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THE IMPACTS OF ALLOWING CITIES TO HAVE STANDING AGAINST PREDATORY LENDERS UNDER THE FAIR HOUSING ACT

Andrew Howell

I. INTRODUCTION

Bank of America and Wells Fargo “Banks” are corporations that regularly deal in the area of real-estate transactions¹ Notably, the Banks lend money to persons who meet certain requirements.² These borrowers then reimburse the Banks the money lent to them as well as interest on the money borrowed, over a period time.³ The Banks were supposedly targeting African Americans and Latino Americans in Miami by imposing higher interest rates, giving misleading information on opportunities to refinance, and not allowing modifications to their loans when notified of foreclosure.⁴

The City of Miami filed a lawsuit against the Banks under the Fair Housing Act (FHA), alleging that the Banks were acting in an unlawful manner by intentionally treating members of African American and Latino American neighborhoods unequally.⁵ The United States District Court for the Southern District of Florida dismissed the claim.⁶ Finding that the city’s injuries were protected under the FHA, the United States Court of Appeals for the Eleventh Circuit reversed the district court’s decision.⁷ The Supreme Court of the United States vacated and remanded the judgments of the Court of Appeals, in doing so, holding that the city of Miami interests did fall within the zone of interests protected under the FHA, but Miami was not able to show proximate cause by failing to prove the injuries caused were more than foreseeable.⁸ In remanding, the court gave judgment for “the lower courts [to] define, in the first instance, the contours of proximate cause under the

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1. *See* Bank of America Corp. v. City of Miami, No. 15-1112 (U.S. May 1, 2017).
 2. *See generally* Stephanie Francis Ward, *Cities need more than foreseeable damages to file fair housing cases against banks*, SCOTUS says, A.B.A. J., (May 1, 2017, 11:38AM), http://www.abajournal.com/news/article/cities_need_more_than_foreseeable_damages_to_file_fair_housing_cases_agains.
 3. *See generally* *Id.*
 4. *Id.*
 5. Bank of America Corp., 137 U.S. at 1298.
 6. *Id.*
 7. *Id.* at 1302.
 8. *Id.* at 1298-1300.

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FHA and decide how that standard applies to the City's claims"⁹ The FHA will certainly be impacted, as a result of this holding.¹⁰ The Supreme Court followed precedent and categorized Miami as an "aggrieved person" and they opened the door for lower courts to define foreseeability in relation to the proximate cause requirement.¹¹

II. BACKGROUND

A. *The Historical Development of the Fair Housing Act*

The FHA was a Civil Rights Act, signed into law on the 11th of April in 1968, enacted with the goal of combatting discrimination in housing.¹² The 36th President of the United States, Lyndon B. Johnson, rightfully, pushed congress to pass the legislation after Martin Luther King Jr., a remarkable civil rights advocate, was assassinated on April 4, 1968.¹³ President Johnson acknowledged Mr. King Jr.'s legacy as a testament to passing the legislation.¹⁴ The FHA is used to prohibit "discriminat[ion] against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, familial status, or national origin."¹⁵ Additionally, and particular to this case, the FHA prohibits "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."¹⁶

B. *The City of Miami's Case Development*

The City of Miami "City" filed suit against the Banks, after a rough financial year

9. *Id.* 1299-1300.

10. *See Id.*

11. *Id.*

12. *History of Fair Housing*, U.S Department of Housing and Urban Development (last visited September 10, 2017), https://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/aboutfheo/history.

13. *Id.*

14. *Id.*

15. 42 U.S.C. § 3604(b) (1968).

16. 42 U.S.C. § 3605(a) (1968).

in 2008, for discriminatory lending practices.¹⁷ The City alleged that as a result of this discrimination there was loss of property tax-based revenue and greater municipal services expenses.¹⁸

To bring suit in the Supreme Court, constitutional requirements must be satisfied.¹⁹ To have constitutional standing, which will allow for a party to bring suit, in the Supreme Court “the Plaintiff must show an ‘injury in fact’ that is ‘fairly traceable’ to the defendants conduct and “that is likely redressed by a favorable judicial decision.”²⁰ To show this, the statutory cause of action must be within the “zones of interests.”²¹ The test is not as demanding as the burden to pass must simply be more than “interests so marginally related to or inconsistent with the purposes implicit in the statute that it cannot reasonably be assumed that Congress intended to permit the suit.”²² Under the FHA, any “aggrieved person” is allowed to file for a violation of the statute and seek damages.²³ The statute defines an “aggrieved person” as “any person who (1) claims to have been injured by a discriminatory housing practice; or (2) believes that such person will be injured by a discriminatory housing practice that is about to occur.”²⁴ Following previous case law, the Supreme Court upheld the decision to consider the City of Miami an “aggrieved person” and that the economic injuries alleged do fall within the “zone of interests.”²⁵ It has been previously held that plaintiffs, similar to the City, have a cause of action.²⁶

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17. Adam Liptak, *Supreme Court Rules Miami Can Sue for Predatory Lending*, Politics, The New York Times (May 1, 2017), <https://www.nytimes.com/2017/05/01/us/politics/supreme-court-miami-banks-fair-housing.html>.
 18. *Id.*
 19. *Bank of America Corp. v. City of Miami*, No. 15-1112, Fla. 137 S.Ct. LEXIS 2801, 1296, 1302 (2017).
 20. *Id.*
 21. *Lexmark Intern., Inc. v. Static Control Components, Inc.* 134 U.S. 1377, 1388 (2014).
 22. *Clarke v. Sec. Indus. Ass’n*, 479 U.S. 388, 399 (1987).
 23. *Bank of America Corp.*, 197 L. Ed. 2d at 682.
 24. 42 U.S.C. § 3602(i)(1)-(2) (1968).
 25. *See Bank of America Corp.*, 197 L. Ed. 2d at 682.
 26. *See Havens Realty Corp. v. Coleman*, 455 U.S. 363 (1982) (finding a lawsuit by a nonprofit organization that spent money to fight housing discrimination, could be brought under the FHA); *see also Gladstone Realtors v. Bellwood*, 441 U.S. 91 (1979) (finding a village that had the racial balance of its community undermined and alleged lost tax revenue could file a lawsuit under the FHA); *see also Trafficante v. Metropolitan Life Ins. Co.*, 409 U.S. 205 (1972) (finding white tenants could bring a lawsuit under the FHA when they are claiming deprivation of benefits from interracial associations where minorities were kept from their apartment complex).

The Plaintiff must also show the Banks were the proximate cause of the City's injuries.²⁷ The City of Miami accuses the Banks of intentionally lending money to minority borrowers at higher interest rates than compared to nonminority borrowers, and failing to give fair terms on refinancing.²⁸ There is an elevated burden to establish proximate cause, and foreseeability alone does not satisfy it.²⁹ Proximate cause "requires some direct relation between the injury asserted and the [injuries] alleged."³⁰ The Supreme Court declined to precisely define proximate cause, therefore vacating the judgments of the Court of Appeals and remanding the case to the lower courts so they may define proximate cause and how it applies to the City of Miami's injuries.³¹

C. Proximate Cause

The analysis for whether proximate cause can be shown depends on the nature of the statutory cause of action.³² The question to be answered is whether there is a sufficient connection between the alleged injuries and the conduct prohibited.³³ In this case the FHA statute prohibits "intentionally lending to minority borrowers on worse terms than equally creditworthy nonminority borrowers and inducing defaults by failing to extend refinancing and loan modifications to minority borrowers on fair terms."³⁴ The City alleges the Banks' actions led to excessive foreclosures and vacancies, which resulted in lost property-tax revenue and higher payments towards public services in the impacted areas.³⁵

D. Targeted Borrowers

The targeting of borrowers is partly due to residential segregation, notwithstanding opinions of academic minds, supportable evidence shows there is a strong connection between neighborhoods and economic

27. *Id.*

28. *See Ward supra* note 2.

29. *See Bank of America Corp.*, 197 L. Ed. 2d at 682.

30. *Holmes v. Sec. Inv'r Prot. Corp.*, 503 U.S. 258, 259 (1992).

31. *Bank of Am. Corp.*, 2017 U.S. LEXIS at **36.

32. *Id.* at 1305.

33. *Id.*

34. *Id.*

35. *Id.*

outcomes.³⁶ Segregation between African Americans and Whites specifically show Whites have a more favorable economic outcome.³⁷

III. ANALYSIS

A. *Impact of the Holding for Advocates of the FHA*

The majority of supporters of the FHA are most likely pleased with the ruling that allows cities to sue banks.³⁸ Merely the intimidation of a lawsuit being brought by cities where housing discrimination heavily exists against defendants, such as banks, will be prominently noticed, as the results of such lawsuit could result in an exorbitant damages rewards.³⁹ Not only will Cities try to file suit, now other entities like counties, states, or other governmental type authorities may attempt to stop inequality under the FHA.⁴⁰

B. *Maintaining the Strength of the FHA*

The FHA was created to protect African Americans and other minorities against discrimination in housing.⁴¹ To deny the city of Miami's lawsuit, the Supreme Court would have had to overrule previous case law, but the Court decided to follow precedent and allow the city standing.⁴² By doing so, acts of individual discrimination should decrease for minorities who seek loans.⁴³

The FHA has also been improved through the narrowing of proximate cause.⁴⁴ The Court will now demand more evidence of the proximate cause

36. Austin W. King, *Affirmatively Further: Reviewing The Fair Housing Act's Integrationist Purposes*, 88 N.Y.U L. REV. 2182, 2196 (2013).

37. *Id.*

38. David Dante Troutt, *When Cities Fight Banks: Understanding Bank of America v. Miami*, RUTGERS CENTER ON LAW (June 13, 2017), <http://www.clime.newark.rutgers.edu/commentary/editorial/when-cities-fight-banks-understanding-bank-america-v-miami>.

39. *Id.*

40. *Id.*

41. *Fair Housing Act of 1968*, HISTORY, <http://www.history.com/topics/black-history/fair-housing-act> (last visited Sept. 10, 2017).

42. Mark Joseph Stern, *Will Fair Housing Stay Fair?*, SLATE (May 1, 2017), http://www.slate.com/articles/news_and_politics/jurisprudence/2017/05/in_bank_of_america_v_miami_the_supreme_court_strengthens_the_fair_housing.html.

43. Troutt, *supra* note 38.

44. Troutt, *supra* note 38.

or foreseeability in the causation analysis.⁴⁵ Proving the causation of injuries may provide an answer as to why there should be liability imposed on an unjust entity.⁴⁶

C. *The FHA Objectives*

Following the Supreme Court ruling that cities have standing to sue banks for predatory lending practices, the City of Philadelphia filed a complaint against Wells Fargo, under the FHA.⁴⁷ Philadelphia claimed that Wells Fargo was pressuring minority borrowers into more expensive and riskier mortgages in comparison to nonminority borrowers and that the banks caused damages to the city by means of lower property taxes and higher costs of providing resources to borrowers.⁴⁸ The ruling followed case precedent and confirmed that cities have a large part to play in the fight against housing discrimination. With Philadelphia taking action so quickly after the ruling, a strong message to act in accordance with the law will be sent to mortgage lenders that are discriminating against minorities.⁴⁹ Prior to the Supreme Court ruling in *Bank of America Corp. v. City of Miami, Fla.*, cities including, Baltimore, Los Angeles, Oakland, and Providence, had filed suit against lenders under the FHA. Now that cities have standing to bring suit, more are sure to follow.⁵⁰ Of the previous suits filed, many courts have not ruled in favor of the cities.⁵¹ Numerous suits have been dismissed, similar to the one filed in Baltimore.⁵² Other suits are ongoing or have been settled, like a case

45. Troutt, *supra* note 38.

46. Troutt, *supra* note 38.

47. Jonnelle Marte, *Wells Fargo steered blacks and Latinos toward costlier mortgages, Philadelphia lawsuit alleges*, LOS ANGELES TIMES (May 16, 2017), <http://www.latimes.com/business/la-fi-wells-fargo-philadelphia-20170516-story.html>.

48. *Id.*

49. Lieff Cabraser, *City of Philadelphia Files Lawsuit Against Wells Fargo for Discriminatory Lending*, LIEFF CABRASER CIVIL JUSTICE BLOG (May 15, 2017), <https://www.lieffcabraser.com/2017/05/city-of-philadelphia-files-lawsuit-against-wells-fargo-for-discriminatory-lending/>.

50. Alana Semuels, *Who Can Go After Banks for the Foreclosure Crisis?*, THE ATLANTIC (May 3, 2016), <https://www.theatlantic.com/business/archive/2016/05/who-can-go-after-banks-for-the-foreclosure-crisis/480588/>; *See Mayor of Balt. v. Wells Fargo Bank, N.A.*, 677 F. Supp. 2d 847 (D. Md. 2010).

51. *See Id.*

52. *See Mayor & City Council of Balt. v. Wells Fargo Bank*, No. JFM-08-62, 2011 U.S. Dist. LEXIS 111248, at *2 (D. Md. Sep. 28, 2011) (holding there was no standing because the plaintiff could not prove a causal connection between the

involving the City of Oakland, where Wells Fargo agreed to settle the pending legal action for \$142 Million about two weeks before the ruling in *Bank of America Corp. v. City of Miami, Fla* was made.⁵³ Additional cities including, Chicago, Cleveland, and Memphis, have also dealt with discriminatory lending practices that have negatively impacted the housing market as well.⁵⁴

IV. CONCLUSION

The Supreme Court followed precedent in finding the City of Miami as an “aggrieved person” and strengthened claims under the FHA.⁵⁵ The fact that Supreme Court held that the City of Miami had standing under the FHA is a step in the right direction. While the Supreme Court declined to rule in favor of the City of Miami,⁵⁶ the door has been opened for a potential ruling in favor of cities in future cases. In doing so, the Supreme Court gave hope to restoration efforts, at least monetarily, for cities and troubled neighborhoods. Ruling in favor of the City of Miami will also help to further protect the minorities that certain banks are taking advantage of. Regarding the City of Miami’s lost property tax revenue and increased municipal expenses, the Supreme Court should give greater weight to the impacts that are being felt from the deceptive practices of banks. If at some point the lower courts are able to define the parameters of proximate cause under the FHA, the Supreme Court should stipulate or specify an outlined standard. Once a standard is provided, other cities will be able to protect their own interests and those of their residents from the same dangers that impacted the residents of the City of Miami. Furthermore, other cities will follow the practice of bringing suit to end predatory lending by entities that caused damage to individuals who did not have the means of protecting themselves. With cities now able to show standing, banks will be more likely to agree to a settlement. Cities will be more likely to recover money and restore impoverished neighborhoods back to the way they were before so many homes were foreclosed.

injuries alleged and actions of the defendant, resulting in a dismissal).

53. James Rufus Koren, *Wells Fargo Ups Sham-account Settlement to \$142 Million, Making More Customers Eligible*, Los Angeles Times (April 21, 2017, 12:10 AM), <http://www.latimes.com/business/la-fi-wells-settlement-plan-20170421-story.html>.

54. Lawrence Hurley, *U.S. Supreme Court to Weigh Miami Predatory Lending Lawsuit*, REUTERS (June 28, 2016, 9:55 AM), <https://www.reuters.com/article/us-usa-court-discrimination/u-s-supreme-court-to-weigh-miami-predatory-lending-lawsuit-idUSKCN0ZE1NQ>.

55. See source cited *supra* note 11.

56. *Id.*

