UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 22-cv-22135-KING/DAMIAN

DANIELYS HERNANDEZ,

Plaintiff,

v.

MB YACHTS, LLC, *et al.*,

Defendants.
_______________________________________/

REPORT AND RECOMMENDATION ON
DEFENDANTS ARDALAN MEHR JOUEI'S AND SUGRA BAGHIROVA'S
MOTIONS TO DISMISS THE COMPLAINT [ECF NOS. 18 & 22]

THIS CAUSE is before the Court on Defendants Ardalan Mehr Jouei's ("Jouei") and Sugra Baghirova's ("Baghirova") (collectively "Defendants") Motions to Dismiss the Complaint (the "Motions"), filed August 25 [ECF No. 18] and September 26, 2022 [ECF No. 22]. The Motions were referred to the undersigned by the Honorable James Lawrence King, United States District Judge, for all such judicial proceedings as are permissible under the Magistrates' Act and the Rules of Court for the Southern District of Florida. [ECF Nos. 21 and 23]. *See* 28 U.S.C. § 636(b)(1)(B).

The undersigned has considered the Motions, the parties' memoranda [ECF Nos. 27 and 30], the pertinent portions of the record, and all relevant authorities and is otherwise fully advised in the premises.

Defendants Jouei and Baghirova seek dismissal of the claims asserted against them in their capacities as managers of Defendant MB Yachts, LLC ("MB Yachts"), on the grounds Plaintiff, Danielys Hernandez ("Plaintiff" or "Ms. Hernandez"), has not alleged facts to

pierce the corporate veil and hold them liable in their capacity as managers of the limited liability company. For the reasons set forth below, the undersigned recommends that the Motions to Dismiss [ECF Nos. 18 and 22] be granted.

I. BACKGROUND

A. Relevant Factual Allegations

For purposes of a motion to dismiss, all allegations in the Complaint are taken as true. The relevant facts are as follow:

On April 19, 2022, Ms. Hernandez contracted with Defendants MB Yachts, Jouei, Baghirova, and other unnamed Defendants to serve as a seafarer and member of the crew of the vessel *M/Y Iris*. [ECF No. 1 ("Complaint") at ¶ 32]. That same day, at a meeting with Defendants, Ms. Hernandez informed them that she had never served as a crew member aboard a yacht and that she had no previous experience or training as a crew member on a yacht. *Id*. at ¶¶ 33–34. Nevertheless, she was hired to serve as a "yacht mate," and was given no guidance, training, or instructions regarding her duties as a yacht mate. *Id*. at ¶¶ 35–36. Defendants hired Andy Garcia, a 20-year-old, to serve as captain of the yacht for a charter on April 20, 2022. *Id*. at ¶ 38.

On April 20, 2022, the scheduled date of the charter, Ms. Hernandez reported to work and was given no training or instructions regarding proper and safe means of securing the yacht at the dock or slip. *Id*. at ¶ 40. Despite the fact she had received no training or instruction and had no experience working on a yacht, in the evening of April 20th, when the yacht was returning from the charter, Ms. Hernandez was ordered to secure the bow line to the dock's cleat in adverse weather conditions. *Id*. at ¶ 42. Unfortunately, while Ms. Hernandez attempted to secure the bow lines, her fingers were severed and torn from her hand. *Id*. at ¶¶

43–44. She has endured multiple surgeries resulting in amputation of other fingers and is now permanently disfigured and suffers severe pain and suffering and depression. *Id*. at ¶¶ 45–46.

Ms. Hernandez alleges that Defendant MB Yachts, LLC was the owner and charterer of the yacht, *M/Y Iris*, and that Defendants Jouei and Baghirova were managers of MB Yachts. *Id*. at ¶¶ 12–14. She also alleges that in their capacity as managers of MB Yachts, Jouei and Baghirova were also owners, operators, managers, controllers, and charterers of the yacht and that they were all her Jones Act employers. *Id*. at ¶¶ 20–21.

B. Procedural Background

Plaintiff filed the Complaint in this Court on July 12, 2022, against Defendants, MB Yachts, Jouei, Baghirova, XYZ Defendant(s), Grand Beach Hospitality Group, and *In Rem* against *M/Y Iris*, asserting claims for Unseaworthiness (Counts I–IV), Jones Act Negligence under 46 U.S.C. § 30104 (Counts V–VIII), Failure to Provide Maintenance and Cure (Counts IX–XII), Failure to Provide Prompt Medical Treatment (Counts XIII–XVI), Joint Venture (Count XVII), and *In Rem* Action for Maintenance and Cure (Count XVIII). [ECF No. 1].

Relevant to the Motions now before the Court, in the Complaint, Ms. Hernandez asserts claims against Defendants Jouei and Baghirova in both their individual capacities and in their capacities as managers of MB Yachts. Specifically, they are named in those capacities in Counts II and III, alleging Unseaworthiness, Counts VI and VII, alleging Jones Act Negligence, Counts X and XI, alleging Failure to Provide Maintenance and Cure, and Counts XIV and XV, alleging Failure to Provide Prompt Medical Treatment.[1]

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[1] Defendants Jouei and Baghirova are also named in Count XVII, alleging a joint venture among Defendants, but that claim appears to only name them in their individual capacities.

C. The Motions To Dismiss

On August 25 and September 26, 2022, Defendants Jouei and Baghirova filed the Motions to Dismiss now before the Court arguing that the claims against them in their capacity as managers of MB Yachts should be dismissed because Ms. Hernandez failed to allege grounds to pierce the corporate veil and hold them liable for the acts of the limited liability company. *See* Motions [ECF Nos. 18 and 22]. Ms. Hernandez failed to file a timely response, and the undersigned entered an Order to Show Cause and directed her to file a response. [ECF No. 26].

On October 28, 2022, Ms. Hernandez filed a response to both Motions. [ECF No. 27]. In her Response, Ms. Hernandez focuses on the grounds for asserting claims against Jouei and Baghirova in their individual capacities, as well as the general grounds for holding Jones Act employers and vessel owners and operators liable for negligence and unseaworthiness claims stemming from incidents onboard vessels. Resp. at 4–5. She also argues the claims against these Defendants are not barred by the corporate shield doctrine based on Florida Statutes Section 605.04093(2), which provides that managers of a limited liability company may be held liable for reckless breaches of their duties as managers. *Id*. at 5. According to Ms. Hernandez, Jouei and Baghirova may be held liable because their failure to provide her with any training or supervision on board the vessel was reckless. *Id*.

In their Reply, filed November 2, 2022, Defendants argue that Ms. Hernandez's arguments regarding whether there are sufficient allegations against them in their personal capacities and the general grounds for liability under the Jones Act are non-responsive to their Motions. Reply [ECF No. 30] at 2–4. They also contend Ms. Hernandez fails to allege any

basis for their liability under Section 605.04093(2) because she has not alleged in the Complaint that they acted recklessly.

II. LEGAL STANDARD ON A RULE 12(b)(6) MOTION TO DISMISS

A complaint must contain a "short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). This pleading requirement serves to "give the defendant fair notice of what a plaintiff's claim is and the grounds upon which it rests." *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 512 (2002) (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)). Rule 12(b)(6) provides that a defendant may move to dismiss a complaint that does not satisfy Rule 8's requirements for "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6).

In evaluating a Rule 12(b)(6) motion to dismiss for failure to state a claim, a court must accept the plaintiff's allegations as true and construe them in the light most favorable to the plaintiff. *See Ziyadat v. Diamondrock Hosp. Co.*, 3 F.4th 1291, 1296 (11th Cir. 2021). Although Rule 8(a)(2) requires only "a short and plain statement of the claim showing that the pleader is entitled to relief," a mere "formulaic recitation of the elements of a cause of action will not do." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Instead, "a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (cleaned up). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.*

In considering a Rule 12(b)(6) motion, a court generally may not look beyond the pleadings. *See Garcia v. Copenhaver, Bell & Assocs., M.D.'s, P.A.*, 104 F.3d 1256, 1266 n.11 (11th Cir. 1997). The pleadings include any information attached to a complaint. Fed. R. Civ. P.

10(c); *Crenshaw v. Lister*, 556 F.3d 1283, 1291 (11th Cir. 2009). However, a district court may consider a document attached to a motion to dismiss if it is (1) central to the party's claim, and (2) its authenticity is not challenged. *SFM Holdings, Ltd. v. Banc of Am. Sec., LLC*, 600 F.3d 1334, 1337 (11th Cir. 2010).

III. DISCUSSION

Pursuant to the Merchant Marine Act of 1920, also known as the Jones Act, "[a] seaman injured in the course of employment . . . may elect to bring a civil action at law, with the right of trial by jury, against the employer." 46 U.S.C. § 30104. "But the cause of action is dependent on the employment relationship, so it may be maintained only if [the defendant] was [the plaintiff's] employer." *Daughtry v. Jenny G. LLC*, 703 F. App'x 883, 886 (11th Cir. 2017) (citing *Hurst v. Pilings & Structures, Inc.*, 896 F.2d 504, 505 (11th Cir. 1990)). When "the employee contends that one who did not sign his checks was in fact his employer, the employee must prove the employment relationship." *Guidry v. S. Louisiana Contractors, Inc.*, 614 F.2d 447, 454–55 (5th Cir. 1980).[2]

In this case, Ms. Hernandez alleges that Defendant MB Yachts, LLC, was her employer but that Defendants Jouei and Baghirova are also liable to her under the Jones Act based on their status as managers of MB Yachts.[3] However, in the Complaint, Ms. Hernandez alleges no basis for holding Jouei and Baghirova liable other than based solely on their positions as managers of the LLC that employed her.

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[2] Fifth Circuit cases decided before October 1, 1981 are binding precedent for the Eleventh Circuit. See *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981).

[3] She also alleges that Jouei and Baghirova are individually liable, but Jouei and Baghirova do not challenge the claims against them in their individual capacities in the Motions now before the Court.

Ms. Hernandez alleges, and Defendants do not dispute, that MB Yachts is a Florida Limited Liability Company ("LLC"). It is also undisputed that individual Defendants Jouei and Baghirova are managers of MB Yachts. A Florida LLC is a hybrid type of corporate entity that provides tax benefits similar to a partnership and limited liability similar to a corporation. *See Olmstead v. F.T.C.*, 44 So. 3d 76, 78, 80 (Fla. 2010). Thus, under Florida law, "[a] member or manager [of a Florida LLC] is not personally liable, directly or indirectly, by way of contribution or otherwise, for a debt, obligation, or other liability of the company solely by reason of being or acting as a member or manager." Fla. Stat. § 605.0304(1) (2022).

A. Liability Of LLC Managers Based On Piercing The Corporate Veil

Notwithstanding the limitation of liability afforded by the Florida LLC statute, it is possible to pierce an LLC's corporate veil under certain circumstances to hold individual members or managers personally liable. Under Florida law,[4] a plaintiff must plead facts showing the following in order to pierce a corporate veil: "(i) the defendant shareholder

[4] Neither party has raised an issue over whether Florida law applies to the determination of their piercing the corporate veil arguments. "[W]hen neither statutory nor judicially created maritime principles provide an answer to a specific legal question, courts may apply state law provided that the application of state law does not frustrate national interests in having uniformity in admiralty law." *All Underwriters v. Weisberg*, 222 F.3d 1309, 1312 (11th Cir. 2000) (quoting *Coastal Fuels Mktg., Inc. v. Fla. Express Shipping Co.*, 207 F.3d 1247, 1251 (11th Cir. 2000)); *see also Offshore Logistics, Inc. v. Tallentire*, 477 U.S. 207, 222–23 (1986) ("[T]he extent to which state law may be used to remedy maritime injuries is constrained by a so-called 'reverse-*Erie*' doctrine which requires that the substantive remedies afforded by the States conform to governing federal maritime standards."); *Steelmet, Inc. v. Caribe Towing Corp.*, 779 F.2d 1485, 1488 (11th Cir. 1986) ("One must identify the state law involved and determine whether there is an admiralty principle with which the state law conflicts, and, if there is no such admiralty principle, consideration must be given to whether such an admiralty rule should be fashioned. If none is to be fashioned, the state rule should be followed." (citing *Wilburn Boat Co. v. Fireman's Fund Ins. Co.*, 348 U.S. 310 (1955)). Because neither party has asserted there is an admiralty counterpart to Florida's piercing the corporate veil doctrine, the undersigned applies Florida law below.

dominated and controlled the corporation to such an extent that the corporation lacked an independent existence and the defendant was in fact an 'alter ego' of the corporation; (ii) the defendant engaged in 'improper conduct' in the formation or use of the corporation; and (iii) the improper formation or use of the corporate form injured the plaintiff." *E. Okeechobee Palms, LLC v. Kellam*, No. 9:14-CV-80866, 2015 WL 12977392, at *4 (S.D. Fla. Feb. 23, 2015) (Middlebrooks, J.), *aff'd*, 637 F. App'x 568 (11th Cir. 2016) (citing *Molinos Valle Del Cibao, C. por A. v. Lama*, 633 F.3d 1330, 1349 (11th Cir. 2011), and *XL Vision, LLC. v. Holloway*, 856 So. 2d 1063, 1066 (Fla. 5th DCA 2003)).

Florida courts have imposed a strict standard upon those wishing to pierce a corporate veil. *Seminole Boatyard, Inc. v. Christoph*, 715 So. 2d 987, 990 (Fla. 4th DCA 1998). Generally, the rule is that the corporate veil will not be pierced absent a showing of improper conduct. *Dania Jai-Alai Palace, Inc. v. Sykes*, 450 So. 2d 1114, 1121 (Fla. 1984); *accord Steinhardt v. Banks*, 511 So. 2d 336 (Fla. 4th DCA 1987). Under this standard, it must be shown that the corporation was organized or used to mislead creditors or to perpetrate a fraud upon them. *Seminole Boatyard*, 715 So. 2d at 990.

As Defendants point out, Ms. Hernandez pleads none of the facts in the Complaint necessary to satisfy this high standard in order to pierce the corporate veil and hold Jouei and Baghirova liable as the managers of MB Yachts. Ms. Hernandez alleges no facts that establish wrongdoing by Defendants Jouei and Baghirova with respect to the formation or use of Defendant MB Yachts's organizational structure. Therefore, the undersigned finds that Ms. Hernandez fails to state a claim against Jouei and Baghirova in their capacity as the managers of MB Yachts, LLC, based on piercing the corporate veil under Florida law.

B. Liability Of LLC Managers Under Section 605.04093(1)(b)(5), Florida Statutes, Based On Reckless Conduct.

In her Response to the Motions, Ms. Hernandez argues that pursuant to Section 605.04093(1)(b)(5), Florida Statutes, she does not need to pierce the corporate veil in order to hold an individual LLC manager liable when the manager acted recklessly.

As discussed above, in general, the members, managers, and managing members of a limited liability company are not liable, solely by reason of being a member or serving as a manager or managing member of the LLC. *See* Fla. Stat. § 605.04093(1) (a manager or member of an LLC "is not personally liable for monetary damages to the [LLC], its members, or any other person for any statement, vote, decision, or failure to act regarding management or policy decisions . . . unless," "[t]he manager or member breached or failed to perform the[ir] duties" and "[t]he manager's or member's breach of, or failure to perform, those duties constitutes" certain defined results). An exception to this general rule is created by Section 605.04093(1)(a)–(b), which provides that an LLC manager may be liable if the manager "breached or failed to perform the duties as a manager" and the manager's breach of, or failure to perform, those duties constitutes "recklessness or an act or omission that was committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property." Fla. Stat. § 605.04093(a), (b)(5).

Ms. Hernandez claims that Defendants Jouei and Baghirova may be held liable, as the managers of MB Yachts, pursuant to Section 605.04093 because they acted recklessly in failing to provide training or supervision while she worked on the vessel. *See* Resp. at 5. However, as Defendants point out, Ms. Hernandez does not allege anywhere in the Complaint that Jouei and Baghirova acted recklessly much less that Section 605.04093(a) and (b)(5) applies, but, instead, it is not until her Response that she, for the first time, attempts to

avoid this obstacle to these Defendants' liability. *See* Reply at 4–5. In the absence of any allegations in the Complaint to support this theory of liability, the Court need not consider Ms. Hernandez's new allegations in her Response because "a legal memorandum in response to a motion to dismiss cannot cure a defective complaint. In other words, a complaint must stand on its own[.]" *Schuh v. Am. Express Bank, FSB*, No. 17-24345-Civ, 2018 WL 3730897, at *5 (S.D. Fla. May 3, 2018) (Torres, J.), *report and recommendation adopted*, 2018 WL 3730226 (S.D. Fla. May 31, 2018) (Williams, J.), *aff'd,* 806 F. App'x 973 (11th Cir. 2020) (quoting *Watts v. City of Port St. Lucie, Fla.*, No. 2:15-cv-14192, 2015 WL 7736532, at *14 (S.D. Fla. Nov. 30, 2015) (Rosenberg, J.)).

Thus, viewing the allegations in the Complaint as true and in the light most favorable to Ms. Hernandez, there is no basis to hold Defendants Jouei and Baghirova liable under Section 605.04093 in their capacity as managers of MB Yachts, LLC.

IV. RECOMMENDATION

Accordingly, for the reasons set forth above, the undersigned respectfully recommends that Defendants Jouei's and Baghirova's Motions to Dismiss the Complaint [ECF Nos. 18 and 22] be **GRANTED** and the Plaintiff's claims against them in their capacities as managers of MB Yachts, LLC be **DISMISSED**.

The parties will have fourteen (14) days from the date of receipt of this Report and Recommendation within which to serve and file written objections, if any, with the Honorable James Lawrence King, United States District Judge. Failure to file objections timely shall bar the parties from a *de novo* determination by the District Judge of an issue covered in the Report and shall bar the parties from attacking on appeal unobjected-to factual and legal conclusions contained in the Report except upon grounds of plain error if necessary in the interest of

justice. *See* 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140, 149 (1985); *Henley v. Johnson*, 885 F.2d 790, 794 (11th Cir. 1989); 11th Cir. R. 3-1 (2016).

RESPECTFULLY SUBMITTED in Chambers at Miami, Florida, this 10th day of February, 2023.

MELISSA DAMIAN
UNITED STATES MAGISTRATE JUDGE

Copies to:
Hon. James Lawrence King, *U.S. District Judge*
Counsel of Record