

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO.

ERIK ELBAZ, Individually
and as Personal Representative for the
Estate of BERNARDO TEXEIRA GARCIA, deceased.

Plaintiff,

v.

ROYAL CARIBBEAN CRUISES (LTD).,

Defendant.

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff, ERIK ELBAZ, individually and as personal representative of the estate of BERNARDO TEXEIRA GARCIA (decedent) sues Defendant, Royal Caribbean Cruises Ltd. (“RCCL”). The Plaintiff alleges, as follows:

JURISDICTIONAL ALLEGATIONS

1. The matter in controversy exceeds, exclusive of interest and costs, the sum specified by 28 U.S.C. 1332. Plaintiff is a resident of the state of New York.
2. Alternatively, in the event this matter does not come under diversity jurisdiction of this Court, then this matter is being brought under the admiralty and maritime jurisdiction of this Court pursuant to Article III, §2 of the United States Constitution, delegating jurisdiction over admiralty cases to the federal courts.
3. Defendant Royal Caribbean operates the vessel *Oasis of the Seas* in navigable waters, on the high seas, between ports in the United States and ports in foreign countries. Defendant

Royal Caribbean is in the business of providing to the public and to Bernardo Texeira Garcia and Erik Elbaz for compensation, vacation cruises aboard its vessel, *Oasis of the Seas*.

4. On or about November 6, 2015, Bernardo Texeira Garcia and his legally married spouse, Erik Elbaz, were paying passengers on Defendant's vessel, *Oasis of the Seas*, which was in navigable waters.

5. On said date, the decedent, Bernardo Texeira Garcia, fell from his stateroom on deck 7, landed on the life boats on deck 6, and eventually fell overboard into the ocean – approximately 55 feet without any floatation devices. Prior to the fall into the ocean, this legally married gay couple was repeatedly exposed to homophobic taunts and slurs by Defendant's employees.

6. Royal Caribbean's employees were present when the decedent fell and despite having grabbed Mr. Garcia by his hands, failed to secure him and pull him up to safety. Thereafter, Royal Caribbean negligently and/or willfully and/or recklessly did not initiate a reasonable search and rescue of the decedent in the ocean. Royal Caribbean failed to deploy lifeboats within a reasonable time and failed to promptly stop and/or turn the ship around. Consequently, the decedent was lost at sea, never to be found.

7. Defendant is subject to the jurisdiction of the Courts of this state.

8. Defendant at all times material hereto, personally or through an agent;

- a. Operated, conducted, engaged in or carried on a business venture in this state and/or county or had an office or agency in this state and/or county;
- b. Were engaged in substantial activity within this state;
- c. Operated vessels in the waters of this state;
- d. Committed one or more of the acts stated in Florida Statutes, Sections 48.081, 48.181 or 48.193;

- e. The acts of Defendants set out in this Complaint occurred in whole or in part in this county and/or state.
- f. Subjected its passengers to a “ticket contract” requiring all litigation to be brought and filed in this Court.

GENERAL ALLEGATIONS

9. The causes of action asserted in this Complaint arise under the General Maritime Law of the United States.

10. At all times material hereto, Defendant owned, operated, managed, maintained and/or controlled the vessel, *Oasis of the Seas*.

11. On or about November 6, 2015, Bernardo Texeira Garcia and Erik Elbaz, were paying passengers on the Defendant’s vessel, *Oasis of the Seas*, which was in navigable waters, for a cruise which began on or about October 31, 2015.

12. Mr. Garcia and his legal spouse, Erik Elbaz were victims of Royal’s unfailing and repetitive anti-gay insults throughout their cruise.

13. Since the first day of the cruise, Garcia and Elbaz were the subject of continuous abusive homophobic slurs. They were repeatedly called a “lipstick” by a bartender on the first day of the cruise.

14. Mr. Garcia and his spouse, Erik Elbaz, complained to Royal Caribbean’s management about the incidents immediately.

15. Again, on the evening of November 5, 2015, the decedent, Bernardo Texeira Garcia, was called a pedophile and other anti-gay slurs by Royal Caribbean’s employees.

16. Mr. Garcia was extremely distraught by the employees’ discriminatory and offensive insults, he left the pool and returned to his stateroom.

17. Once at his stateroom (deck 7), he told his legal spouse, Erik Elbaz, about the insults he was a victim of and became even more distraught.

18. Shortly thereafter, RCCL's security officers reported to the decedent's stateroom and engaged in an argument with Garcia and Elbaz, threatening to incarcerate Mr. Garcia.

19. A series of events that ensued in the stateroom between Mr. Garcia and the security officers which ultimately led Garcia to end up on the Sixth (6) deck life boats, where Mr. Garcia was holding on for his dear life for several minutes.

20. Several RCCL security officers and/or crewmembers grabbed Mr. Garcia by his arms and had a hold of him for several minutes, but ultimately failed to secure and rescue him from falling overboard. Mr. Garcia fell approximately 55 feet into the cold and dark ocean waters. Mr. Elbaz witnessed the entire incident.

21. Mr. Elbaz repeatedly begged and cried for Royal Caribbean officials to stop the ship and rescue his spouse. In response, Royal Caribbean officials failed to rescue Mr. Garcia, they simply kept telling Mr. Elbaz to "calm down."

22. Despite having rescue boats, and first-hand knowledge of Mr. Garcia's fall into the ocean, the *Oasis of the Seas* maintained its course and speed, and rescue boats were never timely deployed.

23. Royal Caribbean's rescue boats took an unreasonable period of time after Mr. Garcia fell overboard to be deployed. As a result, in all likelihood Mr. Garcia had to endure a horrific and painful drowning. Royal Caribbean's willful and/or reckless conduct warrants the imposition of punitive damages.

24. The United States Coast Guard initiated a search and rescue operation after receiving a distress communication from the *Oasis*. Mr. Garcia's body was never found.

25. Between 2000 and 2015, there have been approximately 16 incidents of passengers going overboard while travelling on Royal Caribbean ships. Out of those 16 incidents, only 3 people have survived, the rest have died.

COUNT I – NEGLIGENCE AGAINST ROYAL CARIBBEAN

Plaintiff realleges, adopts, and incorporates by reference the allegations in paragraphs one (1) through twenty-five (25) as though alleged originally herein.

26. It was the duty of Royal Caribbean, to provide Mr. Bernardo Garcia with reasonable care under the circumstances.

27. On or about November 6, 2015, RCCL, and/or its agents, apparent agents, servants, and/or employees breached its duty to provide Mr. Bernardo Garcia with reasonable care under the circumstances.

28. On or about the above date, Mr. Bernardo Garcia was injured due to the fault and negligence of RCCL, and/or its agents, apparent agents, servants, and/or employees as follows:

- (a) Failing to rescue decedent;
- (b) Failing to immediately stop the vessel and initiate the search of the Plaintiff at sea;
- (c) Failing to promptly deploy rescue boats;
- (d) Failing to timely divert the vessel to promptly rescue Mr. Garcia at sea; and/or
- (e) Failing to make every reasonable effort consistent with the safety of the ship and passengers to rescue Mr. Garcia as soon as his situation arose; and/or
- (f) Failing to promulgate and/or enforce and/or comply with rules and/or policies to ensure that passengers that fall overboard are not left out in the ocean by themselves for unreasonable periods of time; and/or
- (g) Failing to promulgate and/or enforce and/or comply with rules and/or policies to ensure

- that passengers do not fall overboard into the ocean; and/or
- (h) Failing to have safety mechanisms in place to detect and alert ship personnel that a passenger has fallen overboard; and/or
 - (i) Having in place polies and/procedures which prevent ship personnel from promptly and/or adequately rescue a passenger at sea; and/or
 - (j) Failing to provide the deceased with the means to stay afloat at sea for the period that he was abandoned by RCCL in the middle of the ocean; and/or
 - (k) Failing to provide reasonable safe conditions for the deceased during his voyage aboard the *Oasis of the Seas*. The unsafe conditions included but are not limited to operating a “floating dram shop,” permitting passengers, including deceased, to become extremely intoxicated by over serving them unreasonable amounts of alcohol for profit; and/or
 - (l) Failing to maintain and monitor security cameras on the ship so as to allow and/or fail to prevent intoxicated passengers from becoming injured; and/or
 - (m) Failing to have an adequate number of personnel aboard the ship so as to be able to promptly, properly and adequately rescue passengers at sea; and/or
 - (n) Failing to properly train personnel aboard the ship so as to be able to promptly, safely and adequately rescue passengers on the verge of falling into the ocean; and/or
 - (o) Failing to properly train personnel aboard the ship so as to be able to promptly, properly and adequately rescue passengers at sea; and/or
 - (p) Failing to properly train crewmembers in diversity and sensitivity training, such that passengers were subject to rampant, repeated anti-gay slurs.
 - (q) Failing to deploy any life rings, life vests or any personal floatation devices for passengers falling overboard; and/or

(r) Violated the International Management Code and failed to have a proper, adequate and safe Safety Management Manual; and/or

29. All of the above caused the decedent to be injured and die.

30. As a direct and proximate result of the negligence and/or reckless and/or wilful conduct of Defendant, Royal Caribbean (described above), Bernardo Texeira Garcia was injured and died.

31. At all times material hereto, Defendant intentionally and/or negligently allowed its employees to engage in discriminatory and abusive treatment of its passengers, failed to take corrective measures to prevent any further abuse, failed to keep its passengers safe, specifically Mr. Garcia and Mr. Elbaz. In addition, Defendant failed to conduct an adequate rescue operation which could have been easily achieved. All of the above caused the decedent to be injured and die.

32. As a direct and proximate result of the negligence and/or reckless and/or willful conduct of Defendant, Royal Caribbean (described above), Bernardo Texeira Garcia was injured and died. Decedent's survivor and estate sustained pecuniary losses as allowed by law.

WHEREFORE, the Plaintiff demands judgment for all damages recoverable under the law, including punitive damages, against the Defendants and requests trial by jury

COUNT II – ERIK ELBAZ'S CLAIM FOR INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS AGAINST ROYAL CARIBBEAN

Plaintiffs reallege, adopt, and incorporate by reference the allegations in paragraphs one through twenty-five (25) as though alleged originally herein.

33. On or about the above referenced date, Royal Caribbean and/or its agents, servants and/or employees intentionally and/or recklessly exposed Elbaz and his husband to repeated anti-gay slurs and then refused to immediately stop the ship and rescue the decedent Bernardo Texeira

Garcia.

34. Royal Caribbean's conduct was intentional and/or reckless. That is, it intended its behavior when its' ship officers knew or should have known that emotional distress would likely result to the plaintiff. First, Defendant and its crew repeatedly subjected this legally married gay couple to anti gay slurs and discrimination. Then, Royal Caribbean literally dropped Mr. Garcia into the ocean as he was holding for his life from the life boat davit. Despite having direct knowledge of the decedent falling overboard, RCCL failed to deploy rescue boats immediately, failed to deploy a beacon to mark the area where decedent fell, the *Oasis of the Seas* maintained its course and speed, never stopping or even turning to the side of the vessel where the decedent had fallen to avoid having the ship's propellers strike Mr. Garcia.

35. Accordingly, Royal Caribbean knowingly and/or recklessly abandoned one of its passengers, Mr. Garcia in the middle of the ocean, leaving him to die. As a result, in all likelihood he had to endure a horrific and painful drowning. Plaintiff Erik Elbaz was forced to witness Royal Caribbean's reckless and/or intentional rescue of his spouse.

36. Royal Caribbean's conduct was, at all times material, outrageous and goes beyond all bounds of decency, utterly intolerable in a civilized community:

(a) Mr. Elbaz witnessed how the RCCL employees failed to rescue Mr. Garcia from the life boat davit where he was holding for his life. Further, Mr. Elbaz witnessed RCCL'S employees drop Mr. Garcia's into the ocean.

(b) At all times material, Erik Elbaz repeatedly cried and begged for Royal Caribbean officials (crew members, security staff, ship officers) to help rescue his spouse, and repeatedly requested Royal Caribbean employees to stop the ship and deploy rescue boats. Instead of taking Mr. Elbaz's cries for help more seriously and taken affirmative action, Royal Caribbean

confined Mr. Elbaz's against his will in order to isolate him from other passengers.

(c) Mr. Elbaz had to endure unnecessary confinement and isolation, during which he suffered severe emotional distress, while he continued to beg Royal Caribbean officials to search and rescue his spouse. As time passed, Mr. Elbaz feared for his spouse's imminent death, and felt helpless, visualizing his spouse floating in the middle of the ocean by himself without a life jacket. Moreover, Mr. Elbaz was so distraught by the fact that RCCL employees let his spouse fall overboard that he immediately contacted his family in the United States to seek help. Mr. Elbaz was uncontrollably crying for help as he felt his like his heart was being stabbed.

(d) Mr. Elbaz is still undergoing therapy to help him manage the severe emotional distress caused as a result of the result of this incident.

(e) All in all, Royal Caribbean's conduct was, at all times material, outrageous and goes beyond all bounds of decency, utterly intolerable in a civilized community. The outrageous conduct includes, but is not limited to: 1) Royal Caribbean's intentional or reckless rescue of Mr. Garcia from the life boat davits and dropping him into the ocean while Mr. Elbaz watched, 2) Royal Caribbean's willful and/or reckless disregard of Mr. Elbaz's pleas to rescue his spouse at sea, 3) Royal Caribbean's willful and/or reckless failure to stop the ship and timely initiate a search and rescue operation, 3) and 4) Royal Caribbean's confinement and isolation of Mr. Elbaz against his will, forcing him to feel helpless and to witness Royal Caribbean's recklessness rescue of his spouse while on the life boat and on high seas.

37. A Plaintiff is allowed to bring a claim seeking recovery for emotional distress that he/she suffers personally. Plaintiff is not seeking recovery for his immediate relative's death or his pre-death pain and suffering—only for the emotional distress that has resulted from witnessing it. The fact that a death occurred is not essential to the claim. "This claim [emotional distress]

does not fall within DOHSA's ambit, and thus can hardly be said to represent "Congress' considered judgment" on the issue." *Mobil Oil Corp. v. Higginbotham*, 436 U.S. 618, 625, 98 S.Ct. 2010, 56 L.Ed.2d 581. *Smith v. Carnival Corp.*, 584 F. Supp. 2d 1343, 1353 (S.D. Fla. 2008); *Martins v. Royal Caribbean Cruises Ltd.*, No. 15-21124-CIV, 2016 WL 1254067 (S.D. Fla. Mar. 29, 2016).

38. As a direct and proximate result of Defendant Royal Caribbean's Intentional Infliction of Emotional Distress, the Plaintiff, Erik Elbaz experienced in the past mental and emotional anguish, loss of enjoyment of life, impairment and inconvenience in the normal pursuits and pleasures of life. In particular, Mr. Elbaz has been diagnosed with post-traumatic stress disorder, anxiety, and depression. Since the incident, Mr. Elbaz also has difficulty sleeping, and experiences nightmares on a daily basis. These losses continue into the future.

WHEREFORE, the Plaintiff demands judgment for all damages recoverable under the law, including punitive damages, against the Defendants and requests trial by jury.

COUNT III - ERIK ELBAZ'S CLAIM FOR NEGLIGENT INFLECTION OF EMOTIONAL DISTRESS AGAINST RCCL

Plaintiff realleges, adopts, and incorporates by reference the allegations in paragraphs one (1) through twenty- five (25) as though alleged originally herein.

39. It was the duty of Defendant, Royal Caribbean, to provide the plaintiff with reasonable care under the circumstances.

40. On or about November 6, 2015, Defendant, Royal Caribbean, and/or its agents, servants, and/or employees (including the vessel's master and the crew) breached their duty to provide Plaintiff with reasonable care under the circumstances.

41. On or about the above date, Plaintiff was injured due to the fault and negligence of Defendant, Royal Caribbean, and/or its agents, servants, and/or employees as follows:

- a. Failing to rescue decedent;
- b. Failing to immediately stop the vessel and initiate the search of the Plaintiff at sea;
- c. Failing to promptly deploy rescue boats;
- d. Failing to timely divert the vessel to promptly rescue Mr. Garcia at sea; and/or
- e. Failing to make every reasonable effort consistent with the safety of the ship and passengers to rescue Mr. Garcia as soon as his situation arose; and/or
- f. Failing to promulgate and/or enforce and/or comply with rules and/or policies to ensure that passengers that fall overboard are not left out in the ocean by themselves for unreasonable periods of time; and/or
- g. Failing to promulgate and/or enforce and/or comply with rules and/or policies to ensure that passengers do not fall overboard into the ocean; and/or
- h. Failing to have safety mechanisms in place to detect and alert ship personnel that a passenger has fallen overboard; and/or
- i. Having in place polies and/procedures which prevent ship personnel from promptly and/or adequately rescue a passenger at sea; and/or
- j. Failing to provide the deceased with the means to stay afloat at sea for the period that he was abandoned by RCCL in the middle of the ocean; and/or
- k. Failing to provide reasonable safe conditions for the deceased during his voyage aboard the Oasis of the Seas. The unsafe conditions included but are not limited to operating a “floating dram shop,” permitting passengers, including deceased, to become extremely intoxicated by over serving them unreasonable amounts of alcohol for profit; and/or

- l. Failing to maintain and monitor security cameras on the ship so as to allow and/or fail to prevent intoxicated passengers from becoming injured; and/or
- m. Failing to have an adequate number of personnel aboard the ship so as to be able to promptly, properly and adequately rescue passengers at sea; and/or
- n. Failing to properly train personnel aboard the ship so as to be able to promptly, safely and adequately rescue passengers on the verge of falling into the ocean; and/or
- o. Failing to properly train personnel aboard the ship so as to be able to promptly, properly and adequately rescue passengers at sea; and/or
- p. Failing to properly train crewmembers in diversity and sensitivity training, such that passengers were subject to rampant, repeated anti-gay slurs.
- q. Failing to deploy any life rings, life vests or any personal floatation devices for passengers falling overboard; and/or
- r. Violated the International Management Code and failed to have a proper, adequate and safe Safety Management Manual; and/or

42. All of the above caused the Plaintiff to be injured and/or which caused the Plaintiff's injuries to be aggravated and made worse.

43. At all times material hereto, Defendant RCCL was negligent in failing to timely, properly and adequately rescue the deceased from the life boat davits, despite having three crewmembers capable of rescuing the deceased; failed to rescue the deceased from the seas. In particular, RCCL failed to immediately stop the vessel and initiate the search of the deceased at sea. Instead, RCCL did not stop the *Oasis of the Seas* and deliberately and/or recklessly took too long to deploy the rescue boats. In doing so, RCCL abandoned the deceased in the middle

of the ocean for an unreasonable period of time. All of the above caused the plaintiff to be injured.

44. As a direct and proximate result of the negligence of Defendant RCCL, the decedent, Bernardo Texeira Garcia, fell from his stateroom in deck 7, landed on the life boats on deck 6 and eventually fell overboard into the ocean – approximately 55 feet without any floatation devices.

45. During that time, the Plaintiff was at all times material in the zone of danger and also witnessed first-hand the entire failed attempt to rescue his spouse, first from the life boat davits and then from the ocean. Mr. Elbaz was literally within feet of his spouse when Royal's employees dropped the deceased into the ocean. Mr. Elbaz was terrified for his spouse's safety. Plaintiff feared that his spouse was going to be lost at sea. He continued to beg Royal Caribbean officials to search and rescue his spouse. As time passed, Mr. Elbaz felt helpless, visualizing his spouse floating in the middle of the ocean by himself without a life jacket. All of this caused Plaintiff severe emotional distress.

46. Plaintiff is allowed to bring a claim seeking recovery for emotional distress that he suffers personally. He is not seeking recovery for his spouse's death or his pre-death pain and suffering—only for the emotional distress that has resulted from witnessing it. The fact that a death occurred is not essential to the claim. “This claim [emotional distress] does not fall within DOHSA's ambit, and thus can hardly be said to represent “Congress' considered judgment” on the issue.” *Mobil Oil Corp. v. Higginbotham*, 436 U.S. 618, 625, 98 S.Ct. 2010, 56 L.Ed.2d 581. *Smith v. Carnival Corp.*, 584 F. Supp. 2d 1343, 1353 (S.D. Fla. 2008); *Martins v. Royal Caribbean Cruises Ltd.*, No. 15-21124-CIV, 2016 WL 1254067 (S.D. Fla. Mar. 29, 2016).

47. As a result of Defendant, Royal Caribbean's Negligent Infliction of Emotional Distress,

the Plaintiff, Erik Elbaz experienced in the past mental and emotional anguish, loss of enjoyment of life, impairment and inconvenience in the normal pursuits and pleasures of life. In particular, Mr. Elbaz has been diagnosed with post-traumatic stress disorder, anxiety, and depression. Since the incident, Mr. Elbaz also has difficulty sleeping, and experiences nightmares on a daily basis. These losses continue into the future.

WHEREFORE, the plaintiff demands judgment for all damages recoverable under the law against the defendants, including punitive damages, and demands jury trial of all issues so triable.

COUNT IV - APPLICATION OF BAHAMIAN LAW THROUGH DEATH ON THE HIGH SEAS ACT, 46 U.S.C. 30306 AGAINST RCCL

Plaintiff realleges, adopts, and incorporates by reference the allegations in paragraphs one (1) through twenty- five (25) as though alleged originally herein.

48. At all times material hereto the laws of the Bahamas provide plaintiff, the decedent, and his survivors with a right of action by reason of the death of decedent by wrongful act, neglect or default occurring upon the high seas against defendants. Plaintiff is pleading, in the alternative, a 46 U.S.C. 30306 cause of action by reason of the laws of the Bahamas.

49. The law of the Bahamas, “Fatal Accidents Act” and the “Survival of Action Act,” together permit recovery of damages similar to those available under Florida’s Wrongful Death Act. See Bank, Miami, as Personal Representative of the Estate of Chad Humphreys, deceased, v. Sun International Hotels Limited, 184 F.Supp.2d 1246 (U.S.D.C. So. Dist. Fla. 2001), such damages include:

- a. The estate’s loss of earnings of the decedent from the date of injury to the date of death;

- b. The estate's loss of net accumulations;
- c. Medical and/or funeral expenses;
- d. Lost support and services;
- e. Loss of decedent's companionship and protection, and mental pain and suffering of the surviving spouse as a result of the decedent's injury and death;
- f. Loss of parental companionship, instruction and guidance, and mental pain and suffering of the surviving children as a result of the decedent's injury and death.

WHEREFORE, Plaintiff demands damages as allowed under application of Bahamian Law through the Death on the High Seas Act, and/or any other applicable wrongful death and/or survival act and including but not limited to mental pain and suffering of decedent's survivors, loss of support, loss of inheritance, loss of past and future earnings, loss of net accumulation, loss of services, loss of nurture and guidance of his minor children, pre-death pain and suffering and funeral expenses against all defendants and demand trial by jury.

DATED November 1, 2016

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