

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 10-cv-24312-JLK

REBECCA FARRAWAY, as mother
and natural guardian of HOLLIE
RAYMOND, a minor,

Plaintiff,

v.

OCEANIA CRUISES, INC.,

Defendant.

ORDER DENYING MOTION FOR LEAVE TO AMEND ANSWER

THIS CAUSE comes before the Court upon Defendant's Motion for Leave to File an Amended Answer (DE #11), filed May 12, 2011. The Court is fully briefed in the matter.¹

In the Complaint, Plaintiff alleges she was raped by an employee of Defendant Oceania Cruises, Inc. ("Oceania") while she was a passenger on a cruise operated by Oceania. (DE #1). Defendant Oceania filed an Answer on January 10, 2011. (DE #6). The Answer raised three Affirmative Defenses. *Id.* Oceania now seeks leave to file an amended answer to add a single additional affirmative defense. (DE #11). Specifically, Defendant wishes to plead that Plaintiff's damages are limited pursuant to the Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea, art. 7, Dec. 13, 1974 ("the

¹Plaintiff filed a Response in Opposition (DE #12) on May 31, 2011.

Athens Convention”). Defendant seeks to invoke the Athens Convention pursuant to the following clause in Plaintiff’s Passenger Ticket Contract:

Foreign Voyages – Important Notice: On cruises which neither embark, disembark nor call at any U.S. port, Carrier shall be entitled to any and all liability limitations, immunities, and rights applicable to it under the “Convention Relating to the Carriage of Passengers and Their Luggage by Sea” of 1974 as well as the “Protocol to the Convention Relating to the Carriage of Passengers and their Luggage by Sea” of 1976 (“Athens Convention”). The Athens Convention limits the Carrier’s liability for death or personal injury to a Passenger to no more than 46.666 Special Drawing Rights as defined therein (approximately U.S. \$65,000 which fluctuates, depending on the daily exchange rate as printed in the Wall Street Journal.

(DE #12-1 ¶ 10(a)).

As explained in the Ticket Contract, the Athens Convention provides limits for the liability of a carrier for the personal injury or death of a passenger. *Id.* However, as pointed out by Plaintiffs, the Athens Convention also provides:

The carrier shall not be entitled to the benefit of the limits of liability prescribed [in previous Articles], if it is proved that the damage resulted from an act or omission of the carrier done with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

Athens Convention, art. 13, s.1. The Convention also contains an identical section applicable to acts or omissions by servants or agents of the carrier.² Thus, the Athens Convention on

²Article 13, section 2 provides:

The servant or agent of the carrier shall not be entitled to the benefit of the limits of liability prescribed [in previous Articles], if it is proved that the damage resulted from an act or omission of that servant or agent done with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

Athens Convention, art. 13, s.2.

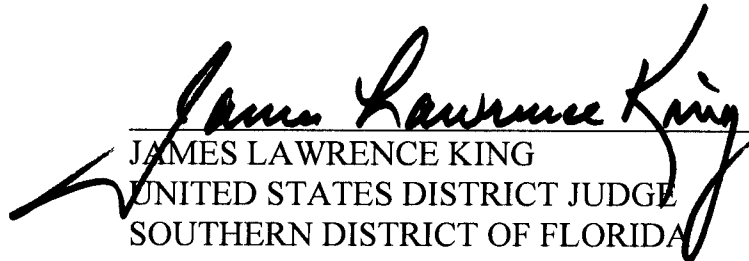
its face does not provide any limit on liability for a carrier's liability for intentional torts. The only substantive claims for relief in Plaintiff's Complaint are sexual assault/rape and false imprisonment. (DE #1). Because these are both intentional torts, the limits of liability contained in the Athens Convention do not apply.

Under the Federal Rules of Civil Procedure, courts should "freely give leave [to amend a pleading] when justice so requires." Fed. R. Civ. P. 15(a)(2). "A district court need not, however, allow an amendment . . . where amendment would be futile." *Bryant v. Dupree*, 252 F.3d 1161, 1163 (11th Cir. 2001) (per curiam). Here, the only amendment to Defendant Oceania's Answer would be an affirmative defense that is inapplicable to the facts of this case, as alleged in the Complaint. Therefore, the amendment sought by Defendant would be futile, and leave to amend should not be granted.

Accordingly, it is hereby

ORDERED, ADJUDGED, and DECREED that Defendant's Motion for Leave to File an Amended Answer (DE #11) is **DENIED**.

DONE and ORDERED in Chambers at the James Lawrence King Federal Justice Building and United States Courthouse, Miami, Florida, this 10th day of June, 2011.


JAMES LAWRENCE KING
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF FLORIDA

cc:

Counsel for Plaintiffs

Jason Robert Margulies
Lipcon Margulies & Alsina
One Biscayne Tower, Suite 1776
2 S. Biscayne Boulevard
Miami, FL 33131
305-373-3016
Fax: 373-6204
Email: crewlawyer@aol.com

Counsel for Defendant

William F. Clair
Hill Betts & Nash
1515 S.E. 17th Street
Suite A 115
Fort Lauderdale, FL 33331
954-522-2271
Fax: 954-522-2355
Email: wclair@hillbetts.com