

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

TFLTC, LLC,
Plaintiff/Appellant,

v.

BETH FORD, PIMA COUNTY TREASURER,
Defendant/Appellee.

Nos. 2 CA-CV 2020-0122, 2 CA-CV 2020-0123, 2 CA-CV 2020-0124,
2 CA-CV 2020-0128, 2 CA-CV 2020-0137 (Consolidated)
Filed April 22, 2021

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Civ. App. P. 28(a)(1), (f).

Appeal from the Superior Court in Pima County
Nos. C20195744, C20190581, C20196128, C20195823, C20195924
The Honorable Lee Ann Roads, Judge Pro Tempore
The Honorable Brenden J. Griffin, Judge
The Honorable Leslie Miller, Judge

AFFIRMED

COUNSEL

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By Mark L. Manoil and Barrett L. Kime
Counsel for Plaintiff/Appellant

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

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MEMORANDUM DECISION

Judge Brearcliffe authored the decision of the Court, in which Chief Judge Vásquez and Vice Chief Judge Staring concurred.

B R E A R C L I F F E, Judge:

¶1 TFLTC appeals the amount of fees it was awarded by the trial courts under A.R.S. § 42-18206 in its foreclosure actions against Sonia Hodgin, Fred Yiu Fat Yu, Jesus Ramirez, David Lynch, and Fred Merrill Wieser. TFLTC contends that each court in these consolidated cases erred by limiting the attorney fees and costs awarded to those incurred before the property owners redeemed the property tax liens. The issue is whether the courts erred in relying on *Leveraged Land Co. v. Hodges*, 226 Ariz. 382 (2011), to limit TFLTC’s recovery of fees. We affirm.

Factual and Procedural Background

¶2 This appeal consists of five separate redemption-right foreclosure actions, brought under A.R.S. § 42-18201, which have been consolidated on appeal. The facts are undisputed.

Hodgin, Yu, and Ramirez

¶3 TFLTC purchased tax liens on Hodgin’s and Ramirez’s properties in February 2016, and another on Yu’s in February 2015. In 2019, TFLTC filed to foreclose the owners’ redemption rights. Hodgin, Yu, and Ramirez each failed to file an answer, and TFLTC sought entries of default. Ultimately, Hodgin redeemed the tax lien on March 4, 2020, Yu redeemed

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on May 2, 2019, and Ramirez redeemed on January 17, 2020.¹ TFLTC then filed an application for attorney fees and costs in each case pursuant to A.R.S. § 42-18206. Notwithstanding whether the fees were incurred before or after the date of redemption, TFLTC asserted it was entitled to recover the entire amount of fees and costs sought.

¶4 As to the Hodgin foreclosure, TFLTC incurred and sought \$2,875 in attorney fees before Hodgin redeemed and \$1,185 after. The post-redemption fees incurred were for drafting a fee and cost demand letter, reviewing a pleading, drafting a stipulation to dismiss non-redeeming defendants, drafting an application for fees and costs, and preparing for and attending the default judgment hearing. In light of Hodgin's redemption, a default judgment hearing was held on the issue of fees and costs alone, after which the trial court awarded TFLTC \$2,875 solely for its pre-redemption attorney fees.

¶5 With regard to the Yu property, TFLTC incurred \$1,230 in attorney fees before Yu's redemption and \$1,136 after. TFLTC's post-redemption fees, incurred two months after Yu's redemption, were for preparing a motion to schedule default judgment hearing, a motion and order to vacate a default hearing, a demand letter, the application for fees and costs, and another motion to schedule a default judgment hearing. Following a default judgment hearing as to fees and costs, the trial court awarded TFLTC \$1,125 in fees, representing only its pre-redemption work.

¶6 As to the Ramirez foreclosure, TFLTC incurred \$1,121 in attorney fees before Ramirez redeemed and \$836 after. The post-redemption fees incurred were for drafting and sending a demand letter to Ramirez, preparing a motion to schedule a default judgment hearing, preparing the application for fees and costs, and preparing for and attending the default judgment hearing. Again, after a default judgment hearing, the trial court awarded TFLTC \$1,121 in fees for only its pre-redemption efforts.

¹No party has provided the date that certificates of redemption were issued to the redeeming parties pursuant to A.R.S. § 42-18154. Therefore, for the purposes of this decision, we will assume the certificates of redemption were issued on the date of redemption in each case.

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Lynch and Wieser

¶7 TFLTC purchased tax liens on both Lynch's and Wieser's properties in February 2016 and filed actions to foreclose each owner's redemption rights in November 2019. Both Lynch and Wieser responded to TFLTC's foreclosure action and redeemed their property tax liens on January 21, 2020.

¶8 In April 2020, TFLTC filed a motion for judgment on the pleadings against Lynch, requesting attorney fees and costs pursuant to § 42-18206. Lynch did not respond to TFLTC's motion, but the Pima County Treasurer, Beth Ford, statutorily a named party in such actions under § 42-18201(A), filed a "notice in lieu of a response" addressing TFLTC's fee claim. TFLTC filed a formal application for attorney fees and costs under § 42-18206, requesting \$1,197 in attorney fees incurred before Lynch redeemed and \$1,797 after. The post-redemption fees were incurred for reviewing Lynch's and Ford's answers, drafting a legal expense letter to Lynch, a motion for judgment on the pleadings, and the application for fees and costs, and for reviewing and responding to Ford's notice in lieu of a response. Following Ford's written objection to the application, the trial court awarded TFLTC its requested costs and \$1,197 in attorney fees for only its pre-redemption work.

¶9 In May 2020, TFLTC filed a motion for summary judgment in its action against Wieser, requesting the trial court find Wieser liable for TFLTC's attorney fees and costs under § 42-18206. Wieser did not respond to TFLTC's motion, and, as she did in the Lynch case, Ford filed a notice in lieu of a response addressing the issue of attorney fees and costs. In June 2020, TFLTC filed its application for attorney fees and costs pursuant to § 42-18206, seeking \$1,489 in attorney fees prior to Wieser's redemption and \$2,984 after. The post-redemption fees incurred were for drafting a fee and cost demand letter to Wieser and a motion to vacate the dismissal as to Ford, reviewing Ford's and Wieser's answers, and preparing a motion for summary judgment, an objection to Ford's notice in lieu of a response, and the application for fees and costs. The court awarded TFLTC \$800 in attorney fees, representing only pre-redemption legal work, and the requested amount in costs.

¶10 TFLTC appealed the amount of attorney fees awarded to it in each case. We consolidated the appeals and have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(1), 12-2101(A)(1).

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Analysis

¶11 Section 42-18206 provides that, if a person entitled to redeem a property tax lien does so after being served in a foreclosure action, but before the foreclosure judgment is entered, “judgment shall be entered in favor of the plaintiff against the person for the costs incurred by the plaintiff, including reasonable attorney fees to be determined by the court.” In each of these redemption-right foreclosure cases, TFLTC claimed fees incurred both before and after the date of redemption by the property owner. In each case, whether after objection by Ford or *sua sponte*, the trial court, relying on *Leveraged Land*, refused to award TFLTC fees incurred after the date of redemption.²

¶12 On appeal, TFLTC argues the trial courts erred by limiting its recovery. TFLTC urges this court to distinguish the holding of *Leveraged Land* and allow it to recover its fees, to the extent otherwise reasonable, in full. Ford counters that *Leveraged Land* clearly limits any fees awarded under § 42-18206 to those incurred before property-owner redemption. We review questions of law *de novo*. *Rodney v. Ariz. Bank*, 172 Ariz. 221, 223 (App. 1992). In such a *de novo* review, “[w]here the facts are undisputed and the issue is one of pure law, this court is free to substitute its legal analysis of the record for that of the trial court.” *Id.*

¶13 Our supreme court interpreted the language of and legislative intent behind § 42-18206 in *Leveraged Land Co.*, 226 Ariz. 382, to determine if there was a limit to recoverable attorney fees. In that case, the defendant property owner redeemed the property tax lien after a foreclosure action had been brought by the tax-lien purchaser, *Leveraged Land*. 226 Ariz. 382, ¶¶ 2-3 (2011). *Leveraged Land* challenged the validity of the redemption. *Id.* ¶ 3. After prevailing, *Leveraged Land* requested \$153,182 in attorney fees and costs under § 42-18206, most of which was incurred during the years of post-redemption litigation. *Id.* ¶¶ 3-4. The trial court awarded \$1,500, stating the total requested amount was “unreasonable.” *Id.*

²Although the court did not expressly rely on *Leveraged Land* in its judgment in Yu’s case, at the default hearing, the court permitted TFLTC to incorporate its argument from a similar case argued earlier that day, in which TFLTC had argued *Leveraged Land* was inapplicable. The court then ultimately removed the fees incurred after redemption from its calculation of reasonable attorney fees.

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¶14 On review, our supreme court ultimately determined that “[t]he entitlement to costs and attorney fees under § 42-18206 arises at the time of redemption and relates to work performed before the treasurer’s certificate of redemption issues.” *Id.* ¶ 13. And, as to those pre-redemption fees and costs incurred and sought, it stated that “we leave it to the sound discretion of the trial court to determine how much of the plaintiff’s costs and fees were reasonable.” *Id.*

¶15 TFLTC argues – as do the amici – that the holding in *Leveraged Land* does not apply to the cases here because TFLTC did not challenge the redemptions below. TFLTC asserts that “the holding in *Leveraged Land* was not intended to alter the trial courts’ discretion in determining reasonable fees for purposes of an award under A.R.S. § 42-18206.” “[R]ather,” TFLTC maintains, “it was merely to remove charges incurred in challenging a redemption (or in initiating new litigation) from those awardable under the statute.” And according to TFLTC, “[s]eeking [an] award of legal expenses is neither a challenge to the redemption nor initiation of new litigation – it is merely the follow-through of the original action to one of the results provided for by the governing statute.” TFLTC and the amici therefore reason that the trial courts erred in relying on *Leveraged Land* to limit the amount of attorney fees awarded to TFLTC.

¶16 We do not believe the holding in *Leveraged Land* is limited to actions in which the redemption has been contested. The supreme court stated in its holding that “a tax lien purchaser is only entitled to reasonable attorney fees incurred before the lien is redeemed and a certificate of redemption issues.” *Id.* ¶ 1. We read the court’s use of “before” as a temporal demarcation, rather than somehow as addressing the purpose of the fees. *See Before*, The American Heritage Dictionary 161 (5th ed. 2011) (defining “before” as “[e]arlier in time”). Moreover, the court used language throughout *Leveraged Land* making clear its holding precluded recovery of all post-redemption attorney fees, not merely those incurred in challenging a redemption. *See id.* ¶¶ 1, 7, 13. We see no room in the holding that admits the interpretation urged on us here, and we are not in a position to alter or limit it. *City of Phoenix v. Leroy’s Liquors, Inc.*, 177 Ariz. 375, 378 (App. 1993) (“[W]e are bound by decisions of the Arizona Supreme Court and have no authority to overrule, modify, or disregard them.”); *McKay v. Indus. Comm’n*, 103 Ariz. 191, 193 (1968) (“Whether prior decisions of the highest court in a state are to be disaffirmed is a question for the court which makes the decisions.”).

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¶17 To persuade us of their view, TFLTC and the amici also raise policy arguments, contending that applying *Leveraged Land* to all foreclosure actions will both “deter tax lien buyers in Pima County” and “disrupt[] the legislative scheme . . . intended to make investors whole for their role in enforcing the state’s policy goals by compensating them with interest.” While that may be so, issues of policy are the business of the legislature, not the judiciary. See *DaimlerChrysler Servs. N. Am., LLC v. Ariz. Dep’t of Revenue*, 210 Ariz. 297, ¶ 35 (App. 2005); see also *Winsor v. Glasswerks PHX, LLC*, 204 Ariz. 303, ¶ 24 (App. 2003) (certain policy issues are “best handled by legislatures with their comprehensive machinery for public input and debate.” (quoting *Leannais v. Cincinnati, Inc.*, 565 F.2d 437, 441 (7th Cir. 1977))). And as to the public policy implicated here, our supreme court tells us in *Leveraged Land* that, while the purpose of § 42-18206 is to make the lien purchaser whole if the landowner redeems, the statute “does not ensure a profit” and only “protects against a loss to the purchaser from pre-redemption litigation.” *Leveraged Land Co.*, 226 Ariz. 382, ¶¶ 10-11. To the extent our supreme court has identified the legislature’s expressed or unstated policy, it is not our role to recast it. See *Galloway v. Vanderpool*, 205 Ariz. 252, ¶ 17 (2003) (“Once published, [the supreme court’s] interpretation becomes part of the statute.”).

¶18 Ultimately, and as to those permissible attorney fees incurred before redemption, “we leave it to the sound discretion of the trial court to determine how much of the plaintiff’s costs and fees were reasonable.” *Leveraged Land Co.*, 226 Ariz. 382, ¶ 13. Here, the trial courts’ awards are consistent with and faithful to § 42-18206, as interpreted by *Leveraged Land*, and we have no reason to otherwise question their reasonableness.

Disposition

¶19 For the foregoing reasons, we affirm the awards of attorney fees and costs to TFLTC.