

App. 1

UNITED STATES COURT OF APPEALS FOR
THE SECOND CIRCUIT

SUMMARY ORDER

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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 30th day of October, two thousand seventeen.

Present: RALPH K. WINTER,
GUIDO CALABRESI,
ROSEMARY S. POOLER,
Circuit Judges.

App. 2

LESLIE MOORE MIRA,

Plaintiff-Appellant,

v.

16-4080-cv

JOHN KINGSTON, BETH HARDER (EVANS),
RICHARD RUBIN, KEVIN SAVILLE, PLATTS
MCGRAW HILL FINANCIAL INC.,

Defendants-Appellees.

Appearing for Appellant: Leslie Moore Mira, New
York, N.Y.

Appearing for Appellee: Gregory Ira Rasin, Pros-
kauer Rose LLP (Michelle Ann Annese, on the
brief).

Appeal from the United States District Court for
the Southern District of New York (McMahon, J.).

**ON CONSIDERATION WHEREOF, IT IS
HEREBY ORDERED, ADJUDGED, AND DE-
CREED** that the judgment of said District Court
be and it hereby is **AFFIRMED**.

Leslie Moore Mira, proceeding pro se, ap-
peals from the November 3, 2016 judgment of the

App. 3

United States District Court for the Southern District of New York (McMahon, J.) dismissing her Title VII complaint, which claimed gender and national origin discrimination. We assume the parties' familiarity with the underlying facts, procedural history, and specification of issues for review.

Contrary to defendants' arguments, we find Mira's notice of appeal sufficient to confer jurisdiction. Federal Rule of Appellate Procedure 3(c) requires a notice of appeal "designate the judgment, order, or part thereof being appealed." Fed. R. App. 3(c)(1)(b); *Gonzalez v. Thaler*, 132 S. Ct. 641, 652 (2012) (Rule 3(c)(1) is jurisdictional). An appeal from a final judgment brings up interlocutory orders for review. *See City of N.Y. v. Mickalis Pawn Shop, LLC*, 645 F.3d 114, 141 n.25 (2d Cir. 2011) (stating that interlocutory orders rendered in a case merge with the final judgment, rendering them amenable to appellate review). Mira's notice of appeal designated the November 3, 2016 judgment granting "defendants' motion to dismiss [the] Title VII claims." Supp. App'x at 59. That designation allows for review of all interlocutory orders in a case, *see Mickalis Pawn Shop, LLC*, 645 F.3d at 141 n.25, which were not immediately appealable, *see In re Repetitive Stress Injury Litig.*, 11 F.3d 368, 372 (2d Cir. 1993) (consolidation orders are non-final); *SEC v. Am. Bd. of Trade, Inc.*, 830 F.2d

431, 443 (2d Cir. 1987) (denial of leave to amend is a non-final order). Therefore, we have jurisdiction to review the denial of consolidation and the futility of leave to amend.

In the main, Mira argues that the district court erred by denying consolidation of this case with an action she brought against another former employer, Argus Media. We review the denial of a motion to consolidate for abuse of discretion. *See In re Repetitive Stress Injury Litig.*, 11 F.3d at 373. “A party moving for consolidation must bear the burden of showing the commonality of factual and legal issues in different actions, and a district court must examine the special underlying facts with close attention before ordering a consolidation.” *Id.* (internal citations omitted). Mira failed to plausibly demonstrate a legal or factual connection between her cases against Platts and Argus. In the Argus case, Mira alleged that after officers of two companies met the “guardedness” toward her “accelerated.” The district court had the discretion to conclude that was not enough to merit consolidation. *See In re Repetitive Stress Injury Litig.*, 11 F.3d at 373.

“A *pro se* complaint should not be dismissed without the Court granting leave to amend at least once when a liberal reading of the complaint gives any indication that a valid claim might be stated.”

Nielson v. Rabin, 746 F.3d 58, 62 (2d Cir. 2014) (internal quotation marks omitted).¹ The district court should have addressed Mira's requests to amend her complaint, even though Mira submitted letters instead of motions. *See In re Sims*, 534 F.3d 117, 133 (2d Cir. 2008) (holding that pro se litigants should be allowed amendment more freely than counsel and that their rights should not be impaired by "harsh application of technical rules" (internal citation omitted)). However, her amended complaint would not have withstood a motion to dismiss. Leave to amend may be denied when amendment would be futile. *Nielson*, 746 F.3d at 62 (internal quotation marks omitted). "An amendment to a pleading is futile if the proposed claim could not withstand a motion to dismiss pursuant to [Rule] 12(b)(6)." *Lucente v. Int'l Bus. Machines Corp.*, 310 F.3d 243, 258 (2d Cir. 2002). We review the denial of leave to amend based on futility de novo. *Hutchison v. Deutsche Bank Secs. Inc.*, 647 F.3d 479, 490 (2d Cir. 2011).

Mira wished to present claims under 42 U.S.C. §§ 1981 and 1985(3). Section 1981 protects against racial discrimination in employment relationships, and most of the substantive Title VII standards apply to Section 1981 claims. *Patterson v. Cty. of Oneida*, 375 F.3d 206, 225 (2d Cir. 2004).

¹ [Second Circuit order misspells *Nielson v. Rabin*.]

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