Alert

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COZEN O'CONNOR

Eleventh Circuit Court of Appeals Refuses to Extend ADA Liability to Websites

Title III of the Americans with Disabilities Act (ADA) requires that disabled persons have equal access to goods and services provided by any "place of public accommodation." On April 7, 2021, the Eleventh Circuit Court of Appeals held in a 2:1 decision that a website is not a "place of public accommodation" subject to the ADA; a position that stands in conflict with some other circuit courts of appeals, requiring caution on the part of businesses.

Appellant, the grocery chain Winn-Dixie Stores, Inc., does not sell any products on its website; however, its website does offer perks such as adding coupons to loyalty cards, locating the nearest store, and refilling prescriptions for in-store pick up. The plaintiff, Juan Carlos Gil, alleged that he is a long-time Winn-Dixie customer with a visual disability that requires him to access websites with screen reader software. Upon learning of the existence of Winn-Dixie's website, Gil alleged that his screen reader software was incompatible.

Gil alleged that Winn-Dixie violated the ADA because the website was inaccessible to visually impaired individuals. Winn-Dixie argued that the ADA only applied to physical locations and that there were no accessibility barriers preventing Gil from visiting its stores.

In 2017, a Southern District of Florida court ruled against Winn-Dixie. The lower court held that the website's services had a sufficient "nexus" to the physical store, and therefore the website was a service in connection with a place of public accommodation covered by the ADA.

The Eleventh Circuit overturned the lower court's decision. The appeals court rejected the lower court's "nexus" theory, which was aligned with the Ninth Circuit's interpretation, and instead applied a strict textualist approach, relying upon the ADA and Department of Justice regulations' definitions of public accommodations. These regulatory and statutory definitions listed only physical places. The Eleventh Circuit found that "intangible spaces," like websites, simply are not places of public accommodation under the ADA.

The appeals court recognized that inaccessible portions of a website could amount to an ADA violation if it became an "intangible barrier" that resulted in the customer's exclusion, segregation, or different treatment from other individuals in the physical store. However, the court reasoned no sales or transactions could occur on the website and the ability to link coupons and submit online prescription refills did not meet this threshold. While this decision is precedential as to claims filed in federal courts in Alabama, Florida, and Georgia, it adds to a split on this question among the circuit courts. The Third, Sixth, and Ninth Circuits have similarly ruled that "places of public accommodation" under the ADA must be physical spaces. However, the First and Seventh Circuits have extended ADA's definition of a public accommodation to virtual or digital spaces. In a world where technology is increasingly omnipresent and the DOJ has consistently declined to act in this space, it is likely that either Congress or the Supreme Court will have to decide the ultimate issue.

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