

**SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF SAN DIEGO  
SOUTH COUNTY COURT  
TENTATIVE RULINGS - June 12,2008**

EVENT DATE: 06/13/2008      EVENT TIME: 08:35:00 AM      DEPT.: S-04

JUDICIAL OFFICER: William S. Cannon

CASE NO.: 37-2008-00069194-CU-CR-SC

CASE TITLE: BARTOSH VS. SOUTH BAY SPE LLC

CASE CATEGORY: Civil - Unlimited

CASE TYPE: Civil Rights

EVENT TYPE: Demurrer / Motion to Strike

CAUSAL DOCUMENT

/DATE FILED:

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Defendants Carla Kanosky, Arum Lee, Castillo Tax & Financial Services and Shoe Warehouse's Demurrer is SUSTAINED WITHOUT LEAVE TO AMEND.

The complaint alleges a cause of action for violation of the Americans With Disabilities Act. 12 USC § 12182(a) states the general rule that "No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation." The complaint alleges plaintiff's son rather than the plaintiff is disabled. Because plaintiff is not disabled, she could not have been discriminated against "on the basis of disability". Just as a spouse of a disabled person lacks standing to pursue an individual claim under the ADA (*Collins v. OSF Healthcare Sys.* (C.D. Ill. 2003) 262 F. Supp. 2d 959, 962), the same rationale precludes a non-disabled parent from bringing an individual claim under the ADA.

Leave to amend may be denied where the plaintiff cannot show a reasonable possibility of amending. (*Goodman v. Kennedy* (1976) 18 Cal. 3d 335, 348-349.) Because plaintiff has not filed an opposition indicating how she could amend to state a viable claim it is appropriate to deny leave to amend.

The motion to strike is moot in light of the ruling on the demurrer.