

12-150-cv  
Kwiatkowski v. Polish & Slavic Federal Credit Union

**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 32.1.1 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.**

1 At a stated term of the United States Court of Appeals for the Second Circuit, held at  
2 the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New  
3 York, on the 15<sup>th</sup> day of February, two thousand thirteen.

4  
5 PRESENT:

6 Raymond J. Lohier, Jr.,  
7 Susan L. Carney,  
8 *Circuit Judges,*  
9 J. Paul Oetken,\*  
10 *District Judge.*

11  
12  
13 Zdzislaw B. Kwiatkowski,

14  
15 *Plaintiff-Appellant,*

16 v.

12-150-cv

17  
18 Polish & Slavic Federal Credit Union, Board of  
19 Directors, of the Polish & Slavic Federal Credit  
20 Union,

21  
22 *Defendants-Appellees.*  
23

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\_\_\_\_\_  
\*The Honorable J. Paul Oetken, of the United States District Court for the Southern District of New York, sitting by designation.

1  
2 FOR PLAINTIFF-APPELLANT: Zdzislaw B. Kwiatkowski, *pro se*,  
3 Brooklyn, NY.

4  
5 FOR DEFENDANTS-APPELLEES: Eileen M. Burger and Mitchell B.  
6 Pollack, Mitchell B. Pollack &  
7 Associates, PLLC, Tarrytown, NY.  
8

9 Appeal from a judgment of the United States District Court for the Eastern District  
10 of New York (John Gleeson, *Judge*).

11 UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED,  
12 AND DECREED that the judgment of the District Court is AFFIRMED.

13 Plaintiff-Appellant Zdzislaw Kwiatkowski, pro se, appeals from the District Court's  
14 judgment dismissing the complaint. Kwiatkowski also challenges the various denials of  
15 his motions to recuse the District Judge. We assume the parties' familiarity with the facts  
16 and record of the prior proceedings, to which we refer only as necessary to explain our  
17 decision to affirm.

18 A. Dismissal of the Complaint

19 1. Standard of Review

20 We review de novo the District Court's dismissal of a complaint pursuant to Rule  
21 12(b)(1) or 12(b)(6) of the Federal Rules of Civil Procedure. See Jaghory v. N.Y. State  
22 Dep't of Educ., 131 F.3d 326, 329 (2d Cir. 1997). Dismissal of a case for lack of subject  
23 matter jurisdiction under Rule 12(b)(1) is proper "when the district court lacks the statutory  
24 or constitutional power to adjudicate it." Makarova v. United States, 201 F.3d 110, 113  
25 (2d Cir. 2000). We accept the allegations in Kwiatkowski's complaint as true, id., and we

1 interpret the complaint “liberally,” Triestman v. Fed. Bureau of Prisons, 470 F.3d 471,  
2 474-75 (2d Cir. 2006).

3 2. Abandonment of Claims

4 Kwiatkowski has abandoned all but four of his claims by failing to raise them  
5 sufficiently in his opening brief on appeal.<sup>1</sup> Although Kwiatkowski is proceeding pro se  
6 and “pro se litigants are afforded some latitude in meeting the rules governing litigation  
7 . . . we need not, and normally will not, decide issues that a party fails to raise in his . . .  
8 appellate brief.” Moates v. Barkley, 147 F.3d 207, 209 (2d Cir. 1998) (per curiam).  
9 Because Kwiatkowski has brought prior pro se appeals in this Court, see Kwiatkowski v.  
10 J.P. Morgan Chase & Co., 112 F. App’x 797 (2d Cir. 2004), Kwiatkowski v. J.P. Morgan  
11 Chase & Co., 96 F. App’x 789 (2d Cir. 2004), we hold him to a basic understanding of the  
12 requirements of Federal Rule of Appellate Procedure Rule 28(a). See Tracy v.  
13 Freshwater, 623 F.3d 90, 103 (2d Cir. 2010) (solicitude afforded a pro se plaintiff “may be  
14 lessened where the particular . . . litigant is experienced in litigation and familiar with the  
15 procedural setting presented”).

16 Kwiatkowski has not abandoned challenges to the District Court’s dismissal of the  
17 following four claims: (1) discrimination in violation of the Equal Credit Opportunity Act  
18 (“ECOA”), 15 U.S.C. § 1691 *et seq.*; (2) patent infringement in violation of 35 U.S.C. §  
19 271(b); (3) use of illegal lending standards pursuant to 13 C.F.R. § 120.150(h) and 12

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<sup>1</sup> Although Kwiatkowski discusses his “securities fraud claims” in his reply brief, those claims are abandoned because he failed to raise them in his opening brief. See JP Morgan Chase Bank v. Altos Hornos de Mexico, S.A. de C.V., 412 F.3d 418, 428 (2d Cir. 2005).

1 C.F.R. § 528.9(b); and (4) enslavement and/or conspiracy to enslave in violation of 42  
2 U.S.C. § 1994.

3 3. Merits

4 We have considered these four remaining claims and affirm the judgment of the  
5 District Court for substantially the same reasons set forth in the District Court’s December  
6 12, 2011 order.

7 First, with respect to Kwiatkowski’s ECOA claim, the allegations in the complaint  
8 do not plausibly suggest a discriminatory purpose, especially given the “more likely”  
9 lawful explanations that the Defendant-Appellee Polish & Slavic Federal Credit Union  
10 (“PSFCU”) proffered for its actions. Ashcroft v. Iqbal, 556 U.S. 662, 680 (2009).

11 Indeed, even the materials attached to Kwiatkowski’s complaint suggest that prior to filing  
12 his complaint, Kwiatkowski viewed PSFCU’s denial of his loan applications as based on  
13 the merits of his application and PSFCU’s policies, rather than his national origin.

14 Second, with respect to Kwiatkowski’s patent infringement claim, the allegations in the  
15 complaint do not plausibly suggest that the Appellees intended to induce patent  
16 infringement or directly infringed his patent. Third, even if a private right of action  
17 existed pursuant to 13 C.F.R. § 120.150(h) and 12 C.F.R. § 528.9(b) – an issue we need not  
18 address – Kwiatkowski’s claims under those regulations are legally insufficient. Fourth,  
19 the District Court properly dismissed Kwiatkowski’s enslavement and/or enslavement  
20 conspiracy claim(s) as implausible. As Appellees point out, there are no facts alleged in  
21

1 the complaint that indicate that Appellees compelled Kwiatkowski to work or held him in a  
2 state of involuntary servitude or peonage.

3 B. Recusal of District Judge

4 Kwiatkowski has not specifically appealed the District Judge's denials of his  
5 motions for recusal, but he discusses these motions on appeal and challenges the District  
6 Judge's impartiality. Reviewing the denial of the recusal motions for abuse of discretion,  
7 see United States v. Diaz, 176 F.3d 52, 112 (2d Cir. 1999), we conclude that the District  
8 Judge acted within his discretion. The motions rested primarily on the District Judge's  
9 prior rulings against Kwiatkowski. See Gallop v. Cheney, 645 F.3d 519, 520 (2d Cir.  
10 2011) (per curiam) ("Prior rulings are, ordinarily, not a basis for disqualification.").  
11 Moreover, Kwiatkowski has presented no record evidence indicating that the District  
12 Judge was partial or biased in the relevant prior proceedings. Nor does the fact that  
13 Kwiatkowski filed a complaint about the District Judge constitute grounds for recusal.  
14 See United States v. Martin-Trigona, 759 F.2d 1017, 1020-21 (2d Cir. 1985).

15 We have considered Kwiatkowski's remaining arguments and conclude that they  
16 are without merit. For the foregoing reasons, the judgment of the District Court is  
17 AFFIRMED.

18 FOR THE COURT:  
19 Catherine O'Hagan Wolfe, Clerk  
20

21 The signature of Catherine O'Hagan Wolfe is written in blue ink over a circular official seal. The seal contains the text "UNITED STATES", "SECOND CIRCUIT", and "COURT OF APPEALS" around its perimeter.