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United States District Court, N.D. Illinois.

Donald L. MILTON, Plaintiff,
v.
BANCPLUS MORTGAGE CORP., a Texas corporation and Lisa Stillwell, Defendants.

No. 96 C 106. | April 19, 1996.

Opinion

MEMORANDUM OPINION

KOCORAS, District Judge:

***1** This matter is before the Court on Defendants' Motion to Dismiss pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure. For the reasons set forth below, this Motion is granted in part and denied in part.

BACKGROUND

In this case, the Plaintiff Donald L. Milton ("Milton") alleges that the Defendants, Bancplus Mortgage Corp. ("Bancplus") and Lisa Stillwell ("Stillwell"), discriminated against him on the basis of race or in the racial composition of his neighborhood in rejecting his mortgage loan application. The Complaint reveals the following relevant facts, which we take as true for purposes of the motion.

Milton is an African-American male who owns a home in Chicago's Roseland neighborhood. African-Americans comprise 95% of Roseland's population. Milton owned the property since 1986, at which time he assumed a mortgage from Bancplus. On or about March 30, 1994, Plaintiff contacted Bancplus in its San Antonio, Texas office to request an application for either a conventional loan or a Federal Housing Administration ("FHA") loan to refinance his previous mortgage. Despite repeated requests, Milton did not receive the proper application form until approximately April 30, 1994.

On May 14, Milton submitted to Bancplus a completed application and all other requested documents, in addition to a check for $325.00 to pay for the appraisal and credit check fees. Milton was seeking a 30-year loan in the amount of $55,000. At the time, Bancplus charged an interest rate of 7.5%. In his application, Milton indicated that he was employed as a structural designer by the Chicago Park District and that his income was over $52,000. Furthermore, Plaintiff also noted that he owned two rental properties. Milton claims that based on his income, credit history and level of debt, he was well-qualified to receive a loan from Bancplus.

Although a Bancplus employee advised Milton that the processing would take approximately 45 days, Bancplus actually took 120 days to process and deny his application. After numerous requests and inquiries by Milton, on or about September 22, 1994, Lisa Stillwell informed Plaintiff that his loan was not approved. Plaintiff alleges that Bancplus stalled the consideration of his application until it could find a reason to reject it. Milton claims that in denying and delaying his application, Bancplus discriminated against him and treated him differently than other non-minority applicants.

Plaintiff later filed this Complaint which alleges that Defendants' discriminatory conduct violates: I) the Equal Credit Opportunity Act, 15 U.S.C. § 1691(e), *et. seq.;* II) the Fair Housing Act, 42 U.S.C. § 3601 *et. seq.;* III) the Thirteenth Amendment of the United States Constitution pursuant to 42 U.S.C. §§ 1981 and 1982; and IV) the Illinois Fairness in Lending Act, 815 ILCS 120/1 *et. seq.* Defendants move to dismiss Counts I-III for failure to state a claim. Defendants also move to dismiss Count IV for lack of subject matter jurisdiction, or in the alternative for failure to state a claim.

LEGAL STANDARD

***2** The purpose of a motion to dismiss pursuant to Rule 12(b)(6) is to test the sufficiency of the complaint, not to decide the merits of the case. Defendants must meet a high standard in order to have a complaint dismissed for failure to state a claim upon which relief may be granted since, in ruling on a motion to dismiss, the court must construe the complaint's allegations in the light most favorable to the plaintiff and all well-pleaded facts and allegations in the plaintiff's complaint must be taken as true. *Ed Miniat, Inc. v. Globe Life Ins. Group Inc.,* 805 F.2d 732, 733 (7th Cir. 1986), *cert. denied,* 482 U.S. 915 (1987). The allegations of a complaint should not be dismissed for failure to state a claim "unless it appears beyond a doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Conley v. Gibson,* 355 U.S. 41, 45-46 (1957). *See also Hishon v. King & Spalding,* 467 U.S. 69 (1984); *Doe on Behalf of Doe v. St. Joseph's Hospital,* 788 F.2d 411 (7th Cir. 1986). Nonetheless, in order to withstand a motion to dismiss, a complaint must allege facts sufficiently setting

forth the essential elements of the cause of action. *Gray v. County of Dane,* 854 F.2d 179, 182 (7th Cir. 1988). We turn to the motion before us with these principles in mind.

DISCUSSION

Defendants filed this Motion to Dismiss in which they claim that the Plaintiff has failed to sufficiently allege a prima facie case of lending discrimination. The Defendants further claim that the state law claim should be dismissed because we do not have jurisdiction over it, or, in the alternative, because it violates the plain meaning of the Illinois Fairness in Lending Act. We consider each of the Defendants' claims separately.

A. Whether Counts I-III Sufficiently Allege Discrimination in Lending.

To survive a motion to dismiss, the Plaintiff must, at the very least, allege facts which, if true, would make out the elements of a prima facie case. *Banks v. Chicago Bd. of Educ.,* 895 F.Supp. 206, 208-209 (N.D.Ill. 1995). The Defendants argue that the facts alleged in the Complaint are not sufficient to withstand this motion. We do not agree. In order to establish a prima facie case of lending discrimination under Section 3605 of the Fair Housing Act, Sections 1981 and 1982 of the United States Code, as well as the Equal Credit Opportunity Act, Plaintiff must show: 1) that he is a member of a protected class; 2) that he applied for and was qualified for a loan from the defendant; 3) that the loan was rejected despite his qualifications; and 4) that the defendant continued to approve loans for applicants with qualifications similar to the plaintiffs. *Watson v. Pathway Financial,* 702 F.Supp. 186, 187 (N.D.Ill 1988); *Gross v. United States Small Business Administration,* 669 F.Supp. 50, 53 (N.D.N.Y. 1987), *aff'd.,* 867 F.2d 1423 (2nd Cir. 1988); *Hickson v. Home Fed. of Atlanta,* 805 F.Supp. 1567, 1571-1572 (N.D.Ga. 1992), *aff'd.,* 14 F.3d 59 (11th Cir. 1994).

***3** We believe that the Complaint sufficiently alleges prima facie case. Milton, an African-American male, applied for a loan and was rejected by Bancplus. Defendants claim that the Plaintiff's case falls apart because he failed to allege that he was qualified for the loan according to Bancplus's criteria and that other whites who were similarly situated received a loan. A plain reading of the Complaint reveals, however, that Milton alleges that he was qualified for the loan and was treated differently than other non-minority applicants. At this early stage in the proceedings, we do not think that Plaintiff needs to point to the exact qualifications which Bancplus requires for a loan and compare them to his own, nor do we think it is necessary to point to specific applicants who actually received a loan. We acknowledge that in order to succeed in his claim, such information would clearly need to be established. However, it would be extremely difficult for the Plaintiff to allege this information with any specificity before he has engaged in discovery.

We also reject Defendants' argument that Milton failed to allege but-for causation between the discrimination and the decision to deny his mortgage application. In the Complaint, Plaintiff explicitly stated that Bancplus "denied Mr. Milton's loan application because of his race or color, and/or because of the racial composition of the neighborhood within which the Property is located." (Complaint, ¶ 42). We believe that such a statement sufficiently alleges causation in order to survive a motion to dismiss. For all of the above reasons, we believe that the Complaint sufficiently alleges discrimination in lending in order to survive this Motion to Dismiss.

B. Whether Count IV Should Be Dismissed

Defendants claim that Milton's claim for discrimination under the Illinois Fairness in Lending Act ("IFLA" or "Act") should be dismissed because 1) this court lacks subject matter jurisdiction to hear it since the Federal claims should be dismissed; and 2) this claim is expressly prohibited by the language of the Act. Since we have determined that Counts I-III should not be dismissed, we need not face the jurisdictional question in relation to this state claim. Accordingly, we will only consider Defendants' second claim.

Paragraph (b) of Section 120/5 of the IFLA states:

> If the same events or circumstances would constitute the basis for an action under this Act or an action under any other Act, the aggrieved person may elect between the remedies proposed by the two Acts but may not bring actions, either administrative or judicial, under more than one of the two Acts in relation to those same events or circumstances. 815 ILCS 120/5.

We believe that the plain language of this statute requires a plaintiff to choose between the IFLA or any other act that he wishes to pursue if the events which give rise to both claims are the same. As such, we do not believe that Plaintiff can successfully pursue claims under the IFLA, in addition to his other claims because they all arise out of the same loan rejection.

***4** Plaintiff attempts to get around this reading by arguing that the legislative history suggests that the Act which is

referred to in this statute is only the Illinois Human Rights Act. We reject this argument because it directly contradicts the language of the statute which states that the other action could come "under any other Act." It is well settled that the plain language of a statute is the best evidence of its meaning and the most reliable indicator of congressional intent. *Central States, Southeast and Southwest Areas Health and Welfare Fund v. Cullum Cos.,* 973 F.2d 1333, 1339 (7th Cir. 1992). Thus, when interpreting its meaning, the court must first look to the plain meaning of the statute. *See e.g., Meredith v. Bowen,* 833 F.2d 650, 654 (7th Cir. 1987). In so doing, the words of the statute are to be given their ordinary, common meaning. *Ulane v. Eastern Airlines, Inc.,* 742 F.2d 1081, 1085 (7th Cir. 1984), *cert. denied,* 471 U.S. 1017 (1985). Only when the statute is ambiguous should the court look to the legislative history. *Meredith,* 833 F.2d at 654. Thus, where the language of the statute is unambiguous, the plain meaning of the statute controls. Therefore, we believe that Plaintiff cannot pursue a claim under this Act in addition to his other claims because the plain language of this statute is not vague or ambiguous. Accordingly, Defendant's Motion to Dismiss Count IV is granted.

CONCLUSION

For all of the above reasons, Defendants' Motion to Dismiss Counts I-III is denied. Defendants' Motion to Dismiss Count IV is granted.