

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

Casella Waste Systems, Inc.

v.

Jon Swan

Docket No.: 217-2023-CV-00285

ORDER ON THE DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

The plaintiff, Casella Waste Systems, Inc. ("Casella"), brings this suit against the defendant, Jon Swan, arising out of Swan's alleged breach of the parties' settlement agreement (the "Agreement"). (Court index #1.)¹ Swan moves for summary judgment. (Court index #7.) Casella objects. (Court index #10.) The Court held a hearing on this matter on November 27, 2023. For the following reasons, Swan's motion is DENIED.

Factual Background

The Court draws the following facts from the parties' consolidated statement of material facts.² (Court index #11.)

Following litigation of a lawsuit filed in this court, Casella Waste Sys., Inc. v. Jon Swan f/k/a/ Jon Alvarez, et al., No. 217-2020-CV-00212, the parties entered into the Agreement on May 11, 2023. (Id. Def. ¶ 1.) Per the terms of the Agreement, the parties filed neither party docket markings in the prior matter. (Id. Def. ¶ 4.) The

¹ Casella has since filed an amended complaint. (Court index #13.) For the purpose of this order, the Court solely relies on Casella's initial complaint but will rely on Casella's amended complaint henceforth.

² Casella notes that Swan failed to follow Superior Court Rule 12(g)(3)(d) which requires the moving party "reply to the nonmoving party's additional statement of material facts within 20 days of filing" Although the Court will not do so in this instance, the Court can grant or deny summary judgment based solely on the parties' non-compliance with the rules. Super. Ct. R. 12(g)(8).

existence of the Agreement and its terms were confidential. (Id. Def. ¶ 2.) The Agreement contained the following confidentiality clause:

The Parties agree that the terms and existence of this Agreement shall be confidential. No Party shall disclose the terms set forth in this Agreement to any person, other than members of a Party's immediate family, legal counsel, or tax advisors, or by order of the court, and none of these persons shall disclose the terms of this Agreement.

(Id. Def. ¶ 3; Court index 2, Ex. A.)³

On May 18, 2023, the Caledonian Record newspaper published an article entitled "Casella Drops Defamation Lawsuit Against Dalton Landfill Opponent," authored by Robert Blechl. (Court index #11 Def. ¶ 7.) On May 19, 2023, Swan posted a link to the article on the @saveforestlake1 Twitter/X feed. (Id. ¶ Def. 9; Ex. B.) The post included a recitation of the article's headline, a link to the article, and tagged other accounts belonging to Swan's "allies" in his campaign against Casella. (Id. Def. ¶ 11, Ex. B.) The post also included a photograph depicting Swan and his attorney smiling and shaking hands with a "Save Forest Lake" sign. (Id. Def. ¶ 10.)

Legal Standard

A motion for summary judgment should be granted where "there is no genuine issue as to any material fact" and "the moving party is entitled to judgment as a matter of law." RSA 491:8-a, III; N.H. Ass'n of Counties v. State, 158 N.H. 285, 287-88 (2009). To defeat summary judgment, the non-moving party "must set forth specific facts showing that there is a genuine issue [of material fact] for trial." Panciocco v. Lawyers Title Ins. Corp., 147 N.H. 610, 613 (2002) (citing RSA 491:8-a, IV). A fact is material if it

³ While the Agreement is confidential and was filed with the Court under seal, (see court index #2), the parties each cite to provisions of the agreement and have not requested that the Court issue this order under seal.

affects the outcome of the litigation. See Bond v. Martineu, 164 N.H. 210, 213 (2012). Ultimately, the court must consider the evidence in “the light most favorable to the party opposing the motion, giving that party the benefit of all favorable inferences that may be reasonably drawn from the evidence.” Concord Group Ins. Cos. v. Sleeper, 135 N.H. 67, 69 (1991).

Analysis

Swan moves for summary judgment on the following two grounds: (1) there are no genuine disputes of material fact and he is entitled to judgment as a matter of law because the record demonstrates that he did not violate the Agreement and (2) he is entitled to judgment under RSA 507:15 because Casella’s suit is a frivolous action “intended to harass or intimidate the prevailing party.” Casella argues that summary judgment is not appropriate because genuine disputes of material fact preclude it and, further, Swan’s motion failed to comply with RSA 491:8-a because it was not supported by affidavit. The Court first addresses whether genuine disputes of fact preclude summary judgment on Casella’s claim that Swan breached the terms of the Agreement and violated the implied covenant of good faith and fair dealing.

“Under New Hampshire law, a breach of contract occurs when there is a failure without legal excuse to perform any promise which forms the whole or part of a contract.” Teatotaller, LLC v. Facebook, Inc., 173 N.H. 442, 447 (2020). Casella argues that in viewing all the facts together and drawing all inferences in favor of Casella, the facts support a reasonable inference that “Swan tipped off the reporter regarding the resolution of the case and published the reporter’s misleading summary of the case in a manner that violated and misrepresented the terms of the [A]greement.”

(Court index #10 at 6-7.) Swan argues that the record contains no facts where Swan disclosed the terms or existence of the Agreement.

The Court finds that genuine disputes of material fact preclude summary judgment on Casella's breach of contract claim at this time. Due to the undeveloped nature of the record—it being almost entirely based upon the complaint—the Court cannot determine the extent to which Swan may have revealed information to Blechl in violation of the Agreement, how the headline from the article was drafted on his social media post, or what a reasonable person would have understood Swan to convey in the post. Further, the Court notes that the Agreement precludes the parties from disclosing the terms of the Agreement which includes the release of claims. (See court index #2 §4.) When viewing the facts in the light most favorable to Casella, Swan's social media post appears to comment on just that, Casella's release of claims. Accordingly, Swan's motion for summary judgment on Casella's breach of contract claim is DENIED.

Turning to Casella's claim for breach of the implied covenant of good faith and fair dealing, "[i]n every agreement, there is an implied covenant that the parties will act in good faith and fairly with one another." Short v. LaPlante, 174 N.H. 384, 391 (2021). One category of implied good-faith obligations is "limitation of discretion in contractual performance." Id. This category is comparatively more narrow than the others (contract formation and termination of at-will employment agreements); "however, its broader function is to prohibit behavior inconsistent with the parties' agreed-upon common purpose and justified expectations, with common standards of decency, fairness, and reasonableness." Id. at 391-92. Among the questions New Hampshire courts use to

determine whether a party breached this covenant is “has the defendant’s exercise of discretion exceeded the limits of reasonableness?” Id. at 392.

Here, that question is: was Swan’s social media post linking to an article which contained alleged misrepresentations of the Agreement and included a picture where he is smiling with his attorney and holding a “Save Forest Lake” sign, a reasonable exercise of discretion in his performance under the Agreement? The record is devoid of any statements from Swan about his intent in posting the link or the extent to which he typed out the headline or merely linked to the article on his post. Due to the undeveloped nature of the record on these issues, the Court rules that genuine disputes of material fact preclude summary judgment. Accordingly, Swan’s motion for summary judgment on Casella’s claim for breach of good faith and fair dealing is DENIED.

Finally, the Court turns to Swan’s arguments under RSA 507:15. RSA 507:15 provides that when “it clearly appears to the court” that a contract or tort action “is frivolous or intended to harass or intimidate the prevailing party, then the court . . . may order summary judgment against the party who brought such an action” The Court determines that, at this stage, the record is insufficient to hold that Casella filed this action frivolously or with the intent to harass or intimidate Swan. This is further evidenced by Casella’s amended complaint alleging additional violations of the Agreement committed by Swan. (See court index #13 ¶¶ 12, 16.) While the Court does not preclude Swan from making arguments under RSA 507:15 in the future, the present record lacks support for relief under RSA 507:15.

The Court declines to address Casella’s arguments under RSA 491:8-a regarding Swan’s failure to accompany his motion with a supportive affidavit because


Casella's other arguments are dispositive. See Canty v. Hopkins, 146 N.H. 151, 156 (2001) (holding that the Court need not consider party's remaining arguments where one or more was dispositive).

Conclusion

For the foregoing reasons, Swan's motion for summary judgment is DENIED.

SO ORDERED.

December 14, 2023



Amy L. Ignatius
Presiding Justice

Clerk's Notice of Decision
Document Sent to Parties
on 12/15/2023