[J-7A-2013, J-7B-2013 and J-7C-2013]
IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

MARGARET HOWARD AND ROBERT HOWARD, CO-EXECUTORS OF THE ESTATE OF JOHN C. RAVERT, DECEASED v. A.W. CHESTERTON CO., ACE HARDWARE CORP., MONSEY PRODUCTS CORP., PECORA CORP. AND UNION CARBIDE CORP. APPEAL OF: MONSEY PRODUCTS CORPORATION	: No. 48 EAP 2012 : : Appeal from the Judgment of Superior Court entered on October 28, 2011 at No. 2978 EDA 2010 reversing, vacating, and remanding the Judgment entered on October 5, 2010 in the Court of Common Pleas of Philadelphia County, Civil Division, at No. 202 June Term 2007 : : ARGUED: March 6, 2013
MARGARET HOWARD AND ROBERT HOWARD, CO-EXECUTORS OF THE ESTATE OF JOHN C. RAVERT, DECEASED v. A.W. CHESTERTON CO., ACE HARDWARE CORP., MONSEY PRODUCTS CORP., PECORA CORP. AND UNION CARBIDE CORP. APPEAL OF: ACE HARDWARE CORPORATION	: No. 49 EAP 2012 : : Appeal from the Judgment of Superior Court entered on October 28, 2011 at No. 2978 EDA 2010 reversing, vacating, and remanding the Judgment entered on October 5, 2010 in the Court of Common Pleas of Philadelphia County, Civil Division, at No. 202 June Term 2007 : : ARGUED: March 6, 2013

MARGARET HOWARD AND ROBERT HOWARD, CO-EXECUTORS OF THE ESTATE OF JOHN C. RAVERT, DECEASED v. A.W. CHESTERTON COMPANY, ACE HARDWARE CORP., MONSEY PRODUCTS CORP., PECORA CORPORATION AND UNION CARBIDE CORPORATION APPEAL OF: PECORA CORPORATION	: No. 50 EAP 2012 : : Appeal from the Judgment of Superior Court entered on October 28, 2011 at No. 2978 EDA 2010 reversing, vacating, and remanding the Judgment entered on October 5, 2010 in the Court of Common Pleas of Philadelphia County, Civil Division, at No. 202 June Term 2007 : : ARGUED: March 6, 2013

CONCURRING STATEMENT

MADAME JUSTICE TODD **DECIDED: September 26, 2013**

I agree with my colleagues that, upon Appellees' evidentiary concession, the opinion of the Superior Court must be reversed. Respectfully, however, in my view, the Court should have stopped there; instead, the Court proceeds to "reaffirm" a series of unadorned holdings, simultaneously asserting they are "well established," but nonetheless re-expressing them. I cannot join this seriatim *dicta*, and so concur only in the result.

First, although the Court contends that these "governing principles" are "relevant to the appropriate disposition of the present case," *Per Curiam* Order at 3-4, I cannot agree. Given the record before us, the parties agree that the Superior Court's opinion should be reversed, and this Court concurs. Appellees' evidentiary concession is the end of the matter, as it fully supports our summary reversal, and, indeed, the Court does not explain how the expressed principles are relevant to our disposition. In my view, these seriatim holdings are unmistakable *obiter dicta*.

The Court's approach suffers from an additional infirmity. We have often repeated the axiom that judicial decisions are to be read against their facts, so as to prevent "the wooden application of abstract principles to circumstances in which different considerations may pertain." Maloney v. Valley Med. Facilities, Inc., 603 Pa. 399, 411, 984 A.2d 478, 485-86 (2009). That axiom recognizes that decisional law develops incrementally, and that, given the tension between the narrow focus on the facts of a given case and the concomitant need to provide broader guidance on the legal issues at play, "we aspire to embrace precision and avoid 'the possibility that words or phrases or sentences may be taken out of context and treated as doctrines.'" Scampone v. Highland Park Care Ctr., LLC, __ Pa. __, 57 A.3d 582, 604-05 (2012) (quoting Maloney, 603 Pa. at 418, 984 A.2d at 490); see also Oliver v. City of Pittsburgh, 608 Pa. 386, 395, 11 A.3d 960, 966 (2011) ("[T]he fact that some decisions of the Court apply loose language cannot mean that the Court must always do so going forward, as this would institutionalize an untenable slippage in the law. Indeed, various principles governing judicial review protect against such slippage, including the axiom that the holding of a judicial decision is to be read against its facts." (citations omitted)). Yet, the Court today disregards its own admonitions by issuing seriatim holdings entirely out of context, stripping future litigants and courts of the ability to interpret these holdings against any operative facts.

Moreover, the Court's well-meaning attempt to "accommodate" Appellants' request to reaffirm several precepts is to little avail in the end: as these statements are *dicta*, courts, including this one, are under no obligation to follow such dictates. See, e.g., Rendell v. Pennsylvania State Ethics Comm'n, 603 Pa. 292, 302, 983 A.2d 708, 714 (2009) (statements from prior decision which were "unnecessary to the resolution of the controversy" were nonbinding *dicta* that "left open the question" for Court's

analysis). Relatedly, we have in the past dismissed assertions made in the context of *per curiam* dispositions as lacking "an in-depth analysis of the reasoning employed" in the referenced decisions. See, e.g., Rendell, 603 Pa. at 303, 983 A.2d at 714 (in dismissing binding effect of summary analysis in prior *per curiam* order, noting, *inter alia*, lack of in-depth analysis); see also U.S. Bancorp Mortg. Co. v. Bonner Mall P'ship, 513 U.S. 18, 24 (1994) ("This seems to us a prime occasion for invoking our customary refusal to be bound by dicta, and our customary skepticism toward *per curiam* dispositions that lack the reasoned consideration of a full opinion." (citations omitted)). I cannot see how the Court's seriatim holdings herein would avoid a similar summary rejection in a future decision.

Finally, on the "merits" of these holdings, the Court repeatedly cites to Betz v. Pneumo Abex, LLC, 615 Pa. 504, 44 A.3d 27 (2012). Yet, the Court does not note or address Appellees' contention that Appellants' failed to preserve a challenge under Betz because Appellants did not request a hearing pursuant to Frye v. United States, 293 F. 1013 (D.C. Cir. 1923). Whatever the correctness of Appellees' claim, it casts doubt on the Court's contention that its seriatim holdings are both necessary to the disposition of this case and unremarkable.

I understand the Court's concern for Appellants, as they have spent considerable time and expense on this litigation, only to have Appellees issue a decisive concession at the last moment, and one which presumably could have been issued long ago. Nevertheless, with all due respect to the litigants that come before this Court, such effort is not justification, in and of itself, for this Court to issue proclamations. That is particularly true when those proclamations are unnecessary to our disposition, and are unmoored from any factual context.