

MERRIMACK, SS.

STATE OF NEW HAMPSHIRE

SUPERIOR COURT

CASE NO. _____

CASELLA WASTE SYSTEMS, INC.
Plaintiff,

v.

JON SWAN f/k/a JON ALVAREZ; FOREST LAKE ASSOCIATION;
SAVE FOREST LAKE; DOE DEFENDANTS 1-20
Defendants.

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff, Casella Waste Systems, Inc., by and through its attorneys, Cleveland, Waters and Bass, P.A., complains against defendants, Jon Swan f/k/a Jon Alvarez, Forest Lake Association, and Save Forest Lake, for damages and equitable relief arising from Alvarez's nearly year-long campaign on behalf of himself and the officers and participating members (such officers and members, "Doe Defendants 1-20") of Forest Lake Association and Save Forest Lake (all defendants other than Alvarez, the "Forest Lake Defendants") to disparage plaintiff's reputation by publishing and disseminating throughout the State of New Hampshire false statements of fact about the plaintiff online, in print, and in person. Defendants' expressly stated intent is to prevent plaintiff from engaging in business in New Hampshire altogether and from developing landfill capacity in Dalton, New Hampshire, and they have published a multitude of falsehoods to accomplish that goal, all of which are defamatory statements for which the law makes defendants liable. Alvarez has also sought to interfere tortiously in plaintiff's prospective economic advantage. In support of this complaint, plaintiff alleges and claims as follows:

Parties

1. Plaintiff, Casella Waste Systems, Inc. ("Casella") is a Delaware corporation with a principal office located at 25 Greens Hill Lane, Rutland, Vermont 05701. Casella is registered

to do business in New Hampshire and has conducted business throughout the state, often through wholly-owned subsidiaries, for over twenty-five years. Casella does extensive business in Merrimack County.

2. Defendant, Jon Swan (f/k/a Jon Alvarez), is an individual with a residence located at 25 Cashman Road, Dalton, New Hampshire. Defendant Forest Lake Association is an unincorporated association with an address of P.O. Box 354, Whitefield, New Hampshire. On information and belief, Defendant Save Forest Lake is an unincorporated association with an address of 25 Cashman Road, Dalton, New Hampshire. Doe Defendants 1-20 are officers and members of Forest Lake Association and Save Forest Lake who have participated in Alvarez's campaign against plaintiff and whose identities are not yet known to plaintiff.

Jurisdiction and Venue

3. Pursuant to RSA 491:7, this court has subject matter jurisdiction over this matter. Specifically, this is a civil action arising out of defendants' defamatory statements and other tortious conduct described below.

4. The court has personal jurisdiction over defendants because they are New Hampshire residents or their primary place of business is New Hampshire.

5. Pursuant to RSA 507:9, the Merrimack Superior Court is the proper venue for this action.

6. Alvarez's tortious conduct on behalf of himself and the Forest Lake Defendants was designed to disseminate defamatory statements to the public throughout the state and thereby harm Casella in every location in New Hampshire in which it now does business, including in Merrimack County, and has inflicted such harm. Many of Alvarez's defamatory

statements have been directed to state executive branch officials and legislators in Concord, Merrimack County, with the purpose of damaging Casella's reputation in state government.

Factual Background

7. Casella is a publicly-traded company engaged in the business of waste management throughout the northeastern United States. It was founded by two brothers in Rutland, Vermont, in 1975 as a recycling company. As the company grew, it recognized that there was an increasing need for management of the entire stream of municipal solid waste and that by handling the waste stream from pickup to final disposal it could enhance its ability to divert reusable or recyclable waste from landfills and incinerators and ensure that waste that was not reusable or recyclable be disposed of in a way that protected the environment. It has since remained a fundamental precept of Casella to divert from endpoint disposal, to the extent technologically and financially feasible, those wastes that can be reused or recycled.

8. Casella is a vertically integrated company, providing services ranging from preventing the production of waste in the first instance through disposal of waste that cannot be reused or recycled. Through its subsidiaries and divisions, Casella provides, among other things, waste management education and training to its customers, residential curbside collection of waste and recyclables, commercial and industrial waste removal, waste hauling services, single-stream (i.e., commingled) recycling, materials recovery facilities for the separation and aggregation of distinct forms of recyclables, regional transfer stations to aggregate waste and make its transportation more economical, operation of municipal transfer stations for cities and towns, composting of food wastes and wastewater treatment plant biosolids, and landfills for the disposal of municipal solid waste. It maintains these operations in New Hampshire, Maine, Vermont, Massachusetts, New York, and northern Pennsylvania.

9. One of Casella's subsidiaries is North Country Environmental Services, Inc. ("NCES"), which owns and operates a landfill in Bethlehem, New Hampshire. Before Casella acquired NCES, a Bethlehem resident had operated an unlined landfill in his gravel pit on the property. The unlined landfill leached contaminants into groundwater, some of which emerged at a group of springs on the bank of the Ammonoosuc River and drained into the river. During this acquisition of the landfill, Casella managed and conducted the excavation of the entire unlined landfill and placed the excavated waste and contaminated soils in a double-lined landfill cell that was developed in compliance with state and federal regulations. Since the excavation project NCES has monitored the contaminants in groundwater, at the springs, and in the river with the oversight of the New Hampshire Department of Environmental Services ("DES"). Although some contaminants have persisted in groundwater with sporadic detections at trace concentrations following removal of the waste, groundwater at many portions of the site has met drinking water quality standards for many years with limited exceptions. When sampling the water from the springs first began in the mid-1980s, the results routinely indicated the presence of volatile organic compounds (VOCs) at several spring locations. There have not been any detections of VOCs in the main spring since April 2005. There have been intermittent low level detections of individual VOCs from lesser springs over the years, but no such detections since April 2017.

10. In connection with litigation between NCES and the Town of Bethlehem, in 2012 the town and NCES entered into a settlement agreement that had the effect of limiting the size of NCES's landfill to sixty-one acres. Although NCES owns land adjacent to the landfill, it cannot develop this parcel as a landfill without the town's consent and an amendment to the town's zoning ordinance. The town has withheld its consent thus far, and the NCES landfill is projected

to run out of its current capacity at the end of 2021. If DES approves a planned final expansion proposed by NCES, capacity at the landfill is projected to last through 2026.

11. Casella Waste Systems is a regional solid waste resource management company serving more than 50,000 households and 5,500 businesses across 150 towns and cities in New Hampshire through collection, transfer, recycling, and waste disposal operations. Because landfill capacity is essential to plaintiff's business operations in New Hampshire, and the future of the Bethlehem landfill was at a minimum unsettled, NCES began searching for alternative sites for a new landfill. In late 2018 NCES entered into an option agreement with two property owners in Dalton to acquire land for development of a landfill. The property owners have title to over 1,000 acres of contiguous parcels in Dalton. There are existing sand and gravel mining, asphalt production, and logging operations on the property, and one of the owners has received an alteration of terrain permit for construction of a drag strip on the property. The land on which NCES has an option is remote from public roads.

12. Alvarez has a history of fomenting controversy through extreme and provocative public statements and conduct. For example, before moving to New Hampshire Alvarez lived in upstate New York where he formed what he called a "militia," held a contest on his talk radio program for best papier mâché pig made from the pages of the Koran, and posted a Facebook tribute to a pilot who flew a plane into a federal office building, killing himself and a federal employee. When he moved to New Hampshire, Alvarez began using the name "Jon Swan." "Swan" is the surname of Alvarez's current wife.

13. Alvarez and his wife live on Forest Lake in Dalton. The parcel on which NCES has an option is located beyond a ridge from Forest Lake. The option parcel is not visible from

Forest Lake or Alvarez's home, and any landfill NCES develops would be screened from those locations.

14. When Alvarez learned of NCES's proposed development he created Save Forest Lake and began a campaign to stop the development on behalf of himself and the Forest Lake Defendants. Over time, however, this campaign has devolved into vicious online, print, and spoken attacks on anyone who disagrees with defendants about the NCES project, and the scope of Alvarez's effort has expanded to attempting to prevent Casella from doing business in New Hampshire.

15. On multiple occasions, Alvarez has published false statements of fact about Casella, including statements wrongfully accusing Casella of engaging in criminal conduct. Both the context and the tenor of Alvarez's false statements of fact establish the malice behind them and Alvarez made the statements with the intent and effect of lowering Casella's esteem in the community.

16. Alvarez has repeatedly made defamatory statements about Casella knowing them to be false or with reckless disregard for whether they are true. All of Alvarez's conduct described in this complaint was undertaken on his own behalf, as the agent and in furtherance of the objectives of the Forest Lake Defendants, and in concert with Doe Defendants 1-20.

17. By way of example, and without in any way limiting the nature and extent of defamatory statements for which plaintiff seeks to recover, the following include defamatory statements Alvarez published online and in print regarding Casella's business practices:

- a. "Casella needs New Hampshire so it can continue its predatory exploitation of our resources for its own greed" (Feb. 25, 2020 social media posting);

- b. Casella does not recycle most of the materials placed in “zero-sort” recycling bins because they are contaminated such that they end up in a landfill (Feb. 14, 2020 social media posting);
- c. Plaintiff has “poor management and bully tactics” (Feb. 12, 2020 social media posting);
- d. “Casella’s ‘Zero-Sort’ single-stream recycling practices, and ensuring higher rate of contamination, is part of the reason why China and many 3rd world nations stopped accepting our ‘recyclables’ aka PLASTICS.” (Feb. 2020);
- e. Plaintiff “is a very unscrupulous company that only cares about the bottom line and not the environment” (Feb. 3, 2020 social media posting);
- f. “We do not want this poorly-run garbage profiteer and polluter anywhere near Forest Lake and we look forward to their expulsion from Bethlehem in or before 2023.” (Feb. 3, 2020 social media posting); and
- g. Plaintiff is a “true community predator...proven to be a bad neighbor and a corporate bully. Garbage profiteers!” (Dec. 24, 2019 social media posting).

18. On or about April 7, 2020, Alvarez published a video and transcript in which he equated Casella with the National Socialist German Workers’ (or “Nazi”) Party and its chief executive officer with Adolf Hitler.

19. On January 16, 2020, defendants published false statements online, directed at plaintiff, accusing it of engaging in “scams,” including:

- a. Warning the “elderly and more vulnerable” to beware of “a waste management company” engaging in a ‘scam,’ “at a significant cost to both [a citizen’s] finances and reputation” for encouraging a continued relationship; and

- b. Warning the “elderly and more vulnerable” that “a waste management company had persuaded a town elder, via email, to put his reputation on the line by presenting an apparently fictitious offer of riches to the town government, with ‘no strings attached’ (yes, he sadly fell for that one), without the realization that this could be deemed as an attempt to influence public opinion regarding a very unpopular landfill development.”
20. On December 29, 2019, defendants falsely accused plaintiff of spilling 8,000 gallons of landfill leachate into the Black River in Vermont in statements posted online, and falsely accused plaintiff’s employees of operating in violation of permitted hours during this incident. In connection with these allegations, defendants further stated:
- a. Plaintiff “is a bad company, with a long history of violations,” and a “poor safety and performance record.” (Dec. 29, 2019 social media posting); and
 - b. “[W]orkplace safety, permit violations & environmental accidents at their current landfills serve as predictors of what is expected from them in Dalton.” (Jan. 5, 2020 social media posting).
- Defendants’ statements falsely imply that plaintiff’s record in ensuring the safety of its employees, in complying with its permitting obligations, and in protecting the environment is far worse than the standard in the industry. In fact, plaintiff has a far better record with respect to these criteria than its competitors do.
21. Defendants published online yet another article falsely attributing the leachate spillage to plaintiff operating outside of permitted hours, and as “YET ANOTHER example of [plaintiff’s] poor management of YET ANOTHER of their landfills in recent months.” (Jan. 1, 2020 social media posting). Defendants’ article further falsely accused plaintiff of:

- a. Misleading the public;
 - b. Trying to improperly influence a zoning vote; and
 - c. Engaging in a “very sneaky” lot-line adjustment.
22. Defendants falsely stated online on November 20, 2019 that plaintiff has “repeated site violations, air and noise pollution, PFAS, leachate, dioxane in the Ammo[noosuc River], unsightly heavy traffic, litigious neighbor and overall bad business partner filling up NH landfill space with out of state trash...” 1,4-dioxane has been sampled for in the Ammonoosuc River since July 2009 as part of site monitoring and has not once been detected in the river.

23. On November 24, 2019, defendants published on social media that plaintiff ships “millions of gallons of leachate to the Concord and Franklin [wastewater treatment facilities] despite their inability to treat it effectively before it is emptied into the Merrimack River[.]” This statement falsely implies that leachate is untreated before it is unlawfully discharged to the Merrimack River and that plaintiff is complicit in those discharges. In fact, New Hampshire law requires the collection and removal of leachate from landfills and its conveyance to an approved treatment or disposal facility, and plaintiff complies with this requirement.

24. Defendants falsely describes plaintiff as “greedy” and “predatory,” and has published statements to this effect, including:

- a. “...we know a landfill in Dalton represents billions of dollars for greedy Casella and their [sic] garbage empire.” (Dec. 29, 2019 social media posting);
- b. Casella is a “predatory out-of-state corporation that sought to prey on our vulnerability.” (Jul. 31, 2019 article in the Union Leader); and
- c. Plaintiff is “a predatory landfill company.” (Jul. 5, 2019 social media posting).

25. Alvarez considers himself at “war” with plaintiff:

a. “If you haven’t figured out by now that I’m at [expletive] war, you’ve not been paying attention.” (Jun. 29, 2019 social media posting).

26. Alvarez has expressly stated he is trying to disrupt plaintiff’s existing and future business and facilities in New Hampshire.

27. Defendants has engaged in efforts to prevent plaintiff’s subsidiary, NCES, from obtaining an expansion permit for its Bethlehem facility.

28. On December 4, 2019, defendants published statements online including:

- a. “Let’s kick [plaintiff] OUT of NH!;”
- b. “NCES has been a bad business partner for the North Country and an expansion for them to import more trash is not what we need. Close it down when it reaches Stage V capacity in April, 2020. NO STAGE VI EXPANSION!;”

29. Defendants had previously published the following false statements in a November 20, 2019 Letter to the Editor of the local newspaper, the Caledonian Record:

- a. Plaintiff is a “corporate predator” who tried to “influence the vote on zoning in the Town of Dalton with their blatant distortions of reality in their numerous mailers sent to voters;”
- b. “It is time to close the NCES landfill in Bethlehem. New Hampshire does not need Casella Waste Systems and its greedy practice of importing out of state trash in order to increase its own profitability”; and
- c. “We do not need Casella and its greed. On the contrary, Casella needs NH to continue to profit from importing trash.”

30. Defendants made defamatory statements about the alleged impact that plaintiff’s proposed new facility would have in Dalton, New Hampshire and the surrounding towns.

31. Alvarez published a photoshopped view from Forest Lake depicting a landfill rising over one hundred feet above the ridgeline between the site and the lake when, in fact, the proposed landfill would be screened from the lake and its surrounding homes.

32. Alvarez spoke at a public hearing held on or about July 23, 2019 in Dalton, New Hampshire that was reported in local news outlets. Alvarez falsely stated at the hearing that the proposed landfill in Dalton would release leachate that would contaminate groundwater and also affect surface water. (Jul. 31, 2019 article in the Union Leader).

33. Alvarez published online a Letter to the Editor he submitted on July 7, 2019, in which he falsely stated Casella “claim[s] to be a steward for the environment, but the reality at each of their [sic] facilities speaks to the contrary.”

34. In another Letter to the Editor of the Caledonian Record on May 28, 2019, entitled “Time for the North Country to dump Casella,” which defendants published online, defendants falsely stated:

- a. The location of the proposed landfill in Dalton has “high ground that drains into both Forest Lake and Alderbrook, both of which eventually drain into the Connecticut and Ammonoosuc Rivers . . . ;”
- b. “Bethlehem has some of the highest property taxes in the North Country as a result of their [sic] relationship with Casella;”
- c. Plaintiff is trying to “pack the Town of Bethlehem Planning Board” to seek further expansion in a town “against the will of the voters.”

35. Defendants have falsely accused plaintiff of engaging in criminal, safety, and ethical violations.

36. On January 2, 2020, in connection with falsely accusing plaintiff of spilling 8,000 gallons of leachate into the Black River, defendants asserted that “criminal charges should be brought forth, why on earth is a leachate truck leaving the Coventry landfill, OWNED AND OPERATED by [plaintiff], at 3AM in the morning [sic]...”

37. Defendants falsely accused plaintiff of “negligence and worker safety violations.” (Jan. 2, 2020 social media posting).

38. Defendants falsely accused plaintiff of engaging in “unethical lobbying efforts” in a July 2019 letter to Attorney General Gordon MacDonald. Defendants’ false reports of criminal conduct included:

- a. Plaintiff “engaged in unethical lobbying efforts” and its subsidiary sent out information “filled with falsehood, misinformation, and needs to be investigated”;
- b. There should be a law against the “purposeful misleading of voters by a company when there is financial gain to be realized by such lobbying”; and
- c. Casella provided information to the public that includes “misleading information relative to the groundwater at their [sic] NCES facility in Bethlehem relative to drinking water standards.”

39. On April 24, 2019, Alvarez filed an ethics complaint against Horizons Engineering with the New Hampshire Board of Land Surveyors, accusing it of representing plaintiff and that, in so doing, it “knowingly attempted to deceive the Planning Board, abutters, and the public regarding an attempt by [plaintiff] to adjust property lines . . .” and such activity “constitutes professional malfeasance and possibly criminal conduct.” These statements were false.

- a. Alvarez further falsely stated that “[us]ing the engineering company’s professional position to mask the property owner and proposed purchaser’s intent to inst[al]l a large, 300 + sized [sic] piece of land carved out of a larger parcel, for a garbage landfill in a town with no zoning ordinances and skirting the abutting landowner notification process, which would include the NH Div. of Parks, is fraudulent and despite the failure of the attempt, should be addressed accordingly by those responsible for licensing and permitting;” and
- b. “[T]his will surely lead to the subsequent contamination and destruction of wetlands and will constitute an environmental catastrophe which will forever alter the ecosystem over a wide area of the north country, create economic hardship for an area which relies heavily on eco-tourism dollars from out of area vacationers, negatively impact the quality of life, health, and property values for so many area residents. This proposed garbage landfill surely cannot be allowed to progress, which is likely the reason for the attempted deception and subterfuge.”

40. The local newspaper reported on the ethics complaint filed by Alvarez and his false allegations that plaintiff acted improperly in connection with an application to adjust lot lines. (May 10, 2019 article in the Caledonian Record).

COUNT I

41. Plaintiff restates and incorporates herein by reference each and every preceding paragraph as if fully set forth herein.

42. Plaintiff is a public figure because it is engaged in the business of waste and recycling management, which are issues in which the public has a justified and important interest.

43. Alvarez and Doe Defendants 1-20 are private persons and the Forest Lake Defendants are private unincorporated membership organizations.

44. Defendants intentionally or without reasonable care published, without any valid privilege, false statements of fact about plaintiff to third parties, including but not limited to false statements published on social media, in newspapers, in chatrooms, on other websites, and/or in mailings to other third-parties, and in person.

45. Defendants published false statements of fact with actual malice, that is, with knowledge that his statements were false, or with reckless disregard for whether his statements were true or false.

46. The false statements and the impression they create tend to lower plaintiff's reputation in the community and harm its business interests.

47. Defendants acted intentionally and maliciously to harm plaintiff and to create a false impression of plaintiff because of defendants' ill will, hatred, and hostility towards plaintiff.

48. As a result of such conduct, plaintiff suffered harm to its reputation and business.

49. Plaintiff is entitled to a declaration that defendants have defamed plaintiff, injunctive relief, compensatory damages for general harm to reputation without specific proof, special damages for those present and future damages plaintiff will suffer as the natural and direct consequence of defendants' defamatory acts, including harm to business reputation, credit reputation, loss of business and any other damage proven to have resulted as the normal and direct consequence of the defamation, as well as liberal compensatory damages because defendants acted with ill will, hatred, hostility, or evil motive in publishing their defamatory statements.

COUNT II

50. Plaintiff restates and incorporates herein by reference each and every preceding paragraph as if fully set forth herein.

51. As described herein, defendants negligently or intentionally published, without any valid privilege, false statements of fact about plaintiff to third parties, including but not limited to false statements made in social media postings, on other websites, in chatrooms, print media and/or in person.

52. Defendants' false statements of fact include allegations of criminal conduct by plaintiff, and matters incompatible with plaintiff's business, trade, or profession.

53. Defendants failed to exercise reasonable care in publishing false and defamatory statements of fact, without any valid privilege.

54. These statements and the impression they create tend to lower plaintiff's reputation in the community and harm its business interests.

55. Defendants acted intentionally and maliciously to harm plaintiff and create a false impression of plaintiff because of defendants' ill will, hatred, and hostility towards plaintiff.

56. As a result of such conduct, plaintiff suffered harm to its reputation and business.

57. Plaintiff is entitled to a declaration that defendants have defamed plaintiff, injunctive relief, compensatory damages for general harm to reputation without specific proof, special damages for those present and future damages plaintiff will suffer as the natural and direct consequence of defendants' defamatory acts, including harm to business reputation, credit reputation, loss of business and any other damage proven to have resulted as the normal and direct consequence of the defamation, as well as liberal compensatory damages because

defendants acted with ill will, hatred, hostility, or evil motive in publishing the defamatory statements.

WHEREFORE, plaintiff respectfully requests this Honorable Court:

- A. Enjoin defendants from defaming plaintiff;
- B. Issue an order declaring that defendants have defamed the plaintiff with their words and conduct;
- C. Enter an award of damages to compensate plaintiff for the acts complained of above, including enhanced compensatory damages, all within the jurisdictional limits of this court;
- D. Award plaintiff its reasonable attorney's fees and costs in accordance with New Hampshire law; and
- E. Grant plaintiff such other and further relief as equity requires.

PLAINTIFF REQUESTS A TRIAL BY JURY ON ALL ISSUES SO TRIABLE.

Respectfully submitted,

CASELLA WASTE SYSTEMS, INC.,

By Its Attorneys,

CLEVELAND, WATERS AND BASS, P.A.

Date: 4/14/20

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