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

DEFENDANTS' MOTION FOR LEAVE TO FILE REPLY IN SUPPORT OF PRELIMINARY OBJECTION TO PLAINTIFF'S AMENDED COMPLAINT

Defendants Louis J. Freeh and Freeh Sporkin & Sullivan LLP ("FSS") respectfully seek leave to file a Reply in Support of Preliminary Objection to Plaintiff's Amended Complaint. Defendants' proposed Reply is attached as Exhibit A hereto.

Respectfully submitted,

Dated: December 1, 2016

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EXHIBIT A

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

DEFENDANTS' REPLY IN SUPPORT OF PRELIMINARY OBJECTION TO PLAINTIFF'S AMENDED COMPLAINT

In response to Defendants' Preliminary Objection to Plaintiff's Amended Complaint, Plaintiff (i) claims that a 105-page pleading is necessary to plead actual malice; (ii) argues that Defendants' objection is untimely; and (iii) asserts, somewhat incredibly, that the paragraphs of Plaintiff's Amended Complaint each contain "subsidiary facts" that "fit together into a single allegation." Pl.'s Mem. in Opp'n to Defs.' Preliminary Objection ("Opp'n") at 11. Plaintiff's attempt to sustain his bloated pleading should be rejected, and he should be required to file a complaint in the format required by Pennsylvania's rules of pleading.

First, Plaintiff contends that the length of the Amended Complaint is "reasonable," and that such length is necessary to plead actual malice because "it is

a subjective state-of-mind issue," because the Freeh Report itself is lengthy, and because "many accusations Defendants made about Dr. Spanier also relate to multiple different alleged acts or omissions by Dr. Spanier ***over a period of 13 years***." Opp'n at 4 (emphasis in original). While Plaintiff may be right about the difficulty of pleading actual malice, the length of the Freeh Report has nothing whatsoever to do with the length of the Amended Complaint, particularly in light of the fact that Plaintiff complains only of seven sentences within the Report. *See* Am. Compl. at ¶ 239.

Plaintiff's Amended Complaint contains far more than allegations about "multiple different alleged acts or omissions ***by Dr. Spanier***," Opp'n at 4 (emphasis added). Instead, Plaintiff's Amended Complaint lobs immoderate attacks at Freeh, his "business model," *see, e.g.*, Am. Compl. ¶ 55, and even other members of his family, *id.* at ¶ 64. Such mud-slinging has no place in a filing made in a court of law. Plaintiff's Amended Complaint also retains factual allegations far removed from of the issues raised by Plaintiff's Amended Complaint, such as the amount of money paid for Freeh's investigation, discussions between PSU officials and various members of the NCAA, and even the email that allegedly formed the basis for the now-dismissed tortious

interference claim Plaintiff unsuccessfully had asserted against FGIS.[1] *See, e.g.*, Am. Compl. at ¶¶ 88-92, 193-94.

Plaintiff then argues that Defendants' Preliminary Objection is somehow in contradiction to Defendants' first set of Preliminary Objections, which purportedly claimed that Plaintiff's original Complaint "was deficient for failure to plead ***enough*** facts to withstand preliminary objections." Opp'n at 5.[2] That contention misses the point; regardless of whether Plaintiff has adequately pled actual malice (which Defendants dispute, but which this Court has already determined), many of the facts he ***does*** plead are simply irrelevant, not to mention obviously calculated for media consumption. For example, Plaintiff admits that he alleges "specific ***past*** examples," Opp'n at 8 (emphasis added) (citing Am. Compl. ¶¶ 62-66), but fails to address the fact that what occurred in other investigations has no bearing on this case, Plaintiff's allegations, or the likelihood that he can prove his claim.

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1 Plaintiff contends that "Defendants do not identify any portions of, or allegations in, the First Amended Complaint that they claim are irrelevant or extraneous." Opp'n at 3. But as elsewhere recognized in Plaintiff's Opposition, *compare id.* at 7-8, Defendants did exactly that. *See* Defs.' Mem. of Law in Support of Preliminary Objection at 3-4 (identifying "allegations far afield from the questions at issue in this case").

2 Plaintiff also confusingly contends that his original Complaint "was significantly longer than the First Amended Complaint." Opp'n at 5. A simple comparison shows that the Amended Complaint is a mere seven pages (or 6.25%) shorter. *Compare* Complaint (Feb. 10, 2016), *with* Amended Complaint (Oct. 17, 2016).

Second, Plaintiff contends that Defendants' Preliminary Objection should be disregarded because it runs afoul of Rule 1028(b)'s requirement that "[a]ll preliminary objections shall be raised at one time." Opp'n at 6. To be clear, Rule 1028 contemplates that preliminary objections may be filed to both an original pleading and an amended pleading. *See* Pa. R. Civ. P. 1028(f) ("Objections to any amended pleading shall be made by filing new preliminary objections."). To the extent that Plaintiff argues that Defendants should have raised their preliminary objection to Plaintiff's original Complaint, that contention overlooks the fact that it was anticipated that Plaintiff, once afforded the opportunity to file an Amended Complaint, would avail himself of that opportunity to streamline the averments of his pleading, particularly after the unnecessary length was brought to Plaintiff's attention (and particularly because Plaintiff has already received whatever media boost he had hoped to obtain by the filing of his original Complaint). Plaintiff failed to do so. He should not now be heard to complain that Defendants' Preliminary Objection is untimely.[3]

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[3] Plaintiff's argument that Defendants' "true aim" is further delay, Opp'n at 6-7, also is unavailing. There is no reason that the filing of preliminary objections or a second amended complaint should delay the progress of this case, as evidenced by the fact that Plaintiff has already served discovery requests on Defendants. Instead, Defendants' "true aim" is to avoid the prejudice that necessarily would ensue if Defendants were required to answer Plaintiff's Amended Complaint.

Third, Plaintiff's contention that his Amended Complaint complies with Rule 1022 is simply not tenable. The argumentative nature of the Amended Complaint certainly is far from a "technical violation[]" causing no prejudice to Defendants. *Compare* Opp'n at 10 (quoting *Bethlehem Steel Corp. v. Litton Indus., Inc.*, 71 D & C.2d 635, 643 (Com. Pl. Allegheny Cnty. 1974)). Plaintiff may be correct that a court has "ample room for intelligent and flexible treatment," *id.*, yet that does not excuse Plaintiff from the obligation to ensure that each paragraph of his Complaint contains "as far as practicable only one material allegation." Pa. R. Civ. P. 1022. The amendment of the rule to permit Plaintiff to do so only "as far as practicable" does not mean that Plaintiff may ignore the rule entirely; if that were the legislature's intent, it would have repealed the rule completely. *See, e.g.*, *Kheifetz v. TLA Cinema*, 2016 WL 1690735 (Com. Pl. Phila. Cnty. Feb. 3, 2016), *aff'd*, 2016 WL 5803807 (Pa. Super. Ct. Nov. 17, 2016) (sustaining preliminary objections for failure to comply with Rule 1022); *see also Sklaroff v. Abington Twp.*, No. 23 C.D. 2013, 2013 WL 6858905, at *3 (Pa. Commw. Ct. Dec. 30, 2013) (affirming dismissal of amended complaint containing "various instances of immaterial allegations, multiple allegations within one paragraph, and opinion and conjecture instead of factual allegations.") (citations omitted).

Nor is this failing restricted to a certain portion or portions of Plaintiff's 105-page Amended Complaint. The example paragraph identified by Plaintiff is emblematic of the problems with Plaintiff's pleading. Plaintiff points to Paragraph 183 as an example of the grouping of "related, subsidiary facts" into a "***single*** allegation." Opp'n at 11. Yet even a cursory glance at Paragraph 183 puts the lie to this statement. To the contrary, Paragraph 183 includes ***at least seven*** allegations: (i) the federal security clearance report was "thoroughly researched"; (ii) the federal security clearance report included statements by various identified members of PSU; (iii) the federal security clearance report also included statements of other unidentified witnesses; (iv) the witnesses whose statements were included in the federal security clearance report were "relevant to Freeh's investigation"; (v) Schultz and Curley were not interviewed by Freeh; (vi) Schultz and Curley had "crucial information;" and (vii) Freeh did not have this "crucial information" as a result of the fact that he did not interview Schultz and Curley. If Spanier wished to plead the "core allegation" that "Freeh did not consider the findings of the federal investigation, which contained interviews with crucial witnesses Freeh could not or did not speak to," Opp'n at 12, he should have pled his Amended Complaint in that fashion. Instead, it is an admixture of rhetoric and argument far afield from the pleading of facts contemplated by Pennsylvania's pleading regime.

Finally, contrary to Plaintiff's blanket assertion, requiring Defendants to answer Plaintiff's Amended Complaint would result in significant prejudice to Defendants. As Plaintiff notes in his brief, Pennsylvania is a fact-pleading state, and that requirement extends to answers as well as complaints. Defendants would need to incur substantial legal expense to answer such a press release in disguise, and it would be both time-consuming and difficult as a practical matter to respond completely to each of the several allegations contained in each of Plaintiff's complaint paragraphs. Nor would such an exercise be helpful to the Court or to the parties, each of whom would be required to parse through yet another pleading in the hundreds of pages.

In sum, Plaintiff should be required to whittle down his Amended Complaint to allege the facts actually in dispute, for the benefit of the parties as well as the Court.

Respectfully submitted,

Dated: December 1, 2016

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CERTIFICATE OF SERVICE

I, David S. Gaines, Jr., hereby certify that I caused to be served on December 1, 2016, a true and correct copy of the foregoing by first-class mail upon the following:

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