UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

HAVANA DOCKS CORPORATION,
Plaintiff,
v.
CARNIVAL CORPORATION,
Defendant.
_____/

Case No. 19-cv-21724
BLOOM/MCALILEY

HAVANA DOCKS CORPORATION,
Plaintiff,
v.
MSC CRUISES SA, et al.,
Defendants.
_____/

Case No. 19-cv-23588
BLOOM/LOUIS

HAVANA DOCKS CORPORATION,
Plaintiff,
v.
ROYAL CARIBBEAN CRUISES, LTD.,
Defendant.
_____/

Case No. 19-cv-23590
BLOOM/LOUIS

HAVANA DOCKS CORPORATION,
Plaintiff,
v.
NORWEGIAN CRUISE LINE HOLDINGS, LTD.,
Defendant.
_____/

Case No.: 19-cv-23591
BLOOM/LOUIS

PLAINTIFF HAVANA DOCKS CORPORATION'S RESPONSE TO DEFENDANTS' MOTION SEEKING CLARIFICATION OF THE COURT'S MARCH 21, 2022 OMNIBUS ORDER ON MOTIONS FOR SUMMARY JUDGMENT

Plaintiff Havana Docks Corporation ("Havana Docks") files this response to the motion seeking clarification of the Court's March 21, 2022 Omnibus Order on Motions for Summary Judgment (the "Motion")[1] filed by defendants Carnival Corporation, Royal Caribbean Cruises Ltd., Norwegian Cruise Line Holdings, Ltd., MSC Cruises S.A., MSC Cruises S.A. Co., and MSC Cruises (USA), Inc. (collectively, the "Defendants").

The Court appropriately entered summary judgment on the Defendants' Fifth Amendment excessive-damages affirmative defenses.[2] *See Havana Docks Corp. v. Carnival Corp., et al.*, --- F. Supp. 3d ---- , 2022 WL 831160, *85 (S.D. Fla. 2022). An affirmative defense is a "defendant's assertion of facts and argument that, if true, will defeat the plaintiff's or prosecution's claim, even if all the allegations in the complaint are true." Black's Law Dictionary (10th ed. 2014); *Am. First. Fed., Inc. v. Lake Forest Park, Inc.*, 198 F.3d 1259, 1264 (11th Cir. 1999). Affirmative defenses serve to provide notice to a plaintiff of any avoidance a defendant may raise at trial. *See Hassan v. U.S. Post. Serv.*, 842 F.2d 260, 263 (11th Cir. 1988).

Following Eleventh Circuit precedent, the Court has twice held that a Fifth Amendment excessiveness argument is a post-trial issue to be addressed after "a jury has delivered a damages award." *Havana Docks Corp. v. MSC Cruises SA Co.*, 484 F.

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[1] *Carnival* Case, No. 19-cv-21724, ECF No. 480; *MSC* Case, No. 19-cv-23588, ECF No. 335; *Royal* Case, 19-cv-23590, ECF No. 257; *Norwegian* Case, No. 19-cv-23591, ECF No. 371.

[2] *Carnival*, ECF No. 160 at 20 (eleventh affirmative defense); *MSC*, ECF Nos. 115 at 16 (MSC USA's fourth affirmative defense), 133 at 15 (MSC SA's fourth affirmative defense); *Royal Caribbean*, ECF No. 59 at 6 (Royal Caribbean's fifth affirmative defense); *Norwegian*, ECF No. 107 at 15 (Def. No. 9).

Supp. 3d 1177, 1202-03 (S.D. Fla. 2020); *Havana Docks*, --- F. Supp. 3d ---- , 2022 WL 831160, at *85; *see also Harris v. Mexican Specialty Foods, Inc.*, 564 F.3d 1301, 1308-13 (11th Cir. 2009). Because Defendants' Fifth Amendment excessive damages argument is not an avoidance that may be presented at trial, it is not an affirmative defense and summary judgment was appropriately entered.[3]

This is so regardless of whether Havana Docks moved for summary judgment on it. "[D]istrict courts are widely acknowledged to possess the power to enter summary judgments *sua sponte*, so long as the losing party was on notice that she had to come forward with all of her evidence." *Celotex Corp. v. Catrett,* 477 U.S. 317, 326 (1986). More specifically, the Eleventh Circuit has held that:

> the court may enter judgment on a ground not mentioned in the motion if the parties have had an adequate opportunity to argue and present evidence on that point and summary judgment otherwise is appropriate. The major concern in cases in which the court decides to enter summary judgment without a proper Rule 56 motion is whether the party against whom the judgment will be entered was given sufficient advance notice and an adequate opportunity to demonstrate why summary judgment should not be granted; if such conditions are complied with, no unfairness results from the court's decision to rule on the motion.

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[3] *See, e.g., Purzel Video GmbH v. St. Pierre*, 10 F. Supp. 3d 1158, 1170-71 (D. Col. 2014) (striking "grossly excessive" statutory damages defense that was "not properly asserted as an 'affirmative defense'"); *Greiff v. TIC Enters. LLC*, 2004 WL 115553, *3 (D. Del. Jan 9, 2004) ("excessive punitive damages" defenses stricken where they did "not constitute affirmative defenses because they will not defeat defendants' counterclaims if proven"); *E.E.O.C. v. New Breed Logistics*, 2013 WL 1404926, *5 (W.D. Tenn. Apr. 5, 2013) (granting summary judgment for plaintiff on excessive damages defense and holding "should there be an award of punitive damages in this case, the Court will entertain such motions as are appropriate at that time").

Kohlheim v. Glynn Cnty. Ga., 915 F.2d 1473, 1478 (11th Cir. 1990) (footnote omitted).[4]

"When a party moves for summary judgment, a court may *sua sponte* grant summary judgment in favor of the non-moving party, if the non-moving party is on notice of the issues to be ruled upon and if the non-movant is entitled to summary judgment as a matter of law." *Floyd v. Sallie Mae, Inc.*, 853 F. App'x 532, 533 n.2 (11th Cir. 2021). As Wright and Miller explain:

> Entering a judgment when there has been a motion but no cross-motion is somewhat different from the situation in which neither party has moved under Rule 56 and the court wishes to act sua sponte. When there has been a motion but no cross-motion, the judge already is engaged in determining whether a genuine dispute as to material fact exists and the parties have been given an opportunity to present evidence designed either to support or refute the request for the entry of judgment.
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> The grant of judgment for the nonmoving party clearly is proper if both sides agree that there are no material fact issues and join in the request that the case be decided, for the moving or the nonmoving side, on the basis of a motion for judgment made by only one of them.

Wright and Miller, Federal Practice and Procedure, § 2720.1, Procedure on a Motion for Summary Judgment—Summary Judgment Without a Motion.

Under Rule 56(f) ("Judgment Independent of the Motion"), the Eleventh Circuit distinguishes "*sua sponte* grants of summary judgment in cases that involve

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[4] *See also Burton v. City of Belle Glade*, 178 F.3d 1175, 1203-04 (11th Cir. 1999) ("A district court possesses the power to enter summary judgment *sua sponte* provided the losing party 'was on notice that she had to come forward with all of her evidence.' . . . [S]o long as the party against whom judgment will be entered is given sufficient advance notice and has been afforded an adequate opportunity to demonstrate why summary judgment should not be granted, then granting summary judgment *sua sponte* is entirely appropriate."); *Bosarge v. Dep't of Educ.*, 5 F.3d 1414, 1416 n.4 (11th Cir. 1993) ("Although Bosarge never moved for summary judgment, a district court may enter judgment for a nonmovant.").

purely legal questions based on complete evidentiary records," from "cases that involve factual disputes where the non-moving party has not had an adequate opportunity to develop the record." *Lance Toland v. Phoenix Ins. Co.*, 855 F. App'x 474, 481-82 (11th Cir. 2021) (emphasis added, quoting *Artistic Ent., Inc. v. City of Warner Robins*, 331 F.3d 1196, 1201 (11th Cir. 2003)). Thus where, as here, a Court grants summary judgment for a non-movant on "'a legal issue [that] has been fully developed[] and the evidentiary record is complete, summary judgment is entirely appropriate *even if no formal notice has been provided*.'" *Id.* at 481 (quoting *Artistic Ent.*, 331 F.3d at 1201-02 (summary judgment appropriate where "the district court had all the information necessary to rule on the legal issues")).

This standard is met here. The Defendants moved for summary judgment on their Fifth Amendment excessive damages affirmative defense, (*e.g.*, Defs' Omni. MSJ and Reply, Carnival, ECF Nos. 330 at 30-31, 399 at 16); and argued it orally to the Court at the January 12, 2022 hearing (*e.g., Carnival*, ECF No. 457 at 78:16 – 79:24, 96:24 – 97:7). There can be no dispute that Defendants had notice and an opportunity to be heard on the issue. *See Lance Toland*, 855 F. App'x at 482 (standard met where "Toland had two hearings and a brief in which to present his evidence and arguments and establish his security interests in the insurance proceeds"). Summary judgment was thus appropriately entered.

Date: April 12, 2022.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was filed with the Clerk of the Court. I also certify that the foregoing document is being served this 12 April 2022, on all counsel of record or pro se parties either via transmission of Notices of Electronic Filing generated 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.

By: s/ Roberto Martínez
Roberto Martínez