

Sent Via U.S. Mail

December 13, 2011

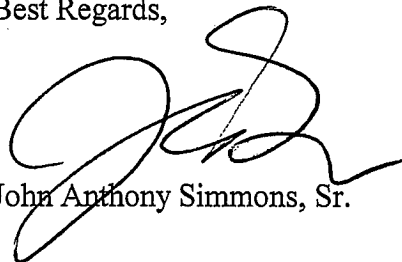
Kathleen Pearl, Clerk
Vermont Superior Court
Caledonia Unit
Civil Division
1126 Main Street, Suite 1
St. Johnsbury, VT 05819

Re: Katherine Baker and Ming-Lien Linsley v. Wildflower Inn a/k/a DOR Associates, LLP
183-7-11 CACV

Dear Ms. Pearl,

Enclosed please find Defendant's Objection to Motion to Amend in the above-captioned matter along with associated exhibits.

Best Regards,



John Anthony Simmons, Sr.

Enclosures

CC: Norman Smith, Esq.
Client
Dan Barrett, Esq., ACLU Foundation of VT
Robert Appel, VT Human Rights Commission

KATHERINE BAKER and
MING-LIEN LINSLEY
Plaintiffs

v.

WILDFLOWER INN a/k/a DOR ASSOCIATES LLP
Defendant

Defendant's Objection to Motion to Amend

NOW COMES the Defendant and objects to the Motion to Amend filed by the Plaintiffs and in support thereof states as follows:

1. The Defendant does not dispute several of the underlying facts brought in the Plaintiffs' actions.
2. The essential facts of the case—that the Plaintiffs contacted the Defendant business regarding holding an event and were told by the Event Coordinator that the Defendant would not do so due to a policy of no same-sex couple events—are true.
3. However, the Event Coordinator did so not because the Defendant has such a policy, but for reasons that are known perhaps only to the Event Coordinator.
4. Through Counsel, the Defendant has made the Plaintiffs aware of this fact. Defendant has also offered to settle the matter and has written out a proposed order granting all relief originally requested, with reasonable attorneys fees, which Plaintiffs refused to accept. Instead, Plaintiffs responded with additional demands, which Defendant's Counsel pointed out were beyond the scope of the suit. See Exhibit A.
5. Plaintiffs were then told that Defendant would seek a Status Conference to resolve any remaining concerns. See Exhibit B. Without prior notice to Defendant, Plaintiffs then filed a Motion to Amend.
6. Rather than settle the matter, the Plaintiffs now seek by motion to amend their complaint in two principle ways. Under both, the Amended Complaint would seek relief to which they are not entitled.
7. First, Plaintiffs are seeking an injunction against a policy which, even if it existed as Plaintiffs characterize it, was not enforced against the Plaintiffs. Their claim is not supported by any specific allegations or an affidavit from a credible witness. Rather, informally, Plaintiffs, through Counsel, have alluded to other people, whom Counsel states will not be forthcoming additional Plaintiffs, that have had interaction with the Defendant. Such nebulous claims do not rise to the level of an actionable cause or event. Thus, Plaintiffs have no standing upon which to bring such additional claims.

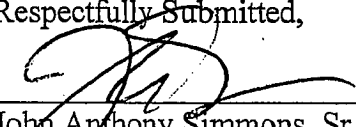
8. Second, Plaintiffs seek an injunction against an entity (Stepping Stone Spa) that is not a party to this action and cannot properly be made a party to this action.
9. In the meantime, the Plaintiffs seek discovery that is burdensome to produce, unnecessarily drives up fees and costs to both Parties, and is moot given that Defendants have offered to settle the matter granting the relief originally sought.
10. In the interests of judicial economy, the Defendant believes a Status Conference would be in everyone's best interests in order to determine the proper next step in this matter.
11. Defendant believes that the Court could assist in reviewing the Proposed Order from Defendant and assessing the proper and reasonable amount of fees and costs to the Plaintiffs. This would conclude this matter.
12. Should the Court, for some reason, allow the Plaintiffs to proceed, at a minimum the Court could give proper instruction as to the grounds on which the matter would proceed and limiting instructions as to the issues still pending, thereby reducing the fees and costs to all involved.
13. Defendant has not yet sought to bring the Event Coordinator in as a co-defendant and/or filed a cross-claim against her, but reserves the right to do so.

WHEREFORE, the Defendant respectfully requests that this Honorable Court:

- A. Deny the Plaintiffs' Motion to Amend;
- B. Schedule a Status Conference consistent with the above.

Dated at Hampton, New Hampshire this 13th day of December, 2011.

Respectfully Submitted,



John Anthony Simmons, Sr., Esq.
Attorney for Defendant
886 Lafayette Road
Hampton, NH 03842
603-929-9100

Norman C. Smith, Esq.
Attorney for Defendant
76 Lincoln Street
P.O. Box 24
Essex Junction, VT 05453-0024
802-288-9088

CERTIFICATION

I hereby certify that a copy of the foregoing motion has been sent this day via U.S. Mail pre-paid to all Counsel of Record.



John Anthony Simmons, Sr., Esq.

John Anthony Simmons PLLC

From: John Anthony Simmons, PLLC <johnanthony@clearvictory.org>
Sent: Thursday, November 03, 2011 2:53 PM
To: Dan Barrett
Subject: 11-03-11: Wildflower Inn

Exhibit A

Dear Dan,

I thank you for the extension on discovery until Monday, November 7 by agreement. Not to confuse the issues, but I was hoping to present you with a settlement offer, have you consider it with your clients, and, if it fails, come up with another deadline for discovery if it is needed. However, I did not want to waste valuable resources on either side if you felt that we could find middle ground.

As such, my DRAFT Settlement Agreement is as follows:

This Settlement Agreement of the ___ day of ___, 2011 between the above named Plaintiffs and the above named Defendant is made in recognition of the parties' desire to resolve the legal dispute between them that arise out of the incidents described in the complaint and the answer filed in the above captioned matter.

NOW, therefore, in consideration of the mutual promises contained herein it is agreed as follows:

1. The Defendant maintains that its employee's conduct was not according to company policy and was not authorized by the Defendant. Defendant acknowledges and concedes that its employee's conduct violated the Fair Housing and Public Accommodations Act, 9 V.S.A section 4500, et seq.

2. While, Defendant maintains that it does not have a "no gay reception" policy, defendants agree and stipulate that it will neither enforce nor enact such a policy.

3. Plaintiffs agrees to discontinue this action with prejudice and to release and forever discharge all claims, demands, requests, or causes of actions, known or unknown, now existing or hereafter arising, whether presently asserted or not, which relate in any way to the subject matter of this action, and further to discontinue and/or not to commence, move or pursue in any court, arbitration or administrative proceeding any litigation or claims whether for damages, declaratory, costs, or any other kind of relief based upon the facts of this claim, the circumstances or instances that give rise to the claim, the litigation itself, this agreement or any results of the aforementioned facts, circumstances, claim or action against the defendant, all affiliated and related entities, their employees, successors, heirs, or assigns, attorneys, officers, and agents.

4. Plaintiffs are awarded \$1.00 in damages.

Please consider this and discuss it with your clients. I look forward to your response.

Best Regards,
John Anthony

-----Original Message-----

From: Dan Barrett [mailto:dbarrett@acluvt.org]

Sent: Thursday, November 03, 2011 7:02 PM

To: John Anthony Simmons, PLLC

Subject: Re: 11-03-11: Wildflower Inn

Dear John Anthony:

Thanks for this; I will discuss it with my clients. We will continue to expect responses to our first set of discovery requests on Nov. 7th.

Yours sincerely,
Dan Barrett

-----Original Message-----

From: John Anthony Simmons, PLLC [<mailto:johnanthony@clearvictory.org>]

Sent: Monday, November 07, 2011 12:06 PM

To: 'Dan Barrett'

Subject: 11-07-11: Wildflower Inn

Dear Dan,

I apologize for the delay in getting back to you. I was gone Thursday afternoon and not in Friday. I also had expected quite a different response to the deadline issue, as part of the rationale for offering to settle is to avoid the cost to both sides involved in providing and reviewing discovery. In the meantime, I need to know your clients' response to our settlement offer, as it was made in order to contain costs for both sides. Please get in touch with me at your earliest convenience. I look forward to hearing from you.

Best Regards,
John Anthony

John Anthony Simmons PLLC

From: John Anthony Simmons, PLLC <johnanthony@clearvictory.org>
Sent: Tuesday, November 08, 2011 9:44 AM
To: 'Dan Barrett'
Cc: julianne@clearvictory.org
Subject: RE: 11-07-11: Wildflower Inn

DICTATED NOT READ

Dear Dan,

I am in a deposition all day today, but I will try to contact you this afternoon if we finish early enough. Otherwise, I will try tomorrow.

Best Regards,

John Anthony

DICTATED NOT READ

-----Original Message-----

From: Dan Barrett [<mailto:d Barrett@acluvt.org>]
Sent: Monday, November 07, 2011 4:31 PM
To: John Anthony Simmons, PLLC
Subject: Re: 11-07-11: Wildflower Inn

Dear John Anthony:

I'm booked this afternoon, but I expect to have word from my clients by tomorrow afternoon. I'll call then so we can discuss what happens next, incl. discovery.

Yours sincerely,
Dan Barrett

-----Original Message-----

From: Dan Barrett [mailto:dbarrett@aclvt.org]

Sent: Thursday, November 10, 2011 12:24 PM

To: johnanthony@clearvictory.org

Subject: Baker v. Wildflower Inn

Confidential - For Settlement Purposes Only

Dear John Anthony:

Thanks for speaking with me this morning regarding Baker v. Wildflower Inn.

The provisions that my clients will need to see in an acceptable negotiated resolution of their claims are:

(1) that defendant agrees to provide full and equal treatment to all customers or potential customers with respect to hosting receptions for weddings, civil unions, or other events at the Wildflower Inn and its associated facilities, regardless of whether the event involves a same-sex couple or a different sex couple. In particular, defendant specifically agrees to cease its policy and practice of discouraging same-sex couples from holding events at the Inn or associated properties and its practice of not returning phone calls, e-mails, or other inquiries from same-sex customers.

(2) that the agreement's terms bind the Stepping Stone Spa with equal force,

(3) that the defendant agrees to pay \$6,392 in fees and \$384.78 in costs,

(4) that the agreement be memorialized as a consent decree.

Please let me know at your convenience whether your client is able to agree to such terms. If not, please also propose a new deadline for the defendant's discovery responses so that we can discuss how to proceed from here.

Yours sincerely,
Dan Barrett

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Dan Barrett
Staff Attorney
ACLU of Vermont
137 Elm Street
Montpelier, VT 05602
802.223.6304
GPG Key ID 0x84C0AFF2

Exhibit B

-----Original Message-----

From: John Anthony Simmons, PLLC [<mailto:johnanthony@clearvictory.org>]
Sent: Tuesday, November 15, 2011 10:54 AM
To: 'Dan Barrett'
Subject: 11-15-11: Offer to settle

Dear Dan,

I have spoken with my clients and offer you the following feedback.

We believe we have already agreed to all essential elements of your cause of action. Namely, we have agreed to a judgment in which we admit that a violation occurred (albeit from a rogue employee) and, as a result, to the award of nominal damages and an injunction against a refusal of same-sex receptions occurring in the future. We believe your claim of attorney fees to be high based on the small amount of activity which has occurred in the case to date, and that is an issue the judge can settle when he/she looks at the Invoices you will submit. In any event, it is unreasonable for my clients to accept a large amount without an invoice in a simple case at this extremely early point in the litigation.

Regarding the applicability of all this to Stepping Stone my clients have no ability to control that entity as it is wholly owned and operated by a third party. Nor, under these facts, would they be a proper party to the lawsuit.

Your request for all this to apply to them seems overreaching.

Lastly, regarding the "discouragement policy" as you have called it, is not within the scope of this suit. Insofar as it has been raised to preserve all options for our defense it would obviously be withdrawn at settlement.

As such, I ask you for your agreement that we will enter a judgment along the terms that I outline above. If you would like to further negotiate your demand for attorney fees, I am open to that. If not, we can merely submit the issue of fees to the Court for its consideration and approval.

Absent an agreement from you as to an agreed upon a judgment, we will file a Motion for Status Conference soon and explain to him/her what I have explained here and ask for resolution to the case according to what I have outlined.

Regarding discovery, since it is our position that all issues in the case are now moot, we will not further run up anyone's costs, yours or ours, until the judge hears us on the Status Conference. Thus, submission of our answers to your discovery requests will wait until then.

Please let me know if you are willing to agree to a stipulated judgment. I look forward to hearing from you.

Best Regards,
John Anthony

-----Original Message-----

From: Dan Barrett [<mailto:d Barrett@aclvt.org>]
Sent: Monday, November 14, 2011 10:56 PM

To: John Anthony Simmons, PLLC
Subject: Re: 11-14-11: One more day

John Anthony:

No worries; I was out at a deposition all day today anyhow.

Yours sincerely,
Dan Barrett

On 11/14/11 2:40 PM, John Anthony Simmons, PLLC wrote:
Dear Dan,

I will need to push into tomorrow for my answer.

I apologize in advance for the delay but will have an answer for you by tomorrow at lunch time.

Best Regards,

John Anthony