PUBLICATION

Eleventh Circuit Further Widens the Reach of the Fair Housing Act

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The city of Miami brought an action against multiple lenders claiming their practices were discriminatory and in violation of the FHA, resulting in a disproportionate and excessive number of defaults and subsequent foreclosures by minority homebuyers. This caused financial harm that included an increase in municipal costs and a decrease in tax revenue. The city of Miami sought an injunction, barring the lenders from engaging in similar conduct and punitive damages, as well as attorney's fees.

It was alleged that the banks' conduct violated the FHA in two ways. First, that they intentionally discriminated against minority borrowers and second, that their conduct had a disparate impact, resulting in a unbalanced number of foreclosures on minority-owned properties. The banks moved to dismiss, most notably stating the city lacked statutory standing to sue under the FHA as the claim fell outside the act's "zone of interest." The city failed to plead that the banks' actions were the proximate cause of the alleged damages. The motion was granted by the district court. The city then moved in the district court for reconsideration and for leave to file an amended complaint, which the district court denied. The city chose to appeal.

Upon review the appellate court held, "the City claims that the Banks' discriminatory lending practices caused minority-owned properties to fall into foreclosure…This, in turn, decreased the value of the foreclosed properties themselves and the neighboring properties, thereby depriving the City of property tax revenue, and created blight, thereby forcing the City to spend additional money on municipal services. We have little difficulty in finding…that the City has said enough to allege an injury in fact for constitutional standing purposes."

The court did not stop there, holding that, "In sum, we agree with the City that the term "aggrieved person" in the FHA sweeps as broadly as allowed under Article III; thus, to the extent a zone of interests analysis applies to the FHA, it encompasses the City's allegations in this case." It went on to note the proximate cause argument: "While we acknowledge the real possibility of confounding variables, at this stage in the proceedings the City's alleged chain of causation is perfectly plausible…the Banks' extensive pattern of discriminatory lending led to substantially more defaults on [their] predatory loans, leading to a higher rate of foreclosure on minority-owned property and thereby reducing the City's tax base."

While the city may not ultimately be successful when this case returns to the district court, this holding is troublesome for lenders and servicers in that it is not a borrower utilizing remedies under the FHA. A lender may now have to price in the risks associated with a municipality or other neighboring homeowners who are not a party to the lending transaction bringing suit. Also, it may become more costly to litigate, as these allegations will be more difficult to win on a motion to dismiss. Lenders and servicers may see an uptick in inquiries from state attorney general offices and regulators, such as the Consumer Finance Protection Bureau when community groups and municipalities complain about blight. It would be prudent to review property preservation, in addition to REO processes and controls, in an attempt to avoid claims similar to those addressed in this case.

If you have questions about this or any other aspects of the residential mortgage industry, please reach out to the Baker Donelson attorney with whom you work or one of our Residential Mortgage Lending and Servicing attorneys.

The cases are *City of Miami v. Bank of America Corp*., No. 14-14543, *City of Miami v. Wells Fargo & Co*., No. 14-14544, and *City of Miami v. Citigroup Inc*., No. 14-14706.