

IN THE UNITED STATES BANKRUPTCY COURT FOR THE
EASTERN DISTRICT OF TENNESSEE

In re

MILLERS COVE ENERGY CO., INC.)	
)	Case No. 90-34050
Debtor.)	Chapter 11
)	
THE OFFICIAL COMMITTEE OF)	
UNSECURED CREDITORS OF MILLERS)	
COVE ENERGY CO., INC.)	
)	
Plaintiff,)	
)	
v.)	Adv. Proc. No. 94-2008
)	
CHICAGO FUEL & IRON COMPANY,)	
INC., et al)	
)	
Defendants.)	

M E M O R A N D U M

This matter is before the court on a motion to quash summons filed by defendant, Chicago Fuel & Iron Company, Inc. ("CFI"), on May 26, 1994. CFI contends that the summons which was served upon it by the plaintiff, the Official Committee of Unsecured Creditors of Millers Cove Energy Company, Inc., on May 19, 1994, is without any legal effect since it was not served within ten days after it was issued by the clerk. As no response has been timely filed by the plaintiff as allowed by Local Rule 7, the court will rule on the motion without a hearing. See Local Rule 7(c).

The complaint initiating this adversary proceeding was filed on April 8, 1994. The summons was issued by the clerk on April 13, 1994. Service of process upon the registered agent for CFI was

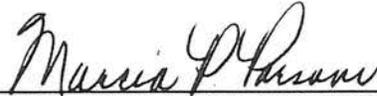
attempted by the plaintiff by depositing a copy of the complaint and summons into the U.S. mail in accordance with FED. R. BANKR. P. 7004(b)(3). Rather than promptly attempting to serve CFI after the summons was issued, the plaintiff waited until May 9, 1994, to attempt service. CFI's registered agent received the copies of the summons and complaint on May 13, 1994. Plaintiff filed the summons on May 24, 1994, which indicated the CFI had been served on May 13, 1994. However, because Rule 5 of the Federal Rules of Bankruptcy Procedure, which incorporates *Fed. R. Civ. P. 5*, deems service by mail to be complete upon mailing, CFI was effectively served on May 9, 1994, with copies of the complaint and summons despite the fact that its registered agent did not receive the copies until May 13, 1994.

Rule 7004(f) of the Federal Rules of Bankruptcy Procedure states in pertinent part that "[i]f service is made by any authorized form of mail, the summons and complaint shall be deposited in the mail within 10 days following issuance of the summons." That was not done in this instance. When service was attempted by the plaintiff some twenty-six days after issuance of the summons, the summons had already expired. See *In re Wilson*, 96 B.R. 301, 303 n.5 (Bankr. E.D. Cal. 1989) (summons expires if not served within ten days after it is issued); *In re Check Reporting Services, Inc.*, 133 B.R. 392, 396 (Bankr. W.D. Mich. 1991) (7004(f) gives a summons a short life of only ten days). As a result, service of process by the plaintiff upon CFI was defective. Therefore, CFI's motion to quash the summons should be granted.

An order will be entered in accordance with this memorandum quashing the summons.

ENTER: June 21, 1994

BY THE COURT

A handwritten signature in cursive script, reading "Marcia P. Parsons".

MARCIA PHILLIPS PARSONS
UNITED STATES BANKRUPTCY JUDGE