Client Alert: Supreme Court Holds That Cities Can Sue Financial Institutions under the Fair Housing Act, Bank of America Corp., et al. v. City of Miami, Florida

In a 5 to 3 opinion the Supreme Court found that the City of Miami had standing to sue Bank of America and Wells Fargo under the Fair Housing Act for financial injury stemming from alleged discriminatory lending practices and remanded the case for further proceedings regarding the question of proximate cause, stating that "the plaintiff must do more than show that its injuries foreseeably flowed from the alleged statutory violation" to establish proximate cause under the Fair Housing Act.

Factual Background. The City of Miami (the "City") filed suit in 2013 against Bank of America and Wells Fargo (the "Banks"), alleging that the banks "intentionally issued riskier mortgages on less favorable terms to African-American and Latino customers than they issued to similarly situated white, non-Latino customers" in violation of the Fair Housing Act (the "FHA") and that these discriminatory practices "disproportionately 'cause[d] foreclosures and vacancies in minority communities in Miami' … harm[ing] the city by decreasing 'the property value of the foreclosed home as well as the value of other homes in the neighborhood.'" The Banks argued that the City was not an "aggrieved person" entitled to sue under the FHA since the claimed harms did not fall within the FHA's "zone of interests." The Banks further argued that there was no "proximate-cause" connection between the claimed violations and the claimed harm.

Procedural Background. The District Court for the Southern District of Florida ("District Court") dismissed the complaints on the grounds that the claimed harms "fell outside the zone of interests the FHA protects" and the City failed to demonstrate "a sufficient causal connection between the City's injuries and the Bank's discriminatory conduct" (i.e. proximate cause). The United States Court of Appeals for the Eleventh Circuit (the "Eleventh Circuit") reversed the District Court, holding "that the City's injuries fall within the 'zone of interests' that the FHA protects" (internal citations omitted) and finding that the City established proximate cause "because the City plausibly alleged that its financial injuries were foreseeable results of the Bank's misconduct."

Opinion. The majority opinion "conclude[d] that the City's financial injuries fall within the zone of interests that the FHA protects." The Court reasoned that the City's claims of "lost tax revenue and extra municipal expenses" as

a result of violations of the FHA "are, at the least, '*arguably* within the [FHA's] zone of interests'" and that, consistent with the Court's past decisions, the definition of "aggrieved person" under the FHA should be interpreted broadly to include, in this case, the City.

Justice Breyer, however, left open the question of whether the City demonstrated proximate cause. "The remaining question is one of causation: Did the Banks' allegedly discriminatory lending practices proximately cause the City to lose property-tax revenue and spend more on municipal services?"

The Court concluded that "the Eleventh Circuit erred in holding that foreseeability is sufficient to establish proximate cause under the FHA." The Court explained that "[i]n the context of the FHA, foreseeability alone does not ensure the close connection that proximate cause requires…Rather, proximate cause under the FHA requires 'some direct relation between the injury asserted and the injurious conduct alleged'" (internal citations omitted).

The Court declined "to draw the precise boundaries of proximate cause under the FHA and to determine on which side of the line the City's financial injuries fall." Rather, the Court vacated the Eleventh Circuit's decision and remanded the case to the lower court to "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."

In the dissenting opinion, Justice Thomas reasoned that the City's was not an "aggrieved person" within the meaning of the FHA and that the City's claimed injuries do not fall within the FHA's zone of interests. Under the FHA, the aggrieved person is able to sue "if he [claims to have been injured by a *discriminatory housing practice*." Justice Thomas reasoned, however, that:

> *Miami's complaints do not allege that any defendant discriminated against it within the meaning of the FHA. Neither is Miami attempting to bring a lawsuit on behalf of its residents against whom petitioners allegedly discriminated. Rather, Miami's theory is that, between 2004 and 2012, petitioner's 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.*

"[N]othing 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." Justice Thomas stated that the City's "asserted injuries are 'so marginally related to or inconsistent with the purposes' of the FHA that they fall outside the zone of interests" (internal citations omitted). Further, this "attenuated chain of causation," in Justice Thomas's view, demonstrates that the City's "asserted injuries are too remote from the injurious conduct" to meet the proximate cause requirement. According to Justice Thomas, "I would hold that Miami's injuries fall outside the FHA's zone of interests" and "Miami's alleged injuries are too remote to satisfy the FHA's proximate cause requirement."[1]

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[1]Justice Breyer delivered the opinion of the Court and was joined by Justices Roberts, Ginsberg, Sotomayor, and Kagan. Justice Thomas filed an opinion concurring in part and dissenting in part, and was joined by Justice Kennedy and Alito. Justice Gorsuch took no part in the consideration or decision of the case.