

NOTICE: NOT FOR OFFICIAL PUBLICATION.  
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION ONE

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CURTIS F. LEE, *Plaintiff/Appellant*,

*v.*

ING INVESTMENT MANAGEMENT, LLC, *Defendant/Appellee*.

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BEUS GILBERT PLLC, *Intervenor/Appellee*.

No. 1 CA-CV 17-0609  
FILED 8-14-2018

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Appeal from the Superior Court in Maricopa County  
No. CV2010-092027  
The Honorable Kerstin G. LeMaire, Judge

**AFFIRMED IN PART; DISMISSED IN PART**

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APPEARANCES

Curtis F. Lee, Scottsdale  
*Plaintiff/Appellant*

Ogletree, Deakins, Nash, Smoak & Stewart PC, Phoenix  
By Tracy A. Miller, Caroline K. Larsen  
*Counsel for Defendant/Appellee*

Beus Gilbert PLLC, Phoenix  
By Leo R. Beus, Thomas A. Gilson  
*Counsel for Intervenor/Appellee*

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## MEMORANDUM DECISION

Presiding Judge Michael J. Brown delivered the decision of the Court, in which Judge Jennifer M. Perkins and Judge Lawrence F. Winthrop joined.

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**B R O W N**, Judge:

**¶1** Curtis F. Lee appeals the superior court's order granting ING Investment Management, LLC ("IIM")'s motion for acknowledgment of satisfaction of judgment and denying Lee's motion for release of funds. For the following reasons, we affirm the satisfaction of judgment order but dismiss Lee's appeal concerning release of funds.

### FACTUAL AND PROCEDURAL BACKGROUND

**¶2** Lee is a former employee of IIM. Upon his termination, Lee, represented by the law firm of Beus Gilbert, sued IIM for breach of a separation agreement and breach of the implied covenant of good faith and fair dealing. Additionally, Lee made a claim under Arizona Revised Statutes ("A.R.S.") section 23-355 for treble damages, which the superior court summarily dismissed. After years of litigation, Lee ultimately accepted an offer of judgment for \$900,000, excluding attorneys' fees. Both Lee and IIM claimed to be the prevailing party and moved for awards of attorneys' fees. The court awarded Lee, as the prevailing party, \$580,021.21 in attorneys' fees and costs. In the final judgment, the court included interest on the attorneys' fees and costs and the \$900,000 offer of judgment.

**¶3** Both sides appealed: IIM appealed the award of attorneys' fees and costs to Lee, and Lee cross-appealed the award of his partial attorneys' fees and the dismissal of his cause of action for treble damages. This court affirmed the superior court's rulings in *Lee v. ING Investment Management, LLC*, 240 Ariz. 158 (App. 2016) ("Lee I").

**¶4** Prior to the *Lee I* opinion, Beus Gilbert and Lee entered a settlement agreement concerning the outstanding attorneys' fees owed by Lee. Under the agreement, within ten days of Lee or Beus Gilbert's receipt of the judgment proceeds, Lee would pay Beus Gilbert \$889,312.33. That

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figure represents a \$600,000 discount in total attorneys' fees Beus Gilbert accrued in litigating the *Lee I* matter and a separate federal court case. The settlement agreement included an arbitration clause. Beus Gilbert later withdrew as Lee's attorneys.

¶5 After *Lee I*, Beus Gilbert asserted a charging lien against the judgment and requested IIM transmit the full judgment amount to its trust account. As a result of Beus Gilbert's charging lien, IIM filed a motion to deposit with the superior court the full amount of the judgment, including attorneys' fees, costs, and interest totaling \$1,618,920.19. Lee disputed Beus Gilbert's lien rights and requested IIM transfer the judgment funds to him directly, or alternatively, to hold a portion of the funds for determination and distribute the remainder to Lee. Two days later, Beus Gilbert filed a motion to direct payment of certain judgment funds and a motion to compel arbitration with Lee regarding the fee dispute. In its motion, Beus Gilbert argued (1) it should receive \$889,312 per the settlement agreement, (2) Lee should receive \$166,996, representing funds not in dispute, and (3) the remaining funds should be deposited with the court while Beus Gilbert and Lee resolve their remaining dispute for fees incurred after entry of the settlement agreement in arbitration. The court granted Beus Gilbert's motion and ordered IIM to wire \$889,312.33 to Beus Gilbert and \$166,996 to Lee and to deposit the remaining funds and interest with the court (the "Distribution Order"). The court also granted Beus Gilbert's motion to compel arbitration.

¶6 A week later, Lee filed an "extremely urgent" request to modify the Distribution Order, contending IIM must withhold \$296,054.72 of judgment proceeds, based on a 28% federal tax rate, to pay the Internal Revenue Service ("IRS") directly because the payment constitutes "wages" under an IRS code. A few days later, Lee filed an "urgent" motion contending that IIM must withhold \$512,123.28, based on a 39% federal tax rate, 6% state tax rate, social security and Medicare taxes, to pay state and federal taxing authorities. IIM responded that it calculated the proper tax withholding amount to be \$342,318.38. Lee later argued that IIM should have, depending on the tax classification of the attorneys' fees award, withheld either \$497,151 or an additional \$266,230 on top of IIM's calculated withholding. Lee's appellate briefing contends that IIM should have withheld \$778,353.38 (\$512,123.38 plus \$266,230).

¶7 IIM ultimately wired \$889,312.33 to Beus Gilbert and \$166,996 to Lee and deposited \$240,799.74 (the "Disputed Funds") with the superior court, representing the amount remaining after the \$342,318.38 tax

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withholding. The court denied Lee's motions, reaffirmed its Distribution Order and acknowledged IIM's deposit (less withholdings) with the court.

¶8 IIM requested the superior court issue a satisfaction of judgment because it paid all amounts due and owing under the judgment. The court's subsequent order confirmed that IIM had satisfied the judgment in full and Lee appealed.

¶9 Before the superior court issued the satisfaction of judgment, Lee filed a motion to release funds held by the court, requesting the court release the Disputed Funds as follows: \$171,204 to Lee to correct IIM's insufficient tax withholdings and the remaining \$69,596 to Beus Gilbert. The court denied Lee's motion to release funds, declined to determine the proper withholding amount, and deferred that determination to the taxing authorities. Lee appealed the denial of his motion and requested that the superior court consolidate the two appeals; however, the record does not reflect that any ruling was made on that request. Because we lack jurisdiction over the order denying his motion to release funds, Lee's request to consolidate is moot.

## JURISDICTION

¶10 We have jurisdiction over the superior court's order granting IIM's motion for satisfaction of judgment pursuant to A.R.S. § 12-2101(A)(2). However, for several reasons, we lack jurisdiction over the court's order denying Lee's motion to release funds.

¶11 First, the superior court's order denying Lee's motion was not signed. *See Ariz. R. Civ. P. 58(b) (1)* ("Except as provided in Rule 58(b)(2)(B) regarding habeas corpus proceedings, all judgments must be in writing and signed by a judge or a court commissioner duly authorized to do so."); *Haywood Sec., Inc. v. Ehrlich*, 214 Ariz. 114, 116, ¶ 9 (2007) (explaining that a judgment must be signed by a superior court judge to be appealable).

¶12 Second, the order is not appealable because the superior court's refusal to release the Disputed Funds did not resolve the issues surrounding the funds. *See Williams v. Williams*, 228 Ariz. 160, 166, ¶¶ 21-22 (App. 2011) (clarifying that although a special order made after final judgment does not require "total finality," it does require complete resolution of a particular matter to be appealable). The court previously ordered that the dispute over the funds be arbitrated pursuant to the settlement agreement, and yet Lee did not oppose Beus Gilbert's motion to compel arbitration or attempt to appeal the court's order granting the motion. *See S. California Edison Co. v. Peabody W. Coal Co.*, 194 Ariz. 47, 53,

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¶¶ 19–20 (1999) (explaining that a party may appeal an order to compel arbitration if a Rule 54(b) judgment is issued). The denial of Lee’s motion to release the Disputed Funds was merely preparatory, which, in this case, means Lee was not aggrieved by the denial, because he must resolve his dispute with Beus Gilbert through arbitration, where his interests and rights will be determined. *See Gries v. Plaza Del Rio Mgmt. Corp.*, 236 Ariz. 8, 12, ¶ 14 (App. 2014) (“A party is aggrieved if the judgment has denied the party a personal or property right.”); *Arvizu v. Fernandez*, 183 Ariz. 224, 227 (App. 1995) (“[A]n order that is merely ‘preparatory’ to a later proceeding that might affect the judgment or its enforcement is not appealable.”).

**¶13** Third, Lee’s motion to release funds is, in substance, a motion to reconsider its Distribution Order because the motion merely requests that the court release the Disputed Funds. An order denying a motion to reconsider is generally not appealable, and Lee does not contend otherwise. *See Vincent v. Shanovich*, 243 Ariz. 269, 271, ¶ 9 (2017) (explaining that for a special order made after final judgment to be appealable, it must raise issues “different from those that could have been raised on appeal from the underlying judgment”).

## DISCUSSION

**¶14** The issue properly before this court is whether the superior court abused its discretion in issuing IIM’s satisfaction of judgment. We review the superior court’s equitable relief rulings for an abuse of discretion. *See Grant v. Ariz. Pub. Serv. Co.*, 133 Ariz. 434, 456 (1982). “A court abuses its discretion if it commits an error of law in reaching a discretionary conclusion, it reaches a conclusion without considering the evidence, it commits some other substantial error of law,” or its findings are not supported by substantial evidence. *Flying Diamond Airpark, LLC v. Meienberg*, 215 Ariz. 44, 50, ¶ 27 (App. 2007) (citation omitted).

### A. Satisfaction of Judgment

**¶15** While Lee admits that IIM has paid the full amount due and owing under the judgment, he argues that the judgment is not fully satisfied because, based on his calculations, IIM did not withhold the proper amount of taxes. Lee fails to cite any authority for the proposition that a fully paid judgment is not satisfied; rather, Lee relies on his own withholding calculations. There is no evidence that Lee is a certified tax professional qualified to dispute IIM’s tax withholding. In fact, Lee’s tax withholding

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calculations were inconsistent throughout his pleadings, ranging from \$296,054.72 to \$778,353.38.

**¶16** As the superior court correctly ruled, we are unable to make tax liability determinations. “Tax liability arises only when the taxing authority makes a deficiency determination. . . .” *CDT, Inc. v. Addison, Roberts & Ludwig, C.P.A., P.C.*, 198 Ariz. 173, 181, ¶ 28 (App. 2000). Lee has not provided any notice, calculation or ruling from either the IRS or Arizona Department of Revenue demonstrating that the \$342,318.38 IIM withheld was deficient to satisfy his tax obligations. Nor has Lee provided any evidence from a certified tax professional supporting his proposed withholding calculations.

**¶17** “A satisfaction of judgment is the discharge of an obligation by payment of the amount due. . . .” *W.F. Conelly Const. Co. v. L. Harvey Concrete, Inc.*, 162 Ariz. 574, 576 (App. 1989). “A satisfaction of judgment also stops the accrual of postjudgment interest.” *Brewer v. Gerson*, 190 Ariz. 164, 165 (1997). Because there is no dispute that IIM paid the amount owed under the judgment, the superior court did not abuse its discretion in determining the judgment was fully satisfied.

**B. Other Issues**

**¶18** In this appeal, Lee attempts to re-litigate the issues previously addressed in *Lee I*, contrary to the law of the case doctrine. “[O]nce an appellate court has decided a legal issue, that decision is the law of the case in subsequent . . . proceedings and the decision will not be reconsidered in a second appeal, provided the facts, issues, and evidence are substantially the same as those upon which the first decision rested.” *Lennar Corp. v. Transamerica Ins. Co.*, 227 Ariz. 238, 242–43, ¶ 12 (App. 2011).

**¶19** Applying the law of the case doctrine, we decline to reconsider the amount of attorneys’ fees the superior court awarded to Lee, as we previously affirmed the ruling in *Lee I*, 240 Ariz. at 162, ¶ 13. Additionally, because we previously held that Lee’s right to appeal the interlocutory summary judgment rulings was extinguished upon his acceptance of the offer of judgment, we decline to reconsider the superior court’s 2012 grant of summary judgment to IIM on the wage and treble damages claim. *Id.* at ¶ 14.

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**CONCLUSION**

¶20 For the foregoing reasons, we affirm the superior court's order granting IIM's motion for satisfaction of judgment and dismiss Lee's appeal of the order denying his motion for release of funds.



AMY M. WOOD • Clerk of the Court  
FILED: AA