IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

4QTKIDZ, LLC; BLUE PALO SERVICING COMPANY, LLC;
AND DANA H. COOK FAMILY PARTNERSHIP, LTD.,
Plaintiffs/Appellants,

v.

HNT HOLDINGS, LLC; AND
BETH FORD, PIMA COUNTY TREASURER,
Defendants/Appellees.

Nos. 2 CA-CV 2019-0187, 2 CA-CV 2019-0188, and
2 CA-CV 2019-0190 (Consolidated)
Filed February 8, 2021

Appeal from the Superior Court in Pima County
Nos. C20192106, C20192012, and C20182065
The Honorable Charles V. Harrington, Judge
The Honorable Paul E. Tang, Judge

AFFIRMED

COUNSEL

Eric W. Kessler, Ryan E. Kessler, and Eric Bryce Kessler, Scottsdale
Counsel for Plaintiffs/Appellants

Quarles & Brady LLP, Phoenix
By John Maston O'Neal and Benjamin C. Nielsen
Counsel for Defendant/Appellee HNT Holdings, LLC

Laura Conover, Pima County Attorney
By Kathryn Ore, Deputy County Attorney, Tucson
Counsel for Defendant/Appellee Beth Ford, Pima County Treasurer

---

MEMORANDUM DECISION

Judge Eckerstrom authored the decision of the Court, in which Presiding Judge Espinosa and Vice Chief Judge Staring concurred.

E C K E R S T R O M, Judge:

¶1 In this consolidated appeal, Dana H. Cook Family Partnership, Ltd. ("Cook Partnership"), Blue Palo Servicing Company, LLC ("Blue Palo"), and 4QTKIDZ, LLC ("4QTKIDZ") (collectively "Appellants") challenge the orders of two separate trial courts setting aside default judgments against HNT Holdings, LLC ("HNT"). Appellants argue that because they complied with the statutory requirements for serving a limited liability company set forth in A.R.S. § 29-606,[1] the trial courts lacked adequate grounds to set aside the defaults. For the reasons that follow, we affirm both orders.

Factual and Procedural Background

¶2 We view the facts in the light most favorable to upholding the rulings below. *Ezell v. Quon*, 224 Ariz. 532, ¶ 2 (App. 2010). HNT is an Arizona limited liability company comprised of two members. In 2005, HNT purchased three contiguous parcels of real property located in Oro

---

[1]This statute has been substantively amended and renumbered as A.R.S. § 29-3119. 2018 Ariz. Sess. Laws, ch. 168, § 4. Because § 29-606 was the law in effect at the time the judgments were set aside, that law controls our reasoning here. *See* 2018 Ariz. Sess. Laws, ch. 168, § 6 (for limited liability companies formed before September 1, 2019, the "obligations of the company's members . . . relating to matters arising and events occurring before September 1, 2020, based on events and activities occurring before September 1, 2020, shall be determined according to the law and terms of the operating agreement in effect at the time of the matters and events"); *see also Allen v. Fisher*, 118 Ariz. 95, 96 (App. 1977) (statute operates prospectively "unless it appears that it was intended to have retroactive effect").

Valley. Its property tax payments on all three parcels became delinquent and, after purchasing a tax lien on one of the parcels, appellant Cook Partnership sought to foreclose upon that property. Purportedly in compliance with A.R.S. § 42-18202, which sets forth notice requirements in tax lien foreclosure actions, Cook Partnership sent HNT a notice of its intent to foreclose to two locations: first, an address on Maverick Road where the HNT statutory agent resided from 2006 to September 2013, and second, an address on Dusty View Drive, the situs address for the parcel in question. Cook Partnership received both notices back—returned as undeliverable to HNT. The notice sent to the Maverick address was returned with a handwritten notation: "no longer @ this residence."

¶3 After the statutorily mandated time, Cook Partnership filed a complaint to foreclose on its tax lien, as provided by A.R.S. § 42-18201. Cook Partnership attempted to serve the complaint on HNT at a third address, another former residence of the HNT statutory agent and the address on file with the Arizona Corporation Commission ("ACC") for HNT's statutory agent. When that attempt proved unsuccessful, Cook Partnership served HNT through the ACC, as provided by § 29-606(B). However, because the outdated third address was HNT's address on file with the ACC, HNT did not receive the papers when the ACC forwarded them to that address, as directed by § 29-606(B).

¶4 Approximately ten months after Cook Partnership served HNT through the ACC, represented by the same law firm and the same attorneys, appellants Blue Palo and 4QTKIDZ sent notices of intent to foreclose on the two other parcels held by HNT. As Cook Partnership had done the prior year, they sent these notices to the Maverick address and to the situs addresses for each respective parcel.[2] After the statutorily appropriate time, they too served HNT through the ACC when their attempts to serve HNT through its statutory agent were unsuccessful.

¶5 HNT did not contest the entry of default in any of the three cases. However, after the trial courts entered default in each of the three cases, HNT moved to set the judgments aside. One court consolidated the

[2]The parties do not direct us to any portion of the record reflecting that the notices were sent in the Blue Palo or 4QTKIDZ matters to the two situs addresses on Dusty View Drive, and we cannot locate such documents in the record before us. However, the parties do not dispute that the pre-litigation notices were sent to those Dusty View Drive addresses or that they were returned as undeliverable.

matters concerning Cook Partnership and Blue Palo for purposes of the hearing. That court set aside both judgments on two bases. First, it granted relief under Rule 60(b)(4), Ariz. R. Civ. P., finding the judgments "void for lack of service under Rule 4.1," Ariz. R. Civ. P. The court reasoned that, reading § 29-606 together with Rule 4.1, "due diligence require[d] more" effort by Cook Partnership and Blue Palo beyond merely serving the ACC and sending service of process to "the last known address" for HNT, particularly when they were aware that HNT would not receive the service of process.

¶6 Alternatively, the trial court granted HNT's motion under Rule 60(b)(6), reasoning that "exceptional additional circumstances" warranted relief. Specifically, it noted that "the exercise of due diligence" could have resulted in actual service upon HNT and that HNT had been diligent upon learning of the lawsuits, would be substantially prejudiced absent relief, and had demonstrated its ability and intent to redeem the property.

¶7 In the 4QTKIDZ matter, the trial court granted HNT's motion to set aside, which also cited Rule 60(b)(1), (4), and (6) as grounds for relief. That court did not cite any specific provision for its ruling. But it reasoned that federal case law[3] creates a "bright line rule that where a party is entitled to notice, and the notice provided is known to be defective," due process requires that "additional reasonable steps" be taken to provide notice—steps that "were not taken here."

¶8 Appellants appealed all three matters and, on the motion of HNT, we consolidated the appeals. We have jurisdiction pursuant to A.R.S. § 12-2101(A)(2). *See Brumett v. MGA Home Healthcare, L.L.C.*, 240 Ariz. 420, ¶ 14 (App. 2016).

Discussion

¶9 We generally review a trial court's grant of a motion to set aside default judgment pursuant to Rule 60(b) for abuse of discretion. *Gonzalez v. Nguyen*, 243 Ariz. 531, ¶¶ 1, 8 (2018). However, we review *de novo* a court's determination under Rule 60(b)(4) that a judgment is void and consequentially must be vacated. *BYS Inc. v. Smoudi*, 228 Ariz. 573, ¶ 18 (App. 2012). We will affirm the trial court's ruling on any basis supported

[3]Specifically, *Jones v. Flowers*, 547 U.S. 220 (2006).

by the record. *Leflet v. Redwood Fire & Cas. Ins. Co.*, 226 Ariz. 297, ¶ 12 (App. 2011).

Voidness Under Rule 60(b)(4)

¶10 Rule 60(b)(4) requires a trial court to vacate a void judgment. *Ruffino v. Lokosky*, 245 Ariz. 165, ¶ 10 (App. 2018). Appellants acknowledge that pre-litigation notice under § 42-18202 is jurisdictional. In other words, insufficient pre-litigation notice renders a default judgment void. *Advanced Prop. Tax Liens, Inc. v. Sherman*, 227 Ariz. 528, ¶ 21 (App. 2011).

¶11 Both trial courts set aside the judgments—albeit for different reasons. Because we conclude the judgments were void for insufficient pre-litigation notice of intent to foreclose, as required by § 42-18202, we affirm both rulings.

¶12 Section 42-18202(A) provides two methods by which a plaintiff intending to file an action to foreclose may provide pre-litigation notice. Appellants employed the second method, which required them to "send notice of intent to file the foreclosure action by certified mail 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 [A.R.S.] § 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.

§ 42-18202(A)(1).

¶13 *Sherman* controls this issue. There, the plaintiff attempted to send the Shermans notice of intent to foreclose under the first method provided by § 42-18202, which directs a purchaser to send notice by

certified mail to the "property owner of record according to the records of the county recorder." *Sherman*, 227 Ariz. 528, ¶ 13 (quoting § 42-18202(A)(1)). The plaintiff directed the notice to an address provided on an affidavit of property value recorded the year the Shermans first purchased the property in question. *Id.* ¶¶ 2-3. That address was not the situs address of the property in question, and the Shermans had sold it five years before. *Id.* ¶ 3. After later attempting to serve process on the Shermans, the plaintiff was informed the address was incorrect, obtained a current address, and allegedly served the Shermans there. *Id.* ¶¶ 4-5. However, the Shermans did not appear, and the trial court entered default judgment against them. *Id.* ¶ 5.

¶14 On appeal, we reversed the trial court's denial of the Shermans' motion to set aside the default judgment. *Id.* ¶ 22. We determined that the requirement to send pre-litigation notice to "[t]he property owner of record according to the records of the county recorder in the county in which the property is located," § 42-18202(A)(1), "pinpoints the *identity* of the owner but does not speak to the *address* of the owner." *Sherman*, 227 Ariz. 528, ¶ 15. Reasoning that "the legislature surely intended that the notice have a good chance of reaching the intended recipient," we concluded it was not enough for the plaintiff to merely send notice to the address on record with the county recorder. *Id.* ¶ 16. Rather, we reasoned, the pre-litigation notice must be sent to the owners of the property, even if their current address differs from the address on file with the county recorder. *Id.* And, we observed that the insufficiency was compounded by the fact that the plaintiff had actual knowledge the notice never reached the Shermans, having been returned to the plaintiff unopened and unclaimed. *Id.* ¶ 17.

¶15 Appellants argue *Sherman* is factually distinguishable because they provided pre-litigation notice to HNT under one of the methods provided in § 42-18202(A)(1), whereas the *Sherman* plaintiff provided notice under the other alternative—sending the notice to only "the property owner of record according to the records of the county recorder." We disagree. The language in § 42-18202(A)(1) requiring notice be sent to the "property owner of record according to the records of the county recorder in the county in which the property is located" substantively mirrors the relevant provision here, § 42-18202(A)(1)(a), which requires notice be sent to 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."[4]

[4]Section 42-13051 tasks the county assessor with identifying taxable real property and determining property tax valuation. Among those

In *Sherman* we observed that in subsection (A)(1) the term "property owner" is immediately modified by the phrase "according to the records of the county recorder in the county in which the property is located." 227 Ariz. 528, ¶ 15. Likewise, in subsection (A)(1)(a) the term "property owner" is immediately modified by the phrase "according to the records of the county assessor in the county in which the property is located." § 42-18202(A)(1)(a). Thus, we see no difficulty in extending *Sherman*'s reasoning to conclude that subsection (A)(1)(a) "pinpoints the *identity* of the owner but does not speak to the *address* of the owner." *Sherman*, 227 Ariz. 528, ¶ 15. That reasoning perhaps applies even more forcefully when, as here, a purchaser sends notice under subsections (A)(1)(a)-(c), which appear to contemplate and correct for the possibility that one or more of the addresses on file with the named agencies may not be correct.

¶16 Like the plaintiffs in *Sherman*, the appellants here sent the notices of intent to foreclose to addresses contained in the county agency's records. Each appellant mailed a notice of intent to two locations: first, a residential address where HNT had been absent for numerous years; and second, to the respective situs address for each of the three undeveloped properties in question. And each appellant received these notices back—returned as undeliverable to HNT. When Cook Partnership served HNT at a third address, that summons was likewise returned as undeliverable.

¶17 As in *Sherman*, here Cook Partnership "did not mail the notice to '[t]he property owner of record'"—meaning HNT—but instead sent that notice to a new owner located at the Maverick address to which HNT had no connection. 227 Ariz. 528, ¶ 16 (alteration in *Sherman*). And, again as in *Sherman*, each of the appellants here had actual knowledge that Cook Partnership's pre-litigation notice of intent to foreclose was not received by HNT. *See id.* ¶ 17. Despite this actual knowledge, Blue Palo and 4QTKIDZ nonetheless repeated the futile steps of providing insufficient notice to HNT with respect to the other two parcels of property. Under these circumstances, we conclude that Appellants failed to meaningfully provide pre-litigation notice to HNT as required under § 42-18202(A)(1)(a)-(c).

---

requirements, the county assessor must "[d]etermine the names of all persons who own, claim, possess or control" a property subject to taxation. § 42-13051(B)(1). Absent from the statute is any duty incumbent on the county assessor to maintain a current address for those property owners. *See* § 42-13051. Thus, it advances our reasoning that the statute requires the records of the county assessor to pinpoint the owner, not to maintain a current address for that owner.

Because such notice is required before a party may commence with a tax lien foreclosure action, we conclude the judgments were, indeed, void as a matter of law and the trial courts correctly vacated the judgments pursuant to Rule 60(b)(4).[5]

Attorney Fees and Costs on Appeal

¶18 HNT requests its fees and costs on appeal, "[p]ursuant to Rule 21 of the Arizona Rules of Civil Appellate Procedure and any other applicable rules or statutes." However, it does not cite any substantive basis for its fee request. *See Chopin v. Chopin*, 224 Ariz. 425, ¶ 24 (App. 2010) (Ariz. R. Civ. App. P. 21 does not provide substantive basis for award of attorney fees). Thus, we deny that request. As the prevailing party, HNT is entitled to recover its costs on appeal, A.R.S. § 12-341, upon its compliance with Rule 21(b).

Disposition

¶19 For the foregoing reasons, we affirm.

[5]Because we resolve both cases on the basis of Rule 60(b)(4), we need not address the trial court's alternative reasoning under Rule 60(b)(6).