In the

United States Court of Appeals

For the Seventh Circuit

No. 22-1359

KAP HOLDINGS, LLC, doing business as PARTSCRIPTION,

Plaintiff-Appellant,

v.

MAR-CONE APPLIANCE PARTS CO.,

Defendant-Appellee.

Appeal from the United States District Court for the
Northern District of Illinois, Eastern Division.
No. 1:21-cv-05648 — **Joan H. Lefkow**, *Judge*.

ARGUED OCTOBER 26, 2022 — DECIDED DECEMBER 12, 2022

Before ROVNER, HAMILTON, and BRENNAN, *Circuit Judges*.

BRENNAN, *Circuit Judge*. This case concerns a purported multi-million-dollar contract between two companies that sell and distribute replacement parts for appliances. For years, KAP Holdings, LLC, doing business as PartScription, and Mar-Cone Appliance Parts Company ("Marcone") contemplated forming a business association. But the businesses never combined, and now PartScription seeks to recover from Marcone for breach of an agreement to form a partnership.

The district court decided that PartScription failed to plausibly allege an enforceable contract and dismissed the complaint with prejudice. PartScription appeals that dismissal as error. In the alternative, PartScription argues that it should have been allowed to amend its complaint. We disagree. Because PartScription's complaint fails to plausibly allege a valid contract, and amendment would be futile, we affirm the district court's judgment.

I

PartScription's business centers around its e-commerce platform, which allows stores to place orders online for parts and other products. Tens of thousands of hardware stores are "loaded into" PartScription's platform and utilize its network of suppliers. Marcone operates in the same industry and is one of the country's largest wholesalers for replacement appliance components.

In 2006 before PartScription formally existed, Kevin Price—PartScription's eventual founder—approached Marcone and pitched using e-commerce in the appliance parts industry. Price and Marcone entered into a non-disclosure agreement while evaluating the concept, but no partnership resulted. Price then independently created PartScription. Roughly a decade later in 2017, Price restarted talks with Marcone executives about a potential business relationship, but those efforts stalled as well.

Not until late 2018 did PartScription and Marcone make discernable progress in their discussions. In November of that year, Marcone's Chief Executive Officer, Jim Souers, invited Price to Marcone's headquarters, and proposed that PartScription and Marcone form a "50-50" partnership. Price

accepted, and the two men shook hands on the idea. From there, Price drafted a term sheet for the contemplated partnership and sent it to Marcone's Senior Vice President, Dave Cook, for review with a copy to Souers. The first line of the term sheet states "PartScription and Marcone (PSM) have agreed to form a partnership/joint venture to serve the independent hardware industry." Other terms address marketing, market strategy, profit sharing, and the like.

Negotiations continued and coalesced around the term sheet. In a January 22, 2019, conference call, Price, Cook, and Marcone's Chief Operating Officer, Avichal Jain, discussed the term sheet's language. During the call, according to the complaint the Marcone representatives "stated that they approved of the terms outlined in the Term Sheet," and offered only one discrete change regarding a joint bank account provision. Some days later Price sent a follow-up email to Jain and Cook saying that his meeting notes indicated "Marcone ha[d] approved the terms outlined in the draft PSM term sheet" and asking whether they needed to memorialize the agreement. No further memorialization took place, but Price delivered a slide presentation to Marcone's vice president of Information Technology in February. The presentation covered certain technical details about the integration of PartScription's platform with Marcone's platform. This was the last substantive meeting between the parties.

Price sent several emails to Marcone representatives to which they were increasingly unresponsive. For instance, Jain calendared a meeting for March 2019 but cancelled it because "Some urgent matter [had] come up." Similarly, Jain informed Price in the spring of 2019 that Marcone was busy with a "couple of very high priority initiatives" and would be

preoccupied for several months. Marcone never revisited the proposed partnership with PartScription.

In 2021, PartScription filed suit for breach of contract in Illinois state court. Marcone timely removed the case to federal court pursuant to diversity jurisdiction. 28 U.S.C. §§ 1441, 1332.[1] The district court ultimately granted Marcone's Rule 12(b)(6) motion, dismissed the complaint with prejudice, and entered judgment. Thereafter, PartScription moved the district court under Federal Rule of Civil Procedure 59(e) for reconsideration of the dismissal order or, in the alternative, for leave to amend its complaint. The district court denied that motion, finding that any amendment would be futile.

PartScription seeks review of the dismissal of its complaint and denial of its Rule 59(e) motion.

II

PartScription alleges breach of contract. We evaluate that claim under Illinois substantive law because Marcone removed this case to the Northern District of Illinois under diversity jurisdiction and no party raises a conflict of law issue. *Citadel Grp. Ltd. v. Wash. Reg'l Med. Ctr.*, 692 F.3d 580, 587 n.1 (7th Cir. 2012) ("'[W]hen neither party raises a conflict of law issue in a diversity case, the federal court simply applies the law of the state in which the federal court sits.'") (quoting *Wood v. Mid-Valley Inc.*, 942 F.2d 425, 426 (7th Cir. 1991)); *Munoz v. Nucor Steel Kankakee, Inc.*, 44 F.4th 595, 599 n.3 (7th

[1] PartScription and Marcone have complete diversity for purposes of 28 U.S.C. § 1332. PartScription is an Illinois limited liability company with two members, both of whom are Illinois citizens. Marcone is a Missouri corporation with its principal place of business in Missouri.

Cir. 2022) (citing *RLI Ins. Co. v. Conseco, Inc.*, 543 F.3d 384, 390 (7th Cir. 2008)).

Under Illinois law, "The elements of a breach of contract claim are: (1) the existence of a valid and enforceable contract; (2) performance by the plaintiff; (3) breach of contract by the defendant; and (4) resultant injury to the plaintiff." *Henderson-Smith & Assocs., Inc. v. Nahamani Fam. Serv. Ctr. Inc.*, 752 N.E.2d 33, 43 (Ill. App. Ct. 2001) (citing *Gallagher Corp. v. Russ*, 721 N.E.2d 605, 611 (Ill. App. Ct. 1999)); *Smith v. Jones*, 497 N.E.2d 738, 740 (Ill. 1986). As a result, PartScription cannot plead a breach of contract claim unless it plausibly alleges the existence of a valid and enforceable contract.

The elements of a valid and enforceable contract are "offer, acceptance and consideration." *Fuqua v. SVOX AG*, 13 N.E.3d 68, 80 (Ill. App. Ct. 2014) (citing *All Am. Roofing, Inc. v. Zurich Am. Ins. Co.*, 934 N.E.2d 679, 689 (Ill. App. Ct. 2010)); *Melena v. Anheuser-Busch, Inc.*, 847 N.E.2d 99, 109 (Ill. 2006) ("In Illinois, an offer, an acceptance and consideration are the basic ingredients of a contract.") (citation omitted). Relatedly, there can only be a binding offer and acceptance when the parties mutually assent to definite and certain terms. "To be enforceable, the material terms of a contract must [ ] be definite and certain. 'The terms of a contract will be found to be definite and certain … if a court is able to ascertain what the parties agreed to … .'" *Szafranski v. Dunston*, 34 N.E.3d 1132, 1147 (Ill. App. Ct. 2015) (citation omitted) (quoting *Bruzas v. Richardson*, 945 N.E.2d 1208, 1215 (Ill. App. Ct. 2011)).

This framework affords certain flexibility, and "[a] contract may be enforced even though some contract terms may be missing or left to be agreed upon." *Acad. Chi. Publishers v. Cheever*, 578 N.E.2d 981, 984 (Ill. 1991) (citation omitted). But

there can be no binding contract when "the essential terms are so uncertain that there is no basis for deciding whether the agreement has been kept or broken." *Id.* Hence, definite and certain terms are indispensable.

We pause here to identify PartScription's specific allegations under Illinois contract law. PartScription's complaint does not allege that Marcone breached a partnership agreement. In fact, PartScription acknowledges that it "has made no allegation that a partnership was actually formed." Instead, PartScription seeks to recover for breach of an "executory agreement to form a partnership." In essence, PartScription claims that Marcone reneged on its promise to form a partnership.

The form of contract that PartScription alleges existed may be unusual, but it can be valid under Illinois law.[2] In *Wilson v. Campbell*, the Illinois Supreme Court recognized that parties can enter a binding agreement to form a partnership separate and apart from a partnership agreement. 10 Ill. 383, 402 (Ill. 1848). That court explained: "A mere agreement to form a partnership does not of itself create a partnership." *Id.* Rather, it creates obligations on the contracting parties distinct from the partnership form: "The parties must enter on the execution of the agreement before the relation of partners exists between them." *Id.* And failure of a party to satisfy the agreement terms "[w]hile the agreement remains executory," generates an "action at law for the violation of the agreement." *Id.*

More than one hundred years later, an Illinois appellate court confirmed that such an oral agreement to form a partnership can be enforceable. In *Rankin v. Hojka*, the court

[2] The district court reached the same conclusion.

acknowledged, "An agreement to form a partnership does not of itself create a partnership, and where one party refuses to carry the executory agreement into effect, an action at law will lie for the breach." 355 N.E.2d 768, 774 (Ill. App. Ct. 1976) (citation omitted) (citing *Wilson*, 10 Ill. 383). As a result, PartScription's contract theory could be cognizable under state law, at least if the parties orally agreed to sufficiently definite terms.

With that legal framework in mind, we turn to PartScription's complaint. Taking all the factual allegations as true and drawing inferences in PartScription's favor, the district court properly dismissed the complaint. We agree that PartScription's complaint fails to allege facts that support the existence of an enforceable agreement. Consequently, even if negotiations unfolded precisely as PartScription suggests, a wide range of material terms remain undecided, and there is no contract as a matter of law.

The district court dismissed PartScription's complaint under Rule 12(b)(6), so our review is de novo. *Levy v. West Coast Life Ins. Co.*, 44 F.4th 621, 626 (7th Cir. 2022). When examining a motion to dismiss, we accept as true all well-pleaded facts in the complaint and draw reasonable inferences in favor of the plaintiff. *Pierce v. Zoetis, Inc.*, 818 F.3d 274, 277 (7th Cir. 2016) (citation omitted). "[B]ut legal conclusions and conclusory allegations merely reciting the elements of the claim are not entitled to this presumption of truth." *McCauley v. City of Chicago*, 671 F.3d 611, 616 (7th Cir. 2011) (citing *Ashcroft v. Iqbal*, 556 U.S. 662, 680–81 (2009)).

To avoid dismissal, "the complaint must 'state a claim to relief that is plausible on its face.'" *Bancorpsouth, Inc. v. Fed. Ins. Co.*, 873 F.3d 582, 586 (7th Cir. 2017) (quoting *Iqbal*, 556

U.S. at 678). There is no rigid reference point for the plausibility inquiry; the determination is context-specific and "requires the reviewing court to draw on its judicial experience and common sense." *Iqbal*, 556 U.S. at 679. At bottom, "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* at 678; *see also Benson v. Fannie May Confections Brands, Inc.*, 944 F.3d 639, 644 (7th Cir. 2019).

PartScription contends the district court erred in granting Marcone's motion to dismiss. Per PartScription, its complaint plausibly alleges a claim for breach of contract and adequately identifies definite and certain terms between itself and Marcone. According to PartScription, the parties reached an agreement on November 1, 2018, to form a "50-50" partnership. Price subsequently memorialized that accord in a term sheet, which all parties orally agreed to (with only one slight modification) during the January 22, 2019, conference call. When asked at oral argument about the alleged agreement, PartScription's counsel explained, "The term sheet confirms that the parties agreed to form a partnership. It sets forth the terms of how to form the partnership."[3] Ergo, PartScription claims, the parties created a binding contract when they agreed to the term sheet language on January 22.[4] Marcone disagrees, responding that the term sheet "does not set forth any obligations for Marcone or PartScription to execute in forming the purported partnership." The question of whether

[3] Oral Arg. at 4:17–30.

[4] Oral Arg. at 5:36–57.

PartScription alleges definite and certain terms turns chiefly on the contents of the term sheet.

The first line of the term sheet states "PartScription and Marcone (PSM) have agreed to form a partnership/joint venture to serve the independent hardware industry." That passage confirms the parties planned to do business together, but it does not independently form a contract. For a legally binding agreement to be formed, there must be definite and certain terms for performance. *Szafranski*, 34 N.E.3d at 1147. The rest of the term sheet falls short of that requirement.

Though the parties generally agreed to form a partnership or joint venture, "[t]he exact legal structure" was yet to be determined. Even if a partnership and a joint venture share common legal characteristics, the legal form of the contemplated business is an important outstanding term. The rest of the term sheet fares no better. Many sections use aspirational words that neither resemble contract language nor identify clear, binding obligations. Several sentences begin with what the hypothetical partnership "would" or "will" do in the future:

> [T]he PSM partnership *would* serve all current and future hardware store Affiliates … .
>
> PSM *would* integrate PartScription's current multi-category parts selection … .
>
> Marcone *would* provide all Marketing, Product Strategy, Field Sales & Support … .
>
> PSM *would* jointly set strategy, operational standards and planning for all activities … .

> Marcone's platform *shall become* the fully integrated source for PSM … .
>
> The functions to be provided *should be* world class … .

Such language does not evidence the parties' intent to be bound.

Other parts of the term sheet identify general next steps but leave essential terms missing or undecided. For example, the term sheet states, "Marcone must execute a non-disclosure agreement to adequately protect PSM and its access to hardware store data entrusted to PartScription." But the parties never agreed to specific terms for the non-disclosure agreement.[5] The term sheet also contemplates a return policy unique to Ace Hardware but states the policy "will be addressed separately." Importantly, the document reveals no timeline on which PartScription and Marcone were to allegedly perform their obligations. Language in the term sheet also expressly contemplates a future writing filling out the agreement between PartScription and Marcone: "[T]he final documents evidencing the structure of the partnership shall contain standard and customary provisions that each of PartScription and Marcone shall retain the ownership of their respective intellectual property … ."

PartScription argues against these facts and repeatedly contends that "the only step required of Marcone to carry out its end of the executory agreement to form the partnership was to cooperate in the agreed step of integrating the e-commerce platforms." Assuming we could construe the alleged

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[5] *See* Oral Arg. at 10:22–11:50.

"cooperation" requirement as an enforceable obligation, the term sheet does not support PartScription's characterization. PartScription points to term sheet language that "PSM would integrate PartScription's current multi-category parts selection … into Marcone's most sophisticated platform environment to provide unparalleled capabilities and service." And "Marcone's platform shall become the fully integrated source for PSM, including all current and future product categories." But even setting aside the marketing vocabulary in those provisions, that cited language reveals no binding obligations between PartScription and Marcone. Those sections merely highlight what the parties hoped their partnership might become in the future—i.e., what PSM "would" do or could "become"—but stop short of binding the parties in contract. The language is descriptive, not promissory.

A party can agree to a plan. But it is something else for a party to promise performance and intentionally bind itself in a legally enforceable manner. The plain language of the term sheet shows no intent to do the latter. Without identifying definite and certain terms, PartScription cannot plausibly allege the existence of a legally binding contract. *Acad. Chi. Publishers*, 578 N.E.2d at 984 ("An enforceable contract must include a meeting of the minds or mutual assent as to the terms of the contract."). We therefore hold that the district court decided correctly that the term sheet "does not contain definite and certain obligations for either party to execute in forming PSM."

Looking beyond the term sheet to the rest of PartScription's complaint, we similarly hold that no other allegations provide the missing definite and certain terms. PartScription does not claim that the parties orally agreed to more detailed

terms at the November 1 meeting than are identified in the term sheet. Nor does PartScription identify any communications or interactions after the January 22 call that furnish definite and certain terms, including the February 12 technical meeting. Without such terms, PartScription cannot plausibly allege the existence of a valid contract.

PartScription's other arguments are also unpersuasive. According to PartScription, this case cannot be resolved on a motion to dismiss because there is ambiguity regarding the parties' intent to be bound. It is true that this court "must initially determine, as a question of law, whether the language of a purported contract is ambiguous as to the parties' intent." *Quake Constr. Inc. v. Am. Airlines, Inc.*, 565 N.E.2d 990, 994 (Ill. 1990). And "If the language of an alleged contract is ambiguous regarding the parties' intent, the interpretation of the language is a question of fact which a [ ] court cannot properly determine on a motion to dismiss." *Id.* But no such ambiguity exists here.

Preliminary negotiations can be enforceable if parties so intend, but that intent must be discerned from the text of the relevant instrument. *Id.* Here, that instrument is the written term sheet to which Marcone representatives orally agreed. If that document reveals no ambiguity, "the parties' intent must be derived by the [ ] court, as a matter of law, solely from the writing itself." *Id.*; *see also People ex. rel. Dept. of Pub. Health v. Wiley*, 843 N.E.2d 259, 268 (Ill. 2006) ("The construction of a contract is a question of law."); *Farm Credit Bank of St. Louis v. Whitlock*, 581 N.E.2d 664, 667 (Ill. 1991) ("The intention of the parties to contract must be determined from the instrument itself, and construction of the instrument where no ambiguity exists is a matter of law.").

There is no ambiguity in the term sheet because its text reveals no objective intent of the parties to be bound. The document contains only aspirational language and, as discussed above, is missing definite and certain terms regarding obligations owed. Neither the text nor the format of the term sheet suggests it was intended to be a binding legal document. So, the parties' oral agreement to the language of the term sheet did not create a contract.

We addressed a comparable situation in *Empro Manufacturing Co. v. Ball-Co Manufacturing, Inc.*, 870 F.2d 423, 424 (7th Cir. 1989). There, the two sides signed a three-page letter of intent, which identified a purchase price but contemplated a later, "formal, definitive Asset Purchase Agreement signed by both parties." *Id.* When Ball-Co began negotiating with other potential buyers, Empro filed suit to enforce the letter of intent. *Id.* After the district court dismissed the complaint, Empro appealed and insisted its allegations raised a question of fact. *Id.* at 424–25. Per Empro, "the binding effect of a document depends on the parties' intent, which means that the case may not be dismissed." *Id.* Applying Illinois law, we rejected Empro's position and held that its approach to contract law would deal "a devastating blow to business." *Id.* at 425. This court explained that "'intent' in contract law is objective rather than subjective." *Id.* And while "Parties may decide for themselves whether the results of preliminary negotiations bind them, [ ] they do [so] through their words." *Id.* (citation omitted).

Here, the words of the term sheet reveal no ambiguity as to the parties' intent. The document speaks of general goals—not obligations—and it fails to identify definite and certain terms binding PartScription and Marcone. It does not

adequately establish that the parties promised anything to one another, precluding a determination of whether each party lived up to its side of the bargain. So, like *Empro Manufacturing Co.*, this case is properly resolved at the motion to dismiss stage.

As we explained in *Empro Manufacturing Co.*, "Letters of intent and agreements in principle often, and here, do no more than set the stage for negotiations on details. Sometimes the details can be ironed out; sometimes they can't." *Id.* at 426. Yet Illinois law "allows parties to approach agreement in stages, without fear that by reaching a preliminary understanding they have bargained away their privilege to disagree on the specifics." *Id.* We do not deny that Price and Marcone representatives engaged in serious negotiations, but they were only preliminary. The November handshake and ensuing term sheet credibly demonstrate that the parties were considering going into business together. Nevertheless, PartScription's complaint does not plausibly allege anything beyond that conclusion. The parties' agreement to the term sheet did not create a valid contract.

Borg-Warner Corp. v. Anchor Coupling Co., which PartScription cites, is not to the contrary. 156 N.E.2d 513 (Ill. 1958). There, defendants sent plaintiff Borg-Warner a detailed option offer, which cabined a few terms to be decided upon later. *Id.* at 514–15. The defendants assured Borg-Warner that if it accepted the option in the time allotted, they were "willing to enter into a contract" based on the terms in the letter. *Id.* at 515. After Borg-Warner undertook an expensive survey of the target company in reliance on the letter, it formally accepted the offer. *Id.* at 515, 517 The defendants refused to consummate the transaction, and Borg-Warner sued. *Id.* at 515.

Reviewing the case, the Supreme Court of Illinois determined that the letter contained enough definite terms to plausibly create a binding contract. *Id.* at 518. Per that court, the letter indicated that the parties agreed upon the purchase price and many additional terms of sale. *Id.* at 514, 517–18. The identified open terms were also not so material as to "preclude the existence of an enforceable contract" as a matter of law. *Id.* at 517. Still, the court recognized that there was ambiguity as to the parties' intentions for the designated open terms. Specifically, it was unclear whether or not the parties intended to resolve the "four very minor" open terms as a condition precedent to contract formation. *Id.* at 515–16. Answering that ambiguity required a trier of fact. *Id.* at 517–18.

This case's facts differ from those of *Borg-Warner*. There, the court determined that the letter of intent contained enough definite and certain terms as to plausibly constitute a contract. *Id.* at 516–17. Indeed, the court stated, "We are of the opinion that on the allegations of the complaint, the trier of fact could find that there was a binding contract of sale in the instant case." *Id.* at 518. It was plausible from the complaint in that case that the parties had executed a contract; the only question was how to interpret the parties' intent with respect to the minor open terms.

Here, the complaint, which fails to adequately plead definite and certain terms, falls short of plausibly alleging the existence of a valid and enforceable contract. Unlike the facts of *Borg-Warner*, the term sheet and surrounding conversations do not leave just a few immaterial terms undecided. Instead, the term sheet speaks in nonbinding expository language, and the complaint otherwise fails to identify concrete obligations between the parties.

A final case, *Rankin v. Hokja*, merits discussion, because it demonstrates how definite and certain terms operate in the context of an agreement to form a partnership. 355 N.E.2d 768 (Ill. App. Ct. 1976). Two men "agreed to form a joint venture," and exchanged reciprocal promises to that effect. *Id.* at 770. Plaintiff Rankin promised to supervise construction of the business's building, obtain a tenant, and pay a disputed amount of cash into the joint venture; for his part, defendant Hojka pledged to convey a parcel of land into a trust jointly owned with Rankin. *Id.* The agreement there resulted in litigation when Hojka refused to transfer the land and claimed that Rankin had not paid his promised share of cash. *Id.* at 770–72. After a bench trial, the state court found that the parties had formed a valid contract, that Rankin had substantially performed, and that Hojka had breached his obligations. *Id.* at 772. On review, the Illinois appellate court affirmed those findings. *Id.* at 777.

The *Rankin* case features the kind of concrete terms missing from this case. Both parties took on definite obligations through their oral agreement to form the joint venture. *Id.* at 770. The dispute in *Rankin* was over the details of a particular term—how much cash Rankin promised to contribute. The existence of a contract was established. *Id.* at 770, 772–73. Here, the term sheet fails to identify any concrete, definite obligations owed between PartScription and Marcone analogous to those in *Rankin*, so there is no contract as a matter of law.

The district court held that PartScription's complaint "does not allege an enforceable agreement to form a partnership," and we agree. Taking all PartScription's allegations as true, the complaint falls short of plausibly alleging a breach of

contract claim. Given that PartScription fails to allege the existence of a valid contract, we do not examine the other elements of the breach of contract claim, such as performance, breach, and damages.

III

We review next PartScription's request to amend its complaint. As stated, the district court dismissed PartScription's original complaint with prejudice and entered final judgment. In doing so, the district court did not allow PartScription an opportunity to amend its complaint. With final judgment entered, PartScription filed a motion under Federal Rule of Civil Procedure 59(e) seeking reconsideration of the district court's dismissal order, or in the alternative, leave to amend the complaint. PartScription included a proposed amended complaint with its motion. The district court denied that motion as well, finding that any amendment would be futile.

This court reviews a district court's "denial of a Rule 59(e) motion for reconsideration and denial of a motion for leave to amend for abuse of discretion." *O'Brien v. Vill. of Lincolnshire*, 955 F.3d 616, 628 (7th Cir. 2020) (citation omitted). Generally, Rule 59(e) relief is considered extraordinary, but "we still review post-judgment motions for leave to amend according to Rule 15 in situations, like this one, where a district court enters judgment at the same time it first dismisses a case." *NewSpin Sports, LLC v. Arrow Elecs., Inc.*, 910 F.3d 293, 310 (7th Cir. 2018) (citation omitted). This is because a district court's simultaneous dismissal of a complaint and entry of judgment forecloses a plaintiff from seeking amendment via Rule 15(a). *O'Brien*, 955 F.3d at 629 (citing *NewSpin Sports*, 910 F.3d at 310). PartScription was not afforded a chance to amend before

the district court entered judgment, so the Rule 15 standard governs.

Rule 15(a) provides that a court "should freely give leave [to amend] when justice so requires." FED. R. CIV. P. 15(a)(2). Regardless, a district court may deny leave to amend if amendment would be futile. *Gen. Elec. Cap. Corp. v. Lease Resol. Corp.*, 128 F.3d 1074, 1085 (7th Cir. 1997); *Foman v. Davis*, 371 U.S. 178, 182 (1962). The district court made that precise finding, and we now review its analysis.

When evaluating a district court's denial of leave to amend based on futility, we apply "the legal sufficiency standard of Rule 12(b)(6) to determine whether the proposed amended complaint fails to state a claim." *Runnion ex rel. Runnion v. Girl Scouts of Greater Chi. & Nw. Ind.*, 786 F.3d 510, 524 (7th Cir. 2015). Consequently, our review of whether the district court abused its discretion "includes *de novo* review of the legal basis for the futility." *Nowlin v. Pritzker*, 34 F.4th 629, 635 (7th Cir. 2022) (quoting *Runnion*, 786 F.3d at 524).

After review of PartScription's proposed amended complaint, we agree with the district court that amendment is futile. Simply put, the additions fail to provide the missing definite and certain terms. At most, the proposed amended complaint offers supplemental information about what the parties considered to be important next steps. For instance, one new section reads: "[The parties] discussed that the only additional steps required of Marcone to form the new PSM partnership according to the Term Sheet would be to cooperate with PartScription in integration of PartScription's customers and vendors into Marcone's existing platform … ." That language describes a conversation, but it does not allege that the parties promised to undertake obligations. Because

amendment would be futile, the district court properly denied PartScription's Rule 59(e) motion.

* * *

For these reasons, we AFFIRM the judgment of the district court.