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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Jason E. Rappaport,

10 Plaintiff,

11 v.

12 Federal Savings Bank, et al.,

13 Defendants.
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No. CV-18-01404-PHX-DWL

ORDER

15 Pending before the Court is Defendants’ objection to the writ of garnishment issued
16 as to Defendant The Federal Savings Bank (“TFSB”). (Doc. 69.) For the following
17 reasons, the writ of garnishment (Doc. 68) is vacated.

18 **BACKGROUND**

19 On August 27, 2021, the Court granted Plaintiff’s motion to confirm arbitration
20 (Doc. 65) and judgment was entered in favor of Plaintiff and against Defendants TFSB and
21 Stephen Calk. (Doc. 66.)

22 On November 4, 2021, Plaintiff filed an application for a writ of garnishment,
23 naming TFSB as Garnishee (Doc. 67), and the writ issued (Doc. 68).

24 On November 19, 2021, Defendant/Garnishee TFSB filed an objection to the writ
25 of garnishment. (Doc. 69.)

26 TFSB asserts that the writ of garnishment is “objectionable as the appropriate
27 procedure” for enforcing the judgment in this action (Doc. 69 at 1), as the applicable federal
28 rule provides that “[a] money judgment is enforced by a writ of execution, unless the court

1 directs otherwise.” Fed. R. Civ. P. 69(a)(1). Furthermore, TFSB repeatedly notes in its
2 objections that it “is both the named Garnishee and Judgment Debtor and it is unclear how
3 it can respond.” (Doc. 69.)

4 On November 23, 2021, the Court issued an order noting that it “appears . . . that
5 the writ of garnishment is inapplicable and should not have issued” and ordering Plaintiff
6 to respond by December 3, 2021. (Doc. 70.)

7 On December 3, 2021, Plaintiff filed a response. (Doc. 71.) Plaintiff contends that
8 the writ of garnishment was proper under Arizona law (*id.* ¶¶ 3-8), but alternatively,
9 Plaintiff submitted an application for a writ of execution (*id.* ¶¶ 1, 9; Doc. 72).

10 DISCUSSION

11 “A money judgment is enforced by a writ of execution, unless the court directs
12 otherwise.” Fed. R. Civ. P. 69(a)(1). “The procedure on execution—and in proceedings
13 supplementary to and in aid of judgment or execution—must accord with the procedure of
14 the state where the court is located, but a federal statute governs to the extent it applies.”
15 *Id.*

16 “Garnishment is commonly used by successful plaintiffs . . . to garnish wages from
17 judgment debtors’ employers and savings from judgment debtors’ bank accounts.”
18 *Labertew v. Langemeier*, 846 F.3d 1028, 1030 (9th Cir. 2017). A writ of garnishment
19 “controls the funds owed to the principal debtor by the garnishee to assure that it is applied
20 to the payment of the garnishor’s judgment against the debtor.” *Jackson v. Phoenixflight*
21 *Prods., Inc.*, 700 P.2d 1342, 1346 (Ariz. 1985). Thus, garnishment can only exist where
22 there are there is a debtor, a creditor, and a third party in possession of some of the debtor’s
23 funds. A.R.S. § 12-1571(C) (“The writ [of garnishment] may issue to the judgment creditor
24 as garnishee *for property of the judgment debtor in possession of . . . a third party.*”) (emphasis added). *See also Valley Bank & Trust Co. v. Parthum*, 56 P.2d 1342, 1343 (Ariz.
25 1936) (“The writ of garnishment is intended to reach the property and effects of a debtor
26 that may be in the possession of a third party called the garnishee.”); *Neeley v. Century*
27 *Fin. Co. of Arizona*, 606 F. Supp. 1453, 1462 (D. Ariz. 1985) (“It is important to note that
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1 the garnishment scenario is not merely an action between the creditor and debtor. These
2 proceedings also involve a third party who is suddenly thrust into the middle of the dispute
3 . . . when in fact the only relationship the garnishee has to the action is that they are the
4 employer of the debtor or the debtor is one of a multitude of depositors with their financial
5 institution. . . . The garnishee’s interest in the asset itself is nonexistent.”).

6 Plaintiff does not dispute that TFSB is intended to be both the garnishee and the
7 judgment debtor. By designating TFSB as a garnishee/judgment debtor, Plaintiff maintains
8 that TFSB owes funds to TFSB: “Given that Garnishee TFSB acknowledges that it holds
9 money due and owing, or otherwise belonging to, Judgment Creditor TFSB, it should have
10 Answered the Garnishment and released those funds to Mr. Rappaport.” (Doc. 71 ¶ 7.)
11 Plaintiff asserts that “the logic of having TFSB as the Judgment Debtor and the Garnishee
12 is sound, given that it is a federally-chartered banking institution and, presumably, holds
13 some of its own assets in that capacity.” (*Id.* ¶ 4.) The logic is *not* sound. If TFSB holds
14 its own assets, they are not subject to “garnishment” because an entity cannot owe money
15 to itself. If TFSB “is in possession of its own monies” and “should be required to turn
16 those monies over to Mr. Rappaport in satisfaction of the Judgment” (*id.* ¶ 5), the proper
17 way to accomplish this is not through a writ of garnishment but rather through a writ of
18 execution.¹ Garnishment is simply inapplicable here.

19 Accordingly,

20 **IT IS ORDERED** that the writ of garnishment issued as to TFSB (Doc. 68) is
21 **vacated**.

22 Dated this 7th day of December, 2021.

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27 Dominic W. Lanza
28 United States District Judge

28 ¹ Arizona’s statutes devote an article—separate from the articles devoted to
garnishment—to writs of execution. (12 AZ ST Ch. 9, Art. 3, A.R.S. § 12-1551 et seq.)