UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 20-21429-CIV-CANNON/Otazo-Reyes

KAREN SYNDER and
TODD SNYDER,

Plaintiffs,

v.

ROYAL CARIBBEAN CRUISES LTD.
a Liberian Corporation, and
ADRENALINE TOURS,

Defendants.
_____/

ORDER GRANTING DEFENDANT ADRENALINE TOURS' MOTION TO DISMISS

THIS CAUSE comes before the Court upon Defendant Adrenaline Tour's ("Adrenaline") Motion to Dismiss the Plaintiffs' Third Amended Complaint ("TAC") for Lack of Jurisdiction ("Motion to Dismiss") [ECF No. 61]; Plaintiffs' Response in Opposition to Adrenaline Tour's Motion to Dismiss [ECF No. 68]; and Adrenaline's Reply to Plaintiffs' Response to Adrenaline's Motion to Dismiss [ECF No. 71]. For the reasons stated below, the Court finds that Plaintiffs have not established personal jurisdiction over Adrenaline. Accordingly, Defendant Adrenaline's Motion to Dismiss [ECF No. 61] is **GRANTED**, and Adrenaline is **DISMISSED WITH PREJUDICE** as a defendant in this action.

I. Background

As alleged in the TAC [ECF No. 51], this maritime action arises from damages that Plaintiffs Karen Snyder and Todd Snyder sustained when they were injured during an offshore excursion in Curacao, while passengers aboard a ship operated by Defendant Royal Caribbean Cruises, Ltd. ("Royal Caribbean"). Royal Caribbean is a Liberian corporation with its principal

place of business in Miami, Florida [ECF No. 51 ¶ 4]. Adrenaline is a corporation existing under the laws of Curacao and maintains its principal place of busines in Curacao [ECF No. 51 ¶ 5; ECF No. 61-1 ¶¶ 3, 5]. In August 2019, while Plaintiffs were onboard Royal Caribbean's ship, *Freedom of the Seas*, Royal Caribbean offered an option for passengers to purchase tickets for an offshore excursion called "Speedboat Adventure and Snorkel" [ECF No. 51 ¶ 28]. Before purchasing tickets, Plaintiff Karen Snyder informed a desk agent for Royal Caribbean that she had pre-existing back injuries and inquired whether the "Speedboat Adventure and Snorkel" was a suitable option for her [ECF No. 51 ¶ 57]. The desk agent described the excursion as "a two-person boat that one of them would drive" [ECF No. 51 ¶ 34]. Based on this representation, Plaintiffs purchased tickets for the excursion [ECF No. 51 ¶ 35].

When the *Freedom of the Seas* called on Curacao, Plaintiffs were told to join a larger group instead of being given their own boat to operate [ECF No. 51 ¶ 41]. The driver of the group boat was employed by Adrenaline [ECF No. 51 ¶ 42]. When the group boat embarked, the driver "drove the boat unreasonably fast through waters that were unreasonably rough," causing both Plaintiffs to be thrown up into the air and back into their seats upon cresting a large wave [ECF No. 51 ¶ 43]. The plaintiffs later were examined by Royal Caribbean's onboard medical staff [ECF No. 51 ¶ 44]. Plaintiffs allege that because of the injuries sustained during the shore excursion, they now suffer bodily pain, injuries, and other damages related to the offshore excursion incident [ECF No. 51 ¶ 116].

Based on these facts, Plaintiffs commenced this action on April 20, 2020 [ECF 1] and filed a seven-count TAC (the operative complaint) on December 3, 2020 [ECF No. 51]. On November 28, 2020, Adrenaline was served [ECF No. 50], and on January 18, 2021, Adrenaline moved to dismiss Plaintiffs' claims pursuant to Federal Rule of Civil Procedure 12(b)(2), arguing that the

Court lacks specific personal jurisdiction, general jurisdiction, and jurisdiction under Federal Rule of Civil Procedure 4(k)(2) [ECF No. 61]. The Motion to Dismiss is fully briefed and ripe for adjudication.

II. Legal Standard

Federal Rule of Civil Procedure 12(b)(2) governs motions to dismiss for lack of personal jurisdiction. "A court must dismiss an action against a defendant over which it has no personal jurisdiction." *Verizon Trademark Servs., LLC v. Producers, Inc.*, 810 F. Supp. 2d 1321, 1323-24 (M.D. Fla. 2011). To withstand a motion to dismiss, the plaintiff must plead sufficient facts to establish a *prima facie* case of jurisdiction over the non-resident defendant's person. *Virgin Health Corp. v. Virgin Enters. Ltd.*, 393 F. App'x 623, 625 (11th Cir. 2010). The district court must accept the facts alleged in the complaint as true, to the extent they are uncontroverted by the defendant's affidavits. *See Consol. Dev. Corp. v. Sherritt, Inc.*, 216 F.3d 1286, 1291 (11th Cir. 2000). If the defendant sustains its burden of challenging the plaintiff's allegations through affidavits or other competent evidence, the plaintiff must substantiate the jurisdictional allegations in the complaint by affidavits, testimony, or other evidence of its own. *Future Tech. Today, Inc. v. OSF Healthcare Sys.*, 218 F.3d 1247, 1249 (11th Cir. 2000).

III. Discussion

A. The Court lacks specific jurisdiction over Defendant Adrenaline Tours.

Adrenaline seeks to dismiss the TAC on the basis that the Court lacks personal jurisdiction over it. "A federal court sitting in diversity undertakes a two-step inquiry in determining whether personal jurisdiction exists: the exercise of jurisdiction must (1) be appropriate under the state long-arm statute and (2) not violate the Due Process Clause of the Fourteenth Amendment to the United States Constitution." *Carmouche v. Tamborlee Mgmt., Inc.*, 789 F.3d 1201, 1203 (11th

Cir. 2015) (citing *United Techs. Corp. v. Mazer*, 556 F.3d 1260, 1274 (11th Cir. 2009)). Florida's long-arm statute provides that a defendant can be subjected either to specific personal jurisdiction by committing any act listed in Fla Stat. § 48.193(1)(a), or general jurisdiction by engaging in "substantial and not isolated activity" in Florida as described in Fla. Stat. § 48.193(2). *See* Fla. Stat. §§ 48.193(a)(1), 48.193(2).

1. Fla. Stat. § 48.193(1)(a)(9) – Jurisdiction by Contract

Adrenaline argues that Plaintiffs cannot establish specific personal jurisdiction because the cause of action does not arise from any acts occurring within Florida [ECF No. 71, pp. 5-7]. Plaintiffs do not allege that Adrenaline committed a tortious act in Florida but argue instead that specific jurisdiction is established pursuant to Fla. Stat. § 48.193(1)(a)(9) and its incorporated requirements. The Court addresses those statutory requirements in turn.

First, Section 48.193(1)(a)(9) establishes jurisdiction based on a party "[e]ntering into a contract that complies with s. 685.102." Fla. Stat. § 48.193(1)(a)(9).

Second, Section 685.102 provides as follows:

> Notwithstanding any law that limits the right of a person to maintain an action or proceeding, any person may, to the extent permitted under the United States Constitution, maintain in this state an action or proceeding against any person or other entity residing or located outside this state, if the action or proceeding arises out of or relates to any contract, agreement, or undertaking for which a choice of the law of this state, in whole or in part, has been made pursuant to s. 685.101 and which contains a provision by which such person or other entity residing or located outside this state agrees to submit to the jurisdiction of the courts of this state.

Fla. Stat. § 685.102(1).

Third, Fla. Stat. § 685.102(1) therefore incorporates the requirements of Fla. Stat. § 685.102, which states as follows:

> The parties to any contract, agreement, or undertaking, contingent or otherwise, in consideration of or relating to any obligation arising out of a transaction involving in the aggregate not less than $250,000, the equivalent thereof in any foreign

> currency, or services or tangible or intangible property, or both, of equivalent value, including a transaction otherwise covered by s. 671.105(1), may, to the extent permitted under the United States Constitution, agree that the law of this state will govern such contract, agreement, or undertaking, the effect thereof and their rights and duties thereunder, in whole or in part, whether or not such contract, agreement, or undertaking bears any relation to this state.

Fla. Stat. § 685.101(1).

Under these provisions, for a contract to serve as the basis for personal jurisdiction, it must: (1) "include a choice of law provision designating Florida law as the governing law"; (2) "include a provision whereby the non-resident agrees to submit to the jurisdiction of the courts of Florida"; (3) "involve consideration of not less than $250,000"; (4) "not violate the United States Constitution"; and (5) "either bear a substantial or reasonable relation to Florida or have at least one of the parties be a resident of Florida or incorporated under its laws." *Hamilton v. Hamilton*, 142 So. 3d 969, 971-72 (Fla. Dist. Ct. App. 2014). "The contracting parties' intent to benefit the third party must be *specific* and must be *clearly expressed* in the contract in order to endow the third party beneficiary with a legally enforceable right." *Bochese v. Town of Ponce Inlet*, 405 F.3d 964, 982 (11th Cir. 2005) (emphasis in original). "Where the contract is designed solely for the benefit of the formal parties thereto, a third person cannot maintain an action thereon, even though such third person might derive some incidental or consequential benefit from its enforcement." *Blu-J, Inc. v. Kemper C.P.A. Grp.*, 916 F.2d 637, 640 (11th Cir. 1990) (citing *State of Fla. for Use & Benefit of Westinghouse Elec. Supply Co. v. Wesley Const. Co*., 316 F. Supp. 490, 495 (S.D. Fla. 1970), *aff'd sub nom*. *State of Fla., for Use & Benefit of Westinghouse Elec. Supply Co.*, 453 F.2d 1366 (5th Cir. 1972).

Adrenaline argues that Plaintiffs have not met the statutory requirements of Section 685.101 sufficient to satisfy Florida's long-arm statute, *see* Fla. Stat. § 48.193(1)(a)(9), because Plaintiffs are not signatories to the Agreement and may not "obtain specific personal jurisdiction

over ADRENALINE since this statute only applies to 'parties to any contract'" [ECF No. 61, pp. 8-13]. *See* Fla. Stat. § 685.101. Plaintiffs do not dispute that the Agreement contained only two signatories—Royal Caribbean and Adrenaline—but argue that those parties "expressly set forth in their contract that their contract is for the benefit of RCCL's passengers, as they have expressly provided, among other things, that a purpose of the agreement was for ADRENALINE TOURS to provide Shore Excursions" [ECF No. 68, p. 8].

The Court agrees with Adrenaline. The language of the Agreement between Royal Caribbean and Adrenaline does not confer third-party beneficiary status on passengers. In fact, the clear language of the Agreement states the opposite: "Other than as expressly set forth herein, this Agreement shall not be deemed to provide third parties with any remedy, claim, right or action or other right" [ECF No. 61-1, p. 9]. Moreover, in an attachment to the Motion to Dismiss, Paul Torres, Adrenaline's General Manager, submitted a Declaration that states: "At the time that it entered into the Tour Operator Agreement with Royal Caribbean Cruises, Ltd., Adrenaline did not intend for Plaintiffs, Karen Snyder and Todd Snyder, to be primary and direct beneficiaries of the Tour Operator Agreement," affirming further that Adrenaline "has never entered into any contracts with Royal Caribbean Cruises, Ltd. (including the Tour Operator Agreement) with the intent to primarily or directly benefit third parties" [ECF No. 61-1, p. 5 ¶¶ 35-36]. At most, Plaintiffs point to the requirement in the Agreement that Adrenaline maintain insurance [ECF No. 61- 1, p. 6] as "existing for the benefit of RCCL's passengers," and the requirement that Adrenaline "provide the tours to Passengers in a manner that meets the highest standards in the industry" [ECF No. 61-1, p. 9] as a stand-alone cause to enforce a third-party beneficiary claim [ECF No. 68, p. 8]. But these general duties and obligations do not support a plausible inference that the Agreement was intended to primarily benefit Royal Caribbean's passengers; rather, they demonstrate Adrenaline's

intent to abide by adequate business standards in its relationship with Royal Caribbean. "Indeed, allegations that a contract requires excursion operators to maintain insurance and exercise reasonable care, 'fail to satisfy the pleading requirements because they do not clearly and specifically express a [d]efendant['s] intent to primarily and directly benefit a [p]laintiff[ ].'" *Sanlu Zhang v. Royal Caribbean Cruises, Ltd*., No. 19-20773-CIV, 2019 WL 8895223, at *7 (S.D. Fla. Nov. 15, 2019) (quoting *Finkelstein v. Carnival Corp*., No. 1:14-CV-24005-UU, 2015 WL 12765434, at *4 (S.D. Fla. Jan. 20, 2015).

Because Royal Caribbean and Adrenaline expressly disclaimed third-party beneficiaries in the Agreement, Plaintiffs as non-parties to the contract cannot establish personal jurisdiction based on the Agreement itself. Fla. Stat. § 685.101; *see also Wolf v. Celebrity Cruises, Inc*., 683 F. App'x 786, 798 (11th Cir. 2017) ("Mr. Wolf's claim for breach of contract based on a third-party beneficiary theory fails because the language of the Agreement expressly belies any intent to benefit a third party."); *Carmouche v. Carnival Corp*., 36 F. Supp. 3d 1335, 1341 (S.D. Fla. 2014) ("Plaintiff is not a party to the shore excursion contract, and, therefore, may not be able to enforce the conferral of jurisdiction clause."), *aff'd sub nom*. *Carmouche*, 789 F.3d 1201.

2. The Agreement's Conferral-of-Jurisdiction Clause

Additionally, the Court rejects Plaintiff's reliance on the "conferral-of-jurisdiction" clause contained in the Agreement as a basis to establish personal jurisdiction [ECF No. 68, pp. 9-16]. The Agreement provides, in pertinent part:

> Operator hereby irrevocably consents to the exclusive jurisdiction of any State or Federal court located in Miami/Dade County in the State of Florida in the event any action is brought by either Party pursuant to this Agreement. Operator hereby waives any venue or other objection that it may have to any such action or proceeding being brought in any State or Federal court located in Miami/Dade County.

[ECF No. 61-1, p. 7].

Plaintiffs argue that Adrenaline has consented to personal jurisdiction in Florida by executing the Agreement with Royal Caribbean [ECF No. 68, pp. 9-16]. This argument fails. The consent-to-jurisdiction section expressly limits it to "any action" brought by "either Party pursuant to the Agreement," not for third-party claims [ECF No. 61-1, p. 7]. Plaintiffs are neither parties to, nor third-party beneficiaries of, the Agreement, and thus cannot avail themselves of the Agreement's consent-to-jurisdiction provision. *See Serra-Cruz v. Carnival Corp.*, 400 F. Supp. 3d 1354, 1363 (S.D. Fla. 2019) ("[T]his Court will not allow Plaintiff to enter through the 'back door' and use the Agreement's consent to jurisdiction clause via a meritless third-party beneficiary claim to find jurisdiction over a foreign defendant in a personal injury case."). Moreover, all of Plaintiffs' claims arise from an incident that occurred during a shore excursion in Curacao—not from the contractual relationship between Royal Caribbean and Adrenaline [ECF No. 51 ¶¶ 35, 43].

3. Fla. Stat. 48.193(1)(a)(4) – Jurisdiction based on insurance agreement

Plaintiffs argue that Adrenaline "subjected itself to the jurisdiction of this Court by contracting to insure RCCL in the Agreement" [ECF No. 68, p. 16]. Florida law provides that a party that contracts "to insure a person, property, or risk located within this state at the time of contracting" submits itself to the jurisdiction of this state. Fla. Stat. § 48.193(1)(a)(4). As stated above, Plaintiffs' claims do not arise from a breach of the Agreement or any other contract; rather, Plaintiffs' claims arise from an injury that allegedly occurred when they were on an offshore excursion in Curacao [ECF No. 51 ¶ 42]. Accordingly, there is no basis upon which this Court is inclined to find that Adrenaline is subject to specific jurisdiction in Florida under Fla. Stat. § 48.193(1)(a)(4).

B. The Court does not have general jurisdiction over Adrenaline Tours.

Alternatively, Plaintiffs maintain that Adrenaline is "subject to personal jurisdiction under Fla. Stat. 48.193(2) and Fed. Rule 4(k)(2)" because they engaged in "substantial and not isolated activity within this state" [ECF No. 68, p. 17]. Section 48.193(2) of Florida's long-arm statute provides a basis for general jurisdiction, stating as follows: "A defendant who is engaged in substantial and not isolated activity within this state, whether such activity is wholly interstate, intrastate, or otherwise, is subject to the jurisdiction of the courts of this state, whether or not the claim arises from that activity." Fla. Stat. § 48.193(2). To determine whether general jurisdiction exists, the Court "need only determine whether the district court's exercise of jurisdiction over [Adrenaline] would exceed constitutional bounds." *Fraser v. Smith*, 594 F.3d 842, 846 (11th Cir. 2010). "A court may assert general jurisdiction over foreign (sister-state or foreign-country) corporations to hear any and all claims against them when their affiliations with the State are so 'continuous and systematic' as to render them essentially at home in the forum State." *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011) (quoting *Int'l Shoe Co. v. State of Wash., Off. of Unemployment Comp. & Placement*, 326 U.S. 310 (1945).

Here, the TAC is devoid of facts alleging that Adrenaline engages in substantial business activity in Florida. Plaintiffs assert that Royal Caribbean "maintained an active role in advertising the subject excursions in this market through RCCL's website and app, located in Florida" [ECF No. 68, p. 18]. This allegation is insufficient to exercise general jurisdiction. In *Fraser*, the Eleventh Circuit held that Florida courts could not exercise general personal jurisdiction over a commercial tour operator organized under the laws of the Turks and Caicos Islands even though the operator maintained a website accessible from Florida. 594 F.3d at 874. As the Eleventh Circuit explained, "'the mere existence of a website that is visible in a forum and that gives

information about a company and its products is not enough, by itself, to subject a defendant to personal jurisdiction in that forum.'" 594 F.3d at 847 (quoting *McBee v. Delica Co.*, 417 F.3d 107, 124 (1st Cir. 2005)).

Additionally, the Court has considered the Declaration of Paul Torres, Adrenaline's General Manager, which states that, Adrenaline never has been incorporated in Florida; has always maintained its principal place of business in Curacao; has never maintained an office in the United States or Florida; has never owned property in Florida; has never maintained a registered agent in Florida; has never maintained a P.O. Box in Florida or the United States; has never maintained a bank account in Florida; and has never directly advertised in any newspaper within Florida [ECF No. 61-1 ¶¶ 5, 6, 8, 13, 15, 17, 21, 22]. Plaintiffs have not rebutted these jurisdictional allegations. "When a plaintiff proffers no competent evidence to establish jurisdiction in opposition to the denials of the jurisdictional allegations contained in the defendant's affidavit, a district court may find that the defendant's unrebutted denials sufficient to negate the plaintiff's jurisdictional allegations." *Zapata v. Royal Caribbean Cruises, Ltd.*, No. 12-21897-CIV, 2013 WL 1100028, at *2 (S.D. Fla. Mar. 15, 2013) (citing *United Techs. Corp. v. Mazer*, 556 F.3d 1260, 1280 (11th Cir. 2009)).

Plaintiffs' argument that Federal Rule of Civil Procedure 4(k)(2) provides jurisdiction of Adrenaline is equally lacking. Rule 4(k)(2) permits a federal court to aggregate a foreign defendant's nationwide contacts to allow for personal jurisdiction provided that: "(1) plaintiff's claims must arise under federal law; and (2) the exercise of jurisdiction must be consistent with the Constitution and laws of the United States." *Fraser*, 594 F.3d at 848–49. Plaintiffs merely assert that "even if ADRENALINE TOURS' contacts with the state of Florida are not substantial enough, they at least satisfy Rule 4(k)(2)," but they simply cite cases for the general proposition

that a court may aggregate a foreign defendant's nationwide contacts to allow for service of process [ECF No. 68, p. 18].

As discussed above, Adrenaline's connections to Florida are not so "continuous and systematic" to render it at home in this state, and Adrenaline's unrebutted Declaration demonstrates that it does not conduct business in Florida or anywhere else in the United States [ECF No. 61-1]. Plaintiffs rely on the same allegations that Royal Caribbean "maintained an active role in advertising the subject excursions in this market through RCCL's website and app, located in Florida" [ECF No. 68, p. 18], but this is inadequate to find that Adrenaline's contacts within the United States were more continuous and systematic than its activities in Florida. S*ee Thompson v. Carnival Corp*., 174 F. Supp. 3d 1327, 1338 (S.D. Fla. 2016) (quoting *Schulman v. Inst. for Shipboard Educ*., 624 F. App'x 1002, 1006 (11th Cir. 2015) ("Selling excursion tickets in the United States through Carnival's website can be readily identified as an 'ordinary business activit[y]' that the Eleventh Circuit has determined is 'far from atypical for foreign corporations' and insufficient to warrant exercising general jurisdiction under Rule 4(k)(2)."). As such, Plaintiffs have not provided evidence that Adrenaline's activities within Florida or the United states are so "continuous and systematic" to render it "essentially at home" in the forum state. *See Goodyear*, 564 U.S. at 919.[1]

[1] In light of the Court's conclusion that Plaintiffs have not established a basis for specific personal jurisdiction under Fla. Stat. § 48.193(1)(a)(1), there is no need to address the second question whether such an exercise of personal jurisdiction would be constitutional. *See Melgarejo v. Pycsa Panama, S.A.*, 537 F. App'x 852, 862 (11th Cir. 2013) ("Because the district court properly concluded there is no basis for specific personal jurisdiction under Fla. Stat. § 48.193(1)(a)(1), we do not reach the second question of the personal jurisdiction analysis—whether such an exercise of personal jurisdiction would be constitutional.") (citing *Madara v. Hall*, 916 F.2d 1510, 1514 (11th Cir. 1990) ("Only if both prongs of the analysis are satisfied may a federal or state court exercise personal jurisdiction over a nonresident defendant.").

IV. Jurisdictional discovery

In Plaintiff's Opposition to Adrenaline's Motion to Dismiss, Plaintiffs seek leave to conduct jurisdictional discovery to help support their claim that Adrenaline is subject to jurisdiction under Florida's long-arm statute [ECF No. 68 pp. 18–19]. Plaintiffs argue that such discovery is necessary because Adrenaline "advertises, market[s], and/or sell[s] the subject excursion tickets through RCCL's website and app, which are administered in Florida," and Plaintiffs purchased the tickets from Royal Caribbean [ECF No. 68, p. 19].

Plaintiffs' request for jurisdictional discovery is unwarranted because there is "no genuine dispute on a material jurisdictional fact to warrant jurisdictional discovery." *Peruyero v. Airbus S.A.S.*, 83 F. Supp. 3d 1283, 1290 (S.D. Fla. 2014); *see also Yepez v. Regent Seven Seas Cruises*, No. 10-23920-CIV, 2011 WL 3439943, at *1 (S.D. Fla. Aug. 5, 2011) ("[T]he failure of a plaintiff to investigate jurisdictional issues prior to filing suit does not give rise to a genuine jurisdictional dispute."). Even if true, Plaintiffs' allegations about Adrenaline's marketing activities do not change the underlying conclusion that, based on these facts, personal jurisdiction cannot be established over Adrenaline. Merely advertising in the forum state without any other contact is insufficient to exercise personal jurisdiction.

V. Conclusion

For the foregoing reasons, it is **ORDERED AND ADJUDGED** as follow:

1. Adrenaline Tours' Motion to Dismiss for Lack of Personal Jurisdiction **[ECF No. 51]** is **GRANTED**.
2. Plaintiffs' claims against Adrenaline Tours are **DISMISSED WITHOUT PREJUDICE** for lack of jurisdiction.
3. The Clerk is directed to **TERMINATE** Defendant, Adrenaline Tours from this case.

DONE AND ORDERED in Chambers at Fort Pierce, Florida this 12th day of May 2021.

AILEEN M. CANNON
UNITED STATES DISTRICT JUDGE

cc: counsel of record