

[Cite as *Cleary v. Chase Bank Card Servs., Inc.*, 2010-Ohio-6474.]

**IN THE COURT OF APPEALS OF OHIO  
SECOND APPELLATE DISTRICT  
MIAMI COUNTY**

JOHN CLEARY	:	
	:	Appellate Case No. 2010-CA-26
Plaintiff-Appellant	:	
	:	Trial Court Case No. 09-CV-905
v.	:	
	:	
CHASE BANK CARD SERVICES, INC.	:	(Civil Appeal from
	:	Common Pleas Court)
Defendant-Appellee	:	
	:	

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OPINION

Rendered on the 29<sup>th</sup> day of December, 2010.

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FAIN, J.

{¶ 1} Plaintiff-appellant John Cleary appeals from a summary judgment rendered against him on his complaint against defendant-appellee Chase Bank Card Services, Inc. Cleary contends that the trial court erred by granting the motion for summary judgment, because there is a genuine issue of material fact whether Chase

discriminated against him on account of his age, by failing to honor a convenience check for \$18,000.00. Cleary brought suit under Ohio Revised Code 4112.021(B)(1)(a), which states that a creditor cannot discriminate against any member of a protected class when evaluating a candidate for credit.

{¶ 2} We conclude that the trial court did not err in rendering summary judgment in favor of Chase, because the record demonstrates there is no genuine issue of material fact, and Chase is entitled to judgment as a matter of law.

{¶ 3} I

{¶ 4} Cleary is a small business owner who has held a credit card issued by Chase and its predecessors for about 15 years. Cleary's business consists mainly of supplying airplane parts to the federal government. To finance the business, Cleary developed what he called his "three-legged stool" approach. Under this system, Cleary would float a loan among three different financial institutions, which included Chase, and a home equity line of credit from Monroe Federal Savings Bank.

Cleary would buy what he needed for his business on the home equity line of credit, and then wait for a convenience check to arrive from one of the credit companies. Once a convenience check arrived from Chase, Cleary would use that check to pay off the home equity loan. The check amount would then remain as a balance due on the Chase account until the second credit company sent a convenience check. Cleary would then use that convenience check to pay off the Chase account. If his company still had no income, Cleary would then start the float over by drawing on the home equity credit line to pay off the credit company. In his deposition Cleary

admitted that if the financial institutions found out about this financing approach, “they probably wouldn’t like it.”

{¶ 5} Cleary employed this financing system for many years. During the prior two years in which Cleary used the “three-legged stool” system, Chase had honored 15 convenience checks, totaling \$84,357.75, before declining to honor the convenience check at issue.

{¶ 6} Cleary admits that the float was not his only financial obligation. Cleary acknowledged that he “had a lot of credit debt,” and had 14 other credit card accounts since 2007.

{¶ 7} In February 2009, Cleary turned 78. In March of that year, Cleary wrote an unsolicited convenience check he received from Chase to Monroe Federal Savings to pay off part of the home equity line of credit, as part of his “three-legged stool” system. The check was made out for \$18,000.00, and was intended to pay down the \$30,000.00 he had outstanding on the account.

{¶ 8} Cleary’s system for floating the loans collapsed when Chase refused to honor the \$18,000.00 check. Without the payment towards his home equity loan, Monroe Federal Savings refused to loan Cleary more money. This meant that Cleary had to resort to alternative, more conventional, sources for funding, which proved difficult in view of both the law suit and the bounced check on his credit report.

{¶ 9} Cleary believes that the fact that he had just turned 78 was sufficient proof that Chase had discriminated against him because of his age. In his deposition, Cleary stated that, “I can’t prove it, obviously, but that’s my belief.”

Cleary acknowledged that no one ever told him that he was denied credit because he was too old. Cleary also candidly acknowledged that the balance on his credit accounts was “too high” at the time that Chase declined to honor the \$18,000 convenience check. Cleary does argue that his taxable income had increased in the previous three years, that he had been a good customer, and that it did not make any business sense on the part of Chase to refuse to pay the convenience check.

{¶ 10} When the check was presented for payment, Chase pulled Cleary’s credit report. The credit agreement Chase sent to Cleary includes a statement that Chase has the right to refuse to honor any convenience checks written on the credit account. After reviewing Cleary’s credit report, Chase decided not to honor the convenience check. In support of its motion for summary judgment, Chase presented an affidavit that the convenience check was dishonored for two reasons: First, the total of the balances owed on all of Cleary’s 14 credit cards was too high and, secondly, the utilization on all of his credit cards was too high. Chase at this time also reduced Cleary’s available credit on both of his accounts. The limit on Cleary’s account that the convenience check at issue was written against was originally \$24,000.00; that limit was reduced to \$500.00. The limit on Cleary’s second account was \$7,000.00; it was reduced to \$6,000.00. No notice was sent to Cleary before the end of March that these actions had been taken by Chase.

{¶ 11} Cleary brought suit against Chase for age discrimination by a creditor under Ohio Revised Code 4112.021(B)(1)(a), believing that Chase had based its decision upon his age. The trial court found that there was no genuine issue of material fact, and rendered summary judgment in favor of Chase. From the

judgment rendered against him, Cleary appeals.

{¶ 12} II

{¶ 13} Cleary presents one (albeit convoluted) assignment of error:

{¶ 14} “TRIAL COURT ERRED IN GRANTING DEFENSE MOTION FOR SUMMARY JUDGMENT.

{¶ 15} “ERROR APPEARS AT CONCLUSION OF TRIAL COURT JUDGMENT ENTRY.

{¶ 16} “DEFENDANT DID TO PLAINTIFF EXACTLY WHAT U.S. FEDERAL DEPOSIT INSURANCE CORPORATION AND U.S. OFFICE THRIFT SUPERVISION ORDERED THAT THE AMERICAN EXPRESS BANK CEASE AND DESIST FROM DOING TO 14,000 OF ITS CREDIT CARD CUSTOMERS. AMERICAN EXPRESS MARKET AND ISSUED CONVENIENCE CHECKS TO CARD HOLDERS AND THEN REVIEWED THE CARD HOLDERS CREDIT OUTSTANDING LIMITS AND REFUSED TO HONOR CONVENIENCE CHECKS. AMERICAN EXPRESS WAS ORDERED TO REVIEW CREDIT STATUS BEFORE ISSUING CONVENIENCE CHECKS.

{¶ 17} “HAVING DETERMINED MARCH 2 TO REDUCE THE PLAINTIFF’S LINE OF CREDIT AND WAITING 4 WEEKS UNTIL A \$18,000.00 CONVENIENCE CHECK WAS PRESENTED TO REFUSE TO HONOR CHECK.

{¶ 18} “TREATING PLAINTIFF A BUSINESS MAN WITH RECKLESS DISREGARD FOR MAINTAINING A GOING BUSINESS REDUCING 1 LINE OF CREDIT FROM \$24,000.00 TO \$500.00 AND ANOTHER CARD FROM \$7,000.00

TO \$6,000.00.”

{¶ 19} Essentially, Cleary contends that the trial court erred by rendering summary judgment against him on his complaint of age discrimination against Chase. Cleary argues that the trial court erred in granting the motion for summary judgment by failing to take into account that Cleary is a business man that has never missed a payment on his lines of credit, and the only reason that Chase had to refuse to honor the convenience check was that Cleary had become 78. Cleary further argues that waiting four weeks to inform Cleary that his line of credit had been reduced was an attempt by Chase to hide the fact that it was discriminating against Cleary based on age. Cleary also argues that Chase committed the same acts that the FDIC had just ruled to have been an unfair business practice when performed by American Express on 14,000 of its customers. Lastly, Cleary argues that Chase’s decision to limit Cleary’s credit and refuse to honor the convenience check has no business rationalization and must, therefore, be age discrimination.

{¶ 20} Under Civ.R. 56(C) summary judgment, “shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” Accordingly, the moving party is entitled to summary judgment when it can be found that: (1) that there is no genuine issue as to any material fact; (2) that the moving party is entitled to judgment as a matter of law; and (3) that reasonable minds can come to but one conclusion, and that conclusion is adverse to the party against whom the motion for summary

judgment is made, who is entitled to have the evidence construed most strongly in his favor. *Harless v. Willis Day Warehousing Co.* (1978), 54 Ohio St.2d 64, 66, 375 N.E.2d 46, 47.

{¶ 21} Here, the issue made up by the pleadings is whether Chase is liable under R.C. 4112.021(B)(1)(a) – Ohio’s version of the Federal Equal Credit Opportunity Act,<sup>1</sup> – by allegedly discriminating against Cleary on the basis of his age in determining whether to withhold or extend credit. R.C. 4112.021(B)(1)(a) states that a creditor cannot discriminate against, “any applicant for credit in the granting, withholding, extending, or renewing of credit, or in the fixing of the rates, terms, or conditions of any form of credit, on the basis of race, color, religion, age, sex, military status, marital status, national origin, disability, or ancestry.” (Emphasis added). The Supreme Court of Ohio has held that when a civil rights claim is brought in Ohio, federal case law can be employed to interpret cases involving Ohio civil rights statutes. *Plumbers & Steamfitters Joint Apprenticeship Commt. v. Ohio Civ. Rights Comm.* (1981), 66 Ohio St.2d 192. *McDonnell Douglas v. Green* (1973), 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed.2d 668, establishes a tripartite test to be used in age-discrimination cases. Under *McDonnell Douglas*, the plaintiff has the burden of setting forth a prima facie case for discrimination. If a prima facie case can be shown the burden shifts to the defendant to show a legitimate, non-discriminatory reason for the action taken. If the creditor can demonstrate a legitimate, non-discriminatory reason, the burden shifts once again to the plaintiff, who must show that the explanation provided by the defendant is a pretext upon which the

discrimination took place.

{¶ 22} In this case no evidence was offered by Cleary to show a prima facie case of age discrimination by a creditor. Cleary argues that the only thing that changed between the time a previously issued convenience check was honored and the time the ill-fated \$18,000.00 convenience check was rejected, was that Cleary had turned 78. Cleary does not offer any evidence that a younger person with a similar credit history was able to obtain credit. In his deposition, Cleary admitted that he could not prove that there was any age discrimination beyond his personal belief that there was. Viewing the evidence in a light most favorable to Cleary, no prima facie case was demonstrated.

{¶ 23} In his attempt at making out a prima facie case, Cleary points to a recent decision by the Federal Deposit Insurance Corporation against American Express Company fining the company for failing to honor convenience checks. American Express declined to honor the checks based on a credit check of those using the convenience checks and failed to inform the customers that their available line of credit had been altered. This court is not bound by any decisions made by a regulatory agency, but, more importantly, this is not an issue raised by the pleadings in this case. This case was pled in Cleary's complaint as an age discrimination claim.

{¶ 24} Chase did offer a plausible, legitimate reason behind its decision not to honor the convenience check. In his deposition, a Chase financial officer testified that when a review of Cleary's credit and outstanding loans was generated and

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<sup>1</sup>15 U.S.C. § 1691(a)(1).



reviewed, Chase decided that Cleary had too much credit debt. Chase then took the actions that it was permitted to take under the terms of the revised credit agreement that it had previously mailed to Cleary. Cleary repeatedly stated in his deposition that he did not read the fine print in the documents setting forth the terms of his credit agreement with Chase. Chase further showed that it had never been contractually obligated to honor convenience checks – that it always had the option of declining to honor a convenience check.

{¶ 25} Cleary offered no evidence to rebut the sincerity of the legitimate, non-discriminatory reasons that Chase averred lay behind its refusal to honor the convenience check. Cleary does offer arguments why the check should have been honored. These arguments include that: his taxable income had increased during the three years prior to the rejection; Cleary was a good customer; the FDIC case previously alluded to; Chase should have notified Cleary that his available credit had been reduced; and Chase failed to use business logic when dealing with Cleary's case. Only the last of these could support an inference that Chase's actual reason for its actions was discriminatory, but we conclude that Chase offered a valid business reason for its actions.

{¶ 26} We conclude that when the evidence in the record is viewed in a light most favorable to Cleary, there is no genuine issue of material fact, and Chase is entitled to judgment as a matter of law. Therefore, we conclude that the trial court did not err in rendering summary judgment in favor of Chase.

{¶ 27} Cleary's sole assignment of error is overruled.

{¶ 28} III

{¶ 29} Cleary's sole assignment of error having been overruled, the judgment of the trial court is Affirmed.

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DONOVAN, P.J., and GRADY, J., concur.

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