

No. 70412-5-1

WASHINGTON STATE COURT OF APPEALS
DIVISION I

JOHN JONES,

Appellant,

v.

McDONALD'S RESTAURANTS OF WASHINGTON, INC.,
Store #4957,

Respondent.

RESPONDENT'S BRIEF

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I. INTRODUCTION

This appeal comes before the Court on a completely unmeritorious premises liability lawsuit. The trial court properly recognized that no issue existed about the basic facts of the incident. Mr. Jones entered the restaurant in Marysville, Washington owned by McDonald's Restaurants of Washington, Inc. ("Defendant") and ordered food. An employee of the Defendant had swept and cleaned the area where the incident occurred immediately before Mr. Jones went back to the rest room. He confirmed that nothing was on the floor when he went into the rest room. Only while he was in the rest room for a very short time was some liquid and ice spilled on the floor.

On these undisputed facts, the trial court entered judgment for Defendant as a matter of law. The area where the incident occurs is not one where the "self-service exception" applies to eliminate the requirement that plaintiff prove Defendant had actual or constructive notice. Defendant did not have the requisite notice of the hazard to trigger a duty to act.

The Court should affirm dismissal of this meritless case.

II. ASSIGNMENTS OF ERROR, ISSUES ON APPEAL

The issues for the Court to decide are few and simple:

Did the trial court properly admit the surveillance videotape which depicts all the relevant actions at the time of the incident,

where both parties used the videotape as best evidence of the events in question, and where Mr. Jones agreed that the videotape accurately depicted his actions?

Did the trial court properly rule as a matter of law that Defendant was not negligent, that it met its duty of care, and that the “self-service exception” to premises liability for business owners such as Defendant did not apply?

III. STATEMENT OF THE CASE

A. STATEMENT OF FACTS

Plaintiff John Jones claims that on September 25, 2008 at the restaurant in Marysville, Washington owned by McDonald’s Restaurants of Washington, Inc. (“Defendant”) he slipped and fell coming out of the rest room. He has sued the Defendant for injuries allegedly incurred.

Mr. Jones went to the restaurant at mid-day, entered and ordered some food before going to the rest room. CP 90. A surveillance videotape captured Mr. Jones on that day, including the slip-and-fall itself. CP 87. Mr. Jones also testified about the incident in his deposition.

1. Testimony of Mr. Jones

Mr. Jones stated that he entered the restaurant alone and did not know any of the customers who were waiting in line. CP 91.

Mr. Jones ordered his food then walked to the restroom located in the back of the restaurant. CP 91.

Mr. Jones testified that he did not observe anyone in front of him as he walked toward the restroom, nor did he see anyone standing near the restroom door before he entered the men's restroom. CP 92. Mr. Jones stated that the floor was clean with nothing spilled on it when he went into the men's room. CP 93. He said he was in the restroom for at least three to five minutes before exiting. CP 95.

As he left, Mr. Jones opened the restroom door, and turned to the right to return to the front counter to get his food. CP 96-97. Mr. Jones testified that when he opened the door of the men's restroom, there was liquid and ice on the floor. "I opened the door and, bam, I fell just like that." CP 98.

2. The Security Video Tape

Defendant's restaurant in Marysville has security surveillance cameras inside the restaurant. These cameras videotaped what actually happened on September 25, 2008. Mr. Jones had the opportunity to view the videotape at his deposition. CP 99-100.

In his deposition, Mr. Jones identified himself on the video as he was standing in line to order his food on September 25, 2008. He is in blue, walking towards the restroom, entering the men's

restroom, then exiting the restroom, and falling to the floor. CP 100-102 and Defendant's DVD, at 32:16)¹ Mr. Jones is wearing light blue denim jeans with a darker blue shirt, not tucked in.

The videotape depicts a second man with a backpack standing near Mr. Jones before he ordered his food. CP 100-102 and Defendant's DVD at 32:16. This second man purchased a soda and filled his drink cup. He waited at the beverage dispenser until Mr. Jones left the front counter. Defendant's DVD, 34:17, 15:57.

The second man then walked towards the restroom with a drink in his hand. Mr. Jones followed this man only a few steps behind. CP 102-104, Defendant's DVD at 34:17, 15:57.

Consistent with Mr. Jones's testimony that before he entered the men's restroom the floor was clean and there was nothing spilled on the floor,² the videotape shows an employee of the restaurant entered the area to sweep up with a broom and a dustpan in hand. RP 17. As he did sweep up he looked into the

¹ Both Mr. Jones and the Respondent submitted a DVD depicting video taken from the surveillance system at the restaurant that depicts the events surrounding the alleged incident. The trial court considered both of these DVD images on the record. *See*, RP 14-15, discussed, Part IV.C, *post*. Court of Appeals Commissioner issued an Amended Notation Ruling on October 1, 2013 on the parties' stipulation that the DVD's should be part of the record. Respondent filed the Supplemental Designation of Clerk's Papers. The trial court clerk should forward the DVD's as part of the record. As of the date of filing the brief, no Clerk's Paper cites are indexed. The pinpoint citation for the statement of the case will be to the time stamp(s) from the DVD marked "Defendant's DVD" for the Court's reference.

² CP 93.

area where the liquid later appeared. He was in this rather small area for approximately 33 seconds when he left. See court's characterization at RP 18.

Thirteen seconds later, the second man entered the area sipping a drink. The second man opened the exit door, across from the restroom, and stepped outside. "Simultaneous[ly]"³ Mr. Jones then entered the men's restroom. CP 104. Within seconds, on the videotape, the tile floor in front of the men's restroom darkens from liquid spilled on the floor. See Defendant's DVD, at 16:02.

The videotape records that Mr. Jones entered the restroom at 16:02 on the minute counter on the videotape; he exited the bathroom at 16:10. The videotape shows Mr. Jones in the restroom for only a matter of seconds rather than the three to five minutes he stated in his deposition testimony. The trial judge viewing the video observed that seven seconds elapsed. See, RP 18, *see also*, CP 109; Defendant's DVD, at 16:02, 16:10.

As shown on the videotape, the drink was spilled to the left of the restroom door, rather than directly in front. The front counter where Mr. Jones' food awaited pickup was to the right. The videotape shows that Mr. Jones stepped to his left in order to step onto the spill and "fall" to the floor. CP 107 -108. Defendant's DVD, at 16:10, *et seq.*

³ This is the trial court judge's characterization, RP 18,

“The tape goes on to document the Plaintiff getting up, returning with a store manager, the store employee mopping up and placing wet floor signs in the area.” See RP 18.

B. STATEMENT OF THE CASE

Mr. Jones filed an amended complaint on December 2, 2011, correctly naming the proper Defendant. CP 50-53. The Defendant had answered the substantive allegations, denying all allegations regarding liability. CP 43-47.

Defendant conducted discovery and took the deposition of Mr. Jones. In that deposition Mr. Jones was asked about the videotape. CP 102-104. He agreed that it depicted his actions on the day of the incident. *Id.*

In February 2013, Defendant moved for summary judgment. CP 32-39. A copy of the surveillance footage on a DVD was submitted as an exhibit. CP 59. After two postponements due to the health of his counsel, Mr. Jones “answered” the motion on April 1, 2013. CP 11-24. Defendant replied. CP 25-31.

The reply was accompanied by declarations that detailed the mechanics of converting the security camera footage into the DVD images, including the process by which the speed of the images was slowed to make the viewing closer to real time. CP 79-84. Each of the declarants stated that nothing was deleted and none of

the content of the original security footage was altered "in any way."
CP 80, 84.

At the specially set hearing for the motion, the Court identified the pleadings she considered in reaching her decision:

[Defendant's] motion for summary judgment; the declaration of Eric Gillett in support of the motion for summary judgment with attached exhibits; the answer to the motion for summary judgment filed by Plaintiff with Exhibit 1 attached, which is one of the security recordings that we have been discussing on the record; the Defendant's reply in support of motion for summary judgment; the second declaration of Eric Gillett in support of the motion for summary judgment with Attachment A, a declaration from Benjamin Hampton and Attachment B, a declaration of Lindsay Hitchcock.

RP 14-15.

After argument, the Court allowed the admission of the videotape:

Both parties rely on McDonald's security camera images as the best evidence of the relevant evidence in this case. As Mr. Gillett indicates, it was viewed and acknowledged as reflecting accurate images by Mr. Jones during his deposition. To the extent that the defense [plaintiff] has unresolved concerns about the video, they are unsubstantiated and do not rise to the level of objections that the Court can give any weight to[.] [A] motion for summary judgment, cannot be defeated by speculation or conjecture.

RP 14-15 [adaptation supplied]. The court granted summary judgment on the record. RP 15-20; see, order, CP 9-10.

The Court later denied plaintiff's motion for reconsideration. CP 7-8.

IV. ARGUMENT

A. SUMMARY OF ARGUMENT

Even though the images on the videotape tell a story different from Mr. Jones' testimony, no genuine issue of material fact exists in this case. The trial court properly admitted the videotape.

The trial court recognized that no issue existed about the relevant facts of the incident. Mr. Jones entered the Defendant's restaurant. Immediately before Mr. Jones went back to the rest room an employee of the Defendant had swept and cleaned the area where the incident occurred. Mr. Jones confirmed that nothing was on the floor when he went into the rest room. Only while he was in the rest room for a very short time was the liquid and ice spilled on the floor. The area is not part of the self-service beverage area of the store.

On these undisputed facts, the trial court entered judgment for Defendant as a matter of law. Defendant did not have the requisite notice of the hazard to trigger a duty to act. The area where the incident occurs is not one where the "self-service exception" applies to eliminate the requirement that plaintiff prove Defendant had actual or constructive notice.

B. STANDARD OF REVIEW

This Court reviews the motion for summary judgment de novo, engaging in the same inquiry as the trial court and viewing the facts, as well as the reasonable inferences from those facts, in the light most favorable to respondents, the nonmoving parties. See *Wilson v. Steinbach*, 98 Wn.2d 434, 437, 656 P.2d 1030 (1982)

This Court can affirm the dismissal by the trial court on any ground found in the record. *Truck Ins. Exchange v. Vanport Homes, Inc.*, 147 Wn.2d 751, 766, 58 P.3d 276 (2002).

The Court also reviews de novo a trial court ruling on a motion to strike evidence made in conjunction with a summary judgment motion. *Momah v. Bharti*, 144 Wn. App. 731, 749, 182 P.3d 455 (2008) quoting *Folsom v. Burger King*, 135 Wash.2d 658, 663, 958 P.2d 301 (1998) (“The de novo standard of review is used by an appellate court when reviewing all trial court rulings made in conjunction with a summary judgment motion.”).

The purpose of summary judgment is to avoid a useless trial. *Seven Gables Corp. v MGM, UA Entertainment Company*, 106 Wn. 2d 1, 13 721 P. 2d 1 (1986). A motion for summary judgment should be granted when there are no genuine issues as to material facts and the moving party is entitled to summary judgment as a matter of law. CR 56 (c).

Summary judgment is a legitimate procedure for testing a party's evidence. *Cofer v. Pierce County*, 8 Wn. App. 258, 162-263, 505 P. 2d 475 (1973). A defendant may move for summary judgment by simply pointing out to the court that there is an absence of evidence to support the Plaintiff's case. *Young v. Key Pharmaceuticals, Inc.* 112 Wn. 2d 216, 225, 770 P. 2d 182 (1989) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 325, 106 S. Ct 2548 91 L. Ed. 2d 265 (1986)). Summary judgment in favor of defendant is appropriate if the plaintiff fails to establish a prima facie case concerning an essential element of his claim. *Seybold v. Neu*, 105 Wn. App. 656, 676, 19 P. 3d 1068 (2001).

The party moving for summary judgment must meet the burden of showing there is no dispute as to any issue of material fact. But once that burden is met, the burden is shifted to the non-moving party to establish the existence of material facts regarding elements essential to its case. *Hiatt v. Walker Chevrolet Company*, 120 Wn. 2d 57, 66, 837 P. 2d 618 (1992).

This showing, if believed, must be beyond mere unsupported allegations and raise a genuine issue as to a material fact. *Brane v. St. Regis Co.*, 97 Wn. 2d 748, 649 P. 2d 836 (1982). Absent that showing, the court should grant the Defendant's motion. *Young*, 112 Wn. 2d at 225, 770 P. 2d 182 (quoting *Celotex*, 477 U.S. at 322-323).

C. THE DVD VIDEOTAPE EVIDENCE WAS PROPERLY CONSIDERED

Evidence Rule 901 provides that a video or motion picture may be admitted upon a showing of how it was made and the circumstances under which it is made.

In *Rice v. Offshore Systems, Inc.*, 167 Wn .App. 77, 86, 272 P.3d 865 (2012), this Court explained the proper procedure for the trial court to undertake in considering the admission of challenged evidence such as the videotape.

ER 901 requires the proponent of the evidence to make a prima facie showing that the evidence is authentic—it is what it purports to be. *State v. Danielson*, 37 Wn. App. 469, 471, 681 P.2d 260 (1984). Because under ER 104 authenticity is a preliminary determination, the court may consider evidence that might otherwise be objectionable under other rules. *City of Bellevue v. Mociulski*, 51 Wn. App. 855, 859, 756 P.2d 1320 (1988). In making this preliminary determination, the court considers only the evidence offered by the proponent and disregards any contrary evidence offered by the opponent. See, e.g., *State v. Tatum*, 58 Wn.2d 73, 360 P.2d 754 (1961). Once a prima facie showing has been made, the evidence is admissible under ER 901. The opponent is free to object based on any other rules that may bar the evidence or offer contradictory evidence challenging authenticity.

In *Rice*, Offshore Systems made a prima facie showing that police reports prepared by Unalaska police officers who responded to the scene and interacted with Rice were authentic. The Court held that under ER 901(b)(4), authenticity may be established based on distinctive characteristics such as appearance, contents,

substance, internal patterns, together with circumstances. The police reports contained unique Unalaska police department logo, incident number, specific facts related to the vessel fire, and the identity and signature of the two officers who prepared the reports. Rice produced these reports in discovery and never challenged their authenticity—that the reports in question are what its proponent claims.

In this case, the Defendant made the requisite prima facie showing to satisfy the admissibility requirements of ER 901. The Declaration of Benjamin Hampton established that the video was not altered; only slowed down. CP 79 -81.

Mr. Jones testified that the video showed him entering and exiting the restroom. CP 109. He also testified, consistent with the video, that before he entered the restroom, there was no spill on the floor. CP 93.

The trial court properly considered the objections of Mr. Jones. Her ruling is appropriate in light of the vague and unpersuasive objections made by Mr. Jones in the briefing and at the hearing. In fact, Mr. Jones relied on the videotape in opposing the motion for summary judgment. See, CP 15-16.

Principal among the objections was the argument that somehow the admission of “editing” by Defendant’s agents in preparing the videotape included cutting out or otherwise altering the surveillance recording evidence. As indicated, the declaration

of Hampton rebutted that argument. In addition, the video used by plaintiff in response to Defendant's motion for summary judgment was authenticated by Ms. Lindsay Hitchcock from Prolumina. She was asked to convert the original raw footage into a viewable Windows format. CP 83-84. She converted the two digital files and renamed them⁴ *Id.*

Ms. Hitchcock's declaration explained how File 01080925180001 was slowed down from the original by 80.84% such that it was playing at 19.16% of the original file speed. CP 84. File 07080925180004 was slowed down from the original by 82.01% such that it was playing at 17.99% of the original file speed. *Id.* Given that the two files were not slowed at the same percent, the two digital files are not going to synchronize exactly. Comparing the times that a person is in each camera view will produce "discrepant results." *Id.* This declaration explained the time discrepancies raised by Mr. Jones and eliminated any issue regarding whether someone "cut" or "tampered" with the tape.

The trial court ruled in favor of admissibility. RP 14-15, quoted *ante*. In fact, the trial court was able to perceive the discrepancies as she related what she saw on the videotape evidence:

⁴ 01080925180001_Slow Speed.wmv is the camera view that shows the front entrance area and front counter; and 07080925180004_Slow Speed.wmv is the camera view that depicts the rear area of the restaurant. CP 83-84.

After he was in this rather small area for approximately 33 seconds, according to the timestamp on the recording, and I will say parenthetically the Court realizes it may not have been 33 actual seconds. As the recording runs, it appears to be at a normal speed, but whether the actual time was a little faster or a little slower is irrelevant, because relative to all the other images in the particular video, the Court can assess whether McDonald's exercised reasonable care in looking for potential hazards within their property.

Id.

Having properly ruled on the admissibility of the videotape evidence, the trial court correctly applied the law to the undisputed facts and entered judgment of dismissal in favor of the Defendant.

D. PREMISES LIABILITY ISSUES

1. Defendant Did Not Have Notice of the Spill

Negligence requires that the Plaintiff establish duty, breach, causation, and damages. *Citoli v. City of Seattle*, 115 Wn. App. 459, 478, 61 P. 3d 1165 (2002). In this case, if an "accident" occurred, which is very doubtful, it was not the result of any negligent act or breach of duty on the part of the Defendant. The Defendant owed a duty to exercise reasonable care to maintain the restaurant in a reasonably safe condition. *Davis v. State*, 144 Wn. 2d 612, 615, 30 P. 3d 460 (2001). The proper standard for evaluating Defendant's conduct is black letter law:

A possessor of land is subject to liability for physical harm caused to his (or her) invitees by a condition on the land if, but only if, he (or she):

(a) Knows or by the exercise of reasonable care would discover the condition, and should realize that it involves an unreasonable risk of harm to such invitees, and

(b) Should expect that they will not discover or realize the danger, or will fail to protect themselves against it, and

(c) Fails to exercise reasonable care to protect them against the danger.

RESTATEMENT (SECOND) OF TORTS § 343.

Plaintiff must create an issue of fact with evidence of actual or constructive notice of the condition, and a reasonable time to alleviate the situation. *Iwai v. State*, 129 Wn. 2d 84, 96, 915 P. 2d 1089 (1996). In the present case, Defendant did not breach its duty of care because there is no evidence that Defendant had actual or constructive notice of the spilled liquid that allegedly caused Mr. Jones to fall.

The floor in front of the restroom and the dining area had been swept clean by a McDonald's employee moments before the incident occurred. RP 17; CP 103. The videotape shows that Mr. Jones entered the restroom, and the liquid was spilled onto the floor immediately thereafter by the second man. Mr. Jones remained in the restroom for only seven or eight seconds, then exited the restroom and "slipped" on the liquid. CP 109; RP 18.

Seven or eight seconds is not enough time to afford a McDonald's employee to detect that a drink had been spilled, or sufficient time to clean up the spill. The conduct of the employee in sweeping the area shortly before the incident discharged the Defendant's duty of care.

There is no genuine issue of material fact that Defendant had actual or constructive notice of the spilled drink. No evidence exists that Defendant had sufficient opportunity, in the exercise of ordinary care, to discover or remove the spill which had only been on the floor for a very short time.

2. The Self-Service Exception Does Not Apply

No exception to the "notice" rule applies in this case. In the trial court, Mr. Jones essentially conceded that the application of the general rule results in summary judgment. Mr. Jones presented no evidence that Defendant had actual or constructive notice of a dangerous condition, the spill, or any reasonable opportunity to clean it up when it was spilled only moments before Plaintiff fell. CP 13-14. Instead, Mr. Jones has argued for application of the "self-service exception." *Id.* The evidence, however, is not in dispute. Defendant is entitled to dismissal of the case as a matter of law.

In *Pimentel v Roundup Company*, 100 Wn.2d 39, 666 P.2d 888 (1983), the Washington Supreme Court examined the liability

of business owners for accidents on their premises. *Pimentel* involved a customer who, while visiting a Fred Meyer store, was struck on the foot by a can of paint that fell from a display shelf. *Id.* at 40-41. The Court examined whether Fred Meyer was responsible for the falling paint can, even without proof that it had actual or constructive notice that the paint can was left in a precarious position, allowing it to tip and fall onto the Plaintiff's foot. *Id.* at 42.

The court acknowledged the long-standing general rule "that for the possessor of land to be liable to invitees for the unsafe condition of his land, he must have actual or constructive notice of that unsafe condition." *Id.* at 44. The opinion is important for the Court's articulation of the exception to the general rule for self-service establishments. After considering various approaches from other jurisdictions, the Court settled on the moderate approach announced in *Jasko v. F. W. Woolworth Company*, 177 Colo. 418, 420-21, 494 P.2d 839 (1972). In that case, the Colorado Supreme Court explained the rationale for the exception:

The basic notice requirement springs from the thought that a dangerous condition, when it occurs, is somewhat out of the ordinary ... in such a situation the storekeeper is allowed a reasonable time, under the circumstances, to discover and correct the condition, unless it is the direct result of his (or his employees') acts. However, when the operating methods of a proprietor are such that dangerous conditions are continuous or easily foreseeable, the

logical basis for the notice requirement dissolves. Then, actual or constructive notice of the specific condition need not be proved.

Id. The Washington Supreme Court stated as follows:

This does not change the general rule governing liability for failure to maintain premises in a reasonably safe condition: the unsafe condition must either be caused by the proprietor or his employees, or the proprietor must have actual or constructive notice of the unsafe condition. Such notice need not be shown, however, when the nature of the proprietor's business and his methods of operation are such that the existence of unsafe conditions on the premises is reasonably foreseeable. This exception merely eliminates the need for establishing notice and does not shift the burden to the defendant to disprove negligence. The plaintiff must still prove that defendant failed to take reasonable care to prevent the injury.

Pimentel, 100 Wn.2d at 49.

Since the *Pimentel* decision, the Supreme Court and appellate courts in Washington State have further refined the application of the exception. These cases clearly require a nexus between the self-service activity and the hazard. That nexus is not present in this case

In *Wiltse v Albertson's, Inc.*, 116 W.2d 452, 805 P.2d 793 (1991), the court applied the *Pimentel* analysis where the plaintiff slipped and fell in water that came from a hole in the roof of Albertson's "self-service grocery store." *Id.* at 453. In *Wiltse*, the Court refused to apply the *Pimentel* exception because "[t]here was no evidence that the leak in the roof was a result of Albertson's

negligence nor that it came from the self-service operation of Albertson's." *Id.* at 454. Further, the Court held that none of the conditions expressed in *Pimentel* were present in the *Wiltse* case:

[T]he conditions that led up to the plaintiff's accident were neither continuous, reasonably foreseeable, nor was the accident associated with the store's self-service mode of operation.

Id.

Mr. Jones's testimony, as well as the security video, establishes that the condition which allegedly caused his accident was neither continuous nor foreseeable. The drink was tossed on the floor only moments before he fell. According to Mr. Jones, the tossed drink was not on the floor immediately before he walked into the restroom. On the video, and in Mr. Jones's version, it was present only when he exited the restroom.

Furthermore, the accident was not associated with the store's self-service mode of operation. The accident did not happen at the self-service drink counter. Mr. Jones did not slip on ice in front of a drink counter. There, not taking as much care as an employee, a customer might foreseeably spill soda or ice on the floor in the location where he serves himself a drink.

In this case, a customer stepped outside the restaurant area and then, for reasons accidental or criminal, tossed his soft drink on the floor near the restroom. Mr. Jones claims this is the hazard on which he slipped and fell.

These circumstances warrant application of the general rule that requires actual or constructive notice to the business owner. No genuine issue of material fact exists that Defendant had actual or constructive notice of this condition. The trial court correctly granted summary judgment.

In *Coleman v. Ernst Home Center, Inc.*, 70 Wn. App. 213, 853 P.2d 473 (1993), this Court recognized that the entryway carpeting where the plaintiff tripped and fell was not part of Ernst's self-service area. The Court noted that self-service departments are areas of a store where customers serve themselves. *Id.* at 219.

The Court of Appeals, in *Coleman*, described the *Pimentel* exception as "a narrow exception to the notice requirement...sometimes applicable to self-service stores." 70 Wn. App. at 217. Quoting the *Wiltse* case, the Court of Appeals stated as follows:

The *Pimentel* rule does not apply to all self-service operations, but only if the particular self-service operation of the defendant is such that it is reasonably foreseeable that unsafe conditions *in the self-service area* might be created.

Id. Further, the *Coleman* court quoted *Wiltse* in pertinent part:

Pimentel speaks to specific self-service operations and specific operating procedures of the store. *Pimentel* realized that certain departments of a store, such as the produce department, were areas where hazards were apparent and therefore the owner was placed on notice by the activity. Hence, the actual cause of the hazard is relevant in establishing

whether the unreasonably dangerous condition was continuous or reasonably foreseeable because of the specific self-service operation. Because *Pimentel* is a limited rule for self-service operations, not a per se rule, the rule should be limited to specific unsafe conditions that are continuous or foreseeably inherent in the nature of the business or mode of operation.

Id. at 218.⁵

Mr. Jones is asking this Court to ignore well-established Washington law by finding that the notice requirements do not apply. The narrow *Pimentel* exception does not apply to this case because there is no nexus between the self-service operation of the restaurant and Plaintiff's accident. Mr. Jones did not fall in front of the self-service drink counter. The mystery customer did not toss his drink anywhere near the self-service counter. It is nothing more than an incidental fact that the customer filled his own drink rather than having it filled by Defendant's employee. Regardless of whether the customer accidentally or intentionally spilled the drink moments before Mr. Jones stepped outside the restroom and fell, Plaintiff has presented no evidence that Defendant had actual or constructive notice that the spill existed.

V. CONCLUSION

This lawsuit was ideal for summary adjudication. No genuine issue of material fact exists. Defendant was entitled to a judgment as a matter of well-established Washington premises

⁵ The trial court in this case stated that *Coleman, supra*, provided an alternative ground for her dismissal of Mr. Jones's claims against Defendant. See, RP 19.

liability law on those undisputed facts. The trial court should be affirmed.

Dated this 21ST day of October, 2013.

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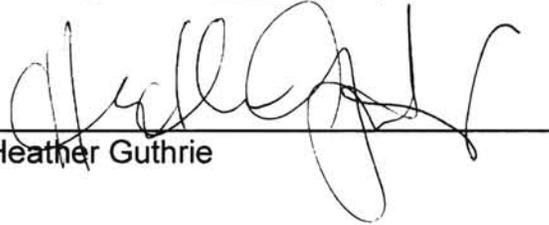
DECLARATION OF SERVICE

The undersigned declares under penalty of perjury under the laws of the State of Washington that on this day the undersigned caused to be served via ABC Legal Messenger Service a copy of the foregoing Respondent's Brief directed to the following individual:

Counsel for Appellant John Jones:

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DATED at Seattle, Washington, this 22nd day of October, 2013.



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