

United States District Court, D. Colorado.
COLORADO CROSS DISABILITY COALITION and
Kevin Williams, Plaintiffs,

v.

HERMANSON FAMILY LIMITED PARTNERSHIP I,
Defendants.

COLORADO CROSS DISABILITY COALITION and
Kevin Williams, for himself and all others similarly
situated, Plaintiffs,

v.

HERMANSON FAMILY LIMITED PARTNERSHIP I,
Defendants.

COLORADO CROSS DISABILITY COALITION and
Kevin Williams, for himself and all others similarly
situated, Plaintiffs,

v.

NINE WEST GROUP, INC. and Hermanson Family
Limited Partnership I, Defendants.

COLORADO CROSS DISABILITY COALITION and
Kevin Williams, Plaintiffs,

v.

HERMANSON FAMILY LIMITED PARTNERSHIP I,
Defendants.

**Nos. Civ.A. 96-WY-2490-A, Civ.A. 96-WY-2491-A,
Civ.A. 96-WY-2492-A, Civ.A. 96-WY-2493-A.**

Aug. 12, 1997.

ORDER DENYING PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT AS TO THE SUSSEX
BUILDING

JOHNSON, J.

*1 The plaintiff's Motion for Summary Judgment as to the Sussex Building, and the response thereto filed by defendant Hermanson Limited Partnership I (Hermanson), came before the Court for consideration. The Court, having considered the motion, the defendant's response thereto, the parties' submissions, the applicable law, and being fully advised in the premises, FINDS and ORDERS as follows:

Contentions of the Parties

Plaintiff contends that he is entitled to summary judgment in his favor and an order requiring the defendant to

provide a portable ramp at the front entrance to the Sussex Building, located at 1430 Larimer Street in Denver, Colorado, and requiring defendant to pay plaintiff the sum of \$50.

The Sussex building is an office building that has a single 7.5" step at its front entrance, which is a barrier to access by people who use wheelchairs for mobility. Plaintiff contends that under the ADA, defendant Hermanson is required to remove this barrier by purchasing and making available a portable ramp providing wheelchair access because it is readily achievable to do so. Plaintiff states that a portable ramp would cost no more than \$880; a buzzer system to summon personnel to deploy the ramp would cost between \$100-\$200. Plaintiff suggests a permanent ramp should be installed prior to 1998, but for purposes of the instant motion has assumed the defendant's plan for permanent access is acceptable.

Defendant opposes the plaintiff's motion for summary judgment as to the Sussex Building. Defendant argues that portable ramps are disfavored. Defendant suggests factual issues exist concerning safety, convenience and cost of proposed portable ramps. Defendant argues that in asking for a portable ramp, plaintiff has conceded that a permanent ramp providing access to the building is not readily achievable. Hermanson contends that its ADA plan does provide for installation of a permanent ramp at the Sussex Building in the next year. Upon expiration of the Squash Blossom lease in October of 1998, Hermanson represents that it intends to convert the present entrance to the building into retail space and build a new entrance to the building on the north side which will be fully wheelchair accessible and will also provide access to the second and third floors of the building by elevator. The intention is that this project be completed before any new tenant moves into the Squash Blossom space.

Defendant argues its plan is important and that the ADA provides that owners of properties, especially those who own multi-building properties, have discretion to prioritize the manner and order in which readily achievable access is provided to their properties. Creation and implementation of an ADA plan is to be encouraged and provides evidence of a business's good faith ADA compliance efforts.

Discussion

The plaintiff's Motion for Summary Judgment as to the Sussex Building will be denied. After reviewing the parties' submissions, it is clear that genuine issues of material fact that preclude entry of summary judgment in favor of either party. The Court is not inclined, at this juncture in the proceedings, to find, as a matter of law, that provision of a portable ramp, as has been suggested by plaintiff, is the most feasible solution for the architectural barrier problems that exist with respect to the Sussex Building. While undoubtedly a portable ramp could provide access to the building, it is also equally clear that defendant's longer-term plans will also provide effective and safe access to the building for those required to use wheelchairs for mobility.

*2 The Court believes that any decision about what is readily achievable, as contemplated by the ADA, is an issue best decided by the finder of fact after trial. The existing record does not permit the Court to conclude that plaintiff is entitled to summary judgment on either count of his amended complaint.

Accordingly, and for the foregoing reasons, it is therefore

ORDERED that plaintiff's Motion for Summary Judgment as to the Sussex Building shall be, and is, DENIED.