

1 John R. Clemency (009646)
2 Mark A. Fuller (012149)
3 Joseph E. Cotterman (013800)
4 **GALLAGHER & KENNEDY, P.A.**
5 2575 East Camelback Road
6 Phoenix, Arizona 85016-9225
7 Telephone: (602) 530-8000
8 Facsimile: (602) 530-8500
9 *Attorneys for Judgment Creditors Yakima*
10 *Company, Inc. and Yakima Compost Company*

11 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
12 **IN AND FOR THE COUNTY OF LA PAZ**

13 COUNTY OF LA PAZ,
14 Plaintiff/Judgment Debtor,
15 v.
16 YAKIMA COMPOST COMPANY,
17 Defendant/Judgment Creditor.

18 YAKIMA COMPANY, INC.,
19 Counterclaimant/Judgment Creditor,
20 v.
21 COUNTY OF LA PAZ,
22 Counterdefendant/Judgment Debtor.

No. CV2003-0119

**YAKIMA COMPANIES' (1)
APPLICATION FOR ORDER
COMPELLING LA PAZ COUNTY TO
PAY YAKIMA'S JUDGMENT; AND (2)
REQUEST FOR APPOINTMENT OF
SPECIAL MASTER**

(Temporarily assigned to the Hon. Richard Weiss)

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INTRODUCTION

La Paz County, like any other government entity, has a legal (and moral) duty to satisfy judgments entered against it by our courts. In this case, after nearly seven years of litigation, the Court of Appeals has issued its mandate. The County is a judgment debtor. It needs to pay its debt.

Unable to spark any dialogue with the County about a solution to this situation short of collection proceedings, Yakima recently did what judgment creditors do every day: it served writs of garnishment to begin collecting from the County’s funds. The County objected, and persuaded this Court that public policy considerations precluded Yakima’s use of garnishment as a post-judgment remedy. Yakima respectfully disagrees with that ruling, but does not seek to reargue the issue here. Instead, recognizing that the Court expressed its reliance on *Maricopa County v. Hodgin*, 46 Ariz. 247, 50 P. 15 (1935), Yakima now seeks relief in the form of an order compelling the County to comply with its legal duty as articulated in *Hodgin*. To quote: “When a judgment is rendered against a county, it is the duty of the board of supervisors to apply funds in the treasury of the county not otherwise appropriated to its payment, or, if there are no such funds, it is its duty to budget the judgment as a county expense and levy a tax to pay it” and collect “revenues from other sources.” *Id.* at 257-59, 50 P. at 19.

The case law makes clear that a post-judgment order (in the nature of mandamus) is a proper vehicle for compelling the County’s compliance with this duty. Yakima therefore seeks an order requiring the County to: (1) immediately pay Yakima all funds not otherwise appropriated or necessary to fund essential government services; (2) take all steps to raise revenue from any available source, and pay such funds to Yakima; and (3) prepare a budget under which the County will pay Yakima all funds not necessary to fund essential County services. Because this process will necessarily require ongoing

1 oversight, Yakima also asks the Court to appoint a Special Master to work with the
2 parties and make recommendations to the Court on resolving any disputes that may arise.

3 This Application is supported by the following memorandum.

4 **MEMORANDUM**

5 The Court is familiar with this case, having just recently sustained the County's
6 objection to Yakima's garnishment of County financial accounts. The Court ruled that
7 application of Arizona's garnishment remedies would violate public policy where, as
8 here, a judgment was entered against a governmental entity. In the course of the hearing,
9 the Court cited *Maricopa County v. Hodgin*, 46 Ariz. 247, 50 P. 15 (1935), as guiding
10 authority on the issue. At the same time, however, the Court "advised" the County
11 Supervisors that "case law suggests it should budget and pay the Judgment of Yakima."

12 Through this application, Yakima seeks to enforce the obligation to which the
13 Court referred. Specifically, Yakima seeks an order compelling the County to take all
14 steps possible to raise revenue, begin paying on the judgment, and prepare a budget that
15 appropriates to Yakima all funds not essential to the operation of County government.
16 Yakima also asks the Court to appoint a Special Master to oversee this process and lead it
17 to a successful conclusion.

18 **I.**

19 **THE COURT SHOULD ISSUE A MANDAMUS ORDER REQUIRING THE COUNTY TO TAKE**
20 **ALL STEPS NECESSARY TO PAY THE JUDGMENT**

21 The case law does more than just "suggest" the County's obligation to pay its
22 judgment creditors. In fact, *Hodgin* itself holds that a government entity has a clear legal
23 duty to (a) pay what is available toward the judgment and (b) take all necessary steps to
24 generate revenues from taxes and other sources to pay the rest of the judgment:

1 When a judgment is rendered against a county, it is the duty of the board of
2 supervisors to apply funds in the treasury of the county not otherwise appropriated
3 to its payment, or, if there are no such funds, it is its duty to budget the judgment
4 as a county expense and levy a tax to pay it

5 *Id.* at 257, 50 P. at 19. Later in its opinion, the Court also made clear that in addition to
6 levying taxes, a county must also seek “revenues from other sources.” *Id.* at 259, 50 P. at
7 19. In other words, a government cannot avoid its judgment creditors by arguing that it
8 does not currently have enough funds on hand to pay a judgment. Here, the County has a
9 legal duty to do everything in its power to pay the judgment: to pay what it has now, to
10 generate revenues from all available sources, and to “budget and pay” the judgment. And
11 to be clear, the County has that legal obligation *now*. It cannot continue to stonewall
12 Yakima merely because the Supervisors still don’t want to deal with the situation.

13 Our Arizona courts, like those around the country, have recognized that a post-
14 judgment order, in the nature of mandamus, is a proper vehicle for compelling a
15 government to meet its obligations in this regard. *See, e.g., Garcia v. City of South*
16 *Tucson*, 135 Ariz. 604, 663 P.2d 596 (App. 1983) (“Mandamus is a proper remedy to
17 enforce a city’s duty to pay a judgment debt and to compel an appropriation. Appellees
18 therefore were entitled to invoke mandamus to enforce collection of their judgment and
19 to compel appellants to levy and collect taxes with which to pay the judgment.”) (citing
20 *Town of Flagstaff v. Gomez*, 29 Ariz. 481, 242 P. 1003 (1926)). *See also* 17 McQuillin,
21 *The Law of Municipal Corporations*, § 51:38 (3rd ed.) (mandamus will be granted “to
22 enforce a mandatory duty to pay a judgment against a municipality, and interest on it.”).
23 So now that the County has blocked Yakima’s efforts to collect even the first dime on its
24 judgment, the Court should enter a mandamus order compelling the County to take all
25 steps necessary to pay Yakima what is owed.

26 The order should include three provisions:

1 First, at the risk of stating what ought to be self-evident, the County should be
2 ordered to issue a warrant for payment of Yakima's judgment and immediately pay
3 Yakima all County funds not already committed to essential public services.

4 Second, the Court should order the County to raise revenue from every available
5 source and apply the funds toward payment of the judgment. This includes not only the
6 levy of taxes, as *Hodgin* notes, but "revenues from other sources." It is neither Yakima's
7 or the Court's obligation to create an exhaustive list of everything that can be done in this
8 regard, and the Court's order should not be limited in any way. *See* McQuillen, *supra*, §
9 51.38 ("In enforcing payment of a judgment by mandamus, the plaintiff is not restricted
10 to any particular property or revenues, or subject to any conditions, unless the judgment
11 or the particular local law so provides."); *Hawthorne v. La-Man Constructors, Inc.*, 672
12 S.W.2d 255, 258-59 (Tex. App. 1984) (affirming writ of mandamus ordering city housing
13 authority to "raise revenue" necessary to pay a judgment; "mandamus will apply to the
14 limited discretionary, non-ministerial acts, if any, underlying the Court's command to
15 'raise revenue,'" and "some leeway in raising the funds to satisfy the judgment is
16 salutary"). Some obvious examples, however, would include the potential for issuing
17 bonds,¹ obtaining a credit facility,² seeking funds from the State, and disposing of County
18 property which is not essential for government services. Arizona law defines and

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20 ¹ *See, e.g., Neidhart v. City of Wood River*, 69 N.E.2d 345, 347 (Ill. App. 1946) (affirming order
21 compelling defendant city to issue bonds to raise revenues necessary to pay a judgment;
22 "Officials can have no higher duty than the payment of the honest debts of the municipality
reduced to judgment, and it is not discretionary with them as to whether or not they shall do so.
. . . [I]t is their duty to take the necessary steps to provide the requisite funds for the payment of
the judgment")

23 ² *See* A.R.S. §11-604.01 (county board of supervisors may obtain credit "to pay the lawful
24 claims and obligations . . . until sufficient monies for payment from property taxes and other
25 nonrestricted revenues are received by the treasurer . . ."); *Hammond v. City of Charlotte*, 175
26 S.E. 148, 149 (N.C. 1934) (issuing writ of mandamus ordering defendant city "to borrow money
and pledge its general credit for the purpose of paying the judgments" and "to pay promptly the
judgments referred to in the complaints").)

1 narrowly circumscribes those kinds of County property which are “exempt from
2 execution, attachment or sale.” A.R.S. §33-1129 (“court houses, jails, public offices,
3 buildings, lots, grounds and personal property, the fixtures, furniture, books and papers
4 and appurtenances belonging and pertaining to the jail and public offices belonging to
5 any county.”) All other property, real and personal, can and must be used to satisfy
6 Yakima’s judgment.³

7 Third, the Court should order the County to begin immediately preparing a budget
8 for the next fiscal year which gives payment of the Yakima judgment priority over
9 appropriation which is not essential for the operation of County government. To be clear,
10 Yakima’s judgment is superior to any contractual payment obligations the County may
11 have. In other words, the County must pay Yakima’s judgment before it pays its
12 bondholders or any other creditors who are not providing essential government services.
13 *See, e.g., Foster v. Taylor*, 42 S.E.2d 531, 534-35 (S.C. 1947) (discussing the “fallacy” of
14 defendant county’s argument that it could not pay plaintiff’s judgment because it had
15 appropriated its “surplus” funds to pay bondholders; “the ‘surplus’ which was thereby
16 appropriated did not, and does not, properly, and therefore legally, include the sums of
17 money which should rightfully have long since been paid to [plaintiff]” . . . it is
18 [plaintiff’s] money, not that of the county.”); *City of Anniston v. Hurt*, 37 So. 220, 222
19 (Ala. 1904) (holding that payments to municipal bondholders and other account creditors
20 were not essential for administering city government, and thus the city’s obligation as a
21 judgment debtor was to budget those funds instead toward payment of the judgment). In
22 practical terms, the County cannot avoid its legal obligation by allocating some trivial

23 ³ Consistent with this statute, Yakima is simultaneously taking steps to execute on non-exempt
24 County property. We should also note that with respect to the County landfill – the genesis of
25 this litigation – Yakima has offered on many occasions to take ownership of the property and
26 give the County a credit on the judgment (based on the assessed full cash value of the land).
Yakima has also agreed that it would accept the County’s refuse, thereby ensuring that this
service would continue to be provided to all County residents.

1 amount of its \$30 million annual budget to the judgment. Interest *alone* is now accruing
2 at the rate of nearly \$1 million each year.

3 As the Court considers this Application, we urge it to bear in mind that to date, the
4 County has done literally nothing to begin paying on Yakima's judgment. And there is
5 no indication that absent an Order from this Court, the County ever intends to do
6 anything meaningful. In earlier briefing, we described Yakima's many, many efforts to
7 try and resolve this case, both pre- and post-judgment. Last December, after the Supreme
8 Court denied review, Yakima contacted the County yet again, making a concrete proposal
9 that would avoid the need to enforce the judgment – and warning the County not to wait
10 until the mandate issued. All to no avail. To this day, the County has not offered a single
11 substantive response, proposal or solution. *Not one.* And the radio silence has continued
12 even since the Court's admonitions to the County at the last hearing. Meanwhile, the
13 County Manager issued a statement to the press last week throwing his hands in the air.⁴
14 In other words, having blocked Yakima's effort to garnish anything from its accounts, the
15 County is sitting back and thumbing its nose at Yakima. The situation is intolerable, and
16 Yakima urges the Court to take decisive action. Our judicial system demands no less.

17 **II.**

18 **THE COURT SHOULD APPOINT A SPECIAL MASTER TO OVERSEE THE PROCESS OF**
19 **PAYING THE JUDGMENT**

20 As a practical matter, the stage is also set for endless disputes and further litigation
21 over the process described above and compliance with the Court's order. Bearing in

22 _____
23 ⁴ See February 7, 2011 Statement of Dan Field on behalf of County Supervisors
24 (www.Parkerliveonline.com). Among other things, Mr. Field complained that the County was
25 hampered in its ability to pay down the judgment because of its desire to pay its bondholders and
26 other unspecified "contractual obligations." This provides a perfect illustration of why an order
compelling payment is necessary. Mr. Field has it backwards: Yakima's judgment must be paid
before the bondholders and others to whom the County owes ordinary contractual obligations.

1 mind that the County has no incentive to prioritize payment of the judgment, it may not
2 explore all available avenues to raise revenue, or may do so in a half-hearted manner. It
3 may not take appropriate steps to dispose of non-exempt County property. It may treat its
4 entire budget, or the lion's share of it, as being "essential" to core government services,
5 the result being that Yakima's judgment is paid at a glacial pace. In fact, given the
6 accruing interest, the amount of the judgment might even continue to grow. So there
7 needs to be a mechanism in place to ensure that the Court's order is obeyed in all
8 respects, such that the judgment is prioritized and paid as swiftly as possible while
9 preserving the most essential operations of County government. Endless motion practice
10 and contempt proceedings in this Court are plainly not the answer.

11 The Rules provide an obvious solution, namely appointment of a Special Master.
12 Under Rule 53, the Court is explicitly empowered to "address pretrial and post-trial
13 matters that cannot be addressed effectively and timely by an available superior court
14 judge in the county in which the court sits." Ariz. R. Civ. P. 53(a)(1)(c). The La Paz
15 County Superior Court has already referred these post-judgment proceedings to this
16 Court because of a potential conflict, and there is no judge in La Paz County to address
17 these matters. Moreover, as a practical matter, this process is not suitable for day-to-day
18 oversight by a judge, nor would that be efficient. A Master could be involved in the
19 details, taking "all appropriate measures" to shepherd the process to a successful
20 conclusion. Ariz. R. Civ. P. 53(c) ("Unless the appointing order expressly directs
21 otherwise, a master has authority to regulate all proceedings and take all appropriate
22 measures to perform fairly and efficiently the assigned duties.") He or she could bring
23 valuable expertise in government and budgeting to the table, could offer proposals and
24 solutions to problems, could be available on short notice to assist the parties in trying to
25 resolve disagreements, would report to the Court on a regular basis, and would be in a
26 position to make recommendations to the Court on disputes the parties were not able to

1 resolve. Ariz. R. Civ. P. 53(g), (h).

2 Appointment of a Special Master will bring efficiency to the process of seeing that
3 Yakima's judgment is paid in a timely manner. The Court should appoint someone with
4 the requisite experience and background to begin serving in that capacity at the earliest
5 opportunity.⁵

6 CONCLUSION

7 In his statement to the press last week, County Manager Field said the following:

8 [C]learly La Paz County currently owes the 2007 Judgment, attorney's fees,
9 and interest awarded to Yakima Composting. This cannot be denied, the jury
10 of our peers found the County responsible and their decision has been upheld
11 by the Court of Appeals and effectively by the Arizona Supreme Court
denying review.⁶

12 On this, at least, the County has it right. But today, even after the Supreme Court denied
13 review and the mandate issued, the County has still done nothing to address how it will
14 meet its legal obligation to pay the judgment. The only thing it *has* done is to block
15 garnishment of County funds, which would at least have started to make a dent in the
16 judgment. Enough is enough. It is critical that the Court enter an appropriate Order, as
17 described above, compelling the County to comply with its legal obligation as a judgment
18 debtor and bring this case to an end, once and for all.

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22 ⁵ The selection process should not be difficult or protracted. The parties can try to agree on a
23 qualified candidate who is willing to accept the assignment, and if unable to do so, can submit
24 lists to the Court, along with curricula vitae, and the Court can make the decision. *See* Ariz. R.
25 Civ. P. 53(b)(1) ("A party may suggest candidates for appointment"). Either way, Yakima asks
26 that the Court impose a short deadline to accomplish this.

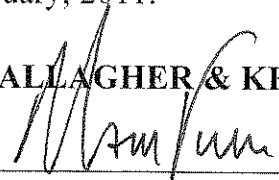
⁶ February 7, 2011 Statement of Dan Field on behalf of County Supervisors (www.Parkerliveonline.com).

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DATED this 14th day of February, 2011.

GALLAGHER & KENNEDY, P.A.

By:



John R. Clemency
Mark A. Fuller
Joseph E. Cotterman
2575 East Camelback Road
Phoenix, Arizona 85016-9225
*Attorneys for Judgment Creditors Yakima
Company, Inc. and Yakima Compost Company*

***ORIGINAL of the foregoing filed via Federal Express this
14th day of February, 2011 with:***

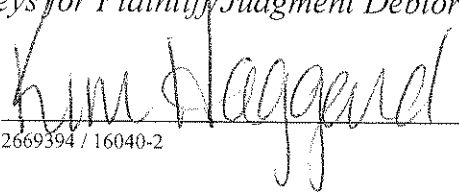
Clerk of the Court
LA PAZ COUNTY SUPERIOR COURT
1316 Kofa Avenue, Suite 607
Parker, AZ 85344

***COPY of the foregoing mailed and faxed this
14th day of February, 2011 to:***

Honorable Richard Weiss
MOHAVE COUNTY SUPERIOR COURT
DIVISION 6
401 East Spring Street
Kingman, AZ 86402
Facsimile Number (928) 753-6934

Stephen E. Crofton
Karen S. Gaylord
SALMON LEWIS & WELDON, P.L.C.
2850 East Camelback Road, Suite 200
Phoenix, AZ 85016
Facsimile Number (602) 801-9070
Attorneys for Plaintiff/Judgment Debtor County of La Paz

By:



2669394 / 16040-2