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DIANE CERVELLI and TAEKO BUFFORD

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAII

DIANE CERVELLI and TAEKO BUFFORD,) CIVIL NO. _____
) (Other Civil Action)
Plaintiffs,)
)
vs.) **COMPLAINT FOR INJUNCTIVE**
) **RELIEF, DECLARATORY RELIEF,**
) **AND DAMAGES; SUMMONS**
ALOHA BED & BREAKFAST, a Hawaii sole)
proprietorship,)
)
Defendant.)
_____)

COMPLAINT FOR INJUNCTIVE RELIEF, DECLARATORY RELIEF, & DAMAGES

Plaintiffs Diane Cervelli (“Diane”) and Taeko Bufford (“Taeko”) (collectively
“Plaintiffs”), by and through their undersigned counsel, file this complaint for injunctive relief,
declaratory relief, damages, and other relief against Defendant Aloha Bed & Breakfast
 (“Defendant”), and allege as follows:

I. INTRODUCTION

1. This case involves the refusal by a for-profit, commercial business establishment to provide accommodations at a bed and breakfast to a lesbian couple because of their sexual orientation, in violation of Hawaii's law prohibiting discrimination in public accommodations. The owner of the business maintains that she need not comply with any part of the law, which prohibits discrimination in public accommodations on the basis of race, sex, gender identity or expression, sexual orientation, color, religion, ancestry, and disability.

2. Plaintiffs file this suit to enforce Hawaii's compelling state interest in eradicating discrimination in Hawaii's public marketplace and to protect the rights of all persons to access public accommodations free from unfair discrimination. The discriminatory practice of barring the doors of a business to a disfavored group causes significant harm to the excluded individuals who, in addition to other injuries, are deprived of their personal dignity and sense of belonging in society by being shunned by a business open to others. It also harms society itself, by fomenting social strife and obstructing the free and open flow of commerce vital to the state economy. These discriminatory practices have a long and painful history. Hawaii's antidiscrimination laws are intended to eradicate the societal stain of invidious discrimination, forbidding a business owner from targeting customers for unlawful exclusion based on the owner's negative attitudes toward their race, sex, gender identity or expression, color, religion, ancestry, disability or, in this case, sexual orientation.

II. PARTIES

3. Plaintiffs Diane Cervelli and Taeko Bufford are lesbian women who are in a committed relationship with one another. They reside in the City of Long Beach in Los Angeles County, California.

4. Defendant is a sole proprietorship that does business as Aloha Bed & Breakfast in the City and County of Honolulu, State of Hawaii. Defendant offers bed and breakfast services to the general public. Defendant's trade name is registered with the Business Registration Division of the Hawaii Department of Commerce & Consumer Affairs. Upon information and belief, Defendant or its sole proprietor remits payment for general excise tax and transient accommodations tax in connection with Defendant's provision of transient accommodations.

III. JURISDICTION AND VENUE

5. This Court has jurisdiction over this action pursuant to Hawaii Revised Statutes ("HRS") §§ 603-21.5(a)(3), 632-1, *et seq.*, 489-7.5(a), and Hawaii Rules of Civil Procedure ("HRCP") Rules 57 and 65.

6. Venue is proper in this Court pursuant to HRS § 603-36, because conduct that gave rise to the claim for relief occurred in this Circuit and Defendant is domiciled in this Circuit.

IV. FACTS

7. Diane and Taeko are a loving, devoted same-sex couple who have been in a committed relationship for approximately five years. Diane is a veterinary technician and is pursuing a degree in nursing. Taeko is a mental health clinician who works with homeless and mentally ill adults at a community mental health center.

8. Defendant, a Hawaii sole proprietorship that operates under the trade name Aloha Bed & Breakfast, is a for-profit, commercial business that offers bed and breakfast services to the general public and provides lodging and food to customers who stay temporarily at its bed and breakfast facilities. Upon information and belief, Phyllis Young is the sole proprietor of Defendant and owns and operates Defendant as a for-profit, commercial business.

9. Defendant's facilities are perched on a hillside in the Mariners Ridge section of Hawaii Kai with sweeping panoramic views of the Pacific Ocean. There are multiple rooms available for rent, including rooms with views of the ocean, Koko Marina, and Koko Crater. Upon information and belief, Defendant's facilities are valued at approximately \$900,000.

10. Defendant advertises its bed and breakfast services to the public through a wide range of outlets, including several Internet web sites used by the general public to locate bed and breakfast facilities. For example, Defendant maintains a web site advertising its bed and breakfast services to the public at <http://home.roadrunner.com/~alohaphyllis>. The web site specifies a two-person occupancy limit per room; a required three-night minimum stay; and the daily rates to rent the rooms, which currently range from eighty-five dollars (\$85.00) to one hundred dollars (\$100.00) per day. The web site also features pictures of views from some of the rooms. The web site states that the bed and breakfast "offers many pluses," including the following amenities:

- a. "Wireless Access;"
 - b. A "large lanai (deck) greets you with a partial ocean view, the patio table being the perfect place to have breakfast or to relax in the early evening just to soak in the ambiance of Hawaiian living;"
 - c. "A large swimming pool is available for your enjoyment;"
 - e. "Breakfasts are customized to your diet and preferences;"
 - f. "Minutes from famed snorkeling beach, Hanauma Bay and Halamana Cove next to Blow Hole, and other lovely beaches;"
 - g. "Two award-winning restaurants five to ten minutes away;"
 - h. "Three nearby shopping centers with host of fast food choices as well;"
- and

i. “Waikiki about 20 minutes away.”

11. Defendant’s services also are currently advertised or listed through the following web sites: The International Bed and Breakfast Pages, Frommer’s Travel Guides, TripAdvisor, Yahoo! Travel, bnbHawaii.com, and Pamela Lanier’s Bed and Breakfasts, Inns and Guesthouses International. Upon information and belief, Defendant’s bed and breakfast services were advertised or profiled, and continue to be advertised or profiled, through these or similar Internet web sites used by the general public to locate bed and breakfast facilities at all relevant times for purposes of this lawsuit. Upon information and belief, Defendant has operated its business or held itself out as a business open to the public since at least 2003 and has had hundreds of customers stay in its facilities.

12. In 2007, Diane began planning a trip for her and Taeko to visit a friend in Hawaii Kai, and to spend time with the friend’s newborn baby.

13. Diane and Taeko had anticipated staying with their friend, but the baby experienced health issues, including loss of appetite and weight loss, which caused the baby to cry more than normal at times. These issues were stressful for Diane and Taeko’s friend, who was a first-time mother, and she suggested that Diane and Taeko consider alternative accommodations to give themselves occasional breaks from the baby’s crying and the family stress.

14. Diane and Taeko agreed, and looked for alternative accommodations to reduce the burden on their friend of hosting visitors. The unexpected expense of paying for lodging made renting a car prohibitively expensive, so they searched for lodging near their friend’s residence. Staying near their friend was important to Diane and Taeko because their friend could not drive long distances to pick them up given her newborn’s health issues.

15. Diane and Taeko's friend suggested that Diane contact certain bed and breakfast businesses, one of which was Defendant.

16. On October 16, 2007, Diane emailed Defendant to inquire whether Defendant had a room available from December 27, 2007 through January 7, 2008. Diane received an email from Phyllis Young on the same day stating that the bed and breakfast could accommodate Diane from January 1, 2008 through January 7, 2008. After confirming that Diane and Taeko's friend could accommodate the couple for the first few nights when the bed and breakfast was unavailable, Diane called the phone number for Defendant on November 5, 2007 and spoke with Phyllis, who confirmed that the room was still available. Phyllis asked if someone would be staying with Diane, and then asked for the second person's name. When Diane responded with words to the effect of "her name is Taeko Bufford," Phyllis asked pointedly, "Are you lesbians?"

17. Diane was shocked by the question, but answered truthfully that they were. Phyllis then refused to rent a room to Diane and Taeko by informing Diane that Phyllis would be very uncomfortable having lesbians in her house. Diane was stunned and said, "What?" Phyllis repeated that she was very uncomfortable renting a room to lesbians.

18. Diane and Phyllis ended the phone call. Diane felt deeply upset, distressed, and humiliated by Phyllis's statements and Defendant's refusal to rent her a room, and called Taeko in tears to explain what had happened. In disbelief, Taeko called Phyllis back, explained that the couple wanted to rent the room, and requested that they be allowed to do so. Phyllis again refused access to Defendant's accommodations. Taeko asked, "Is it because we are lesbians that you will not rent to us?" to which Phyllis replied, "Yes." Phyllis stated that she felt uncomfortable renting a room to homosexuals, citing her personal religious views.

19. Taeko told Phyllis that she was discriminating in violation of the law, but Phyllis insisted that she could exclude whomever she wanted to exclude from Defendant's

accommodations. Phyllis eventually hung up the phone on Taeko. Taeko felt extremely upset and distressed by the conversation and by Defendant's refusal to equally afford her and Diane accommodations provided to other customers. Taeko tried calling Defendant back to finish the conversation, but no one answered. Taeko eventually spoke with Phyllis again later that day, and Phyllis reiterated her personal religious views and again insisted that she could exclude whomever she wanted.

20. Diane and Taeko each found Defendant's refusal of accommodations to them profoundly insulting and hurtful, and felt degraded by being treated as inferior and unworthy of equal treatment in even a routine business transaction. Diane cried throughout the day, found it difficult to function at work, and experienced chest and stomach pain. Taeko also felt distressed and wondered whether they would encounter similar discrimination once they arrived in Hawaii. Defendant's refusal of equal accommodations to Diane and Taeko based on their sexual orientation, through Phyllis's statements to each of them respectively, caused Diane and Taeko injury and damages.

21. Diane and Taeko subsequently were able to rent accommodations at a condo, but it was not close to their friend's home. The burden on Diane and Taeko's friend of driving with a sick newborn baby to the condo meant that Diane and Taeko were able to have only a few visits together with their friend and her newborn baby, which was very disappointing to Diane and Taeko. This undermined the purpose of their trip as well as the enjoyment they would have otherwise derived from it, absent Defendant's unlawful discriminatory conduct.

22. Upon information and belief, although Defendant continues to provide accommodations to the general public, Defendant continues to refuse to provide accommodations to same-sex couples, based on their sexual orientation. Upon information and belief, Defendant continues to believe that the entirety of Hawaii's public accommodations

antidiscrimination law does not apply to it, and that Defendant therefore may refuse customers because of their race, sex, gender identity or expression, sexual orientation, color, religion, ancestry, or disability, without violating that law.

23. Diane and Taeko each timely complained regarding Defendant's unlawful discriminatory conduct to the Hawaii Civil Rights Commission ("HCRC"), the state agency charged with enforcement of the law prohibiting discrimination in public accommodations, among other laws.

24. During the course of HCRC's investigation, Phyllis admitted that she told Diane and Taeko that she would not rent them a room because they were lesbians. Phyllis expressed to HCRC her view that homosexuality is "detestable" and that it "defiles our land."

25. Diane and Taeko are not yet married, nor are they reciprocal beneficiaries, registered domestic partners, or parties to a civil union. However, Phyllis stated to HCRC that it did not matter to her whether Diane and Taeko were married or unmarried; the reason they were denied accommodations was because of their sexual orientation, not their marital status.

26. Phyllis also confirmed to HCRC that Defendant rents lodging on a daily basis; that it does not offer permanent housing to customers; that it does not allow rooms to be rented on a month-to-month basis; that it does not enter into rental agreements with customers; and that it does not provide cooking privileges to customers. Upon information and belief, all or virtually all of Defendant's customers are transient guests who do not permanently reside at Defendant's establishment.

27. After conducting its investigation, HCRC on March 3, 2010 issued a Notice of Reasonable Cause to Believe That Unlawful Discriminatory Practices Have Been Committed.

28. On November 21, 2011, Diane and Taeko received copies of notices of their right to sue from HCRC. Diane and Taeko timely filed this suit within 90 days after receipt of the notices, pursuant to HRS § 368-12.

CLAIM FOR RELIEF

Discriminatory Denial of Public Accommodations Based on Sexual Orientation Pursuant to HRS § 489-1, *et seq.*

29. Plaintiffs reallege and incorporate herein by reference the allegations contained in Paragraphs 1 through 28 above, as if fully set forth herein.

30. Hawaii's law prohibiting discrimination in public accommodations serves a compelling state interest in eradicating the stain of discrimination from public society in Hawaii. That law's "purpose . . . is to protect the interests, rights, and privileges of all persons within the State with regard to access and use of public accommodations by prohibiting unfair discrimination." HRS § 489-1. Plaintiffs bring this claim to vindicate that purpose.

31. HRS § 489-3 provides that "[u]nfair discriminatory practices that deny, or attempt to deny, a person the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of a place of public accommodation on the basis of . . . sexual orientation . . . are prohibited."

32. Defendant is a "place of public accommodation" within the meaning of HRS § 489-2 because Defendant is a "business" and an "accommodation . . . whose goods, services, facilities, privileges, advantages, or accommodations are extended, offered, sold, or otherwise made available to the general public as customers, clients, or visitors." Defendant also is a form of public accommodation specifically covered and enumerated by the law because Defendant is "[a]n inn, hotel, motel, or other establishment that provides lodging to transient guests," within the meaning of HRS § 489-2(2). Defendant rents its rooms for a daily rate. Defendant offers

accommodations, goods, services, facilities, privileges, and advantages that include rooms to rent, access to wireless Internet, use of a lanai and swimming pool, and customized breakfasts. Defendant's services are made available to the general public as customers through its own web site advertising its services, and through web sites available to the public as detailed above. Defendant qualifies as an inn or other establishment that provides lodging to transient guests because it provides lodging to customers who stay temporarily at its bed and breakfast facilities.

33. Defendant engaged in unfair discriminatory practices prohibited by HRS § 489-3 by denying Plaintiffs "the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of a place of public accommodation on the basis of" Plaintiffs' "sexual orientation." Specifically, Defendant refused to allow Diane and Taeko to make a reservation for, or to rent, any of the rooms it offers to the general public, as well as to obtain the services, privileges, and other advantages provided to those renting a room, based on Diane and Taeko's sexual orientation.

34. Defendant's denial of public accommodations to Diane and Taeko because they are lesbians constitutes a prohibited discriminatory practice based on Diane and Taeko's sexual orientation within the meaning of HRS § 489-2. As alleged above, when Diane attempted to reserve a room and identified herself and Taeko as lesbians in response to Phyllis's question, Defendant denied them access to all of Defendant's bed and breakfast accommodations and services, which Phyllis explained was based on personal views that made her uncomfortable offering accommodations to lesbians. As further alleged above, when Taeko also attempted to reserve a room, Defendant again denied the couple access to all of Defendant's bed and breakfast accommodations and services, and Phyllis reiterated her personal views and discomfort with lesbians as the reason for the denial.

35. Diane and Taeko each have been injured and damaged as a direct and proximate result of Defendant's discriminatory refusal to provide them with equal access to its bed and breakfast facilities and services. Defendant's actions have caused emotional distress and pain, as well as actual damages. Defendant's refusal of equal treatment caused Diane and Taeko to feel upset, distressed, and humiliated, as well as profoundly devalued by being treated as inferior and unworthy of equal treatment.

36. Defendant's discrimination against Diane and Taeko in violation of HRS § 489-3 was intentional, willful, wanton, or committed with gross negligence.

37. As alleged above, Diane and Taeko timely exhausted administrative remedies by complaining to HCRC, pursuant to HRS § 368-11, and timely filed this suit within 90 days after receipt of notices of their right to sue from HCRC, pursuant to HRS § 368-12.

DECLARATORY AND INJUNCTIVE RELIEF

HRS §§ 632-1, *et seq.* and 489-7.5(a); HRCP Rules 57 and 65

38. Diane and Taeko are entitled to a declaration that Defendant is covered by and must comply with Hawaii's laws prohibiting discrimination in public accommodations set forth HRS § 489-1, *et seq.* and that Defendant's denial of public accommodations to them based on their sexual orientation, and its ongoing refusal to offer accommodations on equal terms to lesbians and gay men, violate those laws. An actual controversy exists between Diane and Taeko, on the one hand, and Defendant, on the other, over the couple's concrete interest in, and assertion of legal rights to, equal access to the accommodations that Defendant offers to the general public. A declaratory judgment will terminate the present uncertainty concerning whether Defendant's denial of equal accommodations violates HRS § 489-1, *et seq.*

39. Diane and Taeko are entitled to permanent injunctive relief pursuant to HRS § 489-7.5, which permits injured persons to bring proceedings to enjoin unlawful discriminatory

practices. Injunctive relief is also appropriate because Diane and Taeko will prevail on the merits, the balance of irreparable damage favors the issuance of an injunction, and the public interest supports granting an injunction to end Defendant's invidious discrimination based on sexual orientation.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment as follows:

A. Entering a declaratory judgment that Defendant's denial of public accommodations to Plaintiffs based on their sexual orientation and its ongoing refusal to provide accommodations to lesbians and gay men on terms equal to those provided to heterosexuals violates Hawaii's laws prohibiting discrimination in public accommodations pursuant to HRS § 489-1, *et seq.*;

B. Permanently enjoining Defendant (and its officers, agents, servants, employees, attorneys, and all persons acting or purporting to act in concert or participation with Defendant) from engaging in discriminatory practices that deny Plaintiffs and other members of the public equal access to Defendant's goods, services, facilities, privileges, advantages, and accommodations based on sexual orientation in violation of HRS § 489-1, *et seq.*;

C. Awarding Plaintiffs damages in an amount to be proven at trial including actual, compensatory, statutory, treble, special, and punitive damages pursuant to HRS §§ 368-17 & 489-7.5;

D. Awarding Plaintiffs pre-judgment and post-judgment interest;

E. Awarding reasonable attorneys' fees, costs, and other expenditures incurred as a result of bringing this action, pursuant to all applicable laws and doctrines; and

F. Awarding Plaintiffs further relief as this Court may deem just and equitable.

Dated: Honolulu, Hawaii, December __, 2011.

PETER C. RENN (*admission pro hac vice pending*)
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