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UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
NORTHERN DIVISION

TERRI LAFONTAINE TORGERSON,
BIG TALK, INC., a South Dakota
Corporation,

Plaintiff,

vs.

WELLS FARGO BANK
SOUTH DAKOTA, N.A., a corporation,

Defendant.

Civil Case No. 05-1050

COMPLAINT

For and in support of her Complaint against Defendant, Plaintiff states and alleges:

JURISDICTION

1. Plaintiff brings this action for violations of the Fair Housing Act, 42 U.S.C. Sec. 3605; the Federal Equal Credit Opportunity Act, 15 U.S.C. § 1691 et seq. (ECOA) and Regulation B thereunder, 12 C.F.R. § 202.1 et seq.; and the Civil Rights Act, 42 U.S.C. 1981 and 1982. Jurisdiction is provided for under the provisions above cited.

2. This Court has Pendent Jurisdiction over the Fifth Claim for Relief of this Complaint. The claims asserted under the first four claims for relief involve substantial federal issues, and those asserted under the Fifth Claim for Relief, which involves allegations of negligent, reckless and intentional conduct, constituting tort claims under the law of the State of South Dakota, bear such a relationship to one another to permit the conclusion that the entire action constitutes one case. The federal and state claims derive from a common

nucleus of operative fact, and are such that a party would ordinarily be expected to try them all in one judicial proceeding.

PARTIES

3. Plaintiff is a natural person residing in Sisseton, Roberts County, South Dakota, within the Northern Division of South Dakota. Big Talk, Inc. is a South Dakota Corporation wholly owned by Plaintiff and intended for use by Plaintiff in the acquisition and operation of Taco John restaurants. Terri LaFontaine Torgerson and Big Talk, Inc. will be referred to collectively as "Plaintiff."

4. Defendant Wells Fargo Bank South Dakota, N.A. is a corporation registered and doing business in the State of South Dakota, the business of which consists in whole or in part in the making of business and commercial loans to qualified persons. It is a member of the Federal Deposit Insurance Corporation (FDIC) and the Federal Savings & Loan Insurance Corporation (FSLIC). Prior to the events set forth herein, Wells Fargo Bank South Dakota, N.A. acquired or merged with Marquette Bank.

FACTS

5. Plaintiff Terri LaFontaine Torgerson is a Native American citizen of the United States and of the State of South Dakota residing at Sisseton, Roberts County, South Dakota.

6. On or about September 1, 1994, Plaintiff, a 28 year old single mother (41 years now), who is a Native American and a member of the Sisseton Wahpeton Sioux Tribe, obtained a Lennox Heating and Air Conditioning franchise, and started a business selling and servicing Lennox heating and air conditioning equipment and selling propane, on the Sisseton Wahpeton Indian Reservation in Sisseton, South Dakota. Plaintiff obtained an SBA

guaranteed loan of \$105,000, a real estate mortgage loan of \$50,000, and a line of credit in the amount of \$225,000 from Marquette Bank, the predecessor in interest to Defendant, for that purpose. Further, Plaintiff maintained her business checking account and savings account with the Defendant with significant balances.

7. Plaintiff has a pristine credit history with both Marquette Bank and with Defendant, its successor in interest, never having even been late in making a bank payment on any of the loans and never having overdrawn her account.

SALE OF PROPANE BUSINESS

8. In approximately November, 2000, Plaintiff decided to sell the propane business. It was the Plaintiff's intention, with the proceeds of the sale of Dakota Sioux Propane, to purchase, construct and operate the first of multiple Taco John's restaurant locations in Browning, Montana, on the Blackfoot Indian Reservation, to be opened in March or April 2003. Determining that there was a demand for Mexican food, and determining that there was a need for fast food restaurants at various locations on Indian Reservations, and further determining that there was a desperate need for employment opportunities in Indian Reservations, Plaintiff had already scouted a location in Polson, Montana, and had started the process of acquiring land in that location. Plaintiff had also investigated other potential reservation locations for Taco John's restaurants.

9. On or about October 15, 2002, Plaintiff entered into a contract with the Sisseton Wahpeton Sioux Tribe (Tribe) for the sale of Dakota Sioux Propane, with the intention of using the proceeds of the sale to finance the construction of various Taco John's restaurants in Indian Country.

10. To facilitate the sale of Dakota Sioux Propane to the Tribe, and with knowledge that Plaintiff was dependent upon an immediate issuance by the Bureau of the loan guarantee, the Defendant undertook to compile and submit a loan guaranty package to the Bureau of Indian Affairs (BIA), seeking issuance of a BIA loan guarantee to the Tribe. Plaintiff specifically advised Defendant and its agent, Mark Wolfe, that the loan package including the BIA guarantee must be submitted to be acted on before the new tribal Council was seated in early January, 2003, because the new Council rarely acted on old Council business. Plaintiff also specifically advised Wolfe of her plans for multiple Taco John's Restaurants, as set forth in paragraph 8, above. On three or four occasions after the submission and before the seating of the new Council, the BIA contacted Plaintiff and advised that the completed loan package had not been submitted by Defendant to the BIA, and on each occasion, Plaintiff contacted Defendant's agent, Mark Wolff. On each such occasion, Mark Wolfe falsely represented to Plaintiff and the Tribe that he had submitted the completed package. At a later point, he falsely represented to the Plaintiff that the guaranty was not issued because of "legal problems." Defendant, through its agent, Mark Wolff, intentionally or recklessly omitted the real estate appraisal from the submitted loan guaranty package, without which the BIA could not act. As a result of this neglect, approval of the loan guaranty was delayed, and the closing of the sale of the propane business was delayed from November 1, 2002, to June 25, 2003.

11. In reliance upon the completed sale, and the assumption by the Tribe of the business, Plaintiff did not contract for the future supply of propane on or before July 2002. As a result of the delay in the guarantee, due to Defendants' failure to submit the appraisal, the sale did not close as originally scheduled, forcing Plaintiff to purchase propane at a

significantly increased cost until the sale was closed, to Plaintiff's damage in an amount in excess of \$500,000. Further, as a result of the delay, Plaintiff had to purchase new propane tanks and additional propane inventory for the Tribe, at a cost of \$43,278.

12. On or before October 15, 2002, Plaintiff initiated discussions with the Taco John's franchisor for the issuance of a Taco John's franchise to be located in Browning, Montana. In January, 2003, Plaintiff purchased land for the initial franchise located in Browning, Montana, on the Blackfoot Indian Reservation.

13. As a further result of the delay in the closing of the above referred to sale, Plaintiff lost the benefit of an advantageous contract for the construction of the Browning, Montana Taco John's restaurant and incurred additional construction costs of \$125,000 in the construction of the Browning, Montana, Taco Johns Restaurant.

14. As a further result of said delay, the Plaintiff was unable to open her Taco John's Restaurant in Browning, Montana until December 2003, when she projected to open the restaurant in April 2003, a delay of six months, to their damage in the amount of \$125,000.

15. As a further result of said delay, and the loss of the favorable construction contract, the contractor placed a mechanics' and materialmen's lien against Plaintiff's property in Browning, Montana, and Plaintiff had to arbitrate a construction dispute. As a result of the pending arbitration and the lien, which has not yet been resolved, Plaintiff has been delayed in implementing her plan for the development of further Taco John's restaurants, to her damage in an amount to be determined by the jury.

16. As a further result of said delay, Plaintiff lost her opportunity to implement a stock market investment plan which would have taken advantage of the post 9/11 market opportunities, and would have produced significant short term stock gains.

TACO JOHNS LOANS

17. In September 2003, Plaintiff inquired of Defendant's Sisseton South Dakota, Branch Manager, Jane Schneider, as to whether Plaintiff should apply for a loan for start-up capital for the Taco John's project, for which they had purchased the land and the franchise, at the Sisseton, South Dakota branch, or whether Plaintiff should apply at a Wells Fargo Bank in Montana. The location of the first Taco John's proposed by the Plaintiff was on the Blackfoot Indian Reservation in Browning, Montana, and the racial population of the neighborhood within which the real estate is located is over 95% Native American. Upon the insistence of the Branch Manager that Plaintiff apply at the Sisseton branch, Plaintiff applied for a business and commercial loan from Defendant to furnish forty percent (40%) of the start-up capital (\$250,000), the Plaintiff to furnish sixty percent of the startup capital (\$350,000), for the construction and operation of a Taco John's franchise in Browning, Montana. Plaintiff provided Defendant with reasonable projections of income and expenses arising out of the operation of said restaurant.

18. Plaintiff met all financial and credit requirements of Defendant and was in all respects qualified to receive a business and commercial loan in the amount and for the terms for which application was made. Indeed, Plaintiff was told by Jane Schneider that the loan had been approved.

19. Defendant, by its authorized agent, Jane stated that the loan would be ready on or about November 21, 2003, and Plaintiffs went to the Wells Fargo office for the loan closing.

20. On or about November 21, 2003, the President of the Sisseton Branch, Mark Wolfe, who had recently been transferred from Mobridge, South Dakota, and represented himself as an expert in Native American banking, reneged on the prior approval and took over the Plaintiff's loan application. He stated that Ms. Torgerson's loan "did not fit in the box". Thereafter, Defendant, by and through its agent, Mark Wolfe, while promising to provide the Plaintiff with a decision, by a series of actions and inaction, intentionally delayed the loan application process. Wolfe treated Plaintiff in a very patronizing and condescending fashion, as if she was an ignorant little girl, without any business background. For example, he stated in slow words, as though to a mentally challenged person, "Now, Terri, you understand that if you get this loan, you have to pay it back." Further, at various times through the application process, Defendant's employees made comments to the effect fact that the area which would be served by the business was a "low income" area and that communities on Indian Reservations were so risky for banks that the Defendant would not put automatic teller machines in those areas.

21. Despite the fact that Plaintiff had a previous credit history with Defendants, and despite his advising that Taco Johns was the best franchise to get into and that Defendant had financed other Taco Johns, Wolfe then instructed Schneider to offer to make the loan conditional on obtaining an SBA guaranty. Schneider refused to approach Plaintiff with the SBA guaranty proposal, stating that it would have been an insult to Plaintiff in view of her credit record with Defendant.

22. Ultimately, on December 11, 2003, Wolfe offered to consider a different loan in the same amount, but only as a home equity loan based on a mortgage on a lake home on Lake Kampeska, near Watertown, Codington County, South Dakota, which has a market value of approximately \$250,000.

23. Although Plaintiff's husband, Les Torgerson, was not an applicant for the loan, Defendant, looking for further evidence upon which to deny, delay, or further obstruct the loan application process, on two separate occasions ordered credit reports on Les Torgerson, through a national credit reporting agency, in violation of the Fair Credit Reporting Act, 15 U.S.C.A. § 1681.

24. At a subsequent meeting arranged by Jane Schneider on February 10, 2004, Wolfe promised to consider the business loan and to get back to them in ten days. Wolfe repeatedly stated, "We have boxes you have to fit into at Wells Fargo". Defendant failed to get back to Plaintiff within 10 days. To date, Wells Fargo has neither denied nor accepted the business loan application.

25. After about 3 weeks had passed, without a response from Wells Fargo, Plaintiff was compelled to sell her residential real property on Lake Kampeska and in Arizona to complete the financing of the franchise.

26. On repeated occasions, Plaintiff asked Defendant to approve or deny the loan so that she could apply elsewhere if necessary.

27. As a result of the refusal to grant the loan application as initially submitted, and as a result of the delays, Plaintiff suffered the damages arising out of the accelerated sale of two residential properties, closing costs and realtors' fees on said sales, and other damages to be determined by the court.

28. Ultimately, the Plaintiff's Taco John's venture in Browning, Montana proved to be one of the more successful Taco John's franchises in the nation.

FIRST CLAIM FOR RELIEF

29. Plaintiff incorporates herein the allegations contained in Paragraphs 1 through 28 above.

30. Defendant, negligently, and with racially and sexually discriminatory intent, delayed the submission of the BIA loan guaranty package, above referred to, because the business owner was a Native American woman.

31. Defendant, with racially and sexually discriminatory intent delayed and denied the business and commercial loan for which Plaintiff had applied because of the location of the real estate and/or because of the racial composition of the neighborhood within which it was located.

32. Defendant, with racially and sexually discriminatory intent toward the Plaintiff, delayed and denied the business and commercial loan for which she had applied, due to the fact that she is a Native American woman, and further, in retaliation for the complaints which Plaintiff had made about the handling by Mark Wolfe of the transaction involving the sale of Dakota Sioux Propane.

33. The actions of the Defendant violated the Fair Housing Act, 42 U.S.C. §§ 3601/-/3619.

34. As a proximate cause of the above conduct, Plaintiff has suffered compensatory damages in the form of economic loss, humiliation, embarrassment, mental anguish, inconvenience, and the deprivation of civil rights.

35. The actions of Defendant were intentional and willful and warrant the imposition of punitive damages.

SECOND CLAIM FOR RELIEF

36. Plaintiff incorporates herein the allegations contained in paragraphs 1 through 35 above.

37. The delay and denial of Plaintiff's business and commercial loan application by Defendant was in violation of 42 U.S.C. § 1981.

38. As a proximate cause of the denial for racially and sexually discriminatory reasons for Plaintiff's mortgage loan application by Defendant, Plaintiff has suffered compensatory damages in the form of economic loss, humiliation, embarrassment, mental anguish, inconvenience, and the deprivation of civil rights.

39. The actions of Defendant were intentional and willful and warrant the imposition of punitive damages.

THIRD CLAIM FOR RELIEF

40. Plaintiff incorporates herein the allegations contained in paragraphs 1 through 39 above.

41. The delay and denial of Plaintiff's business and commercial loan application by Defendant was in violation of 42 U.S.C. § 1982.

42. As a proximate cause of the denial for racially and sexually discriminatory reasons of Plaintiff's business and commercial loan application by Defendant, Plaintiff has suffered compensatory damages in the form of economic loss, humiliation, embarrassment, mental anguish, inconvenience, and the deprivation of civil rights.

43. The actions of Defendant were intentional and willful and warrant the imposition of punitive damages.

FOURTH CLAIM FOR RELIEF

44. Plaintiff incorporates herein the allegations contained in paragraphs 1 through 43 above.

45. The denial of Plaintiff's business and commercial loan application by Defendant constitutes racial discrimination with respect to a credit transaction in violation of the Equal Credit Opportunity Act, 15 U.S.C. §§ 1691/-/1691f.

46. As a proximate cause of the delay and denial for racially and sexually discriminatory reasons of Plaintiff's business and commercial loan application by Defendant, Plaintiff has suffered compensatory damages in the form of economic loss, humiliation, embarrassment, mental anguish, inconvenience, and the deprivation of civil rights.

47. The actions of Defendant were intentional and willful and warrant the imposition of punitive damages.

FIFTH CLAIM FOR RELIEF

48. Plaintiff incorporates herein the allegations contained in paragraphs 1 through 47 above.

49. The actions of the Defendant were negligent, reckless, or intentional, and caused damage to the Plaintiff, as alleged herein.

50. The actions of the Defendant warrant the imposition of punitive damages.

WHEREFORE, Plaintiff prays for the following relief:

A. A declaratory judgment that the actions of the Defendant were intentionally racially and sexually discriminatory and in violation of the Fair Housing Act, the Equal

Credit Opportunity Act, 42 U.S.C. § 1981, 42 U.S.C. § 1982, 42 U.S.C. § 1985(3), and 42 U.S.C. § 2000d et seq.;

B. An injunction permanently enjoining the Defendant from discriminating against individuals, on the basis of their race or their sex, in the evaluation, processing, and issuance of business and commercial loans and real estate loans;

C. Compensatory damages in the amount to be determined by the jury assessed against Defendant on behalf of Plaintiff;

D. Punitive damages in the amount to be determined by the jury assessed against Defendant on behalf of Plaintiff ;

E. Attorneys' fees and costs of this action; and

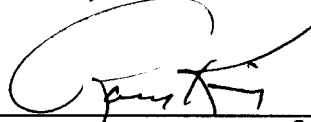
F. Any other relief to which Plaintiff may be entitled in law or in equity.

JURY DEMAND

Plaintiff hereby demands a trial by jury on all issues.

Dated this 13th day of October, 2005.

BANTZ, GOSCH & CREMER, L.L.C.



Rory King (SD I.D. # 947)
305 Sixth Avenue, Southeast
P.O. Box 970
Aberdeen, SD 57402-0970
Phone No.: 605- 225-2232

SARAH VOGEL LAW FIRM, P.C.
1022 East Divide Avenue, Suite B
Bismarck, ND 58501-1902
Phone No.: 701-221-2911
Fax No.: 701-221-5842

Attorneys for the Plaintiff

STATE OF SOUTH DAKOTA

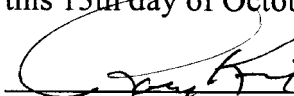
SS

COUNTY OF BROWN

Terri LaFontaine Torgerson, being first duly sworn on oath, deposes and says that she is the Plaintiff in the above entitled matter; and that she has read the foregoing Complaint and knows the contents thereof, and that the same is true to her best knowledge, information and belief.


Terri LaFontaine Torgerson

Subscribed and sworn to before me this 13th day of October, 2005.



Notary Public, South Dakota
My Comm. Expires: 9-25-2010