

ORIGINAL



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

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CENTRE COUNTY, PA

**OPPOSITION OF DEFENDANTS TO
PLAINTIFF'S MOTION TO MODIFY THE STAY**

Defendants Louis J. Freeh and Freeh Sporkin & Sullivan, LLP (“FSS”) have long sought to compel Plaintiff Graham B. Spanier to file a Complaint setting forth the basis and substance of the claims he asserts against them. On March 18, 2015, Plaintiff finally disclosed his Complaint, some 139-pages, replete with impertinent and irrelevant allegations. Simultaneously with that disclosure, Plaintiff filed a Motion to Modify the Stay governing this case, purportedly seeking a partial lifting of the stay permitting him to conduct discovery against Freeh and FSS, but asking

for a “sequencing” of discovery as to himself and other relevant third party witnesses.

Defendants Louis Freeh and FSS do not oppose lifting the stay governing this action to permit Plaintiff to file his complaint. However, Freeh and FSS respectfully request this Court to lift the stay *in total*. To the extent Plaintiff seeks to concoct a lopsided discovery regime permitting Plaintiff to obtain discovery from Freeh and FSS while shielding Plaintiff himself from scrutiny, that request should be rejected.¹

Spanier asserts that such an unprecedented arrangement is necessary “to address the severe information imbalance that currently exists between Dr. Spanier, on the one hand, and the Defendants in the Proposed Complaint on the other.” Pl.’s Mot. to Modify the Stay at 10 n.2. Yet the statement that “information imbalance” justifies such lopsided discovery finds no support in the law; indeed, were such a justification accepted, plaintiffs would be entitled to early, and additional, discovery in nearly every case alleging wrongdoing by a defendant without those plaintiffs subjecting themselves to any reciprocal

¹ In his Supplemental Submission, Plaintiff asserts that he does not seek “lopsided” or “one-sided” discovery. Pl.’s Supplemental Submission at 5. Yet in the very same document, Plaintiff seems to contradict this assertion, stating that “sequencing” may be necessary “to allow Dr. Spanier to obtain documents in Defendants’ exclusive possession before depositions are taken.” *Id.* The mutual reciprocal exchange of documents is a normal part of fact discovery. To the extent Plaintiff seeks anything different, his request should be rejected.

discovery obligations. Spanier cannot assert that he is entitled to discovery because he will not assert his Fifth Amendment rights, but simultaneously seek to avoid discovery directed to him.

“Discovery need not be perfect, but discovery must be fair.” *Boeynaems v. LA Fitness Int’l, LLC*, 285 F.R.D. 331, 333 (E.D. Pa. 2012). The “interests of fairness and justice demand that . . . both parties should have equal access to” information relevant to a plaintiff’s claims. *Bock v. Baker*, 44 Pa. D. & C.3d 60, 63 (Com. Pl. Armstrong Cnty. 1987). While Freeh and FSS do not oppose Plaintiff’s Motion to the extent it seeks to lift the stay on this action, the stay should be lifted *in full*, not left in place as to some parts of this action and lifted as to others. Any issue with regard to third party witnesses asserting a Fifth Amendment privilege against self-incrimination may be dealt with on a case-by-case basis should such a situation arise, and need not be addressed at this juncture. A full lifting of the stay is the only outcome that accords with basic fairness, and preserves all parties’ due process rights with respect to this action.² Accordingly,

² Plaintiff should also be required to re-draft and file a Complaint that omits the impertinent and irrelevant allegations present in Plaintiff’s current Complaint. See for example, among many others, Proposed Complaint ¶¶ 12, 62-63, 67-68, 100. Such allegations have no bearing on Plaintiff’s claims, and are nothing more than *ad hominem* attacks on the reputation of Freeh and FSS in an effort to gain maximum media benefit. At the September 15 conference with the Court, Plaintiff’s counsel offered to discuss with defense counsel possibly streamlining the Complaint, but that discussion has yet to occur.

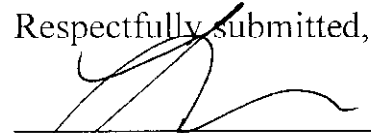
the stay should be lifted, and Plaintiff should be required to re-draft and file a concise complaint that omits The Pennsylvania State University and Freeh Group International Solutions, LLC as well as the many paragraphs of irrelevant and impertinent allegations against Freeh and FSS.

CONCLUSION

For the foregoing reasons, Defendants respectfully request that the stay governing this action be lifted in full and as to all parties.

Dated: October 5, 2015

Respectfully submitted,



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CERTIFICATE OF SERVICE

I, Lisa M. Welsh, hereby certify that I caused to be served on October 5, 2015, a true and correct copy of the foregoing Memorandum by first-class mail upon the following:

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