

VERMONT SUPERIOR COURT  
Environmental Division  
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Docket No. 105-9-19 Vtec

<b>Town of Pawlet v. Daniel Banyai</b>
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Title: Respondent's Motion for Stay Pending Appeal (Motion #26)

Filer: Robert E. Kaplan, Attorney for Daniel Banyai, Respondent

Filed Date: July 19, 2023

Town of Pawlet's Opposition to Respondent's Motion for Stay, filed on June 19, 2023, by Merrill Bent, Attorney for the Town of Pawlett

**The motion is DENIED.**

The matter before the Court began in September 2019 as a municipal enforcement action. That underlying matter giving rise to the action has long since been decided and affirmed. See Town of Pawlet v. Banyai, No. 105-9-19 Vtec, Decision on Merits slip op. at 5–11 (Vt. Super. Ct. Envtl. Div. Mar. 5, 2021); *aff'd* Town of Pawlet v. Banyai, 2022 VT 4. Presently before the Court is a Motion for a Stay of the Court's order enforcing its post-judgment contempt fines and sanctions, entered February 8, 2023.<sup>1</sup> [Hereinafter "Contempt Order"]. In these proceedings, Attorney Merrill Bent represents the Town of Pawlet ("Town"), and Attorney Robert Kaplan represents Respondent.

Respondent now requests that this Court stay the Court's July 6, 2023 order enforcing the terms of the Contempt Order after Respondent failed to meet the obligations of his compliance schedule. These sanctions included deeming the accruing purgeable fine now due and no longer purgeable, issued the mittimus for Respondent's arrest pursuant 12 V.S.A. § 123 and the terms

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<sup>1</sup> The February 8, 2023 Contempt Order was subject to a motion to reconsider, which the Court denied on April 21, 2023, but granted an extension with an accompanying site inspection modification on March 24, 2023. [Hereinafter "Contempt Order"]. The Contempt Order was not appealed.

of the Contempt Order, and appointed the Town to bring the Property into compliance with the Court's outstanding orders.

An appeal of a post-judgment enforcement order to the Supreme Court does not automatically stay the order. V.R.E.C.P. 5(e); 10 V.S.A. § 8504(f)(2); see V.R.A.P. 8(a). A party, however, may move to request a stay from this Court. In these instances, a stay is considered "an extraordinary remedy appropriate only when the movant's right to relief is clear." In re Howard Ctr. Renovation Permit, No. 12-1-13 Vtec, slip op. at 1 (Vt. Super. Ct. Env'tl. Div. Apr. 12, 2013).

To prevail on a motion to stay, "the moving party must demonstrate: (1) a strong likelihood of success on the merits; (2) irreparable injury if the stay is not granted; (3) the stay will not substantially harm other parties; and (4) the stay will serve the best interests of the public." Gilbert v. Gilbert, 163 Vt. 549, 560 (1995); see also In re Route 103 Quarry, No. 205-10-05 Vtec, slip op. at 3, (Vt. Env'tl. Ct. Sept. 14, 2007) (Durkin, J.) (quoting same). When there is a possibility that a stay will harm another party, the movant "must make out a clear case of hardship or inequity in being required to go forward." Morrisville Hydroelectric Project Water Quality, No. 103-9-16 Vtec, slip op. at 3 (Vt. Super. Ct. Env'tl. Div. Aug. 26, 2020) (Walsh, J.) (quoting In re Woodstock Cmty. Tr. & Hous. Vermont PRD, 2012 VT 87, ¶ 36, 192 Vt. 474). "Courts disapprove stays . . . when a lesser measure is adequate to protect the moving party's interests." Woodstock Cmty. Tr. & Hous. Vermont PRD, 2012 VT 87, ¶ 36. "The criteria are flexible in as much as the court may consider varying strengths and weaknesses as to each in determining the necessity of a stay." White v. State, No. 14-1-21, slip op. at 1 (Vt. Super. Apr. 28, 2021).

This Court recently addressed another of Respondent's motions for stay. See generally Town of Pawlet v. Daniel Banyai, No. 105-9-19 Vtec, slip op. (Vt. Super. Ct. Env'tl. Div. July 6, 2023) (Durkin, J.) (denying Respondent's June 15, 2023 request for a stay pending resolution in Banyai v. Town of Pawlet, et. al., No. 2:23-CV-00101 *dismissed in Banyai v. Town of Pawlet*, No. 2:23-CV-00101, slip op. at 1 (D. Vt. Aug. 7, 2023). For many of the same reasons addressed in that decision, the Court again Concludes that Respondent has not met his burden of establishing that a stay is proper, and, accordingly, the Court denies his motion. The Court briefly discusses each criterion in turn.

First, the Court cannot find that Respondent is likely to succeed on the merits. A “contempt order against [a contemnor] is a final order and is appealable as of right. It conclusively determines [a contemnor’s] rights and leaves nothing for the court to do but execute the judgment.” State v. Barrows, 158 Vt. 445, 447–48 (1992) (citing In re Burlington Bagel Bakery, 150 Vt. 20, 21, (1988); 15B C. Wright, A. Miller & E. Cooper, Federal Practice and Procedure § 3914.23, at 140 (1992)). Here, the Court issued the Contempt Order, which was subject to a motion to reconsider, which the Court issued final denial of on April 21, 2023. See Banyai v. Town of Pawlet, No. 2:23-CV-00101, 2023 WL 3814371, at \*2 (D. Vt. June 5, 2023) (“Mr. Banyai has not timely appealed the Post-Judgment Order to any Vermont court.”). As the Contempt Order was not appealed, the Court is left with nothing to do but execute the terms of that contempt order. This prong favors denying the stay.

Second, the Court cannot find that Respondent has alleged a risk of irreparable injury or harm. Respondent alleges he will suffer irreparable injury in the absence of a stay “in the from of significant fines and imprisonment” because “complete performance [with the Contempt Order] is virtually impossible while [Respondent] remains subject to imminent arrest.” Resp’t’s Mot. for Stay at 7. However, monetary damages are generally inadequate for establishing irreparable harm. See Salinger v. Colting, 607 F.3d 68, 80 (2d Cir.2010) (quoting eBay Inc. v. MercExchange, L.L.C., 547 U.S. 388, 391 (2006)) (noting courts should pay “particular attention to whether the ‘remedies available at law, such as monetary damages, are inadequate to compensate for that injury.’”). Regarding the imprisonment sanction, Respondent argues that the imprisonment will cause him irreparable harm because it will make it virtually impossible to complete the compliance schedule. This argument, however, is functionally moot, as the compliance schedule directed in the Contempt Order has run: Respondent is already out of time to bring his property into compliance. As such, this prong favors denying the stay.

Third, the Court cannot find that Respondent has demonstrated that the stay will not harm other parties. As previously noted, the Town has an interest in ensuring compliance with its zoning regulations. If the Court were to grant a stay, compliance with the Town’s zoning regulations would be delayed even further. Also as previously noted, this enforcement proceeding has been on-going since 2019, with final disposition before this Court being rendered

on March 5, 2021 and affirmed by the Vermont Supreme Court on January 14, 2022. See Town of Pawlet v. Banyai, No. 105-9-19 Vtec, Decision on Merits slip op. at 5–11 (Vt. Super. Ct. Envtl. Div. Mar. 5, 2021); *aff'd* Town of Pawlet v. Banyai, 2022 VT 4. A stay would further extend the already years-long period in which Respondent’s property has been in violation of the Town’s zoning ordinances. As such, the Court concludes a stay would harm the Town by prolonging compliance by additional months—possibly years—while increasing time and costs associated with seeking compliance. As such, the Court cannot find that the stay would not harm other parties.

In so finding harm to the Town, the burden to Respondent becomes one of demonstrating “a clear case of hardship or inequity in being required to go forward.” *Id.* Respondent argues that enforcement here demonstrates a clear case of hardship or inequity because the delay pales in comparison to Respondent’s deprivation of liberty that will result absent a stay and that the Town has failed to bring enforcement actions against other violators in Pawlet. In support of this case of hardship and inequity, Respondent presents several vague assertions of other land uses in the area in which “[i]t is questionable whether [the landowner] obtained the proper permits” or “likely does not have a permit” to build or operate those uses. Resp’t’s Mot. to Stay. Regarding the liberty interest, as noted in our earlier decision denying a stay, “while such constitutional [liberty interest] would demonstrate such a hardship, on balance with the first prong and the conclusion that Respondent is unlikely to succeed on the merits . . . the Court finds that at best, this prong is neutral in the analysis . . . .” The strength of this argument is undercut, however, by the inadequate briefing of the liberty interest asserted in the motion. See Res’t’s Mot. for Stay at 5. With regards to Respondent’s argument that other landowners are violating the Town’s Bylaws without similar enforcement, those matters are not before the Court, and those violations have not been persuasively demonstrated in this motion. *Id.* at 5–6. Therefore, on balance, the Court finds this prong favors denying a stay.

Finally, the Court cannot find that Respondent has demonstrated that granting a stay will serve the best interests of the public. At best, Respondent argues that stays generally serve the public interest because “it is in the public interest to have the courts correctly interpret and enforce the law,” and that “[t]he public would therefore best be served by [Respondent’s] appeal

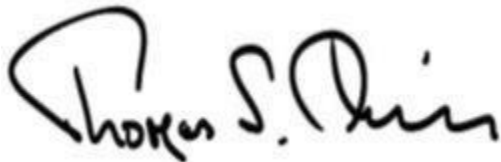
of an unlawful order.” Resp’t’s Mot. for Stay at 7–8. This argument, however, would apply to nearly all appeals, but the Legislature did not make stays automatic or the general rule when parties appeal, but rather the extraordinary remedy in unique and specific circumstances. See V.R.E.C.P. 5(e); 10 V.S.A. § 8504(f)(1)(A)–(B); Howard Ctr. Renovation Permit, No. 12-1-13 Vtec at 1 (Apr. 12, 2013). Moreover, the Court concludes that granting the requested stay would not serve the public’s best interests. If the Court were to grant the stay, the Town would likely see further delay in obtaining compliance with its zoning regulations, and the stay would provide Respondent an incentive to delay further during the appeal. “Such an unfortunate outcome would be in degradation of several public interests, not the least of which is the fair and efficient adjudication of land use disputes.” Route 103 Quarry, No. 205-10-05 Vtec at 6 (Sept. 14, 2007). As such, the Court finds that this factor weighs in favor of denying Respondent’s request for a stay.

### CONCLUSION

For the foregoing reasons, we must **DENY** Respondent’s Motion for Stay. In weighing the four prongs—i.e., “(1) a strong likelihood of success on the merits; (2) irreparable injury if the stay is not granted; (3) the stay will not substantially harm other parties; and (4) the stay will serve the best interests of the public”—the Court finds all four prongs favor denial. As such, Respondent has failed to demonstrate that he is entitled to such an extraordinary remedy as a stay.

**SO ORDERED.**

Electronically signed at Newfane, Vermont on Monday, August 28, 2023, pursuant to V.R.E.F. 9(d).

A handwritten signature in black ink, appearing to read "Thomas S. Durkin". The signature is stylized with a large, looping initial 'T' and a cursive 'D'.

Thomas S. Durkin, Superior Judge  
Superior Court, Environmental Division