



Note: In the case title, an asterisk () indicates an appellant and a double asterisk (**) indicates a cross-appellant. Decisions of a three-justice panel are not to be considered as precedent before any tribunal.*

ENTRY ORDER

MARCH TERM, 2026

AC Wright LLC* v. Wind River	}	APPEALED FROM:
Environmental, LLC et al.	}	
	}	Superior Court, Addison Unit,
	}	Civil Division
	}	CASE NO. 23-CV-04676
	}	Trial Judge: David A. Barra

In the above-entitled cause, the Clerk will enter:

Plaintiff appeals the civil division’s judgment in favor of defendants in this breach-of-contract action. We affirm.

The facts set forth below are undisputed. Plaintiff AC Wright LLC is a Vermont limited liability company. Defendant Wind River Environmental LLC is a Delaware corporation headquartered in Massachusetts. Both provide septic-tank pumping services to customers in Vermont. Defendant Rodem is an inactive corporation owned by defendants Michael and Kelly Medor.

In May 2013, Rodem purchased the assets of Clark Septic Service, a former septic-service company in Bristol. The assets included a “2013 Customer List.” In September 2013, Rodem sold the Clark Septic Service assets, including the customer list, to plaintiff.

In 2018, Wind River purchased Rodem’s assets. As part of the purchase, Wind River came into possession of the information on the customer list. Wind River then sent reminder notices to the customers on the list. The reminder notices listed a customer ID and the date that service was last provided at the listed property address, and stated that “it’s time to clean your septic tank.”

Plaintiff learned of the reminder notices and complained to Wind River. The parties negotiated the issue for approximately two years before entering into a settlement agreement in July 2022. The agreement stated:

WHEREAS, Wind River has been making use of the Customer List and sending reminder notices to former customers of Clark Septic Service soliciting their business (the “Notices”) . . .

1. Identification of Customer List. As part of this Agreement, Wind River has delivered to Wright, and Wright has accepted as such, a full and complete copy of the Customer List, which includes all information available to Wind River regarding customers previously served by any entity operating under the name “Clark Septic Service” attached hereto as Exhibit A.

2. Wind River to Cease Using Customer List. Upon signing this Agreement, Wind River shall immediately cease making any use of the Customer List, including but not limited to sending Notices. For the avoidance of doubt, while not through the use of the Customer List, which Wind River will surrender and destroy, Wind River shall not be precluded from general marketing efforts that may reach Wright’s Customers in the normal course of business.

The customer list was attached to the settlement agreement. The list consisted of several hundred names, some physical addresses, some phone numbers, service dates, and service types. The agreement stated that “liquidated damages for each such violation would be \$750,” but did not define what would be a violation. It did not contain an end date to the prohibition against use of the list. The agreement released Wind River from liability for any claims arising out of its use of the customer list except for claims arising from the parties’ obligations under the agreement.

In 2022, prior to executing the settlement agreement, Wind River began trying to verify contact information for customers in its database for whom it did not have working email addresses. The verification effort involved about 200,000 names in eighteen states. Wind River sent this customer data set—which included, but was broader than, information that appeared in plaintiff’s customer list—to a third-party vendor for assistance. The vendor provided Wind River with three sets of customer information based on the data Wind River provided: customers for whom no email address could be found, customers with verified email addresses, and customers whose email addresses needed to be verified.¹

After the execution of the settlement agreement, Wind River sent emails to all customers in the third group, which included some, but not all, of the names that appeared on the 2013 customer list. Wind River asked recipients to confirm their account information and provided an option for indicating that they were not a customer of Wind River. The emails did not specifically refer to the 2013 customer list. The Wind River emails used email addresses provided by the vendor, which had used the customer list and other information Wind River provided prior to execution of the settlement agreement. Plaintiff’s Exhibit U identified ninety-three email addresses that received Wind River’s email. Of the ninety-three individuals listed on Exhibit U, only sixty-eight are also on the customer list, which is several hundred names long.

Jean Clark received Wind River’s email and contacted plaintiff. Clark was not on the customer list. The email she received was intended for her daughter Sarah Quatrocci, who was on the customer list. The vendor linked Clark’s email address to Quatrocci and provided it to

¹ The trial court did not make a finding as to when the vendor provided the list to Wind River. Wind River’s chief financial officer testified that it occurred during the summer of 2022, but could not recall the specific date.

Wind River—along with email addresses for the other individuals listed in Exhibit U, some of them on the customer list, some of them not—prior to the settlement agreement.

After receiving Clark’s report, plaintiff contacted Wind River and asserted that the verification email violated the settlement agreement. The parties were unable to resolve the issue and plaintiff filed suit against defendants in November 2023. Plaintiff alleged that Wind River was “making use” of the customer list in violation of the settlement agreement when it sent emails to the ninety-three email addresses listed on Exhibit U.

In a written decision issued following a bench trial, the trial court interpreted the settlement agreement’s prohibition on “making use” of the customer list to require actual contact with customers on the list and found that plaintiff had not demonstrated that anyone on the list was contacted. It further concluded that plaintiff had to show that Wind River’s use of the list occurred after the settlement agreement was executed in July 2022. The court found that plaintiff did not establish that Wind River used the list to send the email or that it used the customer list after the settlement agreement. It held that Wind River’s act of sending the information on the customer list to the third-party vendor was covered by the release because it occurred before the settlement agreement was executed. The court concluded that the verification email did not violate the settlement agreement because the email was part of a general marketing effort as opposed to a prohibited use of the list. It accordingly granted judgment in favor of defendants.

On appeal, plaintiff argues that the trial court misinterpreted the settlement agreement and erred in concluding that no breach of its terms occurred. The proper interpretation of a contract is a question of law that we review *de novo*. Falcao v. Richardson, 2024 VT 78, ¶ 11, 220 Vt. 310; see also Beldock v. VWSD, LLC, 2023 VT 35, ¶ 27, 218 Vt. 144 (“Whether a set of facts constitutes a breach of contract is a question of law.”). “[T]his Court must make its own inquiry into the proper legal effect of the terms of the agreement, employing the trial court’s valid findings of fact.” Gannon v. Quechee Lakes Corp., 162 Vt. 465, 469 (1994) (citation omitted).

“Our goal when interpreting contractual provisions is to give effect to the intent of the parties as it is expressed in their writing.” Southwick v. City of Rutland, 2011 VT 105, ¶ 5, 190 Vt. 324. “To determine the meaning of a specific provision of a contract, we consider the whole instrument and construe it in harmony if possible.” John A. Russell Corp. v. Bohlig, 170 Vt. 12, 17 (1999). “When the language of the contract is clear on its face, we will assume that the intent of the parties is embedded in its terms.” Dep’t of Corr. v. Matrix Health Sys., P.C., 2008 VT 32, ¶ 12, 183 Vt. 348 (quotation omitted).

Plaintiff argues that the above-excerpted provisions of the settlement agreement plainly required Wind River to halt any ongoing use of the customer list and refrain from using the list going forward, and to remove the information from its customer database and other ordinary business records. Accordingly, plaintiff argues, Wind River’s inclusion of certain customers from plaintiff’s 2013 customer list in its customer-contact verification campaign violated the settlement agreement.

We disagree. The undisputed evidence shows that while the parties were negotiating the settlement agreement, but before it was signed, Wind River provided information from the customer list to the third-party vendor. Because it preceded the parties signing the agreement, that action was covered by the settlement agreement’s release. The vendor then sent Wind River a new list of names, some of which were from the 2013 customer list, with associated email

addresses. The vendor compiled the email addresses from information Wind River had sent it, including information in the customer list. Plaintiff does not allege the vendor's ascertaining email addresses and sending them to Wind River constitute a breach of the settlement agreement.

The third-party vendor's list and the 2013 customer list are not the same. The vendor list included many names that were not on the customer list and it did not include every individual on that 2013 list. Further, while both the vendor list and the 2013 list contained some customer names in common, the third-party vendor list contained email addresses which were not included in the 2013 list. Because plaintiff does not allege the generation of the vendor list to have been in violation of the settlement agreement, and in light of the vendor lists' unique attributes, we agree with the trial court that Wind River's use of the vendor list was not "making use" of the 2013 customer list.

After the execution of the settlement agreement, Wind River used the list created by the third-party vendor to send an email to individuals whose emails needed verification. The trial court found, and plaintiff does not dispute on appeal, that this effort was part of Wind River's normal course of business. The record is silent as to whether any of the hundreds of individuals who were on the original 2013 customer list received this verification email. Further, the email did not include a reminder to renew service or other direct solicitation of the kind the agreement, through its defined term "Notice," clearly sought to curb. Instead, the email-verification campaign, which launched as a result of Wind River's receipt of new lists compiled by the vendor, was a "general marketing effort" within Wind River's "normal course of business." As such, it was specifically permitted by the agreement, and the trial court properly entered judgment in favor of defendant.²

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Christina E. Nolan, Associate Justice

Michael P. Drescher, Associate Justice

² In light of our holding, we need not assess the trial court's holding that the agreement required evidence that customers on the customer list were actually contacted by Wind River.