

**IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT IN
AND FOR MIAMI-DADE COUNTY,
FLORIDA**

GENERAL JURISDICTION

JENNIFFER KERN, and)
DISABILITY RIGHTS FLORIDA,)
INC., a Florida non-profit)
Corporation,)
)
Plaintiffs,)
)
vs.)
)
MM NORTH BEACH HOTEL,)
LLC, a Limited)
Liability Company,)
registered and doing business in)
Florida, doing business as “Days Inn)
North Beach,”)
)
Defendant.)
_____)

Case No.: 13027787CA01

**FIRST AMENDED COMPLAINT FOR DAMAGES,
INJUNCTIVE AND DECLARATORY RELIEF**

Plaintiffs, Jennifer Kern and Disability Rights Florida, Inc., sue the Defendant, MM North Beach Hotel, LLC (hereinafter “Days Inn”), and as good grounds alleges as follows:

Preliminary Statement

1. Jennifer Kern (hereinafter “Jennifer”) has endured great suffering throughout her life after becoming a quadriplegic. She has had to depend on persons and companies obeying the requirement of Florida’s Civil Rights Act, the American with Disabilities Act (ADA) and other similar local disability laws requiring physically accessible public accommodations so she can

live independently. When Jennifer decided to come from her home in California to Florida to see friends off on a trip and visit with her parents living in the Keys, she was excited about her upcoming trip. She carefully selected a well-known hotel chain (“Days Inn”), thinking a national hotel chain would certainly obey the requirements of the various laws requiring accommodations for people with disabilities. She went on the Internet and booked what was described as a handicapped accessible room at Days Inn. She also called to confirm it was indeed a handicapped accessible room before booking the room. But when she arrived at the Days Inn room late on February 22, 2013 after visiting with her parents in the Keys, her reserved room was anything but accessible. While she could get her wheelchair from the hallway through the front door to the room, she could not access the bathroom door. And even if she could, Jennifer was able to see that there was nothing wheelchair accessible in the bathroom. Since she arrived late and her group was soon headed out to the goodbye dinner for her friends, it was too late to try and switch hotels, and the hotel informed her it had no other ‘accessible’ rooms different than the one she was given. The entire evening and following morning was dominated by the considerable inconvenience that arose from staying in a hotel with no bathroom access. It ruined what she had hoped was going to be a joyous gathering of friends on the last day of her vacation. Jennifer’s excitement and enthusiasm for the long planned evening evaporated, and months of anticipation were replaced with frustration, disappointment, humiliation, and mental anguish.

2. Days’ Inn’s policy of advertising handicapped accessible rooms but not providing same adversely affects the substantial interests of the Disability Rights Florida, as clients and potential clients who are disabled are being denied physical accessibility to a place of public ac-

commodation as required by Florida's Civil Rights Act, the ADA, and a host of other local county and municipal ordinances requiring greater disability access to places of public accommodation.

Jurisdiction and Venue

3. This is an action for damages in excess of Fifteen Thousand Dollars (\$15,000.00), exclusive of interest, costs and attorneys' fees, injunctive and declaratory relief.

4. Venue is proper in this Circuit, as Defendants conduct business in Miami-Dade County, Florida, the cause of action accrued in Miami-Dade County, Florida.

Parties

5. Plaintiff, Jennifer Kern, is a 47 year old female, who after having a severe automobile accident at age 19, became a quadriplegic with severe physical disabilities which confines her to a wheelchair. Due to her physical disabilities, she is substantially limited in one or more of her major life activities. Jennifer is therefore disabled within the meaning of Fla. Stat. § 760.22(7)(a).

6. Plaintiff, Disability Rights Florida, formerly known as the "Advocacy Center for Persons with Disabilities," is a not-for-profit corporation serving as Florida's federally funded protection and advocacy ("P&A") agency for individuals with disabilities. Plaintiff Disability Rights Florida (hereinafter "the P&A") maintains offices in Tampa, Hollywood and Tallahassee. Its main office is located at 2728 Centerview Drive, Suite 102, Tallahassee, Leon County, Florida.

7. Plaintiff P&A is authorized by law to “have the authority to pursue legal, administrative, and other appropriate remedies or approaches to ensure the protection of, and advocacy for, the rights of such individuals within the State or the American Indian consortium who are individuals described in subsection (a)(1) of this section.” 29 U.S.C.A. § 794e (West). Said persons are those whose needs or qualifications are beyond the criteria for the P&A’s Client Assistance Program, subtitle C of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C.A. § 15041 et seq.) or the Protection and Advocacy for Mentally Ill Individuals Act of 1986 (42 U.S.C. 10801 et seq.) 29 U.S.C.A. § 794e (West).

8. Plaintiff P&A is statutorily charged therefore with protecting the rights of persons with disabilities who depend on the compliance of corporations in order to have equal access to places of public accommodation and to live independently with dignity.

9. Plaintiff P&A is authorized to receive complaints from Floridians and persons visiting Florida about deficiencies in its places of public accommodation, and uses its resources to investigate, advocate, and if necessary litigate to ensure the protection of, and advocacy for the rights of all individuals with disabilities within the State of Florida.

10. Defendant’s policy of advertising handicapped accessible rooms but not providing same adversely affects the substantial interests of the Plaintiff P&A, as clients and potential clients who are handicapped are being denied physical accessibility to a place of public accommodation as required by Florida’s Civil Rights Act, the ADA, and a host of other local county and municipal ordinances requiring greater disability access to places of public accommodation.

11. Plaintiff P&A has standing to file this action as it is mandated to provide representation and other legal services to persons with disabilities. Additionally, challenging the Defendant's policy falls within the Plaintiff P&A's general scope of interest and activity, and the relief requested -- declaratory and injunctive -- is the type of relief appropriate for the Plaintiff P&A is to seek on behalf of the individuals who the Plaintiff P&A is mandated to serve.

12. Defendant, MM North Beach Hotel, LLC, is a Limited Liability Company, registered and doing business in Florida, which owns and operates a hotel doing business as the "Days Inn of North Beach," located at 7450 Ocean Terrace, Miami Beach, Florida 33142.

Statement of Facts

13. Jennifer's life was peaceful and free from physical disabilities until age 19, when she was involved in an automobile accident while attending Wesleyan University which left her a quadriplegic.

14. Despite becoming a quadriplegic at a young age, Jennifer has fought to overcome many obstacles and barriers. After the accident, she graduated from Barnard College, and later the University of California, Hastings College of the Law. She became an attorney, is a member of the State Bar of California, and works part time in private practice.

15. As a result of her physical disabilities, Jennifer has come to appreciate the efforts made by many businesses, individuals, and government to make life more accessible for persons with disabilities. The passage of Florida's Civil Rights Act, the Americans with Disabilities Act and other similar disability discrimination laws at the state and local levels over the past twenty-three years have made interacting in public more accessible.

16. Travel across country for a quadriplegic is doable, but difficult, requiring considerable planning and assistance. Nonetheless, with proper planning far in advance of a trip, it can be done.

17. Jennifer began planning for a trip to Florida in late 2012. Since her parents were residing in the Keys and friends were leaving from Miami for an extended trip to Ecuador, she decided to take her son, an adult male friend and an assistant to South Florida to visit with her parents and to see their friends off to South America.

18. When booking her room in Miami Beach for the last night of her trip, she carefully decided to book a wheelchair accessible room with a major hotel chain -- Days Inn -- so she would be assured of having a *bona fide* handicapped accessible room. After all, she thought, certainly a major hotel chain such as Days Inn would be in full compliance with the national, state, and local disability laws. And she called the Days Inn directly to confirm it was indeed a handicapped accessible room and was told it was as advertised.

19. Jennifer then booked what was described as a handicapped accessible room on the Internet with the Defendant Days Inn North Beach Hotel, LLC.

20. Jennifer arrived at the Defendant's hotel around 6 p.m., on February 22, 2013. She had requested her room be on the third floor so she could be near her friends. After checking in and later arriving at the room, she first noticed that the security peep hole in the door was lower than normal. This was a good indication she had indeed been given a handicapped accessible room. And she was able to get her wheelchair from the hallway through the door. But there any further semblance of wheelchair accessibility ended.

21. Jennifer was unable to get her wheelchair through the threshold of the bathroom door since the door opened inside the bathroom and there was no clearance even to the sink. And even if she could, she noticed the bathroom was not handicapped accessible. It lacked a handicapped accessible toilet and shower, shower grab bars, handicapped accessible sink, and all other handicapped accessible implements normally found in a handicapped accessible bathroom.

22. Jennifer immediately called the front desk to determine whether she had been given the correct room and, if not, to see if a legitimately handicapped accessible room was perhaps available. She was told "sorry, this is all we have."

23. It was approaching 7 p.m., the agreed time to meet for the goodbye dinner with her close friends who were headed to South America early the next morning, and too late to try and change hotels. She also had a 5 a.m. flight the next morning back to California.

24. Since Jennifer was unable to even enter the bathroom, she was unable to take a shower, wash her hands, comb her hair, and brush her teeth. More importantly, she was unable to even go to the toilet. One reality of being a quadriplegic is that using the bathroom is quite involved and takes no less than an hour (more like 75 minutes). Without safety bars it can be dangerous for Jennifer and her helpers. Typically she would shower afterward, but in this situation she could not even get to the sink to brush her teeth or wash her hands. This meant she had to rely a great deal (more than she would have needed to) on her friend who was also watching their children, ages 7 and 8 years old. In addition, because she could not use the bathroom and she needed the space in the room to set up a make-shift commode chair with a trash can, no one

could come in the room during that time, and her friend had to go back and forth to another room to check on the kids which interfered greatly with Jennifer's privacy.

25. As a result of not being given a handicapped accessible room as contracted for, Jennifer had to rely on her friend to assist her to transfer safely, defecate and urinate on the make shift commode in the bedroom area. She required assistance to empty the trash bag in the trash can She was unable to shower and wash. There was an unpleasant odor in the room which served as a make-shift bathroom for the entire evening and next morning.

26. As a result of being given a room which was not handicapped accessible and no bathroom access whatsoever, Jennifer was humiliated, frustrated and felt belittled. After all, this was the culmination of what had been hoped to be a celebratory vacation. Instead, it was ruined due to the Defendant's not providing her with a handicapped accessible room.

27. Jennifer, a victim of a severe automobile accident which left her a quadriplegic, was now the victim of handicapped discrimination, was left saddened, depressed, and with a "pain in her heart."

28. Plaintiff P&A became aware that the Defendant was operating a non-handicapped accessible hotel, even though it advertised and booked reservations asserting the opposite.

29. Defendant advertises that its "accessible facilities" "have bath in bedroom." However, the bath was not accessible for Ms. Kern and therefore will not be accessible to other P&A constituents that utilize wheelchairs.

30. Without Defendant's compliance in making its facility and its rooms accessible for persons that utilize wheelchairs, the same injury Ms. Kern suffered will occur the next time a

similarly situated person with a disability reserves a room at Defendant's facility. It is probable that a person with a disability who uses a wheelchair will book a room at Defendant's facility given its website and staff statements to Ms. Kern.

31. Defendant's violations are ongoing and perpetual for each unsuspecting person with a disability that reserves an accessible room at Defendant's facility. Without the readily achievable removal of barriers to make its rooms accessible, Defendant's actions continue to harm the P&A's constituents.

Violations of the Florida Civil Rights Act by Defendant
(Florida Statutes Section 760.07)

32. Florida Statutes Section 413.08(2) states in pertinent part that:

An individual with a disability is entitled to full and equal accommodations, advantages, facilities, and privileges in all public accommodations.

33. Plaintiff P&A's constituents similarly situated as Ms. Kern are specially injured by the Defendant's noncompliance with Section 413.08(2).

34. Defendant Days Inn owns and operates a place of public accommodation, as defined by Fla. Stat. § 413.08(1)(c), and is therefore required to adhere to the requirements and protections afforded by Fla. Stat. § 413.08(2).

35. Defendant Days Inn's agents and employees were authorized to act for Defendant Days Inn when they committed the Florida Civil Rights Act violations alleged herein. Defendant Days Inn had control over its agents and employees, including, but not limited to those working on the front desk who booked an obvious quadriplegic when they committed the Florida Civil Rights Act violations alleged herein.

36. Defendant Days Inn and its employees and agents knew of Jennifer's disabilities, as they are obvious.

37. Defendant Days Inn intentionally failed to make its room handicapped accessible for individuals with disabilities. Said failure to make its rooms handicapped accessible was, among other things, a cause of the discrimination alleged herein.

38. Defendant Days Inn and its employees and agents intentionally discriminated against Jennifer, because of her disabilities, when they refused to provide her with a handicapped accessible room.

39. Defendant Days Inn and its employees and agents intentionally discriminates against individuals with disabilities in Florida who are the constituents of the Plaintiff P&A when it maintains a facility that is not handicapped accessible, while still advertising a fully accessible hotel.

40. Ultimately, Defendant Days Inn and its employees and agents prevented Jennifer from enjoying the full and equal accommodations, advantages, facilities, and privileges at the Days Inn, which is a place of public accommodation.

41. Defendant Days Inn and its employees and agents' actions were in clear violation of Fla. Stat. § 413.08(2).

42. Fla. Stat. § 760.07 gives rise to a cause of action where there is any violation of any Florida statute making unlawful discrimination because of handicap. Specifically, Fla. Stat. § 760.07 states that:

Any violation of any Florida statute making unlawful discrimination because of race, color, religion, gender, national origin, age, handicap, or marital status in the areas of education, employment, housing, or public accommodations gives rise to a cause of action for all relief and damages described in s. 760.11(5), unless greater damages are expressly provided for. If the statute prohibiting unlawful discrimination provides an administrative remedy, the action for equitable relief and damages provided for in this section may be initiated only after the plaintiff has exhausted his or her administrative remedy. The term "public accommodations" does not include lodge halls or other similar facilities of private organizations which are made available for public use occasionally or periodically. The right to trial by jury is preserved in any case in which the plaintiff is seeking actual or punitive damages.

43. Accordingly, Defendant Days Inn and its employees and agents' violation of Fla. Stat. § 413.08(2) gives rise to a claim under Fla. Stat. § 760.07. Fla. Stat. § 413.08(2) does not provide for an administrative remedy, and therefore exhaustion is not required.

44. The foregoing acts of Defendant Days Inn and its employees and agents were committed in knowing and/or reckless disregard of the civil rights of Jennifer and Plaintiff P&A. Defendant Days Inn and its employees and agents acted with malicious intent and evil mind. Defendant Days Inn and its employees and agents acted to serve their own unlawful interests, knowingly and consciously disregarding the risk that their conduct might significantly injure Jennifer.¹

45. Defendant Days Inn and its employees and agents' discrimination and intentional training failures caused Jennifer damages, including, but not limited to those articulated below.

Relief Requested

¹Plaintiff Kern reserves the right pursuant to Fla. Stat. § 768.72 to amend pleadings in the future to state a claim for punitive damages.

WHEREFORE Plaintiff Jennifer Kern respectfully requests this Court to:

- A. assume jurisdiction over this matter;
- B. declare that Defendant Days Inn discriminated against Plaintiff Jennifer Kern in violation of Fla. Stat. § 413.08(2);
- C. declare that Defendant Days Inn's violation of Fla. Stat. § 413.08(2) gives rise to a claim pursuant to Fla. Stat. § 760.07;
- D. award Plaintiff Jennifer Kern damages for mental anguish, loss of dignity, and any and all other intangible injuries it suffered as result of Defendant Day Inn's discriminatory actions;
- E. award Plaintiff Jennifer Kern any and all compensatory damages she is entitled to, including, but not limited to, the cost of her room, and the cost of her vacation;
- F. award Plaintiff Jennifer Kern pre- and post-judgment interest;
- G. award Plaintiff Jennifer Kern her attorneys' fees and costs in this action pursuant to Fla. Stat. § 760.07 and 760.11(5); and
- H. grant such other and further relief as the Court deems just and equitable.

WHEREFORE Plaintiff P&A respectfully requests this Court to:

- A. assume jurisdiction over this matter;
- B. declare that Defendant Days Inn is discriminating against physically handicapped persons who are its constituents in violation of Fla. Stat. § 413.08(2);
- C. declare that Defendant Days Inn's violation of Fla. Stat. § 413.08(2) gives rise to a claim pursuant to Fla. Stat. § 760.07;

D. enter preliminary and permanent injunctive relief requiring Defendant Days Inn, its successors in office, agents and employees, and all other persons in concert therewith, to immediately make all handicapped accessible rooms comply with the architectural requirements for handicapped accessible rooms and make all other public areas handicapped accessible, so that the constituents and clients of Plaintiff Disability Rights Florida will be able to enjoy the public accommodations at the Days Inn in the future;

E. enter preliminary and permanent injunctive relief enjoining Defendant Inn, its successors in office, agents and employees, and all other persons in concert therewith, from taking or continuing any action which has the purpose or effect of discriminating against Plaintiff Disability Rights Florida by virtue of its constituents' and clients' physical disabilities;

F. enter preliminary and permanent injunctive relief enjoining Defendant Days Inn, its successors, and its servants, agents and employees, and all those acting in concert with it, from discriminating on the basis of disability;

G. order Defendant Days Inn to take appropriate affirmative action to ensure that the activities complained of above are not engaged in again by Defendant Days Inn, its successors, and its servants, agents and employees, and all those acting in concert with it;

H. enter preliminary and permanent injunctive relief requiring Defendant Day Inn, its successors, and its servants, agents and employees, and all those acting in concert with it, to adopt policies, procedures and practices, which will ensure that all disabled individuals may enjoy the full and equal accommodations, advantages, facilities, and privileges at the Defendant Days Inn;

I. award Plaintiff P&A its attorneys' fees and costs in this action pursuant to Florida Statutes Sections 760.07 and 760.11(5); and

J. grant such other and further relief as the Court deems just and equitable.

Jury Demand

Plaintiff Kern demands trial by jury on all issues that can be heard by a jury.

Respectfully submitted,

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