LLC*, No. 13-21718, 2014 WL 351962, at *4 (S.D. Fla. Jan. 23, 2014) (internal quotations and citations omitted). However, "[a] request for punitive damages must be stricken from the complaint if the allegations therein do not present a factual basis supporting the recovery of punitive damages, in other words, factual allegations showing wanton, willful or outrageous conduct." *Doe v. Royal Caribbean Cruises, Ltd.*, No. 11-23321-Civ-SCOLA, 2012 WL 4479084, at *2 (S.D. Fla. Sept. 28, 2012).

III. Analysis

Defendant relies on two recent opinions—*The Dutra Group v. Batterton*, 139 S.Ct. 2275 (2019) and *Eslinger v. Celebrity Cruises, Inc.*, 772 F. App'x 872 (11th Cir. 2019)—to conclude that punitive damages are unavailable as a matter of law in this case. In *Batterton*, the Supreme Court held that a mariner may not recover punitive damages on a claim that he was injured as result of the unseaworthy condition of the vessel. *See* 139 S.Ct. at 2278, 2287. Of course, in this case, Plaintiff is not a mariner, and she has not alleged that the *Grandeur of the Seas* was

unseaworthy. Likewise, in *Eslinger*, the Eleventh Circuit held that loss of consortium claims are not cognizable under federal maritime law. *See* 772 F. App'x at 872–73. Plaintiff here does not seek loss of consortium damages. Thus, when read narrowly, neither *The Dutra Group* nor *Eslinger* squarely control here.

Nevertheless, the rationale underpinning the two cases applies with equal force here. These cases both considered the limits of the Supreme Court's decision in *Atlantic Sounding Co. v. Townsend*, 557 U.S. 404 (2009). In *Atlantic Sounding*, the Supreme Court held that a seaman may, as a matter of general maritime law, seek punitive damages for his employer's alleged willful and wanton disregard of its maintenance and cure obligation. *See id.* at 407, 424. This holding flowed from the "general rule that punitive damages were available at common law," which rule "extended to claims arising under federal maritime law." *Id.* at 411; *see also id.* at 414. In applying this rule, the Court relied on its analysis that "[h]istorically, punitive damages have been available and awarded" in some maintenance and cure cases. *Id.* at 407; *see also id.* at 418. But in *The Durta Group*, the Court found no such historical justification in the context of unseaworthiness claims. 139 S.Ct. at 2278–84. Therefore, the Court refused to extend *Atlantic Sounding* to unseaworthiness claims, noting in part that "[t]he lack of punitive damages in traditional maritime law cases is practically dispositive." *Id.* at 2284. Likewise, in *Eslinger*, the Eleventh Circuit concluded that *Atlantic Sounding* did not undermine its prior precedent that plaintiffs generally "may not recover punitive damages, including loss of consortium damages, for personal injury claims under federal maritime law." *See id.* at 872–73. *Eslinger* therefore suggests that there is no historical justification for punitive damages in cases like Plaintiff's.

Assuming punitive damages may be sought at all in maritime personal injury cases, the case law both before and after *Atlantic Sounding* supports that such claims should proceed only

"in exceptional circumstances." *See, e.g., Altosino v. Warrior & Gulf Navigation Co. (In re Amtrak Sunset Ltd. Train Crash in Bayou Canot, Ala., on Sept. 22, 1993)* [hereinafter "*Amtrak*"], 121 F.3d 1421, 1429 (11th Cir. 1997) (concluding that "personal injury claimants have no claim for nonpecuniary damages such as … punitive damages, except in exceptional circumstances such as … those very rare situations of intentional wrongdoing"); *Doe v. Celebrity Cruises, Inc.*, No. 18-cv-23398-KMW, 2019 WL 3282372, at *3–4 (S.D. Fla. May 9, 2019) (holding that *Amtrak* still controls post-*Atlantic Sounding* such that a plaintiff may only seek punitive damages upon a showing of the defendant's intentional misconduct); *Bodner v. Royal Caribbean Cruises, Ltd.*, No. 17-20260-CIV-LENARD/GOODMAN, 2018 WL 4047119, at *2–5 (S.D. Fla. May 8, 2018) (same); *see also Petersen v. NCL (Bahamas) Ltd.*, 748 F. App'x 246, 251–52 (11th Cir. 2018) (rejecting the contention that *Atlantic Sounding* abrogated *Amtrak* vis-à-vis loss of consortium claims, and affirming summary judgment in favor of defendant on plaintiff's loss of consortium claim where there were "no exceptional circumstances in this case and no allegations of intentional conduct").

Plaintiff's negligence allegations here simply do not rise to the level of "intentional misconduct" necessary for the Court to find that this is an "exceptional circumstance" in which punitive damages may be warranted. Plaintiff alleges no facts to suggest Defendant had actual knowledge of its allegedly wrongful conduct. Nor do Plaintiff's allegations reflect a "high probability that injury or damage," *cf. Doe*, 2019 WL 3282372, at *4, would occur to an experienced climber such as herself. Indeed, Plaintiff has brought a claim for negligence, not an intentional tort. *Cf. Bodner*, 2018 WL 4047119, at *8 (permitting punitive damages request to proceed as to battery and false imprisonment claims but striking punitive damages request as to negligence claims). And to the extent Plaintiff argues that the "intentional misconduct" standard

is too strict in light of *Atlantic Sounding*, D.E. 12 at 5, the Court disagrees. *See, e.g.*, *Kennedy v. Carnival Corp.*, --- F. Supp. 3d ----, 2019 WL 2254918 at *15–17 (S.D. Fla. Mar. 6, 2019) (rejecting as "wrongly argue[d]" the claim that "the 'intentional wrongdoing' rule from *Amtrak* was abrogated by the Supreme Court in *Atlantic Sounding*" and holding that a "[p]laintiff must plausibly allege a factual basis for intentional misconduct in order to recover punitive damages").

IV. Conclusion

Plaintiff simply has not stated a valid claim for punitive damages under maritime law. Accordingly, it is

ORDERED AND ADJUDGED that Defendant's Motion, D.E. 9, is GRANTED. Paragraph 67(c) is hereby STRICKEN from the Complaint. It is further

ORDERED AND ADJUDGED that Defendant SHALL file its Answer to the Complaint **on or before August 20, 2019**.

DONE AND ORDERED in Chambers at Miami, Florida, this 13th day of August, 2019.

URSULA UNGARO
UNITED STATES DISTRICT JUDGE

copies provided: counsel of record