

United States Court of Appeals
For the Eighth Circuit

No. 20-2829

Edgar Vernell Futrell

Plaintiff - Appellant

v.

TIAA Bank

Defendant - Appellee

Appeal from United States District Court
for the Eastern District of Missouri - St. Louis

Submitted: March 29, 2021

Filed: April 6, 2021

[Unpublished]

Before SHEPHERD, MELLOY, and KOBES, Circuit Judges.

PER CURIAM.

In this diversity case, Edgar Futrell appeals after the district court¹ dismissed his action under Federal Rule of Civil Procedure 12(b)(6). He argues that the district

¹The Honorable Ronnie L. White, United States District Judge for the Eastern District of Missouri.

court erred by failing to rule on his motion to compel discovery and his attempt to amend his complaint prior to dismissing the action.

Upon carefully reviewing the record and the parties' arguments on appeal, we agree with the district court that Futrell failed to state claims for breach of contract or fraud. See Kelly v. City of Omaha, 813 F.3d 1070, 1075 (8th Cir. 2016) (standard of review). We also conclude that the district court did not abuse its discretion in declining to consider Futrell's motion to compel discovery and his attempt to amend his complaint without leave. See Robinson v. Potter, 453 F.3d 990, 994-95 (8th Cir. 2006) (concluding that district court did not abuse its discretion in denying motion to compel discovery where movant failed to show parties attempted to confer to resolve discovery request, as required by Fed. R. Civ. P. 37 and local rule); see also MSK EyEs Ltd. v. Wells Fargo Bank, Nat'l Ass'n, 546 F.3d 533, 545 (8th Cir. 2008) (concluding that district court did not abuse its discretion by implicitly denying leave to amend complaint).

Accordingly, we affirm. See 8th Cir. R. 47B. We also deny as moot Futrell's motion for appointment of counsel.
