

VERMONT SUPERIOR COURT
Environmental Division
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Burlington, VT 05401
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Docket No. 105-9-19 Vtec

Town of Pawlet v. Daniel Banyai

ENTRY REGARDING MOTION TO ENFORCE

Title: Emergency Motion for Writ of Mittimus and to Enforce Orders (Motion #23)

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

Filed Date: June 1, 2023

Respondent's Opposition to Town of Pawlet's Emergency Motion for Writ of Mittimus and to Enforce Orders, filed by Attorney Robert J. Kaplan on June 15, 2023

Town of Pawlet's Reply in Support of Motion for Writ of Mittimus and to Enforce Orders, filed by Attorney Merrill E. Bent on June 16, 2023

The motion is GRANTED.

The matter before the Court began in September 2019 as a municipal enforcement action of zoning violations on-going at 541 Briar Hill Road in West Pawlet, Vermont (the "Property"). 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, 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 the Town of Pawlet's ("Town") Emergency Motion for Writ of Mittimus and to Enforce Orders related to post-judgment contempt fines and sanctions set forth fully in Town of Pawlet v. Banyai, No. 105-9-19 Vtec (Vt. Super. Ct. Envtl. Div. Feb. 8, 2023) (Durkin, J.) (hereinafter, the Contempt Decision) and as slightly amended in Town of Pawlet v. Banyai, No. 105-9-19 Vtec (Vt. Super. Ct. Envtl. Div. Mar. 24, 2023) (Durkin, J.). Specifically, the Town moves for the Court to (1) issue an immediate Writ of Mittimus for Daniel Banyai's ("Respondent") imprisonment until he demonstrates that all unpermitted structures on his Property have been removed or demolished pursuant to the Court's decision of February 8, 2023; (2) permit the Town to enter the Property to assist in such

removal or demolition; and (3) deem the imposed fines non-purgeable. In these proceedings, Attorney Merrill Bent represents the Town, and Attorney Robert Kaplan represents Respondent.

The Town's motion comes following the Contempt Decision. In that decision, the Court held Respondent in Contempt of Court and its outstanding orders regarding ongoing zoning violations at the Property and issued a series of coercive sanctions and fines to achieve compliance with those outstanding orders. Respondent moved to reconsider and sought an extension for the first compliance deadline. While the motion to reconsider was denied, the Court did grant an extension to Respondent, giving him until May 25, 2023 to complete the deconstruction and removal of the school building. Town of Pawlet v. Banyai, No. 105-9-19 Vtec (Mar. 24, 2023). The Court also changed the second deadline to demolish the berms to May 25, 2023, because the second deadline was so near in time to this new extended deadline, and doing so would eliminate the need for separate inspections. Id. Neither the Contempt Decision nor the decision on reconsideration were appealed to the Vermont Supreme Court.

In the Contempt Decision, the Court ordered Respondent to deconstruct certain buildings on the Property within certain specified timeframes. The decision also required the Respondent to permit the Town to conduct three site inspections. On March 24, when the Court granted Respondent's request for an extension framed as a motion to reconsider, the Court consolidated the first and second deadlines for removal, and consolidated the accompanying site inspections, thereby limiting the site inspections to two, the first of which was set to occur between May 25 and June 2, 2023.¹ If, during the site inspection, it was shown that the deadlines were met, the

¹ Because the extension eliminated one of the site inspections, the Court ordered the Respondent to file an Affidavit by March 31, 2023, confirming compliance with the Court's order for removal of the façade, shipping containers, and stair/ladder/platforms. Respondent timely filed the affidavit on March 31, 2023. In the sworn affidavit, Respondent affirmed that he had not complied with the Court's directives for removal of specified unpermitted structures in the order directed by the Court, but that he had removed other structures. Banyai Aff. at 1 (filed Mar. 31, 2023). He affirmed that he is in the process of removing other structures and had arranged for an individual to remove other structures, but those efforts were hampered by weather. Id. Respondent affirmed that he "remain[s] committed to completing the removal of all items within the Court's February 8, 2023 Order (subject to the Court's reconsideration of the berms) by the final deadline of June 23, 2023," though he acknowledged that his removal efforts have strayed from the Court's order due to circumstances outside his control. Id. at 2.

When the Town moved for enforcement predicated on the failure to comply demonstrated in the affidavit, the Court deferred ruling on deeming the fines due based on the issue due to the pending imminent site inspection set to occur between May 26 and June 2, 2023. The Court noted that while strict compliance was not demonstrated in the affidavit, it remained "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

accruing fines set forth in the Contempt Decision would be purged. Contempt Decision at 28. The Court also set forth the process if site inspection showed that deadlines were not satisfied, stating:

If, however, the Town finds that any one of those deadlines was not satisfied, upon the filing of photographic evidence and an accompanying sworn affidavit stating the date the evidence was collected with the Court, the Court will issue a writ of mittimus for the imprisonment of Daniel Banyai. Additionally, if Respondent fails to accommodate the Town's site inspections as specified here, he shall also be subject to imprisonment. The writ of mittimus will call for Daniel Banyai to immediately report to MVRFC in Rutland, or otherwise direct the Rutland County Sheriff's Office to deliver Danial Banyai to MVRFC.

Id.

The parties agreed to conduct the first site visit on June 1, 2023 at 10:00 a.m. Bent Aff. ¶ 8 (filed June 1, 2023); see Town's Ex. 1 (showing email attempting to confirm June 1, 2023 site inspection, sent May 22, 2023); cf. Town's Ex. 2 (showing email received from Respondent's counsel, noting that it was understood until that day that the site inspection would be occurring June 1, 2023). The evening before the site inspection, Respondent, through his attorney, informed the Town that he would not allow the site inspection to occur. Bent Aff. ¶ 10–11; see Town's Ex. 2 (canceling the site inspection at 6:04 p.m. on May 31, 2023).² The Town informed Respondent that they would be there at 10:00 a.m. as earlier agreed upon and required by the Court's order. Bent Aff. ¶ 12; see Town's Ex. 3 ("As discussed earlier this evening, pursuant to the Environmental Court's Order, the Town representatives will be present at 541 Briar Hill Road at 10:00 a.m., for our long-scheduled site inspection, along with the Sheriff's Deputies."). When the Town and the Sheriff's deputies reported to the Property the morning of June 1, 2023, they

directives." Town of Pawlet v. Daniel Banyai, 105-9-19 Vtec, slip op. at 3 (Vt. Super. Ct. Env'tl. Div. May 30, 2023) (quoting Town of Pawlet v. Banyai, No. 105-9-19 Vtec, slip op. at 6 (Vt. Super. Ct. Env'tl. Div. Mar. 23, 2023)).

² Respondent was denying the site inspection due to a motion for a temporary restraining order filed in Vermont Federal District Court the day before the site inspection. See Town's Ex. 2 ("Good evening, The Federal Court has not yet issued a decision on the Motion for Temporary Restraining Order *that was filed yesterday* on behalf of Mr. Banyai. Mr. Banyai has determined that he will not permit a site visit on his property until there is a decision on his request for a restraining order from the Federal Court."). The Federal Court denied Mr. Banyai's request for a temporary restraining order on June 5, 2023. Banyai v. Town of Pawlet, No. 2:23-CV-00101, 2023 WL 3814371 (D. Vt. June 5, 2023). Mr. Banyai has yet to allow Town officials onto his property for the inspections previously ordered by this Court.

were not met by Respondent. Bent Aff. ¶¶ 13–14. Rather, they found the gate to the Property locked with a sign added to the entrance exclaiming: “WARNING NO TRESPASSING. WRITTEN PERMISSION NEEDED TO ENTER. ADMISSION WITH STATE OR FEDERAL ID ONLY. TRESPASS HERE, DIE HERE, TAKE THE CHANCE!” *Id.* ¶ 14; see Town’s Ex. 4 (depicting the closed gate, blocked roadway, and sign). Thus, the Town has demonstrated that Respondent has failed to meet the directives of the Contempt Decision and compliance schedule.

Respondent has opposed the pending motion. Respondent, however, presented no evidence to support justifying or excusing his failure to permit the site inspection. Rather, Respondent’s opposition merely argues that a writ of mittimus is a punitive measure, rather than coercive,³ functionally reiterating several of the arguments made in his motion for reconsideration, which the Court denied. Compare Resp’t’s Mot. to Reconsider at 4–6 (filed Mar. 3, 2023) with Resp’t’s Opp. to Town’s Mot. for Writ of Mittimus and to Enforce Orders at 2–4 (filed June 15, 2023); see Town of Pawlet v. Banyai, No. 105-9-19 Vtec, slip op. at 5–8 (Vt. Super. Ct. Env’tl. Div. Apr. 21, 2023) (Durkin, J.) (denying Respondent’s motion to reconsider, which advanced the same arguments raised now in opposition). Respondent has presented no alternative grounds to deny the Town’s motion. Again, and critically, neither the Contempt Decision nor the denial of reconsideration was appealed to the Vermont Supreme Court.

As such, the Court **GRANTS** the Town’s motion. The Court deems the fines that had accrued from January 14, 2022 up to June 1, 2023 now non-purgeable and due. This non-purgeable fine totals \$100,600, with such fine constituting a lien upon the Property upon the

³ To the extent Respondent’s argument could be construed as asserting impossibility to purge himself of the imprisonment, the Court is unpersuaded. As noted in the Court’s earlier decision denying the same argument, first, Respondent could have avoided the sanction all together by complying with the Contempt Decision or this Court’s initial decision affirmed by the Vermont Supreme Court for that matter. Further, he maintains control of the keys to the jail here, just not exclusive control. While the Town is now permitted to enter the Property to complete the work of bringing the Property into compliance, the sanction does not strip Respondent of his right to complete the work through his agents or private contractors. See Pawlet, No. 105-9-15 Vtec at 26, 28 (Feb. 8, 2023) (noting “fines will continue to accrue until [Respondent’s] agents or the Town complete[s] the work” and that “nothing prevents Respondent, or his family and friends, from assisting the Town to ensure timely compliance and Respondent’s timely release.”). Ultimately, Respondent confuses his unwillingness to complete the work required with the inability to complete the work. The Court refuses to adopt the interpretation that imprisonment becomes a punitive sanction merely because the sanctioned party failed to heed its coercive nature in the first instance. Indeed, it would be absurd if the Court permitted a contemnor to avoid the imposition or effect of a coercive sanction as a result of the contemnor’s refusal to comply with the order for which the sanction was imposed.

filing of a certified copy in the Town of Pawlet Land Records.⁴ The Court **GRANTS** the Town's request for a writ of mittimus for the imprisonment of Daniel Banyai, which it issues alongside this entry order. Finally, the Court **APPOINTS** the Town of Pawlet to bring the Property into compliance with the Court's outstanding orders in this matter, with the Town entitled to reimbursement of its associated costs by Mr. Banyai upon the filing with the Court of an affidavit and itemization of such costs.

We again reiterate that nothing in this order prevents Mr. Banyai from causing his contractors or agents to bring the Property into compliance sooner. Mr. Banyai will be released upon demonstration that the Property has been found to be in compliance with this Court's outstanding orders, either by the Town or Mr. Banyai's agents.

Conclusion

For the forgoing reasons, the Court **GRANTS** the Town's motion for writ of mittimus, to impose fines due, and to appoint the Town to enter the Property and assist in the removal or demolition of the improvements contemplated in the Court's orders. Specifically:

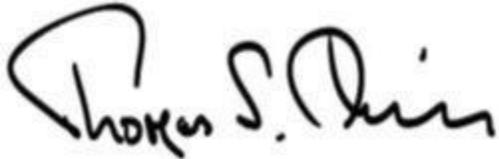
1. The Court deems fines due that have accrued between January 14, 2022 to June 1, 2023—totaling **\$100,600**, with such fine constituting a lien upon the Property upon filing in the Pawlet Land Records. Additional fines at the rate of \$200.00 per day shall continue to accrue from June 2, 2023, until the property is brought into compliance with the previous Court orders.
2. The Court issues a writ of mittimus for the imprisonment of Daniel Banyai, which it enters alongside this Entry Order.
3. The Court appoints the Town of Pawlet to bring the Property into compliance with its orders. The Town is to communicate with Respondent, through his Attorney, regarding all work to be done. The Town must save receipts and a record of any labor or other cost incurred in connection with its efforts to complete the work required to bring the Property into compliance with this Court's orders and will be permitted to recuperate

⁴ In the Contempt Decision the Court imposed fines of \$200 per day, starting the day the Supreme Court affirmed the Court's initial order in this matter and running until the violations are cured. From January 14, 2022, 441 days elapsed before Respondent filed his affidavit demonstrating he was not in compliance with the Court's Order on March 31, 2023, and an additional 62 days elapsed following that affidavit, or 503 days total days elapsed before those fines became non-purgeable upon Respondent's failure to accommodate the site visit.

those costs from Respondent upon completion of the work. Respondent, similarly, is required to communicate with the Town, through its Attorney, regarding any work he has scheduled to be completed by his agents or private contractors in bringing the Property into compliance.

A Judgment Order accompanies this Order.

Electronically signed at Newfane, Vermont on Thursday, July 6, 2023, pursuant to V.R.E.F. 9(d).

A handwritten signature in black ink that reads "Thomas S. Durkin". The signature is written in a cursive style with a large, looping initial 'T'.

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