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## Class Action Against Pizza Hut's Delivery Tax Moves Ahead

By Bonnie Eslinger

Law360, Los Angeles (August 27, 2015, 3:55 PM ET) -- A Florida judge on Wednesday refused to dismiss a putative class action against Pizza Hut of America Inc. alleging it unlawfully collected sales tax on delivery fees, saying sufficient facts were alleged to support claims including deceptive and unfair practices and negligence.

"It should be noted the court is not passing on the merits of this class action in denying the motion to dismiss," Judge Jack Tuter wrote in his order. "Whether this class action can be certified in the future is a matter the court may have to resolve on dispositive motions."

Lauren Minniti sued Pizza Hut in December 2014, claiming she placed an order for delivery to her Fort Lauderdale home and later discovered she'd been charged sales tax on her \$12 pizza, but also the \$2.75 delivery fee. Her suit alleges deceptive and unfair practices, negligence and unjust enrichment.

Minniti's attorney, Ismael T. Salam of Siprut PC, told Law360 on Thursday that he was "thoroughly pleased" with the result.

"Retailers should not abuse their position with consumers by intentionally or negligently collecting more sales tax than owed under Florida law. We are going to put an end to these practices that hurt Floridians every day," Salam wrote in an email.

In its motion to dismiss, Pizza Hut argued that Minniti failed to state a cause of action because the tax on the delivery was not an unfair or deceptive act, one that is likely to mislead customers.

Judge Tuter said Minniti had adequately pled for purposes of her claim and any decision on whether Pizza Hut's tax on delivery was unfair or deceptive, "requires a factual determination which is outside the scope of this court's review when presented on a motion to dismiss."

Pizza Hut's assertion that Minniti failed to allege the "existence of a duty" for her negligence allegation also fell on deaf ears.

"The court determines that plaintiff has adequately pled a cause of action for negligence," Judge Tuter wrote.

Additionally, the judge sided with Minniti over whether or not she had failed to exhaust her administrative remedies, which Pizza Hut had claimed. The company argued that Florida law required the pizza customer to ask the state for a refund if she felt she was erroneously charged taxes. But Minniti pointed to a section of Florida's Administrative Code that states a taxpayer who has paid a tax when no tax is due should get their money back from the business that overtaxed, not the Department of Revenue.

Minniti seeks to represent all Florida residents who purchased food or beverages from Pizza Hut and were charged sales tax on delivery fees.

Representatives for Pizza Hut were not immediately available for comment on Thursday.

Lauren Minniti is represented by Scott Owens and Patrick Crotty of of Scott D. Owens, P.A. and Joseph Siprut and Ismael Salam of Siprut PC.

Pizza Hut of America Inc. is represented by Dario Antonio Perez Jr. of Shutts & Bowen LLP

The case is Lauren Minniti v. Pizza Hut of America Inc., case number CACE14023335, in the in the 17th Judicial Circuit Court of the State of Florida.

— Editing by Ben Guilfoy.

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