Guess v. Richland County Treasurer

2019 | Cited 0 times | D. South Carolina | January 22, 2019

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH CAROLINA

COLUMBIA DIVISION Thurmond R. Guess, Sr.,

Plaintiff, v. Richland County Treasurer; David Adams, as Treasurer,

Defendants. _____

C/A No. 3:18-232-CMC-PJG

REPORT AND RECOMMENDATION

The plaintiff, Thurmond R. Guess, Sr., a self-represented litigant, filed this civil rights action in forma pauperis under 28 U.S.C. § 1915 and § 1915A. This matter is before the court pursuant to 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2) (D.S.C.) for a Report and Recommendation on the defendants' motion for summary judgment. (ECF No. 39.) Pursuant to Roseboro v. Garrison, 528 F.2d 309 (4th Cir. 1975), the court advised Plaintiff of the summary judgment and dismissal procedures and the possible consequences if he failed to respond adequately to the defendants' motion. (ECF No. 41.) Plaintiff filed a response in opposition to the motion. 1

(ECF Nos. 45 & 46.) Having reviewed the record presented and the applicable law, the court finds the defendants' motion for summary judgment should be granted.

BACKGROUND This dispute arises from Plaintiff's winning bids for real property at two Richland County tax sales in 2012 and 2013. Plaintiff previously filed suit against Defendant David Adams in this court in 2015 over the 2012 tax sale. See Guess v. Adams, C/A No. 3:15-cv-657-CMC-PJG. In that

1 ECF No. 46 was filed to correct typographical errors in ECF No. 45.

case, Plaintiff alleged that he was the highest bidder at a county tax sale on December 3, 2012, but that Richland County Treasurer David Adams 2

canceled or voided the sale. Plaintiff alleged the defendants' actions were discriminatory due to Plaintiff' s race, and he sought damages and injunctive relief pursuant to 42 U.S.C. § 1983 and The Equal Credit Opportunity Act (" ECOA"), 15 U.S.C. §§ 1691, et seq. The court granted summary judgment in the defendants' favor, finding Plaintiff forecasted no admissible evidence from which a reasonable factfinder could infer intentional discrimination by the defendants based on Plaintiff's race, that Plaintiff was treated differently from other similarly situated bidders, or that the defendants' proffered reason for voiding the tax sale was pretextual. All of Plaintiff's claims were dismissed with prejudice, except for Plaintiff's ECOA claim, which was dismissed without prejudice.

On January 29, 2018, Plaintiff filed the current action against the defendants. 3

In the original complaint, Plaintiff raised claims concerning the 2012 and 2013 tax sales pursuant to ECOA and 42 U.S.C. § 1983, asserting violations of the Fifth Amendment's Takings Clause and Fourteenth Amendment's Due Process and Equal Protection Clauses. (Compl., ECF No. 1 at 2-3.) The assigned magistrate judge recommended the complaint be summarily dismissed on res judicata grounds or, in the alternative, for failure to state a claim upon which relief can be granted. (ECF No. 8.) The assigned district judge adopted the recommendation in part, finding that Plaintiff's § 1983 claims regarding the 2012 tax sale were barred by res judicata, and providing Plaintiff the

2 Plaintiff also named Shirley Tapp as a defendant in that case, who was the Richland County Delinquent Tax Department Manager.

3 As David Adams is the Richland County Treasurer, (Adams Aff. ¶ 1, ECF No. 39-8 at 2), the court construes this action as seeking relief against Adams in his official capacity as Treasurer, and in his personal, individual capacity.

opportunity to file an amended complaint as to his ECOA claim stemming from the 2012 tax sale and as to all of his claims stemming from the 2013 tax sale. (ECF No. 13.)

Plaintiff filed an Amended Complaint that addresses only the 2013 tax sale. (Am. Compl., ECF No. 15.) Plaintiff now alleges that on December 9, 2013, Plaintiff was the highest bidder for a piece of real property at a Richland County tax sale. (Am. Compl. ¶ 7, ECF No. 1 at 2.) Plaintiff claims the defendants told him he would receive a deed to the property if the original owners did not redeem the property. (Id.) After one year, the property owners did not redeem the property, but the defendants canceled the sale anyway. (Id.) Plaintiff alleges Adams instructed Shirley Tapp to discriminate against him. (Id. ¶ 11.) Plaintiff also alleges Tapp called Plaintiff to tell him that because of Plaintiff's disability, he may not be able to take care of the property, and also that Richland County would take the property from Plaintiff if Plaintiff agreed. (Id. ¶ 13.) Plaintiff further claims the defendants " awarded the property or contract" to individuals who are outside of Plaintiff's protected

class, and that the defendants took Plaintiff's property and illegally transferred it to another party. (Id. ¶ 19, ECF No. 15 at 2-3.)

Also in the Amended Complaint, Plaintiff raises more causes of action than the original complaint. In addition to reasserting his claims pursuant to the ECOA and § 1983, asserting violations of the Fifth Amendment's Takings Clause and Fourteenth Amendment's Equal Protection Clause, Plaintiff also raises claims that the defendants discriminated against him pursuant to 42 U.S.C. §§ 1981 and 1982. 4

(ECF No. 15 at 4.) Plaintiff seeks compensatory and punitive damages.

4 These are the claims construed by the court in an order dated April 6, 2018. (ECF No. 22.) The court notes Plaintiff did not raise a due process claim in the Amended Complaint, as he did in the original complaint.

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DISCUSSION A. Summary Judgment Standard

Summary judgment is appropriate only if the moving party "shows that there is no genuine dispute as to any material fact and the [moving party] is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). A party may support or refute that a material fact is not disputed by "citing to particular parts of materials in the record" or by "showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact." Fed. R. Civ. P. 56(c)(1). Rule 56 mandates entry of summary judgment "ag ainst a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case." Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986).

In deciding whether there is a genuine issue of material fact, the evidence of the non-moving party is to be believed and all justifiable inferences must be drawn in favor of the non-moving party. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986). However, "[o]nly disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted." Id. at 248.

The moving party has the burden of proving that summary judgment is appropriate. Once the moving party makes this showing, however, the opposing party may not rest upon mere allegations or denials, but rather must, by affidavits or other means permitted by the Rule, set forth specific facts showing that there is a genuine issue for trial. See Fed. R. Civ. P. 56(c), (e); Celotex Corp., 477 U.S. at 322. Further, while the federal court is charged with liberally construing a complaint filed by a pro se litigant to allow the development of a potentially meritorious case, see,

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e.g., Erickson v. Pardus, 551 U.S. 89 (2007), the requirement of liberal construction does not mean that the court can ignore a clear failure in the pleadings to allege facts which set forth a federal claim, nor can the court assume the existence of a genuine issue of material fact where none exists. Weller v. Dep't of Soc. Servs., 901 F .2d 387 (4th Cir. 1990). B. Defendant's Motion

1. Claims of Race Discrimination pursuant to 42 U.S.C. §§ 1981, 1982, & 1983 The defendants argue that as to Plaintiff's claims alleging racial discrimination, they are entitled to summary judgment because Plaintiff cannot put forth any evidence that the defendants discriminated against Plaintiff based on his race. The court agrees.

Under 42 U.S.C. § 1981, each citizen is guaranteed the same right to " make and enforce contracts . . . as is enjoyed by white citizens." 42 U.S.C. § 1981(a). Section 1982 further guarantees all citizens the same right " as is enjoyed by white citizens [] to inherit, purchase, lease, sell, hold, and convey real and personal property." 42 U.S.C. § 1982. "B ecause of the historic interrelationship of §§ 1981 and 1982, courts have consistently construed these statutes together." Saunders v. Gen. Servs. Corp., 659 F. Supp. 1042, 1063 (E.D. Va. 1986); see also CBOCS West, Inc. v. Humphries, 553 U.S. 442, 448 (2008) (noting the "sister statutes' common lang uage, origin, and purposes").

To state a claim under §§ 1981 or 1982, "a plaintiff must ultimately establish both that the defendant intended to discriminate on the basis of race, and that the discrimination interfered with a contractual [or property] interest." Denny v. Elizabeth Arden Salons, Inc., 456 F.3d 427, 434 (4th Cir. 2006). Intentional discrimination may be shown by direct or circumstantial evidence and the United States Court of Appeals for the Fourth Circuit has found direct evidence to be "evidence that the [defendant] announced, or admitted, or otherwise unmistakably indicated that [race] was a

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determining factor" in the contested action. Cline v. Roadway Express, Inc., 689 F.2d 481, 485 (4th Cir. 1982) (discussing the type of "unaided proof" that may constitute direct evidence). A plaintiff may also show direct evidence of discrimination through conduct or statements by the defendants "that both reflect directly the discriminatory attitude and that bear directly on the contested [action]." Warch v. Ohio Cas. Ins. Co., 435 F.3d 510, 520 (4th Cir. 2006) (internal quotation marks and citation omitted).

Also, a legal action under 42 U.S.C. § 1983 allows " a party who has been deprived of a federal right under the color of state law to seek relief." City of Monterey v. Del Monte Dunes at Monterey, Ltd., 526 U.S. 687, 707 (1999). To state a claim under § 1983, a plaintiff must allege: (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that the alleged violation was committed by a person acting under the color of state law. West v. Atkins, 487 U.S. 42, 48 (1988).

Here, Plaintiff alleges the defendants violated the Equal Protection Clause of the Fourteenth Amendment. "To succeed on an equal protection claim, a plaintiff must first demonstrate that he has been treated differently from others with whom he is similarly situated and that the unequal treatment was the result of intentional or purposeful discrimination." Morrison v. Garraghty, 239 F.3d 648, 654 (4th Cir.2001).

The defendants provide affidavits from Shirley Tapp and David Adams in which they swear that they were unaware of Plaintiff's race when they cancelled the tax sale and offered Plaintiff a refund for the amount he paid at the tax sale, that their actions were taken pursuant to normal operating process of their office and applicable law, and that they were in no way motivated by racial concerns. (Tapp. Aff. ¶¶ 4-6, ECF No. 39-2 at 3; Adams Aff. ¶¶ 2-7, ECF No. 29-8 at 2-3.) And, the defendants assert Plaintiff cannot produce admissible evidence to support his claim of

discrimination. Indeed, Plaintiff fails to offer any facts that would rebut the defendants' sworn statements in his response to the motion for summary judgment. Other than conclusory allegations of discrimination in the Amended Complaint, Plaintiff fails to forecast any evidence that he was treated differently, or that the defendants intended to discriminate against him. See Fed. R. Civ. P. 56(c) (mandating summary judgment where a party cannot present admissible evidence to support the facts alleged); Celotex Corp., 477 U.S. at 322 (mandating summary judgment against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case); Bouchat v. Baltimore Ravens Football Club, Inc., 346 F.3d 514, 522 (4th Cir. 2003) ("A party opposing a properly supported motion for summary judgment may not rest upon the mere allegations or denials of his pleadings, but rather must set forth specific facts showing that there is a genuine issue for trial.") (internal quotation marks omitted). Accordingly, Plaintiff's claims pursuant to § 1981 and § 1982, and his equal protection claim pursuant to § 1983, fail as a matter of law.

2. Takings Clause Claim Pursuant to 42 U.S.C. § 1983 The defendants argue Plaintiff's Takings Clause claim fails because Plaintiff has not shown that he attempted to obtain compensation for his property under state procedures, and further, he has not shown that he possesses a property interest. The court agrees.

The Fifth Amendment provides "nor shall private property be taken for public use, without just compensation." U.S. Const. amend. V; see also Horne v. Dep't of Agric., 135 S. Ct. 2419, 2426 (2015) (providing the Takings Clause prohibits the government from taking private real or personal property for public use). "F or a takings claim against a state or its political subdivisions to be ripe in federal court, the plaintiff must first have sought compensation 'throug h the procedures the State has provided for doing so.' Because the Takings Clause simply requires the payment of just

compensation, not necessarily payment before or simultaneous with the taking, a plaintiff must first seek compensation from the state via the procedures that the state has established before suing the state in federal court." Sansotta v. Town of Nags Head, 724 F.3d 533, 544 (4th Cir. 2013) (quoting Williamson Cty. Reg'l Planning Comm'n v. Hamilton Bank of Johnson City, 473 U.S. 172, 194 (1985)). 5

Here, Plaintiff claims the defendants " have taken the Plaintiff[']s] private property to public use without just compensation." (Am. Compl. ¶ 35, ECF No. 15 at 4.) It is not clear whether the property Plaintiff is referring to is the real property involved in the tax sale, or the money Plaintiff paid for his winning bid. As to the real property, Plaintiff fails to put forth any evidence that he ever owned the real property. In the Amended Complaint, Plaintiff admits that he never received a deed to the property because the original owners were allowed to redeem the property before the tax sale was finalized. (Id. ¶ 7, ECF No. 15 at 2.) But, to the extent Plaintiff's winning bid can constitute an interest in real property, or, to the extent Plaintiff's taking claim is based on the defendants' acceptance of Plaintiff's money for the winning bid, Plaintiff fails to show that he has sought compensation through state procedures. In her affidavit, Tapp swears that Plaintiff was informed by letter that the tax sale was canceled and that Plaintiff would receive a refund of the amount he paid at the tax sale if Plaintiff would return the original bid receipt. She swears that a check was drafted to Plaintiff in the amount he paid at the tax sale, but Plaintiff has never returned the original

5 The United States Supreme Court recently heard oral arguments on whether Williamson's requirement that property owners exhaust state remedies to ripen federal takings claims should be overturned. Knick v. Township of Scott, Pa., 862 F.3d 310 (3d Cir. 2017), cert. granted in part 138 S.Ct. 1262 (Mar. 5, 2018).

bid receipt. (Tapp. Aff. ¶ 4, ECF No. 39-2 at 3.) Thus, Plaintiff's takings claim is not ripe for adjudication in federal court. See Sansotta, 724 F.3d at 544.

3. Claim Pursuant to the Equal Credit Opportunity Act The defendants argue Plaintiff's ECOA claim should be dismissed because ECOA does not apply to the defendants. The court agrees.

ECOA prohibits creditors from discriminating against applicants on the basis of race, among other things, and provides for a civil cause of action for the applicant and liability on the creditor. 15 U.S.C. §§ 1691(a) & 1691e(a). Under the Act, a creditor is "any person who regularly extends, renews, or continues credit; any person who regularly arranges for the extension, renewal, or continuation of credit; or any assignee of an original creditor who participates in the decision to extend, renew, or continue credit." 15 U.S.C. § 1691a(e).

To establish a prima facie claim of discrimination under ECOA, a plaintiff must show that: (1) he is a member of a protected class; (2) he applied for and was qualified for an extension of credit; (3) the

defendant rejected the application; and (4) the defendant continued to extend loans to others of similar credit history outside of the plaintiff's protected class. See Wise v. Vilsack, 496 F. App'x 283, 285 (4th Cir. 2012)); Best Medical Intern., Inc. v. Wells Fargo Bank, N.A., 937 F. Supp. 2d 685, 696 (E.D. Va. 2013). 6

As a matter of law, Plaintiff's ECOA claim fails because it does not apply to the tax sale in dispute here or to the defendants. In the Amended Complaint, Plaintiff alleges the defendants

6 "Most courts that have considered ECOA discrimination claims have allowed plaintiffs to proceed under the burden-shifting framework laid out by the U.S. Supreme Court in McDonnell Douglas Corp. v. Green, 411 U.S. 792 [] (1973), in the context of Title VII employment discrimination." W ise, 496 F. App'x at 285 (collecting cases).

violated ECOA by discriminating against him "in the context of a sale for service or good," by refusing "to provide accommodation to plaintiff," and by suggesting that the county would take Plaintiff's property if he agreed. (Am. Compl. ¶¶ 11-14, ECF No. 15 at 2.) Plaintiff also suggests ECOA is relevant to this case because it is a consumer protection statute and the tax sale involved the " consumer sale or bidden [sic] sale of property or paying of taxes or transaction." (Id. ¶ 27, ECF No. 15 at 3.) However, ECOA applies only to transactions involving the extension of credit, see 15 U.S.C. § 1691(a); Wise, 496 F. App'x at 285; and it only creates a cause of action against creditors, the definition for which the defendants here plainly do not meet, see 15 U.S.C. § 1691a(e). Accordingly, Plaintiff's ECOA claim fails as a matter of law.

RECOMMENDATION Based on the foregoing the court recommends the defendants' motion for summary judgment be granted. (ECF No. 39.)

_____ Paige J. Gossett UNITED STATES MAGISTRATE JUDGE
January 21, 2019 Columbia, South Carolina

The parties' attention is directed to the important notice on the next page.

Notice of Right to File Objections to Report and Recommendation The parties are advised that they may file specific written objections to this Report and Recommendation with the District Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. "[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must ' only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.' " Diamond v. Colonial

Life & Acc. Ins. Co., 416 F.3d 310 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee's note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); see Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

Robin L. Blume, Clerk United States District Court

901 Richland Street Columbia, South Carolina 29201 Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); Thomas v. Arn, 474 U.S. 140 (1985); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984).

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