

The State of New Hampshire

MERRIMACK COUNTY

SUPERIOR COURT

CASELLA WASTE SYSTEMS, INC.

v.

JON SWAN

Docket No.: 217-2023-CV-00285

ORDER ON PLAINTIFF'S MOTION TO DISMISS COUNTERCLAIMS

Plaintiff, Casella Waste Systems, Inc., brings this action against Defendant, Jon Swan, arising out of Defendant's alleged breaches of the parties' settlement agreement. Doc. 25 (2d Am. Compl.). Defendant filed counterclaims against Plaintiff for breach of contract (Counterclaim I), breach of the covenant of good faith and fair dealing (Counterclaim II), and attorney's fees and costs (Counterclaim III). Doc. 38. Plaintiff moves to dismiss the counterclaims. Doc. 42. Defendant objects. Doc. 45. The Court held a hearing on Plaintiff's motion on September 17, 2024. For the following reasons, Plaintiff's motion is GRANTED in part and DENIED in part.

Background

On May 11, 2023, the parties reached a confidential settlement agreement (the "Agreement") to conclude their litigation in Docket No. 217-2020-CV-00212. Doc. 38 ¶

3.¹ The Agreement included the following confidentiality provision:

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

¹ In Defendant's Answer to the Second Amended Complaint and Counterclaims, Doc. 38, he began new numbering at the start of his counterclaims. To avoid confusion, the Court makes clear that it refers only to the counterclaims section of Doc. 38.

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. ¶ 3.

A few days after the parties executed the Agreement, they filed a “neither party docket markings” in Docket No. 217-2020-CV-00212. Id. ¶ 4. A reporter asked Defendant for a comment on the filing. Id. ¶ 5. Defendant responded, “No comment.” Id. ¶ 6. The resulting newspaper article written by the reporter did not disclose the existence of the Agreement or any of its terms. Id. ¶¶ 7–8. Defendant posted a link to the article on social media with a photograph of him and his attorney holding a Save Forest Lake sign. Id. ¶ 11.

On May 25, 2023, Plaintiff initiated this suit alleging that Defendant violated the Agreement. Id. ¶ 12; Doc. 1. In its complaint, Plaintiff disclosed the existence of the Agreement, included text from the Agreement in its allegations, and included an exhibit of email correspondence between the parties' counsel about the scope of the Agreement. Doc. 1 ¶¶ 4–5, Ex. 1. Plaintiff submitted its complaint as a public filing. See Doc. 1. It separately filed the Agreement as a sealed filing. See Doc. 2.

Standard

When ruling on a motion to dismiss, the Court must discern “whether the allegations in the counterclaimant[’s] pleadings are reasonably susceptible of a construction that would permit recovery.” Town of Londonderry v. Mesiti Dev., Inc., 168 N.H. 377, 379 (2015). The Court “assume[s] the truth of the facts alleged in the counterclaimant[’s] pleadings and construe[s] all reasonable inferences in the light most favorable to them.” Id. The Court then engages in a threshold inquiry that tests

the facts alleged by the [counterclaimant] against the applicable law, and if the allegations constitute a legal basis for relief, must deny the motion to dismiss. Pro Done, Inc. v. Basham, 172 N.H. 138, 141–42 (2019). “In conducting this inquiry, [the Court] may also consider documents attached to the [proponent’s] pleadings, documents the authenticity of which are not disputed by the parties, official public records, or documents sufficiently referred to in the complaint.” Boyle v. Dwyer, 172 N.H. 548, 553 (2019) (quoting Ojo v. Lorenzo, 164 N.H. 717, 721 (2013)). The Court rigorously scrutinizes the facts contained on the face of the [counterclaimant’s pleadings] to determine whether a cause of action has been asserted. In re Guardianship of Madelyn B., 166 N.H. 453, 457 (2014). The Court “need not . . . assume the truth of statements that are merely conclusions of law.” Lamb v. Shaker Reg’l Sch. Dist., 168 N.H. 47, 49 (2015).

Analysis

Defendant argues that Plaintiff is liable under the Agreement because it disclosed the existence, terms, and nature of the Agreement in a public filing: its complaint. Plaintiff moves to dismiss Defendant’s counterclaims. Plaintiff argues that Defendant’s breach of contract counterclaim should be dismissed because he has neither alleged that he suffered any damages from Plaintiff’s alleged breach nor that Plaintiff’s disclosure defeated the object of the parties in entering the Agreement. Plaintiff also argues that the Court should dismiss Defendant’s breach of the covenant of good faith and fair dealing counterclaim because the facts he alleges do not state a claim under that theory. Finally, Plaintiff contends that Defendant’s counterclaims are untimely.

Defendant responds that his breach of contract counterclaim is viable because the confidentiality provision of the Agreement was a material component and Plaintiff's conduct violated that provision. Defendant disagrees that he must allege he suffered material damages from Plaintiff's breach. Next, Defendant argues that his breach of the covenant of good faith and fair dealing is viable and relies upon the same theory underlying Plaintiff's claim for the same. Finally, Defendant contends that his counterclaims are timely because they were properly brought during the pleading stage of this litigation.

The Court addresses each argument in turn.

Breach of Contract

Defendant's breach of contract claim appears to be based on two alleged breaches: Plaintiff's disclosure of the existence, nature, and terms of the Agreement by filing its complaint on May 25, 2023, see Doc. 38 ¶ 12, and Plaintiff's disclosure of the same to third parties prior to May 25, 2023, see id. ¶ 13. See id. ¶¶ 27–29 (breach of contract count). The Court first analyzes Defendant's claim arising out of Plaintiff's filing of its complaint.

"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." Audette v. Cummings, 165 N.H. 763, 767 (2013). "A breach of contract by one party to a contract discharges the duty of performance of the other." Gaucher v. Waterhouse, 175 N.H. 291, 296 (2022). "A breach is material if: (1) a party fails to perform a substantial part of the contract or one or more of its essential terms or conditions; (2) the breach substantially defeats the contract's purpose; or (3) the breach is such that upon a

reasonable interpretation of the contract, the parties considered the breach as vital to the existence of the contract.” Id. Whether conduct is a material breach is a “question for the trier of fact to determine from the facts and circumstances of the case.” Id.

Plaintiff concedes that a violation of a contract’s confidentiality clause may constitute a material breach of the agreement. However, Plaintiff contends that there is no support that by filing suit to enforce a confidential agreement, the filing party has committed such a breach. The Court does not read Defendant’s counterclaim to put forth such a theory. It is not simply that Plaintiff filed a lawsuit to enforce the confidential Agreement. It was that, while Plaintiff filed the entire Agreement under seal, see Doc. 2, it included specific details of the Agreement in its publicly filed complaint, including the entirety of the confidentiality provision. On this ground, the Court determines Defendant has stated a claim for breach of contract. The Agreement required its terms and existence remain confidential. The Agreement prohibited the parties from disclosing the terms of the Agreement to any person. Defendant has stated a claim that Plaintiff violated the confidentiality provision of the Agreement by publicly filing a complaint, disclosing the existence and certain terms of the Agreement. This alleged breach was material because the confidentiality of the Agreement was an essential term. See Gaucher, 175 N.H. at 296.

Accordingly, Plaintiff’s motion to dismiss Defendant’s breach of contract counterclaim arising out of Plaintiff’s public filing of a complaint which referenced the existence and certain terms of the Agreement is DENIED.

The Court turns to Defendant’s counterclaim arising out of Plaintiff’s alleged disclosure of the Agreement to third parties before filing its complaint. Plaintiff argues

that Defendant's allegation is too thin to sustain a claim and that he has not disclosed the basis for his "information and belief" that Plaintiff made disclosures to third parties. The Court determines that, while thin, Defendant's allegations satisfy New Hampshire notice pleading requirements. New Hampshire Superior Court Rule 8(a) requires "a statement of the material facts known to the pleading party on which the claim is based, showing that the pleader is entitled to relief" Defendant's allegation does so. He alleges that Plaintiff disclosed the existence and terms of the Agreement to third parties, in direct conflict with Plaintiff's obligations under the Agreement. See Doc. 38 ¶¶ 13, 28. This allegation suffices to state a claim for breach of contract. See Toy v. City of Rochester, 172 N.H. 443, 448 (2019) ("New Hampshire is a notice pleading jurisdiction, and, as such, we take a liberal approach to the technical requirements of pleadings.").

Accordingly, Plaintiff's motion to dismiss this alternate ground for Defendant's breach of contract counterclaim is DENIED.

Lastly, the Court addresses Plaintiff's argument that Defendant has failed to state a claim on his breach of contract counterclaim because he has not alleged that he suffered material damages from Plaintiff's alleged breach. Plaintiff does not cite to authority supporting its argument that Defendant's breach of contract counterclaim fails for failure to allege material damage. For that reason alone, the Court finds this argument without merit.

Breach of the Covenant of Good Faith and Fair Dealing

Plaintiff argues that Defendant failed to state a claim on his counterclaim for breach of the covenant of good faith and fair dealing because Plaintiff had no discretion in complying with the Agreement and, even if it did, Defendant has not sufficiently

alleged that he was deprived of a substantial portion of the Agreement's value.

Defendant contends that his counterclaim for breach of the covenant of good faith and fair dealing is based on a similar theory as Plaintiff's same claim. Accordingly, he argues that if Plaintiff's alleged breach of the confidentiality provision can support a breach of the implied covenant of good faith and fair dealing claim, so can his.

"In every agreement, there is an implied covenant that the parties will act in good faith and fairly with one another." Skinny Pancake-Hanover, LLC v. Crotix, 172 N.H. 372, 379 (2019). "New Hampshire does not merely have one rule of implied good-faith duty." Id. Instead, New Hampshire's jurisprudence consists of "a series of doctrines, each of which serves different functions." Id. "These doctrines fall into three categories: (1) contract formation; (2) termination of at-will employment agreements; and (3) limitation of discretion in contractual performance." Id. Here, the parties appear to agree that the only category at issue is the third: limitation of discretion in contractual performance. "The third category is comparatively narrow; 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." Short v. LaPlante, 174 N.H. 384, 391–92 (2021).

The New Hampshire Supreme Court has set forth four questions to address in determining whether a party breached this category. "First, does the agreement allow or confer upon the [party] a degree of discretion in performance tantamount to a power to deprive the [other contracting party] of a substantial proportion of the agreement's value?" Id. at 392. "Second, did the parties intend to make a legally enforceable contract?" Id. "Third, has the defendant's exercise of discretion exceeded the limits of

reasonableness?” Id. “Finally, did the [party’s] abuse of discretion cause the damage complained of or does the damage result from events beyond the control of either party, against which the [party] has no obligation to protect the [other contracting party]?” Id.

The parties dispute question one, whether Plaintiff had any degree of discretion in its performance under the Agreement such that it had the power to deprive Defendant of a substantial proportion of the Agreement’s value. See id. Here, each party had an obligation under the Agreement to maintain its confidentiality. Defendant alleges that Plaintiff, by filing a public complaint which included portions of the Agreement, violated the confidentiality provision. Plaintiff contends that it was permitted to include specific portions of the Agreement in its complaint in order to pursue a remedy for Defendant’s alleged breaches. The parties dispute whether Plaintiff breached the Agreement’s confidentiality provision.

The confidentiality provision expressly prohibits disclosure of the existence of the Agreement or its terms. The parties’ performance under the provision is not subject to a degree of discretion. For that reason, a violation of the confidentiality provision does not support a claim for breach of the implied covenant of good faith and fair dealing. See Centronics Corp. v. Genicom Corp., 132 N.H. 133, 144 (1989) (“[T]he concept of good faith in performance addresses the particular problem raised by a promise subject to such a degree of discretion that its practical benefit could seemingly be withheld.”). To briefly address Defendant’s argument, the Court was disinclined to grant summary judgment on Plaintiff’s breach of the implied covenant of good faith and fair dealing so early in this litigation without a developed record. The Court did not find that Plaintiff

stated a claim. See Doc. 21 at 5.

For those reasons, Plaintiff's motion to dismiss Defendant's breach of the implied covenant of good faith and fair dealing is GRANTED.

Timeliness

Finally, Plaintiff argues that Defendant's counterclaims should be dismissed as untimely. Plaintiff contends that New Hampshire Superior Court Rule 10(a) required Defendant to allege his counterclaims earlier in this litigation. Defendant disagrees, arguing that compulsory counterclaims need not be brought within 30 days but rather must be brought during the initial pleading stage of litigation.

In response to Plaintiff's May 25, 2023 original complaint, Defendant answered and asserted a counterclaim on the basis that Plaintiff's action was arbitrary, capricious, vexatious, and oppressive and he sought attorneys' fees as a result. See Doc. 6. Defendant then moved for summary judgment, see Doc. 7, which the Court denied, see Doc. 21. In the meantime, Plaintiff filed its first amended complaint, see Doc. 13, which Defendant answered and incorporated the same counterclaim from his original answer, see Doc. 22. Plaintiff then filed its second amended complaint, see Doc. 25, in response to which Defendant answered and filed the counterclaims now at issue, see Doc. 38. Defendant filed these counterclaims on April 25, 2024, almost a year after Plaintiff initiated this suit. Defendant's response to Plaintiff's second amended complaint was the first time he raised the issues underlying the counterclaims.

New Hampshire Superior Court Rule 10(a) provides,

Compulsory Counterclaims. A pleading shall state as a counterclaim any claim which at the time of serving the pleader has against any opposing party, if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and does not require for its adjudication

the presence of third parties over whom the court cannot acquire jurisdiction.

The Court interprets superior court rules in a manner similar to how statutes are interpreted in New Hampshire. Graham v. Eurosim Constr., 175 N.H. 633, 638 (2023).

“When interpreting a Superior Court Rule, as with a rule of evidence, a statute, or an administrative rule, [the Court] first look[s] to the plain meaning of the words.” Id. The Court does not “consider the words and phrases in isolation, but rather within the context of the rule as a whole.” Id. The Court will not consider what the Supreme Court might have said or add language the Supreme Court did not see fit to include. See In re Guardianship of D.E., 176 N.H. 284, 288 (2023) (interpreting a statute); N.H. Super. Ct. Preamble (stating that the New Hampshire Superior Court rules are adopted by the New Hampshire Supreme Court). Finally, “[t]he rules shall be construed and administered to secure the just, speedy, and cost-effective determination of every action.” N.H. Super Ct. R. 1(b).

Rule 10(a) does not require a defendant to file compulsory counterclaims in immediate response to a plaintiff’s complaint. The plain language of the Rule, requiring that a pleading “state as a counterclaim any claim which at the time of serving the pleader has against any opposing party,” does not require that a counterclaim must be filed in response to an opposing party’s initial pleading. See Graham, 175 N.H. at 638. Rather, the Rule indicates that a compulsory counterclaim must be filed during the pleading stage. Plaintiff’s reading of Rule 10(a) reads in language the Rule does not contain. See Guardianship of D.E., 176 N.H. at 288. The Court declines to do the same. The Court’s interpretation of Rule 10(a) complies with Rule 1(b)’s instruction to interpret the rules to “secure the just, speedy, and cost-effective determination” of this

action because, while filed a year after Plaintiff's initial complaint, Defendant's counterclaims were filed within the pleading stage and do not significantly alter the scope of discovery in this matter. The counterclaims are not expected to delay this case. Accordingly, Plaintiff's motion to dismiss on timeliness grounds is DENIED.

Conclusion

For the foregoing reasons, Plaintiff's motion to dismiss Defendant's counterclaims is GRANTED in part and DENIED in part.

SO ORDERED.

October 10, 2024

Date

A handwritten signature in black ink, appearing to read "D. St. Hilaire", is written above a horizontal line.

Hon. Daniel I. St. Hilaire
Presiding Justice

Clerk's Notice of Decision
Document Sent to Parties
on 10/10/2024