

**[J-22A-2013 and J-22B-2013]
IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT**

DAVID J. MEYER, DALLAS BERRY, : No. 22 WAP 2012
CHARLES J. BROWN, JEREMY LEE :
FOX, MARTIN GORECKI, ANTHONY J. : Appeal from the Order of the
HOLLIBAUGH, LISA L. SALYERS, : Commonwealth Court entered October 27,
ROCHELL SYKES, JOSEPH W. VUCICK, : 2011 at No. 1141 CD 2008, affirming the
DAVID L. WIGLEY, DENNIS W. : Order of the Court of Common Pleas of
WOODLEY, CHRIS MACK AND TAMMY : Beaver County entered June 17, 2008 at
MUSLO, : No. 11345 of 2002.

Appellees : ARGUED: April 10, 2013

v.

COMMUNITY COLLEGE OF BEAVER
COUNTY,

Appellant

TIMOTHY L. BARR, JOHN J. BATTAGLIA, : No. 23 WAP 2012
MARK BROWN, CHRIS FERRAGONIO, :
CRAIG P. FRASER, MATT FRASER, : Appeal from the Order of the
IVAN GLENZ, JUSTIN HAFFEY, STEVE : Commonwealth Court entered October 27,
HALL, DUSTIN HUFF, JOSEPH A. KANAI, : 2011 at No. 1142 CD 2008, affirming the
MICHAEL KEALLY, STEPHEN E. KUSMA : Order of the Court of Common Pleas of
IV, WILLIAM J. LATUSZEWSKI, JOHN : Beaver County entered June 17, 2008 at
KURT LEITSCHAFT, BOB MASILON, : No. 11381 of 2002.
MICHAEL MATZIE, ALEXIS M. MILLER, :
JOSEPH A. MUSSER, TIMOTHY :
POLAND, BRIAN A. SALES, MATTHEW :
J. TEMPLE, TORIE TYSON, JARED :
UNEN, DALE A. VALENSON, MARK C. :
WILLIAMS AND AMY M. ZIMMEL, :

Appellees

v.

COMMUNITY COLLEGE OF BEAVER
COUNTY,

Appellant

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: ARGUED: April 10, 2013

CONCURRING OPINION

MR. CHIEF JUSTICE CASTILLE

DECIDED: JUNE 16, 2014

I agree with the Majority's conclusion that the term "person" as used in the Unfair Trade Practices and Consumer Protection Law ("UTPCPL"), 73 P.S. §§ 201-1 - 201-9.3, does not include political subdivision agencies such as appellant, Community College of Beaver County ("CCBC"), and thus I join the Majority Opinion and its mandate that the Commonwealth Court's order must be reversed, and the matter be remanded for further proceedings on the remaining contract and warranty claims.

I write separately regarding an additional reason to support the Majority's construction, although I recognize that the point is not squarely argued before us here. In order to be liable under the UTPCPL, a defendant must, in addition to being a "person" as defined in that statute, also be engaged in "the conduct of any trade or commerce." 73 P.S. § 201-3. As the Majority notes, "the legislature enacted the UTPCPL to account for the fundamental inequality between buyer and seller, and to protect consumers from exploitative merchants." Majority Slip Op. at 15. In my view, CCBC is not a merchant, and is not engaged in trade or commerce as envisioned in the UTPCPL. I agree with Judge (now President Judge) Pellegrini's expression on this point in his dissent below:

"Trade or commerce" is mercantile activity in which the person engaged in that business is doing so for private profit which could motivate unfair or deceptive practices for private gain or, more accurately, private greed. All of the provisions of the [UTPCPL] are aimed at private businesses. The Community College is not engaged in the conduct of 'trade or commerce'

but is carrying out a public responsibility with tax dollars to provide students with an affordable education to citizens of the Commonwealth. In other words, when a governmental entity is carrying out a public duty, it is not engaged in the conduct of a trade or commerce, but in the conduct of government.

Meyer v. Community College of Beaver County, 30 A.3d 587, 601-02 (Pa. Cmwlth. 2011) (Pellegrini, J., dissenting). See also id. at 604 (Leavitt, J., dissenting) (CCBC is public institution and was not created to compete with private educational institutions, whether non-profit or for-profit; CCBC was created to fill need not filled by other institutions).

CCBC is engaged in providing education; the fact that it accepts tuition funds in exchange for providing that education does not establish that its mission is profit-making trade or commerce. As Judge Leavitt further observed in her dissent below, “[s]tate parks offer overnight campsites at state parks, and so do private campgrounds. This does not mean that the Commonwealth has undertaken ‘trade or commerce’ in the creation of its state park system.” Id. at 603 n.6 (Leavitt, J., dissenting). Accordingly, I find further support for the conclusion that CCBC is not subject to liability under the UTPCPL in the fact that it simply is not engaged in trade or commerce.