

**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 TO 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 7th day of July, two thousand twenty-one.

PRESENT:

SUSAN L. CARNEY,
RICHARD J. SULLIVAN,
JOSEPH F. BIANCO,
Circuit Judges.

Conrad Walker,

Plaintiff-Appellant,

v.

20-3642-cv

Anthony L. Pitnell, Esq., Gross Polowy Law
Firm, HSBC Bank USA, National Association, as
Trustee for SG Mortgage Securities Trust
2006-FRE1, Elpiniki Bechakas,

Defendants-Appellees.

FOR PLAINTIFF-APPELLANT:

Conrad Walker, pro se, Houston, TX

FOR DEFENDANTS-APPELLEES:

Allison J. Schoenthal, Allison M. Funk,
Robin Muir, Goodwin Procter LLP, New
York, NY (*for* HSBC Bank USA, National

Association)

Stephen J. Vargas, Gross Polowy, LLC,
Westbury, NY (*for* Gross Polowy Law Firm
and Anthony L. Pitnell, Esq.)

Ronald A. Giller, Kasey T. Mahoney, Gordon
Reese Scully Mansukhani, LLP, New York,
NY (*for* Elpiniki Bechakas)

Appeal from a judgment of the United States District Court for the Eastern District of
New York (Chen, *J.*).

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

Appellant Conrad Walker, proceeding pro se, sued HSBC Bank USA, National Association
("HSBC"); its attorneys, the Gross Polowy Law Firm ("Gross Polowy"); Anthony Pitnell; and
Elpiniki Bechakas under the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692,
et seq., and state law, alleging that defendants pursued foreclosure against him after fraudulently
assigning his mortgage to HSBC. The district court dismissed the FDCPA claims, citing three
independent grounds: that Walker failed to state an FDCPA claim against any defendant; that the
claims were untimely; and that the claims were also barred by collateral estoppel. It declined to
exercise supplemental jurisdiction over the state law claims. We assume the parties' familiarity
with the underlying facts, the procedural history of the case, and the issues on appeal.

"We review the grant of a motion to dismiss *de novo*, accepting as true all factual claims
in the complaint and drawing all reasonable inferences in the plaintiff's favor." *Fink v. Time
Warner Cable*, 714 F.3d 739, 740–41 (2d Cir. 2013).

The district court properly dismissed Walker's FDCPA claim against the defendants.

1 A plaintiff must bring an FDCPA action “within one year from the date on which the violation
2 occurs.” 15 U.S.C. § 1692k(d). Walker filed his lawsuit on July 26, 2019. Accordingly, any
3 claim based on a violation that occurred before July 26, 2018, is time-barred. Walker asserts that
4 HSBC violated the FDCPA because it failed to indicate it was a debt collector, fraudulently
5 obtained possession of his mortgage note through a backdated assignment of that note, and
6 threatened to take his property away in April 2008 by filing the foreclosure action. His claim
7 against Bechakas is based on her alleged execution of the mortgage note assignment in April 2008.
8 His allegations against Gross Polowy and Pitnell involve court filings made in 2014, 2017, and
9 November 2018. Except for those involving an affirmation-in-opposition filed by Pitnell and
10 Gross Polowy in November 2018, all of these allegations concern acts that occurred before
11 July 2018. These claims are thus time-barred.

12 The district court concluded that a claim based on the November 2018 affirmation was also
13 untimely because it contained the same alleged misrepresentation—that HSBC validly transferred
14 the mortgage note in April 2008—as earlier filings that were the basis for the time-barred claims.
15 Although we have acknowledged that a state court foreclosure proceeding may constitute a debt
16 collection under the FDCPA, *Cohen v. Rosicki, Rosicki & Assocs., P.C.*, 897 F.3d 75, 83–84
17 (2d Cir. 2018), we have not decided whether a repeated but otherwise identical misrepresentation
18 in a court filing counts as a separate FDCPA violation for statute of limitations purposes. We
19 need not decide this issue today, however, because Walker failed to allege sufficient facts to state
20 an FDCPA claim, even assuming that he could bring a timely claim based on the November 2018
21 affirmation.

22 The FDCPA prohibits the use of “false, deceptive, or misleading representation[s] or means

1 in connection with the collection of any debt.” 15 U.S.C. § 1692e. To be actionable under the
2 FDCPA, however, the misrepresentation at issue in the debt collection activity must be material,
3 *i.e.*, it must “ha[ve] the potential to affect the decision-making process of the least sophisticated
4 consumer.” *Cohen*, 897 F.3d at 85 (internal alteration and quotation marks omitted).

5 Walker did not allege sufficient facts to support a conclusion that Pitnell’s statements were
6 material. A misrepresentation concerning a creditor’s identity is not material if it has no effect on
7 the debtor’s “ability to respond to the debt.” *Id.* at 87. In *Cohen*, we determined that a statement
8 in a court filing that misidentified a loan servicer as the creditor or owner of the mortgage was not
9 a material misrepresentation for FDCPA purposes because that statement was “not deceptive as to
10 the nature or legal status of Cohen’s debt,” and it would not have “prevented the least sophisticated
11 consumer from responding to or disputing the action.” *Id.* at 87. Similarly here, Pitnell’s
12 November 2018 affirmation attesting that HSBC was the creditor and that HSBC had been
13 assigned Walker’s mortgage was not materially misleading. It did not prevent Walker from filing
14 a reply affirmation or from continuing to challenge the foreclosure judgment in appellate
15 proceedings. Nor did it misrepresent the nature of Walker’s debt or somehow prevent him from
16 responding to it. Therefore, the alleged misrepresentation was not material, and neither Pitnell
17 nor Gross Polowy violated the FDPCA by making it.

18 In addition, any claim against HSBC based on the November 2018 affirmation was
19 properly dismissed because Walker failed to allege that HSBC was a debt collector within the
20 meaning of the FDCPA. A debt collector “means any person who uses any instrumentality of
21 interstate commerce or the mails in any business the principal purpose of which is the collection
22 of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or

1 due or asserted to be owed or due another.” 15 U.S.C. § 1692a(6). But Walker alleged only that
2 HSBC “was a debt collector, and not a creditor,” and that the 2008 mortgage note assignment was
3 fraudulently backdated at the time the foreclosure action began. These conclusory allegations are
4 insufficient to state a claim under the FDCPA. *See Kirch v. Liberty Media Corp.*, 449 F.3d 388,
5 398 (2d Cir. 2006). Therefore, the district court properly dismissed the FDCPA claim against all
6 defendants.¹

7 Ordinarily, a district court should not dismiss a pro se plaintiff’s complaint without
8 granting leave to amend. Walker’s FDCPA claim against Bechakas was untimely, however, and
9 he cannot state an FDCPA claim against HSBC, Pitnell, or Gross Polowy based on the November
10 2018 affirmation. Because the district court properly dismissed the FDCPA claims—the only
11 claims over which it had original jurisdiction—it did not abuse its discretion by declining to
12 exercise supplemental jurisdiction over Walker’s state law claims. *See Kolari v.*
13 *N.Y.-Presbyterian Hosp.*, 455 F.3d 118, 122 (2d Cir. 2006).

14 We have considered all of Walker’s remaining arguments and find in them no basis for
15 reversal. Accordingly, we **AFFIRM** the judgment of the district court. All motions pending
16 before this Court are **DENIED**.

17
18 FOR THE COURT:
19 Catherine O’Hagan Wolfe, Clerk of Court
20

¹ Because we affirm the judgment of the district court for the foregoing reasons, we decline to address the district court’s dismissal on collateral estoppel grounds.