No. 22-12217

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

TAMARAH C. LOUIS and EMMANUEL LOUIS, individually, and on behalf of all others similarly situated,

Louis v. Bluegreen Vacations Unlimited, Inc., No. 22-12217

CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26(b) and Eleventh

Circuit M6(S)38.9 (A)-18.7 (N)6420.2 (A) (uAe8-.4.(6.002 3)]Tc52,[u3iw ( )Tji8.1 1J-r7.U

Wilson, Christine S., Commissioner, FTC

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U.S. Dep't of Def., Report on Predatory Lending Practices Directed at Members of the Armed Forces and Their Dependents (2006) 4, 5, 6

"It's an unfortunate fact that our men and women in uniform are prime targets for scams and bad actors in the financial marketplace." Rice Testimony at 2. This unfortunate fact is evident from the hundreds of thousands of complaints the Bureau has received from servicemembers and their families. Id. These complaints come "from every branch of the military and every rank." Id. They "come from throughout the United States, the District of Columbia, the territories, and from military installations across the globe." Id.

The financial exploitation of American military families is a longstanding problem. In 2006, DoD submitted a report to Congress finding that "predatory loan practices and unsafe credit products are prevalent and targeted at military personnel." U.S. Dep't of Def., Report on Predatory Lending Practices Directed at Members of the Armed Forces and Their Dependents 45 (2006) ("DoD Report").[3] DoD urged Congress to act, given that "predatory lending undermines military readiness, harms the morale of troops and their families, and adds to the cost of fielding an all volunteer fighting force." Id. at 9.

[3] Available at https://apps.dtic.mil/sti/pdfs/ADA521462.pdf.

According to the DoD Report

our servicemen and women suffer and the toll on our readiness will increase.").

"[s]ubject to a finance charge" or "[p]ayable by a written agreement in more than four installments." 32 C.F.R. § 232.3(f). Certain residential mortgages Td[(. 8.6 (g

that "[i]t shall be unlawful for any creditor to extend consumer credit" to a servicemember if, in doing so, "the creditor requires the borrower to submit to arbitration." 10 U.S.C. § 987(e); see also 32 C.F.R. § 232.8(c); Epic Sys. Corp. v. Lewis,

civilly liable to such person." 10 U.S 10 U.S6.7 (.11 Tf8.113 0 T Tc 0 Tf12 -02 Td( )8.66

In December 2020, Emmanuel and Tamarah joined the Bluegreen Vacation Club. Id. To do so, the couple entered into a contract with Bluegreen,

including by making a "reasonable effort" to determine whether future borrowers are covered by the law. Id. at 24.

that proper calculation and presentation of the MAPR ... would have had any bearing on their decision to accept the contract," the magistrate judge concluded that the plaintiffs' MAPR claim was nothing more than a "bare procedural violation," insufficient to confer standing. Id. at 9. Similarly, the magistrate judge

SUMMARY OF ARGUMENT

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disclosures and inclusion of a prohibited arbitration agreement). This holding is erroneous.

The plaintiffs have s (a)21 (v)14 (e s)4.3.1 (r)3.4 (r)ni rUSCA11 Tc 0 Tw 4.444 0(-

plaintiffs allege to be illegal. Accordingly, the first step to determining whether a plaintiff has standing is to define the scope of the "challenged conduct," id., in reference to the "specific common-law, statutory or constitutional claims that a party presents," Int'l Primate Prot. League v. Administrators of Tulane Educ. Fund, 500 U.S. 72, 77 (1991).

Whether a plaintiff has standing is "a question of substantive law" that cannot be answered without "reference to the statutory and constitutional provision whose protection is invoked." Id. (quoting Fletcher, The Structure of Standing, 98 Yale L.J. 221, 229 (1988)). Here, the plaintiffs invoke the protections Congress afforded to servicemembers under the MLA. Thus, the standing inquiry must begin with a proper understanding of what the MLA renders illegal.

The MLA makes it illegal to extend any non-compliant credit product to a servicemember. The law states that "[a]ny credit agreement, promissory note, or other contract prohibited under [the MLA] is void from the inception of such contract." 10 U.S.C. § 987(f)(3); see also 32 C.F.R. § 232.9(c). The plaintiffs allege that the timeshare agreement fails to comply with the MLA in two ways. First, Bluegreen failed to provide the plaintiffs a MAPR disclosure as required by section 987(c)(1)(A). Second, the timeshare agreement failed to comply with the prohibition on

App'x 453, 457–58 (11th Cir. 2015) (cleaned up). And Congress confirmed its intent to confer servicemembers with these rights when, in 2013, it amended the statute to add a private right of action allowing servicemembers to bring suit under the statute and to expressly authorize a wide array of civil remedies. See t4(6)9.1 33 §7 (o ,)-8.1ct4(6)97 (n b17.38.ps)52e-5 (

result of the statutory violations." Doc. 52 at 2–3. Contrary to that holding, the couple has suffered economic injuries as a result of Bluegreen's unlawful conduct that are sufficient to confer standing.

It is "obvious" that a "monetary injury" constitutes "a concrete injury in fact under Article III." TransUnion LLC v. Ramirez, 141 S. Ct. 2190, 2204 (2021). An "economic injury" is, as this Court has noted, the "epitome" of a concrete injury. MSPA Claims 1, LLC v. Tenet Fla., Inc., 918 F.3d 1312, 1318 (11th Cir. 2019). Indeed, "[f]or standing purposes, a loss of even a small amount of money is ordinarily an 'injury.'" Czyzewski v. Jevic Holding Corp., 580 U.S. 451, 464 (2017); see also Trichell v. Midland Credit Mgmt., Inc., 964 F.3d 990, 997 (11th Cir. 2020) (citing the rendering of "payments" on a debt as a type of "tangible injury" that would "qualify as concrete").

Given that monetary loss obviously constitutes Article III injury, if a plaintiff has rendered payment pursuant to an (allegedly) illegal contract, then the plaintiff may bring suit to challenge the legality of that contract and obtain a refund. Multiple federal courts of appeals, including this one, have recognized this principle.

In London v. Wal-Mart Stores, Inc., 340 F.3d 1246, 1249 (11th Cir. 2003), the plaintiff argued that "paying consideration pursuant to an illegal

Other courts agree. For instance, in Dubuisson v. Stonebridge Life Insurance Co., 887 F.3d 1271 (11th Cir. 2018), [illegible]

The district court ignores these precedents. Instead, it relies principally on Spokeo, Inc. v. Robins, 578 U.S. 330, 340 (2016) and TransUnion LLC v. Ramirez, 141 S. Ct. 2190, 2206 (2021). Those cases held that "Article III standing requires a concrete injury even in the context of a statutory violation," Ramirez, 141 S. Ct. at 2205 (quoting Spokeo, 578 U.S. at 341), and that some, but not all, "intangible harms" constitute concrete injuries, see id. (citing Spokeo, 578 U.S. at 340–41).

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indirectly from the action in question." Wilding v. DNC Servs. Corp., 941 F.3d 1116, 1126 (11th Cir. 2019). This is a "relatively modest" burden. Bennett v. Spear, 520 U.S. 154, 168–71 (1997). The fact that the contract violated particular provisions of the MLA rendered the contract void, and making payment on the void contract injured the plaintiffs. Their "modest burden" is therefore satisfied here because the plaintiffs' economic injuries were the result of an illegal and void loan.

Second, the plaintiffs allege that Bluegreen acted unlawfully when it extended credit to them in violation of the MLA and, as a result, the timeshare agreement is illegal and void in its entirety. Therefore, the plaintiffs' burden is to show that their injuries are fairly traceable to the timeshare agreement itself, because it is the agreement in its entirety that the plaintiffs contend is illegal. They are not required to show that their injuries are directly traceable to the particular provisions in the timeshare agreement that are prohibited by the MLA.

This concept is illustrated by the Supreme Court's holding in Duke Power Co. v. Carolina Environmental Study Group, Inc., 438 U.S. 59 (1978). There, the Court considered whether a group of plaintiffs had standing to challenge the constitutionality of the Price-Anderson Act, a law that limited nuclear power providers' civil liability for nuclear accidents.

The plaintiffs alleged that the law violated the Fifth Amendment because, by capping liability, it prevented the victims of a nuclear accident from being compensated for their injuries. Id. at 67–68.

However, the plaintiffs were not seeking compensation for a nuclear accident. Rather, they alleged a variety of injuries that resulted from living near an illegally subsidized nuclear power plant. The defendants argued that the plaintiffs did not have standing because "the environmental and health injuries" the plaintiffs suffered were "not directly related to the constitutional attack on the Price-Anderson Act." Id. at 78.

The Supreme Court rejected this argument. It reasoned that for standing purposes it was sufficient that plaintiffs' injuries were traceable to the operation of the nuclear power plant. Id. at 75–76. Critically, the Court held that there was no requirement that the plaintiffs show a "subject-matter nexus between the right asserted and the injury alleged." Id. The plaintiffs thus had standing even though they were not directly injured buecrt

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IV. The district court's holding would undermine the remedial purposes of the Military Lending Act.

Finally, the MLA was enacted out of a desire to protect American military families from predatory lending, and thereby enhance operational readiness and safeguard the national defense. E.g., Huntco Pawn Holdings, LLC v. U.S. Dep't of Def., 240 F. Supp. 3d 206, 211 (D.D.C. 2016) (describing the history and remedial purposes of the statute); 2006 Senate Hearing (statement of Sen. Elizabeth Dole) (attesting that predatory lending "not only creates financial problems for individual soldiers and their families but also weakens our military's operational readiness" and poses "a real threat to our national defense").

Congress recognized that effectuating these purposes required strong

bring suit under the statute by adding an express private right of action and authorizing a broad array of civil remedies. See 10 U.S.C. § 987(f)(5).

out a loan or enter into some other credit arrangement. Absent such allegations, servicemembers will be unable to bring suit and may continue to comply with contractual obligations that Congress has rendered void. And creditors will have little incentive to ensure compliance.

This Court should not substitute its judgment for that of Congress. It should endeavor to ensure that protections that Congress has afforded American servicemembers are enforceable and overturn the district court's misapplication of Article III, which rendered those protections impotent.

CONCLUSION

For these reasons, the judgment of the district court should be reversed.

November 21, 2022

Respectfully submitted,

/s/ Ryan Cooper
Seth Frotman
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Acting

CERTIFICATE OF COMPLIANCE

This brief complies with Federal Rule of Appellate Procedure 29(a)(5). The brief is 6,280 words, excluding the portions exempted by Rule 32(f). The brief's typeface complies with Rule 32(a)(5) and (6).

November 21, 2022 /s/ Ryan Cooper
Ryan Cooper

CERTIFICATE OF SERVICE

I certify that on November 21, 2022, I electronically filed this brief with the Clerk of the Court for the United States Court of Appeals for the Eleventh Circuit using the CM/ECF system. The participants in this case are registered CM/ECF users and will be served electronically through the CM/ECF system.

November 21, 2022 /s/ Ryan Cooper
Ryan Cooper