

*Judge Drackort*

STATE OF VERMONT  
WINDSOR COUNTY, SS.

MIDLAND CREDIT MANAGEMENT, INC., : WINDSOR COUNTY SUPERIOR COURT  
Plaintiff :  
 : DOCKET NO. 497-10-01 Wrcv  
v. :  
 :  
JAMES SPAULDING, SR., :  
Defendant :

**PLAINTIFF'S MOTION TO COMPEL, filed September 3, 2003**

Plaintiff Midland Credit Management, Inc., filed this case on October 22, 2001. On December 11, 2001, the court issued a Default Judgment Order in favor of the Plaintiff, in the total amount of \$5,243.16. On July 23, 2002, a deputy sheriff served Defendant with the Judgment Order, and with post-judgment interrogatories from the Plaintiff.

On September 3, 2003, Plaintiff filed a motion to compel Defendant to answer the post-judgment interrogatories. Plaintiff supported its motion with an affidavit stating (1) that Plaintiff's interrogatories were served on Defendant on July 23, 2002, and (2) that to date no responses have been forthcoming.

Rule 37 is flexible, and the court has considerable discretion, within a broad range limited by constitutional restraints and the law relating to the use of the contempt sanction, to administer Rule 37 in a manner "as necessary to hold the scales of justice even." Wright, Miller & Marcus, Federal Practice and Procedure § 2284, pages 612-613. The context of this case is enforcement of post judgment discovery in a collection case. The Defendant did not respond to post judgment interrogatories properly served along with service of the Judgment.

Plaintiff's motion to compel the Defendant to answer post-judgment discovery interrogatories is denied at this time for two reasons: First, the court is reluctant to order compliance where the Plaintiff has not submitted copies of its interrogatories. Before compelling the Defendant to answer, the court needs assurance that the interrogatories it is compelling responses to are reasonable ones in relation to the issues and facts of the case.

Second, the request for interrogatory responses is stale. More than thirteen months have elapsed since the Defendant was served with interrogatories. Under common law, a case would become dormant if a judgment was not paid within a year and a day, and action was needed to renew or revive it before execution could proceed. See Koerber v. Middlesex College, 136 Vt. 4, 8 (1978). Currently, under V.R.C.P. Rule 69, post judgment enforcement may be initiated by motion where a judgment remains unsatisfied, as long as it is within eight years. However, what is involved here is a proper attempt at post judgment discovery initiated in July of 2002, approximately 9 months

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after judgment, but with no follow-up for another 13 months. At some point, after a lapse of time, the attempt to follow up is simply too remote for the court to recognize it, both because it would be unfair to the Defendant to order him to answer interrogatories that he might reasonably have thought had been abandoned, and because the court has the ongoing obligation to administer cases according to procedures that promote respect for the legal process.

While there is no specific rule that provides guidance, Rule 41 (b), in sections (ii) and (iii), is instructive. Under those provisions, where a plaintiff has failed to pursue a case for a period of six months under circumstances when it had the obligation to act, the court may dismiss an action on its own motion. Six months would, by analogy, appear to be a reasonable time period within which a plaintiff who has initiated post judgment discovery should be required to file any motion seeking discovery sanctions. Any longer period makes it unlikely that a defendant will have the interrogatories available. Moreover, it is particularly important to require a plaintiff to follow up within a reasonably limited period of time where the further sanction of contempt may be sought later, as in this case. If the court were to order the Defendant to answer the interrogatories, and Defendant failed to do so and Plaintiff requested a contempt hearing, the court would be in the position of considering whether to hold the Defendant in contempt for failing to abide by an order to do something to benefit Plaintiff, when Plaintiff did not pursue the matter on its own behalf within a reasonable time frame. Plaintiffs are not prejudiced by applying a six month cutoff on motions to enforce discovery in that they have the opportunity to initiate the process again.

For the foregoing reasons, the motion presently before the court is denied. Plaintiff has the opportunity to serve Defendant with a new set of interrogatories, and then pursue any action to enforce the discovery within the following six months.

#### Order

Plaintiff's Motion to Compel is *denied*.

Dated at Woodstock, Vermont, this 15<sup>th</sup> day of September, 2003.

Mary Miles Teachout  
Hon. Mary Miles Teachout  
Presiding Judge

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