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October 14, 2011

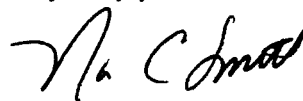
Ms. Kathleen Pearl, Clerk
Vermont Superior Court
Civil Division, Caledonia Unit
1126 Main St., Suite 1
St. Johnsbury, VT 05819

Re: Baker v. Wildflower Inn
Docket No. 187-7-11 CaCv

Dear Ms. Pearl:

Enclosed is **Defendant's Objection to Motion to Intervene.**

Very truly yours,



Norman C. Smith

NCS/csf
Enclosure

c: Robert Appel, Esq.
Dan Barrett, Esq., ACLU (VT)
Joshua A. Block, Esq., ACLU Foundation (NY)
Leslie Cooper, Esq., ACLU Foundation (NY)
James and Mary O'Reilly

VERMONT SUPERIOR COURT
CALEDONIA UNIT

CIVIL DIVISION
DOCKET NO. 187-7-11 CACV

KATHERINE BAKER and
MING-LIEN LINSLEY
Plaintiffs

v.

WILDFLOWER INN a/k/a DOR ASSOCIATES LLP
Defendant

**Defendant's Objection to
Motion to Intervene**

NOW COMES the Defendant and objects to the Motion to Intervene filed by the Vermont Human Rights Commission and in support thereof states as follows:

1. The State of Vermont Human Rights Commission (hereinafter referred to as "HRC") has filed a Motion to Intervene and has advanced certain allegations in support of that motion to which the Defendant objects.

Claim of Intervention as a Matter of Right:

2. The HRC claims it may intervene as a matter of right under Vermont Rule of Civil Procedure (hereinafter "VRCP") 24(a) which allows for intervention in certain cases "**unless** the applicant's interest is adequately represented by existing parties." (Emphasis added.)
3. The HRC alleges that "Without questioning the ability and the skill of the plaintiff's counsel in this matter, it is clear that the Intervener's interest is not "adequately represented by the existing parties." (see Motion to Intervene, page 2)
4. The Plaintiffs have brought this action and bear the burden of proof not only on their case in chief, but also in countering any defenses or counterclaims that are raised by the Defendant. That is part and parcel of the duties of a Plaintiff.
5. The Plaintiffs in this matter are represented by the ACLU of Vermont, an organization whose credentials in matters such as the instant case cannot reasonably be questioned and which organization has a very long history of standing up for its view of what is constitutionally protected and what is not.
6. Thus, the claim that there are a distinct set of goals in terms of relief sought (see Motion to Intervene, page 3) is self-serving and conclusory, without any basis in fact that said statement is true. In fact, it is most likely not true.

7. The fact that the HRC has a subjective very strong interest in the case, as it states at page 2 of its motion, is irrelevant under the rule. The standard under the rule does not make the HRC's entry mandatory if its interests are adequately represented by existing parties. Said interests clearly are adequately represented by the ACLU of Vermont.

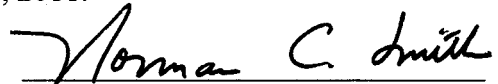
Claim of Permissive Intervention:

8. The HRC claims that it should be permitted to intervene under VRCP 24(b), advancing two separate arguments in advance of its request.
9. First, it insinuates that it could bring a separate action against the Defendant and should be allowed to intervene in the name of judicial economy. The HRC's requests would be duplicative, would not add to the arguments of the Plaintiffs and the ACLU is more than competent to conduct discovery.
10. Second, the HRC believes it should be allowed to enter because its entry would not "unduly delay or prejudice the adjudication of the rights of the original parties." The HRC further claims that its entry "would not substantially delay the proceedings nor cause prejudice to the original parties" because "Defendant only recently filed its Answer to the Plaintiff's Complaint, and upon information and belief, neither the parties nor the court have yet to devise a discovery schedule."
11. The HRC confuses process with substance. While it accurately accounts for the procedural status of this case, it ignores the substantive and financial burden it would pose on the Defendant, a small, private business, to defend this action not only against the ACLU but also, if its request is granted, against the State of Vermont with all of its very significant resources. Said entry would unfairly allocate resources for the prosecution of a private civil action into one where the significant resources of the State of Vermont would also be brought to bear.
12. Allowing this to happen would be not only an unnecessary and duplicative intervention, but an unfair one as well.
13. Additionally, since the HRC's interest in this matter is limited to the constitutional issues raised by the Defendant, it has no interest or right to the underlying claim of the Plaintiffs or the Defendant's defense on the underlying merits of the case. As such, even if the court were to allow the HRC to intervene, the HRC's involvement should be limited to the constitutional issues only, including a limitation on its participation in the discovery process so as to not additionally burden the Defendant in that regard.

WHEREFORE, the Defendant respectfully requests that this Honorable Court:

- A. Deny the HRC's Motion to Intervene.
- B. In the alternative, if the court is to allow the HRC to intervene, allow the HRC to intervene in a limited manner and for the sole purpose of participation regarding the constitutional issues and order that its participation in discovery is limited to that limited purpose.

Dated at Essex Junction, Vermont this 14th day of October, 2011.



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