



Town of Pawlet v Daniel Banyai

ENTRY REGARDING MOTION

Title: Motion to Enforce, for Immediate Site Visit, and to Deem Fines Due For Failure to Comply (Motion #22)

Filer: Merrill E. Bent, attorney for the Town of Pawlet

Filed Date: April 19, 2023

No response filed.

The motion is GRANTED in part, DENIED in part, and DEFERRED in part.

Presently before the Court is the Town of Pawlet's ("Town") motion to enforce. In its motion, the Town asks the Court to issue an order (1) allowing the Town to conduct an immediate site visit at 541 Briar Hill Road in Pawlet ("the Property"); (2) deeming the purgeable fines due for failure to comply with the Court's order; and (3) requiring Daniel Banyai ("Respondent") to identify the individual mentioned in his March 31, 2023 affidavit. Respondent did not respond to the Town's motion. In these proceedings, Attorney Merrill Bent represents the Town, and Attorney Robert Kaplan represents Respondent.

First, the Court addresses the Town's request for an immediate site visit. The Court considers the request as pursuant V.R.C.P. 34(a)(2). In support of this request, the Town points to Respondent's March 31, 2023 affidavit, in which he acknowledged that he had failed to remove the façade, the shipping containers, and the stair/ladder/platforms as the Court required by March 31, 2023, but affirmed that he had removed other structures he was required to remove by June 23, 2023, including a barn building, a chicken coop, and a sheep run-in. The Town

informed the Court, though it did not support the assertion with exhibits, that Respondent has been providing notices to the Town indicating that he has been building “new” structures on the Property during this time, and that the Town suspects that the “new” structures are not new, but rather attempts to circumvent this Court’s order and repurpose those structures he affirmed he had “removed from [his] property” in his March 31, 2023 affidavit. The Town seeks to enter the Property to determine which, if any, structures have been removed from the premises in order to ascertain the veracity of the affidavit filed with the Court. Respondent did not file an opposition to the Town’s motion.

The Court **GRANTS** the Town’s motion for immediate site visit, but notes that this decision is one more of formality than function.¹ First, Respondent did not oppose the request. Second, while good cause is not required, the Town has sufficiently demonstrated good cause for a site inspection to photograph the presence or absence of the barn building, chicken coop, and shed that Respondent affirmed he had removed. Per Respondent’s affidavit, Respondent has removed those structures, as required by this Court, by June 23. However, the Town asserts that, during this time that Respondent has been unable to remove the façade, shipping containers, and stair/ladder/platforms due to the “the manifestation of circumstances largely outside of [his] direct control” as asserted in his Affidavit, see Banyai Aff. ¶ 7, he has been informing the Town of building “new” structures on the property under the agricultural exemption. See Town’s Mot. to Enforce at 3. The Court agrees that it is a reasonable concern that Respondent may be attempting to repurpose existing structures that he has been ordered to deconstruct and remove from his property, again circumventing the Court’s order.² As such, the Court grants the Town’s unopposed

¹ This Order should not be construed as granting an additional site inspection. Per this Court’s reconsidered compliance schedule issued April 21, 2023, the first site visit is supposed to occur anytime during the period between May 26 and June 2—i.e., this week. Because the Court was waiting the allotted period for Respondent’s response to the Town’s motion, the Court was unable to timely consider the Town’s request prior to this first scheduled site inspection. As such, while the Court is granting this request in form, it is functionally moot.

² See Town of Pawlet v. Banyai, No. 105-9-19 Vtec, slip op. at 9 (Vt. Super. Ct. Envtl. Div. Apr. 21, 2023) (“Respondent must *deconstruct and remove* the remaining unpermitted buildings that are subject to the Court’s Order. For clarity, that means that Respondent must deconstruct and remove the following: the Barn (Resp’t’s Ex. B); the “Grain” silo (Resp’t’s Ex. P, Town’s Exs. 2, 19); the Run-In (Town’s Ex. 6, Resp’t’s Ex. D); and the Chicken Coop (Town’s Ex. 8, Resp’t’s Ex. C). This means that those improvements *must no longer be anywhere within the boundaries of the Property.*”) (emphasis added).

request for an immediate site visit so that they may collect photographs of the Property and ascertain the veracity of Respondent's affirmed activities.

Second, the Court addresses the Town's request for the Court to deem fines immediately due for failure to comply with the Court's order. The Court **DEFERS** ruling on this issue pending the imminent site inspection. While the Town is correct that Respondent's affidavit demonstrated that he is not in compliance with the schedule that the Court directed, the Court finds that Respondent did affirm that he has taken steps towards compliance, and the ultimate goal of this proceedings is compliance and the Court still believes "it is ultimately in the best interest of all parties involved for Respondent to do the work of bringing his property into compliance himself" rather than requiring the Town to complete the compliance directives. See Town of Pawlet v. Banyai, No. 105-9-19 Vtec, slip op at 6 (Vt. Super. Ct. Envtl. Div. Mar. 23, 2023). The Court remains cautiously optimistic that Respondent will have met the compliance directives, as he affirmed was his commitment in his March 31, 2023 affidavit. See Banyai Aff. ¶ 6 (filed Mar. 31, 2023). Should the site visit demonstrate that he is not in compliance, the Court will deem fines due immediately after that noncompliance is demonstrated to the Court after the site inspection. See Pawlet, No. 105-9-19 Vtec, slip op. at 10, ¶ 4.ii (Apr. 21, 2023).

Finally, the Court addresses the Town's request that the Court order Respondent to identify the individual mentioned in his March 31, 2023 affidavit. In his March 31, 2023 affidavit, Respondent attested that he "had arranged for an individual with heavy equipment to remove the shipping containers and stair/ladder/platforms from my property during the week of March 20, 2023" but when that individual was unable to complete the task, he arranged "for th[at] individual to return in two weeks" to again attempt to remove them. Respondent did not name the individual. The Town requests the Court "order Respondent to disclose the identify of the 'individual' mentioned in [his affidavit] so that [the individual] may be called to testify as a witness in future proceedings." Mot. to Enforce at 4 (filed Apr. 19, 2023).

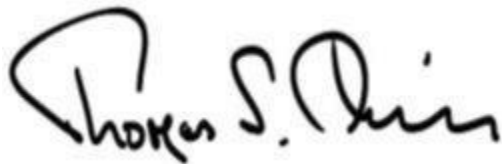
The Court **DENIES** Town's request for Court ordered disclosure at this time. The Town has not demonstrated to the Court that it has attempted to obtain this information through the normal course of discovery. Counsel has the obligation to make good faith efforts between themselves to resolve any discovery disputes before filing any unnecessary motions with the

Court. V.R.C.P. 26(h). While the Court is well aware that Respondent has a history of evading discovery, Respondent is now represented by Attorney Kaplan and has been engaging with the Court process. Before the Court will issue such a disclosure order, the parties must attempt to resolve this issue, and upon failure to do so, may file a motion with this Court following the requirements of V.R.C.P. 26(h).

Conclusion

For the reasons discussed above, the Court **GRANTS**—in form, though not in function—the Town’s motion for immediate site visit; **DEFERS** ruling on the Town’s request for the Court to deem fines due for failure to comply with the Court’s order until after the imminent site inspection; and **DENIES** Town’s request for Court ordered disclosure until the parties demonstrate that they have complied with V.R.C.P. 26(h).

Electronically signed at Newfane, Vermont on Wednesday, May 31, 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