THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS. **SUPERIOR COURT**

Casella Waste Systems, Inc.

v.

Jon Swan

Docket No. 217-2023-CV-00285

ORDER ON PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT

The Plaintiff, Casella Waste Systems, Inc., sued the Defendant, Jon Swan, for breach of a settlement agreement. Doc. 25 (2nd. Am. Compl.) The Plaintiff now moves for partial summary judgment. Doc. 73 (Pl.'s Mot. Part. Summ. J.). The Defendant objects. Doc. 79 (Def.'s Obj.) The Court held a hearing on the motion on August 18, 2025. For the following reasons, the Plaintiff's motion for partial summary judgment is DENIED.

BACKGROUND

The following facts are derived from the parties' combined statements of fact and, unless otherwise noted, are undisputed. In 2020, the parties were involved in previous litigation regarding the Defendant's opposition to a landfill project that the Plaintiff operated. See Casella Waste Systems, Inc. v. Jon Swan f/k/a Jon Alvarez, Case No. 217-2020-CV-212 (2020). That litigation ultimately ended in a settlement agreement dated May 11, 2023. Doc. 96 (Combined Statement Undisputed Facts ¶ 1).

Among its terms, the agreement contained a confidentiality provision and a provision relating to the Defendant's future communications about the Plaintiff. Id. The settlement agreement extended to the Plaintiff's subsidiaries, including North Country

Environmental Services, Inc. Doc. 73 ¶ 4 n.2. Specifically, the "Future Public Communications" provision provides:

> Except in an instance in which [the Defendant] repeats or relays a public communication by an independent source, other than [the Defendant], [the Defendant] agrees that in any public communication in which he imputes conduct or intent to [the Plaintiff], he will (a) disclose the source of the facts on which he relies for such imputation and (b) preface such communication with words such as "I understand", "I think", "In my opinion" or similar phrasing calculated to convey that the communication is an expression of opinion or belief rather than a statement of fact.

Doc. 79 at 3. Following the settlement agreement, the Defendant sought guidance on what he could say about the resolution of the case within the parameters of the settlement agreement. Doc. 96 ¶¶ 2–3. On May 12, 2023, counsel for the parties had an email exchange where counsel for the Defendant suggested the Defendant say, "[t]he lawsuit is now concluded–no further comment," and the Plaintiff's counsel agreed. Id. ¶¶ 2–4.

In the days following the settlement agreement, the Defendant made several electronic posts on Twitter and Facebook. Id. ¶ 4. Several of the Defendant's statements made similar references such as, "NCES Landfill #PFAS contaminants are being discharged into the Ammonoosuc River via surface water runoff." Id. ¶ 6.k. Other posts included statements such as, "Close the dump," and "It's leaking!" Id. ¶ 6.i. The Plaintiff now moves for partial summary judgment regarding the Defendant's liability in posting fourteen statements that allegedly violated the conditions of the settlement agreement. Doc. 73.

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). "An issue of fact is material, so as to preclude summary judgment, if it affects the outcome of the litigation under the applicable substantive law." Huard v. Town of Pelham, 159 N.H. 567, 574 (2009) (citations omitted); see also Bond v. Martineau, 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

The Plaintiff moves for summary judgment arguing that "[i]n every single statement included as part of this lawsuit, [the Defendant] failed to use the prefatory language required by the agreement. Each of those statements undisputedly imputes conduct or intent to [the Plaintiff]." Doc. 73 ¶ 1. The Plaintiff contends that the truth of the statements is irrelevant and whether the Defendant's "statements are supported by public documents, or consistent with some 'context' he unilaterally creates is beside the point." Doc. 97 (Sealed Reply Def.'s Obj. 1). The Plaintiff claims the Court need only

compare the requirements of the parties' settlement agreement to the Defendant's statements to determine that he breached it. Doc. 73 ¶ 3.

For his part, the Defendant argues that summary judgment is not appropriate because there are genuine issues of material fact. Doc. 79. He contends that whether the posts breached the provisions of the settlement agreement is a question for the jury. Id. at 1. He argues that the actual contractual provision itself is replete with discretionary determinations that must be made by a jury. Id. at 3. Although the Defendant acknowledges the provision is a contractual duty, see id., he argues that defamation law standards should apply in this case and that the "language [he] used, the materials he referenced, the statements he responded to, the developments he is referring to, and the well-documented public history of the Plaintiff's landfills are all factual circumstances that a finder of fact must take into account" to determine whether a given statement breached the settlement agreement. Id. at 3, 6. The Defendant alleges that the context of his posts is critical to determining whether any of them breached the terms of the parties' settlement agreement, which is a jury question. Id. at 5.

"When interpreting a written agreement, [the Court] give[s] the language used by the parties its reasonable meaning, considering the circumstances and the context in which the agreement was negotiated, and reading the document as a whole." Birch Broad., Inc. v. Capitol Broad. Corp., 161 N.H. 192, 196 (2010). A court will give a contract's language its plain and ordinary meaning unless the language of the contract is ambiguous. See id. "The language of a contract is ambiguous if the parties to the contract could reasonably disagree as to the meaning of that language." Id. "If the

agreement's language is ambiguous, it must be determined, under an objective standard, what the parties, as reasonable people, mutually understood the ambiguous language to mean." Id. "In applying this standard, a court should examine the contract as a whole, the circumstances surrounding execution and the object intended by the agreement, while keeping in mind the goal of giving effect to the intentions of the parties." Id. at 196–97.

As an initial matter, the Court agrees with the Plaintiff that contract law, rather than defamation law, generally applies. However, the Court concludes that there are genuine issues of material fact regarding whether the Defendant's posts "impute conduct or intent" onto the Plaintiff. Doc. 79 at 3. Although it is undisputed that the Defendant's posts failed to include the required prefatory language, it is disputed whether the posts impute conduct or intent onto the Plaintiff such that they violate the provision. See Doc. 73 at 4 (alleging that "so long as each of those statements imputed conduct to [the Plaintiff], [the Defendant] has breached the settlement agreement"); Doc. 79 at 3 (alleging that the provision is "replete with discretionary determinations that must be made by a jury"). While the Court acknowledges that many of the statements clearly reference the Plaintiff or its subsidiaries, the Defendant has not violated the terms of the provision if the Plaintiff is merely mentioned, but rather only if the elements of the provision are not met.

For example, several of the Defendant's statements make similar references such as, "NCES Landfill #PFAS contaminants are being discharged into the Ammonoosuc River via surface water runoff. Doc. 96 ¶ 6.k. The Plaintiff alleges that there is only one reasonable interpretation of this statement: the Defendant is asserting

that the NCES landfill is not preventing certain chemicals from leaking into the river. Doc. 73 ¶ 17. The Court acknowledges the truth of whether contaminants are being discharged does not matter, what matters instead is whether a reasonable person would read the statement as imputing conduct or intent onto the Plaintiff. "In this state the question of reasonable conduct, whether in relation to tangible property or to intangible rights, is one of fact." Huskie v. Griffin, 75 N.H. 345, 351 (1909)

The only way to determine whether the Defendant's statements "imput[ed] conduct or intent" onto the Plaintiff is to determine how a reasonable person would have understood the Defendant's posts. Questions of reasonableness tend to be issues of fact and have long been held to be questions best left for a jury. See VanDeMark v. McDonald's Corp., 153 N.H. 753, 756 (2006) (defining a material issue of fact). Because reasonableness cannot be established as a matter of law and is necessary to determine whether the Defendant's posts violated the provision, summary judgment on this point is inappropriate. See RSA 491:8-a, III. Accordingly, the Court DENIES the Plaintiff's request for partial summary judgment. Doc. 73.

CONCLUSION

For the reasons stated above, the Plaintiff's motion for partial summary judgment is DENIED.

SO ORDERED,

September 25, 2025
Date

Judge Martin P. Honigberg

Clerk's Notice of Decision
Document Sent to Parties
on 09/25/2025