



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

DEBRA C. JIMEL
PROTHONOTARY
CENTRE COUNTY, PA

2017 JAN 12 PM 4: 11

FILED FOR RECORD

GRAHAM B. SPANIER,

Plaintiff,

v.

THE PENNSYLVANIA STATE
UNIVERSITY,

Defendant.

-) Docket No. 2016-0571
-)
-) Type of Case:
-) Breach of Contract
-)
-) Type of Pleading: **REPLY TO NEW**
-) **MATTER**
-)
-) Filed on behalf of: Plaintiff
-)
-) Counsel of record for this party:
-)
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GRAHAM B. SPANIER,

Plaintiff,

v.

PENNSYLVANIA STATE UNIVERSITY

Defendant.

COURT OF COMMON PLEAS
OF CENTRE COUNTY

No. 2016-0571

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PLAINTIFF'S REPLY TO DEFENDANT'S NEW MATTER

The Plaintiff, Dr. Graham B. Spanier, by and through the undersigned counsel, hereby replies to Defendant The Pennsylvania State University's ("PSU") New Matter as follows:

287. Dr. Spanier admits that he served as President of the University for sixteen years -- from 1995 to November 9, 2011. Dr. Spanier admits that he served as a voting member of the University's Board of Trustees during that same period. Dr. Spanier denies that his presidency was terminated; to the contrary, he offered his resignation from his position as president. However, Dr. Spanier admits that Dr. Spanier and PSU agreed to treat his resignation as a termination without cause under the terms of his 2010 Employment Agreement with PSU. Dr. Spanier admits that, pursuant to the terms of his November 15, 2011 Separation Agreement with PSU,

he has remained a tenured member of the PSU faculty since the date of that agreement.

288. The averments of paragraph 288 set forth conclusions of law to which no specific response is required. To the extent that a response is deemed required, Dr. Spanier denies that he owed PSU a fiduciary duty “throughout this time” and denies that he owed PSU a fiduciary duty in connection with the negotiation and execution of the Separation Agreement.

289. The averments of paragraph 289 set forth conclusions of law to which no specific response is required. To the extent that a response is deemed required, Dr. Spanier lacks sufficient knowledge to respond to the allegations in paragraph 289 and therefore denies them.

290. The averments of paragraph 290 set forth conclusions of law to which no specific response is required. To the extent that a response is deemed required, Dr. Spanier denies that he owed PSU such a duty “at all relevant times” and denies that he owed PSU such a duty in connection with the negotiation and execution of the Separation Agreement.

291. Paragraph 291 is an effort to characterize, inaccurately, a written document that speaks for itself. Dr. Spanier denies all allegations of Paragraph 291 that are different from the language used in the document.

292. Paragraph 292 is an effort to characterize, inaccurately, a written document that speaks for itself. Dr. Spanier denies all allegations of Paragraph 292 that are different from the language used in the document.

293. The averments of paragraph 293 set forth conclusions of law to which no specific response is required. To the extent that a response is deemed required, Dr. Spanier specifically denies all of the allegations in paragraph 293.

294. Dr. Spanier specifically denies each and every allegation in paragraph 294.

295. Paragraph 295 is an effort to characterize a written document that speaks for itself. Dr. Spanier denies all allegations of Paragraph 295 that are different from the language used in the document.

296. The averments of paragraph 296 set forth conclusions of law to which no specific response is required. Paragraph 296 is an effort to characterize a written document that speaks for itself. Dr. Spanier denies all allegations of Paragraph 296 that are different from the language used in the document.

297. The averments of paragraph 297 set forth conclusions of law to which no specific response is required. Paragraph 297 is an effort to characterize a written document that speaks for itself. Dr. Spanier denies all allegations of Paragraph 297 that are different from the language used in the document.

298. Paragraph 298 is an effort to characterize a written document that speaks for itself. Dr. Spanier denies all allegations of Paragraph 298 that are different from the language used in the document.

299. Admitted, on information and belief.

300. Admitted, on information and belief.

301. To the extent that paragraph 301 asserts conclusions of law, there is no specific response required. To the extent that a response is deemed required, Dr. Spanier denies as untrue each and every allegation of paragraph 301.

302. Admitted.

303. Admitted.

304. Dr. Spanier admits that he remained a tenured University faculty member following his his separation from the position of President of the University. Dr. Spanier denies each and every other allegation of paragraph 304.

305. Dr. Spanier lacks sufficient knowledge to admit that the Separation provides Dr. Spanier with “very significant financial and non-financial benefits.” In paragraph 305, Penn State characterizes, incompletely, a document that speaks for itself. Dr. Spanier denies all allegations that are different from the language in the document. In addition, answering further, with respect to the bullet points in paragraph 305:

Bullet #1: The document speaks for itself. Dr. Spanier denies all allegations that are different from the language in the document.

Bullet #2: The document speaks for itself. Dr. Spanier denies all allegations that are different from the language in the document.

Bullet #3: The document speaks for itself. Dr. Spanier denies all allegations that are different from the language in the document.

Bullet #4: The document speaks for itself. Dr. Spanier denies all allegations that are different from the language in the document.

Bullet #5: The document speaks for itself. Dr. Spanier denies all allegations that are different from the language in the document.

Bullet #6: The document speaks for itself. Dr. Spanier denies all allegations that are different from the language in the document.

Bullet #7: The document speaks for itself. Dr. Spanier denies all allegations that are different from the language in the document.

306. Dr. Spanier denies each and every allegation of paragraph 306.

307. Dr. Spanier lacks information sufficient to admit or deny the allegations of paragraph 307, and therefore denies them.

308. Dr. Spanier lacks information sufficient to admit or deny the allegations of paragraph 308, and therefore denies them.

309. Dr. Spanier denies each and every allegation in paragraph 309.

310. Dr. Spanier denies each and every allegation in paragraph 310.

311. Dr. Spanier lacks information sufficient to admit or deny the allegations of paragraph 311, and therefore denies them.

312. The averments of paragraph 312 set forth conclusions of law to which no specific response is required. To the extent a response is deemed required, Dr. Spanier denies each and every allegation of paragraph 312.

313. Dr. Spanier admits that a presentment was lodged against him in 2012. Dr. Spanier denies the allegations of paragraph 313 to the extent that it omits to set forth the fact that many of the charges referenced therein have since been quashed.

314. Dr. Spanier lacks information sufficient to admit or deny the allegations of paragraph 314 — particularly that the benefits were “substantial”, and therefore denies them. Dr. Spanier admits that, with the exception of the breaches that are the subject of Dr. Spanier’s Complaint in this action, PSU has continued to perform under the Separation Agreement and to treat the Separation Agreement as a valid, enforceable contract since its execution in November 2011.

**FIRST AFFIRMATIVE DEFENSE:
UNILATERAL MISTAKE OF FACT**

315. Dr. Spanier incorporates paragraphs 287 through 314, *supra*, as if set forth herein.

316. Dr. Spanier lacks information sufficient to admit or deny the allegations of paragraph 316 as to PSU’s mental state, and therefore denies them. Dr. Spanier

denies that he breached any duty to PSU or that he had any such duty in connection with the negotiation and execution of the Separation Agreement.

317. Dr. Spanier lacks information sufficient to admit or deny the allegations of paragraph 317 as to PSU's mental state, and therefore denies them.

318. Dr. Spanier lacks information sufficient to admit or deny the allegations of paragraph 318 as to PSU's mental state, and therefore denies them. Dr. Spanier further denies that he breached any duty to PSU or that he had any such duty in connection with the negotiation and execution of the Separation Agreement.

319. Dr. Spanier denies each and every allegation in paragraph 319.

320. Denied. The averments of paragraph 320 set forth conclusions of law to which no specific response is required. Further, Dr. Spanier asserts that this affirmative defense is neither factually nor legally applicable.

SECOND AFFIRMATIVE DEFENSE: RESCISSION

321. Dr. Spanier incorporates paragraphs 287 through 320, *supra*, as if set forth herein.

322. The averments of paragraph 322 set forth conclusions of law to which no specific response is required. To the extent that there are factual allegations in paragraph 322, Dr. Spanier denies that he breached any duty to PSU or that he had any such duty in connection with the negotiation and execution of the Separation Agreement.

323. The averments of paragraph 323 set forth conclusions of law to which no specific response is required. To the extent that there are factual allegations in paragraph 323, Dr. Spanier denies each and every allegation of paragraph 323.

324. Dr. Spanier denies each and every allegation in paragraph 324.

325. The averments of paragraph 325 set forth conclusions of law to which no specific response is required. To the extent that there are factual allegations in paragraph 325, Dr. Spanier denies them.

326. Dr. Spanier lacks information sufficient to admit or deny the allegations of paragraph 326 as to PSU's mental state, and therefore denies them. Dr. Spanier further denies that he withheld any such information from PSU and denies the claim that PSU was not aware of the information in the emails PSU references. Dr. Spanier further denies that he breached any duty to PSU or that he had any such duty in connection with the negotiation and execution of the Separation Agreement.

327. Dr. Spanier denies each and every allegation of paragraph 327.

328. The averments in paragraph 328 also set forth conclusions of law to which no specific response is required. To the extent that a response is deemed required, Dr. Spanier denies the allegation that PSU has been damaged or that he breached any duty to PSU.

329. Denied. The averments in paragraph 329 set forth conclusions of law to which no specific response is required. Further, Dr. Spanier asserts that this affirmative defense is neither factually nor legally applicable.

THIRD AFFIRMATIVE DEFENSE: ESTOPPEL

330. Dr. Spanier incorporates paragraphs 287 through 329, *supra*, as if set forth herein.

331. The averments in paragraph 331 set forth conclusions of law to which no specific response is required. To the extent that a response is deemed required, Dr. Spanier denies each and every allegation of paragraph 331.

332. The averments in paragraph 332 set forth conclusions of law to which no specific response is required. To the extent that a response is required, Dr. Spanier lacks sufficient information to admit or deny the allegation as to PSU's mental state, and therefore denies it. Dr. Spanier further denies that he owed any such duty to PSU in connection with the negotiation and execution of the Separation Agreement and denies that he breached any such duty. Dr. Spanier further denies that allegation regarding materiality as it plainly contravenes the plain language of the Separation Agreement, which contains a full integration clause. Dr. Spanier further states that the Separation Agreement is a written document which speaks for itself as to what is and is not material.

333. The averments in paragraph 333 also set forth conclusions of law to which no specific response is required. To the extent that a response is deemed required, Dr. Spanier denies each and every allegation in paragraph 333. Further, Dr. Spanier asserts that this affirmative defense is neither factually nor legally applicable.

FOURTH AFFIRMATIVE DEFENSE: UNJUST ENRICHMENT

334. Dr. Spanier incorporates paragraphs 287 through 333, *supra*, as if set forth herein.

335. The averments in paragraph 335 set forth conclusions of law to which no specific response is required. To the extent that a response is deemed required, Dr. Spanier denies the allegations of paragraph 335. Dr. Spanier further states that the Separation Agreement, a written document, speaks for itself as to any conditions precedent, duties, promises, or warranties owed or not owed by Dr. Spanier in connection with that agreement.

336. The averments of paragraph 336 also set forth conclusions of law to which no specific response is required. To the extent that a response is deemed required, Dr. Spanier denies each and every allegation of paragraph 336.

337. Denied.

338. Dr. Spanier incorporates his response to ¶ 305, *supra*.

339. Denied. The averments in paragraph 339 set forth conclusions of law to which no specific response is required. Dr. Spanier further incorporates his responses to ¶¶ 287-335, *supra*, as if set forth herein.

340. The averments in paragraph 340 set forth conclusions of law to which no specific response is required. To the extent a response is deemed required, Dr. Spanier denies each and every allegation in paragraph 340. Further, Dr. Spanier asserts that this affirmative defense is neither factually nor legally applicable.

**FIFTH AFFIRMATIVE DEFENSE: NOT LIABLE FOR COMMENTS
MADE BY REPORTERS**

341. Dr. Spanier incorporates paragraphs 287 through 340, *supra*, as if set forth herein.

342. The averments in paragraph 342 set forth conclusions of law to which no specific response is required. To the extent that paragraph 342 characterizes the Separation Agreement, the document speaks for itself, and Dr. Spanier denies every allegation that is different from the language of the document. Dr. Spanier further denies the inaccurate characterization of Dr. Spanier's legal claims. Further, Dr. Spanier asserts that this affirmative defense is neither factually nor legally applicable.

SIXTH AFFIRMATIVE DEFENSE: UNIVERSITY MADE REASONABLE EFFORTS

343. Dr. Spanier incorporates paragraphs 287 through 342, *supra*, as if set forth herein.

344. The averments in paragraph 344 set forth conclusions of law to which no specific response is required. To the extent that a response is deemed required, Dr. Spanier denies each and every allegation in paragraph 344. Further, Dr. Spanier asserts that this affirmative defense is neither factually nor legally applicable.

SEVENTH AFFIRMATIVE DEFENSE: TRUTHFUL STATEMENTS MADE IN CONNECTION WITH ONGOING OR FORTHCOMING INVESTIGATIONS

345. Dr. Spanier incorporates paragraphs 287 through 344, *supra*, as if set forth herein.

346. The averments in paragraph 346 set forth conclusions of law to which no specific response is required. To the extent that a response is deemed required, Dr. Spanier denies each and every allegation in paragraph 346. Further, Dr. Spanier asserts that this affirmative defense is neither factually nor legally applicable.

EIGHTH AFFIRMATIVE DEFENSE: STATEMENTS REQUIRED BY LAW AND/OR TO COMPLY WITH LEGAL OBLIGATIONS

347. Dr. Spanier incorporates paragraphs 287 through 346, *supra*, as if set forth herein.

348. The averments in paragraph 348 set forth conclusions of law to which no specific response is required. To the extent that a response is deemed required, Dr. Spanier denies each and every allegation of paragraph 348. Further, Dr. Spanier asserts that this affirmative defense is neither factually nor legally applicable.

NINTH AFFIRMATIVE DEFENSE: COMMENTS NOT NEGATIVE

349. Dr. Spanier incorporates paragraphs 287 through 348, *supra*, as if set forth herein.

350. The averments in paragraph 350 set forth conclusions of law to which no specific response is required. To the extent that a response is deemed required, Dr. Spanier denies each and every allegation of paragraph 350. Further, Dr. Spanier asserts that this affirmative defense is neither factually nor legally applicable.

TENTH AFFIRMATIVE DEFENSE: EXPRESSIONS OF OPINION

351. Dr. Spanier incorporates paragraphs 287 through 350, *supra*, as if set forth herein.

352. The averments in paragraph 352 set forth conclusions of law to which no specific response is required. To the extent that a response is deemed required, Dr. Spanier denies each and every allegation of paragraph 352. Further, Dr. Spanier asserts that this affirmative defense is neither factually nor legally applicable.

ELEVENTH AFFIRMATIVE DEFENSE: VOID AS AGAINST PUBLIC POLICY

353. Dr. Spanier incorporates paragraphs 287 through 352, *supra*, as if set forth herein.

354. The averments in paragraph 354 set forth conclusions of law to which no specific response is required. To the extent that a response is deemed required, Dr. Spanier denies each and every allegation of paragraph 354. Further, Dr. Spanier asserts that this affirmative defense is neither factually nor legally applicable.

TWELFTH AFFIRMATIVE DEFENSE: UNCONSCIONABILITY

355. Dr. Spanier incorporates paragraphs 287 through 354, *supra*, as if set forth herein.

356. Denied. The averments in paragraph 356 set forth conclusions of law to which no specific response is required. To the extent that a response is deemed required, Dr. Spanier denies each and every allegation of paragraph 356. Further, Dr. Spanier asserts that this affirmative defense is neither factually nor legally applicable.

WHEREFORE, Dr. Spanier respectfully requests that judgment be entered in favor of Dr. Spanier and against PSU as requested in Dr. Spanier's Complaint.

COUNTERCLAIMS

The Plaintiff, Dr. Graham Spanier, by and through the undersigned counsel, replies to PSU's Counterclaims as follows:

FIRST COUNTERCLAIM
Breach of the 2010 Employment Agreement

357. Dr. Spanier has filed a preliminary objection to the First Counterclaim.

No response is required.

358. Dr. Spanier has filed a preliminary objection to the First Counterclaim.

No response is required.

359. Dr. Spanier has filed a preliminary objection to the First Counterclaim.

No response is required.

360. Dr. Spanier has filed a preliminary objection to the First Counterclaim.

No response is required.

361. Dr. Spanier has filed a preliminary objection to the First Counterclaim.

No response is required.

362. Dr. Spanier has filed a preliminary objection to the First Counterclaim.

No response is required.

363. Dr. Spanier has filed a preliminary objection to the First Counterclaim.

No response is required.

364. Dr. Spanier has filed a preliminary objection to the First Counterclaim.

No response is required.

365. Dr. Spanier has filed a preliminary objection to the First Counterclaim.

No response is required.

SECOND COUNTERCLAIM
Breach of Fiduciary Duty

366. Dr. Spanier has filed a preliminary objection to the Second Counterclaim. No response is required.

367. Dr. Spanier has filed a preliminary objection to the Second Counterclaim. No response is required.

368. Dr. Spanier has filed a preliminary objection to the Second Counterclaim. No response is required.

369. Dr. Spanier has filed a preliminary objection to the Second Counterclaim. No response is required.

370. Dr. Spanier has filed a preliminary objection to the Second Counterclaim. No response is required.

371. Dr. Spanier has filed a preliminary objection to the Second Counterclaim. No response is required.

372. Dr. Spanier has filed a preliminary objection to the Second Counterclaim. No response is required.

373. Dr. Spanier has filed a preliminary objection to the Second Counterclaim. No response is required.

THIRD COUNTERCLAIM
Unilateral Mistake of Fact

374. Dr. Spanier has filed a preliminary objection to the Third Counterclaim.

No response is required.

375. Dr. Spanier has filed a preliminary objection to the Third Counterclaim.

No response is required.

376. Dr. Spanier has filed a preliminary objection to the Third Counterclaim.

No response is required.

377. Dr. Spanier has filed a preliminary objection to the Third Counterclaim.

No response is required.

378. Dr. Spanier has filed a preliminary objection to the Third Counterclaim.

No response is required.

379. Dr. Spanier has filed a preliminary objection to the Third Counterclaim.

No response is required.

FOURTH COUNTERCLAIM
Rescission

380. Dr. Spanier has filed a preliminary objection to the Fourth Counterclaim. No response is required.

381. Dr. Spanier has filed a preliminary objection to the Fourth Counterclaim. No response is required.

382. Dr. Spanier has filed a preliminary objection to the Fourth Counterclaim. No response is required.

383. Dr. Spanier has filed a preliminary objection to the Fourth Counterclaim. No response is required.

384. Dr. Spanier has filed a preliminary objection to the Fourth Counterclaim. No response is required.

385. Dr. Spanier has filed a preliminary objection to the Fourth Counterclaim. No response is required.

386. Dr. Spanier has filed a preliminary objection to the Fourth Counterclaim. No response is required.

387. Dr. Spanier has filed a preliminary objection to the Fourth Counterclaim. No response is required.

388. Dr. Spanier has filed a preliminary objection to the Fourth Counterclaim. No response is required.

FIFTH COUNTERCLAIM
Unjust Enrichment

389. Dr. Spanier has filed a preliminary objection to the Fifth Counterclaim. No response is required.

390. Dr. Spanier has filed a preliminary objection to the Fifth Counterclaim. No response is required.

391. Dr. Spanier has filed a preliminary objection to the Fifth Counterclaim.

No response is required.

WHEREFORE, Dr. Spanier respectfully requests that judgment be entered in favor of Dr. Spanier as requested in the Complaint, and he respectfully requests that PSU's Counterclaims be dismissed with prejudice.

Dated: January 17, 2017

By: 

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*ATTORNEYS FOR PLAINTIFF GRAHAM
B. SPANIER*

VERIFICATION

I verify that the statements made in the foregoing Reply to New Matter are true and correct to the best of my knowledge, information, and belief. I understand that any false statements herein are made subject to the penalties of 18 Pa. C.S. § 4904, relating to unsworn falsification to authorities.

Date: 1/9/17

Graham Spanier
Dr. Graham B. Spanier

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on the below counsel of record on January 12, 2017.

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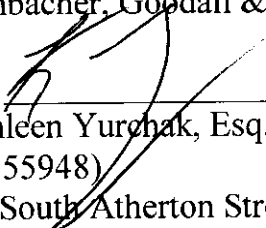
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Dated: January 12, 2017

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