

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 18th day of May, two thousand sixteen.

PRESENT: DENNIS JACOBS,
BARRINGTON D. PARKER,
REENA RAGGI,
Circuit Judges.

1 - - - - -X
2 EZEKIEL FREDERICK, AARON T. FREDERICK,
3 DANIEL I. FREDERICK,
4 Plaintiffs-Appellants,

6 -v.- 15-1457

8 WELLS FARGO HOME MORTGAGE, ET AL.,
9 Defendants-Appellees.

10 - - - - -X
11
12 FOR APPELLANTS: Ezekiel Frederick, Aaron T.
13 Frederick, Daniel I. Frederick,
14 pro se, New York, NY.

15
16 FOR APPELLEES: Allison J. Schoenthal, Lisa J.
17 Fried, Chava Brandriss, Patrick

1 Dempsey, Hogan Lovells US LLP, New
2 York, NY; Andrew C. Glass, Roger L.
3 Smerage, K&L Gates LLP, Boston,
4 MA; Davis S. Versfelt, K&L Gates
5 LLP, New York, NY; Daniel J.
6 Herrera, Solomon & Herrera, PLLC,
7 Levittown, NY.

8
9 Appeal from a judgment of the United States District Court
10 for the Eastern District of New York (Irizarry, J.).

11
12 **UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED AND**
13 **DECREED** that the judgment of the district court be **AFFIRMED**.

14
15 Ezekiel, Aaron, and Daniel Frederick, appearing pro se,
16 appeal from the judgment of the United States District Court
17 for the Eastern District of New York (Irizarry, J.) dismissing
18 their claims under the Fair Housing Act ("FHA") and the Equal
19 Credit Opportunity Act ("ECOA") for failure to state a claim.
20 In a nutshell, the Fredericks claim that the defendants engaged
21 in a joint effort to wrongfully deny the Fredericks' mortgage
22 applications under the Federal Housing Administration's 203(k)
23 program because of their race and ethnicity. They allege the
24 defendants accomplished this through the application of
25 facially neutral FHA policies that had the effect of denying
26 the Fredericks' mortgage loans and depriving them of rental
27 income credits associated with those loans. We assume the
28 parties' familiarity with the underlying facts, the procedural
29 history, and the issues presented for review.

30 **1.** As a threshold matter, we must determine whether we
31 have jurisdiction over the appeals of Aaron and Daniel
32 Frederick. A notice of appeal must "specify the party or
33 parties taking the appeal by naming each one in the caption or
34 body of the notice." Fed. R. App. P. 3(c)(1)(A). "A pro se
35 notice of appeal is considered filed on behalf of the
36 signer . . . unless the notice clearly indicates otherwise."
37 Fed. R. App. P. 3(c)(2).

38 Here, while the notice of appeal was signed only by Ezekiel,
39 the notice provides that the appeal was taken on behalf of
40 "Ezekiel Frederick, et. al.," which is how Ezekiel referred to

1 himself, David, and Aaron in the complaint and on the case
2 caption. Therefore, the notice "clearly indicates" that the
3 appeal was intended to be taken on behalf of all three of them,
4 and we have jurisdiction over each of their appeals.

5 **2.** We review the grant of a motion to dismiss de novo,
6 accept as true all factual allegations, and draw all reasonable
7 inferences in favor of the plaintiffs. Fink v. Time Warner
8 Cable, 714 F.3d 739, 740-41 (2d Cir. 2013). To survive a Rule
9 12(b)(6) motion to dismiss, the complaint must plead enough
10 facts to state a claim that is plausible, though a complaint
11 filed pro se is held to a less stringent pleading standard than
12 one filed by counsel. Ahlers v. Rabinowitz, 684 F.3d 53, 60
13 (2d Cir. 2012). We will liberally construe complaints filed
14 pro se to state the strongest arguments that they suggest.
15 Triestman v. Fed. Bureau of Prisons, 470 F.3d 471, 474 (2d Cir.
16 2006).

17 The district court properly dismissed the Fredericks' FHA
18 and ECOA claims. The Fredericks argued that the defendants'
19 use of facially neutral FHA policies had the effect of
20 discriminating against the Fredericks because of their race and
21 ethnicity, i.e., the defendants' conduct had a disparate
22 impact. The Fredericks, however, failed to identify any
23 specific policy or practice of the defendants that had such an
24 effect. Even considering the additional allegations that the
25 Fredericks made in their brief in opposition to the defendants'
26 motion to dismiss, they failed to allege any statistical
27 evidence specifically tied to the defendants or the group that
28 the Fredericks claim suffers from discrimination. The
29 Fredericks' allegations and arguments, even liberally
30 construed, fail to state a plausible claim.

31 **3.** While a pro se complaint "should not be dismissed
32 without granting leave to amend at least once when a liberal
33 reading of the complaint gives any indication that a valid claim
34 might be stated," Shomo v. City of New York, 579 F.3d 176, 183
35 (2d Cir. 2009) (alterations omitted), leave to replead need not
36 be granted when it would be "futile," Cuoco v. Moritsugu, 222
37 F.3d 99, 112 (2d Cir. 2000).

1 The operative complaint that the district court dismissed
2 was the second amended complaint. True, the first amended
3 complaint had mostly cosmetic changes and the second amended
4 complaint was in substance identical to the first amended
5 complaint; but this suit is not the first time the Fredericks
6 have sought relief for the discrimination they claim to have
7 suffered. In 2012, based on the same conduct that gave rise
8 to this action, the Fredericks filed a complaint with the New
9 York State Division of Human Rights, and filed a civil complaint
10 in the Eastern District of New York. The Division of Human
11 Rights investigated the Fredericks' claims and concluded that
12 there was no probable cause to believe any discrimination had
13 occurred. The complaint filed in the Eastern District of New
14 York was dismissed as frivolous. Therefore, this action is the
15 Fredericks' third unsuccessful effort to advance the same
16 claims.

17 As discussed above, the Fredericks' most recent
18 allegations have failed to state a plausible claim, even
19 considering the additional allegations raised in their
20 opposition brief, and there is no reason to believe that another
21 opportunity to replead would produce a viable claim. The
22 district court properly concluded that any additional amendment
23 would have been futile.

24 Accordingly, and finding no merit in the Fredericks' other
25 arguments, we hereby **AFFIRM** the judgment of the district court.

26 FOR THE COURT:
27 CATHERINE O'HAGAN WOLFE, CLERK