UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 19-61503-CIV-DIMITROULEAS

ROE BOAT, LLC,

Plaintiff,

vs.

N&G ENGINEERING, INC.,

Defendant.
_____/

ORDER ON MOTION TO DISMISS

THIS MATTER comes before the Court on Defendant's Motion to Dismiss Plaintiff's Complaint [DE 11] ("Motion"). The Court has considered the Motion, Plaintiff's Response [DE 12], and Defendant's Reply [DE 13] and is otherwise fully advised in the premises. For the reasons stated herein the Court will grant Defendant's Motion to Dismiss.

I. BACKGROUND

This case arises from a fire aboard the motor yacht, "The Roe Boat," ("Vessel") which occurred on July 26, 2017. Am. Compl. ("AC") ¶ 9. Plaintiff Roe Boat, LLC alleges that the fire was caused by Defendant N&G Engineering, Inc.'s failure to properly perform repairs on the vessel. *See, e.g.* AC ¶ 16, 17.

Plaintiff, the owner, of the Vessel used the vessel for its own use and chartered the Vessel for use by others. AC ¶ 5. In or about August 2016, under an oral agreement with Plaintiff, Defendant completed repairs to the Vessel including to the Vessel's starboard main propulsion engine exhaust turbocharger. AC ¶ 6. In July of 2017, while the Vessel was being chartered, a fire started in the area of the Vessel's starboard main propulsion engine exhaust and

turbocharger. AC ¶ 9. The fire caused extensive damage to the Vessel, according to Plaintiff. *Id.*

Plaintiff brings a claim for breach of maritime contract, breach of implied warranty of workmanlike performance, and negligence.

II. MOTION TO DISMISS STANDARD

Under Rule 12(b)(6), a motion to dismiss should be granted if the plaintiff is unable to articulate "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). "A claim has facial plausibility when the pleaded factual content allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009) (citing *Twombly*, 550 U.S. at 556). When determining whether a claim has facial plausibility, "a court must view a complaint in the light most favorable to the plaintiff and accept all of the plaintiff's well-pleaded facts as true." *Am. United Life Ins. Co. v. Martinez*, 480 F.3d 1043, 1066 (11th Cir. 2007). However, "[m]ere labels and conclusions or a formulaic recitation of the elements of a cause of action will not do, and a plaintiff cannot rely on naked assertions devoid of further factual enhancement." *Franklin v. Curry*, 738 F.3d 1246, 1251 (11th Cir. 2013). "[I]f allegations are indeed more conclusory than factual, then the court does not have to assume their truth." *Chaparro v. Carnival Corp.*, 693 F.3d 1333, 1337 (11th Cir. 2012).

III. DISCUSSION

In its Motion to Dismiss, Defendant argues that Plaintiff fails to state a claim for breach of contract, implied warranty of merchantability, and negligence. In particular, Defendant contends that Plaintiff fails to plead sufficient factual allegations with regard to Defendant's breach of a contract or breach of a duty. In addition, Defendant contends Plaintiff failed to plead

that the engine fire caused damage to more than just the engine, thus barring Plaintiff's negligence claim under the economic loss rule.

A. Plaintiff failed to state a claim

To establish a claim for breach of an oral maritime contract, a Plaintiff must prove: (1) the terms of the maritime contract; (2) that the contract was breached; and, (3) the reasonable value of resulting damages." *Sweet Pea Marine, Ltd. v. APJ Marine, Inc*., 411 F.3d 1242, 1249 (11th Cir. 2005). Plaintiff fails to allege any facts relating to Defendant's breach of an oral contract. Plaintiff's allegation that "Defendant failed to properly perform repairs to the Vessel" is merely conclusory. In addition, Plaintiff's allegations that Defendant's repairs, performed a year before the fire aboard the vessel, were the actual and proximate cause of Defendant's faulty repair, do not alone, allow the Court to reasonably infer that Defendant is liable for the damage alleged.

The implied warranty of workmanlike performance obligates every contractor "to perform services with a reasonable level of '[c]ompetency and safety.'" *See Vierling v. Celebrity Cruises, Inc*., 339 F.3d 1309, 1315 (11th Cir. 2003). Plaintiff fails to allege any facts which would suggest that Defendant performed the repairs to the Vessel in breach of the warranty of workmanlike performance. The Court need not accept as true Plaintiff's conclusory statement that "Defendant breached that implied warranty by failing to perform the repairs to the Vessel in a skilled and workmanlike manner, with the degree of diligence, attention, and skill adequate to complete the tasks." Such an allegation is a recitation of the definition of a breach of the implied warranty of workmanlike performance. *See Id.* (describing the implied warranty of workmanlike performance as an "implied promise to perform those services with reasonable care, skill, and safety").

The elements of a claim of negligence under maritime law are "(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." *Chaparro v. Carnival Corp*., 693 F.3d 1333, 1336 (11th Cir. 2012). Again, in alleging breach Plaintiff merely provides recitation of the definition of the element of breach. Plaintiff states that Defendant "assumed a duty to exercise reasonable care and diligence" in performing services on the ship and that "Defendant breached that duty by failing to exercise reasonable care and diligence in performing repairs to the Vessel." *See* Compl. ¶¶ 23, 24 [DE 1]. Defendant fails to allege facts that allow the court to draw the reasonable inference that Defendant breached its duty of care to Plaintiff and that Plaintiff was harmed because of the breach.

For each count, Plaintiff provides no more than a formulaic recitation of the elements of the cause of action. As such, Plaintiff fails to state a claim for breach of contract, breach of the implied warrant of workmanlike performance, and negligence.

B. Plaintiff's Negligence Claim is not Barred by the Economic Loss Rule

The economic loss rule, bars negligence claims under maritime law which are based solely on economic losses or losses caused by a product to the product itself. *E. River S.S. Corp. v. Transamerica Delaval*, 476 U.S. 858, 871 (1986). "When a product injures only itself the reasons for imposing a tort duty are weak and those for leaving the party to its contractual remedies are strong." *Id.* The Court acknowledges that Plaintiff's Complaint is not an exemplar of clarity and detail. The general allegations, incorporated into Count III, *see* Compl. ¶ 22 [DE 1], however, do state that fire, allegedly caused by Defendant's negligence, "caused extensive damage to the Vessel." Based on such a statement it is plausible that Defendant's alleged negligence caused more than mere economic losses, that Plaintiff's property experienced

physical damage. As such Plaintiff's negligence is not barred by the economic loss rule. *See Gilfillan v. Cheely*, No. 2:18-cv-339-RBS-DEM, 2018 U.S. Dist. LEXIS 203592, at *11 (E.D. Va. Oct. 18, 2018) (describing the extent of the economic loss doctrine as uncertain, but stating that "at a minimum that a maritime negligence claim will lie if the ship repairer's conduct causes harm *beyond* the simple failure to complete the contracted work").The present case is not one where Plaintiff's allegations are clearly limited to damage to the repaired product itself. *Cf E. River S.S. Corp. v. Transamerica Delaval, Inc*., 476 U.S. 858, 867 (1986) (distinguishing between "the traditional 'property damage' cases" where "the defective product damages other property" and the case in *East River*, where "there was no damage to 'other' property").

IV. CONCLUSION

Accordingly, it is hereby **ORDERED AND ADJUDGED** as follows:

1. Defendants Motion to Dismiss [DE 11] is hereby **GRANTED**.
2. Plaintiff is given leave to file an amended complaint on or before **March 23, 2020**; failure to do so shall result in the Court closing this case.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida this 2nd day of March, 2020.

WILLIAM P. DIMITROULEAS
United States District Judge

Copies furnished to:
All counsel of record