

NOTICE: NOT FOR OFFICIAL PUBLICATION.
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

PETER STROJNIK, *Plaintiff/Appellant*,

v.

FLAGEXPRESS, LLC, d/b/a HOLIDAY INN EXPRESS; IHG
FRANCHISING, LLC, *Defendants/Appellees*.

No. 1 CA-CV 21-0074
FILED 11-9-2021

Appeal from the Superior Court in Coconino County
No. S0300CV202000474
The Honorable Ted Stuart Reed, Judge

AFFIRMED

APPEARANCES

By Peter Strojnik
Plaintiff/Appellant

O'Connor & Dyet, PC, Tempe
By Shane P. Dyet, Travis B. Hill, Nick Strom
Counsel for Defendants/Appellees

MEMORANDUM DECISION

Judge David B. Gass delivered the decision of the court, in which Presiding Judge D. Steven Williams and Judge James B. Morse Jr. joined.

G A S S, Judge:

¶1 Peter Strojnik, a self-represented former lawyer, appeals from the dismissal of his complaint with prejudice and the denial of his motion to amend his complaint. We affirm.

FACTUAL AND PROCEDURAL HISTORY

¶2 Strojnik brought an eight-count complaint in Coconino County superior court against FlagExpress, d/b/a Holiday Inn Express; IHG Franchising LLC (the Hotel). Strojnik alleged the Hotel denied him full and equal enjoyment of the premises in violation of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. §§ 12101-12213. Strojnik specifically alleged: (1) violations of the ADA; (2) negligence; (3) negligent misrepresentation; (4) failure to disclose on website; (5) common law fraud/consumer fraud; (6) “consumer fraud—brand deceit”; (7) civil conspiracy to commit fraud, and (8) aiding and abetting.

¶3 The Hotel successfully moved to dismiss the complaint with prejudice under Rule 12(b)(1) of the Arizona Rules of Civil Procedure for lack of standing and Rule 12 (b)(6) for failure to state a claim upon which relief could be granted. The superior court denied Strojnik’s motion to amend his complaint, denied his motion to clarify, and filed a final judgment under Rule 54(c). Strojnik timely appealed. This court has jurisdiction under article VI, section 9, of the Arizona Constitution, and A.R.S. §§ 12-120.21.A.1 and 12-2101.A.1.

ANALYSIS

¶4 Because ours is just the latest decision to address repeated deficiencies in Strojnik’s ADA claims, we resolve his issues succinctly.

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I. We affirm the superior court’s dismissal of Strojnik’s case.

A. Because Strojnik alleged no injury in fact, he lacks ADA standing.

¶5 This court reviews *de novo* whether Strojnik has standing and whether the superior court correctly granted the motion to dismiss. See *Aegis of Ariz., L.L.C. v. Town of Marana*, 206 Ariz. 557, 562, ¶ 16 (App. 2003) (standing); *Coleman v. City of Mesa*, 230 Ariz. 352, 355–56, ¶¶ 7–8 (2012) (dismissal). Because Strojnik was not “entitled to relief under any interpretation of the facts susceptible of proof,” we affirm the dismissal. See *Yes on Prop 200 v. Napolitano*, 215 Ariz. 458, 464, ¶ 7 (App. 2007) (citation omitted).

¶6 ADA plaintiffs must establish standing by showing: (1) they suffered an “injury in fact”; (2) the injury and the defendants’ conduct are “causal[ly] connect[ed]”; and (3) the court likely can redress the alleged injury with a decision in the plaintiffs’ favor. *Doran v. 7-Eleven, Inc.*, 524 F.3d 1034, 1039 (9th Cir. 2008) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992)). Arizona state courts generally defer to the federal courts’ interpretation of federal law. *Cimarron Foothills Cmty. Ass’n v. Kippen*, 206 Ariz. 455, 458, ¶ 6 (App. 2003).

¶7 The first element of standing requires Strojnik to have “a distinct and palpable injury.” See *Fernandez v. Takata Seat Belts, Inc.*, 210 Ariz. 138, 140, ¶ 6 (2005) (citation omitted). We need go no further in our analysis. Rather than showing a distinct and palpable injury, Strojnik—as he has done before—pleads vague disabilities, vague restrictions, and vague connections to the hotel property. See *Strojnik v. Driftwood Hospitality Mgmt. LLC*, CV-20-01532-PHX-DJH, 2021 WL 50456, at *5 (D. Ariz. Jan. 6, 2021). The mere inclusion of hotel photos with vague captions, such as “8lbs to push open lobby bathroom” and “inaccessible check in counter,” is inadequate when Strojnik obfuscates his own particular restrictions. As noted by the Federal District Court in Arizona:

The deeper issue with Mr. Strojnik’s Complaints is whether he demonstrates an injury-in-fact. He does not. Instead of explaining how the alleged ADA violations prevent him from full and equal access to the hotels, Mr. Strojnik makes vague statements about his disabilities, and it is anybody’s guess how the particular hotel features . . . actually impact him.

Id. Various courts have called Strojnik’s ADA cases inadequate cookie-cutter lawsuits. See, e.g., *Strojnik v. State ex rel. Brnovich*, 1 CA-CV 20-0423,

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2021 WL 3051887, at *1, ¶ 2 (Ariz. App. July 20, 2021) (mem. decision) (“cookie cutter”); *Strojnik v. Portola Hotel, LLC*, 19-cv-07579-VKD, 2021 WL 4172921, at *2 (N.D. Cal. Sept. 14, 2021) (citing Strojnik’s long history of filing inadequate ADA claims with non-specific allegations leading to dismissal); *Strojnik v. State Bar of Ariz.*, 446 F. Supp. 3d 566, 570 n.3 (D. Ariz. 2020); *Advocs. for Individuals with Disabilities LLC v. MidFirst Bank*, 279 F. Supp. 3d 891, 893 (D. Ariz. 2017) (litigating “minor, even trivial” ADA violations in an “extortionate” manner). This case is no different.

¶8 On appeal, we currently have this case from Strojnik and one other, *Strojnik v. Kashyap, LLC*, 1 CA-CV 21-0043. Our review of the complaints from both cases shows the same cut-and-paste problems. See Ariz. R. Evid. 201 (taking judicial notice). Not only has Strojnik failed to address the procedural and jurisdictional deficiencies in his nearly 2,000 previous complaints, even his typographical errors are unchanged. Strojnik’s complaint here even acknowledges the generic nature of each filing in a footnote, where he admits “the referenced violations *were not necessarily encountered* at Defendant’s Hotel.” (Emphasis added.) Our decisions addressing both cases are noticeably similar but only because Strojnik has filed the same type of “cookie cutter” lawsuit here. See *Brnovich*, 1 CA-CV 20-0423, at *1, ¶ 2.

¶9 We further decline Strojnik’s invitation to use our “common sense” to fill in the holes in his inadequate pleadings. See *Ramirez v. Health Partners of S. Ariz.*, 193 Ariz. 325, 326 n.2 (App. 1998). When no current injury is capable of redress, a plaintiff has no standing. *Karbal v. Ariz. Dep’t of Revenue*, 215 Ariz. 114, 118, ¶ 19 (App. 2007). In short, Strojnik’s ADA claim here is deficient as a matter of law. See *Fid. Sec. Life Ins. Co. v. State Dep’t of Ins.*, 191 Ariz. 222, 224, ¶ 4 (1998).

B. Strojnik’s state law claims fail.

¶10 Strojnik raises two sets of state law claims. In the first set, he alleges the Hotels engaged in a series of fraud-related torts resulting from an unlawful franchise agreement between FlagExpress and IHG. And the remainder of his state law claims hinge on his ADA claim. Because both sets of claims are deficient as a matter of law, we affirm their dismissal.

1. Strojnik’s fraud-related tort claims are baseless.

¶11 Strojnik argues FlagExpress committed “consumer fraud—brand deceit” under the Arizona Consumer Fraud Act (ACFA) when FlagExpress entered into an agreement with IHG to use the name “Holiday Inn.” See A.R.S. § 44-1522.A. Strojnik further asserts this agreement allowed

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FlagExpress to engage in “a system of deceptive self-identification through the purchase and use of nationally recognizable brand names such as . . . IHG.” We disagree.

¶12 To state a claim under the ACFA, Strojnik’s complaint must sufficiently allege the Hotel’s franchise agreement was fraudulent and the agreement injured him. *See Cheatham v. ADT Corp.*, 161 F. Supp. 3d 815, 825–26, 831 (D. Ariz. 2016) (explaining the ACFA’s prohibition against “fraudulent, deceptive, or misleading conduct in connection with the sale or advertisement of consumer goods and services” requires plaintiffs to sufficiently allege the misrepresentation injured them). Instead, like his ADA claim, he only made conclusory statements about how the Hotels’ conduct injured him, saying, he “justifiably relied on FLAGEXPRESS’s false self-identification to his damage.” The ACFA requires something more. *See, e.g., Lorona v. Ariz. Summit Law Sch.*, 188 F. Supp. 3d 927, 936–37 (D. Ariz. 2016) (law school graduate sufficiently alleged her reliance on her law school’s misrepresentation of its graduate statistics damaged her because she was unemployable after graduating); *Cheatham*, 161 F. Supp. 3d at 831 (customer sufficiently alleged she was damaged by her security system provider’s misrepresentation because she had to pay out-of-pocket expenses after discovering the fraud).

¶13 Strojnik also cannot prevail under either his civil conspiracy or aiding and abetting claims because each tort requires him to prove an underlying tort. *See, e.g., Wells Fargo Bank v. Ariz. Laborers, Teamsters & Cement Local No. 395 Pension Tr. Fund*, 201 Ariz. 474, 498, ¶¶ 99–101 (2002) (civil conspiracy); *Baker ex rel. Hall Brake Supply, Inc. v. Stewart Title & Tr. of Phx., Inc.*, 197 Ariz. 535, 545, ¶ 42 (App. 2000) (aiding and abetting). And because he based both claims solely off his deficient ACFA claim, the superior court did not err in dismissing these claims.

2. Strojnik’s state law claims hinging on his ADA claim fail.

¶14 Strojnik’s remaining state law claims hinge on his ADA claim. But the ADA does not provide any support for these claims. *See Strojnik v. Bakersfield Convention Hotel I, LLC*, 436 F. Supp. 3d 1332, 1344 (E.D. Cal. 2020). For instance, his negligence claim must fail because the ADA does not establish an “independent duty of care.” *See id.* And because FlagExpress owes no duty under the ADA, his negligent misrepresentation claim relying on FlagExpress’s breach of a duty under the ADA also fails. *See, e.g., Van Buren v. Pima Cmty. Coll. Dist. Bd.*, 113 Ariz. 85, 87 (1976) (explaining negligent misrepresentation is governed by negligence

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principles and, thus, requires “a duty owed and a breach of that duty”); *Bakersfield*, 436 F. Supp. 3d at 1344 (explaining Congress did not enact the ADA “as a separate duty of care to give rise to an independent negligence claim under state laws”).

¶15 Next, Strojnik cannot prevail under his claim of failure to disclose because he did not show how he could not reasonably discover the Hotels’ alleged “non-compliance with the ADA” on his own. *See Lerner v. DMB Realty, LLC*, 234 Ariz. 397, 403–04 (App. 2014) (A party is not entitled to relief if “the undisclosed or partially disclosed fact concerns a matter that would-be buyers reasonably can discover on their own.”). On the contrary, Strojnik readily discovered the alleged ADA violations on his own—as evidenced by the photos he used in his complaint to support his ADA claim—and he, therefore, cannot prevail on his failure to disclose claim.

¶16 Lastly, Strojnik’s “common law and consumer fraud” claim regarding FlagExpress’s alleged ADA violations fail because he rests this claim under the ACFA and he did not specifically allege how he was injured by these violations. *See Cheatham*, 161 F. Supp. 3d at 825–26 (explaining the ACFA requires claimants to allege facts showing how they were specifically harmed by their reliance on the tortfeasor’s misrepresentation). Instead, Strojnik merely alleged he “justifiably and reasonably rel[ie]d] on those representations and was damaged.”

¶17 Accordingly, the superior court did not err in dismissing Strojnik’s state law claims.

II. The superior court did not abuse its discretion when it denied Strojnik’s motion to amend.

¶18 Strojnik next argues the superior court should have allowed him to amend his complaint rather than dismissing it with prejudice. We disagree.

¶19 This court reviews a motion for leave to amend the pleadings for an abuse of discretion. *See Hall v. Romero*, 141 Ariz. 120, 124 (App. 1984). As is amply evidenced, Strojnik has a track record of failing to comply with basic jurisdictional and procedural requirements when filing lawsuits. *See Ariz. R. Evid. 201* (taking judicial notice); *see generally Strojnik v. SCG Am. Constr., Inc.*, SACV 19-1560 JVS (JDE), 2020 WL 4258814, at *4–6 (C.D. Cal. Apr. 19, 2020); *Driftwood*, CV-20-01532-PHX-DJH, at *2, 7. Three jurisdictions have even designated Strojnik a vexatious litigant and he was disbarred in Arizona for litigation practices like those listed above. *SCG*, SACV 19-1560 JVS (JDE), at *7–8; *Driftwood*, CV-20-01532-PHX-DJH, at *2,

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10 (Strojnik “harasses and coerces parties into agreeing to extortive settlements”); *Brnovich*, 2021 WL 3051887, at *1, ¶ 2; *Strojnik v. Kashyap*, 1 CA-CV 21-0043 (decision to follow).

¶20 Strojnik’s continuing failure to cure the deficiencies in his lawsuits highlights the futility of allowing him an opportunity to amend his complaint. *See Bishop v. State Dep’t of Corr.*, 172 Ariz. 472, 474–75 (App. 1992) (explaining “a [superior] court does not abuse its discretion by denying a motion to amend if it finds . . . futility in the amendment”); *see also Driftwood*, CV-20-01532-PHX-DJH, at *6 (denying Strojnik’s motion to amend because of his well-established pattern of filing deficient lawsuits). Because Stojnik has failed to show error, the superior court did not abuse its discretion.

ATTORNEY FEES AND COSTS

¶21 FlagExpress did not request attorney fees. But, as the prevailing party, FlagExpress is entitled to its costs incurred on appeal under A.R.S. § 12-342 upon compliance with ARCAP 21.

CONCLUSION

¶22 We affirm the dismissal with prejudice.



AMY M. WOOD • Clerk of the Court
FILED: AA