

Plaintiff's First, Fifth, and Sixth Preliminary Objections to Second Amended Counterclaims.

PRELIMINARY OBJECTION TO (DR. SPANIER'S FIRST, FIFTH, AND SIXTH PRELIMINARY OBJECTIONS TO SECOND AMENDED COUNTERCLAIMS) – FAILURE TO COMPLY WITH LAW OR RULE OF COURT (PA. R. CIV. P. 1028(a)(2))

1. Admitted.

2. Admitted.

3. Admitted.

4. Denied. Answering further, Plaintiff states that Pennsylvania courts recognize that an affirmative defense may be raised by preliminary objections where it is established on the face of the complaint. *Pelagatti v. Cohen*, 536 A.2d 1337, 1346 (Pa. Super. 1987). This Court has previously recognized, in a related matter, that the defense of statute of limitations can be considered and decided on preliminary objections where the untimeliness of the pleading is apparent from the face of the pleading. (Sept. 27, 2016 Opinion, *Graham B. Spanier v. Louis J. Freeh, et al.*, No. 2013-2707 (Ct. Com. Pl.).)

5. Plaintiff admits that Pennsylvania courts will consider the affirmative defense of statute of limitations when raised as a demurrer if the untimeliness of the pleading is readily apparent from the face of the pleading. Plaintiff denies that the statute of limitations bar is not apparent from the face of Defendant's Second Amended Counterclaims. Answering further, Plaintiff states that its preliminary

objections based on the statute of limitations are based solely on the allegations contained in Defendant's Second Amended Counterclaims and the exhibits attached thereto by Defendant, and thus the statute of limitations bar is clear from the face of Defendant's Second Amended Counterclaims. Not only can Defendant not disclaim the statute of limitations bar demonstrated by the documents it attached to its own pleading, but in the context of a demurrer, "it is not necessary to accept as true factual averments in the [pleading] which are in conflict with exhibits attached to the [pleading]." *See Firetree, Ltd. v. Dept. of Gen. Servs.*, 920 A.2d 906, 912 (Pa. Commw. Ct. 2007).

6. Denied.

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

Dated: May 30, 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 May 30, 2017.

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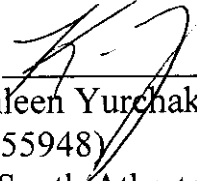
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