

ORDER

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT – LAW DIVISION**

REANETTA PRESCOTT,
Plaintiff,

v.

GRINDMASTER CORPORATION, a Foreign
Corporation; AMERICAN METAL WARE CO.,
a Corporation; and STARBUCKS CORPORATION,
a Foreign Corporation,
Defendants.

No. 08 L 6956

ORDER

Defendant, Starbucks Corporation, (hereinafter “Starbucks”), moves for summary judgment pursuant to 735 ILCS 5/2-1005. For the following reasons, the defendant’s motion is granted.

FACTS

The plaintiff filed a Second Amended Complaint alleging negligence against Starbucks and negligence and strict liability against Grindmaster after the plaintiff was allegedly burned while using a coffee brewer on April 22, 2007. The plaintiff was an employee of Dominick’s Finer Foods and was working as a barista in a Starbuck’s kiosk within the Dominick’s store located on West Division Street. The plaintiff sued Starbucks under the theory that it failed to properly train staff and failed to ensure that the equipment the staff used was safe. The plaintiff also sued Grindmaster Corporation, maker of the brewing machine at issue, under the theory that it failed to make a machine with the proper safety devices and allowed a machine that had shot steam and coffee grinds to be sold and used by Starbucks employees. The plaintiff has agreed to non-suit defendant Grindmaster Corporation, so defendant Starbucks is the sole remaining defendant in this case.

The plaintiff, Reanetta Prescott, testified to the following at deposition:

- She began working in the café at the Dominick’s store on West Division in 1998. In 2006, she was transferred over to the Starbuck’s kiosk in the store. She still works for Dominick’s at that Starbuck’s kiosk as a cashier/barista. (Pl.’s Dep. 9-11).
- She stated that she never has been considered a lead or supervisor of the kiosk. (11-12).
- Prior to this job, she never worked at a different type of coffee shop or store. (13).
- In July of 2006, she received training at the actual kiosk within the Dominick’s store. At the time of the training, the kiosk was brand new and had not yet open to the public but it was fully operational at the time of the training and the coffee brewer was in place and operational at the time of the training. (14-15).

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- She does not recall if she used the coffee brewer during her training but she does recall that they were told that every hour they were to put three scoops in the filter, then push it in and hit stop. (17).
- The coffee brewer in the kiosk in July 2006 during her training period was the same one that was involved in her incident in April of 2007. (17).
- At first she stated that prior to her incident, she was one of the two people at the kiosk that was authorized and trained to train new hires at the kiosk. However, she then stated that she did not start training people until August of 2008, which was after her incident. Prior to August of 2008, Cynthia Alexander handled all the training of new hires. (17-20).
- She stated that prior to her incident, she complained to her manager, Cynthia Alexander, that when the coffee is through brewing and she gets ready to dump the grounds, she would see a little bit of water and steam coming out of the filter. She saw this like three times and complained to her manager six to seven months prior to her accident. (20-22).
- She never had an experience with the coffee brewer where it did something similar to what she stated she saw it do on the date of her incident. (24-25).
- She received approximately 40 hours of training by Starbucks in July of 2006. She received advanced store training and she went through the training with Cynthia Alexander. (25).
- The training included a section concerning equipment maintenance, which would have included the coffee brewer. She also received initial store training, which is the basic training for any barista who is going to serve customers. That training included a section on the brewed coffee station. (26-27).
- The incident she was injured in occurred on April 22, 2007. She began her shift at 5:30am and since someone did not show up for the later shift she was suppose to work until 8:30pm. During the morning shift, there were two of them working the kiosk. (30-31).
- In April of 2007, there were usually two people on duty. (33).
- On the day of the incident, she was scheduled to train a new hire. She stated: "I just remembered they hired a girl. And then, whatever I do they want me to show her what I was trained to do. So really, Cynthia had already trained her, but she let me know a new girl coming in. So we just worked with her too." (34-35).
- She stated that a new person would need to work with someone who was a little bit more senior for 2 weeks before they could be on their own. (36-37).
- At the time of the incident, she getting ready to change the coffee, which they do every hour. She pulled the filter out so she could dump it and put a new filter and fresh coffee grounds in there and then it just exploded, the grinds, the water, everything just exploded. (42).
- Every hour the timer goes off and then she grabs one of the coffee containers and goes to the sink to empty the coffee. Then her normal practice and procedure it to rinse it out and put it back. Then she pulls the brew basket out so she can put a new filter and coffee grounds in it, she pushes it back in, and hits the start button. This is what she does all day long. (45-47).
- On the date of the incident, the timer went off, she pulled out the container, emptied it, and put it back in. Then when she pulled the brew basket out, it exploded. "All the grinds and water, everything, just went all over me." (46-49).
- When asked if the yellow light above the basket was on or off when she pulled out the basket at the time of the accident, she said it was on. Also when asked if the only time water is dripping out of the brew basket into the container is during the brew process, she stated yes. (55).

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- When she pulled the brew basket out, the hot water in the basket and the grinds went all over her chest, arms and right hip. (56-57).
- At the time of the incident she was wearing a green apron, a hat, a long-sleeve black shirt, black pants, and black shoes. (59-60).
- When shown a picture of the caution stickers on the brew baskets and the warning on the coffee container that contents can cause severe burns if handled improperly and asked if they have been on those baskets from July of 2006 through the day of her incident, she stated "I don't know." (63-77).
- No one saw her incident take place – no customers, other employees, or the new girl she was training. (78).
- After the grounds and water were on her body, she began screaming and immediately left the kiosk. The customer service manager came over with some cream to help soothe the pain before the ambulance arrived. (78-81).
- The customer service manager took her into the bathroom and they took pictures of her body and then the manager called the ambulance. (82-85).
- She believed that the brewer was in some way defective. No one had ever indicated to her that the brewer was defective and she is not aware of anyone at Starbucks being aware of any problem or defect with the brewer prior to her accident. (88-90).
- The brewer involved in her incident is the same brewer being used in the kiosk currently. When asked if there is anything different about the brewer now she stated no. (90).
- The dripping she saw the brew basket doing months prior to the accident is not the same thing that occurred on the day of her incident. She is not aware of anyone from Starbucks being aware that the brewer could do things as she described the brewer doing on the day of the incident. (93)
- When she pulled out the brew basket, in the cycle before the one involved in her incident, so the cycle an hour before the accident, she had no issues with the basket. It was a normal typical cycle that she did "every day the same way." (122).
- The incident was the first and only time that she had any kind of incident where an explosion took place and she does not know of anyone else that was involved in an incident like that. (122-23).
- She does not remember a warning sticker being on the brew basket or any warning stickers being on the coffee container at all. She admitted that she worked on that particular machine everyday she does not recall the stickers. (126-28).
- She stated that she was never told by anyone, including in her training that she needed to be careful or that any of the operations he would be performing could cause a burn. (129-30).
- She does not remember if there was a metal flange attached to the brewer with a screw. She never saw a metal flange on the machine. (134-37).
- It was not part of her training to move a metal safety flange before taking the brew basket out. (135-37).
- She never saw a manual for the operation of the machine itself. (139).
- If she had a problem with the brewer she would tell her manager Cynthia Alexander who then would tell the store manager and he would call someone. (139-40).
- At the time of her training in July of 2006, she did not use the brewer, the trainers just told her orally how to do it. And she was never given any warning that it could explode on her. (164).
- The coffee container was not brewing at the time she removed the brew basket and she removed the basket evenly. (166-67).

Cynthia Alexander testified to the following at deposition:

- As of December of 1009 she had been the manager of the Starbucks' kiosk inside the Dominick's store on West Division Street for 3 years. Even though she works in the Starbucks' kiosk, Dominick's is her actual employer. (Alexander Dep. 6-8).
- The plaintiff has been one of her employees at the kiosk since it opened in the summer of 2006. (9-10).
- On the date of the incident she had worked with the plaintiff during the morning shift but she was not at the store when the incident occurred. (11-12).
- On the day of the accident, they were brewing new coffee every hour and during her shift, she did use the brewer at issue and experienced no problems. (15-16).
- She has never seen the brewer behave the way the plaintiff claimed it did on the day of the incident. (17).
- She stated that prior to the incident in April of 2007, the plaintiff never complained to her about the brewer, nor did any other employee. In fact there were never any problems with the brewer and to her recollection the brewer was not repaired or serviced after the incident. (18-20).
- The coffee brewer at the kiosk currently is the same one that was involved in plaintiff's incident. (20-21).
- To her knowledge there was never any safety flange in place on the brewer that could be turned to block the brew basket from being pulled out. (25-26).
- She stated that there are caution stickers on the brew basket that state "Caution, Hot liquid in brew basket could cause burns, remove with care." These stickers have been on the brew basket since the kiosk opened in 2006 and they are still there today. (26-27).
- She acknowledged that there are caution stickers all over the coffee container and brew basket and she sees these caution stickers every time she is working. (26-33).
- During the training they received before the kiosk officially opened, they received training on all of the pieces of equipment in the kiosk. The plaintiff was at all of the same training sessions with her. They began their training on July 17, 2006. (34-35, 37-38).
- She and the plaintiff received both initial store training and advanced store training. Initial store training is basic training for anyone who is going to be a barista and serve customers. During this initial training, she and the plaintiff each received the Participants Workbook to read and review.(38-40).
- When she trains a new hire she gives them the same Participant Workbook and goes through the workbook with them. This workbook is kept at the kiosk. (40-41).
- Module Two of the workbook is titled Brewed Coffee and Tea Station and goes through the parts of the brewer and how to operate all of them. It then goes through the actual brewing procedures. (42-43).
- During their training she and the plaintiff were taught how to operate the brewer properly and were given an opportunity to operate the brewer. During this training, all of the different warning labels were pointed out and the trainers told them about hot water, hot coffee, hot coffee grounds, and to use caution around the brewer. (46-47).
- Knowing how to make coffee is an important part of training that is provided to new hires. (47).
- In order to become barista certified, she and the plaintiff had to be able to use the brewer and actually make coffee. Both of them were certified on August 2, 2006. (50-51).

- Both she and the plaintiff were given advanced store training which is for people at a kiosk that are going to then train other employees, new hires, to work in the kiosk. She received the training because she is the kiosk manager and the plaintiff received it because she is her second person. From the time the kiosk opened till today, she and the plaintiff are the only two employees that are able to train new hires. (51-52).
- When they train a new hire, they go through the workbook with them and received the same initial store training that both she and the plaintiff received. (53).
- The hot spots her and the plaintiff were trained on to teach others are the burner, the hot water, and the grinds. And the basket where the water would come down into when it's brewing. They would teach new hires to check that the batch was down before removing the basket. (56-57).
- When asked what they were trained to say about this topic to trainees, she stated "once the coffee is finished brewing the light goes off. So once that, the light goes off, it's okay for you to remove the basket. But you're not going to remove the basket until, you know, your timer goes off and it's ready to brew another pot. So by that time everything is done." (57).
- From the time the kiosk opened in July of 2006 till the incident in April of 2007, there were approximately 5-7 new hires that needed to go through 40 hours of training. She and the plaintiff would split the duties to train a new hire. The plaintiff usually worked evenings and she usually worked mornings so she would train them in the morning and then the plaintiff would train them from the evening until the trainee left for the day. (62-63).
- To the best of her knowledge, when the plaintiff trained new hires prior to April of 2007, she would review the Participant Workbook with the new hire and she would train the employee on how to use the brewer including a discussion about warnings and hot spots. (66).
- When told that the plaintiff stated she never trained anyone till August 2008, Ms. Alexander stated that this is incorrect; the plaintiff has been involved in training new hires since the kiosk opened. In fact, the plaintiff was training a new hire on the day of the incident. (66-67).
- The trainers never explained to them that they could suffer second or third degree burns while pulling the brew basket out of the coffee container. (88-92).
- Prior to the incident, she observed the plaintiff removing the brew baskets and she never saw her remove them improperly. (98).

Nicole Zimmerman testified to the following at deposition:

- She was the operations project manager for Starbucks from 2006 through March of 2009. She trained the licensed store employees and helped them to prepare a new store for opening. (Zimmerman Dep. 6).
- "A licensed store is a store that has a license to run a Starbucks to serve Starbucks products, but the people there do not work for Starbucks, they work for whoever the licensee is so Dominick's or Target or HMS Host, for example." (8).
- When asked if she ever heard of anyone experiencing an incident like the plaintiff's, while she worked for Starbucks and she stated "I heard of an employee who had removed the brew basket either during the brew cycle or immediately after the brew cycle had finished –that I don't know – but the hot water remained – the grounds remained immersed in the hot water. And because he removed it with some speed, it splashed out onto his hand." He suffered a burn. (10).
- The Dominick's store on West Division was a licensed store so the employees who worked in the Starbucks kiosk were employees of Dominick's. (11).

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- Her role “was to come on site two weeks before the opening date to train everybody how to make the beverages, how to coach, to learn about the history of Starbucks, the culture, to learn about how coffee’s grown, and also to assist them with their initial store order and initial store setup, and to physically unload and position all the product in the store with the team as part of their training.” (12).
- Part of her job was to “set up the time for a technician to come in and calibrate both pieces of brewing equipment. And we would schedule that, usually for the first or second day upon my arrival. So I was always present when someone came to calibrate a machine because we couldn’t train on it if it was not calibrated, so I had to see it occurring.” (13).
- For a brewer to be calibrated, “they check the temperature, they check the volume for – because each brewer can produce either a half batch of coffee or a full batch of coffee, so they check it to make sure that the volume is correct for those. And they check they spray-over volume to make sure that the ratio of water going into the shuttle compared with the ratio going through the coffee before it went into the shuttle- to make sure that ratio was correct.” (14).
- She performed the training at the Dominick’s store on West Division in July of 2006. (16).
- The coffee brewer equipment in the kiosk was owned by Dominick’s therefore any receipt for it being calibrated would be left in their possession. (17-18).
- After a licensed store opened for business the only role Starbucks played was assigning a district manager who is a Starbucks employee. “He or she is the person who would come to the licensed store to ensure that they are following Starbucks standards. And the district manager may help to coach or to ensure that practices are being followed, but they have no control or direct say over the employees.” (20).
- The district manager had no authority over the kiosk employees, he could not hire or fire them and he was not considered the boss of the employees of the kiosk. (20-21).
- Sometimes brewers needed to be re-calibrated and the employees of the kiosk were taught how to check the calibration of the machine which was to be done weekly. If the brewer needed service, it was up to the kiosk employees to make the call. A district manager may check the calibration as part of their assessment as to whether or not the store was being run to standard. If the calibration was off, he would then tell the store employees and it was up to them to call it in for service. (22).
- To the best of her recollection, when the two week training began in July of 2006, the brewer was fully functional and installed in the kiosk. (24-26).
- During the training, the trainees were taught that if the brew light is on, they should never pull the brew basket out and they were also taught that it would be dangerous to pull the brew basket out with the brew light on because there would be hot water and hot grounds in the basket. (46).
- While she did not always point out separate warning labels located on the brewer, she “always did discuss safety precautions and reasons for those.” The safety precautions included “don’t pull the brew basket out if the brew light is on, making sure that the burner switch is off at the appropriate time and on at the appropriate time, and discussing the temperature of the water both coming into the brew basket and at the hot water spout.” (47-48).
- During the initial store training, the trainees would actually make coffee and use the brewer themselves. (48).
- During advance store training “we would sit down and read through the equipment maintenance manual so they were familiar with where to look for troubleshooting information. And then we would also take them to the machine and show them how to do the simple little cleaning tasks that they’re asked to do.” (53).

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- When asked about a safety flange, she stated “it’s a little piece of metal that hangs down to prevent you from –just to give you pause before you remove the brew basket. It’s easily pushed up with a thumb or a finger. It just kind of toggles or slides back and forth so you can remove the brew basket. But it’s just there as a preventative measure for—to prevent burns.” (54-55).
- The safety flange is manual so the employee actually has to push it aside in order to get the basket out. If you wanted to pull the basket out while it was brewing, the safety flange would not prevent that. (55-56).
- “The safety flange prevents you from removing something that’s hot. And after an hour, it would, in my understanding, not be hot enough to burn because there wouldn’t be no water left in there anymore.” (56).
- The main point of the safety flange was to provide protection during the brewing process. (56).
- When asked if the metal flange would have been on the brewer while she was training in July 2006, she stated “Yes. All new equipment had been installed.” So she would have pointed out the safety flange as they discussed safety features. (56-57).
- When she provided training she trained the employees that the brewer was a potentially dangerous piece of equipment because it contained hot water, steam, and hot coffee grounds, so they should always use caution with it. She also stated that the brewer had warnings all over it advertising that there were hot liquids inside and to use caution. (59-60).
- She has never heard of anyone being burned after removing a basket an hour after the brewing session had completed or of an explosion occurring when the brew basket was removed. (61-62).
- She stated the plaintiff would have been trained on the risks associated with improper use of the brewer and hot water ultimately possibly causing burns. She also would have been trained on the proper procedure for removing the brew basket on that particular machine, including moving the safety flange. (70).
- Before a brew basket is to be removed, the brew light has to be off, then the employee is to look to see if the drips have stopped, and then the flange had to be moved up and then the basket is properly removed. (72).
- The previous incident she explained where an employee was burned while removing a brew basket was due to the fact the employee pulled the brew basket out too quickly. The employee even admitted as much. (73-74).
- If the safety flange was not on the brewer during training, it would have been an issue that she would have called on. If the flange was not in place at the time of training it would have been the responsibility of someone from Starbucks to call and get the flanges put on as it is a safety issues. Without the flanges, an employee does not have the second thought about removing the brew basket and possibly hot water scalding them. (78-79).
- When shown the picture of the subject brewer she stated that the safety flange is not present. She also stated that if the district manager noticed that the safety flange was not in place he would tell the store manager and they would call to get it put back on. The district manager is only a helper. (79-80).
- A district manager can shut down a Starbucks if there is a problem about safety and the store is not responding to his concerns. (81).
- The updated version of the brewer is designed so one cannot remove the brew basket until the cycle is done. She would consider this a safer machine. This machine started coming out in 2006. (84-85).
- When asked if she recalls telling the plaintiff what to do in case of a splash over, how to brew coffee, or going over the safety features specifically with the plaintiff, she stated no. (107).

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John Prusko testified to the following at deposition:

- He is a District Manager for Starbucks. Currently he manages about 22 stores in the Chicagoland area. He usually visits each store once to twice a month. (Prusko Dep. 5-7).
- As a district manager he “provides coaching and counseling to our licensees or kiosk managers, looking at the product quality, customer experience performance to our current marketing, promotional standards, signage, retail assortments.” (7).
- When he performs his inspections, if there is something wrong with the machines, he advises the kiosk manager to follow Dominick’s protocol to fix those machines and then set a deadline. (7-8)
- He is the district manager for the Dominick’s store involved in this case. (10).
- He has never had any employees complain to him about being burned from a brewer. (15-16).
- He stated that if something was wrong with the brewer it would be Dominick’s job to handle the repairs as it is their equipment. It is Dominick’s responsibility to maintain the equipment or replace it. (17).
- The general purpose of a safety flange is to prevent or slow down the removal process of the brew basket prematurely – it is a safety measure. (18).
- When he goes to the various stores he does perform an inspection but it is customized to the needs of the store at the particular time, so he may not look at the brewer during his inspection but rather focus on something else. (20-21).
- He stated no one has ever complained to him about having safety issues with the brewer or about the brewer machines not having the safety flange. (21).
- He stated that when it comes to the brewer machine, Starbucks specs everything out but Dominick’s orders the machines based on the plans. At the particular kiosk, Load King delivered the brewers and installed them. (22).
- He stated he has never checked the calibration of the brewer at the Dominick’s kiosk. That is the duty of the kiosk employees. If the calibration is off, Dominick’s is supposed to call for service on the machine as it is their property. (23-24).
- He has never heard of a situation where an hour after brewing there is still water inside the brew basket and when the basket is pulled out the water explodes out of the basket. (24-25).
- When asked what would cause water to stay in the basket he stated that if the filter was somehow blocked the coffee would overflow during the brew cycle and copious quantities are all over the machine, the counter, and on the floor. (24-25).
- Everyone that works within a licensed kiosk is an employee of the store and not an employee of Starbucks. (29).
- He stated he has no responsibility for the safety flanges because the brewers are not under Starbucks’ control, they are Dominick’s responsibility. (29).

DECISION

The defendant first asserts that “[s]ummary judgment is proper where the pleadings, depositions, affidavits, and admissions on file, when viewed in the light most favorable to the nonmoving party, demonstrate that no genuine issue of material fact exists and that the moving party is entitled to a judgment as a matter of law.” *Prostran v. City of Chicago*, 349 Ill.App.3d 81, 85 (1st Dist. 2004). In order to meet her burden in establishing a negligence claim, the plaintiff must prove the existence of a duty owed to her, a breach of that duty by the defendant, and an injury proximately caused by the

breach. *Glass v. Morgan Guaranty Trust Co.*, 238 Ill.App.3d 355, 357 (1st Dist. 1992). If the plaintiff fails to produce competent evidentiary facts in support of each element of her cause of action, the court should grant summary judgment in favor of the defendant. *Barker v. Eagle Food Centers, Inc.*, 261 Ill.App.3d 1068, 1071 (2d Dist. 1994). The complaint alleges that Starbucks had a duty to exercise reasonable care and caution to persons producing and/or selling its products and Starbucks breached that duty by committing the following acts: failed to properly train and/or instruct in the correct use of said brewer; failed to adequately warn of the risks associated with the use of the brewer; failed to appropriately test the brewer so as to adequately ensure its safety in its intended use; and deviated from their manufacturing performance standards by failing to equip the brewer with an adequate splash guard to protect users from its content. *See* Complaint. Starbucks denies these allegations and contends that summary judgment is warranted.

According to the defendant, the plaintiff was properly trained and therefore her failure to train allegation must fail as there was no breach of that duty. The plaintiff worked in the kiosk for 8 months before her incident and while working, she made coffee on the coffee brewer at least twice an hour. Both the plaintiff and Cynthia, her boss, admit the plaintiff knew how to make coffee and she always properly used the coffee brewer. *See* Plaintiff's Dep. 42-43, 45-47, 158-59; Alexander Dep. 11, 98. As such, the defendants maintain that the plaintiff was properly trained to use the coffee brewer. Moreover, even assuming that the plaintiff never actually used the coffee brewer during her training, she was orally trained on the brewer, visually shown how to use it, and she reviewed the manual regarding the brewer's functions and use. *See* Plaintiff's Dep. 17, 45-47, 55, 122, 129-30, 160-61, 164; Alexander Dep. 35, 39-47. Since the plaintiff admits that she was properly using the coffee brewer at the time of the incident, there is no doubt that she was sufficiently trained on how to use the brewer. Furthermore, not only was the plaintiff properly trained in July 2006, but during those eight months before her incident, the plaintiff trained 5 to 7 new hires in the kiosk, which including teaching the new hires how to use the coffee brewer and she would have reviewed the Participant's Workbook with the new hires. *See* Alexander Dep. 51-54, 62-64, 66. The defendants maintain that the plaintiff's involvement with and ability to train new hires proves that she was sufficiently and properly trained prior to her incident.

Next, the defendant contends that the plaintiff was properly warned about the coffee brewer. According to the defendant, the evidence is undisputed that the brewer itself was covered with warning labels and notices that water could splash out of the brew basket. *See* Brewer Photos. The plaintiff's boss, Cynthia Alexander and Nicole Zimmerman, an employee of Starbucks who provided the initial training of the employees prior to the kiosk opening at the Dominick's, recall that all of the caution stickers were on the brewer during the training in July 2006, and Cynthia confirms that those same caution stickers were in place at the time of the incident. The defendant argues that the plaintiff's failure to recall if the stickers were present is insufficient to hold she was not properly warned. In addition, the plaintiff's two week training course included a discussion about the hot spots on the brewer and safety warnings. *See* Alexander Dep. 26-33, 46-47; Zimmerman Dep. 24-25, 47, 59-60, 70; Plaintiff's Dep. 65-77, 125-29; Participant's Workbook.

While the plaintiff seems to be asserting that Starbucks should have trained her for the unknown by warning her that her alleged incident was possible, such a claim is against Illinois law which states that there is no duty to warn an employee as to all unforeseen hazards. *Engelland v. Clean Harbors Environmental Services, Inc.*, 319 Ill.App.3d 1059, 1064 (1st Dist. 2001). Both the plaintiff and Cynthia admit that there were never problems with the brewer before the incident and there have never been any since the incident. *See* Plaintiff's Dep. 17, 23-25; Alexander Dep. 15-16. Ms. Zimmerman who has worked for Starbucks for over eight years, has never heard of an incident like the one described by the plaintiff. *See* Zimmerman Dep. 61-62. John Prusko, a District Manager for Starbucks has also never

heard of an incident like the plaintiff's taking place and he indicated that a brew basket would not hold water for an hour after brewing. If the flow was blocked, the water would have overflowed out of the basket and all over the brewer at the time of brewing. The water would not have sat in the basket for an hour. *See* Prusko Dep. 5, 15, 24-26. Accordingly, since the incident described by the plaintiff is isolated and unique, there can be no duty on Starbucks to warn that it may occur.

Further, the defendant points out that the plaintiff's own description of her incident is conflicting as she claims that she had last brewed coffee an hour before her incident, yet she admits that the "brew" light was lit when her incident took place. She also admits that when the "brew" light is on, that means coffee is brewing. *See* Plaintiff's Dep. 54-55, 63-65. Assuming the brew light was lit at the time of the incident, the plaintiff ignored all posted warnings, warnings from the training manual and her own normal practice which was to look and make sure the dripping had stopped before she pulled out the basket. Accordingly under this scenario, it was the plaintiff's disregard of the safety warnings that caused her incident. Therefore, since the evidence demonstrates that the plaintiff was sufficiently warned about the brewer, summary judgment is proper.

The defendant next argues that it had no duty to test the coffee brewer as it did not own or control the coffee brewer. Starbucks assert that the undisputed evidence proves that Dominick's owned the brewer, Load King installed the brewer, and Beverage Town calibrated the brewer before the kiosk opened for business in August 2006. *See* Zimmerman Dep. 10-11, 17-18; Prusko Dep. 10-11, 22, 24, 27-29. In fact, Starbucks only involvement was that a Starbucks' employee called to make the initial calibration appointment and ensured that the calibration took place before the kiosk opened. Nicole Zimmerman confirmed that the calibration would have taken place before the kiosk was allowed to open for business and the receipt from Beverage Town proves that the calibration took place before the kiosk opened. Once the kiosk opened, Dominick's took over any responsibilities regarding the brewer, including the weekly checks to ensure the calibration was proper and if recalibration was needed, it was up to Dominick's to make this determination and call for service. In fact, the Starbucks district manager never checked the calibration himself and since the Starbucks did not own the brewer, it did not call for service. *See* Zimmerman Dep. 12-15, 17-18; Prusko Dep. 7-8, 16-17, 23-24, 27-29. As such, since there is no evidence to support that Starbucks had any duty to test the brewer after the kiosk opened, summary judgment is proper.

In addition, Starbucks maintains that it did not own or control the coffee brewer so it had no duty to equip it with a splash guard. As Starbucks was not the manufacturer of the brewer, the plaintiff cannot claim that it should have provided a part to the brewer that was not provided by the manufacturer. The coffee brewer was obtained by Load King, installed by Load King, and paid for by Safeway, Dominick's parent company. As such, to argue that Starbucks should have included a part with the brewer is baseless. Further, once the kiosk opened for business, Starbucks had no further connection to the brewer as the brewer was controlled and owned by Dominick's. Prior to the kiosk opening, Starbucks only involvement with the brewer was to ensure it was calibrated before opening. Only Dominick's had ownership and control of the brewer once the kiosk opened and therefore summary judgment in favor of Starbucks is appropriate.

Finally, the defendant argues that even if this Court believes that it breached any of the duties discussed above, summary judgment is still warranted because those alleged breaches did not proximately cause the plaintiff's injury. "The issue of the existence of proximate cause is one of fact that is normally determined by the trier of fact." *Gyllin v. College Craft Ent., Ltd.*, 260 Ill. App. 3d 707, 711 (2d Dist. 1994). However, at the summary judgment stage, the plaintiff must present affirmative and positive evidence that a defendant's negligence was arguably a proximate cause of the plaintiff's injuries. *Id.* "The existence of proximate cause cannot be established by speculation, surmise, or

conjecture.” *Id.* “When the material facts are undisputed and there can be no reasonable difference in judgment as to the inferences drawn from the facts, and there has been no affirmative showing of proximate cause, a plaintiff has failed to establish a genuine issue of material fact.” *Id.* At this “point, the issue of proximate cause is a question of law, and summary judgment is proper as a matter of law.” *Id.*

In *Gyllin*, a motorist was employed as a painter by College Craft and while at a job site the employee spilled stain on his clothes. *Id.* at 708. After leaving the jobsite, the employee drove home in his work clothes with the windows up and no air on in the car and while driving, he crossed the center line in the road and caused a collision. *See* 260 Ill.App.3d at 708. The plaintiff claimed that College Craft failed to properly train the employee about the impact of stain fumes. *Id.* at 709. College Craft’s motion for summary judgment was granted because the court found that the employee did not know what caused him to cross the center line and there was no evidence to support that the cause was the stain fumes. *Id.* at 716. In the present matter, according to the plaintiff’s description of the incident, there was nothing regarding the way she used the brewer that caused her incident, so, accordingly, the plaintiff’s training could not have proximately caused her incident. *See* Plaintiff’s Dep. 42-44, 49-50. Further, since the alleged incident, as the plaintiff described it, was an unusual occurrence that has never been seen before or since, there was no way to warn her about it and no warning could have prevented the incident from occurring. Finally, since the incident took place 8 months after Starbucks had the brewer calibrated and Starbucks involvement with the brewer stopped when the kiosk opened, the initial testing of the brewer had no involvement with the alleged incident. As the undisputed evidence demonstrates that Starbucks did not proximately cause the plaintiff’s alleged incident, summary judgment is warranted.

Based on all of the above, the defendant requests that this Court grant its motion for summary judgment pursuant to §5/2-1005.

In response, the plaintiff first asserts that “[t]he purpose of summary judgment is to determine whether a genuine issue of material fact exists.” *Fillpot v. Midway Airlines*, 261 Ill.App.3d 237, 242 (4th Dist. 1994). A motion for summary judgment should only be granted when “the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” *See* 735 ILCS 5/2-1005(c). “In deciding whether to grant summary judgment, a court shall construe the pleadings, affidavits, depositions, admissions, and exhibits strictly against the movant and liberally in favor of the opponent.” *Fillpot*, 261 Ill.App.3d at 237. Further, the right to summary judgment must be clear beyond question. *Giacalone v. Chicago Park Dist.*, 231 Ill. App. 3d 639, 642 (1 Dist. 1992). The plaintiff maintains that in this case, there are genuine issues of material fact regarding the safety of the brewer and the plaintiff’s training and therefore the defendant’s motion for summary judgment must be denied.

The plaintiff contends that the defendant owed a duty of care to the plaintiff because Starbucks knew that the brewing machine was missing safety flanges but did not report this to the district manager to be fixed. Safety flanges are a main safety feature of the brewer as they give the operator the opportunity to make certain that there is little risk of suffering a burn. In fact, Ms. Zimmerman testified that the absence of the flanges constituted a safety hazard. *See* Zimmerman Dep. 78-79. Despite the importance of the flanges to the safety of employees working at the kiosk, not one witness recalls the flanges being attached to the brewer at any time. *See* Plaintiff’s Dep. 136-37. Indeed, while Starbucks had the duty to make certain that the flanges are present, Ms. Zimmerman does not remember if the brewer was equipped with flanges at any time and if the flanges are missing she testified that it is Starbucks’ responsibility to make certain they are replaced. *See* Zimmerman Dep. 12-13, 79-80. As the plaintiff clearly recalls that the flanges, admitted safety features, were not preset from training up to the

time of her accident, and it was Starbucks' duty, after training is finished to make certain the flanges are present, there are genuine issues of material fact as to whether the safety flanges were present and whether it was Starbucks' responsibility to make certain the flanges were in place.

Next, the plaintiff argues that summary judgment is not proper because Starbucks failed to properly train the plaintiff on the proper and safe use of the brewers. While the defendant claims that the plaintiff admitted during her deposition that she always properly used the brewer, this is irrelevant as to whether she received proper training from Starbucks' staff. The plaintiff indicates in her deposition that she changed the coffee using the proper sequence of actions: emptying the grounds, replacing that container, and then removing the brew basket. *See* Plaintiff's Dep. 43-47. The plaintiff also testified that she had no prior experience with brewing coffee. *Id.* at 158-59. Thus, the passages of the plaintiff's deposition relied upon by the defendant, demonstrate that while the plaintiff knew the sequence of steps required to change the coffee, it does not demonstrate that she was properly trained as to the safety features of the brewer. Significantly, as the safety flanges were not present during training, she could not have received adequate training on the use of the flanges.

In addition, the plaintiff maintains that Starbucks violated its own policy and regulations while training the plaintiff. According to the Starbucks' training manual, trainees are to be given time to practice using the brewer to make certain they know how to safely remove the brew basket. *See* Training Manual p. 7-8. However, the plaintiff testified that she was never allowed to practice operating the brewer during training. *See* Plaintiff's Dep. 164. Further, according to the manual, individuals are to be instructed on the proper health and safety guidelines for working at a Starbucks kiosk but provide no such guidelines other than to suggest that employees are to refrain from sticking their fingers in a customer's cup. *See Id.* p.2, 9. Moreover, while it was Ms. Zimmerman's responsibility to provide safety training to trainees, she failed to do so. *See* Zimmerman Dep. 107. While the defendant claims that the plaintiff was properly trained because she was given manuals to read, the manual dictates that trainees be given an opportunity to practice operating the brewer, and plaintiff was not given time to practice. Furthermore, the manual provided no safety information, and Ms. Zimmerman, who was aware that another worker had been burned by hot grounds from removing the basket on the same model brewer, failed to provide any safety instructions at anytime. *See* Zimmerman Dep. 10. Similarly, Starbucks' claim that the plaintiff must have been properly trained because she allegedly trained others to work at the kiosk, this is a non-sequitur; if the plaintiff had not been properly trained, it cannot be claimed with any certainty that her trainees received adequate instruction.

Further, while Starbucks believes that the warning stickers on the brewer absolve it of its responsibility to provide adequate training, there are no stickers warning of the danger of being hit by hot coffee grounds, only that hot liquids in the basket can cause burns. *See* Plaintiff's Dep. 165-68. Starbucks is correct that it has no duty to warn workers of unforeseen dangers, but being splashed by coffee grounds was not unforeseen as trainer Nicole Zimmerman was aware that another worker had been burned by hot coffee grounds while removing the brew basket. *See* Zimmerman Dep. 10. The plaintiff also notes that Starbucks equips some of its facilities with a brewer where the basket cannot be removed while the contents are hot. *See Id.* at 84-85. Moreover, the plaintiff argues that whether or not the "brew light" was lit has no bearing on the issue present as the brew basket can be removed safely whether or not the light is on. *Id.* at 78. According to the plaintiff, it was defendant's responsibility to provide her with adequate operating and safety training prior to beginning her work at the kiosk. However, Ms. Zimmerman, the plaintiff's trainer, failed to allow trainees to practice using the brewer, violating its training policy, and failed to provide any safety instructions despite her knowledge that the brewer at issue lacked safety features present on other brewers used by Starbucks and that an employee had been burned by hot grounds using the same brewer model. Moreover, since the flanges were not

present during her training, the defendant cannot claim that the plaintiff had been properly trained on safety features. Since there are genuine issues of material fact as to whether Starbucks properly trained the plaintiff, the motion for summary judgment must be denied.

Finally, the plaintiff contends that Starbucks was a proximate cause of the plaintiff's incident. "The issue of the existence of proximate cause is one of fact that is normally determined by the trier of fact." *Gyllin*, 260 Ill.App.3d at 711. While the defendant is correct that proximate cause is a question of law when the material facts are undisputed, the plaintiff maintains that there are multiple material facts that are disputed in this case. According to the plaintiff, she has demonstrated that Starbucks is responsible for ascertaining that the safety flanges are present on the brewer and that Starbucks failed to provide adequate training. Further, the plaintiff argues that the defendant fails to take into account the definition of proximate cause which is defined by Illinois Pattern Jury Instructions 15.01, which states:

When I use the expression "proximate cause," I mean any cause which, in natural or probable sequence, produce the injury complained of. It need not be the only cause, nor the last or nearest cause. It is sufficient if it concurs with some other cause acting at the same time, which in combination with it causes the injury.

See I.P.I 15.01. Here, if the safety flanges were in place and the plaintiff was trained in the use of the safety flanges, then the plaintiff would not have been able to pull the brew basket and be sprayed with steam, water and hot grounds.

Furthermore, the plaintiff asserts that the case at bar is distinguishable from *Gyllin*. In *Gyllin*, the employee did not know what caused him to cross the center line nor was there evidence to support that the cause was the stain fumes. See 260 Ill.App.3d at 707. In the present matter, the plaintiff maintains that there is no question that a cause of the injury was the explosion of scalding hot water and coffee grounds. If the safety flanges were in place the plaintiff would not have been able to fully remove the brew basket. Further, if the plaintiff were trained on the use of the safety flanges, she would have had to stop, hesitate, remove the flange before pulling the basket out, thus giving her the intended cause and possible warning as to the dangerous condition. As such, the plaintiff maintains that a question of fact exists as to whether defendant's failure to have the proper safety feature installed and failure to train plaintiff on the proper safety features of the brewer proximately cause the injury.

For the foregoing reasons, the plaintiff requests that this Court deny the defendant's motion for summary judgment.

In reply, the defendant first asserts that the safety flange is irrelevant to this case. The safety flange is a little piece of metal that hangs down in front of the brew basket and is easily pushed up with a thumb or finger to allow for the removal of the brew basket. The flange is manual and can be moved at any time. It is there to give a person pause before pulling out the brew basket so the person will ensure that brewing is not actively taking place. The safety flange does not actually prevent a person from pulling out the basket while brewing is taking place. An hour after brewing is done, the flange would have no safety relevance because there would be no reason for a person to pause before pulling out the brew basket. See *Zimmerman* Dep. 54-57. The defendant maintains that since the plaintiff's incident took place an hour after brewing was completed and no active brewing was taking place at the time of her incident, the safety flange is irrelevant to this case. There is no reason why a person should pause or take caution when pulling out a brew basket an hour after brewing has taken place. By that time, any water or coffee grounds in the brew basket would be cold and no caution would be needed. Since the

safety flange is irrelevant to this case, whether it was on the brewer during training and whether the plaintiff was trained on how to use the safety flange is also irrelevant.

Next, the defendant contends that it did not own or control the coffee brewer and therefore owed no duty to ensure it was equipped with safety devices at the time of the incident. Prior to the kiosk opening, Starbucks was involved with training the Dominick's employees and ensuring that the kiosk was properly set up, but it never owned or controlled the kiosk equipment. Further, while it is true that Nicole Zimmerman does not have a distinct recollection of the specific coffee brewer in this case, she was confident that all new equipment was in place and installed when she trained the plaintiff and that the safety flange would have been in place during the training. The plaintiff also would have been trained on how to operate the safety flange. *See* Plaintiff's Dep. 57, 70-72. If the safety flanges were not on the coffee brewer when Ms. Zimmerman was to the kiosk to provide training, she admitted that she would have made a call and ensured that the brewer had all of its equipment before the kiosk opened for business. *See* Zimmerman Dep. 78-79. Despite the plaintiff's assertions, this action by Ms. Zimmerman only would have been done prior to the kiosk opening for business in August 2006. Once the training was over and the kiosk was open for business, Ms. Zimmerman had no more involvement with the kiosk and any issues regarding the equipment were left to Dominick's as the owner of the equipment.

Further, Ms. Zimmerman explained that Starbucks had a district manager that would visit the store, but he was only a helper to the store and he would not make any calls himself regarding a missing safety flange. The Dominick's store had full responsibility for the kiosk and brewer at the time of the plaintiff's incident and it would have been up to the store employees and manager to replace any missing safety flange. *See* Zimmerman Dep. 80-81. The district manager for Starbucks, John Prusko, was the only Starbucks employee that would have had any contact with the kiosk around the time of the plaintiff's incident and he confirmed that it was not his job to handle the kiosk equipment and he had no involvement with equipment maintenance. That was the responsibility of Dominick's because they owned and maintained the equipment. It is undisputed that Mr. Prusko had no responsibility for the safety flanges and it was not part of his job to ensure they were present or order them if they were missing. *See* Prusko Dep. 16-17, 20-22, 29-30. Since Starbucks did not own, maintain, or control the brewer at anytime while the kiosk was open, including at the time of the plaintiff's incident, under no circumstances can it be found to hold any duty to maintain the brewer. The record is devoid of any evidence to support that Starbucks had any responsibility to maintain the equipment or to ensure that the safety flange was in place. As such, the defendant maintains that summary judgment is proper.

The defendant next, asserts that the record in this case supports that the plaintiff was properly trained at the time of her incident and that she had complete knowledge of how to use the brewer. Not only did the plaintiff receive a two week training course before she started working in the kiosk, but she then worked in the kiosk for 8 months before her incident took place. During those 8 months, the plaintiff was observed by her supervisor, Cynthia Alexander, who confirmed that the plaintiff knew how to properly use the brewer. *See* Alexander Dep. 11, 98. In fact, during those 8 months the plaintiff operated the brewer on an hourly basis and trained others on how to use the brewer. Ms. Alexander received the exact same training as the plaintiff at the exact same time and she confirmed that they were properly taught how to use the brewer and that they practiced on the brewer during training. *Id.* at 39-40, 46. Despite what is asserted in the plaintiff's brief, even the plaintiff admitted that she may have used the brewer during training, she just cannot remember. *See* Plaintiff's Dep. 17.

In addition, while the plaintiff claims she cannot remember receiving safety training Ms. Zimmerman and Ms. Alexander both confirmed that safety training was provided including a discussion of safety issues involving using the brewer, removing the brew basket, burner switches, water temperature, the hot water spout, and the possibility of being burned. *See* Zimmerman Dep. 46-47, 70;

Alexander Dep. 46-48. In fact, Ms. Alexander admitted that she was not taught about second and third degree burns specifically, but there was instruction about the hot spots of the brewer and that burns were possible. *See* Alexander Dep. 88-92. Moreover, the defendant points out that the plaintiff claimed she was not properly trained because Ms. Zimmerman did not specifically tell the plaintiff about a prior incident where an employee was burned by coffee grounds. First, this claim ignores the fact that the plaintiff was given significant instruction about general safety issues, including the hot spots of the brewer and temperature issues. Second, that prior incident involved an employee being burned on his hand by coffee grounds because of his own error in pulling the brew basket out too quickly. *See* Zimmerman Dep. 73. While Ms. Zimmerman may not have told that exact story to trainees, Ms. Alexander, as well as Ms. Zimmerman, confirm that trainees were taught not to pull the brew basket out during brewing and taught how to properly and safely use the brewer. As such the defendant maintains that since all the evidence supports that the plaintiff was properly trained and knew how to properly use the coffee brewer, summary judgment is warranted for Starbucks.

Next, the defendant asserts that it was not the proximate cause of the plaintiff's injuries. The plaintiff testified that she was properly using the brewer when it all of a sudden malfunctioned, causing hot water, hot coffee grounds, and steam to explode all over her body. According to the plaintiff's description of the incident, there was nothing regarding the way the plaintiff used the coffee brewer that caused her incident and therefore, her training could not have proximately caused her injuries. Since the plaintiff's version of the events must be accepted as true, then clearly Starbucks did not proximately cause the plaintiff's incident and summary judgment should be granted.

Finally, the defendant contends that in its initial motion, Starbucks asserts that summary judgment is warranted as to plaintiff's allegation that Starbucks failed to appropriately test the brewer so as to adequately ensure its safety in its intended use because it had no duty to test the brewer since it did not own the brewer. Further as to plaintiff's allegation that Starbucks deviated from their manufacturing performance standards by failing to equip the brewer with an adequate splash guard to protect users from its content, Starbucks argued summary judgment was warranted because it did not manufacture the brewer. The plaintiff makes no mention of these allegations or arguments in her response brief and therefore the defendant asserts that it can be assumed that the plaintiff does not dispute that summary judgment is warranted as to these allegations.

Based on all of the above, the defendant requests that this Court grant its motion for summary judgment pursuant to §5/2-1005.

This Court holds that the defendant's motion for summary judgment pursuant to §5/2-1005 is granted. "Summary judgment is proper where the pleadings, depositions, affidavits, and admissions on file, when viewed in the light most favorable to the nonmoving party, demonstrate that no genuine issue of material fact exists and that the moving party is entitled to a judgment as a matter of law." *Prostran*, 349 Ill.App.3d at 85. In order to meet the burden in establishing a negligence claim, a plaintiff must prove the existence of a duty owed to her, a breach of that duty by the defendant, and an injury proximately caused by the breach. *Glass*, 238 Ill.App.3d at 357. If the plaintiff fails to produce competent evidentiary facts in support of each element of her cause of action, the court should grant summary judgment in favor of the defendant. *Barker*, 261 Ill.App.3d at 1071. Furthermore, at the summary judgment stage, the plaintiff must present affirmative and positive evidence that a defendant's negligence was arguably a proximate cause of the plaintiff's injuries. *Gyllin*, 260 Ill. App. 3d at 711 "The existence of proximate cause cannot be established by speculation, surmise, or conjecture." *Id.* This Court finds that the plaintiff has failed to meet her burden of establishing a negligence claim against Starbucks and therefore summary judgment is proper.

The plaintiff alleges that Starbucks was negligent in failing to properly train the plaintiff in the correct use of the subject brewer; in failing to warn of the risks associated with the use of the brewer; in failing to appropriately test the brewer so as to adequately ensure its safety in its intended use; and in deviating from their manufacturing performance standards by failing to equip the brewer with an adequate splash guard to protect users from its content. *See* Complaint. First, in regards to the allegation that Starbucks failed to properly train the plaintiff in the correct use of the subject brewer, the plaintiff testified that she received a two week training course before she started working in the kiosk and then worked in the kiosk for 8 months prior to her incident. *See* Plaintiff's Dep. 9-11, 14-15, 25-27. The plaintiff also testified that every hour the coffee needs to be changed which entails emptying the coffee containers, rinsing it out, pulling the brew basket out so she can put a new filter and coffee grounds in it, replacing the brew basket and hitting the start button. *Id.* at 45-47. According to the plaintiff, on the date of her accident, when she pulled out the brew basket, it exploded and hot water and coffee grounds went all over her causing her to be burned. *Id.* at 46-49. While the plaintiff asserts that Starbucks failed to properly train the plaintiff and that it was this failure which proximately caused her accident and injuries, this Court disagrees. The plaintiff has failed to establish how training would have prevented her accident from occurring since she had used the brewer for 8 months without incident and according to her description of the incident, there was nothing regarding the way the plaintiff used the coffee brewer that caused her incident and therefore the plaintiff's training could not have proximately caused her injuries. As such, summary judgment is proper.

Next, this Court holds that the defendant did not owe a duty to warn the plaintiff of any unforeseen risks associated with the use of the brewer. Illinois law holds that there is no duty to warn an employee as to all unforeseen hazards. *See Engelland*, 319 Ill. App. 3d at 1064 ("The act of undertaking to warn employees of some potential hazards does not impose a duty to warn the same employees as to all unforeseen hazards."). In this case, the plaintiff has alleged that while in the process of removing the brew basket from the coffee brewer there was an explosion in which hot water and coffee grounds landed on the plaintiff causing her injuries. *See* Plaintiff's Dep. 46-49. The plaintiff and her supervisor both testified that there were never problems with the brewer before the incident and there have never been any problems with the brewer since. *See Id.* at 17, 23-25; Alexander Dep. 15-16. The plaintiff also testified that she does not know of anyone else that was involved in an incident like the one that caused her injuries. *See* Plaintiff's Dep. 122-23. Mr. Prusko, the District Manager for Starbucks had also never heard of an incident like the plaintiff's taking place. *See* Prusko Dep. 24-25.

Further, Ms. Zimmerman, who has worked for Starbucks for over eight years, and trained the plaintiff, had never heard of an incident like the one described by the plaintiff. *See* Zimmerman Dep. 61-62. Ms. Zimmerman does recall an employee who had removed the brew basket during the brew cycle or immediately after it had finished, and because the employee removed the basket with some speed, it splashed out onto his hand and he suffered a burn. *Id.* at 10. This employee however admitted that the burn was due to the fact that he pulled the brew basket out too quickly. *Id.* at 73-74. That incident is dissimilar to the facts of the present case as it did not involve an explosion of coffee grounds and hot water once the brew basket was pulled out. Since the incident described by the plaintiff is isolated, unique, and no one, not even the plaintiff, has heard of any other similar incidents occurring, there can be no duty on Starbucks to warn that it may occur as it was an unforeseen hazard.

Next, in regards to the allegation that Starbucks failed to appropriately test the brewer so as to adequately ensure its safety in its intended use, this Court finds that Starbucks had no duty to test the brewer as it did not own or control the coffee brewer. In fact, Dominick's owned the brewer, Load King installed the brewer, and Beverage Town calibrated the brewer before the kiosk opened for business in August 2006. *See* Zimmerman Dep. 10-11, 17-18; Prusko Dep. 10-11, 22, 24, 27-29. As Dominick's

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was the owner of the brewer and responsible for its maintenance, the plaintiff has failed to present any evidence to support her allegation that Starbucks had any duty to test the brewer after the kiosk opened. Therefore, this Court holds that summary judgment is proper.

Finally, this Court addresses the plaintiff's allegation that Starbucks was negligent in deviating from their manufacturing performance standards by failing to equip the brewer with an adequate splash guard to protect users from its content and failing to ensure that the safety flange was present on the brewer. First, this Court reiterates that Starbucks did not own or control the coffee brewer nor was it the manufacturer of the coffee brewer and therefore it had no duty to equip it with a splash guard. In regards to the safety flange, this Court holds that the plaintiff has failed to establish how the safety flange would have prevented her particular accident and as such, the absence of the safety flange is not a proximate cause of the plaintiff's injuries. The safety flange is a little piece of metal that hangs down in front of the brew basket and is pushed up with a thumb or finger to allow for the removal of the brew basket. The flange is manual and can be moved at any time. It is there to give a person pause before pulling out the brew basket so the person will ensure that brewing is not actively taking place. The safety flange does not actually prevent a person from pulling out the basket while brewing is taking place. Here, there was no evidence that the plaintiff removed the brew basket any differently than she had in the past. Further, even if the flange was there and the plaintiff pushed it back, there are no facts presented to show the flange would have prevented the explosion of hot water and coffee grounds. "The existence of proximate cause cannot be established by speculation, surmise, or conjecture." *Gyllin*, 260 Ill. App. 3d at 711. As the plaintiff has failed to establish how the absence of the safety flange was a proximate cause of her incident summary judgment is proper.

For the foregoing reasons, this Court finds that the plaintiff has failed to meet her burden of establishing a negligence claim against defendant Starbucks and therefore the defendant's motion for summary judgment pursuant to §5/2-1005 is granted.

_____, 2009

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Judge

Judge's No.

