VERMONT SUPERIOR COURT
Environmental Division
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Burlington, VT 05401
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Docket No. 105-9-19 Vtec

Town of Pawlet v. Daniel Banyai

Title: Respondent's Motion for Stay (Motion #25)

Filer: Robert E. Kaplan, attorney for Daniel Banyai, Respondent

Filed Date: June 15, 2023

Response in Opposition filed on June 19, 2023, by Merrill Bent, attorney for the Town of Pawlett

Reply in Support of Respondent's Motion for Stay, filed on July 3, 2023, by Attorney Robert E. Kaplan.

The motion is DENIED.

The matter before the Court began in September 2019 as a municipal enforcement action. That underlying matter giving rise to the action has long since been decided and affirmed. See Town of Pawlet v. Banyai, No. 105-9-19 Vtec, Decision on Merits slip op. at 5–11 (Vt. Super. Ct. Envtl. Div. Mar. 5, 2021); *aff'd* Town of Pawlet v. Banyai, 2022 VT 4.

Presently before the Court is a Motion for a Stay filed by Daniel Banyai ("Respondent") related to post-judgment contempt fines and sanctions. In these proceedings, Attorney Merrill Bent represents the Town of Pawlet ("Town"), and Attorney Robert Kaplan represents Respondent.

Respondent requests that this Court stay any action on the Town's request to enforce post-judgment contempt sanctions and deem fines due, most notably the ordering of Respondent's imprisonment pending the remediation of zoning violations at his property, as fully set forth in Town of Pawlet v. Banyai, No. 105-9-19 Vtec (Vt. Super. Ct. Envtl. Div. Feb. 9, 2023) (Durkin, J.) and as slightly amended in Town of Pawlet v. Banyai, No. 105-9-19 Vtec (Vt. Super. Ct. Envtl. Div. Mar. 24, 2023) (Durkin, J.) pending disposition of the matter entitled Daniel Banyai v.

Town of Pawlet, Judge Thomas S. Durkin, and John and Jane Doe 1 through 20, whose identities are unknown at present, Case No. 23-cv-000101, in the United States District Court, District of Vermont (hereinafter, the "Federal Action"). Respondent has not met his burden of establishing that a stay is proper, and, accordingly, the Court denies his motion.

Respondent's request for stay is unique in that it is not a request for a stay of a land use decision pending appeal of said decision, but rather a stay pending the resolution of the Federal Action, a separate but somewhat interrelated matter. It is well established in this Court that land use permit decisions are generally not stayed during the pendency of an appeal, but are subject to motions for a stay. V.R.E.C.P. 5(e); see 10 V.S.A. § 6086 ("Following appeal of the District Commission decision, any stay request must be filed with the Environmental Division pursuant to the provisions of chapter 220 of this title."); see also 10 V.S.A. § 8504(f)(1)(A)–(B) (enumerating the limited circumstances where a stay is automatic). Respondent points to no controlling law requiring the Court to automatically grant such relief, and the Court therefore applies the same permissive review to this case. Further, through his motion, Respondent implicitly agrees that such standards apply to his case. See Resp't's Mot. for Stay at 2–3. As such, the Court reviews the request in light of the standards typically applicable to motions to stay in this Court.

A party may move to request a stay from this Court pending appeal of the underlying decision. V.R.E.C.P. 5(e); 10 V.S.A. § 8504(f)(2). In these instances, a stay is considered "an extraordinary remedy appropriate only when the movant's right to relief is clear." In re Howard Ctr. Renovation Permit, No. 12-1-13 Vtec, slip op. at 1 (Vt. Super. Ct. Envtl. Div. Apr. 12, 2013).

To prevail on a motion to stay, "the moving party must demonstrate: (1) a strong likelihood of success on the merits; (2) irreparable injury if the stay is not granted; (3) the stay will not substantially harm other parties; and (4) the stay will serve the best interests of the public." Gilbert v. Gilbert, 163 Vt. 549, 560 (1995); see also In re Route 103 Quarry, No. 205-10-05 Vtec, slip op. at 3, (Vt. Envtl. Ct. Sept. 14, 2007) (Durkin, J.) (quoting same). When there is a possibility that a stay will harm another party, the movant "must make out a clear case of hardship or inequity in being required to go forward." Morrisville Hydroelectric Project Water Quality, No. 103-9-16 Vtec, slip op. at 3 (Vt. Super. Ct. Envtl. Div. Aug. 26, 2020) (Walsh, J.) (quoting In re Woodstock Cmty. Tr. & Hous. Vermont PRD, 2012 VT 87, ¶ 36, 192 Vt. 474). "Courts

disapprove stays . . . when a lesser measure is adequate to protect the moving party's interests." Woodstock Cmty. Tr. & Hous. Vermont PRD, 2012 VT 87, ¶ 36. "The criteria are flexible in as much as the court may consider varying strengths and weaknesses as to each in determining the necessity of a stay." White v. State, No. 14-1-21, slip op. at 1 (Vt. Super. Apr. 28, 2021). The Court addresses each criterion in turn.

First, the Court cannot find that Respondent is likely to succeed on the merits. The unique procedural circumstances of this subsequent federal proceeding make this analysis simple. Respondent has already moved for a temporary restraining order of this action and the at-issue contempt sanctions in the Federal Action and the Vermont District Court has ruled upon the motion, applying similar standards to the ones this Court is tasked with presently applying. The Vermont District Court denied Respondent's motion. As the Vermont District Court indicated in its decision on the motion for the temporary restraining order: "Plaintiff's motion for a temporary restraining order fails at the first step of the analysis; Mr. Banyai is not likely to succeed on the merits of his claim." Banyai v. Town of Pawlet, No. 2:23-CV-00101, 2023 WL 3814371, at *3 (D. Vt. June 5, 2023). As such, and given that Respondent has offered no more here than he did in the Federal Action, this Court cannot find that Respondent is likely to succeed on the merits in the Federal Action as the District Court has already issued its conclusion that success is unlikely. The Court therefore concludes that Respondent fails to meet their burden under this prong.

Further, Respondent appears to boldly assert that the Town's "issuance of NOV2 and their subsequent interpretation and enforcement of NOV2 [is] discriminatory . . . ." (Reply Memo at p. 8). The Court cannot find a factual foundation for this claim. The facts proved at trial were that Respondent forced the Town to take these reasonable actions when he ignored the Town's zoning regulations, intimidated his neighbors and Town officials, and refused to remove his unpermitted shooting training facility improvements. The Town requested that he do so well before issuing NOV1 or NOV2 in the pre-NOV warnings it issued.

Respondent leaves the Court no means for finding how the Town may have discriminated against him. At best, Respondent relies on a decision of the District Commission (i.e., not the Town of Pawlet), to issue an Act 250 permit (i.e., not a zoning permit) after the fact and with minimal fines. Respondent is not incorrect that Towns and the District Commission sometimes

issue after-the-fact permits for otherwise approvable projects. See, e.g., Nakatomi Plaza CU/Site Plan Application, No. 21-ENV-115, slip op. at 19 (Vt. Super. Ct. Envtl. Div. Jan. 3, 2023) (Walsh, J.) (affirming the Town of Richmond's issuance of an as-built permit for the enclosure of a patio area at a bar). However, Respondent fails to similarly direct the Court to any of the occurrences where towns have sought enforcement of its bylaws, with the result being an order that applicants tear down structures built without a permit. See, e.g., In re Wood NOV & Permit Applications, No. 138-8-10 Vtec, slip op. at 20–23 (Vt. Super. Ct. Envtl. Div. Mar. 27, 2012) (Durkin, J.) (coordinated with Town of Hartford v. Wood, No. 1-1-11 Vtec) (ordering Respondent/Applicant to "remove the retaining wall located on the Diner and Club Parcels, and all other unauthorized improvements on these Parcels, either themselves or by hiring a qualified third-party contractor to do so.").

That the Town here sought to take reasonable steps to enforce its zoning regulations is not evidence of discrimination, but evidence of dutiful enforcement of its duly adopted bylaws. We see no evidence here that the Town discriminated against Respondent. Indeed, this zoning enforcement proceeding is only made unique by Respondent's repeated unreasonable responses to the Town's efforts to convince him to comply with duly adopted municipal land use regulations. It is not the project that has resulted in this enforcement outcome, but rather the actions and inactions of Respondent.

Second, with regard to the risk of irreparable injury, the Court finds the prong neutral. Respondent alleges constitutional violations in the Federal Action. Such an injury would constitute irreparable harm if he succeeded on the merits of his claim. See Jolly v. Coughlin, 76 F.3d 468, 482 (2d Cir. 1992) (citing Covino v. Patrissi, 967 F.2d 73 (2d Cir. 1992) ("[I]t is the alleged violation of a constitutional right that triggers a finding of irreparable harm.").[1] Thus, Respondent has demonstrated a risk of irreparable injury.[2] However, because the Court—and the Vermont

[1] The Court flags, however, that the Second Circuit did not rule that an alleged violation of constitutional rights makes a substantial likelihood of success on the merits unnecessary, as misquoted by Respondent. See Covino, 967 F.2d at 77–80 (finding a constitutional violation alleged, but ultimately affirming the denial of the preliminary injunction because its proponent was unlikely to succeed on the merits).

[2] We note, however, that we find Respondent's argument that the Town failed to address his constitutional claims particularly unpersuasive. Respondent never raised his constitutional claims until well after these zoning enforcement proceedings were completed and affirmed by the Vermont Supreme Court. Thus, his right to raise

District Court—finds that he is unlikely to succeed on the merits, on balance this prong carries neutral weight.

Third, the Court cannot find that Respondent has demonstrated that the stay will not substantially harm other parties. Respondent argues that a stay would minimize harm to the Town, and the other Federal Action defendants, because it would guard against further violations of Respondent's constitutional rights and limit the Town's, the Judge's, and the John and Jane Does' liability in the Federal Action.[3] Again, this argument is predicated on prevailing on the merits of the Federal Action, which the Court cannot conclude is likely to occur. As such, as argued by Respondent, this prong is neutral.

Further, the Court disagrees with Respondent's assertion that a stay would be protective of other parties. The Town has an interest in ensuring compliance with its zoning regulations. If the Court were to grant a stay, compliance with the Town's zoning regulations would be delayed even further. As noted, this enforcement proceeding has been on-going since 2019, with final disposition before this Court being rendered March 5, 2021 and affirmed by the Vermont Supreme Court on January 14, 2022. See Town of Pawlet v. Banyai, No. 105-9-19 Vtec, Decision on Merits slip op. at 5–11 (Vt. Super. Ct. Envtl. Div. Mar. 5, 2021); *aff'd* Town of Pawlet v. Banyai, 2022 VT 4. Staying the proceedings until final disposition in the Federal Action could delay the proceedings much further, potentially into winter months, when the Town and/or Respondent's agents and contractors would be delayed in bringing the property into compliance through the winter and proceeding mud season. A stay would further extend the already years-long period in which Respondent's property has been in violation of the Town's zoning ordinances. As such, the Court concludes a stay would substantially harm the Town by prolonging compliance by additional months—possibly years—while increasing time and costs associated with seeking compliance. As such, the Court cannot find that the stay would not harm other parties.

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those claims in our zoning enforcement proceeding was foreclosed by his own inaction. 24 V.S.A. § 4472; Hinsdale v. Vill. of Essex Junction, 153 Vt. 618, 627 (1990).

[3] The Court notes that it is not the parties to the Federal Action that must be the focus of our analysis, but rather the potential for harm to parties to the present state zoning enforcement action, and other non-parties, that is relevant to Respondent's pending motion for stay of this municipal action. However, because many of the parties overlap, the Court considers Respondent's argument as it relates to the Town.

In so finding harm to the Town, the burden to Respondent becomes one of demonstrating "a clear case of hardship or inequity in being required to go forward." Id. While Respondent appropriately cites the rule, Respondent did not produce evidence or an argument demonstrating a clear case of hardship or inequity beyond the alleged constitutional violations. Again, as noted above, while such constitutional violations would demonstrate such a hardship, on balance with the first prong and the conclusion that Respondent is unlikely to succeed on the merits of the Federal Action, the Court finds that at best, this prong is neutral in the analysis, if not weighing in favor of denying the stay.

Fourth, the Court cannot find that Respondent has demonstrated that granting a stay will serve the best interests of the public. At best, Respondent argues that stays generally serve the public interest because it is always in the public interest to prevent the violation of a constitutional right. The Legislature, however, did not make stays automatic or the general rule when parties allege constitutional violations, but rather the extraordinary remedy in unique and specific circumstances. See V.R.E.C.P. 5(e); 10 V.S.A. § 8504(f)(1)(A)–(B); Howard Ctr. Renovation Permit, No. 12-1-13 Vtec at 1 (Apr. 12, 2013).

Moreover, the Court concludes that granting the requested stay would not serve the public's best interests. If the Court were to grant the stay, the Town would likely continue to suffer substantial harm from the delayed compliance with its zoning regulations, and the stay would provide Respondent an incentive to delay further. "Such an unfortunate outcome would be in degradation of several public interests, not the least of which is the fair and efficient adjudication of land use disputes." Route 103 Quarry, No. 205-10-05 Vtec at 6 (Sept. 14, 2007). As such, the Court finds that this factor weighs in favor of denying Respondent's request for a stay.

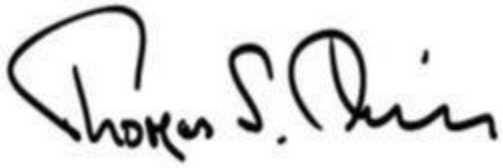
CONCLUSION

For the foregoing reasons, we must **DENY** Respondent's Motion for Stay. In weighing the four prongs—i.e., "(1) a strong likelihood of success on the merits; (2) irreparable injury if the stay is not granted; (3) the stay will not substantially harm other parties; and (4) the stay will serve the best interests of the public"—the Court finds prong one weighs heavily in favor of denial, prong four weighs in favor of denial, and prongs two and three are neutral, specifically in

light of Respondent's failure to demonstrate that he is likely to succeed on the merits of the Federal Action and the Vermont District Court's conclusion as to the same. As such, Respondent has failed to demonstrate that he is entitled to such an extraordinary remedy as a stay.

SO ORDERED.

Electronically signed at Newfane, Vermont on Thursday, July 6, 2023, pursuant to V.R.E.F. 9(d).



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