

**UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION**

In re:

SALVATORE CUOMO and  
CHERYL A. CUOMO,

Case No. 6:09-bk-17173-ABB  
Chapter 7

Debtors.

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LUIS FIGUEROA and  
ANA FIGUEROA,

Plaintiffs,

Adv. Pro. No. 6:10-ap-00029-ABB

v.

SALVATORE CUOMO, SR. and  
CHERYL A. CUOMO,

Defendants.

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**ORDER**

This matter came before the Court on the Motion for Relief from Order Dismissing Adversary Proceeding (Doc. No. 8) filed by the Plaintiffs Luis Figueroa and Ana Figueroa requesting this adversary proceeding be reinstated. A hearing was held on July 12, 2010 at which counsel for the Plaintiffs and counsel for the Defendants/Debtors Salvatore Cuomo and Cheryl Cuomo (“Debtors”) appeared. The parties filed post-hearing briefs pursuant to the Court’s directive (Doc. Nos. 22, 23).

***Events***

Debtors filed the above-captioned Chapter 7 case on November 10, 2009. February 5, 2010 was set as the deadline for filing complaints objecting to the Debtors’ discharge and to determine the dischargeability of debts. Plaintiffs timely filed a

Complaint (Doc. No. 1) on February 2, 2010 requesting: (i) the Debtors' discharge be denied pursuant to 11 U.S.C. Sections 727(a)(3) and 727(a)(5); and (ii) various loan obligations be deemed nondischargeable pursuant to 11 U.S.C. Sections 523(a)(2), 523(a)(4), and 523(a)(6). Debtors are represented by counsel in the main case who made a limited appearance on their behalf in this adversary proceeding.

Plaintiffs have made several errors in this adversary proceeding. The Court issued a Summons on February 2, 2010 (Doc. No. 2) and Plaintiffs were required to serve the Complaint and Summons on Debtors and their counsel within fourteen days of February 2, 2010 by one of the delivery methods delineated in Federal Rule of Civil Procedure 7004. FED. R. BANKR. P. 7004(b), (e), (g). A summons not served within fourteen days of its issuance becomes invalid and an alias summons must be obtained. FED. R. BANKR. P. 7004(e).

Plaintiffs did not serve the Complaint and Summons on the Debtors. They assert service was conducted by the Court electronically via its CM/ECF system. Any transmission of documents by the Court through its CM/ECF system does not constitute service of process. The Summons became invalid fourteen days after its issuance.

Plaintiffs filed a Motion for Default against the Debtors on March 18, 2010. The Motion was denied and an Order was entered on April 2, 2010 (Doc. No. 6) dismissing this adversary proceeding for Plaintiffs' failure to effect service of process pursuant to Federal Rule of Civil Procedure 7004.

### *Motion for Reconsideration*

Plaintiffs filed a Motion for Relief requesting reconsideration of the April 2, 2010 Order and citing Federal Rule of Civil Procedure 60 as the basis for the Motion. The Motion was filed thirty-nine days after the entry of the April 2, 2010 Order and is untimely.

The time periods for effecting service of process have expired. The fourteen-day service period of Rule 7004(e) expired and the original summons is invalid. An alias summons was purportedly issued on May 26, 2010 (Doc. No. 13), but Plaintiffs did not effect service of process. The purported alias summons is invalid pursuant to Rule 7004(e).

Plaintiffs were required to serve the Complaint and a valid summons upon the Debtors and their counsel within 120 days of February 2, 2010 pursuant to Federal Rule of Civil Procedure 4(m) (made applicable to bankruptcy proceedings by Federal Rule of Bankruptcy Procedure 7004(a)). Plaintiffs have not served the Debtors and their counsel with the Complaint and a valid summons. The 120-day service period has expired.

The Court is authorized to strike the Complaint and dismiss this adversary proceeding for the Plaintiffs' failure to conduct service. The Court has discretion "to extend the time for service for an appropriate period" upon the showing of "good cause." FED. R. CIV. P. 4(m). Given the serious allegations made in the Complaint and Plaintiffs' counsel's apparent unfamiliarity with bankruptcy procedures, good cause exists to allow Plaintiffs an opportunity to conduct service.

The Clerk of Court shall be directed to issue an alias summons. Plaintiffs shall conduct service and file proofs of service pursuant to the governing rules. Plaintiffs' failure to timely and fully comply with this Order shall result in the dismissal of this adversary proceeding.

Accordingly, it is

**ORDERED, ADJUDGED and DECREED** that Plaintiffs' Motion for Relief (Doc. No. 8) is hereby **GRANTED** and this adversary proceeding is hereby **REINSTATED**; and it is further

**ORDERED, ADJUDGED and DECREED** that the Clerk of Court shall issue an alias summons forthwith; and it is further

**ORDERED, ADJUDGED and DECREED** that Plaintiffs shall conduct service of the Complaint and alias summons upon the Debtors and their counsel pursuant to the provisions of Federal Rule of Bankruptcy Procedure 7004 and Federal Rule of Civil Procedure 4. Plaintiffs shall file proofs of service. Plaintiffs' failure to timely and fully comply with this Order shall result in the dismissal of this adversary proceeding.

Dated this 10th day of August, 2010.

/s/ Arthur B. Briskman  
ARTHUR B. BRISKMAN  
United States Bankruptcy Judge