

UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF FLORIDA
FORT MEYERS DIVISION

Case No. 2:20-cv-00368-FtM-60MRM

DAVID POSCHMANN,

Plaintiff,

v.

CHOKOLOSKEE ISLAND PARK,
LLC,

Defendant.

CONSENT DECREE

1. This Consent Decree is entered into as of the Effective Date, as defined below in Paragraph 10, by and between: David Poschmann (“Plaintiff”) and Chokoloskee Island Park, LLC (“Defendant”) (collectively, the “Parties”).

RECITALS

2. Title III of the Americans with Disabilities Act of 1990 (“ADA”), 42 U.S.C. §§ 12181-12189 (the “ADA”), and its implementing regulation, 28 C.F.R. pt. 36, prohibit discrimination on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations by any private entity that owns, leases (or leases to), or operates any place of public accommodation. 42 U.S.C. § 12182(a); 28 C.F.R. § 36.201(a).

3. On or about May 21, 2020, Plaintiff filed this action in the United States District Court for the Middle District of Florida captioned *David Poschmann v. Chokoloskee Island Park, LLC* (the “Action”). Plaintiff alleges that Defendant’s online reservation system (“ORS”) is not

fully accessible to individuals with disabilities in violation of Title III of the Americans with Disabilities Act of 1990 (“ADA”).

4. Defendant expressly denies that the ORS or any associated mobile applications violates any federal, state, or local law, including the ADA, and it denies any other wrongdoing or liability whatsoever. By entry into this Consent Decree, Defendant does not admit any wrongdoing.

5. This Consent Decree resolves, settles, and compromises all issues between the Parties in the Action.

6. This Consent Decree is entered into by Plaintiff, individually, but is intended to inure to the benefit of individuals with qualified disabilities who could form part of a class or collective action in the Complaint.

JURISDICTION

7. Plaintiff alleges that Defendant is a private entity that owns and/or operates a place of public accommodation and that it operates an ORS and/or an associated mobile application that is a good or serve of a place of public accommodation, as those terms are understood under the ADA. Plaintiff alleges that the ORS does not comply with the terms of the ADA and that Plaintiff, who is disabled under the ADA and requires a wheelchair to ambulate, cannot enjoy full and equal access to the ORS as a result of his disability. Defendant disputes Plaintiff’s allegations and expressly denies that the ORS or any associated mobile application fails to comply with the ADA or any other statute, regulation, or rule related to the accessibility of public accommodations to individuals with disabilities, or that Defendant has violated the ADA or any other accessibility or public accommodations laws by virtue of its operation of the ORS or otherwise.

8. This Court has jurisdiction over the Action under 28 U.S.C. § 1331 and 42 U.S.C. § 12188. The Parties agree that for purposes of the Action and this Consent Decree, venue is appropriate.

AGREED RESOLUTION

9. Plaintiff and Defendant agree that it is in the Parties' best interests to resolve the Action on mutually agreeable terms without further litigation. Accordingly, the Parties agree to the entry of this Consent Decree without trial or further adjudication of any issues of fact or law raised in Plaintiff's Complaint. In resolution of this Action, the Parties hereby AGREE to the following:

DEFINITIONS

10. Effective Date means the date on which this Consent Decree is entered on the Court's Docket Sheet following approval by the Court.

11. Reasonable Efforts means, with respect to a given goal or obligation, the efforts that a reasonable person or entity in Defendant's position would use to achieve that goal or obligation. Any disagreement by the Parties as to whether Defendant has used Reasonable Efforts as provided for under this Consent Decree shall be subject to the dispute resolution procedures set forth in paragraphs 15 through 18 of this Consent Decree. Reasonable Efforts shall be interpreted so as to not require Defendant to undertake efforts regarding the cost, difficulty or impact on the ORS which could constitute an undue burden, as defined in Title III of the ADA but as applied solely to the ORS - as though the ORS was a standalone business entity, or which efforts could result in a fundamental alteration in the manner in which Defendant operates the ORS, or the primary functions related thereto, or which could result in a loss of revenue or traffic for its ORS related operations. Nothing contained in this paragraph

shall prevent Defendant from ceasing altogether use of the ORS and/or any associated mobile application should Defendant determine that Reasonable Efforts will not achieve the goal or obligation, or that Reasonable Efforts to achieve the goal or obligation would not serve the goals or obligations of the business.

TERM

12. The term of this Consent Decree shall commence as of the Effective Date and remain in effect for 36 months from the Effective Date.

GENERAL NONDISCRIMINATION REQUIREMENTS

13. Pursuant to the terms of this Consent Decree, Defendant:

a. Shall not deny persons with a disability (as defined under the ADA), including the Plaintiff, the opportunity to participate in and benefit from the goods, services, privileges, advantages, and accommodations through the OSR as set forth herein. 42 U.S.C. §12182(b)(1)(A)(i); 28 C.F.R. § 36.202(a);

b. Shall use Reasonable Efforts to provide persons with a disability (as defined under the ADA), including Plaintiff, an equal opportunity to participate in or benefit from the goods, services, privileges, advantages, and accommodations provided through the OSR or any associated mobile applications as set forth herein. 42 U.S.C. § 12182(b)(2)(A)(ii); 28 C.F.R. § 36.202(b); and

COMPLIANCE WITH TITLE III OF THE ADA

14. Conformance Timeline: Defendant shall ensure full and equal enjoyment of the goods, services, privileges, advantages, and accommodations provided by and through the ORS or any associated mobile applications, according to the following timeline and requirements provided that the following dates will be extended in the instance that the Department of Justice

issues regulations for online reservation systems under Title III of the ADA while this Consent Decree is in effect and which contain compliance dates and/or deadlines further in the future than the dates set forth herein. Within twelve months of the Effective Date, Defendant shall:

a. Modify its policies, practices, or procedures to ensure that individuals with disabilities can make reservations for accessible guest rooms during the same hours and in the same manner as individuals who do not need accessible rooms;

b. Identify and describe accessible features in the hotels and guest rooms offered through its reservations service in enough detail to reasonably permit individuals with disabilities to assess independently whether a given hotel or guest room meets his or her accessibility needs;

c. Ensure that accessible guest rooms are held for use by individuals with disabilities until all other guest rooms of that type have been rented and the accessible room requested is the only remaining room of that type;

d. Reserve, upon request, accessible guest rooms or specific types of guest rooms and ensure that the guest rooms requested are blocked and removed from all reservations systems; and

e. Guarantee that the specific accessible guest room reserved through its reservations service is held for the reserving customer, regardless of whether a specific room is held in response to reservations made by others.

f. If Defendant is unable to achieve substantial conformance with the applicable guidelines set forth in 28 C.F.R. § 36.302(e) despite having used Reasonable Efforts to achieve substantial conformance, it shall be deemed to have satisfied its obligations under this Consent Decree as set forth herein regarding remediation of the ORS.

g. Nothing contained in this sections shall prohibit Defendant from ceasing to utilize the ORS or any associated mobile applications.

PROCEDURES IN THE EVENT OF DISPUTES

15. The procedures set forth in Paragraphs 16 through 18 must be exhausted in the event that: (i) Plaintiff alleges that Defendant has failed to meet its obligations pursuant to this Consent Decree, or (ii) Defendant concludes that it cannot substantially comply with any criteria of the applicable standard as set forth hereinabove. Defendant shall not have breached this Consent Decree in connection with the foregoing until the following procedures have been exhausted.

16. If any of the Parties claim this Consent Decree or any portion of it has been violated (“breach”), the party alleging the breach shall give written notice (including reasonable particulars) of such violation to the party alleged to be in breach. The alleged breaching party must respond to such written notice of breach no later than 30 calendar days thereafter (the “Cure Period”), unless the Parties agree to extend the time for response. If the alleged breach is of a nature that it cannot be cured during the Cure Period, the Parties shall mutually extend the Cure Period to reflect the reasonable time period in which the alleged breach can be cured. If the Parties are unable to reach a mutually acceptable resolution during the Cure Period, or any extension thereof, the party alleging a breach of the Consent Decree may seek enforcement of compliance with this Consent Decree from the Court. The Court shall, in its discretion, award reasonable attorneys’ fees and costs to the prevailing party in any such enforcement action.

17. Defendant shall not be in breach of this Consent Decree unless: (a) an independent accessibility consultant determines that a particular item(s) cannot be accomplished by a person with a disability, and (b) Defendant fails to remedy the issue using Reasonable Efforts within a

reasonable period of time of not less than 90 days from receipt of the accessibility consultant's opinion. If the accessibility consultant believes that a reasonable time using Reasonable Efforts to remedy the items found not to be usable is longer than 90 days, then the Parties may agree on a longer time period without leave of Court so long as the extension is documented in writing and executed by the Parties to this Consent Decree or their respective counsel. If the accessibility consultant finds that a particular item found not to be usable cannot be remedied using Reasonable Efforts, Defendant shall not be obligated to remedy that item.

18. Any notice or communication required or permitted to be given to the Parties hereunder shall be given in writing by next day delivery service and addressed as follows:

For PLAINTIFF:

Drew M. Levitt, Esq.
LAW OFFICE OF DREW M. LEVITT
4700 N.W. Boca Raton Blvd., Suite 302
Boca Raton, Florida 33431
Tel: 561.994.6922

For DEFENDANT:

Jonathan A. Beckerman, Esq.
LEWIS BRISBOIS BISGAARD & SMITH
LLP
110 SE 6th Street, Suite 2600
Fort Lauderdale, Florida 33301
T: 954.678.4062

ENFORCEMENT AND OTHER PROVISIONS

19. The interpretation and enforcement of this Consent Decree shall be governed by the laws of the State of Florida.

20. If any provision of this Consent Decree is determined to be invalid, unenforceable, or otherwise contrary to applicable law, such provision shall be deemed restated to reflect as nearly as possible and to the fullest extent permitted by applicable law its original intent and

shall not, in any event, affect any other provisions, all of which shall remain valid and enforceable to the fullest extent permitted by applicable law.

PERSONS BOUND AND INTENDED THIRD-PARTY BENEFICIARIES

21. The Parties to this Consent Decree expressly intend and agree that this Consent Decree shall inure to the benefit of all persons with disabilities as defined by the ADA, which disabled persons shall constitute third-party beneficiaries to this Consent Decree.

22. The signatories represent that they have the authority to bind the respective Parties, Plaintiff and Defendant, to this Consent Decree.

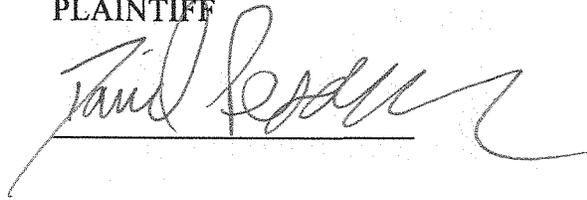
CONSENT DECREE HAS BEEN READ

23. This Consent Decree has been carefully read by each of the Parties, and its contents are known and understood by each of the Parties. This Consent Decree is signed freely by each party executing it. The Parties each had an opportunity to consult with their counsel prior to executing the Consent Decree.

[SIGNATURE PAGE FOLLOWS]

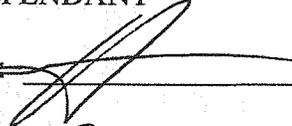
PLAINTIFF

Dated: 7-22-20



DEFENDANT

Dated: 7/14/2020

By: 
RAYMOND C PERRUS

Title: MADDER

APPROVED AS TO FORM AND CONTENT:

PLAINTIFF'S LAWYERS

Dated: July 23, 2020

By: /s/ Drew M. Levitt
Drew M. Levitt, Esq.
Florida Bar No. 782246

DEFENDANT'S LAWYERS

Dated: July 22, 2020

By: /s/ Jonathan A. Beckerman
Lewis Brisbois Bisgaard & Smith LLP
Jonathan A. Beckerman, Esq.
Florida Bar No. 568252