IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

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FILED: 04-20-2010
PHILIP G. URRY, CLERK
BY: GH

PACIFIC NUTRITIONAL, INC., a Washington corporation, Plaintiff/Appellant, v. JOHNNY SHANNON and DARLENE D. SHANNON, husband and wife; JAMES A. ZEMEL and MARI ZEMEL, husband and wife, Defendants/Appellees.	1 CA-CV 06-0627 DEPARTMENT A **MEMORANDUM DECISION** (Not for Publication – Rule 28, Arizona Rules of Civil Appellate Procedure)

Appeal from the Superior Court in Maricopa County

Cause No. CV 2005-053695

The Honorable Robert C. Houser, Judge (Retired)

AFFIRMED

Clark Hill, PLC — Scottsdale
By Ryan J. Lorenz
Attorneys for Plaintiff/Appellant

Law Offices of David William West, PC — Maricopa
By David W. West
Attorneys for Defendants/Appellees Shannon

Mariscal Weeks McIntyre & Friedlander, PA — Phoenix
By Charles H. Oldham
Timothy J. Thomason
Attorneys for Defendants/Appellees Zemel

D O W N I E, Judge

¶1 Pacific Nutritional, Inc. ("Pacific") appeals the grant of summary judgment to Johnny and Darlene Shannon and James and Mari Zemel (collectively, "Defendants"). For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY[1]

¶2 The Shannons have been married for over forty-five years and have lived in Arizona since 1995. Until recently, they owned a home in Arizona (the "Jenan property") that was community property.

¶3 In 1999, Johnny personally guaranteed a promissory note signed by Mia Lundin and Robin Marzi, agreeing to pay Pacific $50,517.84 plus interest. Darlene did not sign the guaranty or the promissory note. Thereafter, Pacific filed a complaint in the Clark County Superior Court in the State of Washington against Johnny,[2] alleging he breached the guaranty agreement. Darlene was not named in the complaint. Johnny signed a settlement agreement regarding the Washington litigation on June 27, 2000. On December 20, 2000, Pacific obtained a default judgment against Johnny and the other

[1] We view the facts in the light most favorable to Pacific as the party against whom summary judgment was entered. *Angus Med. Co. v. Digital Equip. Corp.,* 173 Ariz. 159, 162, 840 P.2d 1024, 1027 (App. 1992).

[2] The complaint also named as defendants Lundin, Marzi and a company they owned.

defendants for $51,812.39, plus interest, attorneys' fees and costs ("Washington judgment"). Pacific domesticated the Washington judgment in Arizona. *See* Ariz. Rev. Stat. ("A.R.S.") §§ 12-1701 to -1708 (2003) (Revised Uniform Enforcement of Foreign Judgments Act).

¶4 In 2005, Pacific filed a complaint in the Maricopa County Superior Court against defendants, seeking to foreclose the judgment lien on the Jenan property to recover the balance due under the Washington judgment.[3] *See* A.R.S. § 33-964(A) (Supp. 2009) (a judgment shall become a lien on the real property of the judgment debtor). The Shannons filed a motion to dismiss or, in the alternative, for summary judgment, arguing the Washington judgment was not enforceable against their community property. The Zemels joined in that motion. Pacific cross-moved for partial summary judgment, contending the Washington judgment was premised on the settlement agreement, not the guaranty, and was therefore a community debt.

¶5 The superior court granted summary judgment to Defendants and dismissed Pacific's complaint. Pacific timely appealed. We have jurisdiction pursuant to A.R.S. § 12-2101(B) (2003).

[3] The Zemels had a deed of trust encumbering the Jenan property and were named as persons with an interest in the property. Subsequently, the Zemels foreclosed on their deed of trust and acquired the property at a trustee's sale.

DISCUSSION

1. Summary Judgment

¶6 We review a grant of summary judgment *de novo*. *L. Harvey Concrete, Inc. v. Argo Const. & Supply Co.,* 189 Ariz. 178, 180, 939 P.2d 811, 813 (App. 1997). Summary judgment is appropriate when no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. Ariz. R. Civ. P. 56(c). We will affirm a grant of summary judgment if it is correct for any reason. *See City of Tempe v. Outdoor Sys., Inc.,* 201 Ariz. 106, 111, ¶ 14, 32 P.3d 31, 36 (App. 2001) (citation omitted).

a. The Washington Judgment

¶7 The record does not support Pacific's claim that the Washington judgment was based on Johnny's breach of the settlement agreement. The Washington judgment was a default judgment, which is limited to the allegations made in the complaint. *Columbia Val. Credit Exch., Inc. v. Lampson*, 533 P.2d 152, 154 (Wash. Ct. App. 1975); *S. Ariz. Sch. for Boys, Inc. v. Chery*, 119 Ariz. 277, 282-83, 580 P.2d 738, 743-44 (App. 1978). The complaint in the Washington litigation alleged Johnny breached the guaranty agreement, and it sought damages for that breach.

¶8 Similarly, Pacific's affidavit of default references only the guaranty. Pacific never amended its complaint, filed a

second action based on breach of the settlement agreement, or placed before the court the settlement agreement such that it arguably could have been merged into the underlying action. The Washington judgment refers only to Pacific's pleadings (i.e., the complaint) and an affidavit of Darien Loiselle, which relates exclusively to the original promissory note and the guaranty. Nothing in the record supports Pacific's claim that the Washington default judgment was based on a breach of the settlement agreement, and no genuine issue of material fact exists regarding that point.

b. Choice of Law

¶9 Under Arizona law, one spouse "may contract debts and otherwise act for the benefit of the community." A.R.S. § 25-215(D) (2007). This power, however, is subject to certain exceptions. *Id.; Rackmaster Sys., Inc. v. Maderia,* 219 Ariz. 60, 63, ¶ 12, 193 P.3d 314, 317 (App. 2008). Specifically:

> Either spouse separately may acquire, manage, control or dispose of community property or bind the community, except that joinder of both spouses is required in . . . .
>
> Any transaction of guaranty, indemnity or suretyship.

A.R.S. § 25-214(C)(2) (2007). This statute has been interpreted as requiring both spouses to sign a guaranty to bind the

community. *Vance-Koepnick v. Koepnick,* 197 Ariz. 162, 163, ¶ 5, 3 P.3d 1082, 1083 (App. 1999) (citation omitted).

¶10 Washington law contains no similar restriction regarding guaranty agreements. *G.W. Equip. Leasing, Inc. v. Mt. McKinley Fence Co., Inc.,* 982 P.2d 114, 116 (Wash. Ct. App. 1999). Under Washington law, both spouses are not required to sign a guaranty agreement to bind the community. *See* Wash. Rev. Code § 26.16.030 (2009) (defining a spouse's ability to manage and control community property).

¶11 We disagree with Pacific's contention that Washington law governs the guaranty as well as the current enforcement action. In *G.W. Equipment*, a case with similar facts, the Washington court applied Arizona law where an Arizona husband signed a guaranty contract in Washington. 982 P.2d at 118. Specifically, Edward Lindstrom personally guaranteed a lease agreement that stated Washington law would apply. *Id.* at 115. After a default on the lease agreement, the creditor sued the defaulting parties, as well as Lindstrom and his "marital community." *Id.* The court noted that, unlike Washington, Arizona requires both spouses to sign a guaranty to bind the marital community. *Id.* at 116 (comparing Wash. Rev. Code. § 26.16.030 and A.R.S. §§ 25-214, -215). In analyzing which law to apply, the court determined that, when community property is at issue, the state where the spouses reside typically has the

most significant interest. *Id.* at 117 (citing *Potlatch No. 1 Fed. Credit Union v. Kennedy,* 459 P.2d 32 (Wash. 1969)). The court concluded that Arizona law applied, explaining:

> Washington courts apply Washington law to determine the rights and authority of Washington spouses to enter into contracts affecting their community property. For Washington courts to conclude that residents of other community property states are bound by Washington community property law as well, rather than the law of their own state, would be illogical and unjust. The Arizona Legislature has enacted a statute which prohibits one spouse from entering into guaranty contracts without the other spouse's consent. Arizona spouses, therefore, may not alter the rights and liabilities of their marital communities, irrespective of the protective policies of their domiciliary states, by choosing to contract in another forum and contractually consenting to the application of that forum's laws.

G.W. Equip., 982 P.2d at 117-18.

¶12 In the case at bar, the Shannons are Arizona residents, and the Jenan property is located here. *G.W. Equipment* thus directs the application of Arizona law.[4] Because

[4] To the extent Pacific argues that *G.W. Equipment* is not binding because it was decided after Johnny signed the guaranty, we disagree. Pacific admits *G.W. Equipment* was at most a clarification of the law in effect at the time the guaranty was signed. Moreover, the case had been decided before the Washington litigation began. *See, e.g., In re Marriage of Yuro,* 192 Ariz. 568, 572, ¶ 8, 968 P.2d 1053, 1057 (App. 1998) (explaining an appellate court must apply the law in effect at the time it renders a decision unless the law provides to the contrary or applying such law would result in manifest injustice). Pacific also argues *G.W. Equipment* dealt with

Arizona requires both spouses to sign a guaranty to bind the community, there is no community obligation or debt resulting from the guaranty signed solely by Johnny.[5]

c. Arizona Cases

¶13 The facts here are similar to *Rackmaster*, where we held that a judgment creditor could not garnish a community bank account based on a foreign judgment entered against one spouse arising from a guaranty. 219 Ariz. at 61, ¶ 1, 193 P.3d at 315. There, the creditor obtained a default judgment in Minnesota against Patrick Maderia based on a guaranty Patrick alone signed. *Id*. at ¶ 2. Patrick was married to Jane Maderia, and the couple resided in Arizona. *Id.* at ¶ 4. Jane was not a party to the Minnesota action, nor was she named in the judgment. *Id.* at ¶ 2. The creditor filed an affidavit of foreign judgment in Arizona and attempted to garnish a community bank account. *Id.* at ¶ 4. We concluded the judgment creditor

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personal jurisdiction, not choice of law. Although the appellant in *G.W. Equipment* apparently did raise jurisdictional issues, the primary argument was that Lindstrom did "not have the power unilaterally to bind the community under Arizona statute." *G.W. Equipment,* 982 P.2d at 116.

[5] Pacific argues in its reply brief that the Shannons waived application of A.R.S. § 25-214(C)(2) by entering into the settlement agreement. We will not address issues that are raised for the first time in a reply brief. *Wasserman v. Low,* 143 Ariz. 4, 9 n.4, 691 P.2d 716, 721 n.4 (App. 1984) (citation omitted). Moreover, one spouse acting unilaterally cannot convert a separate obligation into a community debt. *Zork Hardware Co. v. Gottlieb,* 170 Ariz. 5, 6, 821 P.2d 272, 273 (App. 1991).

could not do so, reasoning that A.R.S. § 25-214(C)(2) requires both spouses to sign a guaranty in order to bind the community. *Id.* at 63-65, ¶¶ 13, 18, 26, 193 P.3d at 317-319. Accordingly, the foreign judgment could not be enforced against community assets. *Id.* at 65, ¶ 26, 193 P.3d at 319.

¶14 Pacific argues *Rackmaster* should be overruled because "it goes too far in construing A.R.S. § 25-214(C)(2)." We disagree. *Rackmaster* analyzed the plain wording of A.R.S. § 25-214(C)(2), cited previous Arizona cases for support, and concluded the statute is substantive in nature.[6] *Id.* at 63 ¶¶ 11, 14-15, 193 P.3d at 317 (citing *Vance-Koepnick,* 197 Ariz. at 163, ¶ 5, 3 P.3d at 1083 and *Consol. Roofing & Supply Co. v. Grimm,* 140 Ariz. 452, 458, 682 P.2d 457, 463 (App. 1984)).

¶15 Pacific also argues *Rackmaster* violates the Full Faith and Credit Clause of the United States Constitution. Under the Full Faith and Credit Clause, a judgment validly rendered in one state must be accorded the same validity and effect in every other state court. *Lofts v. Superior Court (Perry),* 140 Ariz. 407, 410, 682 P.2d 412, 415 (1984). Thus, a state court must recognize the validity of a foreign judgment. *See Nat'l Union*

[6] We also reject Pacific's argument that *Rackmaster* "imposes a substantive right to the detriment of creditors who do not happen to know of the rule of law announced last year." Although *Rackmaster* was decided while this appeal was pending, A.R.S. § 25-214(C)(2) has been in effect since 1973. *See* 1973 Ariz. Sess. Laws, Ch. 172 § 64; *Hamada v. Valley Nat. Bank*, 27 Ariz. App. 433, 436, 555 P.2d 1121, 1124 (App. 1976).

Fire Ins. Co. v. Greene, 195 Ariz. 105, 107-08, ¶¶ 9, 12, 985 P.2d 590, 592-93 (App. 1999). "Recognizing" a foreign judgment means giving the judgment the same effect that it has in the state where it was issued. *Id.* at 108, ¶ 12, 985 P.2d at 593. "Enforcing" a judgment, however, means granting a party the affirmative relief to which the judgment entitles him. *Id.* (quoting *Sainz v. Sainz,* 245 S.E.2d 372, 375 (N.C. App. 1978)). The methods for enforcing a foreign judgment are governed by the laws of the state in which the judgment is sought to be enforced. *Nat'l Union,* 195 Ariz. at 108, ¶ 12, 985 P.2d at 593.

¶16 In the instant case, the superior court recognized the validity of the Washington judgment in the domestication proceedings. Pacific now seeks to enforce the judgment against the Shannons' community property in Arizona. The superior court correctly applied Arizona law and concluded Pacific could not enforce the judgment against that property. There was no violation of the Full Faith and Credit Clause.

¶17 Finally, Pacific argues *Rackmaster* cannot be reconciled with earlier Arizona cases.[7] In *Oyakawa v. Gillett,* 175 Ariz. 226, 854 P.2d 1212 (App. 1993), the issue was whether

[7] *Gagan v. Sharar,* 376 F.3d 987, 990-91 (9th Cir. 2004), is not binding on us. *See Bayham v. Funk,* 3 Ariz. App. 220, 221, 413 P.2d 279, 280 (1966) (federal decisions are not binding); and *Pool v. Superior Court (Fahringer),* 139 Ariz. 98, 108, 677 P.2d 261, 271 (1984) (we interpret our own state law and do not necessarily follow federal precedent).

a California judgment against a marital community was entitled to full faith and credit in Arizona. Dr. Richard Gillett and his wife were California residents when a lawsuit was filed against Dr. Gillett for defamation. *Id.* at 227, 854 P.2d at 1213. A judgment was entered against Dr. Gillett. *Id.* The Gilletts subsequently moved to Arizona, and the plaintiff obtained an amended judgment in California against the marital community and sought to enforce that judgment in Arizona. *Id.* at 227-28, 854 P.2d at 1213-14. A California statute provided that community property was liable for the separate debts of spouses. *Id.* at 228, 854 P.2d at 1214. This Court determined the judgment against the community was valid and must be recognized in Arizona. *Id.* at 231, 854 P.2d at 1217.

¶18 *Oyakawa* is distinguishable because it dealt with recognition of a foreign judgment, while *Rackmaster* and the present case deal with *enforcement* of a judgment. Further, the *Oyakawa* defendants resided in California when the underlying judgment was entered and only later moved to Arizona. *Oyakawa,* 175 Ariz. at 227, 854 P.2d at 1213. Here, and in *Rackmaster,* the parties resided in Arizona at all relevant times. Finally, in *Oyakawa,* the plaintiff obtained a valid judgment against the marital community. *Oyakawa,* 175 Ariz. at 228, 854 P.2d at 1214. In *Rackmaster* and the present case, the relevant judgments were against the respective husbands only.

¶19 In *National Union,* 195 Ariz. at 106, ¶¶ 2-3, 985 P.2d at 591, the plaintiff obtained a default judgment in New York against Charles Greene for breach of a promissory note. At that time, Greene and his wife were Texas residents. *Id.* at ¶ 4. Five years later, Greene moved to Arizona, and the plaintiff domesticated the New York judgment here. *Id.* at 107, ¶¶ 5-6, 985 P.2d at 592. We held that the judgment could be enforced against the Greenes' community property. *Id.* at 108, ¶ 12, 985 P.2d at 593. Similarly, in *Alberta Securities Commission v. Ryckman,* 200 Ariz. 540, 30 P.3d 121 (App. 2001), a Canadian judgment was entered against Lawrence Ryckman for manipulating the Alberta securities market. *Id.* at 543, ¶¶ 3, 5-7, 30 P.3d at 124. Ryckman and his wife resided in Canada when the court entered the judgment. *Id.* at ¶¶ 2, 7-8. They subsequently moved to Arizona. *Id.* at ¶ 2. We upheld the validity of the Canadian judgment and concluded the obligation could be satisfied from the Ryckmans' community property. *Id.* at 548-50, ¶¶ 33-34, 40, 30 P.3d at 129-31.

¶20 *National Union* and *Alberta* are readily distinguishable. The judgments in those cases were based on breach of a promissory note and securities violations, respectively. No guaranty was involved in either case. Thus, the debts would have been community obligations if incurred in Arizona. Additionally, the judgment debtors did not reside in

Arizona when the judgments were entered. Finally, in *National Union*, we held that Arizona law applies when enforcing a foreign judgment. *Rackmaster* is consistent with that holding.

2. Attorneys' Fees

¶21 Defendants request an award of attorneys' fees and costs on appeal pursuant to A.R.S. § 12-341.01 (2003). In our discretion, we decline to award fees. As the prevailing parties, however, we award the Shannons and Zemels their costs on appeal. A.R.S. § 12-341 (2003).

CONCLUSION

¶22 For the foregoing reasons, we affirm the judgment of the superior court.

/s/
MARGARET H. DOWNIE, Judge

CONCURRING:

/s/
MAURICE PORTLEY, Presiding Judge

/s/
LAWRENCE F. WINTHROP, Judge