1996 WL 332451
Only the Westlaw citation is currently available.
United States District Court, N.D. Illinois, Eastern Division.

Maria N. SALDAÑA, Plaintiff,
v.
CITIBANK, FEDERAL SAVINGS BANK, Defendant.

No. 93 C 4164. | June 13, 1996.

Opinion

MEMORANDUM OPINION AND ORDER

***1** Maria Saldaña applied to Citibank, Federal Savings Bank for an acquisition and rehab construction loan. Citibank rejected Saldaña's loan application. Saldaña sued Citibank claiming it denied her loan based on its policy of redlining. Citibank now moves for summary judgment.

On May 23, 1991, Saldaña entered into a real estate sales contract for the purchase of a partially renovated old Victorian single family home at 127 South Mason, in the predominantly African–American neighborhood of Austin in Chicago. The real estate contract contained a 45–day mortgage contingency.

On June 5, 1991, Saldaña went to the Citibank office in downtown Chicago with her husband, Donald Davidson, to apply for an acquisition and rehab construction loan. Saldaña met with Senior Account Executive Ed O'Donnell who asked her about her plans for the house. O'Donnell then informed Saldaña that he was familiar with the specific block in Austin where the house was located and told her he knew the neighborhood was not the same as when he grew up there. O'Donnell then told Saldaña a few times during their conversation that he was hoping she was not asking him to finance the most expensive house on the block.

Saldaña then met with Abby Polin, a Citibank underwriter in the Real Estate Group, and submitted her loan application to her. Together with her application, Saldaña submitted copies of her pay stubs, W2 forms, copies of a profit sharing distribution, tax returns and a copy of her Application for Extension of Time to File her 1990 joint tax return since she had not yet filed the 1990 return.[1] It is disputed whether Saldaña submitted her partnership tax returns along with her application or at a later date. It is also disputed whether Saldaña is actually a limited partner in the partnership as she claims and whether all the information submitted was true and accurate.

[1] There is some dispute as to exactly what information was submitted.

Citibank had a credit check conducted on Saldaña through an independent credit bureau. The credit bureau assigned Saldaña a score of 906, which according to Citibank's loan manual is a bad credit rating indicating Saldaña's likelihood of future default. Saldaña had her own credit report conducted by a different credit bureau, which she claims gave her an excellent rating. However, Citibank does not use this credit bureau to check applicant's credit ratings.

Citibank received the appraisal on July 11, 1991. On July 12, 1991, Citibank mailed Saldaña an adverse action notice and informed her that it declined her application because of delinquent credit obligations and excessive credit obligations in relation to income. When Saldaña learned her loan application was denied, she wrote to Polin to explain her credit report and the reason for the delinquencies, but she did not dispute the accuracy of the report.

Polin agreed to reconsider Saldaña's application, but again determined not to approve the application. Citibank mailed Saldaña a second adverse action notice on August 1, 1991, which explained her application was denied because of delinquent credit obligations. Saldaña ultimately received a loan from First National Bank of Chicago.

Discussion

***2** Summary judgment should be granted when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Fed.R.Civ.P. 56(c); *Celotex Corp. v. Catrett,* 477 U.S. 317, 322 (1986). All reasonable inferences must be drawn in the light most favorable to the non-movant. *Anderson v. Stauffer Chemical Co.,* 965 F.2d 397, 400 (7th Cir.1992). However, the party who bears the burden of proof on a particular issue may not rest on its pleadings, but must affirmatively demonstrate, by specific factual allegations, that there is a genuine issue of material fact remaining for trial. *Celotex,* 477 U.S. at 324 (1986); *Schroeder v. Copley Newspaper,* 879 F.2d 266, 269 (7th Cir.1989). A dispute about a material fact is genuine only if the evidence presented is such that a reasonable jury could return a verdict for the non-movant. *Anderson v. Liberty*

Lobby, Inc., 477 U.S. 242, 248 (1986).

Mortgage Lending Discrimination

Saldaña claims Citibank discriminated against her by declining her loan application thereby engaging in redlining in violation of the Fair Housing Act (FHA), 42 U.S.C. § 3605, and the Equal Credit Opportunity Act (ECOA), 15 U.S.C. § 1691(a)(1). Redlining is defined as "mortgage credit discrimination based on the characteristics of the neighborhood surrounding the would-be borrower's dwelling." *Cartwright v. American Sav. & Loan Ass'n,* 880 F.2d 912, 913 n. 1 (7th Cir.1989).

The ECOA provides: "It shall be unlawful for any creditor to discriminate against any applicant, with respect to any aspect of a credit transaction—(1) on the basis of race...." 15 U.S.C. § 1691(a)(1). The FHA provides:

> It shall be unlawful for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of race, color, religion, sex, handicap, familial status, or national origin.

42 U.S.C. § 3605(a).

To establish a case of lending discrimination under the FHA or the ECOA, Saldaña does not need to prove an actual intent to discriminate on the part of Citibank, but she must show that race played some role in Citibank's decision. *Watson v. Pathway Financial,* 702 F.Supp. 186, 187 (N.D.Ill.1988). Saldaña has three options to prove her case. She may prove discrimination directly, under a disparate treatment theory using the burden shifting test set forth by *McDonnell Douglas Corp. v. Green,* 411 U.S. 792 (1973), or by proving disproportionate impact under *Griggs v. Duke Power Co.,* 401 U.S. 424 (1971). *Gross v. U.S. Small Business Admin.,* 669 F.Supp. 50, 52 (N.D.N.Y.1987), *aff'd,* 867 F.2d 1423 (2nd Cir.1988); *Watson,* 702 F.Supp. at 188.

(i) To prove discrimination based on direct evidence, Saldaña must prove "through direct evidence that the ... decision at issue was based upon an impermissible factor." *McCarthy v. Kemper Life Ins. Companies,* 924 F.2d 683, 686 (7th Cir.1991). If Saldaña is able to establish this prima facie case, Citibank will have to "respond by proving by a preponderance of the evidence that it would have made the same ... decision even if it had not taken the impermissible factor into account. *Id.*

***3** Saldaña claims Ed O'Donnell, a senior account executive at Citibank, made affirmative discriminatory statements, and Abby Polin, the Citibank loan officer, failed to follow normal and customary practice in reviewing the loan application. Saldaña claims these actions constitute direct evidence of discrimination. Saldaña interprets O'Donnell's remark that he was intimately familiar with the particular neighborhood in Austin and that it wasn't the same as it had been when he grew up there to mean the neighborhood had changed for the worse, that is, from white to black. Saldaña also claims O'Donnell stated a number of times that he hoped she was not asking him to finance the most expensive house on the block. Saldaña interpreted this statement to be hostile and reflected an intent to limit the scope of Citibank's exposure in the Austin neighborhood. I am not persuaded by Saldaña's interpretation of these remarks nor do I believe they constitute direct evidence of discrimination.

Saldaña also claims Polin did not follow the customary practice of verifying her income and assets, conducting a background check on the general contractor, or by asking for detailed information concerning the statements on her loan application. Rather, Saldaña claims her loan application was rejected solely on the basis of her credit report. If it is true that Citibank did not follow its standard procedures, I do not find that relying solely upon an applicant's credit report to deny a loan application is persuasive evidence that Citibank relied upon an impermissible factor in evaluating Saldaña's application. Saldaña has thus failed to establish her claim of discrimination by direct evidence.

(ii) Saldaña may still make out a case of disparate treatment under the burden shifting test without the use of direct evidence. First, Saldaña must make out a prima facie case establishing: (1) she is a member of a protected class, (2) she applied for and was qualified for a loan from Citibank, (3) the loan was rejected despite her qualifications, and (4) Citibank continued to approve loans for applicants with qualifications similar to Saldaña's. *Milton v. Bancplus Mortgage Corp.,* 96 C 106, 1996 WL 197532 at *2 (N.D.Ill. April 19, 1996); *Watson,* 702 F.Supp. 188; *Gross,* 669 F.Supp. at 53; *Thomas v. First Federal Sav. Bank of Indiana,* 653 F.Supp. 1330, 1338, (N.D.Ill.1987). Once a prima facie case is established the burden shifts to the defendant to articulate non-racial reasons for its actions. *Watson,* 702 F.Supp. at 188; *Gross,* 669 F.Supp. at 53. If Citibank is able to produce such evidence, Saldaña may still prevail if she can prove by a preponderance of the evidence that a discriminatory reason more likely motivated Citibank or that Citibank's proffered explanation is unworthy of credence or is a pretext for discrimination. *Gross,* 669 F.Supp. at 53.

Saldaña claims the fourth element of the prima facie case, as recited by Citibank, does not apply to her and she need not prove it. Citibank recites the fourth element as requiring her to prove that it continued to approve loans for *white* applicants with qualifications similar to hers. Saldaña is correct that the inclusion of race in this prong is not relevant to establishing a redlining claim since the theory of redlining is that the defendant refused to approve reasonable credit to a particular location because of the racial make-up of the neighborhood, not because of the race of the applicant. However, the correct formulation of this prong of the test does not include the reference to *white* applicants as both parties have read it; it makes no reference to race at all. The fourth prong, which requires a plaintiff to prove the defendant continued to approve loans for applicants with qualifications similar to the plaintiff's, is a necessary element to prove redlining. *Milton,* 1996 WL 197532 at *2.

***4** Saldaña has presented no evidence to establish the fourth element of the prima facie case. Saldaña raises many issues to prove the second and third elements of the prima facie case, that she was qualified for the loan, a fact Citibank disputes. Because Saldaña failed to prove the fourth element of her prima facie case, it is unnecessary to determine whether she was actually qualified for the loan. "[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, 323 (1986).

(iii) Saldaña also attempts to establish her case under a disparate impact analysis. Saldaña claims Citibank had an unwritten policy that set a minimum amount for an applicant to borrow for a rehab loan at $100,000, excluding acquisition costs and other associated fees.[2] This policy, according to Saldaña, assured that there would be little or no purchase/rehab loans in African American communities, and thus no reinvestment in the community, since an applicant would have to qualify for a loan at least $100,000 higher than the purchase price of the applicant's home. Saldaña asserts that Citibank knew that few, if any, applicants could meet this financial test based on their income and net worth or secure an appraisal in amounts that would be required to satisfy the $100,000 minimum due to the depressed real estate values of the disinvested African–American communities.

[2] Citibank disputes this fact as well as all other statistics asserted by Saldaña.

To make out a case of disparate impact, Saldaña has the initial burden of making out a prima facie case of discrimination. The relevant inquiry is whether a policy, procedure, or practice specifically identified by the plaintiff has a significantly greater discriminatory impact on members of a protected class. *Gordon D. Simms v. First Gibraltar Bank, First Gibraltar Bank, FSB, n/k/a First Madison Bank, FSB,* 83 F.3d 1546, 1996 WL 255027, at *7 (5th Cir.1996). The prima facie case is conventionally proved by a statistical comparison of the representation of the protected class in the applicant pool with representation in the group actually accepted from the pool. *Sayers v. General Motors Acceptance Corp.,* 522 F.Supp. 835, 839 (W.D.Mo.1981).

Saldaña attempts to present statistical evidence to establish a prima facie case. She claims Citibank approved one loan in Austin of just over $100,000 and rejected two loans well in excess of $100,000 and asserts the average approved loan in Austin is $69,000. She also claims Citibank's loan approval in the Austin neighborhood fell from 27 to 2 in the years 1990 to 1992. Saldaña identifies the allegedly discriminatory policy, but fails to allege that the policy had a significantly greater impact on members of the protected class. Crucial to establishing her prima facie case is a comparison of loan approval rates of $100,000 or more in Austin to approval rates in other neighborhoods or evidence that loan approval rates dropped in Austin while staying high in other neighborhoods. Without this type of evidence, Saldaña is unable to establish a prima facie case.

***5** Saldaña further asserts that Citibank's loan rejection rate as a whole was 14.25% for white applicants and 34.12% for African–American applicants. She adds that African Americans make up 39% of Chicago's population, but only received 13.77% of Citibank loans in 1991. Finally, during 1991, Citibank's average refinancing approval in Austin was for $39,820, and the average rejection for a refinancing loan was $49,781. For the City of Chicago the average approval for refinancing was for $77,590 and the average rejection was for $76,220. Here, Saldaña is successful in presenting some evidence in a statistical comparison between communities. However, these statistics are of a very general nature and do not relate specifically to the policy identified as having a discriminatory impact. Thus, Saldaña has failed to establish her claim under a disparate impact analysis.

Notice

Saldaña also claims Citibank violated a second section of the ECOA by failing to give her notice of its decision regarding her loan application within thirty days of receiving her completed application. The ECOA requires a creditor to notify an applicant of its action on an application "[w]ithin thirty days ... after receipt of a completed application for credit." 15 U.S.C. § 1691(d)(1).

Saldaña claims her application was complete on June 5, 1991 more than thirty days before Citibank mailed the adverse action notice to her on July 12, 1991. Citibank claims Saldaña's application was not complete until it received her partnership tax returns[3] and appraisal, less than thirty days before it mailed the notice to her. It is undisputed that Citibank did not receive a copy of the appraisal until July 11, 1991. Citibank claims it routinely obtained and considered appraisals in evaluating applications for debt secured by real estate. Saldaña does not dispute this fact, rather she claims the bank did not actually rely on the appraisal to analyze the loan file and thus her application was complete before Citibank received the appraisal.

[3] The parties dispute the date upon which Citibank received the partnership tax returns. However, resolution of this dispute is not necessary to resolve this motion.

A "completed application" is defined as "an application in connection with which a creditor has received all the information that the creditor regularly obtains and considers in evaluating applications for the amount and type of credit requested." 12 CFR § 202.2(f). It is important to note what this section does and does not state. It does not state that an application is complete when all the information actually relied upon has been received. Nor does it state that an application is complete when the applicant applies for the loan and submits the application. *High v. McLean Financial Corp.,* 659 F.Supp. 1561, 1564 (D.D.C.1987); *Riggs Nat. Bank of Washington, D.C. v. Webster,* 832 F.Supp. 147, 150 (D.Md.1993). Rather, it states that an application is complete when the creditor receives the information it ordinarily requires to evaluate a loan. *High,* 659 F.Supp. at 1563–64. Because Citibank regularly obtains and considers appraisals to complete an application, Saldaña's application was not complete until the appraisal was received on July 11, 1991. Thus, Citibank properly notified Saldaña of its decision on her application within the statutory period.

***6** This is not to say that a creditor will always be found to have complied with the thirty-day notice period when it has technically complied with the statute. If a creditor deliberately delays obtaining all the necessary information so that an application is not complete for some period of time, there may be an impermissible motive involved. However, this is not the case here. Saldaña does not allege that Citibank dragged its feet in obtaining the appraisal. Furthermore, Saldaña received her notice 37 days after she submitted her application. A five-week turn-around time from the date she submitted her application to the time she received the decision does not raise an inference of foot dragging.

Illinois Fairness in Lending Act

In addition to her claims under the FHA and the ECOA, Saldaña alleges that Citibank's decision to decline her loan application also violated the Illinois Fairness in Lending Act (IFLA). Section 5(b) of IFLA provides:

> 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(b).

The plain language of this statute requires a plaintiff to choose between the IFLA or any other act that she wishes to pursue if the events which give rise to both claims are the same. *Milton v. Bancplus Mortgage Corp.,* 96 C 106, 1996 WL 197532, *3 (N.D.Ill. April 19, 1996). Since Saldaña's claims all arise out of the denial of her loan application, she cannot sue under both the IFLA, and the FHA or the ECOA. Having chosen to pursue her FHA and ECOA claims in federal court, Saldaña's IFLA claim is dismissed.

Conclusion

The motion for summary judgment is granted.

JUDGMENT

IT IS ORDERED AND ADJUDGED enter summary judgment in favor of defendant, Citibank, Federal Savings Bank and against plaintiff, Maria N. Saldana. Plaintiff takes nothing from the defendant.