UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 18-23203-CIV-JEM

JOHN McDERMOTT,

Plaintiff,

vs.

CELEBRITY CRUISES INC.,

Defendant.
_____/

ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

THIS CAUSE is before the Court on the Motion for Summary Judgment filed by Celebrity Cruises, Inc. (DE 61). The Court has carefully considered the motion, response, and reply thereto, and is otherwise fully advised. For the reasons that follow, the Motion for Summary Judgment is **GRANTED**.

I. FACTS

Plaintiff John McDermott ("McDermott") and his fiancée were passengers on a cruise ship named *Celebrity Summit* operated by Defendant, Celebrity Cruises, Inc. ("Celebrity"). (DE 61, Plaintiff's Statement of Undisputed Fact ("Pl's SOF") ¶¶ 1-3; DE 69, Defendant's Statement of Undisputed Fact ("Def's SOF") ¶¶ 1-3). McDermott is disabled and utilizes an electric scooter for mobility. (DE 61-1, Deposition of John McDermott ("McDermott Dep.") at 20-22, 30). Prior to booking cabin 7190, McDermott inquired about the availability of handicapped-accessible cabins. (*Id*. at 110, 119-120, 124). Although Celebrity informed McDermott that ADA-compliant cabins were fully booked and unavailable, McDermott discussed the configuration of other staterooms

with Celebrity's sales representatives. (*Id*. at 107-108). In particular, McDermott expressed interest in staterooms that would allow McDermott to navigate his scooter on "one level," that is, a surface free of raised thresholds, steps, or other physical impediments. (*Id*. at 108-110). The parties disagree about whether Celebrity implied to McDermott during the booking process that the bathroom of cabin 7190 lacked a raised threshold. Notwithstanding, based on the representation of Celebrity that cabin 7190 was "one level," McDermott made a booking for the August 20, 2017 departure on the *Celebrity Summit*. (*Id*. at 119-120, 125, 273-274, 260; Pl's SOF ¶ 1).

After checking in, McDermott arrived to his cabin and immediately noticed that it was not completely flat, but rather, contained a raised step at the threshold of the bathroom. (McDermott Dep. at 166, 169, 175.) Indeed, McDermott agreed during his deposition that the presence of the allegedly hazardous condition was "clear" and "there was nothing hidden about the condition." (*Id*. at 175-176). The threshold to the bathroom contained a "watch your step" sign on it. (*Id*.) McDermott emphasized that "you couldn't miss" the presence of the threshold and "[y]ou had to be aware of it because the sign was right there at your feet." (*Id*. at 258).

McDermott raised the issue of the threshold with the stateroom attendant, who apologized to McDermott but reiterated that the cruise was fully booked. (*Id*. at 169-170, 273-274). Although McDermott successfully navigated the step numerous times (*Id*. at 181), McDermott fell while attempting to enter the bathroom on August 22, and again on August 24. (*Id*. at 186, 204).

Based on the foregoing incident, McDermott filed a three-count Complaint in federal court. Count I alleges a claim for negligence, and Count II alleges "failure to warn." (DE 1: 4-5). Count III asserted an ADA violation but was dismissed with prejudice by stipulation of the parties. (DE 37). Inasmuch as the dispositive issue before the Court is whether Celebrity owes McDermott a

duty relative to the raised threshold in the first place, Count I and Count II hinge on the same question. Accordingly, these two claims will be addressed as one. This matter is now ripe for review.

II. LEGAL STANDARD

Summary judgment is appropriate when "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). At the summary judgment stage, the Court's function is not to "weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986). In making this determination, the Court must construe the evidence in the light most favorable to the nonmoving party and draw all reasonable inferences in that party's favor. *SEC v. Monterosso*, 756 F.3d 1326, 1333 (11th Cir. 2014). "If reasonable minds could differ on the inferences arising from undisputed facts, then a court should deny summary judgment." *Carlson v. FedEx Ground Package Sys., Inc.*, 787 F.3d 1313, 1317–18 (11th Cir. 2015) (quoting *Allen v. Tyson Foods, Inc.*, 121 F.3d 642, 646 (11th Cir.1997)).

The movant "bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of [the record] which it believes demonstrate the absence of a genuine issue of material fact." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). Once this initial burden is met, "the nonmoving party must offer more than a mere scintilla of evidence for its position; indeed, the nonmoving party must make a showing sufficient to permit the jury to reasonably find on its behalf." *Urquilla-Diaz v. Kaplan Univ.*, 780 F.3d 1039, 1050 (11th Cir. 2015). But if the record, taken as a whole, cannot lead a rational trier of fact to find for the non-moving party, there is no genuine issue for trial, and summary judgment is proper. *Matsushita*

Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986).

Applying these standards to the present case, the Court concludes that no genuine dispute as to material fact exists and that summary judgment in favor of Celebrity is warranted.

III. ANALYSIS

It is axiomatic that "[a] carrier by sea is not liable to passengers as an insurer, but only for its negligence." *Kornberg v. Carnival Cruise Lines, Inc.*, 741 F.2d 1332, 1334 (11th Cir. 1984). To determine whether Celebrity was negligent, the Court applies the standards recently summarized in *Guevara v. NCL (Bahamas) Ltd.*, 920 F.3d 710, 720 (11th Cir. 2019):

> Maritime law governs actions arising from alleged torts committed aboard a ship sailing in navigable waters. *See Keefe v. Bahama Cruise Line, Inc.*, 867 F.2d 1318, 1320–21 (11th Cir. 1989). "In analyzing a maritime tort case, [we] 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." *Id.*

Id. (alteration in original).

The summary judgment motion before the Court places at issue the element of duty. In the maritime context, the shipowner owes passengers a duty of reasonable care. *Id.*; *Kermarec v. Compagnie Generale Transatlantique*, 358 U.S. 625, 630 (1959)). Importantly, however, this duty extends only as far as "known dangers that are not open and obvious." *Guevara*, 920 F.3d at 720 n. 5 (citation omitted). Courts must "apply an objective reasonable person test to determine whether a hazard is open and obvious." *Goncharenko v. Royal Caribbean Cruises, Ltd.*, 734 Fed. Appx. 645, 648 (11th Cir. 2018).

Here, Celebrity has met its initial burden by identifying undisputed evidence that McDermott was aware of the allegedly hazardous bathroom threshold prior to his trip-and-fall. McDermott admitted that the condition was "clear" and "couldn't [be] miss[ed]." (McDermott Dep. at 258). McDermott was further aware of the caution warning contained on the threshold step and complained to the stateroom attendant about the step.

In response to summary judgment, McDermott continues to acknowledge that the step in the bathroom "was open and obvious . . . in the traditional sense." (DE 69: 19). Rather, McDermott's principal argument is that the step was "very much hidden from him" during the booking process. (*Id.*)[1]

The Court finds McDermott's argument to be irrelevant and unpersuasive. Although a misrepresentation of the nature described may provide potential support for other causes of action, negligence is not one of them. Here, the Court applies principles of federal law in "the traditional sense" and concludes that although the raised bathroom step may have been "hidden" during the booking process, it was open and obvious to McDermott—from both an objective and subjective standpoint—at the relevant time, namely, prior to his trip-and-fall. Liability does not attach in such circumstances. *See, e.g.*, *Leroux v. NCL (Bahamas) Ltd.*, 743 Fed. Appx. 407, 410 (11th Cir. 2018) (affirming summary judgment for cruise line where plaintiff admitted that she saw a raised threshold over which she tripped and saw a crewmember mopping the floor with a bucket nearby, reasoning that "Plaintiff simply failed to negotiate a known and obvious hazard"); *Malley v. Royal*

[1] Although McDermott raises arguments concerning notice, breach of duty, and causation, McDermott's inability to generate a triable issue on the essential element of duty renders these arguments moot.

Caribbean Cruises Ltd., 713 Fed Appx. 905, 909 (11th Cir. 2017) (affirming summary judgment and concluding that raised step on helicopter deck open and obvious on the basis of Plaintiff's testimony "that she could easily see the coaming and recognized that she had to step onto it"); *see also Lombardi v. NCL (Bahamas) Ltd.*, 2016 WL 1429586, at *3 (S.D. Fla. April 12, 2016) (granting summary judgment on behalf of a cruise line where plaintiff tripped on the step into her cabin bathroom based on testimony that she observed the step into the bathroom when she first entered the cabin and noticed a "Watch Your Step" sign outside the bathroom).

As in the foregoing cases, the allegedly hazardous condition here was open and obvious to McDermott through the ordinary use of his senses. McDermott testified he was aware of the step as soon as he entered the cabin, and even complained about the step to his stateroom attendant. He further noticed the warning sign on the step and properly crossed the step several times during his stay before the injury. Because McDermott "simply failed to negotiate a known and obvious hazard," *Leroux*, 743 Fed. Appx. at 410, McDermott failed to meet his burden to demonstrate a triable issue on the essential element of duty. Accordingly, summary judgment is proper.

IV. CONCLUSION

For the foregoing reasons, Celebrity's Motion for Summary Judgment (DE 61) is **GRANTED**.

DONE AND ORDERED in Chambers, Miami, Florida, this 11th day of October 2019.

JOSE E. MARTINEZ
UNITED STATES DISTRICT JUDGE

Copies via CM/ECF to:

United States Magistrate Judge Otazo-Reyes

Counsel of record