

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS

SUPERIOR COURT

Casella Waste Systems, Inc.

v.

Jon Swan & Save Forest Lake, et al.

No. 217-2020-CV-212

**PROPOSED ORDER FOR SAVE FOREST LAKE'S
MOTION FOR RECONSIDERATION AND CLARIFICATION**

Having considered Save Forest Lake's Motion for Reconsideration and Clarification, the Court finds and rules as follows:

Part I (Clarification)

Save Forest Lake has requested that the Court clarify its August 10, 2020 Order (the "Order") to expressly strike the non-actionable statements from the Complaint which the Court described at page 10 of the Order as being "strongly worded opinion or hyperbole." *See* Order of August 10, 2020 at 10 ("[A]ssertions such as that Casella is 'predatory,' 'greedy,' 'a bad business partner,' or even a poor 'steward of the environment,' do no reasonably imply any underlying fact that conveys a defamatory meaning."). The Court agrees that such clarity will assist the parties and the Court in focusing on the actionable material. The following statements from Plaintiff's Complaint are not actionable:

1. ¶17(a) ("Casella needs New Hampshire so it can continue its predatory exploitation of our resources for its own greed.").
2. ¶17(c) ("Plaintiff has 'poor management and bully tactics.'").
3. ¶17(e) ("Plaintiff 'is a very unscrupulous company that only cares about the bottom line and not the environment.'").

4. ¶17(f) (“We do not want this poorly run garbage profiteer and polluter anywhere near Forest Lake and we look forward to their expulsion from Bethlehem in or before 2023.”).
5. ¶17(g) (“Plaintiff is a ‘true community predator ... proven to be a bad neighbor and a corporate bully. Garbage profiteers!’”).
6. ¶18 (“Alvarez published a video and transcript in which he equated Casella with the National Socialist German Workers (or “Nazi”) Party and its chief executive officer with Adolph Hitler.”).
7. ¶21 (“YET ANOTHER example of [plaintiff’s] poor management of YET ANOTHER of their landfills in recent months.”).
8. ¶21(c) (“Engaging in a ‘very sneaky’ lot-line adjustment.”).
9. ¶24(a) (“... we know a landfill in Dalton represents billions of dollars for greedy Casella and their [sic] garbage empire.”).
10. ¶24(b) (“Casella is a ‘predatory out-of-state corporation that sought to prey on our vulnerability.’”).
11. ¶24(c) (“Plaintiff is a ‘predatory landfill company.’”).
12. ¶25 (“Alvarez considers himself ‘at war’ with plaintiff.”).
13. ¶25(a) (“If you haven’t figured out by now that I’m at [expletive] war, you’ve not been paying attention.”).
14. ¶26 (“Alvarez has expressly stated he is trying to disrupt plaintiff’s existing and future business and facilities in New Hampshire.”).
15. ¶27 (“Defendants has engaged in efforts to prevent plaintiff’s subsidiary, NCES from obtaining an expansion permit for its Bethlehem facility.”).
16. ¶28(a) (“Lets kick [plaintiff] OUT of NH!”).
17. ¶28(b) (“NCES has been a bad business partner for the North Country and an expansion for them to import more trash is not what we need. Close it down when it reaches Stage V capacity in April, 2020. NO STAGE VI EXPANSION.”).
18. ¶29(a) (portion stating “Plaintiff is a ‘corporate predator[.]’”).
19. ¶29(b) (“It is time to close the NCES landfill in Bethlehem. New Hampshire does not need Casella Waste Systems and its greedy practice of importing out of state trash in order to increase its own profitability.”).
20. ¶29(c) (“We do not need Casella and its greed. On the contrary, Casella needs NH to continue to profit from importing trash.”).
21. ¶30 (“Defendants made defamatory statements about the alleged impact that plaintiff’s proposed new facility would have in Dalton, New Hampshire and surrounding towns.”).
22. ¶31 (“Alvarez published a photoshopped view from Forest Lake depicting a landfill rising over one hundred feet above the ridgeline between the site and lake when, in fact, the proposed landfill would be screened from the lake and its surrounding homes.”).
23. ¶33 (“Alvarez published online a Letter to the Editor he submitted on July 7, 2019, in which he falsely stated Casella ‘claims to be a steward for the

environment but the reality at each of their [sic] facilities speaks to the contrary.”).

Part II (Reconsideration)

Save Forest Lake also requests that the Court reconsider the Order and find additional statements to be not actionable because they are, variously, judgments (*citing inter alia, Grey v. St. Martin’s Press*, 221 F.3d 243, 248 (1st Cir. 2000)), non-defamatory statements (*citing Boyle v. Dwyer*, 172 N.H. 548, 554 (2019)), or not “of and concerning” the Plaintiff (*citing Sturtevant v. Root*, 27 N.H. 69, 71 (1853)).

Upon reconsideration, the Court agrees that the following statements are not actionable for the reasons stated:

1. ¶23 (“[P]laintiff ships ‘millions of gallons of leachate to the Concord and Franklin [wastewater treatment facilities] despite their inability to treat it effectively before it is emptied into the Merrimack River.”) (not defamatory, not of and concerning Plaintiff, protected judgment or opinion).
2. ¶29(a) (portion asserting that Casella was trying to “influence the vote on zoning in the Town of Dalton with their blatant distortions of reality in their numerous mailers sent to voters”) (non-defamatory assertion of fact that Casella was engaged in a direct mail campaign, and a protected judgment about the content of those mailings).
3. ¶32: “Alvarez falsely stated at [a public] hearing that the proposed landfill in Dalton would release leachate that would contaminate groundwater and also affect surface water.” (protected judgment or opinion).
4. ¶34(a): “The location of the proposed landfill in Dalton has ‘high ground that drains into both Forest Lake and Alderbrook, both of which eventually drain into the Connecticut and Ammonoosuc Rivers.’” (non-defamatory).
5. ¶34(b): “Bethlehem has some of the highest property taxes in the North Country as a result of their [sic] relationship with Casella.” (non-defamatory and speculation, opinion or judgment).
6. ¶36: “[C]riminal charges should be brought forth, why on earth is a leachate truck leaving the Coventry landfill, OWNED AND OPERATED by [plaintiff], at 3AM in the morning [sic]...” (protected opinion or judgment, non-defamatory).
7. ¶39: “[Horizons Engineering] knowingly attempted to deceive the Planning Board, abutters and the public regarding an attempt by [plaintiff] to adjust

property lines ... and such activity constitutes professional malfeasance and possibly criminal conduct.” (not of and concerning Casella).

8. ¶39(a): “[Plaintiff] [us]ing the engineering company’s professional position to mask the property owner and proposed purchaser’s intent to install a large, 300 + sized piece of land carved out of a larger parcel, for a garbage landfill in a town with no zoning ordinances and skirting the abutting landowner notification process, which would include the NH Div. of Parks, is fraudulent and despite the failure of the attempt should be addressed accordingly by those responsible for licensing and permitting.” (non-defamatory facts, statements of protected judgment or opinion).
9. ¶39(b): “[T]his will surely lead to the subsequent contamination and destruction of wetlands and will constitute an environmental catastrophe which will forever alter the ecosystem over a wide area of the north country, create economic hardship for an area which relies heavily on eco-tourism dollars from out of area vacationers, negatively impact the quality of life, health and property values for so many area residents. This proposed garbage landfill surely cannot be allowed to progress, which is likely the reason for the attempted deception and subterfuge.” (speculation, opinion or judgment).

Lastly, the Court agrees that the remaining statements, contained in the Complaint at ¶¶19(a), ¶19(b), ¶20(a), ¶20(b), ¶21(a), ¶21(b), ¶22, ¶34(c), ¶35, ¶37, ¶38, ¶38(a), ¶38(b), ¶38(c), are substantially truthful statements supported by documents in the public record, documents incorporated by reference in Save Forest Lake’s social media and online advocacy platforms, or contextually supported by the statements themselves. Furthermore, these statements even if untrue could not be considered by the public as being anything other than sustained advocacy against Casella’s landfill, not an effort to defame Casella.

Plaintiff’s Complaint is therefore dismissed in its entirety.

SO ORDERED

Date: _____

_____, J.,
PRESIDING