UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 20-21859-CIV-ALTONAGA/Goodman

In the Matter of the Complaint for Exoneration from or Limitation of Liability by Jose Garcia, as owner of the 2019 40' Beneteau Motor Yacht bearing Hull Identification No. BENER159L819,

Petitioner.
_____/

ORDER

THIS CAUSE came before the Court on Claimant, Joseph Whalen's Motion to Dismiss [ECF No. 9], filed on June 8, 2020. Whalen requests the Court dismiss Petitioner, Jose Garcia's Complaint for Exoneration from or Limitation of Liability [ECF No. 1] for failure to state a claim. (*See generally* Mot.). Claimant, Robert Roffey, filed a Notice of Joinder in Co-Claimant's Motion to Dismiss [ECF No. 22]. The Court has carefully considered the Complaint, Whalen's Motion, Garcia's Opposition [ECF No. 24], Whalen's Reply [ECF No. 32], and applicable law. For the following reasons, the Motion is granted.

I. BACKGROUND

This case concerns whether Garcia, owner of a 2019 40' Beneteau Motor Yacht ("Vessel"), is entitled to exoneration from or limitation of liability under the Limitation of Liability Act, 46 U.S.C. section 30501 *et seq.* (*See generally* Compl.). Under 46 U.S.C. section 30505, "the liability of the owner of a vessel for any claim, debt, or liability . . . shall not exceed the value of the vessel and pending freight." 46 U.S.C. § 30505(a) (alteration added). A vessel owner "may bring a civil action in a district court of the United States for limitation of liability." *Id.* § 30511(a).

On March 8, 2020, "someone started the [V]essel" while it was docked at the Casablanca Restaurant on the Miami River in Miami-Dade County, causing it to crash into another nearby

vessel. (Compl. ¶ 6 (alteration added)). As a result of this incident, multiple persons have claimed bodily injuries, and at least one person has claimed property damage. (*See id.* ¶¶ 7–8). The Vessel was also damaged in the incident. (*See id.* ¶ 9).

According to the Complaint, Garcia "exercised due diligence to make and maintain the Vessel in all respects seaworthy[.]" (*Id.* ¶ 4 (alteration added)). Garcia asserts "[n]o act or omission by [Garcia] contributed in any way to the cause of the [i]ncident[;]" "[t]he aforesaid injuries and damages were not caused or contributed to by any fault, negligence or lack of due care by [Garcia] or the Vessel[;]"and "[t]he aforesaid injuries and damages were done, occasioned and incurred without the privity and knowledge of [Garcia]." (*Id.* ¶¶ 11–13 (alterations added)).

With respect to the value of the Vessel, Garcia alleges "the entire aggregate amount of [Garcia's] interest in the [V]essel does not exceed the sum of $415,000.00, and there is no pending freight." (*Id.* ¶ 18 (alterations added)). For support, Garcia attaches an Affidavit of Value [ECF No. 1-1] of Neil Maclaren, an Accredited Marine Surveyor, wherein he describes his methodology for determining the Vessel's post-casualty value. (*See generally id.*). Specifically, Maclaren "personally surveyed" the Vessel, "conducted research on the Internet and us[ed] the NADA Appraisl [sic] Guides to try and establish values of similar motor yahcts [sic] in various geographic areas . . . ." (*Id.* ¶¶ 7–8 (alterations added)). Maclaren further avers the Vessel's own "hull, anchor and rails" were damaged as a result of the incident. (*Id.* ¶ 6). Garcia also submits a Letter of Undertaking in which his insurance company "agrees to pay and satisfy the final judgment up to an [sic] not exceeding Four Hundred Fifteen Thousand Dollars and 00/100 ($415,000.00), plus interest from March 8, 2020 and costs." (Letter of Undertaking [ECF No. 1-2] 1).

Garcia filed this action for exoneration or limitation of liability on May 4, 2020. (*See generally* Compl.). Three claimants — Joseph Whelan, SoBe-It 440 LLC, and Robert Roffey —

have filed claims against Garcia. (*See* [ECF Nos. 12, 17, 23]). Whelan also filed the instant Motion to Dismiss, in which Roffey joined. (*See generally* Mot.; Notice of Joinder).

II. LEGAL STANDARD

An action for exoneration from or limitation of liability under the Limitation of Liability Act is governed by Rule F of the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions of the Federal Rules of Civil Procedure ("Supplemental Rules"). Under Supplemental Rule F(2), a petitioner seeking limitation of liability must "set forth the facts on the basis of which the right to limit liability is asserted and all facts necessary to enable the court to determine the amount to which the owner's liability shall be limited." Suppl. R. F(2).

Federal Rule of Civil Procedure 8(a) requires a pleading contain "a short and plain statement of the claim showing that the pleader is entitled to relief[.]" Fed. R. Civ. P. 8(a)(2) (alteration added). To survive a motion to dismiss under Rule 12(b)(6), a complaint must contain sufficient factual allegations to state a plausible claim for relief, meaning the complaint has enough facts to permit the court to "draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

Compared to Rule 8, Supplemental Rule F(2) requires a heightened degree of specificity. *See Matter of Lopez-Castro*, No. 05-21812-Civ, 2005 WL 8155930, at *1 (S.D. Fla. Nov. 15, 2005) (citation omitted); *see also In re Twenty Grand Offshore, Inc.*, 313 F. Supp. 851, 854 (S.D. Fla. 1970) ("The specific requirements of [Supplemental] Rule F(2) . . . differ in their particularity from the more liberal notice pleading of Rule 8 and at least compare with the particularity required in averments of fraud or mistake by Rule 9(b)." (alterations added)). The petitioner must provide a complete account of the incident, including details regarding the faults of all parties involved. *See Petition of M/V Sunshine, II*, 808 F.2d 762, 764 (11th Cir. 1987). Any legal conclusions must be

supported with facts. *See In re Ryan*, No. 11-80306-Civ, 2011 WL 1375865, at *3 (S.D. Fla. Apr. 12, 2011).

III. DISCUSSION

Whalen seeks dismissal of Garcia's Complaint for failure to state a claim, challenging Garcia's allegations of exoneration and limitation and his allegations concerning the value of the Vessel. (*See generally* Mot.). The Court addresses each argument in turn.

1. Allegations of Exoneration and Limitation

According to Whalen, Garcia's Complaint is legally insufficient because it fails to allege detailed facts regarding the incident. (*See* Mot. 2–8). Specifically, Whalen contends Garcia does not state where Garcia was during the incident, who activated the Vessel and the operator's relationship to Garcia, or if the operator was a permissible user of the Vessel. (*See id.* 2). Further, Whalen states that Garcia fails to explain how he exercised due diligence in caring for the Vessel, whether he knew if the operator was in a position to activate the Vessel safely, or how the Vessel was even capable of operation if it had been previously secured. (*See id.* 2–3).

In response, Garcia maintains the relevant pleading standard "is identical to that contained in the Federal Rules of Civil Procedure." (Opp'n 3). He also contends the allegations in his Complaint — that someone else simply stole and activated the Vessel without his knowledge, and he did not cause or contribute in any way to the resulting damages and injuries — state adequate grounds for exoneration from or limitation of liability. (*See id.* 3–5).

Under either the Rule 8(a) or Supplemental Rule F(2) standard, Garcia's allegations are insufficient to state a claim for limitation of liability. To determine if a shipowner is entitled to exoneration or limitation under the Limitation of Liability Act, the district court must analyze (1) what negligent acts or conditions of unseaworthiness resulted in the accident; and (2) whether the

shipowner had knowledge or privity of the acts. *See Suzuki of Orange Park, Inc. v. Shubert*, 86 F.3d 1060, 1062 (11th Cir. 1996) (citations omitted). Privity is a broader concept than having actual knowledge of an incident, and lack of privity refers to a situation in which even a reasonable inspection could not have led the shipowner to obtain the requisite knowledge. *See id.* at 1064. As stated, to survive a motion to dismiss, Supplemental Rule F(2) requires a complaint "set forth the facts on the basis of which the right to limit liability is asserted[.]" Suppl. R. F(2) (alteration added).

In Re Ryan illustrates why Whalen is correct. There, a vessel owner filed an action for limitation of liability after his motor vessel caught fire and exploded, resulting in the death of at least one person who was on board, injuries to two other individuals, and property damage. *See In re Ryan*, 2011 WL 1375865, at *1. The court found the plaintiff-owner's complaint for limitation of liability to be legally defective because it contained only legal conclusions, including statements such as:

> the explosion and resulting damage was [sic] "done, occasioned and incurred without the privity or knowledge" of plaintiff; that he at all times exercised "due diligence" to make his vessel seaworthy in all respects; and that the explosion which caused the injury and damage "was not caused or contributed to by any fault, neglect want or care or design" on his part.

Id. at *3. The complaint did not contain even minimal facts to suggest the vessel owner was not at fault, so the court dismissed the complaint for failure to satisfy Supplemental Rule F(2). *See id.*

As in *In re Ryan*, Garcia simply asserts "[n]o act or omission by [Garcia] contributed in any way to the cause of the [i]ncident[,]" "[t]he aforesaid injuries and damages were not caused or contributed to by any fault, negligence or lack of due care by [Garcia] or the Vessel[,]"and "[t]he aforesaid injuries and damages were done, occasioned and incurred without the privity and knowledge of [Garcia]." (Compl. ¶¶ 11–13 (alterations added)). He also alleges he "exercised

due diligence to make and maintain the Vessel in all respects seaworthy[.]" (*Id.* ¶ 4) (alteration added)). Garcia does not provide any indication of who stole the Vessel or any context as to how the Vessel was activated. With virtually no supporting facts, Garcia's Complaint is conclusory and fails to satisfy Supplemental Rule F(2). *See Petition of M/V Sunshine, II*, 808 F.2d at 764 ("While the narrative [in the complaint] need not necessarily be elaborate, it should be full and complete[,] [and] [t]he faults of other parties and other vessels are to be alleged in detail[.]" (alteration adopted; other alterations added; internal quotation marks and citations omitted)); *Matter of Lopez-Castro*, 2005 WL 8155930, at *2 (dismissing complaint for failure to meet Supplemental Rule F(2)'s pleading requirements because the petitioner merely pled in conclusory fashion that he exercised due diligence, the injuries resulting from the collision were not caused by any fault on his part, and he had no privity or knowledge).

Furthermore, if, as Garcia argues, Rule 8(a) governs this case and the pleading standard is based on plausibility (*see* Opp'n 2–3), his Complaint must still contain "more than labels and conclusions," and the allegations must "raise a right to relief above the speculative level," *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citation omitted). Garcia's allegations, however, are consistent with several possibilities of how the operator could have gained control of the Vessel, including scenarios in which Garcia is at fault. These include

> whether or not [the operator] had actual or implied permission to move [the Vessel]; whether Garcia left the engines running with his intoxicated guests on board; whether Garcia placed the key in a location where it was easily accessible to unauthorized third parties[;] and whether or not Garcia exercised reasonable care in preventing one of his intoxicated guests from trying to move the [Vessel.]

(Reply 3–4 (alterations added)). Contrary to Garcia's contentions, his allegations are insufficient to make it plausible he was free from fault and had no privity or knowledge of the circumstances leading to the incident. Whalen's Motion to Dismiss is granted on this ground.[1]

2. Allegations of the Vessel's Value

Whalen also argues Maclaren's Affidavit of Value provides inadequate support for Garcia's allegations regarding the value of the Vessel. (*See* Mot. 8–11). Whalen primarily relies on *Barnext Offshore, Ltd. v. Ferretti Group, USA, Inc.*, No. 10-23869-Civ, 2012 WL 13012778 (S.D. Fla. May 24, 2012), in which the Court held that in the context of the admissibility of expert testimony, Maclaren, who had been hired to determine the costs of repair for a vessel after a fire, failed to explain why his estimated cost of $350,000 differed drastically from his second estimation of $600,000; and because Maclaren did not state his methodology, he was prevented from testifying as to the estimated costs of repair. *See id.* *13–14.

In response, Garcia contends the Letter of Undertaking from his insurance company for $415,000.00, along with sworn statements by Maclaren where he describes the methodology he used to come to his conclusion about the Vessel's value, provide a sufficient factual basis for the value of the Vessel. (*See* Opp'n 5–7).

[1] Garcia also argues the Court should not improperly shift the burden to Garcia to prove the absence of privity or knowledge before resolving the question of negligence or unseaworthiness. (*See* Opp'n 4–5). Although Garcia is correct that "a claimant [has] the initial burden of proving negligence or unseaworthiness," *Hercules Carriers, Inc. v. Claimant State of Fla., Dep't of Transp.*, 768 F.2d 1558, 1564 (11th Cir. 1985) (alteration added; citations omitted), Garcia fails to explain how "the claimants' burden of proof at trial to prove the [p]etitioner's vessel was at fault . . . changes the pleading requirements for limitation and exoneration petitions[.]" (Reply 4–5 (alterations added; emphasis omitted)). Garcia is still required to "set forth the facts on the basis of which the right to limit liability is asserted[,]" Suppl. R. F(2) (alteration added), or provide "enough facts to state a claim to relief that is plausible on its face[,]" *Twombly*, 550 U.S. at 570 (alteration added). As discussed, Garcia's allegations as to both the negligence/unseaworthiness and privity/knowledge elements are inadequate.

As stated, the allegations of a vessel's value must include "all facts necessary to enable the court to determine the amount to which the owner's liability shall be limited." Suppl. R. F(2). While Whalen acknowledges "this [M]otion is not one seeking to exclude [Garcia's] expert from testifying at trial," he nevertheless contends *Barnext* supports the conclusion the Affidavit of Value does not fulfill the requirements of Supplemental Rule F(2). (Mot. 10 (alterations added; emphasis omitted)). This argument fails to persuade. Whalen does not explain why the Affidavit of Value is insufficient to support allegations of the Vessel's value at the motion-to-dismiss stage. (*See generally* Mot.; Reply); *see also In re Keweenaw Excursions, Inc. v. Jaukkuri*, No. 2:09-cv-50, 2009 WL 4726624, at *1–2 (W.D. Mich. Dec. 2, 2009) (denying motion to dismiss on the basis of an insufficient vessel valuation because "there are a number of methods for determining the value" and the respondent "fail[ed] to cite, nor d[id] the [c]ourt's own research disclose, any authority for the proposition that a court must dismiss a petition for an improper valuation of a vessel" (alterations added)).

Therefore, Whalen's Motion fails on this ground. Nonetheless, as explained, Whalen is correct Garcia has failed to adequately allege he is entitled to exoneration from or limitation of liability.

IV. CONCLUSION

For the foregoing reasons, it is

ORDERED AND ADJUDGED that Claimant, Joseph Whalen's Motion to Dismiss **[ECF No. 9]** is **GRANTED in part**. The Complaint **[ECF No. 1]** is **DISMISSED without prejudice**. Petitioner, Jose Garcia, has until **July 20, 2020** to file an amended complaint.

DONE AND ORDERED in Miami, Florida, this 9th day of July, 2020.

CECILIA M. ALTONAGA
UNITED STATES DISTRICT JUDGE

cc: counsel of record