

Judge Eaton

STATE OF VERMONT
WINDSOR COUNTY, SS

<p>Ann Sullivan Plaintiff</p> <p>v.</p> <p>James Stear Betty Stear Defendant</p>	<p>SUPERIOR COURT Docket No. 32-1-08 Wrcv</p>
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DECISION ON MOTION FOR SANCTIONS

Plaintiff has filed a detailed Motion for Sanctions outlining attempts to obtain discovery from Defendants since the filing of interrogatories and requests for production on February 27, 2008. Responses from James Stear were ultimately received in December 2008, which Plaintiff views as inadequate. No responses from Betty Stear have been received to date.

The Motion for Sanctions, filed under the requirements of V.R.C.P. 11, sets forth a detailed history of efforts by Plaintiff to obtain discovery from Defendants. Except for a brief period following the granting of partial summary judgment in late August until October 26, 2008, defendants have been under an obligation to respond to the Plaintiff's discovery requests. The Court's grant of the Motion to Reconsider on October 26, 2008 made it clear that Defendants had not been relieved from discovery compliance by virtue of the grant of partial summary judgment.

Giving credit for the roughly two months where Defendants could reasonably believe they did not have to respond to discovery, there has still been a full ten months for Defendants to provide complete responses to Plaintiff's discovery. Plaintiff's efforts at obtaining compliance, both before and after the responses received from James Stear, have been considerable. That history is set forth more fully in the Motion for Sanctions, which was not opposed, and which the court therefore takes as true for the purposes of this decision. V.R.C.P. 78(b)(1); *State v. Lee*, 2007 VT 7, 181 Vt. 605.

There is simply no reason why routine discovery, such as obtaining answers to preliminary interrogatories and requests for production should drag on for nearly a year. The Defendants have not indicated they did not understand the requests or were unable to comply. Plaintiff's requests for supplementation to the responses which were finally made by James Stear have been ignored. Plaintiff's sanction pleading demonstrates incomplete and inadequate answers in several respects, including, but not limited to, the failure to produce documents under the control of Defendants.

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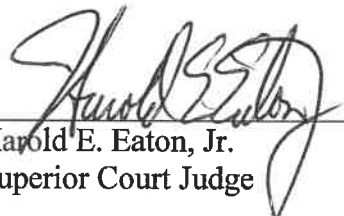
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Vermont has a history of liberality with respect to discovery matters. *Castle v. Sherburne Corporation*, 141 Vt. 157 (1982). Where a party has the practical ability to obtain the materials sought by discovery, those documents are within that party's control. *Id.* The responses by Defendant James Stear are inadequate. The responses by Defendant Betty Stear are non-existent. Defendants have not fulfilled their discovery obligations, especially having in mind that many of the requests from Plaintiff for additional information pertain to Defendants' counterclaim. Defendants failure to properly attend to discovery is further evidence by their lack of a timely response to the Motion for Sanctions.

Plaintiff has requested several specific sanctions, including the striking of certain pleadings of Defendants, to prevent Defendants from contesting certain matters and payment of fees in seeking compliance. This court has broad latitude in determining the appropriate sanctions for failure to comply with discovery. *In re R.M.*, 150 Vt. 59 (1988). The degree of sanction is also a matter for the discretion of the trial court. *John v. Medical Center Hospital of Vermont*, 136 Vt. 517 (1978).

The court does not consider the striking of pleadings to be warranted under the circumstances presented. However, the court will consider monetary sanctions, with the amount to be determined after hearing. In reaching its determination, the court will consider the state of compliance with the discovery requests as of the time of the hearing.

Dated at Woodstock this 26th day of February, 2009.


Harold E. Eaton, Jr.
Superior Court Judge

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