



VT Human Rights Commission
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February 22, 2012

Michele McDonald
Caledonia Superior Court
1126 Main Street :Suite 1
St Johnsbury, VT 05819

Re: Baker and Linsley v. Wildflower Inn a/k/a DOR Associates LLP
Docket No. 183-7-11 Cacv

Dear Michele:

Please accept for filing with the Court the enclosed stipulated Intervenor Complaint of Vermont Human Rights Commission and Vermont Human Rights Commission's Renewed Motion to Intervene in the above referenced matter filed by the Vermont Human Rights Commission. I have provided a copy of the Motion to counsel of record in this matter.

I appreciate your continued cooperation in this matter.

Sincerely yours,


Robert Appel
Executive Director

Enc.

Cc: Attorney Dan Barrett (w/enc.)
Attorney Anthony R. Duprey (w/enc.)
Attorney John Anthony Simmons (w/enc.)

VERMONT SUPERIOR COURT
STATE OF VERMONT

CIVIL DIVISION

CALEDONIA COUNTY

Katherine Baker and Ming-Lien Linsley,)	
Plaintiffs,)	
and)	
Vermont Human Rights Commission,)	Docket No. 187-7-11 Cacv
Intervenor-Plaintiff)	
)	
v.)	
)	
Wildflower Inn a/k/a DOR Associates LLP,)	
Defendant)	

Vermont Human Rights Commission's Renewed Motion to Intervene

The Human Rights Commission ("HRC" or "the Commission") respectfully requests leave to intervene as a full party in this action. After having participated in discovery thus far without multiplying the work of the original parties, the Commission has heard credible testimony of the scale of the Defendant's discriminatory practices, including six violations of the Fair Housing and Public Accommodations Act in less than one year.¹ Because only the Commission has standing to seek a permanent injunction in the public interest and to assess civil penalties in the absence of pecuniary damages, the individual Plaintiffs cannot adequately represent the interests of the Commission (and the public at-large) in remedying Defendant's discriminatory practices.

¹ In her deposition testimony, the Defendant's former Meeting and Event Director employed from May, 2010 to April, 2011, identified five other same sex couples who, pursuant to specific instructions from the Inn's owners, she rebuffed from their efforts to receive the Defendant's services hosting their wedding receptions.

Intervention Should Be Granted In Light of Changed Circumstances

Circumstances have changed since October 2011, when this Court limited the Commission's participation in this case.

On October 3, 2011, the Commission filed a motion for leave to intervene in this action. In a filing dated October 14, 2011, Defendant opposed that motion by arguing that the Commission's interest in the matter was already adequately represented by Plaintiffs and their attorneys (Def. Opp. ¶¶ 1, 3, 7) and that its intervention would be "unnecessary and duplicative" (Def. Opp. ¶ 12). Based on Defendant's statements, the Court (J. Bent) granted the Commission's motion to intervene but limited its participation solely to "constitutional issues absent further order of court."

Since filing its October 14, 2011 opposition, Defendant obtained new counsel and adopted a new strategy of seeking to moot the case without having to defend its longstanding discriminatory policies and practices. Defendant asserts that, in telling Plaintiffs they could not have their reception at the facility, the Meeting and Events Director acted as a "rogue employee." According to Defendant, the Meeting and Events Director should have referred the Plaintiffs to the owners of the Wildflower Inn, apparently so the owners could discourage the Plaintiffs from accessing the facilities without explicitly saying they could not do so.² Defendant asserts that Plaintiffs have standing to challenge only an outright refusal policy and not a policy of discrimination

² Plaintiffs have discovered that in January 2005 another same sex couple seeking to receive services from the Defendant were the victims of discrimination. The couple contacted the Defendant seeking a host for their civil union reception. One of the Inn's owners, Jim O'Reilly, rebuffed their inquiry by stating to the couple that the Inn does not cater to such events, or words substantially to that effect.

through discouragement. Defendants thus have indicated that they seek to moot this case by offering Plaintiffs \$1 in nominal damages based upon their respondeat superior liability for the act of a purported "rouge employee," in an attempt to prevent the Plaintiffs from litigating the Wildflower Inn's policy of discrimination through discouragement. Even as it attempts to moot Plaintiffs' claims, Defendant continues to argue that a policy of discouraging same-sex couples is perfectly legal. (Def. Opp. to Mot. to Compel dated 1/9/12, at ¶ 26).

In light of Defendant's efforts to use the particular facts of Plaintiffs' case to shield their underlying policy from scrutiny, Plaintiffs cannot adequately represent the independent interests of the Commission in ensuring compliance with Vermont law. The Commission believes that Plaintiffs have standing to challenge the Defendant's underlying policy notwithstanding the offer of \$1 in damages. But without endorsing Defendant's argument about mootness, there is no doubt that the Commission has specific statutory authority and standing to seek broader relief than do the individual Plaintiffs. Unlike the individual Plaintiffs, the Commission has standing to seek a permanent injunction in the public interests and to assess civil penalties. See 9 V.S.A. § 4553(a)(6)(A)(i)-(ii). It is therefore essential that the Commission be able to intervene in these proceedings in order to stop Defendant's flagrant violations of the Public Accommodations Act.

Intervention Is Proper Under Vermont Rule 24(b).

V.R.C.P. 24(b) entitles the Commission to intervene as of right in this matter. The

Vermont Supreme Court has not interpreted Rule 24(b) as it applies to granting intervention to “a federal or state governmental officer or agency” that is designated by law as the agency enforcing a statute on which a litigation party relies, but federal cases dealing with FRCP 24(b) state that courts should “take a hospitable attitude toward allowing a government agency to intervene in cases involving a statute it is required to enforce.” *Disability Advocates, Inc. v. Paterson*, No. 03-cv-3209, 2009 WL 4506301, at *2 (E.D.N.Y. Nov. 23, 2009) (internal quotation omitted). “[T]he whole thrust of the amendment is in the direction of allowing intervention liberally to governmental agencies and officers seeking to speak for the public interest.” 7C Charles Alan Wright, *et al.*, *Federal Practice and Procedure*, § 1912 (3d ed. 2010).

HRC has a strong interest in this litigation that merits its full participation even if the Defendant's affirmative defenses are not litigated. As the state agency charged with enforcing Vermont's prohibitions against discrimination, 9 V.S.A. § 4553(a)(6)(A), the Commission has been legislatively granted the ability to obtain broader relief than the relief available to individuals like the Plaintiffs -- namely, a permanent injunction against discrimination based upon the public interest, and the award of civil penalties of up to \$10,000.00 for each violation proven. See 9 V.S.A. § 4553(a)(6)(A)(i),(ii). The Commission is entitled to bring a separate action in its own name to secure such relief, and it would be contrary to notions of judicial economy to constrain the Commission from seeking that same relief in the instant pending action.

Even where liability has been resolved, courts have permitted intervenors to participate in the remedial phase of litigation in order to protect a “direct, substantial,


and legally protectable" interest. *Bridgeport Guardians, Inc. v. Delmonte*, 602 F.2d 469, 473 (2d Cir. 2010) (internal quotation omitted). The Commission's statutory charge to combat discrimination in Vermont provides it with that requisite interest. If, as the Defendant stated at the recent status conference, liability is less contested than remedy, the Commission's ability to obtain relief in the public interest merits its full participation in the remedy phase of this litigation. The Commission's participation is necessary to ensure that **all** who have been harmed by the Defendant's unlawful discriminatory conduct may achieve the relief to which they are entitled.

The Commission has attached its complaint for relief to this motion as required by V.R.C.P. 24(c). It re-alleges and supplements the factual allegations made by Plaintiffs in their second amended complaint, and requests an injunction in the public interest and civil penalties as provided by 9 V.S.A. § 4553(6)(A).

WHEREFORE, the Plaintiff-Intervenor respectfully requests that the Court GRANT its motion for full participation in the litigation and direct the clerk to docket its complaint pursuant to V.R.C.P. 24(c).

Dated at Montpelier, Vermont this 22nd day of February, 2012.

VERMONT HUMAN RIGHTS COMMISSION

By: 
Robert Appel, Its Attorney
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(802) 828-2482

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

Intervenor Complaint of Vermont Human Rights Commission

Parties

1. Plaintiffs Katherine Baker and Ming-Lien Linsley are residents of Kings County, New York.
2. Plaintiff-Intervenor Vermont Human Rights Commission is an agency of the State of Vermont, and is headquartered in Montpelier, Vermont.
3. Defendant Wildflower Inn is the trade name for a business located at 2059 Darling Hill Road, Lyndonville, VT 05851. The Wildflower Inn trade name is registered with the Vermont Secretary of State under file number 0126546
4. DOR Associates LLP is a limited liability partnership located at 2059 Darling Hill Road, Lyndonville, VT 05851. DOR Associates LLP owns and operates the inn located at that address. DOR Associates LLP is registered with the Vermont Secretary of State under the file number 0000250.
5. The Partners of DOR Associates LLP are James P. O'Reilly, Mary O'Reilly, and

Richard J. Downing.

6. Richard J. Downing also owns the Stepping Stone Spa and Wellness Center ("the Stepping Stone Spa"), which is located adjacent to the Wildflower Inn.
7. On information and belief, the Wildflower Inn and the Stepping Stone Spa are situated on land owned by Richard J. Downing.

Jurisdiction and Venue

8. This Court has jurisdiction under 9 V.S.A. § 4506 to redress violations of the Fair Housing and Public Accommodations Act.
9. Venue is proper in this Court pursuant to 9 V.S.A. § 4506(a) and 12 V.S.A. § 402(a) because Defendant is located in Caledonia County, Vermont, and the violations of the Fair Housing and Public Accommodations Act occurred there.

Powers of the Human Rights Commission

10. Pursuant to 9 V.S.A. § 4506(c), the Commission may bring an action in the name of the Commission to enforce the provisions of Fair Housing and Public Accommodations Act in accordance with its powers established in chapter 9 V.S.A. §§ 4551, §§ *et seq.*
11. Pursuant to 9 V.S.A. § 4553(a)(6)(A)(i), the Commission has the power to bring an action seeking a temporary or permanent injunctive relief in the public interest.
12. Pursuant to 9 V.S.A. § 4553(a)(6)(A)(ii), the Commission has the power to bring an action seeking the imposition of civil fines and penalties of not more than \$10,000.00 for each violation of law.
13. Pursuant to 9 V.S.A. § 4553(a)(6)(A)(ii), the Commission has the power to recover costs and reasonable attorney's fees associated with the investigation and enforcement of actions.

Facts

14. HRC incorporates by reference all the allegations in Plaintiffs' Second Amended Complaint as well as the following additional allegations.
15. Since at least 2005, the Wildflower Inn has a longstanding policy and practice of discriminating against same-sex couples who seek to hold their wedding or civil union receptions at the facilities.
16. The Wildflower Inn has implemented its policy by explicitly refusing service to same-sex couples and by discouraging same-sex couples through a variety of means, including but not limited to telling such couples that the Wildflower Inn is not looking for their business, telling such couples that they are not wanted at the facility, telling such couples they should hold their reception elsewhere, telling such couples that the Wildflower Inn will not be able to provide them with equal services that a heterosexual couple would receive, and refusing to return e-mails or phone calls from such same-sex couples.
17. During an 11-month period in 2010 and 2011, the Wildflower Inn discriminated against at least six different same-sex couples who sought to have wedding or civil union receptions at the facility.
18. The Wildflower Inn has never held a same-sex wedding or civil union reception at the facility.
19. Such discrimination is illegal regardless of whether the Wildflower Inn or its agent implements the discrimination by explicitly refusing service or through a policy of discriminatory discouragement.
20. Without a permanent injunction from this Court, the Wildflower Inn intends to continue its policy and practice of discriminatory discouragement of same-sex

couples under the theory that such discrimination is legal so long as it is not accompanied by an explicit refusal of service.

Cause of Action: Violation of Fair Housing and Public Accommodations Act

21. HRC reasserts and incorporates by reference all the preceding paragraphs of this Complaint.

22. Since 1992, Vermont law has prohibited public accommodations from refusing to provide goods and services based on a person's sexual orientation. See An Act Relating to Discrimination on the Basis of Sexual Orientation, 1991, No. 135 (Adj. Sess.), § 2.

23. Under Vermont law, a "place of public accommodation" is "any school, restaurant, store, establishment or other facility at which services, facilities, goods, privileges, advantages, benefits or accommodations are offered to the general public." 9 V.S.A. § 4501(a).

24. The Wildflower Inn is a public accommodation under § 4501(a).

25. Under Vermont law, "[a]n owner or operator of a place of public accommodation or an agent or employee of such owner or operator shall not, because of the race, creed, color, national origin, marital status, sex, sexual orientation, or gender identity of any person, refuse, withhold from, or deny to that person any of the accommodations, advantages, facilities, and privileges of the place of public accommodation." 9 V.S.A. § 4502(a).

26. The Wildflower Inn has a longstanding policy of refusing, withholding from, and denying the "accommodations, advantages, facilities, and privileges of a place of

public accommodation” to same-sex couples who seek to have wedding or receptions at the facility on account of the couples’ sexual orientation.

27. The Wildflower Inn has refused, withheld from, or denied same-sex couples the accommodations, advantages, facilities, and privileges of the place of public accommodation through a variety of means, including but not limited to telling such couples that the Wildflower Inn is not looking for their business, telling such couples that they are not wanted at the facility, telling such couples they should hold their reception elsewhere, telling such couples that the Wildflower Inn will not be able to provide them with equal services that a heterosexual couple would receive, and refusing to return e-mails or phone calls from such same-sex couples.
28. The Vermont Legislature created two narrow exemptions to the public accommodations statute that apply to (a) hotels with five or fewer rooms and (b) religious organizations. The Wildflower Inn does not qualify for either of these exemptions.
29. The Wildflower Inn does not qualify for the statutory exemption in 9 V.S.A. § 4502(d). That section allows the owner or operator of “an inn, hotel, motel or other establishment which provides lodging to transient guests, and which has five or fewer rooms for rent” to “restrict[] such accommodation on the basis of sex or marital status.” The exemption in § 4502(d) does not apply because the Wildflower Inn has more than five rooms for rent and because plaintiffs were discriminated against on account of sexual orientation.
30. The Wildflower Inn does not qualify for the statutory exemption in § 4502(l). That section allows “a religious organization, association, or society, or any nonprofit

institution or organization operated, supervised, or controlled by or in conjunction with a religious organization” to discriminate against persons seeking goods or services “related to the solemnization of a marriage or celebration of a marriage.” Section 4502(l) does not apply because the Wildflower Inn is not a religious organization or a non-profit institution that is operated, supervised, or controlled by or in conjunction with a religious organization. To the contrary, the Wildflower Inn is a privately owned, for-profit, multi-million-dollar business.

31. On information and belief, although the Wildflower Inn asserts that it does not have a “no gay receptions” policy, Defendant intends to continue evading the requirements of the Fair Housing and Public Accommodations Act by, among other things, telling such couples that the Wildflower Inn is not looking for their business, telling such couples that they are not wanted at the facility, telling such couples they should hold their reception elsewhere, telling such couples that the Wildflower Inn will not be able to provide them with equal services that a heterosexual couple would receive, and refusing to return e-mails or phone calls from such same-sex couples.

Request for Relief

Wherefore, Plaintiff-Intervenor the Vermont Human Rights Commission respectfully requests the following relief:


- A. A declaration that the Fair Housing and Public Accommodations Act, 9 V.S.A. §§ 4500, *et seq.*, prohibits Defendant from discriminating against same-sex couples by, among other things, telling such couples that the Wildflower Inn is not looking for their business, telling such couples that they are not wanted at the facility,

telling such couples they should hold their reception elsewhere, telling such couples that the Wildflower Inn will not be able to provide them with equal services that a heterosexual couple would receive, and refusing to return e-mails or phone calls from such same-sex couples.

- B. Pursuant to 9 V.S.A. § 4553(a)(6)(A)(i), an injunction in the public interest prohibiting Defendant from enforcing its policy and practice of discriminating against same-sex couples by, among other things, telling such couples that the Wildflower Inn is not looking for their business, telling such couples that they are not wanted at the facility, telling such couples they should hold their reception elsewhere, telling such couples that the Wildflower Inn will not be able to provide them with equal services that a heterosexual couple would receive, and refusing to return e-mails or phone calls from such same-sex couples.
- C. Pursuant to 9 V.S.A. § 4553(a)(6)(A)(ii), civil penalties not to exceed \$10,000.00 per violation;
- D. An order mandating that Defendant pay the HRC's reasonable costs and attorneys' fees pursuant to 9 V.S.A. § 4506(b); and
- E. Any additional relief that the Court deems just and appropriate.

Dated at Montpelier, Vermont this 22nd day of February, 2012.

VERMONT HUMAN RIGHTS COMMISSION

By: 

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