[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 16-11841

D.C. Docket No. 1:13-cv-21594-KMM

EMI SUN VILLAGE, INC.,
a foreign corporation,
SUN VILLAGE JUAN DOLIO, INC.,
a foreign corporation,
EMI RESORTS (S.V.G.), INC.,
a foreign corporation,
COFRESCO HOLDINGS, INC.,
a foreign corporation,
VILLA SANTA PONCA, S.A.,
a foreign corporation,
INMOBILIARIA MONCEY, S.A.,
a foreign corporation,
SUN VILLAGE JUAN DOLIO ASSOCIATES, LLC,
a Delaware limited liability company,
FREDERICK C. ELLIOTT,

Plaintiffs-Appellants,

versus

JAMES B. CATLEDGE,
IMPACT, INC.,
a Nevada Corporation,
MICHAEL DIAZ,

DIAZ REUS & TARG, LLP,
a Florida limited liability partnership,
HILDA PILOTO,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Florida

(June 28, 2019)

Before ED CARNES, Chief Judge, ROSENBAUM, and DUBINA, Circuit Judges.

PER CURIAM:

In this appeal, Fred Elliott and several entities under his control challenge the district court's order setting aside the entry of default and dismissing one defendant, its order dismissing most of the claims in their complaint for failing to state a claim upon which relief can be granted, and its orders imposing sanctions.

I. BACKGROUND FACTS AND PROCEDURAL HISTORY

A. Facts

In 1987 Fred Elliott started recruiting investors to purchase and develop property in the Dominican Republic. He eventually brought his son, Derek, into the fold. In 2005 the Elliotts[1] entered into an agreement with James Catledge and

[1] For ease of reference, in Part I.A of this opinion we will use "the Elliotts" to refer to Fred and Derek Elliott as well as the various entities under their control that are also plaintiffs in this action. Because Derek Elliott is not a party to this action, in Part I.B and Part III we will use

Impact, Inc. (a company controlled by Catledge), under which Catledge and Impact sold fractional ownership and timeshare products in the Elliotts' properties. Shortly thereafter the Elliotts learned that Catledge and Impact were breaching certain aspects of the agreement. After trying to help Catledge and Impact cure their breaches, the Elliotts terminated the agreement in June of 2008. October the Elliotts sent a letter to Catledge and Impact demanding that they pay for the damages caused by their breaches.

That same month Catledge hired Michael Diaz and his law firm, Diaz Reus & Targ, LLP, to start a litigation campaign against the Elliotts. They began by joining with some of the Elliotts' investors, including David Rocheford, John Steve Thompson, and Klaus Hofmann, to form what they called the Elliott Client Committee. That committee then recruited some of the Elliotts' other investors to join (and help pay for) lawsuits against the Elliotts. The basic premise of those lawsuits was that the Elliotts had conducted a Ponzi scheme and otherwise defrauded their investors through various fractional ownership and timeshare products — products that Catledge and Impact had marketed and sold. The Elliott Client Committee's litigation campaign included lawsuits filed in the Southern District of Florida, the Turks and Caicos Islands, and the Dominican Republic.

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the term "the Elliott group" to refer to Fred and the various entities under the Elliotts' control, but not Derek.

The complaint in the present case alleges that the Elliott Client Committee's litigation strategy was to obtain ex parte temporary restraining orders freezing the Elliotts' assets in various jurisdictions in order to cripple them financially. The committee also conducted a public relations campaign about the litigation campaign.

The first two lawsuits in the litigation campaign were filed on March 3, 2009. One was a class action filed by Diaz in the Turks and Caicos Islands on behalf of many of the Elliotts' investors, including Rocheford, Thompson, and Hofmann.

The other lawsuit was filed by Hilda Piloto in the Southern District of Florida — Hofmann v. EMI Resorts, Inc., No. 1:09-cv-20526-ASG (S.D. Fla. filed Mar. 3, 2009) — on behalf of Hofmann. The complaint in the present case alleges that Diaz drafted the Hofmann complaint and used Piloto and her firm, Arnstein & Lehr LLP,[2] "as straw-men" to file it. The same day the Hofmann lawsuit was filed, Diaz filed a motion to intervene in that lawsuit on behalf of numerous other individuals — including Catledge — who claimed to have been defrauded by the Elliotts. Diaz and Piloto also jointly moved in it for a TRO.

[2] Arnstein & Lehr is now known as Saul Ewing Arnstein & Lehr LLP, but we will refer to the firm by its earlier name.

Both the Turks and Caicos Islands court and the Southern District of Florida court in the Hofmann lawsuit issued TROs[3] freezing the Elliotts' assets. The Turks and Caicos Islands court later discharged its TRO,[4] and in the Hofmann case the district court allowed its TRO to expire after declining to extend it. Each court expressed its unease with the way the plaintiffs before them — including the defendants in the present case — had conducted themselves.

Less than two weeks after Piloto filed the Hofmann lawsuit and after Fred Elliott declined an invitation to meet about settling it, Diaz filed a separate suit against the Elliotts in the Southern District of Florida: Aguilar v. EMI Resorts, Inc., No. 1:09-cv-20657-ASG (S.D. Fla. filed Mar. 13, 2009). The Aguilar lawsuit — which "simply parroted the Hofmann complaint" — was filed on behalf of Catledge and more than 400 individuals who were formerly employed by Impact as sales agents. Those plaintiffs also filed a motion to intervene in the Hofmann case, which was eventually granted.

In the months after the Hofmann lawsuit was filed, the defendants in the present case also sought and obtained TROs from two courts in the Dominican

[3] Technically, the Turks and Caicos Islands court issued a Mareva injunction, which appears to be the British equivalent to a certain type of a TRO. For ease of reference, we will refer to the Mareva injunction as a TRO. That court also appointed a receiver.

[4] And revoked its appointment of a receiver.

Republic freezing the Elliotts' assets. In doing so they allegedly misrepresented the status of their other lawsuits against the Elliotts.

During the course of the Hofmann litigation, the district court appointed Thomas Scott as a Special Master. Hofmann, No. 1:09-cv-20526-ASG (DE 348; DE 457). The court later made Scott a Special Monitor of the Elliotts' assets with the consent of the parties, as a result of which the Elliotts could not make any transactions without Scott's approval. Hofmann, No. 1:09-cv-20526-ASG (DE 528). Based on a report from Scott, the court referred the subject matter of the Hofmann and Aguilar litigation to authorities, including the U.S. Securities and Exchange Commission, for potential criminal and civil investigations. The SEC launched an investigation and later filed an enforcement action against Catledge, Derek Elliott, and some of the Elliott entities (three of which are plaintiffs in the present case). See SEC v. Catledge, No. 2:12-cv-00887-JCM-NJK (D. Nev. filed May 24, 2012). Derek Elliott entered into a cooperation agreement with the SEC in which he admitted that he had violated the Securities Act of 1933 and the Securities Exchange Act of 1934.

Eventually the defendants voluntarily dismissed all of the actions they had brought against the Elliotts. According to the allegations in the present lawsuit, however, the Elliotts suffered $160 million worth of damages because of the defendants' litigation campaign.

B. Procedural History

The Elliott group brought this diversity action in the Southern District of Florida. (Derek Elliott is absent from this lawsuit.) The group named ten defendants in its complaint: (1) Catledge; (2) Impact; (3) Diaz; (4) Diaz's law firm; (5) Piloto; (6) Arnstein & Lehr; (7) Rocheford; (8) Smith; (9) Thompson; and (10) Hofmann. It pleaded separate abuse of process claims and malicious prosecution claims against most of the defendants,[5] a single civil conspiracy claim against every defendant except Impact, and a breach of contract claim against Catledge and Impact. Each claim was brought under Florida law.

Diaz and his law firm jointly filed a motion to dismiss, as did Piloto and Arnstein & Lehr. Hofmann later joined both motions; Rocheford and Smith joined only Piloto and Arnstein & Lehr's motion.

The district court granted the motions to dismiss. It found that the Elliott group's abuse of process claims failed because the underlying conduct was protected by Florida's litigation privilege. It also found that the malicious prosecution claims failed because the defendants "had ample probable cause" to bring the litigation underlying those claims. And the court found that the civil conspiracy claim necessarily failed because it depended on the abuse of process

[5] Specifically Catledge, Diaz, Diaz's law firm, Piloto, Arnstein & Lehr, Thompson, and Hofmann.

claims and malicious prosecution claims. As a result, the court dismissed with prejudice all of the abuse of process claims, all of the malicious prosecution claims, and the civil conspiracy claim against every defendant named in each of those claims — including Thompson and Catledge, even though they had not filed or joined a motion to dismiss. The court noted, however, that it had not dismissed the breach of contract claim against Catledge and Impact.

The following week Piloto and Arnstein & Lehr filed a motion for sanctions against the Elliott group and its counsel under Rule 11 of the Federal Rules of Civil Procedure. Diaz and his law firm filed a similar motion a couple of days later. The district court granted the motions in part and denied them in part. It found that the abuse of process claims, malicious prosecution claims, and civil conspiracy claim generally were not objectively frivolous (either legally or factually) and thus did not warrant sanctions.

But the court found that the Elliott group's factual allegations about the $160 million in damages it claimed were objectively frivolous and did warrant sanctions. The court also found that the malicious prosecution claims brought by one of the Elliotts' LLCs — Sun Village Juan Dolio Associates, LLC— were objectively frivolous and thus warranted sanctions because that LLC was not a party defendant in any of the allegedly malicious prosecutions. After ordering additional briefing, the district court sanctioned all of the plaintiffs and their counsel for the damages

claims, as well as the Elliotts' LLC and its counsel for the malicious prosecution claim, and ordered all of the plaintiffs to jointly and severally pay the defendants' reasonable attorney's fees and costs stemming from the plaintiffs' sanctioned conduct.

Before the court entered an order setting the amount of legal fees the Elliott group owed the defendants, Diaz and his law firm settled with the group and filed a joint stipulation of dismissal. The court dismissed Diaz and his firm, and it later awarded Piloto and Arnsten & Lehr $5,632 in legal fees as a sanction for the damages claims and $2,000 as a sanction for the Elliotts' LLC's malicious prosecution claim.

Shortly before the district court granted the motions to dismiss, the clerk of court entered defaults against Impact and Catledge. Upon Catledge's motion, the district court later quashed the service of process on Catledge, vacated the entry of default against him, dismissed him from the case, and closed the case. It also denied without prejudice the Elliott group's motion for default judgment against Impact and the Elliott group's renewed motion for default judgment against Impact. The court ultimately dismissed Impact with prejudice after resolving the sanctions issues because the Elliott group had failed to file another motion for default judgment.

This is the Elliott group's appeal.

II. STANDARDS OF REVIEW

We review only for an abuse of discretion both a district court's ruling on a motion to set aside an entry of default,[6] EEOC v. Mike Smith Pontiac GMC, Inc., 896 F.2d 524, 528 (11th Cir. 1990), and a district court's decision to impose sanctions under Rule 11, Riccard v. Prudential Ins. Co., 307 F.3d 1277, 1294 (11th Cir. 2002).

"We review de novo the district court's grant of a motion to dismiss under 12(b)(6) for failure to state a claim, accepting the allegations in the complaint as true and construing them in the light most favorable to the plaintiff." Butler v. Sheriff of Palm Beach Cty., 685 F.3d 1261, 1265 (11th Cir. 2012) (quotation marks omitted). "The plaintiff's factual allegations must be enough to raise a right to relief above the speculative level, on the assumption that all the allegations in the complaint are true (even if doubtful in fact)." Id. (quotation marks and brackets omitted). "To survive a motion to dismiss, the plaintiff must plead a claim to relief that is plausible on its face." Id. (quotation marks omitted).

[6] Catledge actually moved to set aside a default judgment against him under Rule 60(b) of the Federal Rules of Civil Procedure. But the district court never entered a default judgment against Catledge, so the court properly construed Catledge's motion as a motion to set aside an entry of default under Rule 55(c).

III. DISCUSSION

Although the Elliott group brought a total of sixteen claims against ten defendants, most of those claims and defendants are not before this Court. The group stipulated to the dismissal of its claims against Diaz and his law firm. And in this appeal, it has represented to this Court that Rocheford, Smith, Thompson, and Hofmann are not parties to the appeal. And it has not offered any argument that Impact was wrongly dismissed. So the Elliott group has abandoned its claims against Impact, Rocheford, Smith, Thompson, and Hofmann. See Sapuppo v. Allstate Floridian Ins. Co., 739 F.3d 678, 681 (11th Cir. 2014) ("We have long held that an appellant abandons a claim when he either makes only passing references to it or raises it in a perfunctory manner without supporting arguments and authority."); AT&T Broadband v. Tech Commc'ns, Inc., 381 F.3d 1309, 1320 n.14 (11th Cir. 2004) ("Issues not raised on appeal are considered abandoned.").

That leaves only Piloto, Arnstein & Lehr, and Catledge. The Elliott group's briefing focuses primarily on Catledge (together with Diaz and his law firm), so we will start with the Elliott group's challenge to the district court's order quashing service on Catledge, setting aside the entry of default against Catledge, and dismissing him from the case. We will then turn to the district court's dismissal of the Elliott group's abuse of process claims, malicious prosecution claims, and civil conspiracy claim. Lastly we will address the sanctions orders.

A. Setting Aside the Entry of Default Against Catledge

A district court "may set aside an entry of default for good cause," Fed. R. Civ. P. 55(c), such as insufficient service of process, see Aetna Bus. Credit, Inc. v. Universal Decor & Interior Design, Inc., 635 F.2d 434, 435 (5th Cir. Unit A Jan. 1981) ("In the absence of valid service of process, proceedings against a party are void."). The Elliott group had the burden of proving that its service of process on Catledge (who has not participated in this appeal) was sufficient. Id. ("When service of process is challenged, the party on whose behalf it is made must bear the burden of establishing its validity.").

The district court found that the Elliott group "failed to meet [its] burden to demonstrate that service did occur." On that basis the district court granted Catledge's motions to quash the service of process on him and set aside the entry of default against him. It also dismissed the claims against him.

The Elliott group suggests that determining whether Catledge was served comes down to a swearing match by affidavit pitting his word against the word of Roger Arreola, one of the Elliott group's process servers. Arreola swore that he served Catledge when he just happened to run into Catledge at a fruit stand near a country club where Catledge had a midafternoon tee time with a friend. Catledge swore that he has never been to that fruit stand, that he did not run into Arreola on the day in question, and that he did not have a tee time on that day.

But it is not just Catledge's word against Arreola's. Catledge also submitted affidavits from four other people: a golf pro at the country club, Catledge's golf partner, a business associate who had lunch with Catledge on the day in question, and Catledge's wife. The golf pro swore in his affidavit that according to the country club's records, Catledge did not have a tee time or play golf on the day in question. He also swore that the country club has a strict policy against revealing to the public information about its members, including their tee times. Catledge's golf partner swore in his affidavit that he did not have a tee time with Catledge on the day in question, that he did not see Catledge on the golf course that day, and that Catledge's usual attire and vehicle do not match Arreola's descriptions of Catledge's attire and vehicle. Catledge's business associate who had lunch with him on the day in question swore in his affidavit that Catledge was not wearing golf clothes at lunch and that, as far as he knew, Catledge did not golf or plan to golf on the day in question. And Catledge's wife swore in her affidavit that she and Catledge left their house together on the day in question shortly after the tee time Arreola claimed Catledge had scheduled. Taken together, those affidavits refute Arreola's story.

The only other proof the Elliott group submitted to show that it had served Catledge was affidavits from five other process servers. But four of them simply swore they were unable to serve Catledge and did not provide any information

about whether anyone else had done so. The fifth process server also did not serve Catledge, but he hired Arreola and corroborated some of the broad details of Arreola's story — that Catledge liked to golf, that he usually played at a particular country club with one of his friends, and that friend had a midafternoon tee time on the day Arreola says he ran into Catledge. But the fifth process server failed to corroborate the crucial (and most improbable) part of Arreola's story, which is that Arreola just happened to stop at a particular fruit stand at the same time that Catledge just happened to stop there.

In light of the evidence presented to it, the district court did not clearly err or abuse its discretion in finding that the Elliott group had not served Catledge. Based on that finding, the district court had good cause to set aside the entry of default against Catledge, see Fed. R. Civ. P. 55(c), and dismiss the claims against him.[7]

B. The Elliott Group's Abuse of Process Claim

Although it appears that the Florida Supreme Court has not addressed the elements of an abuse of process claim, the Florida District Courts of Appeal have

[7] The district court cited a "lack of jurisdiction with respect to Defendant James B. Catledge" when it dismissed the Elliott group's claims against him. The dismissal would have been proper under Rule 12(b)(5) (which Catledge cited in his motion) or under Rule 4(m) of the Federal Rules of Civil Procedure, or both, so we affirm based on those rules. See Big Top Koolers, Inc. v. Circus-Man Snacks, Inc., 528 F.3d 839, 844 (11th Cir. 2008) ("[W]e can affirm [the district court's decision] on any ground that finds support in the record.") (quotation marks omitted).

articulated three elements for such a claim: "(1) the defendant made an illegal, improper, or perverted use of process; (2) the defendant had an ulterior motive or purpose in exercising the illegal, improper or perverted process; and (3) the plaintiff was injured as a result of defendant's action." Hardick v. Homol, 795 So. 2d 1107, 1111 n.2 (Fla. 5th DCA 2001) (citing Thomson McKinnon Sec., Inc. v. Light, 534 So. 2d 757, 760 (Fla. 3d DCA 1988) (citing Della-Donna v. Nova Univ., Inc., 512 So. 2d 1051 (Fla. 4th DCA 1987))).

The district court ruled that the Elliott group's abuse of process claims were barred by Florida's litigation privilege. Under that doctrine, "absolute immunity must be afforded to any act occurring during the course of a judicial proceeding, regardless of whether the act involves a defamatory statement or other tortious behavior . . . , so long as the act has some relation to the proceeding." Levin, Middlebrooks, Mabie, Thomas, Mayes & Mitchell, P.A. v. U.S. Fire Ins. Co., 639 So. 2d 606, 608 (Fla. 1994). The litigation privilege applies to actions for abuse of process. LatAm Invs., LLC v. Holland & Knight, LLP, 88 So. 3d 240, 242 (Fla. 3d DCA 2011).[8]

[8] The Florida Supreme Court has held that the "litigation privilege applies across the board to actions in Florida, both to common-law causes of action, those initiated pursuant to a statute, or of some other origin." Echevarria, McCalla, Raymer, Barrett & Frappier v. Cole, 950 So. 2d 380, 384 (Fla. 2007). The court walked that holding back to some extent in Debrincat v. Fisher, 217 So. 3d 68 (Fla. 2017), by holding that the litigation privilege does not apply to at least some malicious prosecution claims. See id. at 69–71; see also Inlet Beach Capital Invs., LLC v. The Enclave at Inlet Beach Owners Ass'n, Inc., 236 So. 3d 1140, 1141 (Fla. 1st DCA 2018). In light of Debrincat, we recently concluded that Florida's litigation privilege does not

The defendants' conduct during and in relation to the Hofmann and Aguilar litigation as well as the judicial proceedings in the Turks and Caicos Islands and the Dominican Republic is protected by the litigation privilege. See Levin, 639 So. 2d at 608. Even assuming the defendants' submissions and representations to courts in those cases were fraudulent or "involve[d] a defamatory statement or other tortious behavior," that conduct still occurred during "a judicial proceeding" in those courts and "ha[d] some relation to th[ose] proceeding[s]." Id.

To be fair, not all of the conduct that the Elliott group alleges was an abuse of process is protected by the litigation privilege. But the defendants' alleged conduct that is not protected by the litigation privilege — forming the Elliott Client

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"offer[] per se immunity against any and all causes of action that arise out of conduct in judicial proceedings." Sun Life Assurance Co. of Can. v. Imperial Premium Fin., LLC, 904 F.3d 1197, 1219 (11th Cir. 2018). When the Florida courts have not addressed whether the litigation privilege applies to a particular cause of action, we must assess the privilege's applicability to it "in light of the specific conduct for which the defendant seeks immunity" by asking whether applying the privilege "would meaningfully serve the aims of the privilege" or "eviscerate long-standing sources of judicially available recovery." Id. (quotation marks omitted); see also id. at 1218–20.

We do not conduct that analysis here because Florida's Third District Court of Appeal held that the litigation privilege applies to abuse of process claims in LatAm Investments, LLC v. Holland & Knight, LLP, 88 So. 3d 240. Id. at 242. The Florida Supreme Court did not address LatAm in Debrincat, nor has the court addressed it since, so LatAm appears to still be good law. See Pace v. Bank of N.Y. Mellon. Tr. Co. Nat'l Ass'n, 224 So. 3d 342, 343 n.2 (Fla. 5th DCA 2017) (citing LatAm after Debrincat was issued for the proposition that the litigation privilege applies to abuse of process claims); see also, e.g., Pardo v. State, 596 So. 2d 665, 665 (Fla. 1992) ("This Court has stated that the decisions of the district courts of appeal represent the law of Florida unless and until they are overruled by this Court.") (quotation marks and brackets omitted). As a result, we must apply the litigation privilege to abuse of process claims. See Fla. Family Policy Council v. Freeman, 561 F.3d 1246, 1256 (11th Cir. 2009) ("We are, of course, bound to follow Florida appellate court decisions interpreting that state's law."). The Elliott group has not argued that the litigation privilege does not apply to abuse of process claims.

Committee, recruiting the Elliotts' investors to join the committee and the litigation, and conducting a public relations campaign based on the litigation — was not a "use of process." Hardick, 795 So. 2d at 1111 n.2; see Peckins v. Kaye, 443 So. 2d 1025, 1026 (Fla. 2d DCA 1983) ("In an abuse of process action, process may mean an action that is initiated independently such as the commencement of a suit, or one initiated collaterally, such as an attachment.").

In short, the alleged conduct that was a use of process is protected by the litigation privilege, and the alleged conduct that is not protected by the litigation privilege was not a use of process. As a result, the Elliott group's abuse of process claims fail because the allegations are not sufficient to establish the first element of such a claim, which is that "the defendant made an illegal, improper, or perverted use of process." Hardick, 795 So. 2d at 1111 n.2.[9]

[9] There was much discussion at oral argument about whether Florida's litigation privilege applies (and whether it should apply) to conduct during and in relation to judicial proceedings in foreign jurisdictions. But we will assume that it does apply for the purposes of this appeal based on the Florida Supreme Court's articulation of the privilege, see Levin, 639 So. 2d at 608 (holding that the litigation privilege applies to conduct during and in relation to "a judicial proceeding" generally without any hint of a geographic limitation), and because the Elliott group did not clearly raise an argument to the contrary in the district court or in its briefing to this Court (and it resisted almost every opportunity to do so at oral argument), see Juris v. Inamed Corp., 685 F.3d 1294, 1325 (11th Cir. 2012) ("If a party hopes to preserve a claim, argument, theory, or defense on appeal, she must first clearly present it to the district court, that is, in such a way as to afford the district court an opportunity to recognize and rule on it."); United States v. Willis, 649 F.3d 1248, 1254 (11th Cir. 2011) ("A party seeking to raise a claim or issue on appeal must plainly and prominently so indicate . . . . Where a party fails to abide by this simple requirement, he has waived his right to have the court consider that argument.") (brackets and quotation marks omitted).

C. Malicious Prosecution

Under Florida law:

> In order to prevail in a malicious prosecution action, a plaintiff must establish that: (1) an original criminal or civil judicial proceeding against the present plaintiff was commenced or continued; (2) the present defendant was the legal cause of the original proceeding against the present plaintiff as the defendant in the original proceeding; (3) the termination of the original proceeding constituted a bona fide termination of that proceeding in favor of the present plaintiff; (4) there was an absence of probable cause for the original proceeding; (5) there was malice on the part of the present defendant; and (6) the plaintiff suffered damage as a result of the original proceeding. The failure of a plaintiff to establish any one of these six elements is fatal to a claim of malicious prosecution.

Alamo Rent-a-Car, Inc. v. Mancusi, 632 So. 2d 1352, 1355 (Fla. 1994) (citations omitted).

The district court dismissed the Elliott group's malicious prosecution claims upon finding that the defendants "had ample probable cause to bring the underlying litigation based on the evidence of a fraudulent scheme." The district court later found (when addressing the motions for sanctions) that the malicious prosecution claims brought by one of the plaintiffs — one of the Elliotts' LLCs — failed because that plaintiff was not a party to the allegedly malicious prosecutions. That finding is enough to affirm the district court's dismissal of the LLC's malicious prosecution claim. See Big Top Koolers, Inc. v. Circus-Man Snacks, Inc., 528 F.3d 839, 844 (11th Cir. 2008) ("[W]e can affirm [the district court's

decision] on any ground that finds support in the record.") (quotation marks omitted).

Not only that, but the Elliott group stipulated to the dismissal of its claims against Diaz and Diaz's law firm; it has abandoned its malicious claims against Impact, Rocheford, Smith, Thompson, and Hofmann; and its malicious prosecution claim against Catledge was properly dismissed due to insufficient service of process. So the Elliott group's malicious prosecution claims against Piloto and Arnstein &Lehr are the only two remaining.

However, the Elliott group failed to argue in its briefing to this Court that Piloto and Arnstein & Lehr maliciously prosecuted the Elliotts. In its opening brief it focused exclusively on its malicious prosecution allegations against Catledge, Diaz, and Diaz's law firm. The only argument the Elliott group offered that there was any malicious prosecution by Piloto and Arnstein & Lehr was that they "agreed to conspire with Catledge and the Diaz Defendants to maliciously prosecute the Elliotts and that they took overt acts in furtherance of that conspiracy." But that argument supports only the Elliott group's civil conspiracy claim, not its claims for malicious prosecution against Piloto and Arnstein & Lehr. The Elliott group has thus abandoned its malicious prosecution claims against Piloto and Arnstein & Lehr. See Sapuppo, 739 F.3d at 681.

D. Civil Conspiracy

Under Florida law:

> A civil conspiracy claim requires: (1) an agreement between two or more parties; (2) to do an unlawful act or to do a lawful act by unlawful means; (3) the doing of some overt act in pursuance of the conspiracy; and (4) damage to plaintiff as a result of the acts done under the conspiracy.

Philip Morris USA, Inc. v. Russo, 175 So. 3d 681, 686 n.9 (Fla. 2015).

The district court dismissed the Elliott group's civil conspiracy claim because it was contingent on the abuse of process and malicious prosecution claims. We affirm the dismissal of the civil conspiracy claim to the extent it relies on the abuse of process claims or the malicious prosecution claims against Piloto and Arnstein & Lehr, or both, because those underlying claims fail for the reasons we have already discussed.

Evaluating the Elliott group's civil conspiracy claim to the extent it relies on the malicious prosecution claims against defendants other than those three requires some additional analysis. Although the Elliott group is no longer pursuing its malicious prosecution claims against Diaz and his law firm, and although the malicious prosecution claim against Catledge was properly dismissed by the district court due to insufficient service of process, Piloto and Arnstein & Lehr could still be liable for their co-defendants' allegedly malicious prosecution of the Elliott group under the civil conspiracy claim. See Lorillard Tobacco Co. v.

Alexander, 123 So. 3d 67, 80 (Fla. 3d DCA 2013) ("[T]he law regarding conspiracy [in Florida] is well-settled, and provides that an act done in pursuit of a conspiracy by one conspirator is an act for which each other conspirator is jointly and severally liable. Conspiracy is not a separate or independent tort but is a vehicle for imputing the tortious acts of one coconspirator to another to establish joint and several liability.") (citation and quotation marks omitted).

But that would work for the Elliott group only if it had sufficiently alleged its malicious prosecution claims against Diaz, his law firm, and Catledge. It has not. The district court found that all of the defendants "had ample probable cause to bring the underlying litigation." The Elliott group now argues that three defendants — Diaz, Diaz's law firm, and Catledge — lacked probable cause to file the Aguilar lawsuit because Catledge and his agents were culpable for the tortious conduct they attributed to the Elliotts.[10] But Diaz and his law firm had probable cause to file the Aguilar lawsuit on behalf of most of the Aguilar plaintiffs.

As the Elliott group acknowledges in its complaint, the district court in the Hofmann and Aguilar litigation referred Special Monitor Scott's report "to the appropriate authorities" to investigate the potentially criminal activities detailed in

[10] The Elliott group has focused its arguments in support of its malicious prosecution claims on the Hofmann and Aguilar lawsuits to the exclusion of the litigation in the Turks and Caicos Islands and the Dominican Republic. It has thus abandoned any malicious prosecution claims based on the litigation in the Turks and Caicos Islands and the Dominican Republic. See Sapuppo, 739 F.3d at 681.

the report. 1:09-cv-20526-ASG (DE 956 at 33). Based on that referral, the SEC began an investigation and later filed an action against Catledge, Derek Elliott, and some of the Elliott entities that are plaintiffs in this action. The Elliott group attached to its complaint in the present case the cooperation agreement Derek Elliott entered into with the SEC in which Derek Elliott admitted that he violated the Securities Act of 1933 and the Securities Exchange Act of 1934. So not only did the Hofmann and Aguilar plaintiffs have probable cause for a tort suit against the Elliotts, but the SEC also had probable cause for an investigation of — and ultimately an enforcement action against — them. Because Diaz and his law firm had probable cause to file the Aguilar lawsuit on behalf of the Aguilar plaintiffs,[11] the Elliott group's malicious prosecution claim against Diaz and his law firm fails. See Alamo Rent-a-Car, Inc., 632 So. 2d at 1355 (noting that one of the elements of a malicious prosecution claim is that "there was an absence of probable cause for the original proceeding").

That does not necessarily mean that there was probable cause for Catledge to sue the Elliott group in the Aguilar lawsuit or for Diaz and his law firm to include Catledge as one of the plaintiffs in that lawsuit. But even if Catledge himself did not have probable cause to sue, he was just one of the more than 400 plaintiffs in

[11] The Elliott group alleges that Diaz and his law firm had "obvious conflicts" of interest in representing the Aguilar plaintiffs. Even if they did, they still had probable cause to file the Aguilar lawsuit.

Aguilar, and we have already concluded that the other Aguilar plaintiffs had probable cause to bring the lawsuit. The Elliott group's allegations fail to show the damages it suffered were the result of Catledge being one of the Aguilar plaintiffs and not the result of the claims brought by the 400-plus other Aguilar plaintiffs. So the Elliott group's malicious prosecution claims fail to the extent they are based on Catledge being one of the plaintiffs in the Aguilar lawsuit. See id. (noting that one of the elements of a malicious prosecution claim is that "the plaintiff suffered damage as a result of the original proceeding").

As a result, the Elliott group has not sufficiently alleged a malicious prosecution claim against Diaz, his law firm, or Catledge. That means the Elliott group has not sufficiently alleged an underlying unlawful act, so its civil conspiracy claim against Piloto and Arnstein & Lehr fails as well. See Russo, 175 So. 3d at 686 n.9.

E. Sanctions

> Rule 11 requires district courts to impose appropriate sanctions, after notice and a reasonable opportunity to respond, where an attorney or party submits a pleading to the court that: (1) is not well-grounded in fact, i.e., has no reasonable factual basis; (2) is not legally tenable; or (3) is submitted in bad faith for an improper purpose. The objective standard for assessing conduct under Rule 11 is reasonableness under the circumstances and what it was reasonable to believe at the time the pleading was submitted. Sanctions are warranted when a party exhibits a deliberate indifference to obvious facts, but not when the party's evidence to support a claim is merely weak.

Riccard, 307 F.3d at 1294 (brackets, quotation marks, and citations omitted).

The district court sanctioned one of the plaintiffs — one of the Elliotts' LLCs — because its malicious prosecution claim was objectively frivolous. The first element of a malicious prosecution claim is that the plaintiff was a defendant in an allegedly malicious prosecution. Mancusi, 632 So. 2d at 1355. Because the Elliott LLC was not a defendant in the allegedly malicious prosecutions, which of course means that it was not maliciously prosecuted, the district court concluded that the Elliott LLC's claims were objectively frivolous and for that reason it sanctioned the Elliott LLC. That sanction was not an abuse of discretion.

The district court also sanctioned all of the Elliott group plaintiffs because their damages claims were objectively frivolous. The Elliott group argues that the district court's findings were based on "a clearly erroneous reading of the evidence" that "constitute[d] an abuse of discretion." Attwood v. Singletary, 105 F.3d 610, 612 (11th Cir. 1997). Under the clearly erroneous standard, "we may not reverse just because we would have decided the matter differently. A finding that is plausible in light of the full record — even if another is equally or more so — must govern." Cooper v. Harris, 137 S. Ct. 1455, 1465 (2017) (brackets, quotation marks, and citation omitted).

The Elliott group claimed in its complaint that the defendants' alleged abuses of process, malicious prosecutions, and civil conspiracy prevented the group from selling some properties and taking actions to avoid the foreclosure of

two other properties, causing the group to incur damages in excess of $160 million. The district court noted that the Elliott group was not, as its complaint implies, wholly barred from making any transactions involving his properties. The group could have conducted sales and other transactions involving its properties so long as each sale or transaction was approved by Scott, the special monitor appointed in the Hofmann and Aguilar litigation. And as the district court emphasized, the Elliott group consented to the appointment of a special monitor.

The Elliott group never presented to Scott "for approval any proposed sale, refinance, or other transaction." As a result, the district court concluded that "the losses [the Elliott group] complain[s] of can only be described as losses [it] consented to or losses [it] chose not to avoid." Bringing a lawsuit for those losses, the court continued, "is absurd and amounts to a deliberate indifference of obvious facts" sufficient to warrant the imposition of sanctions. (Quotation marks omitted.)

In its response to the sanctions motions, the only argument the Elliott group offered on the damages issue is that its damages were not "a result of [its] consent to have . . . Scott appointed as a receiver" but were instead caused by "the events set in motion by Defendants' malicious actions, including the foreign restraining orders and the bad publicity generated as a result thereof." After the district court rejected that argument and sanctioned the Elliott group for its damages claims, the

group offered some additional arguments[12] in support of its motion to reconsider and in its briefing to this Court.

The Elliott group could have made those arguments in response to the sanctions motions, but it did not. So those arguments were not properly before the district court on a motion to reconsider. See Wilchombe v. TeeVee Toons, Inc., 555 F.3d 949, 957 (11th Cir. 2009) ("A motion for reconsideration cannot be used to relitigate old matters, raise argument or present evidence that could have been raised prior to the entry of judgment. This prohibition includes new arguments that were previously available, but not pressed.") (citation and quotation marks omitted). And they are not properly before this Court. See Juris v. Inamed Corp., 685 F.3d 1294, 1325 (11th Cir. 2012) ("[I]f a party hopes to preserve a claim, argument, theory, or defense on appeal, she must first clearly present it to the district court, that is, in such a way as to afford the district court an opportunity to recognize and rule on it.") (quotation marks omitted); Smith v. Sec'y, Dep't of Corr., 572 F.3d 1327, 1352 (11th Cir. 2009) (Where "[t]he district court did not consider [an] argument because it was not fairly presented . . . we will not decide it."); Walton v. Johnson & Johnson Servs., Inc., 347 F.3d 1272, 1292 (11th Cir.

[12] The two primary arguments the group added are that some of the damages were suffered before Scott's appointment and that the banks trying to foreclose on some of the Elliott group's properties refused to negotiate with Scott.

2003) (per curiam) ("As a general rule, we do not consider arguments raised for the first time on appeal.").

The Elliott group's only argument on this issue that is properly before this Court is that some of its damages were set in motion before Scott's appointment. The district court found that the group could have avoided those damages had it pursued transactions and submitted them to Scott for approval, which means the defendants did not proximately cause the Elliott group's damages because the group either "consented to" the losses it suffered or otherwise "chose not to avoid" them. Given that those findings are plausible, the district court did not abuse its discretion in imposing sanctions on the Elliott group for claiming $160 million in damages.

AFFIRMED.