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Supreme Court Rules Municipalities Have Standing To Sue Under The FHA, But Raises The Bar On Showing Proximate Cause.

On May 2, 2017, the United States Supreme Court held that a municipality has standing to sue for injuries under the Fair Housing Act (“FHA”) for discriminatory lending. However, the Court declined to decide whether the municipality’s injury was proximately caused by the alleged FHA violation.

The Proceedings in the Southern District Court of Florida and Eleventh Circuit

The City of Miami, Florida, (Miami) filed complaints in the Southern District of Florida (District Court) against two national banks (Banks) alleging violations of the FHA. Miami alleged that the Banks engaged in discriminatory lending by providing minorities with home loans containing less favorable terms than similarly situated nonminority borrowers. Miami also claimed that the Banks failed to extend fair refinancing and loan modification opportunities to minorities. Miami claimed that as result of these alleged FHA violations, minorities were unable to stay current on their mortgages, resulting in increased foreclosures in minority communities. As a result of these foreclosures, property values in the minority communities supposedly decreased, which affected the amount of property taxes Miami claimed that it could collect. Miami also alleged that the foreclosures resulted in blight within these communities, resulting in increased expenditures of municipal services, such as police and fire departments in those communities.

The District Court dismissed Miami’s complaints, finding that Miami’s injuries were purely economic and not discriminatory and therefore fell outside the zone of interests that the FHA was intended to protect. The District Court also held that Miami failed to show how its injuries were proximately caused by the Banks’ lending practices.

Miami appealed the District Court’s decision to the Eleventh Circuit which held that Miami’s injuries fell within the zone of interests contemplated by the FHA and that Miami adequately alleged its injuries were proximately caused by the Banks’ alleged lending practices. In finding that Miami sufficiently pled its alleged injuries were proximately caused by the Banks in order to survive a motion to dismiss, the Eleventh Circuit focused solely on whether Miami’s injuries were a foreseeable result of predatory lending.

The United States Supreme Court’s Majority Opinion

The Supreme Court was faced with two questions: (1) whether Miami had adequately alleged standing to bring an FHA claim and (2) whether Miami had adequately alleged that the alleged lending misconduct proximately caused Miami to lose property-tax revenue and spend more on municipal services.

The Supreme Court, in an opinion written by Justice Breyer, conducted its analysis in two parts. First: (1) in a 5-3 vote, the Court agreed with the Eleventh Circuit that Miami had standing to sue under the FHA. In an outcome joined by the entire Court, it decided that alleging “foreseeability

alone” is not enough to meet the FHA’s proximate cause requirement. The Supreme Court declined to apply its proximate cause formulation to Miami’s allegations. Instead, the Court tasked the Eleventh Circuit with determining whether Miami’s alleged injuries were proximately caused by the Banks’ actions.

In reaching its conclusion, the Court determined that Miami’s injuries were within the zone of interests the FHA protects. The Supreme Court focused on the definition of “aggrieved person” as defined by the FHA. Under the FHA, an “aggrieved person” has standing to bring an action. The Supreme Court, citing its previous ruling on the definition of “aggrieved persons” under the prior version of the FHA, noted that “aggrieved person” is broadly defined to include any person who claims to have been injured by a discriminatory housing practice or believes that such injury will occur. Adopting the same broad definition of aggrieved persons under the amended FHA, the Court noted that Congress failed to limit the Court’s broad definition of “aggrieved persons” when it amended the FHA and, therefore, acquiesced to the Court’s definition of the term. The Court further compared Miami’s claims to those made by a municipality in *Gladstone Realtors v. Village of Bellwood*, 441 U.S. 91 (1979) . In *Gladstone*, the Court ruled that the village had standing to sue under the FHA based on alleged injuries due to reduced integration in the community, which resulted in lower tax revenues. The Court noted that Miami’s injuries, reduced property taxes and increases in expenditures for municipal services, were sufficient injuries contemplated by the broad definition of “aggrieved persons.”

In holding foreseeability alone is insufficient to show proximate cause, the Court cited the well-established common law principle that any injury must be proximately caused by the alleged conduct. The Court noted that although it may be foreseeable that a municipality might be injured by the Banks’ alleged practices, the FHA requires a direct relationship between the injury and the alleged violative conduct. Applying common law principles, the Court noted that the injury suffered by Miami must occur within the “first step” of the alleged act. The Court also noted that due to the nature of the housing market and its economic and social implications, nothing in the FHA suggests that Congress intended to allow a suit for injuries merely tangentially related to an alleged violation of the FHA and doing so would result in “massive and complex damages litigation.”

The Court, however, declined to dictate the boundaries of proximate cause under the FHA or to apply its ruling to the allegations of the complaints. Instead, the Court vacated the judgments below and remanded to the Eleventh Circuit for that court to apply the new proximate cause formulation.

The Concurrence and Dissent By Justice Thomas

In his Opinion, Justice Thomas stated that he would have held that (1) Miami’s injuries fell outside of the FHA’s zone of interests and, therefore, Miami lacked standing to bring suit; and (2) that Miami’s injuries were too remote to satisfy the FHA’ proximate cause requirement. However, Justice Thomas concurred with the majority’s decision that foreseeability alone is insufficient to show proximate cause.

In addressing Miami’s standing, Justice Thomas distinguished *Gladstone* and the other FHA cases upon which the majority opinion relied on the basis that those cases “at least arguably” involved discriminatory injuries falling within the zone of interests. Justice Thomas described the “quintessential ‘aggrieved person’” as “a prospective home buyer or lessee discriminated against during the home-buying or leasing process.” Justice Thomas noted that Supreme Court precedent extended “aggrieved persons” status to those who live in a segregated neighborhood, resulting from discriminatory housing practices, and that these cases illustrate the outer limits of protected interests under the FHA. He also noted that Miami’s interests are purely economic, unlike those claimed in *Gladstone*, which included both economic injury and changes to the “racial composition”

of the community resulting from discriminatory practices. Justice Thomas stated that the FHA was not intended to redress purely economic injuries.

In addressing Miami's lack of proximate cause, Justice Thomas wrote that the causal links between Miami's injuries and the Banks' alleged violations were "exceedingly attenuated," observing that there was a lengthy and "attenuated chain of causation" between the Banks' alleged actions and Miami's injury. Pointedly, Justice Thomas predicted the "Court of Appeals will not need to look far to discern other independent events that might well have caused the [Miami's] injuries."

Practical Impact

The Supreme Court's decision establishes a potentially expansive zone of interests for FHA claims brought by municipalities, thereby recognizing standing for plaintiffs situated similarly to Miami, assuming that they can allege the requisite proximate causation. This portion of the opinion may encourage municipalities to bring claims against mortgage lenders and servicers under the Act.

The Supreme Court's holding that foreseeability alone is insufficient to allege proximate cause raises the bar for alleging proximate cause but does not fully clarify what is required in the FHA claim context. However, Justice Thomas' delineation of the many causal links between the Banks' alleged actions and Miami's injuries shows why it will likely be difficult for Miami and other municipalities to allege proximate cause in attempting to recover lost property taxes and other purely economic damages.

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The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.