

General Facts – Destiny v. Mocha and Frappy

Moonpennies is a coffee shop located in the Red-Light Fashion Alley Mall. The shop has had a well-renowned reputation as being the most respectable “Mom and Pop” coffee shop in the state. Owned by a married couple, Mocha and Frappy, Moonpennies has served the local community for over 50 years. Four generations have owned this store, starting with the original owning couple, Cappa and Chino. Nestled deep in the hustle and bustle of the Red-Light Fashion Alley Mall and located next to a strip club, Monkey-Bones, business for Mocha and Frappy has been steady from the beginning. Mocha and Frappy hired their son, Tard-Lee, as a barista in order to have him learn the ropes of how to run a coffee store. From this, Mocha and Frappy hope to one day keep the business within the family and pass the store down to their next generation in Tard-Lee.

In the late evening of December 1, 2005, Moonpennies was routinely serving its customers just like any other day. Before her shift at Monkey-Bones, Destiny, an exotic dancer, rushed into Moonpennies to purchase coffee. She wanted to get a quick coffee rush for her long shift ahead. However, she was running a little late for her next show. Therefore, she burst into Moonpennies while in her “work-attire” with hopes to save time. Destiny approached the register and ordered a regular drink: a Venti full-fat goose-eggnog latte. She routinely orders this special drink daily before her shift and requests “no cinnamon,” being how this particular drink normally gets topped off with cinnamon. Since she was a little exotic dancing girl, Destiny has always been highly allergic to cinnamon. However, on this night, since she was in such a hurry, Destiny forgot to request “no cinnamon” in her drink.

After Destiny ordered, she approached the ‘waiting area’ to pick up her drink. Tard-Lee was the on-duty barista for the evening. While making Destiny’s drink, Tard-Lee got extremely distracted by Destiny’s “work-attire”. Just before finishing Destiny’s latte, he unknowingly grabbed the cinnamon shaker that had a loose cap and poured its entire contents into the drink. Still distracted (and actually more impressed) with Destiny’s “work attire”, Tard Lee was still completely unaware of what he had done as he handed the drink over to Destiny, who rushed out of the store over to Monkey-Bones to start her shift.

This evening at Monkey-Bones was a special night for Destiny, since she was receiving “top-billing” for the first time in her career (“top billing” means being the main event). Since word got out that Destiny was headlining this evening, magazine scouts were in the audience, hoping to catch a glimpse of Destiny’s moves and hoping to offer Destiny a lucrative contract. While waiting behind the curtains just before going on stage, Destiny proceeded to pound the entire latte she had gotten from Moonpennies earlier.

Her performance was going excellent all the way up until the point where Destiny was about to execute her signature move, the “Inverted Grasshopper.” As she hung upside down on the pole, her face began to burn and bubble, and her entire body started to puff up, causing her to lose grip on the pole. Suddenly, Destiny fell and smashed her face onto the floor. The audience, including the magazine scouts, was horrified and ran out of Monkey-Bones. As a result of the fiasco, Destiny was fired from Monkey-Bones, and further, was not offered a contract from the magazine scouts that evening. On top of all this, Destiny suffered a concussion, a sprained neck

from the fall, and an allergic reaction from the cinnamon. Further, the allergic reaction caused her face to be disfigured and her body to become bloated. Destiny had never experienced such a performance and was utterly embarrassed.

Later in December, Destiny brought a negligence suit against Moonpennies for \$4 million in lost wages, contractual tortious interference, medical expenses, and loss of consortium with her husband, John. Destiny hoped to prevail via summary judgment. However, the court ruled against summary judgment because there were factual issues with Destiny's credibility. Further, the court reasoned that the coffee beverage was in Destiny's exclusive control for over five minutes, which prevented her from prevailing over the summary judgment. *Giordano v. White Castle System, Inc.*, 170 A.D.2d 279. Now, the attorneys for Destiny and Moonpennies are contacting each other in the negotiation phase prior to trial.

This pending case falls in a modified comparative negligence jurisdiction where the plaintiff's recovery is reduced by the percentage of fault attributable to the plaintiff as long as the plaintiff's fault is "not as great as" the defendant's. Further, if the plaintiff's negligence were equal to or greater than the defendant's negligence, the plaintiff would be barred from recovery.