

STATE OF VERMONT

SUPERIOR COURT
Orange Unit

CIVIL DIVISION
Docket No. 23-CV-02848

JOHN DURKEE, EXECUTOR OF)
THE ESTATE OF KENNETH H.)
BLAISDELL, JR.,)
Plaintiff,)
v.)
TRINI BRASSARD, COURTNEY)
BRASSARD, BRIAN FALZO, DANIEL)
BRASSARD, AND BRASSARD)
SUGARWORKS AND MAPLE)
SUPPLY, LLC,)
Defendants.)

**PLAINTIFF’S MOTION FOR DISCOVERY SANCTIONS
AGAINST DEFENDANTS DANIEL BRASSARD AND
BRASSARD SUGARWORKS AND MAPLE SUPPLY, LLC**

NOW COMES Plaintiff John Durkee, Executor of the ESTATE OF KENNETH H. BLAISDELL, JR., (“Plaintiff”), by and through counsel, PRIMMER PIPER EGGLESTON & CRAMER PC, and pursuant to V.R.C.P. 37(b) and 37(f), hereby MOVES this Honorable Court to SANCTION Defendants Daniel Brassard and Brassard Sugarworks and Maple, LLC (“Defendants”) for their failure to obey this Court’s April 30, 2025 Order regarding document production, and for their failure to preserve evidence. In support of this motion, Plaintiff submits the within Memorandum of Law, and further hereby states as follows.

Introduction

This action was filed on June 30, 2023, and arises out of Plaintiff’s claims that the defendants owe the Estate of Kenneth H. Blaisdell, Jr. monetary damages for fraudulent transactions initiated between July 18, 2013 and the present from income, assets, and property

owned by Decedent Kenneth H. Blaisdell, Jr. (“Decedent”). Plaintiff’s claims against Defendant Daniel Brassard and Brassard Sugarworks and Maple LLC include the following:

- Count II – Conversion: Defendant Daniel Brassard received income from the sale of hay that legally belonged to Decedent, and Defendant Brassard Sugarworks and Maple, LLC received maple syrup, maple products, and income from the sale of maple products that legally belong to Decedent.
- Count III – Trespass to Chattels: Defendant Daniel Brassard removed the Decedent’s hay, timber, maple syrup, used a sugarhouse, mobile home, and land for his own benefit.
- Count IV – Embezzlement: Defendant Daniel Brassard took income from timber harvesting that legally belonged to the Estate.
- Count VI – Trespass to Land: Defendant Daniel Brassard used the Decedent and later the Estate’s lands by possessing these lands, extracting resources from these lands, and creating waste on these lands.
- Count X – Unjust Enrichment: Defendant Daniel Brassard has been unjustly enriched at the expense of the Estate.

The discovery process in this case has been long and arduous. On September 29, 2023, Plaintiff sought formal discovery through interrogatories and request to produce¹. Defendant Daniel Brassard provided partial answers (mostly objections) on February 28, 2025, more than 15 months after these discovery requests were propounded². However, these responses did not include the production of any documents. Accordingly, Plaintiff was compelled to seek Court

¹ Plaintiff filed a Motion to Compel Defendant Daniel Brassard and Courtney Brassard on December 14, 2024. Plaintiff’s original discovery requests to Defendant Daniel Brassard are Exhibit B to that motion. Defendant Brassard Sugarworks and Maple Supply, LLC’s record requests were included in the set of discovery propounded upon Defendant Daniel Brassard, separate requests were not made.

² Defendant’s responses are Exhibit F to Plaintiff’s Reply to Defendant Daniel Brassard’s Opposition to Plaintiff’s Motion to Compel, filed on March 4, 2025.

intervention to obtain the relevant and discoverable documents. This Court held a hearing on the pending motions to compel and issued an order compelling their production on April 30, 2025. The court-imposed deadline to produce documents was May 30, 2025, but Defendants produced their first group of documents on June 11, with many of documents heavily redacted. The April 30, 2025 Order included a protective order, making redaction of documents inappropriate given that additional layer of protection. Further, the redacted information does not fall within a privilege.

The parties attempted to resolve the remaining discovery disputes. However, the parties are once again at an impasse, with the subject of the current dispute having already been determined by this Court. Over this past year, Plaintiff had to file two motions to compel because of Defendant's refusal to constructively confer and provide the requested discovery. Despite this Court's April 30, 2025 Order, and Plaintiff's various attempts to confer, Defendant has refused to provide the remaining discovery materials. Further, Defendant Daniel Brassard has admitted to destroying evidence. Defendants' actions are a clear violation of the April 30, 2025 Order and Rule 37(f).

Procedural Background

On September 29, 2023, Plaintiff served Defendant Daniel Brassard with written discovery requests, which remained unanswered for more than a year. Plaintiff filed a motion to compel responses on December 14, 2024. Defendants provided their response on February 28, 2025. Defendants' responses did not include any documents. In fact, Defendant responded with objections to many requests, asserting confidentiality. This Court addressed Defendant's concerns in its April 30, 2025 Order ("Confidentiality Order"), and ordered Defendants to produce all responsive materials by May 30, 2025. *See Confidentiality Order at ¶ 2.*

Defendant Daniel Brassard failed to meet this court ordered deadline. On June 11, Defendant Daniel Brassard produced his individual bank and credit card statements but redacted portions of these records. Mr. Brassard did not produce the financial records for Brassard Sugarworks and Maple Supply, LLC³. Even though any amount of redaction could be considered a violation of the April 30, 2025 Order, Plaintiff informed Defendant Daniel Brassard that redactions on account numbers (for non-party accounts) were acceptable, but objected to his redaction of the memo line or account holder sections (for non-party checks deposited into Defendant's accounts). Plaintiff requested that Defendant produce unredacted versions of these records within 15 days. Defendant did not respond or produce further records within the 15-day period.

On July 1, Defendant Daniel Brassard offered to provide a narrative explanation of these payments, but refused to provide (semi) un-redacted versions, claiming his right to withhold this information based on his belief that "[we] will contact the people using the same tone and hostile approach that you have used with me from day 1." *See* Affidavit of Elizabeth A. Willhite, submitted of even date herewith, at ¶ 9. Plaintiff refused this option and asked again for unredacted versions of these documents. Mr. Brassard did not respond or produce records.

On July 11, Plaintiff sent Defendant Daniel Brassard a Rule 26(h) letter to outline the outstanding discovery dispute. *See* July 11, 2025 26(h) Letter attached hereto as **Exhibit A**. In this letter, Plaintiff provided the Bates label references for the production documents which must be produced in (semi) un-redacted form. On July 21, Mr. Brassard provided the bank and credit cards statements for Brassard Sugarworks and Maple Supply, LLC. That same day, undersigned counsel again requested that Defendants produce the (semi) un-redacted financial documents

³ These records were produced on July 21, 2025.

referenced in Exhibit A. Mr. Brassard responded that he requested the records from his bank who would process this request “at their convenience.” *See* July 21, 2025 email String between D. Brassard and E. Willhite, attached hereto as **Exhibit B**. Plaintiff questioned why this was necessary since Mr. Brassard had possession of these records (since he produced them), and in response Mr. Brassard colorfully explained that he burned the documents offering Plaintiff either “(1) a 5-gallon bucket of ashes or (2) wait for the bank – you’re [sic] choice.” *Id.*

Mediation is scheduled for this matter on September 9, 2025, and Plaintiff cannot mediate without these materials. This case is scheduled to be trial ready on October 15, 2025. Despite Herculean efforts on the part of Plaintiff to pursue this discovery, Mr. Brassard continues to delay the process – and has now taken the astonishing step of destroying responsive documents in his possession after unilaterally redacting them in violation of the spirit and letter of this Court’s April 30 Confidentiality Order. Plaintiff will be unjustly prejudiced by Defendants’ persistent refusal to produce these documents in an appropriate form, and this prejudice will affect Plaintiff’s ability to advance all claims against all Defendants.

Legal Analysis

“Under the rules of civil procedure, the trial court has discretion to sanction a party that ‘fails to obey an order to provide or permit discovery.’” *Rathe Salvage, Inc. v. R. Brown & Sons, Inc.* 184 Vt. 355, 360 (2008), quoting V.R.C.P. 37(b)(2). A trial court’s discretionary rulings “are not subject to appellate review unless it is clearly shown that such discretion was abused or withheld.” *Bonfanti v Ayers*, 134 Vt. 421 (1976). “If a party ... fails to obey an order to provide ... discovery, ... an order made under subdivision (a) of this rule ... the court ... may make such orders in regard to the failure as are just...” V.R.C.P. 37(b)(2). “If warranted, the court may

sanction a party by ‘rendering a judgment by default against the disobedient party.’” *Rathe Salvage* 184 Vt. at 360, quoting V.R.C.P. 37(b)(2)(C).

The Vermont Supreme Court has ruled “that before imposing the ultimate sanction of a default judgment, the court must first find that the disobedient party acted in ‘bad faith or deliberate and willful disregard for the court’s orders, and further, that the party seeking the sanction has been prejudiced thereby.’” *Rathe* at 360, quoting *John* at 519. Therefore, unless the inability to comply is due to an inability fostered by circumstances outside of the party’s control, litigation-ending sanctions are appropriate. *See John v. Med. Ctr. Hosp. of Vt., Inc.*, 136 Vt. 517, 519-520 (1978).

In addition to litigation ending sanctions, a court may sanction a party by limiting the “disobedient party [from] support[ing] or oppos[ing] designated claims or defenses, or prohibiting that party from introducing designated matters in evidence...” V.R.C.P. 37(b)(2)(B). A court may find that the disobedient party is in contempt of court for the failure to obey any order. V.R.C.P. 37(b)(2)(D). Finally, ‘in lieu of any of the foregoing orders...the court shall require the party failing to obey the order...to pay the reasonable expenses, including attorney’s fees, caused by the failure...” V.R.C.P. 37(b)(2).

I. Defendant Daniel Brassard has failed to obey the April 25, 2025 Order.

This Court informed all Defendants that the financial records sought are relevant and discoverable at the March 24, 2025, status conference and ordered their production on April 30, 2025. Yet, Defendant Daniel Brassard has failed to comply, and has failed to provide relevant and discoverable documents in unredacted form. Initially, Mr. Brassard did not produce any documents within the time prescribed in the April 30, 2025 order. When Mr. Brassard did produce documents (June 11 and July 21) these productions included redactions, which are

inappropriate given this Court's Protective Order. Even though Plaintiff would have been well within its rights to bring these deficiencies to the Court's attention at that time, Plaintiff made efforts to resolve these disputes. Defendant Daniel Brassard's actions, however, are clear; as he has blatantly disobeyed this Court's order and has shown no intent to comply.

II. Defendant Daniel Brassard has destroyed evidence.

During the time when Plaintiff engaged in multiple attempts to reach an agreement with Defendants to obtain these documents, it learned that Mr. Brassard voluntarily destroyed this same evidence. See **Exhibit B**. "If ...evidence that should have been preserved in the...conduct of litigation is lost because a party as failed to take reasonable steps to preserve it...the court...upon finding of prejudice to another party...may order measures no greater than necessary to cure the prejudice." V.R.C.P. 37(f).

Further, by his own admission, Mr. Brassard's act of destruction was willful and deliberate. His unflinching and deliberate destruction of this evidence is highly prejudicial to Plaintiff's claims. Plaintiff seeks the production of documents identified in **Exhibit A**⁴. See **Exhibit A** at ¶ 2. These documents directly relate to Counts II, III, IV, and X. Plaintiff is entitled to these records to support the claims advanced, and without this information it is unfairly prejudiced.

"The failure to produce documents as ordered ... is considered sufficient prejudice." *SynEcology Partners, L3C v. Business RunTime, Inc.*, 201 Vt. 424, 432 (2016), quoting *Adriana Int'l Corp. v. Thoeren*, 913 F.2d 1406, 1412 (9th Cir. 1990). Plaintiff requested Defendant

⁴ DB00041; DB00054-55; DB00068-70; DB00078; DB00081-82; DB00091; DB00102-103; DB00111; DB00122-123; DB00132; DB00144; DB00155; DB00164-165; DB00186; DB00188; DB00196; DB00198-199; DB00212; DB00214; DB00233-235; DB00239; DB00255-56; DB00258; DB00267; DB00269; DB00284; DB00299-DB00300; DB00313; DB00322; DB00342-344; DB00357; DB00366; DB00373; DB00396-397; DB00416; DB00452-453; DB00469; DB00487-88; DB00491-495; DB00508; DB00518-519; DB00561; DB00627-629; DB00647; DB00668; DB00669; DB00670; DB00672; DB00691-694; DB00708-713; DB00730-733; DB00796; DB00798.

Daniel Brassard's personal and business banking account statements, deposited check images, and deposit slips as part of its discovery requests. Mr. Brassard failed to produce these documents, and Plaintiff had to seek a court order to obtain any production of documents. After the court ordered Defendants to produce these documents, Mr. Brassard persisted in his refusal to produce unredacted versions of these documents. As such, Mr. Brassard has unduly prejudiced Plaintiff, while offering no legitimate excuse for his actions.

Further, Plaintiff alleges that Defendants took income generated from the Decedent's farm operations and deposited this income into his personal accounts. Mr. Brassard's willful actions to apply redactions over the names of account holders on checks deposited into his personal accounts, and over the memo line on checks deposited into his personal accounts is "flagrant bad faith." *See John* 136 Vt. at 520. If Plaintiff is unable to obtain this information, Mr. Brassard will have successfully thwarted the production of evidence that supports Plaintiff's allegations. As such, Plaintiff seeks a default judgment order against Defendants Daniel Brassard and Brassard Sugarworks and Maple Supply, LLC for Counts II, III, IV, and X. *See*, V.R.C.P. 37(b)(2)(C).

This ultimate sanction is just given the deliberate and willful acts of Defendant Daniel Brassard, who admitted that he chose to redact these entries and then burned the unredacted version of these same records. "The Court found that 'the preservation of due process was secured by the presumption that the refusal to produce evidence material to the administration of due process was but an admission of the want of merit in the asserted defense.'" *SynEcology* 201 Vt. at 433, quoting *Insurance Corp. of Ireland Ltd. V. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 705 (1982). Mr. Brassard's "choices" offered to Plaintiff in the July 21 email bespeak the larger problem in the way that Defendant has participated in discovery. The U.S. Supreme

Court has ruled, “[t]he most severe in the spectrum of sanctions provided by ... [the] rule must be available to the ... court in appropriate cases, not merely to penalize those whose conduct may be deemed to warrant such a sanction, but to deter those who might be tempted to such conduct in the absence of such a deterrent.” *National Hockey League v. Metropolitan Hockey Club, Inc.*, 427 U.S. 639, 643 (1976).

III. Defendant should be held in contempt and limited in his assertion of defenses.

Even if the Court does not wish to impose the ultimate sanction, Plaintiff asserts that Defendant’s behavior since April 25, 2025, is contemptuous. Defendant participated in a hearing before this Court on April 25, 2025, and Mr. Brassard offered an argument regarding the production of these materials. After this hearing, Mr. Brassard was present for the Court’s decision. The Court issued a written order five days later, prescribing the time to produce documents and the protections afforded to the disclosure. Yet, Mr. Brassard failed to comply, either on his behalf or on behalf of his LLC. Plaintiff sought a resolution without seeking any punitive action from this Court. However, as the communications between the parties shows, Defendant’s refusal to produce these documents evinces a disregard for the legal process.

Mr. Brassard has thumbed his nose at Plaintiff’s requests by destroying the evidence that this court ordered him to produce, and he admitted that he did so in his self-satisfied email sent on July 21, 2025. See **Exhibit B**. Plaintiff now asks this court to limit his ability to defend against Plaintiff’s claims. “The civil division has ‘inherent authority to enforce’ the discovery rules ‘by excluding evidence, granting a continuance, or by taking other appropriate action.’” *Cornelius v. North Country Health Systems, Inc.*, 2018 WL 6721755 *3 (2018), quoting *Greene v. Bell*, 171 Vt. 280, 283 (2000). Mr. Brassard has denied Plaintiff’s claims in Count II, III, IV and X. His actions in withholding and destroying financial records has prejudiced Plaintiff, who

is unable to determine what each payment was for, for whom, and its relationship to a contract, invoice, or otherwise. *See Int'l Aerospace Grp. Corp. v. Evans Meridians Ltd.*, No. 16-24997-CIV, 2017 WL 1927957, at *5 (S.D. Fla. May 10, 2017) (the redacted bank records did not allow the defendant to determine what each payment was for and its relationship to a contract or invoice and many courts have found that vague references to documents do not suffice under Rule 33(d) in connection with a broad and detailed discovery request). The information sought is responsive to Plaintiff's discovery requests and is relevant to Plaintiff's claims.

Finally, courts disfavor unilateral redaction of documents. *See Leprino Foods Co. v. Avani Outpatient Surgical Ctr., Inc.*, No. 2:22-CV-07434-DSF-JC, 2024 WL 3915928, at *10 (C.D. Cal. May 6, 2024) (“[A]s other courts have observed, that unilateral redactions, even when implemented with restraint and in good faith, give rise to suspicion that relevant material harmful to the producing party has been obscured and all too often, result in litigation of collateral issues wasting the time of both counsel and the Court such that, ordinarily and here, its drawbacks outweigh the minimal risk of harm that may result from disclosure of some irrelevant or private material pursuant to a protective order.”) It is within the court’s discretion to strike Defendants’ answer and limit their ability to present evidence in defense of these claims. “Where the trial court invokes a discovery sanction which precludes a [party] from offering certain evidence, but is not a dismissal, no special findings are required.” *Polak v. Ramirez-Diaz*, 2025 WL 648804

In fact, Plaintiff does not need to prove that Mr. Brassard acted in bad faith or with deliberate disregard for the court’s orders to receive this requested relief. “Our cases have carefully distinguished those cases where a sanction of dismissal or default is imposed from situations where the sanction effectively results in dismissal. Although a sanction may have a similar effect, no special findings are required when there is no outright dismissal or default.”

Stella ex rel. Estate of Stella v. Spaulding, 193 Vt. 226 (2013), see also *State v. Howe Cleaners, Inc.*, 188 Vt. 303 (2010) (“no special findings of bad faith or prejudice, or exhaustion of lesser sanctions, are required for anything less than the ultimate sanctions of dismissal or default.”).

Conclusion

Plaintiff has been unjustly impacted by Defendants’ tactics. Plaintiff has waited for Defendant Daniel Brassard to respond to discovery requests, and the entire matter has been delayed as a result. Plaintiff incurred unnecessary legal expenses to compel these responses and production. Plaintiff obtained a Court Order, but Defendant refused to comply. Plaintiff incurred additional unnecessary legal expenses to confer with Daniel Brassard (on an issue that has been resolved). Plaintiff incurred unnecessary legal expenses to file this motion. All parties will be impacted unjustly by Defendant’s actions to destroy evidence, refusal to obey the Protective Order, and continual gamesmanship tactics if mediation is delayed.

WHEREFORE, Plaintiff hereby respectfully MOVES this Honorable Court for the following relief:

- A. ENTER default judgment in favor of Plaintiff on all claims made against Defendants Daniel Brassard and Brassard Sugarworks and Maple, LLC.;
- B. AWARD Plaintiff all expenses and attorneys’ fees associated with this motion per Rule 37(a)(4), and
- C. ALL such other relief as this Court deems just and appropriate.

ALTERNATIVELY, Plaintiff hereby respectfully MOVES this Honorable Court for the following relief, in the alternative:

- A. ORDER that Defendants Daniel Brassard and Brassard Sugarworks and Maple Supply, LLC are limited in introducing evidence that is offered to defend against Plaintiff's claims in Count II, III, IV and X;
- B. ORDER Defendants Daniel Brassard and Brassard Sugarworks and Maple Supply, LLC's Answer to Plaintiff's Complaint (and Amended Complaint) be stricken for Counts II, III, IV and X, including all affirmative defenses;
- C. ORDER Defendants Daniel Brassard and Brassard Sugarworks and Maple Supply, LLC to produce (semi) unredacted versions of the financial statements identified hereto and in Exhibit B with no redactions on the memo line or account holder within 10 days of the Order; and
- D. AWARD Plaintiff all expenses and attorneys' fees associated with this motion per Rule 37(a)(4), Order limiting Defendants; opposition to Plaintiff's claims against them, and prohibiting Defendants from offering evidence related to any defense of Plaintiff's claims; and
- E. ALL such other relief as this Court deems just and appropriate.

DATED at Woodstock, Vermont, this 24th day of July, 2025.

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