

Supreme Court of Florida

PIZZA HUT OF AMERICA, INC.,
Petitioner,

vs.

RICHARD MILLER, etc., et al.,
Respondents.

No. **88,301**

[July 3, 1997]

OVERTON, J.

We have for review Pizza Hut of America, Inc. v. Miller, 674 So. 2d 178 (Fla. 2d DCA 1996), which conflicts with Breakers Palm Beach, Inc. V. Gloger, 646 So. 2d 237 (Fla. 4th DCA 1994). We have jurisdiction, Art. V, § 3(b)(3), Fla. Const.

In the instant case, the district court found that it was without jurisdiction to decide whether the trial court erred in denying Pizza Hut's motion for **summary** judgment on the basis of worker's compensation immunity. The trial court's order specifically stated that there were factual questions on the issue of worker's compensation immunity left for the **jury** and, consequently, no conclusive determination of nonentitlement to such immunity was made.

In Hastings v. Demming, 22 Fla. L. Weekly **S243** (Fla. May 8, 1997), we held that an appellate court, under Florida Rule of Appellate Procedure 9.130(a)(3)(C)(vi), does not have jurisdiction to review a non-final order denying a motion for summary judgment asserting worker's compensation immunity unless the order conclusively and finally determines a party's nonentitlement to such

immunity. Accordingly, we approve the decision of the district court in the instant case.

It is so ordered.

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

NOT **FINAL** UNTIL TIME EXPIRES TO FILE **REHEARING** MOTION AND, **IF** FILED, **DETERMINED**.

Application for Review of the Decision of the District Court of Appeal - Direct Conflict of Decisions

Second District - Case No. 95-03695

(Hillsborough County)

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