

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2017-015022

06/06/2018

HONORABLE KERSTIN LEMAIRE

CLERK OF THE COURT
C. Ramirez
Deputy

AGRITOPIA RESIDENTIAL NEIGHBORHOOD PHILIP N BROWN
OWNERS ASSOCIATION INC

v.

MABLE E GRAHAM

JONATHAN A DESSAULES

MINUTE ENTRY

The court has considered the fully briefed "Defendant Mable E. Graham's Motion to Dismiss" filed April 27, 2018. The Court has reviewed the legal file in this matter and has considered the applicable case law, statutes and rules of court.

Defendant moves to dismiss claiming that she was never properly served as she lives alone and the process server left the paperwork with someone else in the home. Given that motions to dismiss are generally disfavored, this court will make all inferences in favor of the non-moving party. In addition, the court notes that as the return of service was by a duly appointed process server, it may only be impeached by clear and convincing evidence. *General Electric Capital Corporation v. Osterkamp*, 172 Ariz. 191 (App. 1992). In reviewing the affidavit of service, the court notes that the process server left the paperwork with someone who confirmed residing at the home but who refused to give her name. The court will find, for purposes of this motion only, that alternate service upon someone who resides in the residence and is of a suitable age was achieved.

IT IS ORDERED denying Defendant Mable E. Graham's Motion to Dismiss.