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IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF FLORIDA  
OCALA DIVISION

TINA LAWLER, )  
)  
Plaintiff, )  
)  
v. )  
)  
SUMTER ELECTRIC COOPERATIVE, INC., )  
)  
Defendant. )

CLERK, U.S. DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE, FLORIDA

CASE NO: 99-65-CIV-OC-10C

**DEFENDANT’S REPLY IN SUPPORT OF ITS MOTION TO PARTIALLY  
DISMISS, OR, ALTERNATIVELY,  
MOTION FOR PARTIAL SUMMARY JUDGMENT**

Plaintiff Tina Lawler (“Plaintiff”) has asked this Court to deny Defendant’s request to dismiss her sexual/gender harassment claim under Title VII and the FCRA. In support of her request, Plaintiff relies solely on a “continuing violation” theory. Specifically, she states that her gender harassment claim is not time-barred because the “harassment” continued into 1997. Plaintiff, however, has confused a sexual harassment claim with a retaliation claim.

Defendant has not asked the Court to dismiss Plaintiff’s retaliation claim; the parties will conduct full discovery on that issue. However, the *only* person who allegedly sexually harassed Plaintiff was Jon Perry, and it is undisputed that Sumter discharged Perry on August 2, 1993, and he died on May 6, 1995. Wallace Aff. ¶¶ 4, 5. That Mr. Perry could have “continued” to harass Plaintiff after his demise in 1995 seems unlikely. In fact, Plaintiff concedes that any alleged sexual harassment ended on or before July 1993. See Affidavit of Tina Lawler filed in Support of Plaintiff’s Response. Plaintiff, however, did not file a charge of discrimination with the Equal Employment Opportunity Commission (“EEOC”) until September 1997.

Simply put, Perry did not continue to harass and/or discriminate against Plaintiff into the limitations period because the alleged sexual harassment ended *more than four years* before Plaintiff filed a charge with the EEOC. See Johnson v. Woodruff, 28 F. Supp. 2d 1248 (M.D.Fla. 1998) (to revive an otherwise time-barred claim, the violation must be “part of a pattern of continuing practice out of which the timely-filed incident arose”); Paldano v. Althin Medical, Inc., 974 F. Supp. 1441 (S.D. Fla. 1996) (to demonstrate a continuing violation, the plaintiff must first prove that at least one discriminatory act occurred within the limitations period). Sexual/gender harassment (which is time-barred) and retaliation are completely different concepts. Because Plaintiff’s sexual/gender harassment claim is untimely under Title VII and the FCRA, this Court should grant Defendant’s Motion to Partially Dismiss, or Alternatively, Motion for Partial Summary Judgment.

Respectfully submitted,

  
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Attorneys for Defendant

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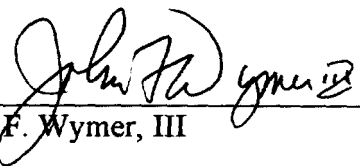
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CERTIFICATE OF SERVICE

This is to certify that I have this day served counsel of record in the foregoing matter with a copy of **DEFENDANT'S REPLY IN SUPPORT OF ITS MOTION** in a properly addressed envelope with adequate postage thereon as follows:

James P. Tarquin, Esq.  
44 S.E. 1<sup>st</sup> Avenue, Suite 306  
Ocala, Florida  
34471

This 4<sup>th</sup> day of June, 1999.



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John F. Wymer, III  
Attorney for Defendant