goldfarb lipman attorneys

1300 Clay Street, Eleventh Floor
Oakland, California 94612
510 836-6336

MAY 4, 2017

LAW ALERT

M David Kroot
Lynn Hutchins
Karen M. Tiedemann
Thomas H. Webber
Dianne Jackson McLean
Michelle D. Brewer
Jennifer K. Bell
Robert C. Mills
Isabel L. Brown
James T. Diamond, Jr.
Margaret F. Jung
Heather J. Gould
William F. DiCamillo
Amy DeVaudreuil
Barbara E. Kautz
Erica Williams Orcharton
Luis A. Rodriguez
Rafael Yaquián
Celia W. Lee
Dolores Bastian Dalton
Joshua J. Mason
L. Katrine Shelton
Eric S. Phillips
Elizabeth Klueck
Daniel S. Maroon
Justin D. Bigelow
Nahal Hamidi Adler

San Francisco
415 788-6336
Los Angeles
213 627-6336
San Diego
619 239-6336
Goldfarb & Lipman LLP

SUPREME COURT FINDS CITY STANDING AGAINST BANKS' PREDATORY LENDING PRACTICES AGAINST RESIDENTS

In a 5-3 decision, the U.S. Supreme Court concluded that the City of Miami, Florida was an "aggrieved person" for purposes of the federal Fair Housing Act (FHA), and so its complaint against Bank of America Corporation and Wells Fargo & Co. (the Banks) should be reviewed to determine whether Miami's injuries were directly caused by violations of the FHA. The Supreme Court affirmed the conclusion of the court of appeals that the City's reduced property tax revenue and increased municipal expenses were within the zone of interests protected by the FHA. However, the Court rejected the circuit court's ruling that the City needed only to show that the fiscal impacts were foreseeable, and held that the City must show "some direct relation between the injury asserted and the injurious conduct alleged."

BACKGROUND

In 2013, the City filed suit alleging that each bank intentionally discriminated against African-American and Latino customers between 2004 and 2012 by engaging in predatory lending and discriminatory foreclosures practices. The City provided statistical analysis indicating that African-American and Latino customers received less-favorable loan terms and were more quickly foreclosed upon as compared to similarly situated white customers. The City complained that this activity violated the FHA, impaired the City's desegregation and integration goals, and reduced property tax revenues while increasing the need for and cost of municipal services.

The district court dismissed the complaints against the Banks, finding that the City's economic harms fell outside the zone of interests protected by the FHA, and that the complaints failed to show a causal connection between the City's injuries and the Banks' discriminatory conduct. The court of appeals reversed the district court, holding that the City's economic injuries were covered by the FHA and that the City had adequately alleged that the violations caused the harms.

THE SUPREME COURT'S DECISION

First addressing the City's standing to sue, the U.S. Supreme Court vacated the circuit court opinion and held that the City's economic injuries were similar in kind to FHA claims previously upheld by the Court in *Gladstone, Realtors v. Village of Bellwood* (1979) 441 U.S. 91. In *Gladstone* the Court held that the village could bring suit against realtors under the FHA for "racially steering" customers to purchase homes in racially segregated neighborhoods (often referred to as redlining). The Court quoted the *Gladstone* decision, stating that redlining adversely affected the village by producing a significant reduction in property values that directly injures a municipality by diminishing its tax base, thus threatening its ability to bear the costs of local government and to provide services. Because Miami alleged similar injuries, the Court held the City's suit should not have been dismissed.

Second, the Supreme Court unanimously rejected the court of appeals' holding and concluded that foreseeability alone is not sufficient to establish proximate cause under the FHA. A majority of the Court declined to decide whether Miami had adequately pleaded that its financial injuries were caused by the FHA violations. Rather, the majority opinion

concluded that "the FHA requires some direct relation between the injury asserted and the injurious conduct alleged." The Court stated that "the general tendency in these cases, in regard to damages at least, is not to go beyond the first step." The Court further noted that "what falls within the first step depends in part on the nature of the statutory cause of action, and an assessment of what is administratively possible and convenient."

Three justices took an additional step, arguing that the City had not adequately connected its injuries to the alleged FHA violations. Notably, the dissenting justices also would have concluded that the City's alleged economic injuries were not protected by the FHA.

ANALYSIS AND IMPLICATIONS FOR FUTURE PRACTICE

The City did not sue the Banks as a representative of those who were allegedly discriminated against by the Banks, but rather as an entity that was directly harmed by the Banks' actions. While the City's novel theory of relief under the FHA survived an initial challenge, it remains unclear how courts will interpret the requirement of a direct relation between harm and prohibited activity. Accordingly, organizations or local jurisdictions seeking to redress allegedly discriminatory practices should fully explore direct and representative theories of relief.

Likewise, following the recent U.S. Supreme Court decision in *Texas Department of Housing v. The Inclusive Communities Project* (2015) 135 S. Ct. 2507, regarding disparate impacts that harm racial and ethnic minorities, private actors and local jurisdictions should scrutinize the statistical likelihood that actions will disparately harm groups protected by the FHA.

For more information on this case or fair housing issues, please contact Lynn Hutchins, Karen Tiedemann, Justin D. Bigelow, or any other attorney at Goldfarb & Lipman LLP at 510-836-6336.

To receive Law Alerts by e-mail, please visit:
Goldfarb & Lipman News and Blog