**STATE OF ARIZONA**

**SUPREME COURT**

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| Tang Investment Company, LLC, an Arizona limited liability company,<br><br>Petitioner/Appellee,<br><br>v.<br><br>Jose R Aroca and Kirstin Aroca, husband and wife,<br><br>Respondent/Appellants. | Arizona Supreme Court<br>No CV24-0049-PR<br><br>Court of Appeals<br>Division Two<br>No. 2 CA-CV 2023-0046<br><br>Pinal County<br>Superior Court of Arizona<br>S1100CV202200940 |

# PETITIONER'S SUPPLEMENTAL BRIEF

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## SUMMARY

The rephrased issue is:

> "Does expiration of the statute of limitations for suit on an unpaid mortgage debt permit an action to quiet title?"

No. As stated by this Court in *Provident Mut. Bldg.-Loan Ass'n v. Schwertner*, 15 Ariz. 517, 140 P. 495 (1914), the expiration of a statute of limitation does not extinguish the debt. The Court held ". . . an action to remove a cloud, being an equitable action cannot be maintained for the cancellation of an unsatisfied mortgage, even though limitation has run against it, and the debt secured by it is barred." *Provident*, p. 518.

Furthermore, an action to quiet title under A.R.S. § 12-1104 is not permitted until after the satisfaction or expiration of a mortgage or DOT under A.R.S. § 33-714(A), even if the statute of limitations on the note has run. The Respondents have admitted their secured debt remains unpaid.

The decision in *Provident, supra* is still valid law. In *Provident*, *supra*, this Court relied on equity in holding that to remove a mortgage lien, the borrower must first pay the debt off (even if the debt is barred by the statute of limitations).

## I. *PROVIDENT* IS STILL BINDING AND REQUIRES THAT A BORROWER PAY THE DEBT TO REMOVE THE LIEN.

The *Provident* ruling was not altered by A.R.S. § 12-1104 (adopted in 1941). In *Provident,* the plaintiff also filed an action to quiet title. Although the statute of

limitations barred filing suit on the debt, this Court held that the statute of limitations did "not *extinguish or satisfy* the debt . . ." *Id. at 517 (*emphasis added). The statute of limitations is "a shield and not a sword" for the debtor. *Id*. This Court emphasized the issue of equity:

> The maximum that 'he who seeks equity must do equity' voices a just and universal rule in determining the equitable rights of suitors, and should always be applied in cases like this. The plaintiff seeks equity. They must do equity. Every man should pay his just debts. It is right that he should do so. The fact that he may not be coerced to discharge them by legal means affects only the legal character of his obligation. It does not alter the primary fact that he owes an obligation which in equity and good conscience he should pay. *Id*. at 519.

Thus, this Court held that to require the removal of the defendant's mortgage lien, the plaintiff must pay the debt. *Id*. at 520.

Following *Provident*, Arizona law has continued to recognize that even if the statute of limitations has expired on a note, a lien on property securing that debt is valid, and the statute of limitations does not extinguish the lien if there is a balance owed. The Petition cited a number of these cases:

**1941:** *Farrell v. West*, 51 Ariz. 491, 491 (1941)

**1977:** *Best Fertilizers of Ariz., Inc. v. Burns*, 116 Ariz. 492, 493 (1977)

**1983:** *De Anza Land and Leisure Corp. v. Raineri*, 137 Ariz. 262, 266 (App. 1983)

**1985:** *Stewart v. Underwood*, 146 Ariz. 145, 148 (App. 1985)

**2014:** *Manicom v. CitiMortgage, Inc*., 236 Ariz. 153, 336 P.3d 1274 (App. 2014)

**2017:** *RCBT Holdings, LLC v. CIT Bank, N.A. 2017 WL 173911 (No. 1 CA-CV 16-0177* (2017)).[1]

**2018:** *Andra R Miller Designs LLC v. US Bank NA*, 244 Ariz. 265, 269, ¶ 11 (App. 2018)

M*anicom, supra,* held in 2014 that the 1914 *Provident* decision is still binding and recognized that "since our early statehood, we have followed the rule that the statutory action to quiet title cannot be sustained as against a mortgage debt confessedly unpaid":

> Ultimately, however, we [the Court of Appeals] is bound by our supreme court's decision in *Provident Mutual Building–Loan Ass'n v. Schwertner*, 15 Ariz. 517, 140 P. 495 (1914). In that case, the court held that when a property owner brings suit to remove a cloud on his title caused by an unsatisfied mortgage from his predecessor, he first must pay off the predecessor's debt**.** *Id*. at 517, 519, 140 P. at 495, 496. The court reasoned that "equity will not grant relief, except upon condition that the debtor pay or tender payment of the debt secured." *Id*. at 519, 140 P. at 496. Thus, since our early statehood, we have followed the rule that "the statutory action to quiet title cannot be sustained as against a mortgage debt confessedly unpaid." *Id*.; accord *Farrell v. West*, 57 Ariz. 490, 491, 114 P.2d 910, 911 (1941); *Sec. Trust & Sav. Bank v. McClure*, 29 Ariz. 325, 333, 241 P. 515, 517 (1925). (*Manicom*, 236 Ariz. At 161; emphasis added).

[1] This is a Memorandum Decision being cited under S. Ct. Rule 111(c)(1)(C) for persuasive value because of the factual similarities and the citations to controlling published decisions.

The 1914 decision in *Provident, supra,* is still be binding over 100 years later.

## II. A.R.S. § 12-1104 DID NOT CHANGE THE LAW IN ARIZONA.

A.R.S. § 12-1104 does not define when a lien "expires" (or is satisfied, reconveyed, released or otherwise discharged). This statute merely allows for a lien to be removed if it is "proved that the *interest or lien or the remedy for enforcement thereof is barred by limitation*." (emphasis added).

In this case, there was never any evidence that the Tang *Deed of Trust* ("DOT") or remedy for enforcement is barred by any statute of limitation. It is a *suit on the note* that is barred by the six-year statute of limitations. Under *Provident*, the Tang DOT remains a valid lien until the note is satisfied, or today until the DOT expires under A.R.S. § 33-714 (discussed below).

A.R.S. § 12-1104 did not change the law in Arizona. Most of the Arizona court decisions discussed in Section I above were decided after the 1941 enactment of A.R.S. § 12-1104 and agreed that *Provident* is still valid law.

## III. The LIEN REMAINS, NOTWITHSTANDING THE DISCHARGE OF THE PERSONAL OBLIGATION, WHETHER DUE TO A STATUTE OF LIMITATIONS OR A BANKRUPTCY DISCHARGE.

Bankruptcy law illustrates the difference between the inability to sue on a note versus the continuing viability of the property lien derived from the note. The statute of limitations for suing on a loan is similar to a bankruptcy discharge. A

Chapter 7 bankruptcy discharge terminates a borrower's obligation to pay back a secured loan. 11 U.S.C. § § 727 and 524. A discharge of the personal obligation to repay the loan does not, however, extinguish the mortgage (or deed of trust) lien that secures the obligation. *Johnson v. Home State Bank*, 501 U.S. 78, 84 (1991).

A bankruptcy discharge releases the borrower from personal liability for certain types of debts. 11 U.S.C. § 524 provides:

> (a) A discharge in a case under this title—
>
> (2) operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a personal liability of the debtor, whether or not discharge of such debt is waived… (emphasis added).

Although a debtor is not personally liable for discharged debts, a valid lien to secure payment of the debt remains as a lien against the property after the discharge. Post-discharge, a secured lender may also foreclose on the lien to recover the real property secured by the lien. 11 U.S.C. §506 provides:

> (a)(1) An allowed claim of a creditor secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property…

11 U.S.C. § 522 provides:

> (c) Unless the case is dismissed, property exempted under this section is not liable during or after the case for any debt of the debtor that arose, or that is determined

> under section 502 of this title as if such debt had arisen, before the commencement of the case, except—
>
> (2) a debt secured by a lien…

After a discharge, a borrower has no legal obligation to pay a discharged debt and a lender is prohibited from taking any action to collect on a discharged debt. This *in personam* remedy gives the debtor a "fresh start". It does not extend to an *in rem* claim against secured property. In *Johnson v. Home State Bank*, 501 U. S. 78, 84 (1991), the United States Supreme Court stated:

> Even after the debtor's personal obligations have been extinguished, the mortgage holder still retains a "right to payment" in the form of its right to the proceeds from the sale of the debtor's property. Alternatively, the creditor's surviving right to foreclose on the mortgage can be viewed as a "right to an equitable remedy" for the debtor's default on the underlying obligation. Either way, there can be no doubt that the surviving mortgage interest corresponds to an "enforceable obligation" of the debtor.
>
> The Court of Appeals thus erred in concluding that the discharge of petitioner's *personal liability* on his promissory notes constituted the complete termination of the Bank's *claim* against petitioner. Rather, a bankruptcy discharge extinguishes only one mode of enforcing a claim -- namely, an action against the debtor *in personam* -- while leaving intact another namely, an action against the debtor *in rem*. (emphasis in original).

Likewise, the statute of limitations on the Aroca note only extinguished one mode of enforcing a claim (an action against Aroca *in personam*). It did not extinguish the lien of the Aroca Deed of Trust (holding that a statutory bar to

enforcement of debt is not equivalent to its extinguishment). A.R.S. § 33-816 governs when Trustee's Sales must be commenced. *De Anza, supra*, .137 Ariz. 262, 266 (App. 1983).

In limited circumstances, a debtor in bankruptcy may strip or lessen the lien on the debtor's residence, pursuant to 11 U.S.C. § 506. This permits the removal or the reduction of the lien depending on the fair market value of the home. *In Re Miller*, 462 B.R. 421, 425 (Bk. E.D.N.Y. 2011). The United States Supreme Court has limited the stripping down of partially secured liens. *Dewsnup v. Timm*, 502 U.S. 410, 416-17 (1992).

## IV. A.R.S. § 12-1104 SHOULD BE READ TOGETHER WITH A.R.S. § 33-714, WHICH EXPRESSLY DEFINES WHEN AN UNPAID DEED OF TRUST (DOT) "EXPIRES".

A.R.S. § 33-714(A) was enacted in 2002 and provides that a lien expires 10 years after its maturity date (or 50 years after the date the lien was recorded if its maturity cannot be ascertainable from the county recorder's records)[2].

33-714. Expiration of mortgage and deed of trust; applicability.

> A. The lien of any mortgage or deed of trust on any real property that is not otherwise satisfied or discharged expires at the later of the following times:

[2] The Tang DOT does not identify a final maturity date. IRA3, Ex 1. Therefore under A.R.S. § 33-714(A)(2), the DOT expires in October 2057 (50 years after the date the DOT was recorded).

> 1. If the final maturity date or the last date fixed for payment of the debt or performance of the obligation is ascertainable from the county recorder's records, ten years after that date.
>
> 2. If the final maturity date or the last date fixed for payment of the debt or performance of the obligation is not ascertainable from the county recorder's records or if there is no final maturity date or last date fixed for payment of the debt or performance of the obligation, fifty years after the date the mortgage or deed of trust was recorded…
>
> C. **Expiration of the lien of a mortgage or deed of trust pursuant to this section is equivalent for all purposes to a satisfaction, reconveyance, release or other discharge of the lien.** (emphasis added).

This statute defines the "expiration" of a lien as being "equivalent for all purposes to a satisfaction, reconveyance, release or other discharge of the lien".[3]

A.R.S. § 12-1104 was enacted in 1941, long before the enactment of A.R.S. § 33-714 in 2002. To the extent that these two statutes conflict, the more recent, specific statute would control over the older, more general statute. *State v. Johnson*, 195 Ariz. 553, ¶8, 991 P.2d 256, 258 (App. 1999).

Arocas rely upon a memorandum decision in *Wood v. Fitz-Simmons*, 2009 WL 580784 (App. 2009). In *Wood,* the plaintiff filed a quiet title action alleging, in the alternative, that the note had been "satisfied" and/or the debt was time barred

[3] A.R.S. § 33-714(A) applies to liens of mortgages and deeds of trust. Many other liens in Arizona statutory law were not included, such as A.R.S. § 13-806, restitution lien; A.R.S. § 33-1022, garages and aircraft; and A.R.S. § 33-1072, real estate brokerage lien.

by the statute of limitations. The trial court found that because the statute of limitations barred an action on the note, it also barred the lender from raising the debt as a defense in a quiet title action. The Court of Appeals recognized that the trial court's decision was "in direct conflict" with the equitable principle set forth in *Provident* and subsequent cases but noted that:

> "The parties do not argue that [A.R.S.] § 12-1104 should not apply in the present case." *Id*. at footnote 3.

In the current case, Tang does argue that A.R.S. § 12-1104 does not apply because an action on a *note* that is barred is not the same as the lien or the remedy for enforcement being barred. The lien is not barred until it expires under A.R.S. § 33-714.

In Arizona, equity still requires a borrower to pay off the note to have the lien removed (until it expires under ARS § 33-714). *Provident* may need to be qualified to provide that a borrower must pay off a debt in order to have an *unexpired* lien removed.

## V. THE SPECIFIC PROVISIONS IN A.R.S. § 33-714 CONTROL OVER THE GENERAL PROVISIONS IN THE OLDER A.R.S. § 33-816.

### A. A.R.S. § 33-714 IS CLEAR AND UNAMBIGUOUS, INCLUDING ITS TERMS OF "SATISFIED OR DISCHARGED" AS APPLIED LIENS OF MORTGAGES AND DEEDS OF TRUST.

A.R.S. § 33-714, enacted after A.R.S. § 33-816, is "plain and unambiguous". This more recent statute is only susceptible to one interpretation and there is no

need to look at alternative methods of statutory construction, such as the historical background or legislative history of the statute. *Planned Parenthood v. Mayes*, 257 Ariz. 110 ¶s 15-17 (2024).

A.R.S. § 33-816, requiring a Trustee's Sale to be commenced "within the period prescribed by law for the commencement of an action on the contract secured by the trustee" was enacted over fifty years ago.

A.R.S. § 33-714, enacted in 2002, modified prior case law and extended the statute of limitations for trustee's sales. The statute clearly applies to all liens that have not been "*satisfied or discharged*." The statute provides in pertinent part:

> 33-714. Expiration of mortgage and deed of trust; applicability.
>
> A. The lien of any mortgage or deed of trust on any real property that is not otherwise *satisfied or discharged* expires at the later of the following times…[10 years or 50 years]
>
> B. Expiration of the lien of a mortgage or deed of trust pursuant to this section is equivalent for all purposes to a *satisfaction, reconveyance, release or other discharge of the lien.* (emphasis added)

The terms "*satisfied or discharged*" are clear and unambiguous. Arizona's rules of statutory construction require that "words and phrases shall be construed according to the common and approved use of the language". A.R.S. § 1-213.

After the lapse of a statutory deadline, a "debt is not *extinguished*; rather, the remedy for an action on the debt is merely barred." *De Anza Land & Leisure Corp. v. Raineri*, 137 Ariz. 262, 266, 669 P.2d 1339, 1343 (App. 1983).

A.R.S. § 33-714 was enacted over 30 years after A.R.S. § 33-816. In interpreting A.R.S. § 33-714, this court must presume that the legislature was competent and that it was aware of all existing statutes, including A.R.S. § 33-816. *State v. Garza Rodriguez*, 791 P2d 633, 637 (Ariz. 1990) ("We presume that the legislature knows the existing laws when it enacts or modifies a statute."). If the plain meaning of a statute ("*satisfied or discharged*") is clear, this Court does not need to search for alternative meanings, such as legislative intent. *Perini Land and Dev. Co. v. Pima Cnty.*, 170 Ariz. 380, 383 (Ariz. 1992) ("We look first to the language of the provision, for if the constitutional language is clear, judicial construction is neither required nor proper.").

Only if the statute is unclear (i.e., subject to more than one reasonable interpretation), should the court look to alternative methods of statutory construction, such as historical background. *State v. Salazar-Mercado*, 325 P.3d 996, 998 (Ariz. 2014) (finding a statute ambiguous "because it can be reasonably read in two ways"). The language of "*satisfied or discharged*" in A.R.S. § 33-714 is unambiguous. To the extent that these two statutes (A.R.S. § 33-714 and A.R.S. § 33-816) conflict, the more recent, specific statute would control over the older,

more general statute. *State v. Johnson*, 195 Ariz. 553, ¶8, 991 P.2d 256, 258 (App. 1999).

There is a distinction between an obligation being "time barred," satisfied, discharged or extinguished. The Aroca debt has not been satisfied, discharged or extinguished. The lien will not be satisfied or discharged until expiration of the time limits under A.R.S. § 33-714. A.R.S. § 33-816 does not apply.

### B The legislative history of A.R.S. § 33-714 confirms it was adopted from California, which extended the deadline to foreclose or commence a Trustee's Sale.

In examining the legislature's intent behind A.R.S. § 33-714, the legislative fact sheets suggested the legislature was primarily concerned with liens that remained on record without release, not whether or not the deadline to foreclose needed to be extended. This is only part of the story.

The legislative history of A.R.S. § 33-714 also shows clear intent on the part of the Arizona legislature to adopt a statute from California. The House of Representative's bill summary indicates that when passing A.R.S. § 33-714, the legislature was copying a California statute that similarly provided a ten-year deadline for mortgages and deeds. "The amendment adopts a California code to provide a ten-year for expiration of mortgages and deeds." https://www.azleg.gov/legtext/45leg/2r/summary/h.hb2071_3-21-2_caucuscow.doc.htm. Notably, the California statutory equivalent to A.R.S. § 33-714, serves as the final

deadline to seek foreclosure. *Ung v. Koehler*, 37 Cal.Rptr.3d 311, 318 (Cal. App. 2005).

When the Arizona Legislature adopted A.R.S. § 33-714, it adopted the ten-year limit utilized by California. The California courts have allowed creditors to initiate trustee's sales up to the ten or sixty-year limit because "the law means what it says." *Smith v. Caliber Home Loans, Inc.* (Case No. 16cv220-LAB (NLS)) (S.D. Cal., 2016). There are a number of decisions in California applying its similar statute known as California Civil Code Section 882.020. This section is virtually identical except the Arizona limitation is ten years (if the maturity is ascertainable from the county records) or fifty years (if not ascertainable), whereas the California statute is ten years and sixty years.

### C. A.R.S § 33-714 extends the statute of limitations to enforce the Deed of Trust.

This extension was recognized by Division One of our Court of Appeals in its Memorandum Decision in *RCBT Holdings, LLC v. CIT Bank, N.A.* (No. 1 CA-CV 16-0177 (1979)).

> Fourth, RCBT cites no authority supporting its claim that if the debt is barred by the statute of limitations, thereby precluding a trustee's sale as a remedy available to CIT, see A.R.S. § 33-816, the deed of trust is rendered "null and void." Indeed, the case law suggests otherwise. See *De Anza Land and Leisure Corp. v. Raineri*, 137 Ariz. 262, 266 (App. 1983) (*recognizing that a statutory bar to enforcement of the debt is not equivalent to its extinguishment*); *Schwertner*, 15 Ariz. at 518 (explaining

> that running of statutory period "affects the remedy and not the right"); *cf. Best Fertilizers of Ariz., Inc. v. Burns, 116 Ariz. 492, 493 (1977)* (when debtor completely satisfies the debt, it is extinguished and the mortgage discharged); *Stewart v. Underwood*, 146 Ariz. 145, 148 (App. 1985) (*rejecting debtor's argument that mortgage was rendered "null and void" because personal debt discharged in bankruptcy; holding discharge did not extinguish debt, but only barred subsequent actions against debtor personally*). (emphasis added).

### D. Conclusion.

A.R.S. § 33-714, enacted after A.R.S. § 33-816, is "plain and unambiguous and susceptible to only one interpretation. A.R.S. § 33-714 extended the deadline for creditors to initiate trustee's sales.

## VI. THE COURT OF APPEALS SHOULD BE REVERSED BECAUSE IT HAS CONFLATED THE EXISTENCE OF A LIEN, WITH DISCHARGE OR ENFORCEMENT OF THE DEBT; THE LIEN AND THE DEBT ARE TWO SEPARATE LEGAL INSTRUMENTS.

In the Opinion, the Court of Appeals concluded:

> "… because Tang's recorded deed of trust is barred by limitation, the lien has been discharged and the Arocas are entitled to judgment under § 12-1104 in their action to quiet title." *Id.* ¶ 16.

In support of this conclusion, the Court of Appeals stated:

> Tang argues that because a quiet title action is an action in equity, under equitable principles, the Arocas are not entitled to that relief until and unless they pay off their debt, even though it is barred by the statute of limitations. *See Provident Mut. Bldg.-Loan Ass'n v. Schwertner*, 15 Ariz. 517, 518-519 (1914). However, 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). *Id.* ¶ 15. (emphasis added).

This Court should reverse the portion of the Court of Appeals Opinion holding that the Tang DOT has been discharged (Opinion, ¶¶ 15 and 16). The DOT has not been discharged by the expiration of the statute of limitations on the note. Further, the lien has not been barred by limitation.[4] Indeed, A.R.S. § 33-714 expressly provides that the lien exists and does not expire until October 2057.

## CONCLUSION

The issue before this Court involves the application of the law of contracts and equitable principles of law. The expiration of a mortgage or DOT under A.R.S. § 33-714(A) permits an action to quiet title under A.R.S. § 12-1104. But the Tang DOT has not expired under A.R.S. § 33-714(A) and under equitable

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[4] As set out in Petitioner's Supplemental Citation of Legal Authority to the Court of Appeals, dated December 6, 2023, a Trustee's Sale of the property was noticed to all parties, and without objection thereafter was conducted, resulting in the Petitioner obtaining title which it still retains.

principles of law remains a valid lien until it expires even if a different statute of limitations precludes an action on the note.

RESPECTFULLY submitted this 3rd day of October, 2024.

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