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**In the United States Bankruptcy Court  
for the  
Southern District of Georgia  
Savannah Division**

In the matter of: )  
 ) Chapter 7 Case  
DONALD R. WILLIAMSON )  
 ) Number 98-42603  
 )  
\_\_\_\_\_ *Debtor* )

**MEMORANDUM AND ORDER  
ON MOTION TO FILE LATE ADVERSARY**

The above-styled case came before this Court for hearing on a Motion to File a Late Adversary by First Liberty Bank on September 22, 1999. This Court has jurisdiction pursuant to 28 U.S.C. § 1334 and 28 U.S.C. § 157(b)(2)(F). Pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure, I make the following Findings of Fact and Conclusions of Law.

**FINDINGS OF FACT**

Debtor Donald R. Williamson filed a Chapter 7 petition on August 28, 1998. A Certificate of Service, dated September 4, 1998, shows that notice of this filing was mailed to all creditors, including First Liberty Bank in Macon, Georgia. (Doc. 6). December 4, 1998 was established as the deadline to file a complaint objecting to discharge of the debtor or to determine dischargeability of certain debts. On October 27, 1998 this Court entered an Order approving a motion filed to employ a real estate broker. On December 22 an Order and Notice of Sale was issued. The Certificate of Service shows that notice of this sale was mailed to all creditors, including First Liberty Bank, on December 26, 1998. (Doc. 16). On January 28, 1999 a hearing was held and this Court entered an Order approving the sale. (Doc. 20). On April 6, 1999, Carol Williamson

brought a Motion to Require the Trustee to Disburse Funds (Doc. 23). On April 17, 1999, First Liberty Bank, among other creditors, was served with notice of this Motion to Require the Trustee to Disburse Funds, according to the Certificate of Service. (Doc. 25). First Liberty Bank did not file an adversary in this case by the December 4, 1998 deadline. Instead, in July of 1999, First Liberty Bank filed this Motion to Allow Late Filing of an Adversary.

At the hearing on the Motion to Allow Late Filing of an Adversary, Ray Medved, the Bankruptcy Specialist for First Liberty Bank in Macon, stated that he receives all bankruptcy notices, but avers that none of the notices sent to the creditors of Donald R. Williamson crossed his desk. Medved stated that the address printed on the matrix for First Liberty Bank was correct. The account file of Donald Williamson was held and maintained in First Liberty Bank's Recovery Department, a separate office. The Recovery Department receives all the mail but there is no set procedure in the Recovery Department ensuring that all Bankruptcy materials are properly forwarded to Medved's office. Medved also stated that he was unaware of the exact date that the matter of Donald Williamson's bankruptcy was brought to his attention and knew of no reason why the adversary was not timely filed.

#### CONCLUSIONS OF LAW

This Court has previously held that a letter or notice, properly addressed and placed in the mail, is presumed to be delivered to the addressee in a timely manner. IHS of Brunswick, Inc. v. Roger Towne (In re First American Health Care of Georgia, Inc.) Ch. 11 Case No. 96-20188, Adv. No. 98-2032, slip. op. at 9 (S.D. Ga. August 24, 1999) (*citing* Hagner v. United States, 285 U.S. 427, 430, 52 S.Ct. 417, 418, 76 L.Ed. 861 (1932)). The presumption can be rebutted, however, by producing evidence which supports the finding of the "non-existence of the

presumed fact.” In re Hobbs, 141 B.R. 466 (Bankr. N.D. Ga. 1992)(Cotton, J.). The majority of courts which have considered this presumption of receipt have ruled that a denial of receipt, standing alone, is insufficient to rebut the presumption. See In re Eagle Bus Manufacturing, 62 F.3d 730, 735-36 (5<sup>th</sup> Cir. 1995); In re Longardner, 855 F.2d 455 (7<sup>th</sup> Cir. 1988); In re Williams, 185 B.R. 598 (9<sup>th</sup> Cir. B.A.P. 1995); Hobbs, 141 B.R. at 468; *But see* In re Yoder, 758 F.2d 1114 (6<sup>th</sup> Cir. 1985)(testimony of nonreceipt alone is sufficient to support finding of nonexistence of presumed fact). I continue to agree with the majority view, and hold that mere denial of receipt is insufficient to overcome the presumption that notice properly mailed is properly delivered.

Direct denial, coupled with other evidence of standardized procedures in the receipt and processing of mail, can be sufficient to rebut the presumption of delivery. Hobbs, 141 B.R. at 468 (citing Legille v. Dann, 544 F.2d 1, 5-11 (D.C. Cir. 1976)). Ray Medved’s testimony in the hearing on this matter provided this Court with no evidence of any standardized procedure which would ensure that Bankruptcy notices made their way from the Collections Recovery Department in First Liberty Bank, admittedly a separate Department, to Medved’s attention. Indeed, a number of notices were issued and served on First Liberty subsequent to the notice of the bar date, and prior to the filing of this motion, yet it appears that none of them were forwarded to Medved. Further, the addresses on the matrixes used to mail notice in Donald Williamson’s bankruptcy case were acknowledged by Medved as correct and no evidence was presented establishing that the notices were returned. Medved himself was unable to offer testimony as to why notice was not received in this case. As such, this Court holds that the testimony presented in the hearing on the Motion to File Late Adversary was insufficient to overcome the presumption of delivery established when a notice is properly addressed and mailed, as evidenced by the matrixes in the file.

O R D E R

First Liberty National Bank has failed to overcome the presumption that it did, in fact, receive notice of Donald R. Williamson's bankruptcy filing and therefore should have filed this adversary before the bar date of December 4, 1999. The time limits imposed by the Federal Rules of Bankruptcy Procedure are jurisdictional in nature and therefore cannot be extended by this Court. In re Ginn, 179 B.R. 349 (S.D. Ga. 1995). In consideration of the foregoing, IT IS THE ORDER OF THIS COURT that First Liberty Bank's Motion to File a Late Adversary is DENIED.

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Lamar W. Davis, Jr.  
United States Bankruptcy Judge

Dated at Savannah, Georgia

This 22<sup>nd</sup> day of December, 1999.