

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS

SUPERIOR COURT

Docket No. 217-2020-CV-212

Casella Waste Systems, Inc.

v.

Jon Swan & Save Forest Lake, et al.

**MOTION FOR SUMMARY JUDGMENT**

Defendant(s) move for summary judgment. In support hereof, they incorporated by reference the contemporaneously filed Memorandum of Law, Statement of Material Facts, Affidavit of Jon Swan, and Appendix containing exhibits and publicly available documents, reports and materials. In further support hereof, they submit:

1. Plaintiff has sued the Defendants for defamation, arguing that a handful of statements they have made in the course of thousands of statements over years of public opposition to the Plaintiff's Dalton, N.H. landfill project are defamatory.

2. This is a Motion under RSA 491:8-a. "Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits filed, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone, although there is a genuine issue as to the amount of damages." *Id.* at III.

3. The Plaintiff is a public figure, at minimum for the purposes of this case. *See* Second Amended Complaint at ¶44. Public figures bear an elevated burden for proving defamation. *Thomas v. Tel. Publ'g Co.*, 155 N.H. 314, 340 (2007) *as modified on denial of reconsideration* (Aug. 29, 2007) (quoting *Pendleton v. City of Haverhill*, 156 F.3d 57, 66 (1st Cir. 1998)); *see also*, *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 345 (1974).

4. To prevail on a defamation claim, a public figure like the Plaintiff 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 reckless disregard of whether it was false or not.” *New York Times Co. v. Sullivan*, 376 U.S. 254, 269–270 (1964). The Defendants’ merely being wrong is not enough.

5. In this case, every statement alleged to be defamatory is protected by the Constitution as opinion, conjecture, surmise, or comment based upon public or described facts. *Automated Transactions, LLC v. Am. Bankers Ass'n*, 172 N.H. 528, 538 (2019); *Levin v. McPhee*, 119 F.3d 189, 197 (2nd Cir 1997); *Grey v. St. Martin's Press*, 221 F.3d 243, 248 (1st Cir. 2000); *Haynes v. Alfred A. Knopf, Inc.*, 8 F.3d 1222, 1227 (7th Cir. 1993).

6. For all of these reasons, the Defendants are entitled to summary judgment.

7. In addition, Plaintiff has clearly filed a SLAPP suit, or strategic lawsuit against public participation. *Opinion of the Justs.*, 138 N.H. 445, 448–49 (1994) (“SLAPPs seek to retaliate against political opposition, attempt to prevent future opposition and intimidate political opponents, and are employed as a strategy to win an underlying economic battle, political fight, or both.”). This lawsuit was intended to chill and silence the Defendants. The Supreme Court has recognized that such lawsuits are anathema to a fair judicial process and

noted that one remedy for such suits may be an award of attorney's fees. *Id.* at 451. Therefore, the Defendants are entitled to their attorney's fees and costs.

WHEREFORE, the Defendants request that the Court:

- A. Grant summary judgment as to all claims;
- B. Dismiss this case;
- C. Order Plaintiff to pay Defendants' legal fees to date;
- D. Grant such other and further relief as the Court deems just and equitable.

Respectfully Submitted,

SAVE FOREST LAKE & JON SWAN

By their Attorneys,

ORR & RENO, P.A.

Date: April 14, 2022

By: /s/ Jeremy D. Eggleton  
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### CERTIFICATION OF SERVICE

I, Jeremy D. Eggleton, do hereby certify that a copy of the foregoing was forwarded, this day, to counsel of record, via the Court's electronic service system.

/s/ Jeremy D. Eggleton