

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION**

DERRICA ACKLIN

PLAINTIFF

V.

4:09CV00750 JMM

**SECURITAS SECURITY SERVICES USA, INC.
and DIMITRI EPPS**

DEFENDANTS

CERTIFICATION ORDER

Now on this 1st day of February, 2010, upon motion of the Plaintiff and pursuant to Rule 6-8 of the Rules of the Supreme Court of the State of Arkansas, this Court certifies to the Supreme Court of Arkansas a question of law that may be determinative of this case and as to which it appears there is no controlling precedent in the decisions of the Supreme Court of Arkansas.

I.

QUESTION OF LAW TO BE ANSWERED

Whether an individual supervisor can be held personally liable for alleged acts of retaliation under the Arkansas Civil Rights Act, Ark. Code Ann. § 16-123-101, *et seq.* (“ACRA”).

II.

FACTS RELEVANT TO THE QUESTION

Plaintiff Derrica Acklin is a female resident of Arkansas. Defendant Dimitri Epps is a resident of Arkansas. Defendant Securitas Security Services USA, Inc. “hereinafter Securitas,” is a Delaware corporation with its principal place of business in New Jersey.

According to the Complaint, Plaintiff was subjected to sexual harassment, gender

discrimination and retaliation while employed by the Defendant Securitas. Plaintiff claims that her supervisor, Epps began to sexually harass her in early November, 2008, she rejected his advances and ultimately filed a hand written grievance on January 28, 2009. Prior to this complaint, Plaintiff had filed another complaint against Epps for unfair treatment. Plaintiff alleges that she received a positive review in February and some time after that, she was terminated. Plaintiff claims that she was terminated in retaliation for opposing practices that are unlawful under the Arkansas Civil Rights Act and for complaining about sexual harassment.

Plaintiff filed suit against the Defendants for sexual harassment, discrimination and retaliation under the ACRA. Defendant Securitas removed this action to federal court on the basis of diversity jurisdiction contending that Plaintiff fraudulently joined Epps as a defendant to defeat diversity jurisdiction. Defendant Securitas argues that this assertion is confirmed by the fact that individual supervisors are not personally liable for alleged acts of retaliation under the Arkansas Civil Rights Act, Ark. Code Ann. § 16-123-101, *et seq.*

The issue of whether an individual supervisor can be held personally liable for alleged acts of retaliation under the Arkansas Civil Rights Act, Ark. Code Ann. § 16-123-101, *et seq.* is likely to arise repeatedly in federal diversity cases, as well as in Arkansas circuit court cases. There is no precedent from the Arkansas Supreme Court on this issue.¹ There is also no consensus among the Judges in the United States District Courts on this issue.²

¹The Arkansas Supreme Court accepted certification of this issue in *Billy Battles v. Mark Townsend and Southern Tire Mart, LLC*, Ark. Sup. Ct. No. 08-602. The certification was withdrawn prior to the Court's decision.

² See *Goal v. Retzer Resources, Inc., et al*, No. 5:09CV00137 JLH (E.D. Ark. 2009)(finding that "a plain reading of the retaliation section of the ACRA shows that the prohibition applies to individual persons as well as corporate employers."); but see *Whitney v. Unibar Maint. Serv., Inc.*, No. 4:04CV00561 JMM (E.D. Ark. 2004)(no individual liability for supervisor in individual capacity for retaliation under the ACRA).

III. REFORMULATION OF THE QUESTION

The United States District Court hereby acknowledges that the Arkansas Supreme Court, acting as the receiving court, may reformulate the question presented.

IV. COUNSEL OF RECORD AND PARTIES

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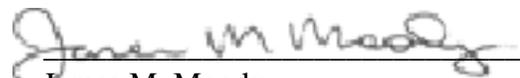
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V.

The Clerk of this Court is hereby directed to forward this Order to the Supreme Court of Arkansas under his official seal.

IT IS SO ORDERED.


James M. Moody
United States District Judge