# United States Court of Appeals

**For the Seventh Circuit**
**Chicago, Illinois 60604**

April 3, 2023

**Before**

DIANE S. SYKES, *Chief Judge*

MICHAEL S. KANNE, *Circuit Judge**

DAVID F. HAMILTON, *Circuit Judge*

No. 21-1360

DEBORAH LAUFER,
*Plaintiff-Appellee*,

*v*.

MICHAEL S. RASMUS and
CARRIER ACCOMMODATIONS, LLC,
*Defendants-Appellants*.

Appeal from the
United States District Court for the
Western District of Wisconsin.

Nos. 20-cv-680 & 20-cv-799

William M. Conley,
*Judge*.

**O R D E R**

Deborah Laufer has filed more than 600 federal lawsuits against hotel owners and operators claiming that their websites are insufficiently specific about whether their facilities are accessible to people with disabilities. She invokes the Americans with Disabilities Act ("ADA"), 42 U.S.C. §§ 12181 et seq., and an implementing regulation, 28 C.F.R. 36.302(e)(1)(ii), and her suits seek injunctive relief directing the defendants to comply with the law, plus attorney's fees.

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* Circuit Judge Kanne was a member of the panel assigned to this appeal but died on June 16, 2022. The case will be resolved under 28 U.S.C. § 46(d) by a quorum of the panel.

Laufer, a disabled resident of Florida, does not intend to stay at any of the hotels. Rather, she is a self-described "tester" who visits hotel websites to determine whether they are ADA compliant and sues if she finds that the websites do not contain the information specified in the regulation. Accordingly, Article III standing is at issue in all of her cases.

At least 25 of Laufer's cases are pending in the Western District of Wisconsin. Though the suits name different hotel operators as defendants, they are otherwise materially identical and were assigned (or reassigned) to Judge William Conley. He ordered Laufer to show cause why she has Article III standing to sue and eventually concluded that she does. But he recognized that the issue is systemically important and has divided district courts around the country, so he certified his jurisdictional order for a consolidated interlocutory appeal in two cases in which the defendant hotel operators are represented by the same attorney. He then stayed *all* of Laufer's cases pending appellate review of his jurisdictional ruling. A motions panel of this court accepted the interlocutory appeal.

When we heard oral argument, only one circuit had weighed in on the question of Laufer's standing. The Fifth Circuit held that she lacked a concrete injury and affirmed a district court's decision dismissing her case for want of jurisdiction. *Laufer v. Mann Hosp.*, 996 F.3d 269, 272–73 (5th Cir. 2021). Soon after, the Tenth Circuit agreed. *Laufer v. Looper*, 22 F.4th 871, 883 (10th Cir. 2022). The Second Circuit later reached the same conclusion in a materially identical case involving a different "tester" plaintiff also represented by Laufer's lawyer. *See Harty v. W. Point Realty, Inc.*, 28 F.4th 435, 443–44 (2d Cir. 2022).

Not long after the Second Circuit's ruling, a circuit split emerged. The Eleventh Circuit held that Laufer suffered a concrete injury sufficient to support standing to sue, though with notable disagreement about the nature of the injury; the case produced a majority opinion and three concurrences. *Laufer v. Arpan LLC*, 29 F.4th 1268, 1275 (11th Cir. 2022); *id.* at 1275–83 (Jordan, J., concurring); *id.* at 1283–97 (Newsom, J., concurring); *id.* at 1297–99 (Carnes, J., concurring). The First Circuit was next to rule on Laufer's standing; it also concluded that Laufer suffered a concrete injury. *Laufer v. Acheson Hotels, LLC*, 50 F.4th 259, 274–75 (1st Cir. 2022). And most recently, the Fourth Circuit concluded that Laufer adequately alleged a concrete injury to support her standing to sue. *Laufer v. Naranda Hotels, LLC*, 60 F.4th 156, 174 (4th Cir. 2023).

As it now stands, the circuits are divided 3–3 on the question of Laufer's standing to sue as an ADA "tester." Last week the Supreme Court granted certiorari in

the First Circuit's case to resolve the conflict. *See Acheson Hotels, LLC v. Laufer*, No. 22-429, 2023 WL 2634524 (cert. granted Mar. 27, 2023). In light of these developments, it would serve no purpose for us to move forward to a decision and align ourselves with one side or the other in this entrenched circuit split. The prudent course is to stay this appeal to await the Supreme Court's decision in *Acheson Hotels*.

There is a procedural twist, however, and it requires a brief explanation. Three weeks after we heard oral argument, the parties filed a joint motion to dismiss the appeal—presumably under Rule 42(b) of the Federal Rules of Appellate Procedure, though the motion did not cite any rule. Nor did it say that the parties had settled the litigation or otherwise agreed to dismiss the two cases below; the motion said only that the parties would bear their own attorney's fees, costs, and litigation expenses. The controversy in these two cases thus remains alive, and dismissal of this appeal would have consequences for the 23 other Laufer cases currently pending in the Western District of Wisconsin. As we have explained, those cases are stayed; dismissing this appeal would lift the stay, and the cases would spring back to life. That, in turn, would likely set off a series of procedural steps by Judge Conley and the defendants in the revived cases to send up one (or more) of Laufer's other cases as a substitute for the dismissed appeal to preserve interlocutory review of his ruling on her standing to sue.

For these reasons, we did not grant the dismissal motion. Under the version of Rule 42(b) in effect at the time, voluntary dismissal was not an automatic or ministerial procedure; rather, dismissal was permissive, even on a joint motion.[1] *Americana Art China Co. v. Foxfire Printing & Packaging, Inc.*, 743 F.3d 243, 246 (7th Cir. 2014). In *Americana Art*, we exercised our discretion to decline to grant a joint motion to dismiss because the issue on appeal was common to many lawsuits and "economically significant." *Id.* That describes this case. We have also declined to grant a joint dismissal motion when "necessary to avoid an injustice." *Alvarado v. Corp. Cleaning Servs., Inc.*, 782 F.3d 365, 372 (7th Cir. 2015). Applying these precedents, we declined to grant the dismissal motion here, opting instead to keep this case under advisement for the

[1] The joint dismissal motion was filed on November 18, 2021. At that time Rule 42(b) provided that an appeal "may" be dismissed on a joint motion if certain conditions were satisfied. Under an amendment effective December 1, 2022, Rule 42(b)(1) requires the clerk of court to dismiss an appeal "if the parties file a signed dismissal agreement specifying how costs are to be paid and pay any court fees that are due." FED. R. APP. P. 42(b)(1).

purpose of deciding the standing question common to all of Laufer's cases in the Western District (and others pending elsewhere in our circuit).

In the meantime, however, the circuit split on the question of Laufer's standing emerged and deepened, and the Supreme Court has stepped in to resolve it. The Court's decision will determine whether any of Laufer's suits can proceed. Under these circumstances, it seems best to stay this appeal to await the Court's ruling.

For the foregoing reasons, this appeal is stayed pending the Supreme Court's decision in *Acheson Hotels*. The parties shall file statements of position within 10 days of the issuance of the Court's opinion.

APPEAL STAYED