

STATE OF VERMONT

SUPERIOR COURT  
Rutland Unit

CIVIL DIVISION  
Docket No. 651-10-00 Rdev

MEGAN D. PRICE,  
Plaintiff

v.

GARRY C. BOWEN,  
Defendant

CONFORMED COPY  
VERMONT SUPERIOR COURT

FEB - 1 2012

RUTLAND

**DECISION AND JUDGMENT**

**Plaintiff's Motion for Sanctions, filed April 7, 2011**

Final judgment on the equitable claims in this case was entered on February 14, 2011. It was not appealed. It provided that Defendant was to cause certain work to be performed to remediate Plaintiff's property according to the terms of the Decision of the Master filed January 27, 2004 with two modifications set forth in the February 14, 2011 Order. The remediation work was to be completed by August 1, 2011.

On April 4, 2011, Plaintiff filed the Motion for Sanctions referenced above, claiming that no progress was being made on Defendant's obligations, and seeking sanctions of \$200 per day. At a status conference held on July 14, 2011, the motion was set for an evidentiary hearing.

At a hearing held on September 9, 2011, Defendant was held in contempt for failing to meet his obligations, and the case continued for further hearing on sanctions.

The hearing on sanctions was held on December 28, 2011. Plaintiff was present pro se, and Defendant was not present but was represented by Attorney Lamar Enzor. Plaintiff made an offer of proof that none of the work had been performed, nor had any money been paid; she had had no communication from the Defendant or his counsel; and she had checked with the Master who had received no communication from Defendant. Attorney Enzor, on behalf of Defendant, asked for more time, and questioned the authority of the Court to order Defendant to execute a mortgage pursuant to paragraph 11 of the Decision of the Master.

It is undisputed that Defendant has performed none of his obligations, and has not given the required mortgage of \$50,000 as security for performance of the work, which was one of his obligations. He has had ample opportunity to comply with the Order, even

after the finding of contempt, and has not done so. He has had full opportunity to oppose the amount of \$200 per day as the requested sanction, and to prevent the need for sanctions, as this Motion for Sanctions was filed almost four months before the completion date for the work.


At this point, it is beyond the time at which it makes sense for security to be provided for the completion of the work, as the Defendant has made no effort to do any of the work. Therefore, there is no need for the Court to address Defendant's argument that it has no authority to order a mortgage on behalf of Defendant. While the Court could instead order an attachment, what Plaintiff is seeking is the sanction of a daily fine of \$200.00. From August 1, 2011, when the work was to have been completed, to this date is 184 days, and at the rate of \$200 per day, the total is \$36,800. This appears to be a reasonable sum, and below the amount of security agreed upon by the parties. It would impose undue hardship on the Plaintiff to have to produce cost estimates for each of the items of work that Defendant has failed to perform.

Therefore, the Court grants Plaintiff's request for sanctions in the amount of \$200 per day.

#### **ORDER**

Judgment is entered for Plaintiff in the amount of \$36,800.00. Interest shall accrue from this date forward at the legal rate of 12% per annum.

Dated at Rutland this 1st day of February, 2011.

  
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Hon. Mary Miles Teachout  
Superior Judge