

(For Publication)

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

JUAN MORENO,)	Case No. SA CV 99-668-GLT[JW]
)	
Plaintiff,)	ORDER GRANTING IN PART
)	PLAINTIFF'S MOTION TO FILE FIRST
vs.)	AMENDED COMPLAINT
)	
G & M OIL CO., et al.,)	
)	
Defendants.)	
_____)	

This case presents an issue of apparent first impression: whether standing under the Americans with Disabilities Act (42 U.S.C. § 12101 et seq.) providing recourse for an inappropriate architectural barrier at a place of public accommodation is "site specific." The question is whether a disabled plaintiff who suffers discrimination due to an inappropriate architectural barrier at one business location may sue for the existence of similar barriers at the same defendant's other business locations where the plaintiff has not personally suffered discrimination. The Court holds standing under this provision of the ADA is limited to the specific location where a plaintiff suffers actual "injury in fact." The individual plaintiff in this case lacks standing to assert claims based on a generalized grievance of similar barriers at other locations or on injuries suffered by third parties at other locations.

1 I. BACKGROUND

2 Plaintiff's original disability discrimination complaint alleges
3 claims under the Americans with Disabilities Act for architectural
4 barriers at Defendants' gas station and convenience store in Santa Fe
5 Springs, California. Plaintiff moves for leave to file a First
6 Amended Complaint adding claims about similar barrier violations at
7 the other 82 gas stations throughout California owned by Defendants.

8 Although he alleges he travels extensively, Plaintiff has not
9 visited any of the 82 other station locations or encountered
10 architectural barriers there. He does not claim he wants to visit the
11 other stations, or will ever do so. Plaintiff claims no specific
12 injury to himself at the 82 additional stations. At oral argument,
13 Plaintiff's counsel stated Plaintiff does not seek ADA damages for
14 conditions at the 82 additional stations, but wants injunctive relief
15 for himself and others similarly situated concerning those locations,
16 based on Defendants' common practice of noncompliance with disability
17 requirements.

18 Plaintiff also asserts state claims based on the California
19 Unfair Business Practices Act (Cal. Bus. & Prof. Code § 17200 et
20 seq.), the Unruh Civil Rights Act (Cal. Civ. Code § 51 et seq.), the
21 California Disabled Persons Act (Cal. Civ. Code § 54 et seq.), and
22 common law negligence.

23 Defendants argue the amendment would be futile because Plaintiff
24 lacks standing concerning the 82 additional station sites.

25 II. DISCUSSION

26 Rule 15(a) provides a party may amend a pleading "by leave of
27 court," and "leave shall be freely given when justice so requires."
28

1 Leave should not be given, however, where the amended complaint would
2 only present a futile claim. See Hurn v. Retirement Fund Trust of
3 Plumbing, Heating and Piping Ind. of So. Cal., 648 F.2d 1252, 1254
4 (9th Cir. 1981).

5 The Court holds an amendment would be futile as to Plaintiff's
6 federal ADA claim. No opposition is stated concerning Plaintiff's
7 state claims.

8 1. The ADA

9 Under the ADA, no individual shall be discriminated against by,
10 among other things, an inappropriate architectural barrier. 42 U.S.C.
11 § 12182(a)-(b). Plaintiff does not claim he was personally
12 discriminated against at the 82 additional stations. He claims
13 inappropriate architectural barriers exist there which discriminate
14 generally against him and others similarly situated.

15 The Court holds the Americans with Disabilities Act's anti-
16 barrier provisions are "site specific" under both jurisdiction
17 principles and the terms of the statute.

18 Under Article III's "case or controversy" requirement, a
19 plaintiff must show he suffered a concrete and particularized "injury
20 in fact." Friends of the Earth v. Laidlaw Environmental Serv., 120
21 S.Ct. 693, 704 (2000). Plaintiff has satisfied Article III by
22 alleging injury at one of Defendant's gas stations.

23 The issue now presented is whether, having satisfied Article III
24 as to one gas station, Plaintiff may assert claims as to the other 82
25 stations.

26 This is a question of prudential standing. Plaintiff may not
27 assert a "generalized grievance" or assert the rights of third parties

1 at sites where he has suffered no injury.

2 The Supreme Court has held that, "when the asserted harm is a
3 'generalized grievance' shared in substantially equal measure by all
4 or a large class of citizens, that harm alone normally does not
5 warrant exercise of jurisdiction." Warth v. Seldin, 422 U.S. 490, 499
6 (1975). Plaintiff lacks standing to sue for any generalized injury
7 caused by the existence of inappropriate barriers at the 82 additional
8 locations.

9 The terms of the statute corroborate this conclusion. Section
10 12188 requires that a plaintiff actually be "subjected to
11 discrimination" or be "about to be subjected" to it.^{1/} There is no
12 showing this Plaintiff was subjected to or about to be subjected to
13 discrimination at the 82 additional gas stations. The statute does
14 not support any claim as to these stations.

15 Plaintiff cannot assert claims against the 82 additional stations
16 based on the rights of other disabled persons who may encounter the
17 barriers. This is not a class action, and the ADA contains no
18 "private attorney general" language. In the absence of such language,
19 Plaintiff's involvement is insufficient because there is no injury to
20 himself concerning the 82 additional locations.

21 The Supreme Court has stated a general rule preventing Plaintiffs
22 from asserting the rights of others:

23 [E]ven when the plaintiff has alleged injury sufficient to meet

24
25 ^{1/} A disabled person is not required "to engage in a futile
26 gesture" if there is actual notice the defendant will
27 discriminate. 42 U.S.C. § 12188. This provision, however, does
28 no more than clarify the previous sentence's statement that a
plaintiff "about to be subjected to discrimination" may sue. It
does not eliminate the requirement of actual existing or
threatened discrimination.

1 the "case or controversy" requirement, this Court has held the
2 plaintiff generally must assert his own legal rights and
3 interests, and cannot rest his claim to relief on the legal
4 rights or interests of third parties.

5 Warth v. Seldin, 422 U.S. 490, 499 (1975).^{2/}

6 The Supreme Court recently summarized the issue of standing to
7 assert the rights of others:

8 In the ordinary course, a litigant must assert his or her own
9 legal rights and interests, and cannot rest a claim to relief on
10 the legal rights or interests of third parties. This fundamental
11 restriction on our authority admits of certain, limited
12 exceptions. We have recognized the right of litigants to bring
13 actions on behalf of third parties, provided three important
14 criteria are satisfied: The litigant must have suffered an
15 "injury in fact," thus giving him or her a "sufficiently concrete
16 interest" in the outcome of the issue in dispute; the litigant
17 must have a close relation to the third party; and there must
18 exist some hindrance to the third party's ability to protect his
19 or her own interests.

20 Powers v. Ohio, 499 U.S. 400, 410-411 (1991) (citations omitted).

21 There is no indication Plaintiff has a close relation to persons
22 discriminated against at the 82 additional sites, or that there exists
23 any hindrance to those persons' ability to protect their own

24
25 ^{2/} The Court in Warth noted "Congress may grant an express
26 right of action to persons who otherwise would be barred by
27 prudential standing rules" and "persons to whom Congress has
28 granted a right of action . . . may have standing to seek relief
on the basis of the legal rights and interests of others." Warth
v. Seldin, 422 U.S. 490, 501 (1975). That is not the case here
because the ADA creates no such right of action.

1 interests. Plaintiff lacks standing to assert the rights of these
2 other persons.

3 The Court concludes that, under the federal ADA, Plaintiff here
4 cannot assert either an interest of his own or the interests of third
5 parties as to the 82 additional sites. Amendment of his ADA claims
6 would be futile as to those locations.

7 2. State Claims, including California Business and Professions
8 Code § 17200

9 Defendants have presented no opposition to the amendment of
10 Plaintiff's state claims, including the § 17200 claim, as to the 82
11 additional sites.

12 III. DISPOSITION

13 The motion is GRANTED as to Plaintiff's state claims but DENIED
14 as to the federal ADA claim. Within 15 days Plaintiff may file a
15 newly prepared amended complaint conforming to this ruling.

16
17 DATED: March _____, 2000.

18
19 _____
20 GARY L. TAYLOR
21 UNITED STATES DISTRICT JUDGE
22
23
24
25
26
27
28