

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF FLORIDA

In Re

JUAN F. EVANS

Case No. 04-31769

Debtor

JUAN F. EVANS

Plaintiff

vs.

Adv. No. 05-03017

CODILIS & STAWIARSKI, P.A.,  
WELLS FARGO BANK MINNESOTA, N.A.  
as trustee for Option One Mortgage Corporation,  
and OPTION ONE MORTGAGE CORPORATION

Defendants

**ORDER DENYING DEFENDANTS' MOTION TO DISMISS COMPLAINT**

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Juan F. Evans, pro se, Plaintiff, Mary Esther, Florida  
Joseph J. Circelli, Codilis & Stawiariski, P.A., Attorneys for Defendants, Tampa, FL

This case is before the court on the motion of the defendants, Codilis & Stawiariski, Wells Fargo Bank Minnesota, N.A., and Option One Mortgage Corporation for dismissal of the complaint of Juan F. Evans, the plaintiff due to lack of jurisdiction and failure to state a claim upon which relief can be granted. This court has jurisdiction to hear this motion pursuant to 28 U.S.C. § § 157 and 1334 and the Order of Reference of the District Court. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and the court has authority to enter a final order. For the reasons indicated below, the court is denying the motion to dismiss.

## FACTS

The debtor, Juan F. Evans, filed his complaint against the defendants on June 17, 2005. The complaint asserts claims against the defendants for violations of the Fair Debt Collection Practices Act, the Florida Consumer Collection Practices Act, the bankruptcy discharge injunction of 11 U.S.C. § 524, and for tortious interference with a business relationship and fraud. The summons was issued on June 20, 2005. Mr. Evans served the summons on the defendants by certified mail on June 24, 2005.

The summons stated on its face, in accord with Fed. R. Bankr. P. 7012(a), that the complaint must be answered “within 30 days after the date of issuance of this summons.” That date was July 20, 2005. The motion to dismiss was filed on July 22, 2005.

## LAW

The defendants assert that the complaint should be dismissed upon two grounds: (1) the court has no jurisdiction to hear the complaint; and (2) the complaint fails to state a cause of action. The debtor, in response, asserts that the defendants’ motion must fail because it was filed too late. He asserts that the defendants’ untimely response requires denial of the motion.

The plaintiff is correct. Fed. R. Bankr. P. 7012(a) states that “the defendant shall serve an answer within 30 days after the issuance of the summons.” There are no extensions of time as to this time requirement in the Rules or Code.

Federal Rule of Bankruptcy Procedure 7012(a) provides 30 days to answer from the *issuance* of the summons and Rule 7004(f) requires service within 10 days or reissuance of the summons. Together these rules operate to provide the same general time period as Federal Rule of Civil Procedure 12(a) which provides 20 days to answer from the *service* of the summons and complaint. *See* 9 COLLIER ON BANKRUPTCY ¶7012.04 (15th ed. 1995). In essence the deviation is to further the policy of moving bankruptcy cases to a conclusion as quickly as possible. Making the issuance of the summons the key date in computing the time to


answer and allowing the summons to be reissued, if necessary, implements this policy.

*Lawrence v. Willow Point on the Bay (In re Interco Systems, Inc.)*, 185 B.R. 447, 451, fn. 1 (Bankr. W.D.N.Y. 1995) (emphasis in original).

Therefore, the court must deny or strike the defendants' motion to dismiss the complaint as untimely. The court will set for hearing by telephone the plaintiff's motion for summary judgment on **November 14, 2005 at 9:00 a.m.** Any pleadings, responsive to the motion for summary judgment, or otherwise, that the defendants wish to file must be filed by October 31, 2005.

THEREFORE IT IS ORDERED that the motion to dismiss of the defendants, Codilis & Stawiarski, P.A., Wells Fargo Bank Minnesota, N.A. and Option One Mortgage Corporation, is DENIED without prejudice.

**Dated: September 13, 2005**

  
MARGARET A. MAHONEY  
U.S. BANKRUPTCY JUDGE