

**United States Court of Appeals**  
**FOR THE EIGHTH CIRCUIT**

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No. 11-3085

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Horace Dwayne Allen,

Appellant,

v.

Bank of America Corporation;  
Merrill Lynch Bank USA; PHH  
Mortgage Corporation; Wells Fargo  
& Company; Bank of America,  
National Association,

Appellees.

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\* Appeal from the United States  
\* District Court for the  
\* District of Minnesota.  
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\* [UNPUBLISHED]  
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Submitted: May 22, 2012  
Filed: June 5, 2012

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Before WOLLMAN, BOWMAN, and SHEPHERD, Circuit Judges.

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PER CURIAM.

Horace Dwayne Allen filed this civil action against the institutions purportedly involved in handling his mortgage while he was suing the builder of his Minnesota residence, which had been destroyed by mold. Defendants removed the action to federal court based on diversity jurisdiction. After multiple hearings, the district

court<sup>1</sup> denied Allen's motion for leave to amend his complaint and granted defendants' motion to dismiss the action. Allen appeals.

Following careful review, we conclude that the district court did not abuse its discretion by denying the motion to amend as futile, see In re Medtronic, Inc., Sprint Fidelis Leads Prods. Liab. Litig., 623 F.3d 1200, 1208 (8th Cir. 2010) (denial of leave to amend is reviewed for abuse of discretion, but legal conclusions underlying determination of futility are reviewed de novo), because the conclusory assertions in Allen's proposed amended complaint did not state a claim of fraud or intentional infliction of emotional distress under Minnesota law, see Trooien v. Mansour, 608 F.3d 1020, 1028 (8th Cir. 2010) (fraud); Langeslag v. KYMN, Inc., 664 N.W.2d 860, 864 (Minn. 2003) (emotional distress), nor did they state a claim of harassment. Accordingly, dismissal with prejudice was proper. See Pet Quarters, Inc. v. Depository Trust & Clearing Corp., 559 F.3d 772, 782 (8th Cir. 2009) (Fed. R. Civ. P. 12(b)(6) dismissal with prejudice is not abuse of discretion when amendment would be futile). We also observe that a Federal Rule of Civil Procedure 60(b) motion cannot be filed in the first instance in this court.

The judgment is affirmed. See 8th Cir. R. 47B.

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<sup>1</sup>The Honorable Michael J. Davis, Chief Judge, United States District Court for the District of Minnesota, adopting the report and recommendations of the Honorable Janie S. Mayeron, United States Magistrate Judge for the District of Minnesota.