

## ***Hot Coffee Reimagined?***

Most people are familiar with the McDonald's "hot coffee" case – if only by reputation. McDonald's defense in that product liability case was, among other arguments, to blame the 79 year old woman who brought the case, for causing her own burn injuries as a result of its scalding hot coffee. In *Massaro v. McDonald's*, 2022 Pa. Super. LEXIS 320, 2022 WL 3036753 (August 2, 2022) (Pellegrini, J.), McDonald's similarly defended against allegations of negligence in a premises liability case by arguing that the plaintiff, a senior citizen, assumed the risk of a violent assault on McDonald's premises.

Thomas Henry Massaro (Massaro) appealed an order of the Court of Common Pleas of Philadelphia County dismissing his claims with prejudice for lack of legal sufficiency. It was alleged by Massaro that he was continuously harassed and assaulted by a deranged third-party (Gordon) while mentoring a student in a McDonald's restaurant. His repeated requests for help from the restaurant's staff had gone unheeded for about an hour. The complaint alleged that Gordon was known to be dangerous by the McDonald's staff and had interviewed to work there but was rejected because he was known to be violent. Gordon repeatedly threatened Massaro and stated "wait til you go outside" where he would attack him. Massaro alleged that he and the student wanted to leave but knew they were safer in a public area with security cameras. After Gordon left, Massaro attempted to step outside to hail the police at which point a further confrontation occurred, and according to the plaintiff, he suffered a heart attack.

The McDonald's defendants filed preliminary objections asserting that the factual allegations in the complaint did not establish a legal duty of care, contending that they could not be held liable because Massaro had assumed the risk of being attacked in the restaurant, which eliminated McDonald's duty of care to protect him from the attack. The trial court sustained McDonald's preliminary objection on what appear to be two not entirely consistent grounds. The trial court first determined that McDonald's did not owe Massaro a duty of care because he had assumed the risk of a known danger in the restaurant. Next, the trial court found that, as a matter of public policy, recognizing a duty of care on the part of McDonald's would constitute an undue burden which would disincentivize its business operations.

Judge Pelligrino, writing for the Superior Court panel, held that the trial court improperly dismissed the case by misconstruing the allegations, resolving disputed material facts, and misapplying the law. Under the facts alleged, McDonald's owed Massaro the same "duty owed to any business invitee, namely, that [they] would take reasonable precaution against harmful third-party conduct that might be reasonably anticipated." *Massaro, supra*, 2022 Pa. Super. LEXIS, at \*17, *quoting Paliometros v. Loyola*, 932 A.2d 128, 133 (Pa. Super. 2007)(citations omitted). Furthermore, with respect to the assumption of risk defense, "[a]ssumption of the risk is established as a

matter of law only where it is beyond question that the plaintiff voluntarily and knowingly proceeded in the face of an obvious and dangerous condition. Voluntariness is established only when the circumstances manifest a willingness to accept the risk.” *Staub v. Toy factory, Inc.*, 749 A. 2d 522, 529 (Pa. Super. 2000). The trial court overlooked the fact that there was no allegation by Massaro that he knew in advance that he was taking a physical risk by mentoring a student at the McDonald’s or that restaurant employees would do nothing to intercede. Also overlooked was the fact Massaro asserted that the man threatening him warned that he would be attacked as soon as he left the restaurant, leaving Massaro no choice but to remain. *Massaro v. McDonald’s, supra*, at \*19-20. Therefore, accepting the facts as alleged in Massaro’s pleading, even assuming that there was some evidence that Massaro could have done something more to protect himself, this would be an issue of comparative negligence to be resolved by the jury. *Id.* at \*20, *citing Staub*, 749 A.2d at 529. The trial court therefore erred as a matter of law in ruling that the assumption of risk doctrine completely eliminated McDonald’s duty of care to Massaro.

The Superior Court also faulted the court below for its “dubious policy rationale” to justify its finding of no duty of care, by applying the factors identified in *Althaus ex rel. Althaus v. Cohen*, 562 Pa. 547, 756 A. 2d 1166, 1169 (Pa. 2000). The *Althaus* factors, however, were only meant to be applied in those situations where the legal relationships are not yet settled. The Superior Court noted that “there can be no doubt that a premises owner running a restaurant open to the public owes a duty of care to business invitees. This makes the *Althaus* factors inapplicable.” *Massaro v. McDonald’s, supra*, at \*21. “Moreover, the trial court tacitly recognized the existence of a duty owed by McDonald’s to Massaro because it found he had assumed the risk of being in the restaurant. The assumption of risk doctrine could not logically come into play unless the trial court had first presupposed that, as a paying customer on the premises, McDonald’s had a duty to take reasonable steps to protect him from known dangers.” *Id.* at \*21-22. Finally, the Superior Court did not agree with the trial court’s assessment that imposing a duty of care on McDonald’s in this case would be an undue burden, observing that it would have taken minimal effort by restaurant employees to reduce or even eliminate the threat. They could have prohibited Gordon from entering the restaurant that day, called the police immediately once the harassment against Massaro began, or come to Massaro’s aid when he asked for help. *Id.* at \*23.

Thus, at least at this stage of the proceedings, under the facts alleged, the Superior Court did not allow McDonald’s to evade its responsibilities to a customer by placing blame upon the plaintiff himself. The trial court erred as a matter of law in sustaining McDonald’s preliminary objection, and the case was remanded for further proceedings.

Important points from this opinion to underscore are as follows:

- Patron of McDonald’s is harassed by another deranged patron.

- McDonald's personnel did not do anything about it.
- Harassed patron ultimately collapses with a heart attack.
- There was no assumption of the risk on the part of the plaintiff.
- McDonald's owed a duty to the injured patron as a business invitee.
- Assumption of the risk is a question for the jury.
- Althaus factors are inapplicable since there is no question that there is a duty owed to the injured patron.
- The Superior Court did not agree with the trial court's assessment that imposing a duty of care on McDonald's would be an undue burden.

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