

ARTICLES

DOES YOUR WEBSITE NEED TO BE HANDICAP COMPLIANT?

By Richard Klein, Esq., Partner, Romer Debbas LLP

As a litigator, I recently had to represent one of my real estate clients in connection with a lawsuit brought ostensibly for allegedly violating Title III of the Americans With Disabilities Act (ADA), 42 U.S.C. §12181 et seq. Specifically, a client of mine owns a mixed-use building in Chelsea and a portion of the retail space is operated by a restaurant. A handicapped individual apparently sought to eat at the restaurant establishment and subsequently brought a lawsuit against the restaurant and my client for ADA violations, such as inaccessible bathrooms, not enough space to navigate with a wheelchair, and similar allegations.

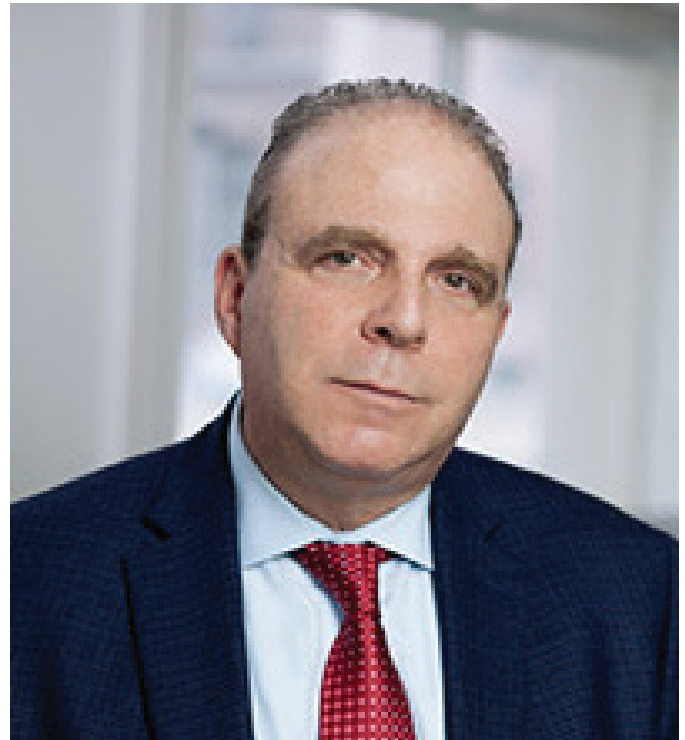
Title III of the ADA prohibits the owner of a place of public accommodation from discriminating “on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation” 42 U.S.C. §12182(a). Clearly, the public policy behind the ADA is extremely important to insure that no individual be discriminated against when attempting to access a public accommodation.

However, it is no secret that lawsuits brought under the ADA have now become a strategy commonly employed to obtain quick monetary settlements, since most defendants will seek to settle the case early rather than incur the costs of litigation.

In my particular lawsuit, upon having done a little research and searching the name of the plaintiff and his attorney through various websites, I was able to determine that this plaintiff and his attorney were making a career of suing various restaurants and other such businesses in the New York City area. In fact, after going onto the federal court system website, I was able to compare the various complaints, letters, and motions submitted to the federal courts by this plaintiff and his attorney, and I found that each was identical to the other. The only changes in each lawsuit were the names of the defendants and street locations.

As I was navigating through the federal court’s website, I began to wonder as to whether a website needs to comply with the ADA, particularly with respect to the management of real estate in the New York City area and the growth of management websites such as ClickPay, Building Link, and Concierge Plus. In today’s technologically savvy world, you can access a building’s website to find their financial statements, offering plan, and other important operative documents. Does a visually impaired individual have any basis to go after such a businesses as being inaccessible to the blind? Or what about the liability of the cooperative or condominium that is utilizing these websites to facilitate its building management—can these entities be found to have violated the ADA?

To begin with, the ADA talks about “places of public accommodation.” Obviously, consistent with the public policy behind the statute, one thinks of actual places of business, like a restaurant, movie theater, or



gym. While private residential housing may not be specifically covered by the ADA, places of public accommodation located in a residential building, such as a gym, rental and sales offices, commercial spaces, and parking spaces, are covered by ADA standards.

So while there have not yet been many cases filed in federal court, it appears that the trend is for federal court judges to side with the plaintiffs.

Further, the courts look to see if the website employs certain software used by visually impaired individuals to access the Internet. These “screen readers” fall under the Web Content Accessibility Guidelines (WCAG). Essentially, this software allows for the visual internet to be converted into sound and “reads” the content of the webpage to the visually impaired user.

So if a sales office for a residential cooperative apartment building is covered by the ADA, and the cooperative now utilizes its website program to process purchase applications, then it would stand to reason that a court could find that the website is also covered by the ADA.

Based upon the foregoing, we are recommending to our clients that they be proactive and, to the extent possible, make sure that any website that they utilize for building management comply with the ADA and employ software that meets WCAG standards.

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