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COURTS Civil Cases: Limitation on Time for Filing

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COURTS

Civil Cases: Limitation on Time for Filing

CODE SECTION:	O.C.G.A. § 9-2-61 (amended)
BILL NUMBER:	SB 17
ACT NUMBER:	734
SUMMARY:	The Act allows renewal of civil cases after dismissal where the original cases were filed in state and federal courts.

History

The history of this provision of the Code is outlined in *Clark v. Newsome*.[1] In 1847 the Legislature passed a renewal act providing that in any case which had been discontinued or dismissed or in which the plaintiff had been nonsuited that the plaintiff could renew the case in any state court within six months of such termination. Such right to renew was extended to only one renewal.[2]

In 1856 the Legislature added another provision to the renewal act: if the judgment is withheld because of some error apparent from the fact of the record, the case could be brought again in state court within six months of the termination of the case.[3] In the 1863 Code the statutes were codified, and the renewal act of O.C.G.A. § 9-2-61, prior to the 1985 amendment, retained basically the same language as its predecessors.

Clark v. Newsome was only one of numerous cases brought under the renewal act in which the court held that a plaintiff would be permitted to renew his cause of action within six months of dismissal, even though the action would otherwise be barred by the statute of limitations. The act was considered remedial in nature and was to be literally construed.[4] The Georgia Supreme Court did not extend renewal to cases originally brought in federal courts.

Constitution Publishing Co. v. DeLaughter[5] addressed the question of the applicability of the renewal act to cases which originated in federal courts. The court stated that "the manifest intention of the legislature" was that the renewal act "should apply only to State courts" and was not

1. 180 Ga. 97, 178 S.E. 386 (1935).
2. 1847 Ga. Laws 217.
3. 1855-56 Ga. Laws 237.
4. Cox v. Berry, 13 Ga. 306, 310 (1853).
5. 95 Ga. 17, 21 S.E. 1000 (1894).

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to be enlarged to include actions brought in federal courts.[6]

In *Henson v. Columbus Bank & Trust Co.*,[7] the court applied the rule in *Constitution Publishing Co.* to conclude that the plaintiff's case was barred by the statute of limitations since it had been originally filed in federal court before its dismissal. The court commented that the well settled law of the State is that the renewal act could not be extended to cases orginally brought in federal courts.

The federal court upheld this interpretation of the renewal act in *Diversified Mortgage Investors v. Georgia-Carolina Industrial Park Venture.*[8] The case law also indicates that where the original action was commenced in state court and removed to federal court where it was subsequently dismissed, the action could not be renewed in state court.[9]

SB 17

The Act deals with voluntary dismissals in federal courts to encourage the filing of causes of action in state courts after dismissal in federal courts. The amendment broadens the scope of the renewal act and its remedial aspect of allowing the dismissed case to stand on the same footing as the original case as long as it is filed within six months of dismissal.

6. *Id.* at 18, 21 S.E. at 1000.
7. 144 Ga. App. 80, 84, 240 S.E.2d 284, 287 (1977).
8. 463 F. Supp. 538 (N.D. Ga. 1978).
9. *See* Cox v. East Tenn., Va. & Ga. R.R., 68 Ga. 446 (1882); Ivester v. Southern Ry., 61 Ga. App. 364, 365, 6 S.E.2d 214, 215 (1939).

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