Vermont Superior Court
Filed 08/13/26
Addison Unit

VERMONT SUPERIOR COURT
Addison Unit
7 Mahady Court
Middlebury VT 05753
802-388-7741
www.vermontjudiciary.org

CIVIL DIVISION
Case No. 72-4-20 Ancv

Aerie Point Holdings, LLC vs. Vorsteveld Farm, LLC

ENTRY REGARDING MOTION

Title: Motion to Fix Amount of Attorney's Fees (Motion: 55)
Filer: Merrill E. Bent
Filed Date: July 13, 2026

The motion is GRANTED.

Plaintiff incurred attorneys' fees, costs, and expert expenses in a fourth round of litigation resulting from Defendant's contempt with respect to compliance with a court Injunction. The hearing held in June 2026 was necessary because at the 2025 hearing on Defendant's Motion to Determine Compliance, Defendant failed to meet the required burden of proof of clear and convincing evidence. Rather than denying the motion altogether, given that steps toward compliance had been taken but with uncertain effect, the court provided a further opportunity to prove compliance to the necessary standard at a continued hearing that was held in 2026. As a result, Plaintiff incurred additional expenses.

Attorneys' fees are justified when a party incurs litigation expenses to protect a right previously obtained and is forced to endure additional rounds of litigation. *Appeal of Gadhue,* 149 Vt 322, 330 (1987); *Agency of Nat. Res. V. Lyndonville Savings Bank,* 174 Vt. 498 (2002) (mem.); *Sutton v. Purzycki*, 2022 VT 56, ¶ 63. Defendant argues that the necessity of a second hearing on the Motion to Determine Compliance was due to "the Court's own desire" and should not be attributable to Defendant, but in fact the hearing was necessary because Defendant failed to meet the necessary burden of proof at the 2025 hearing. Rather than deny Defendant's motion, Defendant was given a second chance, but the fundamental reason for the second hearing was Defendant's own contempt plus its failure to meet its burden of proof at the 2025 hearing. As a result, Plaintiff had to incur additional litigation expenses.

Plaintiff's expenditures included the cost of an expert in agricultural soils to evaluate the impact of Defendant's underground tile drain system on water flow and drainage and the effect of its current condition on compliance with the Injunction. Physical inspection of the agricultural fields by the expert, as well as analysis and testimony, was necessary for the expert to provide relevant testimony that was pertinent to the court's decision. The cost of the expert was reasonable under the particular circumstances of this case, and would not have been necessary without Plaintiff having been forced to endure yet an additional round of litigation. It was reasonable for Plaintiff to incur expert fees.

As to the amounts:

Defendant argues that the expert fees were unreasonably high as the expert's travel to the hearing was unnecessary since he could have testified remotely. However, in-person testimony was called for, and he could not have examined the condition of the fields remotely. The cost of two site visits became necessary due to Defendant's resistance to a site visit and resulting delay. The court concludes that the expense amount requested for the expert is reasonable given the issue and its complexity as well as delay attributable to Defendant.

Defendant does not dispute the rate or amounts charged by Plaintiff's counsel except that Defendant argues that Plaintiff's counsel spent an excessive amount of time on a Motion to Continue. Plaintiff's counsel's explanation on this issue in the Response sufficiently justifies the amount of time spent. Defendant also challenges Plaintiff's counsel's work on a stipulation of facts. This work was part of trial preparation that was helpful to the court and significantly decreased the time that otherwise would have been spent both parties to prove facts with evidence at the hearing.

For the foregoing reasons, attorneys' fees are approved in the amount of $11,553.75, costs of $123.00 are approved, and litigation costs of Plaintiff's expert are approved in the amount of $8,878.85 for a total amount of $20,555.60.

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



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