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United States District Court, N.D. Indiana,
Hammond Division.

JAMES E. THOMAS, et al., Plaintiffs,
v.
FIRST FEDERAL SAVINGS BANK OF INDIANA, et al., Defendants.

Civ. No. H 84–716. | July 30, 1986.

Opinion

ORDER

MOODY, District Judge.

***1** This matter comes before the court on defendants' Motion for Summary Judgment filed on February 28, 1986 and on defendants' Motion to Strike Plaintiffs' Memorandum and Exhibits Thereto which was filed on April 9, 1986. For reasons discussed below, the Motion to Strike Plaintiffs' Memorandum is DENIED; the Motion to Strike Plaintiffs' Exhibits is GRANTED in part and DENIED in part; and the Motion for Summary Judgment is DENIED.

I.

The plaintiffs, James E. Thomas, Rosie M. Thomas, and The Northwest Indiana Open Housing Center filed this action on October 26, 1984 requesting relief under the Civil Rights Act of 1964, 42 U.S.C. §§ 1981 and 1982, the Fair Housing Act, 42 U.S.C. §§ 3604, and 3605, and the Equal Credit Opportunity Act, 15 U.S.C. § 1691. By their complaint, the plaintiffs allege that first National Savings Bank of Indiana and its vice president refused on the basis of race to negotiate a real estate mortgage for Rosie and James Thomas. The defendants request summary judgment on the grounds that they denied the Thomas's loan because the value of the Thomas's collateral was insufficient and not because of any consideration of race or color.

II.

In response to the Motion for Summary Judgment, the plaintiffs filed seven exhibits and a nineteen-page factual discussion, devoid of even a single citation to legal authority. The defendants move to strike the plaintiffs' exhibits on the ground that they are not properly authenticated and thus, are not admissible evidence sufficient to create a factual dispute on the material issue of the defendants' discrimination. The plaintiffs concede that four of their exhibits are improperly authenticated and should be stricken. They dispute that three exhibits, (C) cover sheets from a homeowners' insurance policy, (E) a loan application register from the Federal Home Loan Bank Board, and (G) a residential appraisal report for the home at 1835 West 98th Lane, Crown Point, Indiana should be stricken.

The plaintiffs concede that Exhibit F, a cover sheet showing that the Thomas's property at 756 Johnson was appraised at a replacement value of $50,000 on March 1, 1984, appears to be an unsworn and uncertified exhibit. They argue, however, that the existence and authenticity of the exhibit was established through the deposition of Mrs. Rosie Thomas. Mrs. Thomas did testify as to the existence of this insurance policy and the appraisal value in that policy. This deposition testimony is sufficient authentication of Exhibit F on a Motion for Summary Judgment. Therefore, defendants' Motion to Strike Exhibit F is DENIED.

The plaintiffs argue that Exhibit Q, a copy of the Federal Home Loan Bank Board Loan Application Register of Mortgage Loans, is properly authenticated because the defendants filed it as part of a sworn response to interrogatories. Fed.R.Civ.P. Rule 56(e) lists answers to interrogatories as a proper submission to oppose or refute an affidavit on a motion for summary judgment. By submitting the loan reports in response to an interrogatory requesting a copy of documents or reports the defendant maintained in accordance with the Equal Credit Opportunity Act, the defendants sufficiently authenticated the loan registers. Defendant Edward W. Fabian, a Vice-President of First Federal, affirmed under penalty of perjury that the representations in the answers to interrogatories were true. This is sufficient authentication. Therefore the Motion to Strike Exhibit Q is DENIED.

***2** The plaintiffs argue that Exhibit Y, a residential appraisal report, is properly authenticated because Attorney Kathryn D. Schmidt, on behalf of the defendants, signed the response to the production of documents and thereby certified that appraisal report was a copy of a loan application submitted to defendant First Federal. Fed.R.Civ.P. Rule 11 provides that the signature of an attorney constitutes a certificate that the information is well-founded in fact. However, because Attorney Schmidt is not competent to testify as to the authenticity of the loan report, her signature does not authenticate the documents she produced in response to a request for production of documents. The unsubstantiated documents are improper submissions under Rule 56(e) to oppose a summary judgment motion. The Motion to Strike Exhibit Y is GRANTED.

III.

Title 42 U.S.C. § 1981 guarantees each person, regardless of race or citizenship, freedom from discrimination in the making and enforcing of contracts. Runyan v. McCrary, 427 U.S. 160 (1976); Johnson v. Railway Express Agency, 421 U.S. 454, 459 (1976). To establish a case under § 1981, the plaintiffs must prove that the defendants intentionally and purposefully discriminated against them because of their race. General Building Contractors Association, Inc. v. Pennsylvania, 458 U.S. 375 (1982). The plaintiffs have adduced no direct evidence of discriminatory intent by the defendants. Thus, because the plaintiffs seem to be relying on indirect proof, the allocation of burdens outlined in McDonnell Douglas v. Green, 411 U.S. 792 (1973), applies.

To establish a prima facie case of racial discrimination, the plaintiffs must prove (1) that they are members of a protected class; (2) that they applied and were qualified for a loan from First Federal; (3) that the loan was rejected despite their qualifications; and (4) that First Federal continued to approve loans for applicants with qualifications similar to the plaintiffs'. Texas Dept. of Community Affairs v. Burdine, 450 U.S. 248 (1981); Furnco Construction Corp. v. Waters, 438 U.S. 567, 577 (1978); McDonnell Douglas, 411 U.S. at 802. Because the Thomases are black, they are members of a class protected under § 1981. The parties also agree that the Thomases applied for a second mortgage loan of $7,100 from First Federal on March 29, 1984 offering their residence at 756 Johnson Street, Gary, Indiana, as collateral. The parties also agree that the loan application was rejected although they dispute whether the Thomases qualified for the loan. First Federal claims that it denied the loan because the Thomases did not meet its established guidelines regarding the ratio of debt to value of the collateral. The plaintiffs assert that they did qualify but that the defendants intentionally undervalued their property and, therefore, that the defendants' putative business criteria for denying the loan is pretextual.

The defendants appraised the collateral property to be worth $22,000 although the plaintiffs purchased the home in 1970 for $21,550 and have made approximately $21,000 in improvements since then. The plaintiffs depositions reveal that the property is insured at a replacement value of $50,000.

***3** The disagreement over the value of the proffered collateral presents an issue of fact on whether the Thomases qualified for the loan First Federal denied them. Thus, because material issues of fact remain on this issue, the ultimate issue of the defendants' discriminatory intent remains in dispute and summary judgment is inappropriate on the plaintiffs' claim under § 1981.

IV.

Title 42 U.S.C. § 1982 prohibits any attempt to deprive a person because of his race of his right to buy, sell, hold, lease, or inherit property of all kinds. Jones v. Alfred H. Mayer, Co., 392 U.S. 409, 426–436 (1968). Like § 1981, § 1982 requires proof of discriminatory intent. General Building Contracts Association, Inc. v. Pennsylvania, 458 U.S. 375, 388, 390, n. 17 (1982). As explained above, genuine issues of fact remain as to whether the Thomases qualified for a loan and whether the defendants' proffered explanation for denying the loan is pretextual. These issues are material on the ultimate issue of the defendants' discriminatory intent. Therefore, the § 1982 claim is not ripe for summary judgment.

V.

The plaintiffs have also alleged violations of Title VIII of the Fair Housing Act, 42 U.S.C. §§ 3604 and 3605. Title VIII purports to eliminate all traces of discrimination within the housing field. The plaintiffs carry their burden under Title VIII if they show that the results of the defendants' conduct had an adverse impact on a minority group to which they belong. The plaintiffs need not show that the defendants intentionally discriminated to establish a claim under Title VIII. Hamilton v. Svatik, 779 F.2d 383, 387 (7th Cir. 1985). Under § 3604, the plaintiffs establish a prima facie case by showing that (1) they beong to a minority; (2) the defendants were aware of it; (3) the plaintiffs were ready and able to meet the financing criteria; and (4) the defendants refused to deal with them. Hamilton, 779 F.2d at 387. Title VIII is violated 'whenever the natural and foreseeable consequences of [the defendant's] act is to discriminate between races regardless of intent'. Metropolitan Housing Development Corp. v. Village of Arlington Heights, 558 F.2d 1283, 1288–90 (7th Cir. 1977). As with the §§ 1981 and 1982 claims, the material issue of fact regarding whether the plaintiffs met the financing requirements preclude summary judgment on the plaintiffs' claims under § 3604 and 3605.

VI.

The plaintiffs also allege that the defendants violated the Equal Credit Opportunity Act (ECOA), 15 U.S.C. § 1691. The ECOA makes it unlawful for any creditor to discriminate against any applicant with respect to any aspect of a credit transaction on the basis of race, color, national origin, sex, marital status or age. As with the other claims, the question of whether the defendants discriminated against the defendants by undervaluing their collateral and then informing them that they did not meet their credit guidelines is a disputed issue of material fact.

CONCLUSION

Because disputed issues of material fact remain, the defendants' Motion for Summary Judgment is DENIED. The defendants' Motion to Strike Exhibits A, B, G, W, and Y is GRANTED and the Motion to Strike Exhibits F and Q is DENIED.