

4-7-05 JD

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:	:	CASE NO. A02-96069-REB
	:	
TERESA J. SHAW,	:	
	:	
Debtor.	:	
	:	
_____	:	
MARTHA A. MILLER, in her capacity as	:	ADVERSARY PROCEEDING
Trustee for the Chapter 7 Bankruptcy Estate of	:	NO. 04-6259
TERESA J. SHAW,	:	
	:	
Plaintiff,	:	
	:	
v.	:	
	:	CHAPTER 7
ROBERT CHAPPELL,	:	
	:	
Defendant.	:	JUDGE BRIZENDINE
	:	

ORDER AND NOTICE OF HEARING ON DEFENDANT'S MOTION TO DISMISS

Before the Court is the motion of Defendant to dismiss Plaintiff's complaint for her failure to serve process within 120 days after the filing of the complaint in accordance with Fed.R.Civ.P. 4(m), as adopted herein by Fed.R.Bankr.P. 7004. The Court has reviewed the record, accompanying briefs, and cited authority, and based upon the recent decision of *Horenkamp v. Van Winkle and Co.*, ___ F.3d ___, 2005 Westlaw 564144 (11th Cir. March 11, 2005), finds that it has discretion to extend the time for service of process on a proper showing. Given the absence of an affidavit by Plaintiff in support of her recitation of the pertinent facts or similar evidence, the Court will hold a hearing on this limited issue; to wit, whether to grant

an extension of time for service based on justifying factors. *See e.g. Horenkamp*, ___ F.3d at ___, 2005 Westlaw 564144 at 3. Accordingly, it is

ORDERED AND NOTICE IS HEREBY GIVEN that a hearing will be held at 1:30 o'clock p.m. on the 28th day of April, 2005, in Courtroom 1202, United States Courthouse, 75 Spring Street, S.W., Atlanta, Georgia, to consider the motion and fact issue as stated above regarding same.

The Clerk is directed to serve a copy of this Order and Notice upon Plaintiff's counsel and counsel for Defendant, and the Chapter 7 Trustee.

IT IS SO ORDERED.

At Atlanta, Georgia this 6th day of April, 2005.



ROBERT E. BRIZENDINE
UNITED STATES BANKRUPTCY JUDGE