

John B. MANN, et al., Appellants

v.

David CASTIEL, et al., Appellees.

No. 10-7109.

United States Court of Appeals,
District of Columbia Circuit.

Argued Feb. 14, 2012.

Decided June 1, 2012.

Background: Owners and their two wholly-owned companies sued 31 defendants, alleging various violations of federal and state law, including racketeering, larceny, negligence, unjust enrichment, and unfair trade practices in connection with alleged satellite communications scheme. The United States District Court for the District of Columbia, Royce C. Lamberth, Chief Judge, 729 F.Supp.2d 191, dismissed without prejudice for failure to prove proper service of process on three defendants or to show cause therefor. Owners appealed.

Holdings: The Court of Appeals, Rogers, Circuit Judge, held that:

- (1) service was not waived by defendants' acknowledgement of service;
- (2) service was not waived by defendants' pleading;
- (3) plaintiffs lacked good cause for untimely service; and
- (4) discretionary extension of time to effect service was not warranted.

Affirmed.

1. Federal Civil Procedure ⚡411

Service of process is fundamental to any procedural imposition on a named defendant. Fed.Rules Civ.Proc.Rule 4(c), 28 U.S.C.A.

2. Federal Courts ⚡71

Under the federal rules enacted by Congress, federal courts lack the power to assert personal jurisdiction over a defendant unless the procedural requirements of effective service of process are satisfied. Fed.Rules Civ.Proc.Rule 4(c), 28 U.S.C.A.

3. Federal Civil Procedure ⚡411

Service of process is not only a means of notifying a defendant of the commencement of an action against him, but a ritual that marks district court's assertion of jurisdiction over the lawsuit. Fed.Rules Civ.Proc.Rule 4(c), 28 U.S.C.A.

4. Federal Civil Procedure ⚡2394

A judgment is void where the requirements for effective service of process have not been satisfied. Fed.Rules Civ.Proc. Rule 4(c), 28 U.S.C.A.

5. Federal Civil Procedure ⚡511

Plaintiff has the burden to demonstrate that the procedure employed to deliver the papers satisfies the requirements of the relevant portions of the rule governing service of process. Fed.Rules Civ.Proc.Rule 4, 28 U.S.C.A.

6. Federal Civil Procedure ⚡411

Although the district court cannot be assured that it has jurisdiction over a defendant until the plaintiff files proof of service, the defendant becomes a party officially, and is required to take action in that capacity, upon service. Fed.Rules Civ.Proc.Rule 4(l)(1), 28 U.S.C.A.

7. Federal Civil Procedure ⚡551, 734.1

A defendant must answer the complaint within 21 days after being served, even if the plaintiff fails timely to prove service by filing a server's affidavit or files defective proof of service, for the district court may permit proof of service to be amended. Fed.Rules Civ.Proc.Rules 4(l)(3), 12(a)(1)(A), 28 U.S.C.A.

motion for an extension of time to respond to the March 9, 2010 Order, despite two opportunities to do so. *Id.* at 195. Even if it had entertained the Response, the district court explained that “it would still find that plaintiffs have not carried their burden” to show “good cause” warranting an extension of time to effect service pursuant to Rule 4(m), *id.* at 197, or even “some cause” warranting a discretionary extension, *id.* at 200.

II.

[1–4] “Service of process, under longstanding tradition in our system of justice, is fundamental to any procedural imposition on a named defendant.” *Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 350, 119 S.Ct. 1322, 143 L.Ed.2d 448 (1999). Under the federal rules enacted by Congress, federal courts lack the power to assert personal jurisdiction over a defendant “unless the procedural requirements of effective service of process are satisfied.” *Gorman v. Ameritrade Holding Corp.*, 293 F.3d 506, 514 (D.C.Cir.2002); see *Omni Capital Int’l, Ltd. v. Rudolf Wolff & Co., Ltd.*, 484 U.S. 97, 104, 108 S.Ct. 404, 98 L.Ed.2d 415 (1987); *Miss. Pub’g Corp. v. Murphree*, 326 U.S. 438, 444–45, 66 S.Ct. 242, 90 L.Ed. 185 (1946). Service is therefore not only a means of “notifying a defendant of the commencement of an action against him,” but “a ritual that marks the court’s assertion of jurisdiction over the lawsuit.” *Okla. Radio Assocs. v. FDIC*, 969 F.2d 940, 943 (10th Cir.1992). Consequently, courts have “uniformly held . . . a judgment is void where the requirements for effective service have not been satisfied.” *Combs v. Nick Garin Trucking*, 825 F.2d 437, 442 & n. 42 (D.C.Cir.1987) (collecting cases); cf. *Cambridge Holdings Grp., Inc. v. Federal Ins. Co.*, 489 F.3d 1356, 1360 (D.C.Cir.2007).

Rule 4(c) of the Federal Rules of Civil Procedure provides, in relevant part, that “[a] summons must be served with a copy of the complaint. The plaintiff is responsible for having the summons and complaint served within the time allowed by Rule 4(m).” Rule 4(m) provides, in relevant part:

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.

FED.R.CIV.P. 4(m). Rule 4 further specifies who may make service, see FED.R.CIV.P. 4(c)(2) & (3), and how a waiver of service may be proved, see FED.R.CIV.P. 4(d). “Unless service is waived, proof of service must be made to the [district] court.” FED.R.CIV.P. 4(l)(1). “[P]roof must be by the server’s affidavit,” unless service is made by the United States marshal (or deputy marshal). *Id.*

[5] By the plain text of Rule 4, the plaintiff has the burden to “demonstrate that the procedure employed to deliver the papers satisfies the requirements of the relevant portions of Rule 4.” 4A C. WRIGHT & A. MILLER, FEDERAL PRACTICE AND PROCEDURE § 1083 (3d ed. 2002 & Supp. 2012); see *Light v. Wolf*, 816 F.2d 746, 751 (D.C.Cir.1987); *Grand Entm’t Grp., Ltd. v. Star Media Sales, Inc.*, 988 F.2d 476, 488 (3d Cir.1993); *Aetna Bus. Credit, Inc. v. Universal Decor & Interior Design, Inc.*, 635 F.2d 434, 435 (5th Cir.1981). Seeking to demonstrate compliance with Rule 4, plaintiffs rely on Rule 4(l)(3) and defendants’ waiver by pleading as well as cause for delay in effecting proof of ser-