

United States District Court
for the
Southern District of Florida

James Virgillo, as administrator of)	
the estate of Marietta Virgillo,)	
Plaintiff)	
)	
v.)	Civil Action No. 15-21962-Civ-Scola
)	
NCL (Bahamas) Ltd. d/b/a)	
Norwegian Cruise Lines, Defendant)	

Order Denying the Defendant’s Motion for Summary Judgment

In July 2014, Marietta Virgillo was a passenger aboard the Defendant’s ship, the *Jewel*, when she allegedly fell in her bathroom and injured her ankle because water had backed-up onto the bathroom floor. Prior to the start of the cruise, Virgillo had informed the Defendant that she was disabled and was assigned to a handicap-accessible stateroom. On March 22, 2015, Virgillo¹ sued the Defendant for negligence, alleging that the Defendant had failed to design, maintain, and inspect the bathroom to ensure reasonably safe conditions for handicapped passengers. (ECF No. 1.) Currently pending before the Court is the Defendant’s motion for summary judgment. (ECF No. 53.)

The Court applies the familiar legal standard for summary-judgment motions. “Summary judgment is appropriate where the pleadings, affidavits, depositions, admissions, and the like show that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” *Urquilla-Diaz v. Kaplan Univ.*, 780 F.3d 1039, 1050 (11th Cir. 2015) (punctuation & citation omitted). “[T]o survive summary judgment, the nonmoving party must . . . make a showing sufficient to permit the jury to reasonably find on its behalf.” *Id.*

The elements for negligence under general maritime law are the same as those under common law. *Crayton v. Oceania Cruises, Inc.*, 600 F. Supp. 2d 1271, 1275 (S.D. Fla. 2009) (Ungaro, J.). Therefore, to establish a claim of negligence, a 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) (Moreno, J.).

¹ After filing suit, Virgillo passed away and her husband, as administrator of her estate, was substituted as the Plaintiff.

The Defendant's sole argument for summary judgment is that there is no evidence that it had notice of the water in Virgillo's room or any dangerous condition that could have led to her slip-and-fall. (See ECF No. 53 at 6-7.) Despite the Defendant's protests, the Plaintiff has presented evidence that the Defendant was on notice. Specifically, the Plaintiff asserts that the bathrooms should have been ADA compliant, but were designed so that the coefficient of friction ("COF") on the floor was too low when the floor was wet, making slip-and-falls more likely. The Plaintiff has evidence showing that the Defendant was involved in the design of the flooring and therefore has knowledge of the dangerous condition. See *Groves v. Royal Caribbean Cruises, Ltd.*, 463 F. App'x 837, 837 (11th Cir. 2012) (affirming summary judgment when a plaintiff "slipped and fell as she stepped backwards from the carpeted area onto the granite hard floor" and the plaintiff "presented no evidence that [the defendant] actually created, participated in, or approved the alleged negligent design of these areas near the dining room" and, therefore, had no actual or constructive notice). Further, even if the Defendant was not involved in the design of the bathroom, the Plaintiff has presented the Court with evidence that the Defendant knew its stateroom bathrooms had flooded in the past, including five reports of water on the floor of Virgillo's stateroom bathroom. The Plaintiff has also cited two slip-and-fall instances in similar handicap-accessible bathrooms. This evidence is sufficient for a reasonable juror to conclude that the Defendant was on notice of the dangerous condition that the bathroom floors could be wet despite normal operation by a passenger and passengers in handicap-accessible bathrooms could slip and fall if no action by the Defendant was taken. Accordingly, the Court **denies** the Defendant's motion for summary judgment (ECF No. 53).

Done and ordered in chambers, at Miami, Florida, on August 16, 2016.

A handwritten signature in blue ink, appearing to read 'R. N. Scola, Jr.', written over a horizontal line.

Robert N. Scola, Jr.

United States District Judge