

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 DEFENDANT COURTNEY BRASSARD**

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 Courtney Brassard (“Defendant”) for her 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 Courtney Brassard include the following:

- Count II – Conversion: Defendant Courtney Brassard received income from the sale of hay that legally belonged to Decedent.
- Count III – Trespass to Chattels: Ownership of Decedent’s mobile home was transferred without authorization to Defendant Courtney Brassard but Defendant refused to return the item to the Estate. Instead, Defendant sold the mobile home and kept the entire sale proceeds for herself. Upon information and belief, Defendant Courtney Brassard received \$46,500.00 from the sale of the mobile home in 2023.
- Count IV – Embezzlement: Defendant Courtney Brassard was in receipt of property and a gravel pit gifted to her erroneously by Defendant Trini Brassard, and refuses to relinquish the title back to the estate, asserting the parcel is hers as well as the gravel income it produces. It is believed that Defendant Courtney Brassard has received at least Twenty Thousand Dollars (\$20,000.00) in gravel income alone as a result of Defendant Trini Brassard’s unauthorized transaction.
- Count VI – Trespass to Land: Defendant Courtney 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 Courtney 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 Courtney Brassard ignored these requests for over a year and a half. Accordingly, Plaintiff was compelled to seek Court 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 Defendant produced their first group of documents on June 2nd, and the documents set produced does not provide all the information as requested, omitting copies of all deposited checks and deposit slips .

On July 24, 2025 a Rule 26(h) letter was sent to Defendant Courtney Brassard through her counsel. No response was received. Plaintiff then followed up with emails sent on August 13 and August 14 requesting a discovery conference. No response to any of these communications has been received to date.

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.

Procedural Background

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.

On September 29, 2023, Plaintiff served Defendant Courtney Brassard with written discovery requests, which remained unanswered for more than 21 months. Plaintiff filed a Motion to Compel Responses on December 14, 2024. Defendants provided their response on June 2, 2025 after 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 Courtney Brassard failed to meet this court ordered deadline for production of her individual bank and credit card statements, to include copies of all deposited checks and deposit slips. On July 24, 2025 Plaintiff sent Defendant Courtney Brassard a Rule 26(h) letter to outline the outstanding discovery dispute. *See July 24, 2025 26(h) Letter attached hereto as **Exhibit A**.* In this letter, Plaintiff provided the references for the production documents which must be produced in (semi) un-redacted form. As of the date of this filing, Plaintiff has yet to hear any response from Defendant.

This case is scheduled to be trial-ready on October 15, 2025. Despite Herculean efforts on the part of Plaintiff to pursue this discovery, Ms. Brassard continues to delay the process – in direct 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 Courtney 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 Courtney Brassard has failed to comply, and has failed to provide relevant and discoverable documents in unredacted form. Initially, Ms. Brassard did not produce any documents within the time prescribed in the April 30, 2025 order. When Ms. Brassard did respond to Plaintiff's initial Discovery requests of September 2023, it was nearly 21 months later and the production did not include all the relevant documents. 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 Courtney Brassard's actions, however, are clear; as she has blatantly disobeyed this Court's order and has shown no intent to comply.

This ultimate sanction is just given the deliberate and willful acts of Defendant Courtney Brassard, who continuously fails to respond to any and all communications regarding discovery. "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). Ms. Brassard's decision to ignore all requests 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).

II. Defendant should be held in contempt and limited in her 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 Ms. Brassard offered an argument regarding the production of these materials. After this hearing, Ms. 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, Ms. Brassard failed to comply fully and completely. Plaintiff sought a resolution without seeking any punitive action from this Court. However, as the communications between the parties show, Defendant's refusal to produce these documents evinces a disregard for the legal process.

Plaintiff now asks this court to limit Defendant's 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). Ms. Brassard has denied Plaintiff's claims in Count II, III, IV and X. Her actions in withholding 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 Ms. 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 Courtney 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 unnecessary legal expenses to file this motion. All parties will be impacted unjustly by Defendant's actions to ignore discovery requests, 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 Courtney Brassard;
- 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 Defendant Courtney Brassard is limited in introducing evidence that is offered to defend against Plaintiff's claims in Count II, III, IV and X;
- B. ORDER Defendants Courtney Brassard Answer to Plaintiff's Complaint (and Amended Complaint) be stricken for Counts II, III, IV and X, including all affirmative defenses; and
- C. 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
- D. ALL such other relief as this Court deems just and appropriate.

DATED at Woodstock, Vermont, this 1st day of October, 2025.

PRIMMER PIPER EGGLESTON & CRAMER PC

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