IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT BECKLEY

ANNA WHITE FERRARACCIO, PLAINTIFF,

v. CIVIL ACTION NO. 5:24-cv-00700

NEW PEOPLES BANK, DEFENDANT.

MOTION TO DISMISS

The Defendant New Peoples Bank (NPB) moves to dismiss the Complaint. The *pro se* Complaint alleges violations of four (4) Federal statutes and two (2) State common law claims of retaliation and defamation.

The Federal Causes of Action fail under Fed. R. Civ. P. 12(b(6) for failure to state a claim upon which relief can be granted as follows:

TRUTH IN LENDING ACT ALLEGATIONS

1. Plaintiff alleges NPB violated 15 U.S.C. §§1601-1667f, the Truth in Lending Act (Act).

2. 15 U.S.C. §1603(a) exempts loans primarily for business purposes from the Act's coverage.

3. The loan in question was for business purposes for a corporation owned by the Plaintiff, and which corporation is not a party here.

4. Plaintiff has no standing to bring a truth in lending claim; alternatively, the loan in question is exempt from the Act by law. As a result, the Plaintiff has neither a procedural nor a substantive right to relief from the provisions of the Act.

ELECTION INTERFERENCE ALLEGATIONS

5. Plaintiff alleges NPB violated 18 U.S.C §245(b)(1) by, in some non specific ways, interfering with her campaign for public office.

6. 18 U.S.C. §245 is a criminal statute delineating certain Federal Protected Rights and providing criminal penalties for the violation of the statute.

7. That section does not provide for a private right of action against a violator of the section.

8. Alexander v. Sandoval, 532 U.S. 275, 121 S.Ct. 1511 (2001) provides that absent Congressional action, there is no private right of action for violation of a Federal statute, *Syllabus (d)*, nor can one be created by regulation, *Syllabus (e)*.

EQUAL CREDIT OPPORTUNITY ACT ALLEGATIONS

9. Plaintiff alleges NPB violated 15 U.S.C. §§1691-1691f, the Equal Credit Opportunity Act (ECOA).

10 The ECOA defines an “adverse action” as an action denying credit.

11. NPB made the loan in question to Plaintiff’s corporation; Plaintiff was a guarantor of the loan but was not the recipient of the loan proceeds.

12. Plaintiff’s objection and complaint is not that the loan was not made; rather, the loan was not made based on her time line of expectation and that she changed her position anticipating when the loan would be approved, which loan was ultimately approved.

13. Such complaint is not an adverse action under the ECOA, and Plaintiff was not the affected applicant to the loan.

VIOLATION OF CIVIL RIGHTS UNDER 42 U.S.C. §1983

14. Plaintiff makes no specific allegations of a cause of action under 42 U.S.C. §1983. §1983 requires action by an actor under "any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia...." NPB is not a state actor under a statute, ordinance, regulation, custom or usage of any State, Territory or the District of Columbia.

PENDENT STATE LAW DEFAMATION AND RETALIATION ALLEGATIONS

Plaintiff's other claim of defamation and retaliation are state law pendent claims which are not individually sustainable under the jurisdiction of this Court as pleaded by the Plaintiff, regardless of their merit after discovery, once the Federal claims are dismissed.

WHEREFORE, the Defendant New Peoples Bank prays that the Complaint against it be dismissed and that it have its costs.

NEW PEOPLES BANK,

By Counsel.

/s/ William S. Winfrey, II
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CERTIFICATE OF SERVICE

I, WILLIAM S. WINFREY, II, of counsel for Defendant, do hereby certify that a true and correct copy of the foregoing Motion to Dismiss has this day been electronically filed with the Clerk of the Court via the CM/ECF filing system, as well as service upon the Plaintiff by United States Mail, postage prepaid, at her last-known address of:

Anna White Ferraraccio
41 Pipestem Spa Way
Pipestem, WV 25979
E: AnnaFerraraccio@gmail.com

This the 11th day of December, 2024.

/s/ William S. Winfrey, II
William S. Winfrey, II (WVSB #4093)
Attorney at Law
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AFFIDAVIT OF L. MORI WILLIAMS

STATE OF WEST VIRGINIA,

COUNTY OF MERCER, TO-WIT:

L. MORI WILLIAMS, after being first duly sworn, states:

1. I am the Senior Vice-President and Commercial Loan Officer of New Peoples Bank (NPB) in Princeton, West Virginia.

2. I was the supervising loan officer in charge of a loan in 2024 requested by Plaintiff for Pipestem Spa and Chalet Corporation, a West Virginia Corporation (Pipestem Spa); the common stock of that corporation is owned by Plaintiff. That loan was processed by Jamie Cox-Kidd. This is the loan which is the subject of the Complaint.

3. NPB made the loan to Pipestem Spa beginning with an appraisal completed in May, 2024.

4. NPB requested financial information from Pipestem Spa and Plaintiff that was received piecemeal, causing a delay in the processing of the loan.

5. Because of the number of outstanding loans Pipestem Spa had with NPB, this loan required a review by senior credit officers for approval.

6. Such approval was given and the loan closed July 29, 2024, in the amount of $300,000.00, consolidating one existing loan into the new loan but otherwise in substantially the same terms as requested by Pipestem Spa.

7. Plaintiff was a guarantor of this loan but was not a maker nor did she receive the loan proceeds; those proceeds were distributed to the borrower Pipestem Spa.

And further the affiant saith not.

L. Mori Williams

Taken, subscribed and sworn before me this 11th day of December, 2024, by L. Mori Williams.

My Commission Expires May 6, 2027

Sharon A. Wellman
Notary Public

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
Sharon A. Wellman
William S. Winfrey, II
1608 West Main Street
Princeton WV 24740
My Commission Expires May 6, 2027