

NOT FOR PUBLICATION

In the  
United States Court of Appeals  
For the Eleventh Circuit

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No. 25-12605  
Non-Argument Calendar

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GREGORY BRIAN MYERS,

*Plaintiff-Appellant,*

*versus*

DELUCA LAW GROUP, et al.,

*Defendants,*

U.S. BANK NATIONAL ASSOCIATION,

as Trustee for Credit Suisse First Boston CSFB 2005,

as Trustee for Credit Suisse First Boston CSFB 2005-11,

U.S. BANK ASSOCIATION,

as Trustee for Credit Suisse First Boston Mortgage Acceptance Corp.,

CSFB Mortgage-Backed Pass-Through Certificates, Series 2005-11,

CREDIT SUISSE FIRST BOSTON MORTGAGE ACCEPTANCE  
CORP.,

CSFB MORTGAGE-BACKED PASS-THROUGH  
CERTIFICATES,

SERIES 2005-11,

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U.S. National Association, Trustee,  
CREDIT SUISSE FIRST BOSTON MORTGAGE ACCEPTANCE  
CORP.,

*Defendants-Appellees.*

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Appeal from the United States District Court  
for the Middle District of Florida  
D.C. Docket No. 2:24-cv-00370-JES-KCD

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No. 25-13144  
Non-Argument Calendar

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*Plaintiff-Appellant,*

*versus*

DELUCA LAW GROUP, et al.,

*Defendants,*

U.S. BANK NATIONAL ASSOCIATION,  
as trustee for Credit Suisse First Boston CSFB 2005,  
as Trustee for Credit Suisse First Boston CSFB 2005-11,  
U.S. BANK ASSOCIATION,  
as Trustee for Credit Suisse First Boston Mortgage Acceptance Corp.,  
CSFB Mortgage-Backed Pass-Through Certificates, Series 2005-11,  
CREDIT SUISSE FIRST BOSTON MORTGAGE ACCEPTANCE  
CORP.,  
CSFB MORTGAGE-BACKED PASS-THROUGH  
CERTIFICATES,

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SERIES 2005-11,

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Before ABUDU, KIDD, and ANDERSON, Circuit Judges.

PER CURIAM:

Gregory Myers, proceeding pro se, appeals the district court's dismissal with prejudice of his amended complaint alleging breach of contract, constructive fraud, and a violation of the Fair Debt Collection Practices Act ("FDCPA" or the "Act"). Myers also appeals the court's denial of his motion to alter or amend the judgment, construed under Federal Rule of Civil Procedure 60(b). After careful review, we affirm the district court's dismissal with prejudice and find that its denial of Myers's post-judgment motion was proper.<sup>1</sup>

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<sup>1</sup> Myers asks us to take into consideration his reply brief for this appeal, even though he filed it three minutes after the deadline. For good cause, we may permit a filing after the deadline's expiration. Fed. R. App. P. 26(b). Accordingly, Myers's unopposed motion for leave to file his reply brief out of time is GRANTED.

## I. BACKGROUND

### A. *The Foreclosure Action on the Naples Property*

At the center of this dispute is a parcel of land in Naples, Florida, where Myers resides. Myers's wife, Barbara Ann Kelly, bought the Naples property and financed her purchase with a mortgage. Subsequently, Kelly conveyed the Naples property to herself and Myers. U.S. Bank National Association, as Trustee for Credit Suisse First Boston CFSB 2005-11 ("U.S. Bank") holds the mortgage on the Naples property.

In 2009, U.S. Bank filed a foreclosure action against Kelly and Myers in Florida state court regarding the Naples property. *US Bank Nat'l Ass'n v. Kelly*, No. 11-2009-CA-010813; see *In re Myers*, No. 22-00498, 2023 WL 5697379, at \*1 (M.D. Fla. Sept. 5, 2023). The state court entered final judgment of foreclosure in favor of U.S. Bank, finding that Myers and Kelly missed sixty-six monthly mortgage payments. Myers and Kelly both appealed the foreclosure in state court.

### B. *The Consent Order*

While those appeals were pending, Myers filed for Chapter 11 bankruptcy in the United States Bankruptcy Court for the District of Maryland. See *In re Myers*, No. 15-26033. Of import, under 11 U.S.C. § 362(a), the filing of a bankruptcy petition triggers an automatic stay, which halts all collection and foreclosure actions against the debtor. *In re Patel*, 142 F.4th 1313, 1320 (11th Cir. 2025). Seeking to continue its foreclosure of the Naples property, U.S.

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Bank moved the Maryland bankruptcy court to modify the automatic stay so the state appeals of the foreclosure judgment could proceed and to allow U.S. Bank to sell the Naples property should the appellate court affirm the foreclosure. Myers and U.S. Bank came to an agreement regarding U.S. Bank's request. The agreement was memorialized by a consent order entered by the Maryland bankruptcy court on November 14, 2016.

In relevant part, the consent order provides that both Myers's and Kelly's state court appeals could proceed irrespective of the automatic stay. It required Myers to deposit monthly protection payments of \$5,000 in the Maryland Court Registry until the state appeals were resolved. Myers claims he deposited \$70,000 in the Registry.

Under the consent order, if the state affirmed the foreclosure judgment, U.S. Bank was entitled to receive the payments in the Registry. And, U.S. Bank was required to credit the amount it received in payments against any debt it collected from Myers or Kelly. Notably, the consent order halted the foreclosure sale of the Naples property "unless and until the Myers Appeal and the Kelly Appeal have been fully and finally resolved in favor of U.S. Bank[.]" In 2018, a Florida appellate court affirmed the foreclosure judgment, rejecting Myers's and Kelly's appeals. *Myers v. U.S. Bank Nat'l Ass'n*, 255 So.3d 283 (Fla. 2d DCA 2018) (per curiam).

*C. The Instant Suit*

In 2024, Myers filed suit against U.S. Bank, DeLuca Law Group, PLLC, and four individuals. Myers claimed that by “attempting to re-set a foreclosure sale of the Naples Property[,]” defendants engaged in constructive fraud and deprived Myers of his constitutional rights in violation of 42 U.S.C. § 1983. Myers also brought a breach of contract claim, asserting that defendants had breached the consent order.

The district court dismissed the four individual defendants because Myers never served them with process. Both U.S. Bank and DeLuca Law Group moved to dismiss the complaint. The district court dismissed Myers’s suit without prejudice, finding that the complaint was a shotgun pleading that did not specify which of the defendants was responsible for which act or omission. The district court also held that Myers failed to state a claim under § 1983 because the complaint did not allege that defendants operated under color of state law.

Myers amended his complaint. Myers named as defendants eight different U.S. Bank entities, which he labeled as “US Bank #1” through “US Bank #8.” He also sued an entity titled “Credit Suisse First Boston Mortgage Acceptance Corp.” Myers lodged three

claims against all defendants: (1) breach of contract; (2) constructive fraud; and (3) violation of FDCPA, 15 U.S.C. § 1692.<sup>2</sup> But, Myers alleged that only US Bank #5 breached the consent order.

U.S. Bank moved to dismiss the complaint for lack of subject matter jurisdiction, pursuant to Federal Rule of Civil Procedure 12(b)(1), and for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). Contending that Myers was “a state court loser trying to relitigate his foreclosure action,” U.S. Bank claimed that under the *Rooker-Feldman* doctrine, the district court lacked jurisdiction to revisit a prior state court judgment. And, U.S. Bank argued that Myers had not plausibly alleged any of his claims.

After U.S. Bank moved to dismiss, Myers filed for bankruptcy in the District of Columbia. Then, Myers moved to stay this suit, pursuant to 11 U.S.C. § 362(a). The district court rejected Myers’s request, reasoning that the automatic stay provision did not apply because Myers initiated the case. Subsequently, Myers opposed U.S. Bank’s motion to dismiss. In his opposition, Myers presented the court with facts that were not in his amended complaint. The district court was unpersuaded and dismissed the suit with prejudice.

The court concluded that *Rooker-Feldman* was inapplicable because Myers’s claims arose from the consent order, not the foreclosure judgment. Turning to the Rule 12(b)(6) challenge, the court

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<sup>2</sup> It appears that the amended complaint contains a mistake in its paragraph numbering. Paragraphs numbered 33–35 appear twice.

explained that Myers's suit merited dismissal because Myers provided the facts supporting his claims in his opposition, not the amended complaint. And, the court reasoned, even if the amended complaint contained the facts presented in the opposition, dismissal would still be proper. The court held that amendment to the complaint would be futile and dismissed the suit with prejudice.

As to the contract claim, the court explained that the consent order was not an agreement to stop the foreclosure of the Naples property forever, so U.S. Bank's attempt to foreclose the property after the conclusion of the state appeals did not constitute a breach. The court also held that the constructive fraud claim warranted dismissal since Myers had not alleged a confidential or fiduciary relationship with U.S. Bank. Turning to the FDCPA claim, the court found that the amended complaint contained no factual allegations describing how U.S. Bank violated the Act. Furthermore, Myers's FDCPA claim was "clearly untimely" because it fell outside the Act's one year statute of limitations.

Myers timely appealed the district court's dismissal and denial of his request to stay the suit. That same day, Myers moved to amend or alter the denial of his stay request under Federal Rule of Civil Procedure 59(e). Myers asserted that his suit should have been subject to an automatic stay, and consequently, the district court's adjudication of the motion to dismiss was void.

The district court denied the motion, construing Myers's request under Federal Rule of Civil Procedure 60(b) because Myers filed his motion after the time to file a Rule 59 motion had lapsed.

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Myers timely appealed the denial of his motion to amend or alter judgment. The court consolidated Myers's appeals.

## II. STANDARD OF REVIEW

We review a district court's ruling on a Rule 12(b)(6) motion de novo, accepting the allegations as true, construed in light most favorable to the plaintiff. *Hill v. White*, 321 F.3d 1334, 1335 (11th Cir. 2003) (per curiam). We review a district court's decision to dismiss a complaint with prejudice for abuse of discretion. *See Bryant v. Dupree*, 252 F.3d 1161, 1163 (11th Cir. 2001) (per curiam) (explaining that abuse of discretion is the standard of review for the denial of a motion to amend a complaint). A district court's dismissal with prejudice is proper if granting leave to amend would be futile. *Mar-rache v. Bacardi U.S.A., Inc.*, 17 F.4th 1084, 1102–03 (11th Cir. 2021). A district court's determination that amendment would be futile is reviewed de novo. *Cockrell v. Sparks*, 510 F.3d 1307, 1310 (11th Cir. 2007) (per curiam).

Denials of post-judgment relief pursuant to both Rule 59(e) and Rule 60(b) are reviewed for abuse of discretion. *Arthur v. King*, 500 F.3d 1335, 1343 (11th Cir. 2007) (Rule 59(e)) (per curiam); *Terrell v. Sec'y, Dep't of Veterans Affs.*, 98 F.4th 1343, 1351 (11th Cir. 2024) (Rule 60(b)).

## III. DISCUSSION

Our discussion proceeds in four parts. First, we explain why the district court properly dismissed Myers's breach of contract claim. Second, we find that the district court did not err by referring

to U.S. Bank as a singular entity. Third, we conclude that the district court properly dismissed Myers's suit with prejudice. Finally, we address whether the district court's denial of Myers's motion for post-judgment relief was an abuse of discretion.

*A. The District Court Did Not Err When It Dismissed Myers's Breach of Contract Claim.*

At the outset, we note that Myers has abandoned his challenge to the district court's ruling on his constructive fraud and FDCPA claims. *See Sapuppo v. Allstate Floridian Ins. Co.*, 739 F.3d 678, 681 (11th Cir. 2014) (holding that an appellant abandons a claim on appeal that he fails to "plainly and prominently" raise); *Timson v. Sampson*, 518 F.3d 870, 874 (11th Cir. 2008) (per curiam) ("While we read briefs filed by *pro se* litigants liberally, issues not briefed on appeal by a *pro se* litigant are deemed abandoned." (citation modified)).

But even if Myers had preserved these issues, we find no error in the district court's analysis. The district court correctly concluded that the statute of limitations on Myers's FDCPA claim had run. *See* 15 U.S.C. § 1692k(d). The district court also properly determined that Myers failed to plead constructive fraud. Myers did not allege facts supporting his claims of fraud or the existence of a confidential or fiduciary relationship between the parties. Accordingly, we consider only the district court's dismissal of Myers's breach of contract claim.

Myers mounts a procedural challenge to the district court's dismissal of his contract claim, arguing that the court "overshot

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Rule 12.” In particular, Myers argues that the court erroneously engaged in “merits reasoning” by concluding that the facts alleged in his complaint were contradicted by the terms of the consent order. Not so. The court’s dismissal of the contract claim rested on the allegations in the amended complaint, not its interpretation of the consent order. The district court concluded that the claim was “simply a barebones conclusory recitation of the elements for a breach” that did not “state a cause of action.” We agree.

Myers’s allegations that U.S. Bank “denied” him “the benefit of his bargain” and that he “suffered damages” as a result are not sufficient to defeat a motion to dismiss. “[L]egal conclusions masquerading as facts will not prevent dismissal.” *Oxford Asset Mgmt., LTD v. Jaharis*, 297 F.3d 1182, 1188 (11th Cir. 2002). We affirm the dismissal of Myers’s breach of contract claim.

*B. The District Court’s Dismissal with Prejudice of Myers’s Suit Was Proper.*

Myers argues that dismissing his suit with prejudice was an abuse of discretion. According to Myers, the district court acknowledged that Myers had additional factual allegations to support his claims. Therefore, Myers reasons, the district court should not have “declare[d] amendment futile merely because” Myers had already amended his complaint.

When justice requires, a district court should freely give leave to amend. Fed. R. Civ. P. 15(a)(2). A district court must give a pro se party at least one opportunity to amend a complaint before dismissing with prejudice. *Woldeab v. DeKalb Cnty. Bd. of Educ.*,

885 F.3d 1289, 1291 (11th Cir. 2018). However, this “liberal amendment standard is not an unqualified license to fix every new defect as the court uncovers them.” *In re Engle Cases*, 767 F.3d 1082, 1123 (11th Cir. 2014).

Because Myers already amended his complaint, the district court acted within its discretion to deny him a third bite at the apple. Even if a subsequent amendment could have adequately stated a claim, the district court was not required to provide such an opportunity for Myers to endlessly cure pleading deficiencies as the court identified them, regardless of Rule 15’s liberal amendment standard. *Id.*

Furthermore, on a motion to dismiss, a court’s review “is limited to the four corners of the complaint.” *Wilchombe v. Teevee Toons, Inc.*, 555 F.3d 949, 959 (11th Cir. 2009) (citation modified). Accordingly, the district court’s dismissal with prejudice was proper irrespective of the facts alleged in Myers’s opposition.

*C. The District Court Properly Referred to U.S. Bank as a Single Entity.*

Myers also contends that the district court improperly referred to the different U.S. Bank entities he named in the amended complaint as a singular defendant. Myers claims that the treatment of U.S. Bank as one entity impermissibly “altered the analysis[.]” U.S. Bank counters that even though Myers identified U.S. Bank in “different ways in his amended complaint,” the entities he named are “one and the same.” U.S. Bank emphasizes that Myers sought

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only one summons for U.S. Bank, rather than multiple. Myers argues that “whatever the ultimate legal significance of the differing formulations may be,” whether to treat U.S. Bank as a singular defendant “is a merits argument[.]”

Myers has failed to articulate how the district court’s treatment of U.S. Bank as one entity altered the substance of the court’s analysis or how the distinction between these entities carries any significance. We find no error in the district court’s approach.

*D. The District Court Did Not Err in Denying Myers’s Request for Post-Judgment Relief.*

The same day that Myers appealed the dismissal of his suit, he filed a motion pursuant to Fed. R. Civ. P. 59(e), asking the court to reconsider its denial of his request to stay the suit in light of his bankruptcy proceedings in D.C. According to Myers, the court’s judgment “was entered in violation of the automatic stay and was void ab initio.” Construing Myers’s motion for reconsideration under Rule 60(b), the court denied the motion. Myers timely appealed.

As an initial matter, the district court maintained jurisdiction to deny the post-judgment motion even though it was filed after Myers appealed his suit’s dismissal. *Mahone v. Ray*, 326 F.3d 1176, 1180 (11th Cir. 2003) (“[D]istrict courts retain jurisdiction after the filing of a notice of appeal to entertain and deny a Rule 60(b) motion.”).

The district court did not abuse its discretion by denying the motion. The automatic stay provision did not apply to Myers’s case

because Myers initiated the suit and the automatic stay applies to actions *against* the debtor. 11 U.S.C. § 362; *Crosby v. Monroe Cnty.*, 394 F.3d 1328, 1331 n.2 (11th Cir. 2004). We therefore affirm the district court’s denial of Myers’s post-judgment motion.

#### IV. CONCLUSION

We **AFFIRM** the dismissal with prejudice of Myers’s amended complaint and denial of his post-judgment motion for relief.