

VERMONT SUPERIOR COURT
Washington Unit
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www.vermontjudiciary.org



CIVIL DIVISION
Case No. 24-CV-01179

Jenny Evjen, Trustee of the 1994 Jenny V. Van Esen Irrevocable Trust v. Theresa Commo

ENTRY REGARDING MOTION

Title: Motion to Stay (Motion: 9)
Filer: Theresa Commo
Filed Date: July 27, 2026

The motion is DENIED.

On August 6, 2026, the Court conducted a hearing regarding Defendant Theresa Commo's second motion for an emergency stay. Defendant Commo seeks more time to move out of the property at 295 Duxfarm Estates in Duxbury, Vermont. Defendant's request is, effectively, for an indefinite extension due to difficulties she has had trying to secure new housing, and to address the removal of her personal property from the land. Ms. Commo also expressed a desire to purchase the land and to seek further mediation.

The present action is an eviction proceeding concerning land. Defendant Commo entered into a long-term lease in 2002 to rent the land at 295 Duxfarm Estates for 60 years. Under the terms of the lease, Ms. Commo was entitled to put a modular or manufactured home on the property. In exchange for use and possession of the land, Ms. Commo was obligated to pay monthly rent and all property taxes associated with the property. Ms. Commo paid her monthly rent, but she fell into arrears on her property taxes around 2016. While Plaintiff Jenny Evjen tried to work with Defendant on these arrears and Defendant acknowledged the arrears in 2021, Defendant was never able to bring herself current with these amounts. In January 2024, Plaintiff terminated Defendant's lease in accordance with the terms of the lease, and in March 2024 initiated the present ejectment action.

In December 2025, the Court conducted a bench trial. At that trial, Plaintiff put forward witnesses and evidence in support of her claim. Defendant testified for herself, but she offered no documentary evidence in support of her affirmative defenses or counterclaims. In February 2026, the Court issued findings and conclusions that found Defendant had breached the terms of

her lease and that Plaintiff was entitled to judgment for both the unpaid taxes and costs, as well as possession. The Court found no basis for Defendant's counterclaims and granted judgment to Plaintiff. Due to the long-term nature of the lease, the substantial amount of personal property, and the fact that the building on the property belonged to Ms. Commo, the court scheduled a subsequent 90-minute hearing to take testimony about what dates and terms should control Ms. Commo's timeline for removing herself and her personal property from the land.

At the April 16, 2026 hearing on these issues, Plaintiff put forward proposed dates ranging from 60 to 120 days. Defendant did not propose any timelines and stated that she was busy making renovations and improvements to the modular house. She also expressed surprise that the Court would not be ordering Plaintiff to sell the property to her. There was no indication that Ms. Commo had begun the process of removing the modular home, selling it to a third party, or otherwise acting toward removing herself and her property from the premises.

In the absence of any plan from Ms. Commo, the Court issued an Order on April 17, 2026 that gave Ms. Commo 60 days to remove herself from the property and gave her until August 18, 2026 to remove her personal property from the land. If such property was not removed by August 18th, then the Court ruled that it would be deemed, short of any agreement between the parties, abandoned.

On June 15, 2026, Ms. Commo filed a motion to stay the writ of possession due to hardships and citing her efforts to remove herself and her property. The Court granted a temporary stay and set the matter for a hearing on July 13, 2026. Ms. Commo did not appear at this hearing, and the Court lifted the stay and denied the motion. Plaintiff requested a new writ of possession and agreed to move the date for the writ of possession to August 18, 2026 to coincide with the end of her right to remove personal property.

Ms. Commo filed the second and current motion for emergency relief on July 27, 2026. She apologized for missing the July 13th hearing. Again, Ms. Commo did not offer a plan or a timeline regarding her removal from the property. The Court initially denied the request for a stay, but it set the matter for hearing on August 6, 2026 to give Ms. Commo an opportunity to discuss her motion further.

At this hearing, Ms. Commo stated that she had been trying to secure alternative housing. She admitted that she had no plan to remove the modular home, and she sought to cast blame for her situation on Plaintiff. Ms. Commo indicated that she had a right of first refusal, but when

pressed about where in the lease or other documents such a right was located, she admitted that it was only something she had once talked about with Plaintiff's father and had never seen in writing.

At the hearing, Ms. Commo asked for a stay of the writ of possession, but she did not have a timeline for the length of the stay. Ms. Commo referred to the house at 295 Duxfarm Estates as her forever home and expressed the very real hardship that she is facing with her pending removal.

While the Court is sympathetic to Ms. Commo's plight, it is obligated to view Ms. Commo's request within the legal and equitable structure of the case. As to the legal issues, these have been resolved in the Court's prior orders, which have looked to the parties' lease relationship and the law of leases, tenancies, and ejectment to craft a judgment. Nothing in Ms. Commo's most recent filings or representations give ground to alter these earlier findings and conclusions or present sufficient basis pursuant to V.R.C.P. 60(b) to revisit or reopen those now final decisions.

As to the equitable consideration and remedies, the question is a narrow one. Is there an equitable basis to extend the writ of possession for Ms. Commo?

Equity is not a freewheeling grant of authority to courts to tip or re-balance the outcome of cases. *Trump v. CASA, Inc.*, 606 U.S. 831, 841 (2025). Traditionally equity "exists to secure justice where it would not be secured by the ordinary and existing processes of law." *Id.* at 842 (quoting G. Adams, *The Origin of English Equity*, 16 Colum. L. Rev. 87, 91 (1916)). While the Court has discretion to apply equitable remedies, a party seeking such must establish facts or circumstances that demonstrate the elements of such remedy. *McLaren v. Gabel*, 202 VT 8, ¶¶ 21, 25.

In this case, the Court has considered three potential equitable remedies including equitable estoppel, unjust enrichment, and injunctive relief.¹ In each case, the facts as the Court understand them do not satisfy the elements necessary to establish each remedy.

¹ Defendant while asking for equity has not specified what type of equitable relief she is seeking. Given that Defendant is self-represented, the Court has given her leeway in this respect and has examined several common theories that seem to fit the facts. Nevertheless, this leeway does not remove Defendant's obligation to bring forward facts or bases for such a claim, and it is not the responsibility of the Court to examine her situation through every possible legal lens or equitable theory. See *Zorn v. Smith*, 2011 VT 10, ¶ 22 (noting that pro se litigants are granted some leeway but are still bound by the rules and procedure of the court).

A claim of equitable estoppel has four essential elements that the party asserting the claim must establish:

[F]irst, the party to be estopped must know the facts; second, the party being estopped must intend that his conduct shall be acted upon or the acts must be such that the party asserting the estoppel has a right to believe it is so intended; third, the latter must be ignorant of the true facts; and finally, the party asserting the estoppel must rely on the conduct of the party to be estopped to his detriment.

Fisher v. Poole, 142 Vt. 162, 168 (1982). In this case, there is no evidence that Ms. Commo relied upon any conduct of Ms. Evjen. The evidence in this case is that while Ms. Evjen moved slowly to enforce the non-payment of property tax, there was never a waiver or representation that she would not seek these amounts. Since the judgment, Plaintiff has again acted slowly, but consistently, to enforce her rights under the lease, and to remove Ms. Commo from the property. There is no fact or hidden information that the Court can see that would support a forbearance of Plaintiff's legal rights to reclaim the property in a reasonable time or manner.

A claim of unjust enrichment requires a party to show that they (1) conferred a benefit or caused a benefit to be conferred on the other side; (2) that the other side accepted the benefit; and (3) that allowing the other side to retain the benefit under such circumstances that it would be inequitable without compensation. *Reed v. Zurn*, 2010 VT 14, ¶ 11 (mem.).

In this case, there is no evidence that Ms. Commo has conferred any benefits on Ms. Evjen. Ms. Commo has cited the fact that she is very likely to have to abandon her modular home for lack of resources to sell the property. Assuming for the purposes of this analysis that this is true, there is still no evidence or representation of the nature or value of this house. Specifically, there has been no evidence that this structure is a benefit to Ms. Evjen or that it increases the value of the property.

Even if the Court assumes that the house has some value, there is no evidence that Ms. Evjen has accepted the home or intends to do so. In fact, the evidence is that Ms. Evjen has moved slowly through this process and given Ms. Commo time to remove or sell the house and any personal property. Given that Ms. Commo was not taking any steps toward selling or removing the home as late as April 2026, two months after the Court's judgment, but was putting resources into renovating and improving the house, suggests that Ms. Commo's situation is not

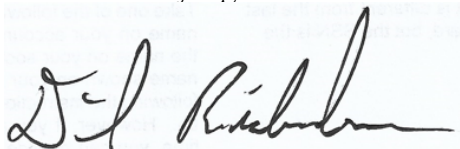
one where Ms. Evjen has manipulated or exploited a legal technicality to deprive Ms. Commo of something of value or otherwise acted in an inequitable nature.

Finally, a claim for injunctive relief requires proof that another person is invading or violating the moving party's property rights such that the court must step into the matter to order the invading party to cease to preserve the moving party's property. See *John Larkin, Inc. v. Marceau*, 2008 VT 61, ¶ 9 (finding that evidence of trespass threatening another party's property may give rise to injunctive relief). Effectively, injunctive relief is a remedy to prevent another from injuring, destroying, or taking another person's property through indirect or unlawful actions.

In this case, Ms. Commo appears to be arguing that Ms. Evjen does not have the right to take her personal property, including her modular house, and that the Court should enjoin Ms. Evjen from taking possession of Ms. Commo's property after August 18th. This argument, however, is missing the element of unlawful action that is a necessary basis for the injunctive relief sought. To the extent that Ms. Evjen does take possession or dispose of Ms. Commo's property after August 18th, a fact that has not been established, she will be doing so because Ms. Commo has abandoned the property by not removing it before the deadlines imposed several months ago in this matter. See 9 V.S.A. § 4462(d) ("Any personal property remaining in a dwelling unit or leased premises after the tenant has vacated may be disposed of by the landlord without notice or liability . . ."). As such, the Court cannot at this time rule that Ms. Commo is entitled to injunctive relief as there is no evidence that Ms. Evjen has acted in an unlawful or improper manner against Ms. Commo's property.

CONCLUSION

While the Court has found no grounds for an equitable remedy, the Court would encourage Ms. Commo, to the extent possible, to develop a reasonable and focused plan for removing her personal property and to communicate with counsel for Plaintiff about any details or developments. For the present purposes, Defendant's motion for emergency relief is **Denied**.
Electronically signed on 8/7/2026 4:32 PM pursuant to V.R.E.F. 9(d)



Daniel Richardson
Superior Court Judge