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Casella Defamation Case Moves Forward With Recent Case Filings

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Jon Swan, of Dalton, pictured here during a public hearing in July 2019 in Dalton on a proposal for temporary emergency zoning, is counter-suing and seeking attorney's fees from Casella Waste Systems in the defamation lawsuit that Casella filed against him in April 2020. (File photo by Robert Blechl)

Now in its third year, the defamation lawsuit filed by Casella Waste Systems against a Dalton resident remains active, with recent motions totaling hundreds of pages as the defendant asks the court to dismiss the case for a lack of actionable claims and Casella maintains that 10 of the man's statements constitute defamation as defined under law.

Before Merrimack Superior Court, according to documents reviewed Thursday, is a motion for summary judgment filed by Jon Swan, founder of Save Forest Lake and a vocal opponent of Casella's new commercial landfill proposed near Forest Lake in Dalton, who argues his statements are based in fact and Casella is using the legal system to try to silence him.

In an objection to Swan's motion to dismiss, Casella, which brought the lawsuit against Swan and SFL in April 2020, argues that Swan's statements on various social media platforms were made with "actual malice" and "material facts remain in dispute to preclude summary judgment."

In August 2020, the court dismissed the majority of Casella's defamation claims, but denied a motion by Swan to dismiss them all on the grounds that the 10 statements at issue could be defamatory if Casella can prove that they are false.

In Casella's 38-page objection filed on July 8, Casella attorneys Bryan Gould, Cooley Arroyo, and Morgan Tanafon, of the Cleveland Waters and Bass law firm, argue that Swan is trying to damage Casella's reputation in New Hampshire to prevent the development of its planned landfill and is trying to accomplish it with statements he is presenting as facts and not opinion.

"While this is ostensibly a part of a prolonged campaign to resist the development of a new landfill in Dalton, New Hampshire, the discourse has crossed the line from impassioned advocacy to harmful defamation," they argue.

Among the statements in contention, they said that Swan has accused Casella of scamming elderly residents, polluting multiple rivers, packing the Bethlehem Planning Board, dumping leachate into the Black River, and weaponizing the legal system by causing Vanessa Cardillo, the former girlfriend of Dalton resident Douglas Ingerson Jr., who is the owner of the 1,900 acres that Casella has an option to purchase, to take out a restraining order against Swan in June 2021, on the day before town meeting and the vote to extend emergency temporary zoning.

The standard of defamation, argue the company's attorneys, requires a plaintiff to show that a defendant failed to exercise reasonable care in publishing a false statement of fact about the plaintiff to a third party and with a reckless disregard of the truth.

On April 14, Swan, who is represented by attorney Jeremy Eggleton, is seeking summary judgment under New Hampshire RSA 491:8-a, which states such judgment shall be rendered if the pleadings, depositions, responses to interrogatories, and affidavits show that there is no genuine issue as to any material fact.

Eggleton said Casella is arguing that “a handful of statements [Swan and SFL] have made in the course of thousands of statements over years of public opposition ... are defamatory” and Casella is legally a public figure and public figures bringing defamation cases “bear an elevated burden for proving defamation.”

To prevail on defamation claims, a public figure “must show that an allegedly defamatory statement was a false assertion of fact, not opinion, and that ‘the statement was made with actual malice — that is, with knowledge that it was false or with a reckless disregard of whether it was false or not,’” wrote Eggleton.

“The Defendants merely being wrong is not enough,” argues Eggleton. “In this case, every statement alleged to be defamatory is protected by the Constitution as opinion, conjecture, surmise, or comment based on public or described facts.”

Swan and Eggleton also said that Casella “has clearly filed a SLAPP suit, or strategic lawsuit against public participation,” in an effort to chill debate on the landfill issue.

Attorneys for Casella, addressing the SLAPP claim, said “this litigation is not a meaningless political exercise” and New Hampshire does not have anti-SLAPP legislation and there is no statutory prohibition on litigation against an advocate in matters of public interest.

Eggleton and Swan argue that Casella “has thrust itself into the forefront of a particular, and heated, public controversy ... Indeed, as the applicant for the project and as operator of another landfill in nearby Bethlehem, [the company] created the public controversy itself.”

Swan seeks from the court summary judgment to dismiss all remaining claims in the case and to order Casella to pay all of his legal fees to date.

The recent round of case filings began in early April, following no motions filed in the first three months of the year.

As of Thursday, no upcoming court hearing has been scheduled in the case.

On April 5, the three attorneys for Casella filed a motion asking the court to compel Swan to fully respond to Casella's second set of requests for the production of documents.

On July 13, the most recent filing in the case, Swan filed a notice of his intent to reply.

On Thursday, Swan said to date he has spent \$60,000 in legal fees fighting Casella's defamation lawsuit and spent about \$11,000 fighting the restraining order at Coos Superior Court.

Following a court hearing several weeks after the protective order against Swan was taken out, the judge dismissed it, concluding it had no basis.

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