

NONPRECEDENTIAL DISPOSITION
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United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

Argued February 16, 2024
Decided February 5, 2025

Before

KENNETH F. RIPPLE, *Circuit Judge*

MICHAEL B. BRENNAN, *Circuit Judge*

CANDACE JACKSON-AKIWUMI, *Circuit Judge*

No. 23-2455

ROBERT OLSON,
Plaintiff-Appellant,

v.

RANDSTAD HR SOLUTIONS OF
DELAWARE LLC, et al.,
Defendants-Appellees.

Appeal from the United States District
Court for the Eastern District of Wisconsin.

No. 2:23-cv-00509

Lynn Adelman,
Judge.

ORDER

When a recruiter at Randstad HR Solutions decided not to submit Robert Olson's resume to West Bend Mutual Insurance Company, Olson thought he was the victim of discrimination. He sued both companies, alleging a litany of federal and state causes of action. The district court decided that none of Olson's allegations crossed the plausibility threshold and dismissed his complaint. We agree and affirm.

I

We accept the factual allegations in Olson's complaint as true and recount the facts in his favor for the purpose of this appeal. *See Proft v. Raoul*, 944 F.3d 686, 690 (7th Cir. 2019). On January 25, 2023, the recruiting firm Randstad solicited Olson's resume via email for a position with West Bend Mutual Insurance Company ("WBMI"). Olson replied expressing interest and attaching his resume.

In a follow up email the next day, Randstad recruiter Mike Hanson told Olson that his resume was "what we were looking for!! [sic]," but Hanson's account manager, Blake Reed, had questions about Olson's suitability. As Hanson explained in the email, Reed observed that "a lot of [Olson's] experience is consulting and having his own companies" and wondered why Olson had not worked for the past eight months. Reed also questioned why Olson was looking for a permanent role given his employment history, and noted that "WBMI can be reluctant to take contractors/consultants." In reply, Olson explained that he did not want the stress of owning a company and was looking for a more stable job. He also explained that he had not worked since April because he lived with his 90-year-old mother, who required his care, and his brother.

On February 1, 2023, Hanson told Olson via email that Reed had decided against submitting Olson's resume to WBMI. Olson responded by, as written in his complaint, "send[ing] a series of emails to Mr. Hanson, insulting Mr. Hanson and casting aspersions upon Mr. Reed for the purpose of soliciting a response from Mr. Hanson and/or Mr. Reed" about why Randstad did not submit his resume.

When Olson's contentious emails failed to bear fruit, he sent another email, this time to Randstad's General Counsel, Jay Ferguson. The email notified Ferguson that Olson was investigating age discrimination and other possible legal claims. Ferguson referred the matter to Randstad's human resources personnel, who told Olson on a phone call that Randstad had not submitted his resume to WBMI because Olson "had a history of 'consulting' work and had not worked since April 2022." Olson then emailed Ferguson "offer[ing] to settle the claims" that Olson planned to bring. Ferguson declined that offer. Olson also sent WBMI's legal department a copy of the complaint he intended to file and a letter claiming that Randstad and WBMI had discriminated against him. WBMI's attorneys likewise declined to settle.

On March 23, 2023, Olson filed a complaint in Wisconsin state court raising thirteen claims against Randstad and WBMI (collectively "defendants"). Four claims

alleged violations of federal law. Olson first claimed age discrimination in violation of the Age Discrimination in Employment Act of 1967. He alleged that the defendants calculated his age from the college and law school graduation dates on his resume and rejected him because, “[u]pon information and belief,” WBMI does not hire people “over the age of forty (40) years old.”

Next, Olson claimed that the defendants discriminated against him as a gay man in violation of the Civil Rights Act of 1964. According to Olson, the defendants inferred that he was gay after he told them that he lived with his brother and mother and refused to consider him for employment as a result.

Third, Olson accused the defendants of discriminating against him for having diabetes in violation of the Americans with Disabilities Act. He theorized that Randstad and WBMI found out about his diabetes from a urine drug test he took in 2022 to interview with a company called Coforge. According to Olson, Coforge discovered from the urine test that Olson had diabetes and, as a business partner to WBMI, conveyed that information to WBMI.

Fourth, Olson claimed the defendants violated the Health Insurance Portability and Accountability Act. He abandoned that claim in the district court, and it does not impact this appeal.

Olson also brought nine state law claims against the defendants. First, he claimed defamation, although he did not identify any specific false or defamatory statements. In the second, third, and fourth state law claims, he alleged that the defendants used fraud and misrepresentation to obtain his personal data and then misused that data without his consent. Fifth, Olson alleged intentional infliction of emotional distress. Sixth, he alleged that, “some years ago,” the defendants breached “various online digital agreements” whose terms he did not know. Seventh, he claimed that the defendants breached an implied contract when they failed to consider him for employment. Eighth, he claimed invasion of privacy for illegally obtaining his personal data. And ninth, he alleged civil conspiracy based on the previous allegations. Olson also alleged that the defendants engaged in age discrimination in violation of state law, but he later abandoned that claim in the district court.

Randstad and WBMI removed the case to federal court and moved to dismiss under Federal Rule of Civil Procedure 12(b)(6). They argued that Olson failed to plead a plausible claim for relief and failed to exhaust his administrative remedies before the

Equal Employment Opportunity Commission. The district court granted the defendants' motion, finding that none of Olson's claims crossed the plausibility threshold. The court dismissed the complaint with prejudice and without leave to amend, finding that any potential amendment would be futile.

Olson now appeals.

II

To survive a motion to dismiss under Rule 12(b)(6), 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) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A plausible claim "pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* (internal citation omitted). The plaintiff must show "more than a sheer possibility that a defendant has acted unlawfully," *id.*, and the allegations cannot be "merely conceivable or speculative," *Carlson v. CSX Transp., Inc.*, 758 F.3d 819, 826 (7th Cir. 2014) (citations omitted). In making this determination, a court draws on "its judicial experience and common sense." *Iqbal*, 556 U.S. at 679. We review a district court's order granting a motion to dismiss de novo. *Jauquet v. Green Bay Area Cath. Educ., Inc.*, 996 F.3d 802, 807 (7th Cir. 2021).

None of Olson's claims meet the standard outlined above. To begin, his complaint does not plead any facts to substantiate his sex discrimination and disability discrimination claims. Olson contends that the defendants inferred that he was gay because he lived with his mother and brother. That is not plausible, as many people of all sexual orientations live with family members. His disability discrimination claim is equally fanciful. His contention that Coforge tested his urine for indicators of diabetes and then disclosed the results to WBMI is no more than speculation.

The same is true for his age discrimination claim. Using our "judicial experience and common sense," *Iqbal*, 556 U.S. at 679, we conclude that Olson did not plead sufficient facts to "nudge [his] claim from conceivable to plausible." *Hirst v. Skywest, Inc.*, 910 F.3d 961, 966 (7th Cir. 2018) (citation omitted). According to Olson, Randstad and WBMI could tell from his resume that Olson was fifty years old, so Randstad did not submit his resume to WBMI, which preferred younger job candidates. Olson's supposition about what happened is conceivable. But, as Olson also alleged in his complaint, Randstad identified problems with Olson's resume that had nothing to do

with age: Olson “had a history of ‘consulting’ work and had not worked since April 2022,” and WBMI did not like to hire candidates with that type of work history. Olson’s complaint, therefore, presents an “obvious alternative explanation” for why he was not considered. *Twombly*, 550 U.S. at 567. And Olson’s allegation that, “[u]pon information and belief, Defendants have and [sic] informal agreement to refer only individuals younger than age forty (40) years old for employment consideration” is speculation. Allegations that are merely conceivable or are speculative do not pass the plausibility threshold.

As for Olson’s state law claims, he either waived or forfeited them all. *See Smith v. GC Servs. Ltd. P’ship*, 907 F.3d 495, 499 (7th Cir. 2018) (“Forfeiture is the failure to make the timely assertion of a right, while waiver is the intentional relinquishment or abandonment of a known right.” (citation and internal quotations omitted)). In his opening brief, Olson stated his intention to dismiss “his breach of contract claims, his defamation claim, and his intentional infliction of emotion [sic] distress claim.” That is undisputed waiver, so we do not consider those claims on appeal. *See Henry v. Hulett*, 969 F.3d 769, 786 (7th Cir. 2020).

Turning to forfeiture, a defendant forfeits an argument on appeal if the argument is “perfunctory and underdeveloped.” *Batson v. Live Nation Ent., Inc.*, 746 F.3d 827, 833 (7th Cir. 2014). That happened here. Olson failed to provide any facts or cite any law in his opening brief to support his argument that the defendants fraudulently obtained and then misused his data. Instead, he offered vague generalities about the importance of secure data. As for his invasion of privacy and civil conspiracy claims, Olson failed to mention them even once in his opening brief. Consequently, those claims are forfeited too. *See Scheidler v. Indiana*, 914 F.3d 535, 540 (7th Cir. 2019) (“A party [] generally forfeits issues and arguments it fails to raise in its initial appellate brief.”).

In sum, we affirm the district court’s determination that Olson failed to state a claim upon which it could provide relief. For this reason, we do not consider the parties’ administrative exhaustion arguments.

III

Olson also challenges the district court’s decision to dismiss his complaint with prejudice and without leave to amend. Olson contends that if he had been given the opportunity, he would have included additional factual allegations to cure the deficiencies in his complaint. We review the district court’s decision for abuse of

discretion. *See Jauquet*, 996 F.3d at 807.

Federal Rule of Civil Procedure 15 allows a plaintiff to amend a complaint once within twenty-one days of service, as a matter of course. FED. R. CIV. P. 15(a)(1). After that, a plaintiff may amend the complaint with the opposing party's written consent or with leave of the court. *See id.* at 15(a)(2). A plaintiff whose original complaint is dismissed under Rule 12(b)(6) should "[o]rdinarily ... be given at least one opportunity to try to amend [their] complaint before the entire action is dismissed." *NewSpin Sports, LLC v. Arrow Elecs., Inc.*, 910 F.3d 293, 310 (7th Cir. 2018) (citation omitted). And when a plaintiff requests leave to amend, the court should "freely give leave when justice so requires." *Id.* (quoting FED. R. CIV. P. 15(a)(2)). But a district court does not abuse its discretion "by failing to order, *sua sponte*, an amendment to the complaint that the plaintiff never requested." *Chaidez v. Ford Motor Co.*, 937 F.3d 998, 1008 (7th Cir. 2019) (cleaned).

Olson made no attempt to amend his complaint in district court. He did not request leave of the court to do so before responding to the defendants' Rule 12(b)(6) motion to dismiss, nor did he submit a proposed amended complaint and ask the court to reconsider its dismissal order. With no amended complaint to review, "the district court could have reasonably believed that [Olson's] amended complaint would suffer the same fatal flaws as the one before it." *Webb v. Frawley*, 906 F.3d 569, 582 (7th Cir. 2018). The district court did not abuse its discretion.

AFFIRMED