

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

Reply in Further Support of Motion to Compel

Plaintiffs Katherine Baker and Ming-Lien Linsley allege that the defendant Wildflower Inn violated the Fair Housing and Public Accommodations Act through its long-standing policy of discriminating against same-sex couples seeking to hold receptions at the facility. Ms. Baker and Ms. Linsley allege that the defendant's policy violates the Act by refusing to host receptions for same-sex couples, discouraging same-sex couples from holding receptions at the facility, and/or telling those couples that they will not receive equal services. Second Amended Compl. ¶¶ 24-29, 40-41. In addition to damages, they have asked for a declaration that the defendant's policy violates the Act and an injunction prohibiting the defendant from enforcing its policy in the future. *Id.* ¶¶ B, C.

The defendant has not agreed to admit that its policies were illegal. Instead, the defendant has offered to admit only that it is liable through *respondeat superior* for the actions of a purported rogue employee. Whether any such employee was acting on the instructions of the Wildflower Inn is a question of fact that Plaintiffs are entitled to investigate through discovery, and they have already issued a deposition subpoena for the employee in question, to be held on February 1, 2012. In addition to that deposition, Plaintiffs are entitled to take discovery from

Defendant for relevant evidence about what its policies are and whether the employee was acting pursuant to those policies.

Instead of opposing the motion to compel with legal argument or citation to authority excusing its refusal to participate in discovery, the defendant presents an irrelevant game of semantics. According to the Wildflower Inn, it does not have a “no gay receptions” policy, but *does* have a policy of telling same-sex couples that the resort does not want their business and that the resort will not be able to provide same-sex couples with equal services because the owners would not be able to “put their hearts” into the reception. Indeed, the defendant admits all of the allegations in Susan Parker’s affidavit describing how she and her spouse were victims of this very policy in 2005. Def. Opp. at ¶¶ 26-27. In the defendant’s view, the employee who turned away Ms. Baker and Ms. Linsley simply failed to phrase the discriminatory policy in precisely the way that the defendant would have liked – that is, as discouragement rather than outright rejection, because the defendant believes that a 2005 Human Rights Commission vote decreed the discouragement policy to be legal.

This is a bad misunderstanding of Vermont law. Although its informal dispute resolution mechanisms can be an efficient means of eliminating discrimination, the Human Rights Commission’s procedures are optional for an aggrieved person, Vt. Stat. Ann. tit. 9, § 4554(f), and are of no precedential effect. The Commission has no power to declare that a complained-of practice does or does not violate the public accommodations act: it only has the power to negotiate a resolution between the aggrieved party and the complainant or “bring an action in superior court” in order to settle the question. *Id.* § 4554(e).

Therefore, whether or not the defendant’s admitted “no gay receptions policy” indeed violates the public accommodations act is a subject for this Court to resolve through factual development, motions for summary judgment, and trial if necessary. Having presented no

cognizable opposition to the plaintiffs' motion to compel, the defendant's *non sequiturs* should be disregarded and the Court should order a firm, near-term discovery response deadline and compel the defendant to pay Ms. Baker and Ms. Linsley's costs and fees for having brought the motion.

_____/s/_____
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January 18, 2012

CERTIFICATE OF SERVICE

I hereby certify that on January 18, 2012, I served the plaintiffs' motion to compel discovery responses, and its attached exhibits, by means of postage-prepaid first class mail upon:

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