

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

Case No. 217-2023-CV-00285

Casella Waste Systems, Inc.

v.

Jon Swan

**SWAN'S OBJECTION TO CASELLA'S MOTION FOR JUDGMENT
NOTWITHSTANDING THE VERDICT**

Jon Swan objects to Casella's Motion for Judgment Notwithstanding the Verdict ("JNOV") (the "Motion") as follows:

1. Casella correctly identifies the extremely high burden it faces in challenging the adverse jury verdict in this case. *See Motion* at 1 (citing and quoting *Boynton v. Figueroa*, 154 N.H. 592, 602 (2006) (JNOV is required when "the sole reasonable inference that may be drawn from the evidence, which must be viewed in the light most favorable to the nonmoving party, is so overwhelmingly in favor of the moving party that no contrary verdict could stand.")).

2. In its Motion, Casella sketches out an alternative view of what the evidence allegedly showed, or could have shown. *See Motion* at Paras. 4, 5. In fact, it is certainly conceivable that some jury *could have concluded*, from the testimony of Lucy Golden, that the fact of there being a settlement agreement was an existing public assumption that somehow excused Casella's later disclosures.¹ But this jury also heard and read evidence from Lucy Golden, and

¹ Although by this logic, then Mr. Swan's statements also would be subject to the same analysis: everyone knows that Casella's landfills leak PFAS, PFOA, 1,4-dioxane, barium, arsenic and other harmful chemicals into the ground water, so how could Mr. Swan be breaching the Settlement Agreement by saying such truthful things? To be clear, this is a logic that Casella rejected and fought very hard to implement—with the support of the Court—at the trial in this matter through its evidentiary objections and motions in limine. Therefore, what is good for the goose is good for the gander—it matters not whether the community made reasonable assumptions about whether a settlement agreement existed, or not; it matters only whether Casella disclosed the existence of the Settlement Agreement or its terms.

Defendant's Exhibit B, that the Caledonian Record newspaper article never mentioned any settlement, nor any settlement agreement, nor any confidentiality provision. Weighing all the evidence in its totality, *this* reasonable jury concluded that Casella disclosed the existence and terms of the Settlement Agreement and thereby breached the Settlement Agreement. Casella's assessment of the evidence is nothing more than one possible alternative inference that the jury could have drawn from the evidence. By definition, this fails to meet the high bar for judgment notwithstanding the verdict. *Akwa Vista LLC v. NRT, Inc.*, 160 N.H. 594, 598 (2010) ("If the evidence adduced at trial is conflicting, or if several reasonable inferences may be drawn, the court *must deny the motion.*")(emphasis added).

3. Casella also falls back on public policy, arguing that his position would require a sealed lawsuit contrary to New Hampshire's general principles of open proceedings and N.H. Super. Ct. R. 13-B(a)(1).² But Casella did not have to seal the entire legal action. It only needed to craft its complaint in a manner that did not disclose the existence or terms of the Settlement Agreement, which it clearly, based on the evidence, knew how to do. Furthermore, Mr. Swan's speech restrictions in the Settlement Agreement were also arguably contrary to the public policy of free speech. As Casella repeatedly argued in this matter, those restrictions were willingly assumed, for consideration. Casella cannot escape the trap of its own making. It was bound by its own promise not to disclose the "existence or terms" of the Settlement Agreement, and a jury heard the evidence and concluded it did just that.

4. Regarding the disclosures to Mr. Leonard by Casella's Rebecca Metcalf, Casella again describes its preferred reading of the testimony, or the cherry-picked portions of Mr. Leonard's testimony that were contradictory. Contrary to Casella's argument at paragraph 10

² An argument Casella never made prior to trial, thus waiving it after the verdict.

that “[Mr. Leonard] did not unequivocally attribute the ‘there’s an NDA’ to Ms. Metcalf[,]” he most assuredly did. In some parts of his testimony he agreed he might have made some assumptions; but in other parts of his testimony, he confirmed that Rebecca Metcalf used the specific words, “I can’t talk about it, there’s a non-disclosure agreement.” It is the jury’s function to weigh any alleged contradiction in Mr. Leonard’s testimony, particularly after Casella chose *not* to put Ms. Metcalf on the stand to rebut the testimony of Mr. Leonard. *Boynton v. Figueroa*, 154 N.H. at 601. The jury heard sound cross-examination from Casella’s counsel and argument from Casella at closing about why it should agree with Casella about what Mr. Leonard’s testimony meant. But the jury also heard that Casella’s own lawyers wrote in an email that “I can’t talk about it” would be a violation of the Settlement Agreement. Exhibit A. Evidently, the jury held Casella to its own standards. That was within its fact-finding discretion.

5. Regarding Casella’s argument that the jury’s sole reasonable inference from Casella’s Exhibit 1 (a Facebook post showing Mr. Swan and the undersigned at Orr & Reno and attaching a link to a news story about the end of the first Casella lawsuit against Mr. Swan) must be that it breached the covenant of good faith and fair dealing, Casella made that argument cogently for the jury and the jury simply did not agree. Many inferences could be made about what Mr. Swan was communicating in that internet post. He testified that he was relieved, and indeed, the post showed him and the undersigned smiling broadly about the conclusion of a financially draining, emotionally taxing, and distracting litigation. As to the attached newspaper article and headline, copied directly into the post, the jury could—and seemingly did—infer that this was Mr. Swan disclosing something he was not barred from disclosing by the Settlement Agreement, without bad faith.

6. Even assuming that the Plaintiff posits a potentially reasonable alternative outcome (which is a leap of faith), the evidence in this matter was rich and could have led to a variety of inferences. Ultimately the jury did not agree with Casella. That is not sufficient to grant a Motion for JNOV. For the reasons set forth in this Objection, the Court should deny Casella's Motion for JNOV.

Respectfully submitted,

JON SWAN

By his Attorneys:

ORR & RENO, P.A.

Dated: May 26, 2026

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing was forwarded, this day, to all counsel via the Court's electronic file and serve system.

/s/ Jeremy D. Eggleton
Jeremy D. Eggleton