

1 Plaintiff acknowledges that defendant has not been personally
2 served, but asserts it is because the address listed on debtor's
3 petition does not exist.

4 At the hearing on the motion to dismiss, the Court heard
5 argument from defendant's current counsel, as well as from
6 plaintiff Mitchell, appearing in his own behalf. At the
7 conclusion of the hearing, the Court orally ruled, on the record,
8 that the motion to dismiss was granted, without prejudice to
9 refiling and proper service.

10 Following the hearing, and oral ruling, the Court has
11 revisited the matter, *sua sponte*, and now reverses its oral
12 ruling. The motion to dismiss is hereby denied, without
13 prejudice to renewal when it is ripe.

14 As noted, it is correct that defendant Carpenter has not
15 been personally served with the summons and complaint in this
16 adversary proceeding. It is also correct that the summons issued
17 by the Clerk's Office on September 27, 2010 has long since
18 expired. However, that does not mean time has run on plaintiff's
19 opportunity to effect service on defendant Carpenter. To the
20 contrary, Rule 4(m), Federal Rule of Civil Procedure, made
21 applicable in these proceedings by Rule 7004(a) Federal Rule
22 of Bankruptcy Procedure, provides for a period of up to 120
23 days from filing the complaint to make service, and even
24 longer for "good cause." The adversary complaint was filed
25 September 27, 2010, and the hearing on the motion to dismiss

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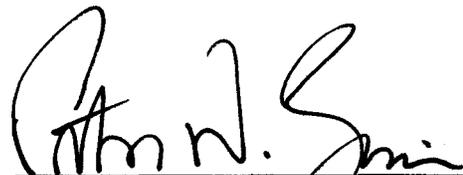
1 was held on November 29, 2010, barely 60 days into the time
2 available to effect service.

3 The Court has no occasion at this time to consider whether
4 "good cause" under Rule 4(m) exists in this case to extend the
5 service period even further because of debtor's use of an
6 incomplete or inaccurate personal address. On November 22, 2010
7 plaintiff requested and was issued an Alias Summons. Plaintiff
8 apparently still has time to effect service of process of the
9 Alias Summons and Complaint.

10 Accordingly, defendant's Motion to Dismiss should have been,
11 and hereby is denied, without prejudice. Plaintiff need not
12 refile the underlying complaint before making proper service on
13 defendant.

14 IT IS SO ORDERED.

15 DATED: NOV 30 2010

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18 PETER W. BOWIE, Chief Judge
19 United States Bankruptcy Court
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