

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Senior District Judge Richard P. Matsch

Civil Action No. 14-cv-02134-RPM

ARCELIA ROJO,

Plaintiff,

v.

ASPEN SKIING COMPANY, LLC,

Defendant.

RULING ON FAILURE TO ACCOMMODATE

On December 29, 2015, the defendant filed a Motion to Dismiss Plaintiff's Failure to Accommodate Claim Pursuant to Fed. R. Civ. P. 12(b)(1) [Doc. 36]. Exhibit A attached is the Charge of Discrimination by the plaintiff. It does not include any allegation that Ms. Rojo is disabled with a need for or a request for accommodation for her disability. The most pertinent language is this:

- (e) I believe that the company fired me because it regarded me as disabled despite the fact that I was performing all of my job assignments without any reasonable accommodations.

That was the Court's view of the plaintiff's case at the hearing on the defendant's motion for summary judgment. In addition to the defendant's jurisdictional challenge there is no evidentiary basis shown that would support a finding of a violation of the ADA on that "prong." In approaching trial, counsel are advised that the Court intends to instruct the jury using the "regarded as" prong in accordance with 29 C.F.R. § 1630.2(g)(3).

SO ORDERED.

Dated: January 7th, 2016

BY THE COURT:

s/Richard P. Matsch

Richard P. Matsch, Senior District Judge