



Town of Pawlet v. Daniel Banyai

ENTRY REGARDING MOTION

Title: Motion for costs and attorney's fees
Filer: Plaintiff, Town of Pawlet
Filed Date: April 24, 2024

No response filed.

The motion is GRANTED.

The Town of Pawlet ("Town") asks this Court to order Daniel Banyai ("Respondent") to pay costs and attorney's fees pursuant to Rule 54(d) of the Vermont Rules of Civil Procedure. The Town further requests that all awarded costs become a lien on Respondent's property located at 541 Briar Hill Road in Pawlet, Vermont (the "Property"). In a February 8, 2023, Entry Order, this Court deferred ruling on the issue of attorney fees until the Property was brought into compliance.¹ Town of Pawlet v. Daniel Banyai, No. 105-9-19 Vtec, slip op. at 27 (Vt. Super. Ct. Env'tl. Div. Feb. 8, 2023) (Durkin, J.) (the "February 8 Order"). The Town has since completed the work necessary to bring the Property into compliance with this Court's prior orders and now seeks reimbursement for those costs and expenses related to this protracted litigation. The pending motion addresses both attorney's fees and litigation costs as well as the reimbursement of costs associated with bringing the Property into compliance upon Respondent's failure to do so himself.

¹ The February 8 Entry Order also imposed a purgeable daily fine of \$200.00 starting from January 14, 2022, and running until all zoning violations occurring on the Property were cured. Later, in July 2023, this Court issued an Order enforcing the February 8 Entry Order and making all fines non-purgeable. Town of Pawlet v. Daniel Banyai, No. 105-9-19 Vtec, slip op. at 5 (Vt. Super. Ct. Env'tl. Div. July 6, 2023) (Durkin, J.). This Order was affirmed by the Vermont Supreme Court on March 1, 2024. Town of Pawlet v. Daniel Banyai, 2024 VT 13. At this time, the Court has not received a request to issue additional fines pursuant to the February and July Orders. Rather, the present motion only seeks reimbursement for costs unrelated to those daily, non-purgeable fines and does not preclude the Town from seeking to enforce other penalties contemplated by other Court orders.

“Vermont follows the ‘American Rule’ with respect to attorneys’ fees. . . and generally does not award fees absent statutory authority or a contractual obligation.” Vermont Women’s Health Center, 159 Vt. 141, 151 (1992) (internal citation omitted). However, there are certain exceptions to the rule, including where a litigant “was forced to enter a second round of litigation to secure a clearly defined right that should have been granted without judicial intervention.” Town of Pawlet v. Daniel Banyai, No. 105-9-19 Vtec at 26 (Feb. 8, 2023) (citation omitted). Courts may use their equity power to award attorney fees as the needs of justice dictate, but this power should only be invoked in exceptional cases and for dominating reasons of justice. DJ Painting, Inc. v. Baraw Enters. Inc., 172 Vt. 239, 246 (2001) (citations omitted).

We conclude that the facts of this case are so exceptional as to warrant an award of attorney’s fees. In reaching this conclusion, we need not recount the lengthy procedural history of this case which is well documented in previous orders by this Court and the Vermont Supreme Court. Throughout the course of these proceedings, Respondent has engaged in a pattern of non-compliance and disregard for the rule of law, resulting in several years of post-judgment proceedings and culminating with his arrest on March 20, 2024. This behavior has resulted in significant costs to the Town, which are supported by the uncontroverted evidence provided as exhibits to the Town’s motion.

Specifically, the Town seeks reimbursement for attorney’s fees and costs in handling post-appeal enforcement against Respondent, which occurred from January 2022, when the Vermont Supreme Court affirmed this Court’s conclusion that there were zoning violations at the Property, through April 2024, when the Property was finally brought into compliance with the applicable zoning regulations. In support of its motion, the Town offers a comprehensive breakdown of all its legal and non-legal expenses. With respect to attorney’s fees, the Town’s attorney provided an affidavit which included billing statements with detailed descriptions of work completed related to the case, time spent on each task, and the costs associated with each task. The affidavit also included a list of the various filing fees, subpoena fees, mailing fees, process serving fees, and police presence fees incurred, all of which are documented in a separate exhibit to the affidavit. In total, the Town has accrued \$48,124.50 in attorney’s fees and \$2,457.50 for costs in handling its post-appeal enforcement. Respondent has not timely objected to any aspect of these fees and costs. Based on the evidence presented, we conclude that these attorney’s fees and costs are reasonable.

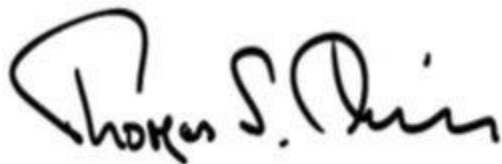
In addition to litigation related expenses, the Town has spent \$12,019.39 for costs to deconstruct and remove the structures on Respondent’s property. These expenses are documented

in invoices from Markowski Excavating, Inc. and Ritchie's Container Rental as required by this Court's previous July 6, 2023, Order. See Town of Pawlet v. Daniel Banyai, No. 105-9-19 Vtec, slip op. at 5 (Vt. Super. Ct. Envtl. Div. July 6, 2023) (Durkin, J.) (explaining that "[t]he Town must save receipts and a record of any labor or other cost incurred in connection with its efforts to complete the work required to bring the Property into compliance . . . and will be permitted to recuperate those costs from Respondent upon completion of the work."). Again, Respondent has not timely objected to any aspect of these fees and costs. Reimbursement for these expenses was specifically authorized in the Court's July 6, 2023, Order, which was subsequently affirmed by the Vermont Supreme Court. Id.; Town of Pawlet v. Daniel Banyai, 2024 VT 13, ¶ 12. For all these reasons, we conclude that the costs to deconstruct and remove the unpermitted structures are reasonable and reimbursable.

Conclusion

For the forgoing reasons, the Court **GRANTS** the Town's motion for reimbursement of its costs and attorney's fees. We hereby **ORDER** Respondent to pay the costs of deconstruction and of bringing the Property into compliance in the amount of \$12,019.39. We further **ORDER** Respondent to pay the costs of litigation related fees in the amount of \$2,457.50 and attorney's fees in the amount of \$48,124.50. Such costs shall constitute a lien upon the Property in the total amount of **\$62,601.39** upon filing of a certified copy of this Decision in the Town of Pawlet Land Records.

Electronically signed at Brattleboro, Vermont on Friday, May 24, 2024, pursuant to V.R.E.F. 9(d).

A handwritten signature in black ink that reads "Thomas S. Durkin". The signature is written in a cursive, slightly slanted style.

Thomas S. Durkin, Superior Judge
Superior Court, Environmental Division