

SUPREME COURT OF FLORIDA

CASE NO. SC07-1729

CITIZENS PROPERTY INSURANCE CORPORATION,

Petitioner,

vs.

JON ALLEN DANCY,

Respondent.

**ON DISCRETIONARY REVIEW FROM THE
DISTRICT COURT OF APPEAL, FIRST DISTRICT
L.T. CASE NO. 1D06-5352**

RESPONDENT'S ANSWER BRIEF ON JURISDICTION

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STATEMENT OF THE CASE AND FACTS

Respondent accepts petitioner's statement of the case and facts except petitioner's description of respondent's claim in the first paragraph on page one. Those facts do not appear in the district court's opinion.

SUMMARY OF ARGUMENT

Respondent acknowledges this court's jurisdiction to review the "citation PCA" issued by the district court below based on the rule established by Jollie v. State, 405 So. 2d 418 (Fla. 1981).

ARGUMENT

The district court below affirmed by "citation PCA" as follows:

AFFIRMED. See Fla. Farm Bureau Cas. Ins. Co. v. Cox, 943 So. 2d 823 (Fla. 1st DCA 2006), rev. granted Fla. Farm Bureau Cas. Ins. Co. v. Cox, 948 So. 2d 758 (Fla. 2007); Citizens Prop. Ins. Corp. v. Ueberschaer, 956 So. 2d 483 (Fla. 1st DCA 2007), certification granted (May 25, 2007).

Citizens Prop. Ins. Corp. v. Dancy, No. 1D06-5352, 2007 WL 2126802 (Fla. 1st DCA July 26, 2007). Both cases cited by the district court are presently pending review in this court. The court issued its opinion in Cox on September 20, 2007, quashing the district court decision. See Florida Farm Bureau Cas. Ins. Co. v. Cox, No. SC06-2494, 2007 WL 2727072 (Fla. Sept. 20, 2007). By order dated June 20, 2007, the court stayed Ueberschaer pending the outcome of Cox.

As petitioner correctly notes, “a district court of appeal per curiam opinion which cites as controlling authority a decision that is either pending review in or has been reversed by this Court . . . constitute[s] prima facie express conflict and allows this Court to exercise its jurisdiction.” Jollie v. State, 405 So. 2d 418 (Fla. 1981). Based on Jollie, respondent acknowledges this court’s jurisdiction to review the decision below.

As a side note, it is impossible to determine from the citation PCA issued below whether the district court affirmed any issues other than those addressed by the certified questions in the two cited cases, Florida Farm Bureau Cas. Ins. Co. v. Cox, 943 So. 2d 823 (Fla. 1st DCA 2006), and Citizens Prop. Ins. Corp. v. Ueberschaer, 956 So. 2d 483 (Fla. 1st DCA 2007). For that reason, a decision from this court simply quashing the district court decision below based on Cox as controlling authority may unwittingly reverse rulings made by the district court on issues not directly affected by Cox. See Key v. State, 638 So. 2d 1040, 1042 (Fla. 1st DCA 1994) (stating that when the Supreme Court of Florida “quashes” a district court decision, the district court decision is annulled and vacated as though it never existed). Therefore, respondent respectfully suggests that the court request the record and order briefing on the merits.

CONCLUSION

Although respondent acknowledges jurisdiction and further acknowledges Cox as controlling authority, at least on the issue raised by the Cox certified question, the court should not decide the present case without briefing on the merits.

Respectfully submitted:

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished to John A. Unzicker, Jr., Esquire, and Michelle L. Hendrix, Esquire, Vernis & Bowling of Northwest Florida, P.A., 315 South Palafox Street, Pensacola, Florida 32502, attorneys for petitioner, and G. Alan Howard, Esquire, and Robert M. Dees, Esquire, Milam, Howard, Nicandri, Dees & Gilliam, P.A., 208 N. Laura Street, Suite 800, Jacksonville, Florida 32202, attorneys for petitioner, by U.S. Mail this 1st day of October, 2007.

CERTIFICATE OF TYPE SIZE AND STYLE

The undersigned attorney hereby certifies that this brief was prepared using a Times New Roman 14-point font in accordance with Florida Rule of Appellate Procedure 9.210(a)(2).

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