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Eighth Circuit Court of Appeals Affirms Cost of Remediation as an Affirmative Defense to Suit Under the Americans With Disabilities Act (ADA) [*Disability Support Alliance; Eric Wong v. Heartwood Enterprises, LLC, No. 16-1759(March 21, 2018)*]

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- **Eighth Circuit Court of Appeals Affirms Cost of Remediation as an Affirmative Defense to Suit Under the Americans With Disabilities Act (ADA) [*Disability Support Alliance; Eric Wong v. Heartwood Enterprises, LLC, No. 16-1759 (March 21, 2018)*]**

Title III of the Americans With Disabilities Act prohibits discrimination in a “public accommodation” to include “failure to remove architectural barriers...where such removal is readily achievable” with readily achievability defined as “easily accomplishable and able to be carried out without much difficulty or expense.”

Eric Wong suffered from a genetic condition of muscular-skeletal connective tissue that required him to use a wheelchair. He traveled by car to Heartwood Offices, a small office building in Saint Paul, in order to attempt to attempt to see a mental health profession leasing a first-floor office. Wong was not an existing patient, and did not have an appointment (the Heartwood business is available only to tenants and visitors with a scheduled appointment who are admitted through the buildings locked door by the tenant). From the car, Wong saw that the building had a seven-inch step between the sidewalk and the path to the building door and then four additional steps from the path to the door. Wong did not attempt to use the path or gain entry in his wheelchair but withdrew and commenced suit against Heartwood in Minnesota state court alleging that exterior barriers at the Heartwood site constituted a violation of Title III to obtain recovery and injunctive relief.

Heartwood removed the action to federal district court which gave summary judgment to Heartwood both on the issue of standing and on the merits of Wong’s claims. Wong appealed. (We address here only the decision on the ADA claim and not the jurisdictional issue of standing.)

At the close of discovery Heartwood moved for and received summary judgment on the ground that removal of the allegedly discriminatory architectural barriers would not be “readily achievable” because of cost. Heartwood presented evidence that estimates showed the cost of installation of a

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wheelchair accessible ramp would be between \$11,987 and \$22,621; the estimated cost of an accessible exterior route to the main entrance ramp \$35,000; and to make the entire building accessible more than \$300,000.

Wong had claimed that the architectural modifications he proposed would cost no more than \$10,000 but he offered no evidence in support of this amount and the court rejected as untimely his submission of supporting documents after Heartwood's motion for summary judgment. The court noted that Wong had "... not presented any specific plans, costs estimates, or evidence regarding Heartwood's financial position on the effects that the modifications might have on Heartwood's operations."

Wong argued on appeal that there were genuine issues of material fact as to whether an external ramp installation would be "readily achievable" whether, for example, tax benefits were available to defray costs or whether Heartwood's financial condition would make the cost of ramp installation achievable.

In affirming the district court the Court of appeals noted that the question of whether removal of a barrier is readily achievable is a case by case inquiry" and that Heartwood had submitted "substantial, unrefuted evidence that removal of the barriers in question would not be 'easily accomplishable and able to be carried out without much difficulty or expense.' "

Regarding Wong's state law claims the court noted that claims under the Minnesota Human Rights Act are analyzed the same as claims under the ADA, and since Heartwood did not violate the ADA, the court properly dismissed his Minnesota Human Rights Act claim.

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