

STATE OF VERMONT

SUPERIOR COURT  
Caledonia Unit

CIVIL DIVISION  
Docket No. 183-7-11 Cacv

Katherine Baker and  
Ming-Lien Linsley,  
Plaintiffs,

FILED

and

APR 11 2012

Vermont Human Rights  
Commission,  
Intervenor-Plaintiff

VERMONT SUPERIOR COURT  
CALEDONIA UNIT

v.

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

DECISION ON MOTIONS

The plaintiffs allege that defendant violated Vermont's Fair Housing and Public Accommodations Act, 9 V.S.A. § 4500 *et seq.*, when it refused to act as a venue for plaintiff's wedding reception owing to plaintiffs' sexual orientation. This case was initially filed on July 19, 2011. Since then, plaintiffs have amended the complaint twice, and the court has allowed the Vermont Human Rights Commission to intervene in the case, limiting its participation to constitutional issues.

There are three motions before the court. First, plaintiff moves to amend the complaint once more to add a claim for punitive damages. Second, the Human Rights Commission renews its earlier motion to intervene, seeking to play a larger role in the litigation. Third and finally, defendant moves to dismiss under V.R.C.P. 12(b)(1), arguing that it has made an offer of judgment that would fully satisfy plaintiff's demands, and as a result, there is no live controversy and the court lacks subject matter jurisdiction.

**Motion to Amend**

Plaintiffs seek to amend their complaint to add a claim for punitive damages, alleging that new information has come to light during the discovery process suggesting that defendant's actions were more egregious than previously thought, and may support a claim for punitive damages. Specifically, plaintiffs allege that defendant maintained a standing policy of discriminating against same-sex couples, and that defendant's refusal to host plaintiffs' wedding

reception was part of a larger pattern of discrimination against many same-sex couples over an extended period of time.

Generally, motions to amend are to be granted feely where justice so requires. V.R.C.P. 15(a). Defendant opposes the motion to amend, arguing that plaintiff does not allege any facts that would support a grant of punitive damages. See, e.g., *Fly Fish Vermont, Inc. v. Chapin Hill Estates, Inc.*, 2010 VT 33, ¶ 18, 187 Vt. 541 (explaining that punitive damages require a showing of outrageously reprehensible conduct and malice). Without commenting on the ultimate merit of the punitive damage claim, the Court concludes that the new factual allegations, if true, could support a legal claim for punitive damages. Therefore, plaintiff's motion to amend must be granted.

### **Renewed Motion to Intervene**

Having already been granted intervenor status on the constitutional issues raised in this case, the Human Rights Commission now seeks to expand the scope of its intervenor status. In support of their motion, the Commission cites to the same factual allegations that give rise to plaintiffs' motion to amend: the newly-discovered evidence that defendant may have engaged in a pattern of discrimination that reaches beyond the instant plaintiffs.

Full intervenor status for the Human Rights Commissions is proper at this time in light of the expanded scope of the allegations. While the Human Rights Commission's interests may have been well-represented by the plaintiffs before the amendment of the complaint, that is no longer the case. Considering the new allegations made by plaintiffs, the Human Rights Commission is in a unique and important position to assert any rights that he people of the State of Vermont may have in connection with the alleged conduct of the Defendant. See 9 V.S.A. § 4553(a)(6)(A) (requiring the Human Rights Commission to enforce violations of the Fair Housing and Public Accommodations Act); V.R.C.P. 24(b) ("When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a federal or state governmental officer or agency . . . the officer or agency upon timely application may be permitted to intervene in the action.").<sup>1</sup> Therefore, the Commission's renewed motion to intervene must be granted.

### **Motion to Dismiss**

Finally, defendant moves to dismiss the second amended complaint. Defendant argues that on November 3, 2011, it made an offer of judgment that would satisfy all demands made by plaintiff.<sup>2</sup> Specifically, defendant's offer states the following:

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<sup>1</sup> Defendant attempts to argue that the Human Rights Commission's motion to intervene is not timely within the contemplation of V.R.C.P. 24(b). This argument is unavailing. The Commission has already moved to intervene and been granted limited intervenor status. This motion is to intervene *further*, and is based on new information learned during the process of discovery.

<sup>2</sup> Defendant argues that its offer satisfies all of the demands made in the first amended complaint, and that the additional allegations in the second amended complaint should be dismissed for various reasons. Many of defendant's arguments for dismissal of the additional allegations in the second amended complaint allege additional facts outside of the complaint, and are not appropriate grounds for dismissal.

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.

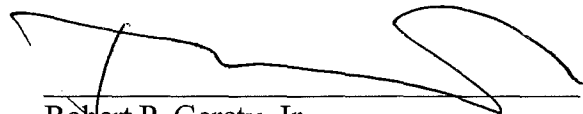
Defendant's Offer of Judgment, November 3, 2011. Essentially, defendant offered to admit liability premised exclusively on a theory of *respondeat superior*.

However, plaintiffs' allege not that defendant's employee acted in violation of the Fair Housing and Public Accommodations Act, but rather that defendant maintained a policy against accommodating same-sex couples, and that defendant's policy violates the Act. See First Amended Complaint ¶¶ 21-23 (entitled "The Wildflower Inn's Policy Against 'Gay Receptions'"); Second Amended Complaint ¶¶ 24-29. An offer to settle premised on an exclusive theory of *respondeat superior* does not provide plaintiffs with all the relief they request – that is, it does not resolve the question of whether defendant's alleged policy violates the Fair Housing and Public Accommodations Act.<sup>3</sup> Because defendant's offer of judgment does not resolve all of plaintiffs' demands for relief, its motion to dismiss for lack of subject matter jurisdiction must be denied because there remains an actual case or controversy between the parties for adjudication.

#### ORDER

- (1) Plaintiffs' Motion to Amend (MPR # 10), filed March 7, 2012, is **granted**.
- (2) Intervenor-Plaintiff's Renewed Motion to Intervene (MPR # 8), filed February 23, 2012 is **granted**.
- (3) Defendant's Motion to Dismiss (MPR # 9), filed February 27, 2012 is **denied**.

Dated at Saint Johnsbury, Vermont this 11th day of April, 2012:

  
Robert P. Gerety, Jr.  
Superior Court Judge

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<sup>3</sup> In its filings, defendant appears to argue that plaintiff may not maintain any theory of recovery premised on defendant's policies, because the employee who refused to accommodate plaintiffs' had no knowledge of such policies. Defendant cites to the employee's deposition in support of this proposition. This argument is not appropriate in the context of a motion to dismiss, as it makes reference to facts outside of the complaint.