

STATE OF VERMONT

SUPERIOR COURT

ENVIRONMENTAL DIVISION
Docket No. 105-9-19 Vtec

TOWN OF PAWLET,

Plaintiff;

v.

DANIEL BANYAI,

Defendant.

**TOWN OF PAWLET'S FURTHER REQUEST TO IMPOSE CONTEMPT
SANCTIONS**

NOW COMES the Plaintiff, the Town of Pawlet ("Town"), by and through its attorneys, Woolmington, Campbell, Bent & Stasny, P.C., and hereby requests this Court to impose sanctions for contempt of Court as outlined in the Court's Interim Order dated April 21, 2022, and as set forth herein.

MEMORANDUM

On April 18, 2022 this Court held an evidentiary hearing on the Town's Motion for Contempt and Motion to Set Post-Judgment Fines, and issued an Interim Order on April 21, 2022.

The Interim Order contained, among other things, the following directives:

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 . . . Mr. Banyai is ordered not to interfere with the Town's Attorney's and accompanying officials' ability to view and measure the exterior of all buildings and all other improvements on his property.

The Court additionally imposed two purgeable fines of \$5,000.00 each, the first in the event that he should fail "to respond to the Town's Post-Judgment Interrogatories and Requests to Produce in accordance with ¶ 4, above, and an additional \$5,000.00 payable to the Town in the event that he fails to file a revised survey in accordance with ¶ 3, above." Finally, the Court stated its inclination "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 Town now files this request that the Court (1) find Defendant in contempt of the Court's March 5, 2021 Order and April 18, 2022 Interim Order; (2) order that both purgeable \$5,000.00 contempt fines are due to the Town; (3) order that all structures on the Defendant's Property, with the sole exception of the permitted 24'7" x 23'4" Garage/Apartment be immediately demolished, and specify by what mechanism such demolition should occur; (4) order that Defendant be imprisoned until he demonstrates that all unpermitted structures on his Property have been removed or demolished and that he has paid the two purgeable contempt fines in the total of \$10,000.00 (and issue a mittimus to effectuate such order); (5) impose fines in the amount of \$200.00 per day

from March 6, 2021 until the Property is brought into compliance, with such fine constituting a lien upon the Property upon filing the Court's order in the Pawlet Land Records; and (6) order Defendant to pay the Town's attorneys' fees incurred from January 15, 2022 to date, and the cost of Defendant's deposition.

I. Defendant has Failed to Comply with Paragraph Three of the Interim Order

The Court ordered Defendant to file his revised survey by no later than Monday, July 18, 2022. Defendant did not comply with the Order. Notably, this was Defendant's second chance to file the survey, after failing to timely submit it in conformity with the Court's March 5, 2021 Order, and instead submitting an incomplete survey in flagrant disregard the plain terms thereof. *See Interim Order*, at 1.

Accordingly, the Court should deem the \$5,000.00 purgeable fine due, order Defendant's imprisonment, and impose additional fines for the duration of the ongoing violation.

II. Defendant has Failed to Comply with Paragraph Four of the Interim Order

Defendant filed a response to the Town's Interrogatories in Request to Produce with this Court, but viewing the responses alongside his deposition testimony, it is clear that it is incomplete and untruthful. On April 12, 2022, the Court granted the Town's Motion to Compel with regard to a deposition and post-judgment interrogatories and requests to produce ("Discovery Order"). The Discovery Order directed Defendant to appear for a deposition to answer questions and respond to the Town's interrogatories and requests to produce served on January 27, 2022 on or before Friday April 15, 2022

at 12:00 p.m.

The Defendant did not serve a response to the Town's interrogatories and requests to produce by the deadline imposed by the Court. Defendant appeared by phone for a deposition (though video appearance had been requested). Defendant's answers to the Town's questions during the deposition were largely comprised of inappropriate responses which were alternately non-responsive, argumentative, circular, or answering a question with a question demanding a definition of commonly used English words or phrases. Even after a definition was supplied, the Defendant often continued to refuse to respond. In some instances, Defendant was asked to respond based on his own definition of a particular word or phrase, and he still refused to respond. In one instance, when asked for an explanation, he refused to answer on the basis that the questioner was "not smart enough" to understand the answer. *See* Deposition transcript, filed by Defendant on May 11, 2022, *ibid*.

Of particular relevance with respect to Paragraph 4 of the Interim Order is Defendant's refusal to answer with respect to the source of the funds he used to pay the fines previously imposed by the Court. In his responses to the Town's Interrogatories, Defendant denies having any source of income. Yet Defendant continues to construct buildings on his property and care for large animals requiring feeding and veterinary care, and was able to pay a fine of over \$53,000.00. At deposition, when the questioner inquired of the source of those funds, counsel for Defendant objected to his "answering questions having anything to do with his personal finances," which objection directly contradicts the Court's Discovery Order directing Defendant to answer questions on that

topic. Deposition, at 42. Defendant then testified that the funds used to pay the fines were “A gift,” but refused to identify the source of the gift, citing a “confidentiality disclosure.” Deposition, at 44–46.

The purpose of the interrogatories in conjunction with the deposition was for the Town to obtain information with regard to the Defendant’s ability to comply with the Court’s orders. Defendant’s denial of any source of income in response to interrogatories coupled with his refusal to answer questions about the source of funds used to pay to pay significant fines is an obvious effort to frustrate meaningful discovery on that issue. Defendant’s attorney has assisted him in defying the Court’s Orders.

The Court should treat the interrogatory responses later filed by Defendant as incomplete and/or untruthful, deem his answers at deposition nonresponsive, deem the \$5,000.00 purgeable fine due, order Defendant to pay attorney’s fees and expenses of deposition, and preclude Defendant from raising a defense of inability to pay with respect to such purgeable fines or any additional fines to be imposed by the Court in this contempt proceeding.

III. Defendant Failed to Comply with Paragraph Five of the Interim Order

Per the deadline set by the Court in its April 18, 2022 Interim Order, the parties agreed that a site visit inspection would be conducted on May 10, 2022. On May 3, 2022, counsel for the Defendant notified the Town that “[Defendant] adopted a firm policy of no mechanized transport on his property and it will be necessary for us to all walk during the site visit.” Exhibit 1-A. After further email exchanges between among the parties’ attorneys and ensuing motion practice, the Court issued an order at 4:00

p.m. on May 9, 2022 directing that the site visit proceed as scheduled the following day, and that the Town be permitted to use ATVs.

At 5:48 p.m. on May 9, 2022, in response to the Court's Order, Defendant (through counsel) sent an email stating that the Defendant would not abide by the Court's Order to permit ATV access to the Property, stating: "If the Town intends to use ATV's, entry for the ATV's will be denied." Exhibit 1-B. Having invested significant time planning the site visit, including coordination of multiple Town officials and the Rutland County Sheriff, the Town proceeded with the site inspection on May 10, 2022 on foot. The parcel of land is over 30 acres, and the Town was thus unable to inspect the entire property during the site inspection, particularly given that one of the Town's representatives had limited mobility following knee surgery, as explained in the Town's pleadings.

Furthermore, Defendant—through his attorney—represented to this Court that the principal reason that he did not wish to permit ATVs on his property was because of the condition of the roads. *See* Motion to Modify Interim Order. The other primary reason was that Defendant's animals were not in a fenced enclosure. *Id.* Neither statement was true on the date of the inspection. As shown in the photographs incorporated herein as exhibits, the roads on the Property were dry and in excellent repair on the date of the site inspection. Exhibit 2. Defendant's livestock was contained in a fenced enclosure. Exhibits 3.

While Defendant's attorney no doubt relied upon representations made by Defendant when making these claims to the Court in support of his motion, he was

present for the site inspection on May 10, 2022, yet he has made no effort since to correct the misrepresentations.

Defendant, with the assistance of counsel, has defied the Court's numerous directives of authorizing the Town and its officials' ability to fully perform a site inspection with the use of ATVs, the Town requests that the Court find Defendant in contempt and impose additional fines for such failure to abide by this Court's multiple orders.

IV. Defendant Remains in Violation of the Court's March 5, 2021 Order

On March 5, 2021, this Court issued an Order directing Defendant to "immediately begin and complete the deconstruction and removal of all buildings on his property that have not be[en] authorized by a valid zoning permit." Not only has Defendant not done so, he continues to build new unpermitted structures, including a structure that was under active construction at the time of the site visit on May 10, 2022. *See, e.g.* Ex. 4-K.

The following unpermitted structures were on Defendant's Property on May 10, 2022:

- Green barn-like structure: 12'3" x 20'3" *Exhibit 4-A*
- Overseas shipping containers: 16' x 20' *Exhibit 4-B*
- Small structure with rectangular windows: 8'7" x 12' *Exhibit 4-C*
- Small metal locker: 8'7" x 12" *Exhibit 4-D*
- Pole barn: 10'8" x 20'9" *Exhibit 4-E*
- Animal Run in #1: 16'9" x 17'2" *Exhibit 4-F*

- School house 20'3" x 35'7" (excluding 9'8" porch) *Exhibit 4-G*
- Range façade: 20'8" wide and 55" deep *Exhibit 4-H*
- Small shed near the garage/apartment: 5'3" x 12'4" *Exhibit 4-I*
- Animal Run in #2 (goats/sheep): 10'3" x 15' *Exhibit 4-J*
- New Construction: 12'2" x 30'1" *Exhibit 4-K*
- Silos (x2) *Exhibit 4-L*
- Large fuel storage tanks (empty) *Exhibit 4-L*
- Various steel structures/components of shooting facilities *Exhibit 4-M*
- Two completed shooting ranges with berms surrounding them *Exhibit 4-N*
- Partially completed shooting range *Exhibit 4-O*
- Miscellaneous fencing and gates *Exhibit 4-P*

It remains clear—as it has been for over a year—that Defendant has no intention of complying with this Court's orders, or with local zoning or State permitting laws.

Due to Defendant's efforts to defy this Court's Orders, since the Vermont Supreme Court's Decision was issued on January 15, 2022, the Town of Pawlet has incurred thousands of dollars in attorneys' fees engaging in this contempt proceeding, including preparing for and attending a hearing without adequate responses to previously served discovery, and extensive motion practice in response to Defendant's ongoing obstruction. The expense has been exacerbated by Defendant's pattern of refusing to comply at the eleventh hour before long-scheduled events, necessitating emergency motions or follow-up motions to compel relief in order to avoid further delay and prejudice to the Town.

CONCLUSION AND REQUEST FOR RELIEF

The Town respectfully requests that the Court provide Defendant with no further opportunities to defy its orders, and to impose such sanctions as necessary to ensure **immediate** compliance, without further delay. Efforts to enforce Pawlet's Zoning Bylaws with respect to this Property have been ongoing since January 2018, and this particular enforcement action was filed three years ago in the late summer of 2019. The Town requests that the Court:

- 1) Find Defendant in contempt of this Court's March 5, 2021 Order and the Court's April 18, 2022 Interim Order;
- 2) Order that both purgeable \$5,000.00 contempt fines are due to the Town
- 3) Order that all structures on the Defendant's Property (with the sole exception of the permitted 24'7" x 23'4" Garage/Apartment) be immediately demolished, and specify by what mechanism such demolition should occur;
- 4) Order that Defendant be imprisoned until he demonstrates that all unpermitted structures on his Property have been removed or demolished and that he has paid the two purgeable contempt fines in the total of \$10,000.00 (and issue a mittimus to effectuate such order);
- 5) Impose fines in the amount of \$200.00 per day from March 6, 2021 until the Property is brought into compliance, with such fine constituting a lien upon the Property upon filing the Court's order in the Pawlet Land Records;
- 6) Order Defendant to pay the Town's attorneys' fees incurred from January 15, 2022 to date, and the cost of Defendant's deposition; and
- 7) Such other relief as this Court deems just and equitable.

Dated at Manchester, VT this 21st day of July, 2022.

/s/ *Merrill E. Bent*
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