

STATE OF VERMONT

SUPERIOR COURT

ENVIRONMENTAL DIVISION  
Docket No. 38-3-19 Vtec

City of St. Albans v Ross Arsenault
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**ENTRY REGARDING MOTION**

Count 1, Municipal Enforcement (38-3-19 Vtec)

Title: Motion for Default Judgment (Motion 2)

Filer: City of St. Albans

Attorney: Colin K. McNeil

Filed Date: July 25, 2019

No response filed

**The motion is DENIED.**

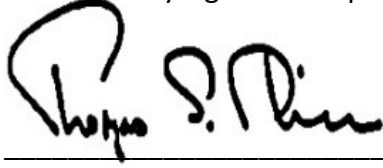
The City of St. Albans ("City") seeks judgment by default against Ross Arsenault ("Defendant"), due to Defendant's failure to timely file an answer to the City's complaint in the above-captioned municipal enforcement action.

The record reflects that Defendant has not filed an answer, nor has he filed an objection to the City's default motion. However, Defendant has filed a motion to dismiss the City's complaint, which motion we have today denied by separate Entry Order. While a motion to dismiss is not a responsive pleading pursuant to V.R.C.P. 7(a), its filing suspends a defendant's obligation to file and answer or other responsive pleading. Neal v. Brockway, 136 Vt. 119, 122 (1936) (holding that the proper course of action when granting a "motion to dismiss prior to service of a responsive pleading is to dismiss with leave to amend"). When a trial court denies a defendant's motion to dismiss, which was filed before a responsive pleading, "the defendant is not required to file an answer until ten days after notice that the [dismissal] motion is denied . . . ." Andrus v. Dunbar, 2005 VT 48, ¶ 17, 178 Vt. 554 (2005)(mem).

The Andrus precedent directs that we deny the City's motion for default judgment. Given that we have today denied Defendant's motion to dismiss the City's complaint, we direct that Defendant shall have until **Monday, September 30, 2019** to file his answer and other responsive pleadings. If he fails to do so, the City will then be entitled to re-file its motion for default judgment.

**So Ordered.**

Electronically signed on September 19, 2019 at Newfane, Vermont, pursuant to V.R.E.F. 7(d).

A handwritten signature in black ink, appearing to read "Thomas S. Durkin", written over a horizontal line.

Thomas S. Durkin, Superior Judge  
Environmental Division

Notifications:

Colin K. McNeil (ERN 5202), Attorney for Plaintiff City of St. Albans

Timothy G. Hurlbut (ERN 5109), Attorney for Defendant Ross Arsenault