

IN THE SUPREME COURT

STATE OF ARIZONA

JOSE R. AROCA and KIRSTIN  
AROCA, husband and wife,

Appellants/Respondents,

vs.

TANG INVESTMENT COMPANY,  
LLC, an Arizona limited liability  
company,

Appellee/Petitioner.

**CASE NO. CV-24-0049-PR**

Court of Appeals, Division Two  
Case No. 2 CA-CV 2023-0046

Appeal from Pinal County  
Superior Court of Arizona  
S1100-CV2022-00940

**RESPONDENTS'  
SUPPLEMENTAL BRIEF**

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## SUPPLEMENTAL ARGUMENT

The Court has granted leave permitting the parties to file supplemental briefs addressing the rephrased issue that is currently on review:

**“Does expiration of the statute of limitations for suit on an unpaid mortgage debt permit an action to quiet title.”**

For the reasons set forth below, it is Appellants/Respondents’ position that a quiet title action is appropriate when “*the remedy for enforcement [of the mortgage debt] is barred by limitation.*” (quoting A.R.S. § 12-1104(B)). This is especially true when the mortgage creditor is threatening foreclosure, and additionally claiming that the mortgage debt must be paid to satisfy a lien regardless of whether the statute of limitations period has expired.

Appellee/Petitioner Tang Investment Company, LLC (“Tang”) is attempting an end-around in hopes of still being able to collect upon an uncollectable debt. The law should not be construed in a manner that essentially allows creditors to extend recovery of a debt beyond the statute of limitations period.

**I. THE STATUTES IN A.R.S. §12-1101; ET SEQ. PERMIT THE FILING OF AN ACTION TO QUIET TITLE BECAUSE FORECLOSURE ON TANG’S MORTGAGE LIEN IS BARRED BY THE STATUTE OF LIMITATIONS**

A.R.S. § 12-1101(A) permits the filing of an “action to determine and quiet title to real property” when an adverse party “claims an estate or interest in the real property which is adverse to the party bringing the action.” More specifically, and applicable to this present case matter, A.R.S. § 12-1104 states as follows:

12-1104. Allegation of lien or interest claimed by adverse party; **jurisdiction of court to enter decree.**

A. In an action to quiet title to real property, if the complaint sets forth that any person or the state has or claims an interest in or a lien upon the property, and that the interest or lien or the remedy for enforcement thereof is barred by limitation, or that plaintiff would have a defense by reason of limitation to an action to enforce the interest or lien against the real property, the court shall hear evidence thereon.

B. If it is proved that **the interest or lien or the remedy for enforcement thereof is barred by limitation, or** that plaintiff would have a **defense by reason of limitation** to an action to enforce the interest or lien against the real property, the court shall have jurisdiction to enter judgment and plaintiff shall be entitled to judgment barring and forever estopping assertion of the interest or lien in or to or upon the real property adverse to plaintiff.

(Emphasis added).

Tang argues that the Arocas are not entitled to bar or forever estop Tang's lien on the Property unless the Arocas pay off their debt, even though collection of the debt is barred by the statute of limitations. In support of its argument, Tang cites to the 1914 case *Provident Mut. Bldg.-Loan Ass'n v. Schwertner*, 15 Ariz. 517, 518-19, 140 P. 495 (1914).

However, as the Court of Appeals properly noted, in 1941 the legislature enacted A.R.S. § 12-1104, which provides that in a quiet title action: "If it is proved that the interest or lien or the remedy for enforcement thereof is barred by limitation ... plaintiff shall be entitled to judgment barring and forever estopping assertion of

the interest or lien in or to or upon the real property adverse to plaintiff.” § 12-1104(B). *Aroca v. Tang Inv. Co. LLC*, 257 Ariz. 48, 544 P.3d 653, 657 (Ct. App. 2024), *review granted* (Aug. 20, 2024).

As such, the holding in *Provident, supra*, is inapplicable. Despite Tang’s arguments otherwise, for a borrower to remove a mortgage lien they should not be required to pay off a debt that is barred by the statute of limitations. Requiring such would frustrate the entire purpose of the statute of limitations.

The unpublished memorandum decision of *Wood v. Fitz-Simmons* was cited in Appellant’s Opening Brief for reference purposes as to this particular point. 2009 WL 580784, 2 CA-CV 2008-0041 (Ariz. App. 2009).<sup>1</sup> Specifically, the Appellate Court in *Wood* relied upon A.R.S. § 12-1104(B) in implicitly finding that because the statute of limitations barred an action on the note, it also barred the Trust from raising the debt as a defense in a quiet title action.

The quiet title statutes in A.R.S. § 12-1101; *et. seq.* provide statutory procedure for barring and forever estopping Tang’s assertion of a lien upon which enforcement thereof is barred by limitation. It cannot be disputed that the mechanism/procedure is available. The only issue then, is whether the Arocas have a sufficient legal or equitable basis for bringing their quiet title action in this

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<sup>1</sup> Memorandum Decision cited under S.Ct.Rule 111(c)(1)(C) because no published opinion adequately addresses the issue.

particular matter. Based upon the circumstances of this case, and the legal maxim that equity follows the law, the Aroca's quiet title action was proper and justified.

## **II. THE AROCAS' ACTION TO QUIET TITLE IS AN APPROPRIATE REMEDY UNDER THE CIRCUMSTANCES**

Prior to filing their civil lawsuit, the Arocas had credible knowledge to believe that Tang still sought to collect upon a mortgage debt even though any action thereon was precluded by the expiration of the applicable limitations period. Indeed, immediately following the filing of the Arocas' trial court action, Tang threatened an unlawful foreclosure and asserted that it had 50-years to initiate a trustee's sale or judicial foreclosure despite maturity of the underlying note in 2012. [See [ROA 15 Exhibit A](#), 07/21/2022 letter from Tang's counsel attached to Tang's Motion to Dismiss].

Even after the Appellate Court Opinion in this case matter, Tang continues to assert in its Petition for Review that the 1914 *Provident* decision requires the Arocas to "pay off the lien." How would that lien payoff amount be calculated? Would it be the amount that was due at the debt's maturity in 2012, or perhaps in 2018 upon expiration of the limitations period. Or, as is more likely, will Tang seek to collect years of alleged interest accruing well beyond the principal balance of the note.

Without a judgment quieting title in favor of the Arocas, the threat that Tang will continue some measure of affirmative action to collect upon the debt would remain. It is likely that Tang would use a clouded title situation to wrongfully





