UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 20-CV-24364-ROSENBERG

LATOYA LEWIS,

Plaintiff,

v.

CARNIVAL CORPORATION,

Defendant.
_____/

ORDER DENYING IN PART AND GRANTING IN PART
DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

This matter is before the Court on Defendant's Motion for Summary Judgment [DE 29]. For its review, the Court has considered Defendant's Motion for Summary Judgment, Plaintiff's Response in Opposition [DE 43], and Defendant's Reply [DE 54]. For the reasons set forth below, Defendant's Motion is **DENIED IN PART** and **GRANTED IN PART**.

I. BACKGROUND

On February 24, 2020, while Plaintiff was a passenger on the cruise ship Carnival *Sensation*, owned and operated by Defendant, Carnival Corporation, Plaintiff and her family traversed the corridor on Deck 9. *Id.* ¶¶ 1-2. They encountered crew members mopping the main marble walkway. *Id.* ¶ 3 Other crew members redirected Plaintiff and her family to walk around the crew members who were mopping, to the end of the tables in the corridor. *Id.* ¶ 5; DE 42 ¶ 5. When the group reached the end of the tables, Plaintiff stepped back onto the marble floor, and was caused to slip and fall by wet conditions. DE 30 ¶ 2.

Subsequently, Plaintiff filed a one-count Complaint against Defendant. DE 1. Count 1 asserts one claim of negligence, and alleges that Defendant, through its vessel, crew, agents,

employees, staff, and/or representatives, breached the duty of reasonable care owed to Plaintiff. *Id.* ¶ 32. Plaintiff alleges that Defendant breached its duty in the following ways:

a. Failing to have adequate policies and procedures in place for inspection, and maintenance of the walkways inside the Carnival *Sensation*;
b. Failing to maintain the corridor floor in a reasonably safe condition;
c. Failing to give proper instructions to the Plaintiff and her family as to how far down the floor had already been mopped and was therefore wet;
d. Failing to have proper and sufficient signage as to the wet and slippery marble floor;
e. Failing to adequately dry the wet and slippery marble floor;
f. Failing to correct the hazardous, dangerous, or risk creating condition prior to Plaintiff's slip and fall;
g. Failing to adequately warn that the marble floor where the Plaintiff slipped and fell was dangerous;
h. Failing to have adequate nonslip flooring or less slippery flooring on a ship where it is common for liquids to be on the floor;
i. Failing to properly train and supervise its crew;
j. Failing to have proper lighting so that hazards may be adequately noticed;
k. Failing to comply with applicable standards, statutes, or regulations the violation of which is negligence per se and/or evidence of negligence;
l. Failing to respond adequately to prior similar incidents and take corrective measures; and
m. Through other acts and omissions constituting a breach of the duty to use reasonable care which will be revealed through discovery.

Id. ¶ 32 (a)-(m). Defendant now moves for summary judgment on Count 1.

II. DISPUTED AND UNDISPUTED MATERIAL FACTS

The parties agree that Plaintiff slipped and fell on a wet floor while walking through a corridor on Deck 9 ("the subject area"), and that when approaching the subject area, Plaintiff observed crew members cleaning and mopping the floor. DE 30 ¶¶ 1-33; DE 42 ¶¶ 1-3. It is also undisputed that Plaintiff saw two wet floor signs in the corridor prior to her fall. DE 30 ¶ 4; DE 42 ¶ 4. All other facts are in partial or full dispute. Plaintiff attests that, as she approached the "wet floor" signs, the crew members did not give her a chance to get close to the signs before they said to her "can you walk around." DE 30 ¶ 5. An assistant housekeeping manager, Morada Malit

("Malit"), attests to telling Plaintiff specifically, "[p]lease take this way and be careful, the floor is wet." *Id.* Plaintiff disputes that she was given this warning. DE 42 ¶ 5. Defendant emphasizes the fact that Plaintiff admitted to not needing any additional warning to tell her that the area where the crew members were working was wet. DE 30 ¶ 6. Plaintiff does not dispute this fact, but disputes Defendant's insinuation that because she knew the area where the crew members was mopping was wet, she knew the subject area—ten to twelve feet away from the crew and signs—was wet. DE 42 ¶ 6. Defendant contends that crew members used furniture to cordon off the subject area [DE 30 ¶ 7], while Plaintiff asserts that furniture was not used to cordon off the area, rather, the furniture was in its usual location on the deck [DE 42 ¶ 7]. And finally, Defendant contends that there was a yellow bucked in the area where Plaintiff fell. DE 30 ¶ 8. Plaintiff does not dispute that the bucket was present on the general area, but not in the area where Plaintiff fell. DE 42 ¶ 8.

III. SUMMARY JUDGEMENT STANDARD

Summary judgment is appropriate if the movant shows that "there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." *Grayson v. Warden, Comm'r, Ala. Dep't of Corr.,* 869 F.3d 1204, 1220 (11th Cir. 2017) (quoting *Celotex Corp. v. Catrett,* 477 U.S. 317, 322 (1986)). The parties may support their positions by citations to materials in the record, including, among other things, depositions, documents, affidavits, or declarations. *See* Fed. R. Civ. P. 56(c). An issue is genuine if "a reasonable trier of fact could return judgment for the non-moving party." *Miccosukee Tribe of Indians of Fla. v. United States*, 516 F.3d 1235, 1243 (11th Cir. 2008) (quoting *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 247-48, (1986)). A fact is material if it "might affect the outcome of the suit under the governing law." *Id.*

In reviewing a motion for summary judgment, courts must "view all of the evidence in the light most favorable to the nonmoving party and draw all reasonable inferences in that party's favor." *Furcon v. Mail Centers Plus, LLC,* 843 F.3d 1295, 1304 (11th Cir. 2016) (quoting *FindWhat Investor Grp. v. FindWhat.com,* 658 F.3d 1282, 1307 (11th Cir. 2011)). Thus, a district court "may not weigh conflicting evidence or make credibility determinations" when reviewing a motion for summary judgment. *Jones v. UPS Ground Freight,* 683 F.3d 1283, 1292 (11th Cir. 2012) (citing *FindWhat Investor Grp.,* 658 F.3d at 1307). As such, where the facts specifically averred by the non-moving party contradict facts specifically averred by the movant, the motion must be denied, assuming those facts involve a genuine issue of material fact. *Lujan v. Nat'l Wildlife Fed'n,* 497 U.S. 871, 888 (1990). However, "[w]hen opposing parties tell two different stories, one of which is blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment." *Scott v. Harris*, 550 U.S. 372, 380 (2007).

IV. ANALYSIS

Defendant argues that summary judgment is warranted as to all of Plaintiff's negligence claims because the subject area was an open and obvious dangerous condition. Alternatively, Defendant argues that the same relief should be granted even if the danger of the subject area was not open and obvious because Defendant satisfied its duty to Plaintiff by providing adequate warning. This request for relief is discussed in Section B. Defendant further argues that summary judgment is independently warranted on Plaintiff's negligent design and negligent training and supervision claims because (1) there is no record evidence supporting the claims and (2) Plaintiff

abandoned the claims by failing to address the absence of record evidence in her Response. The Court will address this claim for relief in Sections B and C.[1]

A. Applicable Law

"Maritime law governs actions arising from alleged torts committed aboard a ship sailing in navigable waters." *Guevara v. NCL (Bahamas) Ltd*., 920 F.3d 710, 720 (11th Cir. 2019). "In analyzing a maritime tort case, [courts] rely on general principles of negligence law." *Chaparro v. Carnival Corp*., 693 F.3d 1333, 1336 (11th Cir. 2012) (quoting *Daigle v. Point Landing, Inc.*, 616 F.2d 825, 827 (5th Cir. 1980)). "To prevail on a negligence claim, a plaintiff must show 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.'" *Id.* (quoting *Chaparro*, 693 F.3d at 1336).

It is well-settled that "[a] carrier by sea is not liable to passengers as an insurer, but only for its negligence." *Kornberg v. Carnival Cruise Lines, Inc*., 741 F.2d 1332, 1334 (11th Cir. 1984). Under maritime law, shipowners owe passengers a duty of reasonable care. *Guevara*, 920 F.3d at 720. The duty of reasonable care requires, "as a prerequisite to imposing liability, that the carrier have had actual or constructive notice of the risk-creating condition." *Keefe v. Bah. Cruise Line, Inc.*, 867 F.2d 1318, 1322 (11th Cir. 1989). "In other words, a cruise ship operator's duty is to shield passengers from known dangers (and from dangers that should be known), whether by eliminating the risk or warning of it." *Tesoriero v. Carnival Corp*., 965 F.3d 1170, 1178 (11th Cir.

[1] In its Reply, Defendant argues that because Plaintiff's argument regarding the "extent of slipperiness" and her reliance on the opinions of Andres Correa, a professional engineer and building inspector, fail to create a genuine issue of material fact as they should be excluded. Defendant has separately moved to strike/exclude testimony from Andres Correa [DE 31]. As the Court's ruling does not depend on Plaintiff's "extent of slipperiness" argument or Andres Correa's opinions, the Court expresses no opinion as to Defendant's argument at this time.

2020). "Reasonableness of care, in turn, is measured by the extent to which the circumstances surrounding maritime travel are different from those encountered in daily life and pose greater danger to the passenger." *Miller v. NCL (Bah.) Ltd*., No. 15-cv-22254, 2016 WL 4809347, at *4 (S.D. Fla. Apr. 6, 2016) (citing *Reinhardt v. Royal Caribbean Cruises*, No. 1:12-cv-22105, 2013 WL 11261341, at *4 (S.D. Fla. Apr. 2, 2013)).

However, under federal maritime law, "a cruise ship has no duty to warn of known dangers that are open and obvious." *Krug v. Celebrity Cruises, Inc*., 745 F. App'x 863, 866 (11th Cir. 2018) (citing *Keefe*, 867 F.2d at 1322). In determining whether a risk is open and obvious, courts focus on "what an objectively reasonable person would observe and do not take into account the plaintiff's subjective perceptions." *Horne v. Carnival Corp*., 741 F. App'x 607, 609 (11th Cir. 2018). "The mere fact that an accident occurs does not give rise to a presumption that the setting of the accident constituted a dangerous condition." *Miller*, 2016 WL 4809347, at *4.

B. The Condition and the Warning

Defendant argues that summary judgment should be granted in its favor on all of Plaintiff's theories of negligence because it was "open and obvious that Plaintiff should not have been walking in the area of the alleged incident." DE 29 at 6. This is so because "Carnival had in place policies and procedures designed to notify passengers and eliminate potentially dangerous conditions," including "the use of clean-up crews, the closing of fire screen doors, the use of furniture to cordon off the area, the use of warning signs indicating a wet floor, the use of a yellow mop bucket, and the use of verbal warnings and instructions." *Id.*; *see also* DE 30 at ¶¶ 4, 5, 7, 8. Based on the actions of Defendant's crew members, it was observable to all passengers, including Plaintiff, that "the subject area was being cleaned and mopped, the floor was wet, and that Plaintiff

should not have walked through the subject area." DE 29 at 6-7. For the same reasons, Defendant argues in the alternative that even if the condition was not open and obvious, Defendant provided adequate warning. *Id.* at 8. Defendant notes that "even Plaintiff herself testified that she did not require any additional warning to know the area where the crew members were working was wet." *Id.*; *see also* DE 30 ¶ 6.

In response, Plaintiff argues that there are genuine issues of material fact as to whether the wet floor was open and obvious because (1) the area where Plaintiff fell was ten to twelve feet away from where the crew members were mopping and where the wet floor signs were located [DE 43 at 3]; (2) the area where Plaintiff fell was not cordoned off [*Id.* at 6]; and (3) the crew did not give Plaintiff sufficient warnings [*Id.* at 7].

Upon review of the record evidence, and drawing all reasonable inferences in Plaintiff's favor, the Court cannot conclude that the wet floor that Plaintiff slipped on was an open and obvious condition. There remains a clear dispute between the parties as to whether the "wet floor" signs were placed in the area of Plaintiff's fall, thus serving as a sufficient warning. There also remains a clear dispute between the parties as to whether the area of Plaintiff's fall was cordoned off by furniture. Moreover, there is a dispute regarding the sufficiency of the warning given to Plaintiff regarding the hazard. For all of these same reasons, the Court cannot establish whether Defendant provided sufficient warning to Plaintiff, thus satisfying its duty to warn. Moreover, it is the factfinder's role rather than the Court's role to "determine whether such warnings are sufficient under the circumstances." *Frasca v. NCL (Bahamas), Ltd.*, 654 F. App'x 949, 954 n.5 (11th Cir. 2016); *see also Radke v. NCL (Bahamas) Ltd.*, No. 19-CV-23915, 2021 WL 1738929, at *7 (S.D. Fla. May 3, 2021) (holding that whether the wet floor signs were close enough to the subject area

of Plaintiff's fall was a question for the jury and denying summary judgment on Plaintiff's failure to warn claims); *Nathans v. Carnival Corp*., No. 17-23686-CIV, 2018 WL 6308694, at *5 (S.D. Fla. Aug. 31, 2018) ("[T]he question of whether the warning cones were sufficiently close to the area where Plaintiff fell to reasonably warn of the danger of the slippery deck is a factual matter for the jury."). Accordingly, Defendant's Motion is denied as to Defendant's request that summary judgment be granted on all of Plaintiff's theories of negligence.

C. Negligent Design Claim

Plaintiff alleges in her Complaint that "[a]t all times relevant, Defendant failed participated [sic] in the design and/or approved the design of the corridor and flooring aboard the **Carnival Sensation**." DE 1 ¶ 25. Under Count I, Plaintiff alleges that Defendant was negligent in "[f]ailing to have adequate nonslip flooring or less slippery flooring on a ship where it is common for liquids to be on the floor" and "failing to have proper lighting so that hazards may be adequately noticed." *Id.* ¶ 32(h), (j). In its Motion, Defendant argues that Plaintiff failed to present record evidence to support a theory of negligent design, and thus, summary judgment must be granted in favor of Carnival. DE 29 at 8-9. In its Reply, Defendant argues that Plaintiff did not address or rebut the argument or legal authority cited in Defendant's Motion as to Plaintiff's claim for negligent design, thus entitling Defendant to summary judgment on the claim for that reason as well. DE 54 at 3.

Liability based on negligent design requires proof that the ship-owner or operator "actually created, participated in or approved" the alleged improper design. *Groves v. Royal Caribbean Cruises, Ltd*., 463 Fed. App'x. 837, 837 (11th Cir. 2012) (affirming summary judgment where plaintiff presented no evidence of the cruise line's actual involvement in the design of the area of injury); *see also Whelan v. Royal Caribbean Cruises, Ltd*., 2013 WL 5583970, at *4 (S.D. Fla.

Aug. 14, 2013) (denying summary judgment based on issues of material fact as to defendant's participation in the design of a ship's nightclub). Plaintiff proffers no evidence tending to show that Defendant "actually created, participated in or approved" the alleged improper design of its flooring and lighting. In addition, besides noting that "there is record evidence to support Ms. Lewis's claim[] for negligent design," [DE 43 at 9] Plaintiff failed to respond to Defendant's arguments and legal authority regarding this theory. The Court therefore considers Plaintiff's negligent design claim as abandoned. *See GolTV, Inc. v. Fox Sports Latin Am. Ltd.*, 277 F. Supp. 3d 1301, 1311 (S.D. Fla. 2017) ("When a party fails to respond to an argument or address a claim in a responsive brief, such argument or claim can be deemed abandoned."). For these reasons, Defendant's Motion is granted as to Plaintiff's negligent design theory.

D. Negligent Supervision and Training

Plaintiff alleges in her Complaint that Defendant failed "to properly train and supervise its crew." DE 1 ¶ 32(i). In its Motion, Defendant argues that Plaintiff failed to present record evidence to support a theory of negligent training and supervision, and thus, summary judgment must be granted in favor of Carnival. DE 29 at 11. In its Reply, Defendant argues that Plaintiff did not address or rebut the argument or legal authority cited in Defendant's Motion as to Plaintiff's claim for negligent training and supervision, thus entitling Defendant to summary judgment on the claim for that reason as well. DE 54 at 3-4.

Negligent supervision and negligent training are distinct legal theories. "Negligent supervision 'occurs when, during the course of employment, the employer becomes aware or should have become aware of problems with an employee that indicated his unfitness, and the employer fails to take further actions such as investigating, discharge, or reassignment.'" *Doe v.*

NCL (Bahamas) Ltd., No. 1:16-cv-23733-UU, 2016 WL 6330587, at *4 (S.D. Fla. Oct. 27, 2016) (quoting *Cruz v. Advance Stores Co.*, 842 F. Supp. 2d 1356, 1359 (S.D. Fla. 2012)). Accordingly, a plaintiff must allege that: "(1) the employer received actual or constructive notice of an employee's unfitness, and (2) the employer did not investigate or take corrective action such as discharge or reassignment." *Id.* (quoting *Cruz*, 842 F. Supp. 2d at 1359). "Negligent training occurs when an employer 'was negligent in the implementation or operation of the training program' and this negligence caused a plaintiff's injury." *Id.* (quoting *Cruz*, 842 F. Supp. 2d at 1359).

Plaintiff proffers no evidence tending to show that Defendant negligently supervised or trained its employees. Further, Plaintiff failed to respond to Defendant's arguments and legal authority regarding these theories. The Court therefore considers Plaintiff's negligent training and supervision claim as abandoned. *See GolTV, Inc.*, 277 F. Supp. 3d at 1311. For these reasons, Defendant's Motion is granted as to Plaintiff's negligent supervision and training claims.

V. CONCLUSION

For the foregoing reasons, the Defendant Motion for Summary Judgment [DE 29] is **DENIED IN PART** and **GRANTED IN PART**. It is **ORDERED AND ADJUDGED** that Defendant's Motion is **DENIED** insofar as issues of material fact preclude any summary judgment determination on whether the subject area was an open and obvious dangerous condition and whether Defendant provided adequate warning to Plaintiff as to the subject area. Defendant's Motion is **GRANTED** insofar as Plaintiff is precluded from pursuing claims based on theories of negligent design, negligent supervision, and negligent training. Plaintiff's Count 1 survives summary judgment.

DONE AND ORDERED in Chambers, West Palm Beach, Florida, this 4th day of August, 2021.

Robin L. Rosenberg

UNITED STATES DISTRICT JUDGE
ROBIN L. ROSENBERG