UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 18-25212-CIV-SMITH

JUAN CARLOS URRUTIA-VELEZ,

Plaintiff,

vs.

FRS-FAST RELIABLE SEAWAYS LLC,

Defendant.
_____/

ORDER GRANTING IN PART DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

THIS MATTER is before the Court on Defendant's Motion for Summary Judgment [DE 45], Plaintiff's response [DE 56], and Defendant's reply [DE 62]. This matter arises from an incident aboard Defendant's vessel. Plaintiff was injured when, as a result of high seas, he fell and sustained an ankle injury. Plaintiff's complaint alleges a single negligence count based on several different ways in which Defendant allegedly was negligent. Defendant seeks summary judgment because it was not on notice of the risk creating condition; even if it had notice, Defendant adequately warned of the dangerous condition; and the rough seas were open and obvious to Plaintiff. For the reasons set forth below, Defendant is entitled to summary judgment on Plaintiff's failure to warn negligence claim but not on Plaintiff's other negligence claims.

I. UNDISPUTED MATERIAL FACTS[1]

On March 22, 2018, Plaintiff was a passenger aboard Defendant's vessel, the *San Gwann*,

[1] The Court omits citations to admitted facts.

when it travelled from Miami, Florida to Bimini, Bahamas. Plaintiff had previously been aboard the *San Gwann*. Part way through the March 22, 2018 voyage, Plaintiff got out of his seat and, due to the motion caused by a wave hitting the vessel, Plaintiff fell, attempted to get up, fell again, landed on his ankle, and fractured it.

According to Plaintiff, after he boarded the *San Gwann*, he had a conversation with one of the employees, Christian Quaranto ("Quaranto"), who told Plaintiff that the day before the waves were a meter high and passengers were vomiting. (Pl. Dep. [DE 45-1] 123-124.) Quaranto further relayed that that day, March 22, 2018, would be rough because the waves were two meters high. (*Id.*) Before the vessel left Miami, according to Plaintiff, Quaranto told Plaintiff that if the trip gets too rough, Plaintiff should move to the back. (*Id.* at 134:18-25.) Quaranto testified that he told Plaintiff to sit in the back of the second floor because of the weather but Plaintiff chose to sit in the front of the first floor because it was roomier for him. (Quaranto Dep. [DE 45-3] at 16:8-17:7; 39:12-24.) Quaranto also gave Plaintiff motion sickness medication, which Plaintiff took. (Pl. Dep. at 124:25-125:13.) Prior to departing Miami, Plaintiff posted to Facebook: "Juan Carlos Urritia is feeling concerned at FRS Caribbean. Going back home. Bimini, Bahamas here I go. Did someone said [sic] 2 meters [sic] waves. . . JESUS! 3 Dramamines down! Wish me luck!" (Def. Ex. 4 [DE 45-4] (emojis omitted).)

Defendant's representative testified that an announcement concerning the weather was made several times telling people about the weather and to stay in their seats (Rassi Dep. [DE 45-2] at 33-35; 82:7-23) and Quaranto testified that the announcement was made between 10 and 12 times the day of Plaintiff's accident. (Quaranto Dep. 43:6-10.)[2] The announcement was made in

[2] While there was testimony that the announcement is a "script" that the crewmembers read, the language of the script is not in the record.

English and Spanish. (*Id.* at 43:11-13.) Defendant's representative testified that the announcement is made because people are more likely to fall when the vessel is moving in bad weather and he defined heavy weather as anything over 1-meter waves. (Rassi Dep. 35:15-36:18; 33:10-16.) Plaintiff does not recall hearing any announcements about rough weather conditions at any time during the voyage. (Pl. Dep. at 137:5-22.)

Plaintiff was initially seated in the front row of the business class level of the vessel. About 45 minutes to an hour into the voyage, Plaintiff got up to move to the back. (*Id.* at 135:8-21.) At that time, no one told Plaintiff to get up and move. (*Id.* at 136:8-12.) According to Quaranto, Plaintiff fell asleep after boarding, woke up about an hour into the trip, and stood up to go to the bathroom, at which point Quaranto told him to stay in his seat. (Quaranto Dep. 44:3-9.) According to Quaranto, he told Plaintiff twice to stay seated but Plaintiff seemed confused or scared. (Quaranto Dep. 44:10-17.) The accident report filled out on the day Plaintiff fell states that he got up to go to the toilet. (Rassi Dep. at 52:6-10.) Prior to getting up from his seat, Plaintiff could see the waves and feel the movement of the vessel. (Pl. Dep. at 142:4-143:11.) Before he got up, Plaintiff took a video using his cell phone to send to his friend to show him the size of the waves. (*Id.* at 143-146.) Plaintiff believes that it was a wave that caused him to fall. (*Id.* at 147:1-4.) Plaintiff believes that, while he was trying to get up from his initial fall, the vessel was hit by a wave and the motion caused him to be lifted airborne and he landed on his ankle, fracturing it. (*Id.* at 147:1-15.)

According to the *San Gwann*'s logs, which it is required to keep by the International Maritime Organization, the wave heights on March 22, 2018 were 2 meters. (Rassi Dep. at17:17-

18:2.)[3] Defendant's policy is to not sail the *San Gwann* in wave heights of over 2.5 meters primarily to preserve the integrity of the vessel but also to make the trip more pleasant for the passengers. (*Id.* at 21:17-20; 40:21-41:2.) Defendant has no records of making any announcements about rough weather conditions because it does not keep such records. (*Id.* at 38:9-18.) Prior to Plaintiff's accident, no passenger had ever fallen down on the Defendant's vessel while traveling between Miami and Bimini; Plaintiff's was the first accident due to heavy weather. (*Id.* at 88:9-15; Quaranto Dep. 35:16-20.)

Plaintiff's complaint alleges that Defendant breached its duty to use reasonable care: (1) by choosing to sail on the day of Plaintiff's fall, (2) by failing to warn passengers that it was dangerous to move around the cabin, (3) by failing to provide passengers with a way of physically steadying themselves with handrails, and (4) by instructing Plaintiff that he should move from the front of the vessel to the back of the vessel.

II. SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate when "the pleadings . . . show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247 (1986). Once the moving party demonstrates the absence of a genuine issue of material fact, the non-moving party must "come forward with 'specific facts showing that there is a genuine issue for trial.'" *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986) (quoting Fed. R. Civ. P. 56(e)). The Court must view the record and all factual inferences therefrom in the light most favorable to the non-moving party and decide whether "'the evidence presents a sufficient disagreement to require submission

[3] There is some dispute between the parties about the wave heights that day. However, the exact wave heights on the day of the incident are not relevant to the instant motion.

to a jury or whether it is so one-sided that one party must prevail as a matter of law.'" *Allen v. Tyson Foods, Inc.*, 121 F.3d 642, 646 (11th Cir. 1997) (quoting *Anderson*, 477 U.S. at 251-52)).

In opposing a motion for summary judgment, the non-moving party may not rely solely on the pleadings, but must show by affidavits, depositions, answers to interrogatories, and admissions that specific facts exist demonstrating a genuine issue for trial. *See* Fed. R. Civ. P. 56(c), (e); *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986). A mere "scintilla" of evidence supporting the opposing party's position will not suffice; instead, there must be a sufficient showing that the jury could reasonably find for that party. *Anderson*, 477 U.S. at 252; *see also Walker v. Darby*, 911 F.2d 1573, 1577 (11th Cir. 1990).

III. DISCUSSION

Defendant argues that it is entitled to summary judgment because it had no notice of the alleged risk creating condition. In order to prevail on a negligence claim, a plaintiff must establish 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. *Sorrels v. NCL (Bahamas) Ltd.*, 796 F.3d 1275, 1280 (11th Cir. 2015). The duty a ship owner owes a passenger is a "duty of exercising reasonable care under the circumstances." *Kermarec v. Compagnie Generale Transatlantique*, 358 U.S. 625, 632 (1959). The duty of reasonable care under the circumstances requires "that the carrier have had actual or constructive notice of the risk-creating condition." *Keefe v. Bahama Cruise Line, Inc.*, 867 F.2d 1318, 1322 (11th Cir. 1989). Thus, Defendant argues that it cannot be negligent because it had no notice of the risk-creating condition. Defendant further argues that, even if it had notice, it gave adequate warning and any dangerous condition was open and obvious, which negates its duty to warn.

A. Notice

Defendant maintains that it had no notice of the dangerous condition and, therefore, it is entitled to summary judgment. Plaintiff argues that Defendant had notice of the dangerous weather conditions prior to sailing on March 22, 2018; chose to sail anyway, despite its policy not to sail in waves over 2.5 meters because of the danger they pose; and knew that the voyage the day before, in lesser weather conditions, had been horrible.

Defendant maintains that it had no notice of a dangerous condition because no passenger had ever fallen on the trip between Miami and Bimini because of weather conditions. This argument, however, is undermined by its actions, specifically, the 10 to 12 announcements Defendant claims it made on the day of the incident telling passengers about the weather conditions and to stay in their seats. Defendant's corporate representative testified that passengers are more likely to fall in heavy weather and defined heavy weather as anything over 1-meter waves. There is no dispute that the waves encountered by the *San Gwann* on March 22, 2018 were greater than 1 meter. Consequently, there is sufficient evidence from which a reasonable juror could conclude that Defendant had notice of a dangerous condition. *See Sorrels v. NCL (Bahamas) LTD.*, 796 F. 3d 1275, 1289 (11th Cir. 2015) (holding that sometimes posting warning signs was sufficient evidence of notice to withstand summary judgment); *Frasca v. NCL (Bahamas), Ltd.*, 654 F. App'x 949, 953-54 (11th Cir. 2016) (holding that playing warning video was sufficient evidence of notice to withstand summary judgment).

Defendant further argues that, even if it did have notice, it gave adequate warnings by making announcements explaining the rough weather and telling passengers to remain seated. "[U]nder federal maritime law, an operator of a cruise ship has a duty to warn of known dangers that are not open and obvious." *Frasca.*, 654 F. App'x at 952. Because the record is devoid of the

actual language used in the warning announcement, the Court cannot make a determination as a matter of law that the warning was adequate to warn passengers of the dangers associated with the sea conditions. Further, there is a dispute as to whether the announcements were actually made. Consequently, summary judgment on the issue of notice is denied.

B. Open and Obvious

Defendant also seeks summary judgment because the danger was open and obvious to a reasonable person. There is no duty to warn if a danger is "open and obvious to any reasonably prudent person through the exercise of common sense and the ordinary use of their eyesight." *Lugo v. Carnival Corp.*, 154 F. Supp. 3d 1341, 1346 (S.D. Fla. 2015). Thus, the issue is "whether a reasonable person would have observed the condition and appreciated the nature of the condition." *Malley v. Royal Caribbean Cruises Ltd.*, 713 Fed. App'x 905, 908 (11th Cir. 2017). Defendant argues that the high seas were open and obvious and, thus, it had no duty to warn.

While Plaintiff argues that the dangerousness of the rough seas were not open and obvious, Defendant points to Plaintiff's Facebook post where Plaintiff noted that he was "feeling concerned" and stated: "Did someone said [sic] 2 meters waves [sic] . . . JESUS! 3 Dramamines down! Wish me luck!" Defendant also points to the fact that Plaintiff took a video of the waves and testified that he intended to send it to a friend to show the friend the size of the waves. Defendant further argues that this was not Plaintiff's first time on the *San Gwann*. Plaintiff responds that he could not have known just how dangerous the rough seas were and could not have known that attempting to move seats could result in an injury such as he suffered.

There is no question that Plaintiff recognized the roughness of the seas. His Facebook post and intent to send the video to his friend make it clear that he recognized the rough weather created a danger. Plaintiff, however, argues that he could not have known just how dangerous the

conditions were. Plaintiff's relies on several cases to support this conclusion. However, those cases are inapposite. Unlike here, in *Frasca*, an expert stated that a deck was unreasonably slippery and that while a reasonable person would recognize that a wet deck would be slippery, he would not be able to recognize that it was unreasonably slippery. *Frasca*, 654 Fed. App'x at 952-953. Similarly, in *Weiters v. Carnival Corp.*, 2018 WL 4682217, *3 (S.D. Fla. Sept. 28, 2018), an expert testified that, even if the plaintiff had seen the water and ice, she could not have appreciated how slippery the floor was because it was unreasonably slick. The plaintiff in *Cosmo v. Carnival Corp.*, 272 F. Supp. 3d 1336, 1344 (S.D. Fla. 2017), also presented evidence that the floors were excessively slippery. In the instant case, Plaintiff has presented no evidence indicating that the vessel's movements with the seas were more than a reasonable person would expect under the circumstances. Thus, the cases cited by Plaintiff do not support his argument. A reasonable person could observe the waves (as Plaintiff did), feel the motion of the *San Gwann* in reaction to the waves, and conclude that standing or walking could result in a loss of balance or falling. Plaintiff has presented no evidence to the contrary, unlike the plaintiffs in *Frasca*, *Weiters*, and *Cosmo*, all of whom presented evidence that a reasonable person would not be able to recognize the unreasonably slippery floors. Because the danger was open and obvious, Defendant had no duty to warn. Consequently, Defendant is entitled to summary judgment on Plaintiff's duty to warn claim.

Accordingly, it is

ORDERED that Defendant's Motion for Summary Judgment [DE 45] is **GRANTED in part and DENIED in part**. Summary judgment is granted on Plaintiff's failure to warn claim but denied in all other respects.

DONE and ORDERED in Fort Lauderdale, Florida, this 2nd day of December, 2019.

RODNEY SMITH
UNITED STATES DISTRICT JUDGE

cc: All Counsel of Record