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 REPLY TO PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION TO DISMISS PLAINTIFF'S SECOND AMENDED COMPLAINT**

The Defendant, New Peoples Bank (hereinafter referred to as "NPB"), makes reply to Plaintiff's Response to Defendant's Motion to Dismiss Plaintiff's Second Amended Complaint as follows:

COUNT 1 - EQUAL CREDIT OPPORTUNITY ACT VIOLATION

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

2. 15 U.S.C. §1691 prohibits discrimination "with respect to any aspect of a credit transaction."

3. The act of Defendant that is used to allege a violation of the ECOA on the basis of sex and religious affiliation states in the Complaint: "12. Plaintiff brings this action pursuant to 15 U.S.C.A., §1691. The Bank unlawfully discriminated against Plaintiff by forcing the non judicial foreclosure in an expedited fashion, upon Plaintiff based on her sex (female) and religion (non Christian)."

4. Accordingly, Plaintiff seeks damages under ECOA for the foreclosure sales.

5. Pursuant to Congressional Authority, the Federal Reserve promulgated regulations concerning the ECOA, commonly referred to as Regulation B - 12 C.F.R. 202.

6. Regulation B states in pertinent part:

> § 202.2. Definitions
> For the purposes of this regulation, unless the context indicates otherwise, the following definitions apply.
> (a) *Account* means an extension of credit. When employed in relation to an account, the word use refers only to open-end credit.
> (b) *Act* means the Equal Credit Opportunity Act (title VII of the Consumer Credit Protection Act).
> ***(c) Adverse action.***
> (1) The term means:
> (i) A refusal to grant credit in substantially the amount or on substantially the terms requested in an application unless the creditor makes a counteroffer (to grant credit in a different amount or on other terms) and the applicant uses or expressly accepts the credit offered;
> (ii) A termination of an account or an unfavorable change in the terms of an account that does not affect all or substantially all of a class of the creditor's accounts; or
> (iii) A refusal to increase the amount of credit available to an applicant who has made an application for an increase.
> ***(2) The term does not include***:
> (i) A change in the terms of an account expressly agreed to by an applicant.
> (ii) ***Any action or forbearance relating to an account taken in connection with inactivity, default, or delinquency as to that account***; (emphasis added.)

7. Regulation B exempts foreclosure sales which are taken in connection with default or delinquency on the account from the provisions of the ECOA, specifically 15 U.S.C. §1691. Therefore, ECOA does not give Plaintiff any possible relief.

8. In Plaintiff's reply, she does not address Regulation B other than to say that the Complaint is broader than foreclosure; yet, the Plaintiff states that she was subjected to an "expedited" foreclosure because of her sex and her religious affiliation.

LOAN 0471 WAS NOT MADE BY PLAINTIFF NOR SECURED BY HER PROPERTY

9. Plaintiff did not address specific allegations that Loan 0471, was for a loan in both the name of Pipestem Spa and Chalet Corporation and secured by property owned by Pipestem Spa and Chalet Corporation. Plaintiff can have no damages under either the ECOA or the Fair Housing Act specifically as to that loan. Plaintiff is not an “aggrieved person” under 42 U.S.C. 3602:

> (i) "Aggrieved person" includes any person who-
> (1) claims to have been injured by a discriminatory housing practice; or
> (2) believes that such person will be injured by a discriminatory housing practice that is about to occur.

10. Plaintiff was only a guarantor of that loan and Defendant seeks no deficiency.

11. Loan 0471 was for a property described by Plaintiff and Pipestem Spa and Chalet Corporation as a “hotel” and not for residential living as required for coverage by the Fair Housing Act.

PLAINTIFF CONTINUES TO FAIL TO ADEQUATELY PLEAD DISCRIMINATION

12. Plaintiff has not pleaded any overt act by Defendant that shows an act of discrimination on the basis of her sex or her religious affiliation as to either count of the Complaint; therefore, she has not met her burden even in notice pleading that she has suffered discrimination. McCleary Evans v. Maryland Department of Transportation, State Highway Administration, 780 F.3d 582 (4th Cir. 2015).

13. Without such demonstration of an overt act of discrimination -- not that the Plaintiff is a woman or that the Plaintiff is a non-Christian but HOW such standing motivated Defendant’s foreclosures against her Corporation -- her Complaint borders on

being "frivolous, unreasonable or without foundation." Christiansburg Garment Co. v. EEOC, 434 U. S. 412, 421 (1978).

14. Finally, Fed. R. Civ. P. 12(d) states:

> d) Result of Presenting Matters Outside the Pleadings. If, on a motion under Rule 12(b)(6) or 12(c), matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56 . All parties must be given a reasonable opportunity to present all the material that is pertinent to the motion.

The rule does not permit Plaintiff to object to the Court considering the Motion to be a Motion under Rule 56; rather, it states a reasonable opportunity to respond shall be given if the Court permits the matters outside the pleadings. These matters, Exhibits 1-15, demonstrate a non-discriminatory reason for the loan foreclosures about which the Plaintiff complains. Plaintiff seems to see no reason to either plead some fact or allege it in her Complaint or in her Response to the Motion summarizing what the Defendant did regarding the foreclosures that was motivated by an unlawful discriminatory reason. By the notes and the payment histories, Defendant demonstrated its right to proceed to foreclosure as a non-discriminatory reason for the actions taken about which Plaintiff sues.

Plaintiff has no evidence of an act of discrimination based on gender or religious affiliation committed by NPB. Plaintiff filed suit and seeks discovery to attempt to try to find such a reason without any proof that such a reason exists.

Plaintiff alleges Exhibits 1-15 are not true copies of loan documents. Attached to this Response is the Affidavit of Jamie Cox-Kidd, Defendant's Loan Officer of one or more of Plaintiff's corporation's loans at issue here, which avers the accurate and truthful information contained within those copies.

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

NEW PEOPLES BANK,

By Counsel.

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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 Reply to Plaintiff's Response to Defendant's Motion to Dismiss Plaintiff's Second Amended Complaint has this day been electronically filed with the Clerk of the Court via the CM/ECF filing system.

This the 25th day of August, 2025.

/s/ William S. Winfrey, II

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