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 SECOND AMENDED COMPLAINT

The Defendant, New Peoples Bank (hereinafter referred to as "NPB"), moves to dismiss the Second Amended Complaint. The Second Amended Complaint (hereinafter referred to as "Complaint") alleges violations of two (2) Federal statutes. The 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:

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 in her sex (female) ands 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.

STANDING OF PLAINTIFF FOR FAIR HOUSING ACT VIOLATIONS

8. Plaintiff has no standing to pursue claims under the Fair Housing Act as she is not the applicant or borrower as defined by the Act.

9. The five (5) loans in question on the three (3) separate properties in question were all made to "Pipestem Spa and Chalet Corporation." See the notes attached to this Motion as ***Exhibits 1, 2, 3, 4, and 5***.

10. Plaintiff was only a guarantor of those loans. See the guarantees attached to this Motion as ***Exhibits 6, 7, 8, 9, and 10***.

11. Plaintiff pledged certain real properties as security for the loans made to Pipestem Spa and Chalet Corporation but did so voluntarily as the sole shareholder of Pipestem Spa and Chalet Corporation.

12. No deficiency is asserted against the Plaintiff by Defendant. As a result, since Plaintiff is not the applicant or borrower, Plaintiff has no standing to assert damages under the Fair Housing Act. The Act does not mention a pledgor of real property or one who makes a hypothecation of personal property as being entitled to any relief.

13. In a light most favorable to the Plaintiff, the allegations of a violation by Defendant of the Fair Housing Act fail because the Plaintiff was not the applicant for the loans. Her claim for damages, if any, is against Pipestem Spa and Chalet Corporation for failure to make payments on loans secured by her real estate.

14. Pipestem Spa and Chalet Corporation was significantly delinquent in monthly payments under its loans which resulted in the foreclosure sales being conducted in a non-discriminatory fashion. The affected notes, ***Exhibits 1-5***, state that the notes may be

accelerated after a delinquency. Defendant waited four (4) months to accelerate the loans and direct the beginning of foreclosure proceedings for the affected properties.

15. Loan payment summaries are herein filed as ***Exhibits 11-15***. All loan documents with certain identifying factors are redacted pursuant to L. R. Civ. P. 5.2.1(a). This information is shared in a response to judicial process as permitted by the Federal Deposit Insurance Corporation Privacy Policy.

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

16. Loan 0471, ***Exhibit 3***, 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.

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

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

NEW PEOPLES BANK,
By Counsel.

/s/ William S. Winfrey, II
William S. Winfrey, II (WVSB #4093)
Attorney at Law
1608 West Main Street
P. O. Box 1159
Princeton, WV 24740
T: (304)487-1887
F: (304)425-7340
E: bill@winfreylaw.com

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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 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 July, 2025.

/s/ William S. Winfrey, II
William S. Winfrey, II (WVSB #4093)
Attorney at Law
1608 West Main Street
P. O. Box 1159
Princeton, WV 24740
T: (304)487-1887
F: (304)425-7340
E: bill@winfreylaw.com