



NOTICE to Plaintiffs:

You are hereby notified to file a written response to the enclosed Preliminary Objections by May 11, 2016 or a judgment may be entered against You.

/s/ Robert C. Heim
Attorney for Defendants

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

GRAHAM B. SPANIER,

Plaintiff,

v.

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

Defendants.

Docket No. 2013-2707

FILED FOR RECORD
2016 MAR 28 PM 4:17
LEESA S. HINDEL
PROTHONOTARY
CENTRE COUNTY, PA

**PRELIMINARY OBJECTIONS OF LOUIS J. FREEH
AND FREEH GROUP INTERNATIONAL SOLUTIONS LLC
TO PLAINTIFF’S TORTIOUS INTERFERENCE CLAIM**

ORIGINAL

Defendants Louis J. Freeh and Freeh Group International Solutions, LLC (“FGIS”), by and through their undersigned attorneys, hereby submit these Preliminary Objections to Count V of the Verified Complaint filed by Plaintiff Graham Spanier, and in support thereof aver as follows:

1. Plaintiff Graham Spanier’s tortious interference claim, asserted in Count V, is premised solely on an April 12, 2012 email sent by Freeh using his FGIS email account.

2. In that email, Freeh responds to an email forwarded from Pennsylvania State University (“Penn State” or “PSU”) Trustee Ronald Tomalis regarding Spanier’s possible employment by the federal government with the comment: “[W]e have done our job notifying the Federal prosecutors regarding the latest information.” Compl. ¶ 249.

3. Spanier claims that this vague reference in a statement to *unnamed* federal prosecutors cost Spanier opportunities with *unnamed* federal government agencies in the *undefined* U.S. intelligence community and on an *unnamed* board of directors.

4. Spanier fails to allege any facts concerning the chronology of these alleged events, Freeh’s motivation, or the truthfulness of Freeh’s alleged statements.

5. Spanier alleges only that Freeh communicated his belief that “Spanier was not fit for the national security work that he was being employed to undertake.” Compl. ¶ 250.

6. Moreover, although Spanier alleges that he became aware of the email supporting his complaint in October 2013, Spanier waited until February 10, 2016 to assert his tortious interference claim against Freeh and add FGIS as a defendant.

7. Spanier cannot state a claim against Freeh or FGIS because the two-year statute of limitations applicable to tortious interference claims expired months before Spanier filed his February 10, 2016 Complaint.¹

8. Spanier’s tortious interference claim should be dismissed.

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. The foregoing averments are incorporated by reference as if fully set forth herein.

10. To state a claim of tortious interference with existing or prospective contractual relations, Spanier must allege facts supporting: (1) the existence of a contractual or prospective contractual relation between Spanier and a third party;

¹ While Defendants recognize that ordinarily a statute-of-limitations argument must be asserted as new matter, case law supports raising the issue on preliminary objections where the statute of limitations has expired on the face of the complaint. *See* Second Preliminary Objection, *infra*.

(2) purposeful action on the part of Freeh and/or FGIS, specifically intended to harm the existing relation, or to prevent the a prospective relation from occurring;

(3) the absence of privilege or justification on the part of Freeh and/or FGIS and

(4) the occasioning of actual legal damage as a result of Freeh and/or FGIS's conduct. *See Al Hamilton Contracting Co. v. Cowder*, 644 A.2d 188, 191 (Pa. Super. 1994). Spanier fails to set forth sufficient facts support any of these elements.

11. *First*, Spanier fails to adequately plead the existence of an existing or prospective contractual basis. Indeed, Spanier's Complaint is not even clear on which aspect of tortious interference his claim is based or whether it is based on both. *Compare* Compl. at 110 ("Count V: Tortious Interference with *Prospective Contractual/Business Relations*) *with id.* ¶¶ 327, 331 ("contractual and *prospective* business relations") (emphasis added).

12. To the extent that Spanier attempts to set forth a claim for *existing* contractual relations, he must identify a specific contract between himself and a third party. *See Northstar Waste, LLC v. Lishon*, No. 04699, 2004 WL 2426237, at *1 (Com. Pl. Phila. Cnty. Aug. 10, 2004) (citing *Strickland v. Univ. of Scranton*, 700 A.2d 979, 985 (Pa. Super. 1997)). To the extent that Spanier's claim is based on *prospective* contractual relations, Spaniner must allege "more than a mere hope or the innate optimism of a salesman," *Glenn v. Point Park College*, 272 A.2d 895,

898-99 (Pa. 1971); *see Thompson Coal Co. v. Pike Coal Co.*, 412 A.2d 466, 471-72 (Pa. 1979) (the law does not protect a mere “expectation”).

13. Spanier fails under either test, as he merely alleges that his work for *unnamed* government agencies was terminated, that he was terminated from an *unnamed* board of directors, and that he lost out on “prospective relations that were reasonably certain to occur but for Freeh’s tortious act.” Compl. ¶¶ 24345, 251, 330.

14. *Second*, Spanier fails to adequately allege that Freeh and FGIS acted for the “specific purpose of causing harm to the plaintiff” or that their “actions were improper under the circumstances presented.” *Phillips*, 959 A.2d at 429 (citing *Glenn*, 272 A.2d at 899). Spanier makes *no* allegation regarding either Freeh’s or FGIS’s purpose in contacting the “federal prosecutors.” *See Harbor Hosp. Servs., Inc. v. Gem Laundry Servs., LLC*, No. 4830, 2001 WL 1808556, at *13 (Com. Pl. Phila. Cnty. July 18, 2001).

15. Spanier’s allegation that Freeh stated that Spanier was “not fit” for his national security work is nothing more than the expression of an opinion. *See Phillips*, 959 A.2d at 435; *see also Small v. Juniata College*, 682 A.2d 350, 354 (Pa. Super. 1997). Moreover, Spanier does not allege what Freeh said to federal prosecutors, or that Freeh said anything false. *See Walnut St. Assocs., Inc. v. Brokerage Concepts, Inc.*, 20 A.3d 468, 478-79 (Pa. Super. 2011); *Rantnetwork*,

Inc. v. Underwood, No. 4:11-cv-1283, 2012 WL 1021326, at *16 (M.D. Pa. Mar. 26, 2012).

16. Furthermore, Spanier alleges only that Freeh and FGIS contacted certain “federal prosecutors,” Compl. ¶ 249, and the Pennsylvania Superior Court has held that such statements are absolutely privileged, *see Pawlowski v. Smorto*, 588 A.2d 36, 43 (Pa. Super. 1991) (citing *Restatement (Second) of Torts* § 587 & cmt. b).

17. *Third*, Spanier also fails to plead the causal connection between Freeh/FGIS’s alleged conduct and the termination of his contractual or prospective contractual relations. *See Hydrair, Inc. v. Nat’l Envtl. Balancing Bureau*, No. 2864, 2001 WL 1855055, at *6 (Com. Pl. Phila. Cnty. Apr. 23, 2001). Spanier fails to allege facts connecting the “federal prosecutors” to whom Freeh/FGIS spoke with the unnamed governmental agency and board of directors with whom Spanier alleges he had contractual relations. Compl. ¶¶ 249, 330.

18. Spanier fails to allege facts to establish that Freeh or FGIS was aware of Spanier’s alleged government employment or government employment opportunity *before* talking to the federal prosecutors. *See Tornese v. Cabrera-Martinez*, No. 172 MDA 2014, 2014 WL 10789964, at *6 (Pa. Super. Oct. 8, 2014).

19. Spanier also fails to allege what Freeh/FGIS could have said to prosecutors that would have caused his termination, when the U.S. government had conducted its own investigation and determined Spanier could retain his Top Secret clearance. *See* Compl. ¶ 179.

WHEREFORE, Freeh and FGIS respectfully request the Court dismiss Count V of the Complaint with prejudice.

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

20. The foregoing averments are incorporated by reference as if fully set forth herein.

21. A new claim or defendant may not be added after the statute of limitations has expired. *See Ferraro v. McCarthy-Pascuzzo*, 777 A.2d 1128, 1132 (Pa. Super. 2001); *Heckman v. Sanchez*, (Pa. Commw. Ct. Mar. 2015).

22. The statute of limitations for a tortious interference claim is two years. *See Maverick Steel Co., LLC v. Dick Corp./Barton Malow*, 54 A.3d 352, 355 (Pa. Super. 2012).

23. Spanier alleges that he learned of the facts underlying his tortious interference claim in October 2015. *See id.* ¶¶ 245-46.² Yet, Spanier failed to

² Defendants do not believe that the discovery rule applies. Indeed, Spanier's assertion that he could not have known of the April 12, 2012 email before October

assert a tortious interference claim against Freeh or add FGIS as a defendant until February 2016.

24. Spanier's motions to join parties and lift the stay did not toll the statute of limitations on these claims. *See* 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 by 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. Super. 1997) (internal citations omitted); *see also Aivazoglou v. Drever Furnaces*, 613 A.2d 595, 599-600 (Pa. Super. 1992) (motion to amend filed before statute of limitations ran but decided after the statute of limitations expired, did not toll the statute of limitations).

25. While the statute of limitations is ordinarily considered an affirmative defense, where the bar posed by an affirmative defense is clear on the face of the 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).

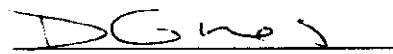
7, 2013 strains credulity given Spanier's allegation that Ryan Bagwell, a third party to this entire dispute, was able to obtain the email in August 2013 via a Right-to-Know-Law request. *See* Compl. ¶ 247. If Spanier truly had been harmed, he could have made his own request under the Right to Know Law and learned of the April 12, 2012 email well before October 2013.

26. Freeh and FGIS have raised these arguments on preliminary objections to spare the Court and the parties the time and expense of engaging in discovery on or answering time-barred claims. If the Court would prefer to consider these issues on a motion for judgment on the pleadings, Freeh and FGIS will reassert their arguments at that time.

WHEREFORE, Freeh and FGIS respectfully request the Court dismiss Count V of the Complaint with prejudice.

Respectfully submitted,

Dated: March 28, 2016



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VERIFICATION

I hereby verify that the facts set forth in and the copies of documents attached to the Preliminary Objections of Defendants Louis J. Freeh and Freeh Group International Solutions, LLC to Plaintiff's tortious interference claim, and the memorandum in support thereof, are true and correct to the best of my knowledge, information and belief. I understand that this declaration is made subject to the penalties of 18 Pa. Cons. Stat. Ann. § 4904 relating to unsworn falsifications to authorities.

