

STATE OF VERMONT
SUPERIOR COURT
CIVIL DIVISION

Katherine Baker, Ming-Lien Linsley,
Plaintiffs,
and
Vermont Human Rights Commission,
Plaintiff-Intervenor

Caledonia Unit
Docket No. 183-7-11 CACV

v.

Wildflower Inn a/k/a DOR Associates LLP,
Defendant

Opposition to Defendant’s “Emergency Motion for Protective Order”

After plaintiffs Katherine Baker and Ming-Lien Linsley issued a routine deposition subpoena to non-party witness Amalia Harris, the defendant to this action moved to quash the subpoena¹ on the basis of its well-worn objection that the unsuccessful settlement negotiations between the parties should have resulted in an agreement. The defendant’s motion to quash identifies no actual, unusual harm that will result from Ms. Harris’s appearance at the deposition, *see* Vt. R. Civ. P. 45(c)(3), and therefore merits no relief from this Court.

A careful reading of the defendant’s motion reveals no allegation that any cognizable harm will result from leaving the subpoena unaltered. Its failure to do so is unsurprising, given that “[i]n the absence of a claim of privilege a party usually does not have standing to object to a subpoena directed to a non-party witness.” *Langford v. Chrysler Motors Corp.*, 513 F.2d 1121, 1126 (2d Cir. 1975). *See also* 9A Charles A. Wright et al., *Federal Practice and Procedure* (3d ed. 2005 & Supp. 2010) (same). The defendant does not claim that attending a mid-day

¹ The defendant’s motion is styled as requesting a protective order pursuant to Vt. R. Civ. P. 26, but protective orders function only to shield a party from discovery that is propounded by another party. The provisions of Vt. R. Civ. P. 45 govern subpoenas.

deposition less than an hour's drive from its local counsel's office constitutes an exotic hardship meriting relief from the Court. Nor does the defendant claim that its motion is based upon an unusual, compelling and unmovable scheduling conflict that prevents its participation in Ms. Harris's deposition.

Defendant has requested a status conference and dismissal of the case based on its own self-serving and unsworn assertions that Ms. Harris was a "rogue employee" and that the owners of the Wildflower Inn played no role in discriminating against Plaintiffs. Yet, now that Plaintiffs have sought to take the deposition testimony of Ms. Harris, defendant wishes to "postpone her deposition until such time as the Court has issued an order as to whether or not this case will proceed," so that it can continue both claim that its violation of the public accommodations act is entirely Ms. Harris's fault *and* prevent the plaintiffs from obtaining sworn testimony to rebut those assertions.

Plaintiffs expect that Ms. Harris will testify that she was in fact following her employer's instructions when she told plaintiffs that the owners do allow same-sex receptions at the facility. This testimony will obviously assist the court in deciding whether defendant has carried its burden of demonstrating that no facts remain in dispute between the parties. At a minimum, Ms. Harris's deposition will assist the Court in making the factual findings that it must prior to entering an injunction against the defendant. *See* Vt. R. Civ. P. 65(d) ("[E]very order granting a . . . permanent injunction shall set forth the reasons for its issuance; shall be specific in terms; [and] shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained.").

If defendant does not think Ms. Harris' testimony will be relevant, it is free to make the strategic decision against attending her deposition as it threatens in its motion. But it cannot claim that run-of-the-mill considerations of how to handle a fact witness's deposition create a

situation that requires this Court to quash the subpoena.

In short, no action is required of the Court. The defendant has failed to meet its burden of showing that the deposition subpoena issued to the non-party witness should be altered or quashed, and its motion should be denied.

_____/s/
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January 30, 2012

CERTIFICATE OF SERVICE

I hereby certify that on January 30, 2012, I served the above opposition and its attachments by means of postage-prepaid first class mail and email upon:

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