

No. 21-981

IN THE
Supreme Court of the United States

LAN TU TRINH,

Petitioner,

v.

DAVID FINEMAN,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF IN OPPOSITION

EUGENE J. MAGINNIS, JR.
DUGAN, BRINKMANN,
MAGINNIS AND PACE
Nine Presidential Boulevard,
Suite 100
Bala Cynwyd, PA 19004

ANDREW A. CHIRLS
Counsel of Record
FINEMAN KREKSTEIN &
HARRIS, P.C.
1801 Market Street,
Suite 1140
Philadelphia, PA 19103
(215) 893-8715
achirls@finemanlawfirm.com

Counsel for Respondent



QUESTIONS PRESENTED

After Petitioner litigated her business dispute with her sister for several years in the state courts of Pennsylvania, and after Petitioner settled the claims regarding the sisters' joint business, which settlement was carried out by Respondent as the receiver, appointed by and pursuant to specific directives of the state court, was the Third Circuit required to ignore and fail to take judicial notice of the state court proceedings and reliable evidence of those proceedings in making its determination that Respondent as receiver was entitled to quasi-judicial immunity when he functioned at the sole direction and with complete approval of the state court that appointed him?

Should this Court exercise its discretionary *certiorari* jurisdiction to reexamine if receivers acting within the scope of their appointment are entitled to quasi-judicial immunity, when all circuit courts that have considered the issue have afforded quasi-judicial immunity to receivers when they function pursuant to and under the orders and supervision of the appointing court, and the history and breadth of judicial and quasi-judicial immunity afforded by this Court do not compel a determination to the contrary?

STATEMENT OF RELATED PROCEEDINGS¹

Trinh v. Citizens Business Banking and Vanessa M. Barbetti, No. 20-6636, Supreme Court of the United States; petition for certiorari denied February 22, 2021

Lan Tu Trinh v. Kathleen Trinh, No. 17-9306, Supreme Court of the United States, petition for certiorari denied November 13, 2018; rehearing denied January 7, 2019

Trinh v. Fineman, No. 21-2806, United States Court of Appeals for the Third Circuit, pending

Trinh v. Fineman, No. 21-2807, United States Court of Appeals for the Third Circuit, pending

Trinh v. Fineman, No. 19-2467, United States Court of Appeals for the Third Circuit, judgment entered November 14, 2019

Trinh v. Citizens Business Banking and Vanessa M. Barbetti, No. 19-2468, United States Court of Appeals for the Third Circuit, judgment entered May 29, 2020

Trinh v. Office of Records City of Philadelphia, Nos. 18-3473 & 18-3485, United States Court of Appeals for the Third Circuit, judgment entered July 12, 2019

Trinh v. US Dept of Ed., No. 19-2481, United States

1. With the exception of *Trinh v. Fineman*, 3d Cir. No. 19-2467, the proceedings identified in the Appendix are not “directly related” pursuant to S.C.R. 14(b)(iii); however, all are related to the subject matter of the original state court action and this action.

Court of Appeals for the Third Circuit, judgment entered November 15, 2019

Trinh v. Fineman, No. 20-CV-5746, United States District Court for the Eastern District of Pennsylvania, dismissed August 27, 2021, appeal pending at Third Circuit No. 21-2806

Trinh v. Fineman, No. 21-CV-2117, United States District Court for the Eastern District of Pennsylvania, dismissed August 27, 2021, appeal pending at Third Circuit No. 21-2807

Trinh, L. v. Trinh, K., No. 506 EAL 2020, Supreme Court of Pennsylvania, appeal denied July 7, 2021

Trinh, L. v. Trinh, K., No. 153 EAL 2020, Supreme Court of Pennsylvania, appeal denied September 22, 2020

Trinh, L. v. Trinh, K., No. 83 EAL 2019, Supreme Court of Pennsylvania, appeal denied August 20, 2019

Trinh, L. v. Trinh, K., No. 118 EM 2018, Supreme Court of Pennsylvania, appeal denied November 26, 2018

Trinh, L. v. Trinh, K., No. 78 EM 2018, Supreme Court of Pennsylvania, appeal denied September 4, 2018

Trinh, L. v. Trinh, K., No. 37 EM 2018, Supreme Court of Pennsylvania, appeal denied May 23, 2018

Trinh, L. v. Trinh, K., No. 542 EAL 2018, Supreme Court of Pennsylvania, appeal denied May 14, 2019

Trinh, L. v. Trinh, K., No. 213 EAL 2018, Supreme Court of Pennsylvania, appeal denied May 24, 2018

Trinh, L. v. Trinh, K., No. 127 EAL 2018, Supreme Court of Pennsylvania, appeal denied July 25, 2018

Trinh, L. v. Trinh, K., No. 585 EAL 2017, Supreme Court of Pennsylvania, appeal denied June 26, 2018

Trinh, L. v. Trinh, K., No. 315 EAL 2017, Supreme Court of Pennsylvania, appeal denied January 3, 2018

Trinh, L. v. Trinh, K., No. 154 EDA 2020, Superior Court of Pennsylvania, appeal dismissed, March 3, 2020

Trinh, L. v. Trinh, K., No. 2028 EDA 2019, Superior Court of Pennsylvania, judgment entered, June 23, 2020

Trinh, L. v. Trinh, K., No. 3649 EDA 2018, Superior Court of Pennsylvania, appeal quashed January 24, 2019

Trinh, L. v. Trinh, K., No. 2603 EDA 2018, Superior Court of Pennsylvania, appeal quashed November 9, 2018

Trinh, L. v. Trinh, K., No. 2385 EDA 2018, Superior Court of Pennsylvania, appeal quashed October 16, 2018

Trinh, L. v. Trinh, K., No. 1812 EDA 2018, Superior Court of Pennsylvania, appeal quashed September 7, 2018

Trinh, L. v. Trinh, K., No. 1389 EDA 2018, Superior Court of Pennsylvania, appeal quashed May 21, 2018

Trinh, L. v. Trinh, K., No. 3903 EDA 2017, Superior Court of Pennsylvania, appeal quashed January 26, 2018

Trinh, L. v. Trinh, K., No. 3267 EDA 2017, Superior Court of Pennsylvania, appeal quashed November 28, 2017

Trinh, L. v. Trinh, K., No. 1225 EDA 2017, Superior Court of Pennsylvania, appeal quashed June 28, 2017

Trinh, L. v. Trinh, K., No. 131 EDA 2017, Superior Court of Pennsylvania, appeal discontinued May 22, 2017

Trinh, L. v. Trinh, K., No. 123 EDA 2017, Superior Court of Pennsylvania, appeal discontinued May 22, 2017

Trinh, L. v. Trinh, K., No. 3294 EDA 2016, Superior Court of Pennsylvania, appeal quashed November 21, 2016

Trinh, L. v. Trinh, K., No. 3293 EDA 2016, Superior Court of Pennsylvania, appeal quashed November 21, 2016

TABLE OF CONTENTS

	<i>Page</i>
QUESTIONS PRESENTED	i
STATEMENT OF RELATED PROCEEDINGS	ii
TABLE OF CONTENTS.....	vi
TABLE OF CITED AUTHORITIES	viii
STATEMENT OF THE CASE	1
I. The State Court Proceedings	1
II. The Federal Court Proceedings	2
THE REASONS TO DENY <i>CERTIORARI</i>	3
I. The Issue of the Transcript Deserves No Further Review.....	3
a. Petitioner Has Waived Her Claim of Error	3
b. The Circuit Took Appropriate Judicial Notice of the State Court Proceedings.....	6
c. It Would Be Futile to Remand the Case to the District Court	7

Table of Contents

	<i>Page</i>
II. The Decision of the Third Circuit to Afford the Receiver Quasi-Judicial Immunity Was in Complete Accord with the Decisions of This Court and the Other Circuit Courts of Appeal.	9
CONCLUSION	12

TABLE OF CITED AUTHORITIES

	<i>Page</i>
Cases	
<i>Alexander v. Hillman</i> , 296 U.S. 222, 56 S. Ct. 204, 80 L. Ed. 192 (1935)	9
<i>Antoine v. Byers & Anderson, Inc.</i> , 508 U.S. 429, 113 S. Ct. 2167, 124 L. Ed. 2d 391 (1993)	11
<i>Atlantic Trust Co. v. Chapman</i> , 208 U.S. 360, 28 S. Ct. 406, 52 L. Ed. 528 (1908)	9
<i>Booth v. Clark</i> , 58 U.S. 322, 17 How. 322, 15 L. Ed. 164 (1854)	9
<i>Bradford Audio Corp. v. Pious</i> , 392 F.2d 67 (2d Cir. 1968)	10
<i>Crites, Inc., v. Prudential Ins. Co. of America</i> , 322 U.S. 408, 64 S. Ct. 1075, 88 L. Ed. 1356 (1944)	9
<i>Davis v. Bayless</i> , 70 F.3d 367 (5th Cir. 1995)	10
<i>Forrester v. White</i> , 484 U.S. 219, 108 S. Ct. 538, 98 L. Ed. 2d 555 (1988)	11

Cited Authorities

	<i>Page</i>
<i>Kermit Constr. Corp. v.</i> <i>Banco Credito Y Ahorro Ponceno,</i> 547 F.2d 1 (1st Cir. 1976)	9, 10
<i>Matsushita Elec. Indus. Co., Ltd. v. Epstein,</i> 516 U.S. 367, 116 S. Ct. 873, 134 L. Ed. 2d 6 (1996)	8
<i>Mireles v. Waco,</i> 502 U.S. 9, 112 S. Ct. 286, 116 L. Ed. 2d 9 (1991) . . .	11
<i>New Alaska Development Corp. v. Guetschow,</i> 869 F.2d 1298 (9th Cir. 1989)	10
<i>Pierson v. Ray,</i> 386 U.S. 547, 87 S. Ct. 1213, 18 L. Ed. 2d 288 (1967)	11
<i>Property Management & Investments, Inc. v.</i> <i>Lewis,</i> 752 F.2d 599 (11th Cir. 1985).	10
<i>Ross v. Rittenhouse,</i> 2 U.S. 160, 2 Dall. 160, 1 Yeates 443 (Pa. 1792). . . .	11
<i>Shaffer v. Smith,</i> 543 Pa. 526, 673 A.2d 872 (1996)	8
<i>Smith v. Martin,</i> 542 F.2d 688 (6th Cir. 1976), <i>cert. denied</i> , 431 U.S. 905, 97 S. Ct. 1697, 52 L. Ed. 2d 388 (1977)	10

Cited Authorities

	<i>Page</i>
<i>T & W Inv. Co., Inc. v. Kurtz</i> , 588 F.2d 801 (10th Cir. 1978).....	10
<i>Trinh v. Fineman</i> , 2020 Westlaw 10758736 (E.D. Pa. 2020), <i>aff'd</i> , 9 F.4th 235 (3d Cir. 2021).....	2, 3
<i>Trinh v. Fineman</i> , 784 Fed. Appx. 116 (3d Cir. 2019).....	2
<i>Trinh v. Trinh</i> , 237 A.3d 1076 (Table); 2020 Westlaw 3441903 (Pa. Super. 2020), <i>app. denied</i> , 258 A.3d 409 (Pa. 2021).....	1, 2, 7, 8

Statutes

28 U.S.C. § 1738.....	8
-----------------------	---

Rules

F.R.C.P. 12(b)(6).....	3
F.R. Evid. 201.....	6
Pa. R.A.P. 126	1
Pa. R.A.P. 126(d)	1

Cited Authorities

Page

Other Authorities

C. Wright & A. Miller, 5C <i>Federal Practice & Proc.</i> § 1364 (2021 Update)	6
--	---

STATEMENT OF THE CASE

I. The State Court Proceedings

Ms. Trinh and her sister Kathleen Trinh were the co-owners and operators of LT International Beauty School located in Philadelphia, Pennsylvania. When the sisters could not agree on the operation of the school, Ms. Trinh filed an action against her sister, Kathleen, in the Court of Common Pleas of Philadelphia County.¹ (Supp. App. 10a).² In September 2016, the Court of Common Pleas appointed Mr. Fineman³ as the receiver of the beauty school. (Supp. App. 6a).

In August 2017, the two sisters agreed to a settlement that included the sale of certain properties owned by the business and winding down of the business. Each sister was to receive one-half of the proceeds. *Trinh v. Trinh*, 2020 Westlaw 3441903*1 (Pa. Super. 2020), *app. denied*, 258 A.3d 409 (Pa. 2021).⁴ On April 29, 2019, the Court of Common Pleas issued an order setting forth the final distribution of funds. Ms. Trinh appealed this order, and

1. The Court of Common Pleas is the trial court with general jurisdiction of law and equity claims in Pennsylvania.

2. All references to “Supp. App.” refer to the supplemental appendix filed in the Third Circuit by Mr. Fineman with permission of the circuit court. Third Circuit docket, ECF No. 16.

3. Respondent’s proper name is S. David Fineman; petitioner has misidentified him in the petition.

4. The unpublished decision of the Superior Court is at 237 A.3d 1076, and 2020 Westlaw 3441903 (Pa. Super. 2020). Pursuant to Pa. R.A.P. 126, an unpublished decision may be cited for its persuasive value, and is binding upon the parties. Pa. R.A.P. 126(d).

the trial court authored an opinion in support of the order. In explaining its ruling that the settlement would stand, the trial court opined that Mr. Fineman appropriately carried out his receivership duties and made available all applicable records. *Trinh v. Trinh*, 2020 Westlaw 3441903*5. Ms. Trinh appealed this ruling, which the Pennsylvania Superior Court affirmed, finding no fault in how the receivership and settlement were carried out by either the trial court or by Mr. Fineman as the receiver, including providing petitioner with all necessary records and information.⁵ The Superior Court opinion provides a detailed analysis of the trial court proceedings, including Mr. Fineman's actions as receiver. At each step of these proceedings in the state courts, Ms. Trinh was represented by counsel. (Supp. App. 18a-19a).

II. The Federal Court Proceedings

Not satisfied with the result of the state court proceedings, Ms. Trinh filed a *pro se* action in the United States District Court for the Eastern District of Pennsylvania at No. 19-CV-2305. (Supp. App. 4a-8a). The district court initially dismissed the action for lack of subject matter jurisdiction. (Supp. App. 15a). On appeal, the Third Circuit remanded the action to the district court to permit Ms. Trinh to amend her complaint. *Trinh v. Fineman*, 784 Fed. Appx. 116 (3d Cir. 2019). Ms. Trinh amended her complaint to assert a section 1983 claim.⁶ (Supp. App. 97a-117a).

5. 2020 Westlaw 3441903*5-*6.

6. After the Third Circuit's decision to remand to allow Ms. Trinh to file an amended complaint, Ms. Trinh sought permission to file a petition for *certiorari* out of time in this Court at 20 M 10, which this Court denied.

After amendment, the district court dismissed Ms. Trinh's amended complaint on the basis that, as a court-appointed receiver, Mr. Fineman was entitled to quasi-judicial immunity. *Trinh v. Fineman*, 2020 Westlaw 10758736 (E.D. Pa. 2020). Ms. Trinh appealed that judgment, and on August 16, 2021, the Third Circuit affirmed the district court's decision to afford Mr. Fineman quasi-judicial immunity. *Trinh v. Fineman*, 9 F.4th 235 (3d Cir. 2021).

THE REASONS TO DENY *CERTIORARI*

I. The Issue of the Transcript Deserves No Further Review.

a. Petitioner Has Waived Her Claim of Error.

The first claim of error and question presented by petitioner asks this Court to remind the Third Circuit of what it may and may not consider in assessing a district court's decision to dismiss an action pursuant to F.R.C.P. 12(b)(6). While the appeal was pending in the Third Circuit, the circuit court ordered that each party provide the Court with briefing on the following issue:

[W]hether any of the acts of the Defendant, David Fineman, alleged in Trinh's amended complaint, were outside the scope of the authority granted him by the Court of Common Pleas of Philadelphia County. *See Russell v. Richardson*, 905 F.3d 239, 247 (3d Cir. 2018) (explaining that this Court uses a functional approach in determining whether quasi-judicial immunity should be applied).

Third Circuit docket, ECF No. 11 entered November 20, 2020.

In order to comply with the order, and to provide the information called for by the court, Mr. Fineman moved for leave to supplement the record by filing a transcript of the state court proceedings.⁷ In this Court, petitioner complains that the circuit court should not have considered that transcript. In the circuit court, however, petitioner did not oppose the motion to supplement the record, which the circuit court granted. By failing to oppose this motion, petitioner waived any objection to the circuit's consideration of the transcript, and she failed to preserve the issue for consideration by this Court.

Not only did Ms. Trinh fail to object to Mr. Fineman's motion and the supplementation of the record, petitioner also failed to comply with the circuit court's directive, and instead responded with a litany of complaints – that Mr. Fineman had not adequately assessed the viability of the sisters' joint business; that the Court of Common Pleas took advantage of the fact she was not a native English speaker; that her own attorney acted contrary to her interests; and that the funds received from the business were not properly applied.⁸ Petitioner blamed these events on the conduct of the “court and all associated legal persons.” However, none of her submissions to the circuit asserted in any manner that anything that Mr. Fineman did in his role as receiver was without the authority or approval of the state court.

7. Third Circuit docket ECF Nos. 15 & 16.

8. Third Circuit docket, ECF No. 12 filed December 30, 2020.

The same is true of the amended complaint filed by petitioner in the district court. It complained about the outcome of the state court action in which Mr. Fineman served as receiver, but was without a single allegation that Mr. Fineman acted at any time without the consent or approval of the state court. (Supp. App. 97a-117a). In the three years since these federal proceedings commenced, and including this petition for *certiorari*, there is not a single instance cited of Mr. Fineman's acting without the consent or approval of the state court that appointed him, his undertaking any action not within his appointment by the state court or Mr. Fineman in any way acting contrary to his appointment or the scope of that appointment. Without identification of a single such act, petitioner has waived the opportunity to now so complain because the Third Circuit examined a transcript from the state court proceedings that identified the scope and extent of Mr. Fineman's appointment. However, even if the circuit court had not examined the transcript, the same result would obtain, as the petitioner's district court complaint failed to allege that Mr. Fineman acted without or beyond the scope of his authority. Similarly, when directly requested by the circuit court to supply such information, petitioner failed to do so.

Petitioner offers no reason in the petition before this Court why any such complaint could not have been put forward in either the district court or the circuit court, and indeed, still fails to identify any action by Mr. Fineman that was without the approval of the state court or beyond the scope of his appointment. To argue that the circuit court's procedure was flawed, but then fail to identify any reason why the flawed procedure caused any harm to petitioner is alone sufficient reason for this Court to deny the petition.

b. The Circuit Took Appropriate Judicial Notice of the State Court Proceedings.

While the decision of the Third Circuit did not specifically take judicial notice of the state court proceedings, the circuit was entitled to invoke the procedure to consider the transcript of the state court proceedings submitted to the circuit. “[J]udicial notice may be taken of prior proceedings, leases, letters, statements made or failures to controvert statements made during oral arguments, prior pleadings, transcripts of prior court proceedings, and various documents that are matters of public record.” C. Wright & A. Miller, 5C *Federal Practice & Proc.* § 1364 (2021 Update). *See also* F. R. Evid. 201 (court may judicially notice facts not subject to reasonable dispute because they can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned; judicial notice may be taken at any stage of the proceedings).

There was no error in the circuit’s consideration of the transcript from the state court proceedings. The petitioner’s amended complaint specifically referenced the state court hearing of July 10, 2017, which was the transcript submitted to the circuit by Mr. Fineman, and the transcript referenced in the circuit’s opinion. Indeed, petitioner’s direct reference to the hearing of July 10, 2017 in her amended complaint clearly brought those proceedings within the scope of matters proper for consideration on the motion to dismiss.

c. It Would Be Futile to Remand the Case to the District Court.

Even if it were to be conceded that the circuit erred in its consideration of the transcript cited in its opinion, it would be futile to remand the action for further consideration by the district court, *i.e.*, to consider the motion to dismiss as a motion for summary judgment. This is so, as after the district court dismissed the action, and while the case was under consideration by the circuit court, the Pennsylvania Superior Court heard petitioner's appeal from the final judgment in the state court proceedings. That appeal considered many of the same factual issues raised by petitioner in the district court action. In its decision in *Trinh v. Trinh*, 2020 Westlaw 3441903 (Pa. Super.), *app. denied*, 258 A.3d 409 (Pa. 2020), the Superior Court ruled as follows:

Subsequent to the trial court's dismissal of Lan Tu's claims, at a hearing on August 22, 2017, the sisters reached an agreement for a final settlement, and its terms were put on the record in open court. *See* Trial Court Transcript, 8/22/2017, at pp. 44-46. Both sisters were represented by counsel at the hearing. The next day, a Consent Order was executed outlining the terms for the dissolution and the winding down of the Beauty School. The Consent Order specified the amounts paid into escrow, identified the company real estate to be sold as liquidated corporate assets, and instructed the court-appointed receiver, David Fineman (the Receiver), on how escrow funds would be distributed to cover the business's

debts and various fees and costs. *See generally* Consent Order, 8/23/2017, at paragraphs 1-11. Each sister was to receive an equal share of the escrow funds after all of the company's winding down expenses were paid. *See id.* at paragraph 5.

2020 Westlaw 3441903*1 The opinion goes on to consider the same issues that petitioner raised in the district court, and finds them wanting.

The Pennsylvania Superior Court's decision rests on grounds that are independent of what petitioner complains of here. Whatever Ms. Trinh seeks to have done in this action will not change the outcome of her many repetitive later cases. The Pennsylvania Superior Court decision is binding upon petitioner and the federal courts in any further proceedings, and the same effect must be given to this judgment as it would be afforded in the Pennsylvania courts. *Matsushita Elec. Indus. Co., Ltd. v. Epstein*, 516 U.S. 367, 373, 116 S. Ct. 873, 877, 134 L. Ed.2d 6 (1996) (All courts must treat a state court judgment with the same respect that it would receive in the courts of the rendering state); 28 U.S.C. § 1738.

Under Pennsylvania law, the rule of *res judicata* provides that "[a] judgment is deemed final for purposes of res judicata or collateral estoppel unless or until it is reversed on appeal." *Shaffer v. Smith*, 543 Pa. 526, 530, 673 A.2d 872, 874 (1996). The Pennsylvania judgment rendered against petitioner, affirmed by the Pennsylvania Superior Court, and denied further review by the Pennsylvania Supreme Court, stands as an effective bar to further consideration of the factual issues.

In any remand, petitioner's claims as set forth in her amended complaint, would be barred by the state court judgment as the facts necessary to procuring any relief from the receiver have been decided against her. No federal proceedings could change or alter those facts that were necessary to and a part of the final judgment rendered in the Pennsylvania courts.

II. The Decision of the Third Circuit to Afford the Receiver Quasi-Judicial Immunity Was in Complete Accord with the Decisions of This Court and the Other Circuit Courts of Appeal.

Early jurisprudence clearly established that a receiver is an officer and representative of the appointing court. *Booth v. Clark*, 58 U.S. 322, 331, 17 How. 322, 15 L. Ed. 164 (1854). A receiver's status as an officer and arm of the appointing court has continually been recognized. *See Atlantic Trust Co. v. Chapman*, 208 U.S. 360, 370, 28 S. Ct. 406, 408, 52 L. Ed. 528 (1908); *Crites, Inc., v. Prudential Ins. Co. of America*, 322 U.S. 408, 414, 64 S. Ct. 1075, 1079, 88 L. Ed. 1356 (1944).

The decisions of the circuit courts cited in the Third Circuit's opinion all provide that receivers are afforded quasi-judicial immunity. *See, e.g., Kermit Constr. Corp. v. Banco Credito Y Ahorro Ponceno*, 547 F.2d 1 (1st Cir. 1976) ("At the least, a receiver who faithfully and carefully carries out the orders of his appointing judge must share the judge's absolute immunity. To deny him this immunity would seriously encroach on the judicial immunity already recognized by the Supreme Court."). *Id.* at 3. This is so, because as this Court has determined, "receivers are the court's representatives." *Alexander v. Hillman*, 296 U.S. 222, 237, 56 S. Ct. 204, 209, 80 L. Ed. 192 (1935).

The other circuit decisions that have afforded immunity to receivers are: *Kermit Const. Corp. v. Banco Credito Y Ahorro Ponceno*, 547 F.2d 1, 2-3 (1st Cir. 1976) (receiver who carries out the orders of his appointing judge must share the judge's absolute immunity.); *Bradford Audio Corp. v. Pious*, 392 F.2d 67, 72-73 (2^d Cir. 1968) (court-appointed carrying out order of appointing court immune from liability.); *Davis v. Bayless*, 70 F.3d 367, 373 (5th Cir. 1995) (court appointed receivers are entitled to share the appointing judge's absolute immunity); *Smith v. Martin*, 542 F.2d 688, 690-91 (6th Cir. 1976), *cert. denied*, 431 U.S. 905, 97 S. Ct. 1697, 52 L. Ed.2d 388 (1977) (receiver carrying out order of the appointing court has judicial immunity); *New Alaska Development Corp. v. Guetschow*, 869 F.2d 1298, 1303 (9th Cir. 1989) (absolute derivative judicial immunity is appropriate for receiver); *T & W Inv. Co., Inc. v. Kurtz*, 588 F.2d 801, 802 (10 Cir. 1978) (receiver following the orders of the court is entitled to share the judge's immunity); *Property Management & Investments, Inc. v. Lewis*, 752 F.2d 599, 602-03 (11th Cir. 1985) (court-appointed receivers enjoy judicial immunity for acts within the scope of their authority). There are no circuit court decisions to the contrary when the receiver was acting within the scope of his appointment and at the direction of the appointing court.

To find that receivers may be liable for actions undertaken within the scope of their appointment, and with approval of the appointing court, would, in essence, subject the appointing courts themselves to claims against them for their decisions made as part of the judicial process. As this Court has recognized, “[f]ew doctrines were more solidly established at common law than the immunity of judges from liability for damages for acts

committed within their judicial jurisdiction.” *Pierson v. Ray*, 386 U.S. 547, 553-54, 87 S. Ct. 1213, 1217, 18 L. Ed.2d 288 (1967).⁹

However, for those instances where a court officer or other related court personnel are not judges, but acting in a judicial capacity, the Court has adopted the functional approach to the application of judicial immunity. *Forrester v. White*, 484 U.S. 219, 108 S. Ct. 538, 98 L. Ed.2d 555 (1988). “The doctrine of judicial immunity is supported by a long-settled understanding that the independent and impartial exercise of judgment vital to the judiciary might be impaired by exposure.” *Antoine v. Byers & Anderson, Inc.*, 508 U.S. 429, 425, 113 S. Ct. 2167, 2171, 124 L. Ed.2d 391 (1993).¹⁰

As Mr. Fineman acted within the scope of his authority and appointment; the amended complaint included no allegations to the contrary, and petitioner failed to identify any instance where Mr. Fineman acted outside the scope of his authority, the decision of the Third Circuit applying

9. While judges may lose their immunity in two types of circumstances: (1) for non-judicial actions, *i.e.*, actions not taken in a judicial capacity, and (2) for actions taken in the complete absence of all jurisdiction, *Mireles v. Waco*, 502 U.S. 9, 11-12, 112 S. Ct. 286, 288, 116 L. Ed.2d 9 (1991), without some assertion that one of these two instances may be applicable, there was no error in the Third Circuit’s decision to apply quasi-judicial immunity to Mr. Fineman’s actions as receiver undertaken within the scope and extent of the authority granted by the appointing court.

10. Pennsylvania has also long applied the doctrine of judicial immunity. *Ross v. Rittenhouse*, 2 U.S. 160, 2 Dall. 160, 1 Yeates 443 (Pa. 1792) (“[A]n action will not lie against a Judge for what he does as such.”).

the functional approach to Mr. Fineman's actions as receiver, and affording him quasi-judicial immunity, was without error.

CONCLUSION

For the reasons set forth herein, respondent respectfully requests that the Court deny the petition for *certiorari*.

Respectfully submitted,

EUGENE J. MAGINNIS, JR.
DUGAN, BRINKMANN,
MAGINNIS AND PACE
Nine Presidential
Boulevard, Suite 100
Bala Cynwyd, PA 19004

ANDREW A. CHIRLS
Counsel of Record
FINEMAN KREKSTEIN &
HARRIS, P.C.
1801 Market Street,
Suite 1140
Philadelphia, PA 19103
(215) 893-8715
achirls@finemanlawfirm.com

Counsel for Respondent