



IT IS ORDERED as set forth below:

Date: May 12, 2010

**Paul W. Bonapfel
U.S. Bankruptcy Court Judge**

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

IN THE MATTER OF:

YOUNG DAE KOO
and HEE SOOK KOO,

Debtors.

CYJA, INC., d/b/a Check Cash Plus,
Rep. Chil Young Son,

Plaintiff

v.

YOUNG DAE KOO,
HEE SOOK KOO, and
BIG TIME TRADING, INC.,

Defendants.

CASE NUMBER: A09-78801-PWB

IN PROCEEDINGS UNDER
CHAPTER 7 OF THE
BANKRUPTCY CODE

ADVERSARY PROCEEDING
NO. 09-6586

ORDER DENYING MOTION TO DISMISS

The Defendants contend that the Plaintiff never served a copy of the summons upon the

Defendants, He Sook Koo and Young Dae Koo, and never served a copy of the complaint upon the Defendant, Big Time Trading, Inc. As a result, the Defendants seek dismissal of this action based upon insufficient process and insufficient service of process.

Rule 12(b) of the Federal Rules of Civil Procedure, made applicable by FED. R. BANKR. P. 7012, provides that a motion asserting a defense of insufficient process (Rule 12(b)(4)) or insufficient service of process (Rule 12(b)(5)) must be made before pleading if a responsive pleading is allowed. On November 6, 2009, approximately four months prior to the filing of the motion to dismiss, the Defendants filed an answer, but did not raise and preserve either insufficient process or insufficient service of process as an affirmative defense. As a result, the Defendants have waived these defenses. FED. R. CIV. P. 12(h); *Vax-D Med. Techs., LLC v. Texas Spine Med. Ctr.*, 485 F.3d 593, 597 (11th Cir. 2007). Accordingly, it is

ORDERED that the Defendants' motion to dismiss is denied.

End of Order

Distribution List

Jin Choi
Jin Choi & Associates, P.C.
Suite 200
3475 Holcomb Bridge Road
Norcross, GA 30092

Brian R. Cahn
Perrotta Cahn & Prieto, P.C.
5 S. Public Square
Cartersville, GA 30120

CYJA, Inc.
Rep. Chil Young Son
5745 Buford Hwy Ste 100F
Doraville, GA 30340

He Sook Koo
11347 Tara Blvd
Hampton, GA 30228-6261

Young Dae Koo
11347 Tara Blvd
Hampton, GA 30228-6261