

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

---

LESALDO SHALTO,

Plaintiff,

-against-

RANGDHONU CAFE and WASHINGTON COURT  
LLC,

Defendants.

---

Case No. 11 CIV 8794 (JGK)  
ECF Case

**COMPLAINT**

Plaintiff, Lesaldo Shalto (hereinafter “Plaintiff”), through his undersigned counsel, hereby files this Complaint and sues defendants, RANGDHONU CAFE (hereinafter the “Cafe”) and defendant, WASHINGTON COURT LLC, (the “LLC”) (the Cafe and the LLC being hereinafter collectively known as the “Defendants”), for damages, injunctive relief, attorney’s fees and costs (including, but not limited to, court costs and expert fees) pursuant to 42 U.S.C. 12181, et. seq., of the Americans with Disabilities Act (“ADA”) and the New York State Human Rights Law (“NYSHRL”) and alleges:

**JURISDICTION AND PARTIES**

1. This is an action for damages, declaratory and injunctive relief pursuant to Title III of the Americans With Disabilities Act, 42 U.S.C. §12181, et. seq., (hereinafter referred to as the “ADA”). This Court is vested with original jurisdiction under 28 U.S.C. §1331 and §1343.

2. Venue is proper in this Court, pursuant to 28 U.S.C. §1391(B) in that all events giving rise to this lawsuit occurred in New York.

3. The remedies provided by the New York State Human Rights Law (hereinafter referred to as the “NYSHRL”) are not exclusive and state administrative remedies need not be exhausted in connection with suits brought under the Federal Civil Rights Act.

4. Upon information and belief, the defendants are authorized to conduct, and are conducting business within the State of New York. Upon information and belief, the LLC is the owner of the commercial real property located at 29-14 36<sup>th</sup> Avenue, Long Island City, New York (hereinafter referred to as the “Offending Property”) and the Cafe is the lessee and/or operator of a retail food establishment located in the Offending Property (hereinafter the “Subject Facility”).

5. At the time of Plaintiff’s visit to the Subject Facility, prior to instituting the instant action, Plaintiff was a resident of the State of New York, suffered from what constitutes a “qualified disability” under the Americans With Disabilities Act of 1990, as he is paralyzed from the waste down and is confined to a wheelchair for mobility. The Plaintiff personally visited the Subject Facility, but was denied full and equal access to, and full and equal enjoyment of, the facilities at the Subject Facility.

6. All events giving rise to this lawsuit occurred in the City of New York, State of New York. Venue is proper in this Court as the Subject Facility and the Offending Property are located in the State of New York and the plaintiff resides in New York County.

**COUNT I – VIOLATIONS OF THE AMERICANS WITH DISABILITIES ACT**

7. On or about July 26, 1990, Congress enacted the Americans With Disabilities Act (“ADA”), 42 U.S.C. §12101 et. seq. Commercial enterprises were provided one and a half years from enactment of the statute to implement its requirements. The effective date of the Title 111 of the ADA was January 26, 1992. 42 U.S.C. §12181; 20 C.F.R. §36.508(a).

8. Congress found, among other things, that:

- (i) some 43,000,000 Americans have one or more physical or mental disabilities, and this number shall increase as the population continues to grow older;
- (ii) historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against

disabled individuals continue to be a pervasive social problem, requiring serious attention;

(iii) discrimination against disabled individuals persists in such critical areas as employment, housing, public accommodations, transportation, communication, recreation, institutionalization, health services, voting and access to public services and public facilities;

(iv) individuals with disabilities continually suffer forms of discrimination, including outright intentional exclusion, the discriminatory effects of architectural, transportation, and communication barriers, failure to make modifications to existing facilities and practices. Exclusionary qualification standards and criteria, segregation, and regulation to lesser services, programs, benefits, or other opportunities; and,

(v) the continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an equal basis and to pursue those opportunities for which our country is justifiably famous, and costs the United States billions of dollars in unnecessary expenses resulting from dependency and non-productivity.

42 U.S.C. §12101 (a)(1)-(3), (5) and (8).

9. Congress explicitly stated that the purpose of the ADA was to:

(i) provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities;

(ii) provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities; and,

(iii) invoke the sweep of congressional authority, including the power to enforce the fourteenth amendment and to regulate commerce, in order to address the major areas of discrimination faced on a daily by people with disabilities.

42 U.S.C. §12101(b)(1)(2) and (4).

10. Pursuant to 42 U.S.C. §12181(7)(E) and 28 C.F.R. §36.104, the Subject Facility is a place of public accommodation in that it is an establishment which provides goods and services to the public.

11. Pursuant to 42 U.S.C. §12181(7)(E) and 28 C.F.R. §36.104, the Subject Facility which is the subject of this action is a public accommodation covered by the ADA and which must be in compliance therewith.

12. The Plaintiff is informed and believes, and therefore alleges, that the Subject Facility has begun operations and/or undergone substantial remodeling, repairs and/or alterations since January 26, 1990.

13. Defendants have discriminated, and continue to discriminate, against the Plaintiff, and others who are similarly situated, by denying full and equal access to, and full and equal enjoyment of, goods, services, facilities, privileges, advantages and/or accommodations at the Subject Facility, in derogation of the findings contained in 42 U.S.C. §12101 and the prohibitions of §12182(a) and by failing to remove architectural barriers pursuant to 42 U.S.C. §12182(b)(2)(A)(iv), where such removal is readily achievable.

14. The Plaintiff has been unable to, and continues to be unable to, enjoy full and equal safe access to, and the benefits of, all the accommodations and services offered at the Subject Facility. Prior to the filing of this lawsuit, Plaintiff personally visited the Subject Facility, with the intention of using the facilities at the Subject Facility, but was denied access to the Subject Facility, and therefore suffered an injury in fact. In addition, Plaintiff continues to desire to visit the Subject Facility in the future, but continues to be injured in that he is unable to and continues to be discriminated against due to the architectural barriers which remain at the Subject Facility, all in violation of the ADA, and the NYSHRL.

15. Pursuant to the mandates of 42 U.S.C. §12134(a), the Department of Justice, Office of the Attorney General, promulgated Federal Regulations to implement the requirements of the ADA, known as the Americans with Disabilities Act Accessibility Guidelines (hereinafter “ADAAG”), 28 C.F.R. Part 36, under which said Department may obtain civil penalties of up to \$55,000 for the first violation and \$110,000 for any subsequent violation.

16. The Offending Property and the Subject Facility are in violation of 42 U.S.C. §12181 et. seq., the ADA and 28 C.F.R. §36.302 et. seq., and are discriminating against the Plaintiff as a result of inter alia, the following specific violations:

(i) Failure to provide an accessible entrance, due to steps and the failure to install ramps with appropriate slope and signage, and/or otherwise provide an accessible public accommodation, as required by 28 C.F.R. Part 36. The steps represent an insurmountable barrier to independent entry by the Plaintiff and other individuals who use wheelchairs.

(ii) Failure to provide adequate ADA compliant directional and accurate information signage throughout the Subject Facility, in violation of 28 C.F.R. Part 36, Section 4.1.3(16).

(iii) Failure to provide adequate ADA compliant signage addressing people with disabilities telling them that accessible services are provided, as required by 28 C.F.R. Part 36, Section 4.30.4.

(iv) The sales counter located at Subject Facility is inaccessible, in violation of 28 C.F.R. Part 36, Section 7.2(1), which requires that a portion of the main counter which is a minimum of 36 inches (915mm) in length shall be provided with a maximum height of 36 inches (915 mm) above the finished floor.

(v) The Subject Facility does not provide railings which meet the requirements for accessibility, in violation of ADAAG 4.9.4.

(vi) The lavatory does not comply with accessibility requirements, in violation of ADAAG 4.13.9 and the locations and clearances for grab bars and fixtures are in violation of ADAAG 4.16 and 4.17.

17. Upon information and belief, there are other current violations of the ADA at the Subject Facility, and only once a full inspection is done can all such violations be identified.

18. To date, the readily achievable barriers and other violations of the ADA still exist and have not been remedied or altered in such a way as to effectuate compliance with the provisions of the ADA.

19. Pursuant to the ADA, 42 U.S.C. §12101 et. seq., and 28 C.F.R. §36.304, the Defendants were required to make the Subject Facility, a place of public accommodation, accessible to persons with disabilities since January 28, 1992. To date, the Defendants have failed to comply with this mandate.

20. Pursuant to 42 U.S.C. §12188, this Court is vested with the authority to grant the Plaintiff's injunctive relief; which would include an order to alter the Subject Facility to make it readily accessible to, and useable by, individuals with disabilities to the extent required by the ADA, and closing the Subject Facility until the requisite modifications are completed.

**COUNT II – VIOLATIONS OF THE NEW YORK CITY HUMAN RIGHTS LAW**

21. The New York City Human Rights Law provides:

(a) It shall be an unlawful discriminatory practice for any person, being the owner, lessee, proprietor, manager, superintendent, agent or employee of any place or provider of public accommodation because of the actual or perceived ... disability ... of any person, directly or indirectly, to refuse, withhold from or deny to such person any of the accommodations, advantages, facilities and privileges of any such place or provider shall be refused, withheld from or denied to any person on account of ... disability ...

NYC Admin. Code § 8-107(4)(a).

22. Defendants are in violation of the New York City Human Rights Law by denying the Plaintiff full and safe access to all of the benefits, accommodations and services of the Subject Facility.

**COUNT III – VIOLATIONS OF THE NEW YORK STATE HUMAN RIGHT LAW**

23. The Plaintiff repeats and re-alleges the allegations of paragraphs 1 through 22 as if set forth in their entirety here.

24. The New York State Human Rights Law provides:

(a) It shall be an unlawful discriminatory practice for any person, being the owner, lessee, proprietor, manager, superintendent, agent or employee of any place of public accommodation ... because of the ... disability ... of any person, directly or indirectly, to refuse, withhold from or deny to such person any of the accommodations, advantages facilities or privileges thereof ... to the effect that any of the accommodations, advantages, facilities and privileges of any such place shall be refused, withheld from or denied to any person on account of ... disability ...

NYS Exec. Law § 296 (2)(a).

25. The Subject Facility is a place of public accommodation as defined in the New York State Human Rights Law.

26. The Defendants have further violated the New York State Human Rights Law by being in violation of the rights provided under the ADA.

27. Defendants are in violation of the New York State Human Rights Law by denying the Plaintiff full and safe access to all of the benefits, accommodations and services of the Subject Facility.

#### **ATTORNEYS' FEES AND COSTS**

28. The Plaintiff repeats and re-alleges the allegations of paragraphs 1 through 27. as if set forth in their entirety here.

29. The Plaintiff has been obligated to retain the undersigned counsel for the filing and prosecution of this action. The Plaintiff is entitled to have his reasonable attorneys' fees, costs, and expenses paid by the Defendants, pursuant to the ADA and the New York City Human Rights Law.

30. Plaintiff prays for judgment pursuant to N.Y. Exec. Law § 297, including compensatory damages contemplated by § 297(9).

#### **DAMAGES**

31. The Plaintiff repeats and re-alleges the allegations of paragraphs 1 through 30 as if set forth in their entirety here.

32. The Plaintiff demands One Thousand Five Hundred Dollars (\$1,500.00) in compensatory damages based on the Defendant's violation of the New York City Human Rights Law and the New York State Human Rights Law.

33. Pursuant to 42 U.S.C. §12188, this Court is vested with the authority to grant the Plaintiff's injunctive relief; including an order to alter the Subject Facility to make them readily

accessible to, and useable by, individuals with disabilities to the extent required by the ADA, the New York City Human Rights Law, and the New York State Human Rights Law and closing the Subject Facility until the requisite modifications are completed.

WHEREFORE, the Plaintiff hereby demands judgment against the Defendants and request the following injunctive and declaratory relief:

A. The Court declares that the Offending Property and Subject Facility owned, operated, leased, controlled and/or administered by the Defendants are violating the ADA and the NYSHRL;

B. The Court enter an Order requiring the Defendants to alter their facilities and amenities to make them accessible to and usable by individuals with disabilities to the full extent required by the ADA and by the NYSHRL;

C. The Court enter an Order directing the Defendants to evaluate and neutralize their policies, practices and procedures toward persons with disabilities, for such reasonable time so as to allow the Defendants to undertake and complete corrective procedures to the Subject Facility;

D. The Court award Plaintiff One Thousand Five Hundred Dollars (\$1,500.00) in compensatory damages;

E. The Court award reasonable attorney's fees, all costs (including, but not limited to court costs and expert fees) and other expenses of suit, to the Plaintiff; and

F. The Court award such other and further relief as it deems necessary, just and proper.

Dated: December 1, 2011

---

Donald J. Weiss, Esq. (7619)  
Attorney for Plaintiff  
363 Seventh Avenue  
New York, New York 10001  
(212) 533-2606