Supreme Court Holds That Cities May Have Standing to Bring Discriminatory Lending Lawsuits Under the FHA for Banks' Alleged Redlining Practices

Publication:

Riker Danzig Client Alert May 2, 2017

In a groundbreaking decision issued Monday, the United States Supreme Court held that a city may have the right to bring an action against a lender for violations of the Fair Housing Act of 1968 ("FHA") when the lender's allegedly discriminatory lending caused large-scale foreclosures and vacancies in predominantly minority neighborhoods. See Bank of Am. Corp. v. City of Miami, Fla., 2017 WL 1540509 (U.S. May 1, 2017). Under the FHA, it is unlawful for "any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of race, color, religion, sex, handicap, familial status, or national origin." See 42 U.S.C. 3605(a). The FHA further provides standing for any "aggrieved person" to bring an action for these discriminatory practices. See 42 U.S.C. 3613.

In this case, the City of Miami brought two actions in which it claimed that two defendant banks, Bank of America and Wells Fargo, issued predatory loans to minority customers which, inter alia, caused a disproportionate number of foreclosures and vacancies in predominantly minority neighborhoods. The presence of these foreclosed and vacant properties allegedly injured the City in two ways. First, it decreased property values in these neighborhoods, which reduced the property tax revenue collected by the City. Second, the vacant properties caused blight and unsafe conditions, which forced the City to increase spending on municipal services to protect these neighborhoods. The banks filed motions to dismiss, arguing that the City's alleged injuries were not within the "zone of interests" protected by the FHA and that the City did not allege a sufficient causal connection between the

allegedly discriminatory actions and its injuries. The district court agreed and dismissed the actions. On appeal, the Eleventh Circuit reversed the lower court's decisions and held that the City could pursue its actions. The Supreme Court granted certiorari, and on May 1, 2017 it vacated and remanded the Eleventh Circuit's order in a 5-3 decision authored by Justice Breyer and joined by Chief Justice Roberts and Justices Ginsburg, Sotamayor and Kagan.

The majority first held that a plaintiff could only have standing if its "interests fall within the zone of interests protected by the law in question." In determining whether the City's interests fell within the "zone of interests" for the FHA, the Court referenced prior decisions in which it interpreted the FHA's use of "aggrieved person" broadly, including Trafficante v. Metropolitan Life Insurance Company, 409 U.S. 205 (1972) and Gladstone Realtors v. Vill. of Bellwood, 441 U.S. 91 (1979). It noted that Congress had amended the FHA in 1988 and did not significantly change the definition of "aggrieved person" even though it was aware of these prior decisions. Moreover, the Court relied on its holding in Gladstone Realtors, in which it held that residents and a village had a cause of action against realtors under the FHA based on the realtors' racially-motivated steering of prospective purchasers to different neighborhoods, because the realtors' conduct "produc[ed] a 'significant reduction in property values [that] directly injures a municipality by diminishing its tax base, thus threatening its ability to bear the costs of local government and to provide services."' Accordingly, the Court found that the City is an aggrieved person with standing under the statute.

Nonetheless, the Court held that the Eleventh Circuit had not adequately addressed whether the banks' allegedly predatory loans proximately caused the City's damages in this matter. Although the Eleventh Circuit determined that the City's injuries were foreseeable, "foreseeability alone does not ensure the close connection that proximate cause requires." Instead, the City was required to prove a "direct relation" between the banks' allegedly discriminatory lending practices and the City's injuries, and the Eleventh Circuit did not address this issue. The Court declined the parties' invitation to "draw the precise boundaries of proximate cause" under the FHA, noting that neither the Eleventh Circuit nor any other court of appeals had weighed in on the issue, and stated that "[t]he lower courts should define, in the first instance, the contours of proximate cause under the FHA and decide how that standard applies to the City's claims for lost property-tax revenue and increased municipal expenses." The Court then vacated the Eleventh Circuit's judgment and remanded the action to make this determination.

Justice Thomas concurred in part and dissented in part, and was joined by Justices Kennedy and Alito. The dissent primarily disagreed with the majority's holding regarding the FHA's zone of interests. Although the dissent acknowledged the broad definition of "aggrieved person" used in Trafficante and Gladstone Realtors, it stated that, in Thompson v. North American Stainless, LP, 562 U.S. 170 (2011), the Court had found the relevant language from those decisions to be "'ill-considered' dictum leading to 'absurd consequences."' In that vein, "nothing in the text of the FHA suggests that Congress was concerned about decreased property values, foreclosures, and urban blight, much less about strains on municipal budgets that might follow." The dissent further noted that the Gladstone

case addressed other injuries beyond the "budget-related injur[ies]" pled by the City, and that the City's injuries alone are insufficient to satisfy the FHA's zone-of-interests limitation. The dissent also maintained that the majority's conclusion here was narrow and that the Opinion "should not be read to authorize suits by local businesses alleging the same injuries that Miami alleges here."

Finally, although the dissent agreed that the City must sufficiently allege a direct connection between the alleged wrongdoing and the City's injuries, it argued that the remand was unnecessary because the Court had enough information before it to hold that there was no proximate cause. The dissent argued that the City's theory, which the dissent characterized as being that "petitioners' allegedly discriminatory mortgage-lending practices led to defaulted loans, which led to foreclosures, which led to vacant houses, which led to decreased property values, which led to reduced property taxes and urban blight" was too attenuated and remote for proximate cause.

Although the Court leaves open the question of how the City can sufficiently allege proximate cause under the FHA, this decision nonetheless adds to the forms of statutory relief municipalities now have to remedy the economic woes caused by foreclosures, whether rightly or wrongly. For a copy of the decision, please contact Michael O'Donnell at modonnell@riker.com, Stuart Lederman at slederman@riker.com or Michael Crowley at mcrowley@riker.com.

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