UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 1:21-cv-22251-JLK

HUNTER SMITH,

Plaintiff,

v.

CARNIVAL CORPORATION,
a Panamanian Corporation d/b/a
CARNIVAL CRUISE LINE,

Defendant.
_____/

ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

THIS CAUSE is before the Court on Defendant's Motion for Summary Judgment (the "Motion") (DE 12), filed September 2, 2022. The Court has also considered Plaintiff's Response (DE 14), filed September 16, 2022, Defendant's Reply (DE 17), filed September 23, 2022, and the parties' respective Statements of Material Facts (DE 11, 15, 16).

I. BACKGROUND

The following facts are undisputed[1]:

Plaintiff was a fare-paying passenger on Defendant's cruise ship, the *Carnival Glory*. DE 11 ¶ 1. During the week-long cruise, Plaintiff played sports trivia a couple of times. *Id.* ¶ 9. On September 20, 2019, Plaintiff and his wife participated in the on-board sports trivia competition, organized and operated by Defendant's crew member, Houston Cookenour (the "trivia host"). *Id.*

[1] The following facts are taken from Defendant's Statement of Material Facts (DE 11), Plaintiff's Response to Defendant's Statement of Facts (DE 15), and facts gleaned from the parties' discovery documents, viewed in the light most favorable to Plaintiff as the nonmoving party.

¶¶ 7, 10. During the trivia competition, Plaintiff engaged in an arm-wrestling competition as a tiebreaker where he sustained injuries to his left arm. *Id.* ¶¶ 28, 34, 39; DE 15 ¶ 29.

II. LEGAL STANDARD

Summary judgment is appropriate where there is "no genuine issue as to any material fact and [] the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247–48 (1986). An issue is genuine if a reasonable jury could return a verdict for the nonmoving party. *Mize v. Jefferson City Bd. of Educ.*, 93 F.3d 739, 742 (11th Cir. 1996). A fact is material if it may affect the outcome of the case under the applicable substantive law. *Allen v. Tyson Foods, Inc.*, 121 F.3d 642, 646 (11th Cir. 1997).

If a reasonable fact finder could draw more than one inference from the facts, creating a genuine issue of material fact, summary judgment should not be granted. *Samples ex rel. Samples v. City of Atlanta*, 846 F.2d 1328, 1330 (11th Cir. 1988). The moving party has the burden of establishing both the absence of a genuine issue of material fact and that it is entitled to judgment as a matter of law. *See Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 586–87 (1986). On a motion for summary judgment, the court views the evidence and all reasonable inferences in the light most favorable to the non-moving party. *Davis v. Williams*, 451 F.3d 759, 763 (11th Cir. 2006).

III. DISCUSSION

Defendant argues that it is entitled to summary judgment because 1) Defendant had no duty to warn because the alleged danger was open and obvious, 2) Plaintiff failed to establish that Defendant had actual or constructive notice of the alleged dangerous condition, and 3) Plaintiff did not establish that Defendant failed to exercise reasonable care under the circumstances. *See generally* Mot. Because the Court finds that Defendant did not owe a duty to Plaintiff due to the

open and obvious nature of the alleged dangerous condition, the Court will limit its analysis to the supposed duty.

"To satisfy the burden of proof in a negligence action, plaintiff must show: (1) that defendant owed plaintiff a duty; (2) that defendant breached that duty; (3) that this breach was the proximate cause of plaintiff's injury; and (4) that plaintiff suffered damages." *Isbell v. Carnival Corp.*, 462 F. Supp. 2d 1232, 1236 (S.D. Fla. 2006) (citing *Hasenfus v. Secord*, 962 F.2d 1556, 1559-60 (11th Cir. 1992)).

Under federal admiralty law, a cruise ship has no duty to warn of known dangers that are open and obvious. *See Carroll v. Carnival Corp.*, 955 F.3d 1260, 1267 (11th Cir. 2020) ("The open and obvious nature of a dangerous condition negates liability for failure to warn."); *see also Keefe v. Bahama Cruise Line, Inc.*, 867 F.2d 1318, 1322 (11th Cir. 1989); *Guevara v. NCL (Bahamas) Ltd.*, 920 F.3d 710, 720 n.5 (11th Cir. 2019) ("An operator of a cruise ship has a duty to warn only of known dangers that are not open and obvious."). "An open and obvious condition is one that should be obvious by the ordinary use of one's senses." *Krug v. Celebrity Cruises, Inc.*, 745 Fed. App'x 863, 866 (11th Cir. 2018). Open and obvious conditions are "discernable through common sense[.]" *Lancaster v. Carnival Corp.*, 85 F. Supp. 3d 1341, 1344 (S.D. Fla. 2015). The Court evaluates whether a danger was open and obvious "from an objectively reasonable person's point of view and does not focus on the plaintiff's subjective perspective." *Krug*, 745 Fed. App'x at 866 (citing *Lugo v. Carnival Corp.*, 154 F. Supp. 3d 1341 at 1345-46 (S.D. Fla. 2015)).

In its Motion, Defendant argues that the dangers of an arm-wrestling competition are open and obvious and as such, Defendant did not have a duty to warn. Mot. at 4–5. In doing so, Defendant relies on the *Krug* case. *See generally Krug*, 745 Fed. App'x 863. In *Krug*, the plaintiff was a cruise ship passenger who was injured during a tiebreaker competition during a trivia game.

Id. at 864–65. To break the tie, the trivia host asked a member from each team to line up at the end of the dance floor and explained that he would put a microphone on the edge of the stage and then play a song. *Id.* The contestants were instructed that if they knew the name of the song, they should run up to the stage, grab the microphone, and shout the name of the song. *Id.* Plaintiff Krug knew the name of the song, ran up to the stage, and fell and hit her head on the stage. *Id.* The district court granted the cruise line's motion for summary judgment and found that the dangers associated with the tiebreaker were open and obvious and the cruise line had no duty to warn. *Id.* at 865. The Eleventh Circuit affirmed this decision on appeal. *Id.* at 866.

In response, Plaintiff argues that he had never arm-wrestled before this incident and as a result was not aware of the risks involved in arm-wrestling. Resp. at 3. Plaintiff also claims he was following the instructions of the trivia host and did not believe that the host would ask him to do something that would cause him harm. *Id.* at 4.

Here, Defendant did not have a duty to warn because there were no hidden dangers in the arm-wrestling competition. *See Krug*, 745 Fed. App'x at 866. Plaintiff testified that prior to the incident, he knew that arm-wrestling could result in injury. Pl.'s Depo. at 58:23–59:9. Plaintiff also testified that both him and his arm-wrestling opponent, Nathan Gilbert ("Gilbert") were athletically built, and that Gilbert was about Plaintiff's size. *Id.* at 44:19–22; 45:2–5. Gilbert testified that Plaintiff told him that he could not wrestle with his right arm because of an injury he sustained in college, so he would have to use his left hand. Gilbert Depo. at 23:13–21. Finally, the trivia host testified that prior to the arm-wrestling match, Plaintiff did not express any concerns or complaints about pain. Cookenour Depo. at 26:14–20. This evidence shows that Plaintiff knew and appreciated the obvious dangers associated with arm-wrestling. Additionally, any possible

danger would have been apparent to a reasonably prudent person through use of common sense. Therefore, the Court finds that Defendant did not have a duty to warn.

"The Court's analysis does not end with the duty to warn inquiry, however, because Defendant still owed Plaintiff a general duty of reasonable care." *Lancaster v. Carnival Corp.*, 85 F. Supp. 3d 1341, 1345 (S.D. Fla. 2015). However, the evidence here shows that Plaintiff willingly participated in the arm-wrestling competition. *See* Cookenour Depo., DE 11-2 at 32:6–8. Since Defendant did not have a duty to warn, Plaintiff cannot prove his prima facie case for negligence and Defendant is entitled to summary judgment.

Accordingly, it is **ORDERED, ADJUDGED, and DECREED** that Plaintiffs' Motion for Summary Judgment **(DE 42)** be, and the same hereby is, **GRANTED**. Pursuant to Rule 58(a) of the Federal Rules of Civil Procedure, final judgment in favor of Defendant will be set out in a separate Order.

DONE AND ORDERED in Chambers at the James Lawrence King Federal Justice Building and United States Courthouse, Miami, Florida, this 26th day of October, 2022.

JAMES LAWRENCE KING
UNITED STATES DISTRICT JUDGE

cc: All counsel of record