

This opinion is not intended for publication

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

| | | |
|------------------------|---|----------------------------------|
| In re: |) | Case No. 02-22197 |
| |) | |
| PAUL J. FINOCCHIOLI, |) | Chapter 7 |
| Debtor. |) | |
| |) | Adversary Proceeding No. 03-1031 |
| CHERYL A. LUACS, ESQ., |) | |
| Plaintiff, |) | Judge Arthur I. Harris |
| |) | |
| v. |) | |
| |) | |
| PAUL J. FINOCCHIOLI, |) | |
| Defendant. |) | |

ORDER REGARDING FAILURE TO PERFECT SERVICE

On January 27, 2003, attorney Cheryl Lukacs filed the above-captioned adversary proceeding against the debtor-defendant, Paul Joseph Finocchioli. The docket reflects that the plaintiff has yet to perfect service, despite the 120-day time limit for perfecting service contained in Rule 4(m) of the Federal Rules of Civil Procedure, made applicable to this proceeding under Rule 7004(a) of the Federal Rules of Bankruptcy Procedure. Furthermore, the plaintiff has not moved to extend the time limit for good cause shown. The court therefore gives notice to the plaintiff that this action will be dismissed pursuant to Rule 4(m), unless, on or before June 23, 2003, the plaintiff files an affidavit or declaration under penalty of perjury establishing good cause for her failure to perfect service within 120 days.

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See Thompson v. Maldonado, 309 F.3d 107 (2d Cir. 2002)(notice to plaintiff must be given prior to a *sua sponte* dismissal under Rule 4(m); *Habib v. General Motors Corp.*, 15 F.3d.72 (6th Cir. 1994)(determination of good cause for failure to effect service is left to sound discretion of the court).

IT IS SO ORDERED.

/s/ Arthur I. Harris 06/02/2003
Arthur I. Harris
United States Bankruptcy Judge