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JEREMY S. BREON
PROTHONOTARY
CENTRE COUNTY, PA

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

BARRY J. FENCHAK, Plaintiff,	)	
v.	)	No. 2024-CV-1843-CI
THE PENNSYLVANIA STATE UNIVERSITY BOARD OF TRUSTEES, and MATTHEW SCHUYLER IN HIS OFFICIAL CAPACITY AS CHAIRMAN Defendants.	)	

Attorney for Plaintiff: *Stephen Marino, Esq.*

Attorney for Defendants: *Andrew R. Stanton, Esq.*
Susan E. Kessler, Esq.
Christopher Conrad, Esq.

OPINION AND ORDER

Marshall, J.

Presently before the Court is the Emergency Motion for a Protective Order and Stay of Discovery, filed by the above-captioned Defendants on March 25, 2026. In reaching this decision, the Court also considered (*i*) the Brief in Support thereof, filed by Defendants on March 25, 2026; (*ii*) the Answer in Opposition, filed by Barry J. Fenchak ("Plaintiff") on March 30, 2026; and (*iii*) the Memorandum of Law in Support of Plaintiff's Answer in Opposition, filed by Plaintiff on March 30, 2026. A hearing on the matter was held on March 31, 2026. Upon review of the filings and arguments of the parties, the Court enters the following Order:

BACKGROUND

Plaintiff initiated this matter on July 16, 2024 by filing a Complaint. On January 6, 2026, this Court granted Defendants' Motion for Summary Judgment and dismissed Plaintiff's Amended Complaint with prejudice. No party appealed this Court's January 6, 2026 Opinion and Order. During the pendency of this matter, from July 2024 to January 2026, Plaintiff did not attempt to seek discovery from either Defendants or a third party, other than those limited informational items

which formed the basis of this suit, which informational items were ultimately provided to Plaintiff. In its January 6, 2026 Opinion and Order granting Defendants' Motion for Summary Judgment, this Court wrote:

> In opposition to the Motion for Summary Judgement, Plaintiff argues that there is an issue of material fact regarding whether Defendants' conduct in originally denying Plaintiff's information requests pursuant to 15 Pa.C.S. §5512 was "dilatory, obdurate, and vexatious" such that Plaintiff should be entitled to attorney's fees…
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> […]
>
> Simply put, there appears to be no reasonable basis for either party to claim that the other acted so vexatiously during the pendency of this matter that this Court should award attorney's fees based on the current state of the record in this matter. This [matter] was contentious, high-stakes litigation over a matter of great importance to each party, but there appears to have been no conduct during the pendency of the matter rising to the level of sanctionable conduct.
>
> […]
>
> AND NOW, this 6th day of January, 2026, Defendants' Motion for Summary Judgment is hereby GRANTED. Plaintiff's Amended Complaint, filed on August 27, 2024, is hereby DISMISSED WITH PREJUDICE.
>
> *Opinion* (Jan. 6, 2026) (emphasis added) (internal citations omitted).

Nevertheless, on January 28, 2026, Plaintiff filed a Petition to Sanction Defendants, seeking "to recover reasonable attorney's fees and costs he was required to expend prosecuting the enforcement of his statutory right as a Pennsylvania State University Board of Trustee member, guaranteed by [Section 5512(a) of the Pennsylvania Nonprofit Corporation Law of 1988] to inspect and receive information regarding the assets and liabilities of the Pennsylvania State University." *See Plaintiff's Memo in Support* (Mar. 31, 2026), p. 3-4. In response, Defendants filed the instant Emergency Motion for a Protective Order and Stay of Discovery on March 26, 2026.

DISCUSSION

Rule 4012(a) (Protective Orders) of the Pennsylvania Rules of Civil Procedure provides that "[u]pon motion by a party or by the person from whom discovery or deposition is sought, and

for good cause shown, the court may make any order which justice requires to protect a party or person from unreasonable annoyance, embarrassment, oppression, burden or expense..." *See* Pa.R.C.P. 4012(a). Whether to grant or deny the motion, and what kind or kinds of protective orders to issue are matters that lie within the sound judicial discretion of the court, and the court's determination as to these matters will not be disturbed unless that discretion has been abused. *See Allegheny West Civic Council, Inc. v. City Council of City of Pittsburgh*, 484 A.2d 863 (Pa. Commw. 1984) (citing Goodrich-Amram 2nd §4012(a): 15.2). An abuse of discretion "is not merely an error of judgment ... [it is a] ... judgment ... [which is] ... manifestly unreasonable, or the result of partiality, prejudice, bias or ill-will, as shown by the evidence or the record...." *Id; see also Mielcuszny et ux. v. Rosol,* 317 Pa. 91, 93–94, 176 A. 236, 237 (1934). Further, in supervising discovery, the trial court has broad discretion to take such action as it deems appropriate to ensure "prompt and adequate discovery." *Kerns v. Methodist Hosp.*, 574 A.2d 1068, 1073 (Pa. Super. Ct. 1990) (emphasis added).

The Court finds that Defendants have adequately shown "good cause" pursuant to Rule 4012(a) such that this Court should issue a protective order in their favor. Most importantly, this matter was settled between the parties and thereafter dismissed on summary judgment with prejudice on January 6, 2026, more than three (3) months ago. With no appeal having been timely filed, this Court's January 6, 2026 Opinion and Order—which dismissed Plaintiff's amended complaint with prejudice—became final on or about February 5, 2026. Accordingly, it is the conclusion of this Court that there is no "pending action" for which discovery may be taken, as required by Rule 4003.1. *See* Pa.R.C.P. 4003.1 ("...a party may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action...").

Although the Court believes that the above analysis is sufficient to dispose of the instant Motion, the Court also notes that allowing discovery at this stage would be unreasonably annoying,

embarrassing and/or burdensome to Defendants, in violation of Rule 4012(a). This matter was litigated for 18 months and Defendants were never served with discovery requests during the pendency of this matter; thereafter, the parties settled and this matter was dismissed. It would be unfair to Defendants, who reasonably believed this matter to be resolved, to re-open this matter and allow Plaintiff to conduct discovery on third parties to determine whether any sanctionable conduct took place during the pendency of this matter. Plaintiff had 18 months to conduct discovery to support his claims, and Plaintiff made the strategic decision not to do so. The Court agrees with Defendants that it is inappropriate for Plaintiff to have not conducted discovery and then, three months after all claims were dismissed with prejudice, to file a sanctions motion and ask for discovery to support that motion. On this basis, the Court finds that Defendants have demonstrated good cause for the protective order requested. Accordingly, the Court enters the following Order:

ORDER

AND NOW, this 9th day of April, 2026, Defendants' Motion for a Protective Order and Stay of Discovery is hereby GRANTED. In accordance with Pa.R.C.P. 4012(a)(1), the Court ORDERS that the discovery sought by Plaintiff, and all other discovery in this matter, is hereby PROHIBITED.

BY THE COURT:

Brian K. Marshall, Judge