PUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-2180

TERESA LAVIS, on behalf of herself and others similarly situated,

Plaintiff - Appellee,

v.

REVERSE MORTGAGE SOLUTIONS, INC.,

Defendant - Appellant.

Appeal from the United States District Court for the Southern District of West Virginia, at Beckley. Irene C. Berger, District Judge. (5:17-cv-00209)

Argued: May 3, 2022 Decided: July 14, 2022

Before AGEE, RICHARDSON, and QUATTLEBAUM, Circuit Judges.

Vacated and remanded by published opinion. Judge Quattlebaum wrote the opinion, in which Judge Agee and Judge Richardson joined.

ARGUED: Jason E. Manning, TROUTMAN SANDERS, LLP, Virginia Beach, Virginia, for Appellant. Sarah K. Brown, MOUNTAIN STATE JUSTICE, INC., Charleston, West Virginia, for Appellee. **ON BRIEF:** Megan Burns, TROUTMAN SANDERS, LLP, Virginia Beach, Virginia, for Appellant. Gary M. Smith, Bren J. Pomponio, MOUNTAIN STATE JUSTICE, INC., Charleston, West Virginia, for Appellee.

QUATTLEBAUM, Circuit Judge:

Teresa Lavis entered into a reverse mortgage agreement with Reverse Mortgage Solutions, Inc. ("RMS"). In violation of the Truth in Lending Act ("TILA"), RMS failed to disclose certain information at closing. Section 1635(a) of TILA allows a borrower to rescind a loan in the event of an inadequate disclosure. Relying on that provision, Lavis notified RMS of her intent to rescind the mortgage loan. Section 1635(b) of TILA imposes certain obligations on a creditor, like RMS, after it receives a notice of rescission, but RMS did not comply with those obligations either. Ultimately, Lavis sued RMS for, among other things, rescission and failing to honor her rescission rights under TILA.

At trial, a jury returned a verdict for RMS. It found that RMS did not fail to honor Lavis' attempt to rescind the loan. Despite that verdict, the district court issued judgment as a matter of law for Lavis, holding that RMS violated § 1635(b)'s requirements following Lavis' notice of rescission. It also held that because of such failure, Lavis was not required to tender, or return, the loan proceeds, which amounted to about $60,000, to RMS.

RMS appealed, presenting to us the question of whether a creditor's failure to comply with its § 1635(b) obligations following a borrower's notice of rescission relieves a borrower of her obligation to tender the loan proceeds back to the creditor. It does not. Accordingly, we vacate the district court's judgment as a matter of law and remand the case to the district court for proceedings consistent with this opinion.

I.

We begin with an overview of TILA. Congress passed TILA "to help consumers 'avoid the uninformed use of credit, and to protect the consumer against inaccurate and unfair credit billing.'" *Jesinoski v. Countrywide Home Loans, Inc*., 574 U.S. 259, 261 (2015) (quoting 15 U.S.C. § 1601(a)). In furtherance of this goal, TILA requires lenders to make certain disclosures to consumer borrowers. 15 U.S.C. § 1601(a); *see also Gilbert v. Residential Funding LLC*, 678 F.3d 271, 276 (4th Cir. 2012). One of the required disclosures is the borrower's right to rescind a consumer credit transaction. 15 U.S.C. § 1635(a). If a lender fails to make a required disclosure, TILA provides a borrower a private cause of action against a lender. § 1640(a). In that action, a borrower may seek rescission of the loan, money damages or both. *See* §§ 1635(a), 1640(a).

TILA also provides that, if the borrower gives the lender a security interest in the borrower's home, the borrower may rescind, for any reason, within three business days from either the closing or the delivery of forms containing "material disclosures." § 1635(a). But if a lender fails to deliver the required disclosures—including the right-to-rescind disclosure—the time to rescind is extended to "three years after the date of consummation of the transaction or upon the sale of the property, whichever occurs first." § 1635(f).

II.

With that background in mind, we turn to the facts here. In 2013, RMS approved Lavis for a reverse mortgage loan secured by her residential property in Beckley, West

Virginia. Reverse mortgages allow a borrower to convert equity in their homes to cash without requiring a borrower to make monthly payments as in traditional mortgage loans. Interest accrues, but the borrower is not liable to pay it. The borrower only pays taxes and insurance. Payment on the loan balance, along with any interest accrued, is not required until a triggering event occurs, which usually is the death of the borrower. So reverse mortgages can be attractive to older homeowners.

At her closing, Lavis signed a note payable to RMS, a loan agreement and an agreement securing repayment of the note to RMS with the property. RMS advanced Lavis $44,008.96 in cash and paid the $13,577.57 balance of a prior lien. But RMS failed to provide Lavis the disclosures required by TILA.

Two years later, in September 2015, RMS notified Lavis that it was calling the loan because Lavis failed to pay the property taxes and insurance as required by the loan agreement. Although a foreclosure sale was scheduled, after corresponding with Lavis' attorney, RMS cancelled the sale and recalled the due and payable status of the loan.

In May 2016, Lavis sent a letter to RMS stating that she was rescinding the loan. RMS received the letter but did not proceed to unwind the loan or otherwise respond to the letter.

In November 2016, Lavis sued RMS in West Virginia state court. Although she alleged other counts, only two are relevant to this appeal. Count VII ("Rescission Count") alleged that RMS failed to provide her with the "required notices of her right to rescind the loan." J.A. 24. As a result of that failure and her May 2016 rescission letter, Lavis sought a declaratory judgment that the loan was "validly and effectively rescinded as a matter of

law" and that she was "not liable to RMS for any amount, including any finance or other charge, and that any security interest" in her house "was and has been void and unenforceable." J.A. 26. She also requested "a judgment enjoining RMS from any and all actions seeking to enforce or collect through any means, directly or indirectly, any right or claim it might assert or could have asserted under or in connection" with the loan. J.A. 26. Thus, Lavis sought an order from the court that terminated RMS's security agreement but allowed her to keep the loan proceeds with no obligation to repay RMS.

The other relevant count is Count VIII ("Failure to Honor Rescission Count"), which also involved Lavis' right to rescind under TILA. In that count, Lavis alleged RMS failed to honor her rescission right by not terminating the security interest in her home and by not responding to her May 2016 rescission letter. On this count, she sought money damages for RMS's violation of TILA.

After removing the case to federal court, RMS moved to dismiss the Rescission Count and the Failure to Honor Rescission Count because Lavis failed to plead the ability to tender the net loan proceeds back to RMS. While RMS acknowledged a borrower's right to rescind under TILA, it argued that to complete rescission, the borrower must still tender the loan proceeds back to the lender. The district court denied RMS's motion, concluding that there is no "pleading standard requiring borrowers seeking rescission to state their ability to tender the loan proceeds at the outset." J.A. 86. But it recognized Lavis' tender obligation. Specifically, the court explained that "Lavis will be required to tender the loan proceeds to return the parties to status quo ante in order to complete rescission and void the loan, and the Court could deny rescission if she is unable or unwilling to do so." J.A.

86. It added that "[r]escission is designed to void the loan and return the parties to their original positions, not allow borrowers to escape any repayment obligation while retaining the secured property." J.A. 86 n. 6. And the court explained that it and the parties "retain some flexibility under [TILA] to determine how rescission should proceed under the circumstances presented." J.A. 86.

The district court also addressed the issue of tender at summary judgment. Although it denied RMS's motion, it reiterated "Lavis will [ultimately] be required to tender the loan proceeds to return the parties to status quo ante." J.A. 1356–57.

The case proceeded to trial in June 2018. Early in the trial, the district court again addressed the tender issue. This time, the court ruled that the amount of tender would be an issue for the court to decide, not the jury. The court reasoned that the Supreme Court's *Jesinoski* decision made rescission "effective" when a borrower sends notice of rescission and, therefore, it refused to permit RMS to introduce evidence on Lavis' inability to tender the loan proceeds. The district court explained that "this Court's ultimately going to determine any amount of tender. So I don't see why . . . this jury needs to hear about the amount of tender or what offsets it . . . I'm going to make that determination. . . . I don't think the . . . amount of tender is for the jury at all." J.A. 1625.

After the close of the evidence, both Lavis and RMS moved for judgment as a matter of law on the Rescission Count and the Failure to Honor Rescission Count. RMS argued that Lavis' May 2016 notice of rescission was not legally effective or valid when sent because Lavis had not tendered payment or presented evidence of her ability to tender to RMS the loan proceeds. The district court disagreed, concluding that *Jesinoski* holds "that

rescission is affected at the time of the notice" and that the borrower does not have to "make tender in order to complete that process or to effectuate rescission that the statute does not require that, that it is complete upon the giving of notice." J.A. 1784–85. Thus, the district court granted Lavis' motion for judgment as a matter of law on the Rescission Count, finding that the evidence established that she had the right to rescind and had taken the steps required by law to rescind the reverse mortgage. But the court deferred ruling on whether Lavis had to tender the loan proceeds to RMS. It also ruled that the Failure to Honor Rescission Count should be submitted to the jury.

The jury returned a verdict for RMS. The jury found that Lavis had not shown that RMS failed to honor her rescission such that RMS did not owe Lavis any statutory damages under TILA.

Lavis then renewed her motion for judgment as a matter of law on the Failure to Honor Rescission Count. The court granted Lavis' motion again, largely relying on *Jesinoski*. It held that *Jesinoski* establishes "that, absent a suit or motion to alter the procedures set forth in the statute and regulations, a [lender's] obligation to return funds and terminate the security interest precedes any obligation of the borrower to tender loan proceeds." J.A. 2833. The court found that RMS had not complied with statutory requirements following Lavis' rescission notice and had thus forfeited any right to require Lavis to tender the loan proceeds. Explaining its reasoning, the court stated that "[a] finding that RMS is entitled to tender, despite its disregard of its obligations over a period of years and its failure to take any measures to preserve its rights under the statute, would incentivize lending institutions to follow RMS' poor example." J.A. 2835.

RMS appealed,[1] and we have jurisdiction under 28 U.S.C. § 1331.[2]

III.

As for the Rescission Count, RMS does not contest that Lavis provided a timely rescission notice under TILA § 1635(a). And it does not contest that it failed to voluntarily unwind the loan or otherwise respond to that notice. But it argues the district court erred in ruling that RMS's failure to respond to Lavis' notice to rescind her loan as required by § 1635(b) automatically resulted in the loan being rescinded and relieved Lavis of her obligation to tender the loan proceeds. To address RMS's argument, we begin with the text

[1] This appeal was stayed after RMS and RMS's parent corporation, Ditech Holding Corporation, filed for protection under Chapter 11 of the Bankruptcy Code. After the bankruptcy court approved a plan of reorganization, we granted RMS's motion to lift the stay which allowed the appeal to continue. Lavis then moved to dismiss RMS's appeal because RMS's assets were sold to a third-party which is not a party to this proceeding. She argued because of this, RMS lacked standing to appeal. We remanded the case to the district court to resolve certain factual issues related to Lavis' motion. On remand, the district court found that RMS remained a corporation but was now owned by a different parent entity. Despite this change in ownership, it also found that the bankruptcy proceedings did not alter the status or ownership of Lavis' mortgage. Based on these findings, we denied Lavis' motion to dismiss RMS's appeal. The bankruptcy proceedings did, however, affect the Failure to Honor Rescission Count. The bankruptcy proceedings encompassed that claim, which sought money damages, and thus approval of the bankruptcy plan on reorganization discharged the claim. As a result, the parties agree the Failure to Honor Rescission Count is moot. Thus, the only issues on appeal relate to the Rescission Count.

[2] We review de novo the district court's grant of a Rule 50(a)(1) motion viewing the evidence in the light most favorable to the nonmoving party. *Fotenot v. Taser Int'l, Inc.*, 736 F.3d 318, 332 (4th Cir. 2013). A "court may grant judgment as a matter of law when it 'finds that a reasonable jury would not have a legally sufficient evidentiary basis to find for' the non-moving party." *Dotson v. Pfizer, Inc*., 558 F.3d 284, 292 (4th Cir. 2009) (quoting Fed. R. Civ. P. 50(a)(1)).

of TILA, then move to related precedent from our Circuit before considering the *Jesinoski* decision, on which the district court relied.

A.

Starting with TILA's text, we are primarily concerned with § 1635(b), the TILA provision that lays out the procedures for rescission. Section 1635(b) begins with the effect of rescission. Once a borrower exercises her right to rescind, she "is not liable for any finance or other charge, and any security interest given by the [borrower] . . . becomes void upon such a rescission." § 1635(b). It then specifies the lender's obligations after receiving notice of rescission. "Within 20 days after receipt of a notice of rescission, the [lender] shall return to the [borrower] any money or property given as earnest money, downpayment, or otherwise, and shall take any action necessary or appropriate to reflect the termination of any security interest created under the transaction." *Id.* And it also addresses the borrower's tender obligation. "Upon the performance of the [lender]'s obligations under this section, the [borrower] shall tender the property to the [lender]," or if that is "impracticable or inequitable, the [borrower] shall tender its reasonable value." *Id.* Finally, § 1635(b) gives courts flexibility to ensure the parties are returned to their status quo ante. "The procedures prescribed by this subsection shall apply except when otherwise ordered by a court." *Id*.

That subsection does not provide that rescission is effective upon notice such that failure by the lender to follow its requirements means the lender loses its right to receive the loan proceeds as part of the rescission. To be sure, a lender's obligations in response to a rescission notice are mandatory. The second sentence of § 1635(b) provides that a lender,

within 20 days of receipt of a notice of rescission, "shall" return money or property given by the borrower to lender and "shall" terminate any security interest provided. But nothing in § 1635(b) specifies that if the lender fails to take these actions, it loses its right to the monies it loaned to the borrower.

The closest language perhaps comes from the subsection's fourth sentence. It provides that the borrower shall tender the property or its reasonable value to the lender upon the lender's performance of its obligations under § 1635(b). And since RMS has not performed its obligations, according to Lavis, she need not tender. But that language is more focused on the timing of when tender occurs rather than whether it occurs at all. It certainly does not expressly state that a lender must return any money it received from the borrower as well as terminate a security interest and that the borrower does not have to return the loan proceeds.

And the last sentence in § 1635(b) confirms this understanding. It provides: "The procedures prescribed by this subsection shall apply except when otherwise ordered by a court." Thus, courts have flexibility to alter the provisions of § 1635(b) as needed to ensure that rescission is equitable. If courts can alter the provisions of § 1635(b), how can a lender's failure to follow its requirements result in a hard and fast rule that the right to receive the loan proceeds is forfeited?

Looking beyond § 1635(b) to TILA as a whole leads to the same conclusion. Nowhere does TILA provide the relief Lavis seeks. Most notably, § 1640 describes a lender's civil liability for violating TILA. It lists the factors to be considered in any award against a lender and the types of damages recoverable. While it lists rescission as a potential

remedy, § 1640 does not indicate that, in the event of rescission, a borrower is relieved of her obligation to return the loan proceeds to the lender.

The absence of a provision identifying the relief Lavis seeks is significant. By any measure, such relief would be remarkable. It would mean that failure to provide a required disclosure results in a lender losing—lock, stock and barrel—the moneys it loaned. And the borrower would get to keep, with no repayment obligation, those same funds. Such relief, in some cases, would redistribute tens of thousands of dollars; in other cases, hundreds of thousands. It is hard to imagine that such extraordinary relief, if allowed under TILA, would not be specified.

And such relief is inconsistent with the entire purpose of rescission. "The equitable goal of rescission under TILA is to restore the parties to the 'status quo ante.'" *Am. Mortg. Network, Inc. v. Shelton*, 486 F.3d 815, 820 (4th Cir. 2007). Yet Lavis' argument would do the opposite. It would grant Lavis a windfall of the amounts RMS advanced to Lavis in cash, as well as those paid to satisfy Lavis' prior lien on the property and the insurance obligation. And it would also impose a penalty on RMS in the same amount.

Thus, the text of TILA does not support Lavis' argument that RMS's failure to comply with § 1635(b) prevents it from recovering tender.

B.

Just like TILA's text does not support Lavis' argument, neither does our precedent. In fact, at least three of our prior decisions make clear that tender is a critical part of rescission.

First, in *Powers v. Sims & Levin*, 542 F.2d 1216 (4th Cir. 1976), we rejected the argument that § 1635(b) authorized two borrowers, after notifying the lender that they intended to rescind, to refuse to repay that amount of the lender's loan which satisfied a prior mortgage and delinquent fire insurance premiums and real estate taxes. *Id*. at 1220. There, the borrowers received a loan to pay off existing debts and to make home improvements. *Id.* at 1218. After giving timely rescission notice, the borrowers declared they would tender the portion of the loan proceeds that was to be used for home improvements but not the portion used to pay off existing debts. *Id*. at 1218. We concluded that "when rescission is attempted under circumstances which would deprive the lender of its legal due, the attempted rescission will not be judicially enforced unless it is so conditioned that the lender will be assured of receiving its legal due." *Id*. at 1222. We explained that "Congress did not intend to require a lender to relinquish its security interest when it is now known that the borrowers did not intend and were not prepared to tender restitution of the funds expended by the lender in discharging the prior obligations of the borrowers." *Id*. at 1221.

Powers does not involve a lender—like RMS—that failed to respond to a rescission notice. But despite that distinction, it holds that courts should not enforce rescission in a way that deprives a lender of the amounts due to it under the pertinent loan.

Then in *American Mortgage Network, Inc. v. Shelton*, 486 F.3d 815 (4th Cir. 2007), we considered again the right of rescission. There, after the borrower notified the lender of his intent to rescind the loan, the lender, unlike RMS here, timely responded by agreeing to unwind the transaction upon receipt of the net loan proceeds from the borrower. *Id*. at

818. At first, the borrower stated that he was unable to tender those net loan proceeds but later argued that the lender had forfeited the right to them by not terminating the security interest within 20 days of receipt of the notice of rescission. *Id.* The lender sought declaratory relief confirming its TILA obligations and the borrower counterclaimed for rescission. *Id.* We affirmed the district court's conclusion that § 1635(b) does not require an unconditional release of a security interest within 20 days of receipt of a rescission notice. We held that "[t]he trial court, in exercising its powers of equity, could have either denied rescission or based the unwinding of the transaction on the borrowers' reasonable tender of the loan proceeds." *Id*. at 820. We explained that "unilateral notification of cancellation does not automatically void the loan contract" because "otherwise, a borrower could get out from under a secured loan simply by claiming TILA violations, whether or not the lender had actually committed any." *Id.* at 821 (internal quotation marks omitted) (quoting *Yamamoto v. Bank of N.Y.*, 329 F.3d 1167, 1172 (9th Cir. 2003)).

It's true that this case involved a lender that followed the requirements in § 1635(b) by responding to the borrower's rescission notice. But *Shelton*'s holding is directly on point to the issues we face. This decision makes clear that notice does not effectuate rescission and that tender is a critical part of obtaining rescission relief.

We next considered rescission under TILA in *Gilbert v. Residential Funding LLC*, 678 F.3d 271 (4th Cir. 2012). There, we faced the same question the Supreme Court resolved three years later in *Jesinoski*—whether a borrower had to sue within three years or whether written notice within three years was sufficient. We answered that notice within three years was enough, emphasizing that courts "must not conflate the issue of whether a

borrower has exercised her right to rescind with the issue of whether the rescission has, in fact, been completed and the contract voided." *Id.* at 277. While written communication indicating an intent to rescind is enough to exercise the right to rescind, "the creditor must acknowledge that the right of rescission is available and the parties must unwind the transaction amongst themselves, or the borrower must file a lawsuit so that the court may enforce the right to rescind" in order to complete the rescission and void the contract. *Id*. (citing *Shelton*, 486 F.3d at 821) (internal quotation marks and citations omitted).

This decision likewise does not determine our outcome since the primary issue decided was about the effectiveness of the borrower's notice—an issue not in dispute in this case. But *Gilbert* clarified that notice of rescission does not automatically require that a security interest be terminated. It also clarified that rescission could take place in two ways. The parties can unwind a transaction on their own or through litigation. And in the case of litigation, the courts are to ensure that the parties take the steps required by TILA to complete the rescission.

In summary, nothing in our prior decisions suggests that a borrower may obtain rescission relief under TILA without tendering to the lender the amounts due to it under the loan. And relatedly, these decisions emphasize the distinction between a notice of rescission and completed rescission.

C.

With little discussion of TILA's text or our prior decisions, the district court granted judgment as a matter of law to Lavis on the Rescission Count. In doing so, it relied mainly

on the Supreme Court's *Jesinoski* decision. Accordingly, because of its importance to the district court's decision, we review that case in some detail.

There, Larry and Cheryle Jesinoski refinanced their home mortgage with Countrywide Home Loans, Inc. 574 U.S. at 261. Nearly three years later, they mailed Countrywide Home Loans a letter purporting to rescind the loan. *Id*. The question before the Supreme Court was whether the Jesinoskis' letter properly exercised their right to rescission or whether they had to sue within three years. *Id*. at 260–61. The Court held that the letter was sufficient. It held that "so long as the borrower notifies within three years after the transaction is consummated, his rescission is timely. The statute does not also require him to sue within three years." *Id*. at 262.

But whether a borrower's rescission notice effected rescission such that the transaction was rendered void—without any requirement that the borrower return the loan proceeds to the lender—was not before the Supreme Court. In fairness, the Court stated that "rescission is effected when the borrower notifies the [lender] of his intention to rescind." *Id*. That language seems to conflate the issues of the proper notice of rescission and the effect of rescission. Even so, the sentence immediately following that language clarifies that the Court's holding focused only on the type of notice required. And confirming this, the Court later added "that a borrower need only provide written notice to

a lender in order to exercise his right to rescind." *Id*. at 264.[3] So, despite some less-than-precise language, *Jesinoski* involved the manner of notification, not the effect of rescission. And it did not hold that rescission was automatic without consideration of tender. Finally, but importantly, *Jesinoski* does not even mention anything about a borrower being relieved of the obligation to tender the loan proceeds as part of rescission. Thus, *Jesinoski* does not support the relief Lavis seeks.

What's more, neither we, nor any of our sister circuits which have addressed the requirement of tender under TILA since *Jesinoski*, have held that the Supreme Court's decision allows a borrower to obtain rescission relief without tendering the loan proceeds back to the lender.[4] In fact, we have held the opposite in an unpublished decision. *Brown v. Gorman*, 680 F. App'x 242 (2017). There, we reviewed a district court order requiring tender in the context of a TILA rescission. The district court held:

> If and when a borrower files suit to complete a rescission, she must show not only that the TILA mandated disclosures were not made, but also that she has the ability to tender the proceeds of the loan to her creditor in return for the release of the security interest on her property. In other words, while the plaintiff can get out of the loan, she does not get to keep the principal amount of the loan. These requirements reflect the equitable goal of rescission under TILA[, which] is to restore the parties to the status quo ante.

[3] Lavis also relies on the decision's statement "that [TILA] disclaims the common-law condition precedent to rescission at law that the borrower tender the proceeds received under the transaction." *Jesinoski*, 574 U.S. at 264. But that language also deals only with the sequence, not the requirement, of tender.

[4] Lavis cites *Paatalo v. JPMorgan Chase Bank*, 146 F. Supp. 3d 1239, 1242–45 (D. Or. 2015) and *U.S. Bank National Association. v. Naifeh*, 1 Cal.App.5th 767, 779–82 (Cal. Ct. App. 2016) as post-*Jesinoski* cases that support her reading of *Jesinoski*.

Brown v. Gorman, No. 1:15–CV–01265, 2016 WL 3702974, at *3 (E.D. Va. July 7, 2016) (internal quotation marks and citations omitted). On appeal, we affirmed this decision. *Brown*, 680 F. App'x at 242–43. While unpublished and conclusory in its affirmance of the district court, this decision addresses the exact question we face today. And the decision clarified that under TILA, the purpose of rescission is to place the parties in the position they were before the loan—not allow the borrower to enjoy the benefits of the loan without the burdens of it. And the holding supports RMS's argument that TILA does not allow the relief that Lavis seeks.

Since *Jesinoski*, other circuit courts have reached the same result.[5] The Tenth Circuit concluded that *Jesinoski* does not hold that a notice of rescission automatically results in a completed rescission. *Pohl v. U.S. Bank for Merrill Lynch First Franklin Mortg. Loan Tr. Back Certificates Series 2007-4*, 859 F.3d 1226, 1230 (10th Cir. 2017) ("Nor are we

[5] To be fair, prior to *Jesinoski*, our sister circuits' treatment of a borrower's tender obligations under TILA was not entirely consistent. *Compare Iroanyah v. Bank of Am.*, 753 F.3d 686, 692 (7th Cir. 2014) ("Tender is inherently part of rescission, not an occasional effect of it.") *with Merritt v. Countrywide Fin. Corp.*, 759 F.3d 1023, 1030 (9th Cir. 2014) (finding that "'[a]lthough tender of consideration received is an equitable prerequisite to rescission, the requirement was abolished by the Truth in Lending Act'" such that a district court may, but need not, require the borrower to tender before rescission (citations omitted)) *and Williams v. Homestake Mortg. Co.*, 968 F.2d 1137, 1140 (11th Cir. 1992) ("The sequence of rescission and tender set forth in § 1635(b) is a reordering of common law rules governing rescission. . . . [A]ll that the consumer need do is notify the creditor of his intent to rescind. The agreement is then automatically rescinded and the creditor must, ordinarily, tender first. Thus, rescission under § 1635 place[s] the consumer in a much stronger bargaining position than he enjoys under the traditional rules of rescission." (internal citations and quotation marks omitted)). But those differences reflected more of a disagreement on the timing of tender rather than whether that obligation was eliminated by a lender's failure to make the required disclosures or respond to a tender notice.

persuaded by the [borrowers]' suggestion that under *Jesinoski*, a notice of rescission tendered during the conditional rescission period becomes incontestable if a lender fails to bring a lawsuit to invalidate it."); *Sanders v. Mt. Am. Credit Union*, 621 F. App'x 520, 525 (10th Cir. 2015) (agreeing with a "majority of circuit courts" that have held "'that unilateral notification of cancellation does not automatically void the loan contract' or the security interest" and finding the district court did not abuse its discretion requiring a claimant to show ability to tender loan proceeds (quoting *Shelton*, 486 F.3d at 821)).

And while admittedly only in unpublished decisions, the Sixth Circuit agrees. *See Segrist v. Bank of New York Mellon*, 744 F. App'x 932, 936 (6th Cir. 2018) (finding that the lenders did not waive their ability to contest rescission by failing to respond during the statutory period); *Chapman v. JPMorgan Chase Bank, N.A.*, 651 F. App'x 508, 513 (6th Cir. 2016) (concluding that *Jesinoski* does not mean "that creditors must accept the validity of a rescission as soon as they receive notice of it; creditors still may ask a court not to enforce an invalid rescission, as today's defendants do. Nor does *Jesinoski* exempt borrowers from the statutory requirements for making a valid rescission in the first place.").

These decisions reinforce our conclusion today that *Jesinoski* did not authorize the relief Lavis seeks. The takeaway from *Jesinoski* is that a borrower's notification of her intent to rescind does not result in an automatic rescission of the loan without consideration of the borrower's obligation to tender.

IV.

In conclusion, the district court erred in granting judgment as a matter of law to Lavis on the Rescission Count. Lavis' May 2016 letter was sufficient notice under TILA of her intent to rescind. But it did not effectuate rescission on its own. In response to RMS's failure to voluntarily unwind the loan or otherwise respond to that notice as required by § 1635(b), Lavis had a right to sue RMS to obtain rescission relief under TILA. But neither § 1635(b) nor any other provision of TILA provides that the failure of a lender to voluntarily unwind a loan or respond to a notice of intent to rescind allows a borrower to avoid tendering the loan proceeds as part of rescission. Our decision is guided by the text of TILA, our Circuit's prior decisions and the proper reading of the Supreme Court decision in *Jesinoski*. Further, to decide otherwise would bestow a remarkable windfall on a borrower and penalty on the lender divorced from the text of TILA and the entire purpose of rescission.

Accordingly, we vacate the district court's order granting judgment as a matter of law to Lavis and remand the case to the district court for further proceedings not inconsistent with this opinion. Lavis' ability to tender, along with RMS's obligations under § 1635(b), must be considered in her Rescission Count under TILA.

VACATED AND REMANDED