

Gomez v. Knife Mgmt., LLC

United States District Court for the Southern District of Florida
September 14, 2018, Decided; September 14, 2018, Entered on Docket
Case No. 17-cv-23843-GAYLES

Reporter

2018 U.S. Dist. LEXIS 159178 *

ANDRES GOMEZ, Plaintiff, v. THE KNIFE MANAGEMENT, LLC, and CARMA LLC d/b/a THE KNIFE STEAKHOUSE, Defendant.

Counsel: [*1] For Andres Gomez, individually, Plaintiff: Thomas B. Bacon, LEAD ATTORNEY, Thomas B. Bacon, P.A., Mt. Dora, FL; Kathy L. Houston, Houston Law Firm, PL, Miami, FL.

For The Knife Management, LLC, a Florida limited liability company, doing business as, The Knife Steakhouse, Carma, LLC, Defendants: Jonathan Adam Heller, Law Offices of Jonathan A. Heller, P.A., Miami, FL.

Judges: DARRIN P. GAYLES, UNITED STATES DISTRICT JUDGE.

Opinion by: DARRIN P. GAYLES

Opinion

ORDER

THIS CAUSE comes before the Court on Defendant The Knife Management, LLC's Motion to Dismiss (the "Motion") [ECF No. 13]. The Court has carefully considered the Motion and the record and is otherwise fully advised. For the reasons that follow, the Motion is granted.

I. BACKGROUND

Plaintiff Andres Gomez is blind and, therefore, qualifies as an individual with a disability under the [Americans with Disabilities Act, 42 U.S.C. § 12181 et seq.](#) ("ADA"). Plaintiff also operates as a "tester" for purposes of ensuring that places of public accommodation comply with the ADA. Due to his visual impairment, Plaintiff is

unable to read computer materials or access and comprehend internet websites without the use of screen reader software. Plaintiff uses JAWS Screen Reader software, a popular screen [*2] reader that is specifically designed for the visually impaired.

According to the Complaint, Defendant owns and operates a chain of restaurants located throughout the United States, the state of Florida, and Miami-Dade County. Defendant's physical restaurants qualify as public accommodations under the ADA. Defendant also owns and operates a website located at www.thekniferestaurant.com. Plaintiff alleges that Defendant's website "is an extension of, is in conjunction with, is complementary and supplemental to, the above-referenced public accommodation," and that it "provides information about Defendant's public accommodation, including information about the goods, services, accommodations, privileges, benefits and facilities available to patrons." [ECF No. 35, ¶ 5]. Plaintiff further alleges he attempted to access and/or utilize Defendant's website but was unable to do so because portions of the website are not readable by screen reader software. [*Id.*, ¶ 10]. Thus, according to Plaintiff, he has been denied full and equal access to Defendant's website and its content.

Plaintiff does not allege that he attempted to visit one of Defendant's physical restaurant locations, that he intends [*3] to visit one in the future, or that Defendant's website impedes his ability to access its physical restaurant locations or the goods and services offered therein.

II. LEGAL STANDARD

"To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" [Ashcroft v. Iqbal, 556 U.S. 662, 678, 129 S. Ct. 1937, 173 L. Ed. 2d 868 \(2009\)](#) (quoting [Bell Atl. Corp. v.](#)

[Twombly, 550 U.S. 544, 570, 127 S. Ct. 1955, 167 L. Ed. 2d 929 \(2007\)](#)). Although this pleading standard "does not require 'detailed factual allegations,' . . . it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Id.* (quoting [Twombly, 550 U.S. at 555](#)).

Pleadings must contain "more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." [Twombly, 550 U.S. at 555](#) (citation omitted). Indeed, "only a complaint that states a plausible claim for relief survives a motion to dismiss." [Iqbal, 556 U.S. at 679](#) (citing [Twombly, 550 U.S. at 556](#)). To meet this "plausibility standard," a plaintiff must "plead[] factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* at 678 (citing [Twombly, 550 U.S. at 556](#)). When reviewing a motion to dismiss, a court must construe the complaint in the light most favorable to the plaintiff and take the factual allegations therein as true. See [Brooks v. Blue Cross & Blue Shield of Fla., Inc., 116 F.3d 1364, 1369 \(11th Cir. 1997\)](#).

III. LEGAL ANALYSIS [*4]

Defendant has moved to dismiss arguing that Plaintiff has not sufficiently alleged standing. Defendant argues that Plaintiff failed to allege that he tried to access the physical restaurant, or that he attempted to use other readily accessible options to discover information available on the website in order to further his attempt to visit the restaurant. Both of these requirements, according to Defendant, are necessary to overcome the standing hurdle: allegations solely of attempts to access the website do not suffice. Plaintiff counters with eight different "discriminatory actions" that Plaintiff has suffered as a result of being "denied access" by virtue of being unable to access the website. [ECF No. 16 at 5]. Because standing is a jurisdictional question, the Court must resolve it before proceeding to the merits of whether Defendant's website is a public accommodation.¹ [Dillard v. Baldwin County Comm'rs, 225 F.3d 1271, 1275 \(11th Cir. 2001\)](#) (citing [Steel Co. v. Citizens for a Better Env't, 523 U.S. 83, 102, 118 S. Ct. 1003, 140 L. Ed. 2d 210 \(1998\)](#)).

¹ Gomez's status as an ADA "tester" does not affect his Article III standing. [Houston v Marod Supermarkets, Inc., 733 F.3d 1323, 1334 \(11th Cir. 2013\)](#).

To assert standing, a plaintiff must demonstrate: (1) an injury in fact; (2) a causal connection between the injury and the conduct complained of; and (3) that the injury will be redressed by a favorable decision. [Lujan v. Defenders of Wildlife, 504 U.S. 555, 560, 112 S. Ct. 2130, 119 L. Ed. 2d 351, \(1992\)](#) (citations omitted). To obtain injunctive relief, a party must also show a sufficient likelihood [*5] that he will continue to be affected by the allegedly unlawful conduct in the future. [Wooden v. Bd. of Regents of Univ. System of Georgia, 247 F.3d 1262, 1283 \(11th Cir. 2001\)](#). Under the ADA, an allegation that Plaintiff intends to return to the "public accommodation" typically suffices to seek injunctive relief. See [Shotz v. Cates, 256 F.3d 1077, 1081 \(11th Cir. 2001\)](#).

Websites, however, are not always public accommodations in the same way that "brick and mortar" locations are. [Gomez v. Gen. Nutrition Corp., No. 17-22747-CIV, 2018 U.S. Dist. LEXIS 149655, 2018 WL 4179057, at *4 \(S.D. Fla. Aug. 29, 2018\)](#) ("Essentially, the ADA prohibits a retailer's website from "imped[ing] a disabled person's full use and enjoyment of the brick-and-mortar store."). So, to have standing to challenge a website connected to a physical location, a plaintiff must demonstrate that the website "is a service that facilitates the use of" the physical location. [Haynes v. Dunkin' Donuts, LLC, No. 18-10373, 2018 U.S. App. LEXIS 21126, 2018 WL 3634720, at *3 \(11th Cir. July 31, 2018\)](#).² Courts in this circuit refer to this as the "nexus" requirement. *E.g.*, [Haynes v. Pollo Operations, Inc., 17-cv-61003, 2018 U.S. Dist. LEXIS 51748, 2018 WL 1523421, at *1 \(S.D. Fla. Mar. 28, 2018\)](#) (citing [Rendon v. Valleycrest Prods., Ltd., 294 F.3d 1279, 1282 \(11th Cir. 2002\)](#)).

Thus, ADA Plaintiffs have two generally accepted ways to demonstrate standing. They can allege intent to visit the physical location in the near future. *E.g.*, [Gil v. Winn-](#)

² Recently, the Eleventh Circuit found that a website could be a "service that facilitates the use of [Defendant's] shops" such that it extended the reach of the physical, public accommodation to the online forum. [Haynes v. Dunkin' Donuts, No. 18-10373, 2018 U.S. App. LEXIS 21126, 2018 WL 3634720, at *3 \(11th Cir. July 31, 2018\)](#). The Court reasoned that "the alleged inaccessibility of [Defendant's] website denie[d] [Plaintiff] access to the services of the shops that are available on [Defendant's] website, which includes the information about store locations and the ability to buy gift cards online." *Id.* But in that case, the Plaintiff had plausibly alleged both intent to visit the physical location and intent to purchase commodities from the website. *Id.*

[Dixie Stores, Inc., 257 F. Supp. 3d 1340, 1347-48 \(S.D. Fla. 2017\)](#) (standing exists where plaintiff "allege[d] that he tried unsuccessfully to access [Defendants'] website and that he intends to patronize [Defendants' physical] stores again if he [*6] can access [the] website"). Or, they can allege that the website "impeded [their] ability to access to [the] physical locations or the goods or services offered therein." E.g., [Haynes, 2018 U.S. Dist. LEXIS 51748, 2018 WL 1523421, at *1 \(S.D. Fla. Mar. 28, 2018\)](#) (no standing where plaintiff "merely allege[d] that the website denied him access to information about Defendant's public accommodation") (internal quotations omitted).

End of Document

Neither exists here. Gomez does not allege that he intends to visit a Knife steakhouse—in the near future, or ever. Nor does he allege that the website impeded his ability to access the restaurant. Rather, he alleges that he "attempted to access" the *website* "but was unable to...enjoy full and equal access...and/or understand the content" because the content was not compatible with his disability software. [ECF No. 35 ¶ 10]. And nowhere does Plaintiff's Complaint allege that his access to the website was tied to his access of the restaurant. Thus, even if Defendant's website is a public accommodation—a question that this Court does not reach—Plaintiff has not established standing to challenge it.

IV. CONCLUSION

Based on the foregoing, it is **ORDERED AND ADJUDGED** that

1. Defendant's Motion to Dismiss [ECF No. 7] is **GRANTED**.
2. Plaintiff's Amended Complaint [*7] [ECF No. 35] is **DISMISSED** without prejudice.
3. This action is **CLOSED** for administrative purposes and all other pending motions are **DENIED AS MOOT**.
4. Plaintiff may move to re-open this case if he files an amended complaint within thirty (30) days from the date of this Order.

DONE AND ORDERED in Chambers at Miami, Florida, this 14th day of September, 2018.

/s/ Darrin P. Gayles

DARRIN P. GAYLES