

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 18-cv-60282-WPD
DIMITROULEAS-SNOW**

JUAN CARLOS GIL,

Plaintiff,

v.

BROWARD COUNTY, a political
subdivision of the State of Florida,

Defendant.

**BROWARD COUNTY’S MOTION TO DISMISS WITH PREJUDICE
PLAINTIFF’S COMPLAINT AND INCORPORATED MEMORANDUM OF LAW**

Defendant, Broward County (“County”), pursuant to Federal Rule of Civil Procedure 12(b)(6) and Local Rule 7.1(a)(1), hereby moves to dismiss Plaintiff Juan Carlos Gil’s Complaint.

In support, the County states as follows:

I. BACKGROUND AND ALLEGATIONS OF THE COMPLAINT

1. On February 8, 2018, Plaintiff filed a complaint for injunctive and declaratory relief, as well as damages, under Title II of the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act. *See generally* ECF No. 1.

2. In his Complaint, Plaintiff alleges that the County’s website, www.broward.org, is an “information portal to Broward County government for the general public,” and constitutes a “program[], service[], and activit[y].” *Id.* at ¶ 3.

3. Plaintiff further alleges that the documents available in the County’s information portal are “not available for persons who are blind or low sighted,” thus denying Plaintiff access to the website’s content. *Id.* at ¶ 5.

4. Plaintiff contends that access to this information is necessary for him to learn about the government of Broward County, where he has considered establishing residence. *Id.* at ¶ 30. Coincidentally, it appears Plaintiff has also considered establishing residence in Palm Beach County, against whom Plaintiff filed a virtually identical lawsuit earlier this year.¹ *See Gil v. Palm Beach County*, Case No.: 9:18-cv-80097-DMM (filed January 29, 2018).

5. Plaintiff not once alleges that his inability to access the website has precluded his access to the County's building or facilities. *See generally* ECF No. 1.

6. Plaintiff also does not allege that he requested any reasonable accommodations from County. *Id.*

II. ARGUMENT

The County may move to dismiss the complaint pursuant to Rule 12(b)(6) if the Plaintiff has failed to state a claim upon which relief may be granted. Fed. R. Civ. P. 12(b)(6). To survive the motion, Plaintiff's "obligation to provide the grounds of his entitle[ment] to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do. Factual allegations must be enough to raise a right to relief above the speculative level, on the assumption that all the allegations in the complaint are true (even if doubtful in fact)." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Unless Plaintiff has "nudged his claim across the line from conceivable to plausible," the complaint "must be dismissed." *Id.* "[U]nsupported conclusions of law or of mixed fact and law have long been recognized not to

¹ A court may judicially notice a fact that is not subject to reasonable dispute because it can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned. Fed. R. Evid. § 201. *See also Remeus v. Waste Mgmt., Inc. of Fla.*, No.: 14-80-158-CIV, 2014 WL 1328392 (S.D. Fla. Mar. 31, 2014) ("Courts may take judicial notice of pleadings from another lawsuit without converting a motion to dismiss into a motion for summary judgment") (citing *Horne v. Potter*, 392 Fed. App'x. 800, 802 (11th Cir. 2010)).

prevent a Rule 12(b)(6) dismissal.” *Dalrymple v. Reno*, 334 F.3d 991, 996 (11th Cir. 2003) (citations omitted).

Even accepting Plaintiff’s allegations as true, Plaintiff has failed to state a claim for which relief may be granted.

A. The County’s Purely Informational Website Does Not Deny Access to Facilities.

Title II of the ADA provides that “[a] public entity may not deny the benefits of its programs, activities, and services to individuals with disabilities because its facilities are inaccessible.” The Americans with Disabilities Act, Title II Technical Assistance Manual, <https://www.ada.gov/taman2.html#II-3.6000> (last visited March 1, 2018). When dealing with websites, “Courts in this district require [that a] website [] provide more than information about a defendant’s business in order to state a claim under the ADA for website inaccessibility.” *Gomez v. La Carreta Enter., Inc.*, No. 17-61195-CIV-DIMITROULEAS, 2017 U.S. Dist. LEXIS 202662 at *9, (S.D. Fla. Dec. 7, 2017). That is, the lack of access to website content must prevent the plaintiff access to “a specific, physical, concrete space.” *See Kidwell v. Fla. Comm’n on Human Relations*, No. 2:16-CV-403-FTM-99CM, 2017 WL 176897 at *5 (M.D. Fla. Jan. 17, 2017).²

As this Court stated in *Gomez v. La Carreta, supra*:

Businesses are not required to have websites. If a business has a website, it cannot impede a disabled’s person’s full use and enjoyment of the physical space the business occupies. Nearly all websites associated with a physical business location provide information about locations, hours, and goods and services provided by the business. Some of these websites do not interface with screen readers. If the Court allows ADA accessibility claims to proceed for these websites under a theory that

² Although the cited authorities deal with Title III of the ADA, there is a dearth of authority on Title II of the ADA as applied to website accessibility. In fact, in 2017 the Department of Justice announced that it was formally withdrawing its previously issued Noticed of Proposed Rulemaking pertaining to Accessibility of Web Information and Services of State and Local Government. *See* Notice of Withdrawal of Four Previously Announced Rulemaking Actions; Federal Register, <https://www.federalregister.gov/documents/2017/12/26/2017-27510/nondiscrimination-on-the-basis-of-disability-notice-of-withdrawal-of-four-previously-announced> (last viewed Feb. 27, 2018). As such, this Motion relies on available Title III precedent.

a visually impaired plaintiff was denied access to *information* about the physical location, then this Court would be saying, in effect, that *all* websites must interface with screen readers. The Court is not willing to take that leap because it would eviscerate the framework established by district courts within the Eleventh Circuit construing *Rendon*.

La Carreta, 2017 U.S. Dist. LEXIS 202662 at *10 (Dimitrouleas, J.) (emphasis on original).

Much like businesses, counties are also not required to have websites. *Gomez v. Bang & Olufsen Am., Inc.*, No. 1:16-CV-23801, 2017 WL 1957182, at *4 (S.D. Fla. Feb. 2, 2017). “[T]he ADA does not require places of public accommodations to create full-service websites for disabled persons. In fact, the ADA does not require a place of public accommodation to have a website at all.” *Id.* Moreover, Plaintiff’s own Complaint alleges that the County’s website is nothing more than an “informational portal to Broward County Business.” ECF No. 1 at ¶ 3. As this Court has previously found, an ADA accessibility claim cannot proceed “under a theory that a visually impaired plaintiff was denied access to information about the physical location.” *La Carreta*, 2017 U.S. Dist. LEXIS 202662 at *10. Again, the Plaintiff must allege that the website’s inaccessibility impedes the plaintiff’s “access to a specific, physical, concrete space.” *Bang & Olufsen*, 2017 WL 1957182, at *4. *See also* Order granting Motion to Dismiss in the matter of *Haynes v. Genesco, Inc.*. Case No.: 0:17-cv-61641-KMM (Jan. 11, 2018, Moore, Michael, J.) (granting motion to dismiss where plaintiff did not allege that the partially-inaccessible website “impedes his access to [d]efendant’s physical stores.”).

Plaintiff’s Complaint is devoid of any allegation that the County’s website has prevented Plaintiff’s access to the County’s facilities. This is not surprising given that if Plaintiff wanted to know so much about the County’s business, he could simply listen to the meetings of the Board of County Commissioners available through the website, or attend the meetings in person at the County’s facilities, all of which are ADA-accessible.

Therefore, because the website at issue is, by Plaintiff's own admission, just an "information portal," and Plaintiff has not and cannot allege that the website prevents Plaintiff's access to a physical location, Plaintiff fails to allege a claim for which relief may be granted, and the Complaint must be dismissed.

B. Plaintiff Has Failed To Request A Reasonable Accommodation.

Under Title II, "[w]hen an auxiliary aid or service is required, the public entity must provide an opportunity for individuals to request the auxiliary aids and services of their choice [. . .]". The Americans with Disabilities Act, Title II Technical Assistance Manual, *supra*. However, a defendant's "duty to provide a reasonable accommodation is not triggered unless a specific demand for an accommodation has been made." *Gaston v. Bellingrath Gardens & Home, Inc.*, 167 F.3d 1361, 1363 (11th Cir. 1999); *see also Wood v. Pres. & Trs. Of Spring Hill Coll.*, 978 F.2d 1214, 1222 (11th Cir. 1992) (holding that student was required to demonstrate that she made specific request for accommodation to prevail on ADA claim against college). This concept applies with equal force in Title II cases. *See* Order granting Motion to Dismiss in the matter of *Magide v. Broward*, No. 0:11-cv-62742-WPD (May 23, 2012, Dimitrouleas, J.) (dismissing claim against Broward County where plaintiff failed to allege that he had requested a reasonable request for an accommodation and that the County had received same). Dismissal is thus appropriate where the plaintiff's allegations do not demonstrate that he made, and the County received, a "specific demand" for an accommodation. *Id.*

Here, the very website about which Plaintiff complains provides that:

If you use assistive technology (such as a screen reader, etc) and have difficulty accessing information on the Site, please contact Broward County's Office of Public Communications at PublicInfo@broward.org or 954-357-6990 and provide

the Web address of the material you tried to access, the problem you experienced, and your contact information so that you can receive the necessary information.³

Notwithstanding, Plaintiff's Complaint is devoid of any allegations that he contacted the County to request a reasonable accommodation or assistance in accessing the Portable Document Format (PDF) documents available through the County's website. As such, Plaintiff has failed to allege a claim for which relief may be granted, and the Complaint is thus subject to dismissal.

WHEREFORE, for the reasons set forth herein, the County respectfully requests that this Court enter an Order granting the County's Motion to Dismiss Plaintiff's Complaint with Prejudice.

Dated: March 5, 2018

Respectfully submitted;

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³ As stated above in footnote 1, a court may judicially notice a fact that is not subject to reasonable dispute because it can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned. Fed. R. Evid. § 201.

CERTIFICATE OF SERVICE
0:18-CV-60282-WPD

The County hereby certifies that a copy of the foregoing was filed on March 5, 2018, using CM/ECF and served upon all counsel of record.

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SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 18-cv-60282-WPD

JUAN CARLOS GIL,

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_____ /

ORDER GRANTING
BROWARD COUNTY'S MOTION TO DISMISS WITH PREJUDICE
PLAINTIFF'S COMPLAINT AND INCORPORATED MEMORANDUM OF LAW

THIS CAUSE is before the Court upon Broward County's Motion to Dismiss with Prejudice Plaintiff's Complaint and Incorporated Memorandum of Law, filed herein on March 5, 2018. The Court has carefully considered the Motion, and is otherwise fully advised in the premises. It is hereby

ORDERED AND ADJUDGED that Broward County's Motion to Dismiss with Prejudice Plaintiff's Complaint and Incorporated Memorandum of Law is GRANTED. This action is DISMISSED WITH PREJUDICE.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida, this
_____ day of March, 2018.

WILLIAM P. DIMITROULEAS
United States District Judge

Copies Furnished to:
Counsel of Record