Insights

Supreme Court Rules that Cities Can Sue Banks Under Fair Housing Act

June 11, 2017

On May 1, 2017, the Supreme Court in *Bank of America Corp. v. City of Miami, Fla.*, 137 S. Ct. 1296 ruled that under the Fair Housing Act ("FHA")[1] cities may sue banks over residential lending practices they allege led to urban blight. However, in order to prove damages, cities must establish a direct link between the revenue loss and the increased costs. The Supreme Court left it to the lower courts to determine the precise boundaries of proximate cause under the FHA.

Background

The City of Miami brought federal lawsuits against Bank of America and Wells Fargo (the "Banks") and alleged that the Banks intentionally targeted predatory practices at minorities including: excessively high interest rates, unjustified fees, teaser low-rate loans that overstated refinancing opportunities, large prepayment penalties and unjustified refusals to refinance or modify loans in the face of default.

The City alleged that these conditions led to a disproportionate number of foreclosures and vacancies in minority neighborhoods, which caused stagnation and decline, hindered the City's efforts to create integrated, stable neighborhoods, reduced property values and diminished the city's property tax revenue while increasing demand for municipal services.

The District Court dismissed the City's complaints because the alleged harms fell "outside the zone of interests that the FHA protects," since they were economic and not discriminatory. The Court also ruled that the complaints failed to show a sufficient causal connection between the City's injuries and the Banks' discriminatory conduct and to allege unlawful activity occurring within the FHA's two year statute of limitation.

The City filed amended complaints seeking reconsideration, which solved the statute of limitation problem. The Court of Appeals reversed the ruling of the District Court and held that the City's injuries fell within the FHA's zone of interest, and that the complaints adequately alleged proximate cause since the damages were "foreseeable." The Court of Appeals then sent the case back to the District Court, but the Banks filed petitions asking the Supreme Court to decide whether the amended complaints satisfied the FHA's zone of interest and proximate cause requirements.

Outcome

The Supreme Court reversed and ruled that the injuries claimed by the City fell within the zone of interests that the FHA protects. The Supreme Court also ruled that the City was an "aggrieved person" and thus able to sue banks under the FHA and potentially hold banks accountable for harm that their lending practices have caused to the community. Finally, the Court ruled that although the damages that the City suffered were foreseeable, foreseeability alone is not sufficient to establish proximate cause under the FHA.

Practical Implications

Although cities may bring suit against banks, the new standard required to provide a direct link between the alleged injury and challenged conduct will be difficult to meet. In repealing the previous standard that stated injuries only had to be foreseeable, Justice Breyer wrote that violations of housing law always have ripples and "nothing in the statute suggests that Congress intended to provide a remedy wherever those ripples travel."[2]

[1] 42 USC §3601 (1968). The Fair Housing Act is a federal statute that prohibits discrimination in the sale or rental of housing, as well as in residential real-estate related transactions such as advertising, mortgage lending, homeowner's insurance and zoning. The law makes it unlawful to discriminate on the basis of race, color, religion, sex, and national origin, disability and familial status.

[2] 137 S.Ct. at 1306.