NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 25-2910

JOHN T. KEMP,
Appellant

v.

PRO CAP 4 LLC; PC4REO, LLC; MARC RUBINSOHN, individually and as owner of PC4REO, LLC; U.S. BANK, as Trustee for Firstrust Bank; FIRSTRUST BANK; CAMDEN COUNTY SHERIFF’S OFFICE; SHERIFF'S OFFICER NICHOLAS LENTZ, individually and in his official capacity; ERIC FITZGERALD, in his official capacity as Tax Collector for the Borough of Haddon Heights; MICHAEL F. ROGERS, in his official capacity as Director of the NJ Division of Local Government Services; MARITA SCIARROTTA, in her official capacity as Acting Director of the NJ Division of Taxation; GARY ZEITZ LLC; GARY C. ZEITZ, individually; ROBIN LONDON-ZEITZ, individually; GOVERNOR PHIL MURPHY, in his official capacity as Governor of the State of New Jersey; RICHARD DOLSON, individually, as a realtor representing Coldwell Banker Realty; COLDWELL BANKER REALTY

On Appeal from the United States District Court
for the District of New Jersey
(D.C. Civil No. 1:25-cv-02174)
District Judge: Honorable Edward S. Kiel

Submitted Pursuant to Third Circuit LAR 34.1(a)
September 1, 2026
Before: BIBAS, CHUNG, and BOVE, *Circuit Judges*

(Opinion filed: September 2, 2026)

OPINION*

PER CURIAM

John T. Kemp appeals an order of the District Court denying his motion to reopen and replead in this pro se civil rights action under 42 U.S.C. § 1983. We will affirm.

I.

Kemp owed Haddon Heights, New Jersey, thousands of dollars in unpaid property taxes, so the municipality put a lien on his home. Haddon Heights then sold the lien—in the form of a tax sale certificate—to a real estate investment company (Pro Cap[1]), which instituted foreclosure proceedings in state court and obtained a judgment in its favor.

Kemp challenged the judgment to no avail. *See PC4REO, LLC v. Kemp*, No. A-3105-23, 2025 WL 1271857, at *2–6 (N.J. Super. Ct. App. Div. Apr. 2, 2025) (per curiam). Among his various challenges rejected by the state courts was a claim under *Tyler v. Hennepin County, Minnesota*, 598 U.S. 631, 638–39 (2023) (holding that the plaintiff "stated a claim under the Takings Clause" where "there was money remaining after [her] home was seized and sold by the County to satisfy her past due taxes").

Kemp raised his *Tyler* claim (and others) in the § 1983 complaint that started this federal case. The complaint named several defendants, including Pro Cap and its counsel.

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

[1] Pro Cap 4 LLC and PC4REO, LLC are separate legal entities, but we refer to them interchangeably and collectively as Pro Cap.

The District Court granted Kemp leave to proceed in forma pauperis; determined that his complaint violated Federal Rule of Civil Procedure 8(a)(2) and failed to state a claim, *see* 28 U.S.C. § 1915(e)(2)(B)(ii); and dismissed the complaint without prejudice. The District Court did not explicitly grant Kemp leave to amend. But it did float in a footnote to its order the possibility of Kemp's filing a motion to reopen supported by an amended, Rule 8-compliant pleading.[2]

Kemp took heed and filed a motion to reopen, attaching an amended complaint. The District Court issued an opinion describing the defects in the proposed pleading and entered an order refusing to reopen the case. The order concluded with a directive that "Plaintiff shall file a letter on the docket within 30 days indicating how he intends to proceed." S. App. 10. Kemp immediately appealed.

II.

We first consider our jurisdiction. Kemp seeks review of the order denying his motion to reopen. The order also directed Kemp to tell the District Court "how he intends to proceed," raising a potential finality issue under 28 U.S.C. § 1291. *See* Pro Cap Br. 6; *cf. Berke v. Bloch*, 242 F.3d 131, 135 (3d Cir. 2001) ("[I]f the order specifically contemplates further activity by the District Court, it is not considered final.").

In the opinion supporting the order under review, the District Court determined that Kemp had again failed to state a claim. The opinion indicated that Kemp's claims were subject to dismissal (and not without prejudice). The opinion, moreover, did not

[2] It thus applied, in function if not form, our sua sponte amendment rule. *See Fletcher-Harlee Corp. v. Pote Concrete Contractors, Inc.*, 482 F.3d 247, 252 (3d Cir. 2007).

invite Kemp to file another motion to reopen. On those facts, the District Court's order is "final" under § 1291. *See Catlin v. United States*, 324 U.S. 229, 233 (1945).

Even if the directive for Kemp to explain "how he intends to proceed" contemplated further action in the District Court, Kemp clearly intended to steer the litigation to this Court. Kemp did not file the requested letter; he filed his notice of appeal the day the order was entered; and, in his opening brief, he defended his amended complaint (to the extent described in this opinion). The District Court's directive is thus no obstacle to our exercise of jurisdiction. *See Weber v. McGrogan*, 939 F.3d 232, 240 (3d Cir. 2019); *Batoff v. State Farm Ins. Co.*, 977 F.2d 848, 851 n.5 (3d Cir. 1992).

III.

Turning to the merits, we observe that, on or around the day Kemp filed his notice of appeal, his home was sold by Pro Cap to a third party. *See* Kemp Br. 9; Pro Cap Br. 6. In light of the sale, and because the District Court has appeared receptive to further litigation by Kemp, we asked for briefing on the viability of an amended *Tyler* claim. Kemp was free to brief non-*Tyler* issues, but he failed to do so.[3] All of his preserved issues sit beneath the umbrella of an argument that his *Tyler* claim has always been valid and was improperly handled by the District Court.

We reject that argument. Kemp might *now* have a viable *Tyler* claim; it remains to be seen. But that has no bearing on the viability of the *pre*-sale claim raised in the amended complaint. Without an allegation of a consummated sale, the pleading lacked a

[3] Unbriefed issues are forfeited. *See In re Wettach*, 811 F.3d 99, 115 (3d Cir. 2016).

factual or legal basis for a surplus-equity calculation. The *Tyler* claim in the amended complaint thus was (at best) unripe, subject to dismissal under § 1915(e)(2)(B)(ii), and not a legitimate ground for reopening. *See Pung v. Isabella Cnty., Michigan*, 146 S. Ct. 1964, 1970 (2026) (explaining that *Tyler* and its doctrinal lineage establish "that when the government seizes and sells property to collect a tax debt, the owner is entitled to the surplus *sale proceeds*—nothing less, and nothing more") (emphasis added).

Accordingly, we will affirm the judgment of the District Court.[4] Kemp's motion to stay the appeal is denied.

[4] During this appeal, Kemp filed in the District Court a "protective motion for leave file [a] second amended complaint." S. App. 5. That post-judgment motion, which sought to raise new state law claims, was not accompanied by a proposed pleading and did not address the reopening standard. *See BLOM Bank SAL v. Honickman*, 605 U.S. 204, 210 (2025) ("[A] party seeking to reopen his case and replead must first satisfy Rule 60(b) on its own terms and obtain Rule 60(b) relief before Rule 15(a)'s liberal amendment standard can apply."); *Fletcher-Harlee Corp.*, 482 F.3d at 252 ("After judgment dismissing the complaint is entered, a party may seek to amend the complaint . . . only through Federal Rules of Civil Procedure 59(e) and 60(b)."). The Magistrate Judge, observing that Kemp's appeal was pending, denied the motion without prejudice. Our affirmance today is without prejudice to Kemp's filing a Rule 60(b) motion to reopen seeking to replead his *Tyler* claim or, alternatively, his filing a new action to raise an adequately pleaded *Tyler* claim against the proper defendants.