

MAY 22 2012

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

BEVERLY MUNGUIA; RUBEN  
MUNGUIA,

Plaintiffs - Appellees,

v.

GRELYN OF MAUI, LLC, a Hawaii  
limited liability company, DBA  
McDonald's Dairy Road,

Defendant - Appellant,

and

DOE ENTITIES 1-50,

Defendant.

No. 11-15751

D.C. No. 1:09-cv-00058-HG-BMK

MEMORANDUM\*

Appeal from the United States District Court  
for the District of Hawaii  
Helen W. Gillmor, Senior District Judge, Presiding

Argued and Submitted May 14, 2012  
San Francisco, California

Before: THOMAS, McKEOWN, and W. FLETCHER, Circuit Judges.

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\* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

Grelyn of Maui, LLC, appeals the judgment entered against it after a jury trial. We affirm. Because the parties are familiar with the factual and procedural history of the case, we need not recount it here.

The district court neither erred in providing, nor in formulating, the “mode of operation” premises liability instruction to the jury. Hawaii premises liability law permits the instruction in cases such as this one, where a proprietor’s self-service food operation involves a reasonably foreseeable risk of remnant food and grease buildup on floors. *Gump v. Wal-Mart Stores, Inc.*, 5 P.3d 407, 410-11 (Haw. 2000); *Gump v. Walmart Stores, Inc.*, 5 P.3d 418, 431-32 (Haw. Ct. App. 1999). Although contested, there was sufficient evidence presented at trial to allow the instruction to be given to the jury under the specific facts of the case.

The evidence was sufficient to sustain the verdict for the reasons explained in the district court’s thorough and well-reasoned order denying the motion for judgment as a matter of law. *See E.E.O.C. v. Go Daddy Software, Inc.*, 581 F.3d 951, 963 (9th Cir. 2009) (“[A] jury’s verdict must be upheld if there is evidence adequate to support the jury’s conclusion . . . .”) (internal quotation marks omitted).

**AFFIRMED.**