No. 22-5092

Supreme Court of the United States

James E. Moore

Petitioner

V.

Koenigsfeld, et al.,

Respondent

On petition for a Writ of Certiorari To The United States

Court Of Appeals For The Eighth Circuit

Reply to respondents

James E. Moore

Pro se

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Table of Contents

Table of Authorities

Constitution

Fifth Amendment Due Process

Statutes

Rules

Other Authorities

Background and procedural

Inaccuracies.

Respondents factual background statement on page 2 referring to the personal loan application is misleading on a material fact, on whether petitioner owned a business or previously owned a business given the application does not ask those questions and allows a person to submit any income they want considered for purposes of obtaining the loan. Also the fact the documents petitioner used to start my business was notarized by respondent Koenigsfeld himself and I specifically herd koenigsfeld on the phone that Tuesday evening tell his superiors that he and I had talked a while back about a business I had started.

With respect to the $15,000 the respondents never asked or inquired about the purpose of the money which was to buy a decent used truck for my business from a private owner.

The respondents reference to the documents filed May 21,2021 stating I added the loss of the loan to the law suit because Customer's Bank conducted another review of my application and stated I was not eligible for the loan and refused to disburse the funds is another attempt to mislead this court on a material fact, whether I was eligible for the loan. The documents filed do not remotely state or suggest that Customer's Bank reviewed my application again and found me to be ineligible for the loan and refused to disburse the funds. Customers Bank has never reviewed my application again and stated I was not eligible for the loan as respondents claim which shows they have never spoken to customer's bank about the loan. Nore do respondents state anywhere in their response that they ever actually contacted customer's Bank concerning the loan or who they spoke to concerning the loan or what response the received from customer's bank concerning the loan which only took a five minute phone call. This shows their statement they were trying to verify the loan was nothing more than a pretext to cover up their discriminatory actions.

Preservice dismissal

The district court stated there is no authorization to conduct an initial review for a non prisoner but there is clear statutory authorization to conduct an initial review for prisoners citing 28 U.S.C. 1915 A. see district court order pg. 2. Many appellate courts have held a court may dismiss a non prisoner preservice pursuant to 1915 (e) provisions. See ball v. Famiglio 726 F.3d 448, 452 (3rd cir. 2013). Rowe v. shake 196 F.3d 778,783 (7th cir. 1999) and Michaw v. Charleston county, SC 434 F.3d 725,728 (4th cir. 2006). But none of these courts have interpreted the mandatory directives of 1915 (d) which states- the officers of the court shall issue and serve all process and perform all duties in such cases, which is a reference to 1915 © which states upon the filing of an affidavit in accordance with subsection (a) and (b) and prepayment of any partial fee as may be required under subsection (b) the court may direct payment by the United States. Therefore the service of process is based on the filing of an affidavit not the courts determination under subsection 1915 (e) factors. In Nichols v. Schubert 499 F.2d 946,947 (7th cir.1974) the court stated that Federal rules of Civil Procedure 4 a required service of process to be issued upon the filing of the complaint. Subsection 1915 (d) it's counterpart requires the preservice upon the filing of the affidavit. There is no language under 1915 (e) which authorizes the court to delay preservice pending thee determination of one of the factors under subsection (e). Also because Federal Rules of Civil Procedure 4 (m) requires that the complaint and summons be served on a defendant within 90 days of the filing of the complaint or the complaint must be dismissed. Therefore it was clear error for the district court to delay preservice pending a determination under 1915(e) because pre service compliance is mandated as well. Therefore the eighth circuit refusal to grant petitioner supplement does not prevent this court from exercising it's authority to review the decision.

Title 12 U.S.C 4002 interpretation

And circuit split.

The district court interpreted 12U.S.C. 4002 to require petitioner to prove (1) that he received a deposit as defined by the act (2) that the (bank wrongfully) prevented me from withdrawing funds out of my account. See district court order pg. 3. It is this incorrect interpretation that the eighth circuit affirmed that conflicts with the ninth circuit decision in little Donkey Enterprise Washington Inc. v. Banc Corp. 136 APPX, 91,92 (9th cir. 2005) and is conflict with this courts decision in Bank One Chicago N.A. v. Midwest bank & trust Co. 516 U.S. 264, 267 (1996). The respondents brief does not mention the courts requirement but acknowledge that the ninth circuit does not require a petitioner to prove the bank wrongfully barred them from withdrawing funds out of their account Respondents brief pg. 16.

Based upon the respondents brief the record is now clear for this court to decide the issue. The respondents brief clearly state I did not allege I received a check drawed upon the government treasury as interpreted by the district court and that I repeatedly referred to a direct deposit from customer's bank. Respondent brief pg.21-22. The term direct deposit is a common term used by everyday people to refer to a (electronic payment) from the payers account to the payees account. Oxford dictionary and title 12 CFR part 229.2(p) defines a electronic payment as – a wire transfer or ACH credit. Therefore clearly the complaint alleged a violation of 4002 (a) (1) cash deposit and wire transfer next business day funds availability. Respondents brief also state I sent a copy of my Monthly bank statement showing the deposit was a ACH clearing up any discrepancy. Respondent brief pg. 22. The respondents have now admitted to violating the mandatory next business day availability by holding the money for three business days. Respondent's brief pg. 1 and respondents did not claim any exception pursuant to 4002 or 4003 applied then or now. Therefore clearly petitioner was entitled to a judgement as a matter of law and the district court was aware of this fact because the bank statement showed the date of deposit and the date the money became available which caused the district court to give such an egregious interpretation of petitioner complaint in favor of the respondents. See

respondents brief pg.22 stating – any error by the court in interpreting Moore's use of the term direct deposit in "favor" of Collins was harmless. This court should grant cert and reverse the eighth circuit which upheld such an egregious interpretation against petitioner in favor of respondents. There can be no dout even if one were to assume the court mis- interpreted the term direct deposit it still would not explain how the court came to the conclusion the money came from the government treasury given the complaint repeatedly stated the money came from customer's bank.

Title 42 U.S.C.1981 discrimination and retaliation

Plausibility and prima facie case

The district court stated the only factual statements alleged in the complaint were that I saw pictures on the internet that show only back folks committing the paycheck protection fraud and not white people who were committing the same fraud. District court order pg.6 and respondents respons pg. 22 stating I pleaded I was African American and I can't conceive no other reasons for Collins and Koenigsfeld other than racial discrimination. See also respondents brief pg. 26 stating – plaintiff case boils down to an argument that because he was mis treated and because he is black, there must be some connection between the two. The district court ignored clear facts alleged in the complaint. I stated I confronted respondents with three pieces of paper on that second trip back to the bank and explained they were unlawfully freezing my account in violation of the law and their own banking policy in refusing to allow me to withdraw money out of my account because they had no suspicion I done anything wrong, violated any law or banking policy and that immediately after my statements respondent koenigsfeld got on his computer and unfroze my account. see Complaint argument 1 and petition for cert statement of the case pg. 4. Respondents in their brief do not deny the confrontation or the statements that were made by petition. Respondent's brief pg.22-27. Respondents do not allege their actions were consistent with law or any of their banking policies. Yet the district court

found none of these facts to raise a plausible inference of intentional discrimination. The lower courts have interpreted this court president in Teamsters v. United States 431 U.S. 324 (1977) and other cases to authorize the establishment of a prima facie case of intentional discrimination in employment cases by eliminating the most common non discriminating rea for the employer actions. See Nanty v. Barrows 660 F.2d 1327,1331 (9th cir. 1991) and Loeb v. Textron Inc. F.2d 1003,1014 (1st cir. 1979) citing teasters at 358. Therefore the facts alleged in petitioner complaint eliminated all the common non-discrimination reasons a bank would have for refusing to allow a depositor to withdraw funds out of their account suspicious activity, violation of law or banking policy. See Complaint argument 1 and petition for cert pg. 4. Therefore clearly the complaint not only raised a plausible claim of intentional discrimination it also alleged a prima facie case of intentional. The respondents have responded to the claim stating they were trying to verify Customer' bank loaned me the money which only takes a five minute phone call not three days. But more important the respondents do not allege nowhere in their response that they ever contacted customer's bank concerning the loan, they do not say who they talked to at customer's bank about the loan or what the bank response was concerning the loan which shows their statement was nothing more than a pretext to hide their discriminatory actions. This was another bias decision by the district court in favor of the respondents in dismissing petitioner issue and this court should grant cert and reverse the eighth circuit.

The same is true with respect to the 1981 retaliation claim as well. Petitioner petition for cert cited eighth circuit case law stating to establish a prima facie case of retaliation a petitioner must prove (1)the petitioner engaged in statutory protected activity, 92) the petitioner suffered an adverse action and (3) the adverse action occurred because petitioner was engaged in the protected activity. Citing Coffman v. Tracker Marine 141 F.3d 1241,1245 (8th cir. 1998) which is consistent with other appellate court decisions. seeMcCoy v. Shrveport 492 F.,3d 551,556-57 95th cir. 2007) and Timmerman v. Bank N.A. 483 F.3d 1106, 1122-23 (10th cir. 2007.

Respondent does in their brief do not contest these are the requirements to establish a prima facie case of retaliation. Respondents brief does not contest the first element which the district court found. That I engaged in statutory protective activity. See respondent brief pg. 25.respondents contest the second element under the false since that I voluntarily sent the money back to customer's bank. See respondent brief pg. 27. Which is absurd given their own brief clearly states I first ask to have the money made available to me which they refused, I then asked to have the money transferred to another checking account which they refused leaving me no choice but to send the money back because their refusals were violating federal law 4002 and their own banking policy which states – a depositor may withdraw all or any amount out of his account at any time or transfer all or any amount at any time. Therefore their violations of the law and their own banking policy in refusing to make the money available because I required them to unfreeze my account constituted averse action which caused me to lose the loan. the respondents also say I did not allege facts to show the requirement to send the money back was based on my race. A misunderstanding of the law. The 3 elements do not require I show the adverse action was based on my race. The discrimination conduct is set forth in argument 1. A

And the eighth circuit consistent with other appellate courts have held a petitioner need not prove the underlying discrimination as long as he had a reasonable belief that what he was opposing constituted discrimination under 1981. See Sisco v. Alberici Construction Co. 655 F.2d 146, 150 (8th cir. 1981). Therefore clearly petitioner complaint alleged facts establishing not only a plausible claim of intentional retaliation but a prima facie case of intentional retaliation as well. Therefore this court should grant cert and reverse the eighth.

Conclusion

Given the district courts clear bias against petitioner interpreting the facts alleged in the complaint in favor of the respondents and the eighth circuit affirmance of such bias which disregarded numerous presidents of this court and conflicts with other appellate court decisions on the same issue requires this court pursuant to United States Supreme court rule 10 (a) to exercise its supervisory power to reverse the eighth circuit who's decision has departed from the accepted and usual course of judicial proceedings, and has sanctioned such a departure from a lower court.

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