

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 04-Z-2293 (BNB)

COLORADO CROSS-DISABILITY COALITION, a Colorado corporation,

Plaintiffs,

v.

GO - TRI INC., INC. a Colorado Corporation, and  
MODA RESTAURANT PARTNERS, INC, a Colorado Corporation,

Defendants.

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**SECOND AMENDED COMPLAINT**

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Plaintiff Colorado Cross-Disability Coalition by and through its attorney, Kevin W. Williams, Legal Program Director of the Colorado Cross-Disability Coalition, hereby brings this Second Amended Complaint against Defendants Go - Tri Inc. and Moda Restaurant Partners, Inc.

**INTRODUCTION**

1. Defendant Go - Tri Inc. was responsible for the design and construction of the Moda Ristorante, a restaurant located at 975 Lincoln Street.
2. Defendant Moda Restaurant Partners Inc. ("Moda Inc.") purchased all of the assets of Go - Tri, Inc., and is now the owner and operator of the Moda Ristorante, Inc.
3. Despite the passage of the Americans with Disabilities Act ("ADA") nearly fifteen years ago, and the existence of the Colorado Anti-discrimination Act ("CADA"), Go - Tri

Inc. failed to design, construct and operate its restaurant so that it is readily accessible to people who use wheelchairs. Defendant Moda Inc. has also failed to make the changes necessary to bring the Moda Ristorante into compliance with the ADA. For example, at the front entrance of the restaurant, the one used by the general public, there are numerous stairs and there is no ramp, making it completely inaccessible to people who use wheelchairs. Although there is a sign on the door directing people who use wheelchairs to go to a back entrance, this requires an individual who uses a wheelchair to wheel halfway down a city block, through an automobile traffic lane, through a parking garage and through a back door. In newly designed and constructed places of public accommodation, such segregated access is not permitted under the law.

4. Other access barriers exist at the Moda Ristorante, including without limitation, a lack of ADA-compliant accessible parking spaces, a back door that has been blocked by tables and chairs, a bathroom doors that have too high an opening force, and a lounge area that has no tables or portion of the bar that is accessible to people who use wheelchairs.

5. Despite Plaintiff's repeated requests to have Go - Tri Inc. bring its restaurant into compliance with the ADA and CADA, and Go - Tri Inc.'s repeated assurances that it would do so, Go Tri Inc. has failed to comply with the ADA. Moda Inc. has failed to bring the restaurant into compliance as well.

### **JURISDICTION**

6. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1343, and supplemental jurisdiction over the state claim pursuant to 28 U.S.C. § 1367.

7. Venue is proper within this District pursuant to 28 U.S.C. § 1391.

### **PARTIES**

8. Plaintiff Colorado Cross-Disability Coalition (“CCDC”) is a Colorado non-profit corporation whose members are persons with disabilities and their nondisabled allies.

9. Defendant Go - Tri Inc. is a Colorado corporation with its principal place of business at 475 West 12th Avenue, # 16B, Denver, Colorado 80204. Defendant Go - Tri, Inc. designed and constructed the Moda Ristorante, a restaurant, and owned and operated the restaurant until recently.

10. Defendant Moda Inc. Is a Colorado Corporation with its principal place of business at 201 Columbine Street, Suite 300, Denver, Colorado 80206. Defendant Moda Inc. purchased all of the assets of Go - Tri, Inc. and now owns and operates the Moda Ristorante.

### **FACTS**

11. CCDC members have not been provided ready access to the Moda Ristorante; they experienced barriers to access at the Moda Ristorante, including, but not limited to:

a. a complete lack of ADA-compliant accessible parking spaces and van accessible spaces;

b. although it was feasible to do so when the Moda Ristorante was constructed, the entrance used by the majority of people visiting the building, the front entrance, has numerous stairs, making it inaccessible to people who use wheelchairs;

c. tables and bar counters in the lounge area that are too high to be accessible to people who use wheelchair;

d. bathroom doors that have greater than 5 lbf (22.2N) opening force, making them inaccessible;

e. although these access problems could have been remedied by now, Defendants have refused to do so.

12. CCDC members have also experienced other barriers that prohibit them from the full and equal enjoyment of the Moda Ristorante.

13. CCDC's purpose is to work for systemic change that promotes independence, self-reliance, and full inclusion for people with disabilities in the entire community. As part of that purpose, CCDC seeks to ensure that persons with disabilities have access to -- and do not encounter discrimination in -- public accommodations such as the Moda Ristorante.

14. CCDC's members include individuals with disabilities and their friends, relatives and allies who dine in restaurants like the Moda Ristorante.

15. The elimination of discrimination, such as that of Defendant, and the integration of persons with disabilities into the community are at the core of CCDC's organizational purpose.

16. The participation of individual CCDC members in the lawsuit is not required either to resolve the claims at issue or to formulate relief.

**FIRST CLAIM FOR RELIEF**  
(Violations of the Americans with Disabilities Act)

17. Plaintiffs reallege and incorporate by reference the remainder of the allegations set forth in this Complaint as if fully set forth herein.

18. Defendant Go - Tri Inc. designed, constructed and operated the Moda Ristorante and is therefore a place of public accommodation as defined in 42 U.S.C. § 12181(7)(B).

19. Defendant Moda Inc. owns and operates the Moda Ristorante and is therefore a place of public accommodation as defined in 42 U.S.C. § 12181(7)(B).

20. Defendants have discriminated against Plaintiff on the basis of disability. Defendants' discriminatory conduct includes but is not limited to:

- a. Discriminatory exclusion from and/or denial of goods, services, facilities, privileges, advantages, accommodations, and/or opportunities;
- b. Provision of goods, services, facilities, privileges, advantages, and/or accommodations that are not equal to those afforded non-disabled individuals;
- c. Failing to design and construct facilities for first occupancy later than 30 months after July 26, 1990, that are readily accessible to and usable by individuals with disabilities;

- d. Failing to remedy discriminatory barriers to access after being informed of them and having abundant time to remedy the barriers.

21. As such, Defendants discriminate and, in the absence of the injunction requested herein, will continue in the future to discriminate against Plaintiff on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, accommodations and/or opportunities of the Moda Ristorante in violation of Title III of the Americans with Disabilities Act, 42 U.S.C. § 12181, et seq., and/or its implementing regulations.

22. Plaintiff has been injured and will continue to be injured by this discrimination.

**SECOND CLAIM FOR RELIEF**  
(Violations of the Colorado Anti-discrimination Act)

23. Plaintiff realleges and incorporates by reference the allegations set forth in this Complaint as if fully set forth herein.

24. The Moda Ristorante, is a place of public accommodation as that term is defined in C.R.S. § 24-34-601(1).

25. The CADA is to be construed consistently with the ADA and other federal civil rights statutes. 3 Colo. Code. Reg. 708.60.1(C).

26. Defendants have, directly or indirectly, refused, withheld from, and/or denied Plaintiff, because of disability, the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of the Moda Ristorante.

27. Plaintiff has been injured by and will continue to be injured by Defendants' discrimination.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully pray:

1. That this Court assume jurisdiction;
2. That this Court issue an order declaring the Defendants to be in violation of the ADA;
3. That this Court issue an injunction ordering the Defendants to bring the Moda Ristorante into compliance with, and to operate the Moda Ristorante in compliance with the ADA;
4. That this Court award Plaintiff its reasonable attorneys' fees and costs under the ADA;
5. That this Court award Plaintiff damages under the CADA;
6. That this Court award such additional or alternative relief as may be just, proper and equitable.

Respectfully submitted,

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Dated: February 17, 2005

Attorney for Plaintiffs

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