



IT IS ORDERED as set forth below:

Date: June 13, 2008

A handwritten signature in black ink, appearing to read "W. H. Drake", is written over a horizontal line.

**W. H. Drake
U.S. Bankruptcy Court Judge**

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
NEWNAN DIVISION**

IN THE MATTER OF:	:	CASE NUMBERS
	:	
CHRISTINE ANN ISRAEL,	:	BANKRUPTCY CASE
	:	NO. 04-17006-WHD
Debtor.	:	
_____	:	
	:	
CHRISTINE ANN ISRAEL,	:	ADVERSARY PROCEEDING
	:	NO. 08-1701
Plaintiff,	:	
	:	
v.	:	
	:	
DIRECT LOANS,	:	IN PROCEEDINGS UNDER
	:	CHAPTER 7 OF THE
Defendant.	:	BANKRUPTCY CODE

ORDER

Before the Court is the Motion to Dismiss filed by the United States of America on behalf of Department of Education Direct Loans Program, the defendant in the above-captioned adversary proceeding (hereinafter the "United States"). The Motion arises in

connection with a complaint to determine the dischargeability of a student loan debt owed by Christine Ann Israel (hereinafter the “Plaintiff”).

The Plaintiff filed her complaint on April 29, 2008, and the Clerk’s Office issued a summons against “Direct Loans” on that same date. The certificate of service filed by the Plaintiff indicates that she mailed the summons and complaint to Direct Loans at a post office box in Utica, New York on April 30, 2008. According to her response, the Plaintiff obtained this mailing address from the Direct Loans website.

The United States seeks dismissal of the complaint for insufficiency of process because the Plaintiff failed to serve the complaint and summons upon the United States in accordance with Rule 7004(b) of the Federal Rules of Bankruptcy Procedure. Rule 7004(b)(4) requires that a summons and complaint be served upon the United States by mailing the summons and complaint to the civil process clerk at the office of the United States attorney for the district in which the action is brought and to the office of the United State Attorney General in Washington, D.C. *See* FED. R. BANKR. P. 7004(b)(4).

The United States correctly asserts that the Court is without jurisdiction over the United States until service is properly perfected. It is within the Court’s discretion, however, to grant the Plaintiff an opportunity to effectuate service of process. *Umbenhauer v. Woog*, 969 F.2d 25, 30 (3d Cir. 1992) (“[D]ismissal of a complaint is inappropriate when there exists a reasonable prospect that service may yet be obtained. In such instances, the district court should, at most, quash service, leaving the plaintiffs free to effect proper service.”)

(citations omitted); *Montalbano v. Easco Hand Tools, Inc.*, 766 F.2d 737, 740 (2d Cir. 1985) (same) (citations omitted); *In re Swanson*, 343 B.R. 678 (Bankr. D. Kan. 2006).

At this time, the Court finds that the Motion to Dismiss, filed by the United States, should be, and hereby is, **DENIED**.

On or before **June 27, 2008**, the Plaintiff shall obtain an alias summons from the Clerk of Court and shall serve the alias summons and complaint as required by Bankruptcy Rule 7004(b)(4). Should the Plaintiff fail to file a certificate of service indicating proper service of the complaint and alias summons on or before **July 9, 2008**, the United States may file a renewed motion to dismiss.

END OF DOCUMENT