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Fate Of Municipal-Plaintiff FHA Suits In Justices' Hands

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The U.S. Supreme Court on Tuesday announced it will hear an appeal by two banks in a case that could define the reach of mortgage discrimination lawsuits under the Fair Housing Act. Bank of America and Wells Fargo are challenging the city of Miami's lawsuit seeking to hold the banks responsible for allegedly discriminatory mortgage practices dating back to the subprime boom which, the city claims, resulted in a raft of foreclosures, in turn causing them to lose property tax revenue and incur out-of-pocket costs associated with municipal services rendered at vacant properties. The banks argue that the municipality is not an "aggrieved person" under the law — both because reduced tax receipts and municipal expenditures are not within the "zone of interests" Congress sought to protect in enacting the FHA, and because the city's injuries, if any, were not caused by any alleged discriminatory conduct.

The court's eventual ruling could provide some much-needed clarity to lower courts wrestling with standing issues in FHA cases. Across the country, at least eight different municipalities are pursuing substantially similar cases against bank defendants. The decision to review City of Miami also comes just one year after the court decided Texas Department of Housing and Community Affairs v. Inclusive Communities Project Inc., 135 S. Ct. 2507 (2015), holding that claims under a disparate impact theory of liability are allowed under the Fair Housing Act, subject to a "robust causality requirement" at the pleading stage. The City of Miami case could provide more nuanced guidance on the causality requirements in pleading an FHA claim, and will be a key case to watch in the Supreme Court's 2016 term.

Case Background and History

The decision under review is City of Miami v. Bank of America Corp., 800 F.3d 1262 (11th Cir. 2015).[1] The case involves allegations by the city of Miami that the banks engaged in discriminatory mortgage lending, offering mortgages to minorities on less favorable terms than mortgages offered to whites with similar credit characteristics. Under the city's theory, the minority borrowers defaulted on their loans, triggering foreclosures and property vacancies. The resulting blight, as alleged, caused the city to lose property tax revenue, spend money and other resources fixing abandoned homes, and incur other out-of-pocket costs relating to the provision of municipal services at the properties — including code enforcement, fire and police services.

The district court granted the banks' motions to dismiss, holding that the city lacked standing to pursue

its claims under the Fair Housing Act.[2] In order to establish standing, the district court explained, the city had to show that it satisfied both the requirements for Article III standing under the Constitution, and the stricter "statutory standing" requirements established by the Supreme Court in Lexmark International Inc. v. Static Control Components Inc., 137 S. Ct. 1377 (2014). See, e.g., City of Miami v. Bank of America Corp., No. 13-cv-24506, (S.D. Fla. July 9, 2014). Under Lexmark, a statutory cause of action may only be brought by a plaintiff who is within the "zone of interests" the statute was designed to protect, and where the plaintiff's alleged injuries are proximately caused by the statutory violation. See Lexmark, 134 S. Ct. at 1388-91.

Applying that standard, the district court held that the city's claims fall outside the zone of interests protected by the Fair Housing Act because the city alleged "merely economic injuries" — lower tax revenue and increased costs of municipal services — that are not "affected by a racial interest" and are only "marginally related" to the purpose of the FHA. City of Miami v. Bank of America Corp., No. 13-cv-24506, (S.D. Fla. July 9, 2014) (internal quotations omitted). The court also concluded that the city failed the proximate causation test because it could not show that foreclosures were linked to discriminatory lending or that the alleged injuries were not caused by "intervening actors such as squatters, vandals or criminals." Id.

The Eleventh Circuit rejected the lower court decision with respect to statutory standing.[3] Relying heavily on three major (yet older) Supreme Court decisions holding that standing under the Fair Housing Act extends as far as Article III allows and is not subject to any statutory or "prudential" limitations, the Eleventh Circuit held that the city has standing to pursue its claims. See City of Miami, 800 F.3d at 1277 (citing Trafficante v. Metro. Life Insurance, 409 U.S. 205 (1972); Gladstone, Realtors v. Village of Bellwood, 441 U.S. 91 (1979); Havens Realty Corp. v. Coleman, 455 U.S. 363 (1982)).

The circuit court conceded that more recent Supreme Court cases strongly suggest the opposite — that all statutorily created causes of actions, like those under the Fair Housing Act, are in fact subject to further limits on standing and require a plaintiff to demonstrate that it falls within the "zone of interests" Congress intended to protect and that its injuries were proximately caused by a violation of the statute. See City of Miami, 800 F.3d at 1276 (discussing Thompson v. N. Am. Stainless, LP, 562 U.S. 170 (2011) and Lexmark International Inc. v. Static Control Components Inc., 134 S.Ct. 1377 (2014)).[4] But ultimately the court declined to apply the reasoning of Thompson (an employment discrimination case) and Lexmark (a trademark case) to the city's Fair Housing Act claim because "[s]imply put, Trafficante, Gladstone, and Havens have never been overruled, and the law of those cases is clear as a bell" — statutory standing under the FHA extends as far as permitted by Article III of the Constitution. City of Miami, 800 F.3d at 1277.[5]

While deferring to the older, "still-undisturbed" line of FHA cases, the Eleventh Circuit acknowledged that recent Supreme Court cases "gestured in the direction" of placing limits on standing under the Fair Housing Act. But the circuit court concluded that its hands were tied because "a gesture is not enough." Id. "The rule governing these situations is clear: if a precedent of the Supreme Court has direct application in a case, yet appears to rest on reasons rejected in some other line of decisions, the Court of Appeals should follow the case which directly controls, leaving to the Supreme Court the prerogative of overruling its own decisions." Id. (internal quotation marks omitted).

Under the Article III standing threshold, the circuit court held that the city adequately pled a link between predatory lending and the alleged costs to the city stemming from foreclosures and reduced property tax revenue. Id. at 1282. Similarly, the city met the applicable causation standard because "[a]lthough there are several links in that causal chain" — that is, from a discriminatorily priced loan to a

loan default, foreclosure and financial harm to the municipality — "none are unforeseeable." Id. The Eleventh Circuit reversed the district court's dismissal and remanded the case.

On Remand and On to the Supreme Court

On remand, the district court granted the banks' motions to dismiss the city's second amended complaints, with leave to amend. See City of Miami v. Bank of America Corp., No. 13-cv-24506, (S.D. Fla. Mar. 17, 2016); City of Miami v. Wells Fargo & Co., No. 13-cv-24508, (S.D. Fla. Mar. 17, 2016). The city filed a third amended complaint in each action on April 29, 2016, and briefing on the banks' motions to dismiss those complaints was in progress at the time the Supreme Court agreed to review the case. The pendency of those motions and the lack of a final judgment in the district court made the cases a "poor vehicle" for Supreme Court review, according to the city. See, e.g., Br. of Resp. City of Miami in Opp. to Pet., No. 15-1112, (U.S. May 20, 2016).

And yet, after the justices distributed the petition for certiorari four times, they agreed to review the case.[6] The decision may signal a desire by the Supreme Court to clarify further the statutory standing requirements announced in Lexmark and Thompson. It also provides the court an opportunity to reconsider its prior line of FHA-standing cases (Trafficante, Gladstone and Havens) in the context of more modern housing-related challenges. The court is expected to decide the case during its next term, beginning in October.

At the Supreme Court, the cases are Bank of America Corp. v. City of Miami, No. 15-1111, and Wells Fargo & Co. v. City of Miami, No. 15-1112.

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[1] The city of Miami also filed substantially similar complaints against Wells Fargo and Citigroup, which were resolved in the same way by the district court and by the Eleventh Circuit. The opinion in the case against Bank of America provided the most detailed account of the Eleventh Circuit's reasoning. See City of Miami, 800 F.3d at 1262 n.1. Only Bank of America and Wells Fargo appealed the Eleventh Circuit's decision to the Supreme Court.

[2] See City of Miami v. Bank of Am. Corp., No. 13-cv-24506, 2014 WL 3362348 (S.D. Fla. July 9, 2014); City of Miami v. Wells Fargo & Co., No. 13-cv-24508, 2014 WL 11380948 (S.D. Fla. Sept. 16, 2014); City of Miami v. Citigroup Inc., No. 13-cv-24510, 2014 WL 11444104 (S.D. Fla. Sept. 16, 2014).

[3] The Eleventh Circuit decision also included a reversal of the district court's dismissal on statute of limitations grounds. See City of Miami, 800 F.3d at 1283-86. The district court held that the complaint was time-barred because it did not allege a violation of the statute within the FHA's two-year limitations period. See City of Miami v. Bank of Am. Corp., No. 13–24506–CIV, 2014 WL 3362348, at *6. It further observed that while the limitations defect in the complaint theoretically could be cured by an amended complaint, because the city also lacked standing there was no reason to allow the city an opportunity to amend its allegations. See id. at *7 n.4. After reversing the lower court judgment on standing issues, the

Eleventh Circuit reversed and remanded on statute of limitations grounds too, allowing the city a chance to file a timely complaint. See City of Miami, 800 F.3d at 1284.

[4] In Thompson, a precursor to Lexmark, the Supreme Court held that "person aggrieved" standing must include some limitations beyond the outer limits of Article III standing. See Thompson, 562 U.S. at 176-77. The court observed that, without any statutory limitations on standing, "absurd" results could follow — for example, a shareholder could sue a company for discriminatory employment practices by merely showing that the value of his stock declined. Id. at 177. The court concluded that whether a plaintiff has standing for statutory causes of action will depend on whether he falls within the zone of interests sought to be protected by the statute. Id. at 177-78.

[5] In agreeing to review City of Miami, the Supreme Court also has an opportunity to consider the meaning of language in Section 801 of the FHA indicating that Congress intended to constrain application of the act "within constitutional limitations." See generally Kirk D. Jensen and Jeffrey P. Naimon, The Fair Housing Act, Disparate Impact Claims, and Magner v. Gallagher: An Opportunity to Return to the Primacy of the Statutory Text, 129 Banking L.J. 99, 112-13 (Feb. 2012) (explaining that by including the words "within constitutional limitations" Congress meant to restrict, not enlarge, application of the statute in light of concerns that the new law might infringe on constitutional rights).

[6] See, e.g., Supreme Court of the United States Docket, No. 15-1112, Wells Fargo & Co. v. City of Miami, http://www.supremecourt.gov/Search.aspx?FileName=/docketfiles/15-1112.htm (last visited June 27, 2016).