

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

TX 2016-000009

05/23/2017

HONORABLE CHRISTOPHER WHITTEN

CLERK OF THE COURT

T. Cooley

Deputy

KERRY HEES, et al.

LEONARD W ARAGON

v.

MARICOPA COUNTY ASSESSORS OFFICE, et al. KATHLEEN ANN PATTERSON

MINUTE ENTRY

The Court has considered Defendant's Motion to Dismiss, filed January 13, 2017, Plaintiffs' Response, filed February 21, 2017, and Defendant's Reply, filed March 6, 2017.

The timeline of relevant events is this:

October 1, 2014	Notice of claim on behalf of Plaintiffs and 21,800 other property owners
March 19, 2015	Amended notice of claim on behalf of same people
October 29, 2015	SBOE holds hearing
November 20, 2015	SBOE mails decision denying Plaintiffs' and class claims
January 19, 2016	Class Action Petition filed; Assessor's Office only named Defendant
January 22, 2016	Class Action Petition served on Assessor's Office, not on County
February 10, 2016	Assessor files motion to dismiss as being non-jural entity
May 19, 2016	Plaintiffs file motion to amend to name County as defendant
June 23, 2016	First Amended Class Action Petition filed, naming County
September 1, 2016	Summons and Amended Class Action Petition served on County

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To perfect a tax appeal, a taxpayer must name and serve the proper defendants. *Pesqueira v. Pima County Assessor*, 133 Ariz. 255, 257 (App. 1982). At the time this action was filed, there were two ways to serve the summons and complaint upon a county: service upon every member of the Board of Supervisors or service upon the clerk of the Board. *Falcon ex rel Sandoval v. Maricopa County*, 213 Ariz. 525, 528 ¶ 16 (2006). (The recent revision to what is now Rule 4.1(h)(2) eliminated the rarely-used option of serving the entire board; now, the clerk must be served.) Plaintiffs instead served the County Assessor's Office. Plaintiffs were aware by March 8, 2016, when they conceded the point in their response to the assessor's motion to dismiss, that Maricopa County was the proper party to be served. On June 23, 2016, they filed their First Amended Class Action Petition. Yet proper service was not made on the County until September 1, 2016, more than six months after recognizing the need to bring the County into the case and more than two months after filing the amended complaint. A.R.S. § 42-16209(A) requires that a copy of the notice of appeal be served within ten days after filing.

Here, more than two months elapsed from the date of filing the Amended Class Action Petition, and much more from the date Plaintiffs realized that the County was the proper party. Merely submitting an e-filing via TurboCourt is not an adequate for of service, first because neither Rule 4.1(h) nor A.R.S. § 42-16209 so declares it, and second because non-parties are not routinely notified of e-filings; the Clerk's office can hardly be expected to discern who should have been named a party but was not. That the Assessor was represented by an attorney who also represents the County is also not adequate. As the Court commented at oral argument, even if the attorney is known to represent the appropriate party, service on the attorney satisfies neither the Rule nor *Falcon*.

The Court sees no basis for excusable neglect. That the relevant county is the proper party to a tax appeal has been established law since *Pesquiera, supra*; that the Clerk of the Board of Supervisors (or the entire Board) is the proper person to be served has been established law since *Falcon, supra*. Plaintiffs' failure to perfect service until some seven months after realizing their mistake in naming the wrong party goes beyond excusability. Compare *E.C. Garcia & Co., Inc. v. Arizona State Dept. of Revenue*, 178 Ariz. 510, 514-15 (App. 1993) (plaintiff taxpayers failed to demonstrate proper service); and contrast *Maricopa County v. Arizona Tax Court*, 162 Ariz. 64, 70 (App. 1989) ("uncertain state" of law when action commenced allowed finding of excusable neglect), and *Ellman Land Corp. v. Maricopa County*, 180 Ariz. 331, 340 (App. 1994) (excusable neglect may be found where law is "particularly muddled and confusing"). The appeal is therefore abated. *Arizona Tax Court, supra* at 70. Accordingly,

IT IS ORDERED granting Defendant's Motion to Dismiss.