IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

GEORGE S. HOOD,	**:**	
Plaintiff,	**:**	**Case No. 2:04-CV-481**
v.	**:**	**Judge Holschuh**
UNITED MIDWEST SAVINGS BANK,	**:**	**Magistrate Judge Abel**
Defendant.	**:**	

MEMORANDUM OPINION & ORDER

Plaintiff George Hood filed suit against United Midwest Savings Bank ("Midwest") alleging violations of the Equal Credit Opportunity Act ("ECOA"), 15 U.S.C. § 1691, and Ohio Revised Code § 4112.021. This matter is currently before the Court on Defendant's motion for summary judgment. (Record at 11). For the reasons set forth below, Defendant's motion is granted in part and denied in part.

I. Background and Procedural History

In 1995, Plaintiff, who is African-American, purchased a vacant lot on Franklin Avenue in a predominantly African-American neighborhood on the Near East Side of Columbus. He wanted to build a house on that lot. Working through his mortgage broker, Tony Malone, he applied to Midwest for a construction loan in November of 1995. (9/10/98 Hood Dep. at 23, 26-27; Ex. A to Mot. Summ. J.). Brian Swope, a loan originator with Midwest, processed the application, got preapproval from Kerri Coffman, Midwest's underwriter, and ordered an appraisal. (Swope Dep. at 56-63; Ex. B to Mot. Summ. J.).

On November 21, 1995, the appraiser, Barbara Roberts, wrote to Swope, stating that she was unable to complete the appraisal because there were no comparable sales in that area of town. (Ex. F to Mem. in Opp'n). Based on this report, Coffman told Swope that Plaintiff's loan could not be approved as submitted. (Coffman Dep. at 52; Ex. D to Mem. in Opp'n). Normally, when Midwest rejected a loan application, it sent a letter to the applicant, as required by the ECOA, advising the applicant of the adverse action taken and the reasons for it. It is undisputed that Midwest did not send Plaintiff any such letter at that time. (Id. at 86). Swope contends that after Coffman told him that the loan could not be approved as submitted, Swope suggested to Plaintiff that if he altered the plans for the house, the loan application might be approved. Swope also contends that, based on this conversation, Plaintiff agreed to submit revised plans. (Swope Dep. at 129-30).

Plaintiff, however, denies that this conversation took place. Instead, Plaintiff contends that he contacted Malone early in December of 1995 to inquire about the status of his loan application. At that time, Malone told him that the application had been rejected because the appraisal could not be completed. Malone faxed Plaintiff a copy of the letter Roberts had sent to Swope. (9/10/98 Hood Dep. at 30; 6/30/99 Hood Aff. ¶ 7; Ex. D to Mot. Summ. J.). Plaintiff contends that he was appalled to learn that no appraisal could be done.

On January 8, 1996, Plaintiff filed a complaint with the Ohio Department of Commerce, Division of Financial Institutions, accusing Midwest of "redlining," discriminating against him because the neighborhood was predominantly African-American. That agency sent a copy of the complaint to Midwest. On January 29, 1996, Midwest's President, Thomas Pulfer, responded to Plaintiff's allegations in writing. He denied that the bank had engaged in redlining, and stated

that Plaintiff's loan application was rejected for three reasons: (1) the appraiser could not qualify comparable values and sales; (2) Plaintiff was expecting the appreciation of the real estate to substantiate for a cash infusion of the required 20 percent down payment; and (3) Midwest had uncovered several credit deficiencies that had not shown up earlier. (Ex. H to Mem. in Opp'n).

Shortly after receiving Pulfer's letter, Malone told Plaintiff that Midwest had reconsidered Plaintiff's request, and agreed to approve Plaintiff's loan application provided that he changed the architectural facade of the house to match the other houses in the neighborhood, and submitted a new loan application. (6/30/99 Hood Aff. ¶ 14). On May 8, 1996, Plaintiff submitted new plans and a second loan application, which was approved by Midwest. The closing was held on June 26, 1996, and Plaintiff immediately applied for a building permit. Plaintiff began construction of his house six weeks later, but because he immediately defaulted on the loan, Midwest did not disburse any money, and the house has not been completed. (Id. at ¶ 25).

Plaintiff filed suit against Midwest, and against two other parties who were later dismissed. See Hood v. Midwest Savings Bank, Case No. C2-97-218. The amended complaint alleged breach of contract, fraud, promissory estoppel, housing and credit discrimination and redlining, violations of the ECOA, Ohio Revised Code § 4112.021, and the Fair Debt Collection Practices Act. On September 24, 2001, the undersigned judge granted Midwest's motion for summary judgment on all of Plaintiff's claims except his claim that Midwest had violated the ECOA by failing to timely provide him with proper notification of the adverse action taken and the reasons for it. So that Plaintiff could appeal the Court's decision with respect to the other claims, the parties agreed that the one remaining ECOA claim would be dismissed without

prejudice. On April 8, 2004, the Sixth Circuit affirmed this Court's decision. Plaintiff then filed the instant suit, reasserting the ECOA claim, along with a parallel claim under Ohio Revised Code § 4112.021. Midwest has now moved for summary judgment on both claims.

II. Standard for Granting Summary Judgment

Although summary judgment should be cautiously invoked, it is an integral part of the Federal Rules, which are designed "to secure the just, speedy and inexpensive determination of every action." Celotex Corp. v. Catrett, 477 U.S. 317, 327 (1986) (quoting Fed. R. Civ. P. 1). The standard for summary judgment is found in Federal Rule of Civil Procedure 56(c):

> [Summary judgment] . . . shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

Summary judgment will be granted "only where the moving party is entitled to judgment as a matter of law, where it is quite clear what the truth is . . . [and where] no genuine issue remains for trial, . . . [for] the purpose of the rule is not to cut litigants off from their right of trial by jury if they really have issues to try." Poller v. Columbia Broadcasting Sys., 368 U.S. 464, 467 (1962) (quoting Sartor v. Arkansas Natural Gas Corp., 321 U.S. 620, 627 (1944)). See also Lansing Dairy, Inc. v. Espy, 39 F.3d 1339, 1347 (6th Cir. 1994).

Moreover, the purpose of the procedure is not to resolve factual issues, but to determine if there are genuine issues of fact to be tried. Lashlee v. Sumner, 570 F.2d 107, 111 (6th Cir. 1978). The court's duty is to determine only whether sufficient evidence has been presented to make the issue of fact a proper question for the jury; it does not weigh the evidence, judge the credibility of witnesses, or determine the truth of the matter. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986); Weaver v. Shadoan, 340 F.3d 398, 405 (6th Cir. 2003).

In a motion for summary judgment, the moving party bears the initial burden of showing that no genuine issue as to any material fact exists and that it is entitled to a judgment as a matter of law. Leary v. Daeschner, 349 F.3d 888, 897 (6th Cir. 2003). All the evidence and facts, as well as inferences to be drawn from the underlying facts, must be considered in the light most favorable to the party opposing the motion. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587-88 (1986); Wade v. Knoxville Util. Bd., 259 F.3d 452, 460 (6th Cir. 2001). Additionally, any "unexplained gaps" in materials submitted by the moving party, if pertinent to material issues of fact, justify denial of a motion for summary judgment. Adickes v. S.H. Kress & Co., 398 U.S. 144, 157-60 (1970).

"[T]he 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, 477 U.S. at 247-48 (emphasis in original). A "material" fact is one that "would have [the] effect of establishing or refuting one of [the] essential elements of a cause of action or defense asserted by the parties, and would necessarily affect [the] application of [an] appropriate principle of law to the rights and obligations of the parties." Kendall v. Hoover Co., 751 F.2d 171, 174 (6th Cir. 1984). See also Anderson, 477 U.S. at 248. An issue of material fact is "genuine" when "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson, 477 U.S. at 248. See also Leary, 349 F.3d at 897.

If the moving party meets its burden, and adequate time for discovery has been provided, summary judgment is appropriate if the opposing party 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. Celotex, 477 U.S. at 322. The nonmoving party must demonstrate that "there is a genuine issue for trial," and "cannot rest on her pleadings." Hall v. Tollett, 128 F.3d 418, 422 (6th Cir. 1997).

> When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.

Fed. R. Civ. P. 56(e).

The existence of a mere scintilla of evidence in support of the opposing party's position is insufficient; there must be evidence on which the jury could reasonably find for the opposing party. Anderson, 477 U.S. at 252. The nonmoving party must present "significant probative evidence" to demonstrate that "there is [more than] some metaphysical doubt as to the material facts." Moore v. Phillip Morris Companies, Inc., 8 F.3d 335, 340 (6th Cir. 1993). The court may, however, enter summary judgment if it concludes that a fair-minded jury could not return a verdict in favor of the nonmoving party based on the presented evidence. Anderson, 477 U.S. at 251-52; Lansing Dairy, Inc., 39 F.3d at 1347.

III. Discussion

Plaintiff's complaint alleges that Midwest violated the Equal Credit Opportunity Act, 15 U.S.C. § 1691, and Ohio Revised Code § 4112.021, when it failed to provide him timely notice of its rejection of his completed loan application and the reasons for it. He claims to have suffered "out-of-pocket expenses, emotional damages, and a loss of civil rights." He seeks compensatory and punitive damages, attorney fees and costs. (Compl. ¶¶ 12-14).

A. Equal Credit Opportunity Act

The Equal Credit Opportunity Act ("ECOA") requires creditors, within thirty days after receipt of a completed application for credit, to notify the applicant of its action on the application. See 15 U.S.C. § 1691(d)(1). The applicant is also entitled to a statement of reasons for any adverse action taken. See 15 U.S.C. § 1691(d)(2). A creditor who violates these provisions is liable "to the aggrieved applicant for any actual damages sustained by such applicant." 15 U.S.C. § 1691e(a). Actual damages may include "out-of pocket monetary losses, injury to credit reputation and mental anguish, humiliation or embarrassment." Fischl v. General Motors Acceptance Corp., 708 F.2d 143, 148 (5th Cir. 1983). The creditor may also be liable for punitive damages of up to $10,000, as well as attorney fees and costs. See 15 U.S.C. § 1691e(b) and (d).

In the earlier lawsuit filed by Plaintiff, the Court determined that genuine issues of material fact precluded summary judgment on Plaintiff's claim arising out of 15 U.S.C. § 1691(d). Specifically, the Court found factual disputes concerning when Plaintiff's loan application was complete, whether Midwest requested additional information from Plaintiff and, if so, whether it acted with reasonable diligence. The Court also found factual disputes about whether Midwest took any "adverse action" on the loan application. (Sept. 24, 2001 Mem. & Order at 24-25). As discussed earlier, the parties agreed that Plaintiff would dismiss this claim without prejudice so that he could immediately appeal the Court's decision with respect to all other claims.

Now that the appeal has been resolved and the ECOA claim has been refiled, Midwest has again moved for summary judgment, albeit on different grounds. Midwest contends that,

even if it violated the ECOA, Plaintiff's claim fails because he suffered no actual damages as a result of Defendant's failure to provide timely notice of the reasons the loan application was rejected. Defendant also contends that there is no basis for an award of punitive damages.

1. Actual Damages

The first question is whether, based on the evidence presented, a reasonable jury could find that Plaintiff suffered any actual damages as a result of Midwest's alleged violation of the adverse action notification provision of the ECOA. Midwest notes that in the earlier lawsuit, in response to written interrogatories, Plaintiff identified the following as ways in which he was damaged:

a) Real property has been purchased which has not been able to be economically utilized. The property was purchased for the construction of a single family home that should have been completed and sold.
b) Approx. $5,000.00 was expended by Plaintiff as prerequisite payments to obtain the loan in question.
c) Subcontractors were hired, debts were incurred in the approximate amount of $7,000.00.
d) Lost profit upon the sale of the completed homes.
e) Plaintiff's credit has been damaged.
f) Plaintiff's reputation has been damaged.
g) Plaintiff has lost the use of the money invested and the real property as well.
h) A judgment has been rendered against the Plaintiff.
i) Plaintiff has incurred attorney fees and the costs of this litigation.
j) Plaintiff has suffered emotional distress, damage to his reputation and humiliation.

(Ex. G to Mot. Summ. J.).

In its motion for summary judgment, Midwest argues that none of these alleged damages flowed from the delay in sending the adverse action letter with respect to the first loan application. Instead, the damages identified by Plaintiff were caused by his subsequent default

on the loan. Plaintiff, in his memorandum in opposition, does not deny that most of the damages he previously identified cannot be traced to the alleged violation of the adverse action notification requirement.

However, in an affidavit dated June 7, 2005, Plaintiff states that Midwest's failure to comply with the ECOA's adverse action notification requirement did cause him to suffer emotional distress. He stated:

> I was completely distraught . . . I suffered emotional distress because I believed that I had been discriminated against and because Midwest did not contact me and give me an explanation of why I was rejected. My belief that I had been discriminated against was based only on my conversation with Mr. Malone and by looking at the letter from Ms. Roberts. I received only a second hand and incomplete explanation for the rejection from a mortgage broker who, like me, was appalled by the rejection and did not believe that being rejected because of a failure to do an appraisal in Olde Towne East was a legitimate basis for the rejection. Midwest then did not give me an opportunity to change any problems that it saw with my application and did not give me a chance to obtain the loan. I had believed, based on my previous conversations with Mr. Swope, that I would get the loan. If Midwest, prior to my talking with Mr. Malone about the status of my application, had provided me with a written explanation such as what was contained in Mr. Pulfer's letter of January 29, 1996 and had worked with me to eliminate what it considered to be deficiencies in my application, I would not have believed that I had been discriminated against.

(6/7/05 Hood Aff. ¶¶ 3-4; Ex. I to Mem. in Opp'n).

Plaintiff further states that he suffered "considerable emotional distress" because of the ongoing uncertainty and the delays in beginning his building project. He contends that if Midwest had complied with the requirements of the ECOA, he could have worked with Midwest to remedy the deficiencies, and could have obtained approval much sooner than he did. But Midwest made no effort to work with him to remedy the alleged deficiencies until the beginning

of February 1996; the loan was not closed until June of 1996. (Id. at ¶6).

In its reply brief, Midwest does not deny that Plaintiff may have suffered emotional distress, nor does Midwest attempt to prove that he did not. Instead, Midwest examines statements made in Plaintiff's June 7, 2005 affidavit, and challenges Plaintiff's claims on grounds of collateral estoppel and lack of proximate cause. First, Midwest argues that Plaintiff "improperly seek[s] to reintroduce the claim of race discrimination that this Court and the Sixth Circuit have already rejected." (Reply at 3). Midwest urges the Court not to allow Plaintiff to bootstrap this previously-dismissed claim "by reintroducing his subjective apprehension of what happened in the form of an emotional distress claim." (Id. at 4).

In the Court's view, Plaintiff's claim of emotional distress is not barred by the Court's earlier ruling, granting summary judgment in favor of Midwest on Plaintiff's claims of race discrimination in housing and credit opportunities.[1] Collateral estoppel applies when: (1) the issue in the subsequent litigation is identical to that resolved in the earlier litigation; (2) the issue was actually litigated and decided in the prior action; (3) the resolution of the issue was necessary and essential to a judgment on the merits in the prior litigation; (4) the party to be estopped was a party to the prior litigation (or in privity with such a party); and (5) the party to be estopped had a full and fair opportunity to litigate the issue. See Santana-Albarran v.

[1] The Court held that Plaintiff failed to present any direct evidence "that Midwest denied his loan application because of his race or the racial composition of the neighborhood in which his property was located." Absent direct evidence of race discrimination, the burden-shifting framework set forth in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1972), applied. The Court held that summary judgment was warranted because Plaintiff had failed to present any evidence that Midwest had approved loan applications of non-minority applicants with qualifications similar to Plaintiff's, and had, therefore, failed to establish a prima facie case of race discrimination. (Sept. 24, 2001 Mem. & Order at 28-38).

Ashcroft, 393 F.3d 699, 704 (6th Cir. 2005).

Midwest's claim of collateral estoppel fails on the first prong. The issue in this case is whether Plaintiff suffered emotional distress as a result of Midwest's failure to comply with the ECOA's adverse action notification requirement. Plaintiff claims that because Midwest gave him just one reason why his loan application was not approved, i.e., inability to complete an appraisal, and he found that reason to be incredible, he reasonably believed that he was a victim of race discrimination and suffered emotional distress as a result. In contrast, the issue in the earlier case was whether Midwest had actually discriminated against Plaintiff on the basis of race in rejecting his loan application. The issue of whether Midwest actually engaged in race discrimination is separate and distinct from the issue of whether Midwest's failure to inform Plaintiff of all of the reasons why his loan application had been rejected led him to believe that he was a victim of race discrimination, and caused him to suffer emotional distress. Therefore, Plaintiff's claim is not barred on grounds of collateral estoppel.

Midwest also argues that Plaintiff cannot show that the alleged ECOA violation was the proximate cause of his emotional distress. Plaintiff has stated that he believed that he was a victim of race discrimination solely because he did not believe that Roberts was unable to complete an appraisal of the property. With respect to the issue of proximate cause, Midwest contends that the relevant question is whether Plaintiff would have suffered the same emotional distress if Midwest had timely disclosed all three reasons why it would not provide the loan requested. Midwest argues that because Roberts' inability to complete the appraisal was one of those three reasons, Plaintiff would have likely suffered the same emotional distress even if it had complied with the adverse action notification requirements of the ECOA.

Plaintiff, however, appears to argue that if Midwest had notified him that his loan application had been rejected not only because Roberts could not complete the appraisal, but also because he had an insufficient down payment and outstanding tax liens, then he would not have jumped to the conclusion that he was a victim of discrimination. But he was told only that an appraisal could not be completed, an explanation he found completely unbelievable. Only after he filed a formal complaint, alleging that Midwest had engaged in redlining, was he provided with any other explanation for Midwest's rejection of his loan application. Viewing the evidence in a light most favorable to the Plaintiff, the Court finds that a reasonable jury could conclude that Midwest's failure to provide Plaintiff with all three reasons his loan application had been rejected was the proximate cause of his emotional distress.[2]

For the reasons set forth above, the Court concludes that a reasonable jury could find that Plaintiff suffered actual damages as a result of Midwest's alleged violation of the adverse action notification provision of the ECOA.

2. Punitive Damages

Midwest has also moved for summary judgment with respect to Plaintiff's claim for punitive damages. The relevant statute reads, in pertinent part, as follows:

> Any creditor . . . who fails to comply with any requirement imposed under this subchapter shall be liable to the aggrieved applicant for punitive damages in an amount not greater than

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[2] Midwest's final argument concerns Plaintiff's statement that instead of receiving an adverse action letter directly from Midwest, he "received only a second hand and incomplete explanation for the rejection from a mortgage broker." (6/30/99 Hood Aff. ¶ 4). As Midwest correctly notes, the Court has already rejected Plaintiff's claim that Midwest violated the ECOA by sending the appraisal report to Plaintiff's mortgage broker instead of to Plaintiff himself.

> $10,000, in addition to any actual damages provided in subsection (a) of this section . . . In determining the amount of such damages in any action, the court shall consider, among other relevant factors, the amount of any actual damages awarded, the frequency and persistence of failures of compliance by the creditor, the resources of the creditor, the number of persons adversely affected, and the extent to which the creditor's failure of compliance was intentional.

15 U.S.C. § 1691e(b). Even if actual damages are not awarded, punitive damages may be awarded "if the creditor's conduct is adjudged wanton, malicious or oppressive, or if it is deemed to have acted in reckless disregard of the applicable law." Fischl, 708 F.2d at 148.

Midwest argues that punitive damages are not appropriate because: (1) Plaintiff suffered no actual damages; (2) Plaintiff has submitted evidence of only this one isolated incident of Midwest's non-compliance with the ECOA's adverse action notification requirement; and (3) there is no evidence of an intentional violation. According to Midwest, because it is undisputed that Swope believed that he made a counteroffer to Plaintiff when he suggested that Plaintiff submit different house plans for approval, there could be no intentional violation; if Midwest made a counteroffer, the adverse action notification requirement was not triggered. (Swope Dep. at 131-32, 135-40, 145, 149).

Plaintiff, however, denies that Swope made a counteroffer. He argues that, viewing the evidence in a light most favorable to him, there was either an intentional violation of the law, or a reckless disregard for it. In light of this Court's previous finding that genuine issues of material fact exist concerning whether Midwest took any "adverse action" on Plaintiff's loan application that triggered the notification requirement, the Court cannot say, at this juncture, whether Midwest intentionally violated the notification requirement or acted in reckless disregard of it. Neither can the Court say, as a matter of law, that Plaintiff is not entitled to an

award of punitive damages. The Court therefore denies Midwest's motion with respect to this issue.

B. Ohio Revised Code § 4112.021

Count II of Plaintiff's complaint alleges a violation of Ohio Revised Code § 4112.021. That statute reads, in pertinent part:

> (B) It shall be an unlawful discriminatory practice: (1) For any creditor to do any of the following: . . . (f) Fail or refuse to provide an applicant for credit a written statement of the specific reasons for rejection of the application if requested in writing by the applicant within sixty days of the rejection. The creditor shall provide the written statement of the specific reason for rejection within thirty days after receipt of a request of that nature.

Ohio Revised Code § 4112.021(B)(1)(f). Midwest contends that summary judgment is appropriate on three grounds: (1) *res judicata*; (2) the doctrine of claim splitting; and (3) statute of limitations.

The doctrine of *res judicata* prevents parties from relitigating claims that were actually litigated, or could have been litigated, in a previous action. See Mitchell v. Chapman, 343 F.3d 811, 819 (6th Cir. 2003). There is no dispute that Plaintiff raised the same § 4112.021 claim in the previous litigation. The parties disagree, however, about whether it survived Midwest's motion for summary judgment. Unfortunately, the Court's Order is ambiguous.

Plaintiff's Fifth Claim for Relief, as set forth in the Amended Complaint in the earlier case, asserted violations of the "state and federal Equal Credit Opportunity laws (15 U.S.C. § 1691 and O.R.C. § 4112.021)." Plaintiff alleged that Midwest had violated these statutes by: (1) discriminating against him with respect to credit transactions on account of his race and the race of people who resided in the neighborhood where the property was located; (2) failing to

promptly provide him a copy of the appraisal report, after he had made a written request for it; and (3) failing to notify him within 30 days that his loan application had been rejected and failing to notify him of the reasons it had been rejected.

The Court granted summary judgment in Midwest's favor on the first two alleged violations. With respect to the third alleged violation, Midwest's failure to provide timely notification concerning the rejection of Plaintiff's loan application, the Court focused on the federal statute, 15 U.S.C. § 1691(d)(1). The Court held that genuine issues of material fact existed concerning when Plaintiff's loan application was complete, whether Midwest acted with reasonable diligence in requesting additional information, and whether Midwest took any adverse action on the loan application. Unfortunately, the opinion does not make it clear whether Plaintiff's parallel state law claim also survived summary judgment. In discussing the alleged violation of § 1691, the Court noted, in a footnote, that "Ohio Revised Code § 4112.021(B)(1)(f) is similar to 15 U.S.C. § 1691(d)(1), except that notice of an application's rejection must be given in writing if the applicant requests the information within 60 days of the rejection." (Sept. 24, 2001 Mem. & Order at 21 n.7). The opinion makes no further mention of the § 4112.021 claim.

Because the Court held that there were factual disputes concerning whether Midwest took any adverse action on the loan application, it could be argued that those same factual disputes precluded summary judgment on the parallel state law claim, i.e., if the loan application was not "rejected," then the 60-day period during which Plaintiff could request a written statement of the reasons for the rejection was never triggered. Nevertheless, in the conclusion of the opinion, the Court granted "Defendant's motion for summary judgment . . . on all of Plaintiff's claims, except

for Plaintiff's Equal Credit Opportunity Act claim that Defendant failed to provide Plaintiff with adverse action notification." (Id. at 48).

Plaintiff did not move, pursuant to Fed. R. Civ. P. 60(b), to amend or set aside that Order to clarify whether the parallel state law claim also survived. A subsequent Order dated April 9, 2002, referring to the September 24, 2001 Memorandum and Order, again states that the Court "granted summary judgment in favor of defendant and against plaintiff on all claims other than the claim that defendant violated the adverse notification requirement of 15 U.S.C. § 1691." (Record at 105). Again, Plaintiff failed to object concerning the scope of the remaining claims. Furthermore, the parties later stipulated that Plaintiff's claim "that defendant violated the adverse action notification requirement under 15 U.S.C. § 1691" would be dismissed without prejudice; that stipulation makes no mention of the parallel state law claim. Under these circumstances, even if it could be argued that the § 4112.021 claim survived summary judgment in the earlier action, the Court finds that Plaintiff has waived his right to reassert that claim.

Even if Plaintiff had not waived his right to reassert the § 4112.021 claim, it appears that Midwest would nevertheless be entitled to summary judgment. Plaintiff, in his reply brief, acknowledges that "there is a question, that defendant did not raise, about whether plaintiff complied with the requirement under O.R.C. § 4112.021(B)(f) that the plaintiff give the defendant a written request for reasons of the rejection within sixty days of the rejection." (Reply at 14). The Court construes this statement as an admission that Plaintiff cannot show that he requested, in writing, a statement of the reasons why Midwest rejected his loan application.

Absent such a request, Midwest cannot be held liable for violating this statute.[3]

IV. Conclusion

For the reasons set forth above, Defendant's motion for summary judgment (Record at 11) is **GRANTED IN PART and DENIED IN PART**. Defendant is entitled to summary judgment on Plaintiff's state law claim. The Court denies Defendant's motion for summary judgment with respect to Plaintiff's ECOA claim, and reserves ruling on the issue of whether punitive damages may be awarded.

A Final Pretrial Conference will be held on March 24, 2006 at 1:00 p.m. A Conference Prior to Trial will be held on April 21, 2006 at 10:00 a.m. and Trial will commence on April 24, 2006 at 9:00 a.m.

Motion in limine, if any, shall be filed no later than March 6, 2006; response briefs shall be filed by March 13, 2006, and reply briefs by March 17, 2006.

IT IS SO ORDERED.

Date: December 16, 2005

/s/ John D. Holschuh
John D. Holschuh, Judge
United States District Court

[3] Having found that Defendant is entitled to summary judgment on these grounds, there is no need for the Court to address Defendant's alternative arguments concerning claim splitting and the applicable statute of limitations.