

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

Kiara Young,

Plaintiff,

Case No. 23-11936

v.

Hon. Jonathan J.C. Grey

PNC Bank,
National Association,

Defendant.

_____ /

**ORDER DENYING DEFENDANT'S MOTION
TO DISMISS (ECF No. 4)**

I. Introduction

On August 7, 2023, Kiara Young filed this action against PNC Bank, National Association. (ECF No. 1.) In the complaint, she alleges that PNC discriminated against her based on her race, in violation of 42 U.S.C. § 1981 and the Michigan Elliot-Larson Civil Rights Act (ELCRA).

On November 6, 2023, PNC filed a motion to dismiss for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). The motion has been fully briefed.¹

¹ Oral arguments would not aid in the disposition of this motion. Thus, the Court is ruling on the briefs alone. *See Kloss v. RBS Citizen*, 996 F. Supp. 2d 574, 590 (E.D. Mich. 2014) (citing Fed. R. Civ. P. 78(b)) (courts may determine motions on the

II. Background

Young is a 31-year-old Black woman. She alleges the following. On May 24, 2023, Young received a check for \$10,5000 from a car dealership that was written on a PNC check. After receiving the check from the dealership, Young attempted to cash the check at a nearby Huntington Bank branch since she was a Huntington customer. The Huntington branch advised Young that if she wanted to cash the check that same day, she needed to go to PNC Bank, the originating bank of the check.

Young was not a PNC customer at the time, but she left the Huntington branch for a PNC branch in Commerce Charter Township, Michigan. She arrived at the Commerce PNC branch at around 5 p.m. Young handed the check to the teller and stated she wanted to cash the check. The teller asked Young if she consented to a 2% processing fee, and Young agreed. After that, the bank manager, identified as a white individual, told Young that PNC could not perform the transaction. The bank manager was rude and unprofessional to Young. Young asked the

briefs without oral hearing); *Mohlong v. Long Beach Mortg.*, No. 12-10120, 2013 WL 827221, at *2 (E.D. Mich. Mar. 6, 2013) (stating that the Eastern District of Michigan LR 7.1(f)(2) gives discretion to decide motions without hearings).

bank manager why the bank could not complete the transaction. The bank manager did not provide Young with any reason for the denial and repeatedly stated PNC could not perform the transaction. The bank manager told Young to take the check to her own bank and cash it there.

Young alleges that the bank manager denied her service after seeing Young's skin color and the amount on the check. Young also alleges that the bank manager failed to follow PNC's own policies and practices regarding investigation of checks. Young alleges that PNC's policies require its employees to investigate the authenticity of any suspicious checks. The company's purported standard investigation includes reaching out to the issuer of the check or the bank listed on the check. Alternatively, the employee can refer the issue to PNC's customer representatives for further investigation or discussion with the customer. Young claims that the bank teller and bank manager failed to authenticate the check or follow PNC's policies before denying Young service.

The following day, Young took the check to a different PNC branch located in Troy, Michigan. She arrived at the Troy branch at around 4

p.m. The Troy teller was kind and cashed the check with a 2% processing fee with no issues.

Young states that “upon information and belief, PNC has allowed similarly situated persons who are not Black to cash checks, either with or without a 2% processing fee.” (ECF No. 1, PageID.6.) These facts purportedly demonstrate hostile actions and indicate an unlawful discriminatory intent.

PNC argues that the complaint is factually deficient and fails to plausibly state a claim of racial discrimination. For the following reasons, the Court **DENIES** PNC’s motion to dismiss.

III. Legal Standard

The Court may grant a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) if the complaint fails to allege facts sufficient to “state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). When assessing a motion to dismiss under Rule 12(b)(6), the Court must give the plaintiff the benefit of the doubt and must accept all the complaint’s factual allegations as true. *Keys v. Humana, Inc.*, 684 F.3d 605, 608 (6th Cir. 2012). Additionally,

when deciding whether to dismiss a case, the Court will typically only rely on the facts stated in the complaint. *Rondigo, L.L.C. v. Twp. of Richmond*, 641 F.3d 673, 680 (6th Cir. 2011) (citations omitted). The Court can consider exhibits attached to the complaint or to the defendant's motion if the exhibits are referred to in the complaint and are central to the claims. *Id.*

IV. Motion to Dismiss

To survive a motion to dismiss under Rule 12(b)(6) for claims pursuant to 42 U.S.C. § 1981 and ELCRA, the plaintiff must point to facts that make plausible their allegations.² *Inner City Contracting, LLC v. Northville, Michigan*, 87 F.4th 743, 755 (6th Cir. 2023) (citations omitted). In this context, that means alleging sufficient facts to show: (1) the plaintiff belonged to a protected class, (2) the defendant intended to discriminate against the plaintiff on the basis of race, and (3) the defendant's discriminatory conduct abridged the rights enumerated by the statute. *Id.*

² These two statutes are governed by the same standard. *See Rogers v. Henry Ford Health Sys.*, 897 F.3d 763, 771 (6th Cir. 2018) (the two statutes are governed by the same standard at the motion for summary judgment phase).

The second prong of intentional discrimination can be supported at trial or on a summary judgment motion by direct or circumstantial evidence which would support an inference of discrimination. *Id.* However, at the pleading stage, the plaintiff is only required to allege facts that make a claim of intentional discrimination plausible. *Id.*

For the first prong, Young has met her burden. She has alleged that she belongs to a protected class because she is a Black woman.

For the second prong, Young has also met her burden. She adequately stated facts that plausibly support her allegation that she was discriminated against based on her race. The Court finds the following alleged facts create a plausible claim: (1) the bank manager was not part of the protected class;³ (2) the bank manager was rude for no apparent reason; (3) the bank manager immediately stopped the teller from performing the transaction after the teller had explained the fee and Young had agreed to the fee; (4) the bank manager refused to state the

³ This fact only slightly supports the plausibility of the claim as many members outside the protected class do not discriminate based on the relevant differences, and members within the protected class can discriminate against others on the basis of the protected class attributes.

reason for the denial of service; (5) the bank manager allegedly failed to follow PNC's policies; and (6) the next day, Young was provided the same service at a similar time of day at a different PNC branch.

PNC argues that, for Young to succeed on a claim based on circumstantial evidence, Young must establish a prima facie case under the *McDonnell Douglas* burden. However, that argument is explicitly belied by the case it cited, *Keys v. Humana, Inc.*, and other Sixth Circuit precedent. 684 F.3d 605, 610 (6th Cir. 2012) (the prima facie case is an evidentiary standard and not a pleading requirement); *Inner City Contracting*, 87 F.4th at 755. By extension, that also means that Young is not required to sufficiently allege that she was treated differently than similarly situated customers⁴ or that she was treated in a markedly

⁴ Young does claim that “upon information and belief, Defendant has allowed other similarly situated persons who are not Black to cash checks, either with or without a 2% processing fee.” In the Sixth Circuit, plaintiffs are permitted to plead upon information and belief when a plaintiff lacks personal knowledge but has sufficient data to justify the allegation or must rely on information from others. *Starkey v. JPMorgan Chase Bank, NA*, 573 F. App'x 444, 447–448 (6th Cir. 2014). Further, plaintiffs can plead upon information and belief when the facts are peculiarly within the possession and control of the defendant or the belief is based on factual information that makes the inference of culpability plausible. *Id.* Since the Court finds that Young survives the motion to dismiss on a different basis, it declines to rule on whether her pleading is properly made upon information and belief.

hostile manner. (See Def.'s Br., ECF No. 4, PageID.35–37.) She is only required to plausibly support her allegation of discriminatory intent with specific stated facts. *Inner City Contracting*, 87 F.4th at 755.

As to PNC's post-hoc assertion that the reason for the denial was that the bank was in after-hours mode and did not have enough cash on hand, that fact is not alleged in the complaint, nor was it supported by an exhibit or affidavit affixed to the complaint.⁵ Thus, the Court cannot assume that assertion is true, nor does the Court need to convert this motion into a motion for summary judgment. Accordingly, the Court ignores that assertion for purposes of this motion.

When a defendant moves to dismiss a complaint and provides alternative plausible explanations to rebut a plaintiff's well-pleaded allegations in a complaint, dismissal of the complaint frequently does not occur. *16630 Southfield Ltd. v. Flagstar Bank, F.S.B.*, 727 F.2d 502, 505 (6th Cir. 2013). “Often, defendants’ conduct has several plausible explanations. Ferreting out the most likely reason for the defendants’

⁵ That assertion also was not supported by an exhibit or affidavit affixed to the motion to dismiss.

actions is not appropriate at the pleading stage.” *16630 Southfield Ltd.*, 727 F.2d at 505 (quoting *Watson Carpet & Floor Covering, Inc. v. Mohawk Indus.*, 648 F.3d 452, 458 (6th Cir. 2011)). The *Southfield* court noted that the existence of obvious alternative explanations can help illustrate the unreasonableness of certain inferences needed to make a claim plausible. *Id.* Here, the Court finds that the existence of alternative explanations does not make Young’s allegation of discrimination unreasonable.

According to the complaint, the bank manager never gave Young any reason for denying the transaction and told her to take the check back to her own bank and cash it there. Based on the allegations in the complaint, the Court has to make an inference about the bank manager’s true reason since it was unstated. It can infer that the bank denied service for a legitimate business reason, or it can infer that the bank teller discriminated against Young on the basis of race. Without more, they are both plausible inferences. Reading the complaint in the light most favorable to Young, she has sufficiently pleaded facts that could plausibly suggest racial animus as a motivation for denying service.

Whether Young can produce enough evidence after discovery to survive a potential motion for summary judgment or to succeed at trial is a separate question entirely and is not for the Court to decide at the pleading stage. *Inner City Contracting*, 87 F.4th at 756. At this stage, Young merely needed to state a claim for relief sufficient to give PNC notice of wrongdoing. *Id.* The Court finds that Young has given such notice.

PNC's final argument is that mere delay in service is not a harm that creates a cognizable claim under § 1981 or ELCRA. Relying on out-of-circuit caselaw, PNC claims that as long as Young was able to eventually receive the service, she cannot demonstrate any loss recoverable under § 1981. (ECF No. 4, PageID.40 (citing *Arguello v. Conoco, Inc.*, 330 F.3d 355, 358 (5th Cir. 2003))). However, as PNC admits, the Sixth Circuit has not adopted this requirement.

The *Arguello* decision states that, in the Fifth Circuit, for retail transactions, a plaintiff must demonstrate an actual loss of contract interest. 330 F.3d at 358. There, the court found that neither plaintiff could support a claim because the first plaintiff was allowed to complete

the transaction on the spot, despite some extra authentication procedures used, even if those extra hurdles were added due to racial discrimination. The second plaintiff's claim failed because he abandoned the transaction before attempting to start it due to his own frustration.

The Court neither adopts nor rejects the *Arguello* holding since neither of those factual circumstances apply here.⁶ Even under the *Arguello* requirement, Young would survive the motion to dismiss since she alleges she was denied a contract interest at the Commerce branch. Young was denied service, forced to leave without completing her transaction, and had to make another trip the following day to a different branch to do so.

V. Conclusion

Accordingly, and for the reasons set forth above, PNC's motion to dismiss (ECF No. 4) is **DENIED**.

⁶ The Court would be unlikely to adopt that requirement even if it applied here because it is at odds with Sixth Circuit caselaw. In this circuit, under the prima facie standard at the motion for summary judgment stage, plaintiffs can meet their burden by establishing that they received services in a markedly hostile manner or in a manner which a reasonable person would find objectively discriminatory. *Christian v. Wal-Mart Stores, Inc.*, 252 F.3d 862, 871 (6th Cir. 2001). That is, the plaintiff can succeed even where the transaction is completed or the defendant ultimately provided the requested service.

IT IS SO ORDERED.

August 28, 2024

s/ Jonathan J.C. Grey

Hon. Jonathan J.C. Grey
United States District Judge

Certificate of Service

The undersigned certifies that the foregoing document was served upon counsel of record and any unrepresented parties via the Court's ECF System to their respective email or First-Class U.S. mail addresses disclosed on the Notice of Electronic Filing on August 28, 2024.

s/ S. Osorio
Sandra Osorio
Case Manager