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IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

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CLERK, U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DISTRICT

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
FIRST FEDERAL BANK OF FLORIDA,)
)
Defendant.)
_____)

CIVIL ACTION NO.

3:16-cv-1148-J-34JBT

COMPLAINT

Jury Trial Demanded

Injunctive Relief Sought

The United States of America alleges:

1. This action is brought by the United States to enforce the provisions of the Fair Housing Act, 42 U.S.C. §§ 3601-3619 ("FHA").
2. This action is brought pursuant to 42 U.S.C. § 3612(o) on behalf of Melody and Shawn Parker and Jamie and Scott French.

JURISDICTION AND VENUE

3. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. § 3612(o)(1).
4. Venue is appropriate pursuant to 28 U.S.C. § 1391(b) because the headquarters of the defendant are located in Lake City, Columbia County, Florida, in this judicial district.

DEFENDANT

5. Defendant First Federal Bank of Florida ("First Federal" or "FFBF") is a community-based bank that offers the traditional services of a financial depository and lending institution, including the receipt of monetary deposits and the financing of residential housing, commercial, and consumer loans. As such, Defendant engages in "residential real estate-related transactions" within the meaning of the FHA, 42 U.S.C. § 3605. First Federal operates 19 retail

branch offices and a mortgage loan production office in Florida and has over \$1 billion in assets. QR Lending ("QR") is a division of Defendant First Federal Bank of Florida. QR Lending's primary business purpose is to provide residential mortgage loan services to community banks.

ALLEGATIONS RELATING TO COMPLAINANTS

Melody and Shawn Parker

6. Melody and Shawn Parker are a married couple who live in Lenox, Georgia. In 2012, they secured a construction loan from Colony Bank to build a house for themselves on land they own in Lenox. In or around November 2012, the Parkers contacted Southern Mortgage Unlimited ("Southern"), a Georgia-based mortgage broker, to apply to refinance their then-current construction loan into a residential mortgage loan on their home, which they anticipated would be completed by June of 2013.

7. The home the Parkers had constructed for themselves is a dwelling within the meaning of the FHA, 42 U.S.C. § 3602(b).

8. At the time of her mortgage loan application to Southern, Ms. Parker was pregnant. Her baby, the couple's first child, was born on May 22, 2013.

9. Southern submitted the Parkers' mortgage loan application to First Federal for origination and closing. First Federal approved the Parkers' loan application in or about December 2012 with a fixed interest rate of 3.25% and scheduled closing for the loan for July 22, 2013. The loan was to be guaranteed through the United States Department of Agriculture Rural Development Loan Guarantee Program.

10. Throughout the relevant time period, Ms. Parker was an employee of Colony Bank in Georgia. After the birth of her baby in May 2013, Ms. Parker went on maternity leave, and planned to be on maternity leave until mid-August 2013, after the scheduled loan closing date

set by First Florida. Ms. Parker intended to return to work at Colony Bank after her maternity leave expired.

11. On July 19, 2013, First Federal's closing coordinator for the Parkers' loan emailed Southern that First Federal could not close the loan on July 22 because it had learned that Ms. Parker was on medical leave and expected to return to work in a few weeks.

12. Almost immediately, Southern emailed the responsible First Federal underwriter, stating that Ms. Parker was on leave because she had had a baby, and the First Federal closing coordinator, stating that Ms. Parker was on maternity leave. The First Federal closing coordinator promptly replied by email, stating, in pertinent part: "I have just spoken with the underwriter and she [Ms. Parker] must be back at work in order to close." The email also noted that the delay in closing would result in the expiration of the loan's interest rate lock.

13. First Federal made no attempt prior to the scheduled closing date to contact the United States Department of Agriculture to determine how to handle the loan closing knowing that Ms. Parker was on maternity leave, would continue to be on maternity leave at the time of the scheduled closing, and would then return to work.

14. A representative of Southern Mortgage then contacted the Parkers to inform them of the contents of the email it had received from First Federal. Ms. Parker later contacted First Federal by telephone and was told that it would not close the loan because she was on maternity leave, and only when she returned to work would it do so.

15. First Federal maintained a file with respect to the Parkers' loan application. An entry in the loan notes for their file dated July 19, 2013, states, in pertinent part: "UW [underwriting] said even though she [Ms. Parker] is on maternaty (sic) leave and receiving full

pay, they still cannot close until she is back at work.”¹ Another note in the Parkers’ file dated July 23, 2013, states that the “file was originally stopped because [Ms. Parker] was on maternity leave,” and adds that her required employment verification cannot be completed until after her return to work.

16. Ms. Parker had planned to be on maternity leave for 12 weeks, until approximately August 19, 2013, but shortened her maternity leave by roughly two weeks so that she could meet First Federal’s requirement that she return to work from maternity leave and have that return documented in order for the loan to close. Because of the delay in closing, First Federal quoted the Parkers a new interest rate for their loan, one percentage point higher than the original rate, but ultimately agreed to originate it at the interest rate previously quoted. The Parker’s mortgage loan closed on or about August 8, 2013.

17. Nothing in the Department of Agriculture’s Rural Development Loan Guarantee Program required, as a condition for closing loans it guaranteed, that a borrower or co-borrower on maternity leave who planned to return to work with the same employer must have returned to work and submitted documentary proof of such return prior to closing.

18. On October 30, 2013, Melody and Shawn Parker filed a timely complaint with the United States Department of Housing and Urban Development (“HUD”) alleging that First Federal of Florida had discriminated against them on the basis of sex and familial status in connection with its processing of their residential mortgage loan application, in violation of the Fair Housing Act. The Parkers subsequently amended their initial complaint to add or correct the

¹ In fact, Ms. Parker was not receiving full pay for the entire period of her maternity leave, but that error is harmless with respect to the defendant’s conduct.

names of respondents and to add allegations of additional subsections of the FHA alleged to have been violated.

Jamie and Scott French

19. Jamie and Scott French are a married couple with three minor children who live in Danville, Indiana. Ms. French gave birth to her third child on January 9, 2013, and planned to be on maternity leave for approximately three months, until mid-April 2013. At the time, she was employed as a technologist at the University of Indiana Riley Hospital for Children. She intended to return to her full-time employment at end of her maternity leave.

20. On or about February 1, 2013, the Frenches submitted a mortgage loan application to North Salem State Bank ("North Salem"), also located in Indiana, to obtain a conventional 30-year, fixed rate home mortgage to replace the construction loan on the single-family home they had recently built. They had obtained their construction loan, on which they were making interest-only payments, from North Salem, and wanted to refinance it with a mortgage loan that would have a lower interest rate and include payments for loan principal.

21. The Frenches' newly-built home is a dwelling within the meaning of the FHA, 42 U.S.C. § 3602(b).

22. After they had applied for the mortgage loan, the Frenches learned that the loan was to be underwritten by QR Lending, a division of Defendant First Federal Bank of Florida.

23. The Frenches' loan was to be purchased by the Federal Home Loan Mortgage Corporation ("Freddie Mac"). Lenders who originate loans to be purchased by Freddie Mac must comply with that agency's written underwriting requirements.

24. On or about February 28, 2013, QR Lending sent a list of loan requirements for the Frenches' loan to North Salem. One of QR's requirements was that Ms. French "must be back

to work.” On March 8, 2013, a representative of North Salem emailed QR to say that “Co-borrower ... has 12 weeks from the time she had her baby and that will end in April. She received a lump sum payout for the leave and has been paid. She will not have a lapse of income.” On March 11, 2013, a QR representative sent an email to North Salem reiterating that Ms. French “will need to be back to work” and that the verification of employment form must show “she is back full-time. . . .”

25. On or about March 13, 2013, a representative of North Salem Bank informed Ms. French by telephone that the only condition remaining before the loan could be closed was that she be back at work full-time. The North Salem Bank representative emailed QR’s loan coordinator to say that “[Ms. French] thinks she is being discriminated against because she was on maternity leave.” Later that day, the QR loan originator working on the Frenches’ application agreed to submit it again to QR’s underwriting department.

26. In response, on or about March 21, 2013, a QR loan underwriter sent a loan conditions sheet setting out the requirements the Frenches needed to satisfy before the loan could close to North Salem. The conditions included the following: “Paystub evidencing coborrower Jamie French is back to work. . . .”

27. On or about March 22, 2013, Ms. French sent an email to North Salem that referenced Chapter 37 of the Freddie Mac Single Family Seller/Servicer Guide, including the following quote from the Guide: “For borrowers returning to their current employer prior to the first mortgage payment due date: The Seller may use for qualifying income the Borrower’s gross monthly income amount that will be received upon the Borrower’s return to current employer.” Freddie Mac did not require a lender whose loans it would guarantee to wait until it had proof that a borrower initially on maternity leave had returned to work before a loan could close. Ms. French

intended to return to work in mid-April, prior to the date the first payment on the mortgage would have been due had the closing not been delayed because of QR's and First Federal's policy with respect to loan applicants on maternity leave.

28. Later the same day, the North Salem representative sent an email to the QR loan originator expressing his concern about what he viewed as the conflict with respect to how a lender should deal with the issue of maternity leave between QR's policy and the guidelines published by both Freddie Mac and the Federal National Mortgage Association ("Fannie Mae").

29. On March 27, 2013, the North Salem representative communicated to Ms. French both by telephone and email that it was QR's own lending policy, not any federal requirements or guidelines, that required pre-closing verification of a maternity leave borrower's return to work by means of a pay stub.

30. In order to close the mortgage loan with their requested terms and conditions, Ms. French decided to shorten her maternity leave by two weeks. She returned to work on or about April 1, 2013. On or about April 12, Ms. French provided QR a pay stub verifying her return to work. QR then issued a new closing conditions sheet that still included the requirement that Ms. French provide a pay stub evidencing her return to work. The Frenches' loan closed on April 25, 2013.

31. On April 11, 2013, Jamie and Scott French filed a timely complaint with the United States Department of Housing and Urban Development alleging that First Federal of Florida and various of its employees or agents, including employees or agents of its QR division, had discriminated against them on the basis of familial status in connection with its processing of their residential mortgage loan application, in violation of the Fair Housing Act. Subsequently,

the Frenches amended their initial complaint several times to add an allegation of sex discrimination and to add additional individual respondents.

HUD ADMINISTRATIVE PROCESS

32. Pursuant to the requirements of 42 U.S.C. § 3610(a) and (b), the Secretary of HUD conducted and completed an investigation of the above complaints, attempted conciliation without success, and prepared a final investigative report with respect to both complaints. Based on the information gathered in the investigation, the Secretary, pursuant to 42 U.S.C. § 3610(g)(1), determined that reasonable cause exists to believe that discriminatory housing practices in violation of the FHA have occurred with respect to both complaints. Therefore, on September 30, 2015, the Secretary of HUD issued a Charge of Discrimination, pursuant to 42 U.S.C. § 3610(g)(2)(A), charging First Federal of Florida, together with various named individual employees or agents of First Federal, with engaging in discriminatory housing practices in violation of the Fair Housing Act with respect to both the Parkers and the Frenches.

33. On October 13, 2015, Jamie and Scott French elected to have the claims asserted in the Charge of Discrimination resolved in a civil action in federal district court, pursuant to 42 U.S.C. § 3612(a).

34. On October 16, 2015, an Administrative Law Judge issued a Notice of Election to Proceed in United States Federal District Court and terminated the HUD administrative proceeding on the complaints of both the Frenches and the Parkers.

35. Following that Notice of Election, the Secretary of HUD authorized the Attorney General to commence a civil action on behalf of the Frenches and the Parkers, pursuant to 42 U.S.C. § 3612(o).

CLAIM FOR RELIEF

36. By the actions referred to in the foregoing paragraphs, Defendant First Federal Bank of Florida has discriminated against the Parkers and the Frenches in making available, or in the terms or conditions of, a residential real estate-related transaction because of familial status, in violation of the Fair Housing Act, 42 U.S.C. § 3605(a).

37. Melody and Shawn Parker have suffered damages as a result of Defendant's discriminatory conduct. Each is an "aggrieved person" pursuant to 42 U.S.C. § 3602(i).

38. Jamie and Scott French have suffered damages as a result of Defendant's discriminatory conduct. Each is an "aggrieved person" pursuant to 42 U.S.C. § 3602(i).

39. The discriminatory actions of Defendant First Federal alleged herein were intentional, willful, and taken in disregard of the federally protected rights of Melody and Shawn Parker and Jamie and Scott French.

WHEREFORE, the United States prays that the Court enter an ORDER that:

1. Declares that the discriminatory conduct of Defendant First Federal Bank of Florida, as set forth above, violates the Fair Housing Act, as amended, 42 U.S.C. §§ 3601-3619;
2. Enjoins the Defendant, its agents, employees, and successors, and all other persons in active concert or participation with it, from discriminating on the basis of familial status against any person in making available, or in the terms or conditions of, a residential real estate-related transaction;
3. Enjoins the Defendant, its agents, employees, and successors, and all other persons in active concert or participation with it, from failing or refusing to take such affirmative steps as may be necessary to restore, as nearly as practicable, Melody and Shawn Parker and Jamie and Scott French to the position they would have been in but for the discriminatory conduct;

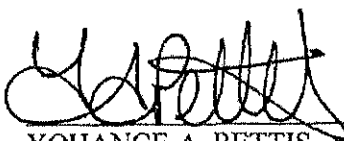
4. Enjoins the Defendant, its agents, employees, and successors, and all other persons in active concert or participation with it, from failing or refusing to take such actions, including instituting policies and procedures, as may be necessary to prevent the recurrence of any such discriminatory conduct in the future and to eliminate, to the extent practicable, the effects of Defendant's' unlawful conduct; and

5. Awards monetary damages, pursuant to 42 U.S.C. §§ 3612(o)(3) and 3613(c)(1) to Melody and Shawn Parker and Jamie and Scott French.

The United States further prays for such additional relief as the interests of justice may require.

Dated: September 9, 2016.

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