

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

TX 2006-000395

05/17/2007

HON. THOMAS DUNEVANT, III

CLERK OF THE COURT  
S. Brown  
Deputy

SUNRISE MOUNTAIN DEVELOPMENT  
PARTNERS LLC

DONALD P ROELKE

v.

MARICOPA COUNTY

RACHELLE Z LEIBSOHN

**UNDER ADVISEMENT RULING**

**(Plaintiff's Motion To Enlarge Time For Service Of Process and Defendant's Motion To Dismiss)**

Plaintiff filed an appeal of its 2007 property taxes on December 15, 2006. A.R.S. § 42-16209(A) requires that property tax appeals be served on the taxing entity within ten days of filing which did not occur in this case. Counsel's account of what happened is set forth in his brief.

Plaintiff asserts that the ten day period for service obsolete. The Court cannot agree. The legislature reenacted that requirement in its overhaul of Title 42 in 1997, and is presumed to be aware that other provisions of that overhaul affected the timing of tax appeals. It must therefore be honored. It is a well-established principle that specific statutory provisions override the general provisions of the Rules of Civil Procedure, even when the latter were more recently enacted. *Arizona Corp. Comm'n v. Catalina Foothills Estates*, 78 Ariz. 245, 247 (1954); *Phoenix of Hartford, Inc. v. Harmony Restaurants, Inc.*, 114 Ariz. 257, 258 (App. 1977). Here, the statute (1997) was enacted more recently than the current version of Rule 4(i) (1991). Nonetheless, applying the prior version of Section 16209, the Court of Appeals has allowed the time limit to be enlarged for excusable neglect. *Maricopa County v. Arizona Tax Court*, 162 Ariz. 64, 70 (App. 1989). This Court follows that precedent in applying the new law. However, Plaintiff's reliance on Rule 4(i) is misplaced. The Court of Appeals did not hold that the time

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limits of Rule 4(i) apply to tax appeals; rather, it *analogized* the statutory ten-day service deadline to the 120-day limit of Rule 4(i), then analogized the allowable remedy to that of Rule 6(b). *Id.* The court recognized excusable neglect as the only basis on which an extension to the Section 16209 time limit may be granted. The delay in this case was not, or at least was not wholly, the result of excusable neglect. (Even were the Court to apply the broader language of Rule 4(i), it questions the applicability of *Maher v. Urman*, 211 Ariz. 543 (App. 2005). In that Division Two case, the court expressly acknowledged the conflict with Division One case law in its interpretation of Rule 4(i). *Id.* at 547 ¶ 9 (*disagreeing with Toy v. Katz*, 192 Ariz. 73, 82 n.1 (App. 1997)). This case is governed by Division One precedent, and the Court is not convinced that Division One would lay aside its earlier position as *mere dictum*. *Toy* recognized as grounds for enlargement only good cause and such extenuating circumstances as compel the court in the interest of justice to allow extra time. 192 Ariz. at 84. No such compelling circumstance exists here. At best, the delay to assess the legal situation resulted from a desire not to spend the client's money on a case that might be dismissed; the cost of effecting service, however, is not so great as to raise that laudable desire to the necessary level of extenuation.)

Regardless of whether the initial oversight could qualify as excusable neglect, the subsequent delay for the purpose of assessing the client's options cannot. The equitable grace period is therefore not available.

Therefore, IT IS ORDERED:

1. The County's Motion to Dismiss is granted.
2. Plaintiff's Motion To Enlarge The Time For Service Of Process is denied.
3. Plaintiff's oral Motion For Relief Under The Savings Statute is denied.