

NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 26-10458
Non-Argument Calendar

JOSUE BATISTA,

Plaintiff-Appellant,

versus

MICHAEL SABA,

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 9:25-cv-80785-DMM

Before NEWSOM, ABUDU, and ANDERSON, Circuit Judges.

PER CURIAM:

Josue Batista, proceeding pro se, appeals the district court's order granting Michael Saba's Federal Rule of Civil Procedure 12(b)(6) motion to dismiss with prejudice Batista's second amended

complaint—which alleged race discrimination in violation of 42 U.S.C. §§ 1981 and 1982 and, according to Batista, also alleged retaliation under those statutes—for failure to state a claim. Batista also appeals the district court’s order denying his motion to alter or amend the judgment pursuant to Federal Rule of Civil Procedure 59(e). Regarding the district court’s Rule 12(b)(6) order, Batista argues that the court erred because, in dismissing his second amended complaint, it (1) applied a heightened summary-judgment burden rather than the “plausibility” pleading standard required to survive a Rule 12(b)(6) motion to dismiss, (2) failed to separately analyze his § 1982 discrimination claim, and (3) erroneously found that further amendment would be futile. Batista also contends that the district court erred by declining to independently adjudicate his retaliation claims. Regarding the district court’s Rule 59(e) order, Batista argues that the court abused its discretion in denying his motion because it failed to remedy the legal errors that he identified and did not address caselaw that he argued was relevant. For reasons we will explain, we affirm in part, vacate in part, and remand for further proceedings consistent with this opinion.¹

¹ Saba’s motion for sanctions is DENIED because Batista is proceeding pro se and was not warned by the district court that his claims were frivolous. Cf. *United States v. Morse*, 532 F.3d 1130, 1133 (11th Cir. 2008). While several of Batista’s arguments on appeal are meritless, they are not clearly frivolous. See *Woods v. IRS*, 3 F.3d 403, 404 (11th Cir. 1993).

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I**A**

We review the district court’s grant of a motion to dismiss for failure to state a claim under Rule 12(b)(6) de novo, “accepting the allegations in the complaint as true and construing them in the light most favorable to the plaintiff.” *Timson v. Sampson*, 518 F.3d 870, 872 (11th Cir. 2008). A complaint must contain “a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). Further, we review de novo an order denying leave to amend on the grounds of futility. *Marrache v. Bacardi U.S.A., Inc.*, 17 F.4th 1084, 1092 (11th Cir. 2021).

To survive a Rule 12(b)(6) motion to dismiss, “a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citation modified). And to satisfy this plausibility threshold, the plaintiff must plead “factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* “Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” *Id.*

Section 1981 of the Civil Rights Act provides that “[a]ll persons . . . shall have the same right . . . to make and enforce contracts . . . as is enjoyed by white citizens.” 42 U.S.C. § 1981. To state a claim under § 1981, a plaintiff “must allege (1) intentional race discrimination (2) that caused a contractual injury.” *Ziyadat v. Diamondrock Hosp. Co.*, 3 F.4th 1291, 1296 (11th Cir. 2021); *see also*

Comcast Corp. v. Nat’l Ass’n of Afr. Am.-Owned Media, 589 U.S. 327, 341 (2020) (“[A] plaintiff must initially plead and ultimately prove that, but for race, [he] would not have suffered the loss of a legally protected right.”). At the motion-to-dismiss stage, a plaintiff need only provide enough factual matter, taken as true, to suggest intentional discrimination. See *Surtain v. Hamlin Terrace Found.*, 789 F.3d 1239, 1245–46 & n.6 (11th Cir. 2015) (discussing Title VII, which applies the same analytical framework and proof requirements as discrimination claims under § 1981). A plaintiff need not allege specific facts establishing a prima facie case under the *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973), framework to survive a motion to dismiss. *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 510–11 (2002). This is because *McDonnell Douglas* provides “an evidentiary standard, not a pleading requirement,” and “the prima facie case relates to the [plaintiff’s] burden of presenting evidence that raises an inference of discrimination,” not to the threshold for surviving a motion to dismiss. *Id.*

Section 1982 of the Civil Rights Act provides that “[a]ll citizens of the United States shall have the same right . . . as is enjoyed by white citizens . . . to inherit, purchase, lease, sell, hold, and convey real and personal property.” 42 U.S.C. § 1982. Section 1982 protects “broadly defined” property rights, the enforceability of those rights, and the right to use property “on an equal basis with White citizens.” *Watts v. Joggers Run Prop. Owners Ass’n, Inc.*, 133 F.4th 1032, 1045 (11th Cir. 2025) (citation modified). “Because § 1982 was also first enacted as part of the Civil Rights Act of 1866 and uses nearly identical language as § 1981, the Court’s precedents

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have construed §§ 1981 and 1982 similarly.” *Comcast Corp.*, 589 U.S. at 336 (citation modified). Section 1982 applies only to cases asserting acts of racial discrimination. *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409, 413 (1968). As with § 1981 claims, to prevail under § 1982, a plaintiff must show that the defendant’s challenged conduct was because of race. *See Comcast Corp.*, 589 U.S. at 336. Moreover, “plaintiffs who make claims under § 1982 . . . have been required to allege that some intentional discrimination took place.” *Jackson v. Okaloosa County*, 21 F.3d 1531, 1543 (11th Cir. 1994).

Generally, a pro se plaintiff must be given at least one chance to amend his complaint before the district court dismisses the action with prejudice, at least when a “more carefully drafted complaint might state a claim.” *Silberman v. Miami Dade Transit*, 927 F.3d 1123, 1132 (11th Cir. 2019) (citation omitted). That said, a court may deny leave to amend the complaint “when such amendment would be futile.” *Hall v. United Ins. Co. of Am.*, 367 F.3d 1255, 1263 (11th Cir. 2004) (citation omitted). An amendment is futile when the complaint as amended would still be subject to dismissal. *Id.*

We liberally construe a pro se litigant’s pleadings. *Campbell v. Air Jam. Ltd.*, 760 F.3d 1165, 1168 (11th Cir. 2014). But that “leniency does not give a court license to serve as de facto counsel for a party, or to rewrite an otherwise deficient pleading in order to sustain an action.” *Id.* at 1168–69 (citation modified).

Here, the district court did not err in granting Saba’s motion to dismiss as to Batista’s race-discrimination claims. First, the district court properly concluded that Batista failed to plausibly allege that Saba intentionally discriminated against him because of his race. Although Saba allegedly made hostile comments to Batista, none referenced his race or ethnicity. And because these statements could have applied to any person—irrespective of his race or ethnicity—they don’t permit a reasonable inference that Saba intentionally discriminated against Batista based on his race. Similarly, the complaint’s threadbare allegations regarding the treatment of (supposedly) similarly situated tenants are too conclusory to plausibly allege intentional race-based discrimination on the part of Saba. At bottom, because Batista failed to provide sufficient non-conclusory allegations regarding Saba’s intent to discriminate on the basis of Batista’s race, the district court properly dismissed his § 1981 and § 1982 claims. *See Ziyadat*, 3 F.4th at 1296 (explaining that plaintiffs must allege “intentional racial discrimination” to “state a claim under § 1981”); *Jackson*, 21 F.3d at 1543 (“[P]laintiffs who make claims under § 1982 . . . have been required to allege that some intentional discrimination took place.”).

Second, and relatedly, the district court did not improperly “collapse[] § 1982 into § 1981.” Br. of Appellant at 13–14. Rather, it correctly dismissed Batista’s § 1982 claim because he did not plausibly “allege that some intentional discrimination took place.” *Jackson*, 21 F.3d at 1543.

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Finally, the district court did not err in determining that further amendment to Batista's race-discrimination claims would be futile. Batista contends that, if permitted to amend his complaint, he can plead "nonconclusory facts identifying the individuals and entities who implemented and communicated the challenged enforcement actions at [Saba's] direction, including those who issued default notices, invoked eviction-related legal process, and controlled payment and fee access." Br. of Appellant at 21. But none of these additional facts would plausibly allege that Saba intentionally discriminated against Batista because of his race. Therefore, since Batista's proposed third amended complaint would still be subject to dismissal, the district court's denial of leave to amend was justified. *See Hall*, 367 F.3d at 1263.

B

Sections 1981 and 1982 of the Civil Rights Act also encompass claims of retaliation. *CBOCS West, Inc. v. Humphries*, 553 U.S. 442, 457 (2008) (discussing § 1981); *Jackson v. Birmingham Bd. of Educ.*, 544 U.S. 167, 176 (2005) (discussing § 1982). To state a retaliation claim, a plaintiff must allege that "he engaged in statutorily protected activity, he suffered a materially adverse action, and there was some causal relation between the two events." *Moore v. Grady Mem. Hosp. Corp.*, 834 F.3d 1168, 1176 (11th Cir. 2016) (citation omitted). The protected activity must involve "the assertion of rights encompassed by the statute." *Id.* (citation omitted).

In its order granting Saba’s motion to dismiss, the district court characterized Batista’s case as “a racial discrimination/retaliation suit” and observed that Batista’s sur-reply “centers mainly on retaliation claims not relevant to the reasons I am dismissing this case.” Order on Motion to Dismiss at 1, 6, Dkt. 58. But the district court didn’t adjudicate any retaliation claims in its order dismissing Batista’s second amended complaint. Because we generally prefer that district courts address in the first instance issues raised by the parties,² we vacate the court’s order in part and remand with instructions for it to consider, in the first instance, whether Batista raised any retaliation claims in his operative complaint and, if so, whether those claims were plausibly alleged.

II

We review the denial of a motion for post-judgement relief under Rule 59(e) for abuse of discretion. *Auto. Alignment & Body Serv., Inc. v. State Farm Mut. Auto. Ins. Co.*, 953 F.3d 707, 719 (11th Cir. 2020). “A district court abuses its discretion if it applies an incorrect legal standard, follows improper procedures in making the

² See, e.g., *SA Palm Beach, LLC v. Certain Underwriters at Lloyd’s London*, 32 F.4th 1347, 1363 (11th Cir. 2022) (vacating in part the district court’s dismissal and remanding the case for the district court to rule on the unaddressed claim); see also *Callahan v. U.S. Dep’t of Health & Human Servs.*, 939 F.3d 1251, 1266 (11th Cir. 2019) (remanding in part because “unavoidably fact-sensitive” questions “should be addressed first by the district court,” as we are “a court of review, not a court of first view”); *Singleton v. Wulff*, 428 U.S. 106, 120 (1976) (explaining that “[i]t is the general rule, of course, that a federal appellate court does not consider an issue not passed upon below”).

determination, or makes findings of fact that are clearly erroneous.” *Smith v. Miorelli*, 93 F.4th 1206, 1211–12 (11th Cir. 2024).

Rule 59(e) of the Federal Rules of Civil Procedure provides that a defendant may move to alter or amend a judgment no later than 28 days after the entry of the judgment. Fed. R. Civ. P. 59(e). “The only grounds for granting a Rule 59 motion are newly-discovered evidence or manifest errors of law or fact.” *Arthur v. King*, 500 F.3d 1335, 1343 (11th Cir. 2007) (citation modified). A Rule 59(e) motion may not be used “to relitigate old matters, [or] raise argument[s] or present evidence that could have been raised prior to the entry of judgment.” *Id.* (citation omitted).

Here, the district court did not abuse its discretion in denying Batista’s Rule 59(e) motion because Batista did not offer any newly discovered evidence, and the district court did not make any manifest errors of law or fact.³ Contrary to Batista’s arguments, the district court did not treat “*McDonnell Douglas* as a pleading-stage framework” or otherwise “impose[] an improper comparator-pleading burden.” Br. of Appellant at 22–23. Instead, the district court, having considered the complaint’s non-conclusory allegations, correctly determined that Batista failed to plausibly allege that Saba intentionally discriminated against him because of his

³ Because we vacate the dismissal of Batista’s retaliation claims—insofar as they were raised in the operative complaint—and remand for the district court to address the parties’ retaliation-related arguments in the first instance, we needn’t consider whether the district court erred by not discussing retaliation in its order denying Batista’s Rule 59(e) motion.

race. *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (“Factual allegations must be enough to raise a right to relief above the speculative level . . .”).

Moreover, the district court did not abuse its discretion in declining to discuss the applicability of *Ismael v. Roundtree* to Batista’s case. 161 F.4th 752 (11th Cir. 2025). In *Ismael*, we provided a roadmap for district courts to analyze summary-judgment motions in the context of employment discrimination and stated that, where a plaintiff “cannot establish a prima facie case, [t]he does not automatically lose on summary judgment.” *Id.* at 764. Because *Ismael* addresses the legal standard at the summary-judgment stage, it’s not pertinent to the district court’s dismissal of Batista’s complaint.⁴

III

In sum, we **AFFIRM** the dismissal with prejudice of Batista’s race-discrimination claims under 42 U.S.C. §§ 1981 and 1982 as well as the denial of his Rule 59(e) motion. Regarding Batista’s retaliation-related arguments, we **VACATE** the district court’s order in part and **REMAND** with instructions for the court to consider, in the first instance, whether Batista raised any retaliation claims in his operative complaint and, if so, whether those claims were plausibly alleged.

⁴ Contrary to Batista’s characterizations, the district court’s order did not impermissibly resolve disputed inferences against him or improperly weigh facts and credibility.