Client Alert: Supreme Court Allows Cities To Sue Banks For Predatory Lending Under Fair Housing Act

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The Supreme Court ruled on Monday that cities have standing under the Fair Housing Act (FHA) to sue banks based on allegations of discriminatory lending practices that purportedly led to economic losses for the cities through lower tax revenues and increased demand for city services. However, the decision is not a total win for the cities because the Court found that more than mere foreseeability of harm from the alleged discriminatory practices is required to be pleaded in a complaint to establish proximate cause under FHA.

The FHA prohibits racial discrimination in connection with real-estate transactions, and permits any "aggrieved person" to file a civil action.

In 2013, the City of Miami sued Bank of America and Wells Fargo arguing that they intentionally targeted minority borrowers with riskier loans and then induced defaults by failing to extend refinancing and loan modifications on fair terms. This conduct allegedly led to a disproportionate number of foreclosures and vacancies in majority-minority neighborhoods as compared to majority-white neighborhoods, which impaired the city's effort to assure racial integration and diminished its property-tax revenue, while increasing demand for police, fire, and other municipal services.

The banks sought dismissal of the lawsuit and contended first that that the city does not fall within FHA's "zone of interest" – "aggrieved persons" Congress intended to protect when it passed the law. Second, the banks argued that the harm the city allegedly suffered was not sufficiently related to FHA violations, thus the bank could not be liable for city's losses for lack of proximate cause. The District Court found in favor of the banks, dismissing the lawsuit on motion to dismiss. On appeal, the Court of Appeals reversed and found in favor of the city of Miami on whether the lawsuit could proceed.

The Supreme Court, by 5-3 vote rejected the banks' first argument and held that the city is an "aggrieved person" authorized to bring suit under the FHA. The majority, which included Justices Roberts, Ginsburg, Sotomayor, Kagan, and Breyer, explained that the FHA's

definition of an "aggrieved person" reflects the intent to confer standing broadly, so long as the alleged injury is "arguably" within the "zone of interest."

However, the Court disagreed with the Court of Appeals on the causation question. In reversing dismissal to permit the city's lawsuit to proceed, the U.S. Court of Appeals for the Eleventh Circuit determined that while there are "several links in the causal chain" between the alleged lending practices and the alleged losses, the city sufficiently alleged causation because the effects of the practices were foreseeable. The Supreme Court rejected foreseeability as too low of a bar for sustaining the tort-like FHA claims and explained that parties seeking redress for FHA violations must sufficiently allege a direct connection between the violation and their alleged injury. The Court remanded the case with instructions for the lower courts to "define, in the first instance, the contours of the proximate caused under the FHA and decide how that standard applies to city's claims."

Justice Clarence Thomas wrote an opinion concurring in part and dissenting in part, which was joined by Justices Alito and Kennedy. Justice Gorsuch joined the Court after the case was argued and did not participate in the decision. Justice Thomas' opinion agreed with the majority on the proximate cause issue in so far as it was written, and further indicated that the Court of Appeals would "not need to look far to discern other, independent events that might well have caused the injuries Miami alleges." His opinion also indicated a belief that the majority was wrong to conclude that the FHA was intended to protect cities from urban blight. Justice Thomas observed that these problems "fall outside the FHA's zone of interests" because the FHA is aimed at protecting the "quintessential 'aggrieved person'" – the victim of discriminatory lending practices – or, perhaps, residents of neighborhoods that remain segregated due to such practices.

In sum, Miami won this round: its case was not dismissed and will now go forward; banks' expense of and exposure in litigation continues. But the case will now be reviewed against a more stringent causation test, which will play out in lower courts to decide how a more stringent causation standard applies to claims of this kind. While the majority officially did not define the scope of application of causation, it did provide an indication that the FHA does not support allegations of "ripples of harm" that are "far beyond" the alleged misconduct of defendants.