ADA Defense Lawyer: DA sues to stop abusive ADA litigation

21 May 2019

JMBM’s ADA Compliance and Defense team, led by my partner Marty Orlick, continues to help hotels and other businesses achieve compliance under the Americans With Disabilities Act (ADA), and has defended more than 750 ADA lawsuits and DOJ investigations or actions brought against owners and operators of “public accommodations.” Such properties include hotels, resorts, restaurants, timeshares, bed and breakfasts, spas, sports facilities, wineries, theaters and other commercial real estate, such as apartment communities, shopping centers, retail stores and banks.

Today, Marty shares some good news from Riverside, California, where the Riverside County District Attorney’s Office is seeking to stop abusive ADA lawsuits filed by serial litigants.

Riverside County DA drops the hammer on ADA litigant and counsel to stop abusive litigation

by

Martin H. Orlick, Hotel Lawyer & Chair,
JMBM’s ADA Compliance & Defense Group

In an extraordinary case charging ADA litigation abuse, the Riverside County District Attorney’s Office filed an action on behalf of the People of California seeking to permanently prevent serial ADA plaintiff James Rutherford and two law firms that regularly represent him (Manning Law and the Law Offices of Babak Hashemi, and individual members of the firms) from filing abusive lawsuits. The Complaint alleges that the defendants violated various Business & Professions Code sections designed to protect the public against “unlawful, unfair or fraudulent acts or practices” and seeks civil penalties not to exceed $2,500 for each violation and other equitable relief. Civil penalties in this case could exceed $800,000 if the allegations prove true.

The Complaint alleges that “Defendants filed 323 lawsuits based on alleged violations of the Americans with Disabilities Act” in federal and state courts. Many of these lawsuits were filed against hotels and retailers. According to court papers, the pleadings filed by the defendants follow a pattern of near-identical “allegations, except for the identity of the named defendants and the date of the alleged harm.”

This lawsuit is eerily similar to a lawsuit filed by the Arizona Attorney General against Peter Strojnik, Sr., who filed nearly 2,000 identical ADA lawsuits against Phoenix/Scottsdale businesses. Suspended from practicing law, Mr. Strojnik surrendered his license to avoid disbarment. Another lawyer in New Mexico also surrendered her license in lieu of disbarment over ADA litigation abuse.

The Riverside DA alleges that the “federal ADA lawsuits also rely on a few core misrepresentations, which the People have identified as the foundation to the fraud Defendants have perpetrated on each and every Riverside County individual and/or business sued in the federal lawsuits.” The allegations include misrepresentations that Rutherford encountered
architectural barriers such as non-compliant parking spaces, signage, curb ramps and inaccessible paths of travel to the businesses’ entrances.

As a result of encountering these alleged ADA violations, Rutherford claims he suffered difficulty, discomfort and embarrassment entitling him to minimum statutory damages of $4,000 for each offense and incidence of deterrence.

Although the lawsuit takes no position on whether Rutherford is disabled, it disputes that based on his disability, he was denied full and equal access to and enjoyment of the goods or services of any business, that he had no good faith intention to return, and in fact did not return to any of these businesses – a fundamental tenet of Article III standing under the ADA.

The Complaint concludes that the defendants, and each of them, “colluded, conspired and/or otherwise agreed to engage in an ADA lawsuit scheme, designed to defraud, extract and/or extort money settlements from Riverside County individuals and businesses, based on the fraud, misrepresentations and false allegations contained in each and every one of the federal lawsuits.”

No one disputes that the ADA is the most important civil rights law for persons with disabilities. However, few doubt that the protections of the ADA have been abused by “high frequency litigants” and a handful of lawyers. In enacting California Code of Civil Procedure Section 425.5, designed to curb ADA abuse, in a rare declaration, the California Legislature found:

(1) Protection of the civil rights of persons with disabilities is of the utmost importance to this state, and private enforcement is the essential means of achieving that goal, as the law has been designed; and

(2) According to information from the California Commission on Disability Access, more than half, or 54 percent, of all construction-related accessibility complaints filed between 2012 and 2014 were filed by two law firms. Forty-six percent of all complaints were filed by a total of 14 parties.

While Rutherford and the defendant law firms were not among those the Legislature referenced, they have filed a significant number of ADA lawsuits. If the Court finds for the People in the Riverside DA’s case, it will fundamentally change the way plaintiff’s ADA lawyers perform due diligence and should reduce abusive ADA litigation in California.

The alleged violations of Business and Professions Code Section 17200 raise interesting procedural issues for the court’s handling current Rutherford cases and potential disgorgement of all prior settlement payments.

All eyes will be on the Riverside DA’s case.
Martin H. Orlick is one of the top ADA defense lawyers in the country. He has helped hotels, restaurants, retailers, banks and other commercial property owners defend more than 600 ADA cases. In addition to defending lawsuits and governmental investigations, Marty’s team of ADA specialists focuses on enterprise-wide ADA compliance and litigation prevention, including facilities, website and operational compliance. He is also a senior member of the law firm’s Global Hospitality Group®, a partner in the real estate department, and a member of the American College of Real Estate Lawyers (ACREL). For more information about ADA compliance and defense, contact Marty Orlick at 415.984.9667 or morlick@jmbm.com.

This is Jim Butler, author of www.HotelLawBlog.com and hotel lawyer, signing off. Please contact us if you would like to discuss any issues or development that affect your hotel interests. We would like to see if our experience might help you create value or avoid unnecessary pitfalls. Who’s your hotel lawyer?

Jim Butler is a founding partner of JMBM and JMBM’s Global Hospitality Group® which provides business and legal advice to hotel owners, developers and investors. This advice covers hotel purchase, sale, development, financing, franchise, management, labor & employment, ADA, IP, litigation and many other areas.

Jim is recognized as one of the top hotel lawyers in the world and has led the Global Hospitality Group® in more than $87 billion of hotel transactions and more than 3,900 hotel properties located around the globe.

Contact Jim at +1-310.201-3526 or JButler@jmbm.com