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2022 Decisions

Opinions of the United  
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for the Third Circuit

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2-10-2022

## Francis Greiser, Jr. v. Joanne Drinkard

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NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

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No. 21-1879

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FRANCIS GREISER, JR.,  
Appellant

v.

JOANNE L. DRINKARD; PAUL A. DRINKARD

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On Appeal from the United States District Court  
for the Eastern District of Pennsylvania  
(E.D. Pa. Civil No. 2:18-cv-05044)  
District Judge: Honorable Cynthia M. Rufe

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Submitted Pursuant to Third Circuit LAR 34.1(a)  
January 3, 2022

Before: GREENAWAY, Jr., PORTER, and NYGAARD, Circuit Judges

(Opinion filed: February 10, 2022)

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OPINION\*

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PER CURIAM

Francis Greiser, Jr., appeals pro se from the District Court's dismissal of his amended complaint without leave to amend, and its subsequent denial of his motion for

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\* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

reconsideration. For the following reasons, we will affirm the District Court's judgment.

I.

Greiser made the following allegations in his amended complaint. In 2010, his parents purchased an apartment, Unit 214, at a Florida cooperative apartment complex, Whittier Towers. He and his parents agreed that he would renovate the apartment in exchange for permanent occupancy there and ownership of the unit when his parents both passed away. Greiser initially lived in Unit 214 with his parents, but in 2011, his parents purchased Unit 210 in the same complex, and Greiser moved there.

In 2012, Greiser's parents added Greiser to their proprietary lease for Unit 210. As a result, the Whittier Towers cooperative apartment association sued Greiser and his parents to remove Greiser's name from the proprietary lease, as Greiser had not been approved by the Whittier Towers cooperative board.

In 2014, Greiser's father had a stroke and was in and out of the hospital in Pennsylvania. Greiser's sister, Joanne Drinkard, was appointed as their father's agent through a power of attorney. Greiser visited his parents in January 2015 and stayed at their home in Pennsylvania. In March 2015, his mother accused him of trying to break into a safe at his parents' home. When his father died in May 2016, Greiser learned from family members at the funeral that his sister told people that he had attempted to break into his parents' safe. His relationship with his mother never recovered.

Greiser believes that his sister convinced their father to change his will in 2015, before he died. In 2016, Greiser initiated an action in the Orphans' Court Division of the

Delaware County Court of Common Pleas to produce his father's wills and get an accounting of his father's estate. That Court identified two wills, from 2001 and 2015, and dismissed the action after noting that the sole beneficiary in both wills was Greiser's mother. Greiser believes that his sister lied and hid assets from the Orphans' Court, and that she has been using their mother's assets for her own gain.

Greiser's sister also became involved in the handling of the Whittier Towers litigation after their father died. In 2017, after years of litigation and mediation, Whittier Towers agreed to drop the lawsuit in a settlement agreement; Greiser was paid \$60,000 to agree to its terms. In exchange, Greiser's name was removed from the proprietary lease of Unit 210 and Greiser moved out of the unit. Greiser's mother later sold both units.

In 2018, Greiser initiated an action in the United States District Court for the Southern District of Florida, bringing state law claims against his sister and her husband, Paul Drinkard. Greiser continues to reside in Florida, while the Drinkards are Pennsylvania residents. The case was ultimately transferred to the United States District Court for the Eastern District of Pennsylvania.

After the transfer, the Drinkards moved to dismiss Greiser's amended complaint based on a service issue. Greiser moved for leave to file a second amended complaint, but he later withdrew his request. The District Court denied the Drinkards' first motion to dismiss, and Greiser sought reimbursement for service-related costs.

On the day before the Drinkards' answer or second motion to dismiss was due, Greiser filed another motion for leave to file a second amended complaint, as well as his

proposed second amended complaint, and on the following day, the Drinkards moved to dismiss. The District Court ultimately granted the Drinkards' motion, dismissing the claims in Greiser's amended complaint with prejudice, and denied Greiser's motion for leave to amend his complaint. The District Court also partially granted Greiser's motion for costs. Greiser moved for reconsideration, which was denied, and timely appealed.

## II.

We have jurisdiction over this appeal pursuant to 28 U.S.C. § 1291. We exercise plenary review over the District Court's dismissal of Greiser's amended complaint. See Fowler v. UPMC Shadyside, 578 F.3d 203, 206 (3d Cir. 2009). Dismissal is appropriate "if, accepting all well-pleaded allegations in the complaint as true and viewing them in the light most favorable to the plaintiff, a court finds that [the] plaintiff's claims lack facial plausibility."<sup>1</sup> Warren Gen. Hosp. v. Amgen Inc., 643 F.3d 77, 84 (3d Cir. 2011). We review the denial of a motion for reconsideration for abuse of discretion. See Max's Seafood Café ex rel. Lou-Ann, Inc. v. Quinteros, 176 F.3d 669, 673 (3d Cir. 1999).

## III.

We agree that dismissal of Greiser's amended complaint was appropriate.<sup>2</sup> First, Greiser brought four tort claims under Florida law against the Drinkards regarding the

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<sup>1</sup> "We may affirm on any ground supported by the record as long as the appellee[s] did not *wave* — as opposed to *forfeit* — the issue." TD Bank N.A. v. Hill, 928 F.3d 259, 276 n.9 (3d Cir. 2019).

<sup>2</sup> We note where Greiser made additional allegations in his proposed second amended complaint that relate to the claims against the Drinkards in his amended complaint.

sale of Units 210 and 214 at Whittier Towers. Greiser alleged unjust enrichment, wrongful conveyance and conversion, tortious interference with a contract, and tortious interference with a business relationship by the Drinkards.

Greiser cannot state a claim for unjust enrichment, as he has not alleged that he conferred a benefit on the Drinkards in the course of his mother's sale of the Whittier Towers apartments, and cannot state a claim for wrongful conveyance and conversion where he has not alleged that the Drinkards took control of the Whittier Towers units. See AgriTrade, LP v. Quercia, 253 So. 3d 28, 33 (Fla. Dist. Ct. App. 2017) (explaining that one element of unjust enrichment is that the "plaintiff has conferred a benefit on the defendant, who has knowledge thereof") (internal quotation marks and citation omitted); Belford Trucking Co. v. Zagar, 243 So. 2d 646, 648 (Fla. Dist. Ct. App. 1970) ("[C]onversion is . . . an act of dominion wrongfully asserted over another's property inconsistent with his ownership of it.").

Greiser also cannot state a claim for tortious interference with a contract or with a business relationship based on his conclusory allegations about his sister's influence on their mother's decisions. As the District Court explained, given the closely tied familial relationships in this matter, Greiser's allegations are not sufficient to allege "an intentional and unjustified interference with the relationship by the defendant[s]." Font & Nelson, PLLC v. Path Med., LLC, 317 So. 3d 134, 138-39 (Fla. Dist. Ct. App. 2021) (internal quotation marks and citation omitted).

Next, Greiser brought claims for tortious interference with an expectancy and fraudulent concealment and misrepresentation under Pennsylvania law, relating to his father's will. Greiser could not state a claim for tortious interference with an expectancy because he did not claim that his sister "used fraud, misrepresentation, or undue influence to [successfully] *prevent* execution of [his father's] intended will" in a situation where his father would have otherwise changed his will.<sup>3</sup> See Fiedler v. Spencer, 231 A.3d 831, 836 (Pa. Super. Ct. 2020) (emphasis added). He also could not state a claim for fraudulent concealment and misrepresentation based on allegations that his sister lied and withheld information during probate proceedings, as he does not allege that he acted in reliance on his sister's representations but rather that he contested them in court.<sup>4</sup> See Bortz v. Noon, 729 A.2d 555, 560 (Pa. 1999); Youndt v. First Nat'l Bank of Port Allegany, 868 A.2d 539, 545 (Pa. Super. Ct. 2005).

Greiser also brought claims for defamation by implication and defamation per se under Pennsylvania law. He claimed that his sister lied to their parents about him trying to break into their safe sometime before March 2015, and then again before their father's funeral in 2016. His proposed second amended complaint alleges that his sister has

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<sup>3</sup> Greiser sought to add a parallel claim in his proposed second amended complaint against his mother, but amendment would have been futile where he made no allegations that his mother prevented his father from executing an intended will.

<sup>4</sup> In addition to restating these allegations against his sister in his proposed second amended complaint, Greiser sought to bring a parallel fraud claim against his mother, but amendment would have been futile where Greiser made no allegations that he relied on his mother's representations.

continued to lie about the safe during the course of proceedings in the District Court and that she has continued to tell others that he is trying to steal from his mother.

An action for defamation or slander under Pennsylvania law is subject to a one-year statute of limitations. 42 Pa. Cons. Stat. § 5523(1). It is apparent from the face of Greiser's complaint that the alleged statements he identified were uttered, at the latest, at his father's funeral in 2016, but he brought his action in the District Court in 2018.<sup>5</sup> To the extent that Greiser additionally alleged in his proposed second amended complaint that his sister continued to accuse him of stealing to unidentified individuals at unidentified times after their father's funeral, such allegations would be too vague to allow his claims to survive dismissal. See Jaindl v. Mohr, 637 A.2d 1353, 1358 (Pa. Super. Ct. 1994) ("A complaint for defamation must, on its face, identify exactly to whom the allegedly defamatory statements were made."). Accordingly, we agree with the District Court's dismissal of Greiser's amended complaint.<sup>6</sup>

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<sup>5</sup> A statute of limitations is an affirmative defense that normally must be raised in an answer to the complaint. See Fed. R. Civ. P. 8(c). "However, the law of this Circuit . . . permits a limitations defense to be raised by a motion under Rule 12(b)(6) . . . if the time alleged in the statement of a claim shows that the cause of action has not been brought within the statute of limitations." Robinson v. Johnson, 313 F.3d 128, 135 (3d Cir. 2002) (internal quotation marks and citations omitted). "If the bar is not apparent on the face of the complaint, then it may not afford the basis for a dismissal of the complaint under Rule 12(b)(6)." Id. (citation omitted).

<sup>6</sup> Greiser brought one additional claim for intentional infliction of emotional distress in his amended complaint, but because he did not raise or discuss it in his opening appellate brief, he has forfeited any challenge to the disposition of that claim. See United States v. Pelullo, 399 F.3d 197, 222 (3d Cir. 2005). We note that Greiser discusses the claim in his



Further, we conclude that the District Court did not abuse its discretion or otherwise err in denying Greiser’s renewed request to file a second amended complaint.<sup>7</sup> See Grayson v. Mayview State Hosp., 293 F.3d 103, 108 (3d Cir. 2002). Amendment would have been futile for new claims of breach of contract and promissory estoppel against Greiser’s mother and his father’s estate — new defendants to the action — based on his allegations regarding the Whittier Towers units. Such claims, premised on allegations of an oral contract, would be barred by Florida’s statute of frauds, as the District Court explained. See Fla. Stat. § 725.01; see also Stamer v. Free Fly, Inc., 277 So. 3d 179, 182 (Fla. Dist. Ct. App. 2019) (“Florida law is clear that promissory estoppel is not an exception to the statute of frauds.”).

Greiser also sought to add new claims against his mother and sister for wrongful use of civil proceedings and abuse of process under Pennsylvania law, based on new allegations that Greiser’s mother and sister sought and received temporary protection

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reply brief, but we do not “reach arguments raised for the first time in a reply brief.” See Barna v. Bd. of Sch. Dirs. of Panther Valley Sch. Dist., 877 F.3d 136, 146 (3d Cir. 2017).<sup>7</sup> Greiser argues that the District Court erred in ruling on defendants’ motion to dismiss before considering his renewed request to file a second amended complaint. However, he provides no support for the proposition that the District Court should have considered the parties’ motions in the order he would have preferred. As we have explained, “matters of docket control . . . are committed to the sound discretion of the district court,” and “[w]e will not interfere with a trial court’s control of its docket except upon the clearest showing that the procedures have resulted in actual and substantial prejudice to the complaining litigant.” In re Fine Paper Antitrust Litig., 685 F.2d 810, 817 (3d Cir. 1982) (internal quotation marks and citations omitted). Greiser was on notice of defendants’ motion to dismiss and had a full opportunity to contest it. Further, Greiser had previously moved for leave to file a second amended complaint earlier in the litigation, but withdrew his request only to renew it one day before defendants’ motion to dismiss was due.

from abuse (“PFA”) orders against him in September 2019, alleging that he had threatened them. Ultimately, they each withdrew those petitions and their cases were dismissed, while Greiser withdrew a counterclaim against his sister.<sup>8</sup> Allowing Greiser to amend his complaint to add these claims would have been futile where he did not make allegations to state a claim, for the reasons given by the District Court. See Lerner v. Lerner, 954 A.2d 1229, 1238 (Pa. Super. Ct. 2008) (“[T]here is no liability [for abuse of process] where the defendant has done nothing more than carry out the process to its authorized conclusion, even though with bad intentions.”) (citation omitted); 42 Pa. Cons. Stat. § 8351(a) (providing that to state a claim for wrongful use of civil proceedings, a plaintiff must allege that a defendant acted “in a grossly negligent manner or without probable cause and primarily for a purpose other than that of . . . adjudication of the claim in which the proceedings are based,” and that the proceedings terminated in favor of the person against whom they were brought).

Greiser included two remaining claims against his mother and his father’s estate in his proposed amended complaint. Greiser first contended that he was owed about \$4000<sup>9</sup>

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<sup>8</sup> Greiser makes no mention of this counterclaim in his factual allegations, but a counterclaim is discussed in the order dismissing Greiser’s sister’s petition, which Greiser attached to his proposed amended complaint. See Davis v. Wells Fargo, 824 F.3d 333, 341 (3d Cir. 2016) (explaining that in evaluating whether a Rule 12(b)(6) dismissal was appropriate, we may examine “exhibits attached to the complaint, matters of public record, as well as undisputedly authentic documents if the complainant’s claims are based upon these documents”) (citation omitted).

<sup>9</sup> This amount was included in a letter from Greiser’s attorney that Greiser attached to his proposed amended complaint. See Davis, 824 F.3d at 341.

based on a written contract with his mother stating that he was entitled to certain proceeds when Whittier Towers Unit 210 was sold. He also maintained that his parents were unjustly enriched when he performed renovation work in Unit 214. It would have been inequitable to permit Greiser to pursue two new claims worth less than \$75,000 in damages against two new defendants nearly two years into this diversity action.

See Grayson, 293 F.3d at 108; see also Fed. R. Civ. P. 15(a)(2). We thus perceive no abuse of discretion in denying Greiser leave to amend to add these claims.

Next, the District Court did not abuse its discretion in denying Greiser's motion for reconsideration. See Max's Seafood Café, 176 F.3d at 673. Greiser sought reconsideration in part based on a document he had acquired indicating that he received a homestead property tax exemption from 2012-2016. As the District Court noted, Greiser could have provided that document earlier, and he could have made factual allegations about this document at any time, as he claims to have filed it himself. Greiser provided no further allegations that would have prevented dismissal of his claims.

Finally, Greiser claims that the District Court should have fully granted his request for costs associated with litigating several service-related motions. We see no error in the District Court's decision to deny costs for Greiser's subscriptions to legal research services for several years, case filing fees, and non-itemized litigation expenses. See Fed. R. Civ. P. 4(d)(2).

For these reasons, we will affirm the judgment of the District Court.<sup>10</sup>

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<sup>10</sup> We grant Greiser's requests to file an overlong brief and to file the second volume of his joint appendix out of time.