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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Susie K. Holmes,
Plaintiff
v.
Safeguard Properties, LLC,
Defendant

Case No.: 2:13-cv-1012-JAD-NJK
Order
Granting Summary Judgment (Doc. 31)

This case arises out of water damage to property in Henderson, Nevada, that allegedly occurred while defendant Safeguard Properties was hired to watch plaintiff William Martinez’s housing unit.¹ Martinez resided in San Diego, California at the time; he initially filed this action in California state court.² The complaint was later amended to ass as a plaintiff Susie Holmes, who alleged that she lived above Mr. Martinez’s property and that mold was growing in her unit.³ Safeguard removed the case to the federal Southern District of California, and the case was transferred to the District of Nevada.⁴ I subsequently approved Martinez’s stipulation to dismiss

¹ Doc. 1-1 at 15 (complaint).
² *See id.*
³ *See id.* at 26, 28; *see also* Doc. 7 at 3.
⁴ Docs. 1, 10.

1 claims with prejudice.⁵ And while Holmes opposed the venue-change motion in the Southern
2 District of California, she has filed nothing in the approximately 21 months since this case was
3 transferred to Nevada.⁶ Discovery closed in April 2014 with no disclosures or discovery performed
4 by Holmes.⁷

5 Safeguard filed a motion for summary judgment against Holmes on April 30, 2014, and
6 followed with a notice of non-opposition on June 5, 2014.⁸ After carefully considering the record
7 and law, I grant summary judgment in Safeguard’s favor and order this case closed.⁹

8 Discussion

9 Summary judgment is appropriate when the pleadings and admissible evidence “show there
10 is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of
11 law.”¹⁰ When considering summary judgment, the court views all facts and draws all inferences in
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13 ⁵ Doc. 30.

14 ⁶ See Doc. 7 (motion opposing transfer filed by Martinez and Holmes); see also Doc. 10 (order
15 transferring case on June 6, 2013).

16 ⁷ Doc. 31 at 6–7.

17 ⁸ Doc. 31 (motion for summary judgment); Doc. 32 (certificate of service for summary-judgment
18 motion); Doc. 33 (notice of non-opposition to summary judgment).

19 ⁹ James Imperiale, Esq., who represented Holmes in California, has neither withdrawn as her
20 counsel nor filed a pro hac vice petition. He also has not filed anything on Holmes’s behalf since this
21 case transferred to the District of Nevada. Regardless of whether she is actually represented, I therefore
22 give Holmes the benefit of treating her as a pro se party. Had she filed anything before me, I would
23 have liberally construed her pro se submissions. See *Bernhardt v. L.A. Cnty.*, 339 F.3d 920, 925 (9th
24 Cir. 2003).

25 Holmes was not provided with the notice required to pro se prisoners under *Rand v. Rowland*,
26 154 F.3d 952 (9th Cir. 1998) (en banc), *Wyatt v. Terhune*, 315 F.3d 1108 (9th Cir. 2003), and *Klinge*
27 *v. Eikenberry*, 849 F.2d 409 (9th Cir. 1988). The Ninth Circuit has expressly ruled that, when a non-
28 prisoner, civil litigant appears pro se, “[t]he district court [is] not required to provide her with notice of
summary judgment rules.” *Bias v. Moynihan*, 508 F.3d 1212, 1223 (9th Cir. 2007) (citing *Jacobsen*
v. Filler, 790 F.2d 1362, 1365–67 (9th Cir. 1986)). Accordingly, even if Holmes is representing herself,
it is appropriate for me to resolve this summary-judgment motion without first issuing a *Klinge* notice.

26 In addition, I find this motion appropriate for resolution without oral argument. LR 78-2.

27 ¹⁰ See *Celotex Corp. v. Catrett*, 477 U.S. 317, 330 (1986) (citing Fed. R. Civ. P. 56(c)).

1 the light most favorable to the nonmoving party.¹¹ If reasonable minds could differ on material
2 facts, summary judgment is inappropriate because summary judgment’s purpose is to avoid
3 unnecessary trials when the facts are undisputed, and the case must then proceed to the trier of fact.¹²

4 If the moving party satisfies Rule 56 by demonstrating the absence of any genuine issue of
5 material fact, the burden shifts to the party resisting summary judgment to “set forth specific facts
6 showing that there is a genuine issue for trial.”¹³ The nonmoving party “must do more than simply
7 show that there is some metaphysical doubt as to the material facts”; she “must produce specific
8 evidence, through affidavits or admissible discovery material, to show that” there is a sufficient
9 evidentiary basis on which a reasonable fact finder could find in her favor.¹⁴ The court only
10 considers properly authenticated, admissible evidence in deciding a motion for summary judgment.¹⁵

11 In this case, Holmes asserts a single claim for general negligence against Safeguard
12 Properties.¹⁶ Because I sit in diversity, the forum state’s substantive law applies.¹⁷ While “general
13 negligence” is not a claim under Nevada law, negligence is. It requires that “(1) the defendant owed
14 the plaintiff a duty of care, (2) the defendant breached that duty, (3) the breach was the legal cause

17 ¹¹ *Kaiser Cement Corp. v. Fishbach & Moore, Inc.*, 793 F.2d 1100, 1103 (9th Cir. 1986).

18 ¹² *Warren v. City of Carlsbad*, 58 F.3d 439, 441 (9th Cir. 1995); *see also Nw. Motorcycle Ass’n*
19 *v. U.S. Dep’t of Agric.*, 18 F.3d 1468, 1471 (9th Cir. 1994).

20 ¹³ *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 256 (1986); *Celotex*, 477 U.S. at 323.

21 ¹⁴ *Bank of Am. v. Orr*, 285 F.3d 764, 783 (9th Cir. 2002) (internal citations omitted); *Bhan v.*
22 *NME Hosps., Inc.*, 929 F.2d 1404, 1409 (9th Cir. 1991); *Anderson*, 477 U.S. at 248–49.

23 ¹⁵ Fed. R. Civ. P. 56(c); *Orr*, 285 F.3d at 773–74.

24 ¹⁶ *See* Doc. 1-1 at 2 (amended state-court complaint).

25 ¹⁷ “It is, of course, well established that in diversity actions a federal court must apply the
26 substantive law of the state in which it sits.” *Brennan v. Lerner Corp.*, 626 F. Supp. 926, 929 (N.D.
27 Cal. 1986) (citing *Erie R. Co. v. Tompkins*, 304 U.S. 64 (1938)); *see also Jacobs v. CBS Broad., Inc.*,
291 F.3d 1173, 1177 (9th Cir. 2002) (quoting *Priest v. Am. Smelting & Ref. Co.*, 409 F.2d 1229, 1231
28 (9th Cir. 1969) (“Since federal jurisdiction in this case is based upon diversity of citizenship, the district
court and this court must apply the substantive law of the forum state.”)).

1 of the plaintiff's injuries, and (4) the plaintiff suffered damages."¹⁸ For Safeguard to establish that it
2 deserves judgment as a matter of law, at least one negligence element must be negated.¹⁹ The only
3 exhibits that Holmes has offered are the documents attached to her complaint, not one of which
4 demonstrates that Safeguard owed or breached a duty in any way.²⁰ Not one demonstrates that
5 Safeguard caused damage to her property, as Safeguard argues in its summary-judgment motion.²¹
6 And as Safeguard further argues, not one exhibit establishes what damages, if any, Holmes suffered
7 as a result of Safeguard's misconduct.²² Indeed, none of it helps Holmes because it all pertains to
8 Martinez's property. In short, Safeguard has demonstrated that the record is devoid of any evidence
9 to support Holmes's negligence claim against it, thus satisfying its burden. Perhaps this is the
10 natural consequences of Holmes's failure to engage in any discovery or provide the disclosures
11 required of civil litigants by Federal Rule of Civil Procedure 26. Regardless, the burden shifted,
12 Holmes failed to satisfy it, and summary judgment in Safeguard's favor is now warranted.

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22 ¹⁸ *Sadler v. PacifiCare of Nev.*, 340 P.3d 1264, 1267 (Nev. 2014) (quoting *DeBoer v. Sr. Bridges*
23 *of Sparks Fam. Hosp.*, 282 P.3d 727, 732 (Nev. 2012)) (internal quotation marks omitted).

24 ¹⁹ *See Foster v. Costco Wholesale Corp.*, 291 P.3d 150, 153 (Nev. 2012) (citing *Harrington v.*
Syufy Enters., 931 P.2d 1378, 1380 (Nev. 1997)).

25 ²⁰ *See generally* Doc. 1-1.

26 ²¹ *See* Doc. 31 at 6-7.

27 ²² *Id.* at 7.

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Conclusion

Accordingly, it is hereby ORDERED, ADJUDGED, and DECREED that defendant Safeguard Properties, Inc.'s, motion for summary judgment [Doc. 31] is GRANTED, and judgment is entered in favor of Safeguard and against Holmes.

As the entry of judgment on Holmes's claims terminates this suit, the Clerk of Court is instructed to CLOSE this case.

DATED March 3, 2015.



Jennifer A. Dorsey
United States District Judge