

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
July Term 2011

TBE GROUP, INC., d/b/a **TAMPA BAY ENGINEERING,**
Petitioner,

v.

**TAPAN BANERJEE, THE DEMOYA GROUP, INC., ADAIR & BRAIDY,
INC., STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION,
PROTECTION SERVICES, INC., UNITED RENTALS HIGHWAY
TECHNOLOGIES, INC., STEVEN D. BROWN, and ANN STOCKTON
DEAUNOVICH,**
Respondents.

No. 4D11-1580

[August 17, 2011]

PER CURIAM.

We have previously dismissed petitions for writ of certiorari challenging nonfinal orders that denied claims of sovereign immunity, pursuant to section 768.28, Florida Statutes. *See Dep't of Educ. v. Roe*, 679 So. 2d 756 (Fla. 1996); *Brown v. McKinnon*, 964 So. 2d 173 (Fla. 3d DCA 2007), *rev. denied*, 980 So. 2d 488 (Fla. 2008). Accordingly, the instant petition likewise is hereby dismissed.

However, we note that the supreme court has accepted jurisdiction of *Keck v. Eminisor*, 46 So. 3d 1065 (Fla. 1st DCA), *rev. granted*, 54 So. 3d 973 (Fla. 2010), in which the First District certified the following as a question of great public importance:

Whether review of the denial of a motion for summary judgment, based on a claim of individual immunity under section 768.28(9)(a) without implicating the discretionary functions of public officials, should await the entry of a final judgment in the trial court?

Id. at 1068.

This case involves the denial of a motion for summary judgment based on a corporation's claim of immunity as an agent of the State

Department of Transportation, under section 768.28(9)(a) and (10)(e). Accordingly, we certify the following question:

Whether review of the denial of a motion for summary judgment, based on a claim of immunity as an agent of the state under section 768.28(9)(a) & 10(e), without implicating the discretionary functions of public officials, should await the entry of a final judgment in the trial court?

Dismissed; question certified.

MAY, C.J., TAYLOR and CONNER, JJ., concur.

* * *

Petition for writ of certiorari to the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; Meenu T. Sasser, Judge; L.T. Case No. 502006CA013955XXXXMB.

Donald F. Wright, Edward M. Baird, Ryan C. Phillips, and Sarah D. Rodriguez of Wright, Fulford, Moorhead & Brown, P.A., Altamonte Springs, for petitioner.

No response required for respondents.

Not final until disposition of timely filed motion for rehearing.