

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 REPLY TO
DEFENDANT DAN BRASSARD'S OPPOSITION TO
PLAINTIFF'S MOTION FOR SANCTIONS**

Defendant Dan Brassard ("Defendant") argues that Plaintiff John Durkee, Executor of the Estate of Kenneth H. Blaisdell, Jr.'s ("Movant"), *Motion for Sanctions* should be denied because: (1) Defendant was not tardy; (2) Defendant produced more than was requested; (3) Defendant cured the improperly redacted earlier production; and (4) Defendant was not responsible for the destruction of evidence. If these statements were true, Defendant's basis for his opposition would be well grounded; however, these claims are not based in fact. Moreover, as the parties are on the eve of either settlement or trial, Plaintiff will be severely prejudiced if Defendant is permitted to continue in this action while failing to comply with his discovery obligations and the court order related to the same.

Legal Analysis

A motion for sanctions pursuant to Rule 37(b) and 37(f) may be granted at the discretion of the trial court when a party fails to obey an order to provide or permit discovery. V.R.C.P.

37(b)(2). “In relevant part, Rule 37(b)(2) states that if a party fails to obey a court order to provide or permit discovery, ‘the court in which the action is pending may make such orders in regard to the failure as are just.’” *State v. Howe Cleaners, Inc.*, 188 Vt. 303, 313 (2010), quoting V.R.C.P. 37(b)(2). The Court ordered the Defendant to produce all records that are responsive to Plaintiff’s discovery requests on April 30, 2025. Defendant has failed to comply with this order. This failure on its own is considered sufficient prejudice under Vermont law. *SynEcology Partners, LLC v. Business RunTime, Inc.*, 201 Vt. 424, 434 (2016). “Imposition of sanctions under this rule ‘is necessarily a matter of judicial discretion’ that is ‘not subject to appellate review unless it is clearly shown that such discretion has been abused or withheld.’” *State v. Howe*, at 313, citing *John v. Med. Ctr. Hosp. of Vt., Inc.*, 136 Vt. 517, 519 (1978).

Defendant opposes Plaintiff’s motion for sanctions claiming (1) Defendant was not late in complying the April 30, 2025 order; (2) Defendant produce more records than was requested in Plaintiff’s discovery requests; (3) Defendant produced unredacted versions of checks that he previously redacted thus curing his noncompliance; and (4) the destruction of evidence was not his fault. Plaintiff argues that these statements are not factually correct. Further, Defendant’s behavior during discovery to delay, limit communications, falsely certify service activities, and generally act in bad faith has severely prejudiced Plaintiff.

1. Defendant did not comply with the April 30, 2025 Order.

Defendant did not provide all relevant documents by May 30, 2025 or June 5, 2025. Defendant filed a certificate of service on June 5, 2025, claiming he mailed production documents, but he mailed a one-page document with a URL address (hyper-link). *See*, Affidavit of Elizabeth Willhite, submitted of even date herewith, at ¶¶ 5-6. This unwieldy process resulted

in a further delay of Plaintiff's receipt of these extremely tardy discovery responses¹. Plaintiff had to reach out to Defendant, because the hyperlink did not work as typed on the document Defendant mailed to Plaintiff. *Id.* Defendant did not respond to Plaintiff's team, but instead only responded to one member of the legal team. *Id.* at ¶ 7. As a result, Plaintiff did not gain access or was not effectively "served" with this discovery until June 10, 2025.

Even after June 10, 2025, Plaintiff did not have a complete set of documents from Defendant due to the illegibility of the records produced and the substantial redactions on the records produced. *Id.* at ¶¶ 12-16. Further, Defendant did not produce any banking records for his business accounts at that time. *Id.* at ¶ 9. Some of Defendant's business banking records were produced on July 20, 2025, but did not include deposit slips or deposited checks. *Id.* at ¶¶ 9-10.

The Vermont Supreme Court has held that a trial court may impose a default judgment as a discovery sanction when there is evidence of a violation of the duty to supplement discovery responses or other discovery abuses. *Trevor v. Icon Legacy Custom Modular Homes, LLC*, 210 Vt. 614 (2019). Plaintiff is still without a complete production set from this Defendant. The parties plan to attend a mediation session on September 9. Plaintiff will be prejudiced if this Defendant participates in mediation and defends himself and his business against the Estate's claims without fully complying with the April 30, 2025 discovery order.

2. Defendant did not produce extra banking records.

Defendant was asked in Plaintiff's discovery requests to provide copies of banking statements, deposited checks, and deposit slips for his personal and business accounts. See, Exhibit B to Defendant Daniel Brassard's Opposition Motion (Interrogatory Number 2).

¹ Plaintiff originally served these discovery responses on September 23, 2023.

Defendant produced banking statements from one of his businesses, but Plaintiff is aware that he owns a second business, Brassard Self-Storage, LLC. Defendant has not produced any records for this business. Defendant has not produced deposited checks or deposit slips for Brassard Sugarworks and Maple Supply, LLC. *Id.* at ¶ 10.

3. Defendant did not produce unredacted versions of deposited checks

Defendant asserts in his opposition that he has reproduced all the checks identified in Plaintiff's July 11, 2025 Rule 26(h) letter. However, Plaintiff disagrees with this statement and has provided three examples to illustrate Defendant's lack of veracity. *Id.* at ¶ 11-17. Until Defendant produces his entire banking record (personal and businesses) with deposited checks in legible, unredacted form, Plaintiff asserts his obligations have not been fulfilled. Further, rather than working with Plaintiff to produce the necessary documents, Defendant's communications belie his true intent, which is to waste time, delay, and obfuscate. The court ordered this Defendant to produce all responsive records by May 30, 2025, as of the date of this filing he continues to be in contempt of that order.

4. Defendant's reason for the destruction of evidence does not shift blame away from him.

Defendant informed Plaintiff, colorfully, that the original production set was no longer available because he burned it. He further offered Plaintiff either a 5-gallon bucket of ash or new copies from his bank. Yet in response to Plaintiff's motion for sanctions, Defendant now asserts it was his children, not him, who destroyed this evidence. Plaintiff will not belabor this point, but states Defendant's defense offered against Plaintiff's request for sanctions is without merit.

Conclusion

The threshold question is whether or not this Defendant failed to comply with the court's April 30, 2025 order. There is no version of the facts as presented by Defendant that supports the argument that he complied with this order. Even if Defendant was not initially tardy with his production, the production was incomplete, illegible, and contained inappropriate redactions. Plaintiff has made several efforts to resolve this dispute, to no avail. Defendant has shown his contempt for the discovery process, the court's order, and Plaintiff's entitlement to discovery. The parties are now on the eve of either settlement or trial, and Defendant's behavior will only persist without court intervention. All of which will severely prejudice Plaintiff. Movant restates its request to dismiss the entire Counterclaim with prejudice.

DATED at Woodstock, Vermont, this 14TH day of August, 2025.

PRIMMER PIPER EGGLESTON & CRAMER PC

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