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Designated by Order of the Court for the publication of court and other legal notices, the Franklin County Legal Journal (USPS 378-950), 100 Lincoln Way East, Chambersburg, Franklin County, PA 17201-2291, contains reports of cases decided by the various divisions of the Franklin County Branch of the Court of Common Pleas of the 39th Judicial District of Pennsylvania and selected cases from other counties.

**Catherine M. Dusman, Plaintiff vs. Joseph O. Padasak, Jr., and
Black & Davison, a Partnership, Defendants**

Court of Common Pleas of the 39th Judicial District of Pennsylvania,
Franklin County Branch, Civil Action No. 2016-3795

HEADNOTES

Res Judicata

1. The doctrine of res judicata is well-decided in Pennsylvania: “Under the doctrine of res judicata, or claim preclusion, a final judgment on the merits by a court of competent jurisdiction will bar any future action on the same cause of action between the parties and their privies. The doctrine therefore forbids further litigation on all matters which might have been raised and decided in the former suit as well as those which were actually raised therein.” Mariner Chestnut Partners, L.P. v. Lenfest, 152 A.3d 265, 286 (Pa. Super. 2016) (internal citations and quotations omitted).

2. Under res judicata, “a final judgment on the merits by a court of competent jurisdiction will bar any future suit between the parties or their privies in connection with the same cause of action.” McArdle v. Tronetti, 627 A.2d 1219, 1222 (Pa. Super. 1993).

3. Res judicata seeks “to conserve limited judicial resources, establish certainty and respect for court judgments, and protect the party relying upon the judgment from vexatious litigation” by barring “relitigation of issues that either were raised or could have been raised in the prior proceeding.” McArdle, 627 A.2d at 1222.

4. To determine whether res judicata applies to bar a present action, the following four conditions must be present in the two separate actions: “1) identity of issues; 2) identity of causes of action; 3) identity of parties or their privies; and 4) identity of the quality or capacity of the parties suing or being sued.” McArdle, 627 A.2d at 1222.

5. As to the third consideration under res judicata, privity is defined as “mutual or successive relationships to the same right of property, or such an identification of interest of one person with another as to represent the same legal right.” Bergdoll v. Cortes, 858 A.2d 185, 197 n. 4 (Pa. Cmwlth. 2004).

6. “Privity for purposes of res judicata is not established by the mere fact that persons may be interested in the same question or in proving the same facts.” Day v. Volkswagenwerk Aktiengesellschaft, 464 A.2d 1313, 1317 (Pa. Super. 1983).

7. As to the fourth element of resjudicata, the court’s consideration turns to to “whether the ultimate and controlling issues have been decided in a prior proceeding in which *the present parties actually had an opportunity to appear and assert their rights.*” Stevenson v. Silverman, 208 A.2d 786, 788 (Pa. 1965) (emphasis in original).

8. Where the underlying facts and issues of a case yield two separate causes of action which would not have properly been brought with the previous cause of action in question, and where the identity of the parties and their privies are not common between those cases, res judicata does not apply to bar present litigation as a matter of law.

Appearances:

Paul J. Cianci, Esq. *for Defendant Padasak*

Edwin A. Schwartz, Esq. and Nicole M. Ehrhart *for Defendant Black & Davison*

OPINION

Before Meyers, J.

PROCEDURAL HISTORY

Catherine Dusman initiated that present action against Joseph Padasak, Jr., and Black & Davison, a partnership [collectively “the Defendants”], by filing a Praecipe for Writ of Summons on October 26, 2016. Dusman filed a Complaint on December 22, 2016, alleging intentional interference with an existing contractual relation, and civil conspiracy. On January 5, 2017, Black & Davison filed Preliminary Objections to Dusman’s Complaint with a corresponding Brief in Support. On January 10, 2017, Padasak filed his own Preliminary Objections to Dusman’s Complaint. Oral argument on both Defendants’ Preliminary Objections was scheduled to be heard on March 2, 2017.

However, on January 30, 2017, Dusman filed an Amended Complaint, again claiming intentional interference with an existing contractual relation, and civil conspiracy. On February 10, 2017, the Court adopted a Stipulation by the parties outlining the timeline for subsequent filings. Pursuant to this stipulation, the Defendants would file Preliminary Objections to Dusman’s Amended Complaint, and Dusman would either file a Second Amended Complaint, or list the Preliminary Objections for oral argument within twenty days of receipt.

On February 16, 2017, Black & Davison filed Preliminary Objections to Dusman’s Amended Complaint and a corresponding Brief in accordance with the Stipulation. Padasak followed suit on February 20, 2017, by filing his own Preliminary Objections to Dusman’s Amended Complaint. Rather than listing the Defendants’ Preliminary Objections for oral argument, Dusman chose to file a Second Amended Complaint on March 9, 2017.

On March 22, 2017, Black & Davison filed Preliminary Objections to Dusman’s Second Amended Complaint with a corresponding Brief in Support. Padasak filed his own Preliminary Objections to Dusman’s Second Amended Complaint on March 29, 2017. In response, Dusman filed a Brief in Opposition to Defendants’ Preliminary Objections on May 4, 2017. Oral argument on both Defendants’ Preliminary Objections was heard before this Court on June 1, 2017. On August 8, 2017, this Court issued an Order and Opinion overruling all of the Defendants’ Preliminary Objections.

On August 18, 2017, the Defendants filed a Joint Motion for Reconsideration and/or Motion for Appellate Certification of the Court's August 2, 2017 Order of Court and Staying Proceedings. The Court issued a Rule to Show Cause on August 22, 2017. On September 11, 2017, the Plaintiff filed an Answer to Defendants' Joint Motion for Reconsideration. The Court denied the Defendants' Motion for Reconsideration on October 19, 2017.

Black & Davison filed an Answer with New Matter to Dusman's Second Amended Complaint on August 28, 2017. Padasak filed his own Answer to Dusman's Second Amended Complaint with New Matter on August 29, 2017. On September 18, 2017, Dusman filed a Reply to New Matter to each of the Defendants' Answers. On November 13, 2017, this Court issued an Order directing the parties to discuss and submit a proposed case management order by January 15, 2018.

On November 28, 2017, the Defendants filed a Joint Motion for Judgment on the Pleadings. The Court issued an Order scheduling the matter for February 2018 oral argument. Dusman filed an Answer to Defendants' Motion for Judgment on the Pleadings on December 12, 2017. The Defendants filed a Joint Brief in Support of their Motion on December 28, 2017, and Dusman filed her Brief Opposing the Defendants' Motion on January 4, 2018. On January 12, 2018, the parties filed a Stipulation requesting the Court extend the deadline to file a case management Order to thirty days after disposition of the Defendants' Joint Motion for Judgment on the Pleadings. The Court accepted the Stipulation on January 22, 2018. Oral argument on the Defendants' Joint Motion for Judgment on the Pleadings was held before the undersigned on February 1, 2018.

The procedural history relevant to this case includes not only the activities on this docket, but the activities of other separate but related dockets which involve similar parties and similar general allegations. The instant case revolves around Dusman's allegations of intentional interference with a contractual relationship and a conspiracy to do the same. At docket No. 2013-2085, Dusman filed a mandamus action against the CASD and its Board of Directors, by which Dusman was reinstated as assistant superintendent via Court Order in April 2014 [hereinafter "the Mandamus Case"]. At docket No. 2013-4009, Dusman filed a defamation suit against Padasak alone, alleging that he defamed her to numerous individuals outside the scope of his duties as superintendent of CASD [hereinafter "the Defamation Case"]. However, on October 11, 2017, the undersigned issued an Order and Opinion in the Defamation Case granting Padasak's Motion for Summary Judgment, citing a lack of evidence in the record to support Dusman's allegations of a long-standing plot by Padasak to get her fired.

Dusman appealed that Order, which is currently before the Pennsylvania Superior Court.

The matter of the Defendants' Joint Motion for Judgment on the Pleadings in the instant case is now ripe for decision by this Court.

FACTUAL HISTORY

The following factual history has been largely reproduced from this Court's Opinion filed on August 2, 2017.

Padasak serves as Superintendent of the Chambersburg Area School District (CASD). Second Amended Complaint, ¶3. Black & Davison is a law firm which served as the CASD solicitor until July 1, 2016. Second Amended Complaint ¶4. The factual basis of this lawsuit stems from Dusman's various employment contracts while serving as an assistant superintendent of the CASD.

On August 23, 2005, the CASD School Board elected Dusman to serve as an assistant superintendent until August 22, 2009. Second Amended Complaint ¶6. However, Dusman did not enter into a written contract as to her employment until September 27, 2007 [hereinafter "2007 Contract"]. Second Amended Complaint, ¶¶6-7. The 2007 Contract modified Dusman's term to expire on July 31, 2008, rather than August 22, 2009. Second Amended Complaint ¶7, Ex. A [hereinafter "2007 Contract"]. Therefore, Dusman alleges her contract should have been available for automatic renewal in 2012 under the terms of the 2007 Contract and the Pennsylvania School Code.¹ Second Amended Complaint ¶¶9-10. Due to some confusion with the 2007 Contract, when the CASD School Board elected Dusman to another four year term as assistant superintendent on March 24, 2009, Dusman entered into a new contract [hereinafter "2009 Contract"], which set her automatic renewal for 2013, rather than 2012.² Second Amended Complaint ¶¶12-13.

As Solicitor for the CASD, Black & Davison drafted the employment contracts at issue. Second Amended Complaint ¶11. Dusman now alleges that Black and Davison, at the behest of Padasak, purposefully and knowingly altered the 2009 Contract so that Padasak could recommend Dusman not be renewed as an assistant superintendent of the CASD in 2013. Second Amended Complaint ¶16. Dusman also alleges that but for this 2009 Contract, she should have been automatically renewed in 2012, and any action to remove her in 2013 would have been ineffective. Second

¹ Specifically, Dusman indicates that her automatic renewal would have occurred pursuant to 24 P.S. §10-1077(b). Second Amended Complaint ¶10.

² Earlier in the pleading, Dusman states that "[o]n or about March 13, 2009, the CASD School Board voted to extend" her contract for an additional four years, at which time she executed the 2009 Contract. Second Amended Complaint ¶8. However, later on, Dusman states that this extension occurred on March 24, 2009. Second Amended Complaint ¶13.

Amended Complaint ¶10.

Furthermore, Dusman alleges Padasak falsely represented that her contract ended on August 22, 2013, when he knew that her actual term either (1) ended on June 30, 2013, like all other contracted administrative employees, or (2) had been automatically renewed pursuant to the 2007 Contract.³ Second Amended Complaint ¶¶14, 17. Dusman also alleges that Black & Davison, in their role as solicitor, corroborated these false representations. Second Amended Complaint ¶17. Consequently, Dusman alleges that as a result of these “fraudulent, material misrepresentations,” of the Defendants, the CASD school board voted to remove her from her position as assistant superintendent on March 13, 2013.⁴ Second Amended Complaint ¶18.

Upon receiving notice of her nonrenewal in 2013, Dusman inspected her personnel file, finding only the 2007 Contract and an unexecuted 2009 Contract.⁵ Second Amended Complaint ¶20. Dusman also asserts that Barry Purvis, the interim Human Resources Director for CASD at the time told her that Jan Sulcove, a partner at Black & Davison, was in possession of her executed 2009 Contract. Second Amended Complaint ¶22. When Dusman reached out to Sulcove for a copy of her 2009 Contract, Sulcove provide her the 2007 Contract and a resolution dated March 24, 2009 [hereinafter “2009 Resolution”], which renewed Dusman’s Contract until August 22, 2013. Second Amended Complaint ¶24.

Dusman claims the effort to remove her in 2013 was a breach of contract because (1) it was less than 150 days before her contract term expired and (2) her contract would have automatically renewed in 2012 under the 2007 Contract or when CASD failed to comply with the statutory 150 day notice requirement. Second Amended Complaint ¶¶18, 25. On May 16, 2013, Dusman’s attorney mailed a letter to the CASD School Board stating they could not remove her for the aforementioned reasons. Second Amended Complaint ¶26.

However, the CASD School Board failed to act on her letter, so in 2013, Dusman filed a Complaint in Mandamus in this Court seeking to compel the CASD to reinstate her as assistant superintendent.⁶ Second Amended Complaint ¶27. During discovery in this mandamus case, Dusman learned that since 2010, the CASD Human Resources Department had

³ Dusman asserts that around the time she was elected to a renew contract in March 2009, CASD had begun to align contractual terms for every CASD contractual administrative employee to begin on July 1 and end on June 30 to align with the fiscal year. Second Amended Complaint ¶14. Although Dusman contends that the 2009 Contract aligned her with this pattern, she does not have access to and therefore has not attached the 2009 Contract. Second Amended Complaint ¶15.

⁴ On that same date, she was named Director of Early Childhood Development for CASD. Second Amended Complaint ¶18.

⁵ Padasak allegedly maintains to date that Dusman does not have a valid contract with CASD. Second Amended Complaint ¶19.

⁶ This case is docketed at No. 2013-2085 [hereinafter “mandamus case”].

communicated to Padasak on at least two occasions that Dusman's 2009 Contract term ended on June 30, 2013. Second Amended Complaint ¶29. Dusman also learned that in 2008, Sulcove had provided a member of the public with a copy of Dusman's 2007 Contract which contained an altered term set to expire on August 22, 2009, rather than July 31, 2008 [hereinafter "Altered 2007 Contract"].⁷ However, this Altered 2007 Contract was not produced by CASD in discovery in the mandamus action and was not in Dusman's personnel file. Second Amended Complaint ¶31.

Moreover, during discovery in the mandamus case, Black & Davison produced an unexecuted version of the 2009 Contract which also contained a modified term ending on August 22, 2013, rather than July 31, 2013 [hereinafter "Altered 2009 Contract"]. Second Amended Complaint ¶32. Dusman now contends that the Defendants conspired to destroy her original 2009 Contract and replace it with the Altered 2009 Contract to align with the terms of the 2009 Resolution and bolster CASD's position in the mandamus case.⁸ Second Amended Complaint ¶¶33, 35. Dusman alleges these actions were motivated by Padasak's desire to have her fired since March 2009, and the Defendants' actual malice toward her.⁹ Second Amended Complaint ¶¶36, 38. Relatedly, Dusman contends that Sulcove influenced the CASD School Board to view Dusman's mandamus case as a rejection of the offer to serve as Director of Early Childhood Development, which caused her further stress and damages. Second Amended Complaint ¶51.

Throughout these events, Dusman alleges that Padasak was acting outside the scope of his responsibilities and role as Superintendent of the CASD when he tampered with her contract and made material false representations to the CASD School Board as to her term dates. Second Amended Complaint ¶¶3, 17, 39. Dusman also contends that Black & Davison's conduct was outside the scope of its representation of CASD as Solicitor in that they were not authorized to alter employee contracts.¹⁰ Second Amended Complaint ¶40. Generally, Dusman asserts that the Defendants' actions were a conspiracy to terminate her employment, ruin her career, and cause her financial and emotional harm.¹¹ Second Amended Complaint ¶¶47-48.

⁷ Dusman also claims this Altered 2007 Contract was not executed and did not include a salary. Second Amended Complaint ¶31.

⁸ Dusman also alleges that the Defendants collaborated to draft an unfavorable employment review of Dusman to ensure she would not receive a raise. Second Amended Complaint ¶3

⁹ Dusman also contends that this was the first overt act in the Defendants' conspiracy to get her fired and cause her harm. Second Amended Complaint ¶52.

¹⁰ Dusman also alleges that there is no privilege to withhold, destroy, or alter employment contracts. Second Amended Complaint ¶41.

¹¹ As to this Civil Conspiracy charge, Dusman alleges that the Defendants relied on each other in fabricating and altering contracts and perpetuating false information to the CASD School Board. Second Amended Complaint ¶49. She also asserts that Padasak and Sulcove "publicly and privately expressed malice" toward Dusman and specifically sought to ruin her career and cause her harm. Second Amended Complaint ¶51.

Although Dusman was eventually reinstated as assistant superintendent pursuant to the mandamus case, Dusman was not compensated for the alleged breach of her contract because there has been no determination by any court as to whether she has a validly executed 2009 Contract, or whether the 2007 Contract remains in effect.¹² Second Amended Complaint ¶43. Dusman also claims emotional distress as a result of the alleged outrageous conduct of the Defendants.¹³ Second Amended Complaint ¶45. Despite not having claimed breach of contract here, Dusman requests this Court enter judgment for damages from the breach of contract between Dusman and the CASD (who is not a party to this action), emotional distress, punitive damages for outrageous conduct, and costs of litigation.

Black & Davison responded to these allegations, claiming that the 2009 Contract is non-existent and was not drafted or executed by them. B&D Answer with New Matter to Plaintiff's Second Amended Complaint [hereinafter "B&D Answer"] at ¶¶9, 13. Black & Davison further responds that they were completely unaware of the 2007 Contract until the mandamus action revealed it and therefore had no role in drafting, executing, or modifying it. B&D Answer at ¶¶10-12. Since the parties never executed the 2009 Contract, B&D alleges that Dusman's four year contract term began on August 23, 2009 and ended on August 22, 2013, based solely on her personal start date rather than some generalized state date for all CASD employees. B&D Answer at ¶¶14-16. As such, Black and Davison contends that they advised the CASD School board in March 2013 that Dusman's contract term ended on August 22, 2013. B&D Answer at ¶17. Black & Davison strictly denies that it has intentionally withheld or destroyed an executed version of the 2009 Contract since the only copy they have is unexecuted. B&D Answer at ¶35.

Black & Davison further disputes any evidence of a conspiracy between the Defendants to craft an unfavorable employment review for Dusman. B&D Answer at ¶37. Rather, such review was the result of numerous deficiencies in Dusman's performance by written complaints from peers, parents, and members of the public. B&D Answer at ¶37. Black & Davison also asserts various affirmative defenses in their New Matter. Specifically, Black & Davison claims that Dusman has failed to mitigate her damages, that her claim is barred by the statute of limitations, and that Black & Davison was not the proximate cause of any of the alleged damages sustained by Dusman. B&D Answer at ¶¶58-63. Most relevant to the Court's present inquiry is Black & Davison's pleading essentially res

¹² This issue remains the subject matter of the continuing mandamus action at 2013-2085. Dusman Brief in Opposition Defendants' Preliminary Objections [":Dusman's Brief"] at 1.

¹³ Dusman also alleges that Padasak continues to actively conceal facts from discovery which is prolonging her mandamus action and continues to injure her by causing her to incur more legal fees and emotional distress. Second Amended Complaint ¶¶55-56.

judicata in that they are protected from liability due to other Court rulings in other cases. B&D Answer at ¶64. Dusman refuted each of these defenses in her Reply to New Matter of Black & Davison.

Padasak answered Dusman's Second Amended Complaint in a similar fashion to Black & Davison. Padasak also asserts that no 2009 Contract was ever executed by the parties. Padasak Answer to Second Amended Complaint with New Matt [hereinafter "Padasak Answer"] at ¶¶8, 13, 32. Rather Padasak asserts that the CASD did not unilaterally change her contractual term so that it could not be renewed; instead, the parties together modified the contract. Padasak Answer at ¶¶7, 10. Although Padasak admits that Black & Davison did draft contracts, he is unaware of whether Black & Davison drafted Dusman's alleged contracts. Padasak Answer at ¶11. Padasak further claims he was unaware of Black & Davison altering the contract and specifically denies directing them to alter her contract to prevent Dusman's renewal. Padasak Answer ¶12. As such, Padasak also denies making any material misrepresentations to the CASD School Board regarding Dusman's contract term as part of a plot to get rid of her. Padasak Answer ¶17. Moreover, Padasak notes that he does not possess the power to demote Dusman or alter her contract – only the CASD School Board has that power. Padasak Answer at ¶¶12, 28, 35.

Padasak further corroborates Black & Davison's strict denial that the Defendants conspired to prevent Dusman from receiving a raise by preparing a negative employment review. Padasak Answer at ¶37. Rather, the Defendants drafted the negative employment review in response to documented complaints about Dusman's performance. Padasak Answer at ¶37. Similarly, Padasak denies any malice on behalf of himself or Black & Davison, which would cause them to actively seek to harm Dusman's employment status at CASD. Padasak Answer at ¶38, 47. Padasak also denies withholding or destroying an executed version of the 2009 Contract. Padasak Answer at ¶42. Once Dusman was reinstated to her position as assistant superintendent of CASD, the CASD offered to distribute her back pay without waiver of any legal rights, but Dusman rejected said payment. Padasak Answer ¶43. As such, Padasak pled various affirmative defenses in his New Matter such as failure to mitigate damages privilege, immunity, statute of limitations, and res judicata.¹⁴ Padasak Answer at ¶¶58, 60, 62-68, 72, 79. Dusman refuted each of these defenses in her Reply to New Matter of Padasak.

¹⁴ Although neither Black & Davison nor Padasak specifically state the term "res judicata" or "claim preclusion" in their New Matter, the language used in their respective New Matters alleges that previous judicial entities have already discharge liability of the parties. While Dusman claims neither Defendant has pled claim preclusion, the Court finds that since Pennsylvania is a fact pleading state, the Defendants have each pled res judicata as an affirmative defense in their New Matter without using that specific language.

DISCUSSION

I. APPLICABLE STANDARD: JUDGMENT ON THE PLEADINGS

Judgment on the pleadings is governed by Rule 1034 of the Pennsylvania Rules of Civil Procedure, which states that if party has moved for a judgment on the pleadings at the appropriate time, “the court shall enter such judgment or order as is proper on the pleadings.” Pa.R.C.P. 1034. Pleadings and their contents are to be “viewed in the light most favorable” to the non-moving party. Karns v. Tony Vitale Fireworks Corp., 259 A.2d 687, 688 (Pa. 1969). As such, the non-moving party’s “well-pleaded allegations” are deemed true, and only facts admitted by the non-moving party can be used against it. Id.

The established standard of deciding a judgment on the pleadings is set out in Del Quadro v. City of Philadelphia:

It is fundamental that a judgment on the pleadings should not be entered where there are unknown or disputed issues of fact. The court must treat the motion as if it were a preliminary objection in the nature of a demurrer. In conducting this inquiry, the court should confine its consideration to the pleadings and relevant documents. Since a motion for judgment on the pleadings is not a motion for summary judgment, no affidavit or depositions may be considered, nor is any matter before the court except the pleadings. It is clear that the briefs of the parties are not pleadings.

437 A.2d 1262, 1263 (Pa. Super. 1981) (internal citations omitted); see also Southwestern Energy Production Co. v. Forest Resources, LLC, 83 A.3d 177, 185 (Pa. Super. 2013)(holding a trial court should not enter judgment on the pleadings where there remain disputes of fact and the record does not bar the non-moving party from relief as a matter of law).

II. ANALYSIS

The Defendants now jointly argue based on this Court’s granting of summary judgment in the Defamation Case, Dusman is now barred from relief in the instant case under the doctrine of res judicata or claim preclusion. The doctrine of res judicata is well-decided in Pennsylvania:

Under the doctrine of res judicata, or claim preclusion, a final judgment on the merits by a court of competent jurisdiction will bar any future action on the same cause of action between the parties and their privies. The doctrine therefore forbids further litigation on all matters which

might have been raised and decided in the former suit as well as those which were actually raised therein.

Mariner Chestnut Partners, L.P. v. Lenfest, 152 A.3d 265, 286 (Pa. Super. 2016) (internal citations and quotations omitted). Stated otherwise, “a final judgment on the merits by a court of competent jurisdiction will bar any future suit between the parties or their privies in connection with the same cause of action.” McArdle v. Tronetti, 627 A.2d 1219, 1222 (Pa. Super. 1993). Res judicata seeks “to conserve limited judicial resources, establish certainty and respect for court judgments, and protect the party relying upon the judgment from vexatious litigation” by barring “relitigation of issues that either were raised or could have been raised in the prior proceeding.” Id. To determine whether res judicata applies to bar a present action, the following four conditions must be present in the two separate actions: “1) identity of issues; 2) identity of causes of action; 3) identity of parties or their privies; and 4) identity of the quality or capacity of the parties suing or being sued.” Id.

First, the Court must determine whether the issues present in the Defamation Case are the same as the issues presented in the instant case. The issues presented in the Defamation Case centered on comments allegedly made by Padasak about Dusman to various employees of CASD and mutual acquaintances, which allegedly harmed Dusman’s professional reputation and her ability to supervise. The Defamation Case made no mention of any of Dusman’s contracts with the CASD or Black & Davison’s role in producing or altering the same. In contrast, the instant case alleges the Padasak and Black & Davison conspired to misinform the CASD School Board as to the terms of Dusman’s contract such that her contract could be altered. The instant case presents no question as to whether Dusman’s professional reputation or ability to supervise was harmed. Rather, the instant case addresses whether the Defendants collectively and unilaterally destroyed or modified the 2009 or 2007 Contracts, respectively, such that they have interfered with her contractual relationship with CASD.

The Defendants argue that the Court has already determined that Padasak has not engaged in a ploy to harm Dusman’s employment with CASD. Although this Court ruled in Padasak’s favor in the Defamation Case, the Defendants are mischaracterizing the findings made by this Court. The Defendants claim that this “Court has thus decided, after the expiration of discovery in the defamation case, that Dusman failed to make and cannot make a case that Padasak engaged in a ploy to ensure that Dusman was demoted from her position as assistant superintendent.” Defendants’ Motion for Judgment on the Pleadings [hereinafter “Defendants’ Motion”] at ¶44. However, the Court explained in its October 11, 2017 Opinion that based

on the record presented in the form of extensive deposition testimony from the parties and various witnesses, “there [was] no evidence in the record to support [Dusman’s] allegation,” with emphasis placed on the lack of evidence as to the defamatory character and impact of Padasak’s statements. There was no evidence in the record to create a dispute of material fact which required submission of the matter to a jury.

Inexplicably, the Defendants now boldly interpret this singular statement by the Court as a definitive finding that Dusman “cannot make a case that Padasak engaged in a ploy,” as to his allegedly defamatory statements and therefore *also* would be unable to make a case that Padasak engaged in a ploy in an entirely unrelated instance. Defendants’ Motion at ¶44. (“And if Padasak did not engaged in such a ploy, then there can be no such ploy involving both Padasak and Black & Davison in this case). This Court’s finding in the Defamation Case is explicitly limited to a finding that the record in that case did not produce evidence such that a jury could find in Dusman’s favor. Whether the factual record may be developed in the instant case under a set of entirely different factual circumstances is yet to be seen, given that discovery has not been completed and there has been no prompting of this Court to review the factual record. In the absence of any substantive or relevant admissions in the record, and in light the obvious existence of a strong factual dispute as to the existence of an executed 2009 Contract, the Court finds substantial issues of fact remain in the present case which did not exist in the Defamation Case, where the Court’s review of the factual record revealed an absence of facts in Dusman’s claims.

Res judicata seeks “to conserve limited judicial resources, establish certainty and respect for court judgments, and protect the party relying upon the judgment from vexatious litigation.” However, as the holding in the Defamation Case is limited to review of the record in that case regarding statements made having nothing to do with Dusman’s contract with CASD, there is no concern that any holding in the instant case would cause any party to question the certainty or respect for this Court’s entry of summary judgment in the Defamation case.

Furthermore, the Court does not agree with the Defendants that Dusman’s overarching claims of Padasak’s malice toward her requires Dusman to bring every possible action fueled by Padasak’s alleged malice simultaneously. The Defendants argue that Dusman’s instant contractual interference and conspiracy claims could have been brought in the Defamation Case because it is part of Padasak’s broader ploy to harm Dusman’s interests. However, joinder of the Defamation Case and the instant case would undoubtedly present a jury with two unrelated factual records which have no bearing on each other practically or legally. Only if

the statements alleged in the Defamation Case pertained to statements made by either of the instant Defendants directly related to Dusman’s contractual relationship with CASD, could the Court find identity of issues.

Therefore, in light of the immense discrepancies in the underlying issues, this Court cannot find identity of issues between the Defamation Case and the instant case. Moreover, there are overarching questions of fact arising from the pleadings in this case which clearly distinguish it from this Court’s findings in the Defamation Case. Although the Court’s finding that this sole condition is not shared between both cases is dispositive of whether *res judicata* applies to bar Dusman from relief in the instant case, the Court will analyze each of the other three required common conditions in turn.

Second, the Court must determine whether the causes of action in the Defamation Case and the instant case are the same. When addressing the question of the “identity of causes of action,” rather than looking at merely the type of action brought, the Court must also look for “essential similarity of the underlying events giving rise to the various legal claims.” McArdle, 627 A.2d at 1222 (citing In re Jones & Laughlin Steel Corp., 477 A.2d 527, 531 (Pa. Super. 1984)). Specifically, the court should consider “the identity of the acts complained of, the demand for recovery, the identity of witnesses, documents, and facts alleged.” Id. In McArdle, the Superior Court was confronted with two cases involving the same parties, one brought in federal court, and one in state court. Id. The McArdle Court held that the federal claims asserted by the plaintiff were supported by allegations that the defendants had engaged in improper conduct resulting in intentional deprivation of the plaintiff’s constitutional rights. Id. In contrast, the McArdle Court held that the state claims raised by the plaintiff “merely challenged the tortious nature of appellees’ conduct [and] contained no allegations regarding the deprivation of constitutional rights.” Id. The state claim was based upon the defendants’ conspiracy to willfully or recklessly harm the plaintiff. Id. Therefore, although some causes of action overlapped in name between the federal and state action, the McArdle Court held that the “differences in factual allegations, along with the disparity in proof that they render necessary, clearly demonstrate the distinct nature of the two sets of claims,” and *res judicata* did not apply to bar the plaintiff’s state claims. Id. at 1222-23.

As in McArdle, there are substantial differences in the underlying claims and required proof of those claims which distinguishes the identity of the issues in the Defamation Case from the instant case. The underlying factual allegations of the Defamation Case pertain to statements allegedly made by Padasak about Dusman having a proper commission and whether

she lied about being responsible for a new report card system. Dusman alleged these statements were made intentionally to undermine her authority and to harm her chances of being hired for a position at another school district. The record of the Defamation Case contained little to no documentary evidence, and relied solely on the deposition testimony of the parties and the individuals to whom Padasak allegedly made the defamatory statements. In the Defamation Case, Dusman sought damages for damage to her reputation and punitive damages.

In comparison, the underlying facts of this case pertain to Padasak's relationship with then-CASD solicitor Black & Davison by which the parties conspired to alter or caused the CASD School Board to alter the terms of Dusman's contract with CASD. Dusman asserts that Padasak made statements to the CASD School Board so that her contract could be modified to prevent her renewal as assistant superintendent. There is no reference to Padasak's statements or any other statements made by either Defendant which defamed Dusman or undermined her authority to supervise CASD employees. Although there is not yet a factual record in this case, it is likely that evidence of this alleged conspiracy would come in the form of some communication between Padasak, Black & Davison, and or third parties which would indicate some intention to conspire to alter or harm Dusman's contractual relationship with CASD. The deposition testimony recorded in the Defamation Case would be wholly irrelevant to this inquiry. Moreover, in the instant case, Dusman is seeking monetary damages resulting from the alleged breach of contract, emotional distress caused by the breach, and punitive damages. Therefore, based on the discrepancies in the underlying factual allegations and requests for damages of the Defamation Case and the instant case, in addition to the different proof required to establish Dusman's claims, the Court finds no identity in the causes of action in these two cases.

Third, the Court must determine whether the same parties or their privies were parties to both actions. Although Dusman and Padasak are both parties to both the Defamation Case and the instant case, Black & Davison was not included in the Defamation Case. Therefore, this Court must determine if Padasak and Black & Davison were in privity. In Pennsylvania, privity is defined as "mutual or successive relationships to the same right of property, or such an identification of interest of one person with another as to represent the same legal right." Bergdoll v. Cortes, 858 A.2d 185, 197 n. 4 (Pa. Cmwlth. 2004). "Privity for purposes of res judicata is not established by the mere fact that persons may be interested in the same question or in proving the same facts." Day v. Volkswagenwerk Aktiengesellschaft, 464 A.2d 1313, 1317 (Pa. Super. 1983). Although both Defendants have a general interest in disproving Dusman's claim that Padasak has it out for her, Black & Davison's role in the alleged conspiracy creates a substantially

different legal right exemplified by the Defendants' choice to retain their own respective counsel. Black & Davison may present argument or facts which impose liability solely on Padasak; Padasak may develop a record that shows Black & Davison was either negligent in their interpretation of Dusman's contract or advised Padasak incorrectly. There has been no discovery in this case, so there is no telling at the present time how the interests of the Defendants will manifest. Therefore, the Court finds there is no identity of parties.

Fourth and finally, the Court must consider the identity of the quality or capacity of the parties suing or being sued. The court's consideration of *res judicata* turns to "whether the ultimate and controlling issues have been decided in a prior proceeding in which *the present parties actually had an opportunity to appear and assert their rights.*" Stevenson v. Silverman, 208 A.2d 786, 788 (Pa. 1965) (emphasis in original); see also Schultz v. City of Philadelphia, 460 A.2d 833 (Pa. Super. 1983) (holding fraternal order of police suing on behalf of all retired police officers, and police officers suing on their own behalf as retired officers, established identity of quality or capacity). Black & Davison did not have an opportunity to appear and assert its rights in the Defamation Case solely because they had nothing to do with the factual circumstances of that case. Notably, although Padasak was party to both actions, he also did not previously have the opportunity to assert his rights and defend Dusman's claims of intending or conspiring to harm her contractual relationship with CASD because those claims were not and should not have been brought in the Defamation Case.

This Court has already determined that the Defamation case and the instant case were based on two separate factual circumstances stemming from the same ploy allegedly promulgated by Padasak. Based on these different underlying issues and claims, different rights have been invoked by all parties to the instant case than in the previous case. Therefore, this Court cannot find identity of quality or capacity of the parties here.

CONCLUSION

Res judicata seeks "to conserve limited judicial resources, establish certainty and respect for court judgments, and protect the party relying upon the judgment from vexatious litigation." Nothing in the instant case calls into question the validity or findings of this Court in the Defamation Case such that the Court would be concerned about the validity of its judgment. Given the immense differences in the facts alleged, the proof required, and the demand for damages, the Court cannot find that *res judicata* applies. Specifically, none of the aforementioned four concurrent conditions have been met. The mere fact that Dusman alleges a larger ploy by which

Padasak has sought to wreak havoc on her career does not mean that every intentional tort allegedly performed in pursuit of that ploy must be brought simultaneously in one suit. Although the alleged motivation leading to the alleged commission of these torts is the same, the factual circumstances which give rise to them are entirely different. Therefore res judicata does not apply to the instant case to bar Dusman from relief. Since res judicata does not apply and upon consideration of the standard for demurrer applied by this Court in its Order and Opinion filed on August 2, 2017, this Court cannot find that Dusman is barred from relief as a matter of law.

Therefore, Defendants' Joint Motion for Judgment on the Pleadings is DENIED. The Court further directs the parties to file a Joint Case Management Order within thirty (30) days of the date of this Opinion and attached Order.

ORDER OF COURT

AND NOW THIS 14th day of February, 2018, upon review of the record and independent review of applicable law,

IT IS HEREBY ORDERED that the Defendants' Joint Motion for Judgment on the Pleadings is DENIED.

IT IS FURTHER ORDERED that within thirty (30) days of the date of this Order, the parties shall submit a proposed joint case management Order to the Court for execution.

This Order is pursuant to the attached Opinion

Pursuant to Pa.R.C.P. 236, the Prothonotary shall give written notice of the entry of this Order, including a copy of this Order, to each party, and shall note in the docket the giving of such notice and the time and manner thereof.