Banking and Finance Law Daily Wrap Up, TOP STORY—U.S.: Miami has standing to sue banks over mortgage loan discrimination, (May 1, 2017)

Banking and Finance Law Daily Wrap Up

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By Richard A. Roth, J.D.

The Fair Housing Act gives the City of Miami standing to sue banks over allegedly discriminatory mortgage lending practices, the Supreme Court has decided by a five-to-three vote. According to the Court, the city meets the requirements for being an "aggrieved person" that can sue under the FHA. However, the Court declined to say that the city's complaint described injuries that had been proximately caused by the banks' alleged discrimination. The city's financial injuries might have been foreseeable results of the banks' lending practices, but the Court was not prepared to say that the allegations described a connection between the lending practices and the injuries that was sufficiently close to meet proximate cause requirements (*Bank of America Corp. v. City of Miami*, May 1, 2017, Breyer, S.).

Miami sued Bank of America and Wells Fargo, claiming that the banks had engaged both in redlining—refusing to make loans to minority borrowers on the same terms that were available to nonminority borrowers—and reverse redlining—making loans to minority borrowers on exploitative terms. The banks refused to make loans to minority borrowers on terms similar to those available to white borrowers with comparable credit qualifications, offered minority borrowers loans only on predatory terms, and refused to extend refinancing loans to minority borrowers on terms similar to those available to white borrowers, Miami alleged.

The U.S. Court of Appeals for the Eleventh Circuit decided that the city had adequately described injuries subject to the FHA that were proximately caused by the alleged discrimination (see *City of Miami v. Bank of America Corp.*, and *City of Miami v. Wells Fargo & Co.*, *Banking and Finance Law Daily*, Sept. 5, 2015).

Standing to sue. The Court began by noting that the FHA allows any aggrieved person to sue for a violation and defines "aggrieved person" as "any person . . . who claims to have been injured by a discriminatory housing practice" (42 U.S.C. §3613). Miami claimed generally that the banks' discriminatory lending practices had interfered with its fair housing policies and caused a disproportionately large number of foreclosures in minority neighborhoods. This brought about reduced property values, which in turn reduced the city's property tax revenues. More vacant properties also forced the city to increase its spending on city services.

The banks argued that Miami was not an aggrieved person because the harm it claimed was not arguably within the zone of interests the FHA was intended to protect; in other words, the city did not have statutory standing to sue. The five-Justice majority disagreed.

The claimed injuries were at least arguably within the FHA zone of interests, the majority decided, adding emphasis to the word "arguably." Congress intended that statutory standing under the FHA should be as broad as the Constitution permitted.

The majority rejected the banks' argument that the act established more limited criteria for standing. Even if the FHA called for more restrictive standing criteria, the city still met those criteria, they said. Miami would have been harmed by a decline in property values that reduced its tax base and threatened its ability to pay for necessary city services.

Proximate cause. On the other hand, the majority was not satisfied that the city's complaint met proximate cause criteria. In the case of a violation of a statute, such as the FHA, proximate cause requires more than that the injury be a foreseeable result of the challenged action, the majority said. The injury also must have a close connection to conduct prohibited by the statute. Nothing in the FHA suggested that Congress wanted to create

a cause of action for any harm simply because that harm could have foreseeably resulted from a violation, the majority said.

More specifically, Miami needed to show that its lost revenue and increased expenses were closely connected to the redlining and reverse redlining, the majority said. The Eleventh Circuit opinion noted that there were several intervening steps, and the majority was concerned that there might have been so many intervening steps that there was no close connection.

Neither the Eleventh Circuit nor any other appellate court has attempted to analyze that aspect of proximate cause, the majority noted. Declining to proceed in the absence of such an analysis, the Court vacated the Eleventh Circuit decision and returned the suit to the appellate court to consider how the "close connection" standard would apply to the city's claims of reduced property taxes and increased municipal expenses.

Concurring and dissenting. Justices Thomas, Alito, and Kennedy disagreed that the city had statutory standing to sue the banks, and thus they would have dismissed the suit. They agreed that proximate cause requirements had not been met, but saw no reason for a remand.

According to the opinion authored by Thomas, the injuries claimed by the city were not even arguably related to the purposes of the FHA. The act was concerned with lending discrimination, not with property taxes, foreclosures, urban blight, or municipal financial problems.

Had the city based its arguments on claims related to racial balance and stability, the situation might have been different, Thomas observed. However, Miami had asserted only a "budget-related injury," and that was not within the FHA's zone of interest.

The cases are No. 15-1111 and No. 15-1112.

Supreme Court docket. For details about this and other petitions and cases pending before the Supreme Court, please consult this list of selected banking and finance law cases awaiting action in the 2016 term. Issued opinions, granted petitions, pending petitions, and denied petitions are listed separately, along with a summary of the questions presented and the current status of each case.

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Companies: Bank of America Corp.; Wells Fargo & Co.

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