

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEBRASKA

ANDREW RIGGLE,)
) CASE NUMBER:
)
Plaintiff,)
)
vs.)
)
MEGA SAVER)
R.S. HOLDINGS I, LLC AND DOES 1-5,)
)
Defendants.)

Plaintiff, Andrew Riggle, through undersigned counsel, hereby files this Complaint and sues Mega Saver, Nebraska entity, for injunctive relief, attorney fees and costs pursuant to 42 U.S.C. § 12181 *et seq.*, (AMERICANS WITH DISABILITIES ACT” OR “ADA”) and alleges:

JURISDICTION AND PARTIES

1. This is an action for injunctive relief pursuant to Title III of the Americans with Disabilities 42 U.S.C. § 12181 *et seq.*(hereinafter referred to as the “ADA”). This Court is vested with original jurisdiction pursuant to 28 U.S.C. § § 1331 and 1343.
2. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b).
3. Plaintiff, Andrew Riggle, is a resident of Lancaster County, Nebraska.
4. Andrew Riggle is a qualified individual with a disability under the ADA. Andrew Riggle has a bad back, heart problems, and arthritis. Andrew Riggle is receiving Social Security Disability.
5. Andrew Riggle disability, at all times material hereto, impairs his ability to walk and open open doors.
6. Defendants, Mega Saver and R.S. Holdings I, LLC are and at all times herein mentioned were a business, association, or corporation duly authorized to exist and operate within the State

of Nebraska and the owner, lessee, or tenant of the premises located at 5101 South 24th Street Omaha, Nebraska and doing business as Mega Saver (hereinafter the "Property").

7. Plaintiff, on information and belief, alleges that defendant is the owner and/or landlord of defendant R.S. Holdings I, LLC.

8. Plaintiff is ignorant of the defendants sued as Does 1-5. Plaintiff sues them in their fictitious names as Doe defendants. Upon information and belief, Plaintiff, alleges that Does 1-5 are the owners, operators, lessees or tenants of the subject property and each of the Doe defendants at a at all times herein was acting as the agent and or representative of each other and thereby are responsible in some manner for the injuries and damages complained of herein. Plaintiff will seek leave of court to amend this complaint to name Doe defendants when the same is ascertained.

9. All events giving rise to this lawsuit occurred in the District of Nebraska.

COUNT I

VIOLATION OF TITLE III OF THE ADA

10. Plaintiff re-alleges and incorporates in this cause of action each and every allegation contained in the previous paragraphs of this Complaint.

11. The Property, a gas station, is open to the public and provides goods and services to the public.

12. Plaintiff visited the Property and attempted to utilize the facilities offered at the Property.

13. While at the property, Andrew Riggle experienced serious difficulty accessing the goods and using the services therein due to the architectural barriers discussed herein.

14. Andrew Riggle wants to use the property in the future, but can't because of the barriers to his use.

15. Defendants are in violation of 42 U.S.C. § 12181 *et seq.* and 28 CFR §36.302 *et seq.* and

are discriminating against the Plaintiff due to Defendants failure to provide and/or correct the following barriers to access which were personally observed, encountered and which hindered Plaintiff's access:

A. Summary of failures to comply with ADA Accessibility Guidelines (hereinafter referred to as the "ADAAG") for parking:

- I. Designated Disabled "VAN ACCESSIBLE" Parking- Space
(ADAAG 4.1.2(5)(b))
- II. Designated Disabled "VAN ACCESSIBLE" Parking Space- Width
(ADAAG 4.1.2(5)(b))
- III. Designated Disabled "VAN ACCESSIBLE" Parking Space- Length
(ADAAG 4.1.2(5)(b))
- IV. Designated Disabled "VAN ACCESSIBLE" Parking Space- Signage
(ADAAG 4.1.2(5)(b))

Regular Disabled Parking Space-
(ADAAG 4.6.3 (18' Length x 9' Width Min))

- VI. Regular Disabled Parking Space – Width (ADAAG 4.6.3 (9' Width Min))
- VII. Regular Disabled Parking Space- Length
(ADAAG 4.6.3 (18' Length))
- VIII. Van Accessible Aisle-
(ADAAG 4.6.3)
- IX. Van Accessible Aisle - Width
(ADAAG 4.6.3)
- X. Van Accessible Aisle - Length
(ADAAG 4.6.3)
- XI. Signage Installed -(Each Space)
(ADAAG 4.6.4)
- XII. Additional Signage- (Van Accessible) (ADAAG 4.6.4)
- XIII. Designated Disabled Parking Space Signage-
(ADAAG 4.6.4)

XIV. Parking Space Emblem – Proper Size
(ADAAG 4.6.4)

There are no identifiable van accessible or regular parking spaces located on this property. It is possible that a disabled person using a wheel chair may have to travel behind several vehicles (other than their own), to gain access to the front entry. There are no routes marked from the parking lot to the front entry.

16. Defendants either does have a policy to assist people with disabilities or refuses to enforce such a policy if it does exist.

17. Independent of his intent to return as a patron to the Property, Plaintiff additionally intends to return to the Property as an ADA tester to determine whether barriers to access stated herein have been cured.

18. Removal of the barriers to access located on the Property is readily curable, reasonably feasible and easily accomplishable without placing an undue burden on Defendants.

19. Removal of the barriers to access located on the Property would allow Plaintiff too fully utilize the goods and services located therein.

20. The Plaintiff has been obligated to retain undersigned counsel for the filing and prosecution of this action. Plaintiff is entitled to have his reasonable attorneys' fees, costs, and expenses paid by Defendants.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff demands judgment against Defendants and request the following injunctive relief:

A. That the Court declare the Property owned, leased, leased to and/or operated by Defendants is in violation of the ADA;

B. That the Court enter and Order directing Defendants to alter its facilities to make them accessible to and useable by individuals with disabilities to the full extent required by Title III of the ADA;

C. That the Court enter an Order directing Defendants to evaluate and neutralize its policies and procedures towards persons with disabilities for such reasonable time so as to allow Defendants to undertake and complete corrective procedures;

D. That the Court award reasonable attorney fees, costs (including expert fees) and other expenses of suit to the Plaintiff, and

E. That the Court awards such other and further relief as it deems just and equitable.

DATED this 8th day of November, 2015

ANDREW RIGGLE, Plaintiff

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