

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

Casella Waste Systems, Inc.

v.

Docket #217-2023-CV-285

Jon Swan

CASELLA WASTE SYSTEMS, INC.’S
MOTION FOR PARTIAL SUMMARY JUDGMENT

NOW COMES the Plaintiff, Casella Waste Systems, Inc. (“Casella”), by and through its attorneys, Cleveland, Waters and Bass, P.A., and hereby moves, pursuant to Superior Court Civil Rule 12(g), this Honorable Court to enter summary judgment against the Defendant, Jon Swan (“Swan”) as set forth below.

Background and Introduction

1. This dispute centers on certain statements made by Swan that violated the parties’ settlement agreement. Pursuant to the agreement, Swan was required to preface any public communication imputing conduct or intent to Casella with words such as ‘I understand’, ‘I think’, ‘In my opinion’ or similar phrasing. Swan was also required to provide the source of the facts which he relied on when imputing conduct or intent to Casella. In every single statement included as part of this lawsuit, Swan failed to use the prefatory language required by the agreement. Each of those statements undisputedly imputes conduct or intent to Casella.

2. Swan has attempted to justify his breaches by claiming that he is merely reporting or reproducing undeniable facts. *See* Mot. to Compel at ¶23; Reply to Obj. to Mot. to Compel at 4-7. For instance, Swan has claimed that by posting publicly available data produced by Casella “he is not imputing ‘conduct or intent to Casella’ but merely stating irrefutable facts.” *See* Reply

to Obj. to Mot. to Compel at 5. Tellingly however, none of Swan's statements reproduce or reference publicly available data or facts obtained from public sources.¹ Indeed, this court has already recognized that "the truth of the Defendant's statements is irrelevant." Order on Motion to Compel at 3. This court also further clarified that "central to whether the Defendant breached the "Future Public Communications" provision is whether he was repeating or relaying a public communication by an independent source, which could include the Plaintiff." *Id.*

3. Casella's claims here are straightforward and simple. The Court need only compare the requirements of the parties' settlement agreement to the statements Swan made. The truth, or lack thereof, of the statements Swan made is not at issue. Moreover, Swan goes well beyond simply repeating or relaying information from other sources. Ultimately, this is a simple breach of contract case that requires only analysis of whether Swan included the required, agreed-to prefatory language and the bases for his allegations.

Statement of Material Facts

4. Pursuant to Superior Court Civil Rule 12(g)(2), a separate Statement of Material Facts is attached hereto with supporting exhibits, all of which are hereby incorporated by reference.

Legal Standard

5. Summary judgment is appropriate 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." RSA § 491:8-a, III. In reviewing the summary judgment motion, the court will consider the affidavits and other evidence, and all inferences properly drawn from them, in the light most

¹ It is also telling in his pleadings that Defendant never fully analyzes the statements at issue in this lawsuit, instead simply asserting that the statements reproduce irrefutable facts. Each statement is addressed and analyzed in detail later in this pleading.

favorable to the non-moving party. See Big League Entm't, Inc. v. Brox Industries, Inc., 149 N.H. 480, 482 (2003). One opposing a motion for summary judgment must support his or her objection with “specific facts showing the existence of a genuine issue for trial.” Lake v. Sullivan, 145 N.H. 713, 715 (2001). General and bare allegations of expected proof are insufficient to raise genuine issues of fact. Lourie v. Keene State Coll., 121 N.H. 233, 236 (1981).

Discussion

6. The parties’ settlement agreement requires Swan to preface certain communications with ‘I understand’, ‘I think’, ‘In my opinion’ or similar phrasing if such communications impute conduct or intent to Casella. Further, Swan is required to disclose the source of the facts on which he relies for that imputation. Thus, Casella can show that Swan breached the contract if: (1) a statement imputes conduct to Casella, and (2) either (a) fails to include the required prefatory phrasing, or (b) fails to disclose the source of facts Swan is relies upon for that imputation.²

7. Swan has claimed that, regardless of the parties’ settlement agreement, the “operative standard” by which to judge all of Casella’s claims in this case is “what a reasonable person would have understood Swan to convey in the post.” See Reply to Obj. to Mot. to Compel at 3. Swan’s argument is based on his summary judgment motion, which only ruled on the first statement in this lawsuit. That statement related to how Swan portrayed the conclusion of the lawsuit. Based on the meager record, this court concluded that it could not determine “what a reasonable person would have understood Swan to convey in the [first] post.” See Order on Motion for Summary Judgment dated December 14, 2023, at 4.

8. This contention is based on the unsupported claim that “all of Mr. Swan’s social media posts that Casella challenges in this case relate to his relay of public information.” See

² The settlement agreement also extends to Casella’s subsidiaries, including North Country Environmental Services, Inc. For ease of reference, Casella also includes, where appropriate, North Country Environmental Services, Inc.

Reply to Obj. to Mot. To Compel at 4. All of the statements in this lawsuit, however, go beyond simply relaying public information by providing commentary or statements from Swan primarily concluding that the landfill is leaking.

9. Swan utterly failed to include any prefatory phrasing in every statement included in this lawsuit. *See* Exhibits 4 - 17. Thus, so long as each of those statements imputed conduct to Casella, Swan has breached the settlement agreement regardless of whether he disclosed the source of facts he relied on.

10. Each of the statements is discussed in more detail below.

I. Analysis of Individual Statements

A. First Statement (Exhibit 3)

11. Swan's first statement arises out of an agreement between counsel as to how Swan could communicate the termination of the first lawsuit. Counsel agreed that Swan could post the "neither party" docket markings and that he could make no statement other than "[t]he lawsuit is now concluded – no further comment." *See*, Exhibit 1. Counsel for Casella agreed to this as long as Swan did not deviate from the language or what he could post. *Id.*

12. The email agreement between counsel bound Swan and limited his comment about the matter to specifically prescribed words. Despite this highly detailed agreement, Swan posted a link to an article on Twitter.

13. Above the link, Swan re-stated the article's headline, which read, "Casella Drops Defamation Lawsuit Against Dalton Landfill Opponent." *See* Exhibit 3; *see also* Exhibit 2. By including the headline in the body of the tweet, Swan necessarily endorsed that message, in violation of the agreement.

14. Moreover, the tweet was accompanied by an image of Swan and Attorney Eggleton holding a sign reading “Save Forest Lake” “No Landfill”. Taken together, Swan’s repeating of the headline combined with the image of Swan and his attorney holding a “Save Forest Lake – No Landfill” sign create a clear impression on any reasonable viewer that is far different than the message the parties agreed would be communicated to the public.

15. Swan’s reposting of the article communicated that he endorsed the headline and therefore violated the terms of the settlement agreement by implying that Casella had dropped the lawsuit.

B. Second Statement (Exhibit 4)

16. The second statement reads as follows:

From a letter to Casella from NHDES, November 1, 2017. That is a long time for NHDES to keep this under wraps....not one peep about this at any of the numerous hearings, where we’ve been told that there are no issues and NCES is a state-of-the-art landfill. *This data says otherwise. The bad stuff is not being contained, and it’s flowing with the groundwater within the watershed of the Ammonoosuc River.*”

See Exhibit 4 (emphasis supplied).

17. This statement was made in a Facebook post which shared an excerpt of a letter from the New Hampshire Department of Environmental Services (“NHDES”) to North Country Environmental Services, Inc. (“NCES”). Sharing the letter is not problematic and does not violate the settlement agreement because it clearly falls within the exception of “an instance in which Swan repeats or relays a public communication by an independent source other than Swan....” But he did not stop there. Instead, Swan, interjected that “[t]he bad stuff is not being contained, and it’s flowing with the groundwater within the watershed of the Ammonoosuc River.” *See Exhibit 4.*

The only reasonable interpretation of this statement is Swan stating that the NCES landfill is not containing certain chemicals.³

18. Moreover, even if Swan had included the required prefatory language, the letter Swan refers to does not indicate where the source of these chemicals comes from; it only provides that the chemicals were detected. Thus, Swan “doubly” breached the agreement by not disclosing the source of the facts upon which he relies.

C. Third Statement (Exhibit 5)

19. The third statement reads as follows:

Why is NHDES parroting the old unlined landfill alibi used by Sanborn & Head and Casella? Historical issues? *Regardless, contaminants are not being contained within the lined landfill still in operation...*

See Exhibit 5 (emphasis supplied).

20. This statement was made in connection with a Facebook post of a photograph Swan highlighted from a letter dated October 21, 2019 from NHDES to NCES regarding testing at the NCES monitoring wells. As with Exhibit 4, Swan was within his rights to post the letter. But the italicized portion of this statement violates the settlement agreement. It is a statement that attributes conduct to Casella that originates with Swan, not with Casella or any other independent third party, and does not include the required prefatory language or any of the bases on which Swan concludes that “contaminants are not being contained within the lined landfill.” This statement therefore breached both conditions of the settlement agreement that Swan must adhere to when making statements that impute conduct or intent to Casella.

³ As context and background, this illustrates one of the primary claims Swan makes throughout his campaign against Casella: that the NCES landfill in Bethlehem, New Hampshire is leaking. Prior to NCES’s operation of the landfill, an unlined municipal landfill existed. There were no protections in the unlined landfill to prevent any chemicals from leaching into the surrounding soil and groundwater. As part of NCES’s permits to operate a landfill on that site, it was required to excavate the unlined landfill, including all the waste, and build a lined landfill that would contain that waste. NCES complied with that permit and the entire landfill in Bethlehem is now lined.

D. *Fourth Statement (Exhibit 6)*

21. The fourth statement, in pertinent part, reads as follows:

I am spending more time researching and writing about the landfill fight at Forest Lake and at NCES in Bethlehem (*which is releasing contaminants into the Ammonoosuc River watershed*).

See Exhibit 6 (emphasis supplied).

22. This statement was made as a post to a Facebook group named “Twin Mountain and Carroll, NH Community and News Group” and states that the NCES landfill was releasing contaminants into the Ammonoosuc River watershed. Swan failed to include the required prefatory language and failed to cite the source of any facts he relied on in making that claim. This statement therefore breached both conditions of the settlement agreement that Swan must adhere to when making statements that impute conduct or intent to Casella.

E. *Fifth Statement (Exhibit 7)*

23. The fifth statement, in response to a tweet from @rosemarierung regarding Saint Gobain and PFAS, reads as follows:

@NHDES is an executive agency under the thumb of @GovChrisSununu, so why surprised? *NCES Landfill is releasing 1,4-dioxane & #PFAS contaminants into the watershed of the Ammonoosuc River.* The fox guards the henhouse, we’ve learned up north. #ProfitOverPeople #WaterIsLife

See Exhibit 7 (emphasis supplied).

24. As with the prior statements, the fifth statement imputes conduct to Casella that the Bethlehem landfill is releasing contaminants into the surrounding environment. Swan failed to include the required prefatory language and failed to cite the source of any facts he relied on in making that claim. This statement therefore breached both conditions of the settlement agreement that Swan must adhere to when making statements that impute conduct or intent to Casella.

E. Sixth Statement (Exhibit 8)

25. The sixth statement reads as follows:

Since the Ammonoosuc River is a tributary of the Connecticut River, wouldn't it make sense for our federal delegation to call on NHDES and the EPA to close down the NCES Landfill, once and for all, *since it is failing to contain harmful contaminants like 1,4-Dioxane and PFAS? These chemicals are being released within the Ammonoosuc River watershed.* Groundwater monitor well reports, submitted to NHDES by Sanborn & Head, confirm this. Downgradient migration and dilution of these harmful contaminants, via groundwater and within the watershed, is occurring, with no plans in place for remediation. You can read about this in great detail on my website, www.saveforestlake.com.

See Exhibit 8 (emphasis supplied).

26. As with the prior statements, this sixth statement imputes conduct to Casella that the Bethlehem landfill is leaking contaminants into the surrounding environment. Similarly, as with each of the prior statements, Swan failed to include the required prefatory language and failed to cite the source of any facts he relied on in making that claim. This statement therefore breached both conditions of the settlement agreement that Swan must adhere to when making statements that impute conduct or intent to Casella.

F. Seventh Statement (Exhibits 9-10)

27. The seventh statement, in a photograph edited by Swan, reads as follows:

“Call NHDES and [sic] EPA and ask them what they are going to do about the PFAS contaminants that are leaking from the landfill within the watershed of the Ammonoosuc River.”; and

“IT’S LEAKING PFAS.”

See Exhibits 9-10.

28. As with the prior statements, this seventh statement imputes conduct to Casella that the Bethlehem landfill is leaking contaminants into the surrounding environment. Similarly, as with each of the prior statements, Swan failed to include the required prefatory language and failed to cite the source of any facts he relied on in making that claim. This statement therefore breached

both conditions of the settlement agreement that Swan must adhere to when making statements that impute conduct or intent to Casella.

G. Eighth Statement (Exhibit 11)

29. The eighth statement reads as follows:

Executive Councilor and candidate for governor Cinde Warmington raises concerns about PFAS contamination and the Forest Lake landfill project, following the October 4th meeting of the Executive Council in Canterbury, NH. Apparently both concerns came up during the meeting. It is wonderful to finally see someone in a position of power acknowledge the threat posed to the people of the North Country by the Spread of PFAS contamination. How in good conscience can NHDES or the Governor of NH permit a PFAS-emitting project like a landfill, in an area FREE of PFAS contamination? That will be the question going forward, especially as we watch the nightmare unfold that is the NCES Landfill in neighboring Bethlehem *and its continued release of PFAS contaminants into the watershed of the Ammonoosuc River!*

See Exhibit 11 (emphasis supplied).

30. As with the prior statements, this seventh statement imputes conduct to Casella that the Bethlehem landfill is leaking or releasing contaminants into the surrounding environment. Similarly, as with each of the prior statements, Swan failed to include the required prefatory language and failed to cite the source of any facts he relied on in making that claim. This statement therefore breached both conditions of the settlement agreement that Swan must adhere to when making statements that impute conduct or intent to Casella.

H. Ninth Statement (Exhibit 12)

31. The ninth statement is a photograph of a sign posted by Swan with wording on the sign stating “CLOSE THE DUMP” and “IT’S LEAKING!”.

See Exhibit 12.

32. As with the prior statements, this ninth statement imputes conduct to Casella that the Bethlehem landfill is leaking contaminants into the surrounding environment. Similarly, as with each of the prior statements, Swan failed to include the required prefatory language and

failed to cite the source of any facts he relied on in making that claim. This statement therefore breached both conditions of the settlement agreement that Swan must adhere to when making statements that impute conduct or intent to Casella.

I. Tenth Statement (Exhibit 13)

33. The tenth statement reads as follows:

Citizens from the North Country rallied on Saturday, October 7, 2023, during the Casella/NCES Landfill “Open House”, to urge NHDES and EPA officials to do the right thing and close the long-controversial, *now-leaking landfill. Failure to contain and/or properly manage landfill leachate at the facility* has lead[sic] to numerous groundwater monitoring well detections of PFAS contaminants, including PFOA at incredibly high levels, and in exceedance of the AGQS limits. As the Waste Management Council deemed the approval of Stage VI expansion “unlawful”, due to no significant public benefit, and with new revelations about the groundwater contaminant detections, *it’s time to stop feeding the leaking*, and close the landfill once and for all. It’s not need[sic], nor wanted, and, [sic] *it’s failing to contain harmful contaminants from being released within the watershed of the Ammonoosuc River. #CloseTheDump!*

See Exhibit 13 (emphasis supplied).

34. As with the prior statements, this tenth statement imputes conduct to Casella that the Bethlehem landfill is actively leaking contaminants into the surrounding environment. Similarly, as with each of the prior statements, Swan failed to include the required prefatory language and failed to cite the source of any facts he relied on in making that claim. This statement therefore breached both conditions of the settlement agreement that Swan must adhere to when making statements that impute conduct or intent to Casella.

J. Eleventh Statement (Exhibit 14)

35. The eleventh statement reads as follows:

How can we trust @EPA & @NHDES to protect Forest Lake when they won’t protect the Ammonoosuc River from *#PFOA in NCES Landfill surface water runoff?*

See Exhibit 14 (emphasis supplied).

36. As with all the prior statements, this eleventh statement imputes conduct to Casella that the Bethlehem landfill is leaking contaminants into the surrounding environment, this time reasoning it is from surface water runoff. Similarly, as with each of the prior statements, Swan failed to include the required prefatory language and failed to cite the source of any facts he relied on in making that claim. This statement therefore breached both conditions of the settlement agreement that Swan must adhere to when making statements that impute conduct or intent to Casella.

K. Twelfth Statement (Exhibit 15)

37. The twelfth statement reads as follows:

Lab results confirm *NCES Landfill #PFAS contaminants are being discharged into the Ammonoosuc River via surface water runoff* at 2 locations! Top 4 match those detected in upgradient gw monitoring wells & leachate disposed at NH WWTPs. Where's @NHDES? @EPA @Michael_S_Regan @NHPR

See Exhibit 15 (emphasis supplied).

38. As with the prior statements this statement imputes conduct to Casella that the Bethlehem landfill is leaking contaminants into the surrounding environment through surface water runoff. Admittedly, Swan did include references in this post to sources other than himself as required by the settlement agreement. Swan, however, failed to include the required prefatory language, presenting an opinion as fact in violation of the settlement agreement. This statement therefore breached the condition of the settlement agreement requiring certain prefatory language Swan must include when making statements that impute conduct or intent to Casella.

L. Thirteenth Statement (Exhibit 16)

39. The thirteenth statement reads as follows:

Casella Waste Systems seeks new greenfield landfill permits next to Forest Lake as their *30-yr old NCES Landfill discharges #PFOA into the Ammonoosuc River*

See Exhibit 16 (emphasis supplied).

40. As with the prior statements this statement imputes conduct to Casella that the Bethlehem landfill is leaking contaminants into the surrounding environment through surface water runoff. Swan, however, failed to include the required prefatory language, presenting an opinion as fact in violation of the settlement agreement. This statement therefore breached the condition of the settlement agreement requiring certain prefatory language Swan must include when making statements that impute conduct or intent to Casella.

M. Fourteenth Statement (Exhibit 17)

The fourteenth statement, in pertinent part, reads as follows:

Not really sure what other responses you are looking for, as I've clearly stated, there is no need for Casella and NCES, especially since *NCES is failing to contain harmful contaminants like PFAS and 1,4-Dioxane*, with recent sampling of surface water runoff revealing 4 PFAS compounds directly entering the Ammonoosuc River...so, NCES will close, by 2026 or sooner, and will likely become a Superfund site

See Exhibit 17 (emphasis supplied).

41. This fourteenth statement includes a discussion of waste sources and the ability of New Hampshire's existing landfills to absorb waste from sources that would go to the Bethlehem landfill. Swan includes as an ancillary comment that NCES's landfill is not containing contaminants.

42. As with the prior statements this statement imputes conduct to Casella that the Bethlehem landfill is leaking contaminants into the surrounding environment through surface water runoff. Admittedly, Swan did include references in this post to sources other than himself as required by the settlement agreement. Swan, however, failed to include the required prefatory language, presenting an opinion as fact in violation of the settlement agreement. This statement therefore breached the condition of the settlement agreement requiring certain prefatory language Swan must include when making statements that impute conduct or intent to Casella.

Conclusion

43. For the reasons stated above, Casella is entitled to summary judgment on its claims against Swan. In most of the statements Swan made he failed to include the source of facts on which he relied in making a statement, and in every single statement Swan also failed to include the required prefatory language of “I understand”, “I think”, “In my opinion”, or similar phrasing. Based on these failures, Casella is entitled to liquidated damages of \$5,000 per statement.

Respectfully submitted,

CASELLA WASTE SYSTEMS, INC.
By Its Attorneys,
CLEVELAND, WATERS AND BASS, P.A.

Date: May 5, 2025

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served this day, May 5, 2025, through the court’s ecf-filing system upon all parties who have filed appearances.

/s/ Jacob M. Rhodes
Jacob M. Rhodes, Esq.