

**IN AND FOR THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION**

CASE NO.: 10-22241-CIV-KING

JUNE BRIDGEWATER,

Plaintiff,

v.

CARNIVAL CORPORATION, RAPSODY  
TOURS, CHARTERS & CRUISE LIMITED,  
DREAMER CATAMARAN CRUISES, and  
XYZ CORPORATION,

Defendants.

---

**ORDER DENYING DEFENDANT CARNIVAL'S PARTIAL MOTION  
TO DISMISS**

THIS CAUSE comes before the Court upon Defendant Carnival's Motion to Dismiss (DE #58), filed March 28, 2011.<sup>1</sup> Therein, Defendant seeks dismissal of Count V of Plaintiff's Amended Complaint (DE #57), which purports to state a claim for Third-Party Beneficiary. In large part, Defendant claims dismissal is warranted because of Plaintiff's failure to allege in Count V that "there is a provision in the alleged contract between [Defendants] which guaranteed the Plaintiff safe passage on the shore excursion boat ..." (DE #58 at 5). Additionally, Defendant claims dismissal is appropriate because maritime law prohibits implied breach of contract actions.<sup>2</sup>

---

<sup>1</sup> Because Defendant Carnival's Motion seeks dismissal only of Count V, Defendant has waived its basis for dismissal at this stage of any other counts applicable to Carnival.

<sup>2</sup> The Court declines to address Defendant's second contention at this time, as the record is insufficiently developed regarding the specific contractual provisions at issue.

Upon consideration of Plaintiff's Amended Complaint, the Court cannot concur.<sup>3</sup> Carnival concedes that Plaintiff's Amended Complaint states that Carnival's co-Defendants were alleged to have an obligation towards Plaintiff, (DE #68 at 2, citing DE #57 ¶57), yet Carnival claims that there are no such allegations regarding Carnival itself. However, Paragraph 57, when read in conjunction with the remainder of the Complaint, alleges that "Defendant Carnival[] was the owner or co-owner of the subject excursion." (DE #57 ¶13). As such, any obligations arising from Carnival's co-Defendants also arose from Carnival. Insomuch as Count V alleges certain duties owed by the Defendants, Carnival is encompassed by those allegations. Therefore, notwithstanding Defendant's contention otherwise, the Amended Complaint has provided sufficient notice of both the basis for Plaintiff's claim and given Carnival an opportunity to respond thereto. The case cited by Defendant, *Rinker v. Carnival Corp.*, -- F. Supp. 2d ----, 2010 WL 4811760 (S.D. Fla. Nov. 19, 2010), is distinguishable on the basis that only one defendant in that case breached the alleged third-party beneficiary contract. *Id.* at 2010 WL 4811760, at \*4-5. Here, however, Plaintiff's allegations apply equal to Carnival and its co-Defendants.

Accordingly, having considered the parties' legal filings and being otherwise fully advised on the premises, it is **ORDERED, ADJUDGED, and DECREED** that:

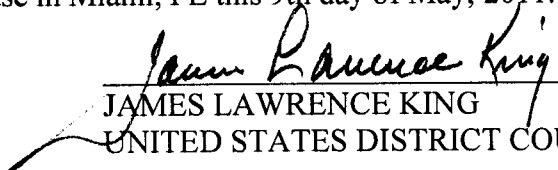
1. Defendant Carnival Corporation's Motion to Dismiss (DE #58) be, and the same is hereby, **DENIED**.
2. Defendant shall **ANSWER** Plaintiff's Amended Complaint (DE #57) **within twenty days** of the date of this Order.

---

<sup>3</sup> Plaintiff filed a Response (DE #65) on April 25, 2011, to which Defendant filed its Reply (DE #68) on May 5, 2011. The matter is therefore ripe for determination.

**DONE and ORDERED** in Chambers at the James Lawrence King Federal Justice

Building and United States Courthouse in Miami, FL this 9th day of May, 2011.

  
JAMES LAWRENCE KING  
UNITED STATES DISTRICT COURT

**cc:**

**Counsel for Plaintiff**

**Carlos Felipe Llinas Negret**

Law Offices of Lipcon, Margulies & Alsina P.A.

2 South Biscayne Boulevard

One Biscayne Tower, Suite 1776

Miami, FL 33131

(305) 373 3016

Fax: (305) 373 6204

Email: cllinas@lipcon.com

**Jason Robert Margulies**

Lipcon Margulies & Alsina

One Biscayne Tower, Suite 1776

2 S. Biscayne Boulevard

Miami, FL 33131

305-373-3016

Fax: 373-6204

Email: crewlawyer@aol.com

**Counsel for Defendant Carnival**

**Adam David Warden**

Foreman Friedman, P.A.

One Biscayne Tower

2 South Biscayne Blvd.

Suite 2300

Miami, FL 33131

Email: awarden@fflegal.com

**Jeffrey Eric Foreman**

Foreman Friedman, PA

One Biscayne Tower

2 S Biscayne Boulevard

Suite 2300

Miami, FL 33131-1803

305-358-6555

Fax: 374-9077  
Email: jforeman@fflegal.com

**Noah Daniel Silverman**  
Foreman Friedman, PA  
2 S Biscayne Boulevard  
Suite 2300 One Biscayne Tower  
Miami, FL 33131  
305-358-6555  
Fax: 305-374-9077  
Email: nsilverman@fflegal.com

**Counsel for Defendant Rapsody**

**Jerry Dean Hamilton**  
Hamilton Miller & Birthisel LLP  
150 SE 2nd Avenue  
Suite 1200  
Miami, FL 33131  
305-379-3686  
Fax: 379-3690  
Email: jhamilton@hamiltonmillerlaw.com

**Hector Virgilio Ramirez**  
Hamilton Miller & Birthisel  
150 SE Second Avenue  
Suite 1200  
Miami, FL 33131-2332  
305-379-3686  
Fax: 379-3690  
Email: hramirez@hamiltonmillerlaw.com

**Michael John Dono**  
Hamilton, Miller & Birthisel LLP  
200 Southeast First Street  
Suite 1102  
Miami, FL 33131  
305-379-3686  
Fax: 305-379-3690  
Email: mdono@hamiltonmillerlaw.com