

STATE OF VERMONT  
RUTLAND COUNTY

GENERAL MOTORS ACCEPTANCE CORP. )

v. )

TROY PEABODY )

Rutland Superior Court  
Docket No. 215-3-08 Rdcv

CONFORMED COPY  
RUTLAND SUPERIOR COURT

SEP - 3 2008

DECISION

Plaintiff's Motion to Set Aside Dismissal, filed July 21, 2008

Plaintiff seeks to recover a monetary debt owed by defendant Troy Peabody, who has not answered the complaint or appeared in the action. After Plaintiff moved for default judgment on April 1, 2008, the court issued a responsive entry order raising the question of whether the claim had been filed within the applicable Statute of Limitations period. 12 V.S.A. § 511; *DaimlerChrysler Servs. N. Am., LLC v. Ouimette*, 2003 VT 47, ¶ 6, 175 Vt. 316. The entry order, which was filed on May 21, 2008, stated that "Plaintiff may file a supplemental affidavit within fifteen days."

Plaintiff did not file any response within fifteen days. The court subsequently issued an order on July 16, 2008 dismissing the case "due to the Plaintiff's lack of prosecution." Plaintiff now requests that the court set aside the dismissal under V.R.C.P. 60(b) because Plaintiff was not provided with reasonable notice that failure to respond to the May 21, 2008 entry order would result in dismissal. The court is meritorious, and the court accordingly vacates the July 16th dismissal.

The power of courts to dismiss cases *sua sponte* is subject to the constitutional requirements of proper notice and an opportunity for a hearing. 9 Wright & Miller, Federal Practice and Procedure: Civil 3d § 2369 (citing *Societe Internationale Pour Participations Industrielles et Commerciales, S.A. v. Rogers*, 357 U.S. 197, 209 (1958)). This fundamental principle is embodied by V.R.C.P. 41(b), which requires that, before the court may dismiss an action on its own motion, all parties must be afforded reasonable notice and an opportunity to show good cause why the action should not be dismissed. "Reasonable notice," in the context of *sua sponte* dismissal under Rule 41(b), means a clear statement from the court that the action is subject to dismissal, along with an opportunity for the plaintiff to show good cause why the case should not be dismissed.

The May 21, 2008 entry order invited Plaintiff to file a supplemental affidavit demonstrating that the claim had been filed within the applicable statute of limitations period, but did not clearly state that the matter was subject to dismissal if Plaintiff did not file a supplemental memorandum. For this reason, the court cannot conclude that Plaintiff was provided with reasonable notice and an opportunity to respond as required by Rule 41(b). The court's July 16, 2008 dismissal order is therefore vacated.

**ORDER**

Plaintiff's Motion to Set Aside Dismissal, V.R.C.P. 60(b)(1), filed July 21, 2008,  
is *granted*; and

Dated at Rutland, Vermont this 29<sup>th</sup> day of August, 2008.

Mary Miles Teachout  
Hon. Mary Miles Teachout  
Presiding Judge