UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 1:21-cv-22630-KMM

ETHELEN WILLIAMS,

Plaintiff,

v.

CARNIVAL CORPORATION,

Defendant.
_____/

ORDER

THIS CAUSE came before the Court upon Defendant Carnival Corporation's ("Defendant") Motion for Judgment on the Pleadings. ("Mot.") (ECF No. 38). Plaintiff Ethelen Williams ("Plaintiff") failed to file a response. Given the issues raised in Defendant's Motion, the Court converted Defendant's Motion for Judgment on the Pleadings to a motion for summary judgment and provided the Parties with ten (10) days to supplement the record consistent with Federal Rule of Civil Procedure 56 and Local Rule 56.1 of the Local Rules of the Southern District of Florida. (ECF No. 43) at 4–5. Defendant filed a Notice of Supplementing the Record in Support of Motion for Summary Judgment, (ECF No. 46), and a Statement of Material Facts (ECF No. 48). Plaintiff filed her Response in Opposition. ("Resp.") (ECF No. 53). Defendant filed a Reply. ("Reply") (ECF No. 54). The Motion is now ripe for review.

I. BACKGROUND[1]

On June 15, 2019, Plaintiff was a passenger aboard the Carnival *Vista*. ("Compl.") (ECF

[1] The undisputed facts are taken from Defendants' Statement of Material Facts in Support of Motion for Summary Judgment ("Def.'s 56.1") (ECF No. 48) and a review of the corresponding record citations and exhibits. In filing her response, Plaintiff failed to file a Statement of Material

No. 1-2) ¶ 5; Def.'s 56.1 ¶ 1. Plaintiff claims that she "suffered a severe injury to her head and back when the closet door of the cabin suddenly and without warning fell on top of her, resulting from the door being loose from its hinges," Compl. ¶ 5, which caused her to "sustain[] severe and permanent injuries to her neck, head, and back." *Id.* ¶ 8.

Plaintiff filed this action on January 19, 2021 in the 10th Judicial District Court, Galveston County, Texas, asserting a claim of negligence. *See generally id.* Plaintiff alleges that Defendant failed to (1) inspect, monitor, or maintain its premises, (2) take reasonable precautions for Plaintiff's safety, (3) provide adequate safety equipment, (4) provide adequate medical attention, and (5) maintain a safe premises. *See id.* ¶ 6.

On February 22, 2021, the case was removed to the United States District Court for the Southern District of Texas. (ECF No. 1). The Southern District of Texas ordered the case transferred to this Court on July 22, 2021, thereby giving effect to a forum selection clause in the ticket contract between Plaintiff and Defendant. *See generally* (ECF No. 18). On August 23, 2021, Defendant filed its Answer and Affirmative Defenses, wherein, as its Second Affirmative Defense, it asserted that Plaintiff's case is time-barred by the limitations period set forth in the ticket contract between Plaintiff and Defendant. (ECF No. 26) at 2–3. Defendant also attached a copy of the ticket contract as Exhibit 1 to its Answer and Affirmative Defenses. ("Tckt. Cont.") (ECF No. 26-1).

Facts to "challenge any purportedly material fact asserted by [Defendants] that [Plaintiff] contends is genuinely in dispute." *See* S.D. Fla. L.R. 56.1(a)(2). To the extent Plaintiff intended to challenge Defendant's Statement of Material Facts within the Response itself, Plaintiff failed to follow the required form as required by the Local Rules of the Southern District of Florida ("Local Rules"). *See id.* r. 56.1(b). The Local Rules provide that "[a]ll material facts in any party's Statement of Material Facts may be deemed admitted unless controverted by the other party's Statement of Material Facts, provided that: (i) the Court finds that the material fact at issue is supported by properly cited record evidence; and (ii) any exception under Fed. R. Civ. P. 56 does not apply." *Id.* r. 56.1(c).

On September 27, 2021, Defendant moved for judgment on the pleadings pursuant to Federal Rule of Civil Procedure 12(c), referencing the ticket contract attached to its Answer and Affirmative Defenses. *See generally* Mot. Plaintiff failed to file a response. The Court ordered that Defendant's Motion for Judgment on the Pleadings be converted to a motion for summary judgment, finding that it could not consider the ticket contract at that point, as the ticket contract was neither referenced in nor central to Plaintiff's Complaint.[2] *See generally* (ECF No. 43). Accordingly, the Court provided the Parties with ten (10) days to supplement the record consistent with Federal Rule of Civil Procedure 56 and Local Rule 56.1 of the Local Rules of the Southern District of Florida. (ECF No. 43) at 4–5.

Now, the Parties have supplemented the record. The undisputed facts are as follows.

On January 16, 2019, Plaintiff booked a cruise on the Carnival *Vista* departing from Galveston, Texas on June 15, 2019. Def.'s 56.1 ¶ 5 (citing Def.'s 56.1 Ex. A. "Vazquez Decl." (ECF No. 46-1) at 2 ¶ 8). When passengers book cruises, Defendant sends them emails that include a link to Defendant's online registration process, where passengers are presented with the terms and conditions of Defendant's ticket contract and an opportunity to review the same. Def.'s 56.1 ¶ 6 (citing Vazquez Decl. at 2 ¶ 9). Defendant sent "Guest Confirmation" emails to the email address associated with Plaintiff's booking on January 16, 2019, March 8, 2019, April 7, 2019, and June 12, 2019. Def.'s 56.1 ¶ 7 (citing Vazquez Decl. at 2 ¶ 9). These emails contained a section labeled "Important Notes", which states:

> Your booking is subject to the terms and conditions set forth in Carnival's Cruise Ticket Contract. You can access the Cruise Ticket Contract through www.carnival.com/bookedguest. It is important for you to read the Cruise Ticket Contract and become acquainted with the specific conditions and limitations of your cruise, including time limitations and the proper venue in which to file suit.

[2] Finding that the ticket contract was not central to Plaintiff's Complaint, the Court declined at the time to determine whether its authenticity was undisputed. (ECF No. 43) at 3.

> You can also view a copy of the Cruise Ticket Contract in Carnival's website (www.carnival.com) under the Customer Service section.

Def.'s 56.1 ¶ 8; Vazquez Decl. at 2 ¶ 10; *id.* at 32.

Passengers on cruises operated by Defendant must acknowledge and accept the terms and conditions of the ticket contract to complete the online registration process. Def.'s 56.1 ¶ 9 (citing Vazquez Decl. at 3 ¶ 11). Passengers are required to scroll to the bottom of the terms and conditions of the ticket contract before accepting its terms. Def.'s 56.1 ¶ 9 (citing Vazquez Decl. at 3 ¶ 11). Plaintiff accepted the terms and conditions of the ticket contract on June 14, 2019. Def.'s 56.1 ¶ 10 (citing Vazquez Decl. at 3 ¶ 12; Pl.'s Opposition to Carnival's Motion to Transfer Venue (ECF No. 14) at 7).

On July 2, 2019, Defendant received a letter from Plaintiff's counsel that was dated June 20, 2019. Def.'s 56.1 ¶ 12 (citing Vazquez Decl. at 4 ¶ 16); Vazquez Decl. at 37. Therein, Plaintiff's counsel advised Defendant that Plaintiff had retained counsel with respect to the injuries she claimed to have suffered on the June 15, 2019 cruise. Def.'s 56.1 ¶ 12; Vazquez Decl. at 37; Resp. Ex. 1 (ECF No. 53-1). Defendant responded to Plaintiff's counsel's letter, advising Plaintiff that it was reserving "[a]ll rights in law, equity, and those contained within the passenger ticket contract . . . including the forum selection/ venue provision requiring all passenger lawsuits against [Defendant] to be filed in the United States District Court for the Southern District of Florida."[3] Def.'s 56.1 ¶ 12 (citing Vazquez Decl. at 5 ¶ 17; Vazquez Decl. at 36). Thereafter, on January 19,

[3] The Vazquez Declaration states that Defendant's letter in response to Plaintiff's counsel's letter of representation was sent on July 29, 2019 but is dated April 2, 2019. Vazquez Decl. at 5 ¶ 17; Vazquez Decl. at 36. Defendant attributes this to a scrivener's error. Vazquez Decl. at 5 ¶ 17 n.1. Plaintiff does not dispute the authenticity of the letter or the declaration stating that it was mailed to Plaintiff on July 29, 2019.

2021, Plaintiff filed this action in the 10th Judicial District Court, Galveston County, Texas. *See generally* Compl.

Now, the Court considers Defendant's motion for judgment on the pleadings, which has been converted to a motion for summary judgment. *See generally* Mot.

II. LEGAL STANDARD

Summary judgment is appropriate where there is "no genuine issue as to any material fact [such] that the moving party is entitled to a judgment as a matter of law." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986) (quoting Fed. R. Civ. P. 56). A genuine issue of material fact exists when "a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) (citation omitted). "For factual issues to be considered genuine, they must have a real basis in the record." *Mann v. Taser Int'l, Inc.*, 588 F.3d 1291, 1303 (11th Cir. 2009) (citation omitted). Speculation cannot create a genuine issue of material fact sufficient to defeat a well-supported motion for summary judgment. *See Cordoba v. Dillard's, Inc.*, 419 F.3d 1169, 1181 (11th Cir. 2005).

The moving party has the initial burden of showing the absence of a genuine issue as to any material fact. *Clark v. Coats & Clark, Inc.*, 929 F.2d 604, 608 (11th Cir. 1991). In assessing whether the moving party has met this burden, a court must view the movant's evidence and all factual inferences arising from it in the light most favorable to the non-moving party. *Denney v. City of Albany*, 247 F.3d 1172, 1181 (11th Cir. 2001). Once the moving party satisfies its initial burden, the burden shifts to the non-moving party to present evidence showing a genuine issue of material fact that precludes summary judgment. *Bailey v. Allgas, Inc.*, 284 F.3d 1237, 1243 (11th Cir. 2002); Fed. R. Civ. P. 56(e). "If reasonable minds could differ on the inferences arising from undisputed facts, then a court should deny summary judgment." *Miranda v. B & B Cash Grocery*

Store, Inc., 975 F.2d 1518, 1534 (11th Cir. 1992) (citation omitted). But if the record, taken as a whole, could not lead a rational trier of fact to find for the non-moving party, there is no genuine issue for trial, and summary judgment is proper. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986) (citation omitted).

III. DISCUSSION

Defendant argues that it is entitled to summary judgment[4] because (1) the ticket contract between Plaintiff and Defendant contains a valid and enforceable one-year limitation for Plaintiff to bring suits against Defendant, (2) the ticket contract reasonably communicated that limitation to Plaintiff, and (3) Plaintiff filed suit against Defendant outside that limitation period. *See generally* Mot.

Plaintiff responds that (1) she filed this case in a Texas state court within the two-year statute of limitations under Texas law and within the three-year statute of limitations for personal injury claims under Federal maritime law, (2) Defendant's one-year contractual limitation clause is unenforceable because its physical characteristics fail to reasonably communicate its terms and because Plaintiff did not have an opportunity to be meaningfully informed of those terms, and (3) the Court should equitably toll the limitations period because, although Plaintiff did not bring suit until January 19, 2021, she notified Defendant of her intent to pursue her legal claims within the one-year limitation period. *See generally* Resp.

In reply, Defendant argues (1) Texas's two-year statute of limitations does not apply in this case because this case is governed by Federal maritime law, (2) the physical characteristics of the ticket contract reasonably communicate the terms of the one-year limitation provision to Plaintiff,

[4] Because the Court ordered Defendant's Motion for Judgment on the Pleadings converted to a motion for summary judgment, for clarity and consistency the Court references Defendant's arguments as though they advocate summary judgment.

(3) Plaintiff fails to dispute that she was given multiple opportunities to become meaningfully informed of the one-year limitation period, and (4) equitable tolling does not apply because Plaintiff has not demonstrated an inequitable event. *See generally* Reply.

For the reasons discussed below, the Court finds maritime law applies in this case, that the one-year limitation period set forth in Defendant's ticket contract is valid and enforceable such that Plaintiff's suit is time-barred, and that equitable tolling does not apply in this case.

A. Maritime Law Applies in this Case.

The first issue before the Court is what statute of limitations applies, which turns on what law applies to this case. Defendant asserts that Federal maritime law applies in this case. *See generally* Mot.; Reply. Plaintiff asserts that her suit is timely filed under the two-year statute of limitations provided for under Texas law. Resp. at 3 (citing Tex. Civ. Prac. & Rem. Code § 16.003).

It is well settled that "[m]aritime 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). This includes injuries aboard vessels that are docked. *Kermarec v. Compagnie Generale Transatlantique*, 358 U.S. 625, 628 (1959) (holding that maritime law applied in a case alleging injury aboard a vessel berthed at a pier in a river). It is also "well settled that the general maritime law of the United States, and not state law, controls the issue of whether a passenger is bound to terms set forth in a cruise ship's ticket and contract of passage." *DeLuca v. Royal Caribbean Cruises, Ltd.*, 244 F. Supp. 3d 1342, 1345–46 (S.D. Fla. 2017) (quoting *Veverka v. Royal Caribbean Cruises, Ltd.*, 2015 WL 1270139, at *5 (D.N.J. Mar. 18, 2015).

Here, it is undisputed that Plaintiff was a passenger on Defendant's ship when the alleged injury occurred; in fact, Plaintiff's Complaint specifically alleges that the injury occurred in her

cabin. Compl. ¶ 5; Def.'s 56.1 ¶ 1. Thus, Federal maritime law applies in this case. *See Guevara*, 920 F.3d at 720. Moreover, Federal maritime law would apply in this case even if it had not been removed to Federal court. *See Keefe v. Bahama Cruise Line, Inc.*, 867 F.2d 1318, 1321 (11th Cir. 1989) (citing *Kermarec*, 358 U.S. at 628) ("[Federal maritime law] would have governed the outcome of this case had it remained in the state court in which it originally was brought, or had the parties invoked the district court's original maritime jurisdiction, rather than alleging diversity of citizenship as the jurisdictional basis for the suit.").

B. Defendant's One-Year Limitation Provision Is Valid and Enforceable.

The Court first notes that Plaintiff does not dispute the authenticity of the ticket contract. In fact, as to the record evidence in this case, the Court finds that the evidence cited by Defendant is uncontroverted because Plaintiff failed to file an opposing statement of material facts identifying which portions of Defendant's Statement of Material Facts were "disputed" or "undisputed," with corresponding record citations. *See generally* Resp.; S.D. Fla. L.R. 56.1. Plaintiff's failure to do so results in Defendant's Statement of Material Facts, which is supported by properly cited record evidence, being deemed admitted. *See* S.D. Fla. L.R. 56.1(c).

It is undisputed that the alleged injury in this case occurred on June 15, 2019, Compl. ¶ 5; Def.'s 56.1 ¶ 1, and the record reflects that Plaintiff first brought this suit on January 19, 2021, *see generally* Compl. Accordingly, the second issue before the Court is whether Federal maritime law's three-year statute of limitation applies—in which case Plaintiff's Complaint was timely filed before the June 15, 2022 deadline—or whether the one-year limitation set forth in the ticket contract applies—in which case Plaintiff's case is time-barred because it was filed after the June 15, 2020 deadline.

By statute, Federal maritime law imposes a three-year limitation for a "civil action for

damages for personal injury . . . arising out of a maritime tort." 46 U.S.C. § 30106. However, pursuant to 46 U.S.C. § 30508, shipowners may, by contract, limit the time to bring a civil action further within the bounds set by 46 U.S.C. § 30508:

> (b) Minimum time limits. The owner, master, manager, or agent of a vessel transporting passengers or property between ports in the United States, or between a port in the United States and a port in a foreign country, may not limit by regulation, contract, or otherwise the period for--
> [. . .]
> (2) bringing a civil action for personal injury or death to less than one year after the date of the injury or death.

46 U.S.C. § 30508(b)(2).

Generally, "Courts will enforce such a limitation if the cruise ticket provided the passenger with reasonably adequate notice that the limit existed and formed part of the passenger contract." *Nash v. Kloster Cruise A/S*, 901 F.2d 1565, 1566 (11th Cir. 1990). In evaluating whether a limitation was reasonably communicated to a passenger, Courts look to the "physical characteristics of the clause and the passenger's opportunity to become meaningfully informed of the contract terms." *Caron v. NCL (Bahamas), Ltd.*, 910 F.3d 1359, 1367 (11th Cir. 2018). Here, the Court finds that the physical characteristics of the ticket contract between Plaintiff and Defendant reasonably communicated the one-year limitation to her. In addition, there is no genuine dispute that Plaintiff had opportunities to become meaningfully informed of those terms.

a. Physical Characteristics of the Ticket Contract.

This "first factor is limited to a review of the contract itself." *Roberts v. Carnival Corp.*, 824 F. App'x 825, 828 (11th Cir. 2020) (citing *Estate of Myhra v. Royal Caribbean Cruises, Ltd.*, 695 F.3d 1233, 1245–46 (11th Cir. 2012); *Krenkel v. Kerzner Int'l Hotels Ltd.*, 579 F.3d 1279, 1282 (11th Cir. 2009)). The Court must look to the "size, placement, font, and readability of the limitations-period clause, among other objective characteristics." *Id.*

Defendant points the Court to the text of the first page of the ticket contract, which contains a warning header in bold and capitalized text that directs the reader to clause 13 of the contact, which, according to Defendant, clearly and unambiguously sets forth the one-year limitation period. Mot. at 5–6. Defendant also argues that similar bolded and capitalized text at the top of a ticket contract, directing a reader to specific terms and conditions, have been upheld. Reply at 5–6 (citing *Calixterio v. Carnival Corp.*, No. 15-22210-CIV, 2016 WL 3973791, at *3 (S.D. Fla. Jan. 7, 2016; *Sorgenfrei v. Carnival Corp.*, 727 F. Supp. 2d 1354, 1359 (S.D. Fla. 2010)).

In response, Plaintiff argues that: (1) the bolded, capitalized text on the first page of the ticket contract only generally directs the reader to "several clauses, each clause muddied with more than one-page [sic] of material to review," (2) clause 13 of the ticket contract where the one-year limitation is found is on page twelve of sixteen of the contract and is six paragraphs long, and (3) the font used in the clause is inconspicuous. Resp. at 5 (citing *Ward v. Cross Sound Ferry*, 273 F.3d 520, 525 (2d Cir. 2001)). In addition, Plaintiff argues that Defendant intended that the language of clause 13 remain hidden from Plaintiff's attention. *Id.* at 5. Plaintiff also asserts that the ticket contract never explicitly directed Plaintiff to clause 13, and instead only generally directed Plaintiff to clauses 1, 4, 11, 12, and 14. *Id.* at 6.

The Court finds that the physical characteristics of the ticket contract reasonably communicate the terms of the one-year limitation period to Plaintiff. The top of the first page of the ticket contract presents the reader with the following bolded and capitalized text[5]:

> TICKET CONTRACT
>
> IMPORTANT NOTICE TO GUESTS: THIS DOCUMENT IS A LEGALLY BINDING CONTRACT ISSUED BY CARNIVAL CRUISE LINE TO, AND ACCEPTED BY, GUEST SUBJECT TO THE IMPORTANT TERMS AND CONDITIONS APPEARING BELOW.

[5] The Court has reproduced the text of the first page of the ticket contract un-bolded in this Order.

> NOTICE: THE ATTENTION OF GUEST IS ESPECIALLY DIRECTED TO CLAUSES 1, 4, AND 11 THROUGH 14, WHICH CONTAIN IMPORTANT LIMITATIONS ON THE RIGHTS OF GUESTS TO ASSERT CLAIMS AGAINST CARNIVAL CRUISE LINE, THE VESSEL, THEIR AGENTS AND EMPLOYEES, AND OTHERS, INCLUDING FORUM SELECTION, CHOICE OF LAW, TIME LIMITATIONS FOR FILING SUIT, ARBITRATION, AND WAIVER OF JURY TRIAL FOR CERTAIN CLAIMS.
>
> IMPORTANT TERMS AND CONDITIONS OF CONTRACT – READ CAREFULLY!

Vazquez Decl. at 7; Tckt. Cont. at 1. In bold, capitalized text on the first page, the ticket contract calls the reader's attention, beginning with phrasing "IMPORTANT NOTICE TO GUESTS." *Id.* The ticket contract "ESPECIALLY DIRECT[S]" the reader to clauses containing "IMPORTANT LIMITATIONS ON THE RIGHTS OF GUESTS," including "TIME LIMITATIONS FOR FILING SUIT." *Id.* Readers are encouraged to "READ CAREFULLY!" *Id.*

This bolded and capitalized text on the first page of the ticket contract also directs the reader to the clause containing the one-year limitation using the phrasing: "THE ATTENTION OF GUEST IS ESPECIALLY DIRECTED TO CLAUSES 1, 4, AND 11 THROUGH 14." *Id.* The Court notes that Plaintiff incorrectly asserts the ticket contract "only generally directed Plaintiff to see several clauses including clauses 1, 4, 11, 12, and 14." Resp. at 6. The ticket contract clearly states "NOTICE: THE ATTENTION OF GUEST IS ESPECIALLY DIRECTED TO CLAUSES 1, 4, AND 11 THROUGH 14." Vazquez Decl. at 7 (emphasis added); Tckt. Cont. at 1. Plaintiff seems to recognize that the range "11 through 14" contains clause 12, yet somehow does not contain clause 13, which is where the one-year limitation is located.

In addition, the text of clause 13 is set out on page 12 of the ticket contract immediately beneath a bolded, underlined, and capitalized header titled "JURISDICTION, VENUE, ARBITRATION, TIME LIMITS FOR CLAIMS AND GOVERNING LAW." Vazquez Decl. at 18 (emphasis added); Tckt. Cont. at 13. Clause 13 reads as follows:

> Carnival shall not be liable for any claims whatsoever for personal injury, illness or death of the Guest, unless full particulars in writing are given to Carnival within 185 days after the date of the injury, event, illness or death giving rise to the claim. Suit to recover on any such claim shall not be maintainable unless filed within one year after the date of injury, event, illness or death, and unless served on Carnival within 120 days after filing. Guest expressly waives all other potentially applicable state or federal limitations periods.

Vazquez Decl. at 18; Tckt. Cont. at 13. The text of clause 13 is not unduly small, is set out in separate sub-paragraphs, uses legible font of the same type and size as the surrounding paragraphs, and clearly states that a lawsuit to recover for personal injury "shall not be maintainable unless filed within one year after the date of injury." *Id.*

Courts in this district have found that the physical characteristics of similar ticket contracts reasonably communicated the terms they set forth. *See, e.g.*, *Calixterio*, 2016 WL 3973791, at *3; *Sorgenfrei*, 727 F. Supp. 2d at 1359 (finding that a ticket contract reasonably communicated terms of a one-year limitation clause where the "front page of the contract puts a cruise passenger on notice that she should review the entire contract, and even points out that important limitations on rights are contained within the contract"); *see also DannaMarie Provost v. Hall*, 757 F. App'x 871, 876 (11th Cir. 2018) ("[W]e have previously held that cruise ticket contracts printed in a similar size and typeface [as the one at issue in that case] were sufficient 'as a matter of physical presentation' to provide reasonable notice to passengers where . . . the relevant provision was clearly labeled and an additional notice in a prominent location (such as the cover of the ticket booklet) directed ticket-holders to the contract section of the booklet.").

Accordingly, the Court finds that the physical characteristics of the ticket contract reasonably communicated the terms of the one-year limitation clause to Plaintiff.

b. Opportunity to Be Meaningfully Informed.

The second factor relates to whether Plaintiff had a meaningful opportunity to be informed

of the terms of the one-year limitation clause. Defendant argues that Plaintiff is bound by the terms of the one-year limitation clause regardless of whether she read the terms because she accepted passage aboard Defendant's ship. Mot. at 6–7 (citing *Davis v. Valsamis, Inc.*, 181 F. Supp. 3d 420, 426 (S.D. Tex. 2016). Defendant argues that the evidence in the record establishes that it sent Plaintiff four emails over the course of six months containing a link to Defendant's online registration process, in which Defendant informed Plaintiff that her cruise was subject to the terms and conditions of the ticket contract, Reply at 7, that Plaintiff acknowledged and accepted the terms of the ticket contract on June 14, 2019, *id.*, and that Plaintiff admitted in her Opposition to Defendant's Motion to Transfer Venue that she had accepted the terms and conditions on June 14, 2019. *Id.* at 8.

Plaintiff argues that the email confirmations she received from Defendant did not contain the terms of the ticket contract or a copy of the ticket contract itself, that the emails did not contain a direct website link to the ticket contract, only a general link to Defendant's main website, and that she never possessed the ticket contract. Resp. at 7.

For a contractual limitation period to be valid, Plaintiff must have "had the ability to become meaningfully informed of the clause and to reject its terms." *Krenkel*, 579 F.3d at 1281. This prong does not concern whether Plaintiff actually read the contract terms; rather, it concerns only whether she had the opportunity to do so. *See Baer v. Silversea Cruises Ltd.*, 752 F. App'x 861, 866 (11th Cir. 2018). In making this determination, the Court must consider factors outside of the contract itself. *Roberts*, 824 F. App'x at 829.

Here, the uncontroverted evidence reflects that Plaintiff received four emails before her cruise containing a notice that encouraged her to review the terms and conditions of the ticket contract. Vazquez Decl. at 25–28, 32; Def.'s 56.1 ¶¶ 6–7. Plaintiff also conceded that she received

a copy of the ticket contract.[6] (ECF No. 14) at 7. Defendant's records reflect, and Plaintiff does not dispute, that she acknowledged and accepted the terms and conditions of the ticket contract on June 14, 2019. Def.'s 56.1 ¶ 10; Vazquez Decl. at 34. Plaintiff also does not dispute that, in acknowledging and accepting the terms of the ticket contract, she was required to scroll to the bottom of the ticket contract. Vazquez Decl. ¶¶ 11–12; Def.'s 56.1 ¶¶ 9–10. Necessarily, Plaintiff would have had to scroll past the one-year limitation clause at issue in this case. And, as noted above, Plaintiff need not have actually read those terms, she must only have had a meaningful opportunity to read the terms before accepting. *See Baer*, 752 F. App'x at 866. The undisputed facts thus demonstrate that Plaintiff had that a reasonable opportunity to become meaningfully informed of the one-year limitation period.

The Court thus finds that the ticket contract reasonably communicated the one-year limitation period for Plaintiff to bring suit against Defendant and time-bars this suit.

C. Equitable Tolling Does Not Apply in this Case.

To avoid the contractual limitation set forth in the ticket contract, Plaintiff argues that the Court should apply equitable tolling because she "actively pursued her judicial remedies and filed her pleading during the limitations period in a state court . . . while exercising due diligence in all other respects of her legal rights." Resp. at 10. Plaintiff argues that prior to filing this case "and well within the limitations period," she "provided notice of her intent to pursue her legal claims." *Id.* at 10. Further, Plaintiff argues that Defendant waited until nine months after this case was filed to assert a contractual limitations defense, thus leading Plaintiff to presume that Defendant would

[6] The header for paragraph 8 of Plaintiff's Opposition to Carnival's Motion to Transfer Venue states, "THERE IS NO EVIDENCE THAT PLAINTIFFS SAW THE FORUM SELECTION CLAUSE, BUT *THE BOOKING HISTORY NOTES PROVE THAT ALL PLAINTIFFS RECEIVED THE CONTRACT* WITHIN THE 61 DAY PENALTY PERIOD." (ECF No. 14) at 7 (emphasis added).

not enforce the one-year contractual limitation. *Id.* at 11.

In its Reply, Defendant argues that Plaintiff has not demonstrated that any inequitable event has occurred that prevented her from timely filing this case. Reply at 8–9. Defendant also argues that the cases Plaintiff relies on are distinguishable. *Id.* at 9–10.

Equitable tolling "is an extraordinary remedy which should be extended only sparingly." *Justice v. United States*, 6 F.3d 1474, 1479 (11th Cir. 1993). Plaintiff bears the burden of establishing that equitable tolling applies. *See Chang v. Carnival Corp*., 839 F.3d 993, 996 (11th Cir. 2016). Generally, "[t]he interests of justice side with the defendant when the plaintiff does not file her action in a timely fashion despite knowing or being in a position reasonably to know that the limitations period is running." *Justice*, 6 F.3d at 1479. Equitable tolling "is not warranted where a plaintiff knows or reasonably should know that the limitations period is running and still fails to file on time," as "[c]ourts generally will not apply equitable tolling when the late filing is caused by 'garden-variety' neglect." *DannaMarie Provost*, 757 F. App'x at 876. A court may equitably toll a limitation period where a plaintiff:

> shows facts to support one of three scenarios, namely: (1) the plaintiff was misled by defendant's actions into allowing the limitations period to elapse; (2) the plaintiff was unaware that her rights had been violated; or (3) the plaintiff actively pursued her judicial remedies, but filed a technically defective pleading during the limitations period, but has acted with proper diligence in all other respects.

Love v. Carnival Corp., No. 11-22920-CIV, 2012 WL 13050571, at *3 (S.D. Fla. Oct. 19, 2012) (citing *Justice*, 6 F.3d at 1479).

Plaintiff fails to establish that equitable tolling is warranted in this case.

First, the undisputed facts do not establish that Defendant misled Plaintiff into allowing the limitations period to elapse, that Plaintiff was unaware that any of her rights had been violated, or that any other inequitable event occurred that prevented Plaintiff from timely filing this action

within the contractual limitation period despite her active pursuit of her claims.[7] More to the point, it is not the case that Plaintiff filed a technically defective pleading *during* the limitations period, acting diligently in all other respects; rather, Plaintiff filed her pleading *after* the limitations period had already run.

Second, Plaintiff's argument that she timely filed her claim in a state court is misplaced. The Court cannot interpret Plaintiff's argument as asserting that her claim was timely filed within the two-year statute of limitations referenced in her Response, Resp. at 3—that statute of limitation would not have applied to Plaintiff's claim, because, as noted above, a state court would have been required to apply Federal maritime law. *See DeLuca*, 244 F. Supp. 3d at 1345–46. Thus, the Court must interpret Plaintiff as claiming that she filed her claim within the three-year statute of limitations under Federal maritime law, which, as the Court notes above, would have given way to the one-year limitation period set forth in the ticket contract. To assert that Plaintiff's claim was timely filed under Federal maritime law presupposes that equitable tolling applies given that Plaintiff did not file this case within the one-year contractual limitation period.[8]

Third, Plaintiff's reliance on *Booth v. Carnival Corp.*, 522 F.3d 1148 (11th Cir. 2008), in which the Eleventh Circuit affirmed the equitable tolling of a contractual limitation period, is also misplaced. In *Booth*, the plaintiff gave timely notice to the defendant of its claim and filed suit in

[7] The Court reiterates that Plaintiff has not filed a Statement of Material Facts, as required by the Local Rules, thus Plaintiff has not put forth evidence to establish any inequities. In fact, Plaintiff does not point the Court to any evidence of the efforts she undertook in furtherance of her claims between June 15, 2019 and January 19, 2021, other than the letter of representation her counsel mailed to Defendant on June 20, 2019. *See* Resp. at 10–11.

[8] In the Court's view, the relief Plaintiff seeks, in effect, would permit her to unilaterally renege on the contracted-to one-year limitation period: Plaintiff asks this Court to equitably toll an untimely filed Complaint and permit her to benefit from the three-year statute of limitations under Federal maritime law simply because her counsel mailed a letter of representation to Defendant within the contracted-to one-year limitation period shortly after Plaintiff claims she was injured.

a state court before the one-year limitation period had run. *Booth*, 522. F.3d at 1149–50. After the limitation period had run, the plaintiff filed a concurrent Federal court action against the same defendant while the state court case was pending. *Id.* at 1150. The Federal court case was administratively closed pending the outcome of the state court case. *Id.* The state court case was eventually dismissed for improper venue. *Id.* When the Federal court case was reopened, the defendant moved to dismiss because the limitation period had run. *Id.* The district court applied equitable tolling and denied the defendant's motion to dismiss. *Id.*

The Eleventh Circuit upheld the application of equitable tolling in *Booth* because the *timely filed* state court case, for which the state court had competent jurisdiction, was dismissed solely for improper venue, leaving the plaintiff with an untimely filed federal court case that had been filed during the pendency of the timely filed state court case, such that "Carnival was aware within the limitation period that Booth was actively pursuing his cause of action." *Booth*, 522 F.3d at 1152–53. Here, Plaintiff's case was not timely filed within the one-year limitation period, and Plaintiff has adduced no evidence that she had at any point been forced to or mistakenly did untimely refile the instant action while a timely filed state-court action was pending. Further, while the plaintiff in *Booth* was "entitled to believe that his state filing might be sufficient given the fact that defendants can, and often do, waive their defenses of improper venue," *id.* at 1153, Plaintiff has not pointed the Court to authority indicating that defendants can and often do waive their contractual limitations defenses.[9]

More damaging to Plaintiff's argument, though, is that, in *Booth*, "the plaintiff had

[9] In addition, Defendant points the Court to Defendant's letter responding to Plaintiff's counsel's June 15, 2019 letter of representation, *see* Def.'s 56.1 ¶ 12 (quoting Vazquez Decl. at 5 ¶ 17); Vazquez Decl. at 37. In its letter, Defendant wrote that it was expressly reserving "[a]ll rights in equity, law, and those contained within the passenger ticket contract." Vazquez Decl. at 36. Plaintiff has not disputed the authenticity of Defendant's letter or the facts it sets forth.

prosecuted his claim with the diligence necessary to warrant consideration of an equitable tolling claim and therefore the limitations period was properly tolled *from the date on which he filed his state-court action*." *Chang v. Carnival Corp.*, 839 F.3d 993, 997 (11th Cir. 2016) (emphasis added). Here, the state court action was not timely filed within the one-year limitation period, thus tolling the contractual limitation period *from* the date the state court action was filed does not erase the fact that more one year had elapsed *before* the state court action was filed.

IV. CONCLUSION

Accordingly, UPON CONSIDERATION of the Motion, the pertinent portions of the record, and being otherwise fully advised in the premises, it is hereby ORDERED AND ADJUDGED that Defendant's Motion for Judgment on the Pleadings (ECF No. 38), which the Court has converted to a motion for summary judgment, is GRANTED.

DONE AND ORDERED in Chambers at Miami, Florida, this 14th day of December, 2021.

K. MICHAEL MOORE
UNITED STATES DISTRICT JUDGE

c: All counsel of record