UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

YVETTE BOYKIN, :

Plaintiff, :

v. :

BANK OF AMERICA, N.A., et al., :

Defendants. :

CIVIL ACTION NO.

1:03-CV-3467-MHS

ORDER

Presently before the Court are the parties' cross-motions for summary judgment. For the following reasons, the Court grants defendant's motion, denies plaintiff's motion, and dismisses this action.

Background

On November 14, 2003, plaintiff, an African-American female who is proceeding pro se, filed this action pursuant to various federal statutes, regulations, and constitutional provisions. Plaintiff claims that defendants Bank of America, N.A., and Equicredit Corporation of America (collectively, the "Bank") denied plaintiff's loan refinancing application on the basis of her race, gender, and age and the property's location in a predominantly African-American neighborhood.

On June 29, 2001, plaintiff applied for the loan over the telephone by calling Equicredit's headquarters in Jacksonville, Florida.[1] She sought the loan to refinance a home in Buffalo, New York. Equicredit informed plaintiff over the telephone that her credit rating was sufficient to qualify for a loan but that she would need to send further documentation to receive final approval. Plaintiff did not disclose her race or the racial makeup of the neighborhood where the property was located to Equicredit. Plaintiff mailed the requested documentation to Equicredit. None of this information revealed plaintiff's race, sex, or the racial demographics of the area surrounding the property.

On July 25, 2001, Equicredit contacted plaintiff by telephone and informed her that it had denied her loan application based upon its determination that the loan would be "high cost" under New York law.[2] In August of 2001, plaintiff received written confirmation of the denial of her

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[1] Plaintiff submitted her loan application to Equicredit Corporation of America, a wholly owned subsidiary of Bank of America, N.A.

[2] At the time of plaintiff's loan application in June of 2001, Equicredit had a written credit policy that it would not make a loan which was considered "high cost" under New York law. A "high cost" loan is one where the closing costs for the loan exceed five percent (5%) of the loan amount. Plaintiff applied for a loan in the amount of $28,000.00. The estimated closing costs were $1,784.50, or 6.4% of the loan amount.

loan and Equicredit's determination that the loan would be "high cost" as the reason for denial.

On August 8, 2001, plaintiff filed a complaint against defendant Bank with defendant United States Department of Housing and Urban Development (HUD). HUD referred the complaint to defendant State of New York Executive Department, Division of Human Rights (DHR). DHR determined that there was no probable cause to support plaintiff's allegations and that the investigation did not reveal any evidence of discrimination. DHR found further that plaintiff's loan application was denied because costs exceeded defendant Bank's guidelines, which DHR concluded was a legitimate non-discriminatory business reason. Plaintiff contends that HUD and DHR failed to ensure that the investigation of the subject complaint was complete and adequate prior to issuing a no probable cause determination and closing the complaint.

On June 10, 2004, the Court dismissed all claims against the Bank except plaintiff's claim under the Fair Housing Act ("FHA"). The Court also dismissed plaintiff's claims against HUD. On September 29, 2004, the Court

granted plaintiff's motion for entry of default against DHR for failure to answer or otherwise respond to the complaint.

Defendant Bank now moves for summary judgment arguing that its denial of plaintiff's loan was not based on any discrimination against her. Plaintiff also moves for summary judgment and partial summary judgment arguing that the bank's denial of her loan was pretext for illegal discrimination.

Standard for Summary Judgment

Rule 56 of the Federal Rules of Civil Procedure "mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial. In such a situation, there can be no 'genuine issue as to any material fact,' since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial." Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986).

The movant bears the initial responsibility of asserting the basis for his motion. Celotex, 477 U.S. at 323; Apcoa, Inc. v. Fidelity National Bank, 906 F.2d 610, 611 (11th Cir. 1990). However, the movant is not required to negate his opponent's claim. The movant may discharge his burden by merely "'showing' -- that is, pointing out to the district court -- that there is an absence of evidence to support the non-moving party's case." Celotex, 477 U.S. at 325. After the movant has carried his burden, the non-moving party is then required to "go beyond the pleadings" and present competent evidence designating "specific facts showing that there is a genuine issue for trial." Id. at 324. While the court is to view all evidence and factual inferences in a light most favorable to the non-moving party, Samples v. City of Atlanta, 846 F.2d 1328, 1330 (11th Cir. 1988), "the mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no genuine issue of material fact." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-48 (1986) (emphasis in original).

A fact is material when it is identified by the controlling substantive law as an essential element of the non-moving party's case. Anderson, 477 U.S. at 248. An issue is genuine when the evidence is such that a reasonable

jury could return a verdict for the nonmovant. Id. The nonmovant "must do more than simply show that there is some metaphysical doubt as to the material facts.... Where the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no 'genuine issue for trial.'" Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586-87 (1986). An issue is not genuine if it is unsupported by evidence, or if it is created by evidence that is "merely colorable" or is "not significantly probative." Anderson, 477 U.S. at 249-50. Thus, to survive a motion for summary judgment, the non-moving party must come forward with specific evidence of every element material to that party's case so as to create a genuine issue for trial.

The Rule 56 standard is not affected by the filing of cross-motions for summary judgment: "The court must rule on each party's motion on an individual and separate basis, determining, for each side, whether a judgment may be entered in accordance with the Rule 56 standard." 10A Charles A. Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice and Procedure § 2720 at 335-36 (3d ed. 1998). Cross-motions may, however, be probative of the absence of a factual dispute where they reflect general

agreement by the parties as to the controlling legal theories and material facts. See United States v. Oakley, 744 F.2d 1553, 1555 (11th Cir. 1984).

Discussion

The FHA makes it unlawful for a person or entity whose business includes engaging in residential real estate-related transactions to discriminate against any person because of race when making such a transaction available or in the terms or conditions of the transaction. 42 U.S.C. § 3605(a). A "real estate-related transaction" includes the making or purchasing of loans or providing other financial assistance for purchasing, constructing, improving, repairing, or maintaining a dwelling. 42 U.S.C. § 3605(b).

A claim brought under the FHA is governed by Title VII's analytical framework. See Sec'y, United States Dep't of Hous. and Urban Dev. v. Blackwell, 908 F.2d 864, 870 (11th Cir. 1990). Under this framework, a plaintiff can prove discrimination by direct evidence or circumstantial evidence. See Damon v. Fleming Supermarkets of Florida, Inc., 196 F.3d 1354, 1359 (11th Cir. 1999). Plaintiff has presented no direct evidence of discrimination in this case, and therefore the Court will proceed under the

three-step analysis set forth in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973).

Under the McDonnell Douglas analysis, first the plaintiff must establish a prima facie case of discrimination. Once the plaintiff has done this, the burden then shifts to the defendant to articulate a legitimate non-discriminatory reason for its adverse action. Once the defendant has met its burden, the plaintiff then has the burden of persuading the court that defendant's reason for its adverse action is a pretext for discrimination. See Tex. Dep't of Cmty. Affairs v. Burdine, 450 U.S. 248, 254 (1981).

In the credit and loan application context, to establish a prima facie case of discrimination, plaintiff must establish the following: 1) that the plaintiff is a member of a protected class; 2) that the plaintiff applied for and was qualified for a loan from the defendant; 3) that the loan was rejected despite plaintiff's qualifications; and 4) that the defendant continued to approve loans for applicants outside of the plaintiff's protected class with similar qualifications. Cooley v. Sterling Bank, 280 F. Supp. 2d 1331, 1339 (M.D. Ala. 2003). With regard to the fourth prong, plaintiff must present evidence that she was "similarly situated in all relevant aspects" to the non-

minority applicants defendant approved. Id. at 1340. A similarly situated person's and plaintiff's credit qualifications and loan details must be nearly identical and significantly parallel in every material respect. Id.

Even assuming that plaintiff has satisfied the first three elements, plaintiff has not produced evidence to show that defendant continued to approve loans for non-minority applicants with credit qualifications and loan details nearly identical and significantly parallel to plaintiff. Defendant avows that it is unaware of any other applicant whose credit qualifications and loan details are nearly identical to plaintiff's. Plaintiff states that she believes that defendant is not aware of any other similarly situated applicants because it has not provided her with information needed to make the comparison. Plaintiff's assertions are not sufficient to meet her burden. In addition, plaintiff submitted evidence of loan application information for the Buffalo, NY, area produced by defendant, but it fails to establish that certain non-minority applicants had a credit history, total assets, Beacon score, loan amount, or closing fees nearly identical to plaintiff. Cf. id. at 1341 (the plaintiff's evidence failed to establish an applicant similarly situated to the plaintiff in terms of prior credit relationship, existing lines of credit, and

annual income). Thus, plaintiff has failed to establish a prima facie case of discrimination.

Even assuming that plaintiff could establish a prima facie case, plaintiff's claims would fail at the pretext stage of the McDonnell Douglas analysis. Defendant argues that it denied plaintiff's loan because it determined that plaintiff's closing costs on the loan would exceed 5% of the proposed loan amount, resulting in a "high cost" loan under New York law in violation of defendant's underwriting policies. Because defendant articulated a legitimate non-discriminatory reason for denying plaintiff's loan, the burden shifts back to plaintiff to offer sufficient evidence for a reasonable factfinder to conclude that this was not the real reason defendant denied the loan. Cooley, 280 F. Supp. 2d at 1342.

Plaintiff argues that her loan was not a "high cost" loan because it was for rental property. She claims that defendant knew the loan was for rental property because it asked her for lease information and was aware of her residence in Georgia. Also, plaintiff argues that defendant violated its policy by failing to note on her application that it had not asked for her race when completing her application. For these reasons, plaintiff argues that

defendant's explanation for denying her loan is illegitimate and a pretext for discrimination.

Even if defendant denied the loan on the mistaken belief that it was for non-rental property and failed to note the lack of plaintiff's race information on her application, this does not amount to evidence of discriminatory intent. See Cooley, 280 F. Supp. 2d at 1343-44 (proving pretext requires more than showing that a bank was wrong in its assessment of underlying facts or failed to follow its own internal procedures in denying a loan application). Most notably, plaintiff admits that defendant did not ask for her race or gender information and that none of the documents that defendant relied on to make the loan decision indicated plaintiff's race. Plaintiff also testified that she did not have any evidence that defendant discriminated against her because of her race, gender, or the racial makeup of the property's neighborhood, but instead she relied on her belief that discrimination occurred. The Court concludes that plaintiff has failed to meet her burden to produce evidence from which a reasonable jury could conclude that defendant was more likely motivated by a discriminatory intent in denying her loan application. See id. at 1344.

Accordingly, defendant Bank is entitled to summary judgment. In addition, in light of the dismissal of plaintiff's claim against the Bank, plaintiff's related claim against defendant DHR must also be dismissed.

Summary

For the foregoing reasons, the Court GRANTS defendant's motion for summary judgment [#39-1]; DENIES plaintiff's motion for summary judgment and partial summary judgment [#46-1, #46-2]; and DISMISSES this action as to all defendants.

IT IS SO ORDERED, this 23 day of May, 2005.

Marvin H. Shoob, Senior Judge
United States District Court
Northern District of Georgia