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Georgia Civil Procedure Forms

Publication 80912 Release 22 December 2012

HIGHLIGHTS

- **This release adds further refinements, forms and new cases to the treatise's exhaustive coverage of Georgia civil practice and procedure.**
- **Updated authoritative commentary on Georgia Civil Procedure by Robert R. Ambler, Jr., Esquire.**
- **Many new Georgia civil procedure cases and forms analyzed and explained to assist in all aspects of civil litigation in Georgia.**

New Forms:

- **Form 9-11-12(b).39 Motion to Dismiss for Forum non Conveniens**
- **Form 9-11-12(b).40 Affidavit in Support of Motion to Dismiss for Forum Non Conveniens**
- **Form 9-11-12(b).41 Stipulation Pursuant to O.C.G.A. § 9-10-31.1(b) in Support of Motion to Dismiss for Forum Non Conveniens**
- **Form 9-11-21.11 Motion to Realign Parties**
- **Form 9-11-26(b).4 Document Retention Memo Following Initiation of Litigation**
- **Form 9-11-8(a).1.1 Complaint—Malpractice of Pharmacist**
- **Form 9-11-8(a).6.1 Complaint—Fraudulent Misrepresentation, Concealment, and Conspiracy in Sale of Real Property**

Noteworthy Cases:

Hutcheson v. Elizabeth Brennan Antiques & Ints., Inc., 317 Ga. App. 123, 730 S.E.2d 514 (2012): The contractor sued a property owner in the Superior Court of Walker County (Georgia), to recover payment for work done by the contractor on the owner's property. Following the owner's failure to timely answer the contractor's complaint after service by publication, the trial court entered a default judgment against the owner. The owner's motion to set aside the default judgment was denied. The owner appealed. After, the contractor filed her lawsuit, the sheriff's department and two special process servers, despite multiple attempts, were unable to personally serve the owner. Believing that the owner was evading service, the contrac-

tor requested and received permission to obtain service by publication. Despite the publication, the owner did not file an answer, and as a result, the contractor obtained a default judgment. On appeal, the court found that the trial court did not err in granting the contractor's motion for service by publication, pursuant to O.C.G.A. § 9-11-4(f)(1)(A), because the contractor proffered evidence suggesting that the owner was evading personal service. However, the clerk of the superior court conceded that it did not mail copies of the order for service by publication, notice of publication, and the contractor's complaint to the owner's known address. Thus, service in the case did not comply with the terms of O.C.G.A. § 9-11-4(f)(1)(C). Accordingly, the trial court lacked personal jurisdiction over the contractor. The appellate court was, therefore, constrained to reverse the trial court's denial of the owner's motion to set aside the default judgment. The judgment was reversed.

Sherman v. Dev. Auth., 730 S.E.2d 113 (2012): Appellant plaintiff appealed the judgment of the Fulton County Superior Court (Ga.) that validated and confirmed certain revenue bonds and bond security by appellee agency. Plaintiff contends that the validation order was "void on its face," arguing that the trial court did not have personal jurisdiction over the company because its acknowledgment of service and answer were signed by the senior vice president rather than a Georgia licensed attorney, as required by law. Plaintiff contends that the trial court was without jurisdiction to rule upon the memorandum's validity, arguing that pursuant to the statutes constituting the revenue bond law. The appellate court found that the bonds at issue were not issued under the Revenue Bond Law. The board was aware of the bond transaction and that the memorandum was to be submitted to the court for validation, and yet the board did not seek to intervene. Because the company raised no objection to personal jurisdiction of the trial court in this matter, the trial court had personal jurisdiction over the corporation. The judgment was affirmed in part and vacated in part.

Rite Aid of Ga., Inc. v. Peacock, 315 Ga. App. 573, 574, 726 S.E.2d 577, 579 (2012): Plaintiff customer filed suit against defendant pharmacy for breach of duty, breach of contract, and unjust enrichment and sought to render it a class action. The pharmacy challenged a judgment of the Superior Court of Emanuel County (Georgia), which found that the class the customer sought to represent met the requirements of O.C.G.A. § 9-11-23(a) and (b)(3). The customer alleged that the pharmacy sold customers' medication information to another pharmacy. The court of appeals held that the trial court erred when it found that the customer and the proposed class shared common questions of law and fact and that he was a sufficiently typical representative of that class under O.C.G.A. § 9-11-23(a)(2) and (a)(3). Although the customer felt that the sale of his prescription information was illegal, he could not say that he had suffered any actual financial or physical injury as a result of that sale. When the customer admitted that he demanded that the neighboring pharmacy fill his prescription with the information sold to it by the first pharmacy and that he continued to use the other pharmacy to fill his prescription needs he raised a substantial possibility that the first pharmacy could defeat the action by asserting that the customer waived or ratified the sale. There was no evidence of any "public" disclosure of the customer's data, and such cases were bound to turn on individual rather than common questions. Given the customer's

lack of actual injury, he was unlikely to vigorously litigate the action on behalf of the class. The court of appeals reversed the judgment.

Norfolk S. Ry. v. Hartry, 316 Ga. App. 532, 729 S.E.2d 656, 658 (2012): A railway company challenged a decision from a Georgia trial court, which granted a motion to compel discovery filed by an engineer and his wife in a personal injury case and denied the railway company's motion for a protective order. After a train collision, the railway company agreed to provide the data recorded by a event data recorder on certain conditions, one of which was the payment of $ 500 for certain software. A motion to compel discovery was granted, and a motion for a protective order was denied. This appeal followed. In affirming, the appellate court determined that discovery could have been obtained regarding any matter that was relevant to the subject matter involved in the pending litigation, so long as it was not privileged, pursuant to O.C.G.A. § 9-11-26(b)(1). Under O.C.G.A. § 9-11-34(a), a requesting party was allowed to inspect and copy data after the producing party translated the data into a reasonably usable form. The producing party might have been required to bear the expense of producing the documents and translating them into a reasonably usable form. The trial court did not abuse its discretion by failing to grant the protective order since there was no undue burden or expense given the crucial nature of the evidence. Moreover, the cost was minor compared to the amount at stake in the lawsuit, and it was the railway company's decision to install the device. The judgment was affirmed.

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Publication 80912, Release 22, December 2012

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