California Supreme Court Rules Intentional Discrimination Not Required for Unruh Civil Rights Act Claims Involving ADA Violations

In Munson v. Del Taco, Inc., No. S162818, __ Cal. 4th __ (2009), issued June 11, 2009, the Supreme Court held that a plaintiff who seeks Civil Code § 52 damages for a violation of the Americans with Disabilities Act of 1999 under the Unruh Civil Rights Act is not required to prove intentional discrimination.

On June 11, 2009, the California Supreme Court, in Munson v. Del Taco, Inc., responded in the negative to the Ninth Circuit Court of Appeal’s certified question whether a plaintiff seeking damages under the Unruh Civil Rights Act, Civil Code § 51 (the “Unruh Act”), founded on alleged violations of the Americans with Disabilities Act of 1999, 42 U.S.C. §§ 12101, et seq. (the “ADA”), is required to prove intentional discrimination. In holding that this is not required, the Court sided with the Ninth Circuit Court of Appeals’ interpretation of the Unruh Act in Lentini v. California Center for the Arts, 370 F.3d 837 (9th Cir. 2004), and overruled the California Fourth District Court of Appeal’s interpretation offered in Gunther v. Lin, 144 Cal. App. 4th 223 (2006). It further confirmed that Unruh Act claims alleging violations of the ADA are an exception to the rule in Harris v. Capital Growth Investors XIV, 52 Cal. 3d 1142 (1991), that intentional discrimination is required to establish an Unruh Act violation. The Munson Court makes clear that while a plaintiff alleging a violation of the Unruh Act is required to prove that the discrimination was intentional, the same does not hold true for a plaintiff alleging a violation of the ADA under the Unruh Act.

Plaintiff Kenneth Munson has a physical disability that requires him to use a wheelchair. Munson complained that he visited the at-issue Del Taco restaurant, which is owned and operated by Del Taco, Inc. (“Del Taco”), and encountered architectural barriers that denied him access to the parking area and restrooms. Munson alleged that these barriers to access violated the ADA and the Unruh Act, and sought injunctive relief and damages under the Unruh Act’s remedy provision, Civil Code § 52.

Section 51(b) states that: “All persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry, national origin, disability, medical condition, marital status, or sexual orientation are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.”
After the trial judge held that an architectural barrier indeed existed and a readily achievable accommodation was possible, the parties agreed to $12,000 in damages, and Del Taco appealed the judgment against it. On appeal, the Ninth Circuit Court of Appeals turned to the California Supreme Court to answer the unresolved question in California: Whether a plaintiff who seeks damages under Section 52 for a violation of the Unruh Act is required to prove “intentional discrimination.”

**The Supreme Court’s Earlier Harris Decision Dictates that a Plaintiff Is Required to Plead and Prove Intentional Discrimination to Establish a Cause of Action Under the Unruh Act**

In *Harris*, plaintiffs Tamela Harris and Muriel Jordan filed a class action against several owners and operators of apartment buildings. The class action challenged the minimum income policy, which Harris and Jordan characterized as arbitrary economic discrimination and sex discrimination based on its alleged adverse impact on women. Because plaintiffs did not meet defendants’ minimum income requirement, they were denied the opportunity to rent apartments. After the trial court dismissed their claims, plaintiffs appealed. The Court of Appeal agreed with the trial judge that the disparate impact test is inapplicable in Unruh Act cases, including those alleging sex discrimination.

The California Supreme Court considered, in part, whether to extend application of the disparate impact test, which does not require a showing of intentional discrimination, to Unruh Act claims. It concluded that analogous federal precedent applying the disparate impact test did not justify this approach; the Unruh Act was passed in 1959 and its predecessor in 1897, long before the disparate impact theory was recognized by federal courts. Instead, it found that the plain language of the Act emphasizes *intentional* discrimination by use of the terms “aiding,” “inciting,” and “offense” to signify willful, affirmative misconduct. The Court also interpreted the treble damages award provision as the Legislature’s intent to punish intentional, “morally offensive” conduct.

Ultimately, the *Harris* Court held that “a plaintiff seeking to establish a case under the Unruh Act must plead and prove intentional discrimination in public accommodations in violation of the terms of the Act.”

**Amendment of Section 51 to Add Subdivision (f) to Provide Unruh Act Claims for ADA Violations**

The year after the *Harris* decision (though not, as far as the history indicates, in response to that decision), the Legislature amended Section 51 to, among other things, add Subdivision (f). Section 51(f) specifies that “[a] violation of the right of any individual under the [ADA] shall also constitute a violation of this section.” This was but one part of a broad enactment that sought to conform aspects of California law relating to disability discrimination (e.g., employment, government services, transportation, and communications, as well as public accommodations) to the recently enacted ADA. The general intent of the legislation was to “strengthen California law in areas where it is weaker than the [ADA] and to retain California law when it provides more protection for individuals with disabilities than the [ADA].”

**Maintaining the Viability of the Harris Decision, the Munson Court Carves Section 51(f) Claims Out as an Exception to the Unruh Act Intentional Discrimination Requirement**

The *Munson* Court held that Section 51(f) does not distinguish between ADA violations involving intentional discrimination and those resulting from “the discriminatory effects of architectural, transportation, and communication barriers” and the failure to make modifications to existing facilities.
In reaching this conclusion, the *Munson* Court found that “the most natural reading of the statutory language — that section 52 provides remedies for all categories of discrimination prohibited under section 51 — is also the reading that best accords with the law’s history.” By adding subdivision (f) to Section 51, it found the Legislature included ADA violations (whether involving intentional discrimination or not) in the “discrimination” prohibited by Section 51 and remediable under Section 52.

In reaching this conclusion, the *Munson* Court looked to the *Gunther* and *Lentini* decisions. The Court rejected the *Gunther* interpretation that a violation of the ADA is also a violation of Section 51 but that Section 52 only authorizes a private action for damages for intentional discrimination violations. Rather, the Court agreed with the *Lentini* approach that “[b]ecause the Unruh Act has adopted the full expanse of the ADA, it must follow, that the same standards for liability apply under both Acts.” The *Munson* Court agreed that the “effect was to create an exception to *Harris*’s holding that ‘a plaintiff seeking to establish a case under the Unruh Act must plead and prove intentional discrimination.’”

The *Munson* Court found the legislative history for the amendment adding Section 51(f) to be compelling. By incorporating the ADA into the Unruh Act, the Legislature affords a remedy to persons injured by ADA violations, a remedy reserved for government enforcement actions under the ADA.

The *Munson* Court was not persuaded that interpretation of Section 51(f) to permit a damages remedy for ADA accessibility violations that do not involve intentional discrimination “would spur abuses in an already troubled legal arena.” Although it shared these concerns to some degree, it nonetheless found that this did “not supply a justification for our inserting additional elements of proof into the cause of action defined by the statute.” Any alterations would be left to the Legislature.

**The *Munson* Court Spoke to Changes Recently Implemented by the Legislature Via SB 1608**

The *Munson* Court spoke briefly to the recent Legislative changes implemented by Senate Bill 1608. It recognized that SB 1608 permits damages “only if an accessibility violation actually denied the plaintiff full and equal access, that is, only if ‘the plaintiff personally encountered the violation on a particular occasion, or the plaintiff was deterred from accessing a place of public accommodation on a particular occasion.’” (Emphasis added.) It recognized that the “2008 Legislature was informed — and may be presumed to have been aware — that damages under the Unruh Civil Rights Act might be awarded for denial of ADA mandated access without proof of intentional discrimination.” However, “the reform approach the Legislature ultimately chose did not include requiring proof of intent to discriminate.” Instead, it “impose[d] limitations on damages and attorney fees, coupled with a scheme of accessibility inspections, stays of litigation, and mandatory evaluation conferences.”

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2 For additional information on SB 1608, please see our Client Alert entitled “New California Law Fosters Compliance with Existing Building Accessibility Standards” at http://www.pillsburylaw.com/index.cfm?pageid=34&itemid=38969
Pillsbury can enhance your understanding of the implications of the *Munson* decision, and advise you about compliance with the Unruh Act and ADA. It can also advise you of ways in which you can manage and minimize the risk of construction-related accessibility litigation so that you can make the best decision for your business about construction-related accessibility issues.

For further information, please contact:

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