IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Nicholas Davitt,		
	Plaintiff :	
v.	:	No. 53 M.D. 2025
	:	Submitted: April 13, 2026
Pennsylvania Office of	:	
Attorney General,	:	
	Defendant :	

BEFORE: HONORABLE MICHAEL H. WOJCIK, Judge
HONORABLE CHRISTINE FIZZANO CANNON, Judge
HONORABLE STACY WALLACE, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE WALLACE FILED: November 5, 2026

Nicholas Davitt (Davitt) filed a Complaint in this Court's original jurisdiction setting forth a breach of contract claim and a defamation claim against the Pennsylvania Office of Attorney General (OAG). The OAG has filed a preliminary objection (Preliminary Objection) to Davitt's Complaint asserting the OAG maintains sovereign immunity protection, which bars Davitt's claims. After review, we are constrained to sustain the OAG's Preliminary Objection and dismiss Davitt's Complaint.

BACKGROUND

On February 12, 2025, Davitt filed his Complaint alleging the following. Davitt worked for the OAG from May 5, 2014, until March 5, 2018, as a narcotics

agent. Complaint, at 2. In 2017, the OAG placed Davitt on administrative leave. *Id*. at 3. On March 5, 2018, the OAG took disciplinary action against Davitt and, as a result, Davitt filed a grievance through his union demanding the OAG rescind such discipline. *Id*. As a resolution to the grievance, the OAG and Davitt entered into a Separation Agreement and General Release (Agreement) that Davitt would resign from his employment with the OAG effective March 5, 2018. *Id*.

In relevant part, under the Agreement, the OAG agreed to provide a neutral employment reference for Davitt if requested by a prospective employer; specifically, it would only provide Davitt's position at separation, rate of pay, and dates of employment. Complaint, Exhibit A, at 1 ¶ 4. The Agreement indicated that if a prospective employer was a law enforcement agency requesting review of personnel records, the OAG would not permit review without proof of an executed waiver by Davitt. *Id*. Additionally, the OAG agreed Davitt's termination letter and pre-disciplinary conference letters would not be placed in his personnel file. *Id*., Exhibit B. Moreover, the Agreement contained a non-disparagement clause in which Davitt and the OAG agreed they would not make any statement or release any information designed or intended to embarrass, disparage, or criticize the other. *Id*., Exhibit A, at 3 ¶ 9.

Davitt alleges that on August 30, 2024, he received a conditional offer of employment with the State Correctional Institution at Waymart (SCI-Waymart) as a correctional officer, which was subject to pre-employment testing and a background check. Complaint, at 5. On September 19, 2024, Davitt received notice from SCI-Waymart that he was removed from consideration for the position because Davitt's "background made [him] unsuitable for employment" at that time. *Id*. Davitt contacted the background review team, which informed him that his "personnel file

[at the OAG] list[ed] that [he was] dismissed/removed due to conduct," and that he was "coded that way in the employee system." *Id*. After SCI-Waymart rescinded its employment offer, Davitt applied for posted positions at other correctional institutions and state probation offices in Pennsylvania for which he was qualified, but did not receive any offers of employment. *Id*. Davitt asserts his employment applications were rejected because the OAG's records falsely indicate he was "dismissed/removed due to conduct" and because he is "coded that way in the employee system" in violation of the parties' Agreement. *Id*. at 6. Accordingly, Davitt's Complaint asserts a breach of contract claim and a defamation claim against the OAG.

On March 18, 2025, the OAG filed its Preliminary Objection asserting that as an executive agency of the Commonwealth, it is entitled to sovereign immunity from suit on Davitt's breach of contract and defamation claims. OAG's Br. at 4. The OAG argues the sovereign immunity doctrine immunizes the Commonwealth, including the OAG, from suit, except when specifically waived by the General Assembly. *Id*. The OAG contends the Commonwealth has not waived immunity for breach of contract claims or defamation claims. *Id*. at 6-8. Accordingly, the OAG asks this Court to dismiss Davitt's Complaint. *Id*. at 9. In response, Davitt argues the OAG waived sovereign immunity when it entered into the Agreement, and he asks this Court to overrule the OAG's Preliminary Objection. Davitt's Br. at 6.

DISCUSSION

Pennsylvania Rule of Appellate Procedure (Rule) 1516(b) authorizes any party to file preliminary objections to an original jurisdiction petition for review for the reasons specified in Pennsylvania Rule of Civil Procedure (Civil Rule) 1028.

See Pa.R.A.P. 1516(b). Under Civil Rule 1028(a)(1), any party may file a preliminary objection based on "lack of jurisdiction over the subject matter of the action or the person of the defendant, improper venue or improper form or service of a writ of summons or a complaint." Pa.R.Civ.P. 1028(a)(1). Under Civil Rule 1028(a)(4), a party may file a preliminary objection to a pleading based on the "legal insufficiency of" the pleading. Pa.R.Civ.P. 1028(a)(4).

When addressing preliminary objections, this Court must accept as true all well-pleaded factual allegations as well as any inferences reasonably deduced therefrom. *Neeley v. Dep't of Corr.*, 838 A.2d 16, 19 n.4 (Pa. Cmwlth. 2003). However, this Court is not bound by "legal conclusions, unwarranted inferences from facts, argumentative allegations, or expressions of opinion encompassed in the [Complaint]." *Williams v. Wetzel*, 178 A.3d 920, 923 (Pa. Cmwlth. 2018). We will not sustain preliminary objections unless it "appear[s] with certainty that the law will not permit recovery," and we resolve any doubt by a refusal to sustain them." *Neeley*, 838 A.2d at 19 n.4.

Under article I, section 11 of the Pennsylvania Constitution, "[s]uits may be brought against the Commonwealth in such manner, in such courts and in such cases as the Legislature may by law direct." Pa. Const. art. I, § 11. The Legislature has declared that the Commonwealth "shall continue to enjoy sovereign immunity . . . and remain immune from suit except as the General Assembly shall specifically waive the immunity." 1 Pa.C.S. § 2310. Our appellate courts have consistently recognized that the Commonwealth is protected from civil suit by sovereign immunity except where the General Assembly has expressly waived that immunity. *Armenti v. Pa. State Sys. of Higher Educ.*, 100 A.3d 772, 777 (Pa. Cmwlth. 2014). The limited exceptions to sovereign immunity must be narrowly and strictly

construed because the General Assembly intended to exempt the Commonwealth from immunity only in specific situations. *Id*.

The General Assembly has waived sovereign immunity as set forth in Titles 42 and 62 of the Pennsylvania Consolidated Statutes. *See* 1 Pa.C.S. § 2310; Pa. Const. art. I, § 11. The limited waivers of sovereign immunity in Title 42 pertain exclusively to claims arising from negligence. *See* 42 Pa.C.S. § 8522. The waivers of sovereign immunity in Title 62 are limited to certain contract claims against the Commonwealth and its agencies, including claims "brought in accordance with" Sections 1711.1 (relating to protests of solicitations or awards) and 1712.1 (relating to contract controversies) and Subchapter C (relating to Board of Claims). *Armenti*, 100 A.3d at 777 (citation omitted).

Here, Davitt asserts claims for breach of contract and defamation. However, the General Assembly has not waived the Commonwealth's immunity for either of these claims. Regarding the defamation claim, this Court has specifically held that "defamation is an intentional tort, which does not fall within the General Assembly's limited waiver of sovereign immunity." *Mazur v. Cuthbert*, 186 A.3d 490, 499 (Pa. Cmwlth. 2018); *see also Miller v. Pa. Off. of Att'y Gen'l*, (Pa. Cmwlth., No. 2072 C.D. 2015, filed Sept. 20, 2016), slip op. at 3[1] (noting this Court has explained that the General Assembly did not waive sovereign immunity for an intentional tort by the OAG, which is a Commonwealth agency).

Regarding his breach of contract claim, while the General Assembly has carved out exceptions to the Commonwealth's immunity for breach of contract,

[1] Unreported decisions of this Court issued after January 15, 2008, may be cited as persuasive authority pursuant to Section 414(a) of this Court's Internal Operating Procedures, 210 Pa. Code § 69.414(a). The unreported cases herein are cited for their persuasive value.

those exceptions exist "only to the extent set forth in [Chapter 62's Procurement Code]." 62 Pa.C.S. § 1702. In *Dubaskas v. Department of Corrections*, 81 A.3d 167, 176-77 (Pa. Cmwlth. 2013), this Court recognized that the limited waiver of sovereign immunity in Title 62 does not apply to employment-related contracts or collective bargaining agreements. In *Roe v. Pennsylvania Game Commission*, 147 A.3d 1244 (Pa. Cmwlth. 2016), a petitioner filed a complaint against the Pennsylvania Game Commission (Commission) averring breach of contract claims. The petitioner had

> entered into an Agreement and Release . . . with the Commission's Board of Commissioners (Commissioners), under which [the petitioner] agreed to retire before January 31, 2014, waive and release any and all claims he may have [had] against the Commission and the Commissioners, and keep confidential any and all communications with the Commission during his tenure as Executive Director. In addition to paying [the petitioner] $220,000.00 "no later than two weeks after the retirement date," the Commission agreed to keep its communications with [the petitioner] confidential. . . . The Original Agreement stated that the payment "shall not be compensation but shall be consideration for the obligations to be fulfilled by [the petitioner] as set forth [t]herein."
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> . . . .
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> Thereafter, the Commission asked [the petitioner] to sign an Amended and Restated Agreement and Release (Amended Agreement) "to modify some of the language of the [Original] Agreement." The Amended Agreement reflected that [the petitioner] retired on January 17, 2014 and provided that he would be paid the $220,000.00 "as soon as practically possible." The Amended Agreement specified that its intent was "to settle potential legal claims that the parties might have made against each other" and that the Commission's payment would be "consideration for settlement of potential legal claims." *Id.* Like the Original Agreement, the Amended Agreement provided that the payment was not compensation. [The petitioner] and the eight Commissioners signed the Amended Agreement on January 27, 2014,

> and it was approved as to form and legality by the Commission's Chief Counsel, but it was not executed by the OAG or the Comptroller.

Id. at 1246-47. After the Commission refused to pay him, despite his retirement and compliance with the terms of the agreements, the petitioner filed his complaint alleging breach of contract claims. *Id*. at 1247. The Commission filed preliminary objections asserting the General Assembly "only waived immunity over contract claims against Commonwealth agencies to the extent jurisdiction over those claims lies with the Board [of Claims (Board)]" and asserting the Board lacked jurisdiction. *Id*. This Court explained:

> [S]overeign immunity is waived for claims over which the Board has exclusive jurisdiction. Therefore, the issue before us becomes whether the Board has exclusive jurisdiction over the Agreements underlying this case.
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> . . . [T]he Procurement Code provides that the Board shall have exclusive jurisdiction to arbitrate claims arising from "[a] contract entered into by a Commonwealth agency . . . and filed with the [B]oard in accordance with . . . [the Procurement Code] (relating to contract controversies)." 62 Pa.C.S. § 1724(a)(1). . . . In *Dubaskas* . . . , 81 A.3d [at] 167 . . . , this Court stated: "[T]he Board has jurisdiction over 'claims arising from *certain* contracts entered into by a Commonwealth agency,' and there are still 'jurisdictional prerequisites' that must be met in order for the Board to exercise its jurisdiction over a particular claim." *Id.* at 176. . . .
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> The Procurement Code defines "[c]ontract," in relevant part, as "[a] type of written agreement . . . for the procurement . . . of . . . services . . . executed by all parties in accordance with the act of October 15, 1980 (P.L. 950, No. 164), known as the Commonwealth Attorneys Act." 62 Pa.C.S. § 103. . . . "Services" are defined in relevant part therein as "[t]he furnishing of labor, time or effort by a contractor not involving the delivery of a specific end product. . . ." *Id.*. . .
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> . . . [J]urisdiction does not automatically rest solely with the Board simply because a contract is implicated in the parties' dispute. *Keenheel v. Pa. Sec. Comm'n*, . . . 565 A.2d 1147 ([Pa.]1989). Whether

> a settlement agreement comes within the Board's jurisdiction depends upon the nature of the claim underlying the settled matter. *See Armenti* . . . , 100 A.3d [at] 772 . . . .
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> Here, the Agreements provided that [the petitioner] and the Commission agreed, in exchange for $220,000.00, that [the petitioner] would: (1) retire early, (2) waive all potential legal claims, and (3) keep confidential communications that occurred while he was Executive Director. With respect to the Agreements' early retirement term, this Court has expressly stated that "nothing in the Procurement Code supports the proposition that a contract which fixes the duration of employment is one for 'services' . . . ." *Armenti*, 100 A.3d at 776.
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> . . . .
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> The General Assembly did not define labor, time or effort in the Procurement Code. Section 1903(a) of the Statutory Construction Act of 1972 provides that when words in a statute are undefined, they must be accorded "their common and approved usage[.]" 1 Pa.C.S. § 1903(a). "Where a court needs to define an undefined term, it may consult definitions in statutes, regulations or the dictionary for guidance, although such definitions are not controlling." *Adams Outdoor Adver., LP v. Zoning Hearing Bd. of Smithfield Twp.*, 909 A.2d 469, 483 (Pa. Cmwlth. 2006). *Merriam-Webster's Collegiate Dictionary* (11th ed. 2004) defines "labor" in this context as "the services performed by workers for wages[.]" *Id.* at 694. "Time" is defined as "the hours or days required to be occupied by one's work[.]" *Id.* at 1309. "Effort" is defined as "something produced by exertion or trying[.]" *Id.* at 397. Because agreeing to waive all potential legal claims and keep communications confidential does not even remotely constitute the "furnishing of labor, time or effort," the Agreements were not for "services" and, thus, are not "contracts" within the meaning of the Procurement Code. 62 Pa.C.S. § 103.

Roe, 147 A.3d at 1248-50. This Court then reasoned that because the agreements were not written agreements for services, they were not contracts under the Procurement Code and any claims arising therefrom did not fall under the Board's jurisdiction. *Id*. This Court explained:

> [T]he law is clear that the Commonwealth is immune from suit except as specifically waived by the General Assembly, and the General Assembly has waived sovereign immunity for claims over which the Board has exclusive control. By extension, claims over which the Board does not have exclusive control are barred by sovereign immunity.

Id. at 1252. Because the Board lacked jurisdiction, and there was no specific waiver of immunity applicable to the petitioner's breach of contract claim, the Court held the Commission was immune from the petitioner's claim. *Id*. at 1252.

Similarly, here, Davitt's breach of contract claim stems from the Agreement, which is a separation and release agreement. Like in *Roe*, the Agreement is not a written agreement for services, and thus, is not a contract under the Procurement Code. Therefore, Davitt's claim arising from the Agreement does not fall under the Board's jurisdiction over breach of contract claims. Additionally, there is no express waiver of immunity applicable to a breach of contract claim arising under the Agreement. Accordingly, we have no choice but to conclude the OAG is immune from Davitt's breach of contract claim.

Davitt argues the OAG waived sovereign immunity by entering into the Agreement. However, under both the Pennsylvania Constitution and the governing statutory framework, the authority to waive sovereign immunity rests exclusively with the General Assembly. *See* Pa. Const. art. I, § 11; 1 Pa.C.S. § 2310. As this Court noted in *Armenti*, 100 A.3d at 777, "only the General Assembly can create exceptions to the Commonwealth's sovereign immunity." "Without the General Assembly's express abrogation of sovereign immunity, [Davitt] is without recourse." *Roe*, 147 A.3d at 1252. The OAG does not have the authority to waive sovereign immunity, and it did not do so by entering into the Agreement. Therefore, Davitt's claims are unfortunately barred.

We do not come to this conclusion lightly. Based on the facts asserted, the OAG entered into the Agreement with Davitt, received the benefit of the Agreement, and then allegedly failed to uphold its end of the bargain. Were the OAG a private party, ordinary contract principles would apply and provide an avenue for relief. Yet, because the General Assembly has not waived sovereign immunity for a claim such as this, Davitt is left without a remedy. We recognize that this is a troubling outcome. However, we are not free to disregard sovereign immunity simply because its application produces a seemingly unfair result. Additionally, we may not create a waiver where the General Assembly has provided none. We are constrained to apply the law as written. If the Commonwealth is to be held accountable for a breach of contract under circumstances such as those presented here, it is for the General Assembly, not this Court, to provide that remedy.

CONCLUSION

Because the General Assembly has not expressly waived sovereign immunity for Davitt's defamation claim or breach of contract claim against the OAG, the OAG is immune from suit on these claims. Accordingly, the OAG's Preliminary Objection is sustained, and Davitt's Complaint is dismissed.

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STACY WALLACE, Judge

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	:	
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Attorney General,	:	
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O R D E R

AND NOW, this 5th day of November 2026, the Pennsylvania Office of Attorney General's preliminary objection is **SUSTAINED**, and Nicholas Davitt's Complaint is **DISMISSED**.

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STACY WALLACE, Judge