

Daily Tax Report: State

Arizona High Court Clarifies Tax Foreclosure Notice Statute

By Perry Cooper

July 27, 2022, 3:42 PM

Three lienholders gave a property owner sufficient notice of their intent to foreclose on three tax-delinquent properties, the Arizona Supreme Court said in an opinion interpreting the state's tax code.

The Dana H. Cook Family Partnership Ltd., Blue Palo Servicing Co., and 4QTKIDZ LLC tried to contact property owner HNT Holdings LLC at the addresses on record at the Pima County assessor's office, at the properties at issue, and at the tax bill mailing address of the county assessor. "No additional effort to locate the owner's current address is necessary," Chief Justice Robert M. Brutinel wrote for the unanimous court Wednesday. "Therefore, the Lienholders' pre-litigation notices to HNT were sufficient, and the default judgments are not void on that ground."

The decision overturned an appeals court ruling that the statute required further due diligence to serve notice on the owner if the lienholder has reason to believe the notice wasn't received.

The three companies purchased tax liens on the properties after HNT failed to pay property taxes on three contiguous parcels it owned in Oro Valley. The companies mailed notices of their intent to foreclose, all of which were returned as undeliverable. After the statutorily mandated time, they filed complaints to foreclose on the tax liens, again failing to serve HNT successfully.

A trial judge set aside the foreclosures as void for lack of service. The Court of Appeals affirmed, finding notice isn't sufficient if a lienholder doesn't take additional steps to locate a current address after learning the notice wasn't delivered.

Arizona's tax code requires a lienholder to send pre-litigation notice of its intent to foreclose by either sending notice to the property owner's address listed with the county recorder, or to the address on record with the county assessor, plus two additional addresses.

The second method doesn't require "some additional effort to ensure a higher likelihood of the owner receiving notice," the Supreme Court said.

The court held that pre-litigation notice was sufficient, and sent the case back for the appeals court to determine if notice of the actual litigation was sufficient.

4QTKIDZ attorney Eric W. Kessler of Kessler Law Group said the ruling will provide certainty to lienholders and title insurers involved in past tax sales. Under the appeals court's "odd" interpretation of the statute, a property owner could file a challenge 20 years after a sale to get their property back if the lienholder hadn't been able to track the owner down, he said.

The Pima County Attorney's office declined to comment. HNT attorneys John M. O'Neal and Benjamin C. Nielsen of Quarles & Brady LLP didn't immediately respond to requests for comment.

The case is 4QTKIDZ, LLC v. HNT Holdings, LLC, Ariz., No. CV-21-65-PR, 7/27/22.

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