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GRAHAM B. SPANIER,

Plaintiff,

v.

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

Defendants.

:
: COURT OF COMMON PLEAS
: OF CENTRE COUNTY

:
: No. 2013-2707

DEAN B. STANTON
PROthonary
CENTRE COUNTY, PA

FILED
2016 MAY 11 PM 3:44

**PLAINTIFF'S ANSWER TO DEFENDANTS LOUIS J. FREEH AND
FREEH GROUP INTERNATIONAL SOLUTIONS, LLC'S PRELIMINARY
OBJECTIONS TO PLAINTIFF'S TORTIOUS INTERFERENCE CLAIM**

AND NOW comes Plaintiff, Graham B. Spanier, through his attorneys,
making his Answer to Defendants Louis J. Freeh ("Freeh") and Freeh Group

International Solutions, LLC's Preliminary Objections to Plaintiff's Tortious Interference Claim.

1. DENIED as to Defendants' characterization that Plaintiff's tortious interference claim is "premised solely" on an April 12, 2012 email sent by Defendant Freeh. The Complaint sets forth in detail the facts supporting Plaintiff's claim, including the fact that the prospective employment opportunities in question were withdrawn shortly after Freeh sent the email in question.

2. ADMITTED only to the extent that Defendants accurately quote a selected portion of the email chain in question. In fact the email that Penn State Board of Trustees member Ronald Tomalis sent to Freeh and FGIS employee Omar McNeil contained the text of an article from the *Patriot News* detailing Dr. Spanier's post-presidency employment with the federal government. (*See* Feb. 10, 2016 Compl. ¶ 196, *Spanier v. Freeh, et al.*, No. 2013-2707 (Pa. Commw. Ct. filed Feb. 10, 2016).) Mr. Tomalis added his own commentary, stating, "[s]eems someone might not have done their homework..." (*Id.*) Freeh responded, "Very interesting—we have done our job notifying the Federal prosecutors regarding the latest information." (*Id.*) Trustee Kenneth Frazier then responded, saying "Oh brother." (*Id.*)

3. DENIED as to Defendants' characterizations of Plaintiff's claim. Dr. Spanier does not claim that the statement in the email to Trustees Frazier and

Tomalis cost Dr. Spanier prospective employment opportunities; rather, Dr. Spanier alleges that the statement in the email reflects action taken by Freeh to contact federal government officials in order to interfere with Dr. Spanier's employment opportunities. (*See id.* ¶¶ 196, 250.)

4. DENIED. The Complaint sets forth the exact chronology of events, including when the employment opportunities were offered, when Freeh interfered with Dr. Spanier's employment opportunities, when these opportunities were withdrawn as a result of Freeh's actions, and when Dr. Spanier learned of Freeh's actions. (*See id.* ¶¶ 196, 241-254.) The Complaint also alleged facts regarding Freeh's motivation; in addition to dozens of allegations regarding Freeh's motivation for making false statements about Dr. Spanier, the Complaint specifically alleges that Freeh and members of the Board of Trustees were "openly discussed targeting Dr. Spanier" and "plotted to deny Dr. Spanier this employment opportunity." (*Id.* ¶ 196.)

5. ADMITTED only to the extent that Defendants accurately quote a portion of paragraph 250 of Plaintiff's Complaint which, as a written document, speaks for itself. DENIED as to Defendants' characterization that this is Dr. Spanier's "only" allegation regarding Defendants' actions. The Complaint alleges in great detail Defendants' malicious targeting of Dr. Spanier and sets forth a multitude of false statements Defendants made regarding Dr. Spanier. At this

stage Plaintiff cannot know the verbatim statements Freeh made to federal officials while tortiously interfering with Dr. Spanier's employment opportunities. However, the rational inference from the factual allegations in the Complaint is that Freeh communicated false information to federal officials.

6. DENIED. Dr. Spanier filed a motion seeking to join FGIS as a tortious interference defendant on March 18, 2015, and on the same date filed a proposed complaint naming Freeh and FGIS as defendants and setting forth the factual allegations supporting the tortious interference claim.

7. DENIED. Dr. Spanier filed a motion seeking to join FGIS as a tortious interference defendant on March 18, 2015, and on the same date filed a proposed complaint naming Freeh and FGIS as defendants and setting forth the factual allegations supporting the tortious interference claim. Freeh and FGIS had notice of Plaintiff's claim and the supporting factual allegations as of March 18, 2015, well before the expiration of the applicable statute of limitations.

8. DENIED.

FIRST PRELIMINARY OBJECTION:
Legal Insufficiency (Demurrer) Under Pa. R. Civ. P. 1028(a)(4):
Failure to Plead Elements of Claim
Count V (Tortious Interference)

9. Plaintiff's foregoing admissions and denials are incorporated by reference as if fully set forth herein.

10. This is a conclusion of law to which no response is required. To the extent a response is required, ADMITTED as to the elements of a tortious interference claim. DENIED as to Defendants' argument that Dr. Spanier fails to allege sufficient facts to support the elements of a tortious interference claim.

11. DENIED. As Defendants' note, Plaintiff's Complaint contains a claim for tortious interference with prospective/contractual business relations (Count V).

12. This is a conclusion of law to which no response is required. To the extent a response is required, ADMITTED to the extent that Dr. Spanier does not allege a claim for interference with existing contractual relations. DENIED as to the claim that Dr. Spanier does not set forth facts showing that the prospective contractual relations were reasonably certain to occur.

13. DENIED. Dr. Spanier sets forth factual allegations stating when he was approached regarding the prospective employment opportunities, detailing the preparations that were under way for him to begin his employment, and noting that he had actually begun work on these matters. (*See id.* ¶¶ 241-244.)

14. DENIED. Dr. Spanier alleges that Freeh and members of the Board of Trustees were "targeting" Dr. Spanier and "plotted to deny Dr. Spanier this employment opportunity." (*Id.* ¶ 196.) The Complaint also alleges that Freeh and

FGIS's interference with Dr. Spanier's prospective employment was "knowing and intentional." (*Id.* ¶ 14.)

15. DENIED. The Complaint alleges in great detail Defendants' malicious targeting of Dr. Spanier and sets forth a multitude of false statements Defendants made regarding Dr. Spanier. At this stage Plaintiff cannot know the verbatim statements Frech made to federal officials while tortiously interfering with Dr. Spanier's employment opportunities. However, the rational inference from the factual allegations in the Complaint is that Freeh communicated false information to federal officials. *See Green v. Mizner*, 692 A.2d 169, 172 (Pa. Super. Ct. 1997) (when reviewing preliminary objections in the nature of a demurrer, the court must accord the plaintiff all the inferences rationally deduced from the allegations in the complaint).

16. This is a legal conclusion to which no response is required. To the extent a response is required, DENIED. To the extent statements to law enforcement officers are privileged, this privilege only applies if the statements were made "preliminary to the criminal proceedings" and "for the purpose of convincing the proper authorities to institute criminal proceedings against [the plaintiff]." *Pawlowski v. Smorto*, 588 A.2d 36, 84 (Pa. Super. 1991). Dr. Spanier has never been charged, or threatened with prosecution of any federal crime. Moreover, the Complaint alleges that this was not Freeh's purpose in

communicating with federal officials. (Compl. ¶¶ 15, 17.) Defendants do not dispute this fact and do not claim that Freeh was seeking to instigate federal criminal charges against Dr. Spanier, nor can they for purposes of preliminary objections. *See P.J.S. v. Pa. Ethics Comm'n*, 669 A.2d 1105, 1112 (Pa. Commw. Ct. 1996) (it is improper for the Court to address or resolve factual disputes at the preliminary objections stage).

17. DENIED. Dr. Spanier pleads facts showing the relevant timeline and demonstrating that Dr. Spanier's employment opportunities were withdrawn shortly after Freeh contacted federal officials. (*See* Compl. ¶¶ 15, 245, 248.) Dr. Spanier alleges that Freeh and FGIS's actions were the cause of the loss of these employment opportunities. (*Id.* ¶¶ 250-251.)

18. DENIED. Dr. Spanier alleges facts demonstrating that Freeh and FGIS were aware of Dr. Spanier's prospective employment at least as of April 12, 2012, when Defendants received an email setting forth the text of a news article noting Dr. Spanier's prospective employment. (*Id.* ¶ 196.)

19. ADMITTED only to the extent that the federal government did conduct an investigation that determined that Dr. Spanier could retain his Top Secret security clearance. DENIED as to the claim that Dr. Spanier fails to allege what Freeh and FGIS could have said to cause Dr. Spanier's termination. The Complaint alleges in great detail Defendants' malicious targeting of Dr. Spanier

and sets forth a multitude of false statements Defendants made regarding Dr. Spanier. At this stage Plaintiff cannot know the verbatim statements Freeh made to federal officials while tortiously interfering with Dr. Spanier's employment opportunities. However, the rational inference from the factual allegations in the Complaint is that Freeh communicated false information to federal officials. *See Green*, 692 A.2d at 172 (when reviewing preliminary objections in the nature of a demurrer, the court must accord the plaintiff all the inferences rationally deduced from the allegations in the complaint).

For the reasons stated herein and for the reasons stated in Plaintiff's Brief in Opposition to Defendants Louis J. Freeh and Freeh Group International Solutions, LLC's Preliminary Objections to Plaintiff's Tortious Interference Claims, Plaintiff respectfully request that the Court overrule Defendants' preliminary objections.

SECOND PRELIMINARY OBJECTION:
Legal Insufficiency (Demurrer) Under Pa. R. Civ. P. 1028(a)(4):
Statute of Limitations
Counts V (Tortious Interference)

20. Plaintiff's foregoing admissions and denials are incorporated by reference as if fully set forth herein.

21. Neither ADMITTED nor DENIED. This paragraph states a legal conclusion to which no response is required.

22. Neither ADMITTED nor DENIED. This paragraph states a legal conclusion to which no response is required.

23. DENIED. Defendants' statement that Dr. Spanier alleges that he learned of the facts underlying his tortious interference claim in October 2015 does not accurately characterize the allegations in the Complaint, nor does it support Defendants' statute of limitations argument. DENIED as to the statement that Dr. Spanier did not assert a tortious interference claim against Freeh or FGIS until February 2016. Dr. Spanier filed a motion seeking to join FGIS as a tortious interference defendant on March 18, 2015, and on the same date filed a proposed complaint naming Freeh and FGIS as defendants and setting forth the factual allegations supporting the tortious interference claim. Freeh and FGIS had notice of Plaintiff's claim and the supporting factual allegations as of March 18, 2015, well before the expiration of the applicable statute of limitations.

24. ADMITTED only to the extent that Defendants accurately quote portions of Pa. R. Civ. P. 1007, *Burger v. Borough of Ingram*, 697 A.2d 1037, 1040 (Pa. Super. Ct. 1997), and *Aivazoglou v. Drever Furnaces*, 613 A.2d 595, 599-600 (Pa. Super. Ct. 1992). As to all other statements in this paragraph, neither ADMITTED nor DENIED as this paragraph states legal conclusions to which no response is required. To the extent that a response is required, DENIED. Defendants do not dispute that they had actual knowledge of the claim against

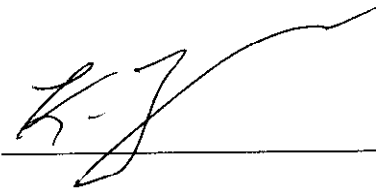
Freeh and FGIS as of March 18, 2015, well before the expiration of the statute of limitations. See *Morgan v. Harnischfeger Corp.*, No 3929-C, 1993 WL 766113, at *1-2 (Pa. Ct. Com. Pl. Mar. 5, 1993.).

25. DENIED. Defendants' reliance on *Pelagatti v. Cohen*, 536 A.2d 1337, 1346 (Pa. Super. Ct. 1987) is misplaced and does not support Defendants' act of raising a defense of statute of limitations in their preliminary objections. The defense of statute of limitations must be raised as an affirmative defense and pleaded under new matter in an answer. Pa. R. Civ. P. 1030. In *Pelagatti*, the Superior Court merely held that on appellate review it could affirm a dismissal by the trial court where the defendant raised the affirmative defense of statute of limitations in preliminary objections and the plaintiff did not object at the time to the procedural irregularity. See *Pelagatti*, 536 A.2d at 1346; see also *Cooper v. Downingtown Sch. Dist.*, 238 Pa. Super. 404, 407 (1976) (same); *Royal Oil & Gas Corp. v. Tunnelton Mining Co.*, 444 Pa. 105, 108-109 (1971).

26. DENIED. Defendants are required to assert the affirmative defense of statute of limitations in their answer as new matter. Pa. R. Civ. P. 1030.

WHEREFORE, Plaintiff respectfully requests this Honorable Court to overrule Defendants' Preliminary Objections to Plaintiff's Tortious Interference Claim.

Dated: May 11, 2016

By:  _____

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CERTIFICATE OF SERVICE

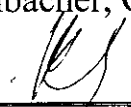
I hereby certify that a true and correct copy of the foregoing was served on the below counsel of record on May 11, 2016.

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