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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

FILED  
JAN 02 1998  
MICHAEL W. DOBBS  
CLERK, U.S. DISTRICT COURT

SELMA S. BUYCKS-ROBERSON, on her )  
behalf and others similarly situated)

Plaintiffs;

vs.  
CITIBANK FEDERAL SAVINGS BANK,

Defendant.

Case No. 94 C-94  
Chicago, Illinois  
November 12, 1997  
9:00 o'clock a.m.

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE RUBEN CASTILLO

FILED  
JAN 05 1998

APPEARANCES:

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1 (Proceedings heard in open court:)

2 THE CLERK: 94 C 4094, Buycks-Roberson versus  
3 Citibank.

4 MS. NALE: Good morning, Your Honor, Lucia Nale on  
5 behalf of Citibank.

6 MR. MINER: Good morning, Jud Miner and Fay Clayton  
7 for the plaintiffs.

8 MS. CLAYTON: Good morning, Your Honor.

9 THE COURT: How many motions do we have up today,  
10 three?

11 MS. NALE: Well, I suppose one could say three. As  
12 you know, we filed our summary judgment motion --

13 THE COURT: Right.

14 MS. NALE: -- our related Daubert motion, and  
15 plaintiffs have filed a motion for sanctions which I think is  
16 up at 9:30, but I'm hoping we could address it today as well.

17 THE COURT: Sure. No, I want to address all three  
18 motions.

19 MS. CLAYTON: Your Honor, I would suggest that before  
20 we address those, this is also a status conference, it might be  
21 useful to Your Honor if Mr. Miner reported on the status of  
22 conversations since our last meeting.

23 THE COURT: Sure.

24 MR. MINER: We have been talking, and it's certainly  
25 my perception that we're a hair apart in terms of trying to

1 resolve it. I hoped to hear back from Mr. Salpeter yesterday.  
2 He wasn't sure he'd be able to get back to me. We didn't talk,  
3 so --

4 THE COURT: Do you know anything about that?

5 MS. NALE: Your Honor, I personally haven't been  
6 involved in the discussions with Mr. Salpeter and Jud. I am  
7 aware that we need to get back to our client. As Mr. Miner is  
8 aware, Al is out of town, as is Bob, which is why I'm here  
9 alone today.

10 THE COURT: Okay.

11 MS. NALE: So we are moving forward in the talks. I  
12 can't say one way or the other where they're going to go.

13 I do, however, want to deal with the briefing issue,  
14 particularly on the summary judgment. As in the past as you're  
15 well aware, we've made progress, but we've run into  
16 difficulties that couldn't be overcome, and I don't want the  
17 let motion, therefore, linger in the background.

18 THE COURT: It will not linger, don't worry about  
19 that.

20 Do you want me -- what's the plaintiffs' perspective  
21 as to what we should do with the three motions, given what  
22 you're telling me, Mr. Miner?

23 MR. MINER: Well, we have a couple of thoughts.  
24 First, we are going to be filing two more motions.

25 THE COURT: What are your two more motions?

1 MR. MINER: I withheld them because of my  
2 conversations. I told Mr. Salpeter. One is that if we're  
3 going to proceed, we're going to ask the Court to lift the  
4 protective order so that we can use this data more freely.  
5 Right now we're under tremendous constraints. In light of  
6 recent Seventh Circuit authority that really discourages these  
7 kinds of blanket prohibitions, not showing this to anybody,  
8 we're going to simply ask the Court to let us use it more  
9 freely.

10 THE COURT: Okay.

11 MR. MINER: Secondly, we have had an ongoing dispute  
12 with the defendants over what are called ACAPS databases.  
13 ACAPS were represented to us early in the game as sort of the  
14 ultimate database for determining credit, and -- but it was  
15 highly secret information. They weren't going to share with us  
16 actually what the formula was and how it was ascertained.

17 Largely on those representations, and our belief that  
18 it was fairly accurate or accurate enough, we used it heavily  
19 in our analysis. In their response, they have come out and  
20 suggested that maybe the ACAPS really aren't worth anything and  
21 there's some very specific pieces of credit information that  
22 are much more reliable.

23 We now want to know what's in the database. We  
24 suspect that pieces of information they're relying on are  
25 indeed part of the database we're using, but we ought to know

1 that for sure now.

2           Since they're no longer relying on the ACAPS database  
3 and apparently are representing that it's not worth much, we're  
4 going to ask the Court to order them to tell us precisely  
5 what's on it.

6           And in terms of the order of the motions, we certainly  
7 would like to address first this sanctions motion because we  
8 have spent an arm and a leg on this case, we think  
9 inappropriately in many respects, and we'd like that addressed  
10 so that we can continue, if we go on, to fight this on a level  
11 playing field.

12           And, secondly, before we even get to the motion for  
13 summary judgment, there's some fundamental problems in terms of  
14 it being wildly over the 15-page limit without bothering to ask  
15 the Court's permission to do so, and it's my recollection it  
16 wasn't even filed on time. So I'm not sure that that motion is  
17 really properly before the Court at this time.

18           THE COURT: Okay.

19           MS. CLAYTON: One other aspect --

20           THE COURT: Go ahead.

21           MS. CLAYTON: -- on our motions, Your Honor, is that  
22 with regard to the settlement talks, as Your Honor will recall,  
23 one of the stumbling blocks was the attorneys' fees.

24           In the interim since our last settlement conference,  
25 Citibank has substantially increased its offer, and I would

1 say, I think it's fair to say we -- that with one small caveat  
2 in terms of future efforts, we have reached an agreement on  
3 that item. Wouldn't you say?

4 MR. MINER: I think, but I've thought this before, I  
5 believe that I'm going to be quite surprised if we don't  
6 actually resolve this matter. I mean I think we're that close.

7 Now, Mr. Salpeter did have to go back to his clients  
8 on I think it's really two points. I didn't view either of  
9 them as very significant. In terms of some of the money  
10 differences, we have dramatically closed the gap.

11 MS. CLAYTON: But the key there is if we have to do a  
12 lot of future work, that will be a problem.

13 THE COURT: I understand.

14 MS. CLAYTON: We have no difficulty in Citibank  
15 responding to our motion, of course.

16 THE COURT: I'll give you the last word, but then I  
17 really want it to be the last word.

18 MS. NALE: Your Honor, I'm not going to deal with the  
19 representations made by plaintiffs on ACAPS. If they file a  
20 motion, I'll deal with that.

21 THE COURT: That would be a motion to compel, right?

22 MR. MINER: Right.

23 THE COURT: That will be about the fifth motion to  
24 compel?

25 MS. CLAYTON: I think probably the ninth.

1 MS. NALE: Okay. But let me deal first with the  
2 concept of the sanctions motion. From my perspective, I think  
3 that's something that needs to be deferred to the end of the  
4 case.

5 The arguments presented in the sanctions motions have  
6 been raised along with those eight prior motions to compel that  
7 you've heard about, and in each instance, no award of  
8 attorneys' fees has been made.

9 I'd also point out in our last settlement discussions,  
10 you pointed out to Mr. Kriss that while we were focusing on  
11 summary judgment, that's our focus where it would be, and we  
12 wouldn't have to respond on other matters.

13 With that said, I think it should be deferred because  
14 it could become moot. We could settle. We might win, and  
15 after all, this is an attorneys' fees case. So I think it  
16 should be deferred to the end of the case, and that's where  
17 briefing should stand on that motion. If the Court disagrees,  
18 we'll set a briefing schedule. We move onward.

19 I think it's important, however, that we do set a  
20 briefing schedule for the summary judgment motion. It was  
21 filed with a motion for leave to file an oversized brief, which  
22 obviously is also, I guess, part of the motions before Your  
23 Honor. I didn't include that separately, but that's part of  
24 the motion up before Your Honor, and they didn't say anything  
25 about whether they want to proceed forward with discovery.

1 THE COURT: You don't have to worry about that.

2 MS. NALE: That's where I think we should go.

3 THE COURT: Okay. First, a word about settlement. I  
4 put a lot of energy into trying to help you along those lines.  
5 I think in September we met maybe three times.

6 My focus now is going to be on the litigation of the  
7 case, so it's up to you. At this point, I brought you as close  
8 as I could. It's up to you to make that journey over that  
9 bridge. Unless you think there's something totally exceptional  
10 about this, I will keep focused on the litigation of the case,  
11 and you can report to me if you have a tentative settlement by  
12 presenting it to me jointly to my chambers by way of a joint  
13 motion for preliminary approval, which is I think what we would  
14 have to do, given the class certification in this case.

15 If you think there's something exceptional about this  
16 that merits what would be probably my fifth settlement  
17 conference in this case, let me know about that by way of a  
18 joint letter.

19 Now, the litigation of the case. I've taken a close  
20 look at all the pleadings in this case. I do disagree with the  
21 defendants. The motions for sanctions I think needs to be  
22 dealt with.

23 I have thought about having a hearing on this issue  
24 because some very serious allegations are being made. I think  
25 in the first instance, I need to see a written response from



1 the defendant. I'll give the defendants as much time as you  
2 want, so you tell me what you think is a reasonable briefing  
3 schedule with regard to this.

4 MS. NALE: Your Honor, I would like, because I'm  
5 committing other people to a schedule here --

6 THE COURT: Don't worry about it. Just ask --

7 MS. NALE: -- may I just ask for 45 days to make sure  
8 I'm not stepping on anyone's toes?

9 THE COURT: I will give you 45 days, and I will give  
10 the plaintiffs 21 days thereafter, and then we might be at the  
11 point where we're going to have a hearing before I decide  
12 what's going to be done with that.

13 Now, the motion for summary judgment. I've taken a  
14 close look at the motion, I've taken a close look at all the  
15 attachments. Let me give you what are my preliminary  
16 conclusions as to the motion for summary judgment.

17 And I think I have to start out with the Daubert  
18 motion because this is the prong on which you're trying to have  
19 me grant summary judgment.

20 My preliminary conclusion with regard to the Daubert  
21 motion would be to partially grant and partially deny the  
22 motion, and let me tell you what I mean by that.

23 I would fully deny the motion as it relates to expert  
24 witness Shlay. I believe that her testimony fully meets the  
25 Daubert criteria. I believe that at best, what the defendants

1 have mounted is what Daubert refers to as what could be shaky  
2 but admissible testimony. That's my conclusion.

3 Now, as to Mr. Bradford, I preliminarily conclude that  
4 I would be of a mind to exclude his opinion testimony but allow  
5 him to testify as to the charts that he prepared as someone who  
6 has knowledge, who made a selection, made a comparison and  
7 would be able to describe fully the comparison that he made,  
8 the findings that he made, but would not be allowed to give his  
9 opinion testimony that what occurred here was, in fact,  
10 discriminatory. He would be allowed to give results without  
11 opinion. That would be my conclusion based on Daubert, its  
12 progeny, and most importantly Rule 403, balancing probative  
13 value against prejudicial impact.

14 Having said that, my preliminary conclusion would be  
15 to deny the motion for summary judgment in the way that it's  
16 currently framed. I would do that because there are too many  
17 material issues of fact, because Citibank used subjective  
18 decision-making in this case, because Miss Shlay's testimony is  
19 perhaps a little shaky but admissible, and certainly in  
20 carefully reviewing her deposition testimony, I believe there's  
21 enough here to proceed to trial.

22 Now, I have couched this all as preliminary  
23 conclusions. I'm not going to enter any findings on the  
24 motion. What I would have in mind is to schedule oral argument  
25 where you could address my preliminary conclusions.

1           And from the defendants, I would really like to see  
2 what the case law is and a similar case like this where summary  
3 judgment has been granted. I looked at your cases. I don't  
4 see it. So I'd certainly like to see that case law, and I'd  
5 like to get the case law at least three days before oral  
6 argument.

7           From the plaintiffs' perspective, I'd like to see any  
8 case law that you think supports allowing someone like  
9 Mr. Bradford give the opinion testimony that I preliminarily  
10 have concluded should be excluded in this case, and I would  
11 like to see the case law on that, again, at least three days  
12 before oral argument.

13           I am very much aware of the attorneys' fees issues in  
14 this case. I would have in mind setting this case for oral  
15 argument, because of my own trial schedule, before  
16 Thanksgiving, and I was thinking of either the 24th or the  
17 25th. And what I have in mind is a 25, 25 and 10 schedule;  
18 that is, 25 minutes for the defendants, 25 minutes for the  
19 plaintiffs, 10 minutes for defendant's rebuttal. So it's  
20 defendants first followed by plaintiffs followed by defendant's  
21 rebuttal followed by what could be a ruling from the Court.

22           Having said all of that, are you available or would  
23 you know if the attorneys who would argue this are available on  
24 either November 24th or the 25th, or would you want to do it  
25 later? And if you take a later date, which would be in

1 December, all I can tell you is my trial schedule is such that  
2 I think we would do this in the evening.

3 MS. NALE: Okay, I was not prepared for what you have  
4 just presented --

5 THE COURT: I didn't think you would be.

6 MS. NALE: -- so I don't know what either  
7 Mr. Salpeter's or Mr. Kriss's schedule would be. I imagine it  
8 will be Mr. Kriss who will argue the motions. And I'm  
9 reluctant to commit him without at least attempting to reach  
10 him and then reporting back perhaps to the Court.

11 THE COURT: Sure.

12 MS. NALE: It may need to be later.

13 A couple questions, though. Is there some type of  
14 brief that we're going to receive?

15 THE COURT: No, no, there would not be a brief. It  
16 would be basically you give me the case law three days before.  
17 I've read everything that's been submitted. Everything would  
18 then be done orally. If I decide that further briefing is  
19 necessary before I issue a ruling, I'll then take it.

20 But right now, these are my preliminary conclusions,  
21 and I think they're pretty close to the money, and I'm giving  
22 you just a chance, rather than enter an order, I'm giving you a  
23 chance to tell me why I'm wrong.

24 MS. NALE: Which is fine, Your Honor. I have no  
25 problem with that, not that I like to phrase my response that

1 way.

2 THE COURT: Yeah.

3 MS. NALE: But so that I can go back and make a little  
4 more sense when I return to the office as to what exactly it is  
5 you'd like addressed.

6 THE COURT: From Citibank's perspective, I'd like to  
7 see any case law that would allow for the granting of a summary  
8 judgment with this type of allegation; that is, a class-wide  
9 allegation of discriminatory lending by a bank. I'd like to  
10 see the cases where judges have granted summary judgment.  
11 Anything close to this I would like to see, and you can assume  
12 that I've looked at all the cases that you've cited so far, but  
13 I'd like to see if you have something that's even more  
14 comparable.

15 MS. NALE: Okay. And with regard to Mr. Bradford,  
16 again so I'm clear, I understand your ruling with regard to  
17 Miss Shlay, your preliminary conclusion.

18 On Mr. Bradford when you say he would only be  
19 permitted to testify as to the charts and not an ultimate  
20 conclusion --

21 THE COURT: He would testify as a summary witness;  
22 that is, somebody that went and gathered these documents. He  
23 could testify how he decided which loan files to pull, and he  
24 would testify, I think it's Rule 1006 allows for summary  
25 testimony by a witness who would take voluminous documents and

1 summarize them into a chart and explain his findings.

2 MS. NALE: Okay. And does that apply also to his  
3 findings with regard to his discussion of the individual loan  
4 files identified in his report?

5 THE COURT: I think it would.

6 MS. NALE: Okay.

7 MS. CLAYTON: With regard to the schedule, Your Honor,  
8 the only date that doesn't work for me is November 25th. I  
9 have a deposition that day, but the 24th would be okay or an  
10 evening in December.

11 MS. NALE: I would, you know, without having spoken to  
12 Mr. Kriss, I can't imagine, unless there's a conflict, why that  
13 wouldn't be okay. I'd like, however, to extend the courtesy to  
14 place an appropriate phone call, find out. If I may, could we  
15 call back?

16 THE COURT: Let me do this. I'm going to schedule it  
17 for 3:00 o'clock on the 24th; and if we need to change it,  
18 we'll change it. But as I said, you'll probably then get a  
19 replacement of some evening in December. We're only going to  
20 take an hour, so if we start at 4:30, we should be done well  
21 before 6:00.

22 But that will probably be a replacement because I have  
23 a heavy, I don't know how I managed to do this, but I have a  
24 heavy December trial calendar. So I'll probably give you an  
25 evening, and then if a trial goes away, we'll probably then

1 slot it to something more reasonable. But we're going to do  
2 that, and let's see what happens. In the meantime, you can let  
3 me know if there are any developments in this case.

4 MR. MINER: Thank you.

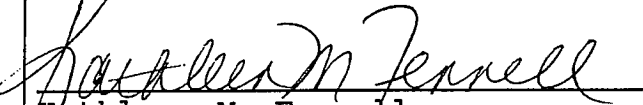
5 MS. CLAYTON: Thank you.

6 MS. NALE: Thank you, Your Honor.

7 (Which were all the proceedings heard.)

8 CERTIFICATE

9 I certify that the foregoing is a correct transcript from  
10 the record of proceedings in the above-entitled matter.

11   
12 Kathleen M. Fennell  
13 Official Court Reporter

11-12-97  
Date

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