MARITIME LAW ASSOCIATION OF THE UNITED STATES

Cruise Lines and Passenger Ships Committee

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1. Passenger Tickets - Venue & Law
Carnival Cruise Lines, Inc. v. Shute, 499 U.S. 585 (1991).

Procedural History

The Shutes, a Washington State couple, filed suit in the United States District Court for the Western District of Washington. Carnival moved for summary judgment, on the basis that the forum clause in the ticket required the Shutes to bring their suit against it in a court in the State of Florida. Carnival argued, alternatively, that the District Court lacked personal jurisdiction over it because its lacked sufficient contacts with the State of Washington. The District Court granted summary judgment on the basis that Carnival had insufficient contacts with the State of Washington to exercise personal jurisdiction. The Court of Appeals for the Ninth Circuit reversed.

The Supreme Court granted certiori to "primarily consider whether the United States Court of Appeals for the Ninth Circuit correctly refused to enforce a forum selection clause contained in tickets issued by petitioner Carnival Cruise Lines, Inc., to respondents Eulala and Russel Shute."

The Supreme Court held that the Court of Appeals erred in refusing to enforce the forum-selection clause.

Facts

The Shutes purchased their tickets through a Washington travel agent. The face of each ticket contained terms and conditions of passage, which provided:

"It is agreed by and between the passenger and the Carrier that all disputes and matters whatsoever arising under, in connection with or incident to this Contract shall be litigated, if at all, in and before a Court located in the State of Florida, U.S.A. to the exclusion of the Courts of any other state or country."

The Shutes boarded the ship in Los Angeles, and, while in international waters off the Mexican coast, Mrs. Shute suffered injuries when she slipped on a deck mat during a guided tour of the ship's galley.

Opinion

The Supreme Court first analyzed *The Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1 (1972). It refined the *Bremen* analysis to forum selection clauses in passenger contracts. It reasoned that a reasonable forum selection clause in a passenger contract could be permissible for several reasons, including: 1) a cruise lines' reasonable interest in limiting the for a in which it could be subject to suit; 2) dispelling any confusion about where legitimate suits must be brought and defended saving litigants time and expense of motion practice; and 3) enabling litigants to benefit from reduced fares reflecting the savings the carrier enjoys by limiting the for a.

In addition, the Court reasoned that there was no indication that Carnival set Florida as the forum to discourage passengers from pursuing legitimate claims because Carnival's offices were in Florida and it regularly sailed to and from Florida ports. Moreover, Florida was not deemed so inconvenient for a couple which willingly traveled to Mexico.

Finally, the Court reviewed 46 U.S.C. § 30509, formerly 46 U.S.C. App. 183(c), which provides that it is unlawful for "the owner of any vessel transporting passengers between ports of the United States or between any such port and a foreign port to insert in any rule, regulation, contract, or agreement any provision or limitation" purporting to limit their liability for negligence in the case of personal injury or

death, or purporting to "lessen, weaken, or avoid the right of any claimant to a trial by court of competent jurisdiction on the question of liability for such loss or injury, or the measure of damages therefor." The court found that this provision did not prohibit a forum selection clause and that the clause in Carnival's contract did not prohibit the claim from being heard in a court of competent jurisdiction, before a jury, and did not purport to limit Carnival's liability for negligence.

In summary, the Supreme Court upheld the ability of Carnival to enforce its forum selection clause and reversed the judgment of the Court of Appeals.

2. Negligent Failure to Warn – Notice of Dangerous Condition *Francis v. MSC Cruises, S.A.*, 835 Fed. App'x 512 (11th Cir. 2020).

While aboard the *MSC Davina*, Plaintiff Janet Francis and her friend Regina Kenneweg went through a corridor to a self-service buffet and noticed that the floor was dirty. It appeared as though passengers had been carrying food from the buffet through the corridor out to the deck, and some of that food had spilled onto the floor. The two women walked carefully through the corridor, making sure not to step on any of the spilled food. They made it safely to the buffet. They were at the buffet for somewhere between 10 and 30 minutes. When they left the buffet, they walked through the corridor, noting that the corridor had been cleaned in their absence; however, as they walked Francis slipped and fell on a piece of watermelon. Francis suffered a broken tibia and sued MSC for a single count of negligence, alleging three different theories of negligence: negligent design of the corridor's floor, negligent maintenance of the corridor's floor, and negligent failure to warn about the slip hazard.

MSC moved for summary judgment on the ground that it had no actual or constructive notice of the slip hazard—the piece of watermelon on the floor. Francis filed a cross motion for partial summary judgment on the ground that there was no disputed issue of material fact related to several issues in the case, including that the floor where she slipped was not reasonably slip-resistant when contaminated with a slipping hazard and that MSC was on notice of the piece of watermelon that caused her to fall. The magistrate judge granted MSC's motion for summary judgment, finding that the watermelon was not present in the hallway for long enough to invite corrective measures and that there was no history of substantially similar incidents aboard the Davina or her sister ships classwide. As a result, MSC had no actual or constructive notice of the slip hazard and could not be held liable for Francis's fall. Following the grant of summary judgment, the magistrate judge entered a final judgment in favor of MSC and against Francis, closed the case, and declared all motions moot. Francis appealed.

Absent actual notice, a plaintiff can establish constructive notice by showing that a hazard existed for a sufficient period "to invite corrective measures" or by providing evidence of substantially similar incidents in the past. The Appellate Court stated that Francis herself, though walking carefully and looking for fruit, did not see the watermelon before she fell. In refuting Francis' arguments that nearby crew members should have been aware of the watermelon, the Court could not say that a reasonable factfinder could infer that crewmembers a short distance away should have noticed a single small piece of watermelon. The Appellate Court stated that "our law does not require crew members to be on notice within 10 to 30 minutes of every small piece of food that falls to the floor, on a ship where hundreds of passengers are walking with food each day." The Appellate Court concluded that no genuine dispute of material fact exists as to whether MSC was on notice about the dangerous condition; therefore, the magistrate judge's grant of summary judgment was proper.

The Court further found that Francis alleged theories of negligent design or maintenance sufficient to meet the notice pleading requirements of the Federal Rules of Civil Procedure and MSC's Motion for Summary Judgment only addresses the negligent failure to warn. Therefore, the lower court's ruling on the remaining negligence claims was sua sponte. The Appellate Court found that the lower court erred in granting summary judgment on the negligent design and negligent maintenance theories. The case was remanded for further proceedings.

3. Statute of Limitations – Passenger Ticket
Caron v. NCL (Bah.), Ltd. 910 F.3d 1359 (11th Cir. 2018).

Olivier Caron, a Canadian citizen, was injured while a passenger on the Star, a vessel owned and operated by NCL. On the second day of his Baltic cruise, Caron bought an all-inclusive package, which allowed him unlimited beer and wine while on the cruise, and proceeded to drink beer late into the night. After leaving the bar, instead of returning to his room, Caron entered an area that was clearly marked with signs reading "CREW ONLY" and "RESTRICTED, CREW ACCESS ONLY." Caron then entered another door labeled "CAUTION Only authorized crew beyond this sign," and fell several feet through an emergency-exit hatch, causing injuries.

Caron filed suit against NCL in the Southern District of Florida, asserting jurisdiction on the basis of diversity of citizenship and admiralty jurisdiction. Although Caron alleged that admiralty jurisdiction was proper, he did not make a Rule 9(h) election for his claim to proceed in admiralty.

NCL moved to dismiss this claim under Federal Rule of Civil Procedure 12(b)(6) and strike the allegation of over-service on the basis of a limitations provision in Caron's ticket contract, which required any personal-injury suits against NCL to be brought within one year of the incident giving rise to the injury. The District Court dismissed the over-service claim and granted summary judgment for NCL on the other negligence claim. Plaintiff appealed.

The Appellate Court found that though alienage-diversity jurisdiction is lacking, the District Court validly exercised admiralty jurisdiction over the case pursuant to 28 U.S.C. § 1333(1). The Appellate Court found that Caron's over-service claim does not relate back and was therefore barred by the limitations clause. The Appellate Court also agreed with the District Court that the testimony did not create a genuine issue of material fact on whether the absence of locks rendered the hatch dangerous. The Court also agreed that Caron did not present sufficient evidence of negligence on the part of NCL's crew. The Appellate Court found that NCL was entitled to dismissal of Caron's over-service claim and summary judgment on Caron's negligence claim.

4. Notice of Dangerous Condition
Adams v. Paradise Cruise Line Operator, Ltd., 847 Fed. App'x 556 (11th Cir. 2021).

After taking a shower onboard a cruise ship, the Grand Celebration, Plaintiff Marilyn Adams slipped and fell on the bathroom floor, suffering a serious injury. The ship's crew had inspected and cleaned the stateroom the morning Adams and her husband boarded the ship, which was the same date of her fall. When Adams first went into the bathroom, she found it in an "acceptable" condition. The entrance to the bathroom displayed a warning sign providing, "'WATCH YOUR STEP.' BATHROOM FLOOR SLIPPERY WHEN WET."

Plaintiff sued the ship owner, Bahamas Paradise Cruise Line Operator, Ltd., Inc. ("Paradise Cruise"), alleging that Paradise Cruise failed to maintain and inspect the bathroom to be free from dangerous conditions, and failed to warn Adams of these conditions. The district court granted summary judgment in favor of Paradise Cruise. In its summary judgment order, the district court grouped these allegations into three categories: (1) failure to maintain a bathroom free from dangerous conditions; (2) failure to inspect the bathroom for dangerous conditions and timely correct such conditions; and (3) failure to warn Adams of dangerous conditions in the bathroom.

The Appellate Court found in its review that Adams did not show a genuine issue of disputed fact about whether the corroded area on the bathroom doorframe constituted a dangerous condition causing Adams's slip and fall as she presented no evidence suggesting that the rust spot was the conduit for the water on the bathroom floor. The Court found that as for Adams's argument that the pooling of water on the bathroom floor was itself the dangerous condition at issue, Paradise Cruise had no duty to protect Adams from a dangerous condition of which it had no notice

The Appellate Court affirmed the lower court's ruling and concluded that Adams failed to raise a genuine issue of fact indicating that Paradise Cruise had actual or constructive notice of a dangerous condition in its stateroom bathroom. The Court stated that it did not need to address whether the excessive pooling of water was an open and obvious condition of which Adams was or should have been aware.

5. Class Action – Ticket Forum Selection
Turner v. Costa Crociere S.P.A., 2021 U.S. App. LEXIS 24824, 2021 WL 3673727 (11th Cir. Aug. 19, 2021).

Parties

Paul Turner, on his own behalf and on behalf of all others similarly situated passengers aboard the *Costa Luminosa* as Plaintiff-Appellant v. Costa Crociere S.P.A., Costa Cruise Lines, Inc., Defendant-Appellees.

Procedural History

Appeal from the United States District Court for the Southern District of Florida, in which the District Court dismissed the proposed class action.

Issue

The question before the Eleventh Circuit in *Turner* was whether a cruise company may deprive a U.S. passenger of rights guaranteed by a federal statute, 46 U.S.C. § 30509, by writing an Italian choice-of-law clause and an Italian forum selection clause into a consumer cruise line contract. In dismissing a proposed class action, the Eleventh Circuit held that the forum selection clause in the ticket contract of class representative (Paul Turner of Wisconsin) was enforceable and required any claims associated with the cruise to be tried in Genoa, Italy.

Facts

Class Action involving allegations against Defendant Costa's (a) knowing and intentional decision to proceed with a transatlantic 20-day cruise on March 5, 2020, knowing at least one of its passengers from the prior voyage who disembarked February 29, 2020 had symptoms of coronavirus; (b) knowing and intentional decision to conceal from passengers that a passenger on the *Costa Luminosa* had symptoms of coronavirus that necessitated a medical evacuation; and (c) knowing and intentional decision to wait two days to order passengers to isolate in their staterooms after being informed that the passenger who disembarked in Puerto Rico with symptoms of coronavirus tested positive for such.

The cruise line moved to dismiss the case on the basis of a forum selection clause in the ticket mandating that all disputes be resolved by a court in Genoa, Italy. The contract also contained a choice-of-law clause selecting Italian law. By way of background, it is important to note that (1) the parent company for the cruise line was headquartered in Italy, (2) its operating subsidiary was headquartered in Florida, (3) the cruise was to begin in Fort Lauderdale, Florida, and (4) the cruise was to terminate in the Canary Islands.

Rule of Law Applied

As set forth in the seminal case *Shute*, forum selection clauses in passenger tickets are enforceable. Here, the Eleventh Circuit never reached the merits of the plaintiffs' claims. Instead, it enforced the Italian forum selection clause—dismissing the case on the basis of *forum non conveniens*.

Analysis

46 U.S.C. § 30509 provides in relevant part:

> *The owner . . . of a vessel transporting passengers . . . between a port in the United States and a port in a foreign country, may not include in a . . . contract a provision*

> *limiting . . . the liability of the owner . . . for personal injury or death caused by the negligence or fault of the owner or the owner's employees or agents*

In lieu of express limitations, cruise lines have sought to achieve the same end via a choice-of-law provision. The contract in *Turner* had a choice-of-law clause selecting Italian law (to which Italy is a party to the Athens Convention). The Athens Convention caps the liability of cruise lines at approximately $568,000 in personal injury cases. If a U.S. court were to give effect to the Italian choice-of-law clause in applying Italian law, therefore, it would be required to apply the liability cap set forth in the Athens Convention. It is unknown if any U.S. court would enforce an Italian choice-of-law clause on these facts given the language in Section 30509.

However, if the forum selection clause is enforced then the case must be brought in an Italian court—which is likely to enforce an Italian choice-of-law clause and apply the Athens Convention (capping damages). In support of its decision, the Eleventh Circuit stated as follows:

> *[B]oth we and the Supreme Court have directly rejected the proposition that a routine cruise ship forum selection clause is a limitation on liability that contravenes § 30509(a), even when it points to a forum that is inconvenient for the plaintiff.*

The *Turner* court also cited to a prior Eleventh Circuit decision, *Estate of Myhra v. Royal Caribbean Cruises*, for the proposition that "46 U.S.C. § 30509(a) does not bar a ship owner from including a forum selection clause in a passage contract, even if the chosen forum might apply substantive law that would impose a limitation on liability."

Holding

The Supreme Court has instructed that a valid forum-selection clause should be given controlling weight in all but the most exceptional cases. The Eleventh Circuit held that the forum selection clause is enforceable and applies to Turners' claims, and the district court acted well within its discretion when it granted the Defendant's motion to dismiss on forum non conveniens grounds.

Judgment

Affirmed.

6. Class Action Waiver
McIntosh v. Royal Caribbean Cruises, Ltd., 2021 U.S. App. LEXIS 22218 (11th Cir. July 27, 2021).

Parties

Nikki McIntosh, Plaintiffs-Appellants v. Royal Caribbean Cruises, Ltd. ("RCL"), Defendant-Appellee.

Procedural History

The district courts' dismissal for lack of subject matter jurisdiction of passengers' negligent infliction of emotional distress claims from cancellation of cruise because of a hurricane was reversed for reconsideration of the amount in controversy for diversity jurisdiction and for reconsideration whether there was admiralty jurisdiction.

Issues

Three issues were presented on appeal:

1. The district court failed to give the plaintiffs notice of its intent to *sua sponte* address the matter of diversity jurisdiction.

2. Plaintiffs plead an unspecified amount of damages and therefore bear the burden of proving by a preponderance of evidence that the claim on which jurisdiction is based exceeds the jurisdictional minimum for federal diversity jurisdiction (excess of $75,000).

3. The district court also summarily stated that the plaintiffs' claims did not arise under federal maritime law so as to provide jurisdiction under 28 U.S.C. §1333(1).

Facts

Class action on behalf of Royal Caribbean Cruise Lines ("RCL") passengers that sued after RCL canceled a cruise on the date of departure because of Hurricane Harvey. RCL offered refunds to the would-be passengers but only on the date of departure. Despite being aware that Hurricane Harvey was approaching many passengers did not cancel the cruise because they believed they would not be refunded pursuant to the ticket contract. Accordingly, plaintiffs claim they traveled to Galveston and Houston as Hurricane Harvey approached and alleged that while in Texas, they were forced to endure hurricane conditions—suffering physical and emotional injuries.

Rule of Law Applied

The Eleventh Circuit found that in ruling that diversity jurisdiction was lacking, the district court committed two errors, one procedural and one substantive—each providing an independent basis for reversal. First the district court failed to give the plaintiffs notice of its intent to *sua sponte* address the matter of diversity jurisdiction. Specifically, the district court should have given the parties notice and an opportunity to be heard. Its failure to do so was error. Second, putting aside the aggregation of damages issues, the district court failed to consider whether any individual plaintiff sustained the $75,000 amount-in-controversy requirement. Lastly, the Eleventh Circuit did not express an opinion on if the torts alleged arise under federal maritime law but on remand required the district court to address if any of the claims arise under federal maritime law because the elements of a tort can differ under maritime law and state law.

Analysis

The Eleventh Circuit was unconvinced that all of the plaintiffs failed to plead the requisite damages needed for federal diversity jurisdiction (excess of $75,000) noting that many passengers were trapped by Hurricane Harvey, without power and provisions, sustaining injuries to their bodies, impairment, and physical and mental pain and suffering. However, that alone was not enough to establish diversity. **Alienage diversity must be complete so that there is no alien on both sides of the dispute.** Thus, there would be no diversity between a corporation incorporated in a foreign state and another alien, regardless of the corporation's principal place of business. Here, the cruise line is a citizen of Liberia (place of incorporation), and some of the passengers were residents of Canada, Mexico, and the Philippines.

The Eleventh Circuit remanded the case to reconsider whether the requirements for diversity jurisdiction were satisfied, noting that a dismissal for lack of jurisdiction should be without prejudice. Regardless of whether there was diversity, the Eleventh Circuit instructed the federal district court to consider on remand whether the claims satisfied the locality/connection test for admiralty jurisdiction as the outcome of that decision would determine whether state law or maritime law applied. In this context, the Eleventh Circuit had recognized a claim for negligent infliction of emotional distress under the maritime law (under different circumstances), but the plaintiffs never embarked on a cruise in this case and the district court would have to determine whether to apply that maritime cause of action in the instant case. In doing so, the Eleventh Circuit stated that the district court should apply the location/connection test from *Grubart*.

Holding

The district court erred because: (1) it failed to give the plaintiffs, who were would-be passengers on a cancelled cruise, notice of its intent to sua sponte address the matter of diversity jurisdiction under 28 U.S.C. §1332; (2) it failed to consider whether any individual plaintiff had satisfied the $75,000 amount-in-controversy requirement for diversity jurisdiction under 28 U.S.C. §1332.

The Eleventh Circuit further held that based on its review of the record, that some of the plaintiffs sufficiently pled damages over $75,000.

Judgment

Reversed and remanded.

7. Choice of Law – Supplement General Maritime Law *Goodloe v. Royal Caribbean Cruises, LTD*, 2021 U.S. App. LEXIS 18398 (11th Cir. June 21, 2021).

Parties

Laura Goodloe, as Personal Representative of the Estate of Richard J. Puchalski, Plaintiff-Appellee v. Royal Caribbean Cruises, Ltd. ("RCL"), Defendant-Appellant.

Procedural History

Appeal from the United States District Court for the Southern District of Florida, in which the District Court provided that Florida law applied to deny Defendant-Appellant's Motion for Remittitur to limit Plaintiff-Appellee's award to pecuniary damages.

Issue

If Florida law or Wisconsin law should supplement general maritime law in deciding whether plaintiff in a wrongful death action could recover non-pecuniary damages.

Facts

Laura Goodloe brought a wrongful death suit on behalf of the estate of her deceased father, Richard Puchalski, against Royal Caribbean Cruises. After being prescribed medications by a doctor on a cruise ship, Mr. Puchalski passed away from a heart attack.

Rule of Law Applied

The following factors under *Lauritzen* are considered when conducting a domestic choice-of-law analysis under maritime law: (1) place of the wrongful act, (2) domicile of the injured, (3) domicile of the defendant, (4) place of contract, (5) law of the forum, and (6) location of the defendant's base of operations.

Analysis

Applying the six *Lauritzen* factors, the Court determined as follows:

(1) Place of the Wrongful Act: This factor was not included in the Court's analysis because the "wrongful act" of Mr. Puchalski's death occurred in Alaska, rather than in Florida or Wisconsin.

(2) Domicile of the Injured: Mr. Puchalski, as the deceased, was domiciled in Wisconsin.

(3) Domicile of the Defendant: RCL maintained its headquarters (domicile) in Florida.

(4) Place of the Contract: This factor was not included in the Court's analysis because the place of contract favored neither Florida nor Wisconsin.

(5) Law of the Forum: Mr. Puchalski's cruise ticket included a Florida forum selection clause.

(6) Location of the Defendant's Base of Operations: RCL maintained its base of operations in Florida.

Florida has a slightly stronger connection to the case than does Wisconsin based on the above factors. However, this analysis is not dispositive, and each state's relative interests in having its laws applied

must be considered. Florida has a stronger interest in the application of its laws to this case because Wisconsin applies the law of the state where the death occurred in wrongful death actions, whereas Florida applies Florida law in wrongful death actions brought against Floridians, even if the death occurred in another state.

Holding

Based on *Lauritzen* and Florida's interests in applying its laws to wrongful death actions brought against its own citizens, Florida law applies as a supplement to general maritime law to award Plaintiff-Appellee both pecuniary and non-pecuniary damages under Fla. Stat. § 768.21.

Judgment

Affirmed.

Summary

This case involves a wrongful death action, in which decedent, Mr. Puchalski traveled aboard a Royal Caribbean Lines ("RCL") cruise ship and collapsed after being prescribed an ACE inhibitor, a beta blocker, and a diuretic by the ship's physician in response to experiencing shortness of breath. He died several days later after being airlifted to an intensive care unit in Anchorage, Alaska. Mr. Puchalski was a citizen of Wisconsin, and RCL was domiciled in Florida.

On behalf of decedent's estate, Ms. Goodloe filed an action in the Southern District of Florida based on the forum selection clause on Decedent's cruise ticket, alleging "negligent medical care and treatment by RCL employees or actual agents and negligence against RCL itself based on its apparent authority over those employees or actual agents."

At issue was whether Ms. Goodloe may recover both pecuniary and non-pecuniary damages based on the claims, and whether Florida law or Wisconsin law governed to make this determination. The District Court awarded both pecuniary and non-pecuniary damages under Florida law (Fla. Stat. § 768.21). On appeal, the Eleventh Circuit Court of Appeals applied Lauritzen, adjusting the test which was typically applied in the international context to fit the domestic choice-of-law context, and balanced both states' interests, to determine that Florida law applied—affirming the decision of the Southern District of Florida.

8. Class Action Waiver - *Philips v. NCL*
Phillips v. NCL Corp., 824 Fed. App'x 675 (11th Cir. 2020).

Parties

Martha Phillips, et al, Plaintiffs-Appellants v. NCL Corporation, Ltd. d/b/a Norwegian Cruise Lines, Defendant-Appellee

Procedural History

Appeal from the United States District Court for the Southern District of Florida, in which the District Court dismissed the proposed consumer fraud class action and compelled arbitration.

Issue

Did the terms of the cruise line's ticket, including its arbitration and class-action-waiver clauses, apply to passengers' consumer fraud class action suit?

Facts

Class action suit in which cruise ship passengers brought a consumer fraud complaint against Norwegian Cruise Lines alleging that it received kickbacks for the sale of insurance policies that it bundled with the sale of cruise tickets causing the overall ticket price to be artificially high. Norwegian moved to compel arbitration and to strike the putative class based on provisions contained within the terms of its cruise tickets.

The plaintiffs alleged that they were not bound by the arbitration and class action provisions of Norwegian's tickets because their claims were brought against Norwegian in its capacity as a seller of insurance and not as a cruise line, and were therefore separate from the terms of the tickets.

The district court agreed with Norwegian and granted its motion to compel arbitration.

Rule of Law Applied

The Eleventh Circuit had previously held that an employee's claims for rape and personal injuries did not fall within the scope of an arbitration clause contained within the employee's employment contract with a cruise line. The court reasoned that rape allegations against the cruise line could have arisen in the absence of any contractual relationship between the employee and the cruise line and that a non-employee could have maintained the same set of facts against the cruise line entirely in the absence of any contractual agreement. Therefore, those allegations fell outside the scope of the employment contract's arbitration clause. However, claims that arose out of the employee's status as a seaman did fall within the scope of the employment contract and could be compelled into arbitration.

Analysis

Given that the travel insurance policy at issue could only be purchased as part of the sale of a cruise ticket, there was no separate sale transaction and any alleged fraudulent transaction was necessarily included in the same transaction as the sale of the ticket. Norwegian could not have engaged in the aggrieved conduct in the absence of a contractual relationship with the passengers. A non-passenger could not have brought these same claims against Norwegian. Therefore, the alleged conduct was part of the same overall transaction involving the sale of cruise tickets and was subject to the terms of those tickets.

Holding

The Eleventh Circuit held that the plaintiffs' consumer fraud allegations arose out of the sale of cruise tickets and therefore fell within the scope of the cruise ticket's arbitration and class-action-waiver clauses.

Judgment

Affirmed.

Summary

Five passengers allege that Norwegian Cruise Lines failed to disclose profits it would earn in connection with the sale of travel insurance it bundled as part of the sale of tickets on its cruises. The plaintiffs brought two causes of action, one under the Florida Deceptive and Unfair Trade Practices Act and one for unjust enrichment. Norwegian offered a Travel Insurance Plan as part of the sale of its cruise tickets, which was insured by third-party underwriters. Passengers had the option to either purchase or opt out of the Travel Insurance Plan when they booked their tickets, but the Travel Insurance Plan could only be purchased as part of the sale of a cruise ticket. The passengers discovered that Norwegian received kickbacks from the insurers for the sale of these policies and failed to disclose related inflation in the price of the ticket. The passengers also alleged that Norwegian engaged in a "reinsurance scheme" in which the insurers would reinsure these policies with another insurance company owned by Norwegian.

The terms and conditions of Norwegian's cruise tickets contained an incorporation clause stating that the ticket formed the entire contract between the passenger and Norwegian. The terms and conditions also contained a mandatory arbitration clause and a class action waiver provision. Norwegian moved to compel arbitration and to strike the class allegations under these provisions of the passengers' tickets.

The passengers alleged that they were not bound by the arbitration and class action provisions of Norwegian's tickets because their claims were brought against Norwegian in its capacity as a seller of insurance and not as a cruise line and were therefore separate from the terms of the tickets.

The district court agreed with Norwegian, granted its motion to compel arbitration, and dismissed the passengers' class allegations.

In affirming the granting of Norwegian's motion to compel arbitration, the Eleventh Circuit found that the passengers' claims necessarily arose from the same transaction as the sale of the cruise tickets. The Travel Insurance Plan at issue could not be purchased separately from the cruise tickets sold by Norwegian. Since the only people who could contest the sale of the Travel Insurance Plan were necessarily people who purchased tickets on a Norwegian cruise, the passengers' claims for consumer fraud could not be brought by someone who was not also subject to the terms of the cruise tickets. The passengers' claims related to the *sale* of the Travel Insurance Plan, rather than its contents, and Norwegian's marketing of the Travel Insurance Plan was offered as a way to protect passengers from risk related to the cruise. Therefore, the passengers' claims were subject to both the arbitration and class-action-waiver clauses contained within the terms of Norwegian's tickets.

9. Statute of Limitations - Passenger Ticket
Roberts v. Carnival Corp., 824 Fed. App'x 825 (11th Cir. 2020).

Parties

Erika Roberts, Plaintiff-Appellant v. Carnival Corporation d/b/a Carnival Cruise Line, Defendant-Appellee.

Procedural History

Appeal from the United States District Court for the Southern District of Florida, in which the District Court dismissed the plaintiff's slip-and-fall complaint because the complaint was not brought within the contractual limitations period specified in the defendant's ticket.

Issues

Did the district court improperly consider matters outside the four corners of the pleadings in dismissing the plaintiff's complaint on the basis of a contractual time bar in the terms of her cruise ticket?

Facts

Carnival Cruise Line passenger brought negligence action against Carnival for injuries sustained on cruise. In ruling on Carnival's motion to dismiss the passenger's complaint, the district court considered the terms of the passenger's cruise ticket as well as an "acceptance report" demonstrating that the passenger received those terms. Neither document was referenced in the complaint. The district court granted Carnival's motion to dismiss on the basis that the passenger had brought her complaint outside of the one-year contractual limitations period contained within the cruise ticket terms. The passenger appealed.

Rule of Law Applied

In ruling on a motion to dismiss, a district court must not look beyond the allegations in a plaintiff's complaint. However, the court may consider documents attached to a motion to dismiss if those documents are referenced in the complaint, are central to the plaintiff's claims, and of undisputed authenticity. Otherwise, extrinsic evidence can only be considered if the motion is converted to one for summary judgment.

46 U.S.C. § 30106 provides a default statute of limitations period of three years to maritime tort claims, but 46 U.S.C. § 30508(b)(2) permits cruise lines to set a contractual time limit of not less than one year. For such a contractual limitation to be enforceable, it must be "reasonably communicated to the passenger," which entails looking at (1) "the physical characteristics of the clause" and (2) "the passenger's opportunity to become meaningfully informed of the contract terms."

Analysis

The Eleventh Circuit found that the district court erred by consulting the passenger's ticket and the "acceptance report" in ruling on Carnival's motion to dismiss because neither document was referenced in the plaintiff's complaint nor was either document central to the plaintiff's negligence claim against Carnival. Furthermore, it was not apparent from the face of the plaintiff's complaint that her claim was time barred. The time limit that Carnival was attempting to enforce against the plaintiff was contained within her cruise ticket and the plaintiff was not given an opportunity to present evidence showing that she had a meaningful opportunity to become aware of this limitations period.

Holding

The district court erred because: (1) it improperly considered documents outside of the plaintiff's complaint in granting Carnival's motion to dismiss, and (2) it failed to provide the plaintiff with an opportunity to present evidence showing that she had been presented with a meaningful opportunity to become aware of the contractual limitations provision that formed the basis of Carnival's motion.

Judgment

Vacated and remanded.

Summary

This maritime negligence action arose from a slip-and-fall injury that the plaintiff suffered on a cruise offered by Carnival Cruise Lines. Carnival moved to dismiss the plaintiff's complaint because it was not brought within the one-year limitations period specified in its cruise ticket. The district court granted Carnival's motion to dismiss on the basis that the action was time barred.

In ruling on Carnival's motion to dismiss, the district court considered two matters outside the "four corners" of plaintiff's complaint: (1) the ticket contract that contained the one-year limitations period for personal injury claims, and (2) an "acceptance report" showing that the plaintiff received a copy of the ticket contract before boarding the cruise. The district court granted Carnival's motion because the plaintiff's complaint was one for personal injury and "the Ticket Contract is central to Plaintiff's claims based on its language." The plaintiff appealed arguing that the district court improperly considered matters outside of the pleadings without first converting Carnival's motion to dismiss into a motion for summary judgment.

The Eleventh Circuit vacated the district court's dismissal of the complaint on grounds that it was time barred and remanded for further proceedings. The court reiterated the rule that a district court cannot consider documents not attached to the pleadings in ruling on a motion to dismiss unless that document is "referred to in the complaint, central to the plaintiff's claim, and of undisputed authenticity." The court concluded that the district court erred by finding that the ticket contract was central to plaintiff's complaint. The court found that the ticket was not referenced in the plaintiff's complaint nor was it central to the plaintiff's negligence claim because Carnival's negligence to the plaintiff could be alleged without reference to the ticket. Furthermore, the "acceptance report" was neither referenced in plaintiff's complaint nor relevant to her negligence claim.

In addition, the court held that dismissal was inappropriate because it was not apparent from the face of the complaint that the plaintiff's claim was time barred. The court noted that the default limitations period for maritime tort claims is three years but can be limited by contract to a shorter period not less than one year. However, a contractual limitations period is only enforceable if it is "reasonably communicated to the passenger." This inquiry involves looking to the contract itself to determine if the limitations-period clause is of appropriate size, placement, font, and readability to be apparent to the passenger, as well as looking to extrinsic factors to determine if the passenger was given a meaningful opportunity to become informed of the contractual terms. The court noted that this subjective factor necessarily requires it to consider facts outside of the contract itself. The district court erred by not giving the plaintiff an opportunity to present evidence that the contractual limitations provision was reasonably communicated to her.

10. Class Action Waiver
Ford v. Carnival Corp., 2021 U.S. Dist. LEXIS 149151 (C.D. Cal. Aug. 9, 2021).

Parties

Cynthia Lynn Ford, et al, Plaintiffs v. Carnival Corporation, Carnival PLC & Princess Cruise Lines, Ltd., Defendants

Procedural History

The defendant cruise lines brought a Rule 12(b)(6) motion to dismiss the complaint of a putative class of cruise ship passengers.

Issue

(1) Did the cruise line defendants owe the passengers a heightened duty of care to protect against exposure to COVID-19?

(2) Did the passengers adequate allege that the cruise line defendants had knowledge of the risks of COVID-19 when they commenced the cruise at issue?

(3) Did the passengers who did not test positive or show symptoms of COVID-19 fall within the "zone of danger" test for purely emotional harm?

(4) Did the passengers who alleged diagnosis or symptoms of COVID-19 adequately allege causation?

(5) Did the passengers adequately plead that Princess Cruise Line was the alter ego of Carnival?

(6) Could evidence needed to enforce a class action waiver provision in the passengers' cruise ticket terms be introduced on a motion to dismiss?

(7) Did the passengers have standing to bring a claim for injunctive relief from future harm?

Facts

Cruise ship passengers sued a cruise line and its alleged alter ego alleging exposure to the COVID-19 virus on a cruise. The passengers alleged that the cruise line was aware of the dangers of commencing the cruise and was aware that at least one passenger developed symptoms of COVID-19 while the cruise was underway and yet did not take adequate steps to prevent the passengers' exposure to that virus. The cruise line moved to dismiss the passengers' complaint arguing that the passengers failed to allege (1) that the cruise line knew that sailing created a unreasonable risk of exposure or that measures to control the virus during the cruise were inadequate, (2) that the passengers had been harmfully exposed to COVID-19, and (3) that the passengers had established causation.

Rule of Law Applied

A carrier must have "actual or constructive notice of a risk-creating condition" before it can be liable for a claim that is not unique to the maritime context. However, if a plaintiff's claim is unique to the maritime context, the carrier owes a heightened duty of care.

The "zone of danger" test for stand-alone claims of emotional distress requires a showing that the plaintiff either sustained a physical impact as a result of a defendant's negligent conduct or was "placed in immediate risk of physical harm by that conduct"

Analysis

The passengers failed to establish that the cruise line owed a heightened duty of care because there was no allegation that cruise ship passengers were uniquely susceptible to COVID-19 exposure. The cruise line could only be liable to the passengers if it had actual or constructive knowledge that sailing created a unique risk of exposure to COVID-19. The passengers had adequately pled facts plausibly demonstrating that the cruise line had such knowledge.

The passengers had inadequately stated facts demonstrating a causal connection between any alleged misconduct by the cruise line and the alleged exposure to COVID-19 because the passengers did not allege when they began to experience COVID-19 symptoms.

Holding

The court held that the passengers adequately stated facts that plausibly demonstrated the cruise line had actual or constructive knowledge that actions it took on the cruise at issue would create a risk of exposure to COVID-19. However, the court held that those passengers who had not been diagnosed with or shown symptoms of COVID-19 had failed to allege that they fell within the "zone of danger" and therefore failed to allege any harm suffered; their complaints were dismissed with prejudice. The court held that the passengers who had alleged diagnosis with or symptoms of COVID-19 had nonetheless failed to allege causation by not stating when they began to show symptoms, but the court granted these passengers leave to amend the pleading.

The court held that the passengers had failed to allege that Princess Cruise Lines was the alter ego of Carnival but dismissed this claim with leave to amend.

The court held that the cruise line defendants could not dismiss the passengers' complaint on the basis of a class action waiver in the passengers' cruise tickets because evidence needed to establish that the passengers were bound by that waiver provision could not be raised on a motion to dismiss. The court also held that the passengers failed to establish standing to support injunctive relief against future alleged harm and granted leave to amend the pleading.

Judgment

The defendants' motion to dismiss was granted in part and denied in part.

Summary

This case is a putative class action suit brought by 23 passengers who were onboard the cruise ship *Grand Princess* for a roundtrip voyage from San Francisco to Mexico in February 2020. The plaintiffs sued Princess Cruise Lines as operator of that cruise and Carnival Corporation as its alleged alter ego. They alleged causes of action for negligence, gross negligence, negligent infliction of emotional distress, and intentional infliction of emotional distress based on the cruise line defendants' response to the COVID-19 pandemic on the *Grand Princess*.

The plaintiffs allege that 100 passengers on the cruise at issue eventually became infected with COVID-19 and 2 passengers died after disembarking. Allegedly, the cruise line defendants were aware of the unique risks posed by the spread of a virus like COVID-19 on a cruise ship, failed to take steps to screen passengers for the virus before boarding, did not provide advice to passengers on how to mitigate exposure

to the virus, and failed to alert passengers when at least one of the passengers tested positive for the virus while the cruise was underway. The plaintiffs state that they would not have sailed if they had been aware of the risk of COVID-19 infection while aboard or, if they had been made aware of certain risks after the cruise was underway, they would have disembarked at one of the *Grand Princess's* ports of call. 5 of the plaintiffs tested positive for COVID-19 and suffered symptoms, 10 plaintiffs alleged symptoms of COVID-19 but did not indicate whether they tested positive, and 8 plaintiffs did not allege symptoms or positive diagnosis but rather trauma associated with direct exposure and the risk of contracting the virus.

The cruise line defendants moved to dismiss under Federal Rule of Civil Procedure 12(b)(6). The defendants based their motion on three grounds: (1) the plaintiffs did not plausibly allege actual or constructive knowledge by the cruise line defendants that sailing would create a risky condition or that the defendants undertook inadequate measures to contain the virus once the cruise was underway, (2) the plaintiffs failed to allege "concrete, harmful symptoms" of COVID-19, and (3) the plaintiffs failed to allege that the defendants' actions caused any alleged harm.

The court first addressed the duty of care that the cruise line defendants owed to the plaintiffs. Shipowners owe a heightened duty of care to passengers if a risk-creating condition is unique to the maritime context, but only "actual or constructive knowledge of a risk-creating condition" if a condition is not uniquely maritime. The court held that the spread of the COVID-19 virus and increased risk of exposure occurs in any setting in which people are in close proximity to one another and, while those conditions certainly exist on a cruise ship, those conditions are not *unique* to cruise ships, and therefore not uniquely maritime.

As a result, the plaintiffs would need to allege actual or constructive knowledge by the cruise line defendants that the COVID-19 virus posed a risk to its passengers, either before the *Grand Princess* set sail or during the voyage. The plaintiffs allege that various public health officials were warning of the dangers of COVID-19 prior to the *Grand Princess* setting sail and that the cruise line defendants were aware of a COVID-19 outbreak on a sister ship that occurred at the same time as the voyage of the *Grand Princess*, and that one passenger sought medical treatment onboard the *Grand Princess* for COVID-like symptoms and had been experiencing symptoms for a week before seeking treatment. The court held that these allegations were sufficient, at the motion to dismiss stage, to state plausible allegations of knowledge that would establish the defendants' negligence. However, the court held that these allegations were not sufficient to sustain the plaintiffs' cause of action for intentional infliction of emotion distress and dismissed that count with prejudice.

The court next held that under the "zone of danger" test, the claims of the 8 plaintiffs who did not allege either a positive diagnosis or symptoms of COVID-19 could not sustain a cause of action against the cruise line defendants. The court reasoned that these 8 plaintiffs were never "placed in immediate risk of physical harm" as a result of any alleged conduct by the cruise line defendants because there are far too many variables that determine whether a cruise ship passenger would be exposed to a virus. Being exposed to COVID-19 onboard the *Grand Princess* could not be considered "imminent, immediate, or an instant physical harm." Therefore, these 8 plaintiffs could not be considered within the zone of danger and their claims were dismissed with prejudice.

The court next considered whether the remaining plaintiffs adequately pled causation between the cruise lines' alleged conduct and these plaintiffs' symptoms or diagnosis of COVID-19. The court held that these plaintiffs failed to allege when they began experiencing symptoms. Therefore, it was not possible to determine whether the plaintiffs contracted the disease onboard the *Grand Princess* or at some other time. The court dismissed the claims of the remaining plaintiffs with leave to amend.

The court furthermore held that the plaintiffs had not adequately alleged that Carnival Corporation was the "alter ego" of Princess Cruise Lines because there was no allegation that Carnival exerted "total domination" over Princess. Rather, the allegations were of a typical parent-subsidiary relationship. The

court dismissed the claims against Carnival without prejudice and granted the plaintiffs leave to state a plausible theory against Carnival.

The court also held that the portion of the cruise lines' motion to dismiss to enforce the "class action waiver" provision in the plaintiffs' passenger contract necessarily relied on matters outside of the pleadings and could not be brought at the motion to dismiss phase. Finally, the court held that the plaintiffs failed to establish standing to enforce their claim for injunctive relief based on "imminent future harm" because allegations that the plaintiffs would "like to go on cruises again, including cruises operated by Defendants…" were insufficient to establish imminent or actual future injury.