

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 DANIEL BRASSARD’S
OBJECTION TO DEPOSITION NOTICE**

NOW COMES Plaintiff JOHN DURKEE, EXECUTOR OF THE ESTATE OF KENNETH H. BLAISDELL, JR., (“Estate”), by and through counsel PRIMER PIPER EGGLESTON & CRAMER PC, and pursuant to V.R.C.P. 26, 30, and 32 hereby REPLYS to Defendant Daniel Brassard’s Opposition Motion to Deposition Notice. Plaintiff submits the legal memorandum below in further support.

Introduction

Plaintiff intended to communicate with Defendant Daniel Brassard (“Defendant”) about his schedule before appealing to the Court on this issue. Plaintiff was preparing a letter pursuant to Rule 26(h) to resolve the scheduling of Defendant’s deposition. However, Defendant filed this objection before a letter could be sent.

Defendant's allegation that Plaintiff thinks he can "run me over because I don't know any better" is out of all proportion when reviewed with the patience Plaintiff has showed Defendant throughout discovery. Plaintiff did not respond to his claimed unavailability with a threat to compel his attendance. Plaintiff was preparing a reasonable measured response, and did not believe court intervention was necessary. Plaintiff is amenable to scheduling the deposition at a time that is reasonable for all parties. The time requested for this deposition is less than 4 hours. The deposition was scheduled on the same day as his mother's, since he attended day one of her deposition.

The filings in this case display the struggle these parties have had during discovery, and Plaintiff is now in a position where this case must not be delayed any further. Therefore, Plaintiff objects to waiting until after May 1, but is amenable to other options for scheduling this deposition.

Legal Standard

V.R.C.P. 26 and 30 prescribes the procedure parties must follow to obtain an oral examination of a person. "A party desiring to take the deposition of any person upon oral examination shall give notice in writing to every other party to the action at least 14 days before the time of taking the deposition." V.R.C.P. 30 (b). If a party wishes to obtain documents as well as conduct an oral examination, they must notice this request. "The notice to a party deponent may be accompanied by a request that the party at the taking of the deposition produce and permit inspection and copying of designated books, papers, documents, or tangible things which constitute or contain matters within the scope of Rule 26(b)." V.R.C.P. 30 (b)(5). A deposition is categorized as one of the six "Discovery Methods" outlined by Rule 26. V.R.C.P. 26(a). As such, any dispute about scheduling or requesting a deposition is governed by Rule 26.

“Counsel have the obligation to make good faith efforts among themselves to resolve or reduce all differences relating to discovery procedures and to avoid filing unnecessary motions.”

V.R.C.P. 26(h).

Factual Background

On June 7, 2024, Plaintiff served Defendant Daniel Brassard with a *Notice of Deposition Duces Tecum* scheduling his deposition for August 8, 2024. See Notice of Deposition Duces Tecum dated June 7, 2024, attached hereto as **Exhibit A**. Defendant responded to this notice claiming he was not a party to a civil action. See, June 2024 String of Emails, attached hereto as **Exhibit B**. The original date was rescheduled, due to unavailability of Defendant Courtney Brassard’s counsel, and an amended notice was sent. See, Notice of Deposition Duces Tecum dated August 1, 2024, attached hereto as **Exhibit C**. Defendant’s deposition was rescheduled for September 25, 2024. This date was amended due to the unavailability of Plaintiff’s counsel.

On February 27, 2025, Plaintiff noticed Defendant’s deposition for a third time. See Notice of Deposition Duces Tecum dated February 27, 2025, attached hereto as **Exhibit D**. The deposition is scheduled for March 11, 2025, which is 12-days from the notice date. Plaintiff understands this is 2 days less than what is prescribed, but as of January 2025, all parties were aware that depositions would take place on March 11, 2025. See, 2025 January, 2025 Series of Emails, attached hereto as **Exhibit E**. Defendant had informed Plaintiff that he is not available for a deposition until May 1, however, at the time Plaintiff did not believe arguing about the unreasonableness of that statement was necessary. Further, based on the discovery available to Plaintiff at that time, there were no immediate plans to depose Defendant.

During all this time, Defendant’s responses to written discovery requests were pending. Defendant initially claimed that he did not have responsive documents, but on February 27,

2025, he provided formal written responses. Defendant is now objecting to the disclosure of information and production of documents related to almost every topic requested by Plaintiff. See, Defendant Daniel Brassard and Brassard Sugarworks Responses to Plaintiff's First Set of Interrogatories and Request to Produce dated February 28, 2025, attached hereto as **Exhibit F.** Defendant has also made filings and statements before the probate court that relate to the Estate's claims before this Court. For all the foregoing reasons, Plaintiff is now seeking his deposition, and is entitled to make this request. However, Plaintiff does not oppose rescheduling and was planning to communicate that to Defendant¹.

Legal Argument

Trial Courts "[have] broad discretion in discovery rulings." *State v Lee*, 181 Vt. 605 (2007), citing *Schmitt v Lalancette*, 175 Vt. 284 (2003). Vermont Rules of Civil Procedure "shall be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action." V.R.C.P. 1. Rule 26(h) provides "[c]ounsel have the obligation to make good faith efforts among themselves to resolve or reduce all differences relating to discovery procedures and to avoid filing unnecessary motions." V.R.C.P. 26(h).

Defendant's deposition should be rescheduled, but must be before May 1, 2025. The second amended discovery schedule precludes taking fact witness depositions after April 1, 2025. The discovery schedule has been amended twice due, in part, to the failure of Defendant to respond to discovery requests in a reasonable timeframe. Plaintiff's claims should not be delayed because of Defendant's assertion that he is wholly unavailable between January 15,

¹ Defendant informed Plaintiff on February 27 and 28 that March 11 did not work, and Plaintiff was preparing a letter. However, on the next business day, he filed this opposition motion.

2025 – May 1, 2025. Especially when he attended a three-hour probate division hearing, at his request, on February 14, 2025².

Plaintiff did inform the parties in January 2025, that Defendant’s deposition would not be rescheduled. However, a party is entitled to change their mind. “The purpose of depositions are to gather discoverable information from the deponent...” *Jones v Hart*, 2011 WL 9154669 (Vt. Sup. Ct. 2011). “[T]his purpose is more properly framed as one among many purposes of a deposition.” *Adamczyk v Withers*, 2022 WL 9027943 (Vt. Sup. Ct. 2022). “Rule 32 provides at least seven more purposes for a deposition.” *Id.* Plaintiff requested Defendant’s deposition on February 27, 2025, because discovery responses, court filings, and statements made during probate division proceedings dictated Plaintiff’s need to depose this party.

WHEREFORE, Plaintiff asks that the Court provide the following relief:

- A. DENY Defendants’ motion to delay his deposition until after May 1;
- B. ORDER Defendant attend a deposition on one of these alternative dates:
 - a. March 12 (10:00 am – 2:00 pm or 2:00 pm – 6:00 pm)
 - b. March 17 (1:00 pm – 5:00 pm)
 - c. March 27 (1:00 pm – 5:00 pm)
 - d. March 31 (10:00 am – 2:00 pm or 2:00 pm – 6:00 pm)
- C. AWARD Attorney’s fees and cost to Plaintiff for this motion; and
- D. All such other relief as this Honorable Court deems just and appropriate under the circumstances.

² In re Estate of Kenneth H. Blaisdell, Jr. Docket No. 21-PR-04895.

DATED at Woodstock, Vermont this 4th day of March, 2024.

PRIMMER PIPER EGGLESTON & CRAMER PC

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