

Banking and Finance Law Daily Wrap Up, LOANS—U.S.: Supreme Court asked to address standing involving consumer contracts, Military Lending Act, (Oct. 24, 2024)

Banking and Finance Law Daily Wrap Up

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By Sherri M. Schroeder, J.D.

Pointing to a circuit split, the petitioners ask, “Do plaintiffs who paid money under a void contract have Article III standing to challenge the enforcement of that contract and seek restitution of their payment in federal court?”

A military servicemember and his wife have filed a Petition for a Writ of Certiorari that [asks](#) the U.S. Supreme Court to settle a split in the circuit courts over the question of whether plaintiffs who paid money under a void contract have Article III standing to challenge the enforcement of that contract and seek restitution of their payment in federal court. Although the Second, Eighth, and Ninth Circuits have held such plaintiffs do have standing, the Eleventh Circuit, from which the case in question originated, has held such plaintiffs do *not* have standing. Specifically, the Eleventh Circuit requires that, in addition to an injury traceable to a defendant and redressable by a court, a plaintiff seeking to challenge the enforcement of a void contract and obtain restitution must also show that the injury is traceable to the specific statutory provision that the defendant allegedly violated with the void contract (*Louis v. Bluegreen Vacations Unlimited, Inc.*, No. 24-453 (U.S. Oct. 18, 2024)).

In addition to urging the High Court to take up the case to resolve the split, the military couple argue that the Eleventh Circuit’s decision was simply wrong in that it “flies in the face of longstanding tradition” and conflicts with the Supreme Court’s own decisions. They also argue that the question presented is important because the Military Lending Act (MLA) was the law under which the contract in question was voided, and the dissension between the circuits means that military servicemembers stationed in different states will be treated differently. In addition, service members who fail to pay their debts may be confined, lose their security clearance, or be discharged, which could affect military operational readiness

Context. In the underlying case, a military couple bought a timeshare from Bluegreen Vacations through a “high-cost, low-value” loan that they alleged violated the MLA because it misrepresented the interest rate, failed to provide required disclosures, and included an arbitration clause explicitly prohibited by the MLA. Under 10 U.S.C. § 987(f)(3), this meant the contract was void from its inception. However, Bluegreen allegedly kept the couple’s money and continued to try to collect on the loan. When the couple filed suit, the district court dismissed their case for lack of standing, finding no concrete injury. The couple then appealed to the Eleventh Circuit. In the meantime, the Consumer Financial Protection Bureau (CFPB) and the Federal Trade Commission (FTC) filed a joint *Amicus Curiae* brief in support of the military couple’s stance (see [Banking and Finance Law Daily](#), Dec. 2, 2022). In an unpublished decision, the Eleventh Circuit [affirmed](#) the lower court’s ruling, reasoning that the couple did not have standing to file their lawsuit under the MLA because they failed to allege an injury traceable to the alleged MLA violations. The couple then filed their Writ of Certiorari with the Court.

Circuit split. The military couple first urged the Court to take up their question so as to resolve the split between the circuits on the issue. They note that the Second, Eighth, and Ninth Circuits have held that plaintiffs who allege they made payments on a void contract have Article III standing, without requiring that the plaintiff’s harm stem from the specific statutory provision that the defendant allegedly violated. However, the Eleventh Circuit rejected this approach in the case at hand. Though the court did not dispute that a plaintiff who alleges payments under a void contract alleges an injury that is fairly traceable to a defendant and that this injury could be redressed by the court, in the court’s view, something more is needed—the plaintiff must also allege that the harm is caused directly by the statutory violation that renders the contract void. The couple argues that this

expansion of the scope of judicial authority undermines what should be “legislative decisions,” which implicates “the very separation of powers concerns that give rise to standing doctrine in the first place.”

In error. The couple next argues that the Eleventh Circuit’s decision is simply wrong. According to the petition, the requirement that the injury stem from the statutory violation rendering the contract illegal “breaks with the understanding of Anglo-American courts since before the founding.” In addition, such a stance conflicts with the Supreme Court’s standing precedent, as grafting an additional requirement onto the standing inquiry is unnecessary and runs afoul of federal courts’ obligation to hear and decide cases over which they have jurisdiction. The additional requirement also is contrary to the Court’s case precedent, such as *Duke Power Co. v. Carolina Env’t Study Grp.* and *Collins v. Yellen*, wherein the Court rejected the idea that plaintiffs were required to demonstrate they were injured by an alleged due process violation and rejected the assertion that shareholders lacked standing because there was no connection between the shareholders’ injury and a federal agency.

Importance. Finally, the couple argues that the question is too important to not be decided by the Court. In addition to the fact that the circuit split puts service members in a situation wherein they are allowed to sue for restitution on a void contract if they are stationed in California but not if they are stationed in Florida, for example, the petition makes it clear that, under the Uniform Code of Military Justice, servicemembers who do not meet their financial commitments may be subjected to confinement, clearance revocation, court martial, transfer, or even discharge. Not only would those servicemembers suffer, but military operational readiness would suffer, argue the couple. “[R]equiring service members to show not just that they paid money under a void contract, but that they were harmed by the specific statutory provision a lender violated, undermines their ability to enforce the protections Congress enacted—and ultimately military readiness,” they note in the petition.

Supreme Court docket. For more details about this case and other petitions and cases pending before the Supreme Court, please consult [this list](#). Issued opinions, granted petitions, pending petitions, and denied petitions are listed separately, along with a summary of the questions presented and the status of each case.

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Companies: Bluegreen Vacations Corp.; Bluegreen Vacations Unlimited, Inc.

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