FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D21-1821

FAYEZ SHAMIEH and AMAL SHAMIEH,

Appellants,

v.

HCB FINANCIAL CORP., as successor in interest to First NBC Bank, as successor in interest to Central Progressive Bank by acquisition of assets from the FDIC, as receiver for Central Progressive Bank, and ESTEPHAN D. DAHER,

Appellees.

On appeal from the Circuit Court for Okaloosa County.
Michael A. Flowers, Judge.

February 15, 2023

B.L. THOMAS, J.

This is an appeal of an order denying Fayez and Amal Shamieh's motion for summary judgment and granting summary judgment in Estephan Daher's favor. We reverse and remand with instructions.

The Shamiehs and Daher executed a mortgage and promissory note to purchase real property in Okaloosa County, Florida, with Central Progressive Bank in 2006. HCB Financial Corporation eventually acquired the note and mortgage as a successor in interest. The Shamiehs and Daher were jointly and severally liable under the mortgage. But neither the mortgage nor the note addressed their right to seek contribution from each other should either party default. The parties ultimately defaulted on the loan in 2012. HCB brought a foreclosure action against them.

HCB's foreclosure action is one of three different cases that preceded the case on appeal. The Shamiehs filed a civil case in Louisiana state court against HCB and Daher.[1] And HCB filed an involuntary bankruptcy suit against Daher in the Northern District of Florida.

In 2015, Daher and HCB settled. Under the settlement agreement, HCB agreed to release all its claims against Daher, including dismissing the bankruptcy case. HCB also agreed to pay Daher's counsel $7,500. In exchange, Daher admitted to the enforceability of the note and mortgage and agreed to cooperate with HCB in the Louisiana and Okaloosa County litigation.

In 2019, the Shamiehs and HCB settled. Under that settlement agreement, the Shamiehs agreed to pay $1 million and transfer title of the Okaloosa County property to HCB. In exchange, HCB released them from its claims arising from the note and mortgage.

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[1] The Shamiehs are Louisiana residents. The Shamiehs sought recission of the note and mortgage alleging that the Central Progressive Bank employees committed fraud. The Shamiehs added HCB as a defendant because it acquired the note and mortgage. The Louisiana Court of Appeals held that "no court ha[d] jurisdiction" over the Shamiehs' claim because they failed to exhaust their administrative remedies under the Financial Institution Reform, Recovery, and Enforcement Act of 1989. *See generally Shamieh v. First NBC Bank Holding Co.*, 202 So. 3d 1103 (La. App. 3 Cir. 7/27/16).

The Shamiehs filed a crossclaim and brought an equitable contribution claim seeking $500,000 from Daher—half of the settlement amount. The Shamiehs filed a motion for summary judgment, and Daher filed an affidavit opposing the motion arguing that his settlement with HCB severed his and the Shamiehs' common obligation. After a hearing, the trial court denied the Shamiehs' motion for summary judgment and entered summary judgment in Daher's favor. This appeal followed.

This Court reviews a trial court's ruling on a motion for summary judgment de novo. *Dudowicz v. Pearl on 63 Main, Ltd.*, 326 So. 3d 715, 718 (Fla. 1st DCA 2021). "The [trial] court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fla. R. Civ. P. 1.510(a).[2] Here, the issue before the trial court was a question of law: whether Daher's settlement agreement with HCB severed the parties' common obligation thereby negating the Shamiehs' equitable contribution claim.

"The doctrine of equitable contribution is applied to prevent one of two, or more, joint obligors [from] being required to pay more than his [or her] share of a common burden[] . . . ." *Lopez v. Lopez*, 90 So. 2d 456, 458 (Fla. 1956) (citation omitted). "The doctrine of equitable contribution is grounded on principles of equity and natural justice . . . . The [doctrine] attempts to distribute equally among those who have a common obligation, the burden of performing that obligation . . . . While the [doctrine] arose in equity, it is generally enforceable in actions at law." *Fletcher v. Anderson*, 616 So. 2d 1201, 1202 (Fla. 2d DCA 1993) (citations omitted). The law presumes that co-obligors are equally liable for a proportion of the guaranteed obligation. *See Desrosiers v. Russell*, 660 So. 2d 396, 398 (Fla. 2d DCA 1995).

[2] The trial court entered its summary judgment order after May 1, 2021. Thus, the Florida Supreme Court's amendments to the Florida Rules of Civil Procedure adopting the federal summary judgment standard applied. *See In re: Amendments to Florida Rule of Civil Procedure 1.510*, 317 So. 3d 72, 77–78 (Fla. 2021).

The doctrine applies to cases involving joint contractual obligations when the parties' agreement does not address their rights to seek contribution. *Helmet House Corp. v. Stoddard*, 861 So. 2d 1178, 1179–80 (Fla. 4th DCA 2003); *Schrank v. Pearlman*, 683 So. 2d 559, 561 (Fla. 3d DCA 1996). Parties share a common obligation if they are guarantors on a promissory note that provides for their joint and several liability. *See Meckler v. Weiss*, 80 So. 2d 608, 608–09 (Fla. 1955); *see also Helmet House Corp.*, 861 So. 2d at 1180 (first citing *Fletcher*, 616 So. 2d at 1202; and then citing *Curtis v. Cichon*, 462 So. 2d 104, 105–06 (Fla. 2d DCA 1985)). Thus, the general rule is that when one co-obligor "pays more than his [or her] fair share of [a] debt owed by both, the payer is entitled to contribution from the other[] . . . ." *Meckler*, 80 So. 2d at 609; *see also Campbell v. Gordon*, 674 So. 2d 783, 788 (Fla. 1st DCA 1996); *Desrosiers*, 660 So. 2d at 399.

Here, the trial court found Florida's Uniform Contribution Among Tortfeasors Act, section 768.31, Florida Statutes (2020) to be "highly persuasive." Specifically, it found that section 768.31(5)(b) "clearly demonstrates that Florida has codified the concept that the release of a co-obligor from a joint obligation effectively severs the common obligation . . . ." The trial court also found that ruling in the Shamiehs' favor would frustrate the public policy favoring settlement agreements because it would discourage co-obligors like Daher from entering settlement agreements.

The trial court's rationales are flawed. First, Florida's Uniform Contribution Among Tortfeasors Act does not apply because the underlying action was not a tort. *See Helmet House Corp.*, 861 So. 2d at 1179 ("Both parties agree that [Florida's] Uniform Contribution Among Tortfeasors Act . . . does not apply because the parties were sued under a contract theory."). Thus, the trial court erred by relying on that statute. Second, the public policy favoring settlement agreements does not apply either. The Shamiehs' equitable contribution claim does not threaten the *enforceability* of Daher's settlement agreement with HCB. *See Robbie v. City of Miami*, 469 So. 2d 1384, 1385 (Fla. 1985) ("[S]ettlements are highly favored *and will be enforced whenever possible*." (citations omitted) (emphasis added)).

Daher's settlement agreement with HCB did not sever his common obligation to the Shamiehs. The Second District Court of Appeals' decisions in *Fletcher* and *Desrosiers* are persuasive here.

In *Fletcher*, the petitioner and the respondents were guarantors on a promissory note and entered a guaranty agreement with a bank. 616 So. 2d at 1201. The petitioner and respondents were jointly and severally liable under the agreement. *Id.* The parties defaulted on the loan, and the bank sued the guarantors. *Id.* The bank secured a judgment against all solvent guarantors, but the bank's judgment went unsatisfied. *Id.* at 1201–02. In a post-judgment agreement, the petitioner agreed to pay the bank $220,000 in exchange for the bank releasing its claims against the petitioner. *Id.* at 1202. "The respondents [also] paid [the bank] $50,000 and each entered into separate release and settlement agreements with [the bank]." *Id.* The petitioner then filed an equitable contribution claim against the solvent guarantors and demanded a jury trial. *Id.* Pursuant to the respondents' motion, the trial court struck the petitioner's demand for a jury trial. *Id.* The petitioner filed a petition for writ of certiorari challenging the order. *Id.* at 1201. The appellate court granted the petition and quashed the trial court's order striking the petitioner's demand for a jury trial on his equitable contribution claim. *Id.* at 1202. It held that "[t]o the extent that petitioner seeks an aliquot share of contribution, the circuit court departed from the essential requirements of law in striking [the] petitioner's demand for jury trial." *Id.*

In *Desrosiers*, four men entered a joint business venture. 660 So. 2d at 397. Two of the men, the appellees, executed a promissory note to establish a line of credit at a bank. *Id.* All four men personally guaranteed the loan. *Id.* The two other men, the appellants, later withdrew from the business venture. *Id.* The appellants notified the bank, who had disbursed over $140,000 under the note, about their impending withdrawal. *Id.* The bank demanded the appellants pay the $140,000. *Id.* at 398. The appellants paid, the bank released them from their guaranties, and the appellants sought reimbursement from the appellees. *Id.* The court held that nothing in the agreement "overc[ame] the presumption that the four guarantors [were] equally liable for a proportion of [the] debt guaranteed." *Id.* at 399. And the court held that because the appellants "paid more than their share of the amount owed, [they were] entitled to contribution from" the appellees. *Id.*

Here, based on the undisputed facts before the trial court, Daher's settlement agreement with HCB did not sever his common obligation with the Shamiehs under any legal or equitable theory. Thus, because Daher's settlement agreement with HCB did not sever the common obligation, he was not entitled to summary judgment as a matter of law. And here, because the Shamiehs paid more than their pro rata share of the common obligation in their settlement agreement with HCB, they had a right to demand contribution from Daher. *Meckler*, 80 So. 2d at 609; *Desrosiers*, 660 So. 2d at 399.

We cannot say, however, that the trial court could grant summary judgment in the Shamiehs' favor. The Shamiehs sued Daher for half of the $1 million settlement. The Shamiehs assumed that the entire amount they had to pay to settle their claims with HCB constituted the common obligation. This is not necessarily correct.

Daher and the Shamiehs were jointly and severally liable for the principal. They were also jointly and severally liable for other expenses such as accrued interest, late charges, property taxes, and legal fees[3] related to HCB's foreclosure action. The unpaid balance on the principal ($754,951.54) does not appear to be disputed. The unpaid balance on the principal would constitute the common obligation. *See Helmet House Corp.*, 861 So. 2d at 1180. But it is unclear whether and to what extent these other expenses could also be part of the parties' common obligation. Given the nature of the preceding litigation, Daher might not be liable for the portion of the $1 million HCB allocated to cover these other expenses. *See Meckler*, 80 So. 2d at 609 ("[A]ppellant's right of recovery in equity being 'limited to contribution,' he is not entitled to fees for services of his attorney in this suit."). First, the Shamiehs unsuccessfully continued the litigation for years in two

[3] Under the note, HCB was only entitled to attorney's fees in an amount not to exceed 25% of the principal balance due on the loan.

different states after Daher settled with HCB. Second, the Shamiehs and Daher were adverse in the Louisiana state court suit. Both factors, and possibly others, would affect the amount of the other expenses. And both factors, and possibly others, could affect whether the portion of the settlement HCB allocated to cover these other expenses could be part of the common obligation.

This issue requires further findings of fact. Because the amount the Shamiehs may be entitled to is a question of fact—a question of fact that Daher will likely dispute—they are not entitled to summary judgment in their favor. *See* Fla. R. Civ. P. 1.510(a). Thus, we remand the case for further fact finding to determine what amount of contribution the Shamiehs may be entitled to.

We REVERSE the trial court's judgment and REMAND with instructions consistent with this opinion.

NORDBY J., concurs; TANENBAUM, J., concurs with opinion.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

TANENBAUM, J., concurring.

There of course is no dispute that Daher and the Shamiehs all were on the note and mortgage at issue. Apparently, though, Daher and the Shamiehs took different approaches to litigating HCB's foreclosure action, and the Shamiehs seem to have made use of their greater financial resources to execute on a more scorched-earth litigation strategy. This undoubtedly factored into HCB's decision to settle with Daher first, whereby HCB agreed to pay him $7,500 in return for a mutual release, his cooperation against the Shamiehs, and his agreement to allow a default foreclosure judgment regarding the subject property. The Shamiehs would later agree to settle HCB's suit in full—inclusive of the outstanding balance on the note, attorney's fees for all the litigation that the Shamiehs put HCB through, fees, costs, taxes, and interest—for a payment by the Shamiehs of $1 million and their deeding of the subject property to HCB.

The contribution sought by the Shamiehs toward a portion of that payment is an equitable remedy, one "based on a principle of justice and equity, that one person *should not be singled out by the creator* to pay the whole demand; and where this occurs, the law intervenes and places sureties relatively to each other in a state of equality as to the amount paid, and gives the party paying a remedy by action for contribution." *Love v. Gibson*, 2 Fla. 598, 618 (1849) (emphasis supplied). Daher in turn should not be let completely off the hook from contributing to the extinguishment of the debt—vis-à-vis the Shemiahs—simply because HCB made a tactical decision to buy him out first to facilitate its suit against the Shamiehs. Put another way, it seems contrary to the equitable principles behind contribution to allow Daher to separately negotiate his way out of paying his fair share on a debt in return for his cooperation against his co-obligors.

HCB certainly was free to negotiate the two settlements in a manner it concluded would most effectively ensure it recovered as much of the debt as it could on the note. Its decision in this respect, though, should not control what a just outcome is *as between the joint promisors* as part of an equitable true-up. That question is for the trial court to decide in equity. *Cf. Meckler v. Weiss*, 80 So. 2d 608, 609 (Fla. 1955) ("This result conforms to the general rule applicable to co-obligors that as between them, when one of them pays more than his proportionate share of the debt owed by both, the payer is entitled to contribution from the other . . . .").

Matters of equity tend to be fact-intensive affairs, and this case is no exception. The primary fact question that the trial court will have to answer on remand is how much of the $1 million paid by Shamiehs was reimbursement of HCB for the *excess* attorney's fees it incurred to respond to the Shamiehs' aggressive litigation approach. It is the trial court's call as to the extent to which equity demands Daher be responsible for *that* portion of the million-dollar settlement payment, after factoring in the value of the transfer of the property by all three co-obligors to HCB.

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[PUBLISH]

In the

United States Court of Appeals

For the Eleventh Circuit

No. 21-13879

GARY WALTERS,

Plaintiff-Appellant,

versus

FAST AC, LLC,
Florida limited liability company,
FTL CAPITAL PARTNERS, LLC,
foreign limited liability company,
d.b.a. FTL Capital Finance,

Defendants-Appellees.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 2:19-cv-00070-JLB-MRM

Before LAGOA, BRASHER, and ED CARNES, Circuit Judges.

BRASHER, Circuit Judge:

This appeal is about Article III standing. Gary Walters agreed to purchase air conditioning repairs he could not afford from Fast AC, LLC, by taking out a loan with FTL Capital Partners, LLC. He did so after a Fast AC employee lied about the price of FTL's loan and prevented Walters from viewing FTL's loan paperwork. The Truth in Lending Act ("TILA"), 15 U.S.C. § 1601 *et seq.*, requires a lender like FTL to provide certain disclosures about the cost of the loan. Walters sued FTL, claiming that it violated TILA because it did not provide him those disclosures. According to Walters, had he received the proper disclosures, he would not have accepted the loan.

The only question on appeal is whether Walters has standing to bring this TILA claim against FTL. According to FTL, Walters's injuries are not traceable to FTL's disclosure paperwork because Fast AC never showed Walters any paperwork. We agree that, if Fast AC's conduct was independent of FTL, then Walters's injuries are not traceable to FTL. But Walters argues that Fast AC is *not* independent of FTL because Fast AC was acting as FTL's agent. Under this agency theory of liability, Walters argues that

FTL is liable under TILA for Fast AC's failure to provide the required disclosures. Because we conclude that Walters has standing to raise this agency-based TILA claim against FTL, we reverse.

I.

TILA imposes "mandatory disclosure requirements on those who extend credit to consumers in the American market." *Mourning v. Fam. Publ'ns. Serv., Inc.*, 411 U.S. 356, 363 (1973). The specific disclosures TILA requires vary depending on whether the credit provided is "closed-end" or "open-end." The details of the two credit types and their respective disclosure obligations are unimportant here. Suffice it to say that TILA requires lenders extending closed-end credit (but not those extending open-end credit) to disclose, among other things, the number of monthly payments, the cost of those payments, and the total loan amount. *See* 15 U.S.C. § 1638(a); 12 C.F.R. § 1026.18.

FTL Capital Partners, LLC finances home-improvement loans for heating and air conditioning products. FTL partners with contractors who provide those products to customers who wish to pay for the contractor's products through financing. Customers who want to pay for a contractor's services through financing must apply to FTL. If FTL approves the application, FTL sends loan documents, including applicable disclosures, to the customer's personal email. Customers must answer security verification questions before they can access the loan documents in their inbox.

Fast AC, LLC was an FTL-registered contractor from 2016 until 2019, when it was "expelled" for falsely representing to FTL "various times" that it had completed installation work it never performed. During that time, Fast AC employees would go to consumers' homes to sell them its heating and cooling services on credit financed by FTL.

One of those consumers was Gary Walters, a 70-year-old, retired army veteran who lives in Florida with his wife. Walters suffers from Parkinson's disease and other health issues. He cannot walk long distances and uses a wheelchair.

Because we are reviewing a grant of summary judgment, we accept Walters's testimony as true, "affording all justifiable inferences" to Walters. *Sconiers v. Lockhart*, 946 F.3d 1256, 1260 (11th Cir. 2020). According to Walters, Fast AC contacted him, offering to conduct a free cleaning and inspection of Walters's AC unit. Fast AC sent its employee, Mike, to Walters's home to perform the work. After spending a few minutes in Walters's attic (with no tools or cleaning supplies), Mike told Walters that his unit's ductwork was "shot" and that, if Walters did not replace it "real soon," he would "have really bad problems." The total cost of replacing the ductwork was $5,500—more than Walters could afford—but Mike falsely told Walters that it would cost only $50 a month if he secured financing with FTL.

Walters reluctantly agreed. But Walters did not himself fill out FTL's credit application or even see any of the loan paperwork. Instead, Mike got on Walters's computer and "took care" of all the necessary financing paperwork for him by completing, e-signing, and submitting the loan application in Walters's name, thereby concealing FTL's loan documents from him.

Before Fast AC began the ductwork repair, Walters changed his mind and decided to cancel the job. Although he was able to cancel the repairs themselves, Fast AC's representative told him that, to cancel the financing agreement, Walters would have to "call the finance company" directly. Over the next several weeks, there was an unproductive back-and-forth between Walters, Fast AC, and FTL via telephone. FTL sent Walters bills, past-due notices, and demand letters to pay for the ductwork repair that Fast AC never performed. Walters never paid FTL, but FTL did not release him from the loan. Instead, FTL reported negative payment activity on Walters's credit report to TransUnion.

Walters testified in his deposition that the unpaid loan negatively impacted his credit score and prevented him from purchasing a truck and from refinancing his home. Additionally, Walters said he spent money faxing documents to his attorney and experienced emotional distress because of the disputed debt.

Walters sued Fast AC and FTL in the Middle District of Florida. He asserted various state law consumer protection claims against Fast AC. Against FTL, he asserted state law claims and one federal TILA claim. Walters's TILA claim against FTL is the sole basis for federal subject matter jurisdiction over his suit. *See* 28 U.S.C. §§ 1331, 1367(a). On the merits of that claim, Walters alleged that his loan from FTL was a closed-end transaction, but that

FTL did not disclose the loan amount, finance charge, or monthly payments. FTL's credit agreement—which Walters never saw—included only open-end disclosures.

The district court concluded that Walters lacked standing to bring his TILA claim and granted summary judgment for FTL. Specifically, the district court determined that Walters had not suffered an injury in fact because his injuries were not caused by FTL's TILA violation. Because Walters's TILA claim against FTL was the only claim over which the district court had original jurisdiction, the court did not exercise supplemental jurisdiction over Walters's remaining state law claims against Fast AC and FTL. *See* 28 U.S.C. § 1367(a). In an order denying Walters's motion for reconsideration, the district court rejected Walters's argument that its summary judgment order had conflated the injury-in-fact element with traceability. The district court also concluded that Walters had not alleged in his complaint that Fast AC was acting as FTL's agent to provide the required disclosures.

Walters appealed.

II.

We must decide whether Walters has standing to bring his TILA claim against FTL in federal court. This "is a threshold jurisdictional question that we review de novo." *Muransky v. Godiva Chocolatier, Inc.*, 979 F.3d 917, 923 (11th Cir. 2020) (en banc).

"The requisite elements of Article III standing are well established . . . ." *Fed. Election Comm'n v. Cruz*, 142 S. Ct. 1638, 1646

(2022). The plaintiff must show (1) "that he suffered an injury in fact that is concrete, particularized, and actual or imminent," (2) that the injury is traceable to—that is, "was likely caused by"—the defendant's legal violation, and (3) "that the injury would likely be redressed by judicial relief." *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2203 (2021) (citing *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992)). The party invoking federal jurisdiction bears the burden of proving each of these standing elements "with the manner and degree of evidence required at the successive stages of the litigation." *Lujan*, 504 U.S. at 561. Thus, "in response to a summary judgment motion, 'the plaintiff . . . must "set forth" by affidavit or other evidence specific facts'" showing he was injured, by the defendant's legal violation, in a manner amenable to judicial relief. *Ga. Republican Party v. Secs. & Exch. Comm'n*, 888 F.3d 1198, 1201 (11th Cir. 2018) (quoting *Lujan*, 504 U.S. at 561).

We will address each element of standing separately.

A.

We begin with injury in fact. To satisfy this requirement, "a plaintiff must show that he or she suffered 'an invasion of a legally protected interest' that is 'concrete and particularized' and 'actual or imminent, not conjectural or hypothetical.'" *Spokeo, Inc. v. Robins*, 578 U.S. 330, 339 (2016) (quoting *Lujan*, 504 U.S. at 560). "An injury is concrete," we have said, "if it actually exists"—meaning, "it is 'real, and not abstract.'" *Hunstein v. Preferred Collection & Mgmt. Servs., Inc.*, 48 F.4th 1236, 1242 (11th Cir. 2022) (en banc) (quoting *Spokeo*, 578 U.S. at 340). And "[a]n injury is 'particularized' if it 'affect[s] the plaintiff in a personal and individual way.'" *Pedro v. Equifax, Inc.*, 868 F.3d 1275, 1279 (11th Cir. 2017) (second alteration in original) (quoting *Spokeo*, 578 U.S. at 339).

Walters identified several concrete, particularized harms in this case. He testified in his deposition that (1) he was forced to spend time disputing his debt; (2) his credit took a hit, preventing him from making other purchases or refinancing his home; (3) he spent money faxing documents to his attorney; and (4) he felt anxious, exploited, embarrassed, and worthless.

Our precedent recognizes each of these harms as a concrete injury in fact. We have held that such injuries include not only "straightforward economic injuries," like lost money, but also "more nebulous" ones, *Tsao v. Captiva MVP Rest. Partners, LLC*, 986 F.3d 1332, 1338 (11th Cir. 2021), like wasted time, missed credit opportunities, and emotional distress. *See, e.g.*, *Losch v. Nationstar Mortg. LLC*, 995 F.3d 937, 943 (11th Cir. 2021) ("[T]here is no question that wasted time is a concrete harm . . . ."); *Pinson v. JPMorgan Chase Bank, Nat'l Ass'n*, 942 F.3d 1200, 1207 (11th Cir. 2019) (reduced credit score and "lost credit opportunities" are concrete economic harms). And a plaintiff like Walters, who suffers these concrete harms himself, necessarily satisfies the particularity requirement, too. *See Lujan*, 504 U.S. at 560 n.1 (stating an injury is "particularized" if it "affect[s] the plaintiff in a personal and individual way").

FTL makes three arguments that Walters did not suffer an injury in fact, notwithstanding our precedent.

First, FTL challenges the sufficiency of Walters's evidence. FTL suggests that, to survive summary judgment on standing, Walters needed to submit "documentation" to corroborate his deposition testimony detailing his injuries. But we have explicitly held that a plaintiff's "self-serving and/or uncorroborated" testimony can be enough on its own "to preclude summary judgment." *United States v. Stein*, 881 F.3d 853, 857–59 (11th Cir. 2018) (en banc). Here, Walters testified to matters within his personal knowledge. *See* Fed. R. Evid. 602. Walters's deposition testimony describing his lost time, economic harm, and emotional distress is sufficient evidence of those injuries to survive summary judgment. *See Losch*, 995 F.3d at 943 (plaintiff adequately established "concrete injury in the form of emotional distress and time . . . spent" through his own deposition testimony and affidavit).

Second, FTL relies on caselaw involving intangible, statutory injuries. These authorities establish the "now-familiar admonition" that a procedural statutory violation, standing alone, does not amount to a concrete injury in fact. *Muransky*, 979 F.3d at 924 (citation omitted). Instead, a statutory violation gives rise to an injury in fact only if the violation (1) inflicts some separate concrete harm on the plaintiff or (2) creates a material risk of such harm to the plaintiff. *Id.* at 926–27.

These authorities do not support FTL's position. They share a dispositive feature that is missing here: they each involved a "bare procedural violation" and no "concrete harm." *Spokeo*, 578 U.S. at 341. None involved a plaintiff who, like Walters, identified concrete harms in addition to a statutory violation. *See, e.g.*, *TransUnion*, 141 S. Ct. at 2210 (holding "[t]he mere presence of an inaccuracy in an internal credit file" in violation of federal statute inflicts "no concrete harm" unless it is "disclosed to a third party"); *Muransky*, 979 F.3d at 929 (holding unlawfully printing customers' credit card numbers on receipts was not "by itself . . . a concrete injury"). Walters's injuries go beyond FTL's noncompliant disclosures—he provided evidence of lost time, money, and peace. These are garden-variety injuries in fact under Article III.

Finally, FTL argues (and the district court reasoned) that Fast AC's intervening fraud is relevant to assessing whether Walters suffered an injury in fact. We disagree. In answering the question of standing, it is important to separate the element of injury in fact from the element of traceability. *See Allen v. Wright*, 468 U.S. 737, 753 n.19 (1984) (stressing the "importan[ce]" of "keep[ing] the [standing] inquiries separate"), *abrogated on other grounds by Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118 (2014). While the former asks whether there has been a concrete and particularized harm, the latter looks for "a causal connection between the injury . . . and the challenged action of the defendant." *Lujan*, 504 U.S. at 560 (quotation omitted). Sometimes statutory-injury opinions use language that arguably blurs the distinction. *See, e.g.*, *Muransky*, 979 F.3d at 926, 932 (plaintiffs alleging a procedural statutory violation satisfy injury in fact by "show[ing] that the statutory violation itself *caused a harm*," or that the violation "*caused* . . . a material risk of harm") (emphasis added); *TransUnion*, 141 S. Ct. at 2214 ("An 'asserted informational injury that *causes* no adverse effects cannot satisfy [the injury-in-fact requirement of] Article III.") (emphasis added) (quoting *Trichell*, 964 F.3d at 1004). But it would make little sense, and disrupt longstanding conceptions of Article III, to conclude that a plaintiff who suffers a *concrete harm* but not *because of* the defendant's statutory violation, has really suffered no concrete harm at all.

In any event, we will "heed our own warning to avoid 'overthinking' the [injury-in-fact] analysis." *Hunstein*, 48 F.4th at 1242 (quoting *Muransky*, 979 F.3d at 931). We conclude that when a plaintiff establishes that he personally suffered an actual, concrete harm, as Walters did here, the injury-in-fact analysis is complete. Questions about who or what caused the injury in fact are more appropriately addressed under the element of traceability.

B.

Before assessing the complicated question of traceability, we will address the simple question of redressability. Redressability requires the plaintiff to show that his injuries are "likely to be redressed by a favorable judicial decision." *Spokeo*, 578 U.S. at 338 (citing *Lujan*, 504 U.S. at 560–61). Walters suffered an injury in fact in the form of wasted time, economic harm, and emotional distress. "That, it goes without saying, is an injury which the award of damages . . . will redress." *Del Valle v. Trivago GMBH*, 56 F.4th

1265, 1279 (11th Cir. 2022); *see Resnick v. AvMed, Inc.*, 693 F.3d 1317, 1324 (11th Cir. 2012) ("Plaintiffs allege a monetary injury and an award of compensatory damages would redress that injury.").

C.

We end with traceability, which requires "a causal connection" between the plaintiff's injuries and the defendant's legal violation. *Lujan*, 504 U.S. at 560. Although this element presents the most difficult question in this appeal, it too is resolved in Walters's favor.

Crucial here is that Article III standing requires that the plaintiff's injuries be "fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court." *Id.* (cleaned up). Because Walters's TILA claim against FTL provides the only basis for federal jurisdiction, he must establish that his wasted time, financial harm, and emotional distress are traceable to FTL's alleged TILA violation. It will not suffice to show that his injuries are traceable only to the independent actions of Fast AC. *See DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 352 (2006) ("[A] plaintiff must demonstrate standing for each claim he seeks to press.").

Walters offers two reasons why his injuries are traceable to FTL's TILA violation, which we address in turn. Because we accept one of them, we hold that Walters has standing to pursue his TILA claim against FTL.

1.

Walters's first traceability argument is that both Fast AC's concealment of FTL's loan documents *and* FTL's inadequate disclosures in those documents caused Walters's injuries. We disagree. We are not at the pleading stage; we are at summary judgment. And the summary judgment evidence establishes that FTL's allegedly inadequate disclosures in its standard loan documents could not have caused Walters to agree to the harmful loan because Fast AC's employee prevented Walters from ever viewing those documents.

To be sure, traceability is not an exacting standard. It is "less stringent" than the tort-law concept of "proximate cause," *Cordoba v. DIRECTV, LLC*, 942 F.3d 1259, 1271 (11th Cir. 2019), meaning the defendant's challenged conduct need not be "the very last step in the chain of causation" for it to be fairly traceable to the plaintiff's injury, *Wilding v. DNC Servs. Corp.*, 941 F.3d 1116, 1126 (11th Cir. 2019) (quotation omitted). "[E]ven harms that flow indirectly from the action in question can be . . . 'fairly traceable' to that action for standing purposes." *Focus on the Fam. v. Pinellas Suncoast Transit Auth.*, 344 F.3d 1263, 1273 (11th Cir. 2003).

But the requirement is not toothless. A plaintiff must at least demonstrate *factual* causation between his injuries and the defendant's misconduct. *See Dep't of Com. v. New York*, 139 S. Ct. 2551, 2566 (2019) ("Article III requires no more than *de facto* causality . . . .") (quotations omitted). Accordingly, we have held traceability to be lacking if the plaintiff "would have been injured in precisely the same way" without the defendant's alleged misconduct. *See, e.g.*, *Cordoba*, 942 F.3d at 1272 ("There's no remotely plausible causal chain linking the failure to maintain an internal do-not-call list to the phone calls received by class members who *never* said to Telecel they didn't want to be called again."); *Swann v. Sec'y, Ga.*, 668 F.3d 1285, 1289 (11th Cir. 2012) ("Swann's failure to provide the address of the jail on his [absentee-ballot] application independently caused his alleged injury[—i.e., not receiving a ballot]. Swann would not have received a ballot at the jail regardless of the application of the [challenged] statute by the officials."). Thus, under our precedents, a plaintiff lacks standing to sue over a defendant's action "if an independent source would have caused him to suffer the same injury." *Swann*, 668 F.3d at 1288.

Here, FTL's alleged omission of the correct TILA disclosures in its loan paperwork could not have been a "factual cause" of Walters's decision to take out the loan because Fast AC's employee prevented him from ever seeing that paperwork. There is no evidence that Walters relied on disclosures he never received. So he cannot seriously argue that his injuries would have been avoided if those concealed disclosures had included different information. To the extent Walters's harm was caused by "an independent source"—Fast AC's employee—there is no dispute that Walters would have suffered "precisely the same" harm if FTL had used different disclosures in its form paperwork. *Cordoba*, 942 F.3d at 1272; *Swann*, 688 F.3d at 1288–89.

Attempting to explain how documents he never read could have harmed him, Walters relies on the tort-law concept of multiple sufficient causes. This doctrine eases the factual causation requirement in the "rare" occurrence where several "causes independently, but concurrently, produce a result." *Burrage v. United States*, 571 U.S. 204, 214 (2014). In such a case, tort law treats each cause as a factual cause, even though the same injury would have occurred absent any one of them. *See* Restatement (Third) of Torts: Phys. & Emot. Harm § 27 (Am. L. Inst. 2010). Article III standing, too, "is not defeated merely because the complained of injury can fairly be traced to multiple parties." *BBX Cap. v. Fed. Deposit Ins. Corp.*, 956 F.3d 1304, 1312 (11th Cir. 2020) (citation omitted).

But this is not a multiple-sufficient-cause case. To apply a multiple-sufficient-causation analysis, "there must have been multiple causes of the injury." *In re Hanford Nuclear Rsrv. Litig.*, 534 F.3d 986, 1010 (9th Cir. 2008) (citation omitted); *see June v. Union Carbide Corp.*, 577 F.3d 1234, 1243 (10th Cir. 2009) ("The use of the word *sufficient* in both Restatements does not mean that either of them would impose liability for conduct that is not a but-for cause if only the conduct *could* have caused the injury."). Although Walters's complaint alleges multiple *potential* causes of his injuries, the evidence creates no dispute, sufficient to survive summary judgment, that FTL's disclosure forms are not one of them. The summary judgment evidence establishes that Walters accepted FTL's loan because Fast AC's employee hid the true price from him. FTL's allegedly insufficient disclosure forms had nothing to do with it.

Indeed, Walters's own example of how his multiple-sufficient-causes test works shows why it fails under these facts. Walters posits: "If a person is exposed to multiple toxins, or the same toxin multiple times, each source that would be sufficient on its own to cause the plaintiff's injury constitutes a cause of the harm—even if the other sources, too, would have been sufficient without it." But Walters was never "exposed" to FTL's "toxin"—here, its allegedly inadequate disclosures. So he cannot trace his injuries to the text of those disclosures, even under his own conception of the doctrine.

2.

In the alternative, Walters advances another traceability theory, and this one sticks. TILA liability attaches not only to the provision of incorrect disclosures, but also to the failure to provide any disclosures at all. Walters's second theory of traceability is directed at the latter. According to Walters, even if Fast AC's misconduct (including its concealment of the loan documents) was the sole cause of Walters's injury, that injury is nonetheless traceable to FTL because Fast AC was acting as FTL's agent for the purpose of providing the disclosures. In other words, Fast AC's actions were not "independent" of FTL because it took those actions as an agent of FTL.

The district court declined to address this argument, concluding that Walters did not properly allege this agency theory in his complaint. We disagree. The issue is one of pleading. Although we consider all the evidence in the record when addressing "a 'factual challenge' to standing" at the summary-judgment phase, when "making the necessary preliminary determination of *what claims the plaintiff has actually raised* (and therefore, what claims he must have standing to raise), we are bound by the contents of the plaintiff's pleadings, even on summary judgment." *Bochese v. Town of Ponce Inlet*, 405 F.3d 964, 976 (11th Cir. 2005).

We believe Walters sufficiently pleaded that Fast AC was acting as FTL's agent when it allegedly signed up Walters for a loan without disclosing the loan's terms. Walters's complaint alleges that "FTL violated TILA because it never clearly and accurately disclosed: the finance charge; the amount of the total of payments; nor the due dates or payment schedule to" Walters. It alleges that Walters agreed to the loan because "Fast AC never gave him the statutorily required disclosures." And it asserts that "FTL contracted with Fast AC who at all times acted as its agent" and that "FTL is vicariously liable for the harms and losses" caused by Fast AC's misconduct by virtue of this agency relationship. These allegations are more than sufficient to raise a TILA claim based on an agency relationship. *Cf. Palm Beach Golf Ctr.-Boca, Inc. v. John G. Sarris, D.D.S., P.A.*, 781 F.3d 1245, 1259–61 (11th Cir. 2015) (holding federal pleading rules do not "require that a theory of vicarious liability be specifically pled in the complaint") (citation omitted).

There is no question that, if Fast AC was acting as FTL's agent in failing to provide the TILA-mandated disclosures, then

Walters's injuries are traceable to FTL. Accordingly, we conclude that Walters has standing to assert this agency-based TILA claim against FTL.

We express no opinion, however, on the merits of this claim. *See Dillard v. Chilton Cnty. Comm'n*, 495 F.3d 1324, 1330 (11th Cir. 2007) ("[S]tanding is a threshold jurisdictional question which must be addressed . . . independent of the merits of a party's claims.") (cleaned up). We do not address whether or under what circumstances a creditor may be held liable under TILA for the actions of an agent. We also do not address whether there is sufficient evidence of an agency relationship between FTL and Fast AC. *See Callahan v. U.S. Dep't of Health & Hum. Servs.*, 939 F.3d 1251, 1265 (11th Cir. 2019) ("We are wary of diving head-first into claims that the district court hasn't yet considered . . . ."). All we hold here is that Article III allows Walters to litigate these questions in federal court.

III.

Accordingly, we **REVERSE** the district court's entry of summary judgment for FTL and **REMAND** for additional proceedings consistent with this opinion.

DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

QUEST SYSTEMS, LLC,

Appellant,

v.

SALEH FAR and A HOME OF MY OWN, LLC,

Appellees.

No. 2D22-1545

February 8, 2023

Appeal pursuant to Fla. R. App. P. 9.130 from the County Court for Hillsborough County; Frances Maria Perrone, Judge.

Christopher Hixson of Segal & Schuh Law Group, P.L., Clearwater, for Appellant.

Sami Thalji and Melissa Thalji of Florida Consumer Lawyers, Tampa, for Appellee Saleh Far.

No appearance for Appellee A Home of My Own, LLC.

LABRIT, Judge.

Quest Systems, LLC (Quest), appeals an order vacating a judicial sale in a foreclosure action. Appellee Saleh Far was the highest bidder at the sale, but after learning that a superior mortgage encumbered the property, he objected and moved to vacate the sale. Mr. Far argued that he was unaware of the mortgage before the sale and that an alleged fraudulent scheme prevented him from making an informed decision.

But Mr. Far didn't present any evidence explaining how the alleged scheme influenced his decision to bid on the property or inhibited his ability to discover the mortgage before the sale. Consequently, we reverse the order vacating the sale.

Background

The property in dispute is a townhome that has been subject to at least three foreclosure actions. In 2013, mortgage holder MTGLQ, L.P. (MTGLQ), and the homeowner's association (HOA) filed foreclosure actions against the townhome's former owner. Although the record is light on facts, it appears undisputed that the HOA obtained title to the property through a judicial sale while MTGLQ's foreclosure action remained pending. The HOA then assigned title to Bonafide Properties, LLC (Bonafide).[1]

Years later, on the same day, February 15, 2022, two events involving the property occurred: (1) Bonafide deeded the property to Quest via a quitclaim deed, and (2) A Home of My Own, LLC (AHMO), sued Quest to foreclose an equitable lien against the property. It is unclear from the record which event occurred first—the quitclaim deed to Quest or the filing of AHMO's complaint—but the timestamp on AHMO's complaint reflects an 8:51 a.m. filing time.

In its complaint, AHMO alleged that Quest owned the property in dispute, that Quest owed AHMO $24,820, and that Quest would not have acquired the property without those funds. Based on these allegations,

[1] The lack of record evidence related to Bonafide's acquisition of the property is unsurprising. *See Bonafide Props. v. Wells Fargo Bank, N.A.*, 198 So. 3d 694, 696–97 (Fla. 2d DCA 2016) (Altenbernd, J., concurring) (explaining the "innovative procedure" that limited liability companies use to acquire properties at foreclosure sales and how the record "never tell[s] us the rest of the story" in those situations).

AHMO asked the trial court to impose an equitable lien, set a date by which Quest had to repay the funds, and schedule a foreclosure sale if Quest did not meet the deadline.

Within hours of AHMO filing its complaint, AHMO and Quest stipulated to entry of a final judgment of foreclosure. With the stipulation, AHMO and Quest submitted an agreed final judgment which the trial court entered on February 16, 2022—the day after Quest had acquired the property.

At the ensuing judicial sale, Mr. Far was the highest bidder and the clerk issued a certificate of sale confirming the sale to him. Within ten days, Mr. Far filed his motion to vacate. Mr. Far alleged that when he deposited the sales funds with the clerk, the clerk advised him of MTGLQ's mortgage and pending foreclosure action. Mr. Far allegedly was unaware of these facts before he bid on the property.

Mr. Far also asserted that Quest, AHMO, and others had fraudulently schemed to quickly force the sale and obtain a windfall of surplus funds before MTGLQ could hold a foreclosure sale of its own. Mr. Far heavily relied on the timing of the quitclaim deed to Quest and the rapid resolution of AHMO's foreclosure action as evidence of the alleged fraudulent scheme. But Mr. Far presented no evidence linking this alleged scheme to his decision to bid on the property or his lack of knowledge of MTGLQ's mortgage. Mr. Far also presented no evidence as to whether he researched the property before bidding on it or what he found—or was unable to find—if he did. Quest and AHMO raised this lack of evidence below. In response, Mr. Far submitted a short affidavit verifying the allegations of his motion and averring (without any supporting facts) that "quick transfers" and "schemes to hide the ownership of the property" had prevented him from making a fully informed decision.

At a hearing on Mr. Far's motion, the trial court granted the motion without explanation and entered an unelaborated order vacating the sale and directing the return of the sale funds to Mr. Far. Quest timely appealed the order pursuant to Florida Rule of Appellate Procedure 9.130(a)(3)(C)(ii). Quest argues that the order is unsupported by competent substantial evidence, and we agree.

Discussion

We review orders setting aside judicial sales for abuse of discretion. *See Skelton v. Lyons*, 157 So. 3d 471, 473 (Fla. 2d DCA 2015) (citing *Sulkowski v. Sulkowski*, 561 So. 2d 416, 418 (Fla. 2d DCA 1990)). To set aside a sale, a litigant must "allege one or more adequate equitable factors and make a proper showing to the trial court that they exist." *Arsali v. Chase Home Fin. LLC*, 121 So. 3d 511, 518 (Fla. 2013) (citing *Ohio Realty Inv. Corp. v. S. Bank of W. Palm Beach*, 300 So. 2d 679 (Fla. 1974)). These equitable factors can include "gross inadequacy of consideration, surprise, accident, or mistake imposed on complainant, and irregularity in the conduct of the sale." *See Sulkowski*, 561 So. 2d at 418 (quoting *Moran-Alleen Co. v. Brown*, 123 So. 561, 561 (Fla. 1929)).

In addition, "the law is well-established that an objection to a foreclosure sale must be directed toward conduct that occurred at, or was directly related to, the foreclosure sale." *Venezia v. Wells Fargo Bank, N.A.*, 306 So. 3d 1096, 1097 (Fla. 3d DCA 2020). And the rule of caveat emptor generally applies. *U.S. Bank Nat'l Ass'n v. Rios*, 166 So. 3d 202, 210 (Fla. 2d DCA 2015). Thus, a purchaser at a judicial sale "takes title subject to defects, liens, incumbrances, and all matters of which he [or she] has notice, *or of which he [or she] could obtain knowledge in the* *exercise of ordinary prudence and caution.*" *Id.* (quoting *Cape Sable Corp. v. McClurg*, 74 So. 2d 883, 885 (Fla. 1954)).

The operative premise of Mr. Far's motion was that he lacked notice of MTGLQ's mortgage when he bid on the property. But Mr. Far didn't connect the dots—he presented no evidence connecting his alleged lack of notice to anything that occurred at, or related to, the foreclosure sale. Mr. Far likewise did not demonstrate that Quest's alleged scheme influenced his decision to bid on the property or precluded him from discovering MTGLQ's mortgage. There also was no argument or suggestion that MTGLQ's mortgage was not recorded or that MTGLQ's foreclosure action was not a matter of public record. Mr. Far's lack of knowledge of MTGLQ's superior mortgage, without more, was not enough to vacate the sale.

Can Financial, LLC v. Niklewicz, 307 So. 3d 33 (Fla. 4th DCA 2020), is instructive. There, a third-party purchaser objected to a foreclosure sale after learning that a superior mortgage encumbered the property and was the subject of separate foreclosure proceedings. *Id.* at 34. The trial court set aside the sale on the basis that a unilateral mistake had occurred. *Id.* at 35. Our sister court reversed because no competent substantial evidence "support[ed] a finding that equitable grounds existed for vacating the foreclosure sale." *Id.* at 37. After reiterating that "a purchaser at a junior lien foreclosure sale takes the property subject to the superior lien," *id.* at 36, the Fourth District reviewed the equitable grounds that would justify setting aside a sale and concluded that the buyer's evidence—which showed only his inexperience and failure to investigate the property—satisfied none of them, *id.* at 36–37. The court concluded that "[b]ecause the [p]urchaser's failure to investigate the status of the property before purchasing it at a foreclosure sale was attributable solely to the [p]urchaser, the [p]urchaser did not demonstrate adequate grounds to vacate the foreclosure sale." *Id.* at 34.

The same is true here. While the purchaser's objections in *Can Financial* were predicated on different claims than Mr. Far presented, the trial court's ruling in this case rested on a similar lack of evidence. "A trial court abuses its discretion when there is no competent substantial evidence to support its findings." *Id.* at 35; *see also Sulkowski*, 561 So. 2d at 418 (reversing order setting aside judicial sale because no substantial competent evidence supported "a finding that cause existed to set aside the sale"). Likewise, and perhaps because of the dearth of evidence to support setting aside the sale, the trial court made no findings at the hearing or in its written order as to the grounds supporting its decision. "[W]hen the trial court does not make findings regarding the existence of cause and the record is silent on any facts showing such cause, we will reverse." *Skelton*, 157 So. 3d at 473 (citing *Sulkowski*, 561 So. 2d at 418).

Because Mr. Far presented no competent substantial evidence of any ground that would support setting the sale aside and because the trial court made no findings regarding the existence of any such grounds, the trial court abused its discretion by setting the sale aside. Accordingly, we reverse the order vacating the sale and remand for further proceedings consistent with this opinion. On remand, the trial court shall ensure compliance with the procedures set forth in section 45.031(4)–(7), Florida Statutes.

Reversed and remanded.

VILLANTI and SLEET, JJ., Concur.

Opinion subject to revision prior to official publication.