

THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN THE ARIZONA TAX COURT

TX 2015-000450

04/14/2017

HONORABLE CHRISTOPHER WHITTEN

CLERK OF THE COURT
T. Cooley
Deputy

SUNRUN INC

LOGAN VINCENT ELIA

v.

ARIZONA DEPARTMENT OF REVENUE, et al. MACAEN MAHONEY

MARTIN JAMES BRENNAN
WILLIAM J KEREKES
DAVID W KRULA
PETER MUTHIG
ELDA E ORDUNO

MINUTE ENTRY

The Court has considered Yavapai County's Motion to Dismiss, filed February 8, 2017, Plaintiff's Response, filed February 22, 2017, Yavapai County's Reply, filed February 28, 2017, and Plaintiff's Sur-reply, filed March 24, 2017.

The Court has also considered the following joinders to Yavapai County's motion: Yuma County's, filed February 15, 2017; Cochise County's, filed March 1, 2017; Maricopa County's, filed March 2, 2017; and Pima County's, filed March 10, 2017.¹

The Court benefited from oral argument on the motion on April 13, 2017.

It was not necessary for the Defendants to make a special appearance. An objection under Rule 12(b)(2) may be made by motion or pleading. *D.W. Onan & Sons v. Superior Court*, 65 Ariz. 255, 259 (1947). The language of Rule 12(b) was not changed by the recent revision of the

¹ The Court refers to all of the moving Defendants as the Counties.

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Rules of Civil Procedure, so existing case law remains authoritative. ARCP, Prefatory Comment to the 2017 Amendments.

To summarize a record full of missed deadlines:

First Missed Deadline to Serve

On December 15, 2015, Plaintiff filed a Complaint and Notice of Property Tax Appeal for tax year 2015. The litigation languished with no activity at all until November 2016, when Plaintiff filed some procedural motions, including a November 14, 2016 Motion to Extend the Time to Serve Defendants. The reason offered for the failure to timely serve the Defendants was that Plaintiff's counsel had confused service in this case with service in four related cases.

The State responded to the Motion to Extend and filed therewith a Motion to Dismiss. The Court found good cause for the delay and granted Plaintiff's motion to extend, setting the new deadline to serve the Defendants on November 21, 2016.

Second Missed Deadline to Serve

On November 21, 2016 Plaintiff sent pleadings to all the Defendants by certified mail, but the pleadings were not the correct ones. They related to another case, making that service invalid.

Plaintiff learned of its mistake on December 27, 2016, when it was pointed out in the State's Reply brief in support of its Motion to Dismiss. On January 4, 2017 Plaintiff acknowledge the "envelope stuffing" error and filed another Motion for Extension of Time for Service of Process. The Court denied the State's Motion to Dismiss.²

Third Missed Deadline to Serve

Plaintiff was made aware of the "envelope stuffing" error on December 27, 2016. On that date it knew or should have known that it had not effectively served its December 15, 2015 Complaint and Notice of Property Tax Appeal on any of the Defendants.

² The Court did not reset the deadline for service of process at that time, as it believed that the State had received actual notice of the Plaintiff's December 15, 2015 Complaint and Notice of Property Tax Appeal. No other party had been served at that time, and therefore no other party raised the issue of the sufficiency of process as to it.

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The Plaintiff's Complaint and Notice of Property Tax Appeal was not mailed to the Counties by certified mail until January 23, 2017 and not received by them until January 25, 2017.

Rule 4(i), Arizona Rules of Civil Procedure

The legislature has power to provide for the procedure to be followed in an appeal from the BOE to the Tax Court. *Pima County v. State Dept. of Revenue*; 114 Ariz. 275, 278 (1977). A.R.S. § 42-16209(A) contains that procedure. Rule 4(i) may provide illumination, but does not prevail over conflicting terms in the statute.

The Counties' Waiver

At the time of oral argument on the December motion to extend time, service of process on the counties was insufficient. Completion of service of process is the event that brings the defendant within the jurisdiction of the court. *Postal Instant Press, Inc. v. Corral Restaurants, Inc.*, 186 Ariz. 535, 537 (1996). The counties had no obligation, and legally no right to, participate in the briefing on that motion. Their interests were not being represented by the Department.

Cause for the Missed Deadlines

Turning now to the main issue, a tax appeal must be served on the affected government within 10 days after filing. A.R.S. § 42-16209(A). The case law allows the Court to extend the time to serve, but only if the failure is due to either just cause or excusable neglect. *Maricopa County v. Arizona Tax Court*, 162 Ariz. 64, 70. (App. 1989).

The Plaintiff's Complaint and Notice of Property Tax Appeal should have been served within ten days of December 15, 2015. That deadline was missed by many months, but the Court found that counsel's confusion with four other cases was excusable neglect and reset the deadline to November 21, 2016. There was good cause for the first delay in service.

There was good cause for the second delay in service. The delay from November 21, 2016 until Plaintiff's discovery on December 27 that the State had been served with the wrong documents has already been found to be excusable neglect (envelope stuffing confusion).

There was not good cause for the third delay in service. From December 27, 2016 through January 25, 2017 the failure to remedy the insufficient service of process was no longer a matter of neglect. Plaintiff made a strategic choice. It wanted to have a court order in hand before attempting to serve the Counties. There is no reason a court order was needed to cure the

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insufficiency of service of process. The counties could have challenged its adequacy, but that issue would exist whenever the cure was made. There was no reason why Plaintiff could not have sent out the correct Complaint and Notice of Property Tax Appeal on December 28, 2016.

Accordingly, the Counties' Motion to Dismiss is granted.