

# The 4 Top Philadelphia Commerce Court Opinions Of 2023

By **Jonathan Hugg and Sarah Boutros** (December 18, 2023)

As the gavel falls on 2023, it is time to take stock of this year's opinions from the commerce court program in the Philadelphia County Court of Common Pleas.

For more than 20 years, the three-judge commerce court has served as Philadelphia's specialized, problem-solving court for business. Part of the court's mandate is to publish a consistent body of commercial law upon which business lawyers and their clients can rely in decision making.

This year, the court has published 24 opinions. Here are four of the most notable.

## **Ambox v. Pocklington**

Philadelphia's commerce court continues to frown upon "litigation about litigation," as shown by the court's April decision in Ambox Operations Co. LLC v. Pocklington.

William Pocklington sued Christian Randazzo, the principal of Ambox, for fraud over an investment. Ambox filed a retaliatory lawsuit using facts and language Pocklington had averred against Randazzo. Ambox alleged that Pocklington's statements in his complaint were themselves false and tortious.

Judge Ramy I. Djerassi dismissed Ambox's complaint on judicial privilege grounds but also allowed Ambox to amend its claim for tortious interference with prospective economic advantage. Ambox declined, contending that there was no judicial privilege because the alleged false statements and tortious conduct by Pocklington predated his complaint against Randazzo.

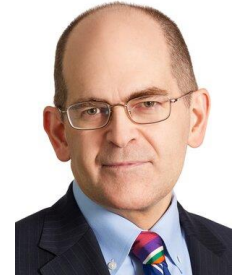
Judge Djerassi noted that traditionally judicial privilege applied to libel and slander claims. Emphasizing the broad scope of judicial privilege — and its grant of absolute immunity even to false or malicious communications made in the regular course of litigation — Judge Djerassi proceeded to extend judicial privilege protection to the alleged tortious interference by Pocklington in his pleading.

Because Pocklington's allegations in his pleading against Randazzo were privileged, Ambox could not use them as the basis for a tort claim against Pocklington. Absent those allegations, Ambox did not state a cause of action, and Judge Djerassi dismissed.

In sum, judicial privilege bars a claim that allegations in a pleading are tortious and actionable. More generally, in Ambox, the commerce court evidenced an ongoing reluctance to entertain alleged damage claims arising from the conduct of cases it oversees.

## **LL Capital Partners v. Tambur**

The commerce court's July ruling in LL Capital Partners I LP v. Tambur shows that the court



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remains skeptical of open-ended stay requests, even if occasioned by a possible related criminal action.

Robert Tambur and other defendants sought a stay after learning that the U.S. attorney's office and the FBI served a subpoena on one of the plaintiffs — not Tambur — and interviewed the plaintiff's CEO, Troy Cavallaro.

Tambur was concerned about the government indicting him because of the fraud and other wrongdoing alleged by the plaintiffs, and about discovery in the civil case possibly provoking the government. However, the government had not subpoenaed or interviewed Tambur.

Tambur also proffered no evidence about the specific subject matter of any alleged investigation, how long the alleged investigation might take, or whether indictments might result. Nevertheless, Tambur sought an indefinite stay.

Judge Nina W. Padilla — who recently became president judge of the Court of Common Pleas — balanced the following:

- The overlap between the civil and criminal cases;
- The status of any criminal case, including the indictment of Tambur;
- The plaintiff's interests in expeditious civil proceedings versus any prejudice caused to the plaintiff by the requested delay;
- The burden on Tambur;
- The interests of the court; and
- The public interest.

Judge Padilla concluded a stay was not warranted because:

- There was no actual criminal case to measure any overlap with the civil case;
- Any alleged criminal case was not advanced, and it was possible that no indictments would result;
- Discovery disputes had already prejudiced the plaintiff by significantly delaying the case;
- The minimal burden on Tambur, who had already invoked his right not to incriminate himself;
- The lack of any showing that Tambur could not defend himself in the civil case; and
- The court and the public's interest in the prompt adjudication of the civil case, unless it interfered with any actual criminal case.

However, Judge Padilla was open to revisiting the situation should the circumstances change. The broader lesson of Tambur is that only external circumstances directly causing tangible and not speculative risk to a litigant will justify a stay in the Commerce Court.

### **Apex Realty v. Elverta Washington Square**

The court's Apex Realty LLC v. Elverta Washington Square LLC ruling is a valuable case because it addresses the seemingly esoteric law of sheriff's sales, about which there is little appellate authority.

The case also addresses the vexing situation of a junior creditor post-sheriff's sale, when the junior creditor seems to have little recourse against the elimination of its lien by a senior creditor.

While the junior creditor in this case did not prevail, the decision nevertheless suggests that a junior creditor has standing collaterally to challenge the validity of the senior creditor's position.

Apex's predecessor obtained a judgment against Elverta. Elverta never challenged the judgment. Apex obtained a writ of execution for the sheriff's sale of Elverta's real estate and successful credit bid.

Therefore, there was nothing to distribute to Arezzo Sky Capital LTD, a junior creditor with a mortgage on the property. However, Arezzo petitioned to set aside the sale on the ground that its mortgage allegedly had priority because of flaws in the loan documents underlying Apex's judgment.

Although typically the delivery of a sheriff's deed cuts off any attacks on a sale, Judge Djerassi noted the equitable nature of a petition to set aside a sheriff's sale, and that a court could undo a sheriff's sale even after delivery of the deed when there is fraud or no authority for the sale. However, because Elverta had not questioned the judgment against it, the court had to presume that it was not fraudulent.

Moreover, after a detailed review of the validity of the loan documents, Judge Djerassi rejected Arezzo's contention that there was no authority for Apex's judgment. Judge Djerassi also deemed the sale price to be reasonable because there was no evidence of irregularities in the sale process or that the price was inadequate.

Despite the result, the lesson of Apex Realty is that, while junior creditors may face a heavy burden to obtain relief in the aftermath of a sheriff's sale, a court will still at least entertain their attacks on a senior creditor's power to execute and wipe out junior liens.

### **Skw-B Acquisitions v. Stobba Residential**

The court's August decision in Skw-B Acquisitions Seller C LLC v. Stobba Residential Associates LP is the rare case where Philadelphia's commerce court imposed a receiver with broad powers to manage and de facto take over property.

Loan documents required the defendant commercial borrowers to deposit rent payments into a bank account for the benefit of the lender. However, the borrowers defaulted by failing to make monthly payments, and then their loan matured. Thereafter, the borrowers instructed their tenants to direct their rent payments to the borrower's operating account.

The lender sued and filed an emergency petition for the appointment of a receiver because of the loss of two tenants and the declining condition of the property that was the collateral for the loan. The court refused, but the Superior Court of Pennsylvania vacated.

On remand, the lender renewed its petition and also alleged that the borrowers had misappropriated rent and mismanaged the property. This time, the court granted the

petition.

Judge Paula Patrick observed that in Pennsylvania, there is a stringent, cautious standard for the appointment of a receiver of a solvent business. The test is similar to that for injunctive relief. The court must be absolutely certain that a receiver is necessary to protect creditors.

The appointment of a receiver cannot cause more harm than good, and there cannot be another less drastic remedy, such as damages. Judge Patrick emphasized that the borrowers were diverting funds to themselves, in violation of the loan documents.

Furthermore, commercial vacancies at the property were increasing, much of the first floor of the property was empty, and several remaining commercial tenants had ceased to pay rent. Conditions at the property were deteriorating.

The borrowers were slow to find replacement tenants, and they were behind on their taxes. A receiver was necessary to prevent further waste, and in particular, to stop the misappropriation of funds. Judge Patrick included with her decision a comprehensive order that is a model for the scope of the authority and duties of a receiver for distressed property.

The court's decision in Skw-B Acquisitions could become a framework for how the commerce court addresses disputes between commercial lenders and borrowers over the disposition of real estate collateral, which have grown increasingly common with the ongoing challenges in the commercial office and retail markets.

## **Conclusion**

The commerce court will start 2024 with Judge Abbe Fletman as its new supervising judge.

New leadership for the commerce program presents an opportunity for the court, after more than two decades, to refresh and update its rules and procedures, to keep up with procedural and case management developments in other jurisdictions. This should include a study of how other, nearby business courts, including those in New Jersey and Delaware with strong economic links to southeastern Pennsylvania, facilitate commercial litigation.

For instance, the commerce court could consider initial disclosure rules, as in New Jersey's complex business litigation program, or electronic discovery protocols, as in the Delaware Superior Court's Complex Commercial Litigation Division.

There may also be a role for commerce court judge pro tems to play in the arbitration of smaller commercial claims. By taking a hard look at how better to serve and respond to the dispute resolution needs of the business community, the commerce court can remain a premiere forum for commercial litigation both locally and in the region.

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