

# LITCHFORD & CHRISTOPHER

PROFESSIONAL ASSOCIATION

*Attorneys and Counselors at Law*

## LEGAL NEWS FOR CLIENTS

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**SUPREME COURT HOLDS THAT AN EMPLOYEE WHO  
IS LIMITED IN PERFORMING MANUAL TASKS IS NOT “DISABLED”  
UNDER THE AMERICANS WITH DISABILITIES ACT**

The Americans with Disabilities Act generally requires an employer to provide a reasonable accommodation to a job applicant or employee who is a qualified individual with a disability, unless the employer can demonstrate that the accommodation would impose an undue hardship. A “qualified individual with a disability” is defined in the Act as an individual with a disability who, with or without a reasonable accommodation, can perform the essential functions of the position that the individual seeks or holds. In turn, the Act defines a “disability” as “a physical or mental impairment that substantially limits one or more of the major life activities of such individual; . . . a record of such an impairment; or . . . being regarded as having such an impairment.” Federal regulations interpreting the Rehabilitation Act of 1973, and EEOC regulations interpreting the ADA, provide some guidance for interpreting the terms used in the Act’s definition of the term “disability.” The Supreme Court turned to the dictionary for additional guidance, however, in *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams* – a case brought by a former employee claiming her former employer failed to provide her with a reasonable accommodation for her carpal tunnel syndrome and related impairments, and wrongfully terminated her employment.

Ella Williams began working at Toyota’s manufacturing plant in Kentucky in 1990. She was placed on an engine fabrication assembly line, where she was required to use pneumatic tools. The use of these tools eventually caused her pain in her hands, wrists, and arms. She was diagnosed with carpal tunnel syndrome and tendonitis. Her physician placed her on permanent work restrictions that precluded her from lifting more than twenty pounds, frequently lifting or carrying objects weighing up to ten pounds, engaging in constant repetitive flexing and extending of her wrists or elbows, performing overhead work, or using pneumatic tools. Given these restrictions, Toyota assigned Williams to various modified duty jobs for the next two years. Still, Williams missed some work for medical leave, and she eventually filed a workers’ compensation claim. That claim was settled, and Williams returned to work. She was not satisfied, though, by Toyota’s efforts to accommodate her work restrictions, so she brought a suit claiming Toyota violated the ADA by refusing to accommodate her disability. That suit also was settled, and Williams returned to work again in late 1993.

When Williams returned, Toyota placed her on a team in Quality Control Inspection Operations (“QCIO”). This group was responsible for four tasks called: assembly paint; paint second inspection; shell body audit; and ED surface repair. For a couple of years, Williams was on a team that only performed the first two tasks, which required visual inspection of the automobiles and some manual tasks such as opening and closing the doors and trunks of the cars, or wiping each painted car with a glove as it moved along the conveyor. Williams was physically capable of performing these tasks and did so satisfactorily.

During the Fall of 1996, Toyota announced that it wanted all QCIO employees to be able to rotate through all four QCIO tasks. Williams received training on the third task – the shell body audit job – which involved using a sponge attached to a block of wood to apply oil to certain exterior parts of a car as it traveled down the conveyor and then inspecting the car for

flaws. Wiping the cars with the oil required Williams to hold her hands and arms up at shoulder height for several hours at a time. Not long after this job was added to Williams' team's responsibilities, she began to experience pain in her neck and shoulders. She was diagnosed with a variety of conditions involving the inflammation of her muscles and tendons in her neck and shoulders, and nerve compression. She requested Toyota to accommodate her medical conditions by allowing her to return to doing only the original two tasks in QCIO. There was a dispute as to whether Toyota refused this request and forced her to continue to perform the shell body audit job, or whether Williams simply began missing work on a regular basis. Nonetheless, on December 6, 1996, which was Williams' last day of work, her physicians placed her under a restriction that prohibited her from performing any work of any kind. About six weeks later, Williams received a letter from Toyota terminating her employment for her poor attendance record.

After filing a charge of disability discrimination with the EEOC and receiving a right to sue letter, Williams brought suit in federal court in Kentucky alleging, among other things, that Toyota violated the ADA by failing to accommodate her disability and terminating her employment. She based her claim that she was disabled on the principal ground that her physical impairments substantially limited her in manual tasks, housework, gardening, playing with her children, lifting, and working, all of which she argued constituted major life activities. The trial court granted summary judgment to Toyota, finding that Williams was not disabled for purposes of the Act at the time her requested accommodation allegedly was refused. It held that she suffered from a physical impairment, but the impairment did not qualify as a "disability" because it had not substantially limited any major life activity. It also found that because Williams' doctors restricted her from performing any work, she was not a qualified individual with a disability at the time of her termination. The Sixth Circuit Court of Appeals affirmed the trial court's ruling on Williams' wrongful termination claim under the Act, but it reversed the trial courts' ruling that Williams was not disabled at the time she sought an accommodation. The appeals court determined that she had to show that at the time of her accommodation request, her manual disability involved a class of manual activities affecting the ability to perform tasks at work. Williams satisfied this test, the court concluded, because her ailments prevented her from performing the tasks associated with certain types of manual assembly line, product handling, and building trade jobs that required gripping of tools and repetitive work with outreached hands and arms.

In a unanimous and important opinion, the Supreme Court reversed this ruling and remanded the case. It considered the complete definition of "disability" under the ADA and observed that merely having an impairment does not make one "disabled." The impairment must substantially limit a major life activity. Calling for a strict interpretation of the definition to create a "demanding standard" for qualifying as disabled, it relied on the dictionary's definition of the term "substantially" to conclude that impairments that interfere only in a minor way with the performance of manual tasks are not substantial and do not qualify as disabilities. The Court also relied on the dictionary's definition of the term "major" to conclude that the manual tasks at issue must be central to daily life based on an individualized assessment of the impairments in question. In the Court's words, "We therefore hold that to be substantially limited in performing manual tasks, an individual must have an impairment that prevents or severely restricts the individual from doing activities that are of central importance to most people's daily lives. The

impact must also be permanent or long term.” It was error, therefore, for the court of appeals to focus solely on Williams’ inability to perform manual tasks associated only with her job; this was too narrow of an approach, as the manual tasks unique to any particular job are not necessarily important parts of most people’s daily lives. Compounding the error was the appellate court’s apparent disregard of what the Supreme Court characterized as the very type of evidence that it should have focused upon, such as Williams’ undisputed ability to tend to her personal hygiene and carry out personal or household chores, including brushing her teeth, washing her face, bathing, tending to her flower garden, preparing breakfast, doing laundry, and picking up around the house.

### **HOMEOWNERS ASSOCIATION BEARS THE BURDEN OF PROVING IT PROPERLY LEVIED AN ASSESSMENT IN A LIEN FORECLOSURE ACTION**

In 1993, Sandra Berg purchased two lots in a subdivision. The lots were subject to a “Declaration of Covenants, Conditions, and Restrictions” that authorized the subdivision’s Homeowners Association to make and collect assessments for common expenses. The Declaration contained certain provisions regulating the manner of the adoption of a budget and the determination of the appropriate homeowner assessments to meet that budget. Included was a provision requiring certain notice to be given to homeowners prior to a meeting at which a budget was to be considered. The subdivision’s Homeowners Association filed a lien foreclosure suit against Berg claiming she had failed to pay the assessments levied against her lots from 1993, when she purchased them, through 1997. Berg defended the suit contending that the property manager and not the board of the Association determined the budget inconsistent with the requirements of the Association’s by-laws, there was no evidence of any board meetings where budgets were adopted by the board, there was no evidence Berg received her notices of the annual meetings, there was no evidence that the notices of the meetings were ever posted on the property, and the minutes of the meetings were not kept in violation of the by-laws. The trial court found that proper notice of the assessments had been given, and Berg had not proved her defenses that the Association failed to comply with the Declaration and by-laws. Berg appealed.

In *Berg v. Bridle Path Homeowners Association, Inc.*, the Fourth District Court of Appeal reversed. It agreed with Berg that the trial court erroneously shifted to her the Homeowners Association’s burden of proving it levied the assessments in compliance with the Declaration and by-laws. The Association argued, in its legal papers, that it had pled generally that “all conditions precedent” to bringing the lawsuit, such as compliance with the Declaration and by-laws, had been performed. The court noted that the Association’s allegations may have been sufficient as a matter of pleading, but it was still required to prove every element of its case, including those elements that constituted conditions precedent, when the performance of the conditions precedent was specifically denied by Berg. Even though she framed her allegations as an affirmative defense, Berg had specifically denied in her pleadings that the Association had properly levied the assessments pursuant to the Declaration and by-laws. According to the court, this denial forced the Association to prove every material allegation of its complaint against Berg. Accordingly, the appellate court held that in order to prevail on a suit to foreclose an assessment lien, a homeowners association is obligated as part of *its* burden of proof to show it

properly levied the assessment in accordance with the community's covenants and by-laws when the defendant challenges the lack of compliance specifically and with particularity. Florida's Fourth District Court of Appeal reversed the trial court's award to the Association of over \$87,000, which included attorney's fees.

### **WHERE HAVE YOU GONE JOE DIMAGGIO? TO SAN FRANCISCO, OF COURSE**

Before a court is permitted to entertain a lawsuit, it must have jurisdiction. Generally, there are two components to jurisdiction – subject matter jurisdiction and personal jurisdiction. Subject matter jurisdiction refers to the power of a court to deal with the subject matter of the case. Personal jurisdiction refers to the power of a court over the defendant in the case. The court must have both subject matter and personal jurisdiction to adjudicate a claim. The rules for determining jurisdiction can be quite complex, and challenges to jurisdiction can raise thorny issues. The United States District Court for the Southern District of Florida had a chance to explore jurisdictional issues in *DiMaggio, LLC v. City and County of San Francisco*.

Baseball great Joe DiMaggio was a native San Franciscan. He died in March 1999, and his estate resides in Florida. Shortly after his death, the San Francisco Board of Supervisors adopted a resolution urging the Mayor to consult with the DiMaggio family and to form a committee to recommend an appropriate way the city should memorialize him. Thereafter, one of San Francisco's Supervisors named Gavin Newsom, who was coordinating the project, made contact with a Florida lawyer representing DiMaggio's estate. Newsom's letter expressed the City's desire to find an appropriate way to memorialize Joe DiMaggio in a manner consistent with the wishes of both San Franciscans and his family, and it listed ten suggestions for doing so. The top suggestion was to name San Francisco's North Beach Playground after him. The Florida lawyer representing DiMaggio's estate responded by facsimile to Newsom. He advised Newsom that were Joe DiMaggio alive, he would have preferred San Francisco honor him by naming either the San Francisco/Oakland Bay Bridge or the International Airport after him. The lawyer concluded by noting that he appreciated that the playground may have been San Francisco's favorite suggestion but it was important to attempt to do what Joe DiMaggio would have done had he been alive to make the decision. Subsequently, Newsom or his assistant, and the lawyer for the estate, spoke several times over the telephone about the project. During these conversations, the City continued to try and get authorization to rename the North Beach Playground after DiMaggio, but the lawyer refused each time. Ultimately, the Florida lawyer sent Newsom another letter explaining again that the estate did not approve of San Francisco renaming the playground after DiMaggio, and if it proceeded to do so against the DiMaggio family's wishes, legal action would be taken.

Notwithstanding this last communication, the San Francisco Board of Supervisors adopted a resolution to change the name of North Beach Playground to "Joe DiMaggio North Beach Playground." The Mayor approved the resolution. Three weeks later, the estate of Joe DiMaggio sued the City and County of San Francisco in the United States District Court for the Southern District of Florida. The estate alleged claims for invasion of privacy and violation of

the right of publicity under Florida law, and false endorsement and dilution of the value of DiMaggio's intellectual property rights under federal law. The estate also filed a motion for a preliminary injunction to prevent the renaming of the playground. San Francisco filed a response to the motion for preliminary injunction and a motion to dismiss the estate's complaint, in which it alleged the court did not have jurisdiction over this case. After hearing oral argument, the court determined that it had jurisdiction over the subject matter of the case because the estate brought claims under federal law, which it had the power to hear, and therefore it also had the power to hear the collateral state law based claims. It also held, however, that it did not have personal jurisdiction over San Francisco and therefore granted the motion to dismiss, leaving the estate to file its lawsuit in California if it chose to try and do so.

In analyzing this personal jurisdiction question, the court noted that it was required to consider three issues – whether: (1) Florida's jurisdiction statute permitted the assertion of personal jurisdiction; (2) San Francisco had sufficient minimum contacts with Florida to satisfy the Constitution's due process requirements; and (3) maintaining the suit would offend traditional notions of fair play and substantial justice. Regarding the first issue, the applicable Florida statute, known as a "long-arm statute," provides in part that any person, whether or not a resident of Florida, who commits a tortious act within the state, submits himself to the jurisdiction of a Florida court. After considering prior cases interpreting this statute, the District Court was satisfied that the estate's allegation in its complaint, which was that by naming the North Beach Playground after DiMaggio his name and likeness were injured in Florida, was sufficient to bring San Francisco within the reach of the statute.

After determining that the long-arm statute was satisfied, the court next considered the second prong of the personal jurisdiction analysis – whether San Francisco's communications to the Florida estate lawyer expressing its intent to memorialize DiMaggio by naming his childhood playground after him constituted sufficient minimum contacts by San Francisco with the State of Florida to satisfy the due process requirements of the Constitution. The court reviewed and interpreted a number of well-known cases in this area to determine the appropriate parameters of the minimum contacts inquiry. It concluded that for constitutionally sufficient contacts to exist, the contacts have to be related to the plaintiff's cause of action or have given rise to it, the contacts must involve some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum, and the contacts with the forum must be such that the defendant should reasonably anticipate being haled into court there. The District Court held that there were no contacts with Florida other than the letters and telephone communications between Newsom and his office, and the estate's lawyer in Florida, and those limited contacts did not demonstrate that San Francisco had any design on doing business in Florida or that San Francisco sought to avail itself of the privileges and protections of Florida laws.

Finally, the court found that exercising jurisdiction over the defendant would be unreasonable and offend traditional notions of fair play and substantial justice. It recognized that there was a potential for injury to DiMaggio in Florida, and the impact of the case would affect the interests of DiMaggio and Florida, but not to a "deleterious degree." In balancing the competing interests of the parties, the court believed the burden on San Francisco to travel 3,000 miles to litigate the case was severe. It realized that a municipality may have limits on its financial resources in ways that resources of private parties are not so limited. It observed that

resolution of this sort of case must necessarily take into account how the landmark might affect the value of the celebrity's name as well as how the name may impact a particular landmark and its surrounding neighborhoods. The court, sitting in Miami, recognized it was not in a comparatively good position to appreciate and exercise the appropriate sensitivities required to make determinations involving a municipality on the other side of the country.

### **CONGRATULATIONS DAVID LERNER**

David Lerner has been elected to the Board of Directors of the Central Florida Chapter of the Florida Restaurant Association. The Florida Restaurant Association, which is headquartered in Tallahassee and made up of twenty-eight local chapters state wide, is the lobbying and networking group for Florida's \$20 billion a year dining industry.