

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

CASELLA WASTE SYSTEMS, INC.

v.

Docket # 217-2023-CV-00285

JON SWAN

COMPLAINT

Plaintiff, Casella Waste Systems, Inc., by and through its attorneys, Cleveland, Waters and Bass, P.A., complains against the defendant, Jon Swan, for breach of the settlement agreement between Casella and Swan dated May 11, 2023.

1. Casella is a corporation organized under the laws of Delaware with a principal office address of 25 Greens Hill Lane, Rutland, VT 05701. Casella is the parent company of North Country Environmental Services, Inc., which owns and operates a commercial solid-waste landfill located at 581 Trudeau Road in Bethlehem and Granite State Landfill, LLC (“GSL”), which has rights to acquire property in Dalton for development of a new solid-waste landfill.

2. Defendant Swan is an individual with an address of 25 Cashman Rd., Dalton, NH 03598.

3. Casella was the plaintiff and Swan the defendant in litigation before this court captioned *Casella Waste Systems, Inc. v. Jon Swan f/k/a Jon Alvarez*, Case No. 217-2020-CV-212 (the “Litigation”). The Litigation arose out of Swan’s opposition to the GSL project in Dalton and his published statements that Casella maintained were defamatory.

4. On May 11, 2023, Casella and Swan participated in a mediation before Hon. Kathleen McGuire and reached agreement on a resolution of the Litigation. The agreement,

which is being submitted separately to the court with a motion to seal, includes a confidentiality agreement which provides:

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.

5. On May 12, 2023, counsel for Casella and for Swan communicated about how Swan could acknowledge that the case had concluded without disclosing the terms of the agreement. Exhibit 1. Counsel agreed that Swan could post the neither-party docket markings that the parties were preparing to file but that he would not make any statement other than, "The lawsuit is now concluded – no further comment." Casella agreed to this proposal "as long as [Swan] sticks to it exactly."

6. Six days after reaching this agreement, an article appeared in the Caledonian Record newspaper with the headline, "Casella Drops Defamation Lawsuit Against Dalton Landfill Opponent." Exhibit 2. The reporter who wrote the story reported only sporadically on the Litigation while it was pending, making it reasonable to infer that Swan steered the reporter to review the court docket. Swan has been interviewed multiple times by the same reporter, and the reporter has repeatedly manifested sympathy for Swan and antipathy toward Casella.

7. The newspaper story states that Casella dropped the Litigation against Swan and implied that the reason for Casella's alleged abandonment of its claims was the court's rulings on Swan's motions to dismiss and for summary judgment. Swan knew that the newspaper story misrepresented the nature of the resolution of the Litigation at mediation.

8. Notwithstanding Swan's knowledge that Casella did not simply "drop" the Litigation, shortly after the article appeared in the newspaper Swan not only posted the article on

Twitter without correcting it but he included with the post a photograph of him and his lawyer holding a “Save Forest Lake” sign and smiling. Exhibit 3. This post, taken in its totality, was tantamount to a statement by Swan that Casella had simply dropped the Litigation and that he had prevailed.

9. In fact, the agreement reached in mediation imposed obligations on Swan. By posting the newspaper article that he likely precipitated and the photograph, Swan misrepresented the nature of the resolution and violated the agreement negotiated between counsel regarding what he could say about the docket markings if he posted them. His misrepresentation of the resolution also violated the implied covenant of good faith and fair dealing in that an agreement to maintain as confidential the existence and terms of a resolution of litigation implicitly includes a prohibition on misrepresenting the terms of the agreement.

10. Under the agreement reached in mediation, Swan is obligated, in addition to any other remedy Casella may have, to pay Casella five thousand dollars for any breach of the agreement.

WHEREFORE, plaintiff respectfully requests that this Honorable Court:

- A. Determine that Swan has breached the agreement for resolution of the Litigation;
- B. Award Casella the contractually prescribed damages of five thousand dollars; and
- C. Grant plaintiff such other and further relief for defendant’s breach as justice and equity require.

Respectfully submitted,

CASELLA WASTE SYSTEMS, INC.,
By Its Attorneys,

Date: May 25, 2023

By: /s/ Bryan K. Gould
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EXHIBIT 1

From: [Eggleton, Jeremy D.](#)
To: [Bryan Gould](#)
Cc: [Cooley Arroyo](#)
Subject: RE: Question [OR-IMANAGE.FID421372]
Date: Friday, May 12, 2023 2:37:15 PM
Attachments: [image001.png](#)

Lovely—thanks!

From: Bryan Gould <gouldb@cwbp.com>
Sent: Friday, May 12, 2023 2:36 PM
To: Eggleton, Jeremy D. <JEggleton@orr-reno.com>
Cc: Cooley Arroyo <arroyoc@cwbp.com>
Subject: RE: Question [OR-IMANAGE.FID421372]

Rather than give in to the lawyer's impulse to fiddle, I'm fine with your formulation as long as he sticks to it exactly.

From: Eggleton, Jeremy D. <JEggleton@orr-reno.com>
Sent: Friday, May 12, 2023 2:04 PM
To: Bryan Gould <gouldb@cwbp.com>
Cc: Cooley Arroyo <arroyoc@cwbp.com>
Subject: RE: Question [OR-IMANAGE.FID421372]

I suggest we come up with a formulation that works for both our clients. People have sent him money to support his legal costs and he needs to be able to say something to them so that they do not continue to do so—lest he be accused of fraud for accepting donations for something he no longer needs to pay for. As they say about the constitution, it's not a suicide pact.

How about: "The lawsuit is now concluded—no further comment." Or similar.

He's really not interested in making hay over this—he just needs to be able to say something to people that allows him to move on from it.

JE

From: Bryan Gould <gouldb@cwbp.com>
Sent: Friday, May 12, 2023 2:00 PM
To: Eggleton, Jeremy D. <JEggleton@orr-reno.com>
Cc: Cooley Arroyo <arroyoc@cwbp.com>
Subject: Re: Question

We aren't moving to seal them, Jeremy. On the other hand, we aren't planning to comment on them and we don't want him to do so either. I don't have a problem with him posting the docket markings, but if he does that he's going to be asked questions, and he won't be able to answer them without violating the agreement. If he can post them and ignore the questions I think that's fine, but

he can't say anything else (including "I can't talk about it"). I'm happy to discuss it further if you'd like.

On May 12, 2023, at 1:41 PM, Eggleton, Jeremy D. <JEggleton@orr-reno.com> wrote:

At what point, if any, can my client say to the world that the lawsuit is over? Read strictly, it would seem that when the docket markings are filed, he can talk about how the suit was resolved for neither party. I assume we are not moving to seal the docket markings?

From: Cooley Arroyo <arroyoc@cwbp.com>
Sent: Friday, May 12, 2023 1:39 PM
To: Eggleton, Jeremy D. <JEggleton@orr-reno.com>
Cc: Bryan Gould <gouldb@cwbp.com>
Subject: RE: Question

Jeremy:

We prepared the attached stipulation for docket markings. Will you please review and let us know if you have any comments? If it's in good shape, please let me know if we can include your electronic signature and we will take care of getting it on file.

As for your question below, the fact that the case has been resolved at this stage is, in itself, a reference to an agreement, so nothing should be publicly stated at all.

Best,
Cooley

Cooley A. Arroyo, Esq.

Attorney

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From: Eggleton, Jeremy D. <JEggleton@orr-reno.com>
Sent: Friday, May 12, 2023 12:02 PM
To: Cooley Arroyo <arroyoc@cwbp.com>

Subject: Question

Our settlement agreement states in terms of confidentiality that we cannot disclose the existence of the agreement or in the terms. We're fine with that obviously, but Jon would like to be able to tell the world that the lawsuit has been resolved. I assume something of that nature would be permissible? Because we wouldn't specifically be referring to the agreement?

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EXHIBIT 2

Casella Drops Defamation Lawsuit Against Dalton Landfill Opponent

- [Robert Blechl rblechl@caledonian-record.com](mailto:rblechl@caledonian-record.com) Staff Writer
- May 18, 2023



Jon Swan, founder of Save Forest Lake, addresses the White Mountains Regional SAU 36 School Board on Monday, April 5. Swan warned that a proposed landfill posed a traffic hazard for Whitefield Elementary School. (Photo by Paul Hayes)



Casella Waste Systems CEO John Casella speaks to Bethlehem residents in 2016 during a presentation for a previous proposed phase landfill expansion in Bethlehem. This week, a lawsuit against Casella Waste Systems filed by the Conservation Law Foundation, which is asking the court to stop Stage VI expansion until its appeals rights are exhausted, went to a court hearing. (File photo by Robert Blechl)

After three years and more than \$100,000 in legal expenses incurred by the defendant, Casella Waste Systems has ended its defamation lawsuit against a vocal opponent of the company and its proposed landfill in Dalton.

On Tuesday, the litigation filed in April 2020 at Merrimack Superior Court in Concord against Dalton resident Jon Swan, the founder of Save Forest Lake, was closed out.

A stipulation for docket marking filed by Casella and agreed to by attorneys Bryan Gould, Cooley Arroyo and Morgan Tanafon, of the Cleveland Waters and Bass law firm

that represents Casella, and attorney Jeremy Eggleton, legal counsel for Swan, states “neither party, no costs, no interest, no further action for same cause.”

The resolution of the case comes two months after a 33-page court order on March 10 that granted Swan, in part, a request for summary judgment and it follows a motion to reconsider that order filed by Casella that was denied by Judge John Kissinger on April 11.

In its lawsuit, Casella alleged that Swan’s campaign against the company is intended to “disparage [Casella’s] reputation” by publishing false statements of fact about the company online, in print and in person, prevent the company from doing business in New Hampshire, lower Casella’s esteem in the community, damage its reputation in state government, and intentionally interfere with its “prospective economic interests.”

Because of Swan’s statements, Casella argued it “suffered harm to its reputation and business.”

In August 2020, the judge dismissed the majority of the dozens of defamation claims alleged by Casella, concluding that Swan’s statements are either strongly worded opinion or rhetorical hyperbole and, as such, are not actionable for defamation, but said nine statements could be defamatory if the company can prove they are false.

Swan’s statements included Casella scamming elderly residents of Dalton, the company not recycling recyclables and filling local landfills with out-of-state trash, illegally spilling 8,000 gallons of leachate into the Black River in Vermont, polluting the Ammonoosuc River, operating outside of permitted hours at its landfill in Vermont, seeking to improperly influence the vote of the Bethlehem Planning Board, conspiring with Horizons Engineering to avoid compliance with regulatory requirements, and improperly treating millions of gallons of leachate emptied into the Merrimack River

In his March order, the judge dismissed as defamatory five of Swan’s comments about out-of-state trash in New Hampshire landfills, the company packing the Bethlehem Planning Board, wastewater treatment plants and the Merrimack River, pollution in the Ammonoosuc River, and zero-sort recycling and the collapse of the recycling market.

He denied, however, Swan’s request to dismiss six comments pertaining to the company’s leachate spill from a truck crash in Vermont, Casella scamming elderly residents and weaponizing the legal system, the operating hours at the Coventry landfill in Vermont, an ethics complaint about Casella and Horizons Engineering involving a lot line adjustment in Dalton, and the “purposeful introduction of PFOS/PFOA” contaminants in the Forest Lake area.

In his order, Kissinger said Casella’s second amended complaint added the statement about the introduction of PFOS/PFOA, but Swan’s motion for summary judgment did not address that statement, which, until the case was closed this week, had continued as a possible issue for trial.

Casella's denied motion for reconsideration had asked the judge to reconsider his order on Swan's motion for summary judgment regarding two posted statements, including what Swan said was Casella not recycling most of the recyclable materials placed in its zero-sort recycling bins because they are contaminated and end up in landfills and about "packing" the Bethlehem Planning Board.

An email sent Wednesday afternoon to Casella spokesman Jeff Weld was not returned by press time.

On March 13, following the judge's order dismissing the five claims, Swan shared a mass email stating "good news from the superior court today."

"To date, my legal expenses for this fight have totaled \$110,217.25 invoices attached," he wrote. "I am currently in arrears totaling \$11,701.37. I appreciate everyone's support ... Thank you all who have donated to the cause. We will win, there will not be a landfill next to Forest Lake. 4 years now ... quite the toll but a just fight, nonetheless

EXHIBIT 3



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Jon Swan

@SaveForestLake1



"Casella Drops Defamation Lawsuit Against Dalton Landfill Opponent"

Link to news story:

caledonianrecord.com/news/local/cas...

Link to pdf: img1.wsimg.com/blobby/go/3a99...

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