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SUPREME COURT HOLDS THAT CITY OF MIAMI HAS STANDING TO ALLEGE VIOLATION OF FAIR HOUSING ACT AGAINST BANKS FOR FINANCIAL LOSSES BASED UPON DISCRIMINATORY LENDING PRACTICES

On May 1, 2017, in *Bank of America Corp. v. City of Miami (No. 15-1111)* and *Wells Fargo & Co. v. City of Miami (No. 15-1112)*, the Supreme Court of the United States affirmed an Eleventh Circuit ruling that the City of Miami had standing under the Fair Housing Act ("FHA") to state a claim that the City was injured based upon the alleged discriminatory lending practices of two banks – but remanded for further proceedings the "precise boundaries" of proximate cause between the banks' practices and the City's injuries.

In 2013, the City of Miami filed lawsuits in federal court against Bank of America and Wells Fargo (the "Banks"), alleging that the Banks "discriminatorily imposed more onerous, and indeed 'predatory,' conditions on loans made to minority borrowers than to similarly situated nonminority borrowers." Such conditions included excessively high interest rates, fees that were unjustified, loans with "teaser" rates that overstated refinancing opportunities, large prepayment penalties, and refusal to refinance or modify loans when default was imminent. As a result, the City alleged, minority borrowers had higher default and foreclosure rates than among similar white borrowers and were concentrated in minority neighborhoods – which lowered property values and revenue from property taxes, increased demand for municipal services, and caused the City to sustain financial losses.

The City's complaints alleged that the Banks violated the FHA, which prohibits "discriminat[ing] 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 …." 42 U.S.C. § 3604(b). The FHA also makes it unlawful for "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 …." *Id.* § 3605(a).

The District Court dismissed the complaints, on the grounds that (1) because the harms alleged were economic rather than discriminatory, they fell outside the "zone of interests" protected by the FHA; (2) the complaints did not show a sufficient causal connection between the City's injuries and the Banks' conduct; and (3) the Banks' conduct fell outside the scope of the FHA's two-year statute of limitations. In response, the City amended the complaints and sought reconsideration, but the District Court held that this could only solve the statute of limitations issue and declined to reconsider.

The Eleventh Circuit reversed, finding that the City's alleged injuries did in fact fall within the zone of interests protected by the FHA, and that the City adequately alleged proximate cause in the context of the FHA based on "foreseeability." The Eleventh Circuit remanded and ordered the District Court to accept the amended complaints.

On appeal, the Supreme Court

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summarized its multiple prior decisions that confirmed Congress' intent to confer standing broadly under the FHA, based upon the FHA's definition of "person aggrieved." It concluded that the City's financial injuries fell within the FHA's zone of interests, as the Court has previously interpreted the FHA, based upon principles of both *stare decisis* and statutory interpretation. The Supreme Court, however, rejected the Eleventh Circuit's conclusion that the Banks' allegedly discriminatory conduct proximately caused the City to lose property tax revenue and increase spending on municipal services. According to the Court, the Eleventh Circuit erred in holding that foreseeability alone establishes proximate cause under the FHA – rather, "proximate cause under the FHA requires 'some direct relation between the injury asserted and the injurious conduct alleged.'" The Court declined to "draw the precise boundaries" of what constitutes proximate cause under the FHA, and remanded for the lower courts to define those parameters.

Justice Breyer wrote the opinion, joined by Chief Justice Roberts and Justices Ginsburg, Sotomayor, and Kagan. Justice Thomas, with whom Justice Kennedy and Justice Alito joined, concurred in part and dissented in part. He believed that the City's injuries were outsize the FHA's zone of interests, and in any event, the City's alleged injuries were too remote to satisfy proximate cause under the FHA.

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PIB Law Obtains Favorable Order from Northern District of California Affirming Bankruptcy Court's Entry of Judgment

On March 1, 2017, in *James Madison Kelley v. JPMorgan Chase Bank, N.A.*, Case 5:16-cv-01141-LHK, the Northern District of California affirmed the Bankruptcy Court's entry of judgment in favor of Chase. The Bankruptcy Court had held that it lacked subject matter jurisdiction over the claims of plaintiff James Madison Kelley ("Kelley"), because the claims were barred by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"). The Bankruptcy Court had further held that, even if FIRREA did not bar the claims, Chase should still be awarded summary judgment because Kelley's claims were non-meritorious.

Kelley took out two loans on property in California in 2005. In 2007, Kelley obtained two refinance loans from Washington Mutual Bank, F.A. ("WaMu"), which are the subject of Kelley's appeal. On September 25, 2008, the Office of Thrift Supervision closed WaMu and appointed the Federal Deposit Insurance Corporation ("FDIC") as Receiver. The same day, Chase entered into a Purchase and Assumption Agreement with the FDIC, pursuant to which Chase acquired certain of WaMu's assets. On October 1, 2008, the FDIC published in the Wall Street Journal a notice to creditors and depositors of WaMu, explaining the FDIC's receivership and the mandatory procedure for submitting a claim against WaMu to the FDIC.

On July 15, 2010, Kelley initiated an adversary proceeding against Chase in the Bankruptcy Court. On May 30, 2014, Kelley filed his Third Amended Complaint, which was the operative complaint in this matter. This complaint asked the Bankruptcy Court to: (1) declare that the subject loans were contractually invalid; (2) declare that the loans be rescinded under the Truth in Lending Act ("TILA"); and (3) declare that Chase did not validly hold claims to the loans, because Chase did not actually receive the loans after WaMu's receivership. Both Chase and Kelley filed motions for summary judgment, and on January 21, 2016, the Bankruptcy Court issued a decision denying Kelley's motion and granting Chase's motion. Kelley appealed.

On appeal, the Northern District of California observed that FIRREA "grants the FDIC authority to 'act as receiver of conservator of a failed institution for the protection of depositors and creditors.'" FIRREA "strips courts of jurisdiction over claims that have not yet been exhausted through th[e] process." The court found that all three of Kelley's claims against Chase in the Bankruptcy Court fell within the scope of – and were therefore barred by – FIRREA.

First, the court found that Kelley's claim for "contract invalidity" of the loans relates to "any act or omission" of an "institution for which the [FDIC] has been appointed receiver." Kelley's allegations "rest solely on the alleged misconduct of WaMu, a depository institution for which the FDIC is Receiver." Kelley did not allege any independent misconduct of Chase. For this reason, the court held that FIRREA deprived the Bankruptcy Court of subject matter jurisdiction

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Second, the court held that Kelley's claim for violation of TILA also related to WaMu's acts or omissions, because the timing of Kelley's notices of rescission – issued by Kelley more than two years after the loans originated – are "entirely contingent" on WaMu's alleged failure to satisfy the requirements of TILA at the time Kelley look out the loans. The court also found that, even if the TILA claim was not barred by FIRREA, the claim was still meritless because Kelley received the disclosures required by TILA, meaning that the three-day right of rescission was not extended to three years – Kelley's rescission, therefore, was too late. Finally, the court agreed with the Bankruptcy Court's finding that Kelley did not demonstrate he could tender an amount necessary to rescind the loans.

Third, the court found that Kelley's claim regarding ownership of the loans was, again, barred by FIRREA because it was based entirely on an act of WaMu, and not based on any independent misconduct of Chase. The court concluded that the claims in any event lacked merit, because Chase acquired WaMu's loans under the September 25, 2008 Purchase and Assumption Agreement and had the right to enforce them. Chase had also submitted evidence in the Bankruptcy Court that it owns and is in possession of the notes and deeds of trust underlying Kelley's loans. ■

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