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GRAHAM B. SPANIER, Plaintiff, v. THE PENNSYLVANIA STATE UNIVERSITY, Defendant.	COURT OF COMMON PLEAS OF CENTRE COUNTY No. 2016-0571

DR. SPANIER'S REPLY BRIEF IN SUPPORT OF PLAINTIFF'S PRELIMINARY OBJECTIONS TO DEFENDANT'S SECOND AMENDED COUNTERCLAIMS

Dr. Graham B. Spanier ("Dr. Spanier"), by his undersigned counsel, respectfully submits the following Reply Brief in Support of Plaintiff's Preliminary Objections to Defendant's Second Amended Counterclaims. On May 9, 2017, Defendant The Pennsylvania State University ("PSU") filed its Memorandum of

Law in Opposition to Preliminary Objections to Second Amended Counterclaims ("Opposition" or "Opp'n") opposing Plaintiff's Preliminary Objections to Defendant's Second Amended Counterclaims ("Pl.'s POs") and the arguments in Plaintiff's Memorandum in Support of Preliminary Objections to Defendant's Second Amended Counterclaims ("Pl.'s Mem."), arguing that each of Defendant's Second Amended Counterclaims ("2d. Am. Countercl.") is properly pled, and asserting that Dr. Spanier's Preliminary Objections should be overruled. Dr. Spanier files this short Reply Brief to identify and clarify certain misstatements of Pennsylvania law in PSU's Opposition.

INTRODUCTION

PSU's Opposition fails to explain why Dr. Spanier's Preliminary Objections to Defendant's Second Amended Counterclaims should not be sustained, and it misstates the controlling Pennsylvania law in several material respects. ***First***, PSU does not effectively dispute that under Pennsylvania law PSU had corporate knowledge of the information it claims Dr. Spanier failed to disclose, and that it therefore cannot have been injured by Dr. Spanier's alleged nondisclosure. ***Second***, Dr. Spanier's Third Preliminary Objection should be sustained because PSU fails to distinguish black-letter Pennsylvania law holding that an integration clause prohibits a party from voiding a contract based on supposed fraudulent inducement. ***Third***, Dr. Spanier's Fourth Preliminary Objection asking the Court

to dismiss PSU's claim for Unilateral Mistake of Fact should be sustained, because the release and integration clauses in the Separation Agreement plainly place the risk of mistake of fact on PSU, and because PSU admits that it was not under any mistake of fact. And ***fourth***, Dr. Spanier's Seventh Preliminary Objection should be sustained, and PSU's claims sounding in equity should be dismissed, because PSU had and failed to assert an adequate remedy at law within the applicable statute of limitations period. For the reasons set forth herein and in his Memorandum of Law in Support of his Preliminary Objections to PSU's Second Amended Counterclaims, Dr. Spanier requests that the Court sustain his preliminary objections.

I. PSU's Claimed Corporate Knowledge Exception Is Not Supported By Law Or Common Sense.

In Dr. Spanier's Ninth Preliminary Objection, he argued that PSU failed to factually allege causation or injury attributable to Dr. Spanier's alleged nondisclosure of information regarding Sandusky because PSU admits in its factual allegations that two other high-ranking PSU officials were aware of the same information that Dr. Spanier allegedly failed to disclose. (*See* Pl.'s POs at ¶¶ 85-97; 2d. Am. Countercl. ¶ 21-23, *id.* at Ex. 4.) Under Pennsylvania law, PSU

cannot dispute that it was aware of that information because a corporate entity is held to have the same knowledge as its officers and agents. (Pl.'s Mem. at 48-49.)[1]

PSU's Opposition fails to meaningfully dispute this argument; in fact, PSU admits that "as a general principal [sic], ... an organization only acquires information through its agents and employees." (Opp'n at 29.) Instead, PSU argues, "the operative question is whether the particular University representatives who were involved in negotiating Dr. Spanier's Separation Agreement were aware of the information in question." (*Id.*) But PSU does not attempt to support this claim with any legal authority, nor does it cite a single case from any jurisdiction suggesting that a corporation can disclaim knowledge known to the entity through its high-ranking officials simply by claiming that other, lower-ranking officials were not aware of the information. Additionally, PSU does not even address, let alone dispute, Dr. Spanier's argument that this Court ***has already held*** that PSU was aware of the information regarding Sandusky through its agents Curley and Schultz, and that PSU is therefore estopped from asserting otherwise. (Pl.'s Mem. at 50 n.8, (citing May 4, 2016 Op., *Pa. State Univ. v. Pa. Mfrs.' Ass'n Ins. Co.*, Nos. 03195, 15111053, 15111034, 15111035, 2016 WL 2737438, at *6-8 (Ct.

[1] *See, e.g., Commw. Dep't of Transp. v. Michael Moraiti, Upper Darby Auto Ctr., Inc.*, 34 Pa. Cmwlth. 27, 30 n.2 (1978) ("In accordance with a well established rule of the law of agency, a corporation is bound by the knowledge acquired by, or notice given to, its officer or agents..."); *Commw. v. One 1978 Porsche Coupe*, 23 Pa. D. & C.3d 268, 271 (Ct. Com. Pl. Montgomery Cnty. 1981) ("A corporation cannot see or know anything except by the eyes of intelligence of its officers... Knowledge of the proper corporate agent must be regarded, in legal effect, as the knowledge of the corporation.").

Com. Pl. Phila. Cnty. May 4, 2016) (Glazer, J.)).) Therefore, Dr. Spanier's Ninth Preliminary Objection must be sustained.

II. Parol Evidence May Not Be Admitted To Show Fraudulent Inducement.

In Dr. Spanier's Third Preliminary Objection, he argued the Separation Agreement bars PSU's Counterclaims based on a supposed failure to disclose by Dr. Spanier because the Agreement contains an integration clause disclaiming the notion that Dr. Spanier had any duty of disclosure to PSU in connection with the agreement regarding the terms of his separation from the University. (Pl.'s POs ¶¶ 30-45.) Dr. Spanier cited numerous Pennsylvania cases holding where a party agrees to an integration clause disclaiming the existence of any outside duty or warranty of disclosure it cannot— as PSU seeks to do here — later turn around and argue that it entered into the contract under false pretenses due to a failure by the other party to disclose information. (Pl.'s Mem. at 28-29.)[2]

[2] "*Yocca v. Pittsburgh Steelers Sports, Inc.*, 578 Pa. 479, 498-501 (2004) (sustaining preliminary objections and invoking the parol evidence rule to dismiss breach of contract claims based on a duty supposedly imposed by a separate document where such a duty was not enumerated in the contract and the contract contained an integration clause); *Dayhoff, Inc. v. H.J. Heinz Co.*, 86 F.3d 1287, 1300 (3d Cir. 1996) (noting that the Supreme Court of Pennsylvania has held that the parol evidence rule bars consideration of supposed prior representations concerning matters covered in the written contract); *HCB Contractors v. Liberty Place Hotel Assocs.*, 539 Pa. 395, 399-400 (1995) (affirming sustaining of preliminary objections and dismissal of claims where party claimed existence of representations outside of a contract that contained an integration clause); *Blumenstock v. Gibson*, 811 A.2d 1029, 1035-1036 (Pa. Super. 2002) (holding that an integration clause bars the admission of parol evidence regarding supposed representations outside of the written agreement, because "the case law clearly holds that a party cannot justifiably rely upon prior oral representations yet sign a contract denying the existence of those representations.")." (Pl.'s Mem. at 28-29.)

In response, PSU claims to find an exception to this well-settled rule that does not exist. PSU cites both *Blumenstock v. Gibson*, 811 A.2d 1029, 1036 (Pa. Super. 2002) and *Youndt v. First Nat'l Bank of Port Allegany*, 868 A.2d 539, 546 (Pa. Super. 2005) for the proposition that parol evidence may sometimes be admitted to show fraudulent inducement and void an agreement. (Opp'n at 15.) But what those cases go on to hold is that parol evidence of previous agreements or representations may ***not*** be used to void a contract ***that contains a full integration clause disclaiming the existence of previous agreements or representations***. *See Blumenstock*, 811 A.2d at 1036 (citing *Bell Atlantic Props., Inc.*, 439 Pa. Super. At 150 n.2) (noting that in general parol evidence can demonstrate fraudulent inducement ***except*** where the agreement contains an integration clause, because "a party cannot justifiably rely upon prior oral representations yet sign a contract denying the existence of those representations."); *Youndt*, 868 A.2d at 546 ("Thus, in a case of fraud in the inducement, parol evidence is inadmissible where the contract contains terms that deny the existence of representations regarding the subject matter of the alleged fraud.").

PSU then attempts to avoid this black-letter rule of Pennsylvania law by arguing that the integration clause in the Separation Agreement does not bar its claims because the integration clause did not "specifically address[]" the question of whether Dr. Spanier was required to disclose information concerning Sandusky

to PSU as a condition precedent to the validity of the Agreement. (Opp'n at 15.) But the Separation Agreement absolutely ***does*** specifically address whether Dr. Spanier agreed to disclose or warrant that he had disclosed information regarding Sandusky to PSU because it contains no term remotely requiring him to do so, and further contains an integration clause that explicitly states the Separation Agreement constitutes "the full and complete understandings and arrangements of the parties with respect to the terms of Dr. Spanier's termination from the position of President of the University," and that "***there are no agreements, covenants, promises or arrangements other than those set forth herein with respect to that subject.***" (2d. Am. Countercl. at Ex. 5 ¶ 17 (emphasis added).) PSU's argument that the Separation Agreement does "specifically address" whether Dr. Spanier did or did not agree to disclose information regarding Sandusky as a condition of the Agreement is nonsensical because the Agreement plainly states that he made no such agreement in connection with the parties' decision to enter into the Separation Agreement.

At bottom, PSU has failed to identify a single Pennsylvania case suggesting that a party who agrees to an integration clause disclaiming the existence of any outside agreements can then turn around and argue that the contract should be voided based on a supposed outside agreement. Dr. Spanier has cited numerous controlling Pennsylvania decisions stating that Pennsylvania law does not permit a

contracting party to do so. Dr. Spanier's Third Preliminary Objection must be sustained.

III. PSU Plainly Bore The Risk Of Mistake Under The Plain Terms Of The Separation Agreement And Is Precluded From Claiming A Unilateral Mistake of Fact.

Dr. Spanier's Fourth Preliminary Objection states that PSU's Second Counterclaim for Unilateral Mistake of Fact should be dismissed because such a claim cannot lie where the party asserting it bore the risk of such a mistake. (Pl.'s POs at ¶¶ 46-51.) Plaintiff further argued that the integration and release clauses in the Separation Agreement plainly demonstrate that PSU bore the risk of mistake as to whether or not Dr. Spanier had disclosed all facts he learned as President regarding Sandusky to PSU because PSU agreed to release Dr. Spanier for all acts or omissions, ***known or unknown***, that he may have made during his time as President. (Pl.'s Mem. at 24-25.) PSU does not dispute that to properly allege a claim for unilateral mistake, it must set forth facts demonstrating that it did not bear the risk of the mistake. (Opp'n at 18-19.)

PSU argues that the Separation Agreement did not place the risk of mistake on PSU, but in so arguing, PSU fails to address or even mention the actual language of the Agreement. (*Id.*) Instead, PSU again attempts to reference supposed prior agreements and obligations between Dr. Spanier and PSU — parol evidence arguments which are not only foreclosed by the broad integration clause

in the Separation Agreement, as set forth above (*See* Section II, supra), but are also irrelevant to the question of how ***the Separation Agreement*** allocated risk. *See Hart v. Arnold*, 884 A.2d 316, 333 (Pa. Super. 2005) (citing Restatement (Second) of Contracts § 154) (a party bears the risk of mistake where the language of the contract at issue allocates the risk to that party) (emphasis added).

The language of the release provision in the Separation Agreement plainly states that PSU agreed to, and intended to, release "***any and all claims, known and unknown***, that the University has or may have against Dr. Spanier ***for any acts, omissions, practices or events*** leading up to and including the effective date of this Agreement and the continuing effects thereof, ***to the extent such acts or omissions relate to his position as President of the University, it being the intention of the University to effect a general release of all such claims***." (2d. Am. Countercl. Ex. 5 at ¶ 8 (emphasis added).) PSU wholly fails to grapple with or explain how such specific language that ***presumes*** possible omissions by Dr. Spanier during his time as President that are unknown to PSU, and states that the University specifically intends to release Dr. Spanier for any such omissions, does not place the risk of the existence of such omissions squarely on PSU. PSU's conclusory allegations to the contrary cannot override the plain language of an agreement that PSU chose to attach as an exhibit to its Counterclaims. *See Firetree, Ltd. v. Dep't of Gen. Servs.*, 920 A.2d 906, 912 (Pa. Commw. Ct. 2007) (affirming dismissal on demurrer

where pleading and attached exhibit were in conflict but attached exhibit required dismissal).

Finally, and more fundamentally, PSU's claim for unilateral mistake of fact is barred for the reason that PSU's own factual averments plainly show that there was no mistake of fact. As explained above and in Dr. Spanier's Memorandum, PSU admits that its own high-ranking officials were aware of all of the material facts at issue long before Dr. Spanier and PSU entered into the Separation Agreement. Because PSU as a corporate entity was aware of those facts known to its officers and agents as a matter of law, PSU fails to, and cannot, plead facts demonstrating that it entered into the Separation Agreement under any mistake of fact.

IV. PSU's Claims Sounding In Equity Are Barred Because It Has A Full And Adequate Remedy At Law.

Dr. Spanier's Seventh Preliminary Objection asserted that PSU's Second, Third, and Fourth counterclaims for equitable relief should be dismissed because equitable relief is disallowed where there is a full and adequate remedy at law. (Pl.'s POs at ¶¶ 68-73); Pa. R. Civ. P. 1028(a)(8). PSU essentially acknowledges that it could have asserted a legal remedy for fraudulent inducement against Dr. Spanier based on his supposed failure to disclose facts prior to the execution of the Separation Agreement, but asserts that this does not constitute a "full and adequate" remedy at law because such a claim is time-barred due to PSU's failure

to assert it within the two-year statute of limitations for tort claims. (Opp'n at 23.) PSU's argument misstates controlling Pennsylvania law.

PSU cites no authority for the proposition that a legal remedy is not full and adequate merely because it has been lost due to the claimant failing to assert it within the statute of limitations period. In fact, Pennsylvania law says the opposite. Having a full and adequate remedy at law ***does not require*** a likelihood of succeeding on the merits. *See Tudor Dev. Grp., Inc. v. U.S. Fid. & Guar. Co.*, 968 F.2d 357, 364 (3d Cir. 1992) (applying Pennsylvania law and affirming granting summary judgment concluding that equitable remedy was inappropriate). Moreover, "[i]t is well settled that a party may not avail itself of the equity powers of the court if there exists ***or existed*** an adequate remedy at law." *Cabot v. Jamie Record Co.*, No. CIV. A. 96-4672, 1999 WL 236737, *7 (E.D. Pa. 1999) (applying Pennsylvania law) (emphasis added). The fact that the statute of limitations has passed on a legal remedy does not mean that PSU has no adequate remedy at law, because a party is not to be rewarded for sleeping on its rights. *See id.* ("While [claimant] may be barred from receiving compensation for breaches beyond the statute of limitations period, an adequate remedy of law did indeed exist even if [claimant] failed to avail himself of it."). *See also Nutt Corp. v. Howell Rd., LLC*, 721 S.E.2d 447, 450 (S.C. Ct. App. 2011) ("We also note that the possibility the statute of limitations may have potentially barred the Nutt Corporation from

obtaining a legal remedy is no ground in itself for allowing the Nutt Corporation to seek equitable relief.").

Thus, Pennsylvania law is in accord with Dr. Spanier's argument. PSU, having slept on its rights and having failed to assert what is plainly a tort claim for fraudulent inducement within the proscribed limitations period, may not repackage that legal claim as equitable claims simply to avoid the statute of limitations bar. PSU had an adequate remedy at law but failed to assert it, and under such circumstances Pennsylvania law does not permit PSU to assert equitable claims instead. Pa. R. Civ. P. 1028(a)(8).

CONCLUSION

Dr. Spanier respectfully requests that this Court sustain his preliminary objections to the Second Amended Counterclaims and dismiss each counterclaim.

Dated: June 6, 2017

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on the below counsel of record on June 6, 2017.

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