

**ALMA DIXON AND THOMAS
DANIELS**

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NO. 2002-CA-0096

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COURT OF APPEAL

VERSUS

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FOURTH CIRCUIT

**PERCY FIELDS, III,
PROGRESSIVE SECURITY
INSURANCE COMPANY, INC.,
AND RPM PIZZA, INC.**

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STATE OF LOUISIANA

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**APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 97-8600, DIVISION "F"
Honorable Yada Magee, Judge**

JOAN BERNARD ARMSTRONG

JUDGE

(Court composed of Judge Joan Bernard Armstrong, Judge Terri F. Love and Judge Max N. Tobias, Jr.)

**I. DAVID WARNER, III
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- and -

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COUNSEL FOR DEFENDANT/APPELLEE

AFFIRMED

The only issue in this appeal is whether summary judgment was properly granted as to the issue of whether the defendant driver, Percy Fields, III, was within the course and scope of his employment with RPM Pizza, Inc. at the time of the accident in question. After discovery, RPM Pizza, Inc. moved for summary judgment and filed affidavits and deposition testimony showing that, at the time of the accident in question, Mr. Fields was on a break and driving on a personal errand. RPM Pizza, Inc. also presented Mr. Field's time card which showed he was "clocked out", and on his own personal time, at the time of the accident. In response to this summary judgment evidence, the plaintiffs argue that Mr. Fields and the other RPM Pizza, Inc. affiants might be lying, but they presented no evidence that Mr. Fields and the other affiants are lying. The plaintiffs also argue that RPM Pizza, Inc.'s employee time records could have been altered but presented no evidence that the time records were altered.

Summary judgment may be granted when there is no genuine issue of material fact. La. Code Civ. Proc. Art. 966. When a motion for summary judgment is properly supported by affidavits and discovery materials, it may not be opposed with mere allegations La. Code Civ. Proc. Art. 966. et seq. Thus, mere possibilities, with no indication that they have actually occurred, do not create a genuine issue of fact. Therefore, summary judgment was properly granted in this case. Lastly, we note that, previously, an appeal of this summary judgment was dismissed without prejudice because it was not properly certified for immediate appeal. Prior to the taking of the present appeal, the appealed-from judgment was revised to include a proper certification.

For the foregoing reasons, the judgment of the trial court is affirmed.

AFFIRMED