

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

November 4, 2015

Lyle W. Cayce
Clerk

No. 15-40615
Summary Calendar

AL WININGER,

Plaintiff - Appellant

v.

BANK OF AMERICA, N.A.; SELECT PORTFOLIO SERVICING,
INCORPORATED,

Defendants - Appellees

Appeal from the United States District Court
for the Eastern District of Texas
U.S.D.C. No. 4:14-cv-00556-ALM

Before JOLLY, DENNIS, and PRADO, Circuit Judges.

PER CURIAM:*

Al Wininger (“Wininger”) appeals from judgments entered by the district court, Judge Amos L. Mazzant presiding, which granted both Bank of America, N.A.’s and Select Portfolio Servicing, Inc.’s motions to dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure and denied Wininger’s motion for leave to file a second amended complaint. After a thorough review of the

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

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record, briefs on appeal, and the rulings of the district court, we conclude that the judgment of the district court should be affirmed. The district court properly granted the dismissals due to Wininger's failure to allege facts that would make the claims plausible. Additionally, the district court correctly held that Wininger's claims against Select Portfolio Servicing were barred by res judicata. *See United States v. Davenport*, 484 F.3d 321, 326 (5th Cir. 2007). The district court also did not abuse its discretion in denying Wininger's motion for leave to file a second amended complaint. Among other factors, Wininger had sufficient prior opportunities to amend or supplement the facts alleged in his complaint and a second amended complaint would have been futile. *See Smith v. EMC Corp.*, 393 F.3d 590, 595 (5th Cir. 2004). Therefore, we affirm the decisions of the district court to dismiss Wininger's claims with prejudice and deny his motion for leave to file a second amended complaint.

AFFIRMED.