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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

ALFREDO GARCIA, Plaintiff and Appellant, v. WILLIAM F. BROWN, as Trustee, etc., Defendant and Respondent.	B234628 (Los Angeles County Super. Ct. No. BC447301)

APPEAL from a judgment of the Superior Court of Los Angeles County. Maureen Duffy-Lewis, Judge. Reversed with directions.

Law Offices of Morse Mehrban, Rummel Mor Bautista, Julie Mehrban, and Morse Mehrban for Plaintiff and Appellant Alfredo Garcia.

James S. Link for Defendant and Respondent William F. Brown as Trustee of the Second Amended Brown Family Trust.

Alfredo Garcia, who alleges that he is a paraplegic, brought this action against William F. Brown, as trustee of the Brown Family Trust, (Brown), the owner and lessor of a building containing a restaurant leased and operated by the Doe defendants. Garcia alleges the restaurant's restroom facilities are not accessible to the disabled in violation of the federal Americans with Disabilities Act (ADA) (42 U.S.C. § 12101 et seq.) and, in his amended cross-complaint, adds that he had "difficulty" in using the facility within the meaning of the Construction-Related Accessibility Standards Compliance Act (Civ. Code § 55.56, subd. (c).) Garcia seeks damages, injunctive relief and attorney fees under California Civil Code section 52, commonly referred to as the Unruh Act.[1] (A violation of the ADA is a violation of the Unruh Act. (Civ. Code, § 51, subd. (f).))

The trial court granted Brown's motion to strike as a sham pleading Garcia's allegation that he had "difficulty" in using the facility and then granted Brown's motion for judgment on the pleadings because the amended complaint no longer alleged damages and thereafter dismissed Garcia's action. We reverse as to Garcia's cause of action for damages and affirm as to the prayer for injunctive relief.

PROCEDURAL BACKGROUND

Garcia's original complaint alleged in relevant part that he was disabled, and that "[o]n or about November 13, 2009, while patronizing [defendants' restaurant], Plaintiff wanted but was unable to use the facility's restroom toilet because it failed to offer two grab (support) bars. Furthermore, Plaintiff wanted but was unable to extract paper towels from the facility's restroom paper towel dispenser, extract toilet seat covers from the facility's restroom toilet seat dispenser, and the facility's restroom mirror because they were mounted too high above the floor." Brown demurred to the complaint on the ground that "plaintiff fails to allege any actual damages, which are required in order to secure a recovery under [the Unruh Act]." Finding that "[p]laintiff sets forth elements of the claim, but insufficient pleading of injury," the trial court sustained the demurrer with

[1] Damages are not recoverable under Title III of the ADA. (42 U.S.C. § 12188, subd. (a)(1).)

leave to amend. Garcia amended his complaint to add the allegation that as a result of the condition of the restroom, "[p]laintiff experienced difficulty" in using that facility.

Brown moved to strike the allegation that "[p]laintiff experienced difficulty" on the ground that it was false and thus a sham pleading. Brown contended that for purposes of the Unruh Act "difficulty" is equivalent to "injury" and that in his answers to Brown's form interrogatories, Garcia stated four times that he had not been "injured" in attempting to use the restroom. The court agreed and granted the motion.Brown also moved for judgment on the pleadings on two grounds. First, absent an allegation of injury or economic loss, Garcia failed to state a cause of action for damages. Second, because Garcia did not allege that he intends to patronize the restaurant in the future, he did not allege facts sufficient to give him standing to seek injunctive relief. The court also granted this motion and then dismissed the complaint. Garcia filed a timely appeal.

DISCUSSION

I. STATUTORY DAMAGES UNDER THE UNRUH ACT

Brown concedes that Garcia's allegation of "difficulty" satisfies the element of injury sufficient to state a cause of action for damages under section 52, subdivision (a)[2] but argues that once the court struck that allegation the complaint was deficient because without injury Garcia is not entitled to recover any damages, including statutory damages. In support of the court's ruling Brown argues that because Garcia had previously admitted in his answers to interrogatories that he had not suffered "injury," the allegation of "difficulty" was false and the court correctly stuck that allegation pursuant

[2] Section 55.56 states in relevant part: "(a) Statutory damages under . . . subdivision (a) of section 52 . . . may be recovered in a construction-related accessibility claim against a place of public accommodation only if a violation or violations of one or more construction-related accessibility standards denied the plaintiff full and equal access to the place of public accommodation on a particular occasion. . . . (c) A violation personally encountered by a plaintiff may be sufficient to cause a denial of full and equal access if the plaintiff experienced difficulty, discomfort, or embarrassment because of the violation."

to Code of Civil Procedure section 436 as a sham pleading.[3]. We disagree. The court should not have stricken Garcia's pleading of "difficulty" and accordingly should not have dismissed his cause of action for damages.

Brown sent Garcia the Judicial Council's general form interrogatories. (DISC-001 [Rev. January 1, 2008].) Interrogatory 6.1 asks: "Do you attribute any physical, mental or emotional injuries to the [incident]?" Interrogatory 8.1 asks: "Do you attribute any loss of income or earning capacity to the [incident]?" Interrogatory 10.3 asks: "At any time after the [incident], did you sustain injuries of the kind for which you are now claiming damages?" Interrogatory 11.1 asks: "[I]n the past 10 years have you filed an action or made a written claim or demand for compensation for your personal injuries?" Garcia answered "none" to interrogatories 6.1 and 8.1 and answered "I was not injured" to interrogatories 10.3 and 11.1.

In response, however, to interrogatory 9.1 asking: "Are there any other damages that you attribute to the [incident]?" Garcia stated his damages consisted of "inability to use the toilet in your restroom, inability to cover your toilet seat with a toilet seat cover, inability to wipe my hands with paper towels in your restroom, and inability to use your restroom mirror." Fairly construed, Garcia's answers to Brown's form interrogatories did state that he had "difficulty" using the restroom, although he did not use that word and used the word "inability" instead. Therefore the court erred in striking the allegation of "difficulty" and then granting the motion to strike the cause of action.

II. INJUNCTIVE RELIEF

A plaintiff seeking injunctive relief for disability discrimination in a place of public accommodation—whether on his own behalf or on behalf of persons similarly situated—must show that he is "aggrieved by the conduct" of the defendant. (Civ. Code, § 52, subd. (c).) To make that showing, the plaintiff must plead and ultimately prove an intent to return to the place of public accommodation because if he does not intend to

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[3] Code of Civil Procedure section 436 states in relevant part that the court may "[s]trike out any . . . false . . . matter inserted in any pleading."

return he is in no need of future relief. (*Coral Construction, Inc. v. City and County of San Francisco* (2004) 116 Cal.App.4th 6, 17 ["Where a petitioner seeks declaratory or injunctive relief it is insufficient that he has been injured in the past; 'he must instead show a very significant possibility of future harm in order to have standing. [Citation.]'"]

Brown moved for judgment on the pleadings as to Garcia's prayer for injunctive relief on the ground that Garcia's amended complaint did not allege that Garcia would suffer in the future from the restaurant's access barriers and therefore failed to show that he was "aggrieved" by the maintenance of the barriers. The trial court agreed with Brown's argument and sustained the motion without leave to amend. On appeal, Garcia does not claim that he could amend his complaint to truthfully allege that he intends to return to the restaurant. Rather, he is content to stand on his argument that the present complaint is adequate.

Garcia's complaint does not seek injunctive relief on behalf of other disabled persons similarly situated. Even if it were interpreted as doing so, it would fail because Garcia does not have standing to sue on behalf of others when he lacks standing to sue on his own behalf. (*Vargas v. Hampson* (1962) 57 Cal.2d 479, 481.)

DISPOSITION

The order dismissing the action is reversed and the case is remanded to the trial court with directions to vacate its order granting defendant's motion to strike and to enter a new and different order denying that motion and to reinstate its order granting the defendant's motion for judgment on the pleadings as to the prayer for injunctive relief. The parties shall bear their own costs on appeal.

NOT TO BE PUBLISHED.

ROTHSCHILD, Acting P. J.

We concur:

CHANEY, J. JOHNSON, J.