United States Court of Appeals
For the First Circuit

No. 24-2000

YOON DOELGER; PETER DOELGER,

Plaintiffs, Appellants,

v.

JPMORGAN CHASE BANK, N.A.; CHICKASAW CAPITAL MANAGEMENT, LLC,

Defendants, Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

[Hon. Angel Kelley, U.S. District Judge]

Before

Montecalvo, Kayatta, and Rikelman,
Circuit Judges.

James R. Serritella, with whom Mario J. Cacciola, Mark Keurian, Hannah R. Freiman, Kim & Serritella LLP, Joshua W. Gardner, and Gardner & Rosenberg PC were on brief, for appellants.

John E. Sutherland and Brickley/Sears, P.A., on brief for the Institute for the Fiduciary Standard as amicus curiae supporting appellants.

R. Walker Humphrey, II and Willoughby Humphrey & D'Antoni, PA, on brief for Public Investors Advocate Bar Association as amicus curiae supporting appellants.

Tracy O. Appleton, with whom Tibor L. Nagy, Jr., Jacob Goldenberg, David Moosmann, Nagy Wolfe Appleton LLP, Joan A. Lukey, Manatt, Phelps & Phillips, LLP, Ryan Robert Baker, Bass Berry & Sims PLC, David John Freniere, and Freniere Law Group PLLC were on brief, for appellees.

Evan Bianchi, Joseph M. Esposito, and Spiro Harrison & Nelson

on brief for Professor Allen Ferrell as amicus curiae supporting appellees.

Eben P. Colby, Marley Ann Brumme, Nicole D. Pacheco, and Skadden, Arps, Slate, Meagher & Flom LLP on brief for Securities Industry and Financial Markets Association as amicus curiae supporting appellees.

Janet Galeria, Audrey Dos Santos, U.S. Chamber Litigation Center, Samuel Larson, Stephanie Swanson, Associated Industries of Massachusetts, Jaime A. Santos, Christopher J.C. Herbert, and Goodwin Procter LLP on brief for the Chamber of Commerce of the United States of America and Associated Industries of Massachusetts as amici curiae supporting appellees.

James Tierney on brief as amicus curiae supporting neither party.

November 19, 2026

MONTECALVO, Circuit Judge. Plaintiffs-Appellants Yoon and Peter Doelger (the "Doelgers") appeal the district court's order granting summary judgment to Defendants-Appellees JPMorgan Chase Bank, N.A. ("JPMC") and Chickasaw Capital Management, LLC ("Chickasaw") (collectively "Defendants") on all of the Doelgers' claims, orders on the parties' motions to strike, and order denying the Doelgers' motion for leave to amend their complaint. The Doelgers claim that the actions Defendants took in providing them with investment advisory services caused them to lose their life savings. Thus, the Doelgers seek to recoup those losses, asserting claims of breach of fiduciary duty; breach of contract; breach of the covenant of good faith and fair dealing; negligence (or gross negligence); negligent misrepresentation; and violations of Massachusetts's consumer protection statute, Mass. Gen. Laws ch. 93A ("Chapter 93A"), and the Florida Adult Protective Services Act, Fla. Stat. § 415.1111 ("FAPSA"). The Doelgers also bring declaratory judgment and rescission claims related to a contract they entered with JPMC. While this appeal was pending, Peter Doelger passed away, prompting Yoon Doelger to file a motion for substitution pursuant to Federal Rule of Appellate Procedure ("FRAP") 43(a), which remains pending.

Because we find that the Doelgers have failed to create a genuine dispute of material fact sufficient to defeat summary judgment, and we find that the district court did not abuse its

discretion when denying the Doelgers' motion to amend their complaint, we affirm the district court's orders on those motions. Accordingly, we dismiss the Doelgers' motion for substitution and their challenges to the motions to strike orders as moot.

I. Background

A. Factual Background

The Doelgers, until Peter's[1] death in 2026, were a married couple and partners for over forty years. Yoon was a full-time parent, and Peter co-founded an energy audit company. In 1995, Peter retired after selling his interest in that company. After retiring, Peter focused on his investment portfolio, and, in the 2000s, began investing in master limited partnerships ("MLPs").[2]

In 2009, Peter opened a line of credit with JPMC -- which had a banking relationship with Peter since at least the 1990s -- that was secured by, among other things, Peter's MLP investments.[3] Between 2009 and 2014, Peter's MLP investments increased in value by over $25 million and were generating an average of $1.5 million in annual distributions and millions of

[1] When referring to the Doelgers individually, we use their first names for clarity.

[2] MLPs are publicly traded entities that trade on the major U.S. stock exchanges and must derive at least 90% of their income from sources, such as energy and natural resource activities, real estate income, and/or income from commodity investments.

[3] Through the line of credit, Peter borrowed millions of dollars, with a peak balance of almost $18 million in mid-2014.

dollars in total gain. But in late 2014, the value of MLPs began to decline.

Sometime in 2013 or 2014, the Doelgers were introduced to JPMC Investor Associate James Baker. And in spring 2015, Peter and Baker discussed switching Peter's MLP manager from Atlantic Trust Private Wealth Management to Chickasaw, which managed the Master Limited Partnership Energy and Infrastructure portfolio strategy ("MLPEI Program") that JPMC offered. This discussion culminated in a meeting on August 10, 2015, at which Baker, Chickasaw representatives, and the Doelgers were in attendance. By the end of the meeting, Peter expressed interest in working with Chickasaw, signing a personal account application ("2015 Advisory Agreement" or the "Agreement") to open the MLP account ("Advisory Account") at JPMC.[4]

Under the 2015 Advisory Agreement, Peter agreed to appoint JPMC as "investment manager" for the portfolio he selected and to allow JPMC to manage such portfolio "following its own judgment and discretion," but "subject to the annexed [p]ortfolio [s]chedule." The portfolio schedule annexed to the Agreement

[4] Chickasaw was not a signatory to the 2015 Advisory Agreement. Instead, JPMC and Chickasaw signed an Agreement for Investment Management Services ("AIMS") and a term sheet ("Term Sheet") associated with the Advisory Account. While the Doelgers were not signatories to the AIMS and Term Sheet, these documents set forth Chickasaw's duties and obligations with respect to the investment management services it provided to the Doelgers.

indicated that Peter selected the MLPEI Program, which "intend[ed] to invest in publicly traded partnerships, limited liability companies and corporations, predominantly in the energy sector." Additionally, the Agreement was "subject to and incorporate[d] the J.P. Morgan General Terms for Accounts and Services" (the "General Terms"), which, in turn, provided that the Agreement would be governed by New York law. Lastly, the Agreement indicated that Peter's net worth was $100 million.

After Peter signed the 2015 Advisory Agreement, but before JPMC could open the Advisory Account, Baker had to clear some "operational hurdles," including JPMC's "internal suitability" policies. At around that time, Peter had given JPMC the "green light" to use $33 million of his MLP investments to fund the Chickasaw-managed MLPEI Program. But JPMC had an internal suitability policy for the MLPEI Program that limited investment into that Program to 5% of the client's liquid net worth. A client's investment could exceed the 5% limitation only if an exception were granted. Thus, Baker pursued an exception given that Peter's $33 million investment would be 33% of his purported $100 million net worth and therefore well above the 5% limitation.

Ultimately, JPMC's approval of the exception was made contingent on Peter signing a letter ("MLPEI Letter") confirming his prior representations to JPMC and acknowledging that his requested investment amount in the MLPEI Program was larger and

more concentrated than JPMC recommended. After Peter signed the MLPEI Letter, JPMC agreed to open the Advisory Account.[5]

From 2014 to 2019, MLPs generally declined in value and underperformed the S&P 500. And during the early 2020 COVID-19 outbreak, the Doelgers' MLP investments declined sharply. The Doelgers sold a portion of those investments in March 2020, and then, about a week later, faced with their MLP investments' continued decline, sold off the remainder of those investments. The Doelgers thereafter paid the balance of their line of credit they had opened with JPMC.

B. Procedural Background

Over a year after divesting from the MLPs, the Doelgers commenced a nine-count action against Defendants JPMC and Chickasaw in June 2021. In February 2023, the district court referred the case to a magistrate judge for full pretrial proceedings and report and recommendation ("R&R") on dispositive motions.

1. Motion to Amend

On August 2, 2023, the Doelgers filed a motion for leave to amend their complaint pursuant to Federal Rule of Civil Procedure ("Rule") 15(a), seeking to add JPMC's affiliate J.P.

[5] Chickasaw was not a signatory to the MLPEI Letter. Additionally, Yoon was not added to the Advisory Account until June 2019, when the Doelgers signed an advisory agreement that was substantively identical to the 2015 Advisory Agreement.

Morgan Securities, LLC ("JPMS") as a defendant, and new claims and allegations against Defendants and JPMS, including "causes of action for breach of contract/third-party beneficiary claims, alter ego liability, aiding and abetting breach of fiduciary duty, and civil conspiracy." The magistrate judge denied the motion. In doing so, she acknowledged that under Rule 15(a)(2), a "court should freely give leave [to amend a pleading] when justice so requires." But, as to the Doelgers' request to add JPMS as a party, she remarked that, under the U.S. District Court for the District of Massachusetts Local Rule 15.1(a), "[a]mendments adding parties shall be sought as soon as an attorney reasonably can be expected to have become aware of the identity of the proposed new party" and that violating that rule is "a basis to deny a motion to amend to add a new party." Pointing to the portions of the original complaint in which the Doelgers made specific allegations of misconduct against JPMS, the magistrate judge determined that the Doelgers were aware of JPMS and its purported malfeasance from the outset of the case. Thus, she denied the Doelgers' "eleventh-hour attempt to add JPMS" as a party.

As to the new claims and allegations the Doelgers sought to add, the magistrate judge determined that their undue delay in raising the proposed amendments despite having "much of the information . . . available to [them] prior to filing the complaint" and the prejudice to Defendants from the additional

discovery they would need to conduct in response to those amendments justified denying their motion to amend. She also noted, in relevant part, that the claims against JPMS "may well be subject to an arbitration clause." Thus, after rejecting the Doelgers' proposed additions, the magistrate judge denied the motion to amend.

The Doelgers filed objections to the magistrate judge's denial of their motion to amend, requesting that the district court set it aside. In a text order, the district court adopted and affirmed the magistrate judge's order denying the motion to amend, discerning no clear error or determination contrary to law and finding the order "consistent with . . . First Circuit jurisprudence."

2. Motion for Summary Judgment and Motions to Strike

On September 28, 2023, Defendants filed a consolidated motion for summary judgment on all of the Doelgers' claims, and subsequently filed, among other things, a declaration from James Baker in further support of their motion. The Doelgers filed their opposition to Defendants' motion, attaching, in relevant part, a declaration from Yoon Doelger in support. That declaration prompted Defendants to file a motion to strike all or parts of Yoon's declaration. In response, the Doelgers filed an opposition to the motion to strike and raised their own motion to strike, in relevant part, Baker's declaration.

On March 25, 2024, the magistrate judge issued an R&R (1) denying the Doelgers' motion to strike; (2) granting in part and denying in part Defendants' motion to strike; and (3) recommending that the district court grant Defendants' motion for summary judgment. The Doelgers filed an objection to the R&R, but the district court -- adopting the R&R in its entirety -- issued an order granting Defendants' summary judgment motion and affirming the R&R as to the Doelgers' motion to strike and Defendants' motion to strike. The Doelgers' timely appeal followed.

3. Motion for Substitution

While this appeal was pending, Peter passed away. Yoon, who was appointed as the representative of Peter's estate, filed a motion to substitute herself in Peter's place pursuant to FRAP 43(a).[6] In the motion, Yoon contended that under Massachusetts law, which she asserted governs this appeal, all of Peter's claims survive his death. In doing so, she acknowledged that, under Massachusetts law, only claims based in contract survived death. But, citing relevant cases, Yoon argued that Peter's tort claims survived his death because they "derive from

[6] In relevant part, FRAP 43(a) provides that "[i]f a party dies after a notice of appeal has been filed or while a proceeding is pending in the court of appeals, the decedent's personal representative may be substituted as a party on motion filed with the circuit clerk by the representative or by any party."

the contractual relationship between him and his professional investment advisers." Defendants agreed that, for substitution purposes, Peter's contract and contract-based tort claims survived Peter's death.[7] But they asserted that Yoon's position undermined the Doelgers' arguments in their merits brief on appeal that the district court erred in determining that the Doelgers' tort claims were duplicative of their contract claims. Thus, Defendants argued that this court should affirm the district court's conclusion on that point.

II. Discussion

We will start by addressing the motion to amend, move to the motion for summary judgment, and then close with the motions to strike and Yoon's motion for substitution.

A. Motion to Amend

Regarding their motion to amend the complaint, the Doelgers principally argue that the district court committed a reversible legal error in its text order adopting the magistrate judge's R&R and, separately, that the district court "should have allowed the amendments" because they were sought as promptly as

[7] Defendants initially filed a motion requesting that this court hold Yoon's motion for substitution in abeyance pending the resolution of the appeal or, alternatively, extend their time to respond. We denied their request to hold the motion in abeyance but granted their request to extend the deadline to respond to Yoon's motion.

possible. We will address each argument in turn but pause to recite our standards of review.

We review the district court's denial of a motion to amend for abuse of discretion. U.S. ex rel. D'Agostino v. EV3, Inc., 802 F.3d 188, 191 (1st Cir. 2015). Under this standard, we defer to the "trial court's hands-on judgment" and will affirm if "the record evinces an arguably adequate basis for the court's decision." Id. at 191-92 (quoting Hatch v. Dep't for Child., Youth & Their Fams., 274 F.3d 12, 19 (1st Cir. 2001)). But our deference has some bounds, and we may find that a trial court has abused its discretion when, "among other things, it adopts and applies the wrong legal rule." Id. at 192. Even so, we may decline to reverse if the error of law is harmless. See, e.g., P.R. Hosp. Supply, Inc. v. Bos. Sci. Corp., 426 F.3d 503, 507 (1st Cir. 2005). Whether the district court applied the correct legal standard is a question of law that we review de novo. See United States v. Vavic, 139 F.4th 1, 16 (1st Cir. 2025).

Starting with a legal error argument, the Doelgers contend that the district court committed reversible error by improperly applying Rule 16's "good cause" standard rather than the applicable, so-called "freely given" standard under Rule 15(a), which provides that courts should "freely give leave [to amend] when justice so requires." Fed. R. Civ. P. 15(a)(2). This error, they assert, is evidenced by the district court's

citations to cases applying the "good cause" standard and determination that the Doelgers "lack[ed] good cause for the amendment."

Defendants do not dispute that the district court applied Rule 16's "good cause" standard but highlight that the court adopted the "reasons stated" in the magistrate judge's order, which applied Rule 15(a)'s "freely given" standard. Additionally, they raise that, even if the district court applied the incorrect legal standard, we can affirm on alternate grounds, namely the grounds provided in the magistrate judge's order.

We agree with the Doelgers that the district court erred when invoking Rule 16's "good cause" standard in its text order.[8] Typically, "Rule 16(b)'s 'good cause' standard, rather than Rule 15(a)'s 'freely given' standard, governs motions to amend filed after" the scheduling order deadline for amending pleadings. Trans-Spec Truck Serv., Inc. v. Caterpillar Inc., 524 F.3d 315, 327 (1st Cir. 2008) (citation modified). But here, the Doelgers could not have triggered Rule 16(b)'s "good cause" standard because the district court's scheduling order did not set a deadline for amending pleadings. Thus, as the magistrate judge

[8] The district court noted that the "freely given" standard "elevate[s]" to a "good cause" standard when a motion to amend is filed late in a case and then determined that the Doelgers "lack[ed] good cause for the amendment" because their proposed amendments included information they "previously knew or should have known."

correctly identified, Rule 15(a)'s "freely given" standard applied to the Doelgers' motion to amend. Accordingly, the district court referenced the incorrect amendment standard.

That said, we decline to hold that the district court's invocation of Rule 16 was an abuse of discretion requiring reversal, considering the procedural posture the district court operated under when issuing its order. Under its standard of review, the district court could "modify or set aside any part of the [magistrate judge's] order" on a nondispositive motion only if the district court determined the magistrate judge's order was "clearly erroneous" or "contrary to law." Fed. R. Civ. P. 72(a); ML-CFC 2007-6 P.R. Props., LLC v. BPP Retail Props., LLC, 951 F.3d 41, 46 (1st Cir. 2020); see also Pagano v. Frank, 983 F.2d 343, 346 (1st Cir. 1993) (noting that a motion for leave to amend is typically a nondispositive motion subject to Rule 72(a)).

But, recall, in its text order, the district court adopted the magistrate judge's order applying Rule 15(a), making no finding that it was "contrary to law." Indeed, the text order began by stating that "the [c]ourt finds the [magistrate judge's] Order to be consistent with the First Circuit jurisprudence and accordingly ADOPTS" that order. The district court's reasoning set out in its text order substantially tracks the analysis by the magistrate judge: that the Doelgers delayed in adding JPMS to the action, especially considering that they explicitly referenced

JPMS in their original complaint, and that adding JPMS two years into the litigation and after the close of discovery would prejudice and burden Defendants. Thus, the district court's text order agrees with the magistrate judge's undue delay and resulting prejudice discussion -- both of which were critical to her analysis under the "freely given" standard -- and adopts the magistrate judge's order on those grounds. We find, then, that any error in citing the good cause standard was harmless. Cf. Santiago v. Municipality of Utuado, 114 F.4th 25, 34 (1st Cir. 2024) ("We must conclude an abuse of discretion occurred when a district court bases its ruling on an erroneous view of the law . . . ." (citation modified)). Accordingly, the district court's error does not amount to an abuse of discretion that would warrant reversal.[9]

We now turn to the Doelgers' contention that their motion to amend should have been granted because they sought amendment as promptly as possible. They assign fault for the delay in procuring the information necessary to amend their complaint to Defendants, asserting that Defendants "stalled the case for nearly a year"

[9] This is not to say that a district court's adoption of an order applying the correct standard will always be sufficient to absolve it from an abuse of discretion finding. But we think, under these circumstances, the district court's decision was not wholly "base[d]" on the "good cause" standard, Santiago, 114 F.4th at 34, as it fully reviewed and considered the magistrate judge's analysis made under the correct "freely given" standard.

when challenging the Doelgers' lead counsel's pro hac vice motion and delayed providing them with information "crucial" for amending their complaint during discovery. Defendants argue the opposite, positing that the reasons for the Doelgers' delay in amending their complaint lie at their feet because they had the knowledge necessary to plead their proposed claims prior to discovery. Moreover, Defendants assert that the district court was "entitled to believe" the Doelgers' amendments would disrupt the case schedule, require additional discovery and research, and thus, unduly prejudice Defendants. Serrano Medina v. United States, 709 F.2d 104, 106 (1st Cir. 1983).

We resolve these arguments in Defendants' favor and hold that "the record evinces an arguably adequate basis for the court's decision" -- namely the undue prejudice the amendments posed to Defendants. U.S. ex rel. D'Agostino, 802 F.3d at 191-92 (quoting Hatch, 274 F.3d at 19). In Acosta-Mestre v. Hilton International of Puerto Rico, Inc., we determined that prejudice to a defendant "resulting from a re-opening of discovery with additional costs, a significant postponement of trial, and a likely major alteration in trial strategy and tactics due to the presence" of a newly added party, "fully support[ed]" the district court's ruling denying the plaintiff's motion to amend under Rule 15(a). 156 F.3d 49, 52 (1st Cir. 1998).

Here, the magistrate judge's order adopted by the district court recognized that similar forms of prejudice to Defendants would result if the court granted the Doelgers' motion. Specifically, the magistrate judge determined that the additional claims and allegations against Defendants and JPMS would require reopening discovery and credited Defendants' assertions that they may need new experts and would require new expert reports. The new discovery, the magistrate judge found, "would come at an additional burden and cost to Defendants, and exponentially add to the time needed to bring this case to a conclusion." We thus agree with Defendants that "[t]he district court was entitled to believe that allowance of the eleventh-hour amendment would result in undue prejudice to the defendants, as it added [a] new part[y] . . . and[,] by raising new and separate claims[,] would require additional research and discovery." Serrano Medina, 709 F.2d at 106. Accordingly, we find no abuse of discretion in the denial of the Doelgers' motion to amend and therefore affirm the district court's disposition of that motion.[10] See id.

[10] The Doelgers raise additional arguments urging us to reverse based on judicial estoppel or JPMC's and JPMS's fraud on the court. They reason reversal is warranted because JPMC's representation before the district court about the non-arbitrability of the Doelgers' claims against JPMS, in JPMC's motion to enjoin the Doelgers' arbitration against JPMS, was at odds with their earlier representation to the magistrate judge about the arbitrability of those claims. But the Doelgers failed to raise these fraud-on-the-court and judicial estoppel arguments below, despite having a chance to do so when, in their opposition

B. Motion for Summary Judgment

We now turn to the appeal of the district court's order granting Defendants' motion for summary judgment. A district court's grant of summary judgment is reviewed de novo, and we may affirm on any ground revealed by the record. See Alicea v. Cincinnati Inc., 166 F.4th 245, 253 (1st Cir. 2026).

Summary judgment is appropriate if the record, viewed in the light most favorable to the non-moving party -- here, the Doelgers -- "discloses 'no genuine issue of material fact' and demonstrates that 'the moving party is entitled to a judgment as a matter of law.'" Iverson v. City of Boston, 452 F.3d 94, 98 (1st Cir. 2006) (quoting Fed. R. Civ. P. 56(c)). "Where a mov[ing party] asserts that there is an absence of evidence to support claims on which the non-mov[ing party] bears the burden of proof, the non-mov[ing party] 'may defeat a summary judgment motion by demonstrating, through submissions of evidentiary quality, that a trial worthy issue persists.'" Alicea, 166 F.4th at 253 (quoting Calvi v. Knox County, 470 F.3d 422, 426 (1st Cir. 2006)). "[A] conglomeration of 'conclusory allegations, improbable inferences, and unsupported speculation' is insufficient to discharge the non[-moving party's] burden." DePoutot v. Raffaelly, 424 F.3d

---

to the motion to enjoin, they stated that Defendants were taking inconsistent positions with respect to whether the claims against JPMS were arbitrable. Accordingly, we deem these arguments waived.

112, 117 (1st Cir. 2005) (quoting Medina-Munoz v. R.J. Reynolds Tobacco Co., 896 F.2d 5, 8 (1st Cir. 1990)).

1. Causation

Our review of the district court's grant of summary judgment centers on causation. In their opposition, Defendants argue that the Doelgers failed to address causation in their summary judgment response brief below, merely dismissed Defendants' causation arguments as "ridiculous" in their surreply, and then, in their objection to the R&R, offered only "conclusory, unsupported statements" to support their causation argument. Accordingly, Defendants contend, the Doelgers waived the causation issue. We agree.

For context, in their summary judgment briefs, Defendants argued that dismissal was warranted because the Doelgers did not have evidence of causation for their breach of contract, breach of the covenant of good faith and fair dealing, breach of fiduciary duty, negligence, gross negligence, negligent misrepresentation, Chapter 93A, and FAPSA claims.[11] The main

[11] Defendants' argument that the Doelgers failed to establish causation for their FAPSA claim appears for the first time in their reply to the Doelgers' opposition to summary judgment below. But we are not so concerned that Defendants waived this causation argument by "failing to raise it in the summary judgment motion['s]" opening brief. Gerald v. Univ. of P.R., 707 F.3d 7, 27 (1st Cir. 2013). That is because appellees are "typically free to defend a judgment below on any ground made manifest by the record, and we are similarly free to affirm a grant of summary judgment for any reason apparent in the record," including the

premise of Defendants' causation argument was that the Doelgers could not meet their burden of proving causation because there was no evidence that, had Defendants acted differently, Peter would have divested from MLPs. Seeing no direct response to their causation arguments in the Doelgers' opposition brief, Defendants, on reply, argued that the Doelgers' failure to address causation constituted waiver of that argument and merited dismissal of the claims requiring causation.

In their summary judgment surreply, the Doelgers retorted that they did address Defendants' causation arguments in their opposition brief, citing the page within that brief that, they contend, contains such a response. But we glean no direct response to Defendants' causation arguments on the cited page. Rather, on that page in the opposition, the Doelgers appear to address damages, not causation, asserting that "Defendants . . . argue that despite their dishonest conduct and mismanagement costing Plaintiffs over 90% of Peter's liquid assets in less than 5 years, Plaintiffs have somehow not suffered any damages. Such arguments are entirely factual, and accordingly inappropriate for summary judgment." While a discussion of damages can be said to imply that something caused the damages, it offers

---

Doelgers' failure to set forth facts establishing causation for their FAPSA claim. Id. (citation modified).

no explanation for what that cause was, much less that it was the specific cause the Doelgers were required to show.

The Doelgers, in their surreply, seemed to make a belated attempt at arguing that certain record facts created a genuine dispute of material fact as to causation. But generally, an argument raised belatedly in the district court is not preserved for later appellate review unless the district court, "without reservation, elects to decide it on the merits." Holsum de P.R., Inc. v. ITW Food Equip. Grp. LLC, 116 F.4th 59, 66 (1st Cir. 2024) (quoting Negrón-Almeda v. Santiago, 528 F.3d 15, 26 (1st Cir. 2008)). Thus, we have rejected waiver arguments when a party failed to raise an argument until their surreply, but the district court nevertheless decided the issue on the merits. See id. (determining that theory defendants raised for the first time in their surreply was preserved for appellate review because the district court addressed the theory and based its ultimate decision on that theory); Negrón-Almeda, 528 F.3d at 26 (proceeding on the merits of an argument raised for the first time in defendants' surreply before the district court because "the district court opted to address the argument head-on").

Here, even the Doelgers acknowledged in their objection to the R&R that the magistrate judge did not address or without reservation elect to decide causation on the merits. To the contrary, in a footnote to her analysis of the Doelgers' breach of

contract claim, the magistrate judge remarked that "[t]he Doelgers must also prove causation. Their opposition memorandum failed to address Defendants' arguments that the Doelgers lack evidence of causation. In their sur-reply, the Doelgers admit that they did not respond to this argument because it was 'ridiculous.'" The magistrate judge thus evinced that she regarded the Doelgers' proffer as to causation as untimely and rejected their only excuse for the untimeliness.

Moreover, the district court, for its part, addressed the Doelgers' objection to the magistrate judge's discussion of causation but did not decide causation on the merits. Rather, the district court noted that the Doelgers' challenges to Defendants' causation argument "mischaracterize[d] Defendants' arguments" and that their remaining causation arguments "consist[ed] of conclusory, unsupported statements," effectively finding that the Doelgers did not preserve their causation arguments.

Additionally, in their opening brief on appeal, the Doelgers failed to address the preservation concerns in the proceedings below, further compounding, rather than eliminating, the issue of waiver. And their attempt on appeal to point us to causation evidence, without having timely raised it below, comes too late. Because the Doelgers' belated causation arguments do not arise under circumstances that invoke our waiver exception, we deem the Doelgers' causation arguments waived. See 3137, LLC v.

Town of Harwich, 126 F.4th 1, 15 (1st Cir. 2025) ("Arguments not spelled out squarely and distinctly in the district court are waived." (citation modified)).

Having concluded that the Doelgers waived the causation element, we hold that the district court did not err in granting summary judgment to Defendants.[12] As the moving party, Defendants asserted "an absence of evidence" on causation, arguing that the Doelgers cannot show, among other things, that Peter would have taken a different approach with respect to his MLP investments if not for Defendants' actions. Alicea, 166 F.4th at 253. To withstand summary judgment then, the Doelgers could not simply dismiss Defendants' causation argument as "ridiculous"; rather, they had to "present 'definite, competent evidence' to rebut the motion on all issues as to which they bore 'the ultimate burden of proof,'" including causation. Cruz-Cedeño v. Vega-Moral, 150

[12] "Causation in fact -- i.e., proof that the defendant's conduct did in fact cause the plaintiff's injury -- is a standard requirement of any tort claim." Univ. of Tex. Sw. Med. Ctr. v. Nassar, 570 U.S. 338, 346 (2013). And under New York law, which the parties do not dispute applies to the Doelgers' contract claims, causation is an element of breach of contract and breach of good faith and fair dealing claims. See 34-06 73, LLC v. Seneca Ins. Co., 198 N.E.3d 1282, 1287 (N.Y. 2022) ("[T]o plead a cause of action for breach of contract, a plaintiff usually must allege that: (1) a contract exists; (2) plaintiff performed in accordance with the contract; (3) defendant breached its contractual obligations; and (4) defendant's breach resulted in damages." (citation modified)); M/A-COM Sec. Corp. v. Galesi, 904 F.2d 134, 136-37 (2d Cir. 1990) (discussing party's failure to establish causation for their breach of the covenant of good faith and fair dealing claim under New York law).

F.4th 1, 7 (1st Cir. 2025) (quoting Pina v. Children's Place, 740 F.3d 785, 795-96 (1st Cir. 2014)). But the Doelgers ignored the causation argument, failing to put forth any evidence -- let alone "definite, competent evidence" -- on an essential element on which they bore the burden of proof. Pina, 740 F.3d at 796 (quoting Mesnick v. Gen. Elec. Co., 950 F.2d 816, 822 (1st Cir. 1991)). Without such evidence, the Doelgers' claims that require causation could not have survived summary judgment as they necessarily fail as a matter of law. Defendants were thus entitled to summary judgment on this basis. See Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986) (mandating summary judgment where "the nonmoving party has failed to make a sufficient showing on an essential element of her case with respect to which she has the burden of proof").

Accordingly, based on the Doelgers' waiver of their causation arguments, we affirm the district court's order granting summary judgment[13] on the Doelgers' breach of contract, breach of the covenant of good faith and fair dealing, breach of fiduciary

[13] Because we affirm the district court's grant of summary judgment, we need not address the Doelgers' arguments that the district court erred when striking expert Phillip Gillespie's testimony on JPMC's suitability obligations and not considering expert David Tilkin's "opinions concerning industry standards." Such evidence is geared to establishing Defendants' standard of care for the Doelgers' fiduciary duty and negligence claims, which fail due to the Doelgers' waiver of their causation arguments.

duty, negligence, gross negligence, negligent misrepresentation, Chapter 93A, and FAPSA claims. See Gerald, 707 F.3d at 27.

2. Declaratory Judgment and Rescission Claims

Turning to the claims without a causation element, we now address the Doelgers' contention that the district court erred in dismissing their claims for declaratory judgment and rescission as to the MLPEI Letter.

The Doelgers first argue that the district court treated the MLPEI letter "as a hedge clause while ignoring the fact that hedge clauses are impermissible."[14] But the Doelgers do not explain how the district court treated the MLPEI Letter as a hedge clause.[15] The district court did not address the Doelgers' objection to the R&R's purported treatment of the MLPEI Letter as a hedge clause,

[14] For context, the SEC defines a "hedge clause" as "a clause in an advisory agreement that purports to limit an adviser's liability under that agreement." Commission Interpretation Regarding Standard of Conduct for Investment Advisers, Investment Advisers Act of 1940 Release No. 5248, 2019 WL 3779889, at *4 n.31 (June 5, 2019). The SEC has indicated that "there are few (if any) circumstances in which a hedge clause in an agreement with a retail client would be consistent with" the Investment Advisers Act's antifraud provisions, though the agency noted that whether a hedge clause violates those provisions "depends on all of the surrounding facts and circumstances." Id.

[15] One of the headings in the Doelgers' brief is titled "The District Court Erred in Enforcing Hedge Clauses, Including the Limitation Provision and the [MLPEI] Letter." However, under that heading, the Doelgers discuss only the "Limitation Provision" in the General Terms and how it purportedly constitutes a "hedge clause." They do not even mention the MLPEI Letter under that heading, let alone explain how any of its provisions constitute a "hedge clause."

deeming the objection "conclusory" and "without justification or supporting argument of any kind." Moreover, the district court determined that the MLPEI Letter does not contain a hedge clause, a determination that the Doelgers do not challenge on appeal. Thus, we discern no reversible error based on the Doelgers' first argument.

The Doelgers' second argument appears to challenge the district court's determination that the MLPEI Letter was neither procedurally nor substantively unconscionable. They assert that whether the MLPEI Letter is unconscionable "is an issue of fact because JPMC made the false statements in the letter and, even if it did not, JPMC cannot rely on the representations it knew were untrue." But the Doelgers, who do not cite or reference the legal standard applicable to their unconscionability claim, fail to explain how JPMC's purported "false statements" in the MLPEI Letter or reliance on the purported "untrue" statements therein gives rise to an issue of fact as to unconscionability. Thus, we find this underdeveloped argument waived. See United States v. Zannino, 895 F.2d 1, 17 (1st Cir. 1990) ("[I]ssues adverted to in a perfunctory manner, unaccompanied by some effort at developed argumentation, are deemed waived.").

Lastly, the Doelgers contend that the district court did not "meaningfully consider" their argument that 15 U.S.C. § 80b-15, a provision of the Investment Advisers Act of 1940,

15 U.S.C. §§ 80b-1 to 80b-21, applies to the MLPEI Letter "due to the fact that JPMC affiliate [JPMS] was a party, thereby triggering rescission." But the district court did consider the Doelgers' argument on that point but deemed it "another unsupported, conclusory objection" that it need not address, and that, in any event, the MLPEI Letter could not be rescinded as to JPMS because JPMS is not a party to this action. On appeal, the Doelgers still do not develop an argument as to why JPMS being a party to the MLPEI Letter triggers rescission of the Letter under § 80b-15. Thus, the Doelgers' undeveloped arguments as to rescission under § 80b-15 are also waived. See Zannino, 895 F.2d at 17.

Accordingly, we affirm the district court's grant of summary judgment on the Doelgers' declaratory judgment[16] and rescission claims.

C. Motions to Strike and Motion for Substitution

Outside of their claims on the merits, the Doelgers raise challenges to the district court's determinations on the parties' motions to strike, namely striking Yoon's statement in her

[16] While before us the Doelgers do not explain the bases for their declaratory judgment claim, their complaint indicates that Peter seeks a judgment declaring the MLPEI Letter unenforceable and "invalid, void, and/or rescinded." But only two of the allegations the Doelgers raised to support their declaratory judgment claim are argued in the declaratory judgment section of their appellate brief, namely the hedge clause and unconscionability arguments that we now reject for the reasons explained above.

declaration about attending the August 2015 meeting with Peter, Baker, and Chickasaw, and not striking Baker's testimony as to his knowledge of JPMC's suitability limits policy. Additionally, Yoon's motion for substitution remains pending. But because we affirm summary judgment on all of the Doelgers' claims, we dismiss the motions to strike as well as Yoon's motion for substitution as those motions are now moot.

III. Conclusion

For the reasons stated above, we **affirm** the district court's orders granting summary judgment and denying the Doelgers' motion to amend. Accordingly, we **dismiss** the Doelgers' motion for substitution and their challenges to the motion to strike orders as **moot**.