

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

ARLENE SCHROEDER, Individually and on
Behalf of all Others Similarly Situated,
Plaintiff

- against -

JOBS AND MAIN REALTY CO. LLC and JOHN
DOE d/b/a ANN CRABTREE,
Defendants

18 Civ. 2742

COMPLAINT

JURY DEMAND

Plaintiff, ARLENE SCHROEDER, by and through her counsel, James E. Bahamonde, Esq. from the Law Offices of James E. Bahamonde, PC, hereby files this Complaint and respectfully alleges against Defendants:

NATURE OF THE CASE

1. In violation of well-settled, 27-year-old law, Defendants have made a financial decision to not remove a variety of unlawful architectural barriers which exist at its public accommodation. Instead, Defendants have chosen to create and follow a policy to exclude Plaintiff and all other disabled persons, who use wheelchairs and scooters, from having access to and use of Defendants' public accommodation.
2. Plaintiff files this action on behalf of herself and as an action for those similarly situated, complaining of violations of Title III of the Americans with Disabilities Act, 42 U.S.C. § 12182 (hereinafter "ADA"), New York State Civil Rights Law § 40-c and 40-d, and New York State Human Rights Law § 296 *et seq.*
3. Plaintiff seeks damages, declaratory and injunctive relief, as well as fees and costs against the Defendants.

VENUE AND JURISDICTION

4. The Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1343, as this action involves federal questions regarding the deprivation of Plaintiff's rights under the ADA.
5. The Court has supplemental jurisdiction over Plaintiff's allegations arising from Defendants' state law violations pursuant to 28 U.S.C. § 1367(a).
6. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to this action, alleged herein, occurred in this district.
7. The jurisdiction of this court is invoked pursuant to 28 U.S.C. Sections 1331 and 2201 and through the Americans with Disabilities Act, 42 U.S.C. § 12181 et seq.

PARTIES

8. That at all times hereinafter mentioned, Plaintiff is now, and at all times mentioned in this complaint, a resident of Suffolk County, New York.
9. Defendant JOBS AND MAIN REALTY CO LLC is a New York domestic limited liability company authorized by the Secretary of the State of New York to do business in New York State with its principal County of business designated as Suffolk County.
10. Defendant JOBS AND MAIN REALTY CO LLC is owner of the commercial property which houses a public accommodation named Ann Crabtree located at 18 Jobs Lane, Southampton, NY 11968.
11. Defendant JOHN DOE is conducts business under the assumed name And Crabtree located at 8 Jobs Ln., Southampton, NY 11968.

12. Defendant JOHN DOE d/b/a ANN CRABTREE leases a commercial space from Defendant JOBS AND MAIN REALTY CO LLC located at 8 Jobs Lane, Southampton, NY 11968.

13. Upon information and belief, Defendant JOHN DOE d/b/a ANN CRABTREE is a business authorized by the Secretary of the State of New York to do business in New York State with its principal County of business designated as Suffolk County.

CLASS ACTION

14. Plaintiff brings this suit for declaratory and injunctive relief and, as a class action for all those similarly situated, who, as persons who must use wheelchairs by reason of various disabilities, and who use or desire to use the services and accommodations offered to the public by Defendants, are protected by, and are beneficiaries of the ADA and New York State Human Rights Law.

15. Plaintiff, complaining for himself and all others similarly situated residents in Suffolk County and State of New York hereby alleges: (a) the class is so numerous that joinder of all members, whether otherwise required or permitted, is impracticable; (b) there are questions of law or fact common to the class which predominate over any questions affecting only individual members; (c) the claims or defenses of the representative parties are typical of the claims or defenses of the class; (d) the representative parties will fairly and adequately protect the interests of the class; and (e) a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

16. References to "Plaintiffs" shall be deemed to include the individually named Plaintiffs, and each member of the Class, unless otherwise indicated.

STATUTORY SCHEME

17. The 2010 United States Census indicates that more than 56.6 million persons in the United States have a disability. The 2010 US Census also indicates that more than 1.39 million New Yorkers have a mobility disability.

18. The ADA and New York State Human Rights Law recognize individuals with disabilities as a protected class.

19. The ADA and New York State Human Rights Law recognize individuals with disabilities as a protected class.

20. It is unlawful for a private entity which owns, leases to or operates a place of public accommodations to discriminate against an individual with a disability.

21. The ADA and New York State Human Rights Law requires a public accommodation to be readily accessible to and usable by a disabled individual.

22. Construction and accessibility alterations made on or after March 15, 2012 must comply with the 2010 ADA Standards for Accessible Design. *See* 28 CFR Part 36 Subpart D and ADA Accessibility Guidelines, 36 C.F.R. Part 1191 Appendices B and D. (The 2010 ADA Standards for Accessible Design are hereinafter referred to as “2010 Standards”).

23. Construction and accessibility alterations commenced after January 26, 1992, and before September 15, 2010, must comply with the 1991 ADA Accessibility Standards. *See*, 28 CFR Part 36 Appendix A. (The 1991 ADA Accessibility Standards are hereinafter referred to as “1991 Standards”).

24. Defendants are required to remove all readily achievable barriers which denies a disabled individual with the opportunity to participate in or benefit from services or accommodations on

the basis of disability.

25. Failure to remove all readily achievable architectural barriers is defined as disability discrimination in violation of the ADA and New York State Human Rights Law.

26. The ADA requires a public accommodation to make reasonable modifications to the policies, practices, or procedures to afford access to persons with disabilities that is equal to the access afforded to individuals without disabilities.

27. The landlord who owns the building that houses a place of public accommodation and the tenant who owns or operates the place of public accommodation have a non-delegable duty to comply with the ADA.

28. The landlord and owner of a property which houses a public accommodation are liable for their tenant's failure to comply with the ADA and New York State Human Rights Law.

Property leases which contain contradictory language is superseded by the ADA.

29. Discriminatory intent is not required to establish liability under ADA and New York State Human Rights Law.

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FACTUAL BACKGROUND

31. Plaintiff cannot walk and relies on a wheelchair to ambulate.

32. Plaintiff is substantially limited in walking

33. Plaintiff is a qualified person with a disability.

34. Defendant JOBS AND MAIN REALTY CO LLC owns the commercial property which houses the public accommodation named Ann Crabtree located at 18 Jobs Lane, Southampton, NY 11968 (hereinafter 'public accommodation').

35. Defendant JOHN DOE D/B/A ANN CRABTREE owns or operates the public accommodation named Ann Crabtree located at 18 Jobs Lane, Southampton, NY 11968.

36. In or about 2017, Plaintiff attempted to enter Defendants' public accommodation. However, was unable because there did not exist an unobstructed accessible route to enter Defendants' public accommodation. There exists a change of ground-level which prohibits wheelchair access.

37. Plaintiff resides in Southampton and is frequently near Defendant's public accommodation.

38. Plaintiff is deterred from visiting Defendants' public accommodation because of the existing accessibility barriers.

39. Plaintiff has the intention to return to Defendants' public accommodation once it becomes readily accessible to and usable.

40. The removal of existing architectural barriers is readily achievable.

41. To date, Defendants have failed to remove the architectural barriers.

FIRST CAUSE OF ACTION
(Violations of the Americans with Disabilities Act)
(Injunctive Relief)

42. Defendants' retail store named Ann Crabtree located at 18 Jobs Lane, Southampton, NY 11968 is a public accommodation within the meaning of Title III of the ADA, 42 U.S.C. § 12181; 28 C.F.R. § 36.104.

43. Defendants have failed to make adequate accommodations and modifications to its public accommodation named Ann Crabtree located at 18 Jobs Lane, Southampton, NY 11968.

44. Defendants have failed to remove all architectural barriers that are structural in violation of 42 U.S.C. § 12182(b)(2)(A)(iv).

45. There exist readily achievable modifications which would make Defendants' public accommodation accessible and readily usable by Plaintiff and all others similarly situated.

46. Defendants failed to make the necessary readily achievable modifications to its public accommodation.

47. Upon information and belief, since 1992, Defendants commercial s property pace has undergone alterations to the areas which affects or could affect access to or usability of its place of public accommodation.

48. It is not impossible for Defendants to remove the architectural barriers which exist at its public accommodation.

49. Defendants failed to design and construct its public accommodation that is readily accessible to and usable by Plaintiff in violation of 42 U.S. Code § 12183(a)(1).

50. It is not structurally impracticable for Defendants' public accommodation to be accessible.

51. Defendants failed to alter its public accommodation to the maximum extent feasible in violation of 42 U.S. Code § 12183(a)(2).

52. Defendants' public accommodation is not fully accessible to, or readily useable by individuals with disabilities.

53. Features of Defendants' public accommodation inaccessible to Plaintiff, and others similarly situated, are including but not limited to:

a. A 36-inch accessible route is not provided throughout Defendants' public accommodation to the public streets and sidewalks, in violation of the 2010 Standard § 206.2.1.

b. There does not exist an accessible route to enter its public accommodation in violation of 28 CFR § 36.403(e) and 2010 Standard § 402.

c. An accessible means of egress is not provided in violation of the 2010 Standard

§ 207.1.

d. The walkway to enter Defendants' public accommodation has unlawful changes in level in violation of the 2010 Standard §§ 303.2.

e. There is insufficient maneuvering clearance perpendicular to the entrance in violation of the 2010 Standard § 404.

f. The door hardware of Defendants' entrance door is inaccessible in violation of 1991 Standards § 4.13.9 and 2010 Standards § 309. The door hardware cannot be operated with one hand and requires tight grasping, pinching, and twisting of the wrist.

g. The walkway to enter Defendants' public accommodation have unlawful changes in level in violation of the 2010 Standard §§ 303, 403.

h. Upon information and belief, the dressing room provided by Defendants have unlawful dimensions in violation of the 2010 Standard § 803.

i. Upon information and belief, the dressing room does not have turning space in violation of the 2010 Standards § 803.2.

j. Upon information and belief, the dressing rooms do not have a bench seat which is 42 inches long minimum and 20 inches deep minimum and 24 inches deep maximum in violation of the 2010 Standards § 903.4..

54. Defendants have discriminated against Plaintiff, and all others similarly situated, on the basis of disability, in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of its public accommodation in violation of 42 U.S. Code § 12182(a).

55. Defendants have subjected Plaintiff, and all others similarly situated, on the basis of disability, directly, or through contractual, licensing, or other arrangements, to a denial of opportunity to participate in or benefit from the goods, services, facilities, privileges, advantages, or accommodations of Defendants in violation of 42 U.S. Code § 12182(b)(1)(A)(i).

56. Defendants have not afforded Plaintiff, and all others similarly situated, on the basis of disability, directly, or through contractual, licensing, or other arrangements with the opportunity to participate in or benefit from a good, service, facility, privilege, advantage, or

accommodation that is equal to that afforded to other individuals in violation of 42 U.S. Code § 12182(b)(1)(A)(ii)..

57. Defendants have provided Plaintiff, and all others similarly situated, on the basis of disability, directly, or through contractual, licensing, or other arrangements with a good, service, facility, privilege, advantage, or accommodation that is different or separate from that provided to other individuals in violation of 42 U.S. Code § 12182(b)(1)(A)(ii).

58. Defendants have not afforded plaintiff, and all others similarly situated, the goods, services, facilities, privileges, advantages, and accommodations in the most integrated setting appropriate in violation of 42 U.S. Code § 12182(b)(1)(B).

59. Defendants have denied Plaintiff, and all others similarly situated, the opportunity to participate in such program or activities that is not separate or different in violation 42 U.S. Code § 12182(b)(1)(C).

60. Defendants have imposed or applied an eligibility criteria that screened out or tended to screen out Plaintiff, and all others similarly situated, from fully and equally enjoying any goods, services, facilities, privileges, advantages, or accommodations being offered in violation of 42 U.S. Code § 12182(b)(2)(A)(i).

61. Defendants have failed to make reasonable modifications in their policies, practices, or procedures, when such modifications are necessary to afford such goods, services, facilities, privileges, advantages, or accommodations to Plaintiff in violation of 42 U.S. Code § 12182(b)(2)(A)(ii).

62. Defendants should have achieved accessibility by January 26, 1992.

63. The barriers to access Defendants' public accommodation continue to exist.

64. Reasonable accommodations exists which do not impose an undue hardship on the

operation of the Defendants' program or activity.

65. Reasonable accommodations could be made which do not fundamentally alter the nature of the Defendants' program or activity.

SECOND CAUSE OF ACTION
(Violations of New York State Human Rights Law)
(Injunctive Relief and Damages on Behalf of Plaintiffs)

66. Plaintiff realleges and incorporates by this reference all of the allegations set forth in this Complaint as if fully set forth herein.

67. Defendants' retail store named Ann Crabtree located at 18 Jobs Lane, Southampton, NY 11968 is a public accommodation within the meaning of New York State Human Rights Law § 292(9).

68. Defendants have not provided Plaintiff and others similarly situated with evenhanded treatment in violation of New York State Human Rights Law § 296.

69. Defendants' direct or indirect unevenhanded treatment of Plaintiff and others similarly situated is demonstrated when he was segregated from all other customers.

70. Defendants have, because of Plaintiff's disability, directly or indirectly, refused, withheld from or denied Plaintiff any of the accommodations, advantages, facilities or privileges of their public accommodation.

71. Defendants have demonstrated that the patronage or custom thereof of Plaintiff and others similarly situated, is unwelcome, objectionable or not acceptable, desired or solicited.

72. Defendants and its agents discriminated against Plaintiff in violation of New York State Human Rights Law § 296.

73. Defendants discriminated in against Plaintiff by creating, fostering, and otherwise failing to prevent or remedy the discrimination against Plaintiff, in violation of New York State Human Rights Law § 296.

74. As a direct and proximate result of Defendants unlawful discrimination in violation of the New York State Human Rights Law, Plaintiff has suffered and continues to suffer mental anguish and emotional distress.

**THIRD CAUSE OF ACTION
(Violations of New York State Civil Rights Law)**

(Statutory Damages on Behalf of Plaintiffs)

75. Plaintiff realleges and incorporates by this reference all of the allegations set forth in this Complaint as if fully set forth herein.

76. On the basis of Plaintiff's disability, Defendants have violated his Civil Rights.

77. Consequently, Plaintiff is entitled to recover the penalty prescribed by Civil Rights Law § 40-c and 40-d, in the amount of \$500 for each and every violation.

78. Pursuant to NY Civil Rights law, Defendants are guilty of a class A misdemeanor.

79. Notice of the action has been served upon the Attorney-General as required by Civil Rights Law § 40-d.

**FOURTH CAUSE OF ACTION
(Declaratory Relief)**

80. Plaintiff realleges and incorporates by this reference all of the allegations set forth in this Complaint as if fully set forth herein.

81. Plaintiff is entitled to a declaratory judgment concerning the violations committed by Defendant specifying the rights of Plaintiff and other persons similarly situated as to the policies, practices, procedures, facilities, goods and services provided by Defendant.

INJUNCTIVE RELIEF

82. Issue a permanent injunction enjoining Defendants from disability discrimination.
83. Issue a permanent injunction ordering Defendants to alter its public accommodation to make such public accommodation readily accessible to and usable by individuals with disabilities.
84. Issue a permanent injunction requiring Defendants to make all necessary modifications to Defendants' policies or practices so that Plaintiff and other persons similarly situated will not be subject to further unlawful discrimination.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests the following relief from the Court:

- A. Certify this case as a class action;
- A. Issue a permanent injunction 1) proscribing disability discrimination, 2) requiring Defendants to alter its public accommodation making such public accommodation readily accessible to and usable to individuals with disabilities, and 3) compelling Defendants to make all necessary modifications to Defendants' policies or practices so that Plaintiff will not be subject to further discrimination in accordance with New York State Human Rights Laws and Title III of the ADA.
- B. Enter declaratory judgment, specifying Defendants ADA and New York state law violations and declaring the rights of Plaintiff and other persons similarly situated as to Defendants' policies, practices, procedures, facilities, goods and services offered to the public.
- C. Pursuant to New York State Civil Rights Law § 40-c and 40-d, hold Defendants liable for \$500 for *each* and every violation.
- D. Pursuant to New York State Civil Rights Law § 40-d, find Defendants guilty of a class

A misdemeanor for violating New York State civil rights law.

E. The court retain jurisdiction over the Defendants until the court is satisfied that the Defendants' unlawful practices, acts and omissions no longer exist and will not reoccur.

F. Award Plaintiff compensatory damages in the amount of \$10,000 for Defendants discrimination in violation of New York State Human Rights Law.

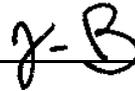
G. Find that Plaintiffs are a prevailing party in this litigation and award reasonable attorney fees, costs and expenses, and such other and further relief, at law or in equity, to which the Plaintiff and other persons similarly situated may be justly entitled.

H. For such other and further relief, at law or in equity, to which the Plaintiff and other persons similarly situated may be justly entitled.

Dated: May 8, 2018

LAW OFFICE OF JAMES E. BAHAMONDE,
P.C.

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