

NONPRECEDENTIAL DISPOSITION

To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals**For the Seventh Circuit****Chicago, Illinois 60604**

Submitted July 11, 2023*

Decided July 11, 2023

*Before*DIANE S. SYKES, *Chief Judge*DAVID F. HAMILTON, *Circuit Judge*MICHAEL B. BRENNAN, *Circuit Judge*

No. 22-2216

FIRAS M. AYOUBI,
*Plaintiff-Appellant,**v.*U.S. BANK N.A., et al.,
*Defendants-Appellees.*Appeal from the United States District
Court for the Northern District of
Illinois, Eastern Division.

No. 1:21-cv-06055

Thomas M. Durkin,
*Judge.***ORDER**

Firas Ayoubi appeals the judgment dismissing his complaint against the United States and others alleging a broad conspiracy to steal his identity and defraud him. The

* Several appellees are not participating in this appeal. After examining the briefs and the record, we have concluded that the case is appropriate for summary disposition. FED. R. APP. P. 34(a)(2)(C).

district judge dismissed Ayoubi's complaint on claim preclusion grounds, finding that the court had dismissed a nearly identical complaint the year before. We affirm.

Ayoubi first sued in state court. In 2019, he filed a complaint in the Illinois Circuit Court of Cook County, alleging that a United States Postal Service employee conspired with employees at several banks and a car dealership to steal his identity, acquire a loan, and purchase a car. As defendants, he named the corporations and their employees but not the United States. Ayoubi raised several state-law claims, a constitutional-tort claim (against the postal worker), and a claim under the Racketeer Influenced and Corrupt Organizations Act. 18 U.S.C. §§ 1961–68.

The following year, with his state case pending, Ayoubi filed a nearly identical complaint in federal court. This complaint added the United States as a defendant and raised several claims under the Federal Tort Claims Act, 28 U.S.C. § 1346, arising from the postal worker's alleged conduct. Ayoubi sought to proceed in forma pauperis, *see* 28 U.S.C. § 1915, despite having "struck out" under the Prison Litigation Reform Act by filing prior frivolous actions. Invoking the imminent danger exception to 28 U.S.C. § 1915(g), he asserted that the defendants had gang connections that threatened his physical safety.

Judge Virginia Kendall found Ayoubi's assertion of imminent danger frivolous, denied his request to proceed IFP, and issued a show-cause order why his case should not be dismissed. After Ayoubi responded, she sanctioned him by dismissing his complaint with prejudice. *Ayoubi v. United States, et al.*, No. 20-cv-05665 (N.D. Ill. Nov. 2, 2020). She explained that Ayoubi, who owed the court thousands of dollars in unpaid fees, alleged no facts from which the court could plausibly infer that he faced imminent danger of serious physical injury. She also referred the case to the court's Executive Committee, which barred Ayoubi from filing new cases until he paid his outstanding fees. *In re Firas M. Ayoubi*, 20 C 7288 (NDIL Exec. Comm. Apr. 26, 2021).

Days later, after the state court ordered Ayoubi to address technical errors in his complaint, Ayoubi added the United States and the Federal Tort Claims Act claims that Judge Kendall had dismissed. The United States removed the case to federal court, 28 U.S.C. § 1442(a)(1), and Judge Thomas Durkin dismissed it under the filing bar. Ayoubi then filed a flurry of postjudgment letters and motions seeking to amend the judgment, FED. R. CIV. P. 59(e), arguing that the filing bar did not apply to his removed action because his state-court complaint predated the bar. Judge Durkin denied some of Ayoubi's filings but was silent as to others. Ayoubi appealed, and we suspended briefing until the judge resolved all of Ayoubi's filings.

On reconsideration, Judge Durkin ruled that claim preclusion principles barred Ayoubi's complaint. The judge found that Ayoubi "filed nearly identical claims against the same group of defendants in a case in this district in 2020." Because Judge Kendall dismissed the prior complaint as a sanction, Judge Durkin found the requirements of claim preclusion satisfied and dismissed the amended complaint with prejudice.

Ayoubi primarily argues that because he filed his state-court action before his federal-court action, the judge should not have applied claim preclusion principles to dismiss his state-law claims. He also argues that the judge "disregarded the state judgment," apparently referring to the state court's order for an amended complaint.

Judge Durkin properly dismissed Ayoubi's amended complaint on claim preclusion grounds. A final judgment on the merits precludes litigants from raising claims arising from a "common nucleus of operative facts" against identical parties. *Daza v. Indiana*, 2 F.4th 681, 683 (7th Cir. 2021), *cert. denied*, 142 S. Ct. 763 (Jan. 10, 2022). The dismissal of his 2020 complaint as a sanction operates as a final judgment on the merits. *See* FED. R. CIV. P. 41(b); *Barr v. Bd. of Trs. of W. Ill. Univ.*, 796 F.3d 837, 840 (7th Cir. 2015). And below is a chart demonstrating the identical parties and claims in Ayoubi's complaints:

	Complaint in <i>Ayoubi v. United States, et al.</i> , No. 20-cv-05665 (N.D. Ill. Nov. 2, 2020).	Amended Complaint in <i>Ayoubi v. U.S. Bank N.A., et al.</i>
Parties	United States of America; U.S. Bank N.A.; American Family Insurance Co.; Wal-Mart Corp.; Synchrony Bank N.A.; Harlem Motors, Inc.; 700Credit Co.; PNC Bank; Mercedes Aldridge, Louay Ihmud, Mojahed Ihmud, Bernard Smuda, Unknown co-conspirator; Unknown employees of corporate defendants,	United States of America; U.S. Bank N.A.; American Family Insurance Co.; Wal-Mart Corp.; Synchrony Bank N.A.; Harlem Motors, Inc.; 700Credit Co.; PNC Bank; Mercedes Aldridge, Louay Ihmud, Mojahed Ihmud, Bernard Smuda, Unknown co-conspirator, Unknown employees of corporate defendants
Claims	Federal claims under: RICO; the First, Fourth, and Fifth Amendments, and the FTCA. State claims under: Illinois Consumer Fraud and Deceptive Business Practice Act; common law fraud, constructive fraud, and conspiracy; Illinois Uniform Commercial Code, negligence, and invasion of privacy.	Federal claims under: RICO; the First, Fourth, and Fifth Amendments, and the FTCA. State claims under: Illinois Consumer Fraud and Deceptive Business Practice Act; common law fraud, constructive fraud, and conspiracy; Illinois Uniform Commercial Code, negligence, and invasion of privacy.

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Ayoubi thinks that his later-filed federal action cannot have preclusive effect over his state action, but this misstates how claim preclusion works. When identical cases proceed in parallel, “the first to reach *judgment* controls the other, through claim preclusion,” regardless of when the cases began. *Blair v. Equifax Check Servs., Inc.*, 181 F.3d 832, 838 (7th Cir. 1999) (emphasis added). Ayoubi may have filed in state court first, but because his federal case reached judgment while his state case was pending, that judgment controls here.

Ayoubi also argues that Judge Durkin should have remanded the state-law claims to state court rather than dismiss the complaint in its entirety. But Judge Durkin properly resolved the state-law claims given the “statutorily-mandated supplemental” jurisdiction in removal cases. 28 U.S.C. § 1442(a)(1); *Baker v. Atl. Richfield Co.*, 962 F.3d 937, 945 (7th Cir. 2020).

We considered Ayoubi’s other arguments; none has merit.

AFFIRMED