

STATE OF NEW HAMPSHIRE

MERRIMACK, ss.

SUPERIOR COURT
DOCKET NO.: 217-2023-CV-00285

CASELLA WASTE SYSTEMS, INC.

v.

JON SWAN

**EMERGENCY MOTION OF CALEDONIAN RECORD PUBLISHING COMPANY, INC.
AND ROBERT BLECHL TO QUASH SUBPOENAS**

The Caledonian Record Publishing Company, Inc., (hereinafter “Caledonian”), and Robert Blechl, (hereinafter “Blechl”), through counsel, hereby move to quash subpoenas that were served on them in this civil action by counsel for the plaintiff, Casella Waste Systems, Inc., (hereinafter “Casella”). Those subpoenas, which are appended hereto as Exhibits 1 and 2, call for the keeper of the records of Caledonian and for Blechl to appear for depositions at the offices of Cleveland, Waters and Bass, P.A., counsel for Casella on October 10, 2023.

In support of this motion Caledonian and Blechl state as follows:

1. Caledonian is a publisher of newspapers and other media in Vermont and has been engaged in that business since 1937.
2. Blechl is employed by Caledonian as a news reporter and in that capacity has written stories that were published by Caledonian concerning certain civil litigation that occurred in this Court between Casella and Jon Swan, (hereinafter “Swan”). That litigation was entitled Casella Waste Systems, Inc. v. Jon Swan f/k/a Jon Alvaraz, et al, Docket No. 217-2020-CV-212.

3. The litigation referenced in paragraph 2 above was apparently settled as “neither party docket markings” were filed on May 15, 2023 and were approved by the Court on May 16, 2023.

4. On May 18, 2023, Caledonian published a story written by Blechl and entitled "Casella Drops Defamation Lawsuit against Dalton Landfill Opponent."

5. The subpoena issued to the keeper of the records of Caledonian, while not labeled a subpoena duces tecum, contains the following “Document Requests”:

All documents and records within its possession, custody or control, evidencing, reflecting or regarding any communications with Jon Swan and/or others relating to the resolution of the Litigation.

All documents and records within its possession, custody or control, evidencing, reflecting or regarding any communications with Jon Swan and/or others relating to the story published in the Caledonian-Record on May 18, 2023, under the headline “Casella Drops Defamation Lawsuit Against Dalton Landfill Opponent.”

Information regarding the residential address of Robert Blechl, a reporter for the Caledonian-Record.

The Constitution of New Hampshire, Part I, Article 22, provides a qualified privilege for news reporters in civil cases. Opinion of the Justices, 117 N.H. 386, 389 (1977). The exception to that privilege pertains to defamation cases wherein a publisher cites anonymous sources. This is not such a case, it is a breach of contract case, and there are no anonymous sources. This is not a criminal case and there are no named or unnamed sources.

As the affidavit of Robert Blechl demonstrates, all of the information in the publication that is the subject of the two (2) subpoenas was obtained by Blechl’s reading of the pleadings and the filings in the underlying civil action. The Blechl affidavit is submitted herewith as Exhibit 3.

Casella's claim that Swan somehow engineered the wording of the May 18, 2023, story is based solely on unfounded speculation and conjecture.

It is well settled law that requiring reporters and publishers to respond to subpoenas and to appear for depositions has a chilling effect on the newsgathering and publishing processes. When, as in this case, no valid basis for the subpoenas exists, the First Amendment and Part I Article 22 of the New Hampshire Constitution mandate the quashing of the issued subpoenas.

Wherefore Caledonian and Blechl now pray that the Court:

1. enter an Order quashing the two (2) subpoenas served upon Caledonian and Blechl;
2. enter an Order awarding Caledonian and Blechl their attorneys' fees incurred in filing this Motion;
3. Order such other and further relief as the Court deem just.

Caledonian and Blechl hereby request the opportunity to present oral argument in support of this Motion should the Court deem such argument to be necessary.

Caledonian Publishing Company, Inc. and
Robert Blechl,
by their attorney,

/s/ Gregory V. Sullivan
Gregory V. Sullivan
NH Bar # 2471
Malloy & Sullivan,
Lawyers Professional Corporation
59 Water Street
Hingham, MA 02043
(781)749-4141
g.sullivan@mslpc.net

Dated: September 29, 2023

EXHIBIT 1

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
https://www.courts.nh.gov

Court Name: Merrimack Superior Court
Case Name: Casella Waste Systems, Inc. v. Jon Swan
Case Number: 217-2023-CV-00285
(if known)

SUBPOENA

To:

The Caledonian Record, Keeper of Records

Name of Witness

263 W Main Street

Street Address

Littleton, NH 03561

City, State, Zip Code

You are required to appear at: the law offices of Cleveland, Waters and Bass, P.A. located
Location (if at a courthouse, put name of court)

at 2 Capital Plaza, 5th Floor, Concord, NH 03301

Street Address

City

State

on 10/10/2023 at 1:00 p.m. to testify about the above case.
Date Time

You are further required to bring with you the following:

The documents listed on the attached Exhibit A.

This is a subpoena for your deposition to be taken by a representative of Avicore Reporting.

IF YOU DO NOT APPEAR YOU MAY BE SUBJECT TO LEGAL PENALTIES

9-25-2023

Date

Nancy L. Lagasse
Signature Justice of the Peace, Clerk of Court, ~~EXPIRES~~
Nancy L. Lagasse
Printed name
DECEMBER 7, 2027
NANCY L. LAGASSE
STATE OF NEW HAMPSHIRE
COMMISSION EXPIRES
JUSTICE OF THE PEACE

Issued at the request of _____

Phone number (optional) _____

RETURN OF SERVICE

On _____ at _____ o'clock in the a.m. p.m. I read or delivered in hand to the above-named person an original subpoena of which this is a true copy.

Signature _____

Printed name _____

Title (if applicable) _____

Agency (if applicable) _____

REQUESTING PARTY IS RESPONSIBLE FOR PAYMENT OF TRAVEL AND ATTENDANCE FEES

EXHIBIT A

INSTRUCTIONS

Production shall be made to, and any objections shall be served upon, Cooley A. Arroyo, Esq., Cleveland, Waters and Bass, P.A., Two Capital Plaza, 5th Floor, P.O. Box 1137, Concord, NH 03302-1137, pursuant to the definitions and instructions specified herein, on or before the date of the deposition.

DEFINITIONS

1. “Communication” shall mean the oral or written transmittal of information (in the form of facts, ideas, inquiries, or otherwise) and includes, but is not limited to, in-person or telephone conversations, voicemails, letters, memoranda, text messages or emails as well as the transfer of any document from one person to another.

2. “Documents and records” shall mean any written or printed information, irrespective of the medium upon which it was recorded, including without limitation, writings, drawings, graphs, charts, photographs, recordings, notes, diaries, calendars, books, papers, journals, accounts, invoices, social media accounts, and any computer-generated, computer-stored, or electronically stored information (“ESI”) within the meaning of Super. Ct. R. Civil 25 and includes preliminary versions, drafts, and revisions. It also includes the original and every non-identical copy (whether different from the original because of handwritten notes, underlining on the copy, or otherwise), regardless of origin or location. This definition includes but is not limited to ESI stored on a computer, smart phone, tablet, computer disk, hard drive, server, flash drive, memory card, or other storage media to which you have access, including in or on storage clouds, drop boxes, or websites and including any and all ESI contained on or otherwise posted on social

media webpages, such as Facebook, Twitter, LinkedIn, Instagram, Pinterest, Google+, MySpace, etc.

3. The “Litigation” shall mean the action captioned *Casella Waste Systems, Inc. v. Jon Swan f/k/a Jon Alvarez*, Case No. 217-2020-CV-212.

DOCUMENT REQUESTS

The deponent shall produce the following documents:

All documents and records within its possession, custody or control, evidencing, reflecting or regarding any communications with Jon Swan and/or others relating to the resolution of the Litigation.

All documents and records within its possession, custody or control, evidencing, reflecting or regarding any communications with Jon Swan and/or others relating to the story published in the *Caledonian-Record* on May 18, 2023, under the headline “Casella Drops Defamation Lawsuit Against Dalton Landfill Opponent.”

Information regarding the residential address of Robert Blechl, a reporter for the *Caledonian-Record*.

EXHIBIT 2

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
https://www.courts.nh.gov

Court Name: Merrimack Superior Court
Case Name: Casella Waste Systems, Inc. v. Jon Swan
Case Number: 217-2023-CV-00285
(if known)

SUBPOENA

To:

Robert Blechl

Name of Witness

263 W Main Street

Street Address

Littleton, NH 03561

City, State, Zip Code

You are required to appear at: the law offices of Cleveland, Waters and Bass, P.A. located
Location (if at a courthouse, put name of court)

at 2 Capital Plaza, 5th Floor, Concord, NH 03301

Street Address

City

State

on 10/10/2023 at 10:00 a.m. to testify about the above case.
Date Time

You are further required to bring with you the following:

The documents listed on the attached Exhibit A.

This is a subpoena for your deposition to be taken by a representative of Avicore Reporting.

IF YOU DO NOT APPEAR YOU MAY BE SUBJECT TO LEGAL PENALTIES

9-25-2023
Date

Nancy L. Lagasse
Signature Justice of the Peace, Clerk of Court
Nancy L. Lagasse
Printed name
STATE OF NEW HAMPSHIRE
-MY- COMMISSION EXPIRES
DECEMBER 7, 2027
JUSTICE OF THE PEACE

Issued at the request of _____

Phone number (optional) _____

RETURN OF SERVICE

On _____ at _____ o'clock in the a.m. p.m. I read or delivered in hand to the above-named person an original subpoena of which this is a true copy.

Signature _____

Printed name _____

Title (if applicable) _____

Agency (if applicable) _____

REQUESTING PARTY IS RESPONSIBLE FOR PAYMENT OF TRAVEL AND ATTENDANCE FEES

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DEFINITIONS

1. “Communication” shall mean the oral or written transmittal of information (in the form of facts, ideas, inquiries, or otherwise) and includes, but is not limited to, in-person or telephone conversations, voicemails, letters, memoranda, text messages or emails as well as the transfer of any document from one person to another.

2. “Documents and records” shall mean any written or printed information, irrespective of the medium upon which it was recorded, including without limitation, writings, drawings, graphs, charts, photographs, recordings, notes, diaries, calendars, books, papers, journals, accounts, invoices, social media accounts, and any computer-generated, computer-stored, or electronically stored information (“ESI”) within the meaning of Super. Ct. R. Civil 25 and includes preliminary versions, drafts, and revisions. It also includes the original and every non-identical copy (whether different from the original because of handwritten notes, underlining on the copy, or otherwise), regardless of origin or location. This definition includes but is not limited to ESI stored on a computer, smart phone, tablet, computer disk, hard drive, server, flash drive, memory card, or other storage media to which you have access, including in or on storage clouds, drop boxes, or websites and including any and all ESI contained on or otherwise posted on social

media webpages, such as Facebook, Twitter, LinkedIn, Instagram, Pinterest, Google+, MySpace, etc.

3. The “Litigation” shall mean the action captioned *Casella Waste Systems, Inc. v. Jon Swan f/k/a Jon Alvarez*, Case No. 217-2020-CV-212.

DOCUMENT REQUESTS

The deponent shall produce the following documents:

All documents and records within his possession, custody or control, evidencing, reflecting or regarding any communications with Jon Swan and/or others relating to the resolution of the Litigation.

All documents and records within his possession, custody or control, evidencing, reflecting or regarding any communications with Jon Swan and/or others relating to the story published in the *Caledonian-Record* on May 18, 2023, under the headline “Casella Drops Defamation Lawsuit Against Dalton Landfill Opponent.”

EXHIBIT 3

STATE OF NEW HAMPSHIRE
MERRIMACK, ss. SUPERIOR COURT
DOCKET NO.: 217-2023-CV-
00285

CASELLA WASTE SYSTEMS, INC.
v.
JON SWAN

AFFIDAVIT OF ROBERT BLECHL

I, Robert Blechl, do hereby depose and state as follows:

1. I am a news reporter employed by the Caledonian Record Publishing Company, Inc.
2. I have followed the litigation filed by Casella Waste Systems, Inc. against Jon Swan since 2020. I have written nine (9) stories about that litigation that were published in the *Caledonian Record*.
3. The most recent story was published on May 18, 2023, and was entitled "Casella Drops Defamation Lawsuit Against Dalton Landfill Opponent".
4. I attempted to speak with Jon Swan about the fact that the Court docket entry of Tuesday, May 15, 2023, read "Neither Party, Docket Markings". Mr. Swan, when contacted by me, would not talk to me about the litigation. I therefore wrote the article of May 18 strictly using what little information there was in the public court record.

5. I have had no conversation or communication with Mr. Swan subsequent to that date concerning the resolution of the litigation. I have never spoken with Jon Swan about the existence of a settlement agreement or the terms thereof.
6. The above facts are based upon my own personal knowledge and are true and accurate.

Sworn to under the pains and penalties of perjury this 29th day of September, 2023.



Robert Blechl

STATE OF VERMONT

CERTIFICATE OF SERVICE

I, Gregory V. Sullivan, do hereby certify that on September 29, 2023, the foregoing Emergency Motion to Quash Subpoenas and Affidavit of Robert Blechl were served upon the parties via the Court's e-filing system.

s/ Gregory V. Sullivan

Gregory V. Sullivan