



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

GRAHAM B. SPANIER,

Plaintiff-Counterdefendant,

v.

THE PENNSYLVANIA STATE
UNIVERSITY,

Defendant-Counterplaintiff.

)Docket No. 2016-0571
)
)Type of Pleading: PRELIMINARY
)OBJECTIONS TO PRELIMINARY
)OBJECTIONS
)
)**PRELIMINARY OBJECTIONS TO**
)**PLAINTIFF'S FIRST, FIFTH, AND SIXTH**
)**PRELIMINARY OBJECTIONS TO**
)**SECOND AMENDED COUNTERCLAIMS**
)
)Filed on behalf of The Pennsylvania State
)University
)
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**PRELIMINARY OBJECTIONS TO PLAINTIFF’S FIRST, FIFTH, AND SIXTH
PRELIMINARY OBJECTIONS TO SECOND AMENDED COUNTERCLAIMS**

The Pennsylvania State University (“Penn State” or “the University”), by its undersigned counsel, respectfully files the following Preliminary Objection to Plaintiff’s First, Fifth, and Sixth Preliminary Objections to the University’s 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. In his First Preliminary Objection, Dr. Spanier contends that Penn State’s First Counterclaim, which alleges a breach of Dr. Spanier’s 2010 Employment Agreement, fails as a matter of law, because it is time-barred by the 4-year limitations period set forth in Pa. C.S.A. § 5525(a).

2. In his Fifth and Sixth Preliminary Objections, Dr. Spanier contends that all four of Penn State’s Counterclaims fail as a matter of law because they are time-barred by the 2-year limitations period that applies to tort claims sounding in fraud, 42 P.C.S.A. § 5524(7).

3. All three of those preliminary objections are styled as demurrers under Pa. R. Civ. P. 1028(a)(4).

4. “The defense of the bar of a . . . statute of limitations can be asserted only in a responsive pleading as new matter under Rule 1030.” Pa. R. Civ. P. 1028, Note.

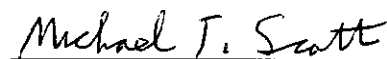
5. Although courts will occasionally consider the affirmative defense of a statute of limitations when raised as a demurrer, they will do so only if the untimeliness of the pleading is readily apparent from the face of the pleading. *Scavo v. Old Forge Borough*, 978 A.2d 1076 (Pa. Commw. 2009). That is not the case here. To the contrary, plaintiff’s preliminary objections involved disputed issues of material fact, including, *inter alia*, disputes over the construction of Dr. Spanier’s 2010 Employment Agreement, his Separation Agreement, and Penn State Human Resource Policy HR91.

6. Because plaintiff’s First, Fifth, and Sixth Preliminary Objections are not properly styled as preliminary objections, they should be overruled.

WHEREFORE, for the reasons set forth herein and in the accompanying memorandum of law, Penn State respectfully requests that this Court sustain these preliminary objections and overrule Dr. Spanier’s First, Fifth, and Sixth Preliminary Objections to the Second Amended Counterclaims.

DATED this the 9th day of May, 2017.

Respectfully submitted,



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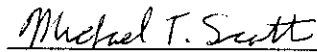
CERTIFICATE OF SERVICE

The undersigned, one of the attorneys for The Pennsylvania State University, hereby certify that I caused to be served a true and correct copy of the foregoing PRELIMINARY OBJECTIONS TO PLAINTIFF'S FIRST, FIFTH, AND SIXTH PRELIMINARY OBJECTIONS TO SECOND AMENDED COUNTERCLAIMS this 9TH day of May, 2017, by mailing same via U.S. mail, first class, postage prepaid, upon the following counsel of record:

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