

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

Casella Waste Systems, Inc.

v.

Jon Swan

Docket #217-2023-CV-00285

MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT

NOW COMES the Plaintiff Casella Waste Systems, Inc. (“Casella” or the “Plaintiff”), by and through its undersigned counsel, and hereby moves for judgment notwithstanding the verdict (“JNOV”) on the jury’s determination that Casella breached the agreement by filing the lawsuit, disclosing the existence of the settlement agreement to a third party, and that Swan did not breach by the initial post of the Caledonian Record article.

I. Introduction

1. A JNOV is required when “the sole reasonable inference that may be drawn from the evidence, which must be viewed in the light most favorable to the nonmoving party, is so overwhelmingly in favor of the moving party that no contrary verdict could stand.” *Boynton v. Figueroa*, 154 N.H. 592, 602 (2006); accord *Blouin v. Sanborn*, 155 N.H. 704, 707 (2007). Although the evidence is viewed in the light most favorable to the nonmoving party, where the Plaintiff moves for JNOV on a counterclaim, the court must consider the Defendant’s burden of proof on the counterclaim. See e.g., *Bronson v. Hitchcock Clinic*, 140 N.H. 798, 800-01 (1996). Thus, this Court must analyze the evidence in the light most favorable to Swan and determine if the evidence supported the jury finding that Casella breached the agreement by a preponderance of the evidence.

2. On the record made at trial, that standard is met. Although Casella filed the lawsuit and disclosed the existence of the settlement agreement and the confidentiality provision, it did not disclose on May 25, 2023, that the Defendant, Jon Swan (“Swan” or the “Defendant”), agreed to pay Casella \$1,500 and that he agreed to couch his speech in certain ways. Similarly, Mr. Leonard unambiguously testified that Casella did not disclose the existence of the settlement agreement, but that he had assumed that there was a settlement based on the newspaper article. From these facts, there is no reasonable conclusion that Casella breached the settlement agreement.

II. Casella is entitled to Judgment Notwithstanding the Verdict on the Jury’s Finding that it Breached the Settlement Agreement by Filing the Complaint

3. The only reasonable inference from the record is that Casella did not breach the settlement agreement by filing the Complaint. The testimony from Swan evidenced that he did not want his supporters knowing that he made a “deal with the devil” because his support would diminish; in other words, he did not desire the existence of any agreement with Casella to be known. The simple fact, however, is that when parties jointly docket markings, it is common knowledge that the case has settled. The public does not know the terms of the settlement agreement, but the existence of a settlement agreement is inherently obvious.

4. This fact was confirmed in the testimony at trial. Swan’s supporter, Lucy Golden, testified that she assumed there was a backroom agreement between Swan and Casella. Similarly, Mr. Leonard testified that he made the assumption that there was a settlement agreement because the parties jointly filed docket markings.

5. Thus, the only reasonable inference is that it was publicly known that Casella and Swan settled the case. The public did not know the details of the settlement agreement, but the fact that there was a settlement was already known prior to Casella’s filing the lawsuit. Where the settlement agreement was already common knowledge prior to Casella filing the lawsuit, Swan

cannot claim that filing the Complaint and thereby disclosing the existence of the lawsuit violated the settlement agreement.

6. Although the Complaint included the confidentiality provision and the liquidated damages, Swan did not testify that these provisions held any special meaning to him. Instead, his testimony focused on the simple fact that settling the case was the primary issue he did not want his supporters to know. Confidentiality and liquidated damages provisions are common and standard in settlement agreements and there is no reasonable inference that, where the existence of the settlement agreement is already known, the disclosure of the confidentiality provision and liquidated damages clause is a breach of the settlement agreement. Moreover, the Complaint did not include the other provisions of the settlement agreement which were particularized to Swan and the dispute at issue. Casella did not disclose those terms in the Complaint, thereby preserving the primary benefit of Swan's bargain. Swan cannot claim a material breach where those particularized provisions were not disclosed by Casella.

7. The court should also consider the public policy that Swan advocates. His interpretation of the confidentiality provision would require the entire lawsuit to be conducted under seal. This violates the general rule in Superior Court Rule 13B(a)(1) of open access to pleadings and the general public preference that lawsuits operate in public view. It also cuts against the standard for a motion to seal in Superior Court Rule 13B(d)(2) which states that "An agreement of the parties that a document is confidential or contains confidential information is not a sufficient basis alone to seal the record." Casella did file a motion to seal the settlement agreement, but not the Complaint itself because Swan cannot have an interest in hiding the existence of a lawsuit from public view. Moreover, the evidence at trial showed that Swan continued to fundraise during the litigation, even starting a GoFundMe that linked to the very documents Swan wanted to keep

confidential. There is no reasonable inference from these facts that by filing a lawsuit for breach of a settlement agreement that the public was already aware of breached the confidentiality provision.

III. Casella did not Breach the Settlement Agreement by Disclosing its Existence to Mr. Leonard.

8. Just as with filing the Complaint there is no reasonable inference that Casella breached the settlement agreement through Rebecca Metcalf's conversation with Mr. Leonard.

9. Mr. Leonard testified that Ms. Metcalf did not disclose the existence of the settlement agreement to him. Instead, just as with Lucy Golden, Mr. Leonard assumed that there was a settlement agreement. Therefore, there was no credible evidence that the jury could have relied on to determine that Casella breached by disclosing the existence of the settlement agreement to Mr. Leonard.

10. Similarly to the argument above, that Swan and Casella settled was common knowledge, Casella did not disclose the existence of the settlement agreement to Mr. Leonard. Although Mr. Leonard testified that Ms. Metcalf said something along the lines of "I can't talk about it, there's an NDA" he did not unequivocally attribute the "there's an NDA" to Ms. Metcalf. Mr. Leonard has legal training as a paralegal and was aware that settlement agreements generally contain a non-disclosure or confidentiality provision. Each time that Mr. Leonard discussed this issue in the Facebook post, he referred to a "court order" or an NDA "put down by the court."

11. Even if Mr. Leonard unequivocally attributed "there's an NDA" to Ms. Metcalf, the same argument as above applies here. Swan cannot claim a particularized interest in the disclosure of a confidentiality provision when the existence of the settlement agreement was already known.

IV. Swan Should be Found to Have Violated the Settlement Agreement's Implied Covenant of Good Faith and Fair Dealing by Posting the Article

12. Casella is entitled to JNOV on the jury's finding that the initial post by Swan that precipitated this entire case was not a breach of the implied covenant of good faith and fair dealing by Swan. The evidence at trial showed that the parties agreed Swan could discuss the termination of the lawsuit in a certain manner. He did not discuss it in that manner. Instead, Swan posted an article from the Caledonian Record (the "Article") with a photograph he captured of himself smiling with his attorney. That post included a title that described the termination of the prior lawsuit as Casella "drop[ing]" that litigation.

13. Prior to this litigation, Swan also created a GoFundMe that linked to an initial article describing the initiation of the first lawsuit and then linked to the Article with words immediately above that link stating "3 years+ later:". The only reasonable inference from this testimony is that Swan was attempting to portray that he beat Casella's lawsuit because it had dropped the litigation. There is no other reasonable inference from the word "drop" and the portrayal of that same link on a GoFundMe fundraiser.

14. This is exactly the type of bad faith conduct that the implied covenant of good faith and fair dealing protects against. Swan cannot both claim that Casella breached the settlement agreement by purportedly disclosing its existence when he portrayed that Casella had given up on its lawsuit against him. The evidence does not support that claim, especially considering that Swan paid Casella \$1,500. For these reasons, Casella is entitled to JNOV on its first claim against Swan.

IV. Conclusion

15. Based on these facts, the sole reasonable inference is that Casella did not breach the settlement agreement and that Swan failed to prove that Casella breached by a preponderance of the evidence. The existence of the settlement agreement was known prior to any of the alleged

breaches, and disclosing the existence of a confidentiality provision could not breach that provision when Swan's primary concern was the disclosure of the fact that he had settled – a fact that was already known. Likewise, the only reasonable inference from the evidence at trial was that Swan portrayed Casella as having given up its litigation which necessarily violated the implied covenant of good faith and fair dealing.

WHEREFORE, Casella respectfully requests that:

(1) This court grant its motion for judgment notwithstanding the pleadings and issue a verdict in favor of Casella; and

(2) Grant any other relief that may be just and proper.

Respectfully submitted,

CASELLA WASTE SYSTEMS, INC.

By Its Attorneys,
CLEVELAND, WATERS and BASS, P.A.,

Dated: May 21, 2026

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CERTIFICATION

I hereby certify that a copy of the foregoing has been served this day, May 21, 2026, through the court's ecf-filing system upon all parties who have filed appearances.

/s/Jacob M. Rhodes
Jacob M. Rhodes

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