

Law

Restaurant's rebirth: Molski stymied on lawsuit blitz

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08-12-05

When the Hungry Fisherman restaurant closed last fall in the face of a potentially costly disabled-access lawsuit, Morro Bay thought it had lost a 30-year downtown fixture.

That was until Pablo Rivera, a cook at the restaurant for 17 years, stepped out from behind the grill. He bought the restaurant and leased the space from the previous owners. On Aug. 4, he opened the Hungry Fisherman to a full breakfast crowd.

"There were people waiting when we opened," he said later that day. "I didn't expect that. ... I think we're going to do great."

While the restaurant was closed, the previous owners settled their lawsuit and renovated the Hungry Fisherman to bring it into compliance with the Americans with Disabilities Act and California access laws.

Meanwhile, the man who sued them, Jarek Molski, has seen his quest against ADA violators stall. Molski, a Woodland Hills man who uses a wheelchair, filed more than 300 lawsuits against California businesses between 2001 and 2004; this year, he has filed just two.

An order in December by U.S. District Judge Edward Rafeedie declared that "Molski's ADA claims are a sham" and barred Molski from filing any new federal lawsuits, without the court's permission, in the district covering the Tri-Counties and the Los Angeles area. Molski's claims are so numerous and so similar that they demonstrate bad faith, Rafeedie ruled.

Molski's attorney, Thomas Frankovich of San Francisco, did not return phone calls seeking comment. Last year, he told the Business Times that his client is fighting for the rights of the disabled, and must sue businesses because it's the only way to make them comply with the ADA.

Molski has also seen a change in the fortunes of his pending lawsuits. Whereas he once settled nearly all of his suits-typically for between \$20,000 and \$35,000, according to Frankovich-in recent months three federal judges have dismissed his claims. In response, Molski re-filed two of the lawsuits in state courthouses, one in Santa Barbara County and one in San Luis Obispo County.

Eric Berg, an attorney with Hatch & Parent in Santa Barbara, represents a few businesses that have been sued by Molski, including Mosby Winery in Buellton. Molski's federal lawsuit against the winery was dismissed July 19, after Mosby showed that it had fixed its ADA violations.

"We think it's a significant victory," Berg said. "When you have a gentleman who's filed as many cases as this guy has, we think any setback is a good one."

According to court documents, Mosby installed a new restroom, a handicapped parking space, a ramp to the front door, new doorknobs, and a tasting table low enough for wheelchair users to reach.

The suit was dismissed because under federal law, the main remedy for ADA violations is an injunction ordering that the violations be fixed. The plaintiff can also recover legal fees, but only if he also wins the injunction.

Without any violations left for Mosby to fix, U.S. District Judge Nora Manella ruled that her court no longer had jurisdiction in the case.

That's the argument that Berg is using in all of his ADA cases. "If we're able to determine that either there was no violation, or the violation has been fixed, we tell the judge that the federal court no longer has jurisdiction over this," he said. "The only variable there is, the federal courts have indicated that if he so chooses, Mr. Molski can file his case in state court."

In state court, Molski can still win damages of up to \$4,000 per violation, even if the problems have been fixed.

The Hungry Fisherman settled with Molski after spending about \$100,000 to bring the building up to code, Rivera said. The family that owned the restaurant still owns the building, and paid for the upgrades.

The restaurant had to remove two tables to make room for the changes, which include new, bigger restrooms, Rivera said.

"We fixed everything," he said. "The bathrooms must be the largest bathrooms in the whole county, for the capacity of the restaurant."

The case of the Hungry Fisherman helped focus attention on Molski's lawsuits among Morro Bay residents and business owners. Molski, who holds a degree in tax law but does not practice, travels frequently along the California Coast. His stops in Morro Bay resulted in about a dozen lawsuits against businesses in the seaside hamlet.

In December, the Morro Bay Chamber of Commerce held a seminar on disabled-access law,

drawing more than 100 people. The chamber also helped survey more than 300 businesses sued by Molski. The results were used by lawyers for the Hitching Post, a restaurant in Casmalia that's fighting a suit from Molski.

"Without that, Judge Rafeedie would have only heard from one attorney at a time," said Kim Kimball, the chamber's president and chief executive officer. "We expanded that knowledge statewide."

The best thing a business owner can do, Kimball said, is to comply with the law and not get sued in the first place. The Economic Vitality Corp. of San Luis Obispo is planning its own three-part series in Paso Robles on the ADA and similar state laws. The lecture series begins Aug. 19, and registration forms are available at www.sloevc.org.
