Foreign Judgments and Community Property - A Moving Target

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Clients, husband and wife and longtime residents of Arizona, present themselves in your office with a default judgment entered against the husband in a foreign state. They ask whether the judgment is enforceable against their community property in Arizona. They relate to you that the wife was not joined in the foreign lawsuit and that, if she had been served and given the opportunity to defend, would have taken the position that the underlying debt was invalid.

Relying on the holding of *Spudnuts v. Lane*[1]and its progeny, you inform the clients that they have nothing to worry about, as the judgment does not bind their community.

Sometime later, you receive a communication from the creditor's counsel, who informs you that, under recent Ninth Circuit law, the judgment is enforceable against your clients' community assets-including the wife's earnings-and that her only basis for defense is to show that the husband was not acting for the community.

Is opposing counsel correct? And, if so, how can that result be squared with the Arizona cases, including *Spudnuts*, that appear to dictate a contrary result and have never been overruled? And how can that result be squared with the recent decision of the Court of Appeals, Division One, in *Rackmaster v. Maderia,**[2]* which refused to permit a creditor to enforce a foreign judgment, entered against one spouse, against a married couple's community assets in Arizona?

In *Rackmaster*, the creditor had obtained a judgment in Minnesota against an Arizona-resident husband, based upon a guaranty signed by husband and not his wife. The creditor then caused the judgment to be domesticated in Arizona and sought to garnish a community bank account. On appeal from a superior court ruling refusing to quash the garnishment,[3] the Court of Appeals reversed, holding that, under the circumstances presented, and given that the wife had not signed the underlying guaranty, the community bank account was not subject to garnishment absent the wife's signature. As counsel for appellants in *Rackmaster*, the authors of this article received calls from transactional and creditors' rights attorneys throughout the country, asking how to harmonize the rights of non-Arizona creditors with what appears to be a powerful weapon for Arizona debtors.

In this article, we attempt to place *Rackmaster* in proper context and discuss the various strains of analysis giving rise to the confusion in this area of law. The underlying principles of law include: (1) the requirement, under the Full Faith and Credit Clause of the United States Constitution, that a foreign judgment from a non-community-property state be given effect in Arizona,[4] (2) the corresponding provision of Arizona law imposing liability on a married couple's community property for a spouse's debts, incurred outside of Arizona, that would have been community debts if incurred in this state,[5] (3) the procedural requirement, under Arizona law, that both spouses be named in a lawsuit against the community,[6] and (4) the substantive prohibition, under Arizona law, against one spouse binding the other, or the community, to a transaction of guaranty or suretyship.[7]

We believe that the existing Arizona cases can be harmonized, in part, by focusing on two threshold questions: (1) whether the defense sought to be asserted by the objecting debtor is procedural or substantive in

nature; and (2) whether the underlying debt was incurred while the members of the marital community were residents of Arizona. However, the Ninth Circuit decision in *Gagan v. Sharar,*[8] while couched in terms of following a purported trend in the Arizona cases, appears to depart from well-established Arizona principles. If followed, it effectively would negate a substantial body of Arizona law that protects the due process rights of married persons in this State.

The Full Faith and Credit Clause

Although *Spudnuts* itself is not a foreign judgment case,[9] virtually all cases in this area arise in the context of foreign judgments, thereby invoking the constitutional principle of full faith and credit.[10]

Under Arizona law, a foreign judgment may be enforced in one of two ways. The creditor either may (1) bring suit on the judgment,[11] or (2) invoke the registration and enforcement provisions of the Uniform Enforcement of Foreign Judgments Act, A.R.S. § 12-1701 *et seq.* (the "UEFJA"). In either event, the outcome is to give the foreign judgment the same effect and subject it to the same defenses as a judgment of the enforcing state.[12]

Significantly, while a judgment registered under the UEFJA is presumed to be valid and properly recognized in Arizona,[13] the statutes do not create substantive rights not conferred by the Full Faith and Credit Clause of the U.S. Constitution. Rather, the UEFJA "is merely a uniform act by which procedurally those rights and defenses afforded under the Full Faith and Credit Clause may be enforced or imposed."[14] It is thus clear that the clause does not make the laws of the rendering state applicable in enforcing the judgment: "The methods by which a judgment of another state is enforced are determined by the local law of the forum."[15] Moreover, the Court of Appeals has made clear that "recognizing" a foreign judgment and enforcing it are two different concepts:

A foreign judgment is recognized … when it is given the same effect that it has in the state where it was rendered with respect to the parties, the subject matter of the action and the issues involved. A foreign judgment is enforced when, in addition to being recognized, a party is given the affirmative relief to which the judgment entitles him.[16]

Spudnuts and Its Progeny

The issue directly presented in *Spudnuts* was whether the other spouse, who was not named in the original complaint, could be added as a defendant following the entry of judgment pursuant to Rule 21.[17] The Court, analyzing the situation in due process terms, reached the conclusion that the wife could not be joined:

We are faced with a due process violation by the addition of a party-defendant who was not served in the action and who had no chance to answer and defend. Service of process on appellant is not sufficient to permit the obtaining of a personal judgment against his wife or the community. A.R.S. § 25-215(D) provides that if a plaintiff wants to hold a marital community accountable for an obligation, both spouses must be sued jointly. A judgment against one spouse does not bind the community. *Eng v. Stein*, 123 Ariz. 343, 599 P.2d 796 (1979).[18]

Two subsequent reported Arizona cases, both from Division Two, applied the principles enunciated in *Spudnuts* in protecting an unsued Arizona spouse against the enforcement of an out-of-state judgment.

Vikse v. Johnson (Div. 2-1983)

In *Vikse,* two Arizona-resident husbands were sued for land fraud in Minnesota.[19] The resulting Minnesota judgment was registered in Arizona, and the judgment creditor caused the sheriff of Cochise County to levy on properties owned by the marital communities of the judgment debtors and their wives. Neither of the judgment debtors' marital communities, nor their spouses, who were also Arizona residents, were named or served in either Minnesota or Arizona. The judgment debtors filed motions to quash on the grounds that the judgments were against the individuals and not against the communities. The trial court granted each motion to quash. On appeal, the judgment creditor argued, among other things, that A.R.S. § 25-215(C) authorized recovery of the judgment from community property because the judgment would have been a community debt if it had been incurred in Arizona.[20]

Division Two of the Court of Appeals noted that neither wife had appeared and, until urging the motion to quash, neither community had been represented in the proceedings.[21] Even assuming that the judgment creditors were correct in their assertion that the fraud committed by the husbands in Minnesota would have created a community obligation if done in Arizona, A.R.S. § 25-215(C), the court found that there was no compliance with the requirement of § 25-215(D) that the spouses be "sued jointly" in an action on a community obligation.[22] The "obvious purpose of joining the spouses," the court said, "is to give each notice and an opportunity to defend."[23] Because neither wife was given either notice or an opportunity to defend, the *Vikse* court determined that the levies on community property were properly quashed. All that needed to be done, assuming community liability, was to join both spouses in the Minnesota lawsuit.[24]

C&J Travel v. Shumway (Div. 2-1989)

In *C&J Travel v. Shumway*, creditors filed suit in New Hampshire against David Shumway and his business for breach of vehicle lease agreements, and obtained a money judgment. Although "no procedural impediment prevented the creditors from joining Robin Shumway as a defendant," they failed to do so.[25] The creditors, after first domesticating the judgment under the UEFJA, later brought suit in Arizona against David and Robin Shumway.

Division Two held that the trial court correctly granted summary judgment and dismissed the complaint seeking to enforce the New Hampshire judgments against Robin Shumway and her community property. Initially, the court noted, by electing to comply with the registration provisions of the UEFJA, the creditors had subjected themselves to Arizona law governing the enforcement of judgments and thus were subject to the joinder provisions of § 25-215(D).[26] Citing *Vikse*, the *C&J* court said the reason for a statutory provision making the community liable for community obligations incurred outside the state is to protect the rights of those creditors regardless that the obligation was not incurred in Arizona. To take advantage of this provision, however, "The creditor must join both spouses and thereby have personal jurisdiction over the community."[27]

Though the teaching of these cases seems clear, and though none has been reversed, their validity has been undermined, to some extent, by subsequent cases focusing on the procedural aspects of § 25-215(D)-in particular, the apparent requirement of the statute that, for a community obligation to be reduced to judgment, the members of the community must be sued jointly *in the same action.*

Later Decisions-Spudnuts *Distinguished*

Oyakawa v. Gillett (Div. 1-1993)

The procedural history of *Oyakawa v. Gillett* is somewhat unique. Initially, Dr. Oyakawa sued Dr. Gillett alone for defamation in a California superior court. All parties then resided in California. Dr. Oyakawa neither named nor served Dr. Gillett's wife, and judgment was entered against Dr. Gillett alone. Thereafter, Dr. Gillett and his wife moved to Arizona. Dr. Oyakawa domesticated the judgment under the UEFJA, and obtained an Arizona writ of garnishment against Dr. Gillett's wages. The Gilletts moved to quash the writ, arguing that because the California judgment was only against Dr. Gillett, it could not support garnishment of Arizona community property in the form of wages.[28]

The case is unusual in this line of cases because Dr. Oyakawa agreed to quash the writ and returned to the California superior court, where he obtained an amended judgment, stating that it was valid against the community. He then domesticated the amended California judgment in Arizona.[29]

The Gilletts moved to stay enforcement of the new judgment and to vacate the portion of the judgment against the wife. The trial court granted the motion, and the judgment creditor appealed.[30] Division One held that a California judgment against the marital property of a defamation defendant and his spouse is valid and entitled to full faith and credit in Arizona.

The *Oyakawa* court noted that, although the judgment binds the wife's interest in the property of the marital community, California statutes provide constitutionally adequate procedures to protect that interest:

The effect of California Civil Code section 5120.110 is to make the spouse who appears in the action the representative of the marital community. Although the statute provides that only one spouse need be named and served, the statute also gives notice to all married persons that a judgment binding both spouses can be obtained by suing only one spouse.[31]
The court concluded that, in Arizona, there is no statute like California Civil Code section 5120.110, which gives notice to all married persons that an action on a community obligation may proceed against one spouse and that the resulting judgment binds the community of both spouses.[32]

Comparing *Oyakawa* to the Division Two cases described above, two distinctions become apparent. First, the underlying judgment was entered in California, which is, unlike Minnesota and New Hampshire, a community property state. This is significant because the California Civil Code provision making a married person the representative for his or her marital community, while having a different procedural outcome, addresses the same concern as A.R.S. § 25-215(D), and, at least arguably, is the functional equivalent of the Arizona requirement that both spouses be joined in litigation.

Second, and of more general importance, in light of subsequent decisions, the defendant spouses in *Oyakawa* were not Arizona residents at the time the initial judgment was obtained; the judgment debtors' attack on the California judgment could thus have been characterized as an effort to impose Arizona legal principles on parties having no perceptible contact with this State: "The superior court superimposed Arizona law upon the California judgment, undercutting the effect of that judgment and thereby violating the Full Faith and Credit Clause."[33]

National Union v. Greene (Div. 1-1999)

Then came *National Union*.

Charles Greene signed a promissory note while he and his wife Agnes lived in Texas. The note provided that it was to "be governed by the laws of the State of New York."[34] National Union Fire Insurance Company guaranteed Charles's payment of the note. When Charles defaulted, National Union made payment and then filed suit against Charles in New York. Charles failed to appear, and a default judgment was entered against him. Agnes was not served, did not become a party to the suit, and was not named in the judgment. Charles subsequently moved to Arizona, and Agnes joined him four years later.[35]

National Union domesticated the New York judgment in Arizona pursuant to the UEFJA and obtained writs of garnishment against Charles's employer and the Wells Fargo Bank into which Charles had deposited his wages.[36] Charles and Agnes moved to quash the writs of garnishment, and the trial court granted the motion.

Division One reversed, distinguishing *Vikse* and *C&J Travel* on the grounds, in part, that the Greenes were not Arizona residents when the litigation began and Agnes Greene could not properly have been joined in the New York litigation: "An Arizona court may not impress Arizona *procedural* law upon a foreign judgment and refuse to recognize that judgment merely because Arizona law was not followed in obtaining it."[37]

While broadly stated, this pronouncement must be considered in light of the context in which it was issued. For the court to have insisted upon strict compliance with the joinder requirement of § 25-215(D), under those circumstances, would have enabled a non-Arizona resident to escape liability for an otherwise legitimate debt by the simple expediency of removing to this state. Although unstated in the opinion, the fear that Arizona might become a debtor's haven may well have played a role in the decision.

National Union indeed provides a modicum of comfort to the frustrations of foreign collection counsel, who have expressed the fear that their clients' rights may be adversely affected by their failing to comply with the Arizona joinder statute when suing Arizona residents even though, under local law, joinder of both spouses is neither necessary nor proper.

Heinig v. Hudman (Div. 1-1993)

This case[38] presented another unique situation calling for special consideration.

The creditor in *Heinig* had obtained a community judgment based upon an arbitration award entered (a) only against the husband, and (b) after the arbitrator had refused to permit the creditor to join the wife in the arbitration on the grounds, in part, that the wife was not specifically named as a party to the underlying arbitration agreement. On appeal, Division One held that a judgment could not be converted automatically to a judgment against the community, based on the wife's due process rights. It held, however, despite the mandate of A.R.S. § 25-215 that spouses be sued "jointly," that the creditor could pursue an action against the wife, and hence the community, so long as the wife's due process rights were given effect:

Although a creditor cannot summarily convert a separate judgment into one against the community, we see no reason to permit the community to escape liability merely because the arbitrator refused to consider the

matter of community liability. … Under the circumstances presented here, we hold that an independent action may be brought to establish the liability of the spouse who could not have been joined in the first action.[39]

Interestingly (based on later developments), the *Heinig* court took for granted that the non-sued spouse's due process rights included the right actually to litigate the underlying debt, as it held that the wife "must be given the opportunity to litigate the existence of liability, the amount of damages, and the nature of the liability as a separate or community obligation."[40]

Gagan-*Anomalous or the Death of § 25-215(D)?*

This brings us to the troubling decision of the Ninth Circuit in *Gagan v. Sharar,* in which the court, while purporting to interpret Arizona law as evidenced by *Greene*, found not only that a judgment could be obtained against an existing Arizona community without compliance with A.R.S. § 25-215(D), but that the non-defendant spouse's due process rights were satisfied by proceedings in which she was permitted to litigate only the issue of community liability, and was given no opportunity to contest the debt itself.[41]

To reach this conclusion, the *Gagan* court relied on what it perceived to be a trend in the Arizona cases militating away from enforcement of A.R.S. §25-215(D). In particular, the Ninth Circuit interpreted *National Union v. Greene* as standing for the twin propositions that (a) § 25-215(D)'s joinder requirement is negated by § 25-215(C), which recites that the community property is liable for a spouse's debts incurred outside this state during the marriage that would have been community debts if incurred in this state; and (b) the non-joined spouse is limited, in subsequent proceedings, to arguing "that the debt should be a separate obligation of the husband rather than a community debt." [42] The *Gagan* court, in reaching that conclusion, made clear that it was primarily motivated by concerns that, if § 25-215(D) were given effect, the consequence would be to impose upon the world the obligation to know and follow Arizona law.

We believe, despite the apparent trend identified by the Ninth Circuit, that the *Gagan* decision is both logically flawed and irreconcilably in conflict with Arizona law. Most significantly, as demonstrated above, the "trend" perceived by the *Gagan* court is not so much a trend as a reaction to a series of cases involving specialized and distinguishable facts. In particular, *Gagan* fails to acknowledge and give effect to the significant distinction, as to joinder of spouses in a single action, between actions brought against an existing Arizona community and actions arising from judgments incurred while the spouses were residing outside Arizona. The difference, of course, is that, though it may be reasonable to require that a creditor seeking to sue an Arizona married couple familiarize itself with the mandatory joinder requirement of Arizona's community property law, it would impose an unreasonable burden on non-Arizona practitioners, and lead to the debtor-haven problem discussed above, to require compliance in advance of the creation of an Arizona community. This distinction, indeed, may be the key to understanding the apparent difference in outcome between *Vikse* and *C&J*, on the one hand, and *Oyakawa* and *Greene*, on the other.

Likewise, the nature of the non-sued spouse's due process rights may appropriately be seen to vary depending on whether an Arizona community existed at the time the judgment was initially incurred. As the court pointed out in *Oyakawa*, in at least some states, one spouse is deemed to be the agent of the community in litigation; where such a rule is in effect, it would make no sense, and would lead to a multiplicity of litigation, to permit a spouse to move to Arizona, following the entry of judgment, and demand a trial that would not have been available in her home jurisdiction. Similarly, it would be anomalous to grant Arizona due process rights to a resident of a common-law property jurisdiction who subsequently moves to Arizona.

For this reason, we believe that *Heinig* and *Flexmaster*, neither of which is mentioned in *Gagan,* remain good law as to their holdings that, where a creditor is permitted to proceed separately against an Arizona spouse, the spouse not previously sued has a constitutional right to litigate all issues that could have been raised in the original lawsuit, including the validity of the underlying debt. Finally, despite the *Gagan* court's flat pronouncement that the non-joined spouse could not have been sued in the underlying RICO litigation, at least one court has dealt with this issue in a manner respecting the applicability and effect of Arizona law. In *Essex Engineering Co. v. Credit Vending, Inc.*,[43] the district court, facing the argument that a non-debtor spouse was not properly sued under local agency law principles, held that those principles would give way to a showing of necessity where the plaintiff sought to obtain judgment against an existing Arizona marital community, and "Arizona law requires that both spouses be joined in order to obtain a judgment enforceable against community property."[44]

***Continued Viability*-Rackmaster**

If nothing else, the decision in *Rackmaster* defines the outer boundary of potential challenges to the protections apparently provided by Arizona's community property law.

Rackmaster involved a significant substantive right under Arizona community property law-the right of a spouse to choose whether to guaranty a debt, free of the general rule that either spouse may bind the marital community. *Rackmaster* arose out of the following facts: At all times relevant, Pat and Jane Maderia had been married and residents of Arizona. In October, 2001, Tristar International and Rackmaster entered into a contract, signed by Pat, as President and CEO of Tristar. On the signature page of the contract was the following language: "Signature of this application constitutes a personal guarantee should this account become delinquent." This was the only reference to a purported "guarantee," and was signed only by Pat. Jane did not sign any guarantee or purported guarantee, never entered into any contract with Rackmaster, and was never a stockholder in Tristar. Tristar defaulted on the contract, and Rackmaster thereafter filed suit against Tristar, Pat and TSI Holdings, in *Rackmaster v. TSI Holdings, et al*., Fourth Judicial District, Hennepin County, Minnesota. Jane was not named or served in the Minnesota case.

Default judgment was entered in the Minnesota case against TSI and Tristar. In the course of the Minnesota litigation, Pat advised Rackmaster that he was a married Arizona resident and that Arizona is a community property state. In 2002, judgment was entered in favor of Rackmaster and against Pat for about $23,056.65, based on the purported guarantee. In Arizona, Rackmaster filed a Notice of Filing Foreign Judgment against Pat but not against Jane, and proceeded to garnish Pat and Jane's community property bank account.

Pat objected and requested a hearing, on the grounds that a community account was being seized to collect a separate debt. The judgment creditor and the trial court expressly acknowledged that the bank account was a community asset, but the trial court nevertheless determined that the garnished funds could be reached by the judgment creditor. The trial court noted that Division One and Division Two had taken different approaches to the issue, and concluded that it would therefore "adopt the reasoning" of an unpublished Division One decision.[45]In that case, the court had permitted a creditor to enforce a Missouri judgment, obtained against one member of an Arizona marital community, against community property located in this state, reasoning that (1) when Arizona revised its community property laws in 1973, the Legislature sought to protect the rights of creditors by providing that a debt incurred outside Arizona that would have been a community debt if incurred within Arizona is a community debt,[46] (2) the judgment debt sought to be enforced resulted from conduct in

Missouri that benefited the McFarlane marital community, and (3) an Arizona judgment based on torts committed for the benefit of the community would be a community debt as a matter of Arizona law.[47]

The Court of Appeals reversed. As a threshold matter, the court noted that the discussion in *Rackmaster's* answering brief devoted to comparing the case to *McFarlane* "is improper argument and will not be considered" because a memorandum decision is not precedent.[48] Judge Weisberg, writing for the court, stated that the *Rackmaster* appeal turned on whether A.R.S. § 25-214(C)(2) (both spouses must sign guaranty) is procedural or substantive in nature. If procedural, he wrote, the community bank account belonging to the Maderias might properly be garnished to satisfy the Minnesota judgment against the husband; if substantive, the writ of garnishment must be quashed. The court analyzed in detail the difference between substantive law, which "creates and defines rights,[49] and procedural law, which prescribes the method by which substantive law is enforced or made effective, and concluded that the right afforded by A.R.S. § 25-214(C) is substantive.

Allowing the enforcement of a guaranty signed only by the husband, the court found, would render ineffective and useless the explicit prohibition of A.R.S. § 25-214(C)(2).[50] Because the Legislature clearly intended that § 25-214(C)(2) protect the substantive rights of the non-signing spouse, the court concluded that it is a substantive law that bars collection of the guaranteed debt from the community's property.

The *Rackmaster* court noted that, in resolving the case, it did not disavow *National Union*, upon which Rackmaster relied, because that case illustrates application of the procedural-substantive dichotomy in the context of A.R.S. § 25-215(D):

But we clarified that although New York law governed the judgment's validity, the methods of enforcing the judgment depended on Arizona law. … Moreover, we held that due process did not require joining both spouses in the underlying New York lawsuit in order to enforce the judgment against the community property in Arizona. Among other reasons, we observed that the creditor could not have known that the parties would later move to Arizona. [citation omitted]. Finally, we also held that although the creditor had obtained the New York judgment solely against the husband, when the creditor named the wife in the foreclosure action in Arizona, she was accorded the necessary due process.[51]

Thus, the teaching of *Rackmaster* is that a trial court may not allow a creditor to bypass a clearly substantive protection provided to the marital community, and, in particular, that a judgment based on a transaction falling within the enumerated exceptions to community liability under § 25-214(C) cannot be converted to a community liability under the guise of full faith and credit.

However, *Rackmaster* does not end the discussion, as it appears to leave open the possibility that the reasoning of Divison One in the unpublished *McFarlane* case is in fact a correct statement of Arizona law applicable to foreign judgments falling outside the parameters of § 25-214(C) (*i.e.,* not protected by the substantive prohibitions of Arizona community property law). As demonstrated above, an analysis of the applicable case law shows that the mandatory joinder provisions of § 25-215(D), though procedural in nature, have a due process component, and are thus not to be disregarded lightly.

Moreover, despite the trend purportedly identified by the federal court in *Gagan*, and despite dicta in the *Rackmaster* opinion,no reported Arizona court has squarely held that a foreign judgment obtained against an existing Arizona marital community is enforceable against community assets where one spouse was either joined in the underlying action or given an opportunity to contest the underlying debt on the merits.

The ultimate resolution of this issue involves the resolution of conflicting public policies: protecting the integrity of Arizona's unique community property regime, on the one hand, and avoiding stigmatizing our state as a debtor's haven, on the other. We believe that the proper resolution lies in distinguishing between existing Arizona marital communities, which are entitled to the *procedural and substantive* protections afforded by our community property statute, and non-Arizona debtors, whose procedural rights may appropriately be limited, if not disregarded entirely.

Whether this analysis comports with future developments in this area of the law remains to be seen.

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Endnotes:

[1] 676 P.2d 669, 670 (Ariz. Ct. App. 1984).

[2] 193 P.3d 314 (Ariz. Ct. App. 2008).

[3] The trial court's ruling was based, at least in part, on the unpublished memorandum decision of Division One in *Tony Twist v. Todd McFarlane and Todd McFarlane Prods., Inc.*, 1 CA-CV 05-0833 (Feb. 6, 2007).

[4] U.S. Const., art. IV, § 1; *Durfee v. Duke*, 375 U.S. 106, (1963).

[5] A.R.S. § 25-215(C).

[6] *Id.* § 25-215(D)

[7] *Id.* § 25-214(C)(2).

[8] 376 F.3d 987, 991 (9th Cir. 2004).

[9] The judgment in that case was based on a Gila County Superior Court judgment against the husband, who appealed. While the appeal was pending, appellee moved to amend the pleadings to add *Spudnuts*, 676 P.2d at 669.

Gail Lane, wife of the appellant, as an additional party-defendant. The trial court denied the motion because jurisdiction had been removed to the Court of Appeals. However, after the appellate mandate issued, appellee again moved to amend the pleadings to add Lane, and the trial court filed an amended judgment, subjecting the new party-defendant to liability, and it is from the amended judgment that appellant brought the now-famous appeal.

[10] The Full Faith and Credit Clause of the Constitution requires that "the judgment of a state court should have the same credit, validity, and effect, in every other court in the United States, which it had in the state where it was pronounced." *Oyakawa v. Gillett*, 854 P.2d 1212, 1217-1218 (Ariz. Ct. App. 1993); U.S. Const., art. IV, § 1.

[11] *C&J Travel, Inc. v. Shumway,* 775 P.2d 1097, 1099 (Ariz. Ct. App. 1989).

[12] *Jones v. Roach,* 575 P.2d 345, 349 (Ariz. Ct. App. 1977). C*f. Phares v. Nutter,* 609 P.2d 561, 563 (Ariz. 1980) (foreign judgments registered under the UEFJA "are subject to the same procedures, defenses and proceedings as are local judgments").

[13] *National Union Fire Ins. Co. of Pittsburgh, Pa. v. Greene,* 985 P.2d 590, 593 (Ariz. Ct. App. 1999).

[14] *Roach*, 575 P.2d at 349.

[15] *National Union*, 985 P.2d at 593 (citation omitted).

[16] *Roach*, 575 P.2d at 349, *quoting Sainz v. Sainz*, 245 S.E.2d 372, 375 (N.C. Ct. App. 1978) and Restatement (Second) of Conflict of Laws, § 93, Introductory Note (1971).

[17] Rule 21 as then in effect read: "Misjoinder of parties is not grounds for dismissal of an action. Parties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just. Any claim against a party may be severed and proceeded with separately." *Spudnuts*, 676 P.2d 669, 670.

[18] 676 P.2d at 670.

[19] *Vikse v. Johnson*, 672 P.2d 193, 194 (Ariz. Ct. App. 1983).

[20] *Id.*

[21] *Id.*

[22] *Id.*at 194-195.

[23] *Id.*at 195.

[24] *Id.*at 196.

[25] 775 P.2d at 1099.

[26] In a footnote, the court suggested that, in the absence of registration proceedings under the UEFJA, the failure to join Mrs. Shumway would still have constituted a bar to enforcement in Arizona, because a second suit against Mr. Shumway would be barred by merger and *res judicata*, *Id.* at 1099, and because an action to enforce the judgment would be procedurally improper: "Assuming arguendo the creditors are not bound by their election, the complaints would have been dismissed for failing to comply with the procedural and substantive rules governing actions on the judgments. An action on a foreign judgment can only be brought against the defendants of record in the judgment. 50 C.J.S. Judgments §§ 857(b) and 870 (1947)." *Id.* at 1099. As to the last point, the decision is *dicta,* and it is unclear whether it would be followed if the issue were squarely presented.

[27] *Id.* at 1100.

[28] 854 P.2d at 1217.

[29] *Id.* at 1214.

[30] *Id.*

[31] *Id.* at 1215.

[32] *Id.* at 1216-1217.

[33] *Id.*

[34] *National Union,* 985 P.2d at 591.

[35] *Id.* at 591.

[36] *Id.* at 592.

[37] *Id.* at 593 (emphasis added).

[38] 865 P.2d 110 (Ariz. Ct. App. 1993).

[39] *Id.* at 115.

[40] *Id.*This aspect of *Heinig* is consistent with the prior Division One opinion in *Flexmaster Aluminum Awning Co., Inc. v. Hirschberg*, 839 P.2d 1128, 1133 (Ariz. Ct. App. 1992), holding (a) that both spouses must be joined in an action on a pre-marital debt of one spouse, and (b) that the non-debtor spouse's due process rights include the "right to litigate both the premarital debt and the value of the husband's contribution to the marital community."

[41] *Gagan v. Sharar*, 376 F.3d 987, 991 (9th Cir. 2004).

[42] *Greene* had held, "The purpose of joining Agnes is to provide her with the opportunity to defend her interests in the community's property and to argue that the debt should be Charles's separate obligation." 985 P.2d at 596.

[43] 732 F. Supp. 311, 316 (D. Conn. 1990).

[44] The *Gagan* court further cited *Alberta Securities v. Ryckman*, 30 P.3d 121, 129 (Ariz. 2001), describing it as "important because it continues the trend in Arizona … of recognizing and enforcing foreign judgments where both spouses are not joined." However, as the *Gagan* court further noted, *Ryckman* involved a separate action on a foreign judgment rather than mere registration of a judgment, and the wife was joined in that Arizona action. Moreover, the *Ryckman* decision turned in applicable part on the nature of the obligation on which the foreign judgment was based, which "would have been a community obligation if it had been incurred in Arizona, A.R.S. § 25-215(C)." 30 P.3d at 129.

[45] *McFarlane,* 1 CA-CV 05-0833.

[46] A.R.S. § 25-215(C); *McFarlane*, ¶ 6.

[47] *Id.* ¶ 7, *citing Selby v. Savard*, 655 P.2d 342 (Ariz. 1982).

[48] Rule 28(c), Ariz.R.Civ.App.P.

[49] A substantive law is one that creates, defines or regulates rights. *Rosner v. Denim & Diamonds, Inc.* 937 P.2d 353, 354 (Ariz. Ct. App. 1996) (*i.e.,* allocation of fault under A.R.S. § 12-2506); *Roddy v. County of Maricopa*, 911 P.2d 631 (Ariz. Ct. App. 1996) (award of costs under A.R.S. § 12-341). Substantive rights created by statutes cannot be enlarged or diminished by court rules. *Daou v. Harris*, 678 P.2d 934, 938 (Ariz. 1984). Procedural law, on the other hand, prescribes the method by which a substantive law is enforced or made effective. *Daou*, 678 P.2d at 939.

[50] *Rackmaster,* 193 P.3d at 314.

[51] *Id.* at 319.