

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION

Case No. 11-23206-CIV-GRAHAM/GOODMAN

HEATHER MORRIS,

Plaintiff,

vs.

ROYAL CARIBBEAN CRUISES, LTD.,

Defendant.

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**ORDER**

**THIS CAUSE** came before the Court upon Defendant's Motion to Dismiss Plaintiff's Amended Complaint (D.E. 11).

**THE COURT** has considered the Motion, the pertinent portions of the record, and is otherwise fully advised in the premises.

**I. FACTUAL BACKGROUND**

Plaintiff was a passenger on Defendant's *Oasis of the Seas* cruise ship in September 2010. While on the ship, Plaintiff made use of an onboard surfing simulator attraction (the "FlowRider"). At Defendant's instruction, Plaintiff mounted the FlowRider at the front end, where jets propel water upward to create the waves on which participants surf. Plaintiff claims that the force of the water knocked her over, pushing her upward over the wave.

The FlowRider on the cruise was shorter than a standard FlowRider because it had been altered at the back end to fit on the

ship. A user of this version would, if thrown from a wave, reach the back wall more quickly than if she were on a FlowRider of the usual length. Hence, when Plaintiff fell, she hit the back wall. The resulting injuries required surgery and caused permanent impairment.

Plaintiff alleges negligence and strict products liability in her amended complaint. (D.E. 7). Defendant seeks to dismiss Plaintiff's claim for strict products liability. (D.E. 11).

## **II. STANDARD OF REVIEW**

When considering a motion to dismiss, the Court must view the complaint in the light most favorable to the plaintiff and accept its allegations as true. See Beck v. Deloitte & Touche, 144 F.3d 732 (11th Cir. 1998). Federal Rule of Civil Procedure 8(a)(2) requires that a plaintiff give notice of its claim by including in the complaint a "short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. (8)(a)(2). In Bell Atlantic Corp. v. Twombly, the Supreme Court held that in order to survive a motion to dismiss, a complaint must contain factual allegations which are enough to raise a right to relief above the speculative level. Twombly, 127 S. Ct. 1955, 1965 (2007). "While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic recitation of the

elements of a cause of action will not do." Id. at 1964-65 (internal citations omitted). In Ashcroft v. Iqbal, the Supreme Court further stated that a court need not accept legal conclusions as true; only well-pleaded factual allegations are entitled to an assumption of truth. Iqbal, 129 S. Ct. 1937, 1949-50 (2009).

### III. ANALYSIS

#### **A. Plaintiff is able to recover under negligence theory or strict liability theory.**

Defendant asserts that Plaintiff cannot seek relief under both the theory of negligence and the theory of strict liability. However, courts have explicitly found that a lawsuit may be brought under both theories. See, e.g., Creel v. General Motors Corp., 233 So. 2d 105, 108 (Miss. 1970); Lamendola v. Mizell, 280 A.2d 241, 243 (N.J. Super.L. 1971) ("[T]he legal theories of products liability and negligence are not mutually repulsive . . ."). Defendant's motion to dismiss based on the argument that these theories are mutually exclusive is denied.

#### **B. Defendant is a manufacturer and can therefore be held strictly liable.**

Defendant's motion also asserts that products liability in admiralty is applicable to manufacturers of vessels, but not to owners or operators because they owe passengers only the duty of reasonable care.<sup>1</sup> (D.E. 11:5). This argument fails to fully address

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<sup>1</sup>Defendant cites Zamora v. Royal Caribbean Cruises, Ltd. in support of its claim. (Case No. 10-CV-23981). That case is irrelevant because it was dismissed not on its merits, but because the parties missed a filing deadline.

Plaintiff's claim. Plaintiff alleges that Defendant modified the FlowRider's original design; therefore, Defendant is more than merely the operator of the cruise ship and surfing attraction.

In Straley v. Calongne Drayage & Storage, Inc., the plaintiff was injured while using an elevator that the defendant landlord had modified from its original design. Straley, 346 So. 2d 171 (La. 1977). The court found that the defendant was more than merely the owner of the premises, and as such, it had an "obligation . . . to assure that the design . . . does not present discernible serious safety hazards." Id. at 176. Unreasonable hazards within the realm of foreseeable use create an additional duty to adequately warn or provide safety devices to protect users. Id. The instant case is analogous. By modifying the FlowRider's original design, Defendant became more than merely its owner. Accordingly, Defendant's motion to dismiss based on its status as simply an owner or operator is denied.

#### IV. CONCLUSION

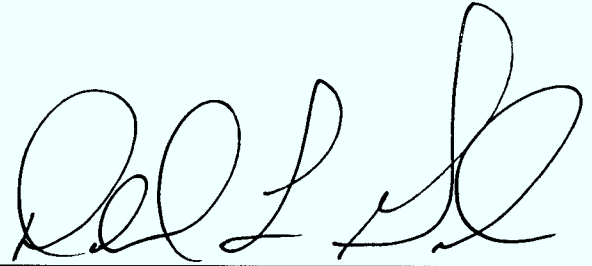
Plaintiff has adequately and properly pled a cause of action under the theory of negligence or, in the alternative, strict liability. Accordingly, it is hereby

**ORDERED AND ADJUDGED** that Defendant's Motion to Dismiss Plaintiff's Complaint [D.E. 11] is **DENIED**.

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In the future, this Court prefers not to have to expend resources in order to make such a determination.

**DONE AND ORDERED** in Chambers at Miami, Florida, this 7<sup>th</sup> day  
of February, 2012.

A handwritten signature in black ink, appearing to read 'DLG', written over a horizontal line.

DONALD L. GRAHAM  
UNITED STATES DISTRICT JUDGE

cc: U.S. Magistrate Judge Goodman  
Counsel of Record