

MAR 28 2006

UNITED STATES BANKRUPTCY COURT  
 NORTHERN DISTRICT OF GEORGIA  
 ATLANTA DIVISION

|                       |   |                      |
|-----------------------|---|----------------------|
| IN THE MATTER OF:     | : | CASE NUMBERS         |
|                       | : |                      |
| ALBERT JOHN GUERRESO, | : | BANKRUPTCY CASE      |
|                       | : | NO. 03-97218-MGD     |
|                       | : |                      |
| Debtor,               | : |                      |
| _____                 | : |                      |
|                       | : |                      |
| KELLY ANN GUERRESO,   | : | ADVERSARY CASE       |
|                       | : | NO. 04-06238         |
|                       | : |                      |
| Plaintiff,            | : |                      |
|                       | : |                      |
| v.                    | : |                      |
|                       | : | IN PROCEEDINGS UNDER |
| ALBERT JOHN GUERRESO, | : | CHAPTER 7 OF THE     |
|                       | : | BANKRUPTCY CODE      |
|                       | : |                      |
| Defendant.            | : |                      |

**ORDER AND NOTICE**

On May 30, 2004, Kelly Ann Guerreso (“Plaintiff”) commenced the above-referenced adversary proceeding by filing a complaint seeking to determine the dischargeability of debt pursuant to 11 U.S.C. §§ 523(a)(5) and (a)(15). Albert John Guerreso (“Defendant”) timely filed an answer on June 21, 2004. On January 30, 2006, after the conclusion of the period for discovery as set forth by the Court in an order entered November 1, 2005, Plaintiff filed a Motion for Summary Judgment. Defendant did not file a timely response to Plaintiff’s request for summary judgment, but on February 28, 2006, filed a motion for the Court to allow him to file an out-of-time response to the summary judgment motion and for an extension of time to

formally respond to Plaintiff's summary judgment motion.<sup>1</sup>

In the motion, counsel for Defendant, John P. Rutkowski, states that on February 9, 2006, he resigned from the law firm with which he had been associated and was given a week to remove furniture and files. Mr. Rutkowski asserts that during the time in which he had to move Defendant's file was misplaced.

Plaintiff filed a response to Defendant's motion stating that Mr. Rutkowski's request is part of a pattern that has been evident throughout the course of the case. Counsel for Plaintiff also states that for her client there is an ongoing effort to keep costs down and that an unopposed motion for summary judgment is in her client's best interests. All of these contentions may very well be true, however, the Court recognizes that a strong federal policy favors resolution of disputes on the merits as opposed to disposition on technicalities. See *Smith v. Pay-Fone Sys., Inc.*, 627 F.Supp. 121, 123 (N.D.Ga. 1985). While the Court finds Mr. Rutkowski's explanation for the late response to be credible, the salient consideration for the Court is whether Defendant's late response will cause undue delay or undue prejudice to Plaintiff. The Court concludes that the delay experienced by Plaintiff of a couple of days in an adversary proceeding that has been pending since May 2004, does not rise to the level of material prejudice sufficient for the Court to refuse to consider Defendant's response to the motion for summary judgment. There is no indication that the late filed response will result in any undue delay or undue prejudice to Plaintiff. Accordingly, it is

**ORDERED** that Defendant's motion for the Court to consider the Defendant's out of time response is **GRANTED**.

---

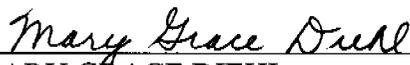
<sup>1</sup> Subsequently on March 3, 2006, Defendant responded to Plaintiff's Statement of Material Facts (Docket No. 26), and on March 6 filed a response to Plaintiff's Motion for Summary Judgment (Docket No. 27).

**IT IS FURTHER ORDERED and NOTICE IS HEREBY GIVEN THAT** a hearing on Plaintiff's Motion for Summary Judgment will be held before the undersigned on May 2, 2006, at 10:00 a.m. in Courtroom 1201, Richard B. Russell Building, United States Courthouse, 75 Spring Street, SW, Atlanta, GA 30303.

The Clerk is directed to mail a copy of this Order and Notice to counsel for Plaintiff and counsel for Defendant.

**IT IS SO ORDERED.**

This the 27<sup>th</sup> day of March, 2006.

  
\_\_\_\_\_  
MARY GRACE DIEHL  
UNITED STATES BANKRUPTCY JUDGE