

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FORT PIERCE DIVISION**

JUAN CARLOS GIL,

Plaintiff,

v.

Case No.: 2:18-cv-14097-RLR

ST. LUCIE COUNTY,

Defendant.

_____ /

DEFENDANT'S ANSWER AND AFFIRMATIVE DEFENSES

The Defendant, St. Lucie County ("County"), by and through the undersigned attorneys, hereby answers and asserts defenses to the Complaint of Plaintiff, Juan Carlos Gil, as follows:

INTRODUCTION

1. The County asserts that the statutes referenced speak for themselves and denies the remaining allegations set forth in paragraph one (1) to the extent they are inconsistent therewith.

2. The County admits that this purports to be an action for civil rights violations but denies that the County committed any civil rights violations against individuals with disabilities. The allegations in paragraph two (2) that have not been specifically admitted are denied.

3. The County admits that it is a public entity which has provided information to the public through the website URL www.stlucieco.gov. The allegations in paragraph three (3) that have not been specifically admitted are denied.

4. The County is without knowledge as to the allegations in paragraph four (4), which is therefore denied.

5. Paragraph five (5) is denied.

6. The County admits that it is a public entity under Section 504 of the Rehabilitation Act. The County asserts that the statutes referenced speak for themselves and denies the remaining allegations set forth in paragraph six (6) to the extent they are inconsistent therewith.

7. Paragraph seven (7) is denied.

8. Paragraph eight (8) is denied.

9. The County admits that this purports to be an action for declaratory and injunctive relief pursuant to the statutory provisions but denies the sufficiency of the same. The allegations in paragraph nine (9) that have not been specifically admitted are denied.

JURISDICTION AND VENUE

10. The County asserts that the statutes referenced speak for themselves and denies the remaining allegations set forth in paragraph ten (10) to the extent they are inconsistent therewith.

11. Paragraph eleven (11) is admitted.

12. Paragraph twelve (12) is denied.

PARTIES

Juan Carlos Gil

13. The County is without knowledge as the allegations in paragraph thirteen (13), which are therefore denied.

14. The County is without knowledge as the allegations in paragraph fourteen (14), which are therefore denied.

15. The County is without knowledge as the allegations in paragraph fifteen (15), which are therefore denied.

16. The County is without knowledge as the allegations in paragraph sixteen (16), which are therefore denied.

17. The County is without knowledge as the allegations in paragraph seventeen (17), which are therefore denied.

18. The County is without knowledge as the allegations in paragraph eighteen (18), which are therefore denied.

St. Lucie County or St. Lucie County, Florida

19. The County admits that it is a local government entity, a body corporate and political subdivision of the state of Florida. The County is without knowledge as to the remaining allegations in paragraph nineteen (19), and therefore denies the same.

20. The County asserts that the statutes referenced speak for themselves and denies the remaining allegations set forth in paragraph twenty (20) to the extent they are inconsistent therewith.

21. The County admits that any state or local government is a public entity. The County asserts that the statutes referenced speak for themselves and denies the remaining allegations set forth in paragraph twenty-one (21) to the extent they are inconsistent therewith.

22. Paragraph twenty-two (22) is admitted.

GENERAL ALLEGATIONS

23. The County admits that it provides information to the public through a website. The allegations in paragraph twenty-three (23) that have not been specifically admitted are denied.

24. The County admits it provides information to the public through a website. The allegations in paragraph twenty-four (24) that have not been specifically admitted are denied.

25. The County admits it provides information to the public through a website. The allegations in paragraph twenty-five (25) that have not been specifically admitted are denied.

26. The County admits it provides information to the public through a website. The allegations in paragraph twenty-six (26) that have not been specifically admitted are denied.

27. The County admits it provides information to the public through a website. The allegations in paragraph twenty-seven (27) that have not been specifically admitted are denied.

28. The County admits it provides information to the public through a website. The allegations in paragraph twenty-eight (28) that have not been specifically admitted are denied.

29. The County admits it provides information to the public through a website. The allegations in paragraph twenty-nine (29) that have not been specifically admitted are denied.

30. The County admits it provides information to the public through a website. The allegations in paragraph thirty (30) that have not been specifically admitted are denied.

31. The County is without knowledge as the allegations in paragraph thirty-one (31), which are therefore denied.

32. Paragraph thirty-two (32) is denied.

33. The County is without knowledge as the allegations in paragraph thirty-three (33), which are therefore denied.

34. The County is without knowledge as the allegations in paragraph thirty-four (34), which are therefore denied.

35. Paragraph thirty-five (35) is denied.

36. Paragraph thirty-six (36) is denied.

37. Paragraph thirty-seven (37) is denied.

38. Paragraph thirty-eight (38) is denied.

39. Paragraph thirty-nine (39) is denied.

40. The County is without knowledge as the allegations in paragraph forty (40), which are therefore denied.

41. The County is without knowledge as the allegations in paragraph forty-one (41), which are therefore denied.

42. The County is without knowledge as the allegations in paragraph forty-two (42), which are therefore denied.

43. Paragraph forty-three (43) is denied.

44. Paragraph forty-four (44) is denied.

45. Paragraph forty-five (45) is denied.

46. Paragraph forty-six (46) is denied.

47. Paragraph forty-seven (47) is denied.

48. Paragraph forty-eight (48) is denied.

49. Paragraph forty-nine (49) is denied.

50. Paragraph fifty (50) is denied.

51. The County admits that Plaintiff is represented in this matter by Scott Dinin P.A. and J. Courtney Cunningham PLLC, but is without knowledge as to the remaining allegations in paragraph fifty-one (51), which are therefore denied.

COUNT I - VIOLATIONS OF TITLE II OF THE ADA

52. The County reasserts and incorporates by reference its response to paragraphs one (1) through fifty-one (51) above and would further state as follows:

53. The County asserts that the statutes referenced speak for themselves and denies the remaining allegations set forth in paragraph fifty-three (53) to the extent they are inconsistent

therewith.

54. The County asserts that the statutes referenced speak for themselves and denies the remaining allegations set forth in paragraph fifty-four (54) to the extent they are inconsistent therewith.

55. The County asserts that the statutes referenced speak for themselves and denies the remaining allegations set forth in paragraph fifty-five (55) to the extent they are inconsistent therewith.

56. The County asserts that the statutes referenced speak for themselves and denies the remaining allegations set forth in paragraph fifty-six (56) to the extent they are inconsistent therewith.

57. Paragraph fifty-seven (57) is denied.

58. Paragraph fifty-eight (58) is denied.

59. Paragraph fifty-nine (59) is denied.

60. Paragraph sixty (60) is denied.

61. Paragraph sixty-one (61) is denied.

62. Paragraph sixty-two (62) is denied.

63. Paragraph sixty-three (63) is denied.

64. The County asserts that the statutes referenced speak for themselves and denies the remaining allegations set forth in paragraph sixty-four (64) to the extent they are inconsistent therewith.

65. Paragraph sixty-five (65) is denied.

66. The County asserts that the statutes referenced speak for themselves and denies the remaining allegations set forth in paragraph sixty-six (66) to the extent they are inconsistent

therewith.

67. The County asserts that the statutes referenced speak for themselves and denies the remaining allegations set forth in paragraph sixty-seven (67) to the extent they are inconsistent therewith.

68. Paragraph sixty-eight (68) is denied.

69. Paragraph sixty-nine (69) is denied.

70. Paragraph seventy (70) is denied.

71. Paragraph seventy-one (71) is denied.

72. Paragraph seventy-two (72) is denied.

COUNT II - VIOLATION OF SECTION 504 OF THE REHABILITATION ACT

73. The County reasserts and incorporates by reference its response to paragraphs one (1) through fifty-one (51) above and would further estate as follows:

74. The County is without knowledge as the allegations in paragraph seventy-four (74), which are therefore denied.

75. Thee County asserts that the statutes referenced speak for themselves and denies the remaining allegations set forth in paragraph seventy-five (75) to the extent they are inconsistent therewith.

76. Paragraph seventy-six (76) is admitted.

77. The County asserts that the statutes referenced speak for themselves and denies the remaining allegations set forth in paragraph seventy-seven (77) to the extent they are inconsistent therewith.

78. The County asserts that the statutes referenced speak for themselves and denies the remaining allegations set forth in paragraph seventy-eight (78) to the extent they are

inconsistent therewith.

79. The County asserts that the statutes referenced speak for themselves and denies the remaining allegations set forth in paragraph seventy-nine (79) to the extent they are inconsistent therewith.

80. The County asserts that the statutes referenced speak for themselves and denies the remaining allegations set forth in paragraph eighty (80) to the extent they are inconsistent therewith.

81. Paragraph eighty-one (81) is denied.

82. Paragraph eighty-two (82) is denied.

83. Paragraph eighty-three (83) is denied.

84. The County asserts that the statutes referenced speak for themselves and denies the remaining allegations set forth in paragraph eighty-four (84) to the extent they are inconsistent therewith.

85. The County asserts that the statutes referenced speak for themselves and denies the remaining allegations set forth in paragraph eighty-five (85) to the extent they are inconsistent therewith.

86. The County asserts that the statutes referenced speak for themselves and denies the remaining allegations set forth in paragraph eighty-six (86) to the extent they are inconsistent therewith.

87. The County asserts that the statutes referenced speak for themselves and denies the remaining allegations set forth in paragraph eighty-seven (87) to the extent they are inconsistent therewith.

88. Paragraph eighty-eight (88) is denied.

89. The County asserts that the statutes referenced speak for themselves and denies the remaining allegations set forth in paragraph eighty-nine (89) to the extent they are inconsistent therewith.

90. The County asserts that the statutes referenced speak for themselves and denies the remaining allegations set forth in paragraph ninety (90) to the extent they are inconsistent therewith.

91. The County asserts that the statutes referenced speak for themselves and denies the remaining allegations set forth in paragraph ninety-one (91) to the extent they are inconsistent therewith.

92. The County asserts that the statutes referenced speak for themselves and denies the remaining allegations set forth in paragraph ninety-two (92) to the extent they are inconsistent therewith.

93. The County asserts that the statutes referenced speak for themselves and denies the remaining allegations set forth in paragraph ninety-three (93) to the extent they are inconsistent therewith.

94. Paragraph ninety-four (94) is denied.

95. Paragraph ninety-five (95) is denied.

96. Paragraph ninety-six (96) is denied.

97. Paragraph ninety-seven (97) is denied.

98. Paragraph ninety-eight (98) is denied.

99. Paragraph ninety-nine (99) is denied.

WHEREFORE, Defendant denies all of the relief requested in the wherefore clause including its subparts (a) – (h) and denies that Plaintiff Juan Carlos Gil is entitled to the relief he is requesting.

All allegations not expressly admitted above are hereby denied.

AFFIRMATIVE DEFENSES

FURTHERMORE, the County also alleges the following Affirmative Defenses to Plaintiffs Complaint:

FIRST DEFENSE

Plaintiff's claims are barred by the doctrine of sovereign immunity and the Eleventh Amendment immunity.

SECOND DEFENSE

The County is a political subdivision of the State of Florida. Therefore, this action is subject to section 768.28, Florida Statutes, which provides for a limited waiver of sovereign immunity for political subdivisions of the State of Florida. Any recovery by Plaintiff against the County is limited by the provisions set forth in section 768.28(5), Florida Statutes, any recovery by Plaintiff's counsel is limited by the provisions of sections 768.28(8), Florida Statutes.

THIRD DEFENSE

Plaintiff cannot state a claim pursuant to the Americans with Disabilities Act because Plaintiff cannot show he was either excluded from participation in or denied the benefits of St. Lucie County's services, programs, activities or was otherwise discriminated against by St. Lucie County because of his disability by St. Lucie County's failure to make a requested reasonable modification that was necessary to accommodate Plaintiffs disability.

FOURTH DEFENSE

Plaintiff cannot state a claim pursuant to the Americans with Disabilities Act because Plaintiff did not request a reasonable modification that was necessary to accommodate Plaintiffs disability.

FIFTH DEFENSE

Plaintiff lacks standing to bring claims for the specific violations alleged in this action, or to bring these claims on behalf of any other individuals.

SIXTH DEFENSE

Plaintiff cannot state a claim pursuant to the Americans with Disabilities Act because St. Lucie County's website is not a place of public accommodation.

SEVENTH DEFENSE

Plaintiff cannot state a claim pursuant to the Americans with Disabilities Act because St. Lucie County is presently in the process of evaluation and updating its website accessibility.

EIGHTH DEFENSE

Plaintiff cannot state a claim pursuant to the Americans with Disabilities Act because current federal law does not require St. Lucie County to implement the policies and procedures demanded by Plaintiff.

NINTH DEFENSE

Some or all of Plaintiff's allegations fail to state a claim for which relief can be granted.

TENTH DEFENSE

Some or all of Plaintiff's claims are barred, in whole or in part, by the doctrines of estoppel and waiver, and by the applicable statute of limitations.

ELEVENTH DEFENSE

Upon information and belief, Plaintiff has failed to mitigate his damages, if any, including bringing to the attention of the County one or more of the alleged barriers, or requesting that the County provide any alternative access to its facility.

TWELFTH DEFENSE

To the extent any barriers to accessibility existed, the County provided legally sufficient alternative access and equivalent facilitation.

THIRTEENTH DEFENSE

To the extent that subsequent remedial actions have been taken to correct any alleged violations, this case has been rendered moot.

FOURTEENTH DEFENSE

To the extent that any barriers to accessibility do exist, removal of the same is not readily achievable or is an undue burden.

FIFTEENTH DEFENSE

To the extent Plaintiff has failed to meet any prerequisites to filing any claims alleged in this lawsuit, such claims are barred.

RESERVATION OF DEFENSES

The County reserves the right to assert such additional defenses as may become apparent during the course of discovery.

WHEREFORE, the County respectfully requests that this Court:

- a. Enter an Order dismissing with prejudice the Complaint in its entirety;
- b. Deny each and every demand, claim and prayer for relief contained in the Complaint;
- c. Award to the County its attorneys' fees and costs; and,
- d. Grant such further relief as the Court may deem just and proper.

Dated: May 3, 2018.

Respectfully submitted,

CONSTANGY, BROOKS, SMITH &
PROPHETE, LLP
Post Office Box 41099
Jacksonville, Florida 32203
Telephone: (904) 356-8900
Facsimile: (904) 356-8200

By: /s John F. Dickinson
John F. Dickinson, Esq.
jdickinson@constangy.com
Florida Bar No. 198651
Elizabeth H. Joiner, Esq.
ejoiner@constangy.com
Florida Bar No. 107843

Attorneys for Defendant,
Martin County

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 3, 2018 a true and correct copy of the foregoing was served by using the CM/ECF system, on all counsel or parties of record listed below:

Scott Dinin, Esq.
Scott R. Dinin, P.A.
4200 NW 7th Avenue
Miami, Florida 33127
Tel: (786) 431-1333
inbox@dininlaw.com

Courtney Cunningham, Esq.
J. Courtney Cunningham PLLC
8950 SW 74th Court, Suite 2201
Miami, Florida 33156
Tel: (305) 351-2014
cc@cunninghampllc.com

/s/ John F. Dickinson
Attorney