

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-30125
Summary Calendar

CLARITA TOLLIVER,

Plaintiff-Appellee,

versus

KMART CORPORATION,

Defendant-Appellant.

Appeal from the United States District Court
for the Eastern District of Louisiana
(CA-93-328-E)

(December 1, 1994)

Before DAVIS, JONES and DUHÉ, Circuit Judges.

PER CURIAM:*

Appellant Kmart Corporation, defendant below, challenges the trial court's decision to remand this case. The remand order may have been erroneous. See DeAguilar v. Boeing Co., 11 F.3d 55 (5th Cir. 1993) (affidavits may be used to clarify petition only if it is ambiguous on amount of damages; attorneys' affidavits could not be used where type of damages asserted in petition must exceed

* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

jurisdictional amount); Marcel v. Pool Co., 5 F.3d 81 (5th Cir. 1993) (post-removal affidavit may not be used to reduce, rather than clarify, amount in controversy). Nevertheless, we have no jurisdiction to review the order, 28 U.S.C. § 1447(c), and must therefore dismiss the appeal. Tillman v. CSX Transp. Inc., 929 F.2d 1023 (5th Cir. 1991).

DISMISSED.