Special Alert: Supreme Court Holds Cities Have Standing Under FHA, But Limits Potential Claims

On May 1, the Supreme Court ruled 5-3 that municipal plaintiffs may be "aggrieved persons" authorized to bring suit under the Fair Housing Act against lenders for injuries allegedly flowing from discriminatory lending practices.[1] However, the Court held that such injuries must be proximately caused by the alleged misconduct—rather than simply a foreseeable result. Some commentators suggest that the Court's zone of interest analysis will result in the filing of new claims. Our view of this decision is that it will reduce such litigation efforts as prospective municipal plaintiffs recognize that it will be more difficult to survive early dispositive motions focused on whether the damages claims bear a direct relationship to the conduct alleged.

Background

The consolidated cases arise out of allegations by the City of Miami that two lenders engaged in discriminatory, predatory lending practices that led to defaults, foreclosures, and vacancies, and that eventually those vacancies damaged the city by reducing property values and corresponding property tax revenues, and increased costs associated with municipal services. A federal district court dismissed the actions,[2] but the Eleventh Circuit reversed.[3] The Eleventh Circuit held, among other things, that (i) the City was an "aggrieved person" capable of suing under the FHA (*i.e.*, within the "zone of interests" Congress intended to protect in enacting the FHA); and (ii) the City's allegation that its injuries were "foreseeable" was sufficient to plead that they were proximately caused by the lenders' alleged conduct. The Supreme Court heard oral argument in the case on November 8, 2016.

The Decision

Justice Breyer delivered the opinion of the Court, in which Chief Justice Roberts and Justices Ginsburg, Sotomayor, and Kagan joined. The Court concluded that "the City's financial injuries fall within the zone of interests that the FHA protects."[4] As a result, the Court held that the city may be considered an "aggrieved person" that could sue under the FHA. The Court relied primarily on its previous statements in *Trafficante v. Metropolitan Life Ins. Co.*[5] that standing under the FHA should be defined as broadly as

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[1] *Bank of Am. v. City of Miami*, Nos. 15-1111 & 15-1112, slip op. at 1, 581 U.S. ___ (2017) (5-3 decision) (Thomas, J., concurring in part and dissenting in part).

[2] *City of Miami v. Bank of Am.*, No. 13-cv-24506, 2014 WL 3362348 (S.D. Fla. July 9, 2014); *City of Miami v. Wells Fargo & Co.*, No. 13-cv-24508 (S.D. Fla. July 9, 2014); *City of Miami v. Citigroup Inc.*, No. 13-cv-24510 (S.D. Fla. July 9, 2014

[3] *See City of Miami v. Bank of Am.*, 800 F.3d 1262 (11th Cir. 2015).

[4] *Bank of Am.*, 581 U.S. at __, slip op. at 2.

[5] 409 U.S. 205, 209 (1972).

permitted under Article III, and in *Gladstone, Realtors v. Village of Bellwood*,[6] where a municipality was permitted to bring claims for lost tax revenue in combination with segregative harms to its community.

On the issue of proximate causation, the Supreme Court vacated the Eleventh Circuit's holding that the City had adequately pled proximate causation under a "foreseeability" test. The Court emphasized that, in federal causes of action, it assumes that Congress is familiar with the common-law rule against attributing loss to a remote cause rather than a proximate cause, and proximate cause requires "some direct relation between the injury asserted and the injurious conduct alleged."[7] The Court stated that a damages claim under the FHA is analogous to a number of tort actions at common law, and noted that it has "repeatedly applied directness principles to statutes with common-law foundations."[8] Importantly, the Court admonished that the "general tendency" in these cases is "not to go beyond the first step" in the causal chain.

The Court declined to say whether the City's claims go beyond the first step, and remanded for further proceedings. Still, the Court included significant observations that will be helpful to the lenders in the further proceedings.

- First, the Court noted that "[t]he housing market is interconnected with economic and social life," and that "[a] violation of the FHA may, therefore, be expected to cause ripples of harm to flow far beyond the defendant's misconduct." However, it found that "[n]othing in the statue suggests that Congress intended to provide a remedy wherever those ripples travel."
- Second, the Court observed that "entertaining suits to recover damages for any foreseeable result of an FHA violation would risk massive and complex damages and litigation." Thus, the Court held that "proximate cause under the FHA requires some direct relation between the injury asserted and the injurious conduct alleged."
- Finally, while suggesting that the analysis of proximate cause, "in regard to damages at least, is not to go beyond the first step," the majority characterized the lawsuits as alleging (i) discriminatory, predatory lending practices, which led to (ii) default and foreclosure rates among minority borrowers that were higher than among similar-situated white borrowers and concentrated in minority neighborhoods, which led to (iii) lowered property values/diminished tax revenues and increased demand for municipal services. While causal chain may be broken out much further, even the majority's truncated version demonstrates that the theory of liability goes, at a minimum, "beyond the first step."

Justice Thomas, joined by Justices Kennedy and Alito, dissented from the Court's holding on the "zone of interests" question, and concurred with the Court's holding on proximate causation.

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[6] 441 U.S. 91, 91 (1979).

[7] *Bank of Am.*, 581 U.S. at __, slip op. at 3.

[8] *Id*. at 11-12.

Justice Thomas stated that he would have held that proximate cause was not sufficiently alleged—and that the Court was in no worse position than the Eleventh Circuit to so decide since the case is still at the motion to dismiss stage. With respect to further proceedings, Justice Thomas stated that "the majority opinion leaves little doubt that neither Miami nor any similarly situated plaintiff can satisfy the rigorous standard for proximate cause that the Court adopts and leaves to the Court of Appeals to apply." He further stated that "Miami's own account of causation shows that the link between the alleged FHA violation and its asserted injuries is exceedingly attenuated," and that "Miami's asserted injuries are too remote from the injurious conduct it has alleged." Justice Thomas reasoned that the city's injuries are even further removed than neighboring homeowners, reasoning that "[n]o one suggest that those homeowners could sue under the FHA, and I think it is clear that they cannot."

Justice Gorsuch took no part in the consideration or decision of the cases.

Buckley Sandler partners Andrew L. Sandler and Valerie L. Hletko have handled similar lawsuits filed by the Mayor and City Council of Baltimore; the City of Memphis and Shelby County in Tennessee; DeKalb, Fulton, and Cobb Counties in Georgia; Cook County in Illinois; and the City of Providence, Rhode Island.

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