**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS**

**WASHINGTON, SC.** **SUPERIOR COURT**

**(FILED: April 30, 2013)**

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| **JAMES LAURENT** | : | |
| | : | |
| **v.** | : | **C.A. No. WC-2009-0545** |
| | : | |
| **ST. MICHAEL'S COUNTRY DAY SCHOOL** | : | |

## DECISION

**STERN, J.** This case is before this Court on Plaintiff James Laurent's Motion to Amend his Complaint. Oral arguments were entertained before this Court on October 19, 2012. The Court now issues the following Decision.

## I

## Facts and Travel

This case arises from Plaintiff James Laurent's (Plaintiff) prior employment by Defendant St. Michael's Country Day School (Defendant). Defendant is a private, non-profit school in Newport, Rhode Island for students in preschool through eighth grade. Compl. ¶¶ 2-3. Plaintiff was employed as a teacher at the school for twelve (12) years. Id. ¶ 4. In 2009, Plaintiff accepted an offer for employment during the 2009-2010 academic year. Id. ¶¶ 7-9. Defendant presented Plaintiff with two (2) copies of the employment contract. Id. ¶ 10. According to an email from the Defendant's Headmaster dated May 9, 2009, all faculty were required to sign and return these employment offers by May 22, 2009. Id. ¶ 13.

Not all teachers were extended an offer of employment prior to the Headmaster's email. Id. ¶ 14. Plaintiff was not one of those teachers and, in fact, he had executed his employment

offer on May 7, 2009, two (2) days prior to the Headmaster's email. Id. ¶ 16. Approximately one month later on June 10, 2009, Plaintiff received a telephone call from the Headmaster, indicating that Plaintiff had been terminated. Id. ¶ 18. Plaintiff alleges that he was not given an opportunity to speak on his behalf either during the telephone conversation with the Headmaster or subsequently before Defendant's Board of Trustees. Id. ¶ 19. The Headmaster, however, allegedly indicated that the reason for Plaintiff's termination was a verbal disagreement that had taken place between Plaintiff and a co-worker in the faculty lounge several days prior to Plaintiff's termination. Id. ¶ 21. Plaintiff further alleges that the circumstances surrounding his termination "led to the circulation of untrue and scandalous rumors regarding [Plaintiff] in the small community." Id. ¶ 20.

Plaintiff filed the instant Complaint on August 7, 2009. The Complaint states three Counts: (1) Count I – Breach of Contract; (2) Count II – Breach of Implied Covenant of Good Faith and Fair Dealing; and (3) Count III – Promissory Estoppel. Through these Counts, Plaintiff alleges that he had a binding contract with Defendant based on the executed employment offer or, even if that employment offer was not binding, that Plaintiff detrimentally relied on the promises contained therein.

Plaintiff now seeks to amend the Complaint. The proposed Revised First Amended Complaint contains each of the three Counts alleged in the original Complaint but also seeks to incorporate six additional Counts: (1) Count IV – Intentional Infliction of Emotional Distress; (2) Count V – Negligent Infliction of Emotional Distress; (3) Count VI – Libel, Slander and Defamation; (4) Count VII – Intentional Destruction of Evidence; (5) Count VIII – Negligent Destruction of Evidence; and (9) Count IX – For Punitive Damages. Plaintiff has not altered the

factual allegations in the original Complaint. The Court entertained arguments on October 19, 2012.

## II

## Standard of Review

Amendment of pleadings is governed by Rule 15 of the Rhode Island Superior Court Rules of Civil Procedure, which states, in pertinent part:

> A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar . . . . Otherwise a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and **leave shall be freely given when justice so requires**.

Super. R. Civ. P. 15(a) (emphasis added). Despite this liberal standard, "the final decision whether to allow or to deny an amendment rests within the sound discretion of the trial justice." Mainella v. Staff Builders Indus. Serv., Inc., 608 A.2d 1141, 1143 (R.I. 1992) (citations omitted). "Reasons for denying leave to amend include undue prejudice, delay, bad faith, and failure to state a claim." Id. (citing Faerber v. Cavanagh, 568 A.2d 326, 329 (R.I. 1990) (citation omitted)).

Additionally, Rule 15 permits the amendment of pleadings even where such amendment seeks to add claims that would otherwise be barred by the relevant statute of limitations. The rule states, in pertinent part:

> Whenever the claim or defense asserted in the amended pleadings arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading.

Super. R. Civ. P. 15(c). "The doctrine of relation back . . . is intimately connected with the policy of the statute of limitations . . . [and] the purpose of [the doctrine] is to ameliorate the

harsher aspects of limitations periods when this can be done without surprise or prejudice to the opposing party." 27A Federal Procedure Lawyer's Ed. § 62:332 at 121.

## III

## Analysis

Plaintiff filed his Complaint on August 7, 2009; however, the instant Motion to Amend that Complaint was not filed until mid-2012. Thus, it is clear that this amendment could not have been made "as a matter of course." Super. R. Civ. P. 15(a). Thus, Plaintiff filed the instant Motion to Amend "by leave of court." Id. It is well-accepted that such "leave shall be freely given when justice so requires." Id.; see Medeiros v. Cornwall, 911 A.2d 251, 253 (R.I. 2006) (noting that the "true spirit of the rule is exemplified in the words '. . . and leave shall be freely given when justice so requires'") (quoting Ricard v. John Hancock Mutual Life Ins. Co., 113 R.I. 528, 540, 324 A.2d 671, 677 (1974)); see also Serra v. Ford Motor Credit Co., 463 A.2d 142, 150 (R.I. 1983) (reiterating "that trial justices should liberally allow amendments to the pleadings"). Mindful of the liberal standard under Rule 15(a), this Court notes that "the decision to grant or to deny a motion to amend a complaint is confided to the sound discretion of [this Court]." Harodite Indus., Inc. v. Warren Elec. Corp., 24 A.3d 514, 529 (R.I. 2011) (citations omitted). As such, "'great deference [is given] to the trial justice's ruling on a motion to amend.'" Id. (quoting Catucci v. Pacheco, 866 A.2d 509, 513 (R.I. 2005)).

### A

### Proposed Counts IV—VI: Tort Claims

This Court must first determine whether "justice so requires" amendment to add the tort claims in Counts IV, V, and VI of the proposed Revised First Amended Complaint to the existing three Counts of the original Complaint. Those claims state causes of action for:

(1) Count IV – Intentional Infliction of Emotional Distress; (2) Count V – Negligent Infliction of Emotional Distress; and (3) Count VI – Libel, Slander and Defamation.

At the outset, the Court notes that these three proposed Counts "asserted in the amended pleadings arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading." Super. R. Civ. P. 15(c). Thus, these Counts relate back to the date of the original Complaint and, therefore, there is no danger of these Counts being barred by the relevant statutes of limitation. See id. This conclusion is supported by the fact that the factual allegations contained in the original Complaint are unaltered by the proposed Revised First Amended Complaint.

For example, the original Complaint states that Defendant's actions "led to the circulation of untrue and scandalous rumors regarding [Plaintiff] in the small community, which rumors [Defendant] did nothing to stop or correct." Compl. ¶ 20; Revised First Am. Compl. ¶ 20. The inclusion of this factual allegation in the original Complaint could serve as support for the now-proposed Counts IV and V, alleging intentional and negligent infliction of emotional distress. See Revised First Am. Compl. ¶¶ 34-39. That same factual allegation could similarly serve as a basis for the now-proposed Count VI, alleging "Libel, Slander and Defamation." See id. ¶¶ 40-43.

That single allegation, however, is not the sole support for the addition of the proposed Counts IV, V, and VI. Indeed, Plaintiff makes clear in those proposed Counts that the circumstances underlying his claims arose from his "termination from employment." Id. ¶¶ 34, 37. The circumstances surrounding Plaintiff's termination were set forth in twenty-three (23) numbered paragraphs in the original Complaint. Those twenty-three (23) paragraphs remain unaltered in the Revised First Amended Complaint. Thus, it is clear that the proposed Counts

IV, V, and VI "arose out of the conduct . . . set forth . . . in the original pleading." Super. R. Civ. P. 15(c). As such, these Counts relate back to the date of the original Complaint and there is no potential statute of limitations problem with permitting amendment as to these Counts. See id.

Because these Counts relate back to the date of the original Complaint—and mindful of the liberal standard that this Court should freely grant leave to amend "when justice so requires"—the Court grants Plaintiff's Motion to Amend as to Counts IV, V, and VI of the proposed Revised First Amended Complaint. In reaching this decision, the Court notes that the proposed Counts are intimately linked to the underlying factual circumstances proposed in the original Complaint in such a way that there is no evidence of "undue prejudice, delay, [or] bad faith" that would require this Court to rule otherwise. Mainella, 608 A.2d at 1143 (citing Faerber, 568 A.2d at 329 (citation omitted)). For these reasons, this Court grants Plaintiff's Motion to Amend as to the following Counts: (1) Count IV – Intentional Infliction of Emotional Distress; (2) Count V – Negligent Infliction of Emotional Distress; and (3) Count VI – Libel, Slander and Defamation.

**B**

**Proposed Counts VII and VIII: Spoliation**

Having granted Plaintiff's Motion to Amend as to Counts IV, V, and VI of the proposed Revised First Amended Complaint, the Court now turns to analyze the validity of the proposed Counts for the intentional and negligent destruction of evidence, also known as spoliation. Spoliation is simply "[t]he intentional destruction, mutilation, alteration, or concealment of evidence." Black's Law Dictionary 1409 (7th ed. 1999). '"The doctrine of spoliation provides that 'the deliberate or negligent destruction of relevant evidence by a party to litigation may give rise to an inference that the destroyed evidence was unfavorable to that party.'" Mead v. Papa

Razzi Restaurant, 840 A.2d 1103, 1108 (R.I. 2004) (quoting Tancrelle v. Friendly Ice Cream Corp., 756 A.2d 744, 748 (R.I. 2000)). However, the Rhode Island Supreme Court has yet to recognize spoliation as an independent cause of action. See Malinowski v. Documented Vehicle/Drivers Sys., Inc., 66 Fed. Appx. 216, 222 (1st Cir. 2003) (noting that "[n]either the Rhode Island legislature nor the Rhode Island Supreme Court has yet established or recognized the existence of an independent tort for the spoliation of evidence"). Because spoliation has yet to be recognized as a cause of action in this State, this Court will now offer a brief overview of why such a cause of action should be recognized.

**1**

**History of Spoliation Remedies**

Destruction of evidence has long been a serious problem in our judicial system. The importance of preventing such spoliation is crucial to upholding a number of the judicial system's key goals—most significantly, truth and fairness. See Gumkowski, Protecting the Integrity, 10 Roger Williams U. L. Rev. 795, 798 (2005) (citation omitted). Spoliation is particularly threatening to these goals because "relevant evidence is critical to the search for the truth." Id. at 796. Further exaggerating the threat of spoliation is the fact that it "is truly a nondiscriminatory offense capable of multiple permutations [and] affects the interests of not only parties involved in litigation, but third parties as well." Id. And to make matters worse, some evidence indicates that spoliation is fairly prevalent in our modern judicial system. Id. at 799-800 (citing a survey by Harvard Law Professor Charles R. Nesson concluding "that half of all litigators described problems with spoliation of evidence as 'frequent' or 'regular'" in our system).

The dangers of spoliation, however, are not new. In fact, the first judicial attempt at preventing spoliation of evidence is found in a 1722 case from England. See Armory v. Delamirie, 93 Eng. Rep. 664 (K.B. 1722). In that case, the court used a jury instruction permitting the jury to presume the quality of a jewel that had allegedly been destroyed unless the jeweler could produce the jewel. Id. This remedy "remained the standard used by English and American courts for over one hundred years" when dealing with the spoliation of evidence. See Gumkowski, Protecting the Integrity, 10 Roger Williams U. L. Rev. 795, 799 (2005) (citation omitted). However, while the adverse inference in jury instructions remains a widely used remedy for spoliation of evidence, courts have also imposed sanctions for such conduct. See id. at 803-04.

The policy considerations behind any remedy for the spoliation of evidence are to provide redress to those affected and to deter the spoliation in the first instance. Id. at 804. "The policy of redress . . . encompasses the idea that a prejudiced party ought to be restored to the position they would have occupied had the spoliation not occurred . . . [while] deter[ence] . . . is the punitive rationale that provides the other basis for the remedy." Id. Regardless of the particular rationale behind any given remedy, the overarching purpose of such remedies is to lessen the impact of the destruction. See id.

In Rhode Island, spoliation has been addressed as an evidentiary matter warranting jury instruction[1] containing an adverse inference. See, e.g., Youngsaye v. Sussett, 972 A.2d 146, 150

[1] The relevant model jury instruction states:

> During this trial you have heard testimony that one of the parties destroyed/mutilated evidence. When evidence is destroyed we call it "spoliation" of that evidence. Under certain circumstances the spoliation of evidence may give rise to an adverse inference that the destroyed/mutilated evidence would

(R.I. 2009) (holding that there was "no error in the trial justice's explanation of the law of spoliation"); Mead v. Papa Razzi, 899 A.2d 437, 443 (R.I. 2006) (concluding "that the trial justice's decision to charge the jury with respect to spoliation was appropriate"); Tancrelle, 756 A.2d at 749 (noting that the Court was "satisfied that the jury instruction pertaining to spoliation was appropriate"). Indeed, the Rhode Island Supreme Court first addressed spoliation in 1996. See R.I. Hosp. Trust. Nat'l Bank v. E. Gen. Contractors, Inc., 674 A.2d 1227, 1234 (R.I. 1996). Since that time, it has become well-established that "the deliberate or negligent destruction of

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> have been unfavorable to the position of the party who destroyed/mutilated it.
>
> Spoliation of evidence may be innocent or intentional, or somewhere between the two. It is the unexplained and deliberate destruction/mutilation of relevant evidence that gives rise to an inference that the thing destroyed/mutilated would have been unfavorable to the position of the spoliator. If you find that [party A] destroyed/mutilated [identify evidence at issue] and did so deliberately then you are permitted to infer that the jury's consideration of that evidence would have been unfavorable to [party A]'s position in this case.
>
> In deciding whether the destruction/mutilation of [identify evidence at issue] was deliberate you may consider all of the facts and circumstances which were proved at trial and which are pertinent to that item of evidence. You may consider who destroyed it, how it was destroyed, the legitimacy or lack of legitimacy in the reasons given for its destruction, the timing of the destruction, whether the individual destroying the evidence knew the evidence might be supportive of the opposing party, whether the spoliation was intended to deprive the court of evidence, and any other facts and circumstances which you find to be true. You may also consider the extent to which it has been shown that the spoliated evidence would, indeed, have been unfavorable to [party A]'s position. If the spoliation of the evidence is attributable to carelessness or negligence on the part of the spoliator you may consider whether the carelessness or negligence was so gross as to amount to a deliberate act of spoliation.

R.I. Bar Ass'n Super. Ct. Bench/Bar Comm., Model Civil Jury Instructions for Rhode Island § 402.3 (R.I. Bar Ass'n 2003).

relevant evidence by a party to litigation may give rise to an inference that the destroyed evidence was unfavorable to that party." Tancrelle, 756 A.2d at 748.

As previously discussed, such adverse inferences in jury instructions are the most common remedies against the spoliation of evidence and have been used since the Armory v. Delamirie decision in the year 1722. See Gumkowski, Protecting the Integrity, 10 Roger Williams U. L. Rev. 795, 805 (2005) (citation omitted). Such an inference is justified because "[w]hen a party is once found to be fabricating, or suppressing, documents, the natural, indeed, the inevitable, conclusion is that he has something to conceal, and is conscious of guilt." Warner Barnes & Co. v. Kokosai Kisen Kabushiki Kaisha, 102 F.2d 450, 453 (2d Cir. 1939), modified, 103 F.2d 430 (2d Cir. 1939).

Our Supreme Court has also permitted the imposition of sanctions for the spoliation of evidence. "The force and finality of these civil sanctions vary greatly." Gumkowski, Protecting the Integrity, 10 Roger Williams U. L. Rev. 795, 809 (2005). However, regardless of a sanction's severity, the goal of sanctions for the destruction of evidence is "to deter spoliation and restore the prejudiced party to the same position he or she would have been in absent the destruction of evidence by the opposing party, as well as to shift the burden of an erroneous judgment to the spoliator." Id. (citation omitted).

Among the available civil sanctions are "issue preclusion, dismissal, summary judgment, default judgment, or the exclusion of expert testimony or other evidence." Id. (citation omitted). In determining which sanction to impose, courts have often considered the following factors: "'(1) whether the defendant was prejudiced * * *; (2) whether the prejudice can be cured; (3) the practical importance of the evidence; (4) whether the [despoiler acted] in good faith or bad faith; and (5) the potential for abuse if the evidence is not excluded.'" Farrell v. Connetti Trailer Sales,

Inc., 727 A.2d 183, 187 (R.I. 1999) (quoting Northern Assurance Co. v. Ware, 145 F.R.D. 281, 282-83 (D. Me. 1993) (quotation omitted)). Our Supreme Court has even deemed these factors appropriate for consideration. Id. Yet, while courts balance a number of factors when determining the severity of the sanction to be imposed, the most important two factors are typically: (1) the mental state of the person responsible for the spoliation; and (2) the prejudice or injury faced as a result of the spoliation. Gumkowski, Protecting the Integrity, 10 Roger Williams U. L. Rev. 795, 809-10 (2005) (citing Margaret M. Koesel et al., Spoliation of Evidence: Sanctions and Remedies for Destruction of Evidence in Civil Litigation 33 (2000)). However, courts are unlikely to use the extreme sanctions of dismissal or default judgment "because courts have a strong desire that cases be decided on the merits." Id. at 810.

Sanctions have also developed to prevent non-parties from destroying relevant evidence. For example, attorneys remain subject to sanctions for their action under Rhode Island's Rules of Professional Conduct insofar as spoliation has been directly addressed therein. Specifically, lawyers in this State are prohibited under Rule 3.4(a) from "unlawfully obstruct[ing] another party's access to evidence or unlawfully alter[ing], destroy[ing] or conceal[ing] a document or other material having potential evidentiary value." Sup. Ct. Art. V R. 3.4(a). This is based on the model rule and many states have adopted similar provisions, subjecting lawyers found to be in violation of the rule "to fines, suspension, or liability for malpractice." Gumkowski, Protecting the Integrity, 10 Roger Williams U. L. Rev. 795, 811-12 (2005) (citation omitted). But, despite the wide range of severity encompassed by existing remedies through jury instructions or sanctions, those traditional remedies remain inadequate to achieve the ultimate goals of redress and deterrence.

**2**

**Inadequacy of Traditional Remedies**

The inadequacies inherent in the traditional remedies for spoliation are two-fold. First, sanctions are limited by the very rules that permit their imposition. Second, courts are limited by jurisdictional requirements from imposing any remedy against a non-party.[2] As these inadequacies are not easily rectified within the confines of the existing remedies, an independent cause of action for the spoliation of evidence is needed in Rhode Island to accomplish the ultimate goals of redress and deterrence.

To elaborate as to the first issue, many of the sanctions mentioned in the preceding section of this memorandum—such as default judgment, summary judgment, and others—arise from the Rhode Island Superior Court Rules of Civil Procedure. Thus, the imposition of sanctions under the Rules of Civil Procedure is inherently limited to the extent provided for therein. For example, Rule 37(b) provides for the imposition of sanctions during discovery for failure to comply with a court order. See Super. R. Civ. P. 37(b). However, this rule limits the court's ability to impose sanctions, insofar as it applies only where a party to the litigation violates a direct order of the court. See id.; see also Gumkowski, Protecting the Integrity, 10 Roger Williams U. L. Rev. 795, 814 (2005) (noting that "a party only can be sanctioned for direct violations of a court order or a discovery request") (quotation omitted). As a result of these limitations, parties could actually be encouraged to destroy evidence prior to litigation or

[2] This, of course, does not apply to attorneys insofar as they may be sanctioned under Rule 3.4 of the Rhode Island Rules of Professional Conduct, which prohibits lawyers from "unlawfully obstruct[ing] another party's access to evidence or unlawfully alter[ing], destroy[ing] or conceal[ing] a document or other material having potential evidentiary value." Sup. Ct. Art. V R. 3.4(a).

discovery so as not to be subject to these sanctions. Gumkowski, Protecting the Integrity, 10 Roger Williams U. L. Rev. 795, 815 (2005) (citation omitted).

Even without the restrictions contained in the various Rules of Civil Procedure, this Court is further limited by jurisdictional requirements, insofar as it can only "hold a party responsible for spoliation if that party is before the court." Id. at 816 (citing Jay E. Rivlin, Note, Recognizing an Independent Tort Action Will Spoil a Spoliator's Splendor, 26 Hofstra L. Rev. 1003, 1016 (1998)). Thus, if a non-party is responsible for the spoliation, the court is unable to hold that party directly responsible because "all the traditional remedies must be connected to the underlying lawsuit." Id. This limitation is significant because it prohibits courts in this State from according adequate relief to those harmed by the destruction of relevant evidence.

Based on the shortcomings of the traditional remedies for spoliation where "[t]he risk of being caught is low, and even if caught, the penalties are so lenient that compared to the significant potential for large benefits from spoliating evidence, . . . the [spoliator] will opt for the withholding or destruction of evidence." Gumkowski, Protecting the Integrity, 10 Roger Williams U. L. Rev. 795, 815 (2005) (citation omitted). For this reason, each of the inadequacies inherent in the traditional remedies for spoliation weighs in favor of recognizing independent causes of action for the intentional or negligent spoliation of evidence in this State.

To date, every state recognizes the dangers of spoliation; however, only slightly more than one-quarter of the states have recognized an independent cause of action for spoliation,[3] while the others[4] continue to "deal with spoliation of evidence as a rule of evidence rather than a

[3] As of December 1, 2008, fifteen jurisdictions across the country had recognized spoliation of evidence as an independent cause of action. 40 Causes of Action 2d, Causes of Action for Spoliation of Evidence § 11 (2009).

[4] As of December 1, 2008, nineteen other jurisdictions had expressly rejected an independent cause of action for spoliation of evidence, either in whole or in part. Id.

substantive claim or defense." 40 Causes of Action 2d, Causes of Action for Spoliation of Evidence § 4 (2009). However, spoliation was first recognized as an independent cause of action in the mid-1980s. Id. § 7 (citing Smith v. Super. Ct., 151 Cal. App. 3d 491, 198 Cal. Rptr. 829 (2d Dist. 1984), overruled by Cedars-Sinai Med. Ctr. v. Super. Ct., 954 P.2d 511 (Cal. 1998)). Since that time, the reasoning set forth in the seminal decision from California "has been relied upon by a number of subsequent courts in fashioning the independent tort." Id. As such, it is clear that the scope of available remedies for spoliation is slowly expanding to address the inadequacies inherent in the traditional remedies for spoliation.

**3.**

**Failure to State a Claim**

In the preceding sections of this Decision, this Court has noted the substantial public policy interests that weigh in favor of recognizing a cause of action for spoliation in this State. Furthermore, in ruling on the instant motion, this Court reiterates that amendment of pleadings under Rule 15 requires that "leave shall be freely given when justice so requires." Super. R. Civ. P. 15(a). However, as previously stated, a motion to amend may be denied when the newly proposed claim fails to state a claim upon which relief can be granted. See Mainella, 608 A.2d at 1143 (citing Faerber, 568 A.2d at 329 (citation omitted)) ("Reasons for denying leave to amend include undue prejudice, delay, bad faith, and failure to state a claim."). Here, there is no recognized cause of action in Rhode Island for the intentional or negligent destruction of evidence. See Malinowski, 66 Fed. Appx. at 222 (noting that "[n]either the Rhode Island legislature nor the Rhode Island Supreme Court has yet established or recognized the existence of an independent tort for the spoliation of evidence").

It is true that "[n]ew and nameless torts are being recognized constantly, and the progress of the common law is marked by many cases of first impression." Smith, 198 Cal. Rptr. at 832 (quoting William L. Prosser, Handbook of the Law of Torts § 1 at 3 (4th ed. 1971)). However, our Supreme Court has instructed that "the creation of new causes of action should be left to the Legislature." Ferreira v. Strack, 652 A.2d 965, 968 (R.I. 1995) (citations omitted). As such, it is not the role of this Court to create new causes of action in this State for the destruction of evidence, despite the strong public policy considerations that weigh in favor of creating such causes of action.

Having determined that Plaintiff's motion must be denied as to the two Counts alleging the intentional or negligent destruction of evidence, this Court need go no further in discussing those two Counts. However, this Court notes that—even if the proposed spoliation Counts did state a valid cause of action—this Court would nonetheless be required to deny the instant motion as to those two Counts for failure to state a claim upon which relief can be granted.

First, even if spoliation was a recognized cause of action in this State, Plaintiff's Revised First Amended Complaint nonetheless fails to state a claim as to the spoliation Counts. If faced with a subsequent dispositive motion as to the spoliation Counts, this Court would "examine[] the allegations contained in the plaintiff's complaint, assume[] them to be true, and view[] them in the light most favorable to the plaintiff." Palazzo v. Alves, 944 A.2d 144, 149 (R.I. 2008) (citing Ellis v. R.I. Pub. Transit Auth., 586 A.2d 1055, 1057 (R.I. 1991)). In determining whether such allegations state a claim, this Court need "look no further than the complaint." R.I. Affiliate, ACLU, Inc. v. Bernasconi, 557 A.2d 1232, 1232 (R.I. 1989) (citation omitted). Notice pleading requires only that a pleading setting forth a claim for relief contain "a short and plain statement of the claim showing that the pleader is entitled to relief" and "a demand for judgment

for the relief the pleader seeks." See Super. R. Civ. P. 8(a). A complaint need not state all the possible facts or legal theories to be proven at trial. Arruda v. Sears, Roebuck & Co., 273 B.R. 332, 339-40 (D.R.I. 2002); Hyatt v. Village House Convalescent Home, Inc., 880 A.2d 821, 824 (R.I. 2005). Generally, "a generalized statement of facts is adequate so long as it gives the defendant sufficient notice to file a responsive pleading." Langadinos v. American Airlines, Inc., 199 F.3d 68, 72-73 (1st Cir. 2000) (citing Conley v. Gibson, 355 U.S. 41, 47-48, 78 S. Ct. 99, 102-03 (1957)).

In this matter, the proposed Counts VII and VIII clearly fail to state a claim upon which relief can be granted. A review of the Revised First Amended Complaint reveals that there is not a single factual allegation as to the destruction of evidence. As such, there are no allegations for the Court to view "in the light most favorable to the plaintiff." Palazzo, 944 A.2d at 149 (citation omitted). Furthermore, the total lack of factual allegations as to the destruction of evidence does not "give[] the defendant sufficient notice to file a responsive pleading." Langadinos, 199 F.3d at 72-73 (citing Conley, 355 U.S. at 47-48, 78 S. Ct. at 102-03). Thus, Plaintiff's proposed spoliation Counts contained in the Revised First Amended Complaint fail to state a claim upon which relief can be granted. As previously discussed, a motion to amend may be denied when the newly proposed claim fails to state a claim. See Mainella, 608 A.2d at 1143 (citing Faerber, 568 A.2d at 329 (citation omitted)). Therefore, even if spoliation was recognized as a valid cause of action in Rhode Island, the Revised First Amended Complaint would nonetheless fail to state a claim for spoliation based on a complete lack of factual allegations to support those claims. As such, Plaintiff's proposed spoliation claims fail to state a claim upon which relief can be granted and, therefore, this Court denies Plaintiff's Motion to Amend as to

those two Counts: (1) Count VII – Intentional Destruction of Evidence; and (2) Count VIII – Negligent Destruction of Evidence.

## IV

## Conclusion

For the reasons set forth in this Decision, this Court grants Plaintiff's Motion to Amend his Complaint as to the following proposed Counts: (1) Count IV – Intentional Infliction of Emotional Distress; (2) Count V – Negligent Infliction of Emotional Distress; (3) Count VI – Libel, Slander and Defamation; and (4) Count IX – For Punitive Damages.

This Court finds that the remaining two Counts—Counts VII and VIII, alleging the intentional and negligent destruction of evidence—fail to state a claim upon which relief can be granted. For this reason, this Court denies Plaintiff's Motion to Amend his Complaint as to those two Counts.

**RHODE ISLAND SUPERIOR COURT**
***Decision Addendum Sheet***

**TITLE OF CASE:** James Laurent v. St. Michael's Country Day School

**CASE NO:** WC-2009-0545

**COURT:** Washington Superior Court

**DATE DECISION FILED:** April 30, 2013

**JUSTICE/MAGISTRATE:** Stern, J.

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