

SUPREME COURT RULES AGAINST AN ADA PLAINTIFF; YES, IT'S TRUE!

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Our firm has handled over 100 ADA lawsuits filed against our property owner clients, their tenants and their property managers. Everyone knows that, despite the recent statutory changes in California, the system remains highly slanted toward the plaintiffs in those cases. In fact, in 95% of the cases, the decision is made by the client early to pay the extortion and move on. However, occasionally a property owner or tenant will fight the case, and when they win, it's a wonderful precedent for ADA defendants!

In a case of first impression, the California Supreme Court recently issued a decision that serves as a strong warning to Americans with Disability Act plaintiffs suing under California's disability access laws that if you bring a lawsuit against a property owner and lose, it will cost you – to the tune of all of the property owner's attorneys' fees and costs. In fact, according to the State's highest court, the award of attorneys' fees to a property owner who successfully defends a claim based on California's disability access laws is mandatory. Unlike its federal law counterpart, the California disability access framework requires that the prevailing party in these lawsuits be awarded his or her attorneys' fees, without any regard to the facts of the case.

Plaintiffs alleging discrimination on the basis of disability in the enjoyment of public accommodations with respect to access have several tools through which they can seek relief. In addition to the Federal Americans with Disability Act, California provides protections through both the Unruh Civil Rights Act and the Disabled Persons Act. Plaintiffs often sue under all three statutory frameworks, seeking the broadest range of remedies afforded under both federal and state laws. After the California Supreme Court's recent holding in *Jankey v. Lee*, however, Plaintiffs may soon be rethinking this strategy

The California Disabled Persons Act is different from its federal counterpart. Under the federal ADA statutes, property owners who successfully defend a lawsuit based on a disability access claim are entitled to recover their attorneys' fees only where the plaintiff's claim was "frivolous,

unreasonable or groundless.” Where a property owner wins, a court then must review the merits of the plaintiff’s case, retaining the discretion to deny fees to the property owner. Many successful property owners have found that recovering their attorneys’ fees to be an arduous task, often not worth the cost of paying their attorneys to seek this recovery.

However, under the California Disabled Persons Act (Civil Code § 54 et seq.), the prevailing party in a disability access lawsuit is entitled to recover attorneys’ fees as a matter of law. The facts of *Jankey v. Lee* are not unlike most disability access lawsuits. Les Jankey, a disabled person, sued Song Koo Lee under both federal and state disability access laws, claiming that a four-inch step located at the front of Mr. Lee’s small grocery store in San Francisco prevented Jankey from accessing Lee’s store. The trial court ruled in favor of Lee, finding that while Jankey was in fact prevented from accessing the store, removal of the barrier was not readily achievable (which is a provision under the disability laws that allows an owner not to make repairs). Lee subsequently moved to recover his attorneys’ fees, which were granted by the trial court. Jankey argued that this was error, claiming that the federal disability standards preempted the state standards and required that Lee prove that Jankey’s claim was “frivolous, unreasonable or groundless” under the federal ADA framework. The California Supreme Court disagreed, finding that California’s laws were not preempted, instead existing as an alternative statutory scheme through which disabled plaintiffs could seek recovery. According to the court, if Jankey did not want to bear the risk of paying Lee’s attorneys’ fees, Jankey should not have brought a claim under the California Disabled Persons Act.

This case serves as a strong incentive to dissuade disabled persons from suing under the California’s Disabled Persons Act if they feel that they could lose. While this case will not preclude a plaintiff from electing to bring suit under the Federal standards, it’s one small step toward a more balanced world in the area of ADA lawsuits.