

ORDERED.

Dated: October 05, 2022



Caryl E. Delano  
Chief United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION  
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In re:

Case No. 2:21-bk-01555-FMD  
Chapter 7

Gregory A. Lampert and  
Gaye C. Lampert,

Debtors.

Brett Voris,

Plaintiff,

v.

Adv. Pro. No. 2:22-ap-0009-FMD

Gregory A. Lampert,

Defendant.

**ORDER DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

THIS PROCEEDING came before the Court for hearing on September 20, 2022, to consider *Plaintiff's Motion for Summary Judgment* (the "SJ Motion")<sup>1</sup> and Defendant's Response in Opposition to the SJ Motion (the "Response").<sup>2</sup>

<sup>1</sup> Doc. No. 21.

<sup>2</sup> Doc. No. 24.

Defendant is the Debtor in this Chapter 7 bankruptcy case. Plaintiff filed a complaint under 11 U.S.C. § 523(a)(6)<sup>3</sup> objecting to the dischargeability of his claim that Defendant wrongfully converted Plaintiff's interest in three business entities (the "Entities").<sup>4</sup> In the SJ Motion, Plaintiff asserts that the "underlying material facts of conversion have already been determined at trial in the California state courts" (the "California Litigation"),<sup>5</sup> and that the rulings of the California courts (the "California Rulings") have preclusive effect in this adversary proceeding.

The California Rulings are:

1. A Judgment entered on October 19, 2011, by the California Superior Court in the case styled *Voris v. Liquiddium Capital Partners, LLC, et al.*, Case No. BC408562, in which the California trial court entered judgment in Plaintiff's favor against two of the three Entities.<sup>6</sup>
2. An opinion entered on May 22, 2014, by the California Second District Court of Appeal in the case styled *Voris v. Lampert*, Case No. B234116, in which the California appellate court reversed in part the trial court's summary judgment ruling in Defendant's favor and remanded Plaintiff's first amended complaint for further proceedings.<sup>7</sup>
3. An Amended Judgment entered on October 8, 2015, by the California Superior Court in the case styled *Voris v. Premier Ten Thirty One Capital Corp, dba PropPoint, et al.*, Case No. BC408562, in which the California trial court granted judgment in Defendant's favor against Plaintiff, and in Plaintiff's favor against one of the three Entities.<sup>8</sup>
4. An opinion entered on March 28, 2017, by the California Second District Court of Appeal in the case styled *Voris v. Lampert*, Case No. B265747, in which the appellate court reversed in part the October 8, 2015 Amended Judgment and remanded on the issue of whether collateral estoppel or res

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<sup>3</sup> Doc. No. 1.

<sup>4</sup> Under 11 U.S.C. § 523(a)(6), a discharge under 11 U.S.C. § 727 does not discharge an individual debtor from any debt for willful and malicious injury.

<sup>5</sup> Doc. No. 21, p. 2.

<sup>6</sup> Doc. No. 21-5, Ex. E to the SJ Motion.

<sup>7</sup> Doc. No. 21-1, Ex. A to the SJ Motion.

<sup>8</sup> Doc. No. 21-6, Ex. F to the SJ Motion.

judicata applied to Plaintiff's claims against Defendant based on Plaintiff's judgments against the Entities.<sup>9</sup>

In his Response, Defendant contends that the California Rulings are not entitled to preclusive effect because, *inter alia*, (1) on April 19, 2011, the California state court dismissed Plaintiff's claims against Defendant; (2) Plaintiff filed a Second Amended Complaint that did not identify Defendant as a defendant;<sup>10</sup> (3) when Plaintiff proceeded to trial against the three Entities on his Second Amended Complaint—to which Defendant was not a named defendant—one of the Entities had filed a bankruptcy petition and the other two Entities were insolvent; and (4) Defendant did not participate in the trial of the Second Amended Complaint.<sup>11</sup> Based on these facts, Defendant contends that he had no reason to participate in or defend himself at the trial of Plaintiff's Second Amended Complaint.

"The collateral estoppel law of the state that issued the prior judgment sought by a party to bar a subsequent proceeding determines whether the prior judgment can have preclusive effect in a subsequent proceeding, and as a matter of full faith and credit, federal courts must apply the state's law of collateral estoppel."<sup>12</sup> Accordingly, California's law of collateral estoppel determines the preclusive effect of the California Rulings in this dischargeability proceeding. The party asserting issue preclusion bears the burden to establish the threshold requirements.<sup>13</sup>

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<sup>9</sup> Doc. No. 21-2, Ex. B to the SJ Motion.

<sup>10</sup> Doc. No. 24-6, Ex. 5 to the Declaration of Defendant filed in support of the Response.

<sup>11</sup> Doc. No. 24, p. 2.

<sup>12</sup> *In re Clark*, 400 B.R. 321, 329 (Bankr. M.D. Fla. 2009) (citations omitted).

<sup>13</sup> *In re Zeeb*, 2019 WL 3778360, at \*7 (9th Cir. B.A.P. August 9, 2019).

Under California law, five elements are required for collateral estoppel to apply to a prior judgment: (1) the issue in the current proceeding is identical to the issue in the prior proceeding; (2) the issue was actually litigated; (3) the issue was necessarily decided in the prior proceeding; (4) the decision in the prior proceeding was a final decision on the merits; and (5) the party to be precluded is identical to or in privity with a party in the prior proceeding.<sup>14</sup> But there is also an additional or a sixth element that requires the court to inquire “whether imposition of issue preclusion in the particular setting would be fair and consistent with sound public policy.”<sup>15</sup>

Even when the threshold elements are satisfied, this means only that issue preclusion is “available.” *The decision to apply issue preclusion to a California judgment is discretionary.* In exercising that discretion, the bankruptcy court is obligated to consider whether application would advance one or more of the policy considerations underlying issue preclusion: preservation of the integrity of the judicial system, promotion of judicial economy, and protection of parties from vexatious litigation.<sup>16</sup>

And “[t]o start with, the bankruptcy court [is] required to discern what exactly was decided by the state court judgment.”<sup>17</sup>

Here, applying preclusive effect to the California Rulings would not protect the parties and judicial system because, among other reasons: (1) the California Litigation involved a number of parties other than Defendant and spanned a period of at least eight years at both the trial and appellate level, so that reasonable doubt exists as to exactly what was adjudicated in the California Rulings; (2) after the California state court dismissed

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<sup>14</sup> *In re Zeeb*, 2019 WL 3778360, at \*7; *In re Spencer*, 2017 WL 3470996, at \*4 (9th Cir. B.A.P. August 11, 2017).

<sup>15</sup> *In re Khaligh*, 338 B.R. 817, 824-25 (9th Cir. B.A.P. 2006), *aff’d*, 506 F.3d 956 (9th Cir. 2007).

<sup>16</sup> *In re Zeeb*, 2019 WL 3778360, at \*7 (emphasis added).

<sup>17</sup> *Id.*

Defendant as a defendant in the California Litigation in April 2011 and Plaintiff did not name Defendant as a defendant in his Second Amended Complaint, Defendant did not participate in the October 2011 trial on Plaintiff's Second Amended Complaint that resulted in determinations favorable to Plaintiff; (3) the record does not clearly establish that the finding of conversion in the California Rulings satisfies the "willful" and "malicious" requirement of 11 U.S.C. § 523(a)(6); and (4) even if the Entities' conduct was willful and malicious, the record does not clearly establish that the individual Defendant's conduct was willful and malicious as required by 11 U.S.C. § 523(a)(6).

The Court concludes that the imposition of issue preclusion under the circumstances of this case would not be fair and consistent with sound public policy. Therefore, the Court will exercise its discretion and deny Plaintiff's SJ Motion.

Accordingly, it is

**ORDERED** that *Plaintiff's Motion for Summary Judgment* (Doc. No. 21) is **DENIED**.

The Clerk's office is directed to serve a copy of this order on interested parties via CM/ECF.