

VERMONT SUPERIOR COURT
Chittenden Unit
175 Main Street, PO Box 187
Burlington VT 05402
802-863-3467
www.vermontjudiciary.org



CIVIL DIVISION
Case No. 21-CV-00830

Fifth Third Bank v. Haws Mohamed et al

ENTRY REGARDING MOTION

Title: Motion to Compel; Motion for Protective Order (Motion: 4; 6)
Filer: Ilerdon S. Mayer; Michael J. Straub
Filed Date: December 14, 2022; January 03, 2023

This is a collection case. The parties agreed to a stipulated judgment, which was issued in November of 2021. Pursuant to its terms, Defendant was to pay certain monthly amounts. Plaintiff has now moved to compel post-judgment discovery and Defendant has moved for a protective order barring such discovery. Plaintiff has failed to oppose the motion for protective order. While Plaintiff asked for a hearing on the motion, making such a request does not eliminate the need to file a timely opposition. Defendant asserts in the opposition to the motion to compel and the motion for protective order that he has been making payments as agreed, and Plaintiff has filed no response disputing that. None of the facts asserted by Defendant being disputed, the court sees no reason for an evidentiary hearing.

The court disagrees with Defendant's argument that there must be some active court proceeding to allow post-judgment discovery in aid of collection of a judgment. Such discovery is routine pursuant to V.R.C.P. 69. *See First Tech. Cap., Inc. v. Airborne, Inc.*, 380 F. Supp. 3d 217, 220 (W.D.N.Y. 2019) ("Put simply, the fact that a case has been closed or terminated is 'not an obstacle to postjudgment discovery.'")


(quoting United States v. Chazen, No. 3:08-CV-2314 FLW DEA, 2019 WL 113722, at *2 (D.N.J. Jan. 4, 2019)); Hardy Indus. Techs., LLC v. BJB LLC, No. 1:12 CV 3097, 2017 WL 4408195, at *2 (N.D. Ohio Oct. 4, 2017) (“nothing in the Federal Rules . . . require[s] the Court to reopen the case before it may address post-judgment discovery motions”); Smith v. Mallick, No. CIV.A. 96CV2211NHJPJ, 2005 WL 3555827, at *2 (D.D.C. Dec. 29, 2005) (“There is no indication in Rule 69 that a case must be reopened before post-judgment discovery can be sought . . .”).

However, the court does agree that because the judgment here was limited to a payment plan, there is no basis for discovery in support of any other means of collection unless Defendant breaches the payment plan. *See generally* EM Ltd. v. Republic of Argentina, 695 F.3d 201, 207 (2d Cir. 2012), *aff’d sub nom.* Republic of Argentina v. NML Cap., Ltd., 573 U.S. 134, 134 (2014) (“The scope of discovery under Rule 69[] is constrained principally in that it must be calculated to assist in collecting on a judgment.”); Hardy Indus. Techs., LLC v. BJB LLC, No. 1:12 CV 3097, 2017 WL 4408195, at *1 (N.D. Ohio Oct. 4, 2017) (“The same limits that apply generally to all discovery requests apply to *post*-judgment requests. Thus, discovery sought must be relevant and not cause an undue burden to the producing party.” (emphasis in original; citation omitted)).

Order

The motion to compel is denied; the motion for protective order is granted.

Electronically signed on February 8, 2023 pursuant to V.R.E.F. 9(d).



Helen M. Toor
Superior Court Judge

