UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

IN ADMIRALTY

CASE NO.: 0:20-cv-60970-RS

IN RE THE COMPLAINT OF:
LOHENGRIN, LTD., as owner of the 2006
M/Y Lohengrin, a 2006, 161-foot aluminum
trideck motoryacht from Trinity Yachts,
IMO Number 8735998, for Exoneration from
or Limitation of Liability
____/

ORDER GRANTING IN PART MOTION TO DISMISS

This matter is before the Court on the Motion to Dismiss [DE 18] filed by Petitioner, Lohengrin, Ltd., the Response in Opposition [DE 23] filed by Respondent, Universal Marine Center, Inc. ("Respondent") and the Reply [DE 33]. On May 25, 2020, Petitioner filed a Complaint for exoneration or limitation of liability pursuant to the Limitation of Liability Act, 46 U.S.C. § 30501, *et seq.* (*See* Compl. [DE 1].) On June 25, 2020, Respondent filed its answer and affirmative defenses, and a claim to Petitioner's Complaint (the "Claim") [DE 11]. The Claim consists of a claim for breach of contract and a claim for negligence. Petitioner seeks dismissal of the Claim, asserting that Respondent has failed to state claims for breach of contract and negligence. Additionally, Petitioner seeks dismissal of Respondent's negligence claim, asserting that Respondent improperly commingles multiples theories of liability into a single count. For the reasons stated below, the Motion is granted in part.

I. FACTUAL BACKGROUND

This action arises out of a vessel fire, which occurred on November 16, 2019, while the subject vessel, the *M/Y Lohengin,* a 161-foot Trinity (the "Vessel"), was docked in the water at the Universal Marine Center located in Fort Lauderdale, Florida. (*See* generally DE 1.)

Prior to the subject fire, the captain of the Vessel executed an Agreement for Dockage and/or Service Work (the "Agreement") with Respondent on May 21, 2019. (DE 11 ¶ 10.) At all times, the Vessel was docked at Universal Marine Center and was undergoing an extensive refit which included maintenance, repairs and upgrades to the Vessel. (*Id.* ¶¶ 11-12.) As a result of the extensive work being performed on the Vessel, an environmental enclosure tent supported by scaffolding and other metal support structures had been erected around the Vessel. (*Id.* ¶ 13.)

During the early morning hours of November 16, 2019, the Vessel caught fire which spread to an adjacent vessel, the *M/Y Reflections*. (*Id.* ¶ 14.) The fire also damaged Respondent's docks, pilings, electrical equipment and other property. (*Id.* ¶ 14.) Both vessels sunk in their slips as a result of the fire. (*Id.* ¶ 15.) Additionally, the environmental enclosures surrounding both yachts collapsed, causing damage to Respondent's submerged lands and dropping debris and creating hazards to navigation within the marina. (*Id.* ¶¶ 15-16.) Both Fort Lauderdale and Broward County Fire Departments responded to the fire causing additional damage to Respondent's property because the fire departments were required to cut holes in Respondent's security fences and damaged asphalt, roadways and landscaping. (*Id.* ¶¶ 17-18.)

Additionally, Petitioner hired another company, Sea Tow Fort Lauderdale to remove scaffolding and to remove other materials from the wreck. (*Id.* ¶ 19.) As a result of that work, Sea Tow Fort Lauderdale damaged Respondent's seawall adjacent to the slip where the Vessel was docked at the time of the fire. (*Id.*) According to the Complaint, Petitioner failed to remove

the sunken wreck of the Vessel from the bottom of the slip for sixty-days, causing accumulation of silt, debris and other damage to Respondent's slips. (*Id.* ¶ 20.) Sea Tow Fort Lauderdale presented a bill for services to Respondent, which Respondent contends Petitioner is responsible for. (*Id.* ¶¶ 21-22.)

Respondent filed its Claim, seeking reimbursement from Petitioner for damages resulting from the Vessel fire. The Claim asserts two claims against Petitioner one for breach of contract and one for negligence. On July 31, 2020, Petitioner filed its Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6).

II. LEGAL STANDARD

Supplemental Rule F(5) of the Supplemental Rules for Admiralty or Maritime Claims governs the claim at issue. It states: "Each claim shall specify the facts upon which the claimant relies in support of the claim, the items thereof, and the dates on which the same accrued." Supplemental Rule F(5). Pursuant to Supplemental Rule A(2), the Federal Rules of Civil Procedure apply to the Supplemental Rules for Admiralty or Maritime Claims "except to the extent that they are inconsistent with [the] Supplemental Rules." Supplemental Rule A(2). Courts have found that Rule 12(b)(6) is the proper standard of review governing a challenge to the sufficiency of a claim under Supplemental Rule F(5). *See Matter of Horizon Dive Adventures, Inc. v. Sotis*, Case No. 17-10050-Civ-King/Simonton, 2018 WL 6978636, at *4 n.4 (S.D. Fla. Nov. 28, 2018) (collecting cases).

"The appropriate standard for deciding to dismiss a claim is whether it appears beyond doubt that the plaintiff can prove no set of facts to support his claim." *GSW, Inc. v. Long Cty., Ga.*, 999 F.2d 1508, 1510 (11th Cir. 1993) (citation omitted). All facts set forth in the complaint are to be accepted as true. *Id.* The Court draws all reasonable inferences in the plaintiff's favor.

Randall v. Scott, 610 F.3d 701, 705 (11th Cir. 2010). "While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations . . . a plaintiff's obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (internal marks and citation omitted). "Factual allegations must be enough to raise a right to relief above the speculative level." *Id.* Still, a well-pled complaint survives a motion to dismiss "even if it strikes a savvy judge that actual proof of these facts is improbable, and that a recovery is very remote and unlikely." *Id.* at 556.

III. DISCUSSION

Petitioner seeks dismissal of the Claim in its entirety for several reasons. First, Petitioner asserts that Respondent has failed to properly state a claim for breach of contract because the Claim does not allege a nexus between the alleged breach and Respondent's purported damages. Next, Petitioner asserts that Respondent's negligence claim should be dismissed because Respondent improperly comingles multiple theories of liability into a single count. The Court will address each argument in turn.

A. Respondent's breach of contract claim is adequately pled.

As an initial matter, Petitioner argues that maritime law applies in this action. Respondent does not object to this assertion in its response. Courts have concluded that general maritime law has adopted the general rules of contract interpretation and construction. *See, e.g. Davis v. Valsamis, Inc.*, 752 F. App'x 688, 691-92 (11th Cir. 2018) ("Maritime contracts 'must be construed liked any other contracts: by their terms and consistent with the intent of the parties.'"); *United States ex rel. E. Gulf, Inc. v. Metzger Towing, Inc.*, 910 F.2d 775, 779 (11th Cir. 1990).

The elements of a breach of contract claim are: (1) a valid contract; (2) a material breach;

and (3) damages. *Sweet Pea Marine, Ltd. v. APJ Marine, Inc.*, 411 F.3d 1242, 1249 (11th Cir. 2005). It is well established that a plaintiff must show the defendant's breach was a substantial factor in causing the damages alleged. *A.R. Holland, Inc. v. Wendco Corp.*, 884 So.2d 1006, 1008 (Fla. 1st DCA 2004). A plaintiff may only recover if the damages are the proximate result of the material breach. *Chipman v. Chonin*, 597 So. 2d 363, 364 (Fla. 3d DCA 1992).

In its Motion, Petitioner argues that Respondent's breach of contract claim should be dismissed because Respondent has failed to allege that the purported breach of the agreement caused the fire aboard the Vessel. In response, Respondent asserts that it is not required to prove why the fire occurred but only that Petitioner was required to indemnify Respondent for damages caused by the fire pursuant to the Agreement.

Taking the allegations as true, the Court finds that Respondent has sufficiently alleged a claim for breach of contract. Specifically, Respondent alleges that on May 21, 2019, Petitioner executed an agreement with Respondent for dockage and/or service work. Pursuant to the Agreement, Respondent provided dockage and other services to Petitioner and submitted monthly invoices to Petitioner, which Petitioner paid. Both parties performed under the Agreement and thus, it is pled that a valid agreement existed.

In executing the Agreement, Petitioner agreed to abide by certain provisions including but not limited to: defending and indemnifying Respondent against all claims, actions, liabilities, and damages for any personal injury or property damage resulting from Petitioner's use of Respondent's slips or marina, whether or not such damage was the result of Petitioner's negligence. Petitioner also agreed to abide by all applicable laws, rules and regulations of Florida, as well as any other governmental body or regulatory authority. Pursuant to the Agreement, Petitioner is responsible for the negligence, actions and omissions of any person it employs or

permits on board the Vessel for any purpose, including, employees, captain, crew, guests, agents, contractors, subcontractors, workers, vendors, and their employees, for any loss or damage to Respondent's property or any person, or personal injury or death of any person. Additionally, Petitioner agreed to be responsible for securing the Vessel in a safe and prudent manner and to be liable for any damages caused to other Vessels or to any part of the premises.

Respondent further alleges that Petitioner has breached its contractual obligations by: a) failing to maintain the Vessel in a safe, prudent and seaworthy manner causing or contributing to the fire; b) by failing to comply with all applicable laws, rules and regulations of Florida, as well as any other governmental body or regulatory authority, including but not limited to OSHA and the American Bureau of Shipping; c) by failing to indemnify Respondent for damage as a result of the fire; d) by failing to indemnify and defend Respondent with regards to Sea Tow Fort Lauderdale's invoice; e) by failing to indemnify Respondent for property damage resulting from the fire; and by f) failing to indemnify Respondent for other consequential and incidental damages as a result of the fire.

Petitioner asserts that this is insufficient because Respondent fails to identify any specific breaches of the Agreement that caused the fire. The Court disagrees, however, and finds that Respondent has alleged sufficient facts showing how Petitioner has failed to indemnify Respondent for damages resulting from the fire to the Vessel, pursuant to the Agreement. Specifically, Respondent alleges that Petitioner failed to remove the sunken wreck of the Vessel from the bottom of the slip for sixty-days, causing accumulation of silt, debris and other damage to Respondent's slips. Further, Respondent alleges that Petitioner failed to reimburse Respondent for damages caused by not only the Fort Lauderdale and Broward County Fire Departments, in responding to the fire but also for the damages caused by Sea Tow Fort Lauderdale, in which

Respondent contends Petitioner is responsible for pursuant to the Agreement. Thus, the Motion is denied as to Count I.

B. Respondent's negligence claim improperly commingles multiple theories of liability.

In the alternative, Respondent pleads in Count II a claim for maritime negligence. Petitioner contends that Count II should be dismissed because it improperly commingles multiple claims of negligence that must be asserted as separate counts. Specifically, Petitioner contends Respondent alleges three different and distinct legal theories sounding in negligence –negligence, gross negligence and negligence *per se*— all of which must be pled as separate claims. In response, Respondent concedes that it alleges distinct allegations of breaches but fails to address Petitioner's assertion that distinct legal theories must be plead separately.

Shotgun pleadings are "cumbersome, confusing complaints that do not comply with" Federal Rule of Civil Procedure 8. *Yeyille v. Miami Dade Cty. Pub. Sch.*, 643 F. App'x 882, 884 (11th Cir. 2016). The Eleventh Circuit has categorized four basic types of shotgun pleadings: (1) those in which "each count adopts the allegations of all preceding counts;" (2) those that do not re-allege all preceding counts but are "replete with conclusory, vague, and immaterial facts not obviously connected to any particular cause of action;" (3) those that do not separate each cause of action or claim for relief into a different count; and (4) those that assert multiple claims against multiple defendants without specifying which applies to which. *Id.* (internal citation omitted). "The unifying characteristic of all types of shotgun pleadings is that they fail to . . . . give the defendants adequate notice of the claims against them and the grounds upon which each claim rests." *Id.* The Eleventh Circuit has made no secret of its disdain for shotgun pleadings.

Here, Count II contains characteristics of the third type of shotgun pleading because Respondent asserts claims for negligence, negligence *per se* and gross negligence. Furthermore,

the allegations within Count II suggest that Respondent seeks to bring theories of liability for negligent supervision, negligent retention and training and failure to inspect, further supporting dismissal because it is unclear exactly what claims Respondent seeks to bring. In its response, Respondent asserts that the allegations of the Claim make "distinct allegations of breaches to address the multiple concurrent causes." (Resp. at 4.) However, it should be noted that these breaches, when read, sound in different theories of liability. Thus, to the extent Respondent relies on such allegations in pleading separate theories of liability, it should assert factual allegations to properly state these respective causes of action. The Motion is granted as to Count II with leave to amend.

i. Respondent fails to not adequately pled a claim for negligence *per se*.

Petitioner asserts that Respondent has failed to state a claim for negligence *per se* because Respondent fails to identify a specific statute and does not allege to be a member of a protected class. The Court agrees and finds that Respondent has not adequately pled a claim for negligence *per se*.

The elements of negligence *per se* are: (1) violation of a regulation; (2) causing the type of harm that the regulation was intended to prevent; and (3) injury to a member of the class of persons intended to be protected by the regulation. *See Marshall v. Isthmian Lines, Inc.*, 334 F.2d 131, 134 (5th Cir. 1964).[1] In its Claim, Respondent simply alleges that the violation of certain regulations and statutes would constitute a breach of a duty owed by Petitioner. The Claim is devoid of any allegations relating to the second and third elements necessary to state a claim for

[1] In *Bonner v. City of Prichard, Ala.*, 661 F. 2d 1206, 1208 (11th Cir. 1981), the Eleventh Circuit Court of Appeals held that decisions of the United States Court of Appeals for the Fifth Circuit are binding precedent for the Eleventh Circuit, district courts and the bankruptcy courts within our circuit.

negligence *per se*. Thus, the Claim fails to adequately plead a claim for negligence *per se*. In amending its Claim, Respondent shall not only list all statutes and regulations Petitioner has allegedly violated but it should also provide enough facts to support a claim for negligence *per se*.

ii. Respondent has failed to allege a claim for gross negligence.

"Gross negligence in an admiralty case is shown where a defendant knows of the risk of harm created by the defendant's conduct or knows facts that make the risk obvious to another in the defendant's situation and disregards that risk." *Great Lakes Reinsurance (UK) PLC v. Sunset Harbour Marina, Inc.*, Case No. 10-24469-CIV-Jordan, 2012 WL 13012738, at *5 (S.D. Fla. Jan. 4, 2012) (internal quotation marks and citation omitted). Here, Respondent alleges that the purported negligent acts of Petitioner and deficiencies of the Vessel caused the fire and Petitioner had actual and constructive knowledge of the purported damages. Respondent also alleges that Petitioner knew or should have known of its negligent acts and the Vessel's deficiencies before the fire occurred and failed to take proper precautions. However, Respondent has failed to allege any additional facts to support a claim for gross negligence or support an inference that Petitioner's purported conduct was more egregious than mere negligence. For instance, there are no facts showing that Petitioner was aware of the risk its purported conduct created and disregarded this risk. The Claim as currently pled fails to state a claim for gross negligence and dismissal is warranted with leave to amend. *See Lobegeiger v. Celebrity Cruises, Inc.*, No. 11-21620-CIV, 2011 WL 3703329, at *16-18 (S.D. Fla. Aug. 23, 2011) (dismissing gross negligence claim where plaintiff failed to present any allegations to support a finding that defendant knew or should have known of the risk posed but disregarded that risk).

Accordingly, it is

ORDERED that:

1. Lohengrin's Motion to Dismiss Universal Marine Center, Inc.'s Claim [DE 18] is **GRANTED IN PART AND DENIED IN PART.** Count II is dismissed without prejudice and with leave to amend.

2. Respondent shall file its Amended Claim no later than **March 3, 2021** consistent with the Court's Order.

3. Lohengrin's Motion for More Definite Statement of Universal Marine Center, Inc.'s Claim [DE 18] is **DENIED AS MOOT.**

DONE AND ORDERED in Fort Lauderdale, Florida, this 17th day of February 2021.

RODNEY SMITH
UNITED STATES DISTRICT JUDGE

cc: Counsel of Record