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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

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Dudley Greer, d/b/a Greer Farms,

) No. CV-10-799-PHX-SMM

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Plaintiff,

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vs.

) **ORDER**

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T.F. Thompson & Sons, Inc., et al.,

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Defendants.

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T.F. Thompson & Sons, Inc., et al.,

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Counter-Claimants,

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vs.

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Dudley Greer, d/b/a Greer Farms,

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Counter-Defendant.

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Before the Court are two related motions: (1) Defendant T.F. Thompson & Sons, Inc.'s Motion for Judgment Debtor Exam (Doc. 139); and (2) Intervenor Judy Greer's Motion to Set Aside Judgment as to Community (Doc. 174). The motions are fully briefed. (Docs. 148, 154, 165, 166, 173, 176, 177.) After considering the parties' positions, the Court will deny the motion to set aside the judgment, and deny the motion for judgment debtor exam.

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BACKGROUND

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This case began when Plaintiff Dudley Greer, d/b/a Greer Farms, filed a complaint

1 against Defendant T.F. Thompson & Sons, Incorporated (“Thompson”) on April 12, 2010.
2 (Doc. 1.) In his complaint, Plaintiff alleged that Thompson sold him diseased seed potatoes.
3 (Id.) The Court subsequently granted Thompson’s motion for summary judgment against
4 Plaintiff on grounds that Plaintiff’s expert did not satisfy the Daubert standard, and entered
5 judgment in favor of Thompson. (Doc. 111; Doc. 112.)

6 Thompson promptly moved for an award of attorney fees and costs pursuant to A.R.S.
7 § 12-341.01(A). (Doc. 114.) Dudley Greer then moved to Amend the Court’s Judgment
8 (Doc. 117), arguing that the Court’s ruling granting Thompson’s motion for summary
9 judgment had misapprehended the factual record, improperly resolved disputed factual
10 issues, and was manifestly unjust. The Court allowed the issue of reconsideration to be
11 briefed, ordering Thompson to respond. (Doc. 118.) The Court subsequently denied the
12 motion for reconsideration. (Doc. 125.) Greer then appealed the Court’s judgment to the
13 Ninth Circuit. (Doc. 127.)

14 Dudley Greer also filed a response to Thompson’s motion for attorney fees, arguing
15 that an award of attorney fees against him would constitute an extreme financial hardship.
16 (Doc. 119.) Greer also filed a motion for leave to file confidential financial information
17 under seal (Doc. 120). In his motion to seal, Greer requested permission to file information
18 from the joint federal income tax returns filed in 2009 and 2010 by Greer and his wife Judy
19 Greer. (Doc. 120 at 1.) Greer also wished to file a “joint statement of financial affairs of
20 Mr. And Mrs. Greer. (Id.) After reviewing the documents Greer wished to have filed under
21 seal, the Court denied the motion. (Doc. 122.) The Court denied the motion pursuant to
22 L.R.Civ. 5.6(b), because Greer failed to set forth any legal justification nor any compelling
23 reasons for the proposed sealing of each document. (Id.) The Court then denied Thompson’s
24 motion for attorney fees without prejudice, pending the outcome of Greer’s appeal to the
25 Ninth Circuit. (Doc. 130.)

26 Greer subsequently dismissed his appeal, and Thompson then renewed its motion for
27 attorney fees and costs. (Doc. 132.) In his response to the motion, Dudley Greer again
28 asserted that an award of attorney fees against him would cause an extreme financial

1 hardship. (Doc. 120.) The Court was mindful of Greer's claim of undue hardship, and
2 therefore offered him the opportunity to again file financial statements under seal – noting
3 that Greer's previous attempt to file statements under seal had been deficient because the
4 statements were not in the form of sworn affidavits, nor were they authoritative evidence of
5 Greer's entire financial situation. (Doc. 136 at 2.) Therefore, the Court postponed ruling on
6 Thompson's motion, and gave Greer thirty days in which to submit financial documents for
7 filing under seal. (Id.)

8 Greer, however, did not submit any financial documents, and the Court therefore
9 issued its ruling on Thompson's motion for attorney fees, on December 11, 2012. (Doc.
10 137.) The Court granted the motion, finding that Thompson's overall request for fees was
11 reasonable and supported by the record and the attorneys' affidavits, with the exception of
12 Thompson's request for fees incurred when the case was on appeal to the Ninth Circuit. (Id.)
13 The Court thus entered judgment against Defendant in the amount of \$221,534.50 for fees
14 and costs pursuant to Ariz. Rev. Stat. § 12-341.01(A). (Id.)

15 On April 18, 2013, Thompson applied for a Writ of Garnishment on Arizona Business
16 Bank to satisfy the unpaid judgment for fees and costs. (Doc. 155.) The Writ was issued the
17 following day (Doc. 156), and duly served upon Garnishee Arizona Business Bank on April
18 22, 2013. (Doc. 157). Garnishee filed its Answer on April 29, 2013, stating that it possessed
19 \$93,777.74 in a bank account belonging to Dudley Greer at the time of service of the Writ.
20 (Doc. 158.)

21 On May 6, 2013, Dudley Greer filed a Request for Hearing on the Garnishment,
22 objecting to the garnishment on the grounds that the funds are community property and thus
23 exempt from garnishment under Ariz. Rev. Stat. 25-215(D) because his wife Judy Greer was
24 not joined in the original action. (Doc. 163.) That same day, Judy Greer filed a motion to
25 intervene in this action for the purpose of objecting to the garnishment on the same grounds.
26 (Doc. 165.) In her declaration accompanying the motion to intervene, Judy Greer averred
27 that Greer Farms, and all funds generated or acquired by Greer Farms, are community
28 property. (Docs. 165-1, 165-2.) The Court granted Judy Greer's motion to intervene, in

1 order to give her the opportunity to present any argument concerning her independent rights
2 to the community funds, as distinct from those presented by Dudley Greer. Judy Greer
3 thereupon filed her Motion to Set Aside Judgment as to Community (Doc. 174).

4 **LEGAL STANDARD**

5 Rule 60(b), Fed. R. Civ. P., permits reconsideration of a district court order based
6 on: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly-discovered evidence
7 which by due diligence could not have been discovered in time to move for a new trial under
8 Rule 59; (3) fraud, misrepresentation, or misconduct by an adverse party; (4) the judgment
9 is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon
10 which it is based has been reversed or otherwise vacated, or it is no longer equitable that the
11 judgment should have prospective application; or (6) any other reason justifying relief from
12 the operation of the judgment. Fed. R. Civ. P. 60(b)(1)-(b)(6).

13 Rule 60 reconsideration is generally appropriate in three instances: (1) when there has
14 been an intervening change of controlling law; (2) new evidence has come to light; or (3)
15 when necessary to correct a clear error or prevent manifest injustice. School District No. 1J
16 v. ACandS, Inc., 5 F.3d 1255, 1262 (9th Cir. 1993). A Rule 60(b) motion must be brought
17 within a “reasonable” time, which cannot be more than one year if the motion is based on
18 mistake, newly-discovered evidence, or fraud. See Fed. R. Civ. P. 60(b).

19 Section 12-341.01, Ariz. Rev. Stat., provides that in any action arising out of a
20 contract, the court may award the successful party reasonable attorney fees. The award of
21 fees under the statute is made “to mitigate the burden of the expense of litigation to establish
22 a just claim or a just defense.” A.R.S. § 12-341.01(B).

23 Section 25-215(D), Ariz. Rev. Stat., states in relevant part (emphasis added):

24 Except as prohibited in § 25-214, either spouse may contract debts and
25 otherwise act for benefit of the community. **In an action on such a debt or**
26 **obligation the spouses shall be sued jointly** and the debt or obligation shall
be satisfied: first, from the community property, and second, from the separate
property of the spouse contracting the debt or obligation.

27 Section 25-214(B) provides that spouses have equal management, control, and disposition
28 rights over their community property and have equal power to bind the community. Further:

1 [e]ither spouse separately may acquire, manage, control or dispose of
2 community property or bind the community, except that joinder of both
spouses is required in any of the following cases:

3 1. Any transaction for the acquisition, disposition or encumbrance of an
interest in real property other than an unpatented mining claim or a lease of
4 less than one year.

5 2. Any transaction of guaranty, indemnity or suretyship.

6 3. To bind the community, irrespective of any person's intent with respect to
that binder, after service of a petition for dissolution of marriage, legal
separation or annulment if the petition results in a decree of dissolution of
marriage, legal separation or annulment.

7 A.R.S. § 25-214(C).

8 DISCUSSION

9 Judy Greer moves to set aside the judgment awarding attorney fees pursuant to Fed.
10 R. Civ. P. 60(b)(4) and/or (6). (Doc. 174.) Judy Greer argues that the judgment is void
11 pursuant to A.R.S. § 25-215(D) because Judy Greer was not joined in this action, and
12 therefore the judgment cannot be satisfied by garnishment of Greer Farms' funds, which are
13 community property. In support of her argument, she cites to Spudnuts, Inc. v. Lane, 139
14 Ariz. 35, 676 P.2d 669 (App. 1984). In that case, the Arizona Court of Appeals applied
15 A.R.S. § 25-215(D) to hold that the plaintiff judgment creditor could not collect from the
16 defendant judgment debtor's marital community because the debtor's spouse had not been
17 joined in the action. Id. at 36, 676 P.2d at 670.

18 Thompson argues in response that A.R.S. § 25-215(D) is inapplicable in this case,
19 because this was not an action brought to enforce an obligation of the community, but rather
20 an action brought by Dudley Greer d/b/a/ Greer Farms which led to the imposition of fees
21 and costs against the farm. Thus, Thompson argues that Spudnuts is inapplicable, because
22 there, the Court was addressing an entirely different question: whether the plaintiff there
23 could amend its pleadings to join the defendant's spouse after judgment had been entered
24 against the defendant. Id. at 36, 676 P.2d at 670. By contrast, here Dudley Greer d/b/a/
25 Greer Farms is the plaintiff, and initiated this case – this is not an action on a contract debt
26 or other community obligation brought by Thompson against Dudley Greer. Thompson
27 instead is seeking to enforce a judgment of attorney fees against Greer Farms which arose
28 as a result of Greer Farms' own actions in filing this contract suit.

1 The Court agrees with Thompson that A.R.S. § 25-215(D) does not apply here, and
2 finds that the judgment at issue in this case may be satisfied by Greer Farms' assets despite
3 that they may be marital community. A.R.S. § 25-214(C) allows that either spouse may act
4 to bind the marital community, except in three distinct situations, none of which apply here.
5 Thus, when Defendant Greer filed this action against Thompson alleging breach of contract,
6 he bound the marital community with respect to the possibility that the fee-shifting statute
7 A.R.S. § 12-341.01 might apply to hold Greer Farms responsible for Thompson's attorney
8 fees and costs.

9 A.R.S. § 25-215(D) does not apply because that statute only mandates joinder of both
10 spouses **in an action on a debt or obligation**. This judgment does not arise from an action
11 brought against a debt or obligation of the community. By the same token, Spudnuts is not
12 applicable here. The court's language in Spudnuts is clear and unambiguous, and does not
13 squarely fit the facts in this case: "A.R.S. § 25-215(D) provides that if **a plaintiff** wants to
14 hold a marital community accountable for an obligation, both spouses must be sued jointly."
15 139 Ariz. at 36 (emphasis added). Thompson is not a plaintiff seeking to enforce an
16 obligation entered into by a defendant pursuant to A.R.S. § 25-215(D).

17 Here, although Judy Greer was not a named plaintiff alongside Dudley Greer, this
18 action was initiated by Dudley Greer **doing business as Greer Farms**. As Judy Greer
19 herself states in her declaration, Greer Farms is a business activity which was "pursued for
20 many years by [Dudley] Greer and I in furtherance of our marital community." (Doc. 165-
21 2.) As such, when Dudley Greer initiated this action on behalf of Greer Farms, he was
22 binding that community property to this potential outcome. Thus, Dudley and Judy Greer
23 cannot now seek to avoid the responsibility that Greer Farms undertook when Dudley Greer
24 initiated this action, merely by claiming that Thompson should have joined Judy Greer.
25 Because Greer Farms initiated this suit, Greer Farms' assets were bound and exposed to
26 potential liability for attorney fees and costs by virtue of A.R.S. §§ 12-341.01(B), and 25-
27 214(B). Dudley Greer, suing on behalf of Greer Farms, had the independent ability to bind
28 the community, and Greer Farms' assets may therefore be applied against the award of

1 attorney fees and costs even though those assets may be community property.

2 Judy Greer argues also, however, that set-aside is warranted in this case because she
3 was not afforded a meaningful opportunity to be heard before her community property was
4 placed in a position of potential seizure by Thompson. (Doc. 174 at 5.) She contends that
5 she had a right to be heard on the issues presented in Thompson’s motion for summary
6 judgment, and on the issue of attorneys’ fees “including the right to decide on whether to
7 provide the financial statements requested by the Court to demonstrate the substantial
8 financial hardship represented by the award of attorneys’ fees.” (Id.)

9 Judy Greer’s argument here is not well taken. The Court notes that Judy Greer had
10 every right to join in this action from the outset of litigation, either cooperatively with
11 Dudley Greer or by moving to intervene. Indeed, Judy Greer does not allege that she did not
12 have full and fair notice that this suit was pending on Greer Farms’ behalf. More
13 importantly, however, the Court notes that during the briefing stages of Thompson’s motion
14 for attorney fees, Judy Greer participated by preparing for filing under seal joint financial
15 statements with Dudley Greer. Thus, it is readily apparent that Judy Greer was aware of and
16 involved with Dudley Greer’s response to Thompson’s motion for attorney fees – to the
17 extent that she felt that Dudley Greer was not adequately representing the interests of the
18 community, she could have moved to intervene at that time. She did not do so, and it is
19 disingenuous for her to now claim that she had no opportunity to be heard on the financial
20 impact to the community.

21 Dudley Greer was independently entitled to file this suit against Thompson, and the
22 Court was statutorily authorized to award Thompson a judgment of attorney fees.
23 Thompson’s motion for attorney fees was fully litigated by Dudley Greer; had Judy Greer
24 wished to intervene at that point in the litigation in order to participate in briefing that issue,
25 she was entitled to move for intervention at that time. That Judy Greer did not join as a
26 plaintiff in this action at the outset does not now mean that she may seek to completely
27 overturn the judgment merely because she believes that Dudley Greer did not effectively
28 represent her interests.

1 Community by Intervenor Judy Greer. (Doc. 174.) Those earnings garnished by Garnishee
2 Arizona Business Bank may be applied to the judgment of attorney fees and costs awarded
3 in favor of Thompson.

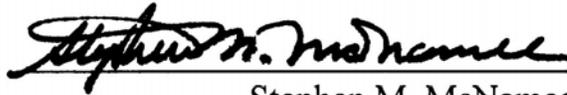
4 **IT IS FURTHER ORDERED** directing Garnishee Arizona Business Bank to release
5 the garnished funds to Thompson.

6 **IT IS FURTHER ORDERED denying** the Motion for Judgment Debtor
7 Examination. (Doc. 139.)

8 **IT IS FURTHER ORDERED denying as moot** the Motions for Oral Argument or
9 Decision on Motion by Intervenor Judy Greer. (Docs. 178, 179.)

10 **IT IS FURTHER ORDERED vacating** the Status Conference currently set for
11 September 16, 2013 at 11:00 a.m.

12 DATED this 26th day of August, 2013.

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Stephen M. McNamee
16 Senior United States District Judge
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