



**NOTICE to Plaintiff:**

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  
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DEBRA S. FRIEDEL  
PROthonotary  
CENTRE COUNTY, PA

**PRELIMINARY OBJECTIONS TO  
PLAINTIFF'S DEFAMATION CLAIMS BY DEFENDANTS  
LOUIS J. FREEH AND FREEH SPORKIN & SULLIVAN LLP**

ORIGINAL

Defendants Louis J. Freeh and Freeh Sporkin & Sullivan LLP (“FSS”), by and through their undersigned attorneys, hereby submit these Preliminary Objections to the Verified Complaint filed by Plaintiff Graham Spanier, and in support thereof aver as follows:

1. This case arises out of the investigation into the child sexual abuse scandal perpetrated by Gerald A. “Jerry” Sandusky, a former assistant football coach at The Pennsylvania State University (“PSU” or “Penn State”).

2. In 2009, the Thirty-Third Statewide Investigating Grand Jury (the “Grand Jury”) was impaneled to investigate allegations of misconduct by various individuals in connection with the handling of the Sandusky scandal.

3. The Grand Jury inquiry stretched over two years and involved the testimony of at least 21 witnesses, as well as the review of a large volume of subpoenaed records. Following its investigation, the Grand Jury issued a 23-page summary of its findings of fact on November 4, 2011, in which it recommended criminal charges against PSU Vice President for Finance and Business Gary Schultz and PSU Athletic Director Timothy Curley.

4. After disclosure of the Grand Jury’s presentment and the involvement of PSU personnel, Graham Spanier was removed as President of PSU on November 9, 2011.

5. Later in November 2011, Freeh and FSS were retained by PSU's Board of Trustees to conduct a full and independent investigation into PSU's handling of the allegations against Sandusky.

6. Over the next seven months, Freeh and FSS performed a detailed investigation of the facts surrounding the allegations against Sandusky, conducting over 540 interviews of PSU personnel and other knowledgeable individuals and reviewing over 3.5 million pieces of electronic data and documents, including important documents from 1998 and 2001 that had not previously been discovered in the course of the Grand Jury's investigation.

7. Freeh's and FSS's investigations culminated in the "Report of the Special Investigative Counsel Regarding the Actions of The Pennsylvania State University Related to the Child Sex Abuse Committed by Gerald A. Sandusky" (the "Report"), which was released on July 12, 2012.

8. The Report stated, *inter alia*, that various PSU officials had been informed of inappropriate behavior by Sandusky on one or more occasions, but that no systematic investigation was undertaken and no report made to state authorities. The Report stated, among other things, that "[d]espite 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," Report at 39, that despite

“having prior knowledge of the 1998 child sex abuse allegation against Sandusky,” Spanier, Schultz, and Curley did not inform DPW about the allegation against Sandusky in 2001, *id.* at 63, and that “Spanier and senior University officials did not make thorough and forthright reports to the Board.” *Id.* at 97.

9. Based on newly discovered evidence, the Investigating Grand Jury issued a supplemental presentment on November 1, 2012.

10. In the supplemental presentment, the Grand Jury recommended charges against Spanier for endangering the welfare of a minor, failing to report suspected child abuse, and committing perjury in his testimony before the Grand Jury.

11. A preliminary hearing was held on these charges on July 29-30, 2013, and Magisterial District Judge William Wenner found the evidence sufficient to hold Spanier over for trial. Spanier’s criminal trial remains pending.

12. In his Complaint, Spanier contends that statements made in the Report, statements made during the July 2012 Press Conference discussing the release of the Report, and comments made in a February 2013 statement were false, defamatory, and made with actual malice. Spanier is unable to support these claims.

**FIRST PRELIMINARY OBJECTION:**  
**Legal Insufficiency (Demurrer) Under Pa. R. Civ. P. 1028(a)(4):**  
**Inactionable Statements of Opinion**  
**Counts I-IV (Defamation)**

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

14. The statements that Spanier claims are defamatory are inactionable statements of opinion. “Generally, a statement that is merely an expression of opinion is not defamatory.” *Balletta v. Spadoni*, 47 A.3d 183, 197 (Pa. Commw. Ct. 2012) (citation omitted).

15. A defamatory communication in the form of an opinion “is only actionable if it implies the allegation of undisclosed defamatory facts as its basis.” *Balletta*, 47 A.3d at 197.

16. Here, the statements that Spanier claims are defamatory are “pure” expressions of opinion regarding Spanier’s state of mind or conduct, and the facts underlying those opinions are fully disclosed in the 162 pages of the Report.

17. Accordingly, Spanier cannot show that such statements are actionable.

WHEREFORE, Defendants Louis J. Freeh and FSS respectfully request that this Court dismiss Counts I-IV of the Complaint with prejudice.

**SECOND PRELIMINARY OBJECTION:**  
**Legal Insufficiency (Demurrer) Under Pa. R. Civ. P. 1028(a)(4):**  
**Inability to Plead Actual Malice**  
**Counts I-IV (Defamation)**

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

19. Spanier is unable to show that the allegedly defamatory statements were made with actual malice.

20. As a public figure, Spanier must show not only that the statements of which he complains were false and defamatory, but also that they were made with actual malice—in other words, that Freeh and FSS “either knew [the statements] were false or recklessly disregarded their falsity.” *Tucker v. Philadelphia Daily News*, 848 A.2d 113, 127, 128 (Pa. 2004). Spanier must show actual malice by clear and convincing evidence. *Castellani v. Scranton Times, L.P.*, 124 A.3d 1229, 1241 (Pa. 2015).

21. Spanier is unable to show actual malice by clear and convincing evidence. Much of the same evidence on which the Report is based was also considered by the Grand Jury prior to issuing the supplemental presentment. Based on that evidence, the Grand Jury recommended charges against Spanier, and Magisterial District Judge William Wenner found the evidence sufficient to hold Spanier over for trial. This evidence of probable cause renders Spanier unable to show actual malice as a matter of law.

22. The Pennsylvania Supreme Court has observed that “[a]n action for libel is upon all fours with an action for a malicious prosecution,” the latter of which is “but an aggravated form of an action for libel.” *Briggs v. Garrett*, 2 A.

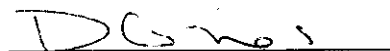
513, 521 (Pa. 1886). Moreover, “if probable cause exists in either case, the question of malice becomes of no importance.” *Id.*

23. Here, the statements made in the Report are supported by the same evidence that both the Grand Jury and Judge Wenner found sufficient to support the initiation of a criminal case against Spanier, with its attendant beyond-a-reasonable-doubt standard. As a result, Spanier is unable to show actual malice as a matter of law, and his defamation claims should be dismissed.

WHEREFORE, for these reasons and those set forth more fully stated in the accompanying Memorandum of Law, Defendants Louis J. Freeh and FSS respectfully request that this Court sustain these Preliminary Objections and dismiss Plaintiff’s defamation claims 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 Sporkin & Sullivan LLP to Plaintiff's defamation claims, 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.

  
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