

**CIRCUIT COURT FOR HAMILTON COUNTY  
State of Tennessee**

FILED IN OFFICE  
2018 MAY 21 AM 8:28  
LARRY L. HENRY, CLERK  
BY LMY DC

RICKY E. WOLFE,

*Plaintiff,*

~v~

DEBO'S DINERS, INC., and

JEKIEVEA MONCHELL YEARBY,

*Defendants.*

§  
§  
§  
§  
§  
§  
§  
§  
§  
§

No. 18C612

**COMPLAINT**

PLAINTIFF, through counsel, for his causes of action will show the Court:

**PARTIES, JURISDICTION, AND VENUE**

**Parties:**

1. Plaintiff Ricky E. Wolfe, at all relevant times is a resident of Hamilton County, Tennessee.
2. Defendant Jekieva Monchell Yearby ("Yearby"), at all relevant times is a resident of Hamilton County, Tennessee.
3. Defendant Debo's Diners, Inc. ("Debo's"), at all relevant times is a corporation organized under the laws of the State of Tennessee, listed with the Tennessee Secretary of State as for-profit corporation (domestic), with its principal address as 7625 Hamilton Park, Drive, Suite 26, Chattanooga, Hamilton County, Tennessee.
4. Debo's may be served with a copy of the Summons and Complaint through its registered agent, David M. Elliott, Esq., whose office is located at 633 Chestnut Street, Suite 900, Chattanooga, Hamilton County, Tennessee 37450-0900.

5. At all relevant times, Debo's owns and operates a chain of restaurants known as "Steak 'n Shake" in Eastern Tennessee, including a "Steak 'n Shake" restaurant located at 5118 Hixson Pike, Chattanooga, Hamilton County, Tennessee, 37343 ("store").

6. At all relevant times, Debo's sold and provided food and beverages to the public through its store.

7. At all relevant times, Yearby acted as an employee and agent for Debo's at the store.

8. At all relevant times, Plaintiff was an invitee, customer, consumer, and patron of Debo's at its store.

**Jurisdiction and Venue:**

9. This Court is vested with original jurisdiction over Debo's since it conducts substantial business within the State of Tennessee and Hamilton County, has its principle address in Hamilton County, is organized under the laws of the State of Tennessee, and the events alleged herein occurred at the store.

10. This Court is vested with original jurisdiction over Yearby since the events alleged herein occurred at the store and that Yearby committed the acts and omissions averred herein at the store.

11. This Court has subject matter jurisdiction over the Plaintiff's causes of action pursuant to TENN. CODE ANN. § 16-10-101, et seq.

12. Venue is proper in this Court pursuant to TENN. CODE ANN. § 20-4-102 since the acts complained of occurred within Hamilton County, Yearby is a resident of Hamilton County, and Debo's conducted business within, and has its principle address in Hamilton County.

## **FACTS**

### **Cocaine:**

13. Cocaine is a substance with very little medical use, the possession and distribution of which is criminalized by Tennessee and Federal law.

14. Cocaine is a strong stimulant, ingestion of which may cause loss of contact with reality, and intense feelings of happiness or agitation. Physical symptoms may include tachycardia, sweating, and large pupils. High doses can result in very high blood pressure or body temperature.

15. Cocaine is addictive and after a short period of use can result in dependence. Its ingestion has a risk of stroke, sudden cardiac death, myocardial infarction, and blood infections.

16. Cocaine is a Schedule II drug under the Federal Controlled Substances Act and TENN. CODE ANN. § 39-17-408, meaning it has a high potential for abuse and limited medical usage.

17. Cocaine has no lawful use in the production and sale of food and beverages within the State of Tennessee, and if it were found in food and beverages served to the public would be a substance foreign to the food and beverage.

### **The event:**

18. At all relevant times, Plaintiff was employed by the Hamilton County Government as a law enforcement officer and deputy of the Hamilton County Sheriff.

19. As a part of the oversight and supervisory function of the Hamilton County Sheriff, Plaintiff and other of the Sheriff's law enforcement and correctional officers are subject to random "drug screens" wherein Plaintiff must give samples of his body fluids to test for the use of drugs such as cocaine when requested.

20. On May 25, 2017, Plaintiff while off-duty, entered the store, sat at a table, and Yearby approached and took his order.

21. Plaintiff ordered a beverage and food from Yearby, and Yearby brought the beverage to him while other employees of Debo's began the preparation of Plaintiff's food order.

22. Plaintiff began to drink the beverage when he noticed an odd taste to it.

23. Plaintiff made a closer examination of the beverage and found a small baggie of cocaine in the beverage.

24. Plaintiff contacted Chattanooga Police and Chattanooga Officer Rahn ("Officer Rahn") arrived in response to Plaintiff's request for police assistance.

25. Officer Rahn reviewed in-store camera footage with the permission of store manager Venita Duncan and discovered Yearby deposited the baggie of cocaine into Plaintiff's beverage.

26. Officer Rahn questioned Yearby who stated that the baggie of cocaine "must have fallen in the drink out of her *waitress book* while she was taking [Plaintiff's] order."

27. Officer Rahn arrested Yearby whereupon Yearby told the officer she had more cocaine on her person along with a small black straw tainted with cocaine residue.

28. Officer Rahn recovered a total of .7 grams of cocaine from Yearby.

29. In Tennessee, possession of .5 grams or more of cocaine is a Class B felony punishable by up to 30 years in the Tennessee Department of Correction.

30. As a direct result of the events stated in the previous paragraphs, the Hamilton County Grand Jury indicted Yearby on one count of felony reckless endangerment; one count of possession of cocaine; and one count of possession of drug paraphernalia.

## CAUSES OF ACTION

### Count One: Negligence

31. Plaintiff repeats and re-alleges each and every fact and allegation contained in the preceding paragraphs of this Complaint as if set forth herein.

32. Debo's owed a duty of care to the Plaintiff and other customers to prepare and serve safe and wholesome foods and beverages.

33. Yearby owed a duty of care to the Plaintiff and other customers to prepare and/or serve safe wholesome foods and beverages.

34. Debo's owed a duty of care to the Plaintiff that required Debo's to conform to a reasonable standard of conduct for the safe preparation, distribution, and sale of food and beverages at the store.

35. Yearby owed a duty of care to the Plaintiff that required Yearby to conform to a reasonable standard of conduct for the safe preparation, distribution, and sale of food and beverages at the store.

36. Both Defendants breached the duty of care they owed to the Plaintiff. The Defendants' breach led to an unreasonable and foreseeable risk of severe drug induced mental and physical injuries to the public and to the Plaintiff.

37. This same breach also exposed the Plaintiff to an unreasonable and foreseeable risk of losing his employment. Had Plaintiff not found the cocaine in his beverage, consumed the cocaine, and later tested positive for cocaine by his employer, he would have most certainly been terminated from his employment and lost his Tennessee P.O.S.T certification.

38. Debo's had a duty to properly supervise, train, and monitor Yearby and other employees, and to ensure Yearby and other employees complied with all statutes, laws,

regulations, safety codes, or company rules pertaining to the safe preparation, distribution, and sale of food and beverages at the store. However, Debo's failed to do so. Failure to conform to this duty constitutes negligence at common-law and led to an unreasonable and foreseeable risk of severe drug induced mental and physical injuries to the public and the Plaintiff.

39. Debo's had a duty to use ingredients, supplies, and other constituent materials that were reasonably safe, wholesome, free from defects and free from cocaine and that otherwise complied with applicable federal, state, and local laws, but Debo's failed to do so.

40. The acts and omissions of the Defendants was the direct and proximate cause of the Plaintiff's damages.

41. Plaintiff was a person intended to be protected by safe food and beverage handling procedures and practices, and as an invitee Debo's had a duty to Plaintiff to ensure Yearby did not taint Plaintiff's beverage with cocaine or serve to Plaintiff a beverage tainted with cocaine. As a direct and proximate result of the acts and omissions of the Defendants Plaintiff drank a beverage contaminated with cocaine.

42. At all relevant times, Yearby was not an independent contractor. Rather, Yearby was an employee of Debo's. Debo's provided Yearby's pay, work schedule, uniforms, and equipment (including Yearby's waitress book). Debo's also provided direct supervision of Yearby through an in-store manager and set forth Yearby's duties. As a direct agent and employee of Debo's, Debo's is liable to the Plaintiff under the doctrine of *respondent superior* for the acts and omissions of Yearby.

43. Thus, Plaintiff suffered legally cognizable damages caused by the Defendants' joint breach in an amount to be determined at trial, but no less than fifty-thousand dollars (\$50,000.00). Plaintiff sues Debo's and Yearby under this Count.

**Count Two:**  
**Strict Liability**

44. Plaintiff repeats and re-alleges each and every fact and allegation contained in the preceding paragraphs of this Complaint as if set forth herein.

45. TENN. CODE ANN. § 29-28-102(7) defines “Seller” to include a retailer, wholesaler, or distributor, and means any individual or entity engaged in the business of selling a product, whether such sale is for resale, or for use or consumption.

46. Debo’s is a seller as defined in TENN. CODE ANN. § 29-28-102(7).

47. The beverage at issue was water with ice. Debo’s sells meals with beverages. Plaintiff believes that Debo’s obtained the water from Tennessee American Water, a private entity that is engaged in the business of purifying water and distributes the purified water to persons and other entities in the Hamilton County region for a fee. In the alternative, Plaintiff believes Debo’s purchased water from a manufacturer or wholesaler engaged in the business of providing for a fee potable water for use by the public.

48. Debo’s altered or modified the water product Yearby served to Plaintiff by the introduction of cocaine, and this alteration or modification was a substantial factor in causing Plaintiff’s harm.

49. At all times relevant hereto, Debo’s is strictly liable for damages caused by the introduction of cocaine into Plaintiff’s beverage.

50. Thus, Plaintiff suffered legally cognizable damages caused by the Defendants’ joint breach in an amount to be determined at trial, but no less than fifty-thousand dollars (\$50,000.00). Plaintiff sues Debo’s and Yearby under this Count.

**Count Three:**  
**Negligence *Per Se***

51. Plaintiff repeats and re-alleges each and every fact and allegation contained in the preceding paragraphs of this Complaint as if set forth herein.

52. In Tennessee it is a Class C or B felony offense for a person to adulterate any food product or liquid that is produced for human consumption by placing in, mixing with, or adding to the product or liquid, any object, liquid, powder or other substance with the intent to cause bodily injury, serious bodily injury or death to a user of the product or liquid.

53. In Tennessee a violation of a penal statute is negligence *per se* and is admissible evidence in a civil action.

54. Having repeated and re-alleged all previous facts and allegations, Plaintiff suffered legally cognizable damages caused by the Defendants' joint breach in an amount to be determined at trial, but no less than fifty-thousand dollars (\$50,000.00). Plaintiff sues Debo's and Yearby under this Count.

**WHEREFORE**, having pleaded his claims, Plaintiff prays for the entry of a judgment against the Defendants both joint and several as follows:

a. That the Court award Plaintiff in sums as shall be determined to fully and fairly compensate Plaintiff for all general, special, incidental, and consequential damages incurred, or to be incurred, by Plaintiff as the direct and proximate result of the defective product and the acts and omissions of the Defendants, but in no amount less than fifty-thousand dollars (\$50,000.00).

b. That the Court award Plaintiff one hundred thousand dollars (\$100,000.00) as punitive damages.

c. Tax costs of the Clerk against the Defendants.

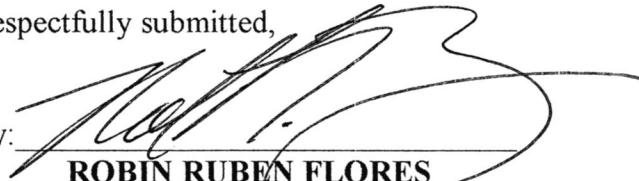
d. Trial by jury.



- e. All other relief allowed at Law and Equity.

Respectfully submitted,

By:



**ROBIN RUBEN FLORES**

TENN. BPR #20751

GA. STATE BAR #200745

Counsel for Plaintiff

4110-A Brainerd Road

Chattanooga, TN 37411

423 / 267-1575 fax 267-2703

[robinflores@epbfi.com](mailto:robinflores@epbfi.com)