

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY  
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
TRIAL DIVISION – CIVIL**

MICHELLE PINGITORE, et al.,	:	MARCH TERM, 2011
	:	
Plaintiffs,	:	NO. 01141
	:	
v.	:	CLASS ACTION
	:	
CITY OF PHILADELPHIA et al.,	:	Control Nos. 11081309, 11081323
	:	11100868
Defendants.	:	

MARIE VIRELLI, et al.,	:	MAY TERM, 2011	
	:		<b>DOCKETED</b>
Plaintiffs,	:	NO. 00387	NOV 14 2011
	:		D. HART
v.	:	CLASS ACTION	CIVIL ADMINISTRATION
	:		
CITY OF PHILADELPHIA et al.,	:		
	:		
Defendants.	:		

**ORDER**

**AND NOW**, this 14<sup>th</sup> day of November, 2011, upon consideration of the Preliminary Objections of the Treasurer of the Commonwealth of Pennsylvania to plaintiffs’ two Amended Complaints, plaintiffs’ Motion for Temporary Restraining Order (“TRO”), the responses thereto, and all other matters of record, and in accord with the Opinion issued simultaneously, it is **ORDERED** that the Preliminary Objections are **OVERRULED** and the Motion for TRO is **DENIED**.

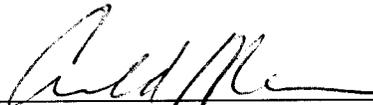
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It is further **ORDERED** that, within thirty (30) days of the date of entry of this Order, defendants shall file their Answers to the Amended Complaints.

**BY THE COURT:**

  
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ARNOLD L. NEW, J.

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY  
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
TRIAL DIVISION – CIVIL**

MICHELLE PINGITORE, et al.,	:	MARCH TERM, 2011
	:	
Plaintiffs,	:	NO. 01141
	:	
v.	:	CLASS ACTION
	:	
CITY OF PHILADELPHIA et al.,	:	Control No. 11061867
	:	
Defendants.	:	

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MARIE VIRELLI, et al.,	:	MAY TERM, 2011
	:	
Plaintiffs,	:	NO. 00387
	:	
v.	:	CLASS ACTION
	:	
CITY OF PHILADELPHIA et al.,	:	
	:	
Defendants.	:	

**OPINION**

Plaintiffs filed these consolidated class actions to recover damages from the Philadelphia Sheriff's Office<sup>1</sup> due to the Sheriff's alleged mishandling of excess monies remaining after foreclosure sales of real property formerly owned by plaintiffs. According to plaintiffs, the Sheriff failed to distribute, and instead concealed and converted, the excess amounts due to plaintiffs.

Based on a reading of the rules and statutes cited by the parties, it appears the following events would normally occur when a foreclosure sale generates proceeds in excess of existing liens and the costs of sale. Approximately 45 days after the sale of the property, the Sheriff

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<sup>1</sup>The City of Philadelphia and two persons who served as Sheriff were also sued. For purposes of this Opinion, they will be referred to, collectively, as the "Sheriff."

distributes the excess proceeds to the former owner of the property.<sup>2</sup> If the former owner fails to cash its distribution check, or otherwise fails to claim the excess funds due to it for five years, then the Sheriff pays the unclaimed amount to the intervening defendant, the Treasurer of the Commonwealth of Pennsylvania,<sup>3</sup> under the Disposition of Abandoned and Unclaimed Property Act (“DUAPA”).<sup>4</sup> The Treasurer then engages in efforts to unite the former owner with the excess money due to him/her.<sup>5</sup>

It appears for some significant portion of the last twenty years, the Sheriff did not timely pay the excess amounts to either the former property owners or the Treasurer. As a result, plaintiffs filed these class actions on behalf of all former property owners to whom the Sheriff did not distribute excess proceeds. In addition, the Treasurer apparently audited the Sheriff, and the Sheriff eventually paid millions of dollars in “abandoned” excess funds to the Treasurer.

The Treasurer claims the funds it received from the Sheriff are the monies allegedly due from the Sheriff to plaintiffs. As a result, the Treasurer has filed Preliminary Objections to plaintiffs’ Amended Complaints seeking to preclude plaintiffs from asserting claims against the Sheriff for the amounts already paid to the Treasurer. In addition, one set of plaintiffs has filed a Motion for Temporary Restraining Order to prevent the Sheriff from paying any additional amounts to the Treasurer.

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<sup>2</sup> See Pa. R. Civ. P. 3136 (“The sheriff shall distribute the proceeds of the sale in accordance with the proposed schedule of distribution” prepared by the sheriff).

<sup>3</sup>The Treasury Department of the Commonwealth of Pennsylvania also intervened. For purposes of this Opinion, they will be referred to, collectively, as the “Treasurer.”

<sup>4</sup> See 72 P.S. §1301.9(1) (Property held by courts and public officers and agencies is presumed abandoned and unclaimed and is subject to the custody and control of the Commonwealth if it is “unclaimed by the owner for more than five (5) years from the date it first became demandable or distributable.” ); 72 P.S. §1301.13 (payment and delivery to Commonwealth).

<sup>5</sup> See *id.* at §1301.12 (notice by Treasurer and claim submission provisions).

Both the Preliminary Objections and the Motion for Injunction ignore the essential fungibility of money and mistakenly view the funds paid to the Treasurer as unique personal property of the putative class members. In this action, the class seeks money damages for wrongful acts allegedly committed by the Sheriff. If the Sheriff committed the wrongs alleged, then the Sheriff may have to pay the class damages. Such payment does not have to be made with the particular dollars transferred to the Treasurer, any dollars will do.

The wrongs, if any, committed by the Sheriff are not righted by the Sheriff's transfer of funds to the Treasurer. The Sheriff does not relive itself of liability to plaintiffs just by paying amounts equal to plaintiffs' damages to the Treasurer.<sup>6</sup>

If the Treasurer now holds funds equal to the excess amounts allegedly due to the class, the class members may seek reimbursement from the Treasurer under DAUPA if they wish, but they are not required to do so. Instead, they may continue to prosecute their claims against the Sheriff in this class action. DAUPA recognizes that a holder, such as the Sheriff, may pay a claimant, such as the class members, the money it owes to them, even after the Sheriff has delivered the money "abandoned" by the class members to the Treasurer.<sup>7</sup> Obviously, any class member who is made whole by the Sheriff cannot seek additional payments from the Treasurer, and any former property owner who is made whole by the Treasurer cannot also continue to be part of the class claiming against the Sheriff.

Since neither the Treasurer nor the Sheriff has, as yet, paid plaintiffs the money they claim is due to them, this court will not dismiss plaintiffs' claims against the Sheriff. Since

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<sup>6</sup> Upon payment or delivery of any abandoned property to the Treasurer, the Sheriff is absolved of liability for the "safekeeping" of the property, but it is not absolved of any other liability. *See* 77 P.S. 1301.14.

<sup>7</sup> "Any holder who has paid moneys to the State Treasurer pursuant to [DAUPA] may make payment to any person appearing to such holder to be entitled thereto. . . . Upon proof of such payment by a holder and proof that the payee was entitled thereto, the State Treasurer shall forthwith reimburse the holder for such payment together with interest . . ." *Id.*

plaintiffs may still recover against the Sheriff despite the Sheriff's transfer of funds to the Treasurer, the court will not enjoin the Sheriff from making any such future payments.

For all the foregoing reasons, the Treasurer's Preliminary Objections are overruled, and plaintiffs' Motion for Temporary Restraining Order is denied.

**BY THE COURT:**



ARNOLD L. NEW, J.