

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

COALITION OF RESTAURANT OWNERS	:	JUNE TERM, 2010
FOR LIQUOR CONTROL FAIRNESS,	:	
WASHINGTON SQUARE WEST CIVIC	:	NO. 02422
ASSOCIATION, and REPRESENTATIVE	:	
BABETTE JOSEPHS,	:	COMMERCE PROGRAM
	:	
Plaintiffs,	:	Control No. 10071934
	:	
v.	:	
	:	
COMMONWEALTH OF PENNSYLVANIA,	:	
PENNSYLVANIA LIQUOR CONTROL	:	
BOARD,	:	
	:	
Defendant.	:	

ORDER

AND NOW, this 1st day of September, 2010, upon consideration of defendant’s Preliminary Objections to plaintiffs’ Complaint, the response thereto, and all other matters of record, and in accord with the Opinion issued simultaneously, it is **ORDERED** that defendant’s objection to this court’s jurisdiction is **SUSTAINED**. This case is transferred to the Commonwealth Court for all further proceedings, including resolution of the remaining Preliminary Objections.

BY THE COURT:

ARNOLD L. NEW, J.

(b) CONCURRENT AND EXCLUSIVE JURISDICTION.-- The jurisdiction of the Commonwealth Court under subsection (a) shall be exclusive . . . except with respect to actions or proceedings by the Commonwealth government, including any officer thereof, acting in his official capacity, where the jurisdiction of the court shall be concurrent with the several courts of common pleas.¹

Under this statute, Commonwealth Court has exclusive jurisdiction over any action brought **against** a state agency and concurrent jurisdiction over any action brought **by** a state agency.

The question is what happens when one state agency sues another state agency?

One of the plaintiffs in this case is a state representative who claims to be acting in her official capacity as an officer of the Commonwealth government.² As a result, plaintiffs argue Commonwealth Court's jurisdiction over their claims is concurrent rather than exclusive, and they may maintain this action before this court. However, plaintiffs' claimed right to choose a court runs afoul of defendant's right to be sued in only one court.

In order to resolve this apparent jurisdictional conflict, the court must look to the reason Commonwealth Court was given exclusive jurisdiction over suits against state agencies such as the PLCB. Our Supreme Court has found:

a purpose of Commonwealth Court is [t]o provide a judicial forum for the uniform and consistent resolution of questions of statewide importance. [A government agency] must have a clear idea of what its powers and duties are and would be severely handicapped if those powers and duties varied from county to county. The legislature of this Commonwealth has clearly recognized the interest of the state in having an expert, specialized tribunal, Commonwealth Court, articulate uniform statewide standards in cases affecting the sovereign. If the Court of Common Pleas decides [such] question[s], Commonwealth Court will act only as an appellate court. But appellate scope of review is limited as to factual matters and inferences from fact, many of which are involved in [such cases.] We question whether Commonwealth Court, acting only as an appellate

¹ 42 Pa. C.S. § 761.

²There is some question as to her standing to do so.

court in cases such as this one, will be able to effectively articulate statewide standards as required by the legislature.³

In this case, public interest requires jurisdiction of this case to rest in the Commonwealth Court rather than the Common Pleas Court.⁴

Commonwealth Court will be able to establish uniform state standards affecting [the PLCB and the location of liquor stores adjacent to restaurants] in a manner hardly possible if it reviews the case on appeal only, and initial adjudication by Commonwealth Court will avoid a multiplicity of suits emanating from different counties.⁵

The necessity for uniform enforcement of state liquor control laws is sufficient reason to find Commonwealth Court's exclusive jurisdiction over cases brought against the PLCB defeats a state representative's alleged right to choose to file suit in this court.

³ Cry, Inc. v. Mill Serv., 536 Pa. 462, 473, 640 A.2d 372, 378 (1994). In Cry, the Department of Environmental Resources was found to be an indispensable party. As a result, the Court had to decide whether the Commonwealth Court's exclusive jurisdiction over cases against state agencies such as the DER outweighed various environmental statutes which "place jurisdiction for citizens suits in the court of common pleas." The Court found that jurisdiction lay in the Commonwealth Court. This conclusion has been questioned in subsequent cases involving similarly worded environmental statutes. In a concurring opinion, Justice Saylor joined by Justices Cappy and Castille stated:

I believe that Cry should be limited and/or overruled on the ground that its rationale was faulty. Specifically, Cry relied on an asserted conflict between a general statutory provision, [the Appellate Court Jurisdiction Act], and a particular one, [the Clean Streams Law], to justify reliance on a policy-based assessment to give effect solely to the general provision. Such approach, however, contravenes the General Assembly's prescription that, in the event of an irreconcilable conflict between general and particular statutes, the particular statute is to be afforded precedence. *See* 1 Pa. C.S. § 1933.

Lang v. Dep't of Env'tl. Prot., 583 Pa. 502, 507, 879 A.2d 777, (2005). These grounds for questioning the Court's conclusion in Cry do not exist in this case because the conflict here is between two general jurisdictional provisions of the same statute, not a general provision and a particular one

⁴ *Id.*

⁵ *Id.*

For all these reasons, the PLCB's preliminary objection to this court's jurisdiction must be sustained and this case must be transferred to Commonwealth Court for all further proceedings.

BY THE COURT:

ARNOLD L. NEW, J.