

1994 WL 16777830 (N.M. Dist.) (Trial Motion, Memorandum and Affidavit)  
District Court of New Mexico.  
Bernalillo County

Stella LIEBECK, Plaintiff,  
v.  
MCDONALD'S RESTAURANTS, P.T.S., INC. and McDonald's Corporation, Defendants.

No. CV-93-02419.  
January 21, 1994.

**Motion for Summary Judgment**

Rodey, Dickason, Sloan, Akin & Robb, P.A., Tracy E. McGee, Attorney for Defendant McDonalds Corporation, Post Office Box 1888, Albuquerque, New Mexico 87103, (505) 765-5900.

COME NOW the Defendants P.T.S., Inc., and McDonald's Corporation, by and through its counsel of record, Rodey, Dickason, Sloan, Akin & Robb, P.A. (Tracy E. McGee) and, pursuant to SCRA 1- 056, move this Court for its order granting summary judgment to Defendants on all of the Plaintiff's claims set forth in her Complaint for damages filed herein.

In support of this motion, Defendants would submit that the following are undisputed material facts in this case:

1. Plaintiff Stella Liebeck was a passenger in a vehicle which proceeded through the drive-through window of a McDonald's Restaurant (franchisee P.T.S., Inc.) located at 5001 Gibson, S.E., in Albuquerque, New Mexico, on or about February 27, 1992. Complaint for Damages, Paragraph III.
2. At the time in question, Plaintiff was 79 years old. Complaint for Damages, Paragraph VI.
3. Subsequent to purchasing the coffee, Plaintiff spilled it on herself, sustaining second and third degree burns to her upper inner thighs, buttocks, and other areas of her body. Complaint for Damages, Paragraph VI.
4. Plaintiff has alleged that the coffee was "excessively hot" and "defective" because of its high temperature. Plaintiff's Complaint, Paragraph IV.
5. The second and third degree burns which Ms. Liebeck sustained could have been sustained at temperatures as low as 130 Fahrenheit. Aff. of Turner M. Osler, M.D., Para. 17.
6. The fact that the coffee that Ms. Liebeck spilled on herself may have been slightly or even significantly hotter than 130° Fahrenheit does not mean that her injuries were worse or more extended than they would have been otherwise. Aff. of Turner M. Osler, M.D., Para. 18.
7. Ms. Liebeck's age may have caused her injuries to have been worse than they might have been in a younger individual, as the skin of an older person is thinner and heals less easily than the skin of a younger individual; however, even a young adult could have sustained third degree burns after spilling liquid at a temperature of as low as 130° on herself. Aff. of Turner M. Osler, M.D., Para. 19.

8. Unless Ms. Liebeck removed all of her clothing immediately, the clothing may have served to hold in the heat of the spilled liquid, and this may have aggravated the nature and extent of her injury; however, to a reasonable degree of medical probability, she would nevertheless have sustained third degree burns as a result of the coffee spilled. Aff. of Turner M. Osler, M.D., Para. 20.
9. A survey of six (6) fast food or restaurant establishments and two (2) private residences was conducted in September 1993 by Danny Jarrett. Aff. of Danny Jarrett, passim.
10. As part of this survey, Mr. Jarrett used a standard food thermometer and measured the temperature of coffee brewed and maintained at these locations. Aff. of Danny Jarrett, Paras. 3 & 4.
11. Mr. Jarrett's measurements of coffee were taken when it was first served to him, after approximately 15 minutes, and after approximately 30 minutes. Aff. of Danny Jarrett, passim.
12. The coffee was served to Mr. Jarrett in containers ranging from styrofoam cups to ceramic mugs. Aff. of Danny Jarrett, passim.
13. At no location did Mr. Jarrett record the temperature of freshly served coffee below 130°. Aff. of Danny Jarrett, passim.

The legal authority upon which Defendants will rely for this motion is as follows:

1. *Lopez v. Maes*, 81 N.M. 693, 472 P.2d 658, cert. den'd, 81 N.M. 721, 471 P.2d 984 (Ct.App. 1970) (In negligence cases, liability requires not only that a defendant be found negligent, but also that his negligence found to be a proximate cause of the injuries and damages of which the plaintiff complains.)
2. *New Mexico State Highway Department v. Van Dyke*, 90 N.M. 357, 563 P.2d 1150 (1977) (The proximate cause of an injury is that which, in a natural and continuous sequence that is unbroken by any new, independent cause, produces injury, and without which the injury would not have occurred.)
3. *Pittard v. Four Seasons Motor Inn, Inc.* 101 N.M. 723, writ quashed 101 N.M. 555, 685 P.2d 963 (Ct.App. 1984) (Proximate cause is that which, in a natural and continuance sequence, unbroken by any new independent causes, produces the injury, and without which the injury would not have occurred.)

Defendants contend that Ms. Liebeck's burns were not the result of serving excessively hot coffee, as other restaurants in this community have been demonstrated to serve coffee at temperatures which, for the sake of argument, might be lower than those served at the McDonald's in question, but which also were high enough temperatures to have still caused the type of injuries and burns that Ms. Liebeck sustained.

Defendants also submit of record, in connection with this motion, the complete sworn affidavits of Turner M. Osler, M.D., and Danny Jarrett for the Court's consideration.

Due to the nature of this motion, concurrence of opposing counsel was not sought.