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

GRAHAM B. SPANIER,

Plaintiff,

v.

LOUIS J. FREEH AND FREEH SPORKIN  
& SULLIVAN, LLP,

Defendants.

Docket No. 2013-2707

Type of Pleading:

**Defendants Louis J. Freeh and  
Freeh Sporkin & Sullivan LLP's  
Motion for Judgment on the Pleadings**

Filed on behalf of Defendants

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DEBRA C. IMMEL  
PROTHONOTARY  
CENTRE COUNTY, PA

**ORIGINAL**

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**Defendants Louis J. Freeh and Freeh Sporkin & Sullivan LLP's  
Motion for Judgment on the Pleadings**

Defendants Louis J. Freeh and Freeh Sporkin & Sullivan LLP (“FSS”), by and through their undersigned attorneys, hereby move for judgment on the pleadings, and in support thereof aver as follows:

1. This case arises out of the investigation into the child sexual abuse scandal perpetrated by Gerald A. “Jerry” Sandusky, a former assistant football coach at The Pennsylvania State University (“PSU” or “Penn State”).

2. In 2009, the Thirty-Third Statewide Investigating Grand Jury (the “Grand Jury”) was impaneled to investigate allegations of misconduct by various individuals in connection with the handling of the Sandusky scandal.

3. The Grand Jury inquiry stretched over two years and involved the testimony of at least 21 witnesses, as well as the review of a large volume of subpoenaed records. Following its investigation, the Grand Jury issued a 23-page summary of its findings of fact on November 4, 2011, in which it recommended criminal charges against PSU Vice President for Finance and Business Gary Schultz and PSU Athletic Director Timothy Curley.

4. After disclosure of the Grand Jury's presentment and the involvement of PSU personnel, Graham Spanier was removed as President of PSU on November 9, 2011.

5. Later in November 2011, Freeh and FSS were retained by a Special Committee of PSU's Board of Trustees to conduct a full and independent investigation into PSU's handling of the allegations against Sandusky.

6. Over the next seven months, Freeh and FSS performed a detailed investigation of the facts surrounding the allegations against Sandusky, conducting over 430 interviews of PSU personnel and other knowledgeable individuals and reviewing over 3.5 million pieces of electronic data and documents, including important documents from 1998 and 2001 that had not previously been discovered in the course of the Grand Jury's investigation.

7. Freeh's and FSS's investigations culminated in the "Report of the Special Investigative Counsel Regarding the Actions of The Pennsylvania State

University Related to the Child Sex Abuse Committed by Gerald A. Sandusky” (the “Report”), which was released on July 12, 2012.

8. The Report stated, *inter alia*, that various PSU officials, including Spanier, had been informed of inappropriate behavior by Sandusky on one or more occasions, but that no systematic investigation was undertaken and no report made to state authorities.

9. Based on newly discovered evidence, the Investigating Grand Jury issued a supplemental presentment on November 1, 2012.

10. In the supplemental presentment, the Grand Jury recommended charges against Spanier for endangering the welfare of a minor, failing to report suspected child abuse, and committing perjury in his testimony before the Grand Jury.

11. Gary Schultz and Timothy Curley each pled guilty to endangering the welfare of a minor in March 2017.

12. Spanier was indicted and ultimately went to trial in March 2017 on two counts of endangering the welfare of a minor and one count of conspiracy to endanger the welfare of a minor. On March 24, 2017, Spanier was convicted by a jury of his peers of one count of endangering the welfare of a child. That conviction required the jury to find, beyond a reasonable doubt, that Spanier

endangered the welfare of a child by violating a duty of care, protection, or support, and that Spanier did so knowingly.

13. In his Complaint, Spanier contends that statements made in the Report, statements made during the July 2012 Press Conference discussing the release of the Report, and comments made in a February 2013 statement were false, defamatory, and made with actual malice.

14. Defendants filed preliminary objections to Plaintiff's Complaint, which this Court granted in part and denied in part in September 2016. The Court found that Plaintiff could pursue his claim based on part or all of twelve statements, but could not proceed on seven other statements, thus significantly narrowing the case.

15. Plaintiff filed an Amended Complaint, and Defendants filed a second set of preliminary objections based on the fact that Plaintiff's First Amendment Complaint contained irrelevant and impertinent matter and did not comply with the Rules of Civil Procedure.

16. The Court granted Defendants' preliminary objections, and Plaintiff filed a narrowed Second Amended Complaint on March 20, 2017.

17. On May 12, 2017, Defendants filed an Answer and New Matter to Plaintiff's Second Amended Complaint.


18. Spanier filed a Response to Defendants' New Matter on June 7, 2017. In his Response, Spanier admitted key facts underlying his claim, including that Spanier: (i) did not report Graduate Assistant Football Coach Michael McQueary's description of inappropriate behavior by Sandusky to the Department of Public Welfare or to the police; (ii) did not do anything to investigate the identity of the child McQueary saw being assaulted; (iii) expressed no concern for Sandusky's victims prior to Sandusky's indictment in November 2011; (iv) did not take any steps to ban Sandusky from the PSU campus; and (v) permitted Sandusky to retire as a PSU football coach with emeritus status.

19. Plaintiff's criminal conviction and his factual admissions are dispositive of his defamation claim. There is no way Plaintiff can maintain the falsity of the statements he claims are defamatory, which is an essential element of his claim, in light of such a conviction and such admissions.

20. Accordingly, for these reasons, as well as those set forth in the accompanying memorandum of law, Defendants respectfully request that judgment be entered in favor of Defendants and against Plaintiff.

Respectfully submitted,

Dated: July 19, 2017

  
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