

IN THE COURT OF COMMONWEALTH OF PENNSYLVANIA  
COURT OF COMMON PLEAS OF PHILADELPHIA  
FIRST JUDICIAL DISTRICT

CITY OF PHILADELPHIA	:	PHILADELPHIA COUNTY
	:	COURT OF COMMON PLEAS
Plaintiff	:	
	:	No. 230702394
v.	:	
	:	
TANNER OPERATIONS, ET AL.	:	
	:	
Defendants	:	
	:	
	:	
	:	

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**ORDER**

**AND NOW**, this \_\_\_\_ day of \_\_\_\_\_, 2024, upon consideration of the Joint Motion of Defendants, Frank’s Gun Shop & Shooting Range LLC, and Mad Minute Enterprises LLC d/b/a Delia’s Gun Shop to Amend the Court’s March 19, 2024 orders overruling their preliminary objections pursuant to Pa.R.A.P. 1311 and any response in opposition thereto, it is hereby **ORDERED** that the motion is **GRANTED**, and the Orders of the Court dated March 19, 2024 which denied the preliminary objections of defendants, Frank’s Gun Shop & Shooting Range LLC, and Mad Minute Enterprises LLC d/b/a Delia’s Gun Shop, are respectively amended to include the following statement:

“This court is of the opinion that this order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the matter, it shall so state in such order.”

BY THE COURT:

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, J.



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CITY OF PHILADELPHIA	:	PHILADELPHIA COUNTY
	:	COURT OF COMMON PLEAS
Plaintiff	:	
	:	No. 230702394
v.	:	
	:	
TANNER OPERATIONS, ET AL.	:	
	:	
Defendants	:	
	:	
	:	

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**MOTION TO AMEND ORDER TO CERTIFY FOR INTERLOCUTORY APPEAL**

Under 42 Pa.C.S.A. § 702(b), defendants, Frank’s Gun Shop & Shooting Range LLC and Mad Minute Enterprises, LLC d/b/a Delia’s Gun Shop move for this Court to amend interlocutory orders dated March 19, 2024, which denied moving defendants’ respective preliminary objections, and aver as follows:

1. On or about November 21, 2023, defendant Frank's Gun Shop & Shooting Range LLC ("Frank's") filed preliminary objections to the amended complaint of plaintiff, city of Philadelphia (the "City").

2. Frank's preliminary objections, among other things, sought dismissal of the amended complaint in its entirety because the Pennsylvania Uniform Firearms Act, 18 Pa.C.S.A. § 6101, et. seq. (the "UFA") barred the City's claims.

3. On or about November 21, 2023, defendant Mad Minute Enterprises, LLC d/b/a Delia's Gun Shop ("Delia's") also filed preliminary objection to the City's amended complaint claiming that the City's claims were barred under the UFA.

4. On March 19, 2024, the Court entered Order denying defendants' respective preliminary objections. Copies of these orders are attached at Exhibit "A" and "B," respectively.

5. An order overruling preliminary objections and directing an answer is generally interlocutory and unappealable as of right. *Chase Manhattan Mortg. Corp. v. Hodes*, 784 A.2d 144, 145 (Pa. Super. Ct. 2001).

6. An interlocutory order may be appealed by permission granted by the appellate court. Pa.R.A.P. 1311.

7. Under Pa.R.A.P. 1311(a), before seeking leave with the appellate court for permission to file an appeal of an interlocutory order by permission, a party must first request that the trial court amend the interlocutory order in question to include the statement specified in 42 Pa.C.S.A. § 702(b).

8. Under 42 Pa.C.S.A. § 702(b) if trial court believes there is “a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the matter, it shall so state in such order.”

9. The orders here do not currently include this statement.

10. There exists a controlling question of law to which a substantial ground of difference of opinion exists regarding the application of the UFA to this case.

11. The ultimate determination of whether the UFA applies to this case will clearly advance the ultimate termination of the matter because if the UFA applies the City’s claim must be dismissed.

12. Moreover, defendants would be prejudiced by not having the appellate court review the issue immediately.

13. Defendants believe that under the UFA the City cannot maintain its suit.

14. Without an immediate appellate review, defendants will have to fully defend against a lawsuit that the UFA was designed to protect against and they would expend considerable monetary resources in the process.

15. Therefore, they lose any protection the UFA was designed to afford them.

WHEREFORE, defendants Frank’s Gun Shop & Shooting Range LLC and Mad Minute Enterprises, LLC d/b/a Delia’s Gun Shop, respectfully request that the Court enter an Order amending its Orders dated March 19, 2024, which denied defendants’

preliminary objections to the amended complaint, to include the statement contained in 42 Pa.C.S.A. § 702(b).

Respectfully submitted,

Dated: April 11, 2024

/s/Walter S. Zimolong  
WALTER S. ZIMOLONG, ESQUIRE  
JAMES J. FITZPATRICK, ESQUIRE

*Attorneys for Defendant,*  
Frank's Gun Shop  
& Shooting Range, LLC

GOLDSTEIN LAW PARTNERS, LLC

Dated: April 11, 2024

/s/ Jonathan S. Goldstein  
BRITAIN R. HENRY, ESQUIRE  
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Shop*

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CITY OF PHILADELPHIA	:	PHILADELPHIA COUNTY
	:	COURT OF COMMON PLEAS
Plaintiff	:	
	:	No. 230702394
v.	:	
	:	
TANNER OPERATIONS, ET AL.	:	
	:	
Defendants	:	
	:	
	:	

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**MEMORANDUM OF LAW IN SUPPORT OF MOTION TO AMEND ORDER TO  
CERTIFY FOR INTERLOCUTORY APPEAL**

**I. MATTER BEFORE THE COURT**

Motion to Amend the Court’s March 19, 2024 Order which denied the preliminary objections of defendants Frank’s Gun Shop & Shooting Range LLC and Mad Minute



Enterprises, LLC d/b/a Delia's Gun Shop to include the statement contained in 42 Pa.C.S.A. 702(b).

## II. STATEMENT OF QUESTION INVOLVED

Should this Court amend its interlocutory orders dated March 19, 2024 to include a statement under 42 Pa.C.S.A. § 702(b) that the Court is of the opinion that the order in question “a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the matter?”

*Suggested Answer: Yes.*

## III. FACTUAL BACKGROUND

On or about November 21, 2023, defendant Frank's Gun Shop & Shooting Range LLC (“Frank's”) filed preliminary objections to the amended complaint of plaintiff, city of Philadelphia (the “City”). Frank's preliminary objections, among other things, sought dismissal of the amended complaint in its entirety because the Pennsylvania Uniform Firearms Act, 18 Pa.C.S.A. § 6101, et. seq. (the “UFA”) barred the City's claims. In support of its arguments under the UFA, Frank's preliminary objections relied upon the holdings of the federal district court in *City of Philadelphia v. Beretta U.S.A., Corp.*, 126 F. Supp. 2d 882 (E.D. Pa. 2000) and the Third Circuit in *City of Philadelphia v. Beretta U.S.A. Corp.*, 277 F.3d 415, 422 (3d Cir. 2002)

On or about November 21, 2023, defendant Mad Minute Enterprises, LLC d/b/a Delia's Gun Shop (“Delia's”) also filed preliminary objection to the City's

amended complaint claiming that the City's claims were barred under the UFA. De-  
lia's likewise relied upon the district court's and Third Circuit's holding in *Beretta*.

The City responded to those preliminary objections and challenged the appli-  
cation of the UFA to this case and the import of the *Beretta* decisions arguing that  
they were distinguishable.

On March 19, 2024, the Court entered Order denying defendants' respective  
preliminary objections. Copies of these orders are attached at Exhibit "A" and "B,"  
respectively. This Court believed that the Third Circuit's *Beretta* decision made the  
UFA inapplicable to the facts of this case. *See* March 19, 2024 Orders at fn. 1.

#### IV. ARGUMENT

An order overruling preliminary objections and directing an answer is gener-  
ally interlocutory and unappealable as of right. *Chase Manhattan Mortg. Corp. v.*  
*Hodes*, 784 A.2d 144, 145 (Pa. Super. Ct. 2001). Therefore, a party seeking to appeal  
an interlocutory order must obtain permission from the appellate court. Pa.R.A.P.  
1311. Under Pa.R.A.P. 1311(a), before seeking leave with the appellate court for per-  
mission to file an appeal of an interlocutory order by permission, a party must first  
request that the trial court amend the interlocutory order in question to include the  
statement specified in 42 Pa.C.S.A. § 702(b). Under 42 Pa.C.S.A. § 702(b) if trial court  
believes there is "a controlling question of law as to which there is substantial ground  
for difference of opinion and that an immediate appeal from the order may materially  
advance the ultimate termination of the matter, it shall so state in such order." Here,  
the Court's March 19, 2024 Orders do not currently include this statement.

There is no doubt that here there exists a controlling question of law to which a substantial ground of difference of opinion exists regarding the application of the UFA to this case and the holding of the district court and Third Circuit in *Berretta*. The ultimate determination of whether the UFA applies to this case will clearly advance the ultimate termination of the matter because if the UFA applies the City's claim must be dismissed. Moreover, defendants would be prejudiced by not having the appellate court review the issue immediately. Defendants believe that under the UFA the City cannot maintain its suit. Without an immediate appellate review, defendants will have to fully defend against a lawsuit that the UFA was designed to protect against and they would expend considerable monetary resources in the process. Therefore, they lose any protection the UFA was designed to afford them.

## V. CONCLUSION

Based on the foregoing, defendants Frank's Gun Shop & Shooting Range LLC and Mad Minute Enterprises, LLC d/b/a Delia's Gun Shop, respectfully request that the Court enter an Order amending its Orders dated March 19, 2024, which denied defendants' preliminary objections to the amended complaint, to include the statement contained in 42 Pa.C.S.A. § 702(b).

Dated: April 11, 2024

Respectfully submitted,

/s/Walter S. Zimolong  
WALTER S. ZIMOLONG, ESQUIRE  
JAMES J. FITZPATRICK, ESQUIRE

*Attorneys for Defendant,*  
Frank's Gun Shop  
& Shooting Range, LLC

GOLDSTEIN LAW PARTNERS, LLC

Dated: April 11, 2024

/s/ Jonathan S. Goldstein  
BRITAIN R. HENRY, ESQUIRE  
JONATHAN S. GOLDSTEIN, ESQUIRE

*Attorneys for Defendants Mad Minute  
Enterprises, LLC d/b/a Delia's Gun  
Shop*



## CERTIFICATE OF SERVICE

I, Walter S. Zimolong, hereby certify that on the date set forth below, in accordance with Pa.R.Civ.P. 205.4(g)(1)(ii), the foregoing was electronically filed with the Philadelphia County Court of Common Pleas electronic filing system website and is available for review on the Philadelphia County Court of Common Pleas electronic filing system's website, which filing constitutes proper service upon counsel of record.

Dated: April 11, 2024

/s/ Walter S. Zimolong

CITY OF PHILADELPHIA, a municipal corporation,  
1515 Arch Street 15<sup>th</sup> Floor  
Philadelphia, PA 19102,

*Plaintiff,*

v.

WRT MANAGEMENT, INC. f/k/a  
TANNER'S SPORT CENTER INC.,  
2660 Dark Hollow Road,  
Jamison, PA 18929,

FRANK'S GUN SHOP & SHOOTING  
RANGE LLC,  
4730 Blakiston Street  
Philadelphia, PA 19136,

MAD MINUTE ENTERPRISES, LLC d/b/a  
DELIA'S GUN SHOP, and DELIA'S GUN  
SHOP, INC.  
6104 Torresdale Avenue  
Philadelphia, PA 19135,

*Defendants.*

COURT OF COMMON PLEAS  
PHILADELPHIA COUNTY

Civil Action No. 230702394

CIVIL DIVISION

230702394-City Of Philadelphia Vs Tanner Operations, Llc Etc



**ORDER**

AND NOW this 19<sup>th</sup> day of March, 2024, upon consideration of the Preliminary Objections to the Amended Complaint filed by Defendant Frank's Gun Shop & Shooting Range LLC ("Frank's") (Control No. 23114738), and Plaintiff's response thereto, it is hereby ORDERED that the Preliminary Objections are **OVERRULED**. <sup>1.</sup>

BY THE COURT:

*Christopher L. Haurin*

*1. Cf. City of Philadelphia v. Beretta USA Corp.,  
277 F.3d 415, 419 (3d Cir. 2002) (no claim  
gun manufacturers violated laws regulating sale and  
distribution of firearms).*

, J.

PLAINTIFF'S  
EXHIBIT

**A**

CITY OF PHILADELPHIA, a municipal corporation,  
1515 Arch Street 15<sup>th</sup> Floor  
Philadelphia, PA 19102,

*Plaintiff,*

v.

WRT MANAGEMENT, INC. f/k/a  
TANNER'S SPORT CENTER INC.,  
2660 Dark Hollow Road,  
Jamison, PA 18929,

FRANK'S GUN SHOP & SHOOTING  
RANGE LLC,  
4730 Blakiston Street  
Philadelphia, PA 19136,

MAD MINUTE ENTERPRISES, LLC d/b/a  
DELIA'S GUN SHOP, and DELIA'S GUN  
SHOP, INC.  
6104 Torresdale Avenue  
Philadelphia, PA 19135,

*Defendants.*

COURT OF COMMON PLEAS  
PHILADELPHIA COUNTY

Civil Action No. 230702394

CIVIL DIVISION

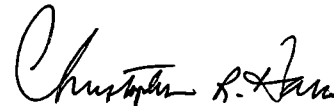
230702394-City Of Philadelphia Vs Tanner Operations, Llc Eta



**ORDER**

AND NOW this 19<sup>th</sup> day of March, 2024, upon consideration of the Preliminary Objections to the Amended Complaint filed by Defendants Mad Minute Enterprises, LLC, d/b/a Delia's Gun Shop and Delia's Gun Shop, Inc. (collectively, "Delia's") (Control No. 23114838), and Plaintiff's response thereto, it is hereby ORDERED that the Preliminary Objections are **OVERRULED**.<sup>1</sup>

BY THE COURT:



*1. Cf. City of Philadelphia v. Beretta USA Corp.,  
277 F.3d 415, 419 (3d Cir. 2002) (no claim gun  
manufacturers violated laws regulating sale and distribution of firearms)*

PLAINTIFF'S  
EXHIBIT

**B**