

Supreme Court of Florida

ORIGINAL

No. 82,365

ALLEN GEE, etc.,

Petitioner,

vs.

SEIDMAN & SEIDMAN, et al.,

Respondents.

[March 30, 1995]

HARDING, J.

We have for review Seidman & Seidman v. Gee, 625 So. 2d 1 (Fla. 3d DCA 1992), in which the Third District Court of Appeal certified the following question to be one of great public importance:

Whether the liquidator of a bankrupt company should be permitted to recover for losses suffered by the company's customers and creditors, against an auditor

which negligently failed to discover the fraud of the company's manager, where the manager's fraudulent act was intended to and did benefit the company.

Seidman & Seidman v. Gee, Nos. 91-345, 91-1479 (Fla. 3d DCA Oct. 28, 1993) (order certifying question).

We find that review was improvidently granted in this case as the question certified by the district court does not reflect the issue actually ruled upon by the court. The liquidator brought the instant action against the auditors only on behalf of the company. As the district court noted in its opinion denying rehearing, "at trial, the liquidator stated 'the Liquidator brings only the claims of [the company] itself . . . and is not seeking to bring the creditors['] claims himself.'" 625 So. 2d at 4. In fact, seventeen of the company's creditors initially joined the liquidator as plaintiffs in the case, but fifteen of them took voluntary dismissals during the discovery proceedings and the remaining two were voluntarily dismissed during the trial. We also note that the liquidator did not bring the action on behalf of any governmental entity in this case.

Under article V, section 3(b)(4) of the Florida Constitution, this Court has jurisdiction to review "any decision of a district court of appeal that passes upon a question certified by it to be of great public importance." (Emphasis added). Because the district court specifically stated that it did not address the issue contained in the question certified to this Court, we are without jurisdiction to entertain the

question. See Revitz v. Baya, 355 So. 2d 1170, 1171 (Fla. 1977).

Accordingly, we dismiss this cause for lack of jurisdiction.

It is so ordered.

GRIMES, C.J., and OVERTON, SHAW, KOGAN, WELLS and ANSTEAD, JJ.,
concur.

NO MOTION FOR REHEARING WILL BE ALLOWED.

Application for Review of the Decision of the District Court of
Appeal - Certified Great Public Importance
Third District - Case Nos. 91-345 & 91-1479

(Dade County)

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