

No. **1310400**

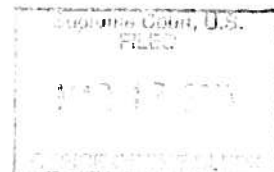
ORIGINAL

IN THE SUPREME COURT OF THE UNITED STATES

BOBBY CHEN
Petitioners,

V.

**MAYOR & CITY COUNCIL OF
BALTIMORE**
100 N. Holliday Street, Room 101
Baltimore, Maryland 21202 *



And

MICHAEL BRAVERMAN *
Department of Housing and Community
Development of Baltimore City *
417 E. Fayette Street
Baltimore, Maryland 21202 *

And

JEROME J. DORICH, JR.
Department of Housing and Community
Development of Baltimore City *
417 E. Fayette Street
Baltimore, Maryland 21202 *

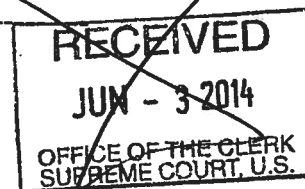
And

WILLIAM BOLDEN *
Department of Housing and Community
Development of Baltimore City *
417 E. Fayette Street
Baltimore, Maryland 21202

And *

P&J CONTRACTING COMPANY, INC.
3010 Ridgewood Avenue
Baltimore, Maryland 21215,
Respondents

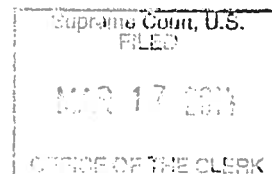
On Petition for a Writ of Certiorari
to the United States Court of Appeals for the Fourth Circuit



1310400

No.

ORIGINAL



IN THE
SUPREME COURT OF THE UNITED STATES

BOBBY CHEN — PETITIONER
(Your Name)

BALTIMORE CITY, VS.
MICHAEL BRAVERMAN, ET AL — RESPONDENT(S)

MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

The petitioner asks leave to file the attached petition for a writ of certiorari without prepayment of costs and to proceed *in forma pauperis*.

☒ Petitioner has previously been granted leave to proceed *in forma pauperis* in the following court(s):

U.S. COURT OF APPEALS, 4TH CIRCUIT

☐ Petitioner has **not** previously been granted leave to proceed *in forma pauperis* in any other court.

Petitioner's affidavit or declaration in support of this motion is attached hereto.

Bobby Chen
(Signature)

1310400

ORIGINAL

AFFIDAVIT OR DECLARATION IN SUPPORT OF MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

I, BOBBY CHEN, am the petitioner in the above-entitled case. In support of my motion to proceed *in forma pauperis*, I state that because of my poverty I am unable to pay the costs of this case or to give security therefor; and I believe I am entitled to redress.

1. For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

Supreme Court, U.S.
FILED
MAR 17 2017
CLERK

Income source	Average monthly amount during the past 12 months		Amount expected next month	
	You	Spouse	You	Spouse
Employment	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>NONE</u>
Self-employment	\$ <u>700.00</u>	\$ <u>0</u>	\$ <u>700.00</u>	\$ <u>0</u>
Income from real property (such as rental income)	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
Interest and dividends	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
Gifts	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
Alimony	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
Child Support	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
Retirement (such as social security, pensions, annuities, insurance)	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
Disability (such as social security, insurance payments)	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
Unemployment payments	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
Public-assistance (such as welfare)	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
Other (specify): _____	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
Total monthly income:	\$ <u>700.00</u>	\$ <u>0</u>	\$ <u>700.00</u>	\$ <u>0</u>

2. List your employment history for the past two years, most recent first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
BOBBY CHEN	39-15 Janet PL	4/2013 ~ 5/2014	\$ 700.00
BOBBY CHEN	132-29 POPLER ST.	4/2012 ~ 4/2013	\$ 600.00

3. List your spouse's employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
N/A			\$
			\$
			\$

4. How much cash do you and your spouse have? \$300.00
Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Financial institution	Type of account	Amount you have	Amount your spouse has
		\$	\$
		\$	\$
		\$	\$

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

☐ Home
Value NONE

☐ Other real estate
Value NONE

☐ Motor Vehicle #1 NONE
Year, make & model _____
Value _____

☐ Motor Vehicle #2
Year, make & model NONE
Value _____

☐ Other assets
Description NONE
Value _____

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

Person owing you or your spouse money	Amount owed to you	Amount owed to your spouse
<u>N/A</u>	\$ _____	\$ _____
_____	\$ _____	\$ _____
_____	\$ _____	\$ _____

7. State the persons who rely on you or your spouse for support.

Name	Relationship	Age
<u>N/A</u>	_____	_____
_____	_____	_____
_____	_____	_____

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, or annually to show the monthly rate.

	You	Your spouse
Rent or home-mortgage payment (include lot rented for mobile home)	\$ <u>350</u>	\$ <u>0</u>
Are real estate taxes included? <input type="checkbox"/> Yes <input type="checkbox"/> No		
Is property insurance included? <input type="checkbox"/> Yes <input type="checkbox"/> No		
Utilities (electricity, heating fuel, water, sewer, and telephone)	\$ <u>0 (Landlord pay)</u>	\$ <u>0</u>
Home maintenance (repairs and upkeep)	\$ <u>0</u>	\$ <u>0</u>
Food	\$ <u>160</u>	\$ <u>0</u>
Clothing	\$ <u>12</u>	\$ <u>0</u>
Laundry and dry-cleaning	\$ <u>6</u>	\$ <u>0</u>
Medical and dental expenses	\$ <u>0 (insurance company pay)</u>	\$ <u>0</u>

	You	Your spouse
Transportation (not including motor vehicle payments)	\$ 18	\$ 0
Recreation, entertainment, newspapers, magazines, etc.	\$ 0	\$ 0
Insurance (not deducted from wages or included in mortgage payments)		
Homeowner's or renter's	\$ 0	\$ 0
Life	\$ 0	\$ 0
Health	\$ 105	\$ 0
Motor Vehicle	\$ 0	\$ 0
Other: _____	\$ 0	\$ 0
Taxes (not deducted from wages or included in mortgage payments)		
(specify): _____	\$ 45	\$ 0
Installment payments		
Motor Vehicle	\$ 0	\$ 0
Credit card(s)	\$ 0	\$ 0
Department store(s)	\$ 0	\$ 0
Other: _____	\$ 0	\$ 0
Alimony, maintenance, and support paid to others	\$ 0	\$ 0
Regular expenses for operation of business, profession, or farm (attach detailed statement)	\$ 0	\$ 0
Other (specify): _____	\$ 0	\$ 0
Total monthly expenses:	\$ 696	\$ 0

9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?

☐ Yes ☒ No If yes, describe on an attached sheet.

10. Have you paid – or will you be paying – an attorney any money for services in connection with this case, including the completion of this form? ☐ Yes ☐ No

If yes, how much? _____

If yes, state the attorney's name, address, and telephone number:

11. Have you paid—or will you be paying—anyone other than an attorney (such as a paralegal or a typist) any money for services in connection with this case, including the completion of this form?

☐ Yes ☐ No

If yes, how much? _____

If yes, state the person's name, address, and telephone number:

12. Provide any other information that will help explain why you cannot pay the costs of this case.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: 5/20/2014, 20__


(Signature)

PETITION FOR A WRIT OF CERTIORARI

BOBBY CHEN
39-15 Janet Place
Flushing, New York 11354
bobchen344@yahoo.com
March 15, 2014

QUESTION PRESENTED

Congress enacted the Federal Rule of Civil Procedure 4(m) of 1993 (See 3b), stating that if a defendant is not served within 120 days after the complaint is filed, the court can either dismiss the action or extend the service time, but if the plaintiff shows good cause for the failure, the court must extend the time for service. However, the court below has issued directly conflicting judgment about the Rule 4(m)'s mandate.

The question presented is whether the court below erroneously held, in conflict with the Rule 4(m) and the decisions of other circuits, that the court must dismiss the case if a defendant is not served within 120 days no matter what is the plaintiff's reason?

Secondly, the question presented is whether a district judge can untimely vacate the already executed order without valid reason? The Court issued an order to extend 60 days for plaintiff to effect service. The Plaintiff completed the service within the extension period. Then the Court vacated the extension order and dismissed the case without new reason. What is the Court's credit? If this judgment is affirmed, other judges may follow it. Then all previous order or judgments can be vacated in very later stage. Such as, when plaintiff win a jury trial, defendants can asking vacate a previous extension order and dismiss the case. All proceeding will become uncertainty. whether a plaintiff's constitutional right is violated if a district judge ignore the law and violate the rule by his discretion.

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

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PETITION FOR A WRIT OF CERTIORARI

Bobby Chen respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit in this case.

OPINIONS BELOW

The opinion of the Court of Appeals for the Fourth Circuit is unpublished, but is available at APPENDIX A and B. The judgment opinion of the District Court for the Northern District of Maryland is not yet reported in the Federal supplement, but is available at APPENDIX C.

JURISDICTION

The Fourth Circuit entered rehearing decision on December 16, 2013. The time for filing a petition in the Supreme Court is 90 days so the deadline is March 16, 2014 (February had only 28 days). However, March 16, 2014 is the Sunday, so the deadline to file the petition will be March 17, 2014. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The appendix reproduces the Constitution's Clause, Necessary and Proper Clause, and Tort of land Clause. It also reproduces the Federal Rule of Civil Procedure 4 (m).

STATEMENT OF THE CASE

1. Background

Plaintiff, homeowner Bobby Chen, avers that after he came back from a trip he found his house was demolishing and all his personal belonging had disappeared. He was surprised, shocked, depressed and sad but could do nothing.

On or about November 12, 2008, the Department of Housing and Community Development of Baltimore City razed Plaintiff's residential property without notice and an opportunity for a pre-deprivation, adversarial hearing, in order to conceal the damage to Plaintiff's property caused during the demolition of an adjacent property owned by the Mayor & City Council of Baltimore. There was neither valid reason nor Court proceeding for the demolishing. It violated both state law and the Due Process clause of the United States Constitution. Goldberg v. Kelly, 397 U.S. 254 (1970).

2. Facts

Petitioner, Bobby Chen, went to the district Court in Baltimore and filed complaint. Meanwhile, he asked clerk to sign the prepared Summons. He planned to give the Summonses to a process service in Baltimore to serve them on defendants that same day. However, he was unable to get the summons at the office. He was told that the Summons will be signed later and mailed to him because he was a *pro se* rather than a lawyer no matter whether or not the filing fee was paid. Thus, he requested the U.S. Marshal to serve the summons and complaint on the Defendants because he felt it was difficult to control process service through long distance (he lived in New York after the Baltimore home was demolished). Plaintiff had never received summonses, and he thought the U.S. Marshal had served or would serve them on defendants. So he was waiting for the Defendants' answer to the Complaint.

When he received "ORDER TO SHOW CAUSE why his case should not be dismissed" entered March 22, 2012 (See APPENDIX D), Plaintiff was very surprised. Plaintiff called Court clerk's office to ask for details and checked Court documents, and then he found that the Summons was issued on 11/28/2011 and there was an order for processing service. The Plaintiff told the clerk that he wanted to serve the Summons and Complaint on Defendants in the next day, March 27, 2012 by a private process service, because it was still within 120 days from Nov. 28, 2011 which is the date when the summons was issued. He asked clerk to give him the Summons because he did not have them. The clerk told him that he needed show good cause within 21 days and submit a request for a new Summons.

The Appellant/Plaintiff responded the show-cause order, specifically asking the Court to grant an extension "for good cause shown," and the Court issued an Order to Grant of Extension of Time to Effect Service of Process for 60 days on April 16, 2012. (See APPENDIX E, Entries 8 & 9 on the docket). Chen hired process service, Mr. Robinson and Mr. Deng to serve Summons and Complaint on defendants. On June 12, 2012 summons and complaint was served on Defendants, this was before the expiration of the 60 day extension. Actually they were served twice. (See Docket entry 12). On June 21, 2012, judge Russell dismissed the case on his own because he thought the service was not completed yet. But he indicated that The court accepted this as good service and allowed the case to proceed.

3. Proceedings Below

On June 7, 2012, Former chief Judge Benson Everett Legg retired. A new judge, George L. Russell III, from *Baltimore city*, was assigned to handle this case. On July 3, 2012, though having actual notice of the Complaint, rather than answer the Complaint, Municipal Defendants filed a motion to vacate the order issued on April 16, 2012, which

gave Plaintiff Chen 60 days extension. The Plaintiff filed response to the motion, pointed out that the defendants' motion was filed untimely, and it should be denied by local rule 105 (10). Also, the Plaintiff responded all the questions on Defendants' motion. After 6 months waiting, Judge Russell III granted Defendant's motion to vacate the April 16 order and dismissed the whole case.

Petitioner filed a notice of appeal and requested the Fourth circuit to review the case, a panel decided to affirm the order of district court without explaining and analysis. A rehearing was requested and was denied without any explaining. Thus, the only reason for dismissal of the case is district judge's opinion: . the case must be dismissed if summons was not served on defendant within 120 days. A district court has no discretion to extend the service time. So judge Legg's extension order was vacated, and the case should be dismissed.

REASONS FOR GRANTING THE PETITION

I. THE DECISION BELOW CONFLICTS WITH FEDERAL RULE OF CIVIL PROCEDURE.

Federal RULES OF CIVIL PROCEDURE, RULE 4(m) states: " If a defendant is not served within 120 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows *good cause* for the failure, the court must extend the time for service for an appropriate period". In Chen's case, petitioner has very good cause to delay the service. The reasons are as follow:

- a) The Common Principle or common standard of the Good Cause is when some outside factor[s,] such as reliance on faulty device... prevented service." *Prisco v. Frank*, 929 F.2d 603, 604 (11th Cir.1991)
- b) In the instant case, Plaintiff was unable to get summons at the filing room because he was a Pro Se. This is clerk's discrimination. He learned that he could use U.S. Marshal Service. He requested that service by writing because he was not living in Baltimore. He was told that the summons would be issued and mailed later, but he never received the summons. The fact that he did not have the summons is the key for the delay. If he had received the summons, he would have known that Marshal would not do the service for him. Thus, he would serve the summons on the defendants. He did not know pro se cannot receive summons at the same day, using marshal service needs an order and getting a summons needs an order. Conversely, in other Courts, those processes are different.
- c) The clerk might not mail out the summons to Chen because they never prove that.
- d) Even if the summons was mailed to Chen and it was lost by post service, Chen was the victim of the mail lost. That was outside factor prevented him from the service.
- e) Plaintiff had worked hard to diligently prosecute this action as stated above in the Facts. Plaintiff has a strong case and he is a victim of the defendants' violation of the law. He did research and talk to different people about the matter during the period from the first case being dismissed and the second case being filed. This case is very important to Plaintiff so he has spent a lot of time, energy and money. Chen is not a lawyer and has never been trained in the law field. So he spent much more time than a lawyer to litigate this case. His home was demolished by defendants and all personal belonging including

TV, computers, clothing and furniture were stolen by defendants. During the 120 days period, Chen had to work hard for making living. He had to rent a house and buy personal belonging which were necessary for living. Also, he needed struggle to illness. He respected the Court and thought that he should not bother Court when the case is pending. (Later, in January, 2013, he called the court to check the case status because motions had been pending for 5 months. The answer was "waiting for the notice by mail") He trusted Marshal's service. Now it becomes defendant's weapon to dismiss his case.

f) Defendants blamed Chen that he did not seek an extension prior to the lapse of the effective period of the summons. However, the Plaintiff did not know he needs an extension because he thought the U.S. Marshal had completed the service. If he had gotten the summons and the order, he would have served the summons on Defendants before the deadline. If he needed more time, he would seek an extension prior to the lapse of the effective period of the summons. In short, Plaintiff had Good Cause because outside uncontrolled factors prevent him from effecting service, but judge Russell III still dismissed the case, violated the Rule 4(m).

**II THE DECISION BELOW CONFLICTS WITH THEIR PREVIOUS DECISION.
District court CONFLICTS WITH itself:**

a. The Court regarded Plaintiff's cause as a good cause. In the Show Cause Order, the Court ordered the plaintiff show cause why his case should not be dismissed. After Chen showed his cause, the Court stated:" in consideration of the Plaintiff's response...hereby ordered...re-issue summons and granted 60 days" extension (See APPENDIX D and E, page 4a and 5a). That means the Court regarded Chen's reason

as good cause. (Logically, "if one could not show good cause then the case would be dismissed" means "if the case was not been dismissed after show cause, then the cause was good cause", i.e., "if A then B" means "if not B then not A"). Otherwise, the case would be dismissed in April, 2012.

b. Judge Russell III conflict with himself. He admitted that there was a good cause for plaintiff so that the Court gave 60 days extension in his June 21, 2012 order. (See APPENDIX F, page 6a). Judge Russell III thought that Chen did not serve summons on defendants within the 60 extension period, so he dismissed the case. But he admitted that the previous 60 days extension was based on Chen had a good cause. Next day, April 22, 2012, the proof of the services were received by the Court. Thus, Judge Russell III vacated the order entered on June 21, 2012 (See APPENDIX G). However, later, he still dismissed Chen's case, violating Rule 4(m).

c. The Fourth circuit did not take any action to correct judge Russell's error which violated the Rule 4(m). If it is not corrected, in the future, no judge needs to follow the law. A judge can do whatever he want to do even the law does not allowed that.

III THE DECISION BELOW CONFLICTS WITH DECISIONS OF THE THIRD, FIFTH, SEVENTH AND TENTH CIRCUITS ON A FUNDAMENTAL ISSUE OF FEDERAL LAW.

The Fourth Circuit's decision in this case created a conflict with four other circuits in holding that a district court grant a discretionary extension where even there is no good cause followed the Advisory Committee notes: "if a plaintiff fails to show good cause, the district court must still consider whether any additional factors, such as the running of a statute of limitations, would warrant a permissive extension of time", "The district court should also take care to protect *pro se* plaintiffs from consequences of confusion or delay attending the resolution of an *in forma pauperis*". See *Panaras*

v. *Liquid Carbonic Indus. Corp.*, 94 F.3d 338, 341 (7th Cir.1996); *Thompson v. Brown*, 91 F.3d 20, 22 (5th Cir.1996); *Espinoza v. United States*, 52 F.3d 838, 841 (10th Cir. 1995); and *Petrucelli v. Bohringer & Ratzinger, GMHB*, 46 F.3d 1298, 1307-08 (3d Cir.1995). *United States v. Mclaughlin*, 470 F. 3d 698, 700-01(7 Cir. 2006).

IV THE DECISION BELOW CONFLICTS WITH THE SUPREME COURT'S DECISION.

Defendants used Mendez v. Elliott as an example. However, post Mendez, while considering Fed. R. Civ. Pro. 4(m) in Henderson v. United States, 517 U.S. 662 (1996) the Supreme Court stated: "Most recently, in 1993 amendments to the Rules, courts have been accorded discretion to enlarge the 120-day period *even if there is no good cause shown.*" Mendez, decided before the Supreme Court statement, can no longer be a good law.

V THE DECISION BELOW CONFLICTS WITH THE RULE FOR VACATING A COURT ORDER OR JUDGMENT.

In order to vacate Judge Benson Legg's order, Judge Russell must prove judge Legg made mistake i.e. an abuse of discretion rather than just use his own standard to deny a previous validly entered decision. To do anything less is an abuse of Plaintiff's right to due process and a fair hearing.

THIS CASE PRESENTS THE RECURRING QUESTIONS OF EXCEPTIONAL IMPORTANCE WARRANTING THE COURT IMMEDIATE RESOLUTION.

This case raises questions of vital importance to people: whether the court should dismiss plaintiff's action as long as a defendant was not served within 120 days no matter what is

the plaintiff's cause? Whether or not the law allowed courts to extend the service time for plaintiff who fails to meet the 120 days service requirement, even if the plaintiff cannot show good cause for the delay? What is the standard to vacate an already executed order? Whether or not a local judge can vacate a court order without finding that order's error? If a local judge does not follow rule 4(m) and dismisses the case which has a good cause what the higher court can do? The Court issued an order to extend 60 days for plaintiff to effect service. The Plaintiff completed the service within the extension period. Then the Court vacated the extension and dismissed the case. What is the Court's credit? If this judgment is affirmed, other judges may follow it. Then all previous order or judgments can be vacated in very later stage. Such as, when plaintiff win a jury trial, defendants can asking vacate a previous extension order and dismiss the case. Parties and courts will waste a lot of time, money and energy.

THIS COURT SHOULD REVERSE THE FOURTH CIRCUIT'S DECISION

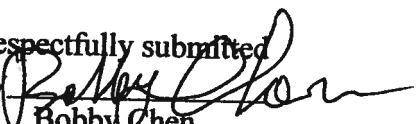
The decision bellow conflicts with FEDERAL RULE OF CIVIL PROCEDURE, conflicts with other circuits decision and Supreme Court's decision, even conflicts with local court's decision. Also, it is a wrong thing for a local judge to violate Federal rule. So the Fourth circuit's decision should be reversed.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted

By


Bobby Chen

1a

**APPENDIX A: Opinion of the United States Court of Appeals for the
Fourth Circuit**

The judgment did not make any analysis or explain the reason why district judge's decision should be affirmed. The 4th circuit was unable to give a valid reason because district judge Russell had no reason to dismiss the case. In order to affirm the order, 4th circuit had to give no explain and issue judgment directly.

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 13-1375

BOBBY CHEN,

Plaintiff - Appellant,

v.

MAYOR & CITY COUNCIL OF BALTIMORE; MICHAEL BRAVERMAN,
Department of Housing and Community Development of
Baltimore City; JEROME J. DORICH, JR., Department of
Housing and Community Development of Baltimore City;
WILLIAM BOLDEN, Department of Housing and Community
Development of Baltimore City; P&J CONTRACTING COMPANY,
INC.,

Defendants - Appellees.

Appeal from the United States District Court for the District of
Maryland, at Baltimore. George L. Russell, III, District Judge.
(1:11-cv-03227-GLR)

Submitted: November 4, 2013

Decided: November 12, 2013

Before WILKINSON, KING, and DUNCAN, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Bobby Chen, Appellant Pro Se. Adam S. Levine, Steven John
Potter, BALTIMORE CITY LAW DEPARTMENT, Baltimore, Maryland;
Kristen Nichole Nesbitt, GOODELL DEVRIES LEECH & DANN, LLP,
Baltimore, Maryland, for Appellees.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Bobby Chen appeals the district court's order dismissing the complaint in this action for failure to effect service of process. We have reviewed the record and find no reversible error. Accordingly, we affirm for the reasons stated by the district court. Chen v. Mayor & City Council of Baltimore, No. 1:11-cv-03227-GLR (D. Md. Feb. 22, 2013). We deny the motion for appointment of counsel, grant leave to proceed in forma pauperis, and dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

FILED: December 16, 2013

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 13-1375
(1:11-cv-03227-GLR)

BOBBY CHEN

Plaintiff - Appellant

v.

MAYOR & CITY COUNCIL OF BALTIMORE ; MICHAEL BRAVERMAN,
Department of Housing and Community Development of Baltimore City; JEROME
J DORICH, JR., Department of Housing and Community Development of
Baltimore City; WILLIAM BOLDEN, Department of Housing and Community
Development of Baltimore City; P&J CONTRACTING COMPANY, INC.

Defendants - Appellees

O R D E R

The petition for rehearing en banc was circulated to the full court. No judge requested a poll under Fed. R. App. P. 35. The court denies the petition for rehearing en banc.

For the Court

/s/ Patricia S. Connor, Clerk

**APPENDIX B: Docket Sheet of U.S. District Court. for the Northern
District of Maryland**

1:11-cv-03227-GLR Chen v. Mayor & City Council of Baltimore et al
History

Doc. No.	Dates	Description
<u>1</u>	Filed: 11/10/2011 Entered: 11/14/2011	Complaint
<u>2</u>	Filed: 11/10/2011 Entered: 11/14/2011	Jury Demand
<u>3</u>	Filed & Entered: 11/17/2011	Order
<u>4</u>	Filed: 11/21/2011 Entered: 11/22/2011	Miscellaneous Correspondence
<u>5</u>	Filed & Entered: 11/28/2011	Order
<u>6</u>	Filed & Entered: 11/28/2011	Summons Issued
<u>7</u>	Filed & Entered: 03/22/2012	Order to Show Cause
<u>8</u>	Filed: 04/11/2012 Entered: 04/12/2012	Response
<u>9</u>	Filed & Entered: 04/16/2012	Order
<u>10</u>	Filed & Entered: 04/16/2012	Summons Reissued
	Filed & Entered: 06/07/2012	Case Assigned/Reassigned
<u>11</u>	Filed & Entered: 06/21/2012	Order Dismissing Case
<u>12</u>	Filed & Entered: 06/22/2012	Summons Returned Executed
<u>13</u>	Filed & Entered: 06/22/2012	Order
<u>14</u>	Filed & Entered: 07/03/2012 Terminated: 02/22/2013	Motion to Dismiss
<u>15</u>	Filed & Entered: 07/05/2012	Rule 12/56
<u>16</u>	Filed & Entered: 07/10/2012	Answer to Complaint
	Filed & Entered: 07/11/2012	Deficiency Notice
<u>17</u>	Filed: 07/20/2012 Entered: 07/23/2012	Response to Motion
<u>18</u>	Filed & Entered: 08/06/2012	Reply to Response to Motion
<u>19</u>	Filed & Entered: 08/07/2012 Terminated: 02/22/2013	Motion for Leave to File
<u>20</u>	Filed & Entered: 08/08/2012	Local Rule 103.3 Disclosure Statement
<u>21</u>	Filed & Entered: 02/22/2013	Memorandum Opinion
<u>22</u>	Filed & Entered: 02/22/2013	Order on Motion to Dismiss
<u>23</u>	Filed & Entered: 03/20/2013	Notice of Appeal
<u>24</u>	Filed & Entered: 03/20/2013	Transmission of Notice of Appeal and Docket Sheet to USCA
<u>25</u>	Filed & Entered: 03/21/2013	USCA Case Number

**APPENDIX C: Order of the United States District Court for the
Northern District of Maryland issued on February 22, 2013**

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

BOBBY CHEN,	:	
	:	
Plaintiff,	:	
	:	
v.	:	
	:	Civil Action No. GLR-11-3227
MAYOR & CITY COUNCIL OF	:	
BALTIMORE, et al.,	:	
	:	
Defendants.	:	
	:	

ORDER

In accordance with the foregoing Memorandum, it is hereby ORDERED that Defendants' Motion to Vacate Grant of Extension of Time to Effect Service of Process and to Dismiss the Complaint (ECF No. 14) is GRANTED. Additionally, Mr. Chen's Motion for Leave to File Surreply (ECF No. 19) is DENIED. The Clerk is directed to MAIL a copy of this Order to Plaintiff at his address of record and CLOSE the case.

SO ORDERED 22nd day of February, 2013

/s/

George L. Russell, III
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

BOBBY CHEN, :
 :
Plaintiff, :
 :
v. : Civil Action No. GLR-11-3227
 :
MAYOR & CITY COUNCIL OF :
BALTIMORE, et al., :
 :
Defendants. :
 :

MEMORANDUM OPINION

THIS MATTER is before the Court on Defendants Mayor and City Council of Baltimore ("City") and individually named City Employees' ("City Employees") (collectively the "Defendants") Motion to Vacate Grant of Extension of Time to Effect Service of Process and to Dismiss the Complaint or, in the Alternative, to Dismiss the Complaint for Insufficient Service of Process. (ECF No. 14). Specifically, Defendants seek to dismiss counts I, II, IV, and V of Plaintiff Bobby Chen's Complaint. Also pending before the Court is Mr. Chen's Motion for Leave to File Surreply to Defendants' Reply. (ECF No. 19).

This case concerns Mr. Chen's allegations that the Defendants negligently, and in violation of the Due Process clause of the United States Constitution, deprived him of his property by razing his building in order to conceal damage caused by City Employees. At its core, however, this case represents yet another chapter in the seemingly never-ending

saga concerning whether, in this circuit, a showing of good cause is required to extend the time for service beyond 120 days.

The issues before the Court are (1) whether the court erred in granting Mr. Chen a sixty-day time extension to effect service of process without requiring a showing of good cause, (2) whether, in the alternative, the Court should grant Defendants' Motion to Dismiss counts II and V of the Complaint against the City Employees due to insufficient service of process, and (3) whether Mr. Chen was afforded sufficient opportunity to contest the matters raised in Defendants' initial Motion.

The issues have been fully briefed and no hearing is necessary. See Local Rule 105.6 (D.Md. 2011). Because Mr. Chen failed to make a showing of good cause in his request to extend the time for service beyond 120 days, the Court will grant Defendants' Motion to Vacate Grant of Extension of Time to Effect Service of Process and to Dismiss the Complaint. Mr. Chen's Motion for Leave to File Surreply will also be denied because Mr. Chen was afforded sufficient opportunity to contest the matters raised in Defendants' initial Motion. Moreover, his Motion betrays his intentions to merely regurgitate old arguments.

I. BACKGROUND¹

A. Factual Background

Mr. Chen is the owner of a residential real property known as 1620 East Chase Street (the "Property"). Mr. Chen alleges he was in the process of rehabilitating the Property when the City, City Employees, and the City's contractor, P&J Contracting Company, Inc. ("P&J"), negligently damaged the Property while razing the adjacent row-house at 1622 East Chase Street, which is owned by the City. According to Mr. Chen, instead of repairing the damage they caused, Defendants determined to conceal their negligence and raze the Property on the pretext that it was an unsafe structure.

B. Procedural Background

Mr. Chen, through legal counsel, first filed this action in 2009. See Chen v. Mayor & City Council of Balt. (Chen I), 1:09-cv-00047 (D.Md. Nov. 19, 2009). After granting Mr. Chen's attorneys' motion to withdraw on August 27, 2009, the Court granted Mr. Chen an extension to file a Rule 16 Conference Statement, and ordered that Mr. Chen submit a status report by September 28, 2009, noting whether he had retained new counsel.

¹ Unless otherwise noted, the following facts are taken from the Complaint and Defendants' Motion to Dismiss. As Defendants' arguments amount to a prototypical procedural challenge, the Court will not belabor the underlying factual background which gave rise to this cause of action. Nevertheless, to provide some context, the Court will delve into a brief recitation of the most salient details.

(Chen I, ECF Nos. 30, 33). The Court also imposed a deadline of October 28, 2009, for Mr. Chen to retain counsel. (Id.) After a second request for extension of time, and because Mr. Chen had failed to inform the Court of a workable address for receipt of notices,² the Court denied the request and dismissed Chen I without prejudice on November 10, 2009. (Chen I, ECF No. 40).

Mr. Chen filed this second action (Chen II) pro se on November 10, 2011, two days prior to what would have been three years from the date of the November 12, 2008 demolition of the Property. (Chen II, ECF No. 1). On November 28, 2011, the Court issued an Order directing the Clerk to prepare summonses and informed Mr. Chen in detail as to the manner in which service could be completed by references to the applicable federal and state rules. (Chen II, ECF No. 5). The Clerk's office mailed the Order and Summonses to Mr. Chen at the address he provided. The mailings were not returned to the Clerk's office as undeliverable.

The 120-day period for service lapsed on March 9, 2012, and on March 22, 2012, the Court issued a Show-Cause Order to Mr. Chen, querying why the case should not be dismissed without

² Pursuant to Local Rule 101.1(b)(ii) (D.Md. 2011), Mr. Chen had a duty to "promptly notify the Clerk of any change of address, including e-mail address, irrespective of any changes noted on a pleading or other document." Under the rule, this obligation is continuing, and the Court may enter an order dismissing any affirmative claims for relief and may enter a default judgment.

prejudice. (Chen II, ECF No. 7). Thereafter, on April 11, 2012, Mr. Chen sought an extension of time to effect service of process. (Chen II, ECF No. 8). In his memorandum, Mr. Chen provided three justifications for his failure to perform service: (1) he claimed he never received the Court's November 28, 2011 Order, or the Summonses; (2) he believed the U.S. Marshal's Office would make service on his behalf; and (3) the statute of limitations would bar his case if it was dismissed. (Chen II, ECF No. 8 ¶¶ 2, 4, 6). Persuaded by Mr. Chen's contentions, on April 16, 2012, the Court issued an Order granting Mr. Chen's request and provided a sixty-day extension to perform service. (Chen II, ECF No. 9). Mr. Chen was forewarned, however, that failure to effect service of process within the sixty-day extension would result in dismissal of his case without prejudice. (Id.)

As evidenced by the record, Mr. Chen made no effort at service of the second Summons until on or about June 12, 2012, just three days prior to its expiration. (See ECF No. 12). As a result of this, and because Mr. Chen did not file any record with the Court evidencing the completion of service by June 12, 2012, the Court dismissed Chen II.³

Defendants now seek to have the case dismissed on grounds that the sixty-day extension requested on April 11, 2012 was

³ Chen II was transferred from Judge Benson E. Legg on June 7, 2012.

improvidently granted, given Mr. Chen's failure to provide good cause for failing to perform service. Alternatively, Defendants contend that, at the very least, the Complaint should be dismissed against the City Employees due to insufficient service.

II. DISCUSSION

A. Standard of Review

Federal Rule of Civil Procedure 4(m) permits dismissal of an action without prejudice "[i]f a defendant is not served within 120 days after the complaint is filed" The rule allows the court to either dismiss on motion or *sua sponte*, after notice to the plaintiff. Fed.R.Civ.P. 4(m). "But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period." Id.

B. Analysis

1. The Status of the "Good Cause" Requirement Within this Circuit

The Court grants Defendants' Motion to Dismiss the Complaint because Mr. Chen failed to make a showing of good cause in his request for a sixty-day extension to perform service.

As a preliminary matter, Mr. Chen argues that Defendants' Motion to Dismiss is untimely because, pursuant to Local Rule 105.10 (D.Md. 2011), Defendants failed to seek reconsideration of the Court's April 16, 2012 Order, within fourteen days of

that Order.⁴ The Court will summarily dismiss this argument, however, because (1) Defendants did not have an opportunity to present their objection to Mr. Chen's request for extension since they were unquestionably not parties to this action during that time frame; and (2) it is well established that, where, as here, the issue of good cause has not had the benefit of adversarial briefing, a grant of an extension is provisional only, and a defendant retains the right to advance a challenge later.⁵

Beyond this preliminary contention, the parties disagree over a basic question: whether precedent established in Mendez v. Elliot, 45 F.3d 75 (4th Cir. 1995), remains good law. Defendants argue that the 120-day limit to effect service is an outer limit and that the district court has no discretion in allowing a time extension beyond that limit absent a showing of good cause. Conversely, Mr. Chen maintains that subsequent case law from the United States Supreme Court, no less, and the United States Court of Appeals for the Fourth Circuit,

⁴ Rule 105.10 states that "[e]xcept as otherwise provided in Fed. R. Civ. P. 50, 52, 59, or 60, any motion to reconsider any order issued by the Court shall be filed with the Clerk not later than fourteen (14) days after entry of the order."

⁵ See Omega U.S. Ins., Inc. v. Pa. Nat. Mut. Cas. Ins. Co., No. ELH-11-2297, 2012 WL 115422, at *5 (D.Md. Jan. 13, 2012) (collecting cases that implicitly support granting plaintiff's motion for extension, while reserving defendant's right to move to vacate the extension as improvidently granted); Hai Xu v. FMS Fin. Solutions, LLC, No. ELH-10-3196, 2011 WL 2144592, at *3 (D.Md. May 31, 2011) (same); Williams v. CompUSA, No. ELH-10-2219, 2011 WL 2118692, at *3 (D.Md. May 27, 2011) (same).

eviscerates the import and authority of Mendez.

In Mendez, the Fourth Circuit held that, under Federal Rule of Civil Procedure 4(m), a district court judge does not have discretion in allowing a time extension beyond the 120-day limit, absent a showing of good cause. Id. at 78-79. By so holding, the Mendez court contradicted every other circuit that had interpreted Rule 4(m) and relied on the erroneous assumption that Rule 4(m) was substantively the same rule as its predecessor, Rule 4(j)⁶. See Hammad v. Tate Access Floors, Inc., 31 F.Supp.2d 524, 526 (D.Md. 1999) ("Among the circuit courts that have addressed this issue, the Fourth Circuit stands alone in holding that Rule 4(m) does not permit a district court to grant the plaintiff a discretionary extension of time to effect service of process."). This assumption, however, is expressly contradicted by the Advisory Committee's Notes to Rule 4(m), which state that:

[t]he new subdivision explicitly provides that the court shall allow additional time if there is good cause for the plaintiff's failure to effect service in the prescribed 120 days, and authorizes the court to relieve a plaintiff of the consequences of an application of this subdivision even if there is no

⁶ Prior to its replacement by Rule 4(m), Rule 4(j) provided that "if a service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint and the party on whose behalf such service was required cannot show good cause why such service was not made within that period, the action shall be dismissed as to that defendant" Fed.R.Civ.P. 4(j) (1988).

good cause shown.

Id. at 527 (quoting Advisory Committee's Notes on 1993 Amendments to Fed.R.Civ.P. 4(m) (emphasis added)).

More significantly, the Supreme Court has had occasion to interpret Rule 4(m) since Mendez. In Henderson v. United States, citing to the Advisory Committee's Notes to the 1993 Amendment to Rule 4, the Supreme Court reasoned that Rule 4(m) permits the district courts to enlarge the time for service "even if there is no good cause shown." 517 U.S. 654, 662 (1996). Although this interpretation was not central to the court's holding in Henderson, some Fourth Circuit courts have viewed it as sufficiently persuasive to consider it authoritative. In refusing to follow Mendez, for example, the court in Hammad stated that:

[i]n light of the Supreme Court's clear explication of the meaning of Rule 4(m) in Henderson to allow discretionary extensions of time for service of process, in conjunction with the other circuit courts' unanimous rejection of the Mendez court's position, this court concludes that Mendez is no longer good law and that, if given the opportunity, the Fourth Circuit perforce would adopt the interpretation of Rule 4(m) held by the Supreme Court and the other circuit courts.

31 F.Supp.2d at 527; accord Melton v. Tyco Valves & Controls, Inc., 211 F.R.D. 288, 289-90 (D.Md. 2002); Coates v. Shalala, 914 F.Supp. 110, 113 (D.Md. 1996).

The district court's analysis is persuasive, to be sure. And in unpublished decisions since Mendez, the Fourth Circuit

has itself appeared to reverse course.⁷ Yet, despite the apparent avalanche of cases within this circuit that question the validity of Mendez,⁸ this Court's most recent decisions affirm the authority of Mendez. See Omega, 2012 WL 115422, at *5 n.2 ("To my knowledge, since Henderson, the Fourth Circuit has not revisited in a reported opinion the issue of good cause in regard to service of process."); Shlikas v. SLM Corp., No. WDQ-09-2806, 2011 WL 2118843, at *3 (D.Md. May 25, 2011) ("Because [plaintiff] has not shown good cause for his failure to effect proper service within the extended deadline, the court must dismiss the action.") (citations omitted); Tenenbaum v. PNC Bank Nat'l Ass'n, No. DKC-10-2215, 2011 WL 2038550, at *4 (D.Md. May 24, 2011) ("[W]hile Mendez may stand on shaky footing, it

⁷ See, e.g., Hansan v. Fairfax Cnty. Sch. Bd., 405 F.App'x 793, 793-94 (4th Cir. 2010) ("The district court must extend the 120-day period if the plaintiff shows good cause for his failure to serve the defendant. Additionally, the district court has discretion to extend the period if the plaintiff can show excusable neglect for his failure to serve." (citations omitted)); Giacomo-Tano v. Levine, No. 98-2060, 1999 WL 976481, at *2 (4th Cir. Oct. 27, 1999) ("Even if a plaintiff does not establish good cause, the district court may in its discretion grant an extension of time for service."); Scruggs v. Spartanburg Reg'l Med. Ctr., No. 98-2364, 1999 WL 957698, at *2 (4th Cir. Oct. 19, 1999) ("[W]e believe that the district court, in its discretion, could have extended the time for proper service of process, notwithstanding its apparent belief to the contrary.").

⁸ See Tenenbaum v. PNC Bank Nat'l Ass'n, No. DKC-10-2215, 2011 WL 2038550, at *3 (D.Md. May 24, 2011) (collecting cases that argue the Fourth Circuit may have premised Mendez on an erroneous assumption that the 1993 amendment to Rule 4 left intact the requirement that a showing of good cause be made before granting an extension).

remains the law of this circuit."); Tann v. Fisher, 276 F.R.D. 190, 196 (D.Md. 2011) ("In recognition of the stare decisis nature of the Mendez, Shlikas, and Tenenbaum decisions, I conclude that, because plaintiff has not shown good cause for extending the deadline for effecting service of process, I must dismiss this case."). This court joins the recent groundswell of cases affirming the import of the good cause requirement announced in Mendez.

1. The Nature of the "Good Cause" Requirement

Good cause "requires a showing that the plaintiff 'made reasonable and diligent efforts to effect service prior to the 120-day limit, which may include a showing that plaintiff's attempts at service were unsuccessful due to a putative defendant's evasion of process.'" Hai Xu, 2011 WL 2144592, at *2 n.3 (quoting Quann v. Whitegate-Edgewater, 112 F.R.D. 649, 659 (D.Md. 1986)). Accordingly, the court may find good cause "where the plaintiff has 'taken some affirmative action to effectuate service of process upon the defendant or ha[s] been prohibited, through no fault of his own, from taking such an affirmative action.'" Tenenbaum, 2011 WL 2038550, at *4 (quoting Vincent v. Reynolds Mem'l Hosp., Inc., 141 F.R.D. 436, 437 (N.D.W.Va. 1992)).

Other notable examples recognized by this Court include instances where (1) the plaintiff experienced difficulty in

obtaining defendant's proper address; (2) the plaintiff was misdirected by court personnel as to proper procedure; or (3) a defect in the attempted service was not revealed by the defendant until after the time expired. Hoffman v. Balt. Police Dep't, 379 F.Supp.2d 778, 786 (D.Md. 2005). At bottom, "[t]he common thread amongst all of these examples is that the interference of some outside factor prevented the otherwise-diligent plaintiff from complying with the rule." Tenenbaum, 2011 WL 2038550, at *4.

"Pro se status, however, is insufficient to establish good cause, even where the pro se plaintiff mistakenly believes that service was made properly." Hansan, 405 F.App'x at 794; see McNeil v. United States, 508 U.S. 106, 113 (1993) ("[W]e have never suggested that procedural rules in ordinary civil litigation should be interpreted so as to excuse mistakes by those who proceed without counsel."). Indeed, this Court has previously observed that "in [the] context of [a] motion to dismiss [a] pro se plaintiff's complaint, . . . 'a mistaken belief that service was proper does not constitute good cause' and 'neglect and inadvertence do not suffice'". Tann, 276 F.R.D. at 193 (quoting Jonas v. Citibank, 414 F.Supp.2d 411, 416 (S.D.N.Y. 2006)).

2. Mr. Chen's Purported Showing of Good Cause

Mr. Chen has now had two opportunities to show good cause for his late service (i.e., his response to the Court's Show Cause Order, and Defendants' Motion to Vacate and Dismiss). In all instances, he provides decidedly unpersuasive variations on the theme that fault does not rest with him: (1) he claims he never received the Court's November 28, 2011 Order, or the Summonses; (2) he believed the U.S. Marshal's Office would make service on his behalf; (3) he laments that the statute of limitations could bar the case if it is dismissed; (4) he argues that he worked hard to diligently prosecute this action; and (5) he contends that the Clerk's office provided him with incorrect information. (Chen II, ECF No. 8 ¶¶ 2, 4; Pl.'s Resp. to Mot. to Dismiss at 2-4, ECF No. 17). None of these reasons establish good cause.

Assuming that the U.S. Postal Service lost the mailing sent by the Clerk's office on November 28, 2011, Mr. Chen certainly had no basis to think that he could rest on his laurels while the time for performing service wasted away. To be sure, the rules demand otherwise. "The plaintiff is responsible for having the summonses and complaint served within the time allowed by Rule 4(m)" Fed.R.Civ.P. 4(c)(1). Moreover, notwithstanding the outside interference, courts require that a

plaintiff be otherwise diligent. Tenenbaum, 2011 WL 2038550, at *4.

Here, Mr. Chen's actions speak louder than his words. Chen I was dismissed on November 10, 2009, for failure to provide the Court with an accurate mailing address. (Chen I, ECF No. 40). Two years later, Mr. Chen filed his second action on November 10, 2011. In weighing whether Mr. Chen was otherwise diligent, it is certainly relevant that Chen II was filed just two days prior to what would have been the running of the statute of limitations on November 12, 2011. Similarly, Mr. Chen concedes that he made no efforts to serve the first Summons and indeed made no efforts to even inquire as to the status of the case until late March 2012, after the Summons had already expired. To be sure, only after Chen II had been dismissed did Mr. Chen provide the court with notice that the Defendants had been served on June 12 and 13, 2012. One would expect a conscientious party to file a motion for extension of time for service before the 120-day period expired. Mr. Chen did not. Thus, Mr. Chen's actions do not suggest that he was acting with the requisite degree of diligence.

Mr. Chen's mistaken belief that the U.S. Marshal would perform service is likewise inadequate to satisfy the good cause requirement. As noted above, a plaintiff's pro se status, neglect, inadvertence, or ignorance are impotent to show good

cause. Indeed there is nothing in the record to support Mr. Chen's claim that he ever made a request that the U.S. Marshal perform service.

Rule 4(c)(3) provides that "[a]t the plaintiff's request, the court may order that service be made by a United States marshal or deputy marshal or by a person specially appointed by the court." Fed.R.Civ.P. 4(c)(3). Rule 7(b) provides that a request for order must be by motion, which must be in writing, and state the nature of the relief and specific ground for making the request. Fed.R.Civ.P. 7(b). Consequently, two things needed to happen before Mr. Chen could expect service to be performed by a U.S. Marshal: (1) a written request for an order from the Court; and (2) an order granting Mr. Chen's request that the U.S. Marshal serve process. There is simply no evidence that any of these steps occurred.

Mr. Chen's attempt to deflect blame on the Clerk's office for his lack of service is also without merit. In particular, Mr. Chen states that after he received the Court's March 22, 2012 Show-Cause Order with regard to the failure to serve process, he contacted the Clerk's office on March 26, 2012, and attempted to obtain the original Summons so that he could serve the City Employees the following day on March 27, 2012. Mr. Chen argues that he was still within the 120-day deadline at this time and contends that the clerk he spoke with misadvised

that he would need to request reissuance of the Summons. (Pl.'s Resp. at 3).

Mr. Chen's argument is fatally flawed, however, because he is measuring the 120-days from the date the Summons was issued on November 28, 2011. Rule 4(m) makes clear that the 120-day period is measured from the filing of the complaint. Fed.R.Civ.P. 4(m) ("If a defendant is not served within 120 days *after the complaint is filed*") (emphasis added). Mr. Chen filed the present action on November 10, 2011. The Summonses were not issued until November 29, 2012, because Mr. Chen failed to pay the filing fee until November 21, 2011. (Chen II, ECF No. 4). By March 26, 2012, the 120-day deadline had already lapsed. Thus, assuming the Clerk's office provided the advice Mr. Chen maintains it did, the advice was accurate.

Finally, "[t]he good cause inquiry . . . implicates the reason for failure to effect service, not the severity of the consequences." Tenenbaum, 2011 WL 2038550, at *5 (quoting Pellegrin & Levine, Chartered v. Antoine, 961 F.2d 277, 283 (D.C. Cir. 1992)). Accordingly, "it is of no moment that the statute of limitations may pose a barrier to a new complaint" Tenenbaum, 2011 WL 2038550, at *5; see also Mendez, 45 F.3d at 78 (noting that a dismissal without prejudice does not permit a plaintiff "to refile without the consequence of time defenses, such as the statute of limitations."); T & S Rentals

v. United States, 164 F.R.D. 422, 426 (N.D.W.Va. 1996) (reasoning that "as long as the refilling of the claim eventually became time-barred, [plaintiffs] would always have 'good cause' for an extension.").

Because it is clear that Mr. Chen failed to show any good cause regarding his failure to effect service of process within the allowable time limit of 120 days, the Court grants Defendants' Motion to Vacate the April 16, 2012 Order, which granted Mr. Chen a sixty-day extension, and dismisses the case against all parties.⁹

3. Motion for Leave to File Surreply

The Court denies Mr. Chen's Motion for Leave to File Surreply because he was afforded sufficient opportunity to contest the matters raised in Defendants' initial Motion.

Unless otherwise ordered by the court, surreply memoranda are not permitted to be filed. See Local Rule 105.2(a) (D.Md. 2011). "Surreplies may be permitted when the moving party would be unable to contest matters presented to the court for the first time in the opposing party's reply." Khoury v. Meserve,

⁹ Having disposed of Defendants' Motion on the basis of their first argument, the Court will decline to consider their second basis for dismissal. Additionally, although Defendant P&J was not a party to this Motion, the Court finds that the improvidently granted extension permitted Mr. Chen to execute service on P&J. Accordingly, as provided in Federal Rule of Civil Procedure 4(m), the Court must and will, on its own, after notice to Mr. Chen, dismiss this action without prejudice as to P&J as well.

268 F.Supp.2d 600, 605 (D.Md. 2003) (citations omitted), aff'd, 85 F.App'x 960 (4th Cir. 2004).

In the Reply to Mr. Chen's Response to the Motion to Dismiss (ECF No. 18), Defendants merely respond to Mr. Chen's myriad justifications as to why good cause exists and the City Employees were properly served. In the Court's judgment, at no time did Defendants use the Reply to advance new arguments in support of their two primary contentions. Conversely, Mr. Chen's Motion for Leave to File Surreply rehashes arguments previously propounded in his Response to the Motion to Dismiss.

Thus, because Mr. Chen was afforded sufficient opportunity to contest the matters raised in Defendants' initial Motion, and because his Motion betrays his intentions to merely regurgitate old arguments, the Court hereby denies Mr. Chen's Motion for Leave to File Surreply. See Interphase Garment Solutions, LLC v. Fox Television Stations, Inc., 566 F.Supp.2d 460, 466 (D.Md. 2008) (denying motion for leave to file surreply where proposed surreply merely rebutted previously briefed matters).

III. CONCLUSION

For the foregoing reasons, the Court will, by separate Order, GRANT Defendants' Motion to Vacate Grant of Extension of Time to Effect Service of Process and to Dismiss the Complaint (ECF No. 14) and DENY Mr. Chen's Motion for Leave to File Surreply (ECF No. 19).

Entered this 22nd day of February, 2013

/s/

George L. Russell, III
United States District Judge

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**APPENDIX D: Order of the United States District Court for the
Northern District of Maryland issued on March 22, 2012**

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**APPENDIX E: Order of the United States District Court for the
Northern District of Maryland. issued on April 16, 2012**

the Court ordered the plaintiff show cause why his case should not be dismissed. After Chen showed his good cause, the Court stated: " in consideration of the Plaintiff's response...hereby ordered...re-issue summons and granted 60 days" extension (See APPENDIX D and E, page 4a and 5a). That means the Court regarded Chen's reason as good cause.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

BOBBY CHEN,

*

Plaintiff

*

v

*

Civil Action No. L-11-3227

MAYOR AND CITY COUNCIL
OF BALTIMORE et al.,

*

*

Defendants

ORDER

On November 20, 2011 Plaintiff Bobby Chen filed a Complaint in the above-captioned suit. Mr. Chen was advised that he was responsible for effecting service of process on the Defendants, and that pursuant to Federal Rule of Civil Procedure 4(m) and Local Rule 103.8.a, service must be made within 120 days of the filing of the Complaint. See Docket No. 5. Mr. Chen was also advised that if he failed to serve the Defendants or to file proof of service with the Court, he risked dismissal of his case.

The 120-day period lapsed on March 9, 2012. To date, the Court has no record that any Defendant has been served. Mr. Chen is, therefore, ORDERED TO SHOW CAUSE, within 21 days of the date of this Order, why his case should not be dismissed without prejudice for want of prosecution.

The Clerk is directed to MAIL a copy of this order to Mr. Chen at his address of record.

SO ORDERED this 22nd day of March, 2012

/s/

Benson Everett Legg
United States District Judge

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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

BOBBY CHEN

Plaintiff

v.

MAYOR & CITY COUNCIL OF BALTIMORE,
et al.

Defendants

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Civil Action No. L-11-3227

ORDER

In consideration of the Plaintiff's response (Docket No. 8) to the Court's Order to Show Cause (Docket No. 7), it is this 16th day of April, 2012, hereby ORDERED that:

1. The Clerk shall RE-ISSUE summonses for all Defendants;
2. Plaintiff is granted ~~60 DAYS~~ 60 DAYS from the date of this Order to effect service of process;
3. Plaintiff is FOREWARNED that failure to effect service of process within 60 days will result in dismissal of his case without prejudice; and
4. The Clerk is directed to MAIL a copy of this Order to Plaintiff at his address of record.

/s/

Benson Everett Legg
United States District Judge

**APPENDIX F: Order of the United States District Court for the
Northern District of Maryland issued on June 21, 2012**

Judge Russell III admitted Chen has a good cause and the 60 days extension is proper and necessary in his June 21, 2012 order. According to Rule 4 (m), he has to extend the service time. So his later order on Feb, 22, 2013, vacating the already executed extension order and dismiss the case, violated the law.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

BOBBY CHEN,	:	
	:	
Plaintiff,	:	
v.	:	
	:	
MAYOR & CITY COUNCIL OF	:	Civil Action No. GLR-11-3227
BALTIMORE, et al.,	:	
	:	
Defendants.	:	

ORDER

On November 20, 2011, Plaintiff Bobby Chen filed a Complaint in the above-captioned suit. (ECF No. 1). Mr. Chen was advised that he was responsible for effecting service of process on the Defendants, and that pursuant to Federal Rule of Civil Procedure 4(m) and Local Rule 103.8.a, service must be made within 120 days of the filing of the Complaint. (See ECF No. 5). Mr. Chen was also advised that if he failed to serve the Defendants and file proof of service with the Court, he risked dismissal of his case.

The 120-day period lapsed on March 9, 2012. After ~~Mr.~~ Chen made a showing of ~~good cause~~ on April 16, 2012, the Court re-issued the summonses (See ECF Nos. 9, 10) and granted Mr. Chen an additional 60 days to effect service of process. The 60-day extension lapsed on June 15, 2012. To date, the Court has no record that any Defendant has been served. In the Court's April 16, 2012 Order (ECF No. 9), Mr. Chen was forewarned that failure to effect service of process within

60 days would result in dismissal of his case without prejudice. Accordingly, it is hereby

ORDERED that Plaintiff's Complaint is DISMISSED WITHOUT PREJUDICE.

The Clerk is directed to MAIL a copy of this Order to Plaintiff at his address of record.

Entered this 21st day of June, 2012

/s/

George Levi Russell, III
United States District Judge

**APPENDIX G: Order of the United States District Court for the
Northern District of Maryland issued on June 22, 2012**

One day after he entered the order on June 21, 2012, Judge Russell III admitted that he made the mistake to dismiss Chen's case. He vacated his June 21 order. But he dismissed the case later although there was no new reason occurred. In order to dismiss the case, he used his power without valid reason. Assume Judge Russell III had really considered that Chen had no good cause he would have not let the case go back to active status on June 22, 2012. He conflict with himself.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

BOBBY CHEN,

:

Plaintiff,

:

v.

:

MAYOR & CITY COUNCIL OF
BALTIMORE, et al.,

:

Civil Action No. GLR-11-3227

:

Defendants.

:

ORDER

In light of the Court's receipt of Plaintiff's Affidavits of Service as to each Defendant (ECF No. 12), it is hereby

ORDERED that the Court's June 21, 2012 Order ~~dismissing Plaintiff's Complaint without prejudice is VACATED.~~

The Clerk is directed to MAIL a copy of this Order to Plaintiff at his address of record.

Entered this 22nd day of June, 2012

/s/

George Levi Russell, III
United States District Judge

TABLE OF AUTHORITIES

1b

Case:

Panaras v. Liquid Carbonic Indus. Corp., 94 F.3d 338, 341 (7th Cir.1996);

Thompson v. Brown, 91 F.3d 20, 22 (5th Cir.1996);

Espinoza v. United States, 52 F.3d 838, 841 (10th Cir. 1995);

Petrucelli v. Boehringer & Ratzinger, GMHB, 46 F.3d 1298, 1307-08 (3d Cir.1995).

United States v. McLaughlin, 470 F. 3d 698, 700-01(7 Cir. 2006).

Notes of Advisory Committee on Rules—1993 Amendment

Subdivision (m). This subdivision retains much of the language of the present subdivision (j).

The new subdivision explicitly provides that the court shall allow additional time if there is good cause for the plaintiff's failure to effect service in the prescribed 120 days, and authorizes the court to relieve a plaintiff of the consequences of an application of this subdivision even if there is no good cause shown. Such relief formerly was afforded in some cases, partly in reliance on Rule 6(b). Relief may be justified, for example, if the applicable statute of limitations would bar the refiled action, or if the defendant is evading service or conceals a defect in attempted service. *E.g., Ditkof v. Owens-Illinois, Inc.*, 114 F.R.D. 104 (E.D. Mich. 1987). A specific instance of good cause is set forth in paragraph (3) of this rule, which provides for extensions if necessary to correct oversights in compliance with the requirements of multiple service in actions against the United States or its officers, agencies, and corporations. The district court should also take care to protect *pro se* plaintiffs from consequences of confusion or delay attending the resolution of an *in forma pauperis* petition. *Robinson v. America's Best Contacts & Eyeglasses*, 876 F.2d 596 (7th Cir. 1989).

The 1983 revision of this subdivision referred to the "party on whose behalf such service was required," rather than to the "plaintiff," a term used generically elsewhere in this rule to refer to any party initiating a claim against a person who is not a party to the action. To simplify the text, the revision returns to the usual practice in the rule of referring simply to the plaintiff even though its principles apply with equal force to defendants who may assert claims against non-parties under Rules 13(h), 14, 19, 20, or 21.

2) THE SUPREME COURT'S DECISION

In Henderson v. United States, 517 U.S. 662 (1996) the Supreme Court stated: “Most recently, in 1993 amendments to the Rules, courts have been accorded discretion to enlarge the 120-day period *even if there is no good cause* shown.”

Federal Rule of Civil Procedure 4(m):

TIME LIMIT FOR SERVICE. If a defendant is not served within 120 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period. This subdivision (m) does not apply to service in a foreign country under Rule 4(f) or 4(j)(1).

13-1375

CERTIFICTION OF SERVICE

I hereby certify that, a copy of the foregoing **PETITION FOR A WRIT OF CERTIORARI** was served on Nesbitt, Kristen Nichole, One South Street, 20th Floor
Baltimore, MD 21202 via first class mail, postage prepaid, on 3/15/2014

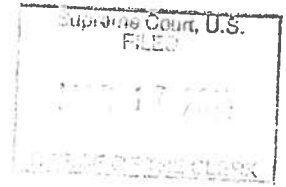
By


Bobby Chen

bobchen344@yahoo.com

1310400

ORIGINAL



CERTIFICATION OF SERVICE

I hereby certify that, a copy of the foregoing **PETITION FOR A WRIT OF CERTIORARI** was served on the Solicitor, at Law department of Baltimore City, 100 N. Holliday Street, Baltimore, MD 21202 via first class mail, postage prepaid, on 5/24/2014

By Bobby Chen
Bobby Chen
The Petitioner
bobchen344@yahoo.com