IN THE COMMONWEALTH COURT OF PENNSYLVANIA

POM of Pennsylvania LLC and Pace-O-Matic, Inc., Petitioners	:	
v.	:	
Commonwealth of Pennsylvania, Pennsylvania State Police, Respondent	:	No. 359 M.D. 2025
	:	Argued: October 13, 2026

BEFORE: HONORABLE ANNE E. COVEY, Judge
HONORABLE STACY WALLACE, Judge
HONORABLE MARY HANNAH LEAVITT, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY
JUDGE COVEY FILED: November 13, 2026

Before this Court are the Commonwealth of Pennsylvania (Commonwealth), Pennsylvania State Police's (PSP) preliminary objections (Preliminary Objections) to POM of Pennsylvania LLC's and Pace-O-Matic, Inc.'s (collectively, POM) Petition for Review (Petition). After review, this Court sustains PSP's second, third, and fourth Preliminary Objections and dismisses the Petition.

Background[1]

On September 24, 2025, POM filed the Petition in this Court's original jurisdiction seeking declaratory judgment and injunctive relief against PSP. Therein,

[1] This Court's facts are derived from the Petition, keeping in mind that "[i]n ruling on preliminary objections, [this Court] must 'accept as true all well-pleaded material allegations in the petition for review[.]'" *Robinson v. Pa. Parole Bd.*, 306 A.3d 969, 972 n.7 (Pa. Cmwlth. 2023), *aff'd*, 328 A.3d 467 (Pa. 2024) (quoting *Garrison v. Dep't of Corr.*, 16 A.3d 560, 563 n.5 (Pa. Cmwlth. 2011)).

POM alleged the following. POM develops, produces, and licenses electronic games of skill (POM Games) that are distributed in Pennsylvania. PSP has waged a campaign against skill games for years, with POM's business being a chief target. PSP has gone to extreme lengths over the years to challenge the legality of the POM Games and POM's business. PSP's campaign against skill games included placing an undercover officer at POM without any legal authority to do so. In 2019, PSP Trooper Ryan Kelley (Trooper Kelley) purportedly retired from PSP and obtained employment with POM as a legal compliance officer. However, Trooper Kelley never actually retired from PSP. Unbeknownst to POM, he worked for PSP as an undercover agent while he was immersed in POM's legal compliance department and received a salary and benefits as a POM employee. Trooper Kelley was also privy to POM's confidential business information, attorney-client privileged communications, and attorney work product. Much of that confidential and privileged information related to legal strategy for ongoing litigation between POM and PSP. PSP's unauthorized operation generated no evidence that POM was engaging in criminal conduct. Trooper Kelley ended his employment with POM in 2022. While participating in PSP's undercover operation, Trooper Kelley also collected a salary and benefits from PSP.

POM seeks declaratory and injunctive relief including: (1) a declaration that PSP violated its due process rights; (2) a declaration that PSP engaged in an unconstitutional taking of its property and is required to provide just compensation; (3) a declaration that PSP was unjustly enriched through Trooper Kelley's compensation; (4) a declaration that PSP engaged in fraudulent misrepresentation rendering Trooper Kelley's employment agreement with POM void *ab initio*; and (5) a declaration that POM is entitled to the equitable return of the salary and benefits that POM paid to Trooper Kelley. On September 25, 2025, POM filed an

Application for Preliminary Injunction seeking to preclude PSP from dissipating or transferring POM's funds prior to this Court's disposition of POM's claims.

On October 16, 2025, PSP filed an Answer to POM's Application for Preliminary Injunction. On October 31, 2025, PSP filed Preliminary Objections to the Petition. In its Preliminary Objections, PSP alleges: (1) Pennsylvania Rule of Civil Procedure (Rule) 1028(a)(4), Pa.R.Civ.P. 1028(a)(4) - POM's declaratory action claims fail because it has an adequate remedy at law (Preliminary Objection 1); (2) Rule 1028(a)(1), Pa.R.Civ.P. 1028(a)(1) - this Court lacks subject matter jurisdiction over POM's Section 1983 of the Civil Rights Act (Section 1983)[2] claims (Preliminary Objection 2); (3) Rule 1028(a)(1) - this Court lacks subject matter jurisdiction over POM's contract claims (Preliminary Objection 3); (4) Rule 1028(a)(4) - PSP is immune from the relief sought in this declaratory judgment action (Preliminary Objection 4); (5) Rule 1028(a)(4) - PSP is not a person under Section 1983 and is immune from suit (Preliminary Objection 5); (6) Rule 1028(a)(4) - POM has failed to allege a due process violation (Preliminary Objection 6); (7) Rule 1028(a)(4) - POM's taking claim fails for the same reasons as its due process claim (Preliminary Objection 7); (8) Rule 1028(a)(4) - POM failed to allege

[2] Section 1983 provides, in relevant part:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any [s]tate or [t]erritory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States [(U.S.)] or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the [U.S.] Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable.

42 U.S.C. § 1983.

unjust enrichment (Preliminary Objection 8); and (9) Rule 1028(a)(4) - POM failed to allege a fraudulent misrepresentation (Preliminary Objection 9).

On October 20, 2025, POM filed an Application for an Evidentiary Injunction Hearing (Hearing Application) and initiated discovery relative to its Application for Preliminary Injunction. On November 3, 2025, PSP filed an Answer to POM's Hearing Application and attempt to conduct discovery. On December 15, 2025, PSP filed an Application to Stay Discovery pending this Court's resolution of its Preliminary Objections. On December 24, 2025, this Court ordered briefing on PSP's Preliminary Objections, held in abeyance POM's Application for Preliminary Injunction and Hearing Application, and granted PSP's Application to Stay Discovery pending disposition of PSP's Preliminary Objections.

Preliminary Objections[3]

This Court first addresses Preliminary Objections 2, 3, and 4 because they relate to this Court's subject matter jurisdiction and this Court's authority to decide this matter. In Preliminary Objection 2, PSP contends that by alleging due process violations of the Fourteenth Amendment to the United States (U.S.) Constitution (Fourteenth Amendment)[4] and takings violations of the Fifth

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[3] To sustain preliminary objections, "it must appear with certainty that the law will not permit recovery, and any doubt should be resolved by a refusal to sustain them." *Torres v. Beard*, 997 A.2d 1242, 1245 (Pa. Cmwlth. 2010).

> A preliminary objection in the nature of a demurrer admits well-pleaded facts and inferences reasonably deduced therefrom in order to test the legal sufficiency of a petition for review. *Id*. A demurrer can "be sustained only in cases where the pleader has clearly failed to state a claim for which relief can be granted." *Id*.

Robinson, 306 A.3d at 972 n.7.

[4] U.S. CONST. amend. XIV.

Amendment to the U.S. Constitution (Fifth Amendment)[5] and by seeking a declaration *that POM is entitled to equitable monetary relief*,[6] POM is essentially asserting tort claims under Section 1983. According to PSP, such claims do not fall within this Court's original jurisdiction. Similarly, in Preliminary Objection 3, PSP argues that POM's unjust enrichment claim,[7] combined with its request for a declaration that it is entitled to equitable monetary relief and the return of said money, is a quasi-contract claim that is within the Board of Claims' sole jurisdiction. In essence, PSP asserts that although framed as a declaratory judgment action, the gravamen of this case seeks the return of compensation and, thus, this Court lacks jurisdiction. In Preliminary Objection 4, PSP insists that sovereign immunity bars the requested relief.

The Pennsylvania Supreme Court (Supreme Court) has explained:

> Jurisdiction over the subject matter is conferred solely by the Constitution and laws of the Commonwealth. *Heath v. Workers' Comp*[.] *Appeal B*[*d. (Pa. Bd. of Prob. & Parole)*], . . . 860 A.2d 25, 29 ([Pa.] 2004). The test for whether a court has subject matter jurisdiction inquires into the competency of the court to determine controversies of the general class to which the case presented for consideration belongs. *Heath*, 860 A.2d at 26. . . . Whether a court has subject matter jurisdiction over an action is a fundamental issue of law which may be raised at any time in the course of the proceedings, including by a reviewing court[,] *sua sponte*. *Commonwealth v. Little*, . . . 314 A.2d 270, 272 ([Pa.] 1974). Further, subject matter jurisdiction may not be

[5] U.S. CONST. amend. V.

[6] In its request for relief, POM asks this Court to "[d]eclare that POM is entitled to equitable relief and the return of the $243,357.12 it paid to Trooper Kelley that PSP was not entitled to but nevertheless retained." Petition at 29.

[7] In Count III of the Petition, titled "Declaratory relief (Unjust Enrichment)," POM alleges that "[a] benefit was conferred on Trooper Kelley and PSP through POM's payment of [Trooper] Kelley's salary and benefits." Petition at 19.

> conferred by consent of the parties and a defect of such jurisdiction may not be waived.

Troutman v. Ct. of Common Pleas (In re Admin. Ord. No. 1-MD-2003), 936 A.2d 1, 5-6 (Pa. 2007).

> [I]n determining matters of jurisdiction, [the Supreme Court] recognize[s] [it] should look "to the substance rather than the form of the complaint." *Mercury Trucking, Inc. v. P*[*a.*] *Pub*[.] *Util*[.] *Comm*[*'n*], . . . 55 A.3d 1056, 1078 (Pa. 2012) (quoting *Stackhouse v. Commonwealth*, . . . 832 A.2d 1004, 1009 (Pa. 2003)). That is, where a complaint can support multiple causes of action, for which a court has jurisdiction over only a subset, [the Supreme Court] must look to the "core" of the complaint to determine whether jurisdiction exists.

Assouline v. Reynolds, 219 A.3d 1131, 1139 (Pa. 2019).

> [T]his Court has original jurisdiction in only a narrow class of cases. That class is defined by Section 761[(a)(1)] of the Judicial Code, which provides that, as a general rule, the Commonwealth Court has original jurisdiction in cases asserted against "the Commonwealth government, including any officer thereof, acting in his official capacity." 42 Pa.C.S. § 761(a)(1).

Borough of Pleasant Hills v. Dep't of Transp., 312 A.3d 389, 396 (Pa. Cmwlth. 2024) (citation omitted).

> The law is well established that
>
> > common pleas courts have subject matter jurisdiction "over **tort actions for money damages that are premised on either common law trespass or a civil action for deprivation of civil rights under** [**Section**] **1983**." *Miles* [*v. Beard*], 847 A.2d [161,] 164 [(Pa. Cmwlth. 2004)]. Further, **where the core of the complaint is a tort action**, **original jurisdiction lies in common pleas court regardless of an ancillary request for declaratory relief**. *Stackhouse*.

Wilson v. Marrow, 917 A.2d 357, 362 (Pa. Cmwlth. 2007) (emphasis added).

"[T]he starting point for determining the 'nature' of a given claim requires an examination of what effect the requested relief would have in light of the legal theories offered in support." *Scott v. Pa. Bd. of Prob. & Parole*, 284 A.3d 178, 189 (Pa. 2022). This Court observed:

> [I]t would seem self-evident that where a request for a declaration of rights can have no effect nor serve any purpose other than as the legal predicate for a damage or other immunity-barred claim in the same action, the demand for declaratory relief ought to fall along with the claim it serves to support. The purpose of absolute sovereign immunity - to insulate state agencies and employees not only from judgments but also from being required to expend the time and funds necessary to defend suits - would be frustrated if the declaratory action were allowed to go forward under those circumstances.

Stackhouse v. Pa. State Police, 892 A.2d 54, 62 (Pa. Cmwlth. 2006) (*Stackhouse II*); *see also Swift v. Dep't of Transp. of the Commonwealth*, 937 A.2d 1162 (Pa. Cmwlth. 2007).

Regarding Preliminary Objection No. 2, wherein PSP avers that this Court lacks subject matter jurisdiction over POM's Section 1983 claims relating to Fourteenth Amendment due process violations and Fifth Amendment takings violations, POM rejoins that PSP's arguments on jurisdiction are devoted to asserting that this Court lacks jurisdiction over Section 1983 claims that POM did not actually bring. POM emphasizes that it does not demand damages and does not sue individual officers. POM insists that PSP cannot convert POM's declaratory judgment claims into a Section 1983 action.

At the outset, "declaratory relief is inherently forward-looking and **is not to be used to address completed past conduct**." *Madigan v. Nazareth Area*

Sch. Dist. (Pa. Cmwlth. No. 527 M.D. 2023, filed Mar. 19, 2026), slip op. at 9 (emphasis added) (citing *Chasan v. Platt*, 244 A.3d 73 (Pa. Cmwlth. 2020)).[8]

Here, because Trooper Kelley ceased his employment with POM in 2022, and the alleged wrongful conduct occurred during Trooper Kelley's employment, all of POM's claims relate to completed past conduct. POM's request for relief reflects the **past nature of such conduct**, asking this Court to:

> 2. Declare that PSP **has violated** POM's due process rights under [the Fourteenth Amendment];
>
> 3. Declare that PSP engag**ed** in an unconstitutional taking of POM's property in violation of [the Fifth Amendment], and must provide just compensation;
>
> 4. Declare that PSP **was unjustly enriched** through its receipt of the funds POM paid to Trooper Kelley **while he was an employee of POM**;
>
> 5. Declare that PSP engag**ed** in fraudulent misrepresentation, rendering Trooper Kelley's employment agreement with POM void *ab initio*; and
>
> 6. Declare that POM is entitled to equitable relief and the **return** of the $243,357.12 **it paid** to [Trooper] Kelley that PSP was not entitled to but nevertheless retain**ed**.

Petition at 29 (bold and underline emphasis added).

Because

> all of [POM's] claims concern completed past conduct of [PSP], [it] may not form the basis of a declaratory judgment claim. *See, e.g.*, *Stahl v. Kenney* (Pa. Cmwlth.[] No. 385 M.D. 2017, . . . filed May 2, 2018), slip op. at 8-9, *aff*[*'*]*d*, . . . 205 A.3d 309 ([Pa.] 2019) (Mem.) (past conduct of common pleas judges in domestic relations litigation, including the entry of orders, was prior conduct that was not an appropriate subject for declaratory relief).

[8] This Court's unreported memorandum opinions filed after January 15, 2008, may be cited "for [their] persuasive value, but not as binding precedent." Section 414(a) of the Commonwealth Court's Internal Operating Procedures, 210 Pa. Code § 69.414(a). The unreported opinions referenced herein are cited for their persuasive value.

Madigan, slip op. at 9-10. Accordingly, this Court cannot grant declaratory relief in the instant action.

Further, "Section 1983 creates no substantive rights; it merely provides the vehicle for litigating deprivations of certain federal rights otherwise established." *Rivera v. Silbaugh*, 240 A.3d 229, 236 (Pa. Cmwlth. 2020). Thus, POM's claims under the U.S. Constitution necessarily implicate Section 1983. Contrary to POM's assertion, POM requests damages, albeit not by way of an explicit demand. Rather, POM's request for relief asks this Court to "[d]eclare that **POM is entitled to equitable relief and the return of the $243,357.12** it paid to Trooper Kelley that PSP was not entitled to but nevertheless retained." Petition at 29 (emphasis added). At its core, POM's Petition is not simply a request for declaratory relief, but a request that this Court declare it is entitled to the return of a particular monetary amount as a result of PSP's conduct. This Court lacks jurisdiction over such claims. *See Miles*. Accordingly, this Court sustains Preliminary Objection 2.

With respect to Preliminary Objections 3 and 4, POM's action arises from Trooper Kelley's employment with POM. POM alleges, *inter alia*, that Trooper Kelley and PSP were unjustly enriched by POM's payment of Trooper Kelley's **salary** while he was allegedly working undercover for PSP; that PSP's actions constituted an unlawful taking of Trooper Kelley's salary; and that PSP engaged in fraudulent misrepresentation; therefore, this Court should declare Trooper Kelley's **employment agreement** with POM void *ab initio*. Further, POM requests this Court to declare that POM is entitled to the equitable return of the salary and benefits that POM paid to Trooper Kelley for three years of work. POM acknowledges in its Petition that "the present action focuses only upon the return of [Trooper] Kelley's salary." Petition at 14. Thus, at their core, POM's claims relate to whether the money POM paid to Trooper Kelley as **employment compensation** was properly received by Trooper Kelley and PSP. Because the basis for Trooper

Kelley's employment compensation was, at the very least, an implied or quasi-contract between POM and Trooper Kelley, this Court reviews whether it has jurisdiction over employment contracts.

In *U.S. Venture, Inc. v. Commonwealth*, 255 A.3d 321 (Pa. 2021), the Supreme Court explained that it had previously, in *Scientific Games International, Inc. v. Commonwealth*, 66 A.3d 740 (Pa. 2013),

> elaborated on the intersection of subject matter jurisdiction and sovereign immunity in the context of the [Commonwealth Procurement] Code (Procurement Code)[9] as follows:
>
> > While more general clarification of the relationship between sovereign immunity and jurisdiction may be appropriate in the arena at large, for present purposes, [the Supreme Court] regard[s] sovereign immunity as a jurisdictional concern vis-à-vis the Procurement Code. Our understanding, in this regard, is premised on the enactment's self-contained reaffirmation of sovereign immunity, *see* [Section 1702(a) of the Procurement Code,] 62 Pa.C.S. § 1702(a), and its explicit, limited waiver of such immunity (among other specified and limited waivers) in connection with a coordinate allocation of "exclusive jurisdiction" to the Board of Claims over claims arising from certain contracts entered into by a Commonwealth agency, *see* [Section 1702(b) of the Procurement Code, 62 Pa.C.S.]§ 1702(b), [Section 1724(a)(1) of the Procurement Code, 62 Pa.C.S. §] 1724(a)(1).
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> *Sci. Games*, 66 A.3d at 757. *See also id.* at 755 ("In other words . . . **the exception to sovereign immunity pertaining to Board[ ]of[ ]Claims**['] **jurisdiction**

[9] 62 Pa.C.S. §§ 101-4509. Although the Procurement Code does not apply herein, the analysis regarding the Board of Claims' jurisdiction is instructive.

> **defines the extent of the Commonwealth's statutory exception from sovereign immunity for claims arising from contract**.").

U.S. Venture, 255 A.3d at 335 (emphasis added). The *U.S. Venture* Court expounded:

> Section 1702 [of the Procurement Code] is the statutory source of the General Assembly's waiver of sovereign immunity. Section 1724(a)(1) [of the Procurement Code], in turn, grants the Board [of Claims] jurisdiction over contracts filed in accordance with "this part." "This part" refers to the [Procurement] Code as it is separated into "Part I" and "Part II." Part I is named "The Commonwealth Procurement Code" and Section 101 ("Short title of part") states, "This part shall be known and may be cited as the Commonwealth Procurement Code." Thus, "this part" refers to a contract that is within the [Procurement] Code's coverage. *See Sci. Games*, 66 A.3d at 744 (stating that **the 2002** [**amendments to the Procurement Code**] "**reconstituted the Board of Claims** . . . **and reposited** '**exclusive jurisdiction**' **in that tribunal to arbitrate claims arising from contracts entered into by Commonwealth agencies in accordance with the Procurement Code**").

Id. (Emphasis added).

POM's allegations frame the matter, in part, as PSP's unjust enrichment, and a taking, resulting from **salary and benefits** paid to Trooper Kelley. "The Board of Claims' statutory exclusive jurisdiction over contractual actions against the Commonwealth includes those based on theories of implied or quasi-contract." *Smock v. Commonwealth*, 425 A.2d 883, 885 (Pa. Cmwlth. 1981).

However,

> the Procurement Code is expressly made inapplicable to employment contracts. Section 103 of the Procurement Code, 62 Pa.C.S. § 103, provides the "clear legislative intent" that an employment agreement is not a contract for "services." The **Board of Claims** simply **does not have jurisdiction** . . . .

Armenti v. Pa. State Sys. of Higher Educ., 100 A.3d 772, 776-77 (Pa. Cmwlth. 2014) (emphasis added). Nor does this Court have subject matter jurisdiction over such a claim because "the Commonwealth has not waived sovereign immunity for suits based on an alleged breach of an employment contract."[10] *Id*. at 777. Accordingly, this Court sustains Preliminary Objections 3 and 4.

Conclusion

For all of the above reasons, PSP's Preliminary Objections 2, 3, and 4 are sustained, and the Petition is dismissed for lack of jurisdiction.[11]

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ANNE E. COVEY, Judge

[10] POM further claims that PSP engaged in fraudulent misrepresentation that should result in the voiding of Trooper Kelley's employment agreement with POM. This Court has explained that "[b]oth intentional misrepresentation and negligent misrepresentation are torts." *Brimmeier v. Pa. Tpk. Comm'n*, 147 A.3d 954, 963 (Pa. Cmwlth. 2016), *aff'd*, 161 A.3d 253 (Pa. 2017). "[F]raudulent misrepresentation [is an] intentional tort[], and this Court has specifically declared that 'intentional tort claims . . . are not within the narrow exceptions set forth in [Section 8522(b) of what is commonly known as the Sovereign Immunity Act, 42 Pa.C.S. § 8522].'" *Rhoads v. Phila. Hous. Auth.*, 978 A.2d 431, 433 (Pa. Cmwlth. 2009) (quoting *Faust v. Dep't of Revenue*, 592 A.2d 835, 839 (Pa. Cmwlth. 1991)).

[11] Given this Court's conclusion that it does not have subject matter jurisdiction over the Petition, it does not reach PSP's remaining Preliminary Objections.

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v.	:	
Commonwealth of Pennsylvania, Pennsylvania State Police, Respondent	:	No. 359 M.D. 2025

O R D E R

AND NOW, this 13th day of November, 2026, the Commonwealth of Pennsylvania, Pennsylvania State Police's second, third, and fourth Preliminary Objections to POM of Pennsylvania LLC's and Pace-O-Matic, Inc.'s Petition for Review (Petition) are SUSTAINED, the Petition is DISMISSED, and all pending applications are DISMISSED.

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ANNE E. COVEY, Judge