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2 NOT FOR PUBLICATION

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

8
9 Susan Pearson,

10 Plaintiff,

11 v.

12 Sean Cannon, et al.,

13 Defendants.

No. CV-16-02721-PHX-DJH

ORDER

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15 Pending before the Court is Plaintiff's Motion for Award of Attorneys' Fees and
16 Costs, filed in association with a garnishment that was initiated to collect on the 2017
17 judgment in this matter (Doc. 59). Defendants Sean Cannon and Cannon Law Firm, PLLC
18 (collectively "Cannon") filed a Response (Doc. 61), as did non-party Cambridge Estates
19 Homeowners Association ("Cambridge Estates") (Doc. 60). Plaintiff, Susan Pearson, filed
20 a Consolidated Reply to the Responses of Cannon and Cambridge Estates (Doc. 62).

21 **I. Background**

22 Plaintiff brought this action against Cannon in August 2016, alleging violations of
23 the Fair Debt Collections Practices Act. (Doc. 1). On March 2, 2017, the Parties filed a
24 Stipulation for Entry of Judgment in Plaintiff's favor in the amount of \$1,025.00. (Doc.
25 26). This Court approved the Stipulation and entered judgment in favor of Plaintiff and
26 against Defendants for \$1,025.00, plus interest at the rate of .66% per annum from the date
27 of the Judgment until paid in full. (Doc. 27). Plaintiff subsequently filed a Motion for
28 Award of Attorneys Fees (Doc. 28), which this Court granted in the amount of \$13,335.00

1 (Doc. 33). The Clerk of Court then entered judgment in favor of Plaintiff and against
2 Defendants for the \$13,335.00 in attorneys' fees. (Doc. 34). The Clerk also entered a
3 Judgment on Taxation of Costs for \$1,516.12. (Doc. 32). On June 28, 2017, Plaintiff filed
4 a Notice of Satisfaction of Stipulated Judgment, stating that the \$1025.00 stipulated
5 judgment had been satisfied, but that the Judgments for Attorneys' Fees and Costs had not
6 yet been satisfied. (Doc. 35).

7 On May 2, 2019, Plaintiff applied for a writ of garnishment for monies in the
8 possession of garnishee, Maricopa County Sheriff's Office (the "County"), that were being
9 "held on behalf of" Cannon. (Doc. 36). The Application for Writ of Garnishment stated
10 that the judgment for taxation of costs, plus the attorneys' fees judgment, totaled
11 \$14,851.12 and that the total amount of the outstanding judgments, including interest, was
12 \$15,145.04 (Doc. 36). The Application for Writ of Garnishment also stated that Plaintiff
13 had "good reason to believe, and therefore alleges," that the County had in its possession
14 non-exempt monies and/or personal property belonging to Cannon. (Doc. 36 at 2). A Writ
15 of Garnishment was issued to the County, again identifying a total amount owed of
16 \$15,145.04. (Doc. 38).

17 In the County's Answer to the Writ of Garnishment, the County stated that it
18 "received \$16,287.89 on May 16, 2019 for judgments arising out of Maricopa County
19 Superior Court cause number CV2018-007526." (Doc. 39 at 2). The Answer further stated
20 that "\$12,707.33 of this amount is owing to the Judgment Debtor, Sean Cannon" and that
21 "\$2,920.00 is withheld from [Cannon] for attorney's fees that [Cannon] alleged occurred
22 but have not been awarded by the Superior Court." (Doc. 39 at 2). The County stated that
23 it would hold the funds pending an order from the Federal Court. (Doc. 39 at 2).

24 On May 16, 2019, Cannon filed an Objection to Garnishment, Request to Quash
25 Garnishment, and Request for Hearing. (Doc. 40). In this Objection, Cannon stated that
26 the funds being held by the County did not belong to Cannon, but instead belonged to
27 Cannon's legal client, Cambridge Estates. (Doc. 40 at 1-2). Cannon further stated that the
28 funds were in the possession of the County as a result of a foreclosure judgment in

1 Maricopa County Superior Court case number CV2018-007526, *Cambridge Estates*
2 *Homeowners Association v. Dung Ta*. (Doc. 40 at 2). Cannon attached a copy of the
3 judgment in that case, which shows that the named plaintiff was Cambridge Estates and
4 that Cannon was the attorney for Cambridge Estates. (Doc. 40-1). Non-party Cambridge
5 Estates, still represented by Cannon, similarly filed a Motion to Quash Garnishment and
6 Request for Hearing. (Doc. 42). That Motion to Quash Garnishment also objected to the
7 garnishment on the basis that the “money being held belongs to Cambridge, not its
8 attorney.” (Doc. 42 at 2).

9 In Plaintiff’s May 23, 2019, Response to the Motions to Quash, Plaintiff stated that
10 she “filed a Writ of Garnishment seeking \$2,920 that is not part of any state court judgment
11 and that belongs to [Cannon].” (Doc. 45 at 1). Plaintiff also stated that there was an
12 existing state court judgment that awarded \$12,707.33 to Cambridge Estates and that the
13 “Writ of Garnishment does not seek those funds.” (Doc. 45 at 2). Plaintiff’s Response
14 then details alleged flaws in the \$2,920.00 of additional costs in the Maricopa County
15 Superior Court case between Cambridge Estates and Dung Ta. Specifically, Plaintiff
16 alleged that the \$2,920.00 in costs was obtained in violation of state and federal law and in
17 violation of court order. (Doc. 45 at 3-5). Plaintiff further alleged that the \$2,920.00 was
18 “part of a pattern of Cannon procuring or seeking personal funds disguised as amounts due
19 to clients.” (Doc. 45 at 5). Plaintiff next asserted that “[Cannon] is using the Writ in the
20 Ta case to collect what he believes he is entitled to above and beyond the fees awarded in
21 the Judgment in the Ta case. As the \$2,920 is earmarked to go to Cannon, it is clearly
22 subject to garnishment.” (Doc. 45 at 8). Plaintiff then acknowledged that an evidentiary
23 hearing “may be appropriate” and stated that discovery regarding the accounting of both
24 Cannon and Cambridge Estates is necessary. (Doc. 45 at 8).¹

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26 ¹ Plaintiff’s extensive familiarity with the Maricopa County Superior Court case between
27 Cambridge Estates and Dung Ta apparently arises from the fact that Plaintiff’s counsel also
28 represents Dung Ta in that matter. (Doc. 45-1 at 24). Indeed, in Plaintiff’s Response to
the Objection to the Garnishment, Plaintiff states that “[g]iven the experience that
Plaintiff’s firm has had in which Cannon has withheld critical and material documents
against the mandates of Arizona Statute and the Arizona Rules of Civil Procedure, Plaintiff
requests that this Court schedule the evidentiary hearing sixty days from the date of the

1 The Objection to Garnishment was referred to Magistrate Judge John Boyle (Doc.
2 44), who scheduled a garnishment hearing for June 11, 2019 (Doc. 46). At the June 11,
3 2019, hearing, an evidentiary hearing was scheduled for August 19, 2019. (Doc. 50). The
4 Court also stated that Plaintiff “may serve limited discovery on [Cannon]” prior to the
5 evidentiary hearing. (Doc. 50 at 2).

6 On June 29, 2019, Cannon and Cambridge Estates withdrew their Objections and
7 Motions to Quash Garnishment “as to the \$2,920.00 at issue in the garnishment action.”
8 (Doc. 57 at 1). Cannon and Cambridge Estates also requested that the evidentiary hearing
9 be cancelled and that all post-judgment discovery actions relating to Cambridge Estates be
10 quashed because Cambridge Estates “has no connection to the above matter in any way
11 whatsoever.” (Doc. 57 at 2). This Court granted the Motion to Withdraw, vacated the
12 August hearing, and ordered that all post-judgment discovery shall cease. (Doc. 58). On
13 or around July 3, 2019, the County released the \$2,920 to Plaintiff and released the
14 remainder of the garnished \$16,287.89 to Cannon in trust for Cambridge Estates. (Doc.
15 59-4 at 57-58).

16 On July 16, 2019, Plaintiff filed the Motion for Award of Attorneys’ Fees and Costs,
17 seeking \$13,860.00 in fees and \$549.80 in costs. (Doc. 59; Doc. 59-1 at 4).

18 **II. Analysis**

19 Plaintiff asserts that she is entitled to fees for this garnishment based upon this
20 Court’s inherent authority to sanction actions taken in bad faith; based upon 28 U.S.C. §
21 1927, which provides that an attorney can be required to personally satisfy excess costs
22 caused by the attorney “unreasonably and vexatiously” multiplying the proceedings; and
23 based upon A.R.S. § 12-1580(E), which provides for an award of fees when an objection
24 to garnishment is made “solely for the purpose of delay or to harass the judgment creditor.”
25 (Doc. 59 at 1, 4). In support of this position, Plaintiff asserts that “[b]ecause of the actions
26 of Cambridge Estates and Cannon, Plaintiff was required to compile and file lengthy
27 court conference to build in the inevitable discovery conferences that will arise in this
28 matter.” (Doc. 45 at 9 (emphasis added)). Plaintiff then states that Plaintiff can have all
written discovery ready to present to the management company of Cambridge Estates
within three business days of the Court’s conference. (*Id.*).

1 responses with detailed exhibits demonstrating their fraudulent accounting, prepare for a
2 potential evidentiary hearing, and draft and submit discovery demands and subpoenas all
3 to get information that Defendants have been hiding in two other proceedings in efforts to
4 mask that the sought funds by [Plaintiff] masked as debts to Cambridge Estates.” (Doc. 59
5 at 2). Plaintiff also alleges that, because it only sought \$2,920 in the garnishment and
6 because Cannon and Cambridge Estates eventually withdrew their objections to the
7 garnishment of that amount, the initial objections were made in bad faith or solely for the
8 purpose of delay or harassment. (Doc. 59, Doc. 62).

9 In response, Cannon and Cambridge Estates both assert that the original amount
10 stated in the Writ of Garnishment was \$15,145.04, which is far greater than the \$2,920.00
11 to which Cannon and Cambridge Estates ultimately withdrew their objection. (Doc. 60 at
12 2, Doc. 61 at 2-3). Cannon and Cambridge Estates also argue that they did not act in bad
13 faith or solely to delay or harass because the garnishment was issued against money that
14 belonged to Cambridge Estates, a non-party client of Cannon’s; they explain that, because
15 the money did not belong to Cannon (the Defendant and Judgment Debtor), but instead
16 belonged to Cambridge Estates (whose only connection to this matter is that it is
17 represented by Cannon), it would not be proper to garnish the money. (Doc. 60, 61).
18 Cannon and Cambridge Estates also state that they withdrew their objections to the
19 garnishment of the \$2,920.00 once it became clear at the hearing before Judge Boyle that
20 Plaintiff was only seeking to garnish \$2,920.00, not the original \$15,145.04 stated in the
21 Writ of Garnishment. (*Id.*).

22 Under Rule 69 of the Federal Rules of Civil Procedure, when there is a money
23 judgment, “[t]he procedure on execution—and in proceedings supplementary to and in aid
24 of judgment or execution—must accord with the procedure of the state where the court is
25 located.” Fed. R. Civ. P. 69(a)(1). Arizona Revised Statute § 12-1570 et seq. addresses
26 garnishment procedure in Arizona. Section 12-1580, regarding objections to garnishment,
27 identifies the limited circumstances under which a party may recover costs and attorneys’
28 fees in a garnishment proceeding:

1 The prevailing party may be awarded costs and attorney fees in a reasonable
2 amount determined by the court. The award shall *not* be assessed against nor
3 is it chargeable to the judgment debtor, *unless* the judgment debtor is found
4 to have objected to the writ *solely for the purpose of delay or to harass the*
5 *judgment creditor.*

6 Ariz. Rev. Stat. Ann. § 12-1580(E) (emphasis added). This statute is the “exclusive avenue
7 for recovering fees in a garnishment proceeding.” *Ironwood Commons Community*
8 *Homeowners Assoc., Inc. v. Randall*, 439 P.3d 1193, 1198 (Ariz. Ct. App. 2019); *Blum v.*
9 *Cowan*, 330 P.2d 961, 966 (Ariz. Ct. App. 2014) (stating that the statute provides for the
10 exclusive means to obtain attorneys’ fees for garnishments). Therefore, based on this
11 statute, Plaintiff may only recover costs and fees for the garnishment if Defendant objected
12 to the writ solely for the purpose of delay or to harass the judgment creditor.

13 Here, Plaintiff presents a myriad of allegations regarding Cannon’s relationship with
14 his client, Cambridge Estates, as well as Cannon’s alleged efforts to hide the terms of their
15 fee agreement. (Doc. 62 at 4). Plaintiff’s allegations, however, are insufficient to establish
16 that Cannon and Cambridge Estates objected to the garnishment “solely” to delay or to
17 harass Plaintiff. There does not seem to be a dispute that, of the more than \$15,000 that
18 was garnished, only \$2,920 was properly subject to the garnishment. The Application for
19 Writ of Garnishment and Affidavit in Support of Application for Writ of Garnishment only
20 mentioned the \$14,851.12 owed. (Doc. 35, Doc. 37). The Application for Writ of
21 Garnishment also broadly stated that the County “is holding non-exempt monies on behalf
22 of [Cannon]” and that the “amount of the outstanding judgments [including interest]. . . is
23 \$15,145.04.” (Doc. 36 at 2). Based on the Writ of Garnishment and the fact that the
24 garnished amount included a substantial amount of money that ultimately belonged to
25 Cambridge Estates, not to Defendant/Judgment Debtor Cannon, the objections filed by
26 Cannon and Cambridge Estates were not made “solely for the purpose of delay or to harass
27 the judgment creditor.” *See* Ariz. Rev. Stat. § 12-1580(E).

28 Plaintiff argues that it is nonetheless entitled to fees because it clarified that it was
only seeking the \$2,920.00 as early as its Response to the Objections that it filed on May
23, 2019 (Doc. 62 at 6 (citing Doc. 45 at 2)). Therefore, according to Plaintiff, because

1 Cannon and Cambridge Estates did not withdraw their objections as to the \$2,920.00 until
2 June 29, 2019, Cannon and Cambridge Estates demonstrated an intent to delay, as well as
3 bad faith. (Doc. 62 at 6-7). Arizona Revised Statute § 12-1580(E) is silent regarding the
4 timing of any obligation to withdraw objections regarding a portion of garnished funds.
5 Rather, § 12-1580(E) simply authorizes a fee award if a party objects to the garnishment
6 solely for purposes of delay or harassment. As discussed above, because the amount
7 garnished included a substantial amount that belonged to Cambridge Estates, not to the
8 judgment debtor Cannon, the Court cannot conclude that the objection was improper or
9 was solely for purposes of delay or harassment.²

10 Plaintiff further argues that the heightened “solely for the purpose of delay or to
11 harass” standard in § 12-1580(E) does not apply to Cambridge Estates because the statute
12 only refers to the judgment debtor’s objection and Cambridge Estates is a third party, not
13 the judgment debtor. (Doc. 62 at 9-10). Therefore, Plaintiff argues, the Court need not
14 find an intent to delay or harass before it awards fees against Cambridge. The Court
15 declines to do so; Cambridge Estates is not the judgment debtor and rightfully objected to
16 a garnishment of its funds.

17 The Court also declines to award fees based upon its authority to sanction bad faith
18 actions or its authority to award fees based on counsel unreasonably and vexatiously
19 multiplying the proceedings. First, Arizona case law states that, within the context of a
20 garnishment proceeding, § 12-1580(E) is the “exclusive avenue” for recovering fees.
21 *Ironwood Commons*, 439 P.3d at 1198. Second, assuming that this statute does not impact
22 the Court’s authority to award fees based upon bad faith or unreasonable and vexatious
23

24 ² Consistent with this, Arizona statute provides that, if a bank account being held in more
25 than one name is garnished, there needs to be a “determination of the interest of the
26 judgment debtor” to that account. Ariz. Rev. Stat. § 12-1595(C). Following this
27 determination and upon entry of an order, the garnishee shall release all impounded funds,
28 except those belonging to the judgment debtor. Ariz. Rev. Stat. § 12-1595(D). Although
the present case does not involve a joint bank account, but instead involves a judgment
primarily owed to the Defendant/Judgment Debtor’s client, the situation is analogous
because the garnished funds did not belong solely to the judgment debtor. Therefore, the
first step in the proceeding would necessarily be to determine which funds were subject to
garnishment; this further indicates that the initial objection was appropriate.

1 conduct, the initial amount garnished far exceeded the \$2,920.00 that could be attributed
2 to Cannon, thus necessitating some degree of response. Third, Cannon and Cambridge
3 Estates withdrew their objections approximately seven weeks before the scheduled
4 evidentiary hearing and less than three weeks after the initial hearing before Judge Boyle.
5 Although this withdrawal could have occurred sooner, it occurred sufficiently prior to the
6 scheduled hearing to suggest that the original delay was not due to bad faith or an effort to
7 unreasonably and vexatiously multiply the proceedings. Accordingly, the Court declines
8 to award fees on this basis.

9 Finally, Plaintiff makes many allegations regarding bad faith by Cannon and
10 Cambridge Estates, including the allegations that “they hide from notice that Cambridge
11 Estates has assigned monies to Cannon that they both do not notify courts of” (Doc. 62 at
12 8) and that, “[i]n separate proceedings, undersigned counsel was able to obtain the fee
13 agreement” between Cannon and Cambridge Estates, which allegedly demonstrates that
14 Cambridge Estates assigns Cannon awards of attorneys’ fees and authorizes Cannon to
15 “convert to themselves homeowners payments.” (Doc. 62 at 9). The only issue presently
16 before the Court, however, is whether an award of attorneys’ fees is appropriate based upon
17 Cannon and Cambridge Estates’s objection to the garnishment. Because there was reason
18 to object to the garnishment, the allegations of wide-ranging bad faith across multiple legal
19 actions do not impact the Court’s analysis regarding the award of attorneys’ fees for
20 objecting to the garnishment. Although this Court is gravely troubled by Cannon’s
21 apparent failure to fully satisfy the 2017 judgment in this matter, that failure is also not at
22 issue in this fee application and accordingly cannot be used to justify a fee award for this
23 garnishment, particularly considering the limited circumstances under which Arizona law
24 authorizes such an award.

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III. Conclusion

Based on the foregoing,

IT IS ORDERED that Plaintiff's Motion for Award of Attorneys' Fees and Costs for the Garnishment Proceeding (Doc. 59) is denied.

Dated this 27th day of March, 2020.



Honorable Diane J. Humetewa
United States District Judge