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Court Concludes That A Business's Website Does Not Need To Comply With The ADA

We have been blogging for more than five years about the rising litigation threat over website accessibility, and the surrounding confusion about what type of compliance, if any, is required. In our initial blog post on this topic in January 2016, we stated that the question as to whether a business's website and mobile app needed to be accessible with the Americans with Disabilities Act ("ADA") had no definitive answer at that time because (i) although Title III of the ADA prohibits discrimination against individuals on the basis of disability with regard to their participation and equal enjoyment in places of public accommodation, the statute did not explicitly define whether a place of public accommodation must be a physical place or facility; (ii) there were no regulations from the Department of Justice ("DOJ") (the federal agency that enforces Title III of the ADA) regarding website accessibility and without applicable regulations, it was unclear how a court would address a lawsuit over website accessibility; and (iii) adding to this uncertainty, the DOJ had emphasized that, despite the lack of regulations, businesses should make websites accessible to the disabled, and relied on a set of guidelines called the Web Content Accessibility Guidelines ("WCAG").

Five years later, this question still has no definitive answer. And, the DOJ still has yet to promulgate regulations regarding businesses' obligations to make websites accessible to individuals with visual and hearing impairments. In April, however, an extremely positive development occurred for businesses when, in the matter of *Gil v. Winn-Dixie Stores Inc.*, the Eleventh Circuit Court of Appeals (which covers Florida, Georgia, and Alabama) held that websites are NOT places of public accommodation and thus are NOT covered by Title III of the ADA.

Gil v. Winn-Dixie began more than 5 years ago when the plaintiff, an individual with a visual impairment, alleged that the supermarket chain violated the ADA because the store's website did not comport with screen-reader technology that reads the texts of websites out loud and as a result, he could not access store coupons or fill prescriptions on the store's website. In 2017, U.S. District Judge Robert Scola agreed with Gil and found that Winn-Dixie violated the ADA because its website denied him "the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations that Winn-Dixie offers to its sighted customers." Judge Scola concluded that the website is regulated by Title III of the ADA because it is closely integrated with the physical locations and is a gateway to the stores. Since that 2017 ruling, plaintiffs (and courts) have relied on this "gateway" language in support of their claims that businesses are required to make their websites accessible for individuals with visual and hearing impairments.

Winn-Dixie appealed the District Court's ruling, based in part on its belief that the current website standards and/or regulations are unclear. After more than two years of deliberation, the Eleventh Circuit Court of Appeals decided to reverse the District Court's ruling. The Eleventh Circuit found that Winn-Dixie did NOT violate the ADA because, among other things, websites are NOT places of public accommodation and the supermarket's website did not pose an "intangible barrier" for the plaintiff to his access to the goods, services, privileges, or advantages of its physical stores.

In support of its position, the Court cited to the statutory definition of the term "public accommodation" which, it noted, was an "expansive list of physical locations" that does not include websites. The Court further reasoned the plain language of the statute is unambiguous — "public accommodations are limited to actual, physical places" and that the grocery chain's website was not the "sole access point" to the store.

(Note that the question as to whether websites are places of public accommodation is only relevant to whether websites must be compatible with certain screen reader software for individuals with visual and hearing impairments. The issues decided in *Winn-Dixie* are not related to the ADA's requirement that a hotel provide information on its website regarding various accessibility features of its public areas and guestrooms so that a mobility impaired individual can determine whether he can visit the property. That is a separate issue that, while dealing with information on a hotel's website, is not technically a "website accessibility" issue.)

There is no debating that the *Winn-Dixie* decision is a significant victory for business owners. That being said, it is important to note that this ruling from the Eleventh Circuit differs substantially from the Ninth Circuit's 2019 decision in *Robles v. Domino's Pizza,* which was the first decision by any U.S. Court of Appeals holding that a website should be considered a place of public accommodation under Title III of the ADA. Indeed, in *Robles*, the Ninth Circuit (covering the majority of Western states) found that the ADA protects not just physical "brick and mortar" locations, but also the "services of a public accommodation," including websites and apps and, as a result, Domino's had violated Title III of the ADA because its website's incompatibility with screen reader software impeded access to the goods and services of its physical pizza franchises.

In distinguishing *Robles*, the Eleventh Circuit emphasized that purchases could be made on the Domino's website, whereas purchases could not be made on the Winn-Dixie website. The Eleventh Circuit further stated that it did not fined *Robles* persuasive, either factually or legally, and did not agree with its conclusion that a website with a "nexus" to a physical place of public accommodation is covered by the ADA (even though, ironically, the 2017 Winn-Dixie District Court's decision contained such "nexus" language).

At the end of the day, by taking a narrow view of the applicability of the ADA to websites, the Eleventh Circuit's Winn-Dixie decision creates obstacles that plaintiffs will now have to overcome in order to bring website accessibility lawsuits, at least in Florida, Georgia, and Alabama. The decision also further highlights a split between the Ninth and Eleventh Circuits, as well as among other Circuits, regarding the applicability of Title III to websites. Thus, with this Eleventh Circuit decision, it is now more likely than ever that the United States Supreme Court will weigh in on this issue in the relatively near future and (hopefully) provide businesses with more definitive guidance as to whether business's websites and mobile apps must be ADA accessible.

As always, we will continue to keep you updated on this constantly developing area of the law.