

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 20-62630-CIV-SMITH

FLYHOPCO, LLC,

Plaintiff,

vs.

INTERNATIONAL PAINT, LLC,

Defendant.

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ORDER GRANTING DEFENDANT'S MOTION TO DISMISS

This matter is before the Court on Defendant, International Paint, LLC's Motion to Dismiss Second Amended Complaint [DE 53], Plaintiff's response [DE 60], and Defendant's reply [DE 61]. Plaintiff's one-count Second Amended Complaint ("SAC") alleges a claim for breach of a maritime contract. For the reasons that follow, Defendant's Motion is granted.

I. THE SECOND AMENDED COMPLAINT

Plaintiff's SAC alleges that Plaintiff is in the business of providing dockage, dockside services, repairs, retrofits, and painting to marine vessels. Defendant is an expert in the manufacture of marine coatings for use in the painting and coating of seagoing vessels. Defendant conducts business in Florida through local distributors.

In March 2019, Plaintiff contracted with a vessel owner to paint the hull of the M/Y Lady Laura. The contract required the use of a special-order paint. Plaintiff purchased the paint from Defendant's local distributor. Plaintiff completed the paint job in June 2019. However, in 2020, defects in the hull paint were discovered. Plaintiff believes that the defect arose from the

manufacture of the paint because the paint had insufficient solids in its composition. As a result of the defect and to comply with the contract between Plaintiff and the vessel owner, Plaintiff repainted the vessel at its own expense. Plaintiff has incurred damages in the amount of \$130,000 and now sues Defendant for breach of a maritime contract to recover those damages.

II. MOTION TO DISMISS STANDARD

The purpose of a motion to dismiss filed pursuant to Federal Rule of Civil Procedure 12(b)(6) is to test the facial sufficiency of a complaint. *See* Fed. R. Civ. P. 12(b)(6). The rule permits dismissal of a complaint that fails to state a claim upon which relief can be granted. *Id.* It should be read alongside Federal Rule of Civil Procedure 8(a)(2), which requires a “short and plain statement of the claim showing that the pleader is entitled to relief.” Although a complaint challenged by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff is still obligated to provide the “grounds” for his entitlement to relief, and a “formulaic recitation of the elements of a cause of action will not do.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007).

When a complaint is challenged under Rule 12(b)(6), a court will presume that all well-pleaded allegations are true and view the pleadings in the light most favorable to the plaintiff. *Am. United Life Ins. Co. v. Martinez*, 480 F.3d 1043, 1066 (11th Cir. 2007). However, once a court “identif[ies] pleadings that, because they are no more than conclusions, are not entitled to the assumption of truth,” it must determine whether the well-pled facts “state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678-79 (2009). A complaint can only survive a 12(b)(6) motion to dismiss if it contains factual allegations that are “enough to raise a right to relief above the speculative level, on the assumption that all the [factual] allegations in the complaint are true.” *Twombly*, 550 U.S. at 555. However, 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.’” *Twombly*, 550 U.S. at 556.

III. DISCUSSION

Defendant seeks to dismiss the SAC because Plaintiff has failed to allege the elements of a contract or of a breach of contract. To recover damages for a breach of an oral maritime contract, a plaintiff must prove: “(1) the terms of a maritime contract; (2) that the contract was breached; and (3) the reasonable value of the purported damages.” *Sweet Pea Marine, Ltd. v. APJ Marine, Inc.*, 411 F.3d 1242, 1249 (11th Cir. 2005) (citing *Exxon Corp. v. Cent. Gulf Lines, Inc.*, 500 U.S. 603, 605–06 (1991); *Krauss Bros. Lumber Co. v. Dimon S.S. Corp.*, 290 U.S. 117, 124 (1933)). Defendant argues that Plaintiff has failed to plead the terms of the contract.

A review of the SAC demonstrates that Plaintiff has not pled any of the terms of the alleged maritime contract. Nor has Plaintiff alleged what term of the contract was breached. Plaintiff has not even alleged that it had any communication with Defendant, as would be necessary to form an oral contract. Plaintiff has merely alleged the existence of a contract and that it was breached. Such “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice” to meet the standards of Federal Rule of Civil Procedure 8(a). *Iqbal*, 556 U.S. at 678. Plaintiff itself recognizes that more than unsupported, conclusory allegation are necessary under Rule 8. *See* Resp. ¶ 7. Plaintiff, however, has not provide more than unsupported, conclusory statements. Accordingly, it is


ORDERED that:

1. Defendant, International Paint, LLC’s Motion to Dismiss Second Amended Complaint [DE 53] is **GRANTED**.

2. Plaintiff may file a third amended complaint by **December 27, 2021**. In deciding

whether to file a third amended complaint, Plaintiff and its counsel shall be guided by the dictates of Federal Rule of Civil Procedure 11. If Plaintiff files a third amended complaint without sufficient factual allegations to support its claim against Defendant and the Court grants another motion to dismiss, Defendant may move for sanctions against Plaintiff pursuant to this Order and Federal Rule of Civil Procedure 11.

DONE and ORDERED in Fort Lauderdale, Florida, this 20th day of December, 2021.


RODNEY SMITH
UNITED STATES DISTRICT JUDGE

cc: All Counsel of Record