



**NOT FOR PUBLICATION**  
**UNITED STATES BANKRUPTCY COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**  
**LOS ANGELES DIVISION**

In re:  
RITA GAIL FARRIS-ELLISON,  
  
Debtor.

Case No. 2:11-bk-33861-RK  
Chapter 7  
Adv. No. 2:12-ap-01830-RK

**ORDER (1) STRIKING NEWLY FILED COMPLAINTS AGAINST FLAGSTAR BANK, RITA GAIL FARRIS-ELLISON, YI MING AND YI MING, LLC AND (2) VACATING HEARING ON OCTOBER 11, 2022**

JAMES LEE CLARK,  
  
vs.  
RITA GAIL FARRIS-ELLISON,  
  
Plaintiff,  
  
Defendant.

Vacated Hearing  
Date: October 11, 2022  
Time: 2:30 p.m.

**TO PLAINTIFF JAMES LEE CLARK, DEFENDANT RITA GAIL FARRIS-ELLISON AND HER ATTORNEY JAMES BRYANT, FLAGSTAR BANK, YI MING AND YI MING LLC:**

On September 9, 2022, Plaintiff James Clark ("Plaintiff") filed a document titled "Complaint for Conversion of Property" (Docket No. 616) in this adversary proceeding. On September 16, 2022, Plaintiff filed a second document titled "Complaint for

1 Conversion of Property” (Docket No. 617) and noticed it for a hearing on October 11,  
2 2022 at 2:30 p.m. In these documents, Plaintiff named Rita Gail Farris Ellison as the  
3 defendant in the caption, but named Rita Gail Farris Ellison, Flagstar Bank, Yi Ming and  
4 Yi Ming LLC as defendants in the body of the documents.

5 For the reasons stated herein, the court hereby strikes both documents from the  
6 case docket and vacates the October 11, 2022, 2:30 p.m. hearing based on the  
7 following.

8 In these adversary proceedings, Plaintiff has made multiple attempts to add  
9 Flagstar Bank and various other parties as defendants. In his latest attempt shown in  
10 these new complaints, Plaintiff alleges a single claim for conversion of property. As an  
11 exhibit, Plaintiffs attached an extensive list of items that he claims are personal  
12 property, which were seized from him.

13 Accordingly, Plaintiff apparently argues that he is allowed to litigate claims  
14 against Flagstar Bank, Yi Ming and Yi Ming LLC in this bankruptcy case because they  
15 “did not get permission to intervene or relief from stay from Bankruptcy Court Judge.”  
16 Complaint, Docket No. 616, Complaint at page 4, lines 6-7. Plaintiff in his Complaint did  
17 not make clear which stay Flagstar Bank, Yi Min or Yi Ming LLC may have violated  
18 because it could not have been an automatic stay of 11 U.S.C. § 362 in this bankruptcy  
19 case because the automatic stay arising in this bankruptcy case relates to the debtor in  
20 this case, Ms. Farris-Ellison, and her bankruptcy estate, and not to Plaintiff and his  
21 property. Thus, there is no actionable claim against these parties based on an  
22 automatic stay in this bankruptcy case. If there is an automatic bankruptcy case  
23 applicable to Plaintiff’s property in another bankruptcy case, which may have been in  
24 one of his bankruptcy cases since his property may have been part of the bankruptcy  
25 estate of those cases, Plaintiff needs to file his complaint there.

26 Flagstar Bank

27 Based on the court’s prior orders, the court must strike the new complaints as to  
28 Flagstar Bank because Plaintiff did not obtain permission to file a new complaint against

1 Flagstar Bank as required by the court's prior orders. On September 9, 2012, this court  
2 issued an order which states, "plaintiff may not refile his claims as to these defendants  
3 [including Flagstar Bank] in this court without prior authorization of this court." Order  
4 Granting Motion to Dismiss Adversary Complaint and Motion for Abstention, entered in  
5 2:12-ap-01830, Docket No. 19, 2:21-22. The court clarified and amended this order on  
6 September 25, 2015 in its Memorandum Decision (Docket No. 186) and extended the  
7 prefiling requirement as to Flagstar by stating, "Plaintiff may not file any complaint,  
8 motion or other proceeding against Flagstar, First American Title Insurance Company  
9 and Investors Title Company, Inc., in Debtor's bankruptcy case or in any adversary  
10 proceeding or contested matter in Debtor's bankruptcy case without prior authorization  
11 of the court, which must be sought by motion, and Plaintiff may not serve these parties  
12 with any such complaint, motion or other proceeding against them without prior  
13 authorization of this court." Memorandum Decision and Order Denying Plaintiff's Motion  
14 to Amend Complaint to Add Defendant, Flagstar Bank, and Directing Entry of Final  
15 Judgment Pursuant to Federal Rule of Civil Procedure 54(b) for Abstention and  
16 Dismissal as to Flagstar Bank, FSB, First American Title Insurance Company and  
17 Investors Title Company, Inc., From This Adversary Proceeding, entered in 2:12-ap-  
18 01830, Docket No. 186 at 16:6-12.

19 Since these orders bar Plaintiff from filing a new complaint against Flagstar Bank,  
20 without permission, and Plaintiff did not seek permission to file his complaints against  
21 Flagstar Bank, Plaintiff filed his new complaints against Flagstar Bank in violation of  
22 these orders, and accordingly, the court must enforce its prior orders and strike the new  
23 complaints from the case docket.

24 Additionally, on December 3, 2012, the court entered an order dismissing the  
25 complaint as to Flagstar Bank, without leave to amend. Order Granting Motion to  
26 Dismiss Adversary Complaint and Motion for Abstention, entered in Adversary  
27 Proceeding No. 2:12-ap-01830, Docket No. 41.<sup>1</sup> The court granted the motion without  
28

---

<sup>1</sup> Plaintiff sought reconsideration of the dismissal which the court denied. *See* Order Denying Plaintiff's Motion for

1 leave to amend and dismissed the complaint against Flagstar Bank with prejudice.  
2 Plaintiff moved for reconsideration of this order, which was denied by the court's order  
3 of May 23, 2013 (docket No. 78). Plaintiff filed a motion to vacate the order of  
4 dismissal, which was denied by the court's order of July 22, 2015 (Docket No. 164).  
5 Plaintiff filed a motion to amend complaint and add Flagstar as a defendant, which was  
6 denied by orders and judgment of September 25, 2015 (Docket Nos. 185 and 186).  
7 These orders provided that the motion to amend was denied with prejudice and that the  
8 adversary proceedings were dismissed against Flagstar based on abstention on final  
9 judgment basis in that the court would abstain from hearing claims against Flagstar,  
10 meaning that Plaintiff could file his claims against Flagstar in state court or take an  
11 appeal of the dismissal based on abstention. The order dismissing Flagstar Bank  
12 based on abstention is a bar to filing a new complaint in these adversary proceedings  
13 against it.

14 Here, the court dismissed Flagstar Bank as a defendant in these adversary  
15 proceedings is a bar from filing new complaints against it. The issue of whether  
16 Flagstar Bank can be a defendant in this adversary proceeding was already explicitly  
17 and definitively decided before. Plaintiff has made multiple attempts to bring a cause of  
18 action against Flagstar Bank, in this adversary proceeding. By prior orders, the court  
19 barred Plaintiff from refiling a complaint against Flagstar Bank without permission, and

---

20  
21 Reconsideration from Order of Dismissal of Defendant Flagstar Bank, FSB and Order Imposing Sanctions entered  
22 in 2:12-ap-01830, Docket No. 78. On March 2, 2015, Plaintiff filed a motion to vacate the order dismissing Flagstar  
23 Bank and allow Plaintiff to amend complaint to add Flagstar (Docket No. 122) which the court denied. *See* Order  
24 Denying Motion to Vacate Order Dismissing Defendant Flagstar Bank and Allowing Plaintiff to Add a Legal Basis  
25 to Include Flagstar entered in 2:12-ap-01830, Docket No. 164. In this order the court stated, "The Court will require  
26 Clark to lodge any pleading relating to or naming Flagstar as a party with the Court with a hearing date on regular  
27 21-days' notice, but Clark is not permitted to serve Flagstar with the pleading until the Court reviews it and makes a  
28 determination that it is appropriate to be filed and served on Flagstar." *Id.* at 2. On July 10, 2015, Plaintiff filed a  
motion to amend complaint to add Flagstar as a defendant. Docket No. 161. The court entered a Memorandum of  
Decision and Order Denying Plaintiff's Motion to Amend Complaint to Add Flagstar Bank, and Directing Entry of  
Final Judgment Pursuant to Federal Rule of Civil Procedure 54(b) for Abstention and Dismissal as to Flagstar Bank,  
FSB, First American Title Insurance Company and Investors Title Company, Inc., From This Adversary Proceeding  
(Docket No. 186) and a Final Judgment Pursuant to Federal Rule of Civil Procedure 54(b) Dismissing Flagstar  
Bank, First American Title Company, and Investors Title Company as Defendants (Docket No. 185). Plaintiff  
sought reconsideration (Docket No. 190) of the order denying plaintiff's motion to amend complaint to add  
defendant Flagstar Bank, but eventually withdrew the motion. *See* Notice of Withdrawal of Motions, Docket No.  
241.

1 Plaintiff did not seek permission to file the new complaints. Plaintiff cannot add Flagstar  
2 Bank as a defendant in this adversary proceeding. Therefore, the court hereby strikes  
3 the new complaints as to Flagstar Bank.

4 Rita Gail Farris Ellison

5 As to Plaintiff filing a new complaint against Defendant Farris-Ellison, any  
6 amendment to the current operative complaint, the third amended complaint, is too late.  
7 The court has already conducted the trial in this adversary proceeding on Plaintiff's  
8 claims against Defendant Farris-Ellison on his third amended complaint. It is too late for  
9 Plaintiff to assert new claims against this defendant because the new complaints, which  
10 purportedly amend his operative complaint, the third amended complaint, does not  
11 comply with Federal Rule of Civil Procedure 15(b), applied in adversary proceedings  
12 through Federal Rules of Bankruptcy Procedure Rule 7015. Plaintiff did not file a  
13 motion for leave to amend the complaint against Defendant Farris-Ellison post-trial; he  
14 just filed this new amended complaint against her. .

15 Generally, leave to amend is within the discretion of the court. *Swanson v. U.S.*  
16 *Forest Serv.*, 87 F.3d 339, 343 (9th Cir. 1996). Factors to consider in allowing an  
17 amendment include: (1) bad faith or dilatory motive on the part of the movant, (2) undue  
18 delay, (3) undue prejudice to the opposing party by virtue of allowing the amendment,  
19 and (4) futility of amendment. *Foman v. Davis*, 371 U.S. 178, 182 (1962). "Prejudice to  
20 the opposing party is the most important factor." *Jackson v. Bank of Hawaii*, 902 F.2d  
21 1385, 1387 (9th Cir. 1990).

22 The factual allegations in Plaintiff's new complaints are vague and conclusory  
23 and do not allege any essential facts such as the alleged conversion of Plaintiff's  
24 property occurred or how Ms. Farris-Ellison was involved since he only alleges that  
25 Flagstar seized his property and that Flagstar, Yi Ming and Yi Ming LLC did not obtain  
26 stay relief to take his property. In light of the fact that the court already tried Plaintiff's  
27 claims against Defendant Farris-Ellison in this adversary proceeding, she did not have  
28 an opportunity to defend against Plaintiff's new allegations related to conversion of

1 property during the trial. Plaintiff's new complaints should not be allowed as amended  
2 complaints because they are untimely and unduly prejudicial to Farris-Ellison. See  
3 *Carter v. National R.P. Passenger Corp.*, 413 F.Supp.2d 495, 501 (E.D. Penn. 2005).

4 Under Rule 15(b)(2), "When an issue not raised by the pleadings is tried by the  
5 parties' express or implied consent, it must be treated in all respects as if raised in the  
6 pleadings. A party may move--at any time, even after judgment--to amend the pleadings  
7 to conform them to the evidence and to raise an unpleaded issue." In these adversary  
8 proceedings, there is no express or implied consent by Farris-Ellison to litigate the issue  
9 of alleged conversion of Plaintiff's property. "Implied consent is not established merely  
10 because one party introduced evidence relevant to an unpleaded issue and the  
11 opposing party failed to object to its introduction. It must appear that the parties  
12 understood the evidence to be aimed at the unpleaded issue." *Kehoe Component*  
13 *Sales Inc. v. Best Lighting Products, Inc.*, 796 F.3d 576, 595 (6th Cir. 2015) (citation  
14 omitted). "Otherwise, the court runs the risk of violating the defendant's procedural due  
15 process rights by imposing judgment upon a claim against which the defendant did not  
16 know [s]he had to defend [her]self." *Id.* at 595. Evidence relevant to the new claims that  
17 is also relevant to the originally pleaded claim is not implied consent because the  
18 defendant must have notice that the new claim is being tried against him or her. *Id.*  
19 Here, there was no express or implied consent in this trial to add any allegations or  
20 claims against Defendant Farris-Ellison regarding claims of conversion of Plaintiff's  
21 personal or real property listed in the attachments to the complaints.

22 Plaintiff did not seek leave of court to file his new complaints, which are amended  
23 complaints, and the filing of such amended complaint is improper pursuant to Federal  
24 Rule of Civil Procedure 15(a)(2) and (b), made applicable by Federal Rule of  
25 Bankruptcy Procedure 7015 in this adversary proceeding. Accordingly, the court strikes  
26 the complaints as to Defendant Rita Farris-Ellison.

27 Yi Ming and Yi Ming LLC

28 The bankruptcy court has subject matter jurisdiction under 28 U.S.C. § 1334(b)

1 over civil proceedings arising under Title 11 of the United States Code (or the  
2 Bankruptcy Code), or arising in Title 11, or related to cases under Title 11. *In re Harris*,  
3 590 F.3d 730, 736-737 (9th Cir. 2009). The new complaints against Yi Ming and Yi  
4 Ming LLC do not include claims that arise under or arise in the Bankruptcy Code. The  
5 complaints do not mention the Bankruptcy Code or Title 11 of the United States Code.  
6 The pending cause of action is for conversion of property which is a state law cause of  
7 action that can potentially exist independent of the bankruptcy case.

8 Also, there is subject matter jurisdiction under 28 U.S.C. § 1334(b) as related to  
9 the bankruptcy case. The test to determine whether a proceeding is related to is  
10 “whether *the outcome of the proceeding could conceivably have any effect on the estate*  
11 *being administered in bankruptcy*. [citations omitted]. Thus, the proceeding need not  
12 necessarily be against the debtor or against the debtor's property. An action is related to  
13 bankruptcy if the outcome could alter the debtor's rights, liabilities, options, or freedom  
14 of action (either positively or negatively) and which in any way impacts upon the  
15 handling and administration of the bankrupt estate.” *Fietz v. Great Western Savings (In*  
16 *re Fietz)*, 852 F.2d 455, 457 (9th Cir. 1988) (emphasis in original).

17 The court has “an independent obligation to determine whether subject-matter  
18 jurisdiction exists, even in the absence of a challenge from any party.” *Arbaugh v. Y&H*  
19 *Corp.*, 546 U.S. 500, 501 (2006). If the “court . . . lacks subject-matter jurisdiction, the  
20 court must dismiss the complaint,’ *sua sponte* if necessary.” *Pistor v. Garcia*, 791 F.3d  
21 1104, 1111 (9th Cir. 2015) (citation omitted).

22 Here, Plaintiff in his new complaints seeks relief against Yi Ming and Yi Ming LLC  
23 for his personal redress, not for any benefit of the bankruptcy estate of Rita Farris-  
24 Ellison. Any potential recovery for Plaintiff will not impact the administration of the  
25 bankruptcy estate in this bankruptcy case of Rita Farris-Ellison. Since the outcome of  
26 Plaintiff's litigation against Yi Ming or Yi Ming LLC will have no effect on the  
27 administration of the bankruptcy estate, there is no subject matter jurisdiction for the  
28 court to exercise over the dispute described in the new complaints, and therefore, the

1 court strikes the complaints as to Yi Ming and Yi Ming LLC.

2 The court makes no determination whether Plaintiff has alleged a valid claim for  
3 conversion against the Defendants named in the new complaints, but the court states  
4 that a claim for conversion is a matter of state law which should be brought in state  
5 court, that is, the Superior Court of California. See *Lee v. Hanley*, 61 Cal.4<sup>th</sup> 1225, 1240  
6 (2015) (discussing the tort of conversion under California law and its elements). The  
7 Superior Court of California is a court of general jurisdiction which can adjudicate any  
8 and all cases brought before it, such as matters arising under state law. California  
9 Constitution, Article VI, § 4; *Long v. Forty Niners Football Co.*, 33 Cal.App.5<sup>th</sup> 550, 556  
10 (2019). As stated previously, the bankruptcy court is a court of limited jurisdiction and  
11 there is no subject jurisdiction over Plaintiff's claim in his new complaints against  
12 nondebtor parties or against debtor Farris-Ellison because the conversion claim does  
13 not arise under federal bankruptcy law or other federal law and is based on acts  
14 unrelated to this bankruptcy case, that is, foreclosure of a mortgage lien held by  
15 Flagstar, and purchase at the foreclosure sale by Yi Ming and Yi Ming LLC and  
16 dispossession of the premises after foreclosure. There are no allegations that these  
17 activities had any relationship to Defendant Farris-Ellison's bankruptcy case.

18 Based on the foregoing, Plaintiff's new complaints in this adversary proceeding,  
19 Docket Nos. 616 and 617, are ordered stricken.

20 The hearing on Plaintiff's new complaints that he noticed for hearing before the  
21 court on October 11, 2022 at 2:30 p.m. is vacated. No appearances are required on  
22 October 11, 2002, and the court will not call the matter for hearing on October 11, 2022.

23 IT IS SO ORDERED.

#



24 Date: September 28, 2022

25 \_\_\_\_\_  
26 Robert Kwan  
27 United States Bankruptcy Judge  
28