

**PENNSYLVANIA SUPREME COURT DEFINES PLAINTIFFS' AFFIRMATIVE DUTY TO TIMELY EFFECTUATE SERVICE OF PROCESS**

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On March 25, 2021, the Pennsylvania Supreme Court delivered a landmark 4-3 decision that clarifies plaintiffs' obligations to effectuate original service of process or risk having the case dismissed, *Gussom v. Teagle*, 2021 WL 1134548 (Pa. March 25, 2021) (Maj. Op. by Baer, J.) (Wecht, J., Dissenting).

In Pennsylvania, suit may be initiated by filing a Complaint or a Writ of Summons, which frequently is done in order to toll the statute of limitations. In 1976, the PA Supreme Court in *Lamp v. Heyman*, 366 A. 2d 882 (Pa. 1976) sought to end certain abuses by plaintiffs who tolled the statute of limitations by issuing and reissuing a Writ or reinstating a Complaint without serving or notifying the defendant. The *Lamp* Rule permits a writ of summons or complaint to remain effective only if the plaintiff refrains from a course of conduct that serves to stall in its tracks the legal machinery set in motion. The burden was placed on the plaintiff to show good-faith efforts to effectuate service of process. Unfortunately, *Lamp* led to inconsistent rulings by the lower courts.

In the 1986 decision in *Farinacci v. Beaver County Industrial Development Authority*, 511 A. 2d 757, 759 (Pa. 1986), the PA Supreme Court revisited and reiterated the ruling in *Lamp* that a plaintiff must show its good-faith effort to ensure that a defendant received notice of the commencement of the action.

However, by 2005, the *Lamp* Rule had been eroded by a series of opinions that tended to shift the burden to the defense to show that the plaintiff had demonstrated an intent to stall the judicial machinery or that the plaintiffs' failure to comply with the Rules of Civil Procedure had prejudiced defendants.

In *Gussom*, the slim majority clarified that its 2005 ruling in *McCreesh v. City of Philadelphia*, 888 A. 2d 664 (Pa. 2005) was not intended to modify plaintiff's burden to prove a good-faith effort to effectuate service of process. The *Gussom* majority reinforces that it is the plaintiff's burden to affirmatively show a good-faith effort to effectuate service of process and/or the defendants actual notice of the commencement of the action. It is now clear that a defendant's duty ends at the allegation that plaintiff failed to satisfy the *Lamp* Rule.

Ms. Gussom was injured on July 25, 2016, and timely commenced the action on April 26, 2018, three months prior to the running of the statute of limitations. An affidavit of nonservice was filed on May 4, 2018, after service was attempted at the wrong address. Plaintiff took no further action until August 22, 2018, when she filed a *praecipe* to reinstate the complaint. At that point, however, the Court noted that the statute of limitations had run. Plaintiff failed to respond to preliminary objections alleging noncompliance with the *Lamp* Rule and there was no evidence to indicate Defendant was on actual notice.

The *Gussom* Court further defines the *Lamp* Rule as a method to enforce and not dilute the policies underlying the statute of limitations. The implication is that parties sitting on their rights to file claims in quick succession of the statute of limitations must be prepared to affirmatively show good-faith efforts to effectuate service of process if they seek to reinstate the writ or reissue the Complaint after the statute of limitations has run. Defendants and defense counsel must be diligent in holding plaintiffs to their burden and preserving such procedural defects and defenses in initial pleadings.