

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES  
SOUTHEAST DISTRICT--DOWNEY COURTHOUSE

**FILED**  
LOS ANGELES SUPERIOR COURT

FEB 02 2010  
JOHN A. CLARKE, CLERK  
BY B. ALICIA ISHIKI, DEPUTY

ALFREDO GARCIA,  
Plaintiff,  
vs.  
PETER & ELENI LIAKOPOULOS, ET AL.,  
Defendants.

) Case No.: 07C01665  
)  
) STATEMENT OF DECISION  
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The above referenced matter came on regularly for hearing as a court trial on November 6, 2009 before Judge Ana Maria Luna in Department 8 in the above entitled court. Plaintiff was present and represented by Attorney Linet Megerdomian from the Law Offices of Morse Mehrban. Defendant Peter Liakopoulos was present. Defendants, Peter and Eleni Liakopoulos and Pete's Hamburgers, Inc. were represented by Attorney Gail Cooper-Folb. Plaintiff presented certain written documents as evidence namely receipts reflecting plaintiff's patronage of the subject restaurant on July 27, 2007. A second, separate receipt reflecting plaintiff's patronage of the restaurant on July 31, 2007 was admitted without objection by defendants for impeachment purposes as will be discussed below. The court sustained defendants' objections to the admission of receipts reflecting patronage of the restaurant on other dates; and the court disallowed the admission of photographs taken of the restroom located at the subject restaurant on foundational grounds. Plaintiff only testified. Defendants presented testimony from Peter and Tom Liakopoulos as well as from William Campana. Defendants also submitted documentary evidence consisting of (i) list of cases reflecting cases filed by plaintiff in 2007 and 2008 in the Los Angeles

1 Superior Court (approximately 150); (ii) photographs of a sign posted in the subject  
2 restaurant; (iii) police logs of calls to the defendants' restaurant on June 21 and July 4,  
3 2007; and (iii) transcripts of plaintiff's deposition given Garcia v. El Pollo Loco  
4 (07C02150), Garcia v. Lau (07C02992) and Garcia v. Don Chava, Inc. At defendants'  
5 request, the court took judicial notice of plaintiff's 2006 felony conviction for burglary  
6 (case number VA096472). The matter was taken under submission after argument.

7 The plaintiff's request for a Statement of Decision asked the court to give a  
8 factual and legal basis on three controverted issues. In the course of taking the  
9 testimony from all the witnesses, the first two issues do not appear to be controverted  
10 and so the court makes the following findings:

- 11 1) Plaintiff was disabled in July, 2007 and, in fact, was wheelchair  
12 bound. Though this court has tried several similar cases for  
13 plaintiff, it was not until cross-examination of plaintiff in this action  
14 that the court learned that plaintiff became a paraplegic in 1997  
15 when he fell out of a tree while intoxicated.
- 16 2) The property located at 13235 Paramount Boulevard, South Gate  
17 known as Pete's Hamburgers is owned and operated by  
18 defendants..

19 The third issue is in dispute, to wit: whether plaintiff encountered at least one  
20 architectural barrier at the subject location on July 27, 2007 that could have been easily  
21 removed or corrected without much difficulty or expense. Plaintiff testified that on this  
22 occasion, he had reason to use the restroom facilities including the toilet. Plaintiff  
23 stated that he could not use the toilet because there was only one grab bar. Plaintiff  
24 described that he went to Rancho Los Amigos Hospital which is located within one mile  
25 of the restaurant to use the bathroom facilities. Plaintiff stated he went back to the

1 restaurant several times after that date and the most recent visit was on August 27,  
2 2009. He stated that based on the cost of installation of grab bars in his own residence,  
3 the cost to remove the barrier was about \$350.00. Plaintiff stated that he did not notice  
4 any new construction or remodeling being done in the restroom. He also said he did not  
5 see any sign posted in the restaurant which reflected that assistance was available to  
6 the disabled.

7 Plaintiff's testimony on cross-examination was most revealing and, in the court's  
8 opinion, most damaging. Plaintiff admitted that the need to sit on a toilet is for the  
9 purpose of defecating—he does not need to use a toilet to urinate. Under questioning  
10 from defendants' attorney, plaintiff described that in order to defecate he must digitally  
11 manipulate himself to bring on the bowel movement. His testimony was equivocal on  
12 the number of times each day he performs this act. He first stated on cross-  
13 examination that he only defecates once a day but when confronted with deposition  
14 testimony in the El Pollo Loco case, plaintiff stated that he had the need to defecate  
15 more than once a day between the time period January and August, 2007. Most telling  
16 in the cross-examination of plaintiff was the fact that on the very same dates that  
17 plaintiff visited defendants' restaurant and within hours of these visits, plaintiff also  
18 visited an El Pollo Loco restaurant which gave rise to alleged ADA violations in case  
19 number 07C02150. Plaintiff could not explain why he felt the need to defecate at  
20 defendants' restaurant on July 27, 2007 around 1:20 p.m. as well as the El Pollo Loco  
21 restaurant at 9:53 a.m. Further, plaintiff could not explain why he needed to defecate at  
22 defendants' restaurant on July 31, 2007 at 2:47 pm. and again at the El Pollo Loco  
23 restaurant at 6:47 p.m. especially when plaintiff testified that he had gone to Rancho  
24 Los Amigos Hospital to use the restrooms there to defecate between 3:30 and 4:30 p.m.

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1 While plaintiff tried to say he could not control his bowel movements, his prior deposition  
2 testimony in other cases clearly demonstrated that he can, in fact, control this process.

3 Plaintiff also gave inconsistent testimony as to the when he had grab bars placed  
4 in the restroom at his own residence. At first he said he had grab bars installed in his  
5 house in June, 2007 which would have predated the dates of the alleged violations in  
6 this case. However, when confronted with his prior deposition testimony, plaintiff  
7 admitted that the grab bars were installed in the bathroom in his home in March, 2008.  
8 He could not satisfactorily explain to the court how he could access the toilet in his  
9 home which did not have grab bars but could not access the toilet in the bathroom at  
10 defendants' restaurant which had one grab bar. Finally, the most telling testimony from  
11 plaintiff (again elicited on cross-examination) was that he files ADA lawsuits such as the  
12 one herein to support himself and for no other purpose. Plaintiff said he goes out to  
13 places and is "lucky" that he finds a barrier. Plaintiff indicated that he receives \$1,000  
14 from any settlement or judgment collected by his attorney.

15 Defendants' witness, William Campana, testified that he is presently and in 2007  
16 was a building official from the City of South Gate. He stated that Tom Liakopolous who  
17 works at the restaurant complained about the repeated vandalizing of the restroom  
18 located on the premises. He described the restroom as being unisex and located to the  
19 back of the restaurant itself with access from the parking lot. He inspected the  
20 bathroom in July 2007 and noted no violations or non-compliance issues.

21 Thomas Liakopolous testified that he was asked by his brother, Peter, to do  
22 construction in the restroom of the restaurant to repair the severe damage caused by  
23 unknown vandals. He stated that it took him about three weeks to locate the materials  
24 and do the work; and that the work was done in the month of July, 2007. He indicated  
25 that although signs would be posted warning that the bathroom was being remodeled,

1 persons would get access to the key and go into the bathroom. He stated the long, 52"  
2 grab bar was installed but that the shorter, 36" bar was not installed immediately  
3 because new tile had to be installed behind the toilet; the tile had to set before the shorter  
4 bar could be mounted.

5 Peter Liakopolous essentially substantiated the testimony of his brother and Mr.  
6 Campana. He stated he has owned the restaurant/burger stand for twelve years and  
7 that a sign offering assistance to anyone (Defendants' Exhibit B) had been on the wall  
8 since 1998. He indicated he had made two reports to the South Gate Police  
9 Department regarding acts of vandalism to his property which had occurred on June 21  
10 and July 4, 2007 (Defendants' Exhibits F and G). It was the damage from this criminal  
11 behavior which necessitated the repair work in the bathroom.

12 Although this court has ruled in favor of plaintiff in other actions brought by him  
13 for alleged ADA violations, the court believes plaintiff has completely failed to carry his  
14 burden of proof under Civil Code Sections 54 and 54.1. Given the totality of the evidence  
15 and the lack of credibility on the part of the plaintiff in the giving of his testimony in this  
16 case, the court cannot find that plaintiff utilized the bathroom at defendants' restaurant  
17 for the purpose of defecating. Rather, the evidence shows that plaintiff's sole motivation  
18 for going into the restroom was to get "lucky" by finding an alleged ADA violation.  
19 Further, even if the court was persuaded that this was not plaintiff's motivation in this  
20 case, plaintiff did not articulate how it was that he could not use a toilet with one grab  
21 bar available at a time when he was using his toilet at home which had no grab bars.

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1 There was simply no architectural barrier to plaintiff's use of the toilet at defendants'  
2 restaurant on July 27, 2007.

3 Judgment is ordered in favor of defendant with costs and fees pursuant to a  
4 memorandum of the same; plaintiff is to take nothing by way of his complaint. All  
5 exhibits are ordered return with the exception of the three deposition transcripts  
6 furnished by defendants and which were read in their entirety by the court before this  
7 decision was rendered.

8 Dated: February 2, 2010

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11 ANA MARIA LUNA  
12 Judge  
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