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

Motion to Amend

The plaintiffs brought this public accommodations suit in July 2011 to redress the defendant's refusal to treat lesbian and gay customers on equal terms as heterosexual ones. Subsequent to filing suit, the defendant has revealed additional information regarding the means by which it has sought to skirt the Act, and now seek to amend their complaint accordingly. As set forth below, the plaintiffs have not delayed unduly in seeking to amend, are not motivated by an improper purpose, and their proposed second amended complaint will not prejudice the defendant. Their motion should therefore be granted.

I. Facts

In 2010, Ms. Baker and Ms. Linsley were looking for a place to hold their wedding reception in the Northeast Kingdom. After Ms. Linsley's mother, Channie Peters, corresponded with the Wildflower Inn about holding the reception there, the Wildflower Inn's Meeting and Events Director told Ms. Peters in an email that "due to [the Wildflower Inn owners'] personal feelings, they do not host gay receptions at our facility." The plaintiffs brought suit in this Court in July 2011, alleging that the Inn violated Vermont's public accommodations act, Vt. Stat. Ann.

tit. 9, §§ 4501-4502. In August, Ms. Baker and Ms. Linsley amended their complaint with the consent of the defendant to correct a typographical error contained in the original.

After the plaintiffs filed suit, the owners of the Wildflower Inn made public statements that appear to be crafted to criticize "the manner" in which the Meeting and Events Director communicated with the plaintiffs while still preserve the Wildflower Inn's longstanding policy and practice of discriminating against same-sex couples without explicitly denying services. In a message posted on the Wildflower Inn's Facebook page and released to the press, the owners of the Wildflower Inn stated: "We welcome and treat all people with respect and dignity. We do not however, feel that we can offer our personal services wholeheartedly to celebrate the marriage between same sex couples because it goes against everything that we as Catholics believe in. . . . . Unfortunately, our Wedding Coordinator did not handle the couple's request in the manner that it should have been."

In their Answer to the plaintiff's complaint, the defendant again alleged that the Meeting and Events Director's actions were not authorized but reaffirmed that the Wildflower Inn has a policy of denying equal services to same-sex couples is less explicit ways. According to the Answer: "The Director was never authorized to reject requests from same-sex couples; rather she was supposed to inform the Owners of the Inn who would then speak with the couple." Answer ¶ A. The Answer went on to allege that it would violate the Wildflower Inn owners' First Amendment rights if they were compelled to allow same-sex wedding and civil union receptions at their facilities. The defendant thus appears to disavow the policy as articulated by the Meeting and Events Director while preserving its underlying ability to discriminate against same-sex couples in a less direct manner.

The defendant also appears to have made misleading statements about whether the Wildflower Inn continues to host wedding and civil union receptions. The defendant stated on its

website that the Wildflower Inn ceased hosting any wedding receptions beginning in May, but that wedding inquiries are referred to the Stepping Stone Spa, a business also jointly owned by DOR Associates, LLP partner Richard Downing and sited next to the Inn on the same Downing-owned parcel of land. In apparent contradiction of these statements, however, a September 2011 publication of *Vermont Vows* magazine profiled a different-sex couple who had their reception at the Inn during the month of July 2011.

These discoveries have prompted Ms. Linsley and Ms. Baker to amend their complaint in two principal ways. First, the second amended complaint clarifies that the plaintiffs are challenging, not only the manner in which the Meeting and Events Director described the Wildflower Inn's policy with respect to same-sex couples, but also the defendant's underlying policy and practice of discriminating against same-sex couples regardless of whether that discrimination takes the form of an outright refusal of service. Specifically, the second amended complaint now includes additional allegations that the defendant has a longstanding policy and practice of actively discouraging same-sex couples from holding wedding receptions or civil unions at the facilities, telling such couples that the resort will not be able to provide the same quality of services, and/or refusing to return phone calls or inquiries from such customers.

Second, the second amended complaint now includes additional allegations about the Wildflower Inn's coordination with the Stepping Stone Spa. These additional allegations are intended to ensure that the Wildflower Inn and its owners cannot evade an adverse decision in this case by directing their customers to a different property that has not specifically been named as a defendant.

These additional factual allegations will ensure that any relief awarded by the Court addresses the full scope of the defendant's illegal conduct..

II. It is Proper to Permit the Plaintiffs to Amend Their Complaint

In relevant part, Vt. R. Civ. P. 15(a) provides that a party may amend a pleading after a response to it has been served "by leave of court," and permission to do so "shall be freely given when justice so requires." "Rule 15(a) tilts heavily in favor of granting motions to amend," *Prive v. Vermont Asbestos Group*, 2010 VT 2, ¶ 12. "[T]he Vermont tradition of liberally allowing amendments to pleadings where there is no prejudice to the other party" flows from the policy goals of providing "maximum opportunity for each claim to be decided on its merits rather than on a procedural technicality," giving ample notice "of the nature of the claim or defense," and encouraging parties to "assert matters that were overlooked or unknown . . . at an earlier stage in the proceedings." *Colby v. Umbrella, Inc.*, 2008 VT 20, ¶ 4 (internal quotations and citations omitted). So strong is the presumption in favor of parties' ability to amend pleadings that "[w]hen there is no prejudice to the objecting party, and when the proposed amendment is not obviously frivolous nor made as a dilatory maneuver in bad faith, it is an abuse of discretion to deny the motion." *Bevins v. King*, 143 Vt. 252, 254 (1983). *See also Colby*, 2008 VT 20, ¶ 4 (describing instances in which motions to amend are properly denied as "rare cases").

The plaintiffs' motion poses no such problems. Their second amended complaint seeks to add factual allegations regarding the defendants' contravention of the Public Accommodations Act, and to tailor the requested relief to those harms. The core of the Ms. Baker's and Ms. Linsley's grievances has not changed, and the defendant has been on notice of the plaintiffs' theory since suit was filed in July.

Moreover, supplementation of the factual allegations will not disrupt the progress of the litigation or the defendant's ability to conduct discovery. In fact, the defendant has not yet begun its discovery efforts, and has yet to address the plaintiffs' two month old discovery requests.

Compare Kreppein v. Celotex Corp., 969 F.2d 1424, 1427 (2d Cir. 1992) (motion to amend in order to add pain and suffering damages demand properly granted during trial; no prejudice to defendants because they "were on notice of the underlying facts relied upon by plaintiff, and had full discovery" prior to trial) *with Ferrisburgh Realty Investors v. Schumacher*, 2010 VT 6, ¶ 16 (denial of leave to add tort claim to real estate contract dispute proper where jury draw was scheduled and discovery would need to be re-opened). *See Drumheller v. Drumheller*, 2009 VT 23, ¶ 29 (Vermont will look "to federal decisions interpreting the federal rule for guidance in applying the Vermont rule" where the two rules are "substantially identical").

Finally, Ms. Baker and Ms. Linsley's motion is not lodged in a bad faith attempt to cover a fatal flaw at the last minute, *see, e.g., Compare Lans v. Digital Equip. Corp.*, 252 F.3d 1320, 1328-1329 (D.C. Cir. 2001) (amendment properly denied as made in bad faith where plaintiff sought to correct for the fact that he did not own patents-in-suit and lacked standing, which were "not honest and understandable mistakes"), or to baselessly lengthen the litigation. *See, e.g., Hoffmann v. United States*, 266 F. Supp. 2d 27, 34-35 (D.D.C. 2003) (denying motion to amend in part because "plaintiffs, sensing the end is near, are attempting to resuscitate previously-rejected claims, in order to breathe life into this withering lawsuit," which "raises the spectre of bad faith"). Because the plaintiffs' motion does not raise any such concerns, their motion should be granted.

III. Conclusion

Because the plaintiffs' proposed second amended complaint is not tendered in bad faith, is not futile, and poses no prejudice to the defendant, their motion to amend should be granted.

_____/s/_____
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November 22, 2011

Certificate of Service

I hereby certify that on November 22, 2011, I served the plaintiffs' motion to amend by means of postage-prepaid first class mail upon:

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