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Federal Rule of Civil Procedure 4(m) addresses the time limit for service of summonses in civil cases. It provides: “If a defendant is not served within 120 days after the complaint is filed, the court . . . 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 time.”

Today, the Supreme Court granted certiorari in *Chen v. Mayor & City Council of Baltimore*, No. 13-10400, to resolve a circuit split concerning whether district courts have discretion under Rule 4(m) to extend the time for service of process absent a showing of good cause. The Second, Third, Fifth, Seventh, Ninth, Tenth, and Eleventh Circuits have held that they do; the Fourth Circuit has held that they do not.

The plaintiff in *Chen* is a pro se litigant who filed a complaint against the city of Baltimore and certain of its employees, alleging that they razed a building that he owned in violation of his due-process rights. But the plaintiff did not serve the defendants within 120 days after filing his complaint. In response to an order to show cause why the case should not be dismissed, the plaintiff provided three justifications for his failure to serve the defendants on time, and he requested an extension of the deadline to do so. The district court granted a 60-day extension, and the plaintiff served the summons within the time allotted. The defendants then moved to dismiss, arguing that the extension was improvidently granted. The district court agreed and granted that motion, concluding that the plaintiff had failed to show good cause for not serving the defendants on time and that, in accordance with binding Fourth Circuit precedent, district courts lack discretion to grant extensions under Rule 4(m) absent such a showing. The Fourth Circuit affirmed the decision in a summary unpublished opinion.

The Supreme Court’s resolution of the circuit split concerning a district court’s discretion to grant extensions under Rule 4(m) will be of significant interest to the business community because it will affect the frequency with which plaintiffs’ failure to effect timely service may be excused.

Absent extensions, amicus briefs in support of the petitioners will be due on December 29, 2014, and amicus briefs in support of the respondents will be due on January 28, 2015. Any questions about this case should be directed to Carl J. Summers (+ 1 202 236 3247) in our Washington office.