

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.

**DEFENDANT'S MOTION TO DISMISS
PLAINTIFF'S AMENDED COMPLAINT**

The Defendant, New Peoples Bank ("hereinafter referred to as "NPB"), moves to dismiss the Amended Complaint. The *pro se* Amended Complaint alleges violations of Four (4) Federal statutes and two state common law claims of retaliation and defamation.

The Federal Causes of Action fail under Fed. R. Civ. P. 12(b)(1) for lack of subject matter jurisdiction in Plaintiff's lack of standing and Rule 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 Pipestem Spa and Chalet Corporation, 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 and has no standing to complain under the ECOA.

12. Plaintiff’s objection and complaint is not that the loan was not made; rather, the loan was not made based on her timeline 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.

AMENDED COMPLAINT ALLEGATIONS

15. Plaintiff's Amended Complaint appears to add a count asking for relief in the form of an apology for some type of unspecified slander or defamation and raises no Federal cause of action.

PENDENT STATE LAW DEFAMATION AND RETALIATION ALLEGATIONS

16. 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 Amended 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 Defendant's Motion to Dismiss Plaintiff's Amended Complaint 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 24th day of March, 2025.

/s/ William S. Winfrey, II
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