



**ARIZONA SUPREME COURT  
ORAL ARGUMENT CASE SUMMARY**



**ADVANCED PROPERTY TAX LIENS, INC v. JORGE OTHON  
AND SPOUSE  
CV-21-0277-PR  
252 Ariz. 206, 501 P.3d 249 (App. 2021)**

**PARTIES:**

*Petitioner:* Advanced Property Tax Liens, Inc.

*Respondents:* Jorge Othon and Spouse of Jorge Othon

**FACTS:**

This case concerns a quiet title action involving a commercial warehouse property in Nogales, Arizona, formerly owned by Victalina Carreon. In late 2014 or early 2015, Jorge Othon entered into an oral agreement with Carreon to buy the property for \$450,000. Both Othon and Carreon knew the property was encumbered by delinquent property taxes that would eventually need to be paid, and the parties accounted for this by deducting the amount of the outstanding taxes from the property's purchase price. In February 2015, Arizona Property Tax Liens, Inc. ("APTL") purchased a certificate of purchase representing a lien for the unpaid taxes on the property.

In July 2017, Othon finished paying Carreon for the property. In September 2017, Carreon executed a deed conveying the property Othon. The deed was properly signed and notarized. Othon did not, however, record the deed. He did not notify the Santa Cruz County Treasurer or Assessor of the change in ownership of the property or provide a mailing address where he could be reached with tax bills or valuation notices.

In May 2018, after mailing a notice of intent to foreclose to addresses it had identified as belonging to Carreon, APTL filed an action in Santa Cruz County Superior Court to foreclose its tax lien. Carreon was named as a defendant. APTL's process server unsuccessfully attempted to serve the summons and complaint on Carreon at the residential address of public record. After additional efforts to locate Carreon, APTL published the tax lien foreclosure documents in Nogales International, a newspaper of general circulation within Santa Cruz County.

In December 2018, APTL filed an affidavit of default, alleging that Carreon had been served and had failed to answer. The superior court entered a judgment of default in February 2019, foreclosing Carreon's right to redeem. In March, the Santa Cruz County Treasurer issued a treasurer's deed conveying the property to APTL, and APTL recorded the deed on March 12, 2019.

In April 2019, Carreon filed a motion to vacate the default judgment. Carreon claimed APTL had inappropriately utilized service by publication, and that the judgment was therefore void. In the proceedings that followed, it was revealed that the property's actual owner was

not Carreon, but Othon. Othon acknowledged during a deposition that the reason he never recorded the deed transferring the property from Carreon to himself was he had a plan to acquire APTL's tax lien, then foreclose upon the property from his own businesses in order to avoid paying taxes.

On August 8, 2019, Carreon moved to withdraw her motion to vacate the default judgment. On August 28, 2019, the superior court granted the motion with prejudice.

On August 21, 2019, APTL filed a complaint seeking to quiet title in the property. APTL named Othon as a defendant. In October, Othon filed an answer and counterclaim, asking the court to deny APTL's claim for quiet title, find the default judgment in the separate foreclosure action void, and declare title to the property vested in him. APTL and Othon cross-moved for summary judgment.

Following a hearing, the superior court granted Othon's motion and denied APTL's. It concluded that Othon had standing to collaterally attack the default judgment in the separate foreclosure action as void due to insufficient service of notice and process on Carreon. The superior court acknowledged the "general rule" that a claim of inadequate service is personal to the person upon whom service was to be made. Still, it concluded that Othon had standing to attack the default judgment because his position as to Carreon was "similar" to that of an insurer who has a "well-recognized right" to raise the issue of defective service as to its insured. It then ruled that APTL had failed to properly provide the statutory pre-litigation notice to Carreon and had not properly served her with the complaint and summons. Accordingly, the superior court determined that the tax lien foreclosure judgment was void.

On appeal, APTL argued in relevant part that Othon did not have standing to contest the superior court's prior order of default because issues of notice and service are personal to a defendant – here, Carreon – and cannot be asserted by a third party such as Othon. The court of appeals concluded that like an insurer, Othon has a "definite and substantial interest" in the outcome of the tax lien foreclosure action, such that he had the right to seek to set aside the default judgment based on alleged deficiencies in notice and service to Carreon. Accordingly, it affirmed the order of the superior court.

#### **ISSUE:**

In the context of a challenge to a default judgment issued in a tax lien foreclosure action, is the relationship between a seller of real estate and a buyer who does not record his or her deed sufficiently analogous to that of an insured and an insurer such that it warrants an exception to the general rule that a claim of inadequate service is personal to the person upon whom the service was to be made?

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