



**ARIZONA SUPREME COURT  
ORAL ARGUMENT CASE SUMMARY**



**4QTKIDZ et al v HNT HOLDINGS LLC  
CV-21-0065-PR  
2021 WL 438848 (Ariz. Ct. App. Feb. 8, 2021)**

**PARTIES:**

*Petitioners:* 4QTKIDZ, LLC, Blue Palo Servicing Company, and Dana H. Cook Family Partnership, Ltd.

*Respondent:* HNT Holdings, LLC

*Amici:* Land Title Association of Arizona

Barry Becker, Esq., Michael J. Doyle, Esq., Michael A. Fleishman, Esq., Heather M. Hendrix, Esq., John J. Lohr, Jr., Esq., and Mark L. Manoil, Esq.

**FACTS:**

This is a consolidated appeal concerning three tax lien foreclosure actions and orders from two separate trial courts setting aside default judgments against HNT. In 2005, HNT purchased three contiguous parcels of real property in Oro Valley. After HNT failed to pay property taxes on the parcels, Petitioners each acquired a tax lien on a respective parcel of real property. More than three years later, the Petitioners sought to foreclose upon the parcels.

First, Petitioner Cook Partnership sent HNT a notice of its intent to foreclose to two locations: (1) an address on Maverick Road which was the owner's mailing address according to the county assessor records and was the address used by the county treasurer to mail the owner its tax statements, and (2) the situs address for the parcel in question. Cook Partnership received both notices back, returned as undeliverable to HNT.

After the statutorily mandated time, Cook Partnership filed a complaint to foreclose on its tax lien. Cook tried to serve the complaint on HNT at a third address: the address on file with the Arizona Corporation Commission ("ACC") for HNT's statutory agent. When that attempt was unsuccessful because the statutory agent no longer resided there, Cook Partnership served HNT through that ACC as provided by A.R.S. § 29-606(B)1.

Approximately ten months later, Petitioners Blue Palo and 4QTKIDZ – represented by the same attorneys as Cook Partnership – sent notices of intent to foreclose on the other two parcels held by HNT. As Cook Partnership had done, Blue Palo and 4QTKIDZ sent the notices to the Maverick address and to the situs addresses for each respective parcel. After the statutorily appropriate time, they too served HNT through the ACC after their attempts to serve HNT through its statutory agent were unsuccessful.

HNT did not contest the entry of default in any of the three cases. However, after default judgments had been entered, HNT moved to set the judgments aside. HNT argued that it had not been properly served by Petitioners, and alternatively that Petitioners had failed to provide them with adequate pre-litigation notice. One court procedurally consolidated the Cook Partnership and Blue Palo matters. The court granted relief to HNT in both cases under Rule 60(b)(4) and (6), Arizona Rules of Civil Procedure, finding that judgment entered originally in each action was void for lack of service. In the 4QTKIDZ matter, the court granted HNT's motion to set aside without citing to a specific provision as the basis for its ruling. All three default judgments were set aside, and the courts entered judgments in favor of HNT.

On appeal, Petitioners challenged the two orders setting aside the default judgments, arguing that because they had complied with the statutory requirements for serving a limited liability company under A.R.S. § 29-606, the superior court lacked adequate grounds to set aside the defaults. All three cases were consolidated for purposes of appeal. The court of appeals resolved the matter by concluding that the default judgments were void for insufficient pre-litigation notice of intent to foreclose, as required by A.R.S. § 42-18202. Petitioners argued that they complied with the statute by sending the pre-litigation notice to the mailing address of the owner on record with the county assessor and county treasurer. The court of appeals determined that Petitioners did not mail the notice to "the property owner of record" as required by the statute because HNT was no longer located at the Maverick address. The court of appeals also noted that the Petitioners had actual knowledge that the pre-litigation notice of intent to foreclose was not received by HNT. Under these circumstances, the court of appeals concluded that Petitioners failed to meaningfully provide pre-litigation notice to HNT as required under § 42-18202(A)(1)(a)-(c), and that because such notice is required before a party may commence with a tax lien foreclosure action, the judgments were void as a matter of law and the trial courts correctly vacated the judgments pursuant to Rule 60(b)(4).

**ISSUE:**

Did the Court of Appeals err in finding that Petitioners did not satisfy pre-litigation notice requirements of §42-18202 through strict reliance on the owner and mailing address information on record with the Pima County Assessor and Treasurer in accordance with A.R.S. §42-18202(A)(1)(a)-(c)?

**STATUTE:**

A.R.S. § 42-18202 provides:

A. At least thirty days before filing an action to foreclose the right to redeem under this article, but not more than one hundred eighty days before such an action is commenced or may be commenced under § 42-18101 the purchaser shall send notice of intent to file the foreclosure action by certified mail to:

1. The property owner of record according to the records of the county recorder

in the county in which the property is located or to all of the following:

- (a) The property owner according to the records of the county assessor in the county in which the property is located as determined by § 42-13051.
- (b) The situs address of the property, if shown on the tax roll and if different from the owner's address under subdivision (a) of this paragraph.
- (c) The tax bill mailing address according to the records of the county treasurer in the county in which the property is located, if that address is different from the addresses under subdivisions (a) and (b) of this paragraph.

2. The treasurer of the county in which the real property is located. The county treasurer may not accept partial payments under § 42-18056, subsection C after the date the treasurer receives a notice of action to foreclose the right to redeem.

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