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, AND FREEH GROUP INTERNATIONAL SOLUTIONS LLC
Defendants

No. 2013-2707

APPEARANCES:

THOMAS CLARE, ESQ.
KATHLEEN YURCHAK, ESQ. — FOR THE PLAINTIFF

ROBERT C. HEIM, ESQ.
MICHAEL KICHLINE, ESQ.
DAVID S. GAINES, JR., ESQ. — FOR THE DEFENDANT

OPINION BY EBY, S.J., September 27, 2016

Currently pending before the Court are Preliminary Objections to Plaintiff's February 10, 2016 Complaint, which alleges causes of action for defamation (Counts I-IV) and tortious interference (Count V) against Defendants Louis J. Freeh, Freeh Sporkin & Sullivan, LLP, and Freeh Group International Solutions, LLC. Defendants' Preliminary Objections challenge both causes of action. Defendants demur to Plaintiff's defamation claims on two grounds. They argue: 1) the defamatory statements relied upon by Plaintiff are non-actionable statements of opinion; and 2) the Plaintiff cannot establish actual malice. As to Plaintiff's tortious interference claim, Defendants argue that the claim is time-barred. Defendants also demur on the basis that Plaintiff has failed to adequately

plead any of the four elements of the cause of action. For the reasons that follow, we intend to grant in part and deny in part, on a statement by statement basis, Defendants' demurrer to Counts I-IV. With regard to Plaintiff's claim for tortious interference in Count V, we find that it is time-barred and thus grant Defendants' Preliminary Objection to Count V.

I. Procedural History

Our most recent Opinion in this matter addressed two motions filed by the Plaintiff on March 18, 2015, prior to the undersigned jurist's assignment to the case: a Motion for Leave to Join Additional Parties and a Motion to Modify Stay. By Order and Opinion[1] dated January 11, 2016, we granted Plaintiff's Motion for Leave to Join Freeh Group International Solutions LLC (FGIS), but denied Plaintiff's Motion for Leave to Join Penn State University.[2] With regard to a stay[3] of proceedings that had been in place due to pending collateral criminal matters since February 25, 2014, we granted Plaintiff's Motion to Modify Stay and lifted the stay in its entirety, with the proviso that the Court would address potential Fifth Amendment concerns as they arose.

With the stay lifted, the Plaintiff filed his Complaint on February 10, 2016. Pursuant to a scheduling Stipulation and Order, the Defendants filed the preliminary objections currently pending before the Court on March 28, 2016. Both parties filed memoranda supporting their respective positions and appeared before the Court for Oral Argument

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[1] The full procedural history of the case prior to March 18, 2015 is thoroughly detailed in our January 11, 2016 Opinion. For brevity's sake, rather than repeat that history, we incorporate it by reference herein.
[2] On February 10, 2016, Plaintiff filed a separate action against Penn State University for breach of contract.
[3] Plaintiff requested the stay by motion filed on October 18, 2013.

on June 30, 2016. Thus, Defendants' Preliminary Objections are now ripe for our review and disposition.

II. Discussion

Pennsylvania Rule of Civil Procedure 1028(a)(4) states that a preliminary objection may be granted for "legal insufficiency of a pleading (demurrer)." In reviewing such an objection, the court must regard the allegations of the Complaint as true and accord the plaintiff all the inferences reasonably deduced therefrom. *Green v. Mizner*, 692 A.2d 169, 172 (Pa. Super. 1997) Preliminary objections testing the legal sufficiency of a complaint can only be sustained if the plaintiff's complaint indicates on its face "that his claim cannot be sustained, and the law will not permit recovery." *Smith v. Wagner*, 403 Pa. Super. 316, 320-21, 588 A.2d 1308, 1311 (1991). If there is any doubt whether preliminary objections in the nature of a demurrer should be sustained, all doubt must be resolved in favor of overruling the preliminary objections. *Green,* 692 A.2d at 172.

A. Defamation

A communication is considered defamatory if it tends "to harm the reputation of another so as to lower him in the estimation of the community or to deter third persons from associating or dealing with him." *Balletta v. Spadoni*, 47 A.3d 183, 197 (Pa. Commw. Ct. 2012). "It is not enough that the victim ... be embarrassed or annoyed, he must have suffered the kind of harm which has grievously fractured his standing in the community of respectable society." *Tucker v. Phila. Daily News,* 577 Pa. 598, 616, 848 A.2d 113, 124

(2004). Statements alleged to be defamatory must be viewed in context. *Baker v. Lafayette Coll.*, 516 Pa. 291, 532 A.2d 399 (1987). To that end,

> words which standing alone may reasonably be understood as defamatory may be so explained or qualified by their context as to make such an interpretation unreasonable. Thus, *we must consider the full context of the article to determine the effect the article is fairly calculated to produce, the impression it would naturally engender, in the minds of the average persons among whom it is intended to circulate.*

Thomas Merton Ctr. v. Rockwell Int'l Corp., 497 Pa. 460, 465, 442 A.2d 213, 216 (1981) (emphasis added) (citations and quotations omitted), *quoted by Balletta v. Spadoni*, 47 A.3d 183, 197 (Pa.Cmwlth., 2012). In cases where a plausible innocent interpretation of the communication coexists with an alternative defamatory interpretation, the issue must proceed to a jury. *Green, supra*, 692 A.2d at 174, *citing Livingston v. Murray*, 417 Pa.Super. 202, 208, 612 A.2d 443, 446 (1992).

Plaintiff's defamation claims are found in Counts I-IV of the Complaint and include 23[4] statements identified by the Plaintiff as defamatory. Count I addresses 12 statements included in the written Freeh Report released on July 12, 2012. Those statements, as delineated in the Complaint, include:

> (1) *Dr. Spanier exhibited "total and consistent disregard . . . for the safety and welfare of Sandusky's child victims."*
>
> (2) *Dr. Spanier "failed to protect against a child sexual predator harming children for over a decade."*
>
> (3) *Dr. Spanier "concealed Sandusky's activities from the Board of Trustees, the University community and authorities."*

[4] This total includes several statements that are repeated in several counts, because those statements were published in more than one manner.

(4) *Dr. Spanier "exhibited a striking lack of empathy for Sandusky's victims by failing to inquire as to their safety and well-being, especially by not attempting to determine the identity of the child who Sandusky assaulted in the Lasch building in 2001."*

(5) Dr. Spanier "empowered Sandusky to attract potential victims to the campus and football events by allowing him to have continued, unrestricted and unsupervised access to the University's facilities and affiliation with the University's prominent football program."

(6) *"[I]n order to avoid the consequences of bad publicity, the most powerful leaders at the University—Spanier, Schultz, Paterno, and Curley—repeatedly concealed critical facts relating to Sandusky's child abuse from the authorities, the University's Board of Trustees, the Penn State community, and the public at large. The avoidance of the consequences of bad publicity is the most significant, but not the only, cause for this failure to protect child victims and report to authorities."*

(7) *Dr. Spanier "fail[ed] ... to adequately report and respond to the actions of a serial sexual predator."*

(8) *"The investigation also revealed: [] A striking lack of empathy for child abuse victims by the most senior leaders at the University."*

(9) *Dr. Spanier made "[a] decision ... to allow Sandusky to retire in 1999, not as a suspected child predator, but as a valued member of the Penn State football legacy . . . essentially granting him a license to bring boys to campus facilities for 'grooming' as targets for his assaults."*

(10) *"Despite their knowledge of the criminal investigation of Sandusky [in 1998], Spanier, Schultz, Paterno and Curley took no action to limit Sandusky's access to Penn State facilities or took any measures to protect children on their campuses."*

(11) *"The investigation also revealed: . . . [a] president who discouraged discussion and dissent."*

(12) *After the February 2001 incident, Sandusky engaged in improper conduct with at least two children in the Lasch Building. Those assaults may well have been prevented if Spanier, Schultz, Paterno and Curley had taken additional actions to safeguard children on University facilities."*

Of the 12 statements identified in Count 1 by Plaintiff, nine appeared under the heading "Findings" in the written Freeh Report. Statements (10) and (12) appeared under

the "Key Findings" heading of the Report, while Statement (7) appeared under the "Recommendations" heading of the Report.

Count II of the Complaint identifies four statements made by Defendant Freeh at a July 12, 2012 press conference coinciding with the release of the Freeh Report. Those statements addressed within Count II of the Complaint include:

> (1) *"Our most saddening and sobering finding is the total disregard for the safety and welfare of Sandusky's child victims by the most senior leaders at Penn State."*
>
> (2) *"The most powerful men at Penn State failed to take any steps for 14 years to protect the children who Sandusky victimized."*
>
> (3) "*Messrs. Spanier, Schultz, Paterno, and Curley never demonstrated, through actions or words, any concern for the safety and well-being for Sandusky's victims until after Sandusky's arrest."*
>
> (4) *[I]n order to avoid the consequences of bad publicity, the most powerful men at Penn State University—Messrs. Spanier, Schultz, Paterno and Curley—repeatedly concealed critical facts relating to Sandusky's child abuse from the authorities, the University's Board of Trustees, the Penn State community, and the public at large."*

Count III of the Complaint addresses four statements contained in written, prepared remarks distributed in conjunction with the July 12, 2012 press conference. The statements are identical to those identified in Count II.

Count IV of the Complaint identifies three statements published in a February 10, 2013 press release by Defendant Freeh. Those statements include:

> (1) *"As detailed in my report ... four of the most powerful officials at Penn State agreed not to report Sandusky's activity to public officials."*
>
> (2) *"I stand by our conclusion that four of the most powerful people at Penn State failed to protect against a child sexual predator harming children for over a decade."*
>
> (3) *"These men exhibited a striking lack of empathy for Sandusky's victims by failing to inquire as to their safety and well-being, especially by not even attempting*

to determine the identity of the child who Sandusky assaulted in the Lasch building in 2001."

To state a claim for defamation under Pennsylvania law, the Plaintiff must allege 1) the defamatory character of the communication, 2) its publication by Defendants, 3) its application to the Plaintiff, 4) the understanding by the recipient of its defamatory meaning, 5) the understanding by the recipient of it as intended to be applied to the plaintiff, 6) special harm resulting from its publication, and 7) abuse of a conditionally privileged occasion. 42 Pa.C.S..A. §8343(a). In addition, because the Plaintiff is a public figure, he must allege facts sufficient to support a finding of actual malice.[5] *Castellani v. Scranton Times, L.P.*, 124 A.3d 1229, 1241 (Pa. 2015).

i. Defamatory character

Defendants first demur to the defamation counts of Plaintiff's Complaint on the basis that the statements enumerated by Plaintiff are non-actionable statements of opinion and thus incapable of having defamatory character. In response, Plaintiff argues the enumerated statements are not couched in terms of opinion, but rather as declarations of objective fact that are therefore capable of possessing defamatory character.[6] Whether a particular statement constitutes fact or opinion is a question of law for the trial court. *Old Dominion Branch No. 496 v. Austin*, 418 U.S. 264 (1974), *cited by Braig v. Field Communications*, 310 Pa. Super. 559, 579, 456 A.2d 1366, 1372 (1983); *Green*, *supra*, 692 A.2d at 174.

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[5] The parties have agreed that Plaintiff is a public figure and thus proof of actual malice is required.
[6] Plaintiff further notes that the Freeh Report itself states that "the findings contained in this report represent fair, objective, and comprehensive analysis of facts." Plaintiff's Memorandum at 19, *citing* Freeh Report at 12.

Under common law, both a statement of fact and an expression of opinion could be defamatory and therefore sustain actions for defamation. *Restatement (Second) of Torts* § 566, Comments a. and c. (1977). In 1974, however, the United States Supreme Court rendered unconstitutional defamation actions based upon pure statements of opinion. In *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 339 (1974), the Court announced:

> Under the First Amendment there is no such thing as a false idea. However pernicious an opinion may seem, we depend for its correction not on the conscience of judges and juries but on the competition of other ideas. But there is no constitutional value in false statements of fact.

Id.

Since *Gertz*, Pennsylvania courts have followed the general rule that "a statement that is merely an expression of opinion is not defamatory." *Balletta,* 47 A.3d at 197; *Alston v. PW-Philadelphia Weekly*, 980 A.2d 215, 219 (Pa. Commw. Ct. 2009) (affirming order sustaining preliminary objections because statement was "protected opinion and, therefore, not actionable as a matter of law"). In doing so, they have specifically adopted Section 566 of the Restatement (Second) of Torts, which "states that a defamatory communication in the form of an opinion is only actionable if it implies the allegation of undisclosed defamatory facts as its basis." *Balletta, supra*, 47 A.3d at 197. *Accord Veno v. Meredith*, 515 A.2d 571, 575 (Pa. Super. 1986) (quoting *Restatement (Second) of Torts* §566 (1977). In contrast, if "'the maker of the comment states the facts on which he bases his opinion of the plaintiff and then expresses a comment as to the plaintiff's conduct, qualifications or character," such a pure expression of opinion "is not actionable 'no matter how unjustified and unreasonable the opinion may be or how derogatory it is'." *Malia v. Monchak*, 543 A.2d 184, 190 (Pa. Commw. Ct. 1988) (citations omitted). Thus, a "clearly

factual" statement followed by a statement that is "purely the opinion" of the one uttering the statement is not actionable. *Mathias v. Carpenter*, 587 A.2d 1, 3 (Pa. Super. 1991).

Our dilemma in evaluating the statements identified as defamatory in Plaintiff's Complaint is that the majority of them do not appear to be simple statements of fact or simple statements of pure opinion. Rather, delivered as the conclusions of persons and entities charged with both conducting an objective investigation and making subjective recommendations based upon that investigation--all within the context of the highly publicized criminal prosecution of Jerry Sandusky and the political firestorm of collateral controversies flowing from that prosecution--most appear to be editorialized statements of both fact and opinion, rich in loaded adjectives, which thus require significant, individual analysis of each statement. Adding to that already tedious task, we are required by *Baker v. Lafayette Coll*ege and its progeny to analyze those statements in context within the 267-page Freeh Report, because the "form" of the statements may not be determinative. As noted by §566, opinion may be ostensibly in the form of a factual statement if it is clear from the context that the maker is not intending to assert another objective fact but only his personal comment on the facts which he has stated.

As a framework for our analysis, we must make several determinations. First, we must determine whether any of the 23 statements at issue are clearly and only factual in nature.[7] If so, they do not enjoy *Gertz* protections and are therefore theoretically capable of defamatory character.

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[7] Plaintiff argues that all but one of the 23 statements identified in the Complaint are presented as objective fact, specifically those that are listed under the Findings or Key Findings headings of the Freeh Report. At oral argument, Plaintiff conceded that Statement (7) of Count I (*Dr. Spanier "fail[ed] ... to adequately report and respond to the actions of a serial sexual predator"*) is opinion, because it is listed in the Recommendations section of the Report.

According to governing case law, if a statement is "sufficiently factual that it is susceptible of being proved true or false," it is not a statement of opinion. *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 21 (1990) Likewise, a statement is not an opinion if "the averred defamatory language is an articulation of an objectively verifiable event." *Id.* at 22. Of the 22 statements still at issue after Plaintiff's concession at Oral Argument, we find that 10 describe objectively verifiable events or actions, susceptible to being proven true or false. Those statements are:

- *Dr. Spanier "failed to protect against a child sexual predator harming children for over a decade."* Count I, Statement (2); Count IV, Statement (2)

- *Dr. Spanier "concealed Sandusky's activities from the Board of Trustees, the University community and authorities."* Count I, Statement (3)

- *"Despite their knowledge of the criminal investigation of Sandusky [in 1998], Spanier, Schultz, Paterno and Curley took no action to limit Sandusky's access to Penn State facilities or took any measures to protect children on their campuses."* Count I, Statement (10)

- *"The investigation also revealed: . . . [a] president who discouraged discussion and dissent."* Count I, Statement (11)

- *"The most powerful men at Penn State failed to take any steps for 14 years to protect the children who Sandusky victimized."* Count II, Statement (2); Count III, Statement (2).

- *"Messrs. Spanier, Schultz, Paterno, and Curley never demonstrated, through actions or words, any concern for the safety and well-being for Sandusky's victims until after Sandusky's arrest."* Count II, Statement (3); Count III, Statement (3)

- *"As detailed in my report ... four of the most powerful officials at Penn State agreed not to report Sandusky's activity to public officials."* Count IV, Statement (1)

Because we find these statements are not opinions but rather factual assertions capable of being proven true or false, we believe they are potentially actionable as defamation. We further find, at least at the preliminary objections stage of these

proceedings, that all but one of these ten "purely factual" statements are also capable of being interpreted "in the minds of the average persons among whom [they were] intended to circulate" in such a way that could "lower [Plaintiff] in the estimation of the community or to deter third persons from associating or dealing with him." *Balletta,* 47 A.3d., at 197. The one exception to that determination in this category is Statement (11) of Count I: *"The investigation also revealed: . . . [a] president who discouraged discussion and dissent."* We do not believe the "discouragement of discussion and dissent" is the type of conduct that is capable of "lowering one in the estimation of the community or to deter third persons from associating or dealing with him" or of "grievously fracturing his standing in the community of respectable society."[8] Because the Plaintiff has failed to satisfactorily allege the first element of defamation as to this statement, we intend to grant Defendants' Preliminary Objection as to Count I, Statement (11).

We must next determine if any of the remaining 12 statements at issue are "pure opinion." If so, they are incapable of defamatory character and are not actionable in Plaintiff's suit for defamation. *See Baker,* 516 Pa. at 297, 532 A.2d at 402 (holding that, "opinion, without more, is not actionable"), *cited by Reed v. Pray*, 53 A. 3d 134 (Pa.Cmwlth. 2012)

Comment b to Section 566 of the Restatement gives us guidance regarding what constitutes the "pure" expression of opinion. It states:

> The simple expression of opinion, or the pure type, occurs when the maker of the comment states the facts on which he bases his opinion of the plaintiff and then expresses a comment as to the plaintiff's conduct, qualifications or character. The statement of facts and the expression of opinion based on them are separate

[8] We recognize that others could also interpret Count I, Statement (11) as pure opinion. Even so, our ultimate ruling on Defendants' Preliminary Objection would be the same. Whether a summary factual conclusion or an opinion based on disclosed facts which appear elsewhere in the Freeh Report as analyzed in pages 12-15 of this Opinion, the statement is non-actionable as defamation.

matters in this case, and at common law either or both could be defamatory and the basis for an action for libel or slander. The opinion may be ostensibly in the form of a factual statement if it is clear from the context that the maker is not intending to assert another objective fact but only his personal comment on the facts which he has stated.

The pure type of expression of opinion may also occur when the maker of the comment does not himself express the alleged facts on which he bases the expression of opinion. This happens when both parties to the communication know the facts or assume their existence and the comment is clearly based on those assumed facts and does not imply the existence of other facts in order to justify the comment. The assumption of the facts may come about because someone else has stated them or because they were assumed by both parties as a result of their notoriety or otherwise.

Id.

In contrast to statements which are the pure expression of opinion, there is a second type: a statement of mixed opinion. Section 566 defines mixed opinion as:

one which, while an opinion in form or context, is apparently based on facts regarding the plaintiff or his conduct that have not been stated by the defendant or assumed to exist by the parties to the communication. Here the expression of the opinion gives rise to the inference that there are undisclosed facts that justify the forming of the opinion expressed by the defendant. To say of a person that he is a thief without explaining why, may, depending upon the circumstances, be found to imply the assertion that he has committed acts that come within the common connotation of thievery. To declare, without an indication of the basis for the conclusion, that a person is utterly devoid of moral principles may be found to imply the assertion that he has been guilty of conduct that would justify the reaching of that conclusion.

Id. In contrast to "pure" expressions of opinion, "mixed" expressions may be actionable.

A simple expression of opinion based on disclosed or assumed nondefamatory facts is not itself sufficient for an action of defamation, no matter how unjustified and unreasonable the opinion may be or how derogatory it is. But an expression of opinion that is not based on disclosed or assumed facts and therefore implies that there are undisclosed facts on which the opinion is based, is treated differently. The difference lies in the effect upon the recipient of the communication. In the first case, the communication itself indicates to him that there is no defamatory factual statement. In the second, it does not, and if the recipient draws the reasonable

conclusion that the derogatory opinion expressed in the comment must have been based on undisclosed defamatory facts, the defendant is subject to liability.

Id.

To further aid our analysis of whether the remaining statements in Plaintiff's Complaint are nonactionable "pure" expressions of opinion or potentially actionable "mixed" expressions of opinion, we have carefully considered the factual scenarios outlined in depth by Comment c of §566. It explains:

> By way of recapitulation, the effect of the rule that there can be no recovery in defamation for a pure expression of opinion can be set forth by applying it to four fact patterns:
>
> (1) If the defendant bases his expression of a derogatory opinion of the plaintiff on his own statement of false and defamatory facts, he is subject to liability for the factual statement but not for the expression of opinion.
>
> (2) If the defendant bases his expression of a derogatory opinion of the plaintiff on his own statement of facts that are not defamatory, he is not subject to liability for the factual statement—nor for the expression of opinion, so long as it does not reasonably indicate an assertion of the existence of other, defamatory, facts that would justify the forming of the opinion. The same result is reached if the statement of facts is defamatory but the facts are true (see § 581B), or if the defendant is not shown to be guilty of the requisite fault regarding the truth or defamatory character of the statement of facts (see §§ 580A and 580B), or if the statement of facts is found to be privileged. (See §§ 593- 612).
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> (3) If the defendant bases his expression of a derogatory opinion on the existence of "facts" that he does not state but that are assumed to be true by both parties to the communication, and if the communication does not give rise to the reasonable inference that it is also based on other facts that are defamatory, he is not subject to liability, whether the assumed facts are defamatory or not.
>
> (4) If the defendant expresses a derogatory opinion without disclosing the facts on which it is based, he is subject to liability if the comment creates the reasonable inference that the opinion is justified by the existence of unexpressed defamatory facts. It makes no difference whether this is explained by holding that there was thus a publication of false, defamatory facts (thus making § 565 applicable) or that an expression of a mixed opinion can itself be a defamatory communication.

Id.

Pennsylvania case law is consistent with the legal conclusions suggested by the fact patterns of Comment c. *See Baker,* 516 Pa. at 299, 532 A.2d at 403 (holding that, in the context of the expression of conclusions based upon an investigation, Defendants' demurrer was appropriately granted when Defendant had "provided the very facts he relied upon to reach his conclusions" and those facts were not themselves defamatory); *Belleta v. Spadoni*, 47 A. 3d 183, 199 (Pa.Commw. 2012) (holding that the trial court was proper in dismissing Plaintiff's cause of action for defamation because the Defendant's expressed conclusion, when viewed in context of the entirety of the article, fully disclosed the facts upon which the Defendant based his opinions and did not imply the existence of undisclosed facts); *Goralski v. Pizzimenti*, 115 Pa. Cmwlth. 210, 540 A.2d 595, 598 (1988) (affirming the trial court's entry of a compulsory nonsuit in a defamation case based on the fact that in a letter discharging plaintiff, defendant's statement that plaintiff was being discharged for misconduct adduced the facts supporting his opinion of plaintiff and therefore did not imply the existence of any undisclosed defamatory facts*); Mathias v. Carpenter*, 587 A.2d 1, 4, 402 Pa.Super. 358, 365 (Pa.Super.,1991) (affirming the trial court's grant of demurrer based on the fact that the writer stated the facts justifying his opinion within the same article and the reader was therefore "provided with adequate facts to assess the validity of the opinion expressed. Under these circumstances, the expression of opinion was not actionable.") *Accord Redco Corp. v. CBS, Inc.*, 758 F.2d 970, 972 (C.A.3, 1985) (explaining that "[a]lthough there may be no such thing as a false opinion, an opinion which is unfounded reveals its lack of merit when the opinion-holder discloses the factual basis for the idea. If the disclosed facts are true and the opinion is defamatory, a listener may choose to accept or reject it on the basis of an independent

evaluation of the facts. However, if an opinion is stated in a manner that implies that it draws upon unstated facts for its basis, the listener is unable to make an evaluation of the soundness of the opinion. In such circumstances, if the underlying facts are false, the Constitution does not protect the opinion. *See* Restatement (Second) of Torts § 566A. We agree with the district court that the factual bases for all stated opinions were adequately disclosed and therefore these statements were not actionable.") *Compare Braig v. Field Communications*, 310 Pa. Super. 569, 456 A.2d 1366 (1983), *certiorari denied* 466 U.S. 970 (1984) (holding that a statement qualified as an opinion but based upon undisclosed defamatory facts was an actionable mixed expression of opinion); *Dougherty v. Boyertown Times*, 377 Pa.Super. 462, 547A.2d 778 (Pa.Super. 1988) (reversing the trial court's grant of a nonsuit because the statements in question, despite being expressed in the form of opinions, could have reasonably been understood to be based, at least in part, on undisclosed defamatory facts); *Malia v. Monchak*, 116 Pa.Cmwlth. 484, 543 A.2d 184 (Pa.Commw. 1988) (reversing dismissal of a complaint, concluding that it was reasonable for those who heard that statement to conclude that the defendant was "privy to undisclosed facts" supporting the opinion).[9]

We find that the remaining 12 statements are consistent with fact patterns (1) and (2) of Comment c, as well as those evaluated by *Baker, Belleta, and Goralski.* These statements are conclusions expressly based upon either the facts disclosed within the statements themselves or as part of the extensive discussion of facts articulated in the

[9] Plaintiff has not argued that any of the 23 statements are mixed opinion based upon undisclosed defamatory facts. Rather, Plaintiff has alleged that all statements, except for the concession of Statement (7) of Count I, are factual assertions.

267-page Freeh Report. Thus, we are required to determine whether the expressly stated or presumed[10] facts underlying the statements are capable of defamatory meaning. If the underlying facts, whether disclosed as part of the opinion statement or in the body of the Freeh Report, are not defamatory, there can be no liability on the part of Defendants, as suggested in fact pattern (2). If defamatory, Defendants may be liable, on the factual portions of the statements, but not on the opinion portions, as described in fact pattern (1).

We find the following statements to be consistent with fact pattern (1) of Comment c:

• ***Dr. Spanier exhibited "total and consistent disregard . . . for the safety and welfare of Sandusky's child victims."*** **Count I, Statement (1)**

This statement of opinion was immediately followed in the Freeh report by the following sentence: "As the Grand Jury similarly noted in its presentment, there was no 'attempt to investigate, to identify Victim 2, or to protect that child or any others from similar conduct except as related to preventing its re-occurrence on University property'." Freeh Report at 14. One paragraph later, the Report notes that Plaintiff and others "exposed this child to additional harm by alerting Sandusky, who was the only one who knew the child's identity, of what McQueary saw in the shower on the night of February 9, 2001." *Id.* at 14-15.

Similar to the statement reviewed above is the following one from the July 12, 2012 press conference announcing the release of the Freeh Report, repeated both orally and distributed in the written remarks by Defendant Freeh at the press conference:

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[10] We consider the complete contents of the Freeh Report to be the expressly disclosed facts and context for all of the defamation counts of Plaintiff's Complaint.

• ***"Our most saddening and sobering finding is the total disregard for the safety and welfare of Sandusky's child victims by the most senior leaders at Penn State."*** **Count II, Statement 1; Count III, Statement 2.**

While the beginning of the statement is even more subjective[11] than the similar statement identified in Count 1, our ultimate analysis is the same. The statement is given in the context of the release of the Freeh Report. As with the similar statement contained in the written Freeh Report, the facts supporting the Defendants' conclusion of Plaintiff's alleged "total disregard for the safety and welfare of Sandusky's child victims" are expressly identified on pages 14-15 of the Freeh Report and fleshed out in further detail by the Report in toto.

Consistent with the above analysis, and as described by the general text and fact patterns (1) and (2) of Comment c, we find that Count I, Statement (1); Count II, Statement (1); and Count III, Statement (2) are pure opinions based upon disclosed facts that appear elsewhere in the Freeh Report. While Plaintiff may challenge those underlying disclosed facts as potentially defamatory, the pure opinions expressed in these statements are not actionable, and we will sustain Defendants' Preliminary Objections regarding them.

• ***Dr. Spanier "exhibited a striking lack of empathy for Sandusky's victims by failing to inquire as to their safety and well-being, especially by not attempting to determine the identity of the child who Sandusky assaulted in the Lasch building in 2001." Count I, Statement (4); Count IV, Statement (3)***

Whether one exhibits "a striking lack of empathy" is clearly in the eye of the beholder and therefore opinion. The facts underlying that opinion are expressly stated as part of the same sentence: "by failing to inquire as to [the victims'] safety and well-being, especially by not attempting to determine the identity of the child who Sandusky assaulted

[11] The language "our most saddening and sobering finding" is clearly opinion and not subject to being proven true or false.

in the Lasch Building in 2001." Freeh Report at 14. They are also implicitly stated in the whole of the Freeh Report. Fact pattern (1) suggests that, while the opinion part of the statement is not actionable, the factual part beginning with "by failing to inquire..." is potentially so, since we believe the included factual allegations could possibly tend to "lower [Plaintiff] in the estimation of the community or to deter third persons from associating or dealing with him." We are therefore unable to sustain Defendants' Preliminary objections to the complete statements identified by *Count I; Statement (4)* and *Count IV, Statement (3)* on the grounds that they constitute non-actionable opinion. Those portions of the statements which contain factual allegations are potentially capable of defamatory meaning.

> • ***Dr. Spanier "empowered Sandusky to attract potential victims to the campus and football events by allowing him to have continued, unrestricted and unsupervised access to the University's facilities and affiliation with the University's prominent football program."*** **Count I, Statement 5.**

The first part of this statement, Dr. Spanier "empowered Sandusky to attract potential victims to the campus and football events," is a conclusion stated as opinion. The Defendants disclose the facts underlying that conclusion in the second half of the statement: "...*by allowing him to have continued, unrestricted and unsupervised access to the University's facilities and affiliation with the University's prominent football program.*" The second half of the statement is additionally supported by specific facts reported elsewhere in the Freeh Report. *Id.* at 51-52. Fact pattern (1) suggests that, while the opinion part of the statement is not actionable, the factual part beginning with "by allowing him to have continued, unrestricted and unsupervised access..." is potentially so, since we believe the included factual allegations could possibly tend to "lower him in the estimation of the community or to deter third persons from associating or dealing with

him." We are therefore unable to sustain Defendants' Preliminary objections to the complete statement identified by *Count I, Statement (5)* on the grounds that it constitutes non-actionable opinion. That portion of the statement which contains factual allegation is capable of defamatory meaning.

- ***"The investigation also revealed: [] A striking lack of empathy for child abuse victims by the most senior leaders at the University."*** **Count I, Statement (8)**

Although couched in terms of objective fact because the statement is prefaced with the words, "[t]he investigation revealed," we believe the words "a striking lack of empathy" clearly place this statement in the realm of opinion. Although this particular statement identified by Plaintiff is not immediately followed by factual averments ostensibly supporting the opinion,[12] very similar statements appear elsewhere in the Freeh Report, and these statements are followed up by factual assertions expressly justifying the opinion stated. *See* Freeh Report at 14 ("They exhibited a striking lack of empathy for Sandusky's victims *by failing to inquire as to their safety and well-being, especially by not attempting to determine the identity of the child who Sandusky assaulted in the Lasch Building in 2001.*") Other supporting facts appear throughout the Freeh Report. *See, e.g.* Freeh Report at 71. Thus, we consider Count I, Statement (8) to be pure opinion based upon disclosed facts. While those disclosed facts are potentially actionable, the pure opinion expressed in Court 1, Statement (8) is not. As a result, we intend to sustain Defendants' Preliminary Objection as to Count I, Statement (8).

- ***Dr. Spanier made "[a] decision ... to allow Sandusky to retire in 1999, not as a suspected child predator, but as a valued member of the Penn State***

[12] The Plaintiff cites to page 16 of the Freeh Report for this statement..

football legacy . . . essentially granting him a license to bring boys to campus facilities for 'grooming' as targets for his assaults." **Count 1, Statement (9)**

This statement seems to contain elements of both fact and opinion. The first portion of the statement is at least arguably factual,[13] setting up the damning opinion[14] which follows: the allegation that Plaintiff's actions or failure to act facilitated a suspected sexual predator's grooming of sexual victims on the University campus. As we have noted above, consistent with fact pattern 1 of §366, the factual assertion is potentially actionable as defamation; the opinion portion is not.

- ***"[I]n order to avoid the consequences of bad publicity, the most powerful leaders at the University—Spanier, Schultz, Paterno, and Curley—repeatedly concealed critical facts relating to Sandusky's child abuse from the authorities, the University's Board of Trustees, the Penn State community, and the public at large. The avoidance of the consequences of bad publicity is the most significant, but not the only, cause for this failure to protect child victims and report to authorities."*** **Count I, Statement (6)**

- ***[I]n order to avoid the consequences of bad publicity, the most powerful men at Penn State University—Messrs. Spanier, Schultz, Paterno and Curley—repeatedly concealed critical facts relating to Sandusky's child abuse from the authorities, the University's Board of Trustees, the Penn State community, and the public at large."*** **Count II, Statement (4); Count 3, Statement (4)**

The above statements contain both fact and opinion elements. Unlike the other statements we have considered that contain both fact and opinion, the opinions expressed are not based upon the factual assertions within the challenged statements,

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[13] While arguably opinion, we believe this statement is more properly considered a factual conclusion, summarizing other disclosed factual assertions within the Freeh Report, including Plaintiff's alleged knowledge of the 1998 allegations against Sandusky (Freeh Report at 39-54) and Plaintiff's heavy involvement in determining the elements of Sandusky's retirement benefits and privileges (Freeh Report at 55-61).

[14] The "damning" nature of the opinion itself does not predispose our analysis. *See* §366, Comment c ("A simple expression of opinion ... is not itself sufficient for an action of defamation, no matter how unjustified and unreasonable the opinion may be or how derogatory it is.")

but rather upon other facts disclosed elsewhere in the Freeh Report. We will therefore address the factual assertions contained within these statements separately from the expressed opinions.

The critical factual assertion contained in each statement is: "[T]he most powerful[15] leaders at the University—Spanier, Schultz, Paterno, and Curley—repeatedly concealed critical facts relating to Sandusky's child abuse from the authorities, the University's Board of Trustees, the Penn State community, and the public at large." We believe this statement is capable of being proven true or false. Moreover, this statement is capable of defamatory meaning, in that it could be interpreted "in the minds of the average persons among whom [it was] intended to circulate" in such a way that could "lower [Plaintiff] in the estimation of the community or to deter third persons from associating or dealing with him." We are thus unable to sustain Defendants' Preliminary Objection to this factual assertion contained within Count 1, Statement 6; Count II, Statement (4); and Count 3, Statement (4).

We next turn to the opinion portions of the challenged statements. The challenged statement in Count I contains two items of opinion: the introductory phrase, *"[i]n order to avoid the consequences of bad publicity,"* and a concluding sentence, *"The avoidance of the consequences of bad publicity is the most significant, but not the only, cause for this failure to protect child victims and report to authorities."* The challenged statements in Count II and Count III contain only the introductory phrase.

The opinion expressed in the introductory phrase is based upon disclosed facts within the Freeh Report. Although state of mind and motive can be difficult to ascertain,

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[15] While recognizing that the phrase "the most powerful leaders of the University" is subjective opinion, we believe that incidental phrase is not relevant in our analysis.

the Report documents several instances in which "the most powerful leaders of the University" allegedly expressed concern about bad publicity and developed a course of action based upon that concern. *See, e.g.,* Freeh Report at 73, 78. We do not find the disclosed facts documenting the desire to avoid publicity to be defamatory. Indeed, there are whole industries—legitimate and well-accepted in general society—dedicated to shaping personal reputations and public opinion. It is not the desire to avoid bad publicity that is potentially defamatory to Plaintiff; if anything, it is the alleged decisions regarding transparency and Plaintiff's alleged failure to act that purportedly flowed out of that desire. We therefore find that this introductory phrase is not actionable as defamation.

We make a similar finding regarding the concluding sentence challenged in Count I, Statement (6): *"The avoidance of the consequences of bad publicity is the most significant, but not the only, cause for this failure to protect child victims and report to authorities."* Read in context within the report, the statement appears to be a rhetorical device, a transition sentence connecting the primary motive for the alleged concealment to the secondary motives for it. The language *"the most significant"* clearly puts this statement in the realm of opinion, one incapable of being proven true or false. The "other causes" of the alleged concealment are articulated in the report immediately after the transitional sentence, and so are fully disclosed. To the extent any of those "causes" are defamatory factual allegations, they are separately actionable, and Plaintiff has indeed pursued some of them in his Complaint. But we consider the summary statement proceeding them to be non-actionable opinion.

Based on this analysis, we intend to grant Defendants' demurrer as to the introductory phrase and the transition sentence of Count I, Statement (6); Count II, Statement (4); and Count 3, Statement (4).

The final statement we must evaluate is identified by Plaintiff in Count 1, Statement (12).

> • ***After the February 2001 incident, Sandusky engaged in improper conduct with at least two children in the Lasch Building. Those assaults may well have been prevented if Spanier, Schultz, Paterno and Curley had taken additional actions to safeguard children on University facilities."*** **Count 1, Statement (12)**

We find that this excerpt from the Freeh Report includes elements that are consistent with both fact patterns (1) and (2) of §566, Comment c. The first sentence of the excerpt is factual in nature and thus potentially actionable. However, those facts are potentially defamatory to a third party, not to Plaintiff.[16] The second sentence of the excerpt seems to be opinion, particularly since it includes the qualifying language, "may well have." While the opinion suggests that there are additional actions the Plaintiff could have taken but did not, those failures to act-- including the failure to notify the Department of Public Welfare, the failure to prevent Sandusky from using University facilities, the failure to discontinue Penn State's relationship with the Second Mile, and the failure to end Sandusky's prominent association with Penn State-- are disclosed in the body of the Freeh Report. While the factual assertions of these alleged failures are potentially actionable, the opinion based on them is not. Since the opinion stated in Count I, Statement (12) is not based upon undisclosed defamatory facts, and the factual assertion

[16] We note that the statement is ultimately not actionable as to the third party, Sandusky, who was eventually found guilty at trial of committing those assaults. *See* Freeh Report at 79.

made in the first sentence of the excerpt is not defamatory as to Plaintiff, we intend to grant Defendants' demurrer as to Count 1, Statement (12).

ii. Actual malice

The Defendants have also demurred to Plaintiff's defamation claims on the grounds that Plaintiff's Complaint fails to support the element of actual malice. In *Castellani v. Scranton Times, L.P.,* 124 A.3d 1229 (Pa. 2015), the Supreme Court held that a public figure

> may not recover damages for a defamatory falsehood that relates to his or her official conduct **"unless he proves that the statement was made with 'actual malice'—that is, with knowledge that it was false or with reckless disregard of whether it was false ..."** *New York Times Co. v. Sullivan,* 376 U.S. 254, 279–80, 84 S.Ct. 710, 11 L.Ed.2d 686 (1964). *See also Time, Inc. v. Pape,* 401 U.S. 279, 284, 91 S.Ct. 633, 28 L.Ed.2d 45 (1971); *St. Amant v. Thompson,* 390 U.S. 727, 731, 88 S.Ct. 1323, 20 L.Ed.2d 262 (1968); *Sprague v. Walter,* 518 Pa. 425, 543 A.2d 1078, 1083–84 (1988); *Curran v. Philadelphia Newspapers, Inc.,* 497 Pa. 163, 439 A.2d 652, 662 (1981). "[P]roof of 'actual malice' calls a defendant's state of mind into question." *Curran,* 439 A.2d at 662 (quoting *Hutchinson v. Proxmire,* 443 U.S. 111, 120 n. 9, 99 S.Ct. 2675, 61 L.Ed.2d 411 (1979)). In this respect, to establish that the defendant acted with reckless disregard for the truth, "[t]here must be sufficient evidence to permit the conclusion that the defendant in fact entertained serious doubts as to the truth of his publication." *Weaver,* 926 A.2d at 903 (quoting *Norton,* 860 A.2d at 55). *See also Curran,* 546 A.2d at 642. Moreover, we have explained that actual malice can be shown where "the publisher's allegations are so inherently improbable that only a reckless man would have put them in circulation," or "where there are obvious reasons to doubt the veracity of the informant or the accuracy of his reports." *Weaver,* 926 A.2d at 903 (*quoting St. Amant,* 390 U.S. at 732, 88 S.Ct. 1323).

Id. at 1241 (emphasis added). "The burdens of production and persuasion as to both falsity and "actual malice" are on the public official-plaintiff." *Id.* at 1241-42 (citations omitted).

Plaintiff argues his Complaint includes detailed allegations suggesting that Defendants had a preconceived plan to defame Plaintiff, that Defendants were aware that Plaintiff never had any knowledge that Sandusky was a predator, and that Defendants intentionally and recklessly disregarded "reams" of exculpatory evidence. Plaintiff's Memorandum at 23. In light of the legal standard governing our review of Defendants' Preliminary Objections, specifically the mandate that we "regard the allegations of the Complaint as true and accord the plaintiff all the inferences reasonably deduced therefrom," we are unable to say that Plaintiff's Complaint indicates on its face "that his claim cannot be sustained, and the law will not permit recovery" on the issue of malice.

The Defendants' argument that the probable cause determination of a Magisterial District Judge reviewing criminal charges against Plaintiff at a preliminary hearing negates the possibility of actual malice at the Preliminary Objections stage is unpersuasive. While the standard for proving actual malice at trial is a difficult, nearly impossible one,[17] and the MDJ's determination of probable cause may be relevant as evidence at trial or even in a motion for summary judgment down the road,[18] we do not find it conclusive in our evaluation of Defendants' Preliminary Objection on the issue. Accordingly, we intend to deny Defendants' demurrer regarding the element of actual malice.

B. Tortious Interference

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[17] *See Manning v. WPXI, Inc.*, 86 A.2d 1137, 1143 (Pa. Super. 2005) (explaining that the actual malice standard is "a rigorous, if not impossible, burden to meet in most circumstances.")

[18] *See Cosmas v. Bloomingdales Bros.*, 660 A.2d 83, 87 (Pa. Super 1995) (stating that, "If the holding – over proceeding was not impeached in any way, it will constitute very weighty evidence [of probable cause] and the plaintiff will bear a hefty burden in trying to overcome it.")

Defendant has also demurred to Count V of Plaintiff's Complaint, a cause of action for tortious interference. Plaintiff's tortious interference claim is based upon an April 12, 2012 email sent by Defendant Freeh to Penn State Trustee, Ronald Tomalis, in response to an email Tomalis had sent Defendant. The Tomalis email to Defendant Freeh's FGIS email account had commented, "Seems someone might not have done their homework," and included an article from *The Patriot News* indicating that the Plaintiff would be working on a national security project for the federal government. Defendant Freeh's April 12, 2012 reply stated: "Very interesting—we have done our job notifying the Federal prosecutors regarding the latest information."

Citing Defendant Freeh's April 12, 2012 email exchange with Tomalis, Plaintiff's Complaint alleges that the Defendants took action indicating to federal officials "that Dr. Spanier was not fit for the national security work that he was being employed to undertake." Plaintiff's Complaint, ¶250. The Complaint further alleges that Freeh's supposed action "caused a government agency to terminate Dr. Spanier's then current and prospective business relationship." *Id.* ¶251.

The Complaint does not identify Plaintiff's existing or prospective employers, and no contracts are attached to the Complaint. Instead, Plaintiff alleges that, in February 2012, "arrangements" were made for him to serve in a "contractual capacity" on projects with the U.S. government and U.S. "intelligence community," but that in April of 2012, those "opportunities were suddenly withdrawn." *Id.* ¶¶243-245. The Complaint further alleges: "As a result of Freeh's actions, a government agency withdrew Dr. Spanier's contracts, Dr. Spanier was removed from the board of directors of a corporation, and Dr. Spanier lost out on prospective relations that were reasonably certain to occur." *Id.* ¶330.

To state a claim for tortious interference with contractual relations, a Plaintiff must plead: 1) the existence of a contractual or prospective contractual relation between the complainant and a third party; 2) purposeful action on the part of the defendant, specifically intended to harm the existing relation, or to prevent the prospective relation from occurring; 3) the absence of privilege or justification on the part of the defendant; and 4) the occasioning of actual legal damage as a result of the defendant's conduct. *See Al Hamilton Contracting Co. v. Cowder*, 644 A.2d 188, 191 (Pa.Super. 1994).[19]

The Defendants object to Plaintiff's tortious interference claim on two grounds: A) the claim is time-barred, and B) the Plaintiff's Complaint fails to adequately plead any of the four elements of the cause of action.

i. Statute of Limitations

While the Statute of Limitations is ordinarily considered an affirmative defense that must be pleaded as new matter, where the bar is clear on the face of a complaint, courts have recognized the efficiencies of considering such arguments on preliminary objections. *See Pelagatti v. Cohen*, 536 A.2d 1337, 1346 (Pa.Super. 1987). Our review of the Rules of Civil Procedure and the chronology of events of this case persuade us that the Plaintiff's cause of action for tortious interference as articulated in Count V of the Complaint is indeed time-barred.

[19] The Plaintiff's Complaint uses the language "interference with contractual or business relations". The elements of the cause of action are the same regardless of the label attached. *See InfoSage, Inc. v. Mellon Ventures, LLP*, 896 A.2d 616, 627 (Pa. Super. 2006)

Under Pennsylvania law, a claim for tortious interference is generally subject to a two-year statute of limitations[20]. *See Maverick Steel Co, LLC v. Dick Corp./Barton Malow*, 54 A.3d 352, 355 (Pa. Super. 2012). The date of the critical email identified by Plaintiff is April 12, 2012. Plaintiff alleges that his national security work opportunities were withdrawn in April of 2012, but he was not able to discover the critical email exchange that allegedly prompted that withdrawal until October 7, 2013. Giving Plaintiff the benefit of the two-year statute and applying the discovery rule, Plaintiff needed to commence his action for tortious interference and thereby toll the statute by October 7, 2015.

Under the Pennsylvania Rules of Civil Procedure, an action may be commenced only "by filing with the prothonotary 1) a praecipe for a writ of summons or 2) a complaint." Pa.R.Civ.P. 1007. "Our Supreme Court has stated that the language of Rule 1007 is clear and unambiguous, and its underlying purpose is to provide certainty as to the commencement of an action. Attempts to commence an action buy means other than those allowed by rule 1007 have consistently been rejected by the courts." *Burger v. Borough of Ingram*, 697 A.2d 1037, 1040 (Pa. Commw. 1997) *citing Lamp v. Heyman*, 469 Pa. 465, 366 A.2d 882 (1976); *Hartmann v. Peterson*, 438 Pa. 291, 265 A.2d 127 (1970); *Aivazoglou v. Drever Furnaces*, 418 Pa. Superior Ct. 111, 613 A.2d 595 (1992). Moreover, the filing of a motion to amend a complaint to add a party or amend a complaint does not toll the Statute of Limitations. *Aivazoglou*, 418 Pa. Super. at 118, 613 A.2d at

[20] Defendants argue that, because Plaintiff's tortious interference claim is really one grounded in defamation, a one-year statute should apply. *See Evans v. Phila. Newspapers, Inc.*, 601 A.2d 330 (Pa. Super. 1991) (holding that where a tortious interference claim is predicated upon defamation, the one-year statute of limitations that governs a defamation claim applies to the tortious interference claim.) At this stage of the proceedings, and particularly given the cryptic nature of the April 12, 2012 email, we are unable to say with certainty that defamation is the gravamen of Plaintiff's tortious interference claim. However, our decision today is the same whether we apply the one-year statute for defamation or the two-year tort catch-all statute, which is most often applied to claims of tortious interference.

599-600; *Anthony v. St. Joseph's Hosp. Sch. Of Nursing, Inc.*, No. 2236 EDA 2013, 2014 WL 109117675 at 3 (Pa. Super. June 10, 2014). Under these guidelines, Plaintiff's February 10, 2016 cause of action for tortious interference against Defendants Freeh and FGIS is outside the two year statute of limitations, and the claim is clearly time-barred.

Plaintiff urges us to recognize an exception to the clear language of Rule 1007. He argues that, although he did not formally file his Complaint including the new cause of action until February 10, 2016, he did attach a Proposed Complaint, one which included the tortious interference claim, as an exhibit to the Memorandum of Law filed in support of his Motion for Leave to Join Additional parties filed with the Court on March 18, 2015. Thus, he argues that Defendants had notice of the cause of action prior to the October 2015 deadline, and that notice provided the timely assertion of the claim. Further, Plaintiff argues he was prevented from filing and serving an actual complaint prior to the expiration of the Statute of Limitations because of the stay[21] that was in place.

We have no authority to recognize such an exception to the very clear language of Pa.R.Civ.P. 1007. As stated by the Superior Court in *Aivazoglou,* "a civil action can only be commenced in the manner provided by R.C.P. 1007." *Id.* at 118, 613 A.2d at 599-600. Moreover, Plaintiff was not without options to protect his tortious interference claim. The stay that Plaintiff requested was not granted until February 25, 2014, months after Plaintiff asserts he learned of the facts underlying the tortious interference claim. Plaintiff could have filed the tortious interference claim before seeking the stay or before the stay was granted. He also could have alerted the Court to the looming expiration of the statute

[21] Plaintiff commenced the defamation actions on July 11, 2013 by filing a Praecipe for a Writ of Summons. When Defendants responded by filing a Praecipe to File Complaint on October 1, 2013, Plaintiff filed a Motion for Stay on October 21, 2013.

of limitations and sought emergency relief from the stay once it was granted. Finally, Plaintiff could have served Defendants with a separate writ of summons on the tortious interference claim against Defendants Freeh and FGIS. He did not do so.

Based upon the above analysis, we intend to sustain Defendants' Preliminary Objection to Count V of Plaintiff's Complaint on the basis that the claim is time-barred.

ii. Demurrer as to elements of cause of action

In light of our holding that the Plaintiff's claim for tortious interference in Count V is time-barred, Defendants' demurrer as to the elements of the cause of action is moot.[22]

We will enter an appropriate consistent with this Opinion.

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[22] Even if we were to find that Plaintiff's cause of action for tortious interference is not time-barred, we would be inclined to grant Defendant's demurrer to Count V. Pennsylvania is a fact-pleading state. "[T]he pleader must define the issues; every act or performance essential to that end must be set forth in the Complaint." *Santiago v. Pa. Nat'l Mut. Cas. Ins. Co., 613 A.2d 1235, 1238* (Pa.Super. 1992) (emphasis added). Plaintiff's Complaint fails to properly plead several elements of a tortious interference action. No contract is attached to the Complaint, nor is any identified. We presume, then that Plaintiff's claim is based on interference with prospective contractual relations. He is thus required to allege facts from which the Court could determine that a future contractual relationship was reasonably certain. *See, e.g. Behrend v. Bell Tel. Co.*, 363 A.2d 1152, 1160 (Pa. Super. 1976). He fails to do so. Plaintiff fails to identify the precise party with whom he claims to have had such relations; instead, he vaguely contends that he was to be employed by the federal government. Also glaring is the lack of causal connection between Defendants' contact with federal prosecutors and the loss of business opportunity for Plaintiff with the "federal government," "government agency," or the "intelligence community." There is no indication federal prosecutors communicated information obtained from Defendants with whatever unspecified agency Plaintiff was negotiating with, nor what that information was. Moreover, there is no attempt to assert when the notification occurred. The complained of communication may well have occurred months before the email was sent. It may also have occurred after Plaintiff's business opportunities were withdrawn. While Plaintiff is entitled to all reasonable inferences flowing from the allegations in his Complaint, he is not entitled to speculation, and that is precisely what his pleading would require on these elements, if his claim were to go forth.