

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

TX 2023-000169

04/17/2024

HONORABLE SARA J. AGNE

CLERK OF THE COURT  
J. Holguin  
Deputy

MARSHALL FOUNDATION

JODI A BAIN

v.

PIMA COUNTY

JAVIER A GHERNA

JUDGE AGNE

MINUTE ENTRY

The Court has received and reviewed Defendant Pima County's Motion to Dismiss, filed December 21, 2023 ("Motion"), as well as subsequent filings related thereto. The Court has considered the filings and arguments of the Parties, the relevant authorities and applicable law, as well as the entire record of the case. The Court can decide the issues raised without oral argument, and so declines Plaintiff's request for the same, and therefore vacates the argument previously set. *See* L.R. Prac. Superior Ct.—Civ., Maricopa County, 3.2(d).

Plaintiff Marshall Foundation filed its Complaint and Notice of Property Tax Appeal on August 28, 2023 ("Complaint"), for the 2024 tax year. (Compl., filed August 28, 2023.) The Summons and Complaint were served on Dana Morales, Special Administrative Assistant, on September 5, 2023. (Certificate of Service, filed September 7, 2023.) Plaintiff delivered the Summons and Complaint to 115 N. Church Avenue, Suite 231, which is the Pima County Administration building. (Mot., Exh. A at ¶¶5–6.) The address for the Clerk of the Board of Supervisors is 33 North Stone Avenue, Suite 100 (the "Stone Address"). (Mot., Exh. A at ¶7.)

Pima County Supervising Attorney for the Tax Unit, Land Use & Environmental Unit, in the Civil Division, James Rappaport, requested copies of the served documents from Plaintiff's counsel on October 19, 2023. (Resp. to Mot. to Dismiss, filed January 29, 2024, Exh. 2, at 7; *see* Notice of Errata, filed January 30, 2024.) On October 23, 2023, Defendant requested Plaintiff serve the Clerk of the Board of Supervisors. (Resp., Exh. 2, at 5.) Plaintiff delivered the

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

TX 2023-000169

04/17/2024

pleadings to the Stone Address on November 20, 2023. (Certificate of Service, filed November 22, 2023.)

According to A.R.S. § 42-16209, “[a] copy of the notice of appeal shall be served on the defendant or defendants within ten days after filing in the manner provided for service of process in the rules of civil procedure or by certified mail.” Service on a county is done by delivering a copy of the Summons and Complaint to the Clerk of the Board of Supervisors. Ariz. R. Civ. P. 4.1(h)(2).

Defendant contends that Plaintiff failed to complete service pursuant to A.R.S. § 42-16209 on the Clerk of the Board of Supervisors, and as a result, Plaintiff’s Complaint should be dismissed. (*See generally* Motion.) Plaintiff contends that the Court can extend the statutory deadline based on good cause and excusable neglect. (Resp., at 8–9.) The Court agrees. *Cf. Allstate Ins. Co. v. O’Toole*, 182 Ariz. 284, 287 (1995) (“Whenever possible, procedural rules should be interpreted to maximize the likelihood of a decision on the merits.”).

In *Maricopa County v. Arizona Tax Court*, 162 Ariz. 64, 66 (App. 1989), taxpayers filed two appeals from real property valuations on November 1, 1988. The notice of appeal in each action was sent by certified mail to the Maricopa County Attorney’s Office. *Id.* Neither notice of appeal was served on the Maricopa County Board of Supervisors prior to November 11, 1988. *Id.* Maricopa County filed motions to dismiss both actions on November 29, 1988. *Id.* On December 12, 1988, taxpayers sent the notices of appeal to the Clerk of the Board of Supervisors via certified mail prior to filing their responses to the motions to dismiss. *Id.*

The Court of Appeals found excusable neglect and good cause for extending the time to complete service. *Id.* at 70. “[B]y analogy to Rule 6(b), the court could grant an extension of time in which the plaintiff could accomplish proper service upon a showing of good cause. Where the plaintiff’s failure to accomplish proper service was the result of excusable neglect, the court could grant such an extension even after expiration of the ten-day period.” *Id.*

Here, Plaintiff delivered the pleadings to the Stone Address for the Clerk of the Board of Supervisors after it became aware of the issue regarding the mistaken address. (Certificate of Service, filed November 22, 2023; Resp., at 10.) Plaintiff contends that conflicting information exists for the address of the Clerk of the Board of Supervisors. (Resp., at 2–4.) Plaintiff also contends that it was reasonable to serve the Church Avenue address for the Clerk of the Board after counsel called to confirm the address for service. (Resp., at 2, 9.)

“In determining whether to grant a discretionary extension, courts have considered several factors, including whether: (1) the applicable statute of limitations bars the plaintiff from

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

TX 2023-000169

04/17/2024

re-filing the action; (2) the defendant evaded service; and (3) the defendant would be prejudiced if the court grants the extension.” *Sholem v. Gass*, 248 Ariz. 281, 290 ¶42 (2020).

Here, two of the three factors favor granting an extension for service. Plaintiff acknowledges that it cannot refile its complaint based on the statutory deadlines set out in A.R.S. § 42-16201(B). (Resp., at 9.) In addition, Plaintiff filed actions for the 2022 tax year (TX2022-000024) and 2023 tax year (TX2022-000356). (Mot., at 2.) Given that this is the third tax year in an ongoing valuation dispute, Defendant is not prejudiced by the Court granting an extension until November 20, 2023, for the case related to this tax year.

Therefore,

**IT IS ORDERED granting** Plaintiff an extension to serve Defendant until November 20, 2023, when statutory service was accomplished.

**IT IS FURTHER ORDERED denying** Defendant Pima County’s Motion to Dismiss, filed December 21, 2023.

**IT IS FURTHER ORDERED vacating** oral argument set April 25, 2024.

**IT IS FURTHER ORDERED** that Defendant comply with Rule 12(a)(2)(A), Ariz. R. Civ. P., within the timeframe set by that Rule.

**IT IS FURTHER ORDERED** that the Parties comply with Rule 16(b) and (c), Ariz. R. Civ. P., during the timeframes prescribed by rule.