

In The
Supreme Court of the United States

BOBBY CHEN,

Petitioner,

v.

**THE MAYOR & CITY COUNCIL OF BALTIMORE,
MARYLAND; MICHAEL BRAVERMAN;
JEROME DORICH AND WILLIAM BOLDEN,**

Respondents.

**ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT**

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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BRIEF IN OPPOSITION TO
PETITION FOR WRIT OF CERTIORARI

Respondents, the Mayor and City Council of Baltimore (the “City”), and three employees of the Baltimore City Department of Housing and Community Development (“HCD”), Michael Braverman, Jerome J. Dorich, Jr., and William Bolden (collectively, the “Municipal Defendants”), by and through their attorneys, Steven Potter, Chief Solicitor, and Adam S. Levine, Assistant City Solicitor, hereby respectfully submit this Brief in Opposition to the Petition for Writ of Certiorari filed by Petitioner, Bobby Chen.

The Court should deny the Petition for Writ of Certiorari (the “Petition”) as Mr. Chen has failed to articulate any compelling reason to disturb the judgment of both the United States Court of Appeals for the Fourth Circuit (the “Fourth Circuit”) and the United States District Court for the District of Maryland (the “District Court”).

This is the second case which Petitioner has filed against the Municipal Defendants on the basis of the same allegations to be dismissed for Petitioner’s failure to comply with the Federal Rules of Civil Procedure. The District Court dismissed the complaint in this action for failure to serve the Municipal Defendants within the 120-day period under Fed. R. Civ. P. 4(m) in the absence of a good cause for an extension. Petitioner’s challenge of the District Court’s fact-specific determination that Petitioner failed to show good cause does not present an issue worthy of granting certiorari.

Similarly without merit as a ground for further review is Petitioner's argument that the Municipal Defendants should be precluded from challenging an extension of time provisionally granted to Petitioner after the 120-day period had expired but before any of the Defendants were even aware that Chen II existed. As to this issue, Petitioner frivolously claims as error the District Court's according Due Process to the Municipal Defendants by allowing them to challenge a ruling made before they were made parties to the case.

Finally, even assuming the District Court has discretion to extend the 120-day period for service in the absence of good cause, this issue is not properly before this Court as Petitioner never made a showing of excusable neglect under Fed. R. Civ. P. 6(b)(2), which governs a request for enlargement of time where the request is made *after* the 120-day period for service has lapsed.

As a result, this Petition presents no issue of significance beyond the immediate parties to this case and there is no need for the Court to devote its time and energy to further review.

STATEMENT OF THE CASE

On November 10, 2011, two days prior to the expiration of the statute of limitations, Petitioner filed an action for compensatory and punitive damages against the Municipal Defendants as well as against the City's demolition contractor, P&J Contracting Company, Inc. ("P&J").¹ (*Chen v. Mayor and City*

¹ It is unclear from the Electronic Docket maintained by this Court whether P&J is a Respondent before this Court. The undersigned attorneys of the Baltimore City Law Department file this Brief in Opposition only on behalf of the Municipal Respondents.

Council of Balt., et al., 1:11-cv-03227 (D. Md. Nov. 10, 2011) (hereinafter, “Chen II”), ECF No. 1)² Mr. Chen’s complaint arose from the November 12, 2008 demolition of a row-house property owned by him. As noted by the District Court in its Memorandum Opinion, Mr. Chen alleged “... 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.”³ *Chen v. Mayor & City Council of Baltimore*, 292 F.R.D. 288, 290 (2013)

This was not Mr. Chen’s first effort to sue the Municipal Defendants and P&J with regard to the November 12, 2008 demolition. A 2009 lawsuit filed by Mr. Chen containing identical allegations was dismissed without prejudice because, after Petitioner’s former counsel withdrew from that case and Mr. Chen had made a second request for extension of time to obtain new counsel, Mr. Chen failed to provide the lower court with a good address for receipt of court notices which were being returned to the Clerk’s Office as “undeliverable”. (See *Chen v. Mayor & City Council of Balt., et al.* 1:09-cv-00047 (D. Md. Nov. 19, 2009) (hereinafter, “Chen I”), ECF Nos. 33-41)⁴

² A complete copy of the docket entries from the District Court in Chen II are attached as Respondents’ Appendix A. The ECF Number refers to the specific docket entry.

³ A copy of the District Court’s February 22, 2013 Order of Dismissal in Chen II as well as its Memorandum Opinion is attached as the Petitioner’s Appendix C, although it is also labeled “3a”.

⁴ A complete copy of the docket entries from the District Court for Chen I reflecting these events is attached as Respondents’ Appendix B. The ECF Number refers to the specific docket entry.

After Mr. Chen paid the filing fee in Chen II on November 21, 2011, the District Court issued an order on November 28, 2011 directing the clerk to “take all necessary steps to prepare the summons and to return service copies of the summons to the Plaintiff.”⁵ (Respondents’ Appendix A, Chen II, ECF Nos. 4-5) The court clerk issued the summonses to Mr. Chen on November 29, 2011 and provided detailed instructions with regard to service. (Respondents’ Appendix A, Chen II, ECF No. 6)

On March 22, 2012, 11 days after the 120-day period for service of the summonses had expired, the District Court issued an order directing Mr. Chen “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.” (Respondents’ Appendix A, Chen II, ECF No. 7) On the day before the expiration of the District Court’s deadline - April 11, 2012 – Mr. Chen filed a response to the order to show cause and moved for an extension of time to serve the Municipal Respondents. (Respondents’ Appendix A, Chen II, ECF No. 8).

Without notice to the Municipal Respondents, sworn statements or an evidentiary hearing, the District Court, on April 16, 2012, ordered the clerk to re-issue the summonses and granted Mr. Chen an additional 60 days to effect service of process. (Respondents’ Appendix A, Chen II, ECF No. 9)

⁵ When Mr. Chen filed the Complaint in the District Court, he did not pay the filing fee or move to proceed *in forma pauperis*. (Respondents’ Appendix A, Chen II, ECF No. 1) The District Court entered an order on November 17, 2011, granting Mr. Chen 21 days to pay the filing fee or to file a motion to proceed *in forma pauperis*. (Respondents’ Appendix A, Chen II, ECF No. 3) Petitioner’s argument that, but for his *pro se* status, the summonses would have been available to him the day of filing is therefore without merit.

On June 22, 2012, after the 60 days granted to Mr. Chen to complete service had expired, affidavits of service were filed asserting that the Municipal Defendants had been served on June 12, 2012. (Respondents' Appendix A, Chen II, ECF No. 12) This was 215 days after the filing of the complaint in Chen II and more than 3 years and 7 months from the date of the alleged injury.⁶

On July 3, 2012, the Municipal Defendants filed a 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 and Request for Hearing (the "Motion to Dismiss"). (Respondents' Appendix A, Chen II, ECF No. 14) The Municipal Defendants argued that Mr. Chen had failed to show good cause under Fed. R. Civ. Pro. 4 (m) or any other reasoned basis for reissuance of the summonses and that furthermore he had failed to effect personal service on the three City employees sued personally for punitive damages. Accordingly, the Municipal Defendant asked that Chen II be dismissed.

On July 10, 2012, P&J answered Mr. Chen's complaint. (Respondents' Appendix A, Chen II, ECF No. 16.)

On July 20, 2012, Mr. Chen responded to the motion to dismiss claiming that he possessed good cause for additional time to serve the summonses, that the District Court had correctly found good cause on April 16, 2012 when it granted a 60-day extension, that the Municipal Defendants had filed their Motion to Dismiss

⁶ The District Court had actually dismissed the action on June 21, 2012 because affidavits of service had not been filed, but vacated its dismissal when the affidavits were filed. (Respondents' Appendix A, Chen II, ECF Nos. 12, 13) Petitioner attaches a copy of the June 21, 2012 dismissal as Petitioner's Appendix 6A, relying on Judge Russell's then statement, before the Municipal Defendants had any chance to argue otherwise, that Petitioner had made a showing of good cause.

untimely, and that Mr. Chen's delivery of the summonses, in this case by certified mail and process server, on or about June 12, 2012 on a co-employee of the three City employees was sufficient service. (Respondents' Appendix A, Chen II, ECF No. 17) On August 6, 2012, the Municipal Defendants filed a Reply. (Respondents' Appendix A, Chen II, ECF No. 18) On August 7, 2012, Mr. Chen requested leave to file an "Answer" to the Municipal Defendants' Reply attaching the "Answer" itself. (Respondents' Appendix A, Chen II, ECF No. 19)

On February 22, 2013, the District Court issued its Memorandum Opinion and Order granting the Motion to Dismiss Chen II without prejudice and denying Mr. Chen's request for leave to file the "Answer" to the Municipal Respondents' Reply. (Respondents' Appendix A, Chen II, ECF Nos. 21-22)⁷ The District Court (J. George L. Russell, III), found that Mr. Chen did not have "good cause" for an extension of time to effect service under Fed. R. Civ. Pro. 4 (m). *Chen*, 292 F.R.D. at 294-295. The District Court did not reach the issue that the three City employees had never been personally served.

On March 20, 2013, Mr. Chen noted a timely appeal of the District Court's February 22, 2013 final judgment. (Respondents' Appendix A, Chen II, ECF No. 23). On November 12, 2013, in an unpublished *per curiam* opinion, the Fourth Circuit affirmed for the reasons stated by the District Court. (Petitioner's Appendix A.) On December 16, 2013, the Fourth Circuit denied Mr. Chen's Petition for Rehearing En

⁷ Based upon the District Court's finding that Mr. Chen's failure to effect timely service on all of the Defendants was the result of his own mistakes and delay, the lower court made its order applicable to P&J as well thus concluding the entire action. *Chen*, 292 F.R.D. at FN 9.

Banc, no judge having requested a poll under Fed. R. App. P. 35. (Petitioner's Appendix A.)

On March 17, 2014, on the last possible day to do so, Mr. Chen filed a Petition for Writ of Certiorari seeking further review before this Court. The "Certification for Service" confirming service of the Petition on the City indicates it was mailed to the City on May 24, 2014 - over two months after Mr. Chen filed his Petition.⁸

REASONS TO DENY THE PETITION

I. THERE IS NO REASON FOR FURTHER REVIEW WHERE PETITIONER'S CHALLENGE IS ONLY TO THE DISTRICT COURT'S FACT-SPECIFIC DETERMINATION THAT NO GOOD CAUSE FOR EXTENSION OF TIME EXISTED.

Review of a district court's dismissal for untimely service under Rule 4 (m) is subject to an abuse of discretion standard. *Shao v. Link Cargo (Taiwan) Limited*, 986 F.2d 700, 708 (1993). The Petition seeks review of whether the District Court correctly applied the law to the facts, challenging the District Court's rejection of Mr. Chen's argument that he demonstrated good cause for seeking additional time to serve the Municipal Defendants after the 120-day period for service had expired on March 9, 2012. *See* Supreme Court Rule 10 ("A petition for certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.")⁹ The petition simply restates

⁸ Until this Court sent correspondence to counsel for the City advising it that a Petition for Certiorari had been filed, counsel was unaware of this fact.

⁹ Although his first argument is entitled "The Decision Below Conflicts with Federal Rule of Civil Procedure," Petitioner focus here is only on the lower court's rejection of previously-made

unsupported factual claims that were soundly rejected by the District Court. *See United States v. Johnston*, 268 U.S. 220, 227, 45 S. Ct. 496, 497 (1925)(observing that “[it] does not grant certiorari to review evidence and discuss specific facts.”); District Court Memorandum Opinion, Petitioner’s Appendix C, pp 13-17.

Denial of certiorari in this case is appropriate under the so-called the “two-court rule,” in which a district court and court of appeals are in agreement as to what conclusion the record requires. *See e.g. Graver Tank & Mfg. Co. v. Linde Air Products Co.*, 336 U.S. 271, 275, 69 S. Ct. 535, 537, 93 L. Ed. 672 (1949). In light of the District Court’s decision and its adoption by the Court of Appeals, review is unwarranted. *See Burger v. Kemp*, 483 U.S. 776, 785, 107 S. Ct. 3114, 3121, 97 L. Ed. 2d 638 (1987) (“Nevertheless, when the lower courts have found that [no constitutional error occurred], ... deference to the shared conclusion of two reviewing courts prevent[s] us from substituting speculation for their considered opinions.”).

In light of Petitioner’s fact-specific arguments regarding the District Court’s application of the correct rules of civil procedure, denial of certiorari is in keeping with this Court’s clear standards.

II. REVIEW OF THE GRANT OF DUE PROCESS TO CHALLENGE TIMELINESS AND SUFFICIENCY OF SERVICE OF PROCESS IS UNWARRANTED.

The Municipal Defendants moved to dismiss the complaint under Fed. R. Civ. P. 12(b)(5) for insufficient service of process arguing that the District Court improvidently granted Mr. Chen a 60-day extension on April 16, 2012 to effect

claims that it was the Clerk’s Office, the U.S. Marshall’s Office, or the U.S. Post Office that was the cause of Mr. Chen’s failure to effect timely service. The District Court’s reasoning in this regard is found at *Chen*, 292 F.R.D. at 294-295. These are not certiorari-worthy claims.

service of process. (Respondents' Appendix A, Chen II, ECF No. 9.) The District Court's order was provisional because it granted Mr. Chen's unopposed motion for an extension of time to serve the Municipal Defendants without the benefit of adversarial briefing and without actually deciding whether Mr. Chen had shown good cause as he claimed for his failure to serve process within 120-days of filing the complaint. Since the Municipal Defendants were not parties to Mr. Chen's action when he filed his motion, they did not have an opportunity to raise their objections. The Municipal Defendants filed their Fed. R. Civ. P. 12(b)(5) motion timely, within 21 days of June 12, 2012, the date of purported service to them.¹⁰ See Fed. R. Civ. P. 12(a)(1)(i).

When the Honorable Benson E. Legg granted a 60-day extension and a reissuance of the summonses, Mr. Chen had not notified the Municipal Defendants of Chen II, much less made any effort to serve them and bring them within the jurisdiction of the District Court. As a consequence, the grant of extension on April 16, 2012 cannot serve as a limit on the Municipal Respondents' timely motion to dismiss. The Honorable George L. Russell, III acted properly in making his own determination that Mr. Chen had not presented good cause for reissuance of the summons without according deference to the earlier ruling.¹¹

¹⁰ The three City employees maintained in their Motion to Dismiss as an alternative ground for dismissal that they had still never been personally served because the summonses were actually delivered to a separate employee of HCD that they had not authorized to accept service of a suit seeking damages personally against them. *Chen*, 292 F.R.D. at 291.

¹¹ Judge Legg's grant of extension included no explicit finding of good cause which was entirely proper given the Municipal Defendants' ignorance of Chen II and their lack of opportunity at that juncture to challenge Mr. Chen's allegations of good cause for more time. A copy of Judge Legg's April 16, 2012 grant of extension is attached as Petitioner's Appendix E, and is also labeled 5a.

It is a fundamental principle of the law that no one shall be bound by an order or judgment of a court rendered before the party has been served and afforded an opportunity to be heard on the matter. *Mason v. Eldred*, 73 U.S. 231, 239 (1868); *See Mullane v. Central Hanover Bank & Trust*, 339 U.S. 306, 314 (1950) (“An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.”)

In recognition of this, the District Court summarily and properly rejected this argument, *Chen*, 292 F.R.D. 292, citing *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), *Hai Xu v. FMS Fin. Solutions, LLC*, No. ELH-10-3196, 2011 WL 2144592, at *3 (D. Md. May 31, 2011), and *Williams v. CompUSA*, No. ELH-10-2219, 2011 WL 2118692, at *3 (D. Md. May 27, 2011), and it generates no legitimate ground for further consideration by this Court.

III. THE ISSUE OF THE ENLARGMENT OF TIME IN THE ABSENCE OF GOOD CAUSE IS NOT BEFORE THIS COURT BECAUSE PETITIONER FAILED TO ASSERT OR SHOW EXCUSABLE NEGLIGENCE UNDER FED. R. CIV. P. 6(B)(2) AS HE WAS REQUIRED TO DO.

Petitioner did not ask the trial court to excuse his neglect in failing to serve the Municipal Defendants. Review of the district court’s failure to exercise its discretion to extend the time for service is unwarranted because Petitioner failed to

first demonstrate or argue that he possessed excusable neglect under Fed. R. Civ. P. 6(b)(2) to seek extension of a deadline that had already expired.

Petitioner moved for additional time after the 120-day period for service had expired and only after the issuance of a show-cause order.¹² In such a circumstance, a request for extension after the passing of the deadline is governed by Fed. R. Civ. P. 6(b)(2); *See United States ex rel. Shaw Environment, Inc. v. Gulf Ins., Co.*, 225 F.R.D. 526, 528 (2005) (“Since plaintiff’s 120 days expired on December 9, 2004, which was prior to the filing on December 23, 2004, of the motion for extension of time, the court must find excusable neglect in order to increase the time period for service. Again, plaintiff offers the court no excuse other than mistake and inadvertence, neither of which in this context amount to excusable neglect under Rule 6(b).”); *Iskander v. Baltimore County*, 2011 WL 4632504 at *2 (D. Md. Oct. 3 2011) (“In addition, where an extension is sought after expiration of 120 days, Rule 6(b) requires that the party demonstrate that the delay in service resulted from excusable neglect.”); *Knott v. Atlantic Bingo Supply, Inc.*, 2005 WL 3593743, at *1 (D. Md. Dec 22, 2005) (“Where an extension is sought after expiration of 120 days, Rule 6(b) requires that a party show that the delay in service resulted from ‘excusable neglect,’” citing the Rule).

Petitioner never attempted to make such a showing below, contending only that he possessed good cause for failing to make service within the 120-day limit. *See Thompson v. Brown*, 91 F.3d 20, 21-22 (1996) (“Not once did Thompson assert

¹² Even there, he waited until the day before the 21-day period under the show-cause order to make his request.

that the court should excuse his neglect in failing to serve defendants.”) As detailed by the District Court in its Memorandum Opinion, Mr. Chen’s first action was dismissed as a result of a failure to provide a proper address for receipt of notices. He then filed the second action two days prior to the stature of limitations. Petitioner delayed in paying the filing fee. There is no record supporting Petitioner’s claim that he made a motion for service by the U.S. Marshall and, of course, the lower court never entered any such order that service take place in that manner. Petitioner took no action whatsoever during the 120-day period in which the summonses were effective after the filing of the complaint. This was not a matter in which the addresses were unknown as the defendants had been served previously in Chen I and there was no evasion. Petitioner moved for additional time without filing an affidavit, and indeed, even after the Municipal Defendants challenged service, still failed to file an affidavit or create a record in support of his claims. After a provisional grant of extension was made, Petitioner waited until three days prior to the expiration of the extension to make any attempt at service. *Chen*, 292 F.R.D. at 291, 294-295.

Mr. Chen’s claims of mistake and inadvertence fail to show “excusable neglect” for filing his motion for extension after the expiration of the 120-day period. Assertions of mistake and inadvertence do not amount to excusable neglect. See *Pioneer Inv. Serv. Co. v. Brunswick Assocs. Ltd. P’ship*, 507 U.S. 380, 392, 123 L. Ed. 2d 74, 113 S. Ct. 1489 (1993) (“inadvertence, ignorance of the rules, or mistakes construing the rules do not usually constitute ‘excusable’ neglect...”). “[A] district

court should find excusable neglect only in the extraordinary cases where injustice would otherwise result.” *United States ex rel. Shaw Envtl., Inc.*, 225 F.R.D. at 528; *See Thompson v. E.I. DuPont de Nemours & Co.*, 76 F.3d 530, 534 (4th Cir. 1996). (“[e]xcusable neglect’ is not easily demonstrated, nor was it intended to be.”).

Petitioner failed to advance a colorable excuse for his delay in requesting an extension of time after the expiration of 120-day period. *See Thompson*, 76 F.3d at 534 (“The most important of the factors identified in *Pioneer* for determining whether ‘neglect’ is ‘excusable’ is the reason for the failure to [timely] file.”) Mr. Chen’s delay in filing the motion for enlargement of time to serve process “was within the reasonable control of the movant.” *Pioneer Inv. Serv. Co.*, 507 U.S. at 395. Mr. Chen retained the ability to move for an enlargement of time. He offers no cognizable excuse for his delay in moving for an extension of time prior to March 9, 2012. He also offers no justification for his delay, from April 16, 2012 until June 12, 2012, in attempting to serve process.

The failure to exercise diligence precludes a finding of excusable neglect. *See Robinson v. Wix Filtration Co.*, 599 F.3d 403, 413 (4th Cir. 2010) (A party’s failure to act with diligence precludes a finding of excusable neglect.). Mr. Chen’s failure to remain reasonably informed as to the status of his litigation is not excusable neglect. *See Robinson*, 599 F.3d at 413 (finding that “[a] party has a duty of diligence to inquire about the status of a case”). As a result of Petitioner’s choices, this suit against three City employees in their personal capacity for punitive damages, a replay of the first action which was also dismissed, was allowed to linger

over seven months beyond the three-year statute of limitations before Defendants even became aware it had been filed.

As a result of Petitioner's failure to attempt a showing of excusable neglect, the District Court cannot have committed error in declining to extend the deadline for service. Further review by this Court of the lower court's discretionary authority for extension in the absence of good cause is therefore not warranted.

CONCLUSION

For the foregoing reasons, the Municipal Defendants respectfully request that this Honorable Court deny Petitioner's request for certiorari review.

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CLOSED,FEEPRO

**U.S. District Court
District of Maryland (Baltimore)
CIVIL DOCKET FOR CASE #: 1:11-cv-03227-GLR**

Chen v. Mayor & City Council of Baltimore et al
Assigned to: Judge George Levi Russell, III
Demand: \$2,500,000
Case in other court: Fourth Circuit Court of Appeals, 13-01375
Cause: 28:1332 Diversity-Torts to Land

Date Filed: 11/10/2011
Date Terminated: 02/22/2013
Jury Demand: Plaintiff
Nature of Suit: 240 Torts to Land
Jurisdiction: Diversity

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Date Filed	#	Docket Text
11/10/2011	<u>1</u>	COMPLAINT against William Bolden, Michael Braverman, Jerome J. Dorich, Jr, Mayor & City Council of Baltimore, P&J Contracting Company, Inc., filed by Bobby Chen. (Attachments: # 1 Civil Cover Sheet, # 2 Summonses)(aos, Deputy Clerk)(FEE PAID 11/21/2011, RECEIPT # 14637055624) Modified on 11/22/2011 (aos, Deputy Clerk). (Entered: 11/14/2011)
11/10/2011	<u>2</u>	Jury Trial Demand by Bobby Chen. (aos, Deputy Clerk) (Entered: 11/14/2011)
11/17/2011	<u>3</u>	ORDER granting Plaintiff 21 days from the date of this order to either pay \$350.00 filing fee or file a motion to proceed in Forma Pauperis. Signed by Judge Benson Everett Legg on 11/17/2011. (c/m 11/17/2011 aos, Deputy Clerk) (Entered: 11/17/2011)
11/21/2011	<u>4</u>	Correspondence re: from Bobby Chen re: filing fee (Fee Paid, Receipt #14637055624) (aos, Deputy Clerk) (Entered: 11/22/2011)
11/28/2011	<u>5</u>	ORDER directing clerk to prepare and issue summons. Signed by Judge Benson Everett Legg on 11/28/2011. (c/m 11/28/2011 aos, Deputy Clerk) (Entered: 11/28/2011)
11/28/2011	<u>6</u>	Summons Issued 21 days as to William Bolden, Michael Braverman, Jerome J. Dorich, Jr, Mayor & City Council of Baltimore, P&J Contracting Company, Inc.. (aos, Deputy Clerk) (Entered: 11/28/2011)
03/22/2012	<u>7</u>	ORDER TO SHOW CAUSE within 21 days from the date of this order, why case should not be dismissed without prejudice for want of prosecution. Signed by Judge Benson Everett Legg on 3/22/2012. (c/m 3/22/2012 aos, Deputy Clerk) (Entered: 03/22/2012)
04/11/2012	<u>8</u>	RESPONSE re <u>7</u> Order to Show Cause; MOTION for extension of time to serve the defendant's; Request for summons to be reissued filed by Bobby Chen. (aos, Deputy Clerk) (Entered: 04/12/2012)
04/16/2012	<u>9</u>	ORDER directing clerk to re-issue summonses; granting plaintiff 60 days from the date of this order to effect service of process; forewarning plaintiff that failure to effect service within 60 will result in dismissal of case without prejudice. Signed by Judge Benson Everett Legg on 4/16/2012. (c/m 4/16/2012 aos, Deputy Clerk) (Entered: 04/16/2012)
04/16/2012	<u>10</u>	Summons Reissued as to William Bolden, Michael Braverman, Jerome J. Dorich, Jr, Mayor & City Council of Baltimore, P&J Contracting Company,

		Inc. (c/m with copies of complaint 4/16/2012 aos, Deputy Clerk) (Entered: 04/16/2012)
06/07/2012		Case reassigned to Judge George Levi Russell, III. Judge Benson Everett Legg no longer assigned to the case. (cags, Deputy Clerk) (Entered: 06/07/2012)
06/21/2012	<u>11</u>	ORDER DISMISSING CASE without prejudice. Signed by Judge George Levi Russell, III on 6/21/2012. (c/m 6/21/2012 aos, Deputy Clerk) (Entered: 06/21/2012)
06/22/2012	<u>12</u>	SUMMONS Returned Executed filed by Stephen Robinson and Bill Deng, Private Process Server on behalf of Bobby Chen. William Bolden served on 6/12/2012, answer due 7/3/2012; Michael Braverman served on 6/12/2012, answer due 7/3/2012; Jerome J. Dorich, Jr served on 6/12/2012, answer due 7/3/2012; Mayor & City Council of Baltimore served on 6/12/2012, answer due 7/3/2012; P&J Contracting Company, Inc. served on 6/13/2012, answer due 7/5/2012. (aos, Deputy Clerk) (Entered: 06/22/2012)
06/22/2012	<u>13</u>	ORDER vacating <u>11</u> Order Dismissing Case. Signed by Judge George Levi Russell, III on 6/22/2012. (c/m 6/22/2012 aos, Deputy Clerk) (Entered: 06/22/2012)
07/03/2012	<u>14</u>	MOTION to Dismiss <i>For Insufficient Service of Process</i> by William Bolden, Michael Braverman, Jerome J. Dorich, Jr, Mayor & City Council of Baltimore Responses due by 7/20/2012 (Attachments: # <u>1</u> Memorandum of Law, # <u>2</u> Exhibit Exhibit 1, # <u>3</u> Exhibit Exhibit 2, # <u>4</u> Exhibit Exhibit 3, # <u>5</u> Exhibit Exhibit 4, # <u>6</u> Request For Hearing, # <u>7</u> Text of Proposed Order)(Levine, Adam) (Entered: 07/03/2012)
07/05/2012	<u>15</u>	Rule 12/56 letter mailed to Bobby Chen. (c/m 7/5/2012 aos, Deputy Clerk) (Entered: 07/05/2012)
07/10/2012	<u>16</u>	ANSWER to <u>1</u> Complaint, by P&J Contracting Company, Inc.. (Attachments: # <u>1</u> Civil Cover Sheet)(Nesbitt, Kristen) (Entered: 07/10/2012)
07/11/2012		Deficiency Notice as to P&J Contracting Company, Inc. -- Your Local Rule 103.3 disclosure statement has not been filed. The Statement must be filed by 7/23/2012 (aos, Deputy Clerk) (Entered: 07/11/2012)
07/20/2012	<u>17</u>	RESPONSE to Motion re <u>14</u> MOTION to Dismiss <i>For Insufficient Service of Process</i> filed by Bobby Chen. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Objection)(aos, Deputy Clerk) (Entered: 07/23/2012)
08/06/2012	<u>18</u>	REPLY to Response to Motion re <u>14</u> MOTION to Dismiss <i>For Insufficient Service of Process</i> filed by William Bolden, Michael Braverman, Jerome J. Dorich, Jr, Mayor & City Council of Baltimore. (Levine, Adam) (Entered: 08/06/2012)
08/07/2012	<u>19</u>	MOTION for Leaving to File Answer(Surreply) to "Municipal Defendant's Reply" by Bobby Chen. (aos, Deputy Clerk) (Entered: 08/07/2012)
08/08/2012	<u>20</u>	Local Rule 103.3 Disclosure Statement by P&J Contracting Company, Inc.. (Nesbitt, Kristen) (Entered: 08/08/2012)

02/22/2013	<u>21</u>	MEMORANDUM OPINION. Signed by Judge George Levi Russell, III on 2/22/13. (c/m 2/22/2013 aos, Deputy Clerk) (Entered: 02/22/2013)
02/22/2013	<u>22</u>	ORDER granting <u>14</u> MOTION to Dismiss For Insufficient Service of Process ; denying <u>19</u> MOTION for Leaving to File Answer(Surreply) to "Municipal Defendant's Reply". Signed by Judge George Levi Russell, III on 2/22/13. (c/m 2/22/2013 aos, Deputy Clerk) (Entered: 02/22/2013)
03/20/2013	<u>23</u>	NOTICE OF APPEAL as to <u>22</u> Order on Motion to Dismiss, Order on Motion for Leave to File, <u>21</u> Memorandum Opinion by Bobby Chen - Fee Status: Filing Fee Not Paid. (sls, Deputy Clerk) (Entered: 03/20/2013)
03/20/2013	<u>24</u>	Transmission of Notice of Appeal and Docket Sheet to US Court of Appeals re <u>23</u> Notice of Appeal. IMPORTANT NOTICE: To access forms which you are required to file with the United States Court of Appeals for the Fourth Circuit please go to http://www.ca4.uscourts.gov and click on Forms & Notices. (sls, Deputy Clerk) (Entered: 03/20/2013)
03/21/2013	<u>25</u>	USCA Case Number 13-1375 for <u>23</u> Notice of Appeal filed by Bobby Chen. Case Manager - Richard Sewell (sls, Deputy Clerk) (Entered: 03/21/2013)
07/08/2013		Assembled Electronic Record Transmitted to Fourth Circuit -- Initial (ko, Deputy Clerk) (Entered: 07/08/2013)
11/13/2013	<u>26</u>	JUDGMENT of USCA (certified copy)"AFFIRMING" the judgment of the District Court as to <u>23</u> Notice of Appeal filed by Bobby Chen. (sls, Deputy Clerk) (Entered: 11/13/2013)
12/16/2013	<u>27</u>	ORDER of USCA "DENYING" petition for rehearing en banc as to <u>23</u> Notice of Appeal filed by Bobby Chen. (sls, Deputy Clerk) (Entered: 12/16/2013)
12/24/2013	<u>28</u>	MANDATE of USCA as to <u>23</u> Notice of Appeal filed by Bobby Chen (sls, Deputy Clerk) (Entered: 12/24/2013)

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09/25/2014 20:45:47			
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CLOSED

**U.S. District Court
District of Maryland (Baltimore)
CIVIL DOCKET FOR CASE #: 1:09-cv-00047-BEL**

Chen v. Mayor & City Council of Baltimore et al
Assigned to: Judge Benson Everett Legg
Demand: \$2,500,000
Cause: 28:1331(a) Fed. Question: Real Property

Date Filed: 01/09/2009
Date Terminated: 11/10/2009
Jury Demand: Both
Nature of Suit: 240 Torts to Land
Jurisdiction: Federal Question

Plaintiff

Bobby Chen

represented by **Bobby Chen**
PRO SE

Howard J Schulman
Schulman and Kaufman LLC
One Charles Center
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TERMINATED: 08/31/2009
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TERMINATED: 08/27/2009
ATTORNEY TO BE NOTICED

V.

Defendant

Mayor & City Council of Baltimore

represented by **Steven John Potter**
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Fax: 14105471025

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ATTORNEY TO BE NOTICED

Defendant

Michael Braverman

represented by **Steven John Potter**

(See above for address)

LEAD ATTORNEY

ATTORNEY TO BE NOTICED

Adam S Levine

(See above for address)

ATTORNEY TO BE NOTICED

Defendant

Jerome J. Dorich, Jr.

represented by **Steven John Potter**

(See above for address)

LEAD ATTORNEY

ATTORNEY TO BE NOTICED

Adam S Levine

(See above for address)

ATTORNEY TO BE NOTICED

Defendant

William Bolden

represented by **Steven John Potter**

(See above for address)

LEAD ATTORNEY

ATTORNEY TO BE NOTICED

Adam S Levine

(See above for address)

ATTORNEY TO BE NOTICED

Defendant

P&J Contracting Company, Inc.

represented by **Kristen Nichole Nesbitt**

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ATTORNEY TO BE NOTICED

Counter Claimant

Bobby Chen

represented by **Howard J Schulman**
(See above for address)
TERMINATED: 08/31/2009
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Daniel P Doty
(See above for address)
TERMINATED: 08/27/2009
ATTORNEY TO BE NOTICED

Counter Claimant

Mayor & City Council of Baltimore

represented by **Adam S Levine**
(See above for address)
ATTORNEY TO BE NOTICED

Counter Claimant

Michael Braverman

represented by **Adam S Levine**
(See above for address)
ATTORNEY TO BE NOTICED

Counter Claimant

Jerome J. Dorich, Jr.

represented by **Adam S Levine**
(See above for address)
ATTORNEY TO BE NOTICED

Counter Claimant

William Bolden

represented by **Adam S Levine**
(See above for address)
ATTORNEY TO BE NOTICED

V.

Counter Defendant

Bobby Chen

represented by **Howard J Schulman**
(See above for address)
TERMINATED: 08/31/2009
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Daniel P Doty
(See above for address)
TERMINATED: 08/27/2009
ATTORNEY TO BE NOTICED

Counter Defendant

Mayor & City Council of Baltimore

represented by **Adam S Levine**
(See above for address)
ATTORNEY TO BE NOTICED

Counter Defendant

Michael Braverman

represented by **Adam S Levine**
(See above for address)
ATTORNEY TO BE NOTICED

Counter Defendant

Jerome J. Dorich, Jr. .

represented by **Adam S Levine**
(See above for address)
ATTORNEY TO BE NOTICED

Counter Defendant

William Bolden

represented by **Adam S Levine**
(See above for address)
ATTORNEY TO BE NOTICED

Cross Claimant

Bobby Chen

represented by **Howard J Schulman**
(See above for address)
TERMINATED: 08/31/2009
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Daniel P Doty
(See above for address)
TERMINATED: 08/27/2009
ATTORNEY TO BE NOTICED

V.

Cross Defendant

Michael Braverman

represented by **Adam S Levine**
(See above for address)

*ATTORNEY TO BE NOTICED***Cross Defendant****Jerome J. Dorich, Jr.**

represented by **Adam S Levine**
 (See above for address)
ATTORNEY TO BE NOTICED

Cross Defendant**William Bolden**

represented by **Adam S Levine**
 (See above for address)
ATTORNEY TO BE NOTICED

Cross Defendant**P&J Contracting Company, Inc.**

represented by **Kristen Nichole Nesbitt**
 (See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Joseph Benjamin Wolf
 (See above for address)
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
01/09/2009	<u>1</u>	COMPLAINT against Mayor & City Council of Baltimore, Michael Braverman, Jerome J. Dorich, Jr, William Bolden, P&J Contracting Company, Inc. (Filing fee \$ 350, receipt #14637031115), filed by Bobby Chen. (Attachments: # <u>1</u> Civil Cover Sheet)(raf, Deputy Clerk) Modified on 1/9/2009 (raf, Deputy Clerk). (Entered: 01/09/2009)
01/09/2009		Jury Trial Demand by Bobby Chen. (raf, Deputy Clerk) (Entered: 01/09/2009)
01/09/2009	<u>2</u>	Summons Issued 20 days as to Mayor & City Council of Baltimore, Michael Braverman, Jerome J. Dorich, Jr, William Bolden, P&J Contracting Company, Inc. (raf, Deputy Clerk) (Entered: 01/09/2009)
02/02/2009	<u>3</u>	Consent MOTION for Extension of Time to File Response/Reply by Bobby Chen, Mayor & City Council of Baltimore, Michael Braverman, Jerome J. Dorich, Jr, William Bolden. Responses due by 2/19/2009 (Levine, Adam) (Entered: 02/02/2009)
02/02/2009	<u>4</u>	PAPERLESS ORDER granting <u>3</u> Motion for Extension of Time to File Response. (Judge Davis) (Entered: 02/02/2009)
02/16/2009	<u>5</u>	MOTION to Dismiss by Mayor & City Council of Baltimore Responses due by 3/5/2009 (Levine, Adam) (Entered: 02/16/2009)
02/16/2009	<u>6</u>	MEMORANDUM of Law In Support of <u>5</u> MOTION to Dismiss by Mayor & City Council of Baltimore. (Levine, Adam) Modified on 2/17/2009 (mcb, Deputy Clerk). (Entered: 02/16/2009)

02/16/2009	<u>7</u>	ANSWER to Complaint <i>By Municipal Defendants</i> , COUNTERCLAIM against Bobby Chen, Mayor & City Council of Baltimore, Michael Braverman, Jerome J. Dorich, Jr, William Bolden by Bobby Chen, Mayor & City Council of Baltimore, Michael Braverman, Jerome J. Dorich, Jr, William Bolden.(Levine, Adam) (Entered: 02/16/2009)
02/17/2009	<u>8</u>	AFFIDAVIT of Service for Summons and complaint served on Pless Jones, resident agent for P&J Contracting, Inc. on January 12, 2009, filed by Bobby Chen. (Doty, Daniel) (Entered: 02/17/2009)
02/17/2009	<u>9</u>	(WITHDRAWN - See docket entry #17) MOTION for Entry of Default for want of answer or other defense <i>against Defendant P&J Contracting Company, Inc.</i> by Bobby Chen Responses due by 3/6/2009 (Attachments: # <u>1</u> Exhibit Maryland State Department of Assessments and Taxation - resident agent for P&J Contracting Company, Inc., # <u>2</u> Affidavit (non-military))(Doty, Daniel) Modified on 3/19/2009 (mcb, Deputy Clerk). (Entered: 02/17/2009)
02/20/2009		Telephone Conference held on 2/20/2009 held before Judge Andre M Davis (bma, CRD) (Entered: 02/23/2009)
02/26/2009	<u>10</u>	ANSWER to Complaint by P&J Contracting Company, Inc..(Nesbitt, Kristen) (Entered: 02/26/2009)
02/26/2009	<u>11</u>	Local Rule 103.3 Disclosure Statement by P&J Contracting Company, Inc.. (Nesbitt, Kristen) (Entered: 02/26/2009)
03/04/2009	<u>12</u>	RESPONSE in Opposition re <u>5</u> MOTION to Dismiss, <u>6</u> MOTION to Dismiss <i>Memorandum of Law In Support</i> filed by Bobby Chen. Replies due by 3/18/2009. (Attachments: # <u>1</u> Memorandum in Support of Response in Opposition to Motion to Dismiss)(Doty, Daniel) (Entered: 03/04/2009)
03/04/2009	<u>13</u>	MOTION to Strike <u>7</u> Answer to Complaint, Counterclaim,, by Bobby Chen Responses due by 3/23/2009 (Doty, Daniel) (Entered: 03/04/2009)
03/04/2009	<u>14</u>	ANSWER to <u>7</u> Answer to Complaint, Counterclaim,, by Bobby Chen.(Doty, Daniel) (Entered: 03/04/2009)
03/04/2009	<u>15</u>	NOTICE by Bobby Chen re <u>9</u> MOTION for Entry of Default for want of answer or other defense <i>against Defendant P&J Contracting Company, Inc. WITHDRAWING Motion</i> (Doty, Daniel) (Entered: 03/04/2009)
03/04/2009	<u>16</u>	CROSSCLAIM against Michael Braverman, Jerome J. Dorich, Jr, William Bolden, P&J Contracting Company, Inc., filed by Bobby Chen.(Doty, Daniel) (Entered: 03/04/2009)
03/05/2009	<u>17</u>	PAPERLESS ORDER withdrawing <u>9</u> Motion for Entry of Default (Judge Davis) (Entered: 03/05/2009)
03/13/2009	<u>18</u>	ANSWER to <u>16</u> Crossclaim by P&J Contracting Company, Inc..(Nesbitt, Kristen) (Entered: 03/13/2009)
03/18/2009	<u>19</u>	REPLY to Response to Motion re <u>5</u> MOTION to Dismiss, <u>6</u> MOTION to Dismiss <i>Memorandum of Law In Support</i> filed by Mayor & City Council of Baltimore. (Attachments: # <u>1</u> Exhibit Circuit Court Order Dated 11/12/08)

		(Levine, Adam) (1 paper copy submitted to Chambers on 3/24/09) Modified on 3/24/2009 (mcb, Deputy Clerk). (Entered: 03/18/2009)
03/20/2009	<u>20</u>	MOTION to Strike <u>19</u> Reply to Response to Motion <i>or, in the Alternative, Motion for Leave to File Surreply</i> by Bobby Chen Responses due by 4/6/2009 (Doty, Daniel) (Entered: 03/20/2009)
03/23/2009	<u>21</u>	RESPONSE to Motion re <u>13</u> MOTION to Strike <u>7</u> Answer to Complaint, Counterclaim,, and attached order filed by Mayor & City Council of Baltimore. Replies due by 4/6/2009. (Levine, Adam) (Entered: 03/23/2009)
03/30/2009	<u>22</u>	RESPONSE in Opposition re <u>20</u> MOTION to Strike <u>19</u> Reply to Response to Motion <i>or, in the Alternative, Motion for Leave to File Surreply</i> filed by Mayor & City Council of Baltimore. Replies due by 4/13/2009. (Levine, Adam) (Entered: 03/30/2009)
04/22/2009		Case reassigned to Chief Judge Benson Everett Legg. Judge Andre M Davis no longer assigned to the case. (cag, Deputy Clerk) (Entered: 04/22/2009)
06/23/2009	<u>23</u>	NOTICE of Appearance by Joseph Benjamin Wolf on behalf of P&J Contracting Company, Inc. (Wolf, Joseph) (Entered: 06/23/2009)
08/12/2009	<u>24</u>	MEMORANDUM. Signed by Chief Judge Benson Everett Legg on 8/12/09. (egs, Deputy Clerk) (Entered: 08/12/2009)
08/12/2009	<u>25</u>	ORDER denying <u>20</u> Motion to Strike ; denying <u>5</u> Motion to Dismiss; denying <u>13</u> Motion to Strike. Signed by Chief Judge Benson Everett Legg on 8/12/09. (egs, Deputy Clerk) (Entered: 08/12/2009)
08/12/2009	<u>26</u>	LETTER ORDER to Counsel. Signed by Chief Judge Benson Everett Legg on 8/12/09. (egs, Deputy Clerk) (Entered: 08/12/2009)
08/20/2009	<u>27</u>	ANSWER to Complaint <i>Counts IV & V</i> by Mayor & City Council of Baltimore, Michael Braverman, Jerome J. Dorich, Jr, William Bolden.(Potter, Steven) (Entered: 08/20/2009)
08/24/2009	<u>28</u>	MOTION to Withdraw as Attorney <i>filed by Howard J. Schulman, Daniel P. Doty, and Schulman & Kaufman, LLC</i> by Bobby Chen Responses due by 9/10/2009 (Attachments: # <u>1</u> Certificate of Counsel)(Doty, Daniel) (Entered: 08/24/2009)
08/27/2009	<u>29</u>	Consent REQUEST for Extension of Time to File <i>Rule 16 Conference Statement and to Postpone Conference</i> (Doty, Daniel) (Entered: 08/27/2009)
08/27/2009	<u>30</u>	PAPERLESS ORDER GRANTING <u>28</u> Motion to Withdraw as Attorney. Attorneys Howard J. Schulman and Daniel P. Doty, counsel for Plaintiff Bobby Chen, are terminated. Signed by Chief Judge Benson Everett Legg on 08/27/2009. (Legg, Benson Everett) (Entered: 08/27/2009)
08/31/2009	<u>31</u>	STATUS REPORT by Mayor & City Council of Baltimore, Michael Braverman, Jerome J. Dorich, Jr, William Bolden. (Levine, Adam) (Entered: 08/31/2009)
08/31/2009	<u>32</u>	Status Report Submitted <i>in Response to Court's Memorandum of August 12, 2009</i> by P&J Contracting Company, Inc. (Nesbitt, Kristen) (Entered: 08/31/2009)

		08/31/2009)
09/01/2009	<u>33</u>	ORDER granting <u>29</u> CONSENT Request for Extension of Time to File Rule 16 Conference Statement and to Postpone Conference; directing Mr. Chen to keep the Court apprised of his efforts to hire new counsel; directing Mr. Chen to file a Status Report on or before September 28, 2009 as therein set forth. Signed by Chief Judge Benson Everett Legg on 9/1/09. (c/m 9/1/09 mcb, Deputy Clerk) (Entered: 09/01/2009)
09/25/2009	<u>34</u>	MOTION for Extension of Time by Bobby Chen (jnl, Deputy Clerk) (Entered: 09/25/2009)
09/25/2009	<u>35</u>	ORDER denying <u>34</u> Motion of plaintiff for Extension of Time. Signed by Chief Judge Benson Everett Legg on 9/25/09. (c/m 9/25/09 jnl, Deputy Clerk) (Entered: 09/25/2009)
09/28/2009	<u>36</u>	STATUS REPORT by Bobby Chen. (mcb, Deputy Clerk) (Entered: 09/29/2009)
10/07/2009	<u>37</u>	Mail Returned as Undeliverable. Mail sent to Bobby Chen. (mcb, Deputy Clerk) (Entered: 10/07/2009)
10/28/2009	<u>38</u>	MOTION for Time Extension by Bobby Chen. (mcb, Deputy Clerk) (Entered: 10/29/2009)
11/02/2009	<u>39</u>	MARGINAL ORDER denying <u>38</u> Motion of Plaintiff for Extension of Time. Signed by Chief Judge Benson Everett Legg on 11/2/09. (c/m 11/2/09 mcb, Deputy Clerk) (Entered: 11/02/2009)
11/10/2009	<u>40</u>	ORDER DISMISSING without prejudice Plaintiff's cause of action pursuant to Local Rule 102.1.b.ii (D. Md. 2004); directing the Clerk to CLOSE this case. Signed by Chief Judge Benson Everett Legg on 11/10/09. (c/m to Plaintiff's last known address 11/10/09 mcb, Deputy Clerk) (Entered: 11/10/2009)
11/19/2009	<u>41</u>	Mail Returned as Undeliverable. Mail sent to Bobby Chen in Flushing, New York. (mcb, Deputy Clerk) (Entered: 11/19/2009)

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09/25/2014 20:53:45			
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