

ENTERED
CLERK, U.S. DISTRICT COURT
FEB 1 2005
CENTRAL DISTRICT OF CALIFORNIA
BY DEPUTY

FILED
CLERK, U.S. DISTRICT COURT
JAN 31 2005
CENTRAL DISTRICT OF CALIFORNIA
DEPUTY

SCANNED

THIS CONSTITUTES NOTICE OF ENTRY
AS REQUIRED BY FRCP, RULE 77(d).

Priority
Send
Enter
Closed
JS-5/JS-6
JS-2/JS-3
Scan Only

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JAREK MOLSKI, an individual; and
DISABILITY RIGHTS
ENFORCEMENT, EDUCATION
SERVICES: HELPING YOU HELP
OTHERS, a California public benefit
corporation,

Plaintiffs,

vs.

CABLE'S RESTAURANT; M.J.
CABLE, INC., a California corporation;
20929 VENTURA BOULEVARD, LLC.,
a California limited liability company;
and LJS PROPERTIES, LLC., a
California limited liability company,

Defendants.

CASE NO. CV 03-4809 DT (CWx)

ORDER DENYING PLAINTIFFS'
MOTION FOR A NEW TRIAL

1 **I. BACKGROUND**

2 On July 7, 2003, Plaintiffs Jarek Molski ("Molski") and the
3 membership of Disability Rights Enforcement Education Services (collectively,
4 "Plaintiffs") filed suit against Defendants Cable's Restaurant, M.J. Cable, Inc.,
5 Ventura Boulevard, LLC., LJS Properties, LLC. (collectively, "Defendants") for
6 injunctive relief and damages pursuant to the Americans with Disabilities Act of
7 1990, 42 U.S.C. § 12101, et seq. (the "ADA" or the "Act") for Defendants' alleged
8 failure to remove structural barriers at the eatery known as Cable's Restaurant.

9 On November 18, after a jury trial on the merits, the jury rendered a
10 verdict in favor of Defendants.¹ Currently before this Court is Plaintiffs' Motion
11 for a New Trial ("Motion").

12 **II. DISCUSSION**

13 **A. Judicial Standard**

14 Pursuant to Fed. R. Civ. P. 59(a), a new trial may be granted to all or
15 any of the parties and on all or part of the issues in an action tried without a jury,
16 for any of the reasons for which rehearings have been granted in suits of equity.
17 Grounds upon which a Rule 59(a) motion may be granted include: (1) manifest
18 error of law or fact, (2) newly discovered evidence, (3) the prevention of manifest
19 injustice, and (4) an intervening change in the controlling law. See Brown v.
20 Wright, 588 R.2d 708, 710 (1978). The governing statute allows the trial judge
21 substantial authority to grant new trials in the interests of justice. Id.

22 **B. Analysis**

23 As an initial matter, Defendants contend that Plaintiffs' Motion is
24 premature because a final judgment has not been entered by the Court. However,
25

26 ¹ The Judgment was lodged on December 22, 2004 and is to be entered
27 following a hearing on this Motion.

1 according to well-settled Ninth Circuit law, Plaintiffs' Motion may be heard
2 despite the fact that no final judgment has been entered. Larez v. City of Los
3 Angeles, 946 F.2d 630, 636 (9th Cir. 1991; Contempo Metal Furn., Etc., v. East
4 Tex. Motor Freight Lines, Inc., 661 F.2d 761, 764 n.1 (9th Cir. 1981). Pursuant to
5 Rule 59(b), a motion for new trial "shall be filed no later than 10 days after entry
6 of judgment." Fed. R. Civ. P. 59(b). This rule does not state that a party must
7 wait until the court has entered a final judgment before bringing a Rule 59(b)
8 motion. As such, Plaintiffs' Motion is not premature.

9 1. *A New Trial Is Not Warranted Because There Is No Clear*
10 *Error And No Manifest Injustice*

11 Plaintiffs bring their Motion only on the following two grounds: (1) a
12 clear error of law or fact exists; and (2) a new trial would prevent manifest
13 injustice. Plaintiffs argue that a new trial is required because the evidence
14 presented at trial unequivocally supports a verdict in favor of Plaintiffs. However,
15 the Court disagrees. Upon review of the record, the evidence presented to the
16 jury, binding legal precedent, and in full consideration of the parties' arguments,
17 the Court concludes that the jury based its verdict on a true and fair weighing of
18 evidence, and thus, a new trial is not warranted. As such, Plaintiffs fail to meet
19 their burden that a new trial is appropriate under Rule 59(b).

20 a. *No Clear Error Of Law Or Fact*

21 After a jury trial on the merits, the jury rendered a verdict in favor of
22 Defendants. According to the Special Verdict Form, filed on November 18, 2004,
23 the jury found that "[D]efendant[s did not] fail[] to identify and remove
24 architectural barriers at Cable's Restaurant." The jury did not, and was not
25 required to, make any other factual findings on the Special Verdict Form once it
26 made this initial determination.
27
28

1 The Court finds the jury's verdict reasonable in light of the evidence
2 presented at trial. Although the Court cannot know the exact rationale used by the
3 jury in arriving at its decision, the Court finds that there was substantial evidence
4 to support its verdict.

5 The Court is remiss to speculate as to the jury's reasoning in arriving
6 at its verdict. Notwithstanding, the Court does note that Defendants offer the
7 following reasonable explanation for the jury's verdict: the jury determined that
8 Molski was not an "individual" under the ADA, and therefore could not recover
9 against Defendants.

10 Defendants properly point out that the ADA prohibits discrimination
11 against an "individual" on the basis of disability in all places of public
12 accommodation. 42 U.S.C. § 12182(a) ("No individual shall be discriminated
13 against on the basis of disability in the full and equal enjoyment of the goods,
14 services, facilities, privileges, advantages, or accommodations of any place of
15 public accommodation by any person who owns, leases (or leases to), or operates a
16 place of public accommodation."). Pursuant to the relevant section of the ADA,
17 42 U.S.C. § 12182(b)(A)(iv), an "individual" under the ADA "refers to the clients
18 or customers" of the place of public accommodation. (See 42 U.S.C. §
19 12182(b)(A)(iv)).

20 During the course of trial, Defendants presented the jury with
21 evidence indicating that Molski was not an "individual" under the ADA, but a
22 business who did not fall within the Act's purview.² From this evidence, a
23

24 ² Plaintiff makes a passing argument that Molski must be considered an
25 individual because the parties' Joint Pre-Trial Conference Order states that
26 "Plaintiff Jarek Molski is a person with disabilities as defined by the ADA."
27 (Joint Pre-Trial Conference Order, 4:12-13). However, Plaintiff's argument is
28 unpersuasive. The mere fact that Molski may be a person with disabilities under

1 reasonable juror could conclude that Molski made a business of shopping for
2 ADA violations at various restaurants, wineries, banks, etc., with the sole intention
3 to recover money. It is undisputed that as of October 8, 2004, Molski had filed
4 374 lawsuits.³ Of those 374 lawsuits, 195 were still pending on October 8, 2004.
5 According to Molski's testimony and sworn interrogatory responses, Molski
6 received an average \$4,000.00 in settlement per case. Based on facts before the
7 jury, Molski's take would amount to approximately \$800,000.00. Even Molski's
8 expert witness testified that 90-95% of Molski's income was derived from cases of
9 this nature. Although Molski's attorney charges \$350.00 to \$500.00 per hour,
10 Molski has never paid his attorney for fees and costs in prosecuting these cases.
11 According to Molski, he expects his attorney's fees and costs to be paid by the
12 defendants in each case. Contrary to Plaintiffs' contentions, the jury was properly
13 provided such evidence to demonstrate that Molski has been occupied with
14 prosecuting his ADA cases and has not been gainfully employed as an attorney
15 since becoming disabled as a result of an accident.

16 Based on the evidence presented at trial, the Court agrees with
17 Defendants that the jury could have reasonably concluded that Molski was not an
18 "individual" under the ADA, and thus had no viable cause of action against
19 Defendants since he could have been viewed as an extremely active litigant
20 abusing the court. Moreover, the Court finds that a reasonable jury could have,
21 based on all the evidence before it, rendered a verdict in favor of Defendants.

22 _____
23 the ADA does not automatically render him an "individual" as defined under the
24 Act.

25 ³ The Court recognizes that the Honorable Edward Rafeedie, United States
26 District Judge for the Central District of California, subsequently found Molski to
27 be a vexatious litigant. Molski, et al v. Mandarin Touch Rest., CV 04-0450 ER
28 (2004). This finding has no bearing or influence on this Court's ruling.

SCANNED

1 There is no showing of a clear error of law or fact. As such, a new trial is not
2 appropriate on these grounds.

3 b. *No Manifest Injustice*

4 Plaintiffs also contend that manifest injustice exists because the jurors
5 were unduly prejudiced by information relating to the number of similar ADA
6 cases filed by Molski. However, because such evidence was more relevant than
7 prejudicial, it was properly admitted under the Federal Rules of Evidence. The
8 relevancy has to do with the motivation for instituting these actions by Plaintiff
9 Molski.

10 In light of the foregoing, this Court neither finds a clear
11 error in law or fact nor a manifest injustice. Plaintiffs' Motion merely attempts to
12 re-litigate issues that have already been correctly and finally determined. The
13 Court concludes that the jury based its verdict on a true and fair weighing of
14 evidence. As such, a new trial is not warranted.

15 **III. CONCLUSION**

16 Accordingly, Plaintiffs' Motion for New Trial is **DENIED**.

17
18 IT IS SO ORDERED.

19 DICKRAN TEVRIZIAN

20 DATED: 1-31-05

21 Dickran Tevrizian, Judge
22 United States District Court