

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 Amend

For many years, the Wildflower Inn has evaded Vermont's Fair Housing and Public Accommodation Act, Vt. Stat. Ann. tit. 9, §§ 4501-4502, by discouraging same-sex couples from holding wedding or civil union receptions 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. This policy led directly to the Wildflower Inn's illegal discrimination against Kate Baker and Ming-Lien Linsley. Following their discovery of additional information showing the defendant's pattern and practice of discriminating against gay and lesbian couples, and the defendant's use of a commonly owned business, the Stepping Stone Spa, to avoid Vermont's public accommodations act, plaintiffs moved to amend their complaint to include that information and to make their request for equitable relief more specific. The Wildflower Inn now opposes their amendment, claiming in a cursory filing that no information supports their additional allegations, and that plaintiffs are not entitled to an order forbidding the defendant from conspiring with others to discriminate. Neither of these is true, and neither states a valid reason to deny plaintiffs leave to amend. The motion should therefore be granted.

Defendant's contention that the additional information in the proposed amended complaint is "not supported by specific allegations or an affidavit from a credible witness" is baseless and circular. Def.'s Mot. for Status Conf. ¶ 7. Plaintiffs are not required to submit evidence at the pleading stage or in support of a motion to amend. The decision on granting a motion to amend is based solely on determining whether amendment would pose the "rare case[]" of undue delay, bad faith, futility, or prejudice to the opposing party. *Colby v. Umbrella, Inc.*, 2008 VT 20, ¶ 4. Disputes over amendments do not reach the substance of the proposed amended pleading, lest motions to amend spiral into summary judgment on the merits of the claims: a party "need not prove its claims before making them." *Applera Corp. v. Michigan Diagnostics, LLC*, 594 F. Supp. 2d 150, 154 (D. Mass. 2009) (granting motion to amend over defendant's complaint that plaintiff had not deposed fact witnesses before pleading additional allegations).

Nonetheless, to the extent that Ms. Baker and Ms. Linsley's additional allegations of the Wildflower Inn's discriminatory pattern and practice are insufficiently detailed for defendant to understand, they have included as Appendix A of their separate motion to compel an affidavit from Susan Parker describing her being refused service by the defendant in 2005 on the basis of her sexual orientation. If the defendant wishes to contest the allegation that it has a longstanding policy of refusing service to same-sex couples, or wishes to avoid an injunction forcing it to abandon that practice, it is free to do so through discovery, a motion for summary judgment, and trial if necessary.

In addition, defendant argues that plaintiffs are not entitled to include allegations against the Stepping Stone Spa because it is not a defendant in this lawsuit. By operation of law, however, once an injunction is entered against the defendant, the Stepping Stone Spa and any other third party would be barred from assisting the Wildflower Inn in discriminating against

gays and lesbians so long as the third party has had actual notice of the injunction. Vt. R. Civ. P. 65(d) (specifying that an injunction is binding not just upon the parties to litigation, but also “their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order”); *see also Vermont Women’s Health Center v. Operation Rescue*, 159 Vt. 141, 145 (1992) (“Rule 65(d) allows for enforcement of injunctions against nonparties in order to ensure that parties do not use nonparties to evade compliance with the injunction.”). Plaintiffs have included explicit allegations concerning the Wildflower Inn’s collusion with the Stepping Stone Spa to foreclose defendant from later claiming that it did not understand that an injunction prohibiting it from continuing to discriminate also prohibits it from colluding with a commonly owned business to do so. Defendant’s protests to the contrary provide no reason to deny the motion to amend.

Finally, defendant asserts that no further proceedings are necessary by claiming that it has offered to admit the allegations and settle the matter for all the relief requested. Def.’s Mot. for Status Conf. ¶ 7. To the contrary, instead of admitting the allegations against it, the Wildflower Inn continues to assert that it has never had a “no gay receptions” policy and that the discriminatory conduct resulted solely from a rogue employee. *Id.* ¶ 3. Defendant’s proposed settlement for an injunction prohibiting it from enforcing a “no gay receptions” policy is therefore meaningless, because defendant does not concede that such an injunction would cover its longstanding discriminatory practices. Plaintiffs have attempted to clarify this issue by presenting the defendant with a draft settlement agreement explicitly covering the full range of their discriminatory conduct. Defendant has rejected that offer, making clear that it wishes to continue pursuing the same course of discrimination.

Because the defendant has failed to advance any grounds for denying Ms. Baker and Ms. Linsley leave to amend their complaint, their motion to do so should be granted, and their proposed amended complaint should be docketed.

/s/

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December 22, 2011

CERTIFICATE OF SERVICE

I hereby certify that on December 22, 2011, 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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