UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 19-7693 PA (MRWx)	Date	January 27, 2020
Title	In the Matter of the Complaint of Truth Aquatics, Inc. and Glen Richard Fritzler and Dana Jeanne Fritzler		

Present: The Honorable	PERCY ANDERSON, UNITED STATES DISTRICT JUDGE	
T. Jackson	N/A	N/A
Deputy Clerk	Court Reporter	Tape No.

Attorneys Present for Plaintiffs:	Attorneys Present for Claimants:
None	None

Proceedings: IN CHAMBERS – COURT ORDER

Before the Court is a Motion to Strike Affirmative Defenses filed by claimant/respondent Christine Dignam ("Claimant"). (Docket No. 21 ("Mot.").) Plaintiffs Dana Jeanne Fritzler, Glen Richard Fritzler, and Truth Aquatics Inc. ("Plaintiffs") filed an Opposition, and Claimant filed a Reply. (Docket Nos. 23 ("Opp.") and 24 ("Reply").) Pursuant to Rule 78 of the Federal Rules of Civil Procedure and Local Rule 7-15, the Court finds this matter appropriate for decision without oral argument. The hearing calendared for January 27, 2020 is vacated, and the matter taken off calendar. For the reasons discussed below, Claimant's Motion to Strike is granted in part and denied in part.

I. Background

On August 31, 2019, Plaintiffs' vessel the *Conception* commenced a three-day dive trip with 33 passengers and six crewmembers on the navigable waters off the coast of California in the area of the Channel Islands. (Docket No. 8 ("First Amended Complaint") ¶11.) On September 2, 2019 at approximately 3:14 a.m. in the morning, a fire broke out aboard the *Conception* while it was anchored off Santa Cruz Island in Platts Harbor. (Opp., Ex. D (Preliminary Report of the National Transportation Safety Board).) Thirty-three passengers and one crewmember died. (Id.) As of now, the cause and origin of the fire is unknown. (Id. ("Efforts continue to determine the source of the fire.").)

On September 5, 2019, Plaintiffs brought this action for exoneration from or limitation of liability under 46 U.S.C. § 30501 et seq. Plaintiffs "desire to contest their liability and the liability of the *Conception* for any alleged loss or damages arising out of the aforesaid Fire." (FAC ¶ 16.) On November 11, 2019, Claimant filed a Counterclaim against Plaintiffs (Docket No. 18.) Claimant brings two claims for relief: (1) wrongful death and (2) survival damages. Claimant alleges both claims arise under general maritime law, and does not bring claims pursuant to California state law. Plaintiffs filed an Answer to the Counterclaim, including the following affirmative defenses:

> TENTH AFFIRMATIVE DEFENSE Plaintiffs allege that Decedent knew or should have known of the risks and hazards inherent in being a passenger on the subject vessel, as well as the magnitude of said risks and hazards and thereafter knowingly and willingly assumed those risks, which

assumption bars Claimant/Respondent's Counterclaim, or reduces her/their damages.

FOURTEENTH AFFIRMATIVE DEFENSE Claimant/Respondent's Counterclaim and each cause of action therein are barred by the defense of primary assumption of the risk.

SIXTEENTH AFFIRMATIVE DEFENSE Plaintiffs cannot be held liable for punitive damages because no Plaintiff, nor the officers, directors or managing agents, committed any alleged oppressive, fraudulent or malicious act, authorized or ratified such an act, or had advanced knowledge of the unfitness, if any, of the employee or employees, if any, who allegedly committed such an act, or employed any such employee or employees with a conscious disregard of the rights or safety of others. Cal. Civ. Code §3294.

EIGHTEENTH AFFIRMATIVE DEFENSE Plaintiffs cannot be held liable for punitive damages because Plaintiffs did not engage in oppressive, fraudulent or malicious conduct toward Plaintiff. Cal. Civ. Code §3294.

TWENTY-THIRD AFFIRMATIVE DEFENSE Plaintiffs allege, on information and belief, the claims, relief and/or damages claimed by Counterclaimant Christine Dignam, and/or others claiming through decedent are subject to and/or limited by the provisions of the Death on the High Seas Act 46 U.S.C. 30301, et seq., and/or the uniformity principles set forth in Miles v. Apex Marine Corp., 498 U.S. 19 (1990), and/or General Maritime Law.

(Docket No. 20 at 8-12.) Claimant has now filed a Motion to Strike these affirmative defenses.

II. Legal Standard

Federal Rule of Civil Procedure 12(f) provides that "the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter." "The function of a 12(f) motion to strike is to avoid the expenditure of time and money that must arise from litigating spurious issues by dispensing with those issues prior to trial." Fantasy, Inc. v. Fogerty, 984 F.2d 1524, 1527 (9th Cir. 1993). "Because of 'the limited importance of pleadings in federal practice,' motions to strike pursuant to Rule 12(f) are disfavored." Estate of Migliaccio v. Midland Nat'l. Life Ins. Co., 436 F. Supp. 2d 1095, 1100 (C.D. Cal. 2006) (quoting Bureerong v. Uvawas, 922 F. Supp. 1450, 1478 (C.D. Cal. 1996)). "Matter will not be stricken from a pleading unless it is clear that it

can have no possible bearing upon the subject matter of the litigation." Clark v. State Farm Mut. Auto. Ins. Co., 231 F.R.D. 405, 406 (C.D. Cal. 2005) (quoting Cal. Dept. of Toxic Substances Control v. Alco Pacific, Inc., 217 F. Supp. 2d 1028, 1033 (C.D. Cal. 2002)). "Moreover, when considering a motion to strike, courts must view the pleading in the light more favorable to the pleader." Id. (quoting Lazar v. Trans Union LLC, 195 F.R.D. 665, 669 (C.D. Cal. 2000)).

"Redundant allegations are those that are needlessly repetitive or wholly foreign to the issues involved in the action." Cal. Dep't of Toxic Substances Control, 217 F. Supp. 2d at 1033 (citing Gilbert v. Eli Lilly Co., 56 F.R.D. 116, 121 n.4 (D.P.R. 1972)). Matter is "immaterial" where it has "no essential or important relationship to the claim for relief . . . being pleaded." Fantasy, 984 F.2d at 1527. "Impertinent" matter does not pertain, and is not necessary, to the issues in question. Id. "[S]candalous" matter "includes allegations that cast a cruelly derogatory light on a party or other person." In re 2TheMart.com, 114 F. Supp. 2d 955, 965 (C.D. Cal. 2000).

"To strike an affirmative defense, the moving party must convince the court that there are no questions of fact, that any questions of law are clear and not in dispute, and that under no set of circumstances could the defense succeed. The grounds for the motion must appear on the face of the pleading under attack or from matter which the court may judicially notice." S.E.C. v. Sands, 902 F. Supp. 1149, 1165 (C.D. Cal. 1995) (internal quotation and citation omitted)."[A] defense may be insufficient as a matter of pleading or as a matter of substance." Sec. People, Inc. v. Classic Woodworking, No. C-04-3133 MMC, 2005 WL 645592, at *2 (N.D. Cal. Mar. 4, 2005). "The key to determining the sufficiency of pleading an affirmative defense is whether it gives plaintiff fair notice of the defense." Simmons v. Navajo, 609 F.3d 1011, 1023 (9th Cir. 2010) (quoting Wyshak v. City Nat'l Bank, 607 F.2d 824, 827 (9th Cir. 1979)). An affirmative defense must be articulated clearly enough so that the plaintiff is "not a victim of unfair surprise." Bd. of Trs. San Diego Elec. Pension Trust v. Bigley Elec., Inc., No. 07-CV-634-IEG (LSP), 2007 WL 2070355, at *2 (S.D. Cal. July 12, 2007) (quoting Woodfield v. Bowman, 193 F.3d 354, 362 (5th Cir. 1999)). An affirmative defense is insufficient as a matter of law only if "it appears to a certainty that plaintiffs would succeed despite any state of the facts which could be proved in support of the defense." Barnes v. AT&T Pension Benefit Plan, 718 F. Supp. 2d 1167, 1170 (N.D. Cal. 2010) (quoting Salcer v. Envicon Equities Corp., 744 F.2d 935, 939 (2d Cir. 1984)).

III. Analysis

To the extent that maritime law governs this action, the Court finds that Plaintiffs' affirmative defenses regarding assumption of risk and punitive damages are immaterial and accordingly strikes them. However, Claimant has failed to meet her burden as to the affirmative defense of Death on the High Seas Act ("DOHSA") and "uniformity principles" of Miles v. Apex, 498 U.S. 19 (1990). Based on the current record, the Court is unable to determine whether this defense is immaterial, and therefore the Court denies Claimant's request to strike this portion of Plaintiffs' Answer. The Court now addresses each of the affirmative defenses in turn.

First, Claimant asks the Court to strike affirmative defenses 10 and 14, both of which involve assumption of risk. Plaintiff argues that the Motion is premature because many pertinent facts, including the origin and cause of the fire, remain unknown. (Opp. at 16.) While Plaintiffs are correct that the record in this case is far from complete, the Court cannot ignore the clear plethora of case law dictating that assumption of risk is not a valid defense under maritime/admiralty jurisdiction. See, e.g., Manning v. Gordon, 853 F. Supp. 1187, 1187 (N.D. Cal. 1994) ("[T]he tenets of admiralty law, which are expressly designed to promote uniformity, do not permit assumption of risk in cases of personal injury whether in commercial or recreational situations. Indeed, admiralty law has been credited as giving birth to the idea of comparative negligence.") (quoting De Sole v. United States, 947 F.2d 1169, 1174-75 (4th Cir. 1991)); DuBose v. Matson Navigation Company, 403 F.2d 875, 877 (9th Cir. 1968) (agreeing that "assumption of risk has no place in maritime law"); Charnis v. Watersport Pro, LLC, 2009 U.S. Dist. LEXIS 76022, *10 (D. Nev. May 1, 2009) ("It is true that assumption of risk is not an available defense in maritime cases involving personal injury.") (collecting cases). One district court's recent opinion is instructive here:

> Defendants first argue that Plaintiff's claim should be dismissed because it is barred by the assumption-of-risk doctrine. The Court disagrees. To the extent that the claim is arising out of the Court's admiralty jurisdiction, maritime tort law does not adopt California's approach to this doctrine. Barber v. Marina Sailing, Inc., 36 Cal. App. 4th 558, 568-69, 42 Cal. Rptr. 2d 697 (1995). Assumption of risk, be it express or implied, may not serve as a bar to claims that arise under admiralty law. Id. at 568 ("Numerous federal cases have held in a variety of contexts that assumption of [] risk is not permitted as an affirmative defense in admiralty law."). While true that California law governs the standard of liability and the remedial regime for survival actions, Defendants do not identify any cases to suggest that Yamaha likewise intended state law to modify the defenses available in admiralty. To the extent that Plaintiff's gross negligence claim arises under the Court's admiralty jurisdiction, assumption of risk does not bar the action.

Kabogoza v. Blue Water Boating, 2019 U.S. Dist. LEXIS 60346, *6-7 (E.D. Cal. Apr. 5, 2019) (emphasis added). The Court finds that, to the extent maritime law governs this action, the assumption of risk defense is immaterial. Accordingly, the Court strikes affirmative defenses 10 and 14.

Second, Claimant asks the Court to strike affirmative defenses 16 and 18, both of which involve punitive damages. Punitive damages are available under general maritime law. See, e.g., In re Exxon Valdez, 270 F.3d 1215, 1226, n.14 (9th Cir. 2001); Churchill v. F/V Fjord, 892 F.2d 763, 772 (9th Cir. 1988). Punitive damages may be imposed under maritime law when there is a preponderance of the evidence of gross negligence, actual malice, criminal negligence, or manifest reckless or callous

disregard for the rights of others. Id.; see also Voillat v. Red & White Fleet, 2004 U.S. Dist. LEXIS 4359, *21 (N.D. Cal. Mar. 18, 2004) (collecting cases). California law, in contrast, requires clear and convincing evidence of malice, fraud, or oppression to support an award of punitive damages. See Cal. Civ. Code § 3294. Clearly, California law has a higher standard and burden of proof for punitive damages that conflicts with the standard under general maritime law. State law "may supplement maritime law when maritime law is silent or where a local matter is at issue, but state law may not be applied where it would conflict with [federal] maritime law." Stevens v. CBS Corp., 2012 U.S. Dist. LEXIS 165121, *7 (W.D. Wash. Nov. 19, 2012) (citations omitted); see also Protectus Alpha Nav. Co. v. North Pac. Grain Growers, Inc., 767 F.2d 1379, 1385 (9th Cir. 1985) ("[F]ederal law, rather than state law, controls the damages issue when the cause of action arises under maritime law."). Thus, California's punitive damages standard is immaterial.

Other courts—including the Ninth Circuit—have declined to apply a higher clear and convincing evidence standard for punitive damages in maritime law cases. See, e.g., In re Exxon Valdez, 270 F.3d at 1232-33 ("While the common law of admiralty could require a higher standard of proof for punitive damages than the Constitution requires, we have been presented with no authority for creating an exception to the general federal standard, and the arguments for doing so are not so compelling as to persuade us, in the absence of precedent, that the district court abused its discretion by instructing on the preponderance of evidence standard."); Ocampo v. United States, 2018 U.S. Dist. LEXIS 216248, *24-26 (S.D. Cal. Sept. 21, 2018) (applying maritime law standard for punitive damages instead of California law standard and finding triable issue as to whether defendant was grossly negligent); Colombo v. BRP US Inc., 230 Cal. App. 4th 1442, n.7 (2014) ("BRP in its reply brief wisely withdrew its contention that a clear and convincing evidentiary standard of proof applied to the punitive damages awarded Haley and Jessica" under federal maritime common law). This further supports a finding that Plaintiffs' California-based affirmative defenses are immaterial. Thus, Plaintiffs' suggestion that Claimant may "dip[] into California law to . . . supplement regarding punitive damages" is unpersuasive. (Opp. at 22.) The Court finds that, to the extent maritime law governs this action, the punitive damages defenses based on California law do not apply and are immaterial. The Court strikes affirmative defenses 16 and 18.

Finally, Claimant asks the Court to strike affirmative defense 23, which provides that Claimant's claims for relief "are subject to and/or limited by the provisions of the Death on the High Seas Act 46 U.S.C. 30301, et seq., and/or the uniformity principles set forth in Miles v. Apex Marine Corp., 498 U.S. 19 (1990), and/or General Maritime Law." (Docket No. 20 at 12.) Claimant does not take issue with her claims being subject to general maritime law. Rather, she only takes issue with the affirmative defense's reference to DOHSA and Miles. (Mot. at 27-34.) Because of the current state of the record, the Court cannot determine whether this affirmative defense is immaterial. For example, there are no facts in the record regarding the exact location of the *Conception* when the fire occurred. This information is necessary to determine whether the incident took place "on the high seas beyond 3 nautical miles from the shore of the United States" such that DOHSA applies. See 46 U.S.C. § 30302. Claimant alleges in her Counterclaim that the fire occurred when the *Conception* was 100 yards from shore, but she provides no citation for support and does not ask the Court to take judicial notice of any documentation in support

of this allegation. (Docket No. 18 ¶3.) The Court cannot determine at this stage in the litigation whether Claimant's claims are subject to DOHSA.

Similarly, the Court cannot determine at this stage in the litigation whether Claimant's claims are subject to the "uniformity principles" espoused in Miles. See Dutra Grp. v. Batterton, 139 S. Ct. 2275, 2278 (2019) (holding that "[w]hen exercising its inherent common-law authority, an admiralty court should look primarily to these legislative enactments for policy guidance. We may depart from the policies found in the statutory scheme in discrete instances based on long-established history, but we do so cautiously in light of Congress's persistent pursuit of uniformity in the exercise of admiralty jurisdiction.") (quoting Miles v. Apex Marine Corp., 498 U.S. at 26-27) (other citations and quotations omitted). Without a complete factual record, the Court is not in a position to determine whether Congressional legislation such as DOHSA applies here, and thus whether or not the principles of uniformity would apply as well. Claimant has failed to her burden in establishing that affirmative defense 23 is immaterial. The Court denies the motion to strike affirmative defense 23.

Conclusion

The Court grants the Motion to Strike as to affirmative defenses 10, 14, 16, and 18. The Court denies the Motion as to affirmative defense 23. The Court is highly sensitive to the reality that this is an emotionally-charged case. However, the Court cautions both sides that editorialized arguments and ad hominem attacks are inappropriate and distract from the merits. See, e.g., Mot. at 11 ("[T]he Fritzlers' decision to file this action less than thirty-six hours after the accident, while dive teams were still searching for the body of the thirty-fourth victim, raised a lot of eyebrows."); Opp. at 7 ("Counterclaimant's attorneys echo media pundits and members of the maritime law plaintiffs' bar who have been quick to criticize Petitioners for exercising their right to invoke the Limitation of Liability Act and Supplemental Rule F."); Reply at 5 ("Like Hamlet's mother, Queen Gertrude, the Fritzlers doth protest too much."). The Court expects the parties to work cooperatively to schedule discovery and to resolve most, if not all, disputes without the intervention of the Magistrate Judge or this Court. All counsel are ordered to familiarize themselves with the District's Civility and Professionalism Guidelines.

IT IS SO ORDERED.