UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 20-CV-62183-WPD

JOLANTA SARIS-SZYFTER,

Plaintiff,

v.

MSC CRUISES S.A.,

Defendant.
_______________________________________/

ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

THIS CAUSE is before the Court upon Defendant MSC Cruises S.A. ("Defendant" or "MSC")'s Motion for Summary Judgment or Alternatively Summary Adjudication [DE 21], filed on October 1, 2021. The Court has carefully considered the Motion, Plaintiff Jolanta Saris-Szyfter ("Plaintiff" or "Saris-Szyfter")'s Response in Opposition [DE 26], Defendant's Reply [DE 27], the statements of material facts [DEs 22, 31], the evidence filed in the record, and is otherwise fully advised in the premises.

I. STANDARD OF REVIEW

Under Rule 56(a), "[t]he court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). The movant bears "the stringent burden of establishing the absence of a genuine issue of material fact." *Suave v. Lamberti*, 597 F. Supp. 2d 1312, 1315 (S.D. Fla. 2008) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986)).

"A fact is material for the purposes of summary judgment only if it might affect the outcome of the suit under the governing law." *Kerr v. McDonald's Corp.*, 427 F.3d 947, 951

(11th Cir. 2005) (internal quotations omitted). Furthermore, "[a]n issue [of material fact] is not 'genuine' if it is unsupported by the evidence or is created by evidence that is 'merely colorable' or 'not significantly probative.'" *Flamingo S. Beach I Condo. Ass'n, Inc. v. Selective Ins. Co. of Southeast*, 492 F. App'x 16, 26 (11th Cir. 2013) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249–50 (1986)). "A mere scintilla of evidence in support of the nonmoving party's position is insufficient to defeat a motion for summary judgment; there must be evidence from which a jury could reasonably find for the non-moving party." *Id.* at 26-27 (citing *Anderson*, 477 U.S. at 252). Accordingly, if the moving party shows "that, on all the essential elements of its case on which it bears the burden of proof at trial, no reasonable jury could find for the nonmoving party" then "it is entitled to summary judgment unless the nonmoving party, in response, comes forward with significant, probative evidence demonstrating the existence of a triable issue of fact." *Rich v. Sec'y, Fla. Dept. of Corr.*, 716 F.3d 525, 530 (11th Cir. 2013) (citation omitted).

II. DISCUSSION[1]

In this action, Plaintiff sues Defendant for negligence under maritime law, arising from an accident that occurred on November 29, 2019 while Plaintiff was a passenger aboard Defendant's cruise ship, the *MSC Meraviglia*. Plaintiff suffered injury when a small piece of metal protruding from the bottom right outside corner of her cabin cut her right foot. DSMF ¶ 1; PSMF ¶ 1.

[1] Defendant's statement of material facts and Plaintiff's response thereto include various citations to specific portions of the record. Defendant's statement of facts [DE 22] is cited as ("DSMF") and Plaintiff's response [DE 31] is cited as ("PSMF"). Any citations herein to the statement of facts and responses should be construed as incorporating those citations to the record.

"Under maritime law, the owner of a ship in navigable waters owes passengers a 'duty of reasonable care' under the circumstances." *Sorrels v. NCL (Bahamas) Ltd.*, 796 F.3d 1275, 1279 (11th Cir. 2015) (citation omitted). To prevail on her negligence claim against Defendant under maritime law, Plaintiff must establish the following: "(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." *Franza v. Royal Caribbean Cruises, Ltd.*, 772 F.3d 1225, 1253 (11th Cir. 2014). Further, in the Eleventh Circuit, "the maritime standard of reasonable care usually requires that the cruise ship operator have actual or constructive knowledge of the risk-creating condition." *Sorrels*, 796 F.3d at 1286.

Defendant argues that Plaintiff has failed to present any evidence indicating that Defendant had actual or constructive notice of the allegedly dangerous condition protruding from Plaintiff's cabin door. In response, Plaintiff points out that Defendant admits that housekeeping crewmembers visited Plaintiff's room at least three times, which is sufficient to prove constructive notice because an employee of Defendant was in the vicinity of the dangerous condition. Plaintiff further argues that it should be left to a jury to decide at what point the metal protrusion on the bottom of the door became present.

Upon careful review, the Court finds that Plaintiff has failed to adduce evidence proving that Defendant had actual or constructive notice of the protruding piece of metal at the bottom of Plaintiff's cabin door. Courts in this district have routinely granted summary judgment in a defendant's favor when a plaintiff fails to put forward evidence on the issue of notice. *See Lipkin v. Norwegian Cruise Line Ltd.*, 93 F. Supp. 3d 1311, 1324 (S.D. Fla. 2015) (granting summary judgment "[b]ecause Plaintiff has failed to cite any evidence in the record showing that [Defendant] had actual or constructive notice of the risk-creating condition alleged in the

complaint"); *Thomas v. NCL (Bahamas) Ltd.,* No. 13-24682-CIV, 2014 WL 3919914, at *4 (S.D. Fla. Aug. 11, 2014) (granting summary judgment where "[t]he unrefuted evidence in the record instead indicates a lack of actual or constructive notice").

Plaintiff does not contend that Defendant had actual notice of the dangerous condition. In fact, Plaintiff admits that there is no record evidence showing that prior similar incidents regarding this cabin door (or any other door) were reported to Defendant, or how the metal piece came to protrude from the bottom of the door. DSMF ¶¶ 3-4; PSMF ¶¶ 3-4. Therefore, summary judgment turns on whether Defendant had constructive notice of the subject hazard.

"A maritime plaintiff can establish constructive notice with evidence that the 'defective condition exist[ed] for a sufficient period of time to invite corrective measures.'" *Guevara v. NCL (Bahamas) Ltd.*, 920 F.3d 710, 720 (11th Cir. 2019) (quoting *Monteleone v. Bahama Cruise Line, Inc.*, 838 F.2d 63, 65 (2d Cir. 1998)). A plaintiff can also show constructive notice through "evidence of substantially similar incidents in which 'conditions substantially similar to the occurrence in question must have caused the prior accident.'" *Id.* (quoting *Jones v. Otis Elevator Co.*, 861 F.2d 655, 661-62 (11th Cir. 1988)).

Plaintiff's sole argument for Defendant's constructive notice is that housekeeping crewmembers visited Plaintiff's room daily for at least three days, implying that Defendant ought to have seen the subject hazard before the incident. However, it is well-established that the "mere implication of . . . constructive notice is insufficient to survive summary judgment." *See Lipkin*, 93 F. Supp. 3d at 1323 (citation omitted); *see also Thomas*, 2014 WL 3919914, at *4; *Cohen v. Carnival Corp.*, 945 F. Supp. 2d 1351, 1357 (S.D. Fla. 2013) (citing *Adams v. Carnival Corp.*, 2009 WL 4907547, at *5 (S.D. Fla. Sept. 29, 2009) (finding plaintiff needed "specific facts" rather than "mere implication" to demonstrate notice)). Rather, a plaintiff must show "specific

facts demonstrating, at least, that the purported defect was detectable with sufficient time to allow for corrective action." *Cohen v. Carnival Corp.*, 945 F. Supp. 2d 1351, 1357 (S.D. Fla. 2013) (internal citation omitted). Plaintiff presents no record evidence regarding how long the alleged condition existed, how it came to protrude from the bottom of Plaintiff's door, or that any similar condition was reported to Defendant. DSMF ¶¶ 3-4; PSMF ¶¶ 3-4. As Defendant points out, Plaintiff must not merely rely "on some generalized theory of foreseeability that is divorced from the particular events in question." *Weiner v. Carnival Cruise Lines*, No. 11-CV-22516, 2012 WL 5199604, at *4 (S.D. Fla. Oct. 22, 2012).

Moreover, the mere presence of employees in the subject area, without more, does not establish constructive notice. *See Garcia v. Target Corp.*, No. 12-20135-CIV, 2013 WL 12101087, at *3 (S.D. Fla. Feb. 26, 2013); *Hammond-Warner v. United States*, 797 F. Supp. 207, 212 (E.D.N.Y. 1992) ("[T]he mere proximity of employees is insufficient grounds on which to establish constructive notice."). This is particularly true under the facts of this case because of the small and concealed nature of the piece of metal, which was half an inch wide and was only visible when the door was open. *See* [DEs 1, 21-2]. In fact, neither Plaintiff nor her niece Diane Robinson noticed the piece of metal prior to Plaintiff's injury. DSMF ¶ 1; PSMF ¶ 1.

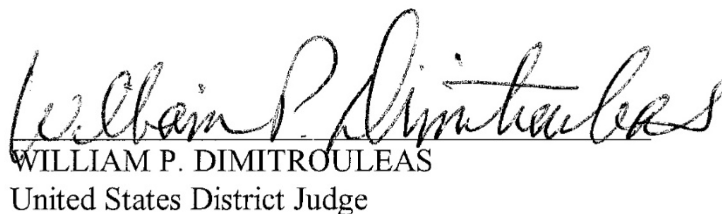
In short, Plaintiff's argument is premised on conjecture and speculation, which is insufficient to create a genuine issue of fact for summary judgment. *Cordoba v. Dillard's, Inc.*, 419 F.3d 1169, 1181 (11th Cir. 2005). Because Plaintiff has failed to adduce evidence proving that Defendant had actual or constructive notice of the subject hazard alleged in the complaint, summary judgment in favor of Defendant is appropriate in this matter.

III. CONCLUSION

Based on the foregoing, it is **ORDERED AND ADJUDGED** as follows:

1. Defendant's Motion for Summary Judgment [DE 21] is **GRANTED** for the reasons stated herein.
2. Pursuant to Fed. R. Civ. P. 58(a), the Court will enter a separate final judgment.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida, this 3rd day of December, 2021.



WILLIAM P. DIMITROULEAS
United States District Judge

Copies furnished:

Counsel of Record