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Court Finds No Jurisdiction to Hear Quadriplegic Lawyer's Access Suit

By ROBERT GREENE, Staff Writer

A quadriplegic Chico lawyer who sued the owners of a shopping center that gave him no wheelchair access to the Kinko's Copy Center had his case rejected yesterday by the Ninth U.S. Circuit Court of Appeals.

The Ninth Circuit said federal courts lack federal-question jurisdiction over state disability damage claims like Douglas Wander's, which was brought under the California Disabled Persons Act.

Wanders sued for injunctive relief under the American with Disabilities Act and damages under the California act. But the injunction bid was thwarted when the owners of Mangrove Square, which included the Kinko's that Wander relied on for making copies of his legal documents, sold the property.

The lawyer was left with his state damage claim, which was premised on Title III of the ADA. But the federal act provides only for injunctive relief and not for damages.

Wander argued that his state law clause of action arose under the ADA, which formed the model for the state Disabled Persons Act. But the former owners

of the complex, Jack S. Kaus and Irene B. Kaus, sought to dismiss for lack of subject matter jurisdiction and Judge Garland E. Burrell of the Eastern District of California granted the motion.

Writing for the Ninth Circuit panel, Judge Barry G. Silverman wrote that the ruling was correct.

“Wander would have the federal court exercise jurisdiction over his state-law damage suit, premised on violation of the ADA, even though Congress intended that such violations *not* give rise to a federal cause of action for damages,” Silverman wrote.

He continued:

“Federal-question jurisdiction is not created merely because a violation of federal law is an element of a state law claim. We think it is clear that the exercise of federal question jurisdiction under these circumstances would fly in the face of clear congressional intent.”

Wander’s attorney, Lynn Hubbard, said his client would not appeal—but added that he expected to prevail in state court.

“We will win,” Hubbard said. “It’s no big deal.”

The worst part of the federal ruling, he said, was the manner in which the Kauses escaped liability.

“We bring the lawsuits and then the defendants sell the business,” Hubbard said.

He added that he did not know for certain whether the center was sold simply because of the suits.

The Kauses’ lawyer, Michael Bishop of the Sacramento law firm of Matheny, Sears, Linkert & Long, said Wander has already conceded that he has no state law claim at his disposal.

Bishop said Hubbard’s reply brief to the Ninth Circuit recited that “Wanders’ right to relief under his remaining state statutory claim is no longer available.”

The case is *Wander v. Kaus*, 01-15116.