



A REPORT TO MEMBERS OF
THE SOUTH CAROLINA BAR
YOUNG LAWYERS DIVISION

Does Sméagol Have a Viable Discrimination and Harassment Claim under the ADA?



By Jeremy R.R. Summerlin

I recently read through an old decision by the Supreme Court of Gondor, issued by the court back during the tail end of the Third Age. For you legal nerds, the case name is *Sméagol a/k/a Gollum v. Frodo Baggins, et al.*

Of particular interest to me as an employment lawyer was the disability discrimination claim raised by Sméagol under the ADA (Ardans with Disabilities Act, Arda being their name for Earth, obv), a strikingly similar statute to our own Americans with Disabilities Act, for which I offer thanks to Eru Ilúvatar.

Sméagol suffered from a disability in the form of dissociative identity disorder (formerly diagnosed as split personality disorder). This disease affects his mental status and makes daily life functions, such as concentrating, thinking, scheming, and plotting, much more difficult than normal. Thus, his condition constitutes a disability under the ADA.

Frodo Baggins, an employee of the joint public/private conglomerate known as the Council of Elrond, was sent off on his assigned work task of destroying the One Ring of Sauron in the cracks of Mount Doom. Samwise Gamgee was sent along with Frodo and reported directly to Mr. Baggins.

At a certain point, Sméagol met up with Frodo and Sam in the rocky crags of the Eryn Muil. The record on appeal conflicts here as to the exact course of events, with the defendants alleging that Sméagol attacked them and attempted to steal the Ring, raising both conversion and trade secrets issues, while Seamgol alleged that the Ring actually belonged to him and had been given to him as a birthday present. The court elides the question of ownership, as it's not relevant to the ultimate issues.



What is agreed upon is that Sméagol thereafter joined the employ of Frodo and Sam, with Mr. Gamgee providing the most direct supervision of Sméagol during this term of employment.

Now, the Defendants argued (unsuccessfully) that Sméagol was never actually an employee of the Quest, but rather worked as an independent contractor. However, immediately upon joining the company, Defendants placed a rope around Sméagol's neck. This level of control, as noted in IRS guidelines and relevant appellate guidance, indicates that Sméagol was more likely an employee, not an independent contractor, and thus the ADA applies.

The rope actually leads to the next legal question confronting the Court. The Defendants directly observed manifestations of Sméagol's mental illness, thus placing them on notice of his disability. (Sméagol had not been employed for a year by that point, so FMLA leave was not available.) Frodo also knew that Smeagol had been tortured and suffered from PTSD. Despite their knowledge, Defendants Gamgee and Baggins nonetheless place the aforementioned rope around Smeagol's neck.

South Carolina Young Lawyer is published quarterly by the Young Lawyers Division of the South Carolina Bar, 950 Taylor St., P.O. Box 608, Columbia, SC 29202-0608. www.scb.org. Copyright © 2023 South Carolina Bar. The opinions expressed are those of the authors and do not represent the opinions or policies of the Young Lawyers Division or the South Carolina Bar. Unauthorized reproduction or use of the materials contained herein is prohibited.

The Defendants defended this decision by arguing that wearing the rope was an essential function of Sméagol's position at that time. (He was later promoted to a full-fledged guide and thus the rope was no longer required, according to the record.) Without it, they argued, Sméagol might have wandered off and been unable to accomplish his tasks. It was also a matter of safety, they allege, akin to personal protective equipment (PPE). Finally, given concerns about Sméagol taking the Ring to a competitor, the defendants argued that the leash was akin to a non-compete agreement and was reasonably limited in time and scope so as to protect a legitimate business interest.

The court found, however, that even if true, Sméagol's request to "take it off us," constituted a request for a reasonable accommodation under the ADA. It does appear from the facts that the parties all engaged in the interactive process, although only after hours of Defendant Gamgee dragging Sméagol through the rocky pathways of the Eryn Muil. This initial refusal to engage with Sméagol's requests (and his obvious allergic reaction to the Elven rope) violates the ADA. I would also argue that Sméagol has tort claims for assault, intentional infliction of emotional distress, and false imprisonment.

Eventually, the Defendants did accommodate Sméagol's disability and allowed him to travel without the leash. However, at that point, Mr. Gamgee engaged in a protracted and retaliatory campaign against Sméagol in the form of harassment based on Sméagol's well-documented disability. Gamgee admits that he kept up a steady stream of negativity about Sméagol (his subordinate, remember) to Mr. Baggins, the ultimate supervisor and decision-maker. Further, and without provocation, Gamgee created two rather nasty nicknames for Mr. Sméagol: Slinker and Stinker. These nicknames were directly targeted at Mr. Sméagol's disability, i.e., dissociative identity disorder.

Even more egregious, Mr. Baggins personally observed Gamgee's harassment of Sméagol based on his disability. While the record does show that Baggins talked to Gamgee about the harassment, Baggins failed to take prompt and remedial action to redress Gamgee's illegal and unlawful behavior,

and the harassment continued. Based on the severe and pervasive nature of Gamgee's harassment, it's clear that Sméagol had been subjected to a hostile work environment based on his disability.

Sméagol is yet another victim of unlawful discrimination and harass-

ment in the workplace of Middle-earth. If you believe that you, like Sméagol, have been discriminated against on the basis of your disability, please do not hesitate to reach out to a local employment lawyer immediately. I treat all claims very seriously, for they are...precious to me.

What's Been Happening?



The YLD celebrated Constitution Day – a Federal Holiday – in September by visiting local high schools throughout the state and providing presentations about civics and government.



The Voices Against Violence Committee hosted its annual Necessities Drive benefiting shelters throughout the state. Thanks to the participation of the young Lawyers throughout the state, they were able to provide various essential items to those in need, including linens, cleaning supplies, and toiletries.



The members of the YLD 6th Circuit celebrated the holidays with Judge Gibbons and other members of the 6th Judicial Circuit at Rocky Creek Sporting Clays in Richburg.

Letter from the President



What made you go to law school? Was it because you enjoyed undergrad so much, you just wanted more classes? Were you a gunner, bound and determined

to outdo your classmates? Was the idea to set yourself up for success, financially and professionally? Or was it perhaps a more altruistic reason?

I did not always want to be an attorney. Growing up, I was good at math; numbers made sense to me. After making an 800 on the math portion of the SAT, I decided I was going to be an accountant. I declared Business Administration as my major at The Citadel and spent a summer working at a CPA firm in Columbia.

Turns out, numbers can be boring. In addition to quickly discovering that my future career needed to involve people, I also came to realize that being a lawyer could be fun, rewarding, and exhilarating. I was written up at The Citadel for an offense—failure to sign out on the computer before going on general leave—that had not yet been codified. As a result, I was able to escape punishment. I lent my explanation to my classmates, and they too escaped consequences. Naively believing that practicing law would be that simple, I elected to go to law school and have

been chasing that feeling ever since. Each of you has a similar journey; something in your life impacted you in such a way that led to law school. Everybody reading this chose to obtain a J.D. degree for some reason or another. Nonetheless, despite varying practice areas, ages, geographic regions, genders, and nationality, we are all members of the South Carolina Bar Young Lawyers Division following law school graduation and admission to the Bar. What you now choose to do with that degree is up to you.

To that end, please join me in welcoming our new admittees to the South Carolina Bar! Regardless of your age, you are a member of the South Carolina Bar Young Lawyers Division for your first 5 years of practice or until you turn 36, whichever comes later. After you get settled, consider joining a YLD committee- we have fantastic leaders within the organization that oversee service to the Bar and service to the public. We'd love to have you! Take a look online at the various opportunities, and always feel free to reach out to me.

I enjoy this time of year, even if the month of December seems to be increasingly fleeting as I get older. Serving as President of the Young Lawyers Division for nearly half a year now has been a privilege. Thank you to everyone

Stars of the Quarter

Mary Templeton

Jeffrey Lappin

Katie Tanner

Wilson Daniel

Dalton Barfield

Megan Feltham

Mary Cothonneau Eldridge

Ryan Swancy

Meg Doelling

Taylor Currin

Ally Burch

Assatta Williams

Elizabeth Crane

who has contributed to our success. I look forward to planning events, hosting CLE's, and getting to see many of you in 2024.

Warmest regards,

Taylor D. Gilliam
YLD President
USC School of Law
gilliatd@mailbox.sc.edu



The 12th Circuit hosted a gathering to introduce new lawyers to the YLD at 1720 Burger Bar.