Anslie
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Welsh

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.	)	No. 2013-2707

Attorney for Plaintiff: *Elizabeth K. Anslie, Esquire*
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OPINION IN RESPONSE TO MATTERS COMPLAINED OF ON APPEAL

Presently before this Court is an appeal filed by Lois J. Freeh and Freeh Sporkin & Sullivan, LLP (hereinafter "Appellants.") Appellants' Statement of Matters Complained of on Appeal raises nine separate issues, many of which this Court addressed in its Opinion and Order dated February 25, 2014. Appellants have, however, raised at least one issue which was not before this Court when it issued its original Opinion and Order on the matter. Further, Appellants also raised additional issues which this Court wishes to address further. The Court will, therefore, address each of those issues in turn.

I. Plaintiff's Fifth Amendment Rights

Appellants argue this Court erred in finding Plaintiff's potential invocation of his Fifth Amendment right against self-incrimination may prejudice him, as Plaintiff has not yet invoked his Fifth Amendment right at any point. The Court disagrees. The Fifth Amendment not only permits an individual to refuse to testify against himself or herself when he or she is a defendant

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in a criminal trial, but also "in any other proceeding, civil or criminal, formal or informal, where the answers might incriminate the speaker in future criminal proceedings." *Commonwealth v. Knoble*, 42 A.3d 976, 979 (Pa. 2012). Plaintiff is entitled to assert his Fifth Amendment rights at any stage in the instant proceedings. Merely because Plaintiff has not yet done so does not mean that he will not assert this right in the future. Further, the Court notes that no meaningful proceedings in the instant action have yet taken place and Plaintiff has therefore not been placed in a position where he might invoke his Fifth Amendment rights.

II. Removal to Federal Court

Appellants allege this Court failed to consider the prejudice to their statutory right of removal to federal court when granting a stay, in light of the one-year statutory limitation on removal from the commencement of an action. The Court first notes Appellants did not raise this issue in their filings or argument on the initial motion for stay, and the Court therefore did not address it in its initial Opinion and Order. However, this Court did consider the potential prejudice to Appellants' statutory right of removal to federal court when it entertained the motion for reconsideration filed by Appellants.

"Any civil action brought in a state court of which the district courts of the United States have original jurisdiction may be removed by the defendant or the defendants to the district court of the United States." 28 U.S.C. §1441(a). A defendant may file for removal within 30 days after receiving a removable initial pleading or after receiving a removable amended pleading, motion, or order if the initial pleading was not removable. 28 U.S.C. §1446(b)(1); 28 U.S.C. §1446(b)(3). A case may not be removed on the basis of jurisdiction conferred by 28 U.S.C. §1332 more than one year after the action has commenced, unless the district court finds the plaintiff has acted in bad faith in order to prevent a defendant from removing the action. 28

U.S.C. 1446(b)(3).

The Third Circuit has held that the one-year limit on removal "is a procedural bar, not a jurisdictional one." *Ariel Land Owners, Inc. v. Dring*, 351 F.3d 611, 616 (3d.Cir. 2003). The effect of this holding "is to open the door to an examination of equitable considerations" when determining whether an exception to the one-year limitation is permitted. *Various Plaintiffs v. Various Defendants (Oil Field Cases)*, 673 F.Supp.2d 358, 364 (E.D.Pa. 2009). When evaluating whether the equitable exception is appropriate, courts balance the equities, considering three factors: "first, how vigorously the plaintiff prosecuted the action in state court; second, whether the defendants were complicit in any delay in removal of the case; and third, whether or not plaintiffs' [actions] amounted to 'flagrant forum manipulation'." *Id.* at 364.

It is entirely possible that the district court, upon balancing the equities, would find the equitable exception to the one-year bar to be an appropriate remedy. However, even if the district court determines an equitable exception is not available to Appellants, their statutory right to removal is outweighed by Plaintiff's right against self-incrimination.

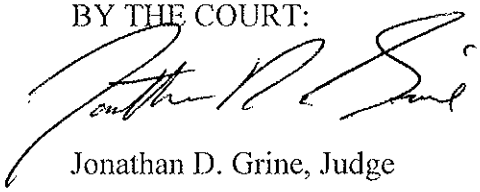
III. Damage to Appellants' Reputation

In its Opinion and Order dated February 25, 2014, this Court briefly addressed the damage Appellants' perceive will result to their reputation if the writ is permitted to remain unanswered, but did not make an explicit finding regarding that potential damage. The Court finds that, although the potential for damage to Appellants' reputation exists, that damage is outweighed by the Court's analysis of the other factors.

The Court respectfully relies on the reasoning provided in this Opinion and the Opinion

and Order of February 25, 2014 and respectfully requests that its decision remain undisturbed.

BY THE COURT:



Jonathan D. Grine, Judge

DATE: April 8, 2014