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 December 8, 2022

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NOT FOR PUBLICATION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. C20192106, C20192012, and C20182065
The Honorable Charles V. Harrington, Judge
The Honorable Paul E. Tang, Judge

VACATED AND REMANDED

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

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

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

¶1 This matter is on remand from the Arizona Supreme Court to determine whether the trial courts correctly set aside default judgments on the ground that HNT Holdings, LLC ("HNT") did not receive proper service of process of three foreclosure complaints under Rule 4.1, Ariz. R. Civ. P. For the reasons that follow, we vacate the orders of the trial courts and remand this matter for further proceedings consistent with this decision.

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). The relevant underlying facts and procedural history of this case were largely set forth in *4QTKIDZ, LLC v. HNT Holdings, LLC*, 253 Ariz. 382 (2022). As relevant here, HNT was the owner of three contiguous parcels of real property in Oro Valley. After property tax payments on all three parcels became delinquent, petitioners Dana H. Cook Family Partnership, Ltd. ("Cook"), Blue Palo Servicing Company, LLC ("Blue Palo"), and 4QTKIDZ, LLC ("4QTKIDZ") (collectively "Lienholders") each purchased a tax lien on a parcel and initiated foreclosure proceedings.[1] Each Lienholder mailed to

[1]The Cook prelitigation notice was sent in February 2018. The prelitigation notices in the Blue Palo and 4QTKIDZ matters were sent in in March 2019.

HNT pre-litigation notice as required by A.R.S. § 42-18202, and although these notices were statutorily sufficient, each attempt at notice was returned to the Lienholders as undeliverable. *See 4QTKIDZ*, 253 Ariz. 382, ¶¶ 1-2, 14. The Lienholders then "filed complaints to foreclose on their tax liens and attempted to serve the complaints on the HNT statutory agent, ultimately serving HNT through the Arizona Corporation Commission when initial attempts at service proved unsuccessful." *Id.* ¶ 2.

¶3 In particular, in the Cook matter, the process server discovered the address to be occupied by an individual identifying himself as someone other than HNT's designated statutory agent. Cook then served HNT through the Arizona Corporation Commission ("ACC"), as directed by A.R.S. § 29-606(B).[2] Because HNT's address on file with the ACC was the same outdated address listed for its statutory agent, HNT did not receive the process papers when ACC forwarded them to that address.

¶4 Approximately ten months after Cook served HNT through the ACC, represented by the same law firm and the same attorneys, Blue Palo and 4QTKIDZ sent notices of intent to foreclose on the two other parcels held by HNT. As Cook had done the year before, Blue Palo and 4QTKIDZ served HNT through the ACC when their attempts to serve HNT through its statutory agent proved unsuccessful.

¶5 In three separate trial court proceedings, the Lienholders secured default judgments against HNT, each of which HNT moved to set aside. One trial court consolidated the Cook and Blue Palo matters for purposes of the hearing and expressly granted HNT relief under Rule 60(b)(4) and (6), Ariz. R. Civ. P. The court reasoned that, reading § 29-606 together with Rule 4.1, each of the two judgments was void for lack of

[2] A.R.S. § 29-606 has since been substantively amended and renumbered as A.R.S. § 29-3119. *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").

service under Rule 4.1.[3] Consequently, the court concluded it "had no discretion except to vacate" the judgments. Alternatively, the court granted HNT's motions under Rule 60(b)(6), reasoning that "exceptional additional circumstances" warranted relief. Specifically, it noted that actual service upon HNT "could have been accomplished through the exercise of due diligence," such as "efforts like simply performing a Google search or perhaps searching public records such as utility and assessor's records." It reasoned that, particularly because the Lienholders were aware HNT would not receive the service of process, "due diligence require[d] more" effort by Cook and Blue Palo.

¶6 In the 4QTKIDZ matter, the trial court granted HNT's motion to set aside, which 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 under a "bright line rule" created by federal case law,[4] when "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."

¶7 The Lienholders appealed all three matters. We consolidated the appeals and upheld the trial courts' set-asides of the default judgments solely on the reasoning that the Lienholders had given HNT insufficient pre-litigation notice under § 42-18202.[5] However, our supreme court disagreed, concluding that the Lienholders' efforts "complied with the second method of notice under § 42-18202." *4QTKIDZ*, 253 Ariz. 382, ¶ 16. Therefore, it vacated this court's decision and remanded for us to determine whether the trial courts properly set aside the default judgments as void for

---

[3]The trial court further reasoned Rule 4.1 applied here because A.R.S. § 42-18203(A) provides that "the provisions of law relating to civil actions and rules of civil procedure control the proceedings in an action to foreclose the right to redeem."

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

[5] After that decision, the Arizona legislature amended § 14-18202(A)(1)(a) to specify that notice may be sent, *inter alia*, to "[t]he property owner, as determined by section 42-13051, *at the property owner's mailing address* according to the records of the county assessor in the county in which the property is located." 2022 Ariz. Sess. Laws ch. 17, § 1 (emphasis added). As our supreme court has noted, this amendment "appears to codify" its interpretation of the pre-litigation notice statutes. *4QTKIDZ*, 253 Ariz. 382, n.1.

failure to properly serve process on HNT under § 29-606 and Rule 4.1. On remand, we have jurisdiction pursuant to A.R.S. §§ 12-2101(A)(1) and 12-120.21(A)(1).

Discussion

¶8 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 legal determinations and interpretations of court rules under Rule 60(b), including that a judgment is void and consequentially must be vacated. *Ruffino v. Lokosky*, 245 Ariz. 165, ¶¶ 9-10 (App. 2018); *see also Aloia v. Gore*, 252 Ariz. 548, ¶ 11 (App. 2022).

¶9 Our aim in construing a statute is "to effectuate the legislature's intent." *Welch v. Cochise Cnty. Bd. of Supervisors*, 251 Ariz. 519, ¶ 11 (2021) (quoting *Stambaugh v. Killian*, 242 Ariz. 508, ¶ 7 (2017)). The plain text of a statute controls if it is clear and unambiguous, "unless an absurdity or constitutional violation results." *Sell v. Gama*, 231 Ariz. 323, ¶ 16 (2013).

Rule 60(b)(4)

¶10 The Lienholders argue that HNT was properly served with process pursuant to § 29-606, and it was therefore error for the trial courts to set aside the default judgments as void. To the extent the trial courts relied on Rule 60(b)(4) grounds to set aside the default judgments,[6] we agree this reliance constituted legal error.

¶11 By their plain text, § 29-606 and Rule 4.1[7] provided the standard for sufficient service of process on a limited liability company.

[6] The trial court in the consolidated matter expressly found the judgments void under Rule 60(b)(4) for lack of proper service. The court in the 4QTKIDZ matter did not cite any specific provision of Rule 60 in its order setting aside the default judgment, although HNT's motion to set aside cited Rule 60(b)(1), (4), and (6) as possible grounds.

[7] The Lienholders argue that Rule 4.1 does not apply to service of process on a limited liability company. We assume, without deciding, that Rule 4.1 does apply and operated in conjunction with § 29-606 to govern service over a limited liability company. *See 4QTKIDZ*, 253 Ariz. 382, ¶ 15

Section 29-606(A)-(B) directed that service could be effected upon the statutory agent or manager appointed by a limited liability company. But, if the "company fail[ed] to appoint or maintain a statutory agent at the address shown on the records of the commission, the commission [was] an agent of the limited liability company on whom any process, notice or demand [could] be served." § 29-606(B). Rule 4.1(i) provides that service can be accomplished "by delivering a copy of the summons and the pleading being served to a partner, an officer, a managing or general agent, *or any other agent authorized by appointment or by law* to receive service of process." (Emphasis added.) By instituting these procedures, our legislature clearly announced the process by which a party may confidently assert it has provided adequate service on an Arizona limited liability company, which bears the burden of keeping its records current. *See* A.R.S. §§ 29-604, 29-605.[8]

¶12 The record demonstrates that the Lienholders complied with this statutory scheme for sufficient service of process. They first attempted to serve HNT at the address on record for its statutory agent, which the agent had failed to update as required at the time by §§ 29-604 and 29-605. When it became apparent that HNT had failed to maintain a current address for its statutory agent, the ACC became, by express provision of § 29-606, an agent of HNT. The Lienholders then completed service by making service on the ACC, again as directed by § 29-606.

¶13 HNT argues that, notwithstanding the statutory scheme, the Lienholders' attempts at service were "faulty" and violated its constitutional right to due process because the Lienholders knew service at the address on record would not reach HNT's statutory agent. We disagree. Like the trial courts in these matters, we are sympathetic to HNT's argument that under some circumstances, due process requires more diligence than occurred here. But, limited liability corporations are materially different from individuals in that they do not necessarily exist at any physical location other than their statutory agent and mailing addresses on record with the ACC. *See, e.g.*, A.R.S. § 29-3110(C)(1). Unlike people or brick-and-mortar businesses, then, there is not always an identifiable

("Even absent § 42-18202's mandate, lienholders must obtain sufficient service of process under Rule 4.1 to bring property owners to court.").

[8] As with § 29-606, §§ 29-604 and 29-605 have been substantively amended and renumbered as A.R.S. §§ 29-3115 to 29-3118. *See* 2018 Ariz. Sess. Laws, ch. 168, § 4.

physical place, other than the registered statutory agents and mailing addresses, where parties may with due diligence locate a limited liability company after their initial efforts at service are thwarted.

¶14 By providing an alternative means for service via the ACC, § 29-606(B) contemplated the precise circumstance the Lienholders encountered, wherein HNT's failure to maintain current records prevented service on its designated statutory agent. And, just as the other subsections of Rule 4 set forth the steps necessary to provide "notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections," *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950), Rule 4.1(i) sets forth the steps reasonably calculated to apprise a corporation of a pending action. Under that rule, notice is sufficient when the summons and pleading are delivered to "any other agent authorized by appointment or by law to receive service of process"—here, again, the ACC.[9] *See Mullane*, 339 U.S. at 307, 315-16 (reasoning that constructive notice via publication in local newspapers inadequate, on its own, to inform out-of-state judicial settlement beneficiaries of pending proceedings, but noting that "an owner with tangible property . . . usually arranges means to learn of any direct attack upon" possessory or proprietary rights). Under these circumstances, the plain text of the statute adequately identifies what constitutes diligence in the context of serving a limited liability company. Thus, we identify no due process violation underlying the Lienholders' service of process, despite the fact that they had knowledge their summons was unlikely to reach HNT.[10]

---

[9]In so concluding, we note that we have held similarly in at least one prior unpublished decision. *See Hahne v. AZ Air Time, LLC*, No. 1 CA-CV 14-0586, ¶ 8 (Ariz. App. Mar. 22, 2016) (mem. decision). *See* Ariz. R. Sup. Ct. 111(c)(1)(C) (unpublished memorandum decisions may only be cited for persuasive value and subject to certain criteria). Federal trial courts have come to the same conclusion on multiple occasions. *See, e.g.*, *Hastings v. Grundy*, No. CV-19-4645-PHX-DGC, 2020 WL 2395168, at *1 (D. Ariz. May 12, 2020); *Delano v. Rowland Network Commc'ns LLC*, No. CV-19-02811-PHX-MTL, 2020 WL 2308476, at *5 (D. Ariz. May 8, 2020); *see also* Ariz. R. Sup. Ct. 111(d) (citations to dispositions of non-Arizona tribunals subject to Rule 111(c)(1)(C) compliance).

[10]We note that the 2019 amendment to the Arizona LLC Act requires a party seeking to serve a limited liability company to exercise "reasonable diligence" when serving a statutory agent. A.R.S. § 29-3119(B). If such

Rule 60(b)(6)

¶15 The Lienholders also argue—albeit for the first time in their reply brief—that the trial courts erroneously set aside default judgment under Rule 60(b)(6), to the extent each court relied on that subsection.[11] In particular, the Lienholders argue that because service was proper, HNT presented no extraordinary circumstances or hardship to justify relief under subsection (b)(6). They further argue that HNT's failure to maintain updated records renders its hands unclean and prevents it from obtaining relief under this subsection.

¶16 Rule 60(b)(6) vests "extensive discretion in trial courts" in determining whether to exercise their broad equitable power to grant relief from default judgment. *Gonzalez*, 243 Ariz. 531, ¶ 11. "[I]f the trial court has doubt about whether to vacate a default judgment, it should rule in favor of the moving party." *Daou v. Harris*, 139 Ariz. 353, 359 (1984). Trial courts "are in a much better position than appellate judges to determine" whether the facts warrant relief from a default judgment. *Id.* And, the law favors a resolution on the merits. *Gonzalez*, 243 Ariz. 531, ¶ 11. For all of these reasons, appellate courts "should be more loathe to reverse an order vacating a default judgment than an order denying a motion." *Marsh v. Riskas*, 73 Ariz. 7, 9 (1951).

¶17 Nonetheless, we must review for abuse of discretion the courts' respective orders setting aside judgment. *Gonzalez*, 243 Ariz. 531, ¶ 8. Because the trial courts vacated the default judgments for different reasons, we will address each ruling separately.

---

efforts fail, then service may be effected via registered or certified mail addressed to the company's "principal address" filed with the ACC. *Id*. Because this statute was not in effect when the Lienholders initiated their foreclosure actions, we do not address whether their efforts would qualify as "reasonable diligence" under the amended statute.

[11]*See* Ariz. R. Civ. App. P. 13(a)(6); *Ramos v. Nichols*, 252 Ariz. 519, ¶ 11 (App. 2022) (issues raised for first time in reply brief waived). Because an appellant may properly rebut points made in an appellee's answering brief, Ariz. R. Civ. App. P. 13(c), and because HNT argued default was properly set aside under Rule 60(b)(6), we nonetheless address this issue.

Consolidated Default Judgments (Cook & Blue Palo)

¶18 In the consolidated matters, the trial court concluded that "exceptional additional circumstances" existed to warrant relief under Rule 60(b)(6). However, it based this ruling, in part, on facts relevant only to the validity of service of the complaint. In particular, the court noted that service on the Lienholders "could have been accomplished through the exercise of due diligence" above and beyond that required by § 29-606, such as through "efforts like simply performing a Google search or perhaps searching public records."

¶19 To the extent the court relied on facts or reasoning relevant to whether service of the complaint was proper, its decision to set aside judgment under Rule 60(b)(6) constituted legal error and was thus an abuse of discretion. *Meister v. Meister*, 252 Ariz. 391, ¶ 12 (App. 2021) (court abuses discretion when it commits legal error in making discretionary decision). A trial court may not grant relief under subsection (b)(6) for any reason set forth in the earlier subsections of Rule 60, because "the grounds for relief in each of the subsections are separate and distinct." *Gonzalez*, 243 Ariz. 531, ¶¶ 11-12, 15; *Webb v. Erickson*, 134 Ariz. 182, 186 (1982) ("reason for setting aside the default must *not* be one of the reasons set forth in the five preceding clauses" because "Clause 6 and the first five clauses are mutually exclusive"). Indeed, it is "improper" for a trial judge to rely on both subsections (b)(4) and (b)(6) "because of their mutual exclusiveness." *Roll v. Janca*, 22 Ariz. App. 335, 336 (1974). Thus, we cannot affirm the court's ruling to the extent the set-aside was premised on the Lienholders' lack of diligence.

¶20 However, the trial court offered additional factors in its alternative decision to vacate the default judgment under subsection (b)(6). In particular, the court noted that HNT "took diligent steps to defend the case" once it learned of the entry of default and that "substantial prejudice" in the form of the loss of real property would result from the default judgment.[12] Although the Lienholders strenuously argue that these factors are insufficient for a showing of hardship or injustice, we owe the court

[12]The trial court's determinations that HNT was able and willing to redeem the properties all go to the second requirement for relief under Rule 60(b)(6), namely that a litigant must show facts which, if proven at trial, would "assert a meritorious defense." *Gonzalez*, 243 Ariz. 531, ¶ 12. Thus, they cannot go toward the threshold finding of extraordinary circumstances of hardship or injustice.

substantial deference in our review of this factual determination. We cannot say with certainty whether, absent the improper grounds for set-aside under subsection (b)(6), the trial court would nonetheless have found facts sufficient to constitute the requisite hardship and injustice to grant equitable relief. Therefore, we remand to allow the trial court to determine whether the totality of the facts and circumstances demonstrated the necessary showing of hardship or injustice to warrant relief under Rule 60(b)(6), disregarding any consideration of the Lienholders' diligence in serving the complaint. *See Amanti Elec., Inc. v. Eng'ed Structures, Inc.*, 229 Ariz. 430, ¶¶ 9-11 (App. 2012) (remanding denial of motion to vacate default judgment to allow trial court to consider whether facts warranted relief under subsection (b)(6), when court erroneously believed it could not conduct (b)(6) analysis).

¶21 Because Rule 60(b)(6) calls on a trial court to exercise its equitable power, *Webb*, 134 Ariz. at 186, we note that both parties in this matter have considerations in equity that the court may wish to consider on remand. In particular, as the Lienholders note, HNT failed, for years, to pay its delinquent property taxes on the parcels in question. It also failed to maintain current records as required by statute, resulting in the lack of notice that animates this appeal. We disagree, however, with the Lienholders that these failures have necessarily rendered HNT without "clean hands" such that relief from default is categorically unavailable. *See, e.g.*, *Sines v. Holden*, 89 Ariz. 207, 209-10 (1961) (clean hands maxim prevents "a party, who, as *actor*, seeks to set the judicial machinery in motion and obtain some remedy" if that party's prior conduct violates "fundamental conceptions of equity jurisprudence" (quoting John N. Pomeroy, *A Treatise on Equity Jurisprudence* § 397 (4th ed.))). We have also noted that "the broad power granted by Clause 6 is not for the purpose of relieving a party from free, calculated and deliberate choices he has made. A party has a duty to take legal steps to protect his own interests." *Roll*, 22 Ariz. App. at 337. However, we have historically applied that reasoning to instances in which a defaulting party failed to diligently defend itself against default, rather than when, as here, a party swiftly moved to set aside judgment upon learning of it. *See, e.g.*, *id.* at 337-38 (affirming set-aside when "[u]ncertainty exist[ed] as to whether [defendants] received service of process" and acted "expeditiously" to have default set aside once made aware of it, and "large judgment" at stake in trip-and-fall case involving relatively minor injuries); *Park v. Strick*, 137 Ariz. 100, 104 (1983) ("relief under Rule 60(c)(6) may be considered where the party did not have knowledge from any source that judgment had been entered and where there are extraordinary circumstances"); *see also Ackermann v. United States*, 340 U.S. 193, 197-98 (1950) (defendant's failure to appeal from default judgment a "free,

calculated, deliberate choice" rendering relief from default judgment improper).

¶22 On the other hand, the Lienholders do not contest that they had actual knowledge that HNT had no notice whatsoever of the proceedings against it, both in the pre-litigation stage as well as during their failed service attempts and through the default proceedings. Nevertheless, the Lienholders had no legal duty to attempt to locate a current address for HNT, even though the record suggests that would have been a simple undertaking. Finally, as the court noted in the earlier proceedings, the results of the defaults in favor of Cook and Blue Palo are harsh. Therefore, we conclude this balancing of equities rests squarely in the power of the trial court, and we remand for that balancing to occur. *See Gonzalez*, 243 Ariz. 531, ¶ 11; *Webb*, 134 Ariz. at 186.

4QTKIDZ Judgment

¶23 As we discuss above, the trial court in the 4QTKIDZ matter did not specifically make a finding that service was void under Rule 60(b)(4). It reasoned only that because the Lienholders knew notice had not occurred, due process required them to take "additional reasonable steps" to provide notice to HNT. "Although it would have been improper for the trial judge to have relied upon both Clause 4 and Clause 6 of Rule 60(c) because of their mutual exclusiveness . . . it is not improper for us to rule on the applicability of both clauses when the trial court has failed to enunciate its basis for granting relief." *Roll*, 22 Ariz. App. at 336. However, as with the consolidated matters, we cannot ascertain from the 4QTKIDZ ruling whether, setting aside any considerations of due process in service, the trial court found facts sufficient to support its vacating of the default judgment under Rule 60(b)(6).[13] The trial court is better situated to make these factual determinations, and thus we also remand the 4QTKIDZ matter for such consideration.

[13] Unlike in the consolidated matter, we are not aware of any transcript of the default judgment hearing in the 4QTKIDZ matter. In the absence of transcripts, we typically presume the trial court made findings sufficient to support its judgment. *See Brousseau v. Fitzgerald*, 138 Ariz. 453, 457 (1984). However, because the ruling cites only facts supporting its legal conclusion regarding the Lienholders' diligence, we conclude a remand is a more prudent course of action in this matter.

Disposition

¶24 For the foregoing reasons, we vacate both orders setting aside default judgment. We remand these matters to the trial courts for further proceedings consistent with this decision.