

#2489

signed 11-5-99

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS**

In Re:

JANICE KING,

DEBTOR.

**CASE NO. 99-41229-7
CHAPTER 7**

GARY A. NELSON,

PLAINTIFF,

v.

ADV. NO. 99-7078

JANICE KING,

COMMERCE BANK, N.A.,

ADVANTA NATIONAL BANK,

DEFENDANTS.

ORDER QUASHING SUMMONS SERVED ON COMMERCE BANK, N.A.

This proceeding is before the Court on the motion of defendant¹ Commerce Bank, N.A. (“Commerce”), to quash the service of summons made on it. Commerce appears by counsel Thomas J. Fritzlen, Jr. The plaintiff appears by counsel Jonathan C. Brzon. The other parties are not involved in this dispute. The Court has reviewed the relevant pleadings and is now ready to rule.

¹Although Commerce and Advanta National Bank have been designated as third-party defendants in the parties’ pleadings, they are actually just defendants because the claims made against them have been asserted by plaintiff Gary A. Nelson, not defendant Janice King.

In response to Commerce's motion, the plaintiff has not contested the bank's assertion that the summons served on it was issued on August 19, 1999, but was not served on it by mail until September 16. Commerce correctly points out that when a summons and complaint are served by mail, Federal Rule of Bankruptcy Procedure 7004(e) requires issuance and service of another summons if the earlier summons was served within ten days after it was issued. The Ninth Circuit Bankruptcy Appellate Panel has ruled that default judgments were void and had to be set aside where the summonses had not been served in the time required by this subsection. *Campbell v. Castelo (In re Campbell)*, 105 B.R. 19, 20-22 (9th Cir. B.A.P. 1989) (applying Rule 7004(f) as it existed in 1989; it was the predecessor of present 7004(e) and was identical in all relevant respects). Consequently, although the plaintiff can easily remedy this defect, the Court concludes it must quash the service made on Commerce because the summons had expired before it was served.

IT IS SO ORDERED.

Dated at Topeka, Kansas, this ____ day of November, 1999.

JAMES A. PUSATERI
CHIEF BANKRUPTCY JUDGE