

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

SLAVKO DAMJANOVIC,)
)
Plaintiff,)
vs.)
THE VONS COMPANIES, doing business)
as VONS STORE 1963 AND SAFEWAY)
INC., VONS DIVISION)
Defendants.)

Case No.: 2:10-cv-00802-GMN-PAL

ORDER

Pending before the Court is Defendants’ Motion for Summary Judgment (ECF No. 17), which was filed on December 16, 2010. No Response has been submitted. For the reasons that follow, the Motion will be GRANTED.

I. BACKGROUND

This is a personal injury lawsuit arising out of injuries Plaintiff Slavko Damjanovic (“Plaintiff”) allegedly sustained after he slipped and fell at a grocery store operated by Defendants. Although the case was initiated in state court, Defendants removed it to this Court, invoking diversity jurisdiction. Having considered the Supplemental Brief (ECF No. 26) filed by Defendants in support of diversity jurisdiction in this case, the Court finds that Defendants have met their burden of establishing that the Court has subject matter jurisdiction over this lawsuit.

After discovery had been conducted in this matter, Defendants filed a Motion for Summary Judgment (ECF No. 17). Plaintiff, who is currently self-represented, has failed to respond to the Motion, despite having been given a Klingele v. Eikenberry notice (ECF No. 18) and ample time in which to file a Response.

1 **II. SUMMARY JUDGMENT STANDARD**

2 The Federal Rules of Civil Procedure provide for summary adjudication if “the movant
3 shows there is no genuine dispute as to any material fact and the movant is entitled to a
4 judgment as a matter of law.” Fed. R. Civ. P. 56(a). Material facts are those that may affect the
5 outcome of the case. See *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A dispute
6 as to a material fact is genuine if there is sufficient evidence for a reasonable jury to return a
7 verdict for the nonmoving party. See *id.* “Summary judgment is inappropriate if reasonable
8 jurors, drawing all inferences in favor of the nonmoving party, could return a verdict in the
9 nonmoving party’s favor.” *Diaz v. Eagle Produce Ltd. P’ship*, 521 F.3d 1201, 1207 (9th Cir.
10 2008) (citing *United States v. Shumway*, 199 F.3d 1093, 1103–04 (9th Cir. 1999)). A principal
11 purpose of summary judgment is “to isolate and dispose of factually unsupported claims.”
12 *Celotex Corp. v. Catrett*, 477 U.S. 317, 323–24 (1986).

13 In determining summary judgment, a court applies a burden-shifting analysis. “When
14 the party moving for summary judgment would bear the burden of proof at trial, it must come
15 forward with evidence which would entitle it to a directed verdict if the evidence went
16 uncontroverted at trial. In such a case, the moving party has the initial burden of establishing
17 the absence of a genuine issue of fact on each issue material to its case.” *C.A.R. Transp.*
18 *Brokerage Co. v. Darden Rests., Inc.*, 213 F.3d 474, 480 (9th Cir. 2000) (citations omitted). In
19 contrast, when the nonmoving party bears the burden of proving the claim or defense, the
20 moving party can meet its burden in two ways: (1) by presenting evidence to negate an
21 essential element of the nonmoving party’s case; or (2) by demonstrating that the nonmoving
22 party failed to make a showing sufficient to establish an element essential to that party’s case
23 on which that party will bear the burden of proof at trial. See *Celotex Corp.*, 477 U.S. at 323–
24 24. If the moving party fails to meet its initial burden, summary judgment must be denied and
25 the court need not consider the nonmoving party’s evidence. See *Adickes v. S.H. Kress & Co.*,

1 398 U.S. 144, 159–60 (1970).

2 If the moving party satisfies its initial burden, the burden then shifts to the opposing
3 party to establish that a genuine issue of material fact exists. See *Matsushita Elec. Indus. Co. v.*
4 *Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). To establish the existence of a factual dispute,
5 the opposing party need not establish a material issue of fact conclusively in its favor. It is
6 sufficient that “the claimed factual dispute be shown to require a jury or judge to resolve the
7 parties’ differing versions of the truth at trial.” *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors*
8 *Ass’n*, 809 F.2d 626, 631 (9th Cir. 1987). In other words, the nonmoving party cannot avoid
9 summary judgment by relying solely on conclusory allegations that are unsupported by factual
10 data. See *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989). Instead, the opposition must go
11 beyond the assertions and allegations of the pleadings and set forth specific facts by producing
12 competent evidence that shows a genuine issue for trial. See *Celotex Corp.*, 477 U.S. at 324.

13 At summary judgment, a court’s function is not to weigh the evidence and determine the
14 truth but to determine whether there is a genuine issue for trial. See *Anderson*, 477 U.S. at 249.
15 The evidence of the nonmovant is “to be believed, and all justifiable inferences are to be drawn
16 in his favor.” *Id.* at 255. But if the evidence of the nonmoving party is merely colorable or is
17 not significantly probative, summary judgment may be granted. See *id.* at 249–50.

18 **III. ANALYSIS**

19 Plaintiff’s Complaint (Ex. 1, ECF No. 1) does not clearly set out the cause or causes of
20 action that he is pursuing. However, Plaintiff appears to be bringing a single negligence cause
21 of action.

22 Because Defendants would not bear the burden of proof at trial, in order to be entitled
23 to summary judgment they need only: (1) demonstrate that Plaintiff failed to make a showing
24 sufficient to establish an element essential to his case, or (2) present evidence negating an
25 essential element of Plaintiff’s negligence claim. See *Celotex Corp.*, 477 U.S. at 323–24.

1 Defendants have demonstrated that Plaintiff has failed to make a showing as to the breach and
2 causation elements of his negligence claim; therefore, they are entitled to summary judgment.

3 **A. Negligence Standard**

4 In Nevada, like elsewhere, a plaintiff must establish four elements in order to prevail on
5 a negligence claim: (1) an existing duty of care; (2) a breach of that duty; (3) legal causation;
6 and (4) damages. *Turner v. Mandalay Sports Entm't, LLC*, 180 P.3d 1172, 1175 (Nev. 2008).

7 Defendants do not dispute that business proprietors owe their invitees--such as Plaintiff--a duty
8 to use reasonable care to keep their business's premises in a reasonably safe condition for use.
9 See *Doud v. Las Vegas Hilton Corp.*, 864 P.2d 796, 799 (Nev. 1993).

10 **B. Breach of Duty**

11 Defendants do, however, contend that Plaintiff has failed to produce evidence showing
12 that they breached their duty to use reasonable care to keep their premises in reasonably safe
13 condition for use. The Court agrees. Plaintiff has produced no evidence indicating that
14 Defendants failed to use reasonable care in maintaining their property; "failed to take
15 reasonable precautions to protect the invitee from dangers which are foreseeable"
16 *Twardowski v. Westward Ho Motels, Inc.*, 476 P.2d 946, 947 (Nev. 1970); or failed to warn
17 Plaintiff of a hidden danger that Defendants knew, or reasonably should have known, about.
18 Plaintiff alleged in his Complaint that "he slipped and fell as a result of a foreign liquid
19 substance which Defendants had caused to be on the premises or negligently allowed to exist
20 there," (Compl. ¶ 7, Ex. 1, ECF No. 1), but has failed to produce any evidence in support of
21 that claim. Because a plaintiff cannot defeat a motion for summary judgment by relying solely
22 on allegations without evidentiary support, see *Taylor*, 880 F.2d at 1045, Defendants' Motion
23 for Summary Judgment will be granted.

24 Not only have Defendants pointed to the lack of evidence in the record pertaining to the
25 breach element of Plaintiff's claim, they have also produced their own evidence indicating that

1 they did not breach their duty to exercise reasonable care in maintaining reasonably safe
2 premises. Specifically, they have attached a signed safety report from a Certified Safety
3 Specialist, in which the Specialist concluded that, even if the floor were wet, “[t]he floor
4 surface provides good surface friction for safe foot traction under dry and wet conditions, as
5 noted during coefficient of friction testing.” (See Ex. C, ECF No. 17.) Furthermore, the
6 Specialist reported that “[s]tore procedures for inspection are excellent and exceed industry
7 practice” and that “[l]ighting in the store is good. The reported liquid substance would be open
8 and obvious.” (Id.) Plaintiff has submitted no evidence to rebut this showing that Defendants
9 had taken reasonable measures to prevent exactly the sort of accident about which Plaintiff
10 complains. Summary judgment will be granted.

11 **C. Causation**

12 In order to prevail on a negligence claim, Plaintiff would also have to prove that his
13 injuries were proximately caused by Defendants’ failure to use reasonable care to keep its
14 premises in a reasonably safe condition for use. “Proximate cause has been widely defined as
15 that cause which, in natural and continuous sequence and unbroken by any efficient,
16 intervening cause, produces the injury complained of and without which the result would not
17 have occurred.” Doud, 864 P.2d at 801. Proximate cause consists of two components: cause in
18 fact and foreseeability. Id. Cause in fact requires proof that Defendants’ failure to exercise
19 reasonable care “was a substantial factor in bringing about [Plaintiff’s] injury.” Id.
20 Foreseeability “is essentially a policy consideration that limits a proprietor’s liability to
21 consequences that have a reasonably close connection with both the proprietor’s conduct and
22 the harm that conduct originally created.” Id.

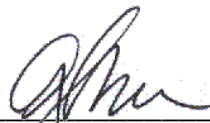
23 As a preliminary matter, the causation element cannot be fulfilled if Defendants did not
24 breach their duty to use reasonable care to keep their premises in a reasonably safe condition
25 for use. However, even if there were a question of material fact as to whether Defendants

1 breached their duty, Plaintiff has failed to produce any evidence suggesting that he can satisfy
2 the causation element. Other than the unsupported allegations contained in his Complaint
3 indicating that he slipped on some sort of liquid that was on the floor, Plaintiff has failed to
4 bring forward anything indicating that Defendants' alleged breach of their duty to him "was a
5 substantial factor" in bringing about the injuries that he now complains of. Mere allegations
6 are insufficient to overcome Defendants' Motion, and summary judgment must be entered.

7 **CONCLUSION**

8 **IT IS HEREBY ORDERED** that Defendants' Motion for Summary Judgment (ECF
9 No. 17) is **GRANTED**.

10 DATED this 21st day of July, 2011.

11 

12 _____
13 Gloria M. Navarro
14 United States District Judge