

STATE OF VERMONT

SUPERIOR COURT

Civil Division

Caledonia Unit

183-7-11 CACV

Katherine Baker and Ming-Lien Linsley,
Plaintiffs

Vs.

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

Objection to Motion to Compel

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

1. In addition to a “Reply in Further Support of Motion to Amend,” the Plaintiffs have filed a Motion to Compel Discovery Responses received by the Defendant’s Counsel on December 26, 2011. (“Motion to Compel.”)
2. Defendant does not directly respond to the Reply in Further Support of Motion to Amend, as the Court has since granted the Motion to Amend and the Defendant does not plan to challenge that decision. However, the logic and reasoning of such motion is similar to the concurrently filed Motion to Compel, and as such, it is in the context of the Motion to Compel that Defendant responds.
3. Defendant does object to the Motion to Compel, for the reasons set forth below, and offers the following for this Honorable Court’s consideration.

History of Cooperation on Discovery:

4. Attorney John Anthony Simmons, Sr. (hereinafter “Defendant’s Counsel”) has appeared on a *pro hac vice* basis in this case and appeared months after the original Answer was filed in this case.
5. As is his normal practice, Defendant’s Counsel has attempted to discuss this matter informally with Plaintiff’s Counsel in order to resolve the matter. Defendant’s Counsel chooses not to respond in kind to accusations of dishonesty or trickery but rather states

that he has been truthful and up front with Plaintiffs' Counsel from the beginning. Sadly, it is that very informal and up front discussion that Plaintiff's Counsel has used against Defendant in order to promulgate more and unnecessary litigation.

6. Defendant's Counsel stated very early on with Plaintiff's Counsel that he believed there was a possibility of Defendant confessing judgment to the original action and desired to avoid the costs of discovery. This was true because of the costs involved on both sides of the equation, both in terms of the individual cost to the Defendant to hire Counsel and also in terms of any potential assessment of attorney fees that might be awarded to the Plaintiffs.
7. Due to his later entry in the case, Defendant's Counsel asked for an extension of time regarding the discovery requests. Plaintiffs' Counsel graciously granted such requests for which Defendant's Counsel stated he was thankful.
8. Such extensions also served Defendant the additional time to decide whether or not to confess judgment or push forward with potentially very expensive litigation.
9. The crux of the matter for Defendant was that that actions complained of were not authorized and not part of a policy to not conduct same sex ceremonies. In fact, no such policy exists and has never existed.
10. Defendant struggled with confessing judgment but ultimately decided that, given that the Court could find that a violation occurred, they were willing to agree to the relief sought in the Complaint.
11. To that end, they authorized Defendant's Counsel to communicate to Plaintiff's Counsel that it would confess judgment.
12. The response from Plaintiffs' Counsel was anything but what they expected.
13. Rather than accept a confession of judgment and work toward getting discretionary attorney fees settled, Plaintiffs chose to instead file a Second Amended Complaint and Motion to Amend.
14. Plaintiffs' Counsel even alluded to "additional information" Plaintiffs had obtained since the start of the lawsuit. When asked about the additional information, and if Plaintiffs had affidavits from witnesses, Plaintiff's Counsel offered only the vaguest of assertions that "additional people have stepped forward." (See discussion below at paragraph ____.)
15. At that point, it seemed to Defendant that its ability to contain costs would be lost unless it asked for the assistance of the Court in a Status Conference, a position which Defendant believes is imminently reasonable.

16. Such position, in retrospect, was reasonable, given that the Court has now scheduled the requested Status Conference.
17. Defendant's motivations have never been to deprive Plaintiffs of information (see Motion to Compel, page 4, "wishing to avoid uncomfortable discovery revelations") or any of the ulterior and bad motives that have been attributed to it (see Motion to Compel, page 5 "to game the discovery process"; Reply in Further Support of Motion to Amend, page 1 "conspiring with others to discriminate", page 3 "collusion.").
18. Quite the contrary, Defendant is owned and operated by God-fearing Catholic people who are law abiding citizens whose strong desire is to hold true to their deeply held Christian beliefs.
19. Plaintiffs assert that Defendant has not made a showing that complying with discovery requests would be burdensome. This misses the point for two reasons. First, the costs alone involved are very burdensome to Defendant since it is not a large and highly profitable entity. Second, given the issue of confession of judgment, Defendant should not be required to prove discovery is burdensome when it is unnecessary in the first place due to a confession of judgment.

The issue of Costs:

20. Despite Plaintiffs' attempts at a characterization otherwise, Defendant is not a large and highly profitable business and resources must be managed very tightly. Thus the Defendant desires to avoid any and all costs.
21. Though the granting of Plaintiffs' attorney fees is only discretionary in this case, the prospect of those being granted is a very real concern to the Defendant. Given the Plaintiffs' very litigious conduct so far, Defendant believes its concern, in retrospect, has been well-founded.

The underlying claim of a "policy" that in reality does not exist:

22. Defendant realized very early on, even before this lawsuit, that they had a rogue employee who had placed them in a very undesirable position. (See paragraphs 6-12, above.) If Plaintiffs persist in falsely asserting that a policy exists which in fact does not exist and has not existed, Defendant will need to file a cross-claim against its former employee, bring her in as a co-Defendant and seek to hold her liable to Defendant for the damage her unauthorized actions have caused to Defendant. All of that, in Defendant's opinion, would still be beyond the scope of the remedies Plaintiffs are entitled to and would only serve to complicate and protract this litigation when it is not necessary in the first place.
23. Instead, Plaintiffs seem unshaken by the facts and instead insist on alleging a policy that does not exist. There are only two pieces of evidence which the Plaintiffs have offered to support this contention.

24. First, it alleges that the former Events Coordinator, Molly Harris, communicated to the Plaintiffs that Defendant has such a policy. (See Complaint.) What Plaintiffs very conveniently leave out of their allegation is that in the very same email that Plaintiffs quote, the very next sentence is a solicitation for a competitor business run by none other than Molly Harris herself. (See attached Exhibit A, original, full email of Molly Harris to Plaintiffs.) Such full information clearly shows Molly Harris' ulterior motives in alleging the non-existent policy, to poach business from her employer though she had promised in taking the job that she would not do so.
25. Second, in its Motion to Compel, it has provided what it believes to be a key piece of information in the form of an affidavit by Susan Parker ("Parker Affidavit").
26. It is important to note that not even the Parker Affidavit supports the assertion Plaintiffs make. Nowhere in the Parker Affidavit is it even alleged that the Defendant ever refused a same-sex ceremony nor does it even claim that Defendant said that it had a policy of doing so. This, in fact, is the very issue that was decisive in the previous 2005 Human Rights Commission action, which the Human Rights Commission dismissed for failure to prove that a refusal of services had taken place. (See attached Exhibit B, 2005 Human Rights Commission order of dismissal.)
27. Defendant has stated, truthfully, in its Answer at paragraph 21, what its policy has been.

Conclusion:

28. Defendant suggests that the most efficient method to resolve this matter is to hold a Status Conference regarding all of the aspects of this case mentioned above.
29. Defendant believes the Court could find it is responsible for the employee's unauthorized actions under the concept of *respondat superior* but Defendant cannot, as a matter of conscience, admit to a policy that does not exist and to holding and expressing its deeply held Christian beliefs, to which it believes it is entitled.
30. Defendant has acted in good faith and should not be held liable for attorney fees. Rather, Defendant will comply with any discovery order the Court imposes, if any.

WHEREFORE, the Defendant respectfully requests that this Honorable Court:

- A. Deny the Motion to Compel;
- B. Schedule a Status Conference at the earliest convenience of the Court at which the Court will consider the proper outcome of this case including the issues of whether a proper confession of judgment has been made and what the amount is of reasonable attorney fees.

Dated: January 9, 2012

Respectfully Submitted,
By the Defendant,
By and Through Legal Counsel

A handwritten signature in black ink, appearing to read 'JAS', is written over a horizontal line.

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



Molly Harris <molly@wildflowerinn.com>

I have bad news

3 messages

Molly Harris <molly@wildflowerinn.com>
To: Channie Peters <ocpeters@gmail.com>

Fri, Nov 5, 2010 at 12:55 PM

Channie,

I must apologize for not being able to say this over the phone. After our conversation, I checked in with my Innkeepers and unfortunately due to their personal feelings, they do not host gay receptions at our facility. I am so sorry and want to stress it does not reflect my personal or professional views. I am happy to assist you in any fashion through my personal business, www.greenvermontwedding.com. Please let me know how you would like to proceed. Once again I apologize for your inconvenience!

Warmest Regards, Molly

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Amalia (Molly) Harris
Meetings & Events Director
The Wildflower Inn & Juniper's Restaurant
2059 Darling Hill Rd
Lyndonville, VT 05851
molly@wildflowerinn.com
802-626-8310 ext. 118
802-321-0364 (cell)

Channie Peters <ocpeters@gmail.com>
To: Molly Harris <molly@wildflowerinn.com>

Fri, Nov 5, 2010 at 5:26 PM

Molly, thank you for your prompt conveyance of this information. It surprises me that homophobia is alive and well in what I thought was a progressive state like Vermont. Unfortunately, the Innkeepers' bigoted views will deprive them of close to \$45,000 in business, just from us. They must be very committed to their bigotry to allow it to enter their business prospects. Does the Vermont Convention Bureau know about this yet?

It looks like there are many lovely venues in VT so we will have no shortage of good choices. I look forward to talking with you soon.

Thanks for your help.

*Best regards,
Channie*

(OIFan) Channie Peters
ocpeters@gmail.com
206-963-7702

[Quoted text hidden]

Molly Harris <molly@wildflowerinn.com>
To: Channie Peters <ocpeters@gmail.com>

Mon, Nov 8, 2010 at 2:01 PM

Channie,

I apologize for not getting in touch with you this weekend. When I got home on Friday, my land line was not in operation and that continued into the evening on Saturday. I do not have cellular reception at my house either. The phone came back on Sunday but my husband is out of town, so I didn't have a moment to break away from my three year old to do any work.

With that said, I am very interested in talking to you, your daughter, and future daughter in law about helping as your wedding coordinator. As I stated in our phone conversation, I do not in any way share the feelings of my bosses. I agree that their bigotry is nauseating at best and I am considering a job change mostly because of this issue. Turning away valuable business because of the gender of the couple is not an experience I have enjoyed or want to continue in anyway, however the economy being what it is I have to keep this job until I can transition to another.

I was thinking of you last evening when the CBS news covered the New York Marathon, I hope the girls did well and everything turned out great!

Please feel free to call me this evening or continue the conversation over the internet. As well I will call you when I put my son to bed and hopefully it will be a good time to get in touch with you as well.

I am confident we will be able to find you a suitable location for the reception, accommodations and rehearsal dinner. Pigeon Hill in East Berkshire, and the Rabbit Hill in Lower Waterford are both places I would recommend. Lower Waterford is only 20 minutes from Karma Choling and East Berkshire is 1.5 hours, but the owners are two men so I know there will not be an issue, only if they are available! I would also recommend Jay Peak Ski Resort in Jay or Burke Mountain Resort right here in East Burke. I hope this helps, please be in touch at your convenience for further assistance.

Best, Molly

[Quoted text hidden]

STATE OF VERMONT
HUMAN RIGHTS COMMISSION

Susan Parker,)	
Charging Party,)	
)	
v.)	HRC Charge No. PA05-0029
)	
Wildflower Inn,)	
Respondent.)	

FINAL DETERMINATION

Pursuant to 9 V.S.A. §4554, the Vermont Human Rights Commission enters the following Order:

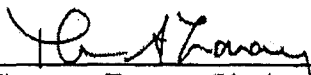
1. The following vote was taken on a motion to find that there are no reasonable grounds to believe that Wildflower Inn, the Respondent, illegally discriminated against Susan Parker, the Charging Party, in housing on the basis of sex and retaliation in violation of 9 V.S.A. §4502(a) of the Vermont Fair Housing and Public Accommodations Act.

Thomas Zonay, Chair	For <input checked="" type="checkbox"/>	Against <input type="checkbox"/>	Absent <input type="checkbox"/>	Recused <input type="checkbox"/>
Shirley Boyd-Hill,	For <input type="checkbox"/>	Against <input type="checkbox"/>	Absent <input checked="" type="checkbox"/>	Recused <input type="checkbox"/>
Therese Corsones	For <input checked="" type="checkbox"/>	Against <input type="checkbox"/>	Absent <input type="checkbox"/>	Recused <input type="checkbox"/>
Charles Kletecka	For <input type="checkbox"/>	Against <input checked="" type="checkbox"/>	Absent <input type="checkbox"/>	Recused <input type="checkbox"/>
Barbara Prentice	For <input checked="" type="checkbox"/>	Against <input type="checkbox"/>	Absent <input type="checkbox"/>	Recused <input type="checkbox"/>
Entry: No Reasonable grounds	<input checked="" type="checkbox"/>	Motion failed	<input type="checkbox"/>	

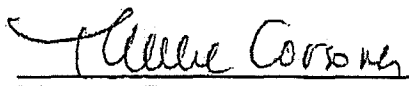
2. Since the Human Rights Commission found that there are no reasonable grounds to believe that Wildflower Inn, the Respondent, illegally discriminated against Susan Parker, the Charging Party in violation of the Vermont Fair Housing and Public Accommodations Act Charge No. H05-0029 is dismissed.

Dated at Montpelier, Vermont this 21st day of September, 2005.


HUMAN RIGHTS COMMISSION

BY: 
Thomas Zonay, Chair


Shirley Boyd-Hill


Therese Corsones


Charles Kletecka


Barbara Prentice