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Supreme Court Reaffirms Standing Under the FHA, but Requires Rigorous Showing of Proximate Cause

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Whether, and under what circumstances, a plaintiff alleges facts sufficient to confer standing under the Fair Housing Act (FHA) has long been the subject of litigation. Two questions frame this analysis: Whether the FHA confers standing co-extensive with the "case or controversy" requirement of Article III; or, whether the definition of "aggrieved person" under the FHA limits claimants only to those within the statute's "zone of interest," requiring a showing more stringent than that required under Article III. While the United States Supreme Court has previously grappled with these issues, it has not done so directly since its landmark decisions in *Trafficante v. Metropolitan Life Ins. Co.*, 409 U.S. 205 (1972); *Gladstone, Realtors v. Village of Bellwood*, 441 U.S. 91 (1979); and *Havens Realty Corp. v. Coleman*, 455 U.S. 363 (1982).

Until now. Obscured by the tumult of last year's presidential elections were oral arguments, presented in the context of consolidated cases, over the outer limits of standing in fair housing cases. The Court granted Bank of America's petition for certiorari, notwithstanding the absence of circuit conflict, to clarify the scope of both constitutional and statutory standing under the FHA. See *Bank of America, N.A. v. City of Miami, Florida*, 2017 WL 1540509 (U.S. May 1, 2017). The dispute specifically centered on whether the City of Miami, in asserting a claim under the FHA for economic damages, alleged facts bringing it within the statute's "zone of interest" or whether the City's interest in avoiding the burdens flowing from lending discrimination were sufficient to otherwise confer standing.

The City brought a number of identical lawsuits against Bank of America, Wells Fargo and Citigroup alleging violations of the FHA, as well as Florida law. The City's claims arose from the banks' alleged predatory lending (including "reverse redlining") to consumers in predominantly minority neighborhoods, which had a "domino effect" resulting in higher rates of foreclosures leading to lost revenues and also requiring additional expenditures from the City to fund services to manage foreclosed properties. Bank of America filed a Motion to Dismiss the City's complaint on grounds that the City lacked statutory standing in that it was outside the FHA's "zone of interest;" the City's pleadings failed to sufficiently allege proximate causation; and the City's claims were otherwise barred by the statute of limitations. The City grounded its argument in its reading of Congressional intent to make the FHA the most comprehensive and broadly impactful pillars of the civil rights framework. The Bank, by contrast, homed in on the definitional limitations of "aggrieved person" and the attenuated nature of the economic harm allegedly caused by the provision of predatory loans to third parties. The inflection point between these competing positions turned on the degree to which damages flow from the alleged conduct, and whether the interest sought to be vindicated could be characterized as "anti-discrimination" or merely economic. The district court disagreed with the City, and granted the Bank's motion to dismiss.

On appeal, the Eleventh Circuit reversed and remanded given the district court's refusal to allow the City to amend its complaint. The court concluded that the City's allegations regarding the purported injury caused by the Bank's discriminatory lending practices, albeit indirect and somewhat attenuated, were sufficient to articulate an "injury-in-fact" supporting constitutional standing. Importantly, the court also concluded that the City constituted an "aggrieved person" under the FHA, falling within the zone of interest protected by the statute given that the Supreme Court's decisions in *Trafficante*, *Gladstone*, and *Havens* explicitly confirmed that standing under the Fair Housing Act extends "as broadly as permitted by Article III of the Constitution." And, the court further made explicit its belief that the statute incorporates a proximate cause requirement, though that element can be met by a showing of indirect injury resulting from conduct prohibited by the Act.

It is these central holdings that the U.S. Supreme Court re-examined in the *Bank of America* case. The Court summarily concluded that the City's claimed economic injuries fell within the zone of interests that the FHA protects. In so doing, the Court reaffirmed its previous standing ruling under the FHA, and held that the principles of *stare decisis* compelled their adherence to those precedents. Moreover, the Court noted that the City's claims of financial injury —specifically, lost tax revenue and extra municipal expenses — alone satisfied the prudential standing requirement. In concluding that the City constituted an "aggrieved person" under the FHA, the Court also referenced the City's complaints alleging that the Bank "intentionally targeted predatory practices at African-American and Latino neighborhoods and residents;" that the unlawful conduct led to a "concentration" of "foreclosures and vacancies" in those neighborhoods that hindered the City's efforts to create integrated, stable neighborhoods and reduced property values, thereby diminishing the City's property-tax revenue and increasing demand for municipal services.

However, the Court disagreed with the Eleventh Circuit's conclusion that the City's complaints met the FHA's proximate cause requirement based solely on the purported foreseeability of the City's alleged financial injuries. As a result of its analysis with respect to "foreseeability," and insofar as no other court of appeals had weighed in on this issue, the Court resolved that the lower courts should define, in the first instance, the contours of proximate cause under the FHA and decide how that standard applies to the City's claims for lost property-tax revenue and increased municipal expenses.

The Court's decision in this case, which reaffirms the central premise underlying its prior opinions, ensures continuity in the class of claimants bringing claims under the FHA. Standing under the FHA, at least at the pleadings stage, is in effect co-extensive with Article III. Importantly, the opinion also confirms that a claimant need not be the direct (or even secondary) target of discriminatory conduct so long as she articulates how the purported injury was proximately caused by discrimination.

This decision, however, may very well prompt renewed scrutiny of the FHA from Congress. Indeed, some in Congress may seek to explore legislation not only more explicitly limiting the definition of "aggrieved person," but also tightening rules for reliance on disparate impact as a cognizable theory under the FHA. Nonetheless, financial institutions, including mortgage originators and servicers, would be well-advised to evaluate standing when confronted with a lawsuit to pre-empt any settlement leverage from which a municipal claimant, or other party indirectly impacted by alleged lending discrimination, may benefit by initiating discovery – particularly in class actions, organizational or individual cases otherwise alleging violations of the FHA.

For more information on the matters discussed in this *Locke Lord QuickStudy*, please contact the authors.

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