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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

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12 Janet Kennedy-Burdick,)

13 Plaintiff,)

No. CIV 01-0898-PHX-RCB

14 vs.)

O R D E R

15 Michael Czarnecki,)

16 Defendant.)

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Introduction

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19 Currently pending before the court is a matter docketed
20 as a "MOTION to *Renew Judgment* by [plaintiff] Janet Kennedy-
21 Burdick." Doc. Entry 84. The untitled document filed with
22 the court seeks "reviv[al]" of the judgment "in the amount of
23 \$1,644,962.06" previously entered in this court on September
24 12, 2003. Mot. (Doc. 84) at 1. *Pro se* defendant Michael
25 Czarnecki did not file a response, and the time to do so has
26 long since passed.

Background

27
28 Plaintiff's motion is terse. In fact, her caption does

1 not comport with convention by including the designations
2 "plaintiff" and "defendant" after the parties' names.
3 Additionally, the plaintiff merely requests that "[t]he Clerk
4 of Courts . . . revive the judgment entered for Plaintiff
5 against Defendant in the amount of \$1,644,962.06 on September
6 12, 2003 by Robert C. Broomfield U.S.D.J." *Id.* at 1. That
7 document is dated January 22, 2013 and signed by plaintiff's
8 counsel. There is no supporting documentation.

9 Regardless of the nomenclature, *i.e.*, revival or renewal,
10 the plaintiff is not entitled to the relief which she is
11 seeking. That is because her request is lacking - both
12 procedurally and substantively.

13 **Discussion**

14 Fed.R.Civ.P. 69(a)(1) provides in relevant part:

15 The procedure on execution -- and in
16 proceedings supplementary to and in aid
17 of judgment or execution -- must accord
18 with the procedure of the state where
19 the court is located, but a federal statute
20 governs to the extent it applies.

19 Fed.R.Civ.P. 69(a)(1). Because "[t]here is no federal
20 statute specifically governing renewal of judgments[,]"
21 Fidelity Nat. Financial, Inc. v. Friedman, 855 F.Supp.2d 948,
22 962 (D.Ariz. 2012), and because this court adjudicated the
23 present case, Arizona law governs renewal of plaintiff
24 Kennedy-Burdick's judgment. See PACCAR Financial Corp. v.
25 Robbins Group Int'l, 2012 WL 526456, at *1 (N.D. Ala. 2012)
26 ("Given that this court adjudicated the case at bar, Alabama
27 law governs the renewal of the judgment.") Indeed, A.R.S.
28 § 12-1612(A) expressly allows for renewal by affidavit of

1 judgments, *inter alia*, entered and docketed in United States
2 District Courts.

3 Assuming *arguendo* that plaintiff's "motion" meets all of
4 the criteria for a renewal affidavit set forth in A.R.S.
5 § 12-1612, still, it was not timely filed. Section
6 12-1551(B) specifically provides:

7 An execution or other process shall not
8 be issued upon a judgment after the expiration
9 of five years from the date of its entry
10 unless the judgment is renewed by affidavit
11 or process pursuant to § 12-1612 or an
12 action is brought on it within five years
13 from the date of the entry of the judgment
14 or of its renewal.

15 A.R.S. § 12-1551(B). Hence, "[i]n Arizona, a judgment
16 becomes unenforceable after five years from the date of entry
17 unless action is taken to renew it." Fidelity, 855 F.Supp.2d
18 at 963 (quoting In re Smith, 209 Ariz. 343, 101 P.3d 637);
19 and (citing Crye v. Edwards, 178 Ariz. 327, 328, 873 P.2d
20 665, 666 (App.1993) ("monetary judgments expire in Arizona if
21 not renewed every five years")). In the present case, that
22 means that absent timely renewal -- either by affidavit or by
23 an action for judgment on the judgment -- plaintiff Kennedy-
24 Burdick's judgment, entered on September 8, 2008, expired on
25 September 12, 2008.

26 There is nothing in the record before the court showing
27 that plaintiff took any action whatsoever to renew her
28 judgment in the five years after its September 12, 2003,
entry. The only action plaintiff took was the filing of this
"motion" on January 28, 2013. Thus, even assuming for the
moment that this "motion" somehow could be construed as a

1 renewal affidavit, it was not timely because it was not filed
2 "within ninety days preceding the expiration of five years
3 from the date of entry of . . . judgment[,]" as A.R.S. § 12-
4 1612(B)(A) requires. While "'some defects contained in an
5 affidavit may not defeat a renewal of judgment, . . .
6 *timeliness* of the affidavit is a *rigid statutory requirement*
7 and is *not* subject to modification by the court.'" Id. at 963
8 (quoting State ex rel. Indus. Comm'n of Ariz. v. Galloway,
9 224 Ariz. 325, 330 n. 5, 230 P.3d 708, 713 n. 5 (App. 2010)
10 (citations omitted) (emphasis added by Fidelity court).
11 Thus, plaintiff Kennedy-Burdick's failure to timely file a
12 renewal affidavit is fatal to her "motion" to revive or renew
13 the \$1,644,962.06 judgment entered in this court on September
14 12, 2003.

15 Not only that, even if plaintiff's "motion" had been
16 timely filed, it is not tantamount to a "renewal affidavit."
17 Section 12-1612(A) permits renewal of a judgment "by filing
18 an affidavit for renewal with the clerk of the proper court."
19 A.R.S. § 12-1612(A). Section 12-1612(B) specifies the
20 information to be set forth in renewal affidavits. A.R.S.
21 § 12-1612(B)(1)-(5). "Arizona courts have consistently held
22 that 'strict compliance with the renewal provisions is
23 required to effect a renewal.'" Fidelity, 855 F.Supp.2d at
24 963 (citing State ex rel. Indus. Comm'n of Ariz. v. Galloway,
25 224 Ariz. at 329-330, 230 P.3d at 712-713 (App. 2010) (citing
26 cases) (footnote omitted)).

27 Plaintiff Kennedy-Burdick's untitled, one sentence
28 submission falls far short of the criteria for a renewal

1 affidavit which A.R.S. § 12-1612(B) specifies. The first,
2 most basic, defect in plaintiff's submission is that she did
3 not file a document explicitly designated as a "renewal
4 affidavit." As this court explained in Fidelity, "[f]ailing
5 to properly title [plaintiff's submission] as a 'renewal
6 affidavit' is not simply a matter of form given the legal
7 import of an affidavit[.]" Id. at 958.

8 "By definition, '[a]n 'affidavit' is a signed, written
9 statement, made under oath before an officer authorized to
10 administer an oath or affirmation in which the affiant
11 vouches that what is stated is true.'" Id. (quoting In re
12 Wetzel, 143 Ariz. 35, 43, 691 P.2d 1063, 1071 (1984); see
13 also Black's Law Dictionary (9th ed. 2009) (an affidavit is
14 "[a] voluntary declaration of facts written down and sworn to
15 by the declarant before an officer authorized to administer
16 oaths []"). Plaintiff's submission filed on January 28,
17 2013, is signed by plaintiff's counsel, but does not include
18 a notary's jurat. A "[j]urat' means a notarial act in which
19 the notary certifies that a signer, . . . , has made in the
20 notary's presence a voluntary signature and has taken an oath
21 or affirmation vouching for the truthfulness of the signed
22 document." A.R.S. § 41-311(6); see also A.R.S. § 12-2221(A)
23 ("oath or affirmation shall be administered" to "best awaken
24 the conscience and impress the mind of the person taking the
25 oath or affirmation []" and "shall be taken upon the penalty
26 of perjury[]"). As in Fidelity, plaintiff Kennedy-Burdick's
27 recent submission "lacks even the most basic attributes of an
28 affidavit of any sort." See id. at 958.

1 Further, plaintiff's submission does not comport with
2 section 12-1612(B) in even some of the most fundamental ways.
3 That submission does not, for example, explicitly state in
4 the caption, or elsewhere, the names of the parties as
5 section 12-1612(B)(1) specifies. It is possible to glean
6 from that submission, though, that Janet Kennedy-Burdick is
7 the plaintiff and Michael Czarnecki is the defendant.
8 Plaintiff's submission also indicates that the judgment was
9 entered by "Robert C. Broomfield U.S.D.J.[,]" and that this
10 matter is "in the United States District Court for the
11 Ditriect [sic] of Arizona[.]" Doc. 84 at 1 (emphasis
12 omitted). Therefore, it is also possible to glean therefrom
13 "the name of the court in which [the judgment] was
14 docketed[.]" See A.R.S. § 12-1612(B)(1). Plaintiff's
15 submission also indicates the entry date of the judgment and
16 the amount, as section 12-1612(B)(1) also specifies. That
17 basic information is not all that a renewal affidavit must
18 recite, however.

19 Among the information required to be set forth in a
20 renewal affidavit is "[t]hat no execution is anywhere
21 outstanding and unreturned upon the judgment, or if any
22 execution is outstanding, that fact *shall* be stated."
23 A.R.S. § 12-1612(B)(2) (emphasis added). That statutorily
24 mandated information is conspicuously absent from plaintiff
25 Kennedy-Burdick's submission. Also missing is any of the
26 information described in section 12-1612(B)(4), that is:


27 That there are no set-offs or
28 counterclaims in favor of the judgment
debtor, and if a counterclaim or

1 set-off does exist in favor of the
2 judgment debtor, the amount thereof,
3 if certain, or, if the counterclaim or
4 set-off is unsettled or undetermined,
5 a statement that when it is settled or
6 determined by action or otherwise,
7 it may be allowed as a payment or credit
8 upon the judgment.

6 A.R.S. § 12-1612(B)(4). These shortcomings in plaintiff's
7 submission severely undermine the "central purpose" of the
8 renewal statutes, which is "to give notice to the judgment
9 debtor and other interested parties of the status of the
10 judgment." See Fidelity, 855 F.Supp.2d at 964 (internal
11 quotation marks and citations omitted).

12 In short, because plaintiff Kennedy-Burdick did not
13 timely file a renewal affidavit which comports with A.R.S.
14 § 12-1612, the court finds that her submission dated January
15 22, 2013, and filed with this court on January 28, 2013, does
16 not operate to renew her \$1,644,962.06 entered in this court
17 on September 12, 2003. Accordingly, the court hereby **DENIES**
18 plaintiff's "MOTION to Renew Judgment" (Doc. 84).

19 DATED this 14th day of March, 2013.

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22 _____
23 Robert C. Broomfield
24 Senior United States District Judge
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27 Copies to counsel of record and *pro se* defendant Czarnecki
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