

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 22-2260

MICHAEL HILLMAN,
Appellant

v.

BOROUGH OF COLLINGDALE; AQUA PENNSYLVANIA, INC.;
PECO ENERGY EXELON; ERIC KEMP; PENNSYLVANIA PUBLIC
UTILITIES COMMISSION; SHERLOW & ASSOCIATES INC.;
SARGENTS COURT REPORTING SERVICES INC.

(E.D. Pa. No. 2:21-cv-04462)

SUR PETITION FOR REHEARING

Present: CHAGARES, Chief Judge, and JORDAN, HARDIMAN, GREENAWAY, JR.,
SHWARTZ, KRAUSE, RESTREPO, BIBAS, PORTER, MATEY, PHIPPS,
FREEMAN, MONTGOMERY-REEVES, and CHUNG, Circuit Judges

The petition for rehearing filed by Appellant in the above-captioned case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the judges of the circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court en banc is **DENIED**.

By the Court,

s/Stephanos Bibas

Circuit Judge

Dated: May 4, 2023
JK/cc: Michael Hillman
All Counsel of Record

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EXELON; ERIC KEMP; PENNSYLVANIA PUBLIC UTILITIES COMMISSION;
SHERLOW & ASSOCIATES INC.; SARGENTS COURT REPORTING SERVICES
INC

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(E.D. Pa. No. 2:21-cv-04462)
District Judge: Honorable Petrese B. Tucker

Submitted Pursuant to Third Circuit LAR 34.1(a)
On March 7, 2023

Before: SHWARTZ, BIBAS, and PHIPPS, Circuit Judges

JUDGMENT

This cause came to be considered on the record from the United States District Court for the Eastern District of Pennsylvania and was submitted pursuant to Third Circuit L.A.R. 34.1(a) on March 7, 2023.

On consideration whereof, it is now hereby **ORDERED** and **ADJUDGED** by this Court that the judgment of the District Court entered June 6, 2022, be and the same hereby is **AFFIRMED**. Costs will be taxed against Appellant. All of the above in accordance with the opinion of this Court.

ATTEST:

Dated: March 8, 2023

s/ Patricia S. Dodszuweit
Clerk

The seal of the United States Court of Appeals for the Third Circuit is circular. It features an eagle with wings spread, perched atop a shield. The shield is supported by two figures. The eagle's chest is covered by a banner. The words "SEAL OF THE COURT" are written in a circle around the eagle. The words "UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT" are written in a larger circle around the seal.
Certified ~~copy~~ copy and issued in lieu
of a formal mandate on 05/12/2023

Teste: *Patricia S. Dodszuweit*
Clerk, U.S. Court of Appeals for the Third Circuit

NOT PRECEDENTIAL

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(Opinion filed: March 8, 2023)

OPINION*

PER CURIAM

Pro se appellant Michael Hillman appeals the District Court’s dismissal of the majority of the claims in his complaint in favor of defendants. For the reasons that follow, we will affirm the District Court’s decision.

Hillman’s claims stem from the way the utilities were metered in an apartment that he leased in Collingdale, Pennsylvania. Hillman has alleged that other units and common spaces in his rental unit were connected to his utility service, forcing him to pay for utility costs that were not his responsibility. In 2019, Hillman notified his electricity provider, PECO Energy Company (“PECO”), about this issue. Hillman was unsatisfied with the resolution and stopped paying his PECO bills.

In 2020, Hillman sought relief before the Pennsylvania Public Utility Commission (“PUC”) — a regulatory body that supervises public utilities and adjudicates disputes over utility service. After multiple hearings, his complaint was dismissed; Hillman did not appeal. Rather, Hillman initiated a lawsuit in the Philadelphia Court of Common Pleas against Collingdale Borough, Aqua Pennsylvania, Inc., PECO, Eric Kemp, the PUC, Strehlow & Associates, Inc., and Sargent’s Court Reporting Services, Inc. The Court of Common Pleas dismissed the case with prejudice and entered a filing injunction prohibiting

* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

Hillman from refiling his claims against these defendants.

Hillman responded by filing a federal complaint against the same defendants from his Court of Common Pleas case, repeating his claims in that prior action. Hillman also included references to 42 U.S.C. § 1983 and § 1985, contending that his federal constitutional rights were violated during the course of this utility dispute because the defendants conspired against him. After the District Court dismissed the majority of his claims and entered another filing injunction against him, Hillman appealed. The District Court subsequently entered a final order adjudicating his remaining claims against the PUC. Hillman did not appeal from that final decision.¹

The District Court appropriately concluded that Hillman's vague, conclusory

¹ We have jurisdiction over this appeal pursuant to 28 U.S.C. § 1291, as Hillman's notice of appeal ripened after the District Court entered its final order. See Fed. R. Civ. P. 54(b); Cape May Greene, Inc. v. Warren, 698 F.2d 179, 184-85 (3d Cir. 1983). However, the scope of this appeal is limited to any decisions made by the District Court before Hillman filed his notice of appeal; he has not appealed from the final decision in this case. See Marshall v. Comm'r Pa. Dep't of Corr., 840 F.3d 92, 98 (3d Cir. 2016) (explaining that the Cape May Greene doctrine "does not permit review of subsequent rulings that were not (and could not have been) designated in the notice of appeal"). We exercise plenary review over the District Court's dismissal of Hillman's claims. See Fowler v. UPMC Shadyside, 578 F.3d 203, 206 (3d Cir. 2009). In our review, we consider Hillman's complaint, any "document integral to or explicitly relied upon" in framing the complaint, see Schmidt v. Skolas, 770 F.3d 241, 249 (3d Cir. 2014) (internal citation and emphasis omitted), and any "undisputedly authentic document that a defendant attaches as an exhibit to a motion to dismiss if the plaintiff's claims are based on the document," see Pension Benefit Guar. Corp. v. White Consol. Indus., Inc., 998 F.2d 1192, 1196 (3d Cir. 1993). We note that Hillman has forfeited a challenge to the District Court's entry of a filing injunction against him, as he did not raise that issue in his appellate brief. See In re Wettach, 811 F.3d 99, 115 (3d Cir. 2016). Additionally, we do not consider new theories of liability or arguments raised for the first time on appeal, see Jenkins v. Superintendent of Laurel Highlands, 705 F.3d 80, 88 n.12 (3d Cir. 2013), or "arguments raised for the first time in a reply brief," see Barna v. Bd. of Sch. Dirs. of Panther Valley Sch. Dist., 877 F.3d 136, 146 (3d Cir. 2017).

allegations failed to present a basis for subject matter jurisdiction over his claims. See Kokkonen v. Guardian Life Ins. Co. of Am., 511 U.S. 375, 377 (1994) (“Federal courts are courts of limited jurisdiction.”). It is apparent that Hillman’s allegations do not form any basis for federal question jurisdiction. Hillman’s passing references to § 1983 do not aid him, as he makes no factual allegations that could conceivably suggest that his federal constitutional rights were violated in a conspiracy by these defendants.² See 28 U.S.C. § 1331. Further, there is no basis for diversity jurisdiction, as Hillman’s filings indicate that all parties are citizens of Pennsylvania. See 28 U.S.C. § 1332(a)(1); Mennen Co. v. Atl. Mut. Ins. Co., 147 F.3d 287, 290 (3d Cir. 1998) (“[J]urisdiction [under § 1332] is lacking if any plaintiff and any defendant are citizens of the same state.”). As the District Court explained, Hillman may not repackage his allegations as federal claims in an attempt to relitigate issues that have already been addressed by the PUC or the Court of Common Pleas.³

Hillman was given an opportunity to amend his complaint prior to the District Court’s dismissal. Under these circumstances, particularly where Hillman has not clarified his allegations in his appellate filings, granting further leave to amend would have been futile. See Grayson v. Mayview State Hosp., 293 F.3d 103, 108 (3d Cir. 2002).

² Hillman’s citations to 42 U.S.C. § 1985(3) are even more tenuous, as he has not explained why he relies on this provision; his complaint included no allegations of race- or class-based discriminatory animus underlying any of the incidents he has described. See Lake v. Arnold, 112 F.3d 682, 685 (3d Cir. 1997).

³ Hillman also argues in his brief that the District Court never ruled on motions for injunctive relief that he filed. However, the District Court denied these motions on June 1, 2022.

For these reasons, we will affirm the District Court's decision.⁴

⁴ Hillman's motion for leave to file multiple reply briefs is granted and his remaining motions are denied.