

SUPREME COURT OF FLORIDA

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SUPREME COURT CASE NO. SC07-1517

DISTRICT COURT CASE NO. 3D06-250

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ALCIDES ACOSTA

Petitioner,

vs.

J. R. BROOKS & SONS, n/k/a  
BROOKS TROPICALS, INC.

Respondent.

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ON PETITION FOR DISCRETIONARY REVIEW  
FROM THE THIRD DISTRICT COURT OF APPEAL

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**RESPONDENT'S BRIEF ON JURISDICTION**

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BRIAN J. STACK, ESQ.  
GREGORY N. ANDERSON, ESQ.  
Stack Fernandez Anderson & Harris, P. A.  
1200 Brickell Avenue  
Suite 950  
Miami, Florida 33131  
Tel: 305.371.0001  
Fax: 305.371.0002

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## **II. STATEMENT OF THE CASE AND FACTS**

The Third District Court of Appeal reversed a final judgment entered by the circuit court on a jury verdict in favor of Petitioner, holding there was no evidence upon which a jury could legally predicate a verdict in favor of Petitioner on his claims for breach of contract, fraud in the inducement, fraud, and breach of fiduciary duty. *Brooks Tropicals, Inc. v. Acosta*, 959 So. 2d 288 (Fla. 3d DCA 2007).<sup>1</sup> Specifically, the Third District held that “[b]ecause there is no evidence to support any of these claims and because they are all barred by applicable statutes of limitation, we reverse.” App. 2 On July 10, 2007, the Third District denied Petitioner’s motions for rehearing and rehearing en banc.

Petitioner has now filed a petition with this Court seeking to invoke the Court’s discretionary review jurisdiction.

## **III. SUMMARY OF ARGUMENT**

In determining whether there is jurisdiction to grant discretionary review of the *Acosta* decision on the basis of “express and direct conflict,” the Court may only consider those facts contained within the four corners of the *Acosta* opinion. On the face of that opinion, there is no express and direct conflict with any decision of this Court or any other district court.

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1. Citations to the Third District’s opinion will be made by citing to the appendix filed by Petitioner with his jurisdictional brief, and will be in the form: App. page #. The opinion will also be referred to throughout this brief as *Acosta*.

#### IV. ARGUMENT

- A. BASED ON A REVIEW OF THE FOUR CORNERS OF THE ACOSTA OPINION, THERE IS NO EXPRESS AND DIRECT CONFLICT WITH A DECISION OF THIS COURT OR OF ANOTHER DISTRICT COURT

Petitioner argues that the Court in this case should exercise its discretionary review powers pursuant to Article V, section 3(b)(3) of the Florida Constitution. *See also* Fla. R. App. P. 9.030(a)(2)(A)(iv). Article V, section 3(b)(3) provides that this Court may review a district court's decision only if it "expressly and directly conflicts with a decision of another district court of appeal or of the supreme court on the same question of law."

In *Reaves v. State*, 485 So. 2d 829, 830 (Fla. 1986), this Court explained that in order for the conflict to be express and direct, the conflict must appear within the four corners of the majority decision being reviewed. In footnote 3 of the *Reaves* opinion, the Court emphasized the importance of adhering to the "four corners" rule when writing jurisdictional briefs:

This case illustrates a common error made in preparing jurisdictional briefs based on alleged decisional conflict. The only facts relevant to our decision to accept or reject such petitions are those facts contained within the four corners of the decisions allegedly in conflict. As we explain in the text above, we are not permitted to base our conflict jurisdiction *on a review of the record* or on facts recited only in dissenting opinions. Thus, it is pointless and misleading to include a comprehensive recitation of facts not appearing in the decision below, with citations to the record, as petitioner provided here.

*Id.* (emphasis added).

Further expanding on the “four corners” rule, this Court has held that inherent or so-called “implied” conflict may no longer serve as a basis for this Court's jurisdiction because the use of an “implication” to find conflict is contrary to Article V, section 3(b)(3), which requires an “express and direct” conflict. *DHRS v. National Adoption Counseling Service, Inc.*, 498 So. 2d 888, 889 (Fla. 1986).

Here, Petitioner commits in his brief the very error that the *Reaves* opinion says is both pointless and misleading. Petitioner does not provide this Court with a single citation or quote from the *Acosta* opinion to support his argument that *Acosta* expressly and directly conflicts with the opinions he cites on pages 9-10 of his brief. Instead, Petitioner cites repeatedly to record evidence from the lower court proceedings to support his argument that conflict jurisdiction exists because the Third District dismissed, ignored and/or disregarded this record evidence. *See* Petitioner’s Brief at pp. 1-4, 5-6.<sup>2</sup> But as the *Reaves* opinion makes clear, this Court is not permitted to base its conflict jurisdiction on record evidence that does not appear in the majority opinion which it is being asked to review.

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2. Although Petitioner filed as an appendix the *Acosta* opinion as he was required to do, what is most telling is that Petitioner never cites to the Appendix anywhere in his brief.

B. THE ACOSTA COURT APPLIED THE APPLICABLE LEGAL STANDARDS TO THE FACTS SET FORTH IN ITS OPINION

Petitioner asserts that the *Acosta* opinion conflicts with *Helman v. Seaboard Coast Line R. Co.*, 349 So. 2d 1187 (Fla. 1977), *Fort Orange Co. v. O’Neal*, 189 So. 685 (Fla. 1939), *Alford v. Barnett Nat. Bank of Jacksonville*, 188 So. 322 (Fla. 1939), *Folwell v. Bernard By and through Bernard*, 477 So. 2d 1060 (Fla. 2d DCA 1985), *Brenda v. Gibson*, 383 So. 2d 1353 (Fla. 4<sup>th</sup> DCA 1980) and *Dailey v. Hendricks*, 200 So. 2d 566 (Fla. 1<sup>st</sup> DCA 1967). Specifically, Petitioner argues that – if this Court considers record evidence not set forth in the *Acosta* opinion – *Acosta* conflicts with the decisions he cites on the well-established legal principles that (1) a jury’s verdict will not be disturbed unless there is no competent evidence to support it, and (2) it is not the function of an appellate court to substitute its judgment or interpretation of the facts for that of the jury. *See* Petitioner’s Brief at pp. 9-10.

Of course, the *Acosta* opinion does not expressly and directly conflict with any of the six opinions to which Petitioner cites. The Third District has previously held that “[a] motion for directed verdict should be granted when there is no reasonable evidence upon which a jury could legally predicate a verdict in favor of the non-moving party.” *Martinez v. Poly-Ply Corp.*, 883 So. 2d 327, 330 (Fla. 3d DCA 2004) (quoting *Scott v. TPI Restaurants, Inc.*, 798 So. 2d 907, 908 (Fla. 5th DCA 2001)). It was this legal principle upon which the *Acosta* opinion is based.

And because the *Acosta* court expressly found that “there is no evidence to support any of [Petitioner’s] claims and because they are all barred by applicable statutes of limitation,” it reversed the final judgment. App. 2 Thus, there is nothing contained in the *Acosta* opinion which runs afoul of the legal principles set forth in the six opinions cited by petitioner or any other decision of this Court or a district court. Stated differently, the Third District did not substitute its judgment for that of the jury in *Acosta* – it correctly stated and applied the applicable legal standards based on the given facts set forth in its opinion, which are the only relevant facts to consider on a petition for discretionary review.

**C. PETITIONER’S BRIEF IS NOTHING MORE THAN  
AN IMPROPER EFFORT TO RE-ARGUE HIS CASE**

Distilled to its essentials, Petitioner’s jurisdictional brief does nothing more than re-argue his case and, once again, express his dissatisfaction with the Third District’s rulings against him. This is improper and cannot under any applicable legal theory constitute a basis for this Court to grant discretionary review.



**V. CONCLUSION**

For the reasons set forth above, Respondent respectfully request this Court to deny the Petitioner's petition for discretionary review.

Respectfully submitted,

**STACK FERNANDEZ ANDERSON &  
HARRIS, P.A.**

Attorneys for Respondent  
Suite 950  
1200 Brickell Avenue  
Miami, Florida 33131  
Telephone: 305.371.0001  
Facsimile: 305.371.0002

By: \_\_\_\_\_

Gregory N. Anderson  
Florida Bar No. 0724009

## VI. CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of this jurisdictional brief was served via regular U. S. mail this Tuesday, September 18, 2007 to the following:

ALLEN J SMITH ESQ  
BILZIN SUMBERG ET AL  
200 S BISCAYNE BLVD  
STE 2500  
MIAMI FL 33131-5340

STACK FERNANDEZ ANDERSON &  
HARRIS, P.A.  
Attorneys for Respondent  
Suite 950  
1200 Brickell Avenue  
Miami, Florida 33131  
Telephone: 305.371.0001  
Facsimile: 305.371.0002

By: \_\_\_\_\_  
Gregory N. Anderson  
Florida Bar No. 0724009

## **VII. CERTIFICATE OF COMPLIANCE**

The undersigned counsel for the Respondent hereby certifies this jurisdictional brief complies with the font requirements of Rule 9.210 (a)(2) of the Florida Rules of Appellate Procedure.

**STACK FERNANDEZ ANDERSON &  
HARRIS, P.A.**

Attorneys for Respondent  
Suite 950  
1200 Brickell Avenue  
Miami, Florida 33131  
Telephone: 305.371.0001  
Facsimile: 305.371.0002

By: \_\_\_\_\_  
Gregory N. Anderson  
Florida Bar No. 0724009