



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**LEVERAGED LAND CO., L.L.C. AND NORMAN AND CHERYL
MONTGOMERY v. MICHAEL HODGES AND DAVID CAIN
CV-10-0196-PR**

PARTIES:

Petitioners: Michael Hodges and David Cain

Respondents: Leveraged Land Co., L.L.C., an Arizona Limited Liability Company (“LLC”) and Norman and Cheryl Montgomery, Husband and Wife

FACTS:

This is the third appeal stemming from real property tax lien foreclosures and redemptions.¹ The question on review is whether a plaintiff in a tax lien foreclosure action can recover some or all of its attorney fees incurred in attempting to contest a defendant’s prior redemption. The underlying facts are as follows.

In June 2005, after Hodges was served with notice by publication of a tax lien redemption foreclosure, a default judgment was entered in favor of LLC, and it took title to Hodges’s land. LLC subsequently sold the land to Raven. In 2007, Raven conveyed a partial interest in the property to Bingham.

In November 2005, Hodges moved to set aside the default because he claimed he was not properly served. He also moved for a new trial, arguing he was able to redeem the tax lien by paying the taxes he owed on the property. The trial court denied the motions. On appeal, the court of appeals held that service on Hodges was appropriate, but it found the trial court erred in denying the motion for a new trial because Hodges timely showed he was able to redeem the tax liens. The court sent the case back to the trial court to allow him to do so.

Hodges ultimately redeemed the liens, and LLC filed a complaint against him, challenging the validity of the redemption. The trial court granted partial judgment for Hodges and dismissed the claims in LLC’s complaint. LLC appealed, and the court of appeals affirmed.

While *Hodges II* was pending, Hodges asked the court to quiet title to the property in Cain, Hodges’s successor in interest. The court granted the motion, but it also required Hodges and Cain to pay \$1,500 of LLC’s attorney fees pursuant to A.R.S. § 42-18206, which provides that a

¹ See generally *Leveraged Land Co. v. Hodges (Hodges II)*, No. 2 CA-CV 2009-0057 (memorandum decision filed Sept. 24, 2009); *Leveraged Land Co. v. Hodges (Hodges I)*, No. 2 CA-CV 2006-0210 (memorandum decision filed Aug. 8, 2007).

person who redeems a piece of property after a foreclosure action has been commenced, and who has been served with process in the foreclosure action, “judgment shall be entered [for] the plaintiff against the person for the costs incurred by that plaintiff, including reasonable attorney fees determined by the court.”

LLC challenged the attorney fee award of \$1,500, asserting the amount was not “reasonable” under the statute. The majority noted LLC clearly had the right to ensure Hodges's redemption claim was valid, and the statute clearly entitled it to reasonable attorney fees incurred in contesting that issue. It concluded that the trial court abused its discretion by awarding, without explanation, only \$1,500 when LLC’s application for attorney fees and supporting affidavit established significantly more fees than that had been incurred. At some point in the proceedings, however, “it arguably became apparent to all concerned not only that Hodges had a right to redeem the property, but also that LLC’s further resistance was unreasonable.” Because § 42-18206 requires recovery of only reasonable fees, the majority sent the case back to the trial court to determine the extent to which it was unreasonable for LLC to pursue its position.

The majority explained that the trial court need not find LLC’s legal positions frivolous or baseless to conclude the fees it incurred advancing or defending those positions were unreasonable. Instead, it must determine whether LLC’s objections to Hodges’s attempt to redeem were sufficiently reasonable and meritorious to justify expenditure of the fees LLC claimed. While the trial court has considerable discretion to determine an appropriate fee award, nothing in the statute’s language compels the conclusion that attorney fees expended after a specific point in the foreclosure litigation are, in all cases, unrecoverable, as the trial court in this case apparently believed.

Dissenting, Judge Eckerstrom disagreed with the majority’s construction of §42-18206. He believed the term “reasonable attorney fee” is vague and found the majority’s interpretation inconsistent with the overall statutory scheme, which strikes a balance that both encourages the purchase of tax liens, thereby ensuring the State receives the taxes it is owed, while at the same time providing opportunity for property owners to retain their property by redemption. In the context of this scheme, the purpose of the attorney fee provision in §42-18206 is apparent: to make tax lien holders whole for any legal fees they incurred in taking the steps necessary to foreclose before the property owner demonstrated, by taking specific statutory steps, the ability and intent to redeem. Thus, §42-18206 should be interpreted to allow the tax lien holder to recover from the redeeming property owner only necessary fees and costs that could have been spared if the property owner had redeemed the property earlier. In his view, the majority's broad interpretation of §42-18206 upset the statute’s delicate balance.

ISSUES:

1. Can a plaintiff in a tax lien foreclosure action under A.R.S. § 42-18201 be awarded fees under A.R.S. § 42-18206 for the attorney fees incurred in discretionary litigation attempting to contest a defendant’s prior redemption?

2. Does contesting redemption performed pursuant to the lower court's order under mandate constitute "reasonable attorney fees" under A.R.S. § 42-18206?
3. Can a plaintiff recover attorney fees under A.R.S. § 42-18206 which were incurred after redemption?
4. Are legal fees incurred pursuing unsuccessful legal arguments "reasonable" [under] A.R.S. § 42-18206?

This Summary was prepared by the Arizona Supreme Court Staff Attorneys' Office solely for educational purposes. It should not be considered official commentary by the Court or any member thereof or part of any brief, memorandum, or other pleading filed in this case.