Vermont Superior Court
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Addison Unit

VERMONT SUPERIOR COURT
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CIVIL DIVISION
Case No. 72-4-20 Ancv

Aerie Point Holdings, LLC vs. Vorsteveld Farm, LLC

DECISION ON MOTION

Defendant's "Opposition to Notice of Property Inspection" filed April 27, 2025 was treated by the court as a Motion to preclude discovery by Plaintiff in the form of a property inspection.

The court will soon be holding a continued hearing on the Defendant Farm's Motion to Demonstrate Compliance with the August 15, 2022 injunctive Judgment in the case. Defendant was held in contempt on two occasions[1] and in order to avoid sanctions, has the burden to show compliance with the Injunction by clear and convincing evidence. See Decision of May 1, 2025. At the time of the first phase of the hearing in April of 2025, the Farm showed initial compliance based on a limited period of time, but in light of all the evidence presented in the case, the court could not conclude that the required standard of clear and convincing evidence of compliance had been met as to an injunction designed to be permanent. The hearing was continued to see if Defendant's system would be effective over time to meet the required standard of clear and convincing evidence. Specifically, the issue is whether the Farm's action of capping the 18 ends of 113 miles of tile drains laid out over 250 acres of farm fields will be sufficient to prevent the caps on the ends from failing or blowouts from occurring at sites along the tile lines in the field, resulting in water flowing to Plaintiff's land in violation of the Injunction.

In preparation for the continued hearing, Plaintiff provided a Notice of Property Inspection pursuant to V.R.C.P. Rule 34, seeking to have its expert inspect the Farm's tiled farmland to obtain information about the effectiveness of the Farm's capping solution. The Farm opposes such an inspection in an Opposition that the court has treated as a Motion to preclude the inspection. Plaintiff filed a response, and Defendant has filed a reply.

Defendant argues that post judgment discovery is allowable in relation to satisfaction of money judgments, and that it has paid the monetary aspects of the judgment in this case, so no further discovery should be allowed. The current posture of this case is the Farm's pending Motion to Demonstrate Compliance with an injunction after having been found in contemp. Defendant Farm was allowed additional time before a continued evidentiary hearing to seek to

[1] January 8, 2024 and September 13, 2024.

meet the required standard of clear and convincing evidence that its solution of capping the ends of the tile drains would constitute meaningful compliance with an injunction designed to permanently limit water in the tile drain system from flowing onto Plaintiff's land. Inspection of the land would provide Plaintiff with highly relevant information on the sole issue to be addressed at the continued evidentiary hearing in which the Farm bears the burden of proof.

Defendant claims that its system of capping is effective, but it would be unfair to Plaintiff, who obtained a permanent injunction in its favor, to allow the Farm to present its evidence about conditions on its fields and preclude Plaintiff from access to obtain relevant information on that issue. Rule 34 is designed to provide an opposing party access to inspect conditions on land when a case calls for decision-making by the court on an issue requiring evidence about conditions on the land. Plaintiff is entitled to the discovery it seeks in order to be able to evaluate and respond to the Farm's evidence.

The attorneys shall confer to establish a date for the inspection, and notify the court by May 20, 2026 of the date that such an inspection will take place.

For the reasons set forth above, the 'Motion' to Preclude a Property Inspection is denied.

Electronically signed May 13, 2026 pursuant to V.R.E.F. 9 (d).

Mary Miles Teachout
Superior Judge (Ret.), Specially Assigned