



Defendant's assertion that Plaintiff failed to serve Defendant's attorney is incorrect. Defendant's attorney was served with reissued summons and the complaint within the time limit allowed in the order entered December 30, 2004.<sup>1</sup> Nevertheless, Defendant appears to assert that Plaintiff was required to serve Defendant and Defendant's attorney *at the same time*, so that Plaintiff should have re-served Defendant when he served Defendant's attorney. Defendant presents no statutory or case law in support of that proposition. The reissued summons, which was served upon Defendant's attorney, provided an extended deadline for the filing of a responsive pleading, based upon the date of the reissued summons. Both Defendant and Defendant's attorney were served with the same complaint and Defendant was able to file the motion to dismiss within the time limit set forth in the reissued summons. Defendant has suffered no prejudice as a result of Defendant and Defendant's attorney having been served at two different times.

The complaint was filed June 30, 2004. Pursuant to Bankruptcy Rule 4007, a complaint to determine dischargeability must be *filed* within 60 days after the date first set for the §341(a) meeting of creditors. The bar date in Debtor's case was July 2, 2004. Plaintiff's complaint was filed prior to that date. The action of filing and serving are separate and distinct. "Filing" occurs when a document is received by the Clerk, not when it is served. *Coggin v. Coggin*, 30 F. 3d 1443 (11th Cir. 1994). Therefore, Defendant's motion to dismiss is without merit. Accordingly, it is hereby


ORDERED that Defendant's motion to dismiss is denied.

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<sup>1</sup> Extension of 120-day time period to perfect service of process on defendant was warranted because dismissal would foreclose Plaintiff's claim entirely and Defendant had actual notice of the lawsuit. *See Horenkamp v. Van Winkle and Co.*, 2005 WL 564144 (11<sup>th</sup> Cir. 2005).

**The Clerk, U.S. Bankruptcy Court, is directed to serve a copy of this order upon Plaintiff's attorney, Defendant's attorney, and the Chapter 7 Trustee.**

IT IS SO ORDERED, this the 1<sup>st</sup> day of July, 2005.

  
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MARGARET H. MURPHY  
UNITED STATES BANKRUPTCY JUDGE