

# Third District Court of Appeal

State of Florida, July Term, A.D. 2007

Opinion filed August 22, 2007.

Not final until disposition of timely filed motion for rehearing.

---

Nos. 3D03-1465, 3D03-1532  
Lower Tribunal No. 01-9307

---

**The Bombay Company, Inc.,**  
Appellant,

vs.

**Martin Bakerman,**  
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Robert N. Scola,  
Judge.

Carlton Fields and Robert E. Biasotti and Annette M. Lang, for appellant.

Robert N. Pelier and Barbara Green, for appellee.

R. Scott Newman for intervenor The Insurance Company of the State of  
Pennsylvania.

Before GERSTEN, C.J. and COPE, J., and SCHWARTZ, Senior Judge

On Remand from the Supreme Court of Florida

COPE, J.

This case is before us on remand from the Supreme Court of Florida in Bakerman v. The Bombay Company, Inc., 32 Fla. L. Weekly S342 (Fla. June 21, 2007). The case has been remanded for proceedings consistent with that Court's opinion. The parties disagree on what those proceedings should be.

The question presented by the appeal in this case is whether the evidence is legally sufficient to support the jury verdict. Id. at S343-44. The underlying question is whether the employer, The Bombay Company, engaged in conduct which was substantially certain to result in injury to the employee, Martin Bakerman. Id. The Court disapproved this court's holding that concealment of the danger was an essential element that must be proven. Id. at S344.

In its opinion, the Court ruled that it was a jury question whether the employer had engaged in conduct which was substantially certain to result in injury or death. Id. In footnote 4, the Court listed facts which were presented to the jury that "reflect a substantial certainty of injury . . . ." Id. at S346 n.4.

In light of the foregoing, the jury verdict in this case must be upheld as being supported by competent substantial evidence. We therefore remand the case to the trial court for reinstatement of the jury verdict in favor of plaintiff Bakerman.