

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

GRAHAM B. SPANIER,
Plaintiff,

No. 2013-2707

v.

LOUIS J. FREEH and FREEH SPORKIN
& SULLIVAN, LLP, AND FREEH GROUP
INTERNATIONAL SOLUTIONS LLC
Defendants

ORDER OF COURT

FILED FOR RECORD
2016 SEP 27 PM 4:23
DEBRA C. IMMEL
PROTHONOTARY
CENTRE COUNTY, PA

AND NOW, to wit, this 27th day of September, 2016, consistent with our Opinion entered this same date and after careful consideration of the Plaintiff's February 10, 2016 Complaint, the Defendants' Preliminary Objections thereto, the memoranda submitted by the parties, and the arguments presented at Oral Argument, we note and direct as follows:

1) With respect to the Defendants' Preliminary Objection to the Plaintiff's cause of action for defamation regarding 23 statements identified in Counts I-IV, on the specific grounds that the identified statements are non-actionable statements of opinion and therefore incapable of defamatory character, we find that the following statements are factual in nature, as they are capable of being proven true or false:

- *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)

We further find that these statements, with the exception of Count I, Statement (11), are capable of being interpreted in such a way that could lower Plaintiff in the estimation of the community or deter third persons from associating or dealing with him. Therefore, Defendants' demurrer on the basis of non-actionable opinion is **DENIED** as to all of the above statements, with the exception of Count I, Statement (11). Defendants' demurrer as to Count I, Statement (11) is **GRANTED**.

2) We find the following statements to be pure opinion, based upon facts disclosed elsewhere in the Freeh Report:

- *Dr. Spanier exhibited "total and consistent disregard . . . for the safety and welfare of Sandusky's child victims."* Count I, Statement (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."* Count II, Statement (1); Count III, Statement (1)
- *"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)
- *Dr. Spanier "fail[ed] ... to adequately report and respond to the actions of a serial sexual predator."* Count I, Statement (7)¹

Defendants' demurrer to these statements on the basis they consist of non-actionable opinion is therefore **GRANTED**.

¹ Plaintiff conceded at Oral Argument that this statement was non-actionable opinion, because it was listed as a "Recommendation" in the Freeh Report.

3) We find that the following statement contains assertions that are both fact and opinion. However, the factual statement at the beginning of the two-sentence excerpt is not defamatory as to Plaintiff. It asserts a statement of fact regarding a third party. The second sentence is pure opinion, based upon facts disclosed elsewhere in the Freeh Report.

• *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)

Defendants' demurrer to this statement is therefore **GRANTED**.

4) We find that the following statements consist of both non-actionable opinion and potentially actionable assertions of fact. Further, we find that the included factual assertions (noted in bold font) are capable of lowering Plaintiff in the estimation of the community and form the basis for the opinions expressed:

• *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).

• *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).

• *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."* Count 1, Statement (9).

• *"[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).

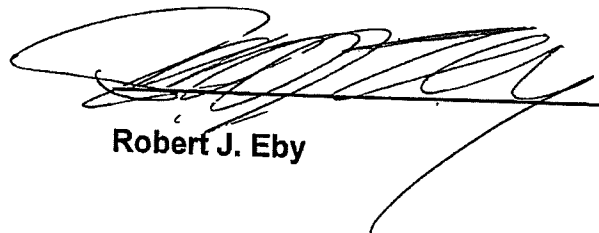
Consistent with Comment c, fact pattern (1) of the Restatement (Second) of Torts §566, Defendants' demurrer to these statements on the grounds that they are non-actionable opinion is **GRANTED** as to the opinion portions of the statements but **DENIED** as to the factual assertions within the challenged statements.

5) With regard to Defendants' demurrer on the basis that Plaintiff has not properly pleaded actual malice on the part of Defendants in relation to any of the challenged statements, Defendants' demurrer is **DENIED**, without prejudice.

6) With regard to Defendants' Preliminary Objection to Count 5 of the Complaint, which alleges a cause of action for tortious interference, Defendants' objection regarding the statute of limitations is **GRANTED**. Defendants' demurrer as to the elements is **DENIED** as **MOOT**.

7) Plaintiff shall have twenty (20) days to file an Amended Complaint consistent with today's Order.

BY THE COURT:

 , S.J.
Robert J. Eby

RJE/kw