

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION
IN ADMIRALTY

CASE NO. 19-20379-CIV-UNGARO

MARIANNE MEYER,

Plaintiff,

v.

CARNIVAL CORPORATION,

Defendant.

**DEFENDANT, CARNIVAL CORPORATION'S,
ANSWER AND AFFIRMATIVE DEFENSES**

COMES NOW, Defendant, CARNIVAL CORPORATION, d/b/a CARNIVAL CRUISE LINE, (hereinafter "CARNIVAL") by and through its undersigned counsel and pursuant to the applicable Federal Rules of Civil Procedure, and files its Answer and Affirmative Defenses to Plaintiff, MARIANNE MEYER's, Complaint for damages contained in the Complaint, and states as follows:

ANSWER

1. Paragraph 1 is denied.
2. Other than to admit that this Honorable Court has subject matter jurisdiction over this action pursuant to its Admiralty and Maritime jurisdiction, and that venue is proper in this Honorable Court, Paragraph 2 is denied. Defendant does not oppose Plaintiff's request for a jury trial.
3. With regard to Paragraph 3, other than to admit that this Honorable Court has subject matter jurisdiction over this action pursuant to its Admiralty and Maritime jurisdiction, and that

venue is proper in this Honorable Court, Paragraph 3 is denied, particularly with regard to the amount in controversy. Defendant does not oppose Plaintiff's request for a jury trial.

4. With regard to Paragraph 4, Defendant admits that venue is proper in the Southern District of Florida pursuant to the parties' passenger ticket contract.

5. Defendant is without sufficient knowledge to admit or deny, and therefore in abundance of caution, must deny Paragraph 5 at this time.

6. With regard to Paragraph 6, Defendant admits only that this Honorable Court has *en personam* jurisdiction over the Defendant in this Admiralty and Maritime personal injury action. Otherwise, Paragraph 6 is denied.

7. With regard to Paragraph 7, Defendant admits only that this Honorable Court has *en personam* jurisdiction over the Defendant in this Admiralty and Maritime personal injury action. Otherwise, Paragraph 7 is denied.

8. With regard to Paragraph 8, Defendant admits only that this Honorable Court has *en personam* jurisdiction over the Defendant in this Admiralty and Maritime personal injury action. Otherwise, Paragraph 8, inclusive of all sub-parts, is denied.

9. Paragraph 9 is denied.

10. With regard to Paragraph 10, Defendant admits only that it may be deemed the owner and operator of the Carnival Ecstasy for purposes of this litigation only, and that Plaintiff was a passenger on board on the date alleged in the complaint. Otherwise, Paragraph 10 is denied.

11. Paragraph 11 is denied.

12. Paragraph 12 is denied.

13. Paragraph 13 is denied.

14. Paragraph 14 is denied.

15. Paragraph 15 is denied.

16. Paragraph 16 is denied.

17. Paragraph 17 is denied.

18. Paragraph 18 is denied.

19. Paragraph 19 is denied.

20. Paragraph 20 is denied.

21. Paragraph 21 is denied.

22. Paragraph 22 is denied.

23. Paragraph 23 is denied.

24. Paragraph 24 is denied.

25. Paragraph 25 is denied.

26. Paragraph 26 is denied.

27. Paragraph 27 is denied.

28. Defendant re-alleges, adopts and incorporates by reference its answers to paragraphs 1-27 as though set forth in full herein.

29. Paragraph 29 is a statement of law to which Defendant is not required to admit or deny. To the extent that an answer is required, Paragraph 29 is denied, except that Defendant admits that the applicable standard is “reasonable care under the circumstances”.

30. Paragraph 30 is a statement of law to which Defendant is not required to admit or deny. To the extent that an answer is required, Paragraph 30 is denied, except that Defendant admits that the applicable standard is “reasonable care under the circumstances”.

31. Paragraph 31 is a statement of law to which Defendant is not required to admit or deny. To the extent that an answer is required, Paragraph 31 is denied, except that Defendant admits that the applicable standard is “reasonable care under the circumstances”.

32. Paragraph 32 is a statement of law to which Defendant is not required to admit or deny. To the extent that an answer is required, Paragraph 32 is denied, except that Defendant admits that the applicable standard is “reasonable care under the circumstances”.

33. Paragraph 33, inclusive of all sub-parts, is denied as worded.

34. Paragraph 34 is denied.

35. Paragraph 35 is denied.

36. Paragraph 36 is denied.

37. Paragraph 37 is denied.

38. Paragraph 38 is denied.

39. The Defendant, CARNIVAL, denies all allegations of the Complaint which are not specifically admitted.

40. The Defendant, CARNIVAL, denies Plaintiff is entitled to judgment of the relief sought.

41. Any and all allegations pertaining to any negligence or liability of the Defendant, CARNIVAL, are specifically denied.

WHEREFORE, having fully answered the Complaint, the Defendant, CARNIVAL, demands that the Complaint be **Dismissed with Prejudice** to and at the cost of Plaintiff, MARIANNE MEYER.

AFFIRMATIVE DEFENSES

As separate and complete defenses, based on information and belief, CARNIVAL CORPORATION states as follows:

FIRST AFFIRMATIVE DEFENSE

For its First Affirmative Defense, CARNIVAL CORPORATION avers that the negligence, actions and/or misaction of the Plaintiff was the sole and proximate cause of any and all injuries or damages as alleged in the Complaint, and as such, the Plaintiff's right to recovery is either barred or shall be reduced pursuant to the doctrine of Comparative Negligence.

SECOND AFFIRMATIVE DEFENSE

For its Second Affirmative Defense, CARNIVAL CORPORATION asserts that the Plaintiff's action is precluded, limited and/or controlled by the limitations, terms and conditions contained in the Plaintiff's ticket/contract for passage.

THIRD AFFIRMATIVE DEFENSE

For its Third Affirmative Defense, Defendant asserts that Plaintiff has failed to mitigate her damages, if any, thus precluding or diminishing the Plaintiff's recovery herein to the extent such mitigation would have diminished or avoided Plaintiff's alleged losses or injuries.

FOURTH AFFIRMATIVE DEFENSE

For its Fourth Affirmative Defense, the Defendant further affirmatively alleges, without admitting liability, that in the event that the Plaintiff should recover on her claim, this Defendant would be entitled to a set-off, off-set and/or reduction for any and all collateral source benefits either paid or payable to the Plaintiff. Alternatively, Plaintiff is not entitled to recover any portions of her damages that have been written off and/or waived by her health care providers.

FIFTH AFFIRMATIVE DEFENSE

For its Fifth Affirmative Defense, Defendant affirmatively alleges that Plaintiff's injuries, if any, are the result of a pre-existing injury or condition which was not aggravated by the alleged accident claimed herein. Alternatively, if any pre-existing injury or condition was aggravated by any alleged injuries herein, the Plaintiff is only entitled to reimbursement for the degree of aggravation, and any recovery she obtains herein must be limited to the percentage of aggravation she suffered as a result of this alleged accident.

SIXTH AFFIRMATIVE DEFENSE

For its Sixth Affirmative Defense, Defendant alleges that Plaintiff's injuries, if any, were proximately caused by the conduct of third parties, such as co-passengers, not subject to the control, supervision or direction of this Defendant, thereby precluding or diminishing Plaintiff's recovery herein.

SEVENTH AFFIRMATIVE DEFENSE

For its Seventh Affirmative Defense, Defendant alleges federal maritime law to the exclusion of state law controls this action.

EIGHTH AFFIRMATIVE DEFENSE

For its Eighth Affirmative Defense, the Defendant asserts that to the extent that the Plaintiff's Complaint relates that a dangerous condition existed on the vessel of this Defendant, this Defendant would affirmatively aver that any such condition, if in existence, was such an open and obvious condition that the Plaintiff did or should have observed and comprehended same; thus, avoiding the alleged accident and as such, any recovery of the Plaintiff herein is barred or should be accordingly reduced.

NINTH AFFIRMATIVE DEFENSE

For its Ninth Affirmative Defense, Defendant avers it owed a duty of reasonable care to the Plaintiff herein and that this Defendant complied with and otherwise fulfilled its duty to the Plaintiff and as such, the Plaintiff herein is unable to recover of this Defendant.

TENTH AFFIRMATIVE DEFENSE

For its Tenth Affirmative Defense, the Defendant avers that it had no notice, actual, constructive or otherwise of any dangerous condition which the Plaintiff alleges was the proximate cause of her damage and as such, the Defendant herein is not liable to the Plaintiff herein based on a theory of negligence and the Plaintiff is unable to recover of this Defendant.

ELEVENTH AFFIRMATIVE DEFENSE

For its Eleventh Affirmative Defense, the Defendant would further affirmatively aver that to the extent that the Plaintiff's Complaint purports to state a claim for attorney's fees, the Defendant avers that there was no basis in contract or statute for the Plaintiff's recovery of same and that federal maritime law also bars the Plaintiff's recovery of attorney's fees herein and as such, any attempt to recovery of attorney's fees by the Plaintiff herein is unsupported and otherwise barred.

TWELFTH AFFIRMATIVE DEFENSE

For its Twelfth Affirmative Defense, the Defendant further affirmatively avers that any injury or damage as alleged to have been suffered by the Plaintiff herein is not the proximate result of any negligence of this Defendant and any such injuries are unrelated to the incident at issue and as such, the Plaintiff is unable to recover of this Defendant.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 19th, 2019, I electronically filed the foregoing document with the Clerk of Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generate by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

Respectfully submitted,
DONNISE DESOUZA WEBB, ESQ
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By: s/ Donnise DeSouza Webb, Esq.
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