

FILED  
4:00 O'Clock P.M.

OCT 10 2017

DONNA McQUALITY, Clerk  
By: L. WILLIAMS

1 J. Jeffrey Coughlin (013801)  
2 **J. JEFFREY COUGHLIN PLLC**  
3 1570 Plaza West Drive  
4 Prescott, Arizona 86303  
5 Telephone: (928) 445-4400  
6 Facsimile: (928) 445-6828  
7 j.coughlin@azbar.org  
8 Attorney for Plaintiffs

9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF YAVAPAI

8 JOHN B. CUNDIFF and BARBARA C.  
9 CUNDIFF, husband and wife; ELIZABETH  
10 NASH, a married woman dealing with her  
11 separate property; KENNETH PAGE and  
12 KATHRYN PAGE, as Trustee of the Kenneth  
13 Page and Catherine Page Trust,

14 Plaintiffs,

15 vs.

16 DONALD COX and CATHERINE COX,  
17 husband and wife,

18 Defendants.

CASE NO. P1300CV20030399

**OBJECTION TO MOTION TO  
QUASH  
(Oral Argument Requested)**

(Div. Pro Tem A)

19 Plaintiffs object to Defendants Motion to Quash for several reasons:

- 20 1. The Supreme Court denied Defendants' Petition for Review and was the third court to  
21 award Plaintiffs their attorneys' fees and costs. The case is over.
- 22 2. Plaintiff's Motion for Order Requiring Debtor to Produce Documentation and Appear for  
23 Examination was served as required by ARCP Rule 5(C)(4).
- 24 3. For the purpose of execution, Plaintiffs can obtain discovery from any person under  
25 ARCP 69.

- 1 4. Judge Paupore warned Defendants that transferring their assets to newly created LLCs in  
2 the midst of the litigation (2008) would not divest the Court of jurisdiction over the  
3 Coxes' property and those to whom they transferred it.
- 4 5. The judgment in this case is binding on all the individuals and entities identified in  
5 Plaintiff's motion.
- 6 6. The requested information is not overbroad; it dates back to the year before Defendants  
7 transferred their property in the midst of the litigation.
- 8 7. Defendants are not entitled to their attorneys' fees because the case is over; Plaintiffs are  
9 trying to get the money the Superior Court, the Court of Appeals and the Supreme Court  
10 awarded them.

11  
12 Defendants articulate their arguments in support of their Objection more particularly in  
13 the accompanying Memorandum of Points and Authorities.

14  
15 **MEMORANDUM OF POINTS AND AUTHORITIES**

16  
17 **1. Factual Background From Judgment to the Present**

18 This Court entered a judgment in Plaintiffs' favor on April 7, 2015 (a copy of which is  
19 attached to Plaintiffs' motion as Exhibit A). This Court entered another judgment in Plaintiff  
20 James Varilek's favor awarding attorneys' fees on May 5, 2015 (a copy of which is attached to  
21 Plaintiffs' motion as Exhibit B). This Court entered a Final Judgment *Nunc Pro Tunc* in  
22 Accordance With the Court's April 7, 2015 Ruling (a copy of which is attached to Plaintiffs'  
23 motion as Exhibit C). In Exhibit C, Judge Paupore stated:

24  
25 In *Reply*, Plaintiffs revised the proposed Final Judgment to  
address some of Defendants' concerns and attacked  
Defendants' transfer of the subject property in the midst of

1 litigation to Defendant Coxes' newly created LLCs.  
2 Defendants' argument that the transfer of the subject  
3 property to newly created LLCs is not properly before the  
4 Court is disingenuous at best. This Court has personal  
5 jurisdiction over the Defendants and Judge Jones' granting of  
6 Plaintiffs' summary judgment touches, concerns, and runs  
7 with the subject property. The language in the proposed final  
8 Judgment paragraph 13 is appropriate under the  
9 circumstances.

7 Paragraph 13 of the Final Judgment states:

8 13. According to the official records of Yavapai County, Arizona,  
9 Defendants Cox, without notice to the Court or the other parties,  
10 transferred the real property legally described in paragraph 3 above  
11 to High C's, LLC, an Arizona limited liability company of which  
12 Defendants Cox were the sole members by a Quit Claim Deed  
13 recorded in the Office of the Yavapai County Recorder in Book  
14 4592, Page 104. Thereafter, High C's, LLC, without notice to the  
15 Court or the other parties, transferred the real property legally  
16 described in paragraph 3 above to Prescott Valley Growers, LLC,  
17 an Arizona limited liability company of which Defendants Cox are  
18 members together with James Michael Cox, by a Quit Claim Deed  
19 recorded in the Office of the Yavapai County Recorder in Book  
20 4753, Page 820. **The Court finds that these transfers should  
21 have been disclosed to the Court and the other parties and that  
22 this *Final Judgment* should be binding upon the Coxes' and  
23 any heir successor or assign of their interest in the real  
24 property described in paragraph 3 above in whole or part.**

18 (Emphasis added).

19 Pursuant to A.R.S. § 12-1631(A)(1) and Rule 69, Arizona Rules of Civil Procedure,  
20 Plaintiffs, Judgment Creditors, wish to obtain information from Judgment Debtors Donald Cox,  
21 Catherine Cox, non-party Prescott Valley Growers, LLC, non-party High C's LLC, non-party  
22 Rain Down, LLC and non-party James Michael Cox, who was added as a member of Prescott  
23 Valley Growers and to whom Judgment Debtors may have transferred an interest in one or more  
24 of their businesses and the property which is the subject of this litigation.  
25

1 Defendants have responded to this Court's Order by filing a Motion to Quash, thereby  
2 avoiding the Court's order to produce information to Plaintiffs' counsel by October 10, 2017 and  
3 avoiding this Court's order to appear and answer Judgment creditors' questions on October 16,  
4 2017.

5 **II. Arguments of Law**

6 **A. The Case is Over**

7 Plaintiffs filed suit in this case in 2003. This Court granted Plaintiffs' motion for  
8 summary judgment in 2013 and awarded them their attorneys' fees and costs in 2015.  
9 Defendants appealed, the Court of Appeals affirmed and awarded Plaintiffs all of the  
10 fees and costs they requested on appeal. Defendants filed a Petition for Review in the  
11 Supreme Court which was denied. The Supreme Court awarded substantially all of the  
12 fees requested by Plaintiff Varilek and all of the fees requested by the remaining  
13 Plaintiffs. Defendants refuse to pay what was awarded to Plaintiffs.

14 The only issue remaining is collection. There is no contract issue left. There is  
15 no abandonment issue left. There is no waiver issue left. Plaintiffs are trying to get their  
16 money from a couple of individuals who transferred the very property at issue in the  
17 case in the midst of the litigation and are dodging responsibility for the judgments  
18 against them. Plaintiffs seek information dating back to the year 2007, the fifth year of  
19 the litigation and the year before the Defendants transferred the subject property to  
20 several LLCs of which they and their son were members. These were fraudulent  
21 conveyances; Plaintiffs want to follow the money so they can get paid. Defendants are  
22 resisting the supplemental proceedings that will expose their fraud. Other than  
23 collection, this case is over.

24 Defendants' motion should be denied and they should be ordered to produce the  
25 information already ordered by this Court at a time which will give Plaintiffs sufficient

1 opportunity to review it and formulate questions for a debtors' examination before this  
2 Court at the earliest opportunity.

3 **B. As a Result of the Case Being Over, a Different Method of Service is**  
4 **Required under ARCP Rule 5(C)(4).**

5 There is no purpose in litigating supplemental proceedings. It is clear this is why  
6 the Supreme Court worded Rule 5 the way it did:

7 *5(c)(4) Service After Judgment. After the time for appeal from a*  
8 *judgment has expired or a judgment has become final after*  
9 *appeal, a **motion**, petition, complaint, or other pleading requesting*  
10 *modification, vacation, or enforcement of that judgment must be*  
11 *served in the same manner that a summons and pleading are*  
12 *served under Rule 4, 4.1, or 4.2, as applicable.*

13 (Emphasis added).

14 This Rule mandates that service be made in the same manner that a summons and  
15 pleading are served under Rules 4, 4.1, or 4.2, which is exactly what Plaintiffs did. There  
16 is no requirement in those rules for service on an attorney for a party. Defendants and  
17 their assigns have been ordered by the Court to produce information relevant to pertinent  
18 occurrences during the time line of this case and then to appear and answer questions. If  
19 they had not been personally served with such an order, there would have been more of  
20 the legal wrangling that has kept this case on the Court's docket for 14 years. Plaintiffs  
21 complied with Rule 5(c)(4) which is a specific rule for judgments that become final after  
22 all appeals have been exhausted and but for collection, the case is over.

23 Defendants' motion should be denied and they should be ordered to produce the  
24 information already ordered by this Court at a time which will give Plaintiffs sufficient  
25

1 opportunity to review it and formulate questions for a debtors' examination before this  
2 Court at the earliest opportunity.

3  
4 **C. ARCP Rule 69 allows for discovery from any person and this Court**  
5 **stated that the Judgment was binding on Defendants, their successors**  
6 **and assigns.**

7 As noted in this Court's Ruling, above, Defendants tried to dodge the issue of  
8 transferring the very property at issue in this case to various LLCs in the midst of the  
9 litigation and Judge Paupore stopped them cold, stating:

10 Defendants' argument that the transfer of the subject  
11 property to newly created LLCs is not properly before the  
12 Court is disingenuous at best.

13 Judge Paupore then signed a Final Judgment which detailed the transfers. First the  
14 Defendants transferred the property to to High C's, LLC, of which Defendants were the sole  
15 members by a Quit Claim Deed. Thereafter, High C's. LLC, without notice to the Court or the  
16 other parties, transferred the property to Prescott Valley Growers, LLC, of which Defendants are  
17 members together with their son, James Michael Cox, by a Quit Claim Deed. Then Judge  
18 Paupore incorporated the Court's control over the LLCs and successors and assigns, stating:  
19 "The Court finds that these transfers should have been disclosed to the Court and the other  
20 parties and that this *Final Judgment* should be binding upon the Coxes' and any heir successor or  
21 assign of their interest in the real property described in paragraph 3 above in whole or part."

22 Rule 69 provides for discovery from any person. In this case, the Court has  
23 identified the persons and entities over whom it retained jurisdiction and upon whom the  
24 Final Judgment is binding.

25 Defendants' motion should be denied and they should be ordered to produce the  
information already ordered by this Court at a time which will give Plaintiffs sufficient

1 opportunity to review it and formulate questions for a debtors' examination before this  
2 Court at the earliest opportunity.

3  
4 **D. The requested information is not overbroad; it dates back to the year before**  
5 **Defendants transferred their property in the midst of the litigation.**

6 This lawsuit began in 2003. By April 4, 2005, scores of pleadings and discovery  
7 had occurred. Motions for Summary Judgment had been filed and denied. Depositions  
8 had been taken. When the trial court granted a motion for summary judgment for the  
9 Defendants, Plaintiffs appealed and in 2007, the Court of Appeals reversed the summary  
10 judgment which had been favorable to Defendants. The reversal was significant in two  
11 respects: it reversed the trial court's summary adjudication of the seminal issue in the  
12 case – that the Defendants' activities did not constitute the operation of a business.  
13 Secondly, the Court of Appeals decision reversed a \$65,000.00 attorneys' fees award to  
14 Defendants. The Court of Appeals decision did not bode well for Defendants. Within  
15 months, they transferred the property which was the subject of the litigation to the  
16 various LLCs and added a new member to the ownership – James Cox. §

17 Plaintiffs are executing on a judgment that is binding on the LLCs and James  
18 Cox. They seek information dating back ten years because that is when the Defendants  
19 began transferring their property out of their individual names. In order to locate money  
20 or property to satisfy a \$300,000.00 judgment, Plaintiffs must follow the money trail.  
21 That trail begins in 2007.

22 Defendants' motion should be denied and they should be ordered to produce the  
23 information already ordered by this Court at a time which will give Plaintiffs sufficient  
24 opportunity to review it and formulate questions for a debtors' examination before this  
25 Court at the earliest opportunity.

1  
2           **E. Defendants are not entitled to attorneys fees; there is no contractual issue**  
3           **presently being litigated; Plaintiffs are trying to get the money the**  
4           **Superior Court, the Court of Appeals and the Supreme Court awarded them**

5           Defendants cite A.R.S. §§12-341.01 and 12-349 as the basis for their claim for  
6 attorneys' fees. Plaintiffs have already been determined by three courts to be the  
7 prevailing party on the contractual issue in this case. There is no contractual issue at  
8 stake any more. The issue is collection. Defendants have not identified any basis for  
9 fees under 12-349. Plaintiffs have provided an explanation for all of the arguments  
10 raised by Defendants in their latest effort to dodge their responsibility for satisfying the  
11 multiple judgments against them.

12           Defendants' motion should be denied and they should be ordered to produce the  
13 information already ordered by this Court at a time which will give Plaintiffs sufficient  
14 opportunity to review it and formulate questions for a debtors' examination before this  
15 Court at the earliest opportunity.

16  
17           **III. Conclusion**

18           For all of the reasons set forth above, Plaintiffs request that this Court deny  
19 Defendants' motion and reiterate the previous order issued to the persons and entities  
20 identified in Plaintiffs' original motion to produce the information already ordered by  
21 this Court at a time which will give Plaintiffs sufficient opportunity to review it and  
22 formulate questions for a debtors' examination before this Court at its earliest  
23 opportunity.



1 DATED this 10th day of October, 2017

2  
3 **J. JEFFREY COUGHLIN PLLC**

4  
5 By:   
6 J. Jeffrey Coughlin

7 COPY of the foregoing  
8 mailed this 10<sup>th</sup> day of  
9 October, 2017

10 Mark W. Drutz  
11 Sharon M. Flack  
12 Musgrove, Drutz, Kack & Flack, P.C.  
13 P.O. Box 2720  
14 Prescott, AZ 86302

15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25