

Third District Court of Appeal

State of Florida, July Term, A.D. 2009

Opinion filed November 25, 2009.

No. 3D09-2059
Lower Tribunal No. 09-358

AA Acquisitions, LLC,
Appellant,

vs.

Opa-Locka Flightline, LLC,
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Jerald Bagley,
Judge.

Berger Singerman and Frank Scruggs; Broad and Cassel and George G.
Mahfood and Michael A. Shafir, for appellant.

Gary, Williams, Finney, Lewis, Watson & Sperando and Mark Miller, for
appellee.

Before COPE, LAGOA and SALTER, JJ.

On Motion for Clarification

COPE, J.

The question is whether a stay order entered by the appellate division of the circuit court is reviewable in this court by way of appeal. We conclude that the answer is no.

Landlord AA Acquisitions, LLC brought an eviction proceeding in county court against tenant Opa-Locka Flightline, LLC. The county court entered a summary judgment of eviction and denied the tenant's motion for stay.

The tenant appealed to the appellate division of the circuit court. On application by the tenant, the appellate division granted a stay. See Fla. R. App. P. 9.310. The tenant's appeal remains pending in the appellate division.

Unsure of the correct procedure, the landlord filed a petition for writ of certiorari in this court, No. 3D09-2166, seeking to vacate the stay. The landlord also filed a notice of appeal of the stay order, which is the case now before us. Another panel of this court denied certiorari. This panel dismissed the appeal. The landlord requests clarification of the reason for dismissal of the appeal.

The underlying judgment was entered by the county court. The appellate division of the circuit court is conducting first-tier appellate review. When the circuit court entered its stay order, it entered that order while acting in an appellate capacity.

It is our view that this court's review of a stay order entered by the appellate division is by certiorari, not by appeal. See USAA Cas. Ins. Co. v. Pembroke Pines MRI, Inc., 2009 WL3364974 (Fla. 4th DCA October 21, 2009).

At the trial level and on first-tier appellate review, the Florida Rules of Appellate Procedure contemplate that as a general rule, stay orders will be entered and reviewed pursuant to rule 9.310. However, cases can also be found entertaining first-tier review of a stay order by way of certiorari or appeal. See Klein v. Royale Group, Ltd., 524 So. 2d 1061, 1063 n.1 (Fla. 3d DCA 1988). See generally Philip J. Padovano, Florida Appellate Practice §§ 11:7, 23:5 (2009).

As already stated, this case involves second-tier review. At the second-tier level, review is by certiorari. See Haines City Comty. Dev. v. Heggs, 658 So. 2d 523 (Fla. 1995); Philip J. Padovano, supra, § 28:5 at 725-26. The appellate division's order granting a stay is not an appealable order.

For the stated reasons, the appeal has been dismissed.