

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
LITTLE ROCK DIVISION**

**BRIGITTE RANEY**

**PLAINTIFF**

**v.**

**CASE NO. 4:10CV01181 BSM**

**OK APPLE, INC.,  
APPLE GOLD, INC.,  
DAVID SCHOEMAKER, and  
ALEX GARLINGTON**

**DEFENDANTS**

**ORDER**

Defendants removed this case from state court on August 31, 2010, on the basis of diversity of citizenship, alleging that separate defendants, David Schoemaker and Alex Garlington, were fraudulently joined for the purpose of defeating federal subject matter jurisdiction. Defendants state that the claims against Schoemaker and Garlington should be dismissed because (1) plaintiff has failed to sufficiently allege a retaliation claim under the Arkansas Civil Rights Act (ACRA) and (2) individuals may not be held liable for retaliation under the ACRA.

Defendant's second argument was recently addressed by the Arkansas Supreme Court in *Calaway v. Practice Management Services, Inc.*, 2010 Ark. 432, at 4, 2010 WL 4524659, at \*2, in which it held that individuals can indeed be held liable for retaliation under the ACRA. As for the first argument, when the allegations in the complaint are accepted as true, plaintiff has sufficiently pled a retaliation claim. Therefore, defendants' motions [Doc. Nos. 6, 8] to dismiss the claims against Schoemaker and Garlington are denied.

Because Schoemaker and Garlington are citizens of Arkansas and were properly joined and served as defendants, the case is not removable under 28 U.S.C. § 1441(b). Accordingly, plaintiff's motion to remand [Doc. Nos. 14, 29] is granted and all other motions, including plaintiff's motion for leave to amend the complaint [Doc. No. 10], are left to be decided by the state court upon remand.

IT IS SO ORDERED this 3rd day of December, 2010.

  
UNITED STATES DISTRICT JUDGE