

UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF FLORIDA

No. 14-CIV-23507-MORENO

EMILIO PINERO,

*Plaintiff,*

vs.

EDAL PLAZA, INC.,

*Defendant.*

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**ORDER DENYING DEFENDANTS' MOTIONS TO DISMISS**

This is an action for violations of the Americans with Disabilities Act, 42 U.S.C. § 12181, et seq. Plaintiff Emilio Pinero alleges that Defendant Edal Plaza, Inc.'s facility contains architectural barriers to access by individuals requiring the use of a wheel chair. Edal Plaza now moves to dismiss this action because, according to Edal Plaza, Mr. Pinero did not plead information about his attempt to access the facility, his interest in returning to the facility, or the feasibility of removing architectural barriers to access with sufficient particularity.


In reviewing Edal Plaza's motion to dismiss, the Court liberally construes the allegations contained in Mr. Pinero's complaint, and draws all reasonable inferences from those allegations. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Turning to Mr. Pinero's complaint, the Court first holds that Mr. Edal's allegations give him standing to bring suit: Mr. Pinero visited Edal Plaza's facility in the past, and Mr. Pinero intends to return there in the future. *See Petinsky v. N & D Holding, Inc.*, No. 13-22438-CIV, 2013 WL 6511738, at \*2 (S.D. Fla. Dec. 12, 2013). The Court next finds that, accepting his allegations as true, Mr. Pinero's complaint satisfies each element required of a claim under the Americans with Disabilities Act. Defendants

do not contest that Mr. Pinero is a qualified individual with a disability. Mr. Pinero was excluded from Edal Plaza's facility when he attempted to access the facility in his wheel chair, and Mr. Pinero was excluded because of the architectural barriers to entrance that violate the dictates of the Americans with Disabilities Act. *Id.* Finally, the Court draws the reasonable inference that facility's barriers to entry are readily removable, as leveling sidewalks and rearranging picnic tables are probably within the realm of practical possibility. Finding that Mr. Pinero stated a claim for violation of the Americans with Disabilities Act, it is

ADJUDGED that Edal Plaza's motion to dismiss is DENIED. It is further

ORDERED that Edal Plaza shall file an answer to Mr. Pinero's complaint by March 31, 2015.

DONE AND ORDERED in Chambers at Miami, Florida, this 19<sup>th</sup> day of March, 2015.

  
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FEDERICO A. MORENO  
UNITED STATES DISTRICT JUDGE

Copies provided to:

Counsel of Record