



IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA  
CIVIL ACTION

GRAHAM B. SPANIER,  
Plaintiff

vs.

THE PENNSYLVANIA STATE  
UNIVERSITY,  
Defendant

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No. 2016-0571

PROCEEDINGS  
COURT OF COMMON PLEAS  
CENTRE COUNTY, PA  
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TYPE OF MATTER:  
Civil

TYPE OF PLEADING:  
Answer to Defendant Preliminary Objections to the  
Complaint

FILED ON BEHALF OF:  
Graham B. Spanier

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**PLAINTIFF'S ANSWER TO DEFENDANT THE PENNSYLVANIA STATE  
UNIVERSITY'S PRELIMINARY OBJECTIONS TO THE COMPLAINT**

AND NOW comes Plaintiff, Graham B. Spanier, through his attorneys, making his Answer to Defendant The Pennsylvania State University's ("Penn State") Preliminary Objections to the Complaint. In further support thereof,

Plaintiff also submits his accompanying Brief in Opposition to Defendant's Preliminary Objections Pursuant to Rule 1028(a)(4), which is incorporated by reference in its entirety, and answers as follows:

1. ADMITTED.

2. ADMITTED only to the extent that the operative contract at issue is November 2011 Separation Agreement, entered into by Dr. Spanier and Penn State in the aftermath of Dr. Spanier's resignation from his position as President of Penn State, which the parties agreed to treat as a termination "without cause" under the terms of Dr. Spanier's prior Employment Agreement.

3. DENIED. Dr. Spanier's Complaint sets forth sufficient facts in support of each breach of contract claim alleged in the Complaint.

**Preliminary Objection to Counts I-V  
Pursuant to Pa. R. Civ. P. 1028(a)(4)**

4. DENIED only as to the characterization that Plaintiff's Complaint "purports" to allege breaches by Penn State of the "non-disparagement" provision in Paragraph 13 of the Separation Agreement. ADMITTED that Counts I-V of the Complaint allege breaches of the "non-disparagement" provision in Paragraph 13 of the Separation Agreement.

5. ADMITTED.

6. DENIED as to Defendant's mischaracterization of the plain language of the Separation Agreement, which, as a written document, speaks for itself. The Separation Agreement permits Penn State to make "negative" comments regarding Dr. Spanier *only* where "required" (1) by law; or (2) to comply with legal obligations; and/or (3) to provide truthful information in connection with ongoing or forthcoming investigations. (Compl., Ex. A ¶ 13 (Separation Agreement).)

7. DENIED as to Defendant's mischaracterization of the plain language of the Separation Agreement, which, as a written document, speaks for itself. The Separation Agreement permits Penn State to make "negative" comments regarding Dr. Spanier *only* where "required" (1) by law; or (2) to comply with legal obligations; and/or (3) to provide truthful information in connection with ongoing or forthcoming investigations. (*Id.*)

8. DENIED. The Complaint sets forth detailed factual allegations explaining how and why the statements at issue in Counts I-V are false. (Compl. ¶¶ 67-139, 144, 157-164.) The Complaint also sets forth detailed factual allegations demonstrating that none of the statements at issue were required to be made in connection with any ongoing or forthcoming investigation, including allegations demonstrating that Penn State retained Louis J. Freeh and Freeh Sporkin & Sullivan, LLP ("FSS") as its agents and directed, permitted, encouraged, facilitated, and sponsored the breach of the non-disparagement clause

by its agent, which is impermissible. (*See id.* ¶¶ 3, 9, 14, 67-139, 144, 157-164); 2A C.J.S. Agency § 141 (2016) (“[o]ne cannot do through an agent that which one cannot do directly.”); *see also* 3 Am. Jur. 2d Agency § 64 (2016) (“An agent can be authorized to do any act the principal may do. However, a principal cannot do an act through an agent which the principal could not do directly.”) The Complaint also sets forth facts demonstrating that none of the statements at issue concerned an “ongoing or forthcoming” investigation. (Compl. ¶¶ 73, 85-86, 88, 130-131, 161-166.)

9. DENIED. Accordingly, for the reasons stated herein and for the reasons stated in Plaintiff’s Brief in Opposition to Defendant’s Preliminary Objections Pursuant to Rule 1028(a)(4), Plaintiff respectfully request that the Court overrule Defendant’s preliminary objections.

**Preliminary Objection to Count VI  
Pursuant to Pa. R. Civ. P. 1028(a)(4)**

10. DENIED only as to the characterization that Plaintiff’s Complaint “purports” to allege a breach of the Separation Agreement by Penn State for failure to provide administrative support. ADMITTED that Count VI of the Complaint alleges a breach of the Separation Agreement by Penn State for failure to provide administrative support.

11. ADMITTED only to the extent that the Complaint alleges that certain required administrative support was withdrawn in breach of the Separation Agreement in November 2012. The Complaint alleges that Penn State failed to provide certain required support prior to November 2012. (*Id.* ¶ 168.)

12. Neither ADMITTED nor DENIED as to whether the Court can consider certain information outside of the allegations in the Complaint. This states a legal conclusion to which no response is required. ADMITTED as to the statement that Dr. Spanier was indicted on certain charges in November 2012, most of which have since been quashed. DENIED as to the argument that the Separation Agreement permits Penn State to fail to provide required administrative support in the event of a criminal indictment, which the contract does not in fact permit.

13. DENIED. Paragraph 4(d) of the Separation Agreement requires Penn State to provide the required administrative support during the lifetime of the contract, and the contract contains no clause permitting Penn State to withhold or fail to provide such support in the event of an indictment. (Compl., Ex. A ¶ 4(d) (Separation Agreement).) Moreover, far from alleging that Dr. Spanier's ability to perform his job has been undermined, the Complaint alleges that Dr. Spanier has taken steps to select an office, hire a secretary, and teach a course, but that Penn

State has rebuffed these efforts in violation of the Separation Agreement. (Compl. ¶¶ 167-170.)

14. DENIED. Dr. Spanier's claim is founded on the terms of his Separation Agreement, not his 2010 Employment Agreement. The 2010 Employment Agreement was terminated as of November 9, 2011, as the Separation Agreement clearly states. (Compl., Ex. A ¶ 2 (Separation Agreement).) Per the terms of the Separation Agreement, the provisions of the 2010 Employment Agreement are not generally incorporated in the Separation Agreement, "except as otherwise provided" in the Separation Agreement itself. (*Id.*) Thus only certain enumerated provisions of the 2010 Employment Agreement are incorporated in the Separation Agreement.

15. ADMITTED only as to the description of a term of the 2010 Employment Agreement. However, this provision of the 2010 Employment Agreement is not incorporated or referenced in the Separation Agreement, and therefore is not applicable to the Separation Agreement. (*Id.*)

16. DENIED. Paragraph 4(d) of the Separation Agreement requires Penn State to provide the required administrative support during the lifetime of the contract, and the contract contains no clause permitting Penn State to withhold or fail to provide such support in the event of an indictment. (*Id.* ¶ 4(d).)



17. DENIED. Accordingly, for the reasons stated herein and for the reasons stated in Plaintiff's Brief in Opposition to Defendant's Preliminary Objections Pursuant to Rule 1028(a)(4), Plaintiff respectfully request that the Court overrule Defendant's preliminary objections.

**Preliminary Objection to Count VII  
Pursuant to Pa. R. Civ. P. 1028(a)(4)**

18. ADMITTED.

19. ADMITTED to the extent that Defendant accurately quotes certain portions of the Separation Agreement, which, as a written document, speaks for itself.

20. ADMITTED to the extent that Defendant accurately quotes certain portions of the Separation Agreement, which, as a written document, speaks for itself.

21. ADMITTED to the extent that Defendant accurately quotes certain portions of the Complaint, which, as a written document, speaks for itself.

22. DENIED. Dr. Spanier's hiring of a public relations consultant to repair the egregious harm to his reputation constitutes "expenses" which he "incurred in connection with matters relating to ... his termination from the position of President of the University," (*id.* ¶ 4(f)), as well as "expenses" that he "incurred" "subsequent to termination of employment as President with respect to

acts or omissions occurring while he was serving as President.” (*See id.* ¶ 6 (incorporating Def.’s Mem., Ex. D ¶ J (Employment Agreement)).) With respect to legal fees, the Separation Agreement does not condition reimbursement of legal fees on whether the fees were incurred in an offensive or defensive legal action; rather, the determining factor is whether the fees were incurred in relation to Dr. Spanier’s termination or to alleged acts or omissions that occurred while Dr. Spanier was serving as President of Penn State. (Compl., Ex. A ¶¶ 4(f), 6 (Separation Agreement).) Dr. Spanier alleges not only that the entire purpose of this suit was to prepare for and defend himself against the University-sponsored Freeh Report — which indisputably accused Dr. Spanier of multiple improper acts and omissions during his time as President – but also that it was Penn State’s own legal counsel that suggested he file the suit in order to gain access to his emails. (Compl. ¶ 173.)

23. DENIED. The Complaint specifically alleges that Penn State has “refused” to reimburse Dr. Spanier for his legal fees. (*Id.* ¶¶ 173, 242.)

24. DENIED. Accordingly, for the reasons stated herein and for the reasons stated in Plaintiff’s Brief in Opposition to Defendant’s Preliminary Objections Pursuant to Rule 1028(a)(4), Plaintiff respectfully request that the Court overrule Defendant’s preliminary objections.

WHEREFORE, Plaintiff respectfully requests this Honorable Court to overrule Defendant's Preliminary Objections in their entirety.

Dated: May 16, 2016

By:  \_\_\_\_\_

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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 May 16, 2016.

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