



Town of Pawlet v. Daniel Banyai

INTERIM ORDER

The Court held an evidentiary hearing on April 18, 2022, in this post-judgment matter on the Town's Motion for Contempt and Motion to Set Post-Judgment Fines. At the hearing, during which all parties appeared remotely, the Court heard arguments and received evidence concerning the Town's Motion for Contempt but not the Motion to Set Fines. The Court could not finish the hearing because discovery has not been completed, with the Town lacking answers to the Interrogatories and Requests to Produce it had served on Mr. Banyai. The Town is also awaiting sufficient information as to the condition of improvements on Mr. Banyai's property. The Court will need to finish the hearing at a later date when discovery has been completed. This Interim Order reiterates the steps that Mr. Banyai must take to complete discovery, which the Court imposed on the record at the conclusion of the April 18, 2022, hearing.

Mr. Banyai has complicated and delayed the post-judgment discovery process with his continued refusal or failure to appropriately respond to the Town's discovery requests and this Court's orders. While the Court understands his decision to cancel the Town's site visit due to illness, there is no justification for the fact that he has yet to produce answers to the Town's Post-Judgment Interrogatories and Requests to Produce. Despite having been served with them in January of 2022, he did not offer any explanation for his lack of a response, nor did he respond in time for the hearing. The Court issued an emergency order, directing that he produce his discovery responses no later than April 15, 2022. *See* Town of Pawlet v. Daniel Banyai, No. 105-9-19 Vtec (Vt. Super. Ct. Env'tl. Div. Apr. 12, 2022) (Durkin, J.) (EO on motion to compel). Mr. Banyai ignored this directive, asserting only that he did not have time to respond to the January Interrogatories and Requests to Produce. We find Mr. Banyai's assertions unconvincing.

Additionally, Mr. Banyai has yet to submit a site plan that conforms the requirements of the Judgment Order issued on March 5, 2021. After more than a year since the Judgment Order was issued, and more than three months since it was affirmed by the Vermont Supreme Court, Mr. Banyai submitted on April 14, 2022, a sparse site plan that only depicts the locations of "non-agricultural" buildings. Defendant's Exhibit A. The plan simply shows the outlines of a house, school, and two shooting ranges inside the boundary lines of the property. Lacking even in driveways, it does not show any other improvements nor the dimensions or setbacks for the improvements that it does show. Mr. Banyai did not adequately explain, either in memorandum as required by the Court's April 14, 2022, Entry Order or in the hearing, how such a limited site map could conform to the Judgment Order's mandate that it detail "all improvements, dimensions, and setbacks from boundary lines."

Town of Pawlet v. Daniel Banyai, No. 105-9-19 Vtec (Vt. Super. Ct. Env'tl. Div. Mar. 5, 2021) (Durkin, J.) (Judgment Order).

During the hearing, Mr. Banyai boldly asserted that the proffered site plan satisfied the directives of the March 5, 2021 Judgment Order. He failed to offer any foundation for his assertion. The Court was left to conclude that his assertion was completely without merit.

It was Mr. Banyai's responsibility to ensure that he contracted for a survey that complied with the Judgment Order, providing the Town and the Court with a "clear understanding of the improvements" on his property. *Id.* We learned at the April 18, 2022, hearing that Mr. Banyai chose not to supply the surveyor with a copy of the March 5, 2021, Judgment Order, and specifically misrepresented to the surveyor what details the Court required in the survey. Mr. Banyai's omissions and misrepresentations have caused these post-judgment contempt proceedings to be unreasonably delayed even further.

The Court is particularly unsettled by Mr. Banyai's attempts to assert during his testimony either that he had produced the required site plan, or that there was not enough time to do so. Mr. Banyai testified that he contacted his current surveyor, of Spencer & Lapre, LLP, soon after the March 5, 2021, Judgment Order was issued, and that while he did not give the surveyor a copy of the Order, he told him what it said. This stands in stark contrast to the surveyor's testimony that he does not recall being contacted before February of 2022, that Mr. Banyai did not enter into a contract with him until mid-March of 2022, and that he was never asked to make a site plan depicting all improvements. The surveyor further testified that Mr. Banyai told him not to include the agricultural buildings in the survey. Based on the testimony at the hearing, and in the absence of a more convincing explanation as to why Mr. Banyai has yet to produce a conforming site plan, the Court finds his noncompliance to be willful.

The Court cannot proceed with, or complete its determinations on, the pending post-judgment matters until Mr. Banyai submits a site plan that complies with the March 5, 2021, Judgment Order and responds in full to the Town's post-judgment discovery requests. His failure to submit the required site plan and to respond to the Town's Post-Judgment Interrogatories and Requests to Produce not only delays this proceeding unreasonably but places him in contempt of the Judgment Order¹ as well as the Court's Entry Order issued April 12, 2022. In light of the necessity of the information and Mr. Banyai's demonstrated unwillingness to comply despite the ample time he has had to do so, and pursuant to the Court's authority and discretion to use civil contempt remedies to compel compliance with its orders, the Court finds it appropriate to attach purgeable fines to corresponding directives in the Interim Order below. *See* 12 V.S.A. § 122; Sheehan v. Ryea, 171 Vt. 511, 512 (2000) (explaining the use of civil contempt to "compel compliance with a court order" is "necessarily discretionary"); Vermont Women's Health Ctr. v. Operation Rescue, 159 Vt. 141, 151 (1992) ("civil contempt fines may be imposed . . . to either compensate complainants or as a coercive sanction . . . [w]hen imposed as a coercive sanction, the fine must be purgeable—that is, capable of being avoided by defendants through adherence to the court's order").

¹ The Court only considers Mr. Banyai's contempt of the site plan requirement in the Judgment Order at this time; it postpones consideration of Mr. Banyai's compliance with the other provisions of the Judgment Order and the Court's subsequent orders until the conclusion of the hearing initiated on April 18, 2022, and the Town's presentation of evidence.

The Court issued the following Interim Order on the record at the conclusion of the hearing. The time periods below relate to the date of the last hearing, April 18, 2022, not the date of this Order.

1. Mr. Banyai shall immediately provide to his surveyor complete copies of the Judgment Order and Merits Decision issued on March 5, 2021.
2. Within 10 days from the last hearing (i.e.: by no later than **Thursday, April 28, 2022**), Mr. Banyai shall enter into a revised contract with his surveyor that aligns with the requirements in the Judgment Order. Mr. Banyai shall also file a copy of the revised contract with the Court **by April 28, 2022**. The contract shall specify that Mr. Banyai will pay for the survey work to be completed by a specific date, which must be within the next 90 days.
3. Mr. Banyai shall cause his surveyor to complete the revised survey and Mr. Banyai shall file that revised survey with the Court, with copies supplied to the Town, within 90 days from the last hearing (i.e.: by no later than **Monday, July 18, 2022**).
4. Within 30 days from the last hearing (i.e.: by no later than **Wednesday, May 18, 2022**), Mr. Banyai shall provide complete responses to the Town's Post-Judgment Interrogatories and Requests to Produce.
5. Within 30 days from the last hearing (i.e.: by no later than **Wednesday, May 18, 2022**), Mr. Banyai shall allow the Town to conduct a site inspection by foot or by ATV or other motorized vehicle. The Town Attorney may be accompanied on the site inspection by up to two Town officials and one or more members of the Rutland County Sheriff's Department. In accordance with the Entry Order issued April 14, 2022, Mr. Banyai is ordered not to interfere with the Town Attorney's and accompanying officials' ability to view and measure the exterior of all buildings and all other improvements on his property.

As a civil contempt measure to ensure Mr. Banyai's compliance, the Court imposes two purgeable fines along with the directives in this Interim Order. The Court orders Mr. Banyai to pay \$5,000 to the Town in the event that he fails to respond to the Town's Post-Judgment Interrogatories and Requests to Produce in accordance with ¶ 4 above, and an additional \$5,000 payable to the Town in the event that he fails to file a revised survey in accordance with ¶ 3, above.

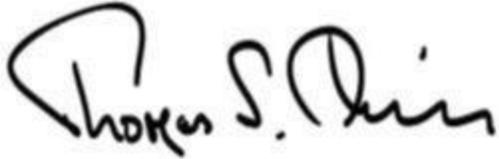
During the hearing, the Court further directed Mr. Banyai and his counsel to file a copy of the March 2022 contract between Mr. Banyai and the surveyor, and to provide the Court and the Town with the full transcript of Mr. Banyai's post-judgment deposition and the accompanying errata sheet. As Attorney Kaplan requested, the transcript and errata sheet may be filed under seal.

As an additional reminder, Mr. Banyai remains under the obligation to comply with the Judgment Order and the NOV, as well as the terms of the Preliminary Injunction Order, which the Court made permanent in its Merits Decision. *See Town of Pawlet v. Daniel Banyai*, No. 105-9-19 Vtec, slip op. at 13 (Vt. Super. Ct. Envtl. Div. Mar. 5, 2021) (Durkin, J.) ("Mr. Banyai is permanently enjoined from the unpermitted use of his Property . . . [he] shall not conduct or permit to be conducted any school and/or firearms training activities on the Property . . . nor host classes of any type on the Property . . ."). The Court will be inclined to consider any request made by the Town for contempt, including imprisonment, in order to encourage compliance if the Court finds that Mr. Banyai has failed to abide by this Interim Order or any of the other orders imposed against him.

The Court will schedule a hearing for the completion of the taking of evidence and oral arguments relevant to the Town's pending motions once the Town notifies the Court that it has completed its site visit of the Banyai property and has received complete responses from Mr. Banyai of its post-

judgment discovery requests and a revised survey that satisfies all directives of the March 5, 2021, Judgment Order.

Electronically signed at Newfane, Vermont on Wednesday, May 25, 2022, 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, looped initial "T".

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