
CITY OF PHILADELPHIA, a municipal corporation,
1515 Arch Street 15th 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

ORDER

AND NOW this _____ day of _____, 2024, upon consideration of the 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 to Certify for Interlocutory Appeal, and Plaintiff's response in opposition thereto, it is hereby **ORDERED** that the motion is **DENIED**.

BY THE COURT:

, J.
Case ID: 230702394
Control No.: 24042688

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**PLAINTIFF'S RESPONSE TO DEFENDANT WRT MANAGEMENT, INC.'S
PRELIMINARY OBJECTIONS TO THE AMENDED COMPLAINT**

Plaintiff City of Philadelphia (the "City") hereby responds to Defendant Frank's Gun Shop & Shooting Range LLC ("Frank's") and Mad Minute Enterprises, LLC d/b/a Delia's Gun Shop ("Delia's") (collectively, "Defendants") Motion to Amend Order to Certify for Interlocutory Appeal.

1. Admitted.
2. Admitted in part; Frank's sought dismissal under Pennsylvania Uniform Firearms Act, 18 Pa.C.S.A. § 6101, et. seq. (the "UFA"). The City denies that the UFA bars the City's

claims. To the extent that this paragraph characterizes a written document, the characterization is denied, and the written document speaks for itself.

3. Admitted.

4. Admitted.

5. Denied as a conclusion of law to which no response is required. To the extent that a response is deemed required, the allegations are admitted.

6. Denied as a conclusion of law to which no response is required. To the extent that a response is deemed required, the allegations are admitted.

7. Denied as a conclusion of law to which no response is required. To the extent that a response is deemed required, the allegations are admitted.

8. Denied as a conclusion of law to which no response is required. To the extent that a response is deemed required, the allegations are admitted.

9. Admitted.

10. Denied.

11. Denied.

12. Denied.

13. The City is without sufficient information to admit or deny the allegations in this paragraph regarding Defendants' belief. To the extent a response is required, this allegation is denied.

14. Denied.

15. Denied.

[Unnumbered prayer for relief] Denied.

Dated: April 26, 2024

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CIVIL DIVISION

PLAINTIFF'S OPPOSITION TO DEFENDANTS FRANK'S GUN SHOP & SHOOTING RANGE LLC AND MAD MINUTE ENTERPRISES, LLC D/B/A DELIA'S GUN SHOP'S MOTION TO AMEND ORDER TO CERTIFY FOR INTERLOCUTORY APPEAL

I. MATTER BEFORE THE COURT

Before the Court is a motion to amend to certify for interlocutory appeal the Court's March 19, 2024 orders overruling the preliminary objections filed by Defendants Frank's Gun Shop & Shooting Range LLC ("Frank's") and Mad Minute Enterprises, LLC d/b/a Delia's Gun Shop ("Delia's").¹

II. QUESTION INVOLVED

1. Do the Court's March 19, 2024 orders involve 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: No.

¹ The City mirrors Defendants' titling of their motion. For the record, in addition to bringing suit against Mad Minute Enterprises, LLC b/d/a Delia's Gun Shop, the City has also sued Delia's Gun Shop, Inc. *See* Am. Compl.

III. STATEMENT OF FACTS

Plaintiff City of Philadelphia (the “City”) filed the operative complaint in this lawsuit on October 31, 2023. The City’s lawsuit is predicated on Defendants’ alleged facilitation of straw purchases, which are illegal under federal and Commonwealth law. *See, e.g.*, Am. Compl. ¶¶ 23-45. The City brought claims for public nuisance, negligence, negligence per se, negligent entrustment, and a statutory violation of 18 Pa.C.S. § 6111(g)(6), which prohibits licensed firearms dealers like Defendants from knowingly and intentionally selling a firearm in violation of the Uniform Firearms Act (“UFA”) when they have reason to believe that the firearm is intended to be used in the commission of a crime. Am. Compl. ¶¶ 96-145. All of the City’s claims are premised on Defendants’ alleged knowing and intentional illegal sales to straw purchasers in violation of the federal Gun Control Act and the UFA. *Id.* The City has requested injunctive relief, as well as damages.

Both Defendants filed their preliminary objections on November 21, 2023. On March 19, 2024, in identical orders, the Court overruled Defendants’ preliminary objections. The Court distinguished the case that Defendants argued was “identical” to this one, *City of Philadelphia v. Beretta U.S.A., Corp.*, 277 F.3d 415 (3d Cir. 2002) (*Beretta II*). *See, e.g.*, Frank’s Mem. at 13, 17; Delia’s Mem. at 5, 8, 9. The Court noted in its order that, unlike here, *Beretta II* contained no claim that the defendant gun manufacturers violated laws regulating the sale and distribution of firearms. *See* Order Overruling Delia’s Prelim. Obj., docketed at 38-23114838; Order Overruling Frank’s Prelim. Obj, docketed at 38-23114738.

IV. ARGUMENT

Defendants are correct that an order overruling preliminary objections is interlocutory and not appealable as of right. *Chase Manhattan Mortg. Corp. v. Hodes*, 784 A.2d 144, 145 (Pa. Super. Ct. 2001). “An appeal from an interlocutory order will be permitted only if: (1) the order involves

a controlling question of law; (2) there is a substantial ground for difference of opinion regarding the question of law; and (3) an immediate appeal would materially advance the ultimate termination of the matter.” *Commonwealth v. Dennis*, 859 A.2d 1270, 1275 (2004) (citation omitted); *see also* 42 Pa.C.S. § 702(b). “Generally, the lower court must certify that the three prongs are satisfied, and the appellate court then decides whether to accept appellate review.” *Dennis*, 859 A.2d at 1275 (citation omitted). “[T]he interlocutory procedure rule to secure immediate appellate review is not designed to encourage or authorize the wholesale appeal of difficult issues when appellate review would be better served by having all issues that are raised in a trial initially reviewed by the trial court and then subject to one review if necessary.” *Kensey v. Kensey*, 877 A.2d 1284, 1289 (Pa. Super. Ct. 2005) (citation omitted).

Defendants have not met the standard for an interlocutory appeal. Defendants argue that Section 6120 of the UFA preempts the City’s lawsuit, and they claim that a decision in their favor on this point would result in an immediate dismissal. Defs. Mem. at 4. This is incorrect: the application of Section 6120 to this lawsuit is not a controlling question of law, and an immediate appeal here would not materially advance the ultimate termination of the matter. This is because even if Section 6120’s preemption provisions applied, the lawsuit would still continue with the City’s Section 6111(g)(6) claim. 18 Pa.C.S. § 6111(g)(6). That statute provides:

Notwithstanding any act or statute to the contrary, any person, licensed importer, licensed manufacturer or licensed dealer who knowingly and intentionally sells or delivers a firearm in violation of this chapter who has reason to believe that the firearm is intended to be used in the commission of a crime or attempt to commit a crime shall be liable in the amount of the civil judgment for injuries suffered by any person so injured by such crime or attempted crime.

Id. (emphasis added). The “notwithstanding clause” of Section 6111(g)(6) nullifies any impact Section 6120 could have on the City’s claim under this provision. As the Commonwealth Court recently explained, “a clause of this nature . . . constitutes a clear and unequivocal expression by

our General Assembly that the statutory section supersedes and completely displaces any and/or all laws that state, or could be interpreted to state, a contrary proposition of law.” *Abington Heights Sch. Dist. v. Pa. Lab. Rels. Bd.*, 274 A.3d 775, 2022 WL 401191, at *10 (Pa. Commw. Ct. 2022); *see also Pleasant Hills Constr. Co. v. Pub. Auditorium Auth.*, 784 A.2d 1277, 1282 (Pa. 2001) (notwithstanding clause has “straightforward” meaning: “regardless of what any other law provides”). Thus, even if Section 6120 would otherwise preempt the City’s public nuisance, negligence, negligence per se, and negligent entrustment claims (it does not, as explained in the City’s opposition to Defendants’ Preliminary Objections), Section 6111(g)(6) would save them, and this case would continue.

Moreover, the City has also specifically pled a violation of Section 6111(g)(6) as a standalone claim (Count 5). The Court overruled Defendants’ preliminary objections to this claim and determined that it was properly pled, a determination that Defendants neither mention nor contest in their Motion to Amend. This claim provides a further, independent basis for the City’s lawsuit to continue even if Defendants were to prevail on an interlocutory appeal and obtain a ruling that Section 6120 preempts the rest of the City’s claims.

Defendants cannot satisfy the second prong for interlocutory review, either. The Court’s interpretation of Section 6111(g)(6) is consistent with the decision in a case Defendants have called “identical” to this one: *City of Philadelphia v. Beretta U.S.A., Corp. (Beretta I)*, 126 F. Supp. 2d 882 (E.D. Pa. 2000), *aff’d*, (*Beretta II*) 277 F.3d 415 (3d Cir. 2002). The City in that case did not allege that the defendants violated any state or federal laws and did not bring a claim under Section 6111(g)(6), either. Both the District Court and Third Circuit made clear that litigation regarding unlawful firearms sales was not preempted by the UFA, and both decisions are distinguishable from this case on that basis. *See Beretta II*, 277 F.3d at 419 (“Plaintiffs do not contend that

defendants violated any of the federal or state laws specifically regulating the sale and distribution of firearms in the United States and in the Commonwealth of Pennsylvania.”). Thus, there is not substantial ground for difference of opinion regarding this question of law. *Beretta* itself erases any doubt on this point, stating that, even though the court declined to find a general legal duty for gun manufacturers to prevent gun violence, “[t]he City may still sue . . . rogue firearms dealers” who violate the law. *Beretta I*, 126 F. Supp. 2d at 902. That is exactly what the City is doing with this lawsuit.

V. CONCLUSION

For the foregoing reasons, the City respectfully asks that Frank’s and Delia’s Motion to Amend Order to Certify for Interlocutory Appeal be denied.

Respectfully submitted this 26th day of April, 2024.

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CERTIFICATE OF SERVICE

I, Melissa Medina, hereby certify that on the date below, the foregoing response in opposition to Defendants' Motion to Amend and accompanying Memorandum of Law was served on all counsel of record by electronic filing and is available for viewing and downloading.

Dated: April 26, 2024

/s/ Melissa Medina
Melissa Medina
Deputy City Solicitor