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California Appeals Court Determines ADA Not Applicable to E-Commerce Websites Lacking a Brick-and-Mortar Store

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The California Court of Appeals Second Appellate District recently affirmed a trial court's dismissal of a complaint filed by a visually impaired plaintiff, alleging that a cleaning product company's retail website was incompatible with screen-reader software. The plaintiff claimed that the retail website constituted a "public accommodation," even absent any connection to a physical space (the cleaning product company did not maintain any brick-and-mortar stores), based on the policy goals of the Americans With Disabilities Act (ADA) to support his claim under California's Unruh Act. The Los Angeles Superior Court granted the defendant's demurrer, concluding the website's alleged inaccessibility did not violate the ADA, and the plaintiff failed to allege sufficient facts to establish discriminatory intent under the Unruh Act.

In *Martinez v. Cot'n Wash, Inc.*, No. B314476 (Cal. Ct. App. August 1, 2022), a visually impaired individual relied on screen-reader software to read website content, but the cleaning product company's website allegedly had access barriers that interfered with the use of the screen reader. Though the plaintiff argued that the plain meaning of the ADA's definition of "place of public accommodation" or "facility" encompassed retail websites, the court found the statutory language was not dispositive because decades of federal case law found the terms ambiguous. Further, the plaintiff's assertion that a retail website qualified as "other personal property" and thus constituted a "facility" under the ADA was similarly unpersuasive when pairing the phrase in the statute with a list of exclusively physical spaces or physical property.

The Court of Appeals further noted that given the different economic and business concerns of physical and digital retail spaces, as well as the differing burdens placed on retailers when implementing antidiscrimination measures for a physical or digital space, "it would not be an absurd result to interpret Title III as treating transactions differently depending on whether they are purely digital or have a physical component." Though the court agreed with the plaintiff that reducing access barriers to digital commerce "would be consistent with the general, overall goal of [the ADA]," the language of the statute did not support an interpretation that the ADA applied to electronic commerce. Instead, "[b]ased on the language Congress (and the DOJ in implementing regulations) chose, even considered in the context of Title III policy goals and a need to interpret the law expansively, it is not clear that Congress intended this result in drafting Title III."

Finally, the Court of Appeals also reviewed the ADA's legislative history since the circuit split involving the ADA's application to websites began, noting "we ultimately find dispositive that adopting [the plaintiff]'s proposed interpretation of 'place of public accommodation' [as encompassing purely digital retail websites] would mean embracing a view that Congress (through its inaction since the enactment of the ADA) and the DOJ (through its

unwillingness to draft regulations) have both tacitly rejected.” The court then confirmed that “Congress’s failure to provide clarification in the face of known confusion — and, to a lesser extent, the DOJ’s similar failure — is not a reason for us to step in and provide that clarification. To the contrary, it is a reason for us *not* to do so.”

This opinion is a step in the right direction in encouraging the Department of Justice and/or Congress to provide rules on whether the ADA applies to websites, and if so, (1) to which types of websites it applies (e.g., websites tied to brick-and-mortar locations, as opposed to digital-only websites); (2) what a company must do to comply with the ADA; and (3) what safe harbor mechanisms can be installed to protect businesses from the onslaught of litigation seen by the state and country for the past several years in this field, while also helping to encourage accessibility measures.

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