

TortsCenter | Ep. 9

“Hoops and Legal Loops: The Dearica Hamby Case Explained”

Courtney Dunn: [00:00:00] A quick note before we get into our episode. The content provided in the Tort Center podcast is for informational purposes only and should not be construed as legal advice. The information presented in each episode is based on general principles of law and may not apply to your specific legal situation.

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By accessing and [00:01:00] listening to the Tort Center podcast. You agree to these terms and conditions. Welcome to our latest episode of Torts Center. We have a special guest with us today from our very own firm here at Siegel McCambridge is Masoud Ali. Carla will introduce us to Masoud and give us some background and we're looking forward to Masoud taking us in a little bit of a different direction today.

Our episodes usually focus on the intersection of torts and sports. But Masood is going to walk us through an ongoing matter involving employment law in the sports arena.

Carla Varriale-Barker: Welcome Masood. Courtney and I have invited Masood Ali, who is a member of our firm's labor and employment committee. To explore with us a different aspect of sports law.

Today, Masood will be breaking down a pending case that involves discrimination, employment and labor [00:02:00] issues involving the WNBA. You may have read about the Derecka Hamby lawsuit. The case is up for a settlement conference later this month. So Masood's update for us is quite timely, but first let me tell you a little bit about Masood.

He concentrates his practice here at Segal, Cambridge on general litigation, but also focuses on labor law. Masood's experience spans matters related to Title

VII, the Americans with Disabilities Act, the Fair Labor Standards Act. And workers compensation. He's an outstanding member of our firm's labor and employment committee.

Before joining the firm, he worked for an employment litigation firm in Chicago. There, he played an integral role in all stages of the litigation process, and he has appeared for. A number of pivotal hearings [00:03:00] before the Illinois Labor Relations Board, the Illinois Human Rights Commission, and the Financial Industry Regulatory Authority.

He's just a delight and I'm so glad that he is bringing his knowledge base to us to discuss this important, fascinating, current case. Welcome Masoud.

Masood Ali: Thank you so much, Carla and Courtney. I'm really honored to be on this great podcast, and I'm happy to provide any insights that I can in this matter. So I'll just kind of start off with a little on what labor and employment is.

There's a lot of what it overall means and what it means for this in specific. And so you may ask yourself, what is labor and employment law? Are they two different things? Are they all one thing? There are many things actually labor is separate. And employment law is separate. So labor is your traditional, your unions, your labor unions, your police, [00:04:00] your fire, your teachers unions.

They all have their own jurisdiction. They have their own kind of governing body with the national labor relations board, the NLRB. There are other boards, but that's the one that people most commonly know. It's more public sector. You can say for labor. For employment law, that's the gambit of the private sector, which would be your discrimination cases, your retaliation cases, your wage cases, Fair Labor Standards Act cases.

And so my expertise is primarily on the employment law side. I do have some experience on labor, but not enough. And in terms of employment law on the private side, there's many different categories that we can talk about. But for today, we're just going to be talking about. Sports. I am a huge sports junkie.

I love basketball, any type of basketball. I love all these athletes. They have just such tremendous talent [00:05:00] and skill. Basketball and law are pretty much my two passions. And so I loved talking about it and I'm really happy to talk about it here with you all today. And so the purpose of, of today and what we're going to be talking about in the De'arra Cahamby lawsuit, as Carla had

previously mentioned, and this lawsuit goes back to De'arra Cahamby's With one NBA team and she was traded to another WNBA team.

And there was allegations from Deerika Hamby about pregnancy discrimination and retaliation. So before going into the weeds of the actual claim, we're going to talk about. DeRicka Hamby herself. She was formerly a player for the Las Vegas Aces, and DeRicka Hamby is actually a very accomplished player.

She had a very accomplished career in college at Wake Forest. In terms of her [00:06:00] professional experience now in the WNBA, She's been a multiple time all star. She is an Olympian as well. She has also been awarded many awards for her roles coming off the bench as the Sixth Woman of the Year, multiple time winner of that award.

And we'll get into why that's irrelevant once we talk about the claims in a little bit. She was drafted very highly by the Las Vegas Aces. And the Las Vegas Aces are also very accomplished. They have won multiple WNBA championships. And they are one of the premier teams in the whole WNBA.

Courtney Dunn: The first ever WNBA championship the Aces won, right?

When Miss Hamby was on the team.

Masood Ali: Yes, I believe that's correct.

Courtney Dunn: She started at every game. She was a big, a big part of the Aces win of that first championship.

Masood Ali: Correct. She played an integral [00:07:00] role with the Las Vegas Aces. She is a very accomplished player and she is. Definitely someone where, when we talk about in terms of basketball, we're not talking about someone kind of at the end of the bench and, you know, bringing all of those players still calculate.

They're very great. We're talking about someone.

Courtney Dunn: We'll hear her name that are avid WNBA fans or spectators that this name, you're like, okay, she's a superstar. She's someone that people know. She's just very well in her career. I think she started in 2015 in the WNBA. So it's not for this case, she's a pretty high profile plaintiff.

Masood Ali: Absolutely. Courtney, you hit it right on the head. She is a very high profile plaintiff. Someone very well accomplished and very well known within the WNBA. Correct. Now that we got the background on De'Arca Hamby, kind of going into the beginning stages of the lawsuit and the allegations. And what happened?

So while she was with the Las Vegas [00:08:00] aces in 2022, she had actually re signed with the aces to a two year deal. And during that time, when she resigned, she was also subject to a marketing agreement that she had with the WNBA itself, but to kind of pull it back. The WNBA is the broad organization, the basketball organization that oversees the whole basketball league for the association.

And then there, there are teams throughout the league located in different states and those are all different, you know, franchises that you can say as a, as an example. Of the WNBA. So the WNBA is kind of the governing body you could say. And then the Las Vegas aces are her direct employer. And we'll touch on the, the employer situation here in a little bit, but when she was with the Las Vegas aces in [00:09:00] 2022, she had a deal, not only with Las Vegas aces, she was also subject to a marketing agreement.

With the WNBA itself, that marketing agreement, we've probably seen this on social media. There's there's posts about the WNBA, their ads, their run that promote the league itself. As we know right now, for those who are not aware of the WNBA, it's pretty much the highest exposure as it's ever been, there's been a lot of collegiate athletes that are coming in to the WNBA.

They're putting a lot of eyes on the WNBA, Caitlin Clark. Good example

Courtney Dunn: yea

Masood Ali: providing a lot of eyes on the league itself. So the promotional running, that machine is always running with an organization, especially with other revenues are split. And I don't want to go into too much of a tangent on, on that.

Essentially the more eyes that are on the league, the more deals they can get, the WNB can get more TV [00:10:00] deals, parts of your deals, commercials, so on and so forth, and that only helps the players. Increase their salary. And that's a separate topic for, for a different, for a different episode. But the promotions are always the promotional materials and the marketing are always there.

So De'Erica had agreements with essentially both the WNBA itself, but the promotional marketing agreement and her contract. With the Las Vegas aces. And so now we're, I'm going to take you back to 2022. De'Arca has her new deal. She's still subject to that marketing agreement that we just, we just talked about, and then she ends up becoming pregnant.

Obviously there's, when you're a WNBA player, there's, there's a season where you have to prepare for, there's always an off season as well. So De'Arca lets her coach know, her team know, Becky Hammond is the coach. And we're going to talk about her in a little bit as well. about her pregnancy and then [00:11:00] this is what her availability is going to be like.

It'll happen during the off season. She'll be back for the regular season. You know, she just letting, you know, her employer know what, what's going on.

Courtney Dunn: Was the promotional contract with the WNBA, was there a term on that? Because you said the contract with the ACEs, that was the two year extension starting 2022.

So that would have ended in 2025. What about the promotional deal?

Masood Ali: Yeah, the promotional deal did, it was in sometime in 2023, I don't know the exact date off the top of my head, but it was when she re signed with the Aces, she also had a concurrent deal with the WNBA and it expired in uh, 2023. And so going back to the lawsuit and like the allegations and leading up to the case.

Now, the allegations are De'Arca Handy, essentially you can break it down into two different categories. [00:12:00] One would be discrimination based off De'Arca informing her employer about her pregnancy. That would be one category. And then the second category would be retaliation because she was eventually traded.

And then we're going to talk about that. Here soon, if I can boil it down to in simpler terms is De'Ricka Hemby alleges that after she told her employer about her pregnancy, that the relationship changed, it, it just soured between her coach, between her team. She felt more alienated with the contract that she signed that she re signed with the Las Vegas agents.

She had certain benefits that she got from the team in terms of. Onboarding her, her family, her home. She has certain benefits that were going fine. Everything was going normal, just as stipulated from the contract. But then after she told

her coach and her team about this [00:13:00] pregnancy, she felt more isolated from the team.

She got more just kind of like the cold shoulder that you would say. And that culminated into her being eventually traded from the team.

Courtney Dunn: I think I read and correct me if I'm wrong, that she felt like things were getting a little off, right? She noticed that they were treating her a little differently. I think her complaint even said that the coach on the phone asked her whether her pregnancy was planned.

And Ms. Hamby said, no, it was not. And the coach said, well, you didn't take proper precautions to avoid getting pregnant, which I thought was shocking. And, you know, that really seemed to stand out to me in the complaint, but also the fact that she posted on formerly Twitter about what she was, this kind of reaction she was getting, right.

And I thought that she was. Maybe feeling like once she made that public post, things got worse for her. Am I right about reading it that way? [00:14:00]

Masood Ali: Yeah, no, you're absolutely right, Courtney. And these are allegations that will definitely be fleshed out if this case proceeds. The, the coach Becky Hammond says, no, none of this happened.

It was just a business decision. And we'll talk about that here soon, but you're absolutely on the mark. The allegations from here are, there were specific instances about this. Her and her coach about talking about her pregnancy. And why did you plan it in this way where you're interfering with, with, with the team and you don't have to be an expert to know that once the term of the conditions, once you start talking about pregnancy discriminate in talking to an employee about planning their pregnancy and how it's affecting the workplace and things of that nature, that's a no go.

I will see how it plays out. But that's absolutely right. And then there's the distinction between trying this case within the court system that we have here and also social media and how it, how it impacts the case [00:15:00] being tried in the court of public opinion. And me as a, me as a civil defense lawyer, we always want to try it within the ambits of the court and then the law and what we have.

And so, of course, this is the social media world that we're in here on the money corny that she issued DRK issued a public statement in January of 2023 of

talking about, you know, how this affected her how heartbroken she was. You know how she felt that she was manipulated and this is all things that we're going to have to have to wait and see on how things play out.

But essentially kind of going back to the prongs of what this case will be in terms of discrimination. I wanted to focus a little bit more on that kind of broad strokes and then go into. You know, the retaliation being the trade. So in terms of the process itself, there are so many employment law cases, you know, throughout the [00:16:00] country that every employment case must be filed first with an agency, whether that be the federal agency, which is the EEOC, the Equal Employment Opportunity Commission, or a subsequent state agency, that's like a counterpart of the EEOC over here where I'm based in Chicago, Illinois.

Suburbs of Chicago, not proper Chicago. It's a big deal over here in Illinois, the state agencies, the Illinois human rights commission, as we talked about earlier. So there's always that in terms of like legal practicalities of the case, every employment law case, whether it's a winner or loser, anywhere in between, you must file with the appropriate state agency or else your case is going to get booted out for failing to exhaust your administrative remedies.

And so over here in this case, Jerrica did that she filed with both the EEOC and the Nevada state [00:17:00] counterpart. And then after that, what happens is there's a few ways and I'm, I don't want to go into the legal, my new shirt too much, but because we're on a podcast and we can talk about these things, I think I, I will go a little bit, a little bit into it in terms of.

The practical standpoint, because I also used to be a plaintiff's employment law attorney, and I've actually have more, more experience on that side than I do on the civil defense side. So there's always some gamesmanship within this agency filing. Because when you file the plaintiff files, and then the defense always has to answer with a position statement, you know, any exhibits, any information on their position of the case.

And so there's kind of two conflicting paths for this straight of agency route is when you're a plaintiff's attorney, you could tell your client, Hey, we're going to wait until the position statement is filed because we can always on the any party, whether plaintiff [00:18:00] or defendant, once you do an agency filing, you can request to see what the other side submitted so the plaintiff can see what the defense's position statement was.

And vice versa, the defense can request and see what plaintiff filed, but it's usually not much that plaintiff filed. They talk with the case examiner, you know, on the defense side, we don't get much, but the plaintiff, sometimes they can get more information, so there's always competing kind of strategies going on on the agency filing plaintiffs.

Nine times out of 10 year olds say, I want this case to move forward. Why is it taking so long at the agency level? There's so many cases. Going on. And so there's always two options you can tell your client, you can wait, and then we can request and see what we get from the defendants for their position statement.

Or we can just say, Hey, agency, we're not gonna go through this whole, you know, waiting game of defendants filing. We're just gonna request our right to sue. We're just gonna opt out of any investigation and we're gonna strictly get our right [00:19:00] to, so we can go into court. And it's interesting because now that I'm on like defense side, the defense bar is aware of this, they know that plaintiff is going to see what we filed.

So then defense has to think. How much information are we going to put on this position statement? Are we going to go full bore? We have nothing to hide. Are we going to do it pretty much like a MSJ? Are we going to do that or are we not? So it's, it's, it's very interesting to, for this agency, the legal minutia that goes on in there.

I just wanted to, to highlight that briefly because that happens and that's now that I'm on both, I've been on both sides of the coin. It's interesting to see how that happens. But in this case, she filed with the proper agency, I believe she filed with both EEOC and the state agency, and then she got her right to sue.

Once you get your right to sue, you have 90 days to get into federal court, where we're at right now, in the Nevada [00:20:00] District Court. So that was kind of step one, they lay out essentially what the complaint is, what we've talked about. There's nothing really substantial done at the agency level. It's just about getting your right to sue, whether there's a finding of evidence or not.

For the plaintiff, it's their decision to continue to go on to court or not. So, for example, if I get a letter that says from the agency, Hey, we did not find substantial evidence from this case. That doesn't mean the case is over. That just means that the agency's opinion. And then the plaintiff has the base to sue in federal court.

So, that's just a little background on the kind of preliminary step. I don't want to get bogged down into that. So then after that step, there was actually a filing in court, which is what we, we talked about throughout this podcast so far is the complaint that was filed from De'Erica herself. And there was a few [00:21:00] causes of action.

So De'Erica's first cause of action is a discrimination claim based on sex, which would be pregnancy in violation of Title VII and their state counterpart against The defendant, Las Vegas aces. She also has another cause of action of retaliation under title seven against the Las Vegas aces. And then she also has a retaliation claim under title seven, once again, along with the state counterpart in Nevada under the WNBA itself.

So going into what title seven is and the interplay with pregnancy discrimination, title seven is. A federal law. So that's the civil rights act of 1964. That is what I see every day where there's discrimination claims, harassment claims, unlawful termination claims filed based on a protected class, [00:22:00] which is all legal parlance for based on your sex, sexual orientation, your race.

Your religion, your disability status. I'm probably missing, you know, a few, but obviously pregnancy has been included in that as part of sex. And that's how it gets into federal court to begin with. In terms of retaliation, the title seven also has specific provisions for retaliation within it. And so we've talked a lot about her pregnancy discrimination claims so far, but we haven't really gotten into her retaliation.

What Dierka is alleging is, after she told her team, her coach, about her pregnancy, Once you got the cold shoulder and she was the same sort of benefits and accommodations and just the overall environment and the conversations that she was having with her coach and about her role on a team. [00:23:00] Once all that happened, obviously in the, in sports, people get traded.

There's the trade deadline. People get traded. WNBA is no different. And so after she told her team about her pregnancy, a few months after, I believe she told her team in the off season, which would have been in August or September somewhere around there, she gets traded. The trade deadline, the WNBA at that time was mid January, 2023.

She tells her employer in August, 2022, she gets traded in January of 2023. And now we're going back to, you know, how we first started this podcast on, she's a very accomplished player, right? It's not like she's the one who's the team won't

need, or she's a very good player. And so what her claim is, she told her team about her pregnancy.

She was retaliated in the sense that she was traded to a different team, the Los Angeles Sparks. And that team is a, it's a good team. What she's essentially saying is her, but for her telling her employer about her pregnancy, she would have still been on that team. Had nothing to do with, obviously since plaintiffs, this is her theory of the case.

If she didn't tell coach Hammond or Las Vegas Aces about her pregnancy, she would have still been on that team. She enjoys a lot of benefits in terms of personally and professionally for being in Las Vegas. Las Vegas is great on taxes. You know, Uncle Sam's taking out a lot more of her money in California than it is in Las Vegas.

And she specifically alleges that and plead that in her complaint, Las Vegas Aces are also. Again, when we talked about their championship team, they're a very good team, you know, they're coming off of championship runs and there's so much more, you know, financial. Opportunity for her, the Las Vegas Aces, as opposed [00:25:00] to the Sparks, which she was traded to.

And so that in a nutshell. Is her claim against the team itself, and then just to kind of close the loop on how the organization, how the WNBA is involved in it is going back to that marketing agreement and the agency kind of filing steps that we talked about earlier, similar to how the EEOC does its own investigation and issues a right to sue.

The WNBA itself actually launched an investigation themselves internally on this claim here. So in terms of the WNBA's investigation, they did come up with some adverse findings against the Las Vegas Aces. They actually determined that the team offered improper benefits to the Erica Handy, away a first round draft pick from the Las Vegas Aces, [00:26:00] which is pretty substantial.

In terms of getting new players and acquiring more players in the first round is, is a pretty high threshold. And, uh, essentially there's some findings in there that show something was kind of a foot going on with, with this whole situation, they also suspended coach Becky Hammond for, for a few days, for a few games, I believe it was two or three games in total.

And so all in all, what De'arraka's allegations are that the WNBA actually did not go into enough detail or enough punishment regarding the pregnancy discrimination aspect itself. Essentially what De'arraka says is they didn't go far

enough, they didn't really address the merits of the pregnancy aspect of this, kind of focused on the benefits about the housing.

And you have the vacation home and then like the lodging stuff that we've already discussed earlier, but they didn't really [00:27:00] touch on the pregnancy discrimination aspect. Number one, and she also claims that the actual marketing agreement that was with, with her and the WNBA, when that expired in 2023, it was not re upped by the WNBA.

They did not offer D'Erica another marketing agreement. And De'Erka alleges that because of this whole, all these players were public by now, they were, they were on X, like you talked about Courtney, it was public knowledge, the court of public attorney knew about this well before the contract was renewed.

And De'Erka alleges that she wasn't offered any more marketing opportunities from the WNBA because she spoke out

Carla Varriale-Barker: the case is so interesting and it caught so much attention. Can you address a bit? What is novel about this case? Is it a player coming out and suing the league, the [00:28:00] team, et cetera? Is it now that women's sports are becoming more popular?

Is it a matter of all of a sudden now we are confronted with issues like pregnancy something that is not necessarily an issue in the NBA for the male play, where the players who identify as male.

Masood Ali: Yeah, I think that's great. I think all those points are true. I don't know, like, I haven't heard of a lot of lawsuits.

Whether it be the WNBA or the WNBA, I mean, I'm, I just haven't seen a lot. I don't have any anecdotal evidence to support that. It does seem novel to me in terms of, especially like the profile of the player. I think that's a huge talking point because she is very, very accomplished.

Carla Varriale-Barker: Masood, can you explain why wasn't this subject to the collective bargaining agreement where so many player disputes are ordinarily addressed?

Masood Ali: Yeah. So in terms of the [00:29:00] NBA, and I'm going to go to the NBA for circling back to the NBA, they are subject to collective bargaining agreements. And there are certain exceptions for, for antitrust laws and those

things where you can't bring certain types of claims here. These discrimination claims and these.

Title seven, these federal type of questions. I think it is something that's very novel that where it's, it's new, the CBAs, they're generally reactive. They're more reactive than proactive. So it might be something where it comes up in another CBA where there's an exception or some sort of concession made in terms of taking cases to court.

But in looking at the claims from the defense councils and looking at kind of the legal filing, there's been no. sort of legal arguments or anything like that, where this case is not appropriate to be in federal court because the teams are subject to a [00:30:00] CBA. I think this is a case that's going to go through.

There's nothing that's going to stop it. Um, not going through based off a collective bargaining agreement.

Carla Varriale-Barker: And then can you talk a little bit about, I mean, everybody would have expected a motion to dismiss coming from the defense side. Can you talk a little bit about the strategy behind the motion to dismiss?

And of course, now we have a settlement conference coming up at the end of the month. What can we look forward to with respect to the settlement conference?

Masood Ali: Yeah, so in terms of the motion to dismiss first, the arguments are essentially pretty similar between both the team, the ACEs and the WNBA.

Essentially they say, so the business decision, this was not related to her disclosure of pregnancy. It was simply, we wanted to make the team better in terms of, you know, financial flexibility or having [00:31:00] more opportunity for others to progress. And resigning their own players. So it was something that had to be done.

This is what we see all the time on the defense side. There's always one element of plaintiff past the meat. And that's the element of, Hey, are they meeting the legitimate expectations? You know, of the employer, does the employer have another reason, a business reason, that's nothing to do with any sort of protected class.

So in terms of the pregnancy aspect, the discrimination part, both defendants say that there was no discrimination at all. It was simply a business decision to

trade Deerika. The WNBA gets into a little bit more of the minutia in terms of being a proper employer or not. I don't want to bore everyone who's listening to this podcast, but essentially what, uh, WNBA says is they have an additional argument that they're actually not a proper employer, that they're just a governing body, that the Las Vegas ACEs [00:32:00] are the proper employer.

Courtney Dunn: You said so of the fact that the filings mentioned that by signing that two year extension, Derek, uh, implicitly agreed to not get pregnant. I mean, from the legal side, whether you're thinking from the plaintiff side or defense, given your experience, where did What are your initial thoughts of how the court can approach that and how that can be further fleshed out?

Masood Ali: I'm going to put my defense hat on first, just because that's what I do now on a day to day basis. I would not advise any client for any sort of implicit, explicit guidance in terms of pregnancy that is people have their own lives and they want to build their own families. You know, that's. On them. This is a very unique case because we're in the sports arena and there's, you know, an off season and there's a regular season.

I don't know any sports attorneys who are in house counsel, but if [00:33:00] I was talking to them, I would say, you know, you can't really advise them one way or another. And this is a protected class as we've talked about within them. Title seven, federal law, state law, right?

Courtney Dunn: To become pregnant in those two years, just because she signed the extension.

Masood Ali: Correct. Absolutely. Absolutely. And then going back to the actual settlement conference that's coming up, it's really the, a toss up. It depends on how much the planter really wants to go forward with this case. As we all know, a settlement is unpredictable. Usually nobody is happy at the end of it, whether they settle or not.

You know, one side is giving more than they want to. The other side is. Receiving less than they expected. It really just comes down to, to me, the plaintiff's kind of dear cause willingness to move forward with this case. She's still in the league. She's still an active player that she's [00:34:00] want to deal with at a time, dress, everything that comes with being a professional athlete and now going through a full fledged lawsuit.

And it's just going to come down to numbers. They're going to go back and forth. And then we'll see what happens pretty soon, but there's really no specific

guidance that I have or, you know, insight. So what's going to happen besides waiting and seeing.

Courtney Dunn: Yeah, it's a toss up, but I'm sure we will definitely stay tuned so we can be updated on how this turns out, what direction it goes.

And I think you gave a great background and really got us caught up to speed on where this case is headed and everyone's position. So I am interested to see what comes next. Yeah.

Carla Varriale-Barker: Maybe you'll brief us on what happens if this case gets past the settlement conference. Boy, if I'm the WNBA in the league, I'm thinking very carefully about making sure this gets resolved and not played out in the press too much more.

It's a bad look. [00:35:00]

Masood Ali: Absolutely. You're absolutely right. The court of public opinion. It's usually the one that people read more than the actual court. So absolutely, absolutely.

Carla Varriale-Barker: Masood thank you so much for taking the time for breaking down a hot topic from employment law for us. We appreciate you and we look forward to collaborating with you when we have employment, discrimination, and other matters that cross our desks.

Thank

Courtney Dunn: you to our viewers for joining me, Carla and Masood today for this very special episode, our little detour from torts and sports. Please remember to rate review and subscribe, and you can listen to us on pod bean and apple podcast. [00:36:00] Thanks.