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LUXURY ASSET LENDING, LLC	:	
Plaintiff	:	COURT OF COMMON PLEAS
	:	PHILADELPHIA COUNTY
v.	:	
	:	MAY TERM, 2018
PHILADELPHIA TELEVISION NETWORK, INC.	:	
and RICHARD H. GLANTON	:	No. 000074
Defendants	:	

Memorandum of Law in Support of Motion for Reconsideration of
January 8, 2019 Order Holding Motion for Stay in Abeyance Pending Appeal

Defendant Philadelphia Television Network, Inc. ("PTNI") states as follows in support of its [Emergency] Motion for Reconsideration of this Court's Order of January 8, 2019 (the "January 8 Order") holding in abeyance PTNI's Emergency Motion for Stay of January 7, 2019 (the "Stay Motion") until disposition of PNTI's appeal from the November 19, 2018 Order appointing a receiver to sell PTNI's assets (the "Receivership Order").

I. STATEMENT OF FACTS, BACKGROUND AND THE CASE

PTNI incorporates the facts and history as set out in the Stay Motion, and its attached Affidavit, Exhibits, and in PTNI's Memorandum of Law in Support of the Stay Motion. PTNI moves for Reconsideration because the January 8 Order appears to rest on a mistaken assumption that PTNI's pending appeal of the Receivership Order divests or limits this Court's ability to grant PTNI's Stay Motion. However, as set out below, this is not the case, particularly as to appeals from receivership or injunctive matters. As to appeals involving receivership,

property disposition and attachment or injunctive matters, Pa. R. App. P. 311(a)(2), (a)(4) and (h) empower and expect the trial court to proceed with the case notwithstanding the appeal, including the power to stay, limit, determine, vacate or modify the receivership and the receiver's actions during appeal. In addition, Pa R. App. P. 1732(a) and also Pa. R. App. P. 1701 (b)(1) and (c) empower the granting of stays pending appeal and the conditioning or limiting of the sale of PNTI's assets and to preserve the status quo.[1]

PTNI remains at the continuing peril of the receiver's sale and transfer of all its assets, which is in process by the receiver, with prior notice to and prior consent only needed from non-party Newport Investment Group, LLC, without bond and without notice to PTNI or any other interested party as to buyer, date, price or other terms. The purpose of PTNI's Stay Motion was to prevent an agreement for sale of all of PTNI's assets, and any related or following steps to close upon and effectuate that sale, and to prevent any transfer to such a buyer of PTNI's low-power television broadcast license, before this Court or the Superior Court can hear and determine PTNI's meritorious contentions, including in a Rule to Show Cause hearing scheduled in this Court for February 6, 2018, and in PTNI's appeal from the Receivership Order, which is in in its early stages.

[1] The Proposed Order attached to the Motion for Reconsideration is updated to refer to the Motion for Reconsideration, and to use clearer language that relief is based on both the pending Petition to Strike and the pending Appeal. PTNI's Stay Motion sought stay relief in support of and pending both the determination of the Petition to Strike and of PTNI's appeal, as set out at ¶¶ 21, 23 and 24 of the Motion to Stay and at p.15 of the Memorandum of Law accompanying the Stay Motion.

In PTNI's filings with this Court, as specifically cross-referenced in and also as attached to PTNI's Stay Motion and Memorandum of Law,[2] PTNI sets out that the *ex parte* and never-noticed orders, actions and purported stipulation against it are all null and void and must be vacated. They were all built on deliberate concealment, fraud, lack of notice or due process, and misrepresentations. They embody no real loans or borrowing for PTNI, because PTNI got no loan and borrowed and received no funds, nor did PTNI or its board or shareholders consent to, approve or authorize any of them, nor were any of them permitted by PTNI's governing documents or Pennsylvania Corporate Law. The "lender," the "assignee" and former officer Richard Glanton deliberately concealed from PTNI and its board and shareholders even the existence of any purported loans to PTNI, or any PTNI loan defaults, or any filed complaints, or any pending or entered default judgments, transferred judgments, or purported stipulations, until well after all of them were lodged in court and then acted upon *ex parte* by unknowing courts. Instead all of these embodied and furthered a deliberately concealed a fraudulent caper of collusive and likely illegal activities, participated in by the purported "lender" and its purported "assignee" and a former rogue officer, Richard Glanton, first to retrieve and transport hundreds of millions in currency from Ghana, and then to loot all of PTNI's assets and rescue Richard Glanton from bankruptcy when that caper failed.[3]

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[2] These matters are set out in PTNI's well-documented Petition to Strike, Vacate or Stay filed December 4, 2018, and set for hearing on a Rule to Show Cause on February 6, 2018, and in that Petition's Exhibits and Memorandum of Law, and also in PTNI's Reply filed in Support of that Petition and its accompanying Affidavit and Exhibits, and in PTNI's Response in Opposition to Newport's Emergency Petition to Appoint Receiver and its accompanying Exhibits and Memorandum of Law, which has never been considered by the Court, and in PTNI's Notice of Appeal from the Receivership Order in PTNI's Statement of Errors filed with this Court under Pa. R. Civ. P. 1925(b).

[3] The prior actions, judgments, transfer and resulting actions and orders are also null and void due to other fatal defects set out in PTNI's filings and cross-referenced in its Stay Motion and its supporting

PTNI also establishes in these filings, strong and meritorious contentions that the *ex parte* Receivership Order must be overturned, not only because of the above-described defects, but because of the lack of notice or any opportunity to be heard as to the receivership, the lack of an emergency justifying the receivership or ex parte relief, the failure to comport with the FCC's ruling of November 13, 2018 holding that the pledge and securitization and foreclosure of PTNI's license rights to Luxury/Newport violated the Federal Communications Act and federal policy, the lack of notice or input as to any sale or sale process, the ack of bond, and the lack of duration or other terms as to the continuation of the "temporary" receivership.

Because PTNI has never yet been heard by any Court, and never notified of any opportunity to be heard, and because all of these events were concealed from PTNI, and because PTNI is a very small business, PTNI has had to work hard to try to catch up with this concealed trail of *ex parte* and non-noticed court actions.[4] PTNI needs an interim stay so that

Memorandum of Law, including as to parties in interest, judgment creditors, purported assignments and even the existence of Newport Investment Group, LLC.

[4] PTNI has diligently and timely sought relief including vacatur and stay of the November 19, 2019 receivership order, without as yet receiving any hearing or ruling granting or denying same. PTNI's filings seeking such relief include PTNI's Emergency Stay Motion (the "Stay Motion") filed on January 7, 2019; PTNI's Petition to Strike, Vacate, Open or Stay Foreign Default Judgment and to Reconsider, Stay or Vacate Prior Orders Appointing Receiver and Entering Purported Stipulation (the "Petition to Strike, Vacate or Stay") filed December 4, 2018, on which this Court issued Rule to Show Cause December 28, 2018 and scheduled hearing on February 6, 2018; and PTNI's Response in Opposition to Plaintiff's Emergency Petition for Appointment of Receiver and Seeking to Vacate, Reconsider or Stay Appointment of Receiver, filed December 10, 2018. PTNI's Response in Opposition was filed, within the time period specified on the Cover Sheet for Response, but necessarily after *ex parte* relief had already been entered. Based on calls with court staff and chambers of both judges that entered prior orders (Anders and Partrick), this PTNI Response in Opposition, though filed within the time period specified on the Cover Sheet, has not been presented to any judge for determination.

it may be heard by this Court on the Rule to Show Cause and its Petition to Strike, Vacate or Stay, and so that it may be heard by the Superior Court on its appeal from the Receivership Order, and so determinations can be made through those proceedings, without having PTNI's assets sold and its broadcast license transferred in the interim by the receiver, acting under sole instruction of rogue "assignee" and non-party Newport, and providing no notice to PTNI.

II. QUESTION PRESENTED

> Should this Court reconsider its Order of January 8, 2019 and stay the sale or transfer of PTNI assets and broadcast license rights, pending further Order of this Court, and in particular pending determination of the Rule to Show Cause Hearing scheduled for February 6, 2019 before this Court and of PTNI's pending appeal from the prior ex parte receivership order of November 19, 2018
>
> **Suggested Answer**: Yes

III. ARGUMENT

This Court has the general inherent power to stay, vacate or reconsider its own Orders, such as the Order of January 7, 2019 as to which PTNI now seeks reconsideration. *Moore v. Moore,* 535 Pa. 18, 26, 634 A. 2d 163, 167 (Pa. 1993). This Court neither granted nor denied PTNI's Stay Motion, but instead determined the Stay Motion will be "held in abeyance" until "disposition" of PTNI's pending appeal to the Superior Court from the November 19, 2018 Order appointing a receiver and setting out terms for the receivership. That appeal is in early stages with no date set for briefing or presentation. Thus any abeyance period pending disposition of the appeal may be for a long, indefinite time. PTNI believes the January 8 Order rested on an incorrect or incomplete assumption that PTNI's appeal divested or limited this Court's jurisdiction to rule on or grant the Stay Motion. PTNI therefore seeks reconsideration particularly because the appeal did not divest or limit this Court.

A. The Trial Court is Empowered to Proceed and Grant Relief by Pa. R. App. P. 311(h)

The applicable Pennsylvania rules expect that the trial court will proceed with this case even during the appeal, and expect that matters such as PTNI's Stay Motion will be presented and decided in the first instance by the trial court. This Court's Receivership Order of November 19, 2018 was appealable by right under Pa. R. App. P. 311 (a)(2) because it is an "order confirming, modifying, dissolving, or refusing to confirm, modify or dissolve an attachment, custodianship, *receivership*, *or similar matter affecting the possession or control of property*" (emphasis added) and it is also appealable by right under Pa. R. App. P. 311(a)(4) which applies to orders with injunctive effect, because many sections of the Receivership Order impose restrictions and grant powers that have injunctive effect on PTNI and others.

Appeals under either 311(a)(2) or 311(a)(4) do not divest this Court of power or jurisdiction to proceed with the case, as is generally the situation for other types of cases by reason of Pa R App P 1701(a). Instead, Pa. R. App. P. 311(h) specifically applies to appeals under 311(a)(2) and (a)(4) and states: "(h) *Further Proceedings in the trial court.* Pa.R.A.P. 1701(a) shall not be applicable to a matter in which an interlocutory order is appealed under subparagraphs (a)(2) or (a)(4) of this rule."

Thus, in *City of Reading v. Firetree, Ltd.,* 984 A.2d 16 (Pa. Cmw. 2008), the Court held and explained that because of Rule 311(h) the trial court was free to enter a prohibition, hold evidentiary hearings and issue a final decree, notwithstanding a pending appeal taken under 311 (a)(4), and that Rule 311(h) applied and overrode the limitations of Rule 1701. *Id.* 984 A.2d at 17-18. The Court affirmatively stated , "*The trial court should not have relinquished jurisdiction. It should have proceeded with the matter as scheduled*" *Id.* 984 A.2d at 17.

(emphasis added). And in *Ortiz v. Commonwealth*, 655 A.2d 194, 196 (Pa. Cmw. 1995), *aff'd* 545 Pa. 279, 619 A.2d 152 (1996), the Court held that Rule 311(h) applies to appeals under Pa. R. App. P. 311(a)(2) or (a)(4), overcoming limitations of Rule 1701, leaving the trial court free to rule on or grant preliminary objections during the appeal. And in *Cruby v. Dep't of Corrections,* 4 A.3d 764 (Pa. Cmw. 2010), the trial court's statement was found to be in error that an appeal under 311(a)(4) "divested it of jurisdiction to proceed beyond the *ex parte* preliminary injunction stage." The Court stated in *Cruby* that, "by virtue of Pa.R.App. P. 311(h) an appeal from such an order does not divest the trial court of jurisdiction to proceed further with the underlying case. 4 A.3d 764 at 770 n.3 (citing 20A, G. Ronald Darlington et al Pennsylvania Appellate Practice § 1701:13).

The Pennsylvania Supreme Court applied these same principles to receivership appeals in *Northampton Nat'l Bank v. Piscanio,* 379 A.2d 870 (Pa. 1977). The Court saw no procedural error with the trial court's termination of a receivership during appeal. The question instead was whether that action made the appeal moot. *Id.* 379 A.2d 871. The Court proceeded to reverse the order appointing a receiver, because the appellant still had a potential recovery for damage caused by the receivership. 379 A.2d at 871-73. Therefore, as to receivership orders, property orders, and injunctive orders, the trial court is not limited by a pending appeal. Instead, the premise is that the trial court will continue to exercise authority over case and as to the continuation, non-continuation, termination, stay, or change in scope of a receivership and of the powers and duties of the receiver.

B. The Trial Court is also Empowered to Act by Pa. R. App. P. 1701(b)(1) and (c).

Even if 311(h) did not apply, there would still be trial court jurisdiction and authority to grant the relief sought by PTNI in the Stay Motion, because those powers are also granted to the trial court by both Pa.R.App.P. 1701(b)(1) which states that "After an appeal is taken . . . the trial court or other governmental unit may (1) Take such action as may be necessary to preserve the status quo . . . grant supersedeas . . . and take other action permitted or required by these rules or otherwise ancillary to the appeal or petition of review proceeding"; and by Pa.R.App.P 1701(c), which authorizes, during appeal, any "item . . . ordered by the trial court . . . or by the appellate court or a judge thereof as necessary to preserve the rights of the appellant." *See Abrams v. Uchitel,* 806 A.2d 1, 8 (Pa. Super. 2002) applying these rules to uphold jurisdiction in both trial and appellate courts on these matters, in a receivership case.

C. The Trial Court May Stay Matters Pending Appeal under Pa. R. App. P. 1732(a)

In addition to the grounds set out above, Pa. R. App. P. 1732(a) also authorizes and indeed requires PTNI to present a request for stay pending appeal to this Court. The rule states that an application seeking "*stay of an order of a trial court pending appeal",* or seeking *"an order suspending, modifying, restoring or granting an injunction during the pendency of appeal*" "*must ordinarily be made in the first instance to the trial court.*" PTNI's has diligently sought, without yet receiving a ruling, both a stay pending its appeal and an order with for suspending or modifying the far-ranging injunctive effect upon PTNI and its assets, operations and control of the November 19, 2018 Orders.

Therefore, both branches of Pa. R. App. P. 1732(a) (appeal and injunction) authorize this Court to act and to grant PTNI's Stay Motion pending determination of the Rule to Show Cause

and pending determination of PTNI's appeal. *See Pa State Assn of Jury Commissioners v. Commonwealth*, 619 Pa. 369, 382n.12, 64 A.3d 611, 619n. 12 (2012) (applications for stay or injunction pending appeal, including motions or petitions not so-named, but having effect of seeking stay or injunction pending appeal, are to be presented first to the trial court, and failure to do so can be a "fatal procedural defect").

Taken separately and together, Pa. R. App. P. 311(a)(2) and (a)(4), 311(h), 1701(b)(1) and (c) and 1732(a) permit and likely require PTNI's Stay Motion and the Rule to Show Cause to be determined by this Court, while the appeal is pending. PTNI should not be forced to give up its appeal, or wait through an unknowably long appeal period, while the receiver acts to sell its assets and transfer its broadcast rights. PTNI therefore respectfully submits that the Order of January 8, 2019 should be reconsidered, and that the Stay Motion should be granted.

D. Grounds for Granting Stay Motion

For the convenience of the Court, the remaining pages of this Memorandum gather and recapitulate its contentions, made in the Stay Motion and its attachments, that Stay and related relief should be granted to PTNI, in light of the strength of PTNI's contentions and consideration of the balance of equities and harms, which is strongly in PTNI's favor. These contentions have been set out by PTNI in its Stay Motion, its Petition to Strike, Vacate or Stay, its Reply in Support of that Petition, its Response filed December 10, 2018, after the entry of ex parte relief against it, in Opposition to Emergency Petition to Appoint Receiver and their respective supporting Memorandum, Exhibits and Affidavits (collectively the "PTNI Filings").

1. PTNI's Contentions are Meritorious

PTNI's merits contentions, to be further presented at the Rule to Show Cause hearing of February 6, 2018, are strong and meritorious. These are also summarized and cross-referenced and evidenced, in PTNI's Stay Motion and its Affidavit, Exhibits, and Memorandum of Law. These PTNI Filings make a compelling case that this Court's Orders of May 4, May 10 and November 19, 2018, and the California default judgment against PTNI, and the purported assignment of that judgment to Newport in April 2018, and the purported stipulation between Luxury/Newport and Richard Glanton, *are all null and void and fatally defective because*: (i) all of these matters and actions were deliberately concealed from and never noticed to PTNI, which did not know about them and never had an opportunity to appear and defend under state law requirements and the requirements of due process; (ii) the transferor of the judgment to his Court, and still the only plaintiff in this case, Luxury Asset Lending, had filed an assignment of judgment of record in California before domesticating the judgment in its own name, and therefore was not an eligible "judgment creditor" entitled to transfer a foreign judgment to Pennsylvania on May 4, 2018; (iii) Newport did not exist at the time of the purported assignment to Newport in California, nor at the time of its purported stipulation with Richard Glanton and its formalization by this Court on May 10, 2018; (iv) Newport is not and has never been a party in this case in violation of the real party in interest and substitution requirements of Pa.R.Civ.P. 2002 and 2352; (v) Luxury/Newport also fails to meet the judgment transfer requirements of 42 Pa. C.S. §4306, or comport with due process, because the default and transfer notices purportedly given, and the business address and notice certifications used by Luxury/Newport in California and Pennsylvania, were all to places other than PTNI's real,

actually known, and long-term business address at 2 Johns Lane, Lafayette Hill, PA; (vi) the purported agreements were concealed from, were unknown to, and were unconsented, and unauthorized by PTNI or its shareholders, and were contrary to shareholder rights at Pennsylvania law and PTNI's governing Bylaws and Shareholder Agreement; (viii) there were no actual loans to PTNI nor any benefit to PTNI; (viii) the loan documents and their enforcement, and the stipulation with Richard Glanton, violated federal law and policy under the Federal Communications Act, as the Federal Communications Commission has itself ruled in this case on November 13, 2018; (ix) Richard Glanton was not and has never been the majority shareholder in PTNI, which was mispresented to this Court to support the May 10 and November 19, 2018; (x) regardless of the shares Glanton holds, transfer of all PTNI is contrary to Pennsylvania law without consent of its disinterested shareholders, and particularly in self-interested transactions, as was the effect of Glanton's purported stipulation with Luxury/ Newport; (xi) there are no alleged loan documents to support most of the alleged debt, and $3,300,000 of the $3,900,000 total is instead claimed to be an [unenforceable] "oral" agreement to "lend" $30,000 in additional funds to Glanton for the Ghana venture, in exchange for payment of $3,300,000, just two weeks later; and last but very much not least (xii) all of the above were in fact a fraudulent and concealed scheme among Luxury, Newport and Glanton, first to retrieve and recover large amounts of supposed currency in Ghana, while deliberately concealing from PTNI that it was an alleged "borrower" -- followed a phase two, consisting of the active and express collusion by Glanton, Luxury and Newport to take all of PTNI's assets and tag PTNI with the losses, to recoup from the failure of their Ghana currency scheme and from Richard Glanton's resulting personal bankruptcy.

PTNI's contentions are also strong and meritorious for overturning the Receivership Order, as was also summarized and cross referenced in the Stay Motion. In addition to all the above defects, which render the receivership void, there was no timely notice to PTNI of the Receivership Petition, nor any determination or opportunity for future determination, on notice to PTNI with opportunity for it to respond and be heard, of the matters necessary to support a receivership. There was no emergency or risk to Newport justifying the drastic remedy of receivership. And a number of the facts and representations made by Newport to obtain the Receivership Order were also false (e.g. Glanton's "majority" ownership, the validity of the loan documents as representing real loans to PTNI). The Receivership Order also must be overturned because (i) receivership was proposed and entered by Newport, and for Newport's benefit, even though Newport is not a party, (ii) there has been no court determination on notice to PTNI that there should be a sale of PTNI's assets; (iii) there is no duration for the "temporary" receivership nor any mechanism for determining when or whether the receivership may become permanent; (iv) there is no bond or security required by Pa. R. Civ. P. 1533 (a)(1) or (d)(1); (v) there is no provision for reporting, appraisal, inventory, compensation, claims, method for realizing value, or recommendations and methodology for sale or liquidation required by 15 Pa. R.Civ.P. § 1533(e), (f) and (g); and (vi) the receivership Order specifies only approval from Newport for sale, and fails to provide any notice or opportunity to object to other parties-in-interest, including PTNI and its creditors and shareholders.

2. <u>The Balance of Equities and Harms weighs strongly in PTNI's favor</u>.

The balance of equities and harms weighs strongly in PTNI's favor. Newport and the receiver continue in their path to an imminent out-of-court sale of PTNI's assets, which may

occur before this Court or the Superior Court can rule. If such a transfer or purported transfer occurs, there will be a prospective total loss to PTNI, without being heard on the merits before this Court and the Superior Court, and there will also likely be costly litigation among PTNI, Newport, the Receiver and the purported transferee, as to the effect of the purported transfer. *See Harris v. Harris,* 239 A.2d 783 (Pa. 1968) (execution sale transfer may be avoided, even as to innocent purchasers, if instruments or judgments thereon are void or fraudulent; *Northampton Nat'l Bank v. Piscanio,* 379 A.2d 870 (Pa. 1977) (even if receivership is vacated or ended, there remains issue of liability for harms caused through imposition of receivership).

By contrast, since PTNI's only material asset is the bundle of rights that includes the ability to hold an FCC broadcast license for WEFG, there is no material risk to Luxury/Newport that the value would be adversely affected by the relatively modest stay sought by PTNI. On the contrary, those rights should increase in value by the clarity achieved, because final decisions would help take away clouds from title and ownership rights. Therefore the risks to PTNI of not having a Stay far outweigh any risks to Newport resulting from granting the stay. PTNI therefore respectfully submits that this Court should preserve the status quo, and protect its own ability to determine the Rule to Show Cause, as well as the ability of both this Court and the Superior Court to address issues regarding receivership as well as PTNI's pending Appeal, by entering an order preventing a sale or agreement of sale of PTNI's assets or transfer of PTNI's broadcast license in the interim.

CONCLUSION

For the reasons set out above, PTNI respectfully submits that this Court should reconsider its Order of January 8, 2019 and grant the Stay and related relief requested by PTNI, and such other and related relief as may be just and appropriate.

Respectfully submitted,

Dated: January 21 , 2019

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INTERLOCUTORY APPEALS

Rule 311. Interlocutory Appeals as of Right.

(a) General rule.—An appeal may be taken as of right and without reference to Pa.R.A.P. 341(c) from:

(1) Affecting judgments.—An order refusing to open, vacate, or strike off a judgment. If orders opening, vacating, or striking off a judgment are sought in the alternative, no appeal may be filed until the court has disposed of each claim for relief.

(2) Attachments, etc.—An order confirming, modifying, dissolving, or refusing to confirm, modify or dissolve an attachment, custodianship, receivership, or similar matter affecting the possession or control of property, except for orders pursuant to 23 Pa.C.S. § § 3323(f), 3505(a).

(3) Change of criminal venue or venire.—An order changing venue or venire in a criminal proceeding.

(4) Injunctions.—An order that grants or denies, modifies or refuses to modify, continues or refuses to continue, or dissolves or refuses to dissolve an injunction unless the order was entered:

(i) Pursuant to 23 Pa.C.S. § § 3323(f), 3505(a); or

(ii) After a trial but before entry of the final order. Such order is immediately appealable, however, if the order enjoins conduct previously permitted or mandated or permits or mandates conduct not previously mandated or permitted, and is effective before entry of the final order.

(5) Peremptory judgment in mandamus.—An order granting peremptory judgment in mandamus.

(6) New trials.—An order in a civil action or proceeding awarding a new trial, or an order in a criminal proceeding awarding a new trial where the defendant claims that the proper disposition of the matter would be an absolute discharge or where the Commonwealth claims that the trial court committed an error of law.

(7) Partition.—An order directing partition.

(8) Other cases.—An order that is made final or appealable by statute or general rule, even though the order does not dispose of all claims and of all parties.

(b) Order sustaining venue or personal or in rem jurisdiction.—An appeal may be taken as of right from an order in a civil action or proceeding sustaining the venue of the matter or jurisdiction over the person or over real or personal property if:

(1) the plaintiff, petitioner, or other party benefiting from the order files of record within ten days after the entry of the order an election that the order shall be deemed final; or

(2) the court states in the order that a substantial issue of venue or jurisdiction is presented.

(c) Changes of venue, etc.—An appeal may be taken as of right from an order in a civil action or proceeding changing venue, transferring the matter to another court of coordinate jurisdiction, or declining to proceed in the matter on the basis of forum non conveniens or analogous principles.

(d) Commonwealth appeals in criminal cases.—In a criminal case, under the circumstances provided by law, the Commonwealth may take an appeal as of right from an order that does not end the entire case where the Commonwealth certifies in the notice of appeal that the order will terminate or substantially handicap the prosecution.

(e) Orders overruling preliminary objections in eminent domain cases.—An appeal may be taken as of right from an order overruling preliminary objections to a declaration of taking and an order overruling preliminary objections to a

petition for appointment of a board of viewers.

(f) Administrative remand.—An appeal may be taken as of right from: (1) an order of a common pleas court or government unit remanding a matter to an administrative agency or hearing officer for execution of the adjudication of the reviewing tribunal in a manner that does not require the exercise of administrative discretion; or (2) an order of a common pleas court or government unit remanding a matter to an administrative agency or hearing officer that decides an issue that would ultimately evade appellate review if an immediate appeal is not allowed.

(g) Waiver of objections.

(1) Except as provided in subparagraphs (g)(1)(ii), (iii), and (iv), failure to file an appeal of an interlocutory order does not waive any objections to the interlocutory order:

(i) (Rescinded).

(ii) Failure to file an appeal from an interlocutory order under subparagraph (b)(1) or paragraph (c) of this rule shall constitute a waiver of all objections to jurisdiction over the person or over the property involved or to venue, etc., and the question of jurisdiction or venue shall not be considered on any subsequent appeal.

(iii) Failure to file an appeal from an interlocutory order under paragraph (e) of this rule shall constitute a waiver of all objections to such an order.

(iv) Failure to file an appeal from an interlocutory order refusing to compel arbitration, appealable under 42 Pa.C.S. § 7320(a)(1) and subparagraph (a)(8) of this rule, shall constitute a waiver of all objections to such an order.

(2) Where no election that an interlocutory order shall be deemed final is filed under subparagraph (b)(1) of this rule, the objection may be raised on any subsequent appeal.

(h) Further proceedings in the trial court.—Pa.R.A.P. 1701(a) shall not be applicable to a matter in which an interlocutory order is appealed under subparagraphs (a)(2) or (a)(4) of this rule.

Official Note

Authority—This rule implements 42 Pa.C.S. § 5105(c), which provides:

c) Interlocutory appeals. There shall be a right of appeal from such interlocutory orders of tribunals and other government units as may be specified by law. The governing authority shall be responsible for a continuous review of the operation of section 702(b) (relating to interlocutory appeals by permission) and shall from time to time establish by general rule rights to appeal from such classes of interlocutory orders, if any, from which appeals are regularly permitted pursuant to section 702(b).

The appeal rights under this rule and under Pa.R.A.P. 312, Pa.R.A.P. 313, Pa.R.A.P. 341, and Pa.R.A.P. 342 are cumulative; and no inference shall be drawn from the fact that two or more rules may be applicable to an appeal from a given order.

Paragraph (a)—If an order falls under Pa.R.A.P. 311, an immediate appeal may be taken as of right simply by filing a notice of appeal. The procedures set forth in Pa.R.A.P. 341(c) and 1311 do not apply to an appeal under Pa.R.A.P. 311.

Subparagraph (a)(1)—The 1989 amendment to subparagraph (a)(1) eliminated interlocutory appeals of right from orders opening, vacating, or striking off a judgment while retaining the right of appeal from an order refusing to take any such action.

Subparagraph (a)(2)—The 1987 Amendment to subparagraph (a)(2) is consistent with appellate court decisions disallowing interlocutory appeals in matrimonial matters. Fried v. Fried, 501 A.2d 211 (Pa. 1985); O'Brien v. O'Brien, 519 A.2d 511 (Pa. Super. 1987).

Subparagraph (a)(3)—Change of venire is authorized by 42 Pa.C.S. § 8702. Pa.R.Crim.P. 584 treats changes of venue and venire the same. Thus an order changing venue or venire is appealable by the defendant or the Commonwealth, while an order refusing to change venue or venire is not.

See also Pa.R.A.P. 903(c)(1) regarding time for appeal.

Subparagraph (a)(4)—The 1987 amendment to subparagraph (a)(4) is consistent with appellate court decisions disallowing interlocutory appeals in matrimonial matters. Fried v. Fried, 501 A.2d 211, 215 (Pa. 1985); O'Brien v. O'Brien, 519 A.2d 511, 514 (Pa. Super. 1987).

The 1996 amendment to subparagraph (a)(4) reconciled two conflicting lines of cases by adopting the position that generally an appeal may not be taken from a decree nisi granting or denying a permanent injunction.

The 2009 amendment to the rule conformed the rule to the 2003 amendments to the Pennsylvania Rules of Civil Procedure abolishing actions in equity and thus eliminating the decree nisi. Because decrees nisi were in general not appealable to the extent they were not effective immediately upon entry, this principle has been expressly incorporated into the body of the rule as applicable to any injunction.

Subparagraph (a)(5)—Subparagraph (a)(5), added in 1996, authorizes an interlocutory appeal as of right from an order granting a motion for peremptory judgment in mandamus without the condition precedent of a motion to open the peremptory judgment in mandamus. An order denying a motion for peremptory judgment in mandamus remains unappealable.

Subparagraph (a)(8)—Subparagraph (a)(8) recognizes that orders that are procedurally interlocutory may be made appealable by statute or general rule. For example, see 27 Pa.C.S. § 8303. The Pennsylvania Rules of Civil Procedure, the Pennsylvania Rules of Criminal Procedure, etc., should also be consulted.

Following a 2005 amendment to Pa.R.A.P. 311, orders determining the validity of a will or trust were appealable as of right under former subparagraph (a)(8). Pursuant to the 2011 amendments to Pa.R.A.P. 342, such orders are now immediately appealable under Pa.R.A.P. 342(a)(2).

Paragraph (b)—Paragraph (b) is based in part on the Act of March 5, 1925, P. L. 23. The term ''civil action or proceeding'' is broader than the term ''proceeding at law or in equity'' under the prior practice and is intended to include orders entered by the orphans' court division. Cf. In the Matter of Phillips, 370 A.2d 307 (Pa. 1977).

In subparagraph (b)(1), a plaintiff is given a qualified (because it can be overridden by petition for and grant of permission to appeal under Pa.R.A.P. 312) option to gamble that the venue of the matter or personal or in rem jurisdiction will be sustained on appeal. Subparagraph (g)(1)(ii) provides that if the plaintiff timely elects final treatment, the failure of the defendant to appeal constitutes a waiver. The appeal period under Pa.R.A.P. 903 ordinarily runs from the entry of the order, and not from the date of filing of the election, which procedure will ordinarily afford at least 20 days within which to appeal. See Pa.R.A.P. 903(c) as to treatment of special appeal times. If the plaintiff does not file an election to treat the order as final, the case will proceed to trial unless (1) the trial court makes a finding under subparagraph (b)(2) of the existence of a substantial question of jurisdiction and the defendant elects to appeal, (2) an interlocutory appeal is permitted under Pa.R.A.P. 312, or (3) another basis for appeal appears, for example, under subparagraph (a)(1), and an appeal is taken. Presumably, a plaintiff would file such an election where plaintiff desires to force the defendant to decide promptly whether the objection to venue or jurisdiction will be seriously pressed. Paragraph (b) does not cover orders that do not sustain jurisdiction because they are, of course, final orders appealable under Pa.R.A.P. 341.

Subparagraph (b)(2)—The 1989 amendment to subparagraph (b)(2) permits an interlocutory appeal as of right where the trial court certifies that a substantial question of venue is present. This eliminated an inconsistency formerly existing between paragraph (b) and subparagraph (b)(2).

Paragraph (c)—Paragraph (c) is based in part on the act of March 5, 1925 (P. L. 23, No. 15). The term ''civil action or proceeding'' is broader than the term ''proceeding at law or in equity'' under the prior practice and is intended to include orders entered by the orphans' court division. Cf. In the Matter of Phillips, 370 A.2d 307, 308 (Pa. 1977).

Paragraph (c) covers orders that do not sustain venue, such as orders under Pa.R.C.P. 1006(d) and (e).

However, the paragraph does not relate to a transfer under 42 Pa.C.S. § 933(c)(1), 42 Pa.C.S. § 5103, or any other similar provision of law, because such a transfer is not to a ''court of coordinate jurisdiction'' within the meaning of this rule; it is intended that there shall be no right of appeal from a transfer order based on improper subject matter jurisdiction. Such orders may be appealed by permission under Pa.R.A.P. 312, or an appeal as of right may be taken from an order dismissing the matter for lack of jurisdiction. See Balshy v. Rank, 490 A.2d 415, 416 (Pa. 1985).

Other orders relating to subject matter jurisdiction (which for this purpose does not include questions as to the form of action, such as between law and equity, or divisional assignment, see 42 Pa.C.S. § 952 will be appealable under Pa.R.A.P. 341 if jurisdiction is not sustained, and otherwise will be subject to Pa.R.A.P. 312.

Paragraph (d)—Pursuant to paragraph (d), the Commonwealth has a right to take an appeal from an interlocutory order provided that the Commonwealth certifies in the notice of appeal that the order terminates or substantially handicaps the prosecution. See Pa.R.A.P. 904(e). This rule supersedes Commonwealth v. Dugger, 486 A.2d 382, 386 (Pa. 1985). Commonwealth v. Dixon, 907 A.2d 468, 471 n.8 (Pa. 2006).

Paragraph (f)—Pursuant to paragraph (f), there is an immediate appeal as of right from an order of a common pleas court or government unit remanding a matter to an administrative agency or hearing officer for execution of the adjudication of the reviewing tribunal in a manner that does not require the exercise of administrative discretion. Examples of such orders include: a remand by a court of common pleas to the Department of Transportation for removal of points from a drivers license; and an order of the Workers' Compensation Appeal Board reinstating compensation benefits and remanding to a referee for computation of benefits.

Paragraph (f) further permits immediate appeal from an order of a common pleas court or government unit remanding a matter to an administrative agency or hearing officer that decides an issue that would ultimately evade appellate review if an immediate appeal is not allowed. See Lewis v. Sch. Dist. of Philadelphia, 690 A.2d 814, 816 (Pa. Cmwlth. 1997).

Subparagraph (g)(1)(iv)—Subparagraph (g)(1)(iv), added in 2015, addresses waiver in the context of appeals from various classes of arbitration orders. All six types of arbitration orders identified in 42 Pa.C.S. § 7320(a) are immediately appealable as of right. Differing principles govern these orders, some of which are interlocutory and some of which are final. The differences affect whether an order is appealable under this rule or Pa.R.A.P. 341(b) and whether an immediate appeal is necessary to avoid waiver of objections to the order.

• Section 7320(a)(1)—An interlocutory order refusing to compel arbitration under 42 Pa.C.S. § 7320(a)(1) is immediately appealable pursuant to Pa.R.A.P. 311(a)(8). Failure to appeal the interlocutory order immediately waives all objections to it. See Pa.R.A.P. 311(g)(1)(iv). This supersedes the holding in Cooke v. Equitable Life Assurance Soc'y, 723 A.2d 723, 726 (Pa. Super. 1999). Pa.R.A.P. 311(a)(8) and former Pa.R.A.P. 311(g)(1)(i) require a finding of waiver based on failure to appeal the denial order when entered).

• Section 7320(a)(2)—Failure to appeal an interlocutory order granting an application to stay arbitration under 42 Pa.C.S. § 7304(b) does not waive the right to contest the stay; an aggrieved party may appeal such an order immediately under Pa.R.A.P. 311(a)(8) or challenge the order on appeal from the final judgment.

• Section 7320(a)(3)—(a)(6)—If an order is appealable under 42 Pa.C.S. § 7320(a)(3), (4), (5), or (6) because it is final, that is, the order disposes of all claims and of all parties, see Pa.R.A.P. 341(b), failure to appeal immediately waives all issues. If the order does not dispose of all claims or of all parties, then the order is interlocutory. An aggrieved party may appeal such an order immediately under Pa.R.A.P. 311(a)(8) or challenge the order on appeal from the final judgment.

Paragraph (h)—See note to Pa.R.A.P. 1701(a).

Source

The provisions of this Rule 311 amended June 28, 1985, effective July 20, 1985, 15 Pa.B. 2635; amended December 30, 1987, effective January 16, 1988 and shall govern all matters thereafter commenced and, insofar as just and practicable, matters then pending, 18 Pa.B. 245; amended March 31, 1989, effective July 1, 1989, 19 Pa.B. 1721; amended March 12, 1992, effective July 6, 1992, and shall govern all matters thereafter commenced, 22 Pa.B. 1354; amended May 6, 1992, effective July 6, 1992, 22 Pa.B. 2675; amended April 10, 1996, effective April 27, 1996, 26 Pa.B. 1985; amended June 29, 2005, effective 60 days after publication, 35 Pa.B. 3897; amended October 14, 2009, effective 30 days after publication 39 Pa.B. 6324; amended December 29, 2011, effective and applicable to all Orphans' Court orders entered forty-five days after adoption, 42 Pa.B. 374; amended December 29, 2011, effective and applicable to all Orphans' Court orders entered forty-five days after adoption, 42 Pa.B. 4693; amended December 14, 2015, effective April 1, 2016, for all orders entered on or after that date, 46 Pa.B. 8. Immediately preceding text appears at serial pages (363208) to (363212) and (367329).

IN GENERAL

Rule 1701. Effect of Appeal Generally.

(a) General rule.—Except as otherwise prescribed by these rules, after an appeal is taken or review of a quasijudicial order is sought, the trial court or other government unit may no longer proceed further in the matter.

(b) Authority of a trial court or agency after appeal.—After an appeal is taken or review of a quasijudicial order is sought, the trial court or other government unit may:

(1) Take such action as may be necessary to preserve the status quo, correct formal errors in papers relating to the matter, cause the record to be transcribed, approved, filed and transmitted, grant leave to appeal in forma pauperis, grant supersedeas, and take other action permitted or required by these rules or otherwise ancillary to the appeal or petition for review proceeding.

(2) Enforce any order entered in the matter, unless the effect of the order has been superseded as prescribed in this chapter.

(3) Grant reconsideration of the order which is the subject of the appeal or petition, if:

(i) an application for reconsideration of the order is filed in the trial court or other government unit within the time provided or prescribed by law; and

(ii) an order expressly granting reconsideration of such prior order is filed in the trial court or other government unit within the time prescribed by these rules for the filing of a notice of appeal or petition for review of a quasijudicial order with respect to such order, or within any shorter time provided or prescribed by law for the granting of reconsideration.

A timely order granting reconsideration under this paragraph shall render inoperative any such notice of appeal or petition for review of a quasijudicial order theretofore or thereafter filed or docketed with respect to the prior order. The petitioning party shall and any party may file a praecipe with the prothonotary of any court in which such an inoperative notice or petition is filed or docketed and the prothonotary shall note on the docket that such notice or petition has been stricken under this rule. Where a timely order of reconsideration is entered under this paragraph, the time for filing a notice of appeal or petition for review begins to run anew after the entry of the decision on reconsideration, whether or not that decision amounts to a reaffirmation of the prior determination of the trial court or other government unit. No additional fees shall be required for the filing of the new notice of appeal or petition for review.

(4) Authorize the taking of depositions or the preservation of testimony where required in the interest of justice.

(5) Take any action directed or authorized on application by the appellate court.

(6) Proceed further in any matter in which a non-appealable interlocutory order has been entered, notwithstanding the filing of a notice of appeal or a petition for review of the order.

(c) Limited to matters in dispute.—Where only a particular item, claim or assessment adjudged in the matter is involved in an appeal, or in a petition for review proceeding relating to a quasijudicial order, the appeal or petition for review proceeding shall operate to prevent the trial court or other government unit from proceeding further with only such item, claim or assessment, unless otherwise ordered by the trial court or other government unit or by the appellate court or a judge thereof as necessary to preserve the rights of the appellant.

(d) Certain petitions for review.—The filing of a petition for review (except a petition relating to a quasijudicial order) shall not affect the power or authority of the government unit to proceed further in the matter but the government unit shall be subject to any orders entered by the appellate court or a judge thereof pursuant to this chapter.

Official Note

The following statutory provisions relate to supersedeas generally:

42 Pa.C.S. § 702(c) (supersedeas) provides that except as otherwise prescribed by general rule, a petition for permission to appeal under that section shall not stay the proceedings before the lower court or other government unit, unless the lower court or other government unit or the appellate court or a judge thereof shall so order. See also Rule 1313 (effect of filing petition).

42 Pa.C.S. § 5105(e) (supersedeas) provides that an appeal shall operate as a supersedeas to the extent and upon the conditions provided or prescribed by law, and that unless a supersedeas is entered no appeal from an order concerning the validity of a will or other instrument or the right to the possession of or to administer any real or personal property shall suspend the powers or prejudice the acts of the appointive judicial officer, personal representative or other person acting thereunder.

Subdivision (a) codifies a well-established principle. See e.g. Merrick Estate, 432 Pa. 450, 454, 247 A.2d 786, 787 (1968); Corace v. Balint, 418 Pa. 262, 275-76, 210 A.2d 882, 889 (1965). Rule 5102 saves the provisions of Section 426 of the Pennsylvania Workmen's Compensation Act (77 P. S. § 871), which permit a rehearing by the agency under certain circumstances during the pendency of an appeal. Rule 311(h) (further proceedings in lower court) provides that Subdivision (a) is not applicable where an appeal as of right is taken from interlocutory orders relating to attachments, injunctions, etc., thus making clear that the procedure for seeking appellate review of these collateral matters does not impair the power of the lower court to continue with the case proper.

Subdivision (b)(1) sets forth an obvious power of the lower court or agency under these rules to take actions to preserve the status quo and to clarify or correct an order or verdict. The power to clarify or correct does not extend to substantive modifications. Pa. Indus. Energy Coalition v. Pennsylvania PUC, 653 A.2d 1336, 1344-45 (Pa. Cmwlth. 1995), aff'd, 543 Pa. 307, 670 A.2d 1152 (1996). Examples of permissible actions to preserve the status quo are those ''auxiliary to the appellate process, such as a supersedeas or injunction.'' Id. Examples of permissible corrections are ''non-substantial technical amendments to an order, changes in the form of a decree, and modification of a verdict to add prejudgment interest.'' Id. at 1344. ''Such actions have no effect on the appeal or petition for review and cannot prompt a new appealable issue.'' Id. at 1345.

Among the permissible ''corrections'' is the addition or modification of contractual or statutory prejudgment interest, which is an element of contract damages. In such cases, the award of such interest is mandatory and not discretionary. TruServ Corp. v. Morgan's Tool & Supply Co. Inc.,

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, 39 A.3d 253, 264 (2012). Accordingly, even though the amount of a verdict is changed by the addition of prejudgment interest, the verdict has been ''corrected'' and not ''modified.''

The Supreme Court has held that, so long as a motion for attorneys' fees has been timely filed, a trial court may act on that motion under subdivision (b)(1) even after an appeal has been taken. Samuel-Bassett v. Kia Motors Am., Inc., 613 Pa. 371, 34 A.3d 1, 48 (2011). Thus, unlike the court actions discussed in Pa. Indus. Energy Coalition, an award of attorneys' fees constitutes a separately appealable order that would be reviewable upon filing of a timely separate notice of appeal, measured from the date the fee award order was entered.

Generally an appeal does not operate as a supersedeas of government agency action.

Subdivision (b)(3) is intended to handle the troublesome question of the effect of application for reconsideration on the appeal process. The rule (1) permits the trial court or other government unit to grant reconsideration if action is taken during the applicable appeal period, which is not intended to include the appeal period for cross appeals, or, during any shorter applicable reconsideration period under the practice below, and (2) eliminates the possibility that the power to grant reconsideration could be foreclosed by the taking of a ''snap'' appeal. The better procedure under this rule will be for a party seeking reconsideration to file an application for reconsideration below and a notice of appeal, etc. If the application lacks merit the trial court or other government unit may deny the application by the entry of an order to that effect or by inaction. The prior appeal paper will remain in effect, and appeal will have been taken without the necessity to watch the calendar for the running of the appeal period. If the trial court or other government unit fails to enter an order ''expressly granting reconsideration'' (an order that ''all proceedings shall stay'' will not suffice) within the time prescribed by these rules for seeking review, Subdivision (a) becomes applicable and the power of the trial court or other government unit to act on the application for reconsideration is lost.

Subdivision (b)(3) provides that: ''(W)here a timely order of reconsideration is entered under this paragraph, the time for filing a notice of appeal or petition for review begins to run anew after entry of the decision on reconsideration.''

Pursuant to Pa.R.C.P. 1930.2, effective July 1, 1994, where reconsideration from a domestic relations order has been timely granted, a reconsidered decision or an order directing additional testimony must be entered within 120 days of the entry of the order granting reconsideration or the motion shall be deemed denied. See Pa.R.C.P. 1930.2(c), (d) and (e). The date from which the appeal period will be measured following a reconsidered decision in a domestic relations matter is governed by Pa.R.C.P. 1930.2(d) and (e).

Under the 1996 amendments to the Rules of Criminal Procedure governing post-sentence practice, see Pa.R.Crim.P. 720 and 721, reconsideration of a decision on a defendant's post-sentence motion or on a Commonwealth motion to modify sentence must take place within the time limits set by those rules, and the judge may not vacate sentence or ''grant reconsideration'' pursuant to subdivision (b)(3) in order to extend the time limits for disposition of those motions. The amendments to Pa.R.Crim.P. 720 and new Pa.R.Crim.P. 721 resolve questions raised about the interplay between this subdivision and post-trial criminal practice. See, e.g., Commonwealth v. Corson, 444 A.2d 170 (Pa. Super, 1982).

Source

The provisions of this Rule 1701 amended through December 10, 1986, effective January 31, 1987, and shall govern all matters thereafter commenced and, insofar as just and practicable, matters then pending, 16 Pa.B. 4951; amended August 22, 1997, effective January 1, 1998, 27 Pa.B. 4543; amended April 9, 2013, effective to appeals and petitions for review filed 30 days after adoption, 43 Pa.B. 2271. Immediately preceding text appears at serial pages (365273) to (365274) and (315517) to (315518).

Rule 1732. Application for Stay or Injunction Pending Appeal.

(a) Application to trial court.—Application for a stay of an order of a trial court pending appeal, or for approval of or modification of the terms of any supersedeas, or for an order suspending, modifying, restoring, or granting an injunction during the pendency of an appeal, or for relief in the nature of peremptory mandamus, must ordinarily be made in the first instance to the trial court, except where a prior order under this chapter has been entered in the matter by the appellate court or a judge thereof.

(b) Contents of application for stay.—An application for stay of an order of a trial court pending appeal, or for approval of or modification of the terms of any supersedeas, or for an order suspending, modifying, restoring, or granting an injunction during the pendency of an appeal, or for relief in the nature of peremptory mandamus, may be made to the appellate court or to a judge thereof, but the application shall show that application to the trial court for the relief sought is not practicable, or that the trial court has denied an application, or has failed to afford the relief which the applicant requested, with the reasons given by the trial court for its action. The application shall also show the reasons for the relief requested and the facts relied upon, and if the facts are subject to dispute the application shall be supported by sworn or verified statements or copies thereof. With the application shall be filed such parts of the record as are relevant. Where practicable, the application should be accompanied by the briefs, if any, used in the trial court. The application shall contain the certificate of compliance required by Pa.R.A.P. 127.

(c) Number of copies.—Seven copies of applications under this rule in the Supreme Court or the Superior Court, and three copies of applications under this rule in the Commonwealth Court, shall be filed with the original.

Official Note

The subject matter of this rule was covered by former Supreme Court Rule 62, former Superior Court Rule 53, and former Commonwealth Court Rule 112. The flat seven day period for answer of former Supreme Court Rule 62 (which presumably was principally directed at allocatur practice) has been omitted in favor of the more flexible provisions of Pa.R.A.P. 123(b).

Source

The provisions of this Rule 1732 amended September 10, 2008, effective December 1, 2008, 38 Pa.B. 5257; amended January 5, 2018, effective January 6, 2018, 48 Pa.B. 461. Immediately preceding text appears at serial page (367349).
