No. _____

In The
Supreme Court of the United States

DOUGLAS EDWARDS,

Petitioner,

v.

SOLOMON AND SOLOMON P.C.,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

RORY STARKEY
HILLIARD STARKEY LAW
561 Thornton Rd., Suite G
Atlanta, GA 30122
(678) 909-2096 (telephone)
rkstarkey@hstarlaw.com
Counsel for Petitioner

COCKLE LEGAL BRIEFS (800) 225-6964
WWW.COCKLELEGALBRIEFS.COM

QUESTIONS PRESENTED

1. Whether the Eleventh Circuit's affirmation of the District Court's refusal to apply Georgia's renewal statute was in error when that refusal nullifies the United States Congress' Fair Debt Collection Practices Act grant of concurrent jurisdiction to Federal District Courts and State Courts of Competent Jurisdiction.

2. Whether the Eleventh Circuit's affirmation of the District Court's refusal to apply Georgia's renewal statute is in error when said denial obstructs uniformity by its creation of inconsistent decisions between Georgia's three Federal District Courts and Georgia's Courts of Competent Jurisdiction.

CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 14(b) and Rule 29.6, I hereby certify that there is no parent or publicly held company owning 10% or more of the corporation's stock and the following named persons are parties interested in the outcome of this case:

1. Bedard Jr., John, Attorney for Respondent
2. Chapman, Michael, Attorney for Respondent
3. Edwards, Douglas, Petitioner
4. Onabanjo, Ife, Attorney for Petitioner
5. Solomon and Solomon P.C., Respondent
6. Starkey, Rory, Attorney for Petitioner

LIST OF PROCEEDINGS

1. Edwards v. Solomon and Solomon P.C.
   a. Superior Court of Bartow County, Georgia
   b. Docket Number: SUCV2019000510
   c. Removed to District Court on May 30, 2019.
2. Edwards v. Solomon and Solomon P.C.
   a. United States District Court for the Northern District of Georgia
   b. Docket Number: 4:19-cv-00114-HLM-WEJ
   c. Voluntarily Dismissed without Prejudice on May 30, 2019.
3. Edwards v. Solomon and Solomon P.C.
   a. Superior Court of Bartow County, Georgia
   b. Docket Number: SUCV2019001541
   c. Removed to District Court on December 30, 2019.
4. Edwards v. Solomon and Solomon P.C.
   a. United States District Court for the Northern District of Georgia
   b. Docket Number: 4:19-cv-00299-HLM-WEJ
   c. Judgment entered on February 21, 2020.
5. Edwards v. Solomon and Solomon P.C.
   a. United States Court of Appeals for the Eleventh Circuit
   b. Docket Number: 20-11148
   c. Judgment entered on September 30, 2020.

TABLE OF CONTENTS

TABLE OF CONTENTS – Continued

TABLE OF CONTENTS – Continued

TABLE OF AUTHORITIES

Page

CASES

TABLE OF AUTHORITIES – Continued

CITATIONS TO OFFICIAL AND UNOFFICIAL OPINIONS

The Eleventh Circuit's Opinion is unpublished. It is set forth in the Appendix at App. 1 through App. 7. The District Court's Order dismissing the Petitioner's case is not reported and is set forth in the Appendix at App. 12 through App. 15. The Magistrate's Final Report and Recommendation adopted by the District Court as it relates to matters relevant to certiorari herein was not reported and is attached to the Appendix at App. 16 through App. 22.

STATEMENT OF JURISDICTION

The Supreme Court has jurisdiction pursuant to 28 U.S.C. § 1254(1). The Eleventh Circuit entered its Judgement on September 30, 2020. *See*, App. 8. Per the COVID-19 extension issued on November 13, 2020, this Petition is due on March 1, 2021. This petition was timely filed on February 22, 2021. The Eleventh Circuit affirmed the Lower Court's decision.

CONSTITUTIONAL PROVISION IN QUESTION

The provision at issue is 15 U.S.C. § 1692k(d) which states "an action to enforce any liability created by this subchapter may be brought in any appropriate United States district court without regard to the amount in controversy, or in any other court of

competent jurisdiction, within one year from the date on which the violation occurs."

STATEMENT OF CASE

This appeal derives from a Fair Debt Collection Practice Act "F.D.C.P.A." lawsuit brought by Plaintiff-Petitioner Douglas Edwards (hereinafter "Consumer Edwards") against Defendant-Respondent, Solomon and Solomon P.C., a collections law firm. Consumer Edwards sought relief from Solomon and Solomon P.C.'s (hereinafter "Collections Law Firm") stacked, continuing and egregious violations of 15 U.S.C. § 1692(e) and 15 U.S.C. § 1692(f). Consumer Edwards filed suit in the Superior Court of Bartow County, GA. *See*, App. 32. The Collections Law Firm removed the case to Federal Court. *See*, App. 23. Consumer Edwards voluntarily dismissed the case, paid cost, and refiled the case in the Superior Court of Bartow county within six months pursuant to Georgia's renewal statute. *See*, App. 69; and O.C.G.A. § 9-2-61(a). The Collections Law Firm again removed the case to the District Court, *see*, App. 55, and then filed a Motion to Dismiss predicated on the *statute of limitations*.

The District Court issued a final order granting the Collections Law Firm's Motion to Dismiss. *See*, App. 16-22. The District Court's jurisdictional authority was predicated upon 28 U.S.C. § 1331. Consumer Edwards appealed to the Eleventh Circuit. The

Eleventh Circuit affirmed the District Court's decision. *See*, App. 1-7.

REASON TO GRANT WRIT OF CERTIORARI

The Petitioner seeks this Writ of Certiorari because the Lower Court has decided an important question of federal law that has not been, but should be, settled by this Court. This issue is a question of first impression. Furthermore, it is necessary to estop federal courts from usurping Congress' clear grant of concurrent jurisdiction to state and federal courts for the efficient, fair, and expeditious resolution of F.D.C.P.A. claims.

STATEMENT OF FACTS

Consumer Edwards borrowed a total of $47,094.00 over the course of seven years for the furtherance of his dentistry education at an eight percent interest rate. After graduation, Consumer Edwards was unable to afford the loan payments on his meager dental assistance salary and defaulted on the loan. However, once Consumer Edwards received his dentistry license and was able to make payments he sought to do so.

While the loan was in default, the guarantor split the loan into two. The Collections Law Firm collected on one portion of the loan and another collection company collected the other portion. Consumer Edwards

paid off the portion of the loan held by the other company.

In June 1999, the Collections Law Firm contacted Consumer Edwards about the repayment of his loan. That communication failed to include the principal amount. Shortly after the Collections Law Firm's communication, Consumer Edwards made his first payment of $300.00 on July 20, 1999. Consumer Edwards made such payments for twenty (20) straight years without ever missing a payment.

Consumer Edwards noticed that his balance never decreased so he started demanding a statement of principal. Every single dunning letter from the Collections Law Firm to Consumer Edwards from the first communication to the last communication, that is twenty (20) straight years, failed to list, mention, or speak of a principal amount in any manner. That included dunning letters sent on May 1, 2018 and May 25, 2018.

More specifically, Consumer Edwards, after struggling to resolve issues of unapplied payments with another loan, contacted the Collections Law Firm to ensure that his payments were being handled appropriately and to get more information, including the principal amount, on his loan. As explained above, the Collections Law Firm refused to provide the principal amount on the debt. Consumer Edwards was given the run-around for several years while inquiring about the principal amount. A representative of the Collections Law Firm even told Consumer Edwards that they did

not know the principal amount on Consumer Edwards' loan. By refusing to disclose the principal of the loan, the Collections Law Firm was able to hide the apportionment of Consumer Edwards' monthly $300.00 dollar payments for twenty years.

Additionally, on July 23, 2018, Ms. Tonya Tillman, a representative of the Collections Law Firm attempted to collect on the paid off portion of the loan during a phone call with Consumer Edwards' wife.

ARGUMENT AND CITATIONS

I. THE ELEVENTH CIRCUIT ERRED IN ITS FAILURE TO MANAGE THE CASE *SUB JUDICE* AS A CASE OF FIRST IMPRESSION.

The Eleventh Circuit's Opinion

> "Our case law is clear that, where Congress has sent an express statute of limitations, state law cannot otherwise extend it." *See*, App. 5 line 2.

The F.D.C.P.A. was promulgated by Congress to combat the unscrupulous and corrupt practices of debt collection agencies. To be effective and efficient, Congress gave concurrent jurisdiction to both the federal courts and states courts. Congress expressly granted concurrent jurisdiction in 15 U.S.C. § 1692(k) when it could have been silent. This statute is clear and unambiguous, and the plain meaning of the statute should be applied. By holding that the state renewal provision does not apply, the Lower Court essentially ruled that

F.D.C.P.A. claims will not obtain the full treatment and benefit of the concurrent jurisdiction granted by 15 U.S.C. § 1692(k). A simple act of removal of a properly refiled lawsuit ends the consumer's pursuit of otherwise valid claims. To be clear, Congress' grant of concurrent jurisdiction does not diminish a Defendant's right to remove. The Defendant can remove his case to Federal Court, but that removal should not be outcome determinative.

Moreover, Congress understood that the states would apply their procedural provisions to cases litigated within the state if granted jurisdiction, and still granted concurrent jurisdiction. In fact, Congress intentionally granted concurrent jurisdiction to make it easier for aggrieved consumers to avail themselves of the remedies available against unscrupulous debt collection activity. The fact that Consumer Edwards availed himself of the renewal provision by filing both his initial suit and his refile in State Court – where renewal is applicable – makes the renewal statute applicable to the removed case. To hold otherwise erases the intentions of concurrent jurisdiction expressly provided by Congress. Thus, the Lower Court's decision to not apply the renewal provision should be overturned as being incompatible with Congress' intention for concurrent jurisdiction.

To be clear, the Federal Removal statute was enacted to prevent defendants from being unfairly punished by state courts. When the statute was first enacted in the Judiciary Act of 1789, a limited right to "remove" certain cases from state courts to federal courts was granted, and thereafter to and including

1872, the United States Congress enacted several specific removal statutes and the majority of which were initiated by instances of state resistance to the enforcement federal laws through the harassment of federal officers. *See*, Judiciary Act of 1789, § 12, 1 Stat. 73; and Act of February 4, 1815, § 8, 3 Stat. 198; and *Willingham v. Morgan*, 395 U.S. 402, 405-406 (1969). Removal was not intended to be employed the way in which the District Court applied it in the case *sub judice*. Therefore, the Lower Court's decision should be rejected as the same amounts to an attempt to usurp legislative authority unequivocally resting with the United States Congress.

II. THE ELEVENTH CIRCUIT'S DECISION REFUSING THE APPLICATION OF THE STATE RENEWAL STATUTE CONTRADICTS THE VERY UNIFORMITY OF APPLICATION IT REASONED WOULD BE OFFENDED BY ITS APPLICATION.

The Eleventh Circuit's Opinion

> "The incorporation of variant state statutes would defeat the aim of a federal limitation provision designed to produce national uniformity." *See*, App. 5 line 24-27.

The Lower Court affirmed the District Court's decision that Georgia's renewal provision should not apply as the same would maintain uniformity. This reasoning and the resulting ruling upend the very uniformity suggested by the Lower Court. In the case at

bar, Consumer Edwards filed his complaint and discovery in State Court and planned to proceed therein as permitted by 15 U.S.C. § 1692(k). The Collections Law Firm chose to remove the case to Federal Court as permitted under 28 U.S.C. § 1441(a). Consumer Edwards voluntarily dismissed the case and timely refiled in State Court pursuant to O.C.G.A. § 9-2-61. However, the Collections Law Firm once again removed and claimed that the suit was barred because the suit was now in Federal Court and no longer in State Court, so the renewal statute did not apply. The District Court agreed with the Collection Law Firm's position notwithstanding its assault on uniformity, the very principle it pretended to protect.

In *Erie Co. v. Tompkins*, the Supreme Court tried to resolve the issue of uniformity amongst the federal and state courts in diversity claims and prevent plaintiffs from forum shopping. The Supreme Court's solution was to have federal courts in diversity proceedings apply the state substantive law and federal procedural rules. *Erie Co. v. Tompkins*, 304 U.S. 64 (1938). The scenario here is the reverse of the one in *Erie Co. v. Tompkins* but the reasoning for uniformity is the same. This is a federal question brought in state court as permitted by statute, so both the federal substantive law and state procedures apply.

As asserted earlier, the courts are to look to Congress' intent for passing a statute especially when it has been expressly written. Congress gave both federal and state courts concurrent jurisdiction in F.D.C.P.A. claims. The Collections Law Firm's successful removal

for dismissal and the Lower Court's affirmation of the same effectively results in defendant forum shopping. When it is known that the act of removal, not an untimely filing, or a baseless lawsuit, but the simple act of removing a case that was legally and timely filed in State Court and in accordance with its rules results in the dismissal of a claim that the United States Congress intended to be brought in State Court, defendants will forum shop for the best outcome to avoid justice. To prevent defendants from forum shopping and create uniformity between concurrent state and federal court jurisdictions, the Court should apply Georgia's renewal statute. It is the act of removal that ended Consumer Edwards' lawsuit, not an untimely filing as his initial lawsuit and his renewed lawsuit were filed timely. This result contradicts Congress' grant of concurrent jurisdiction.

III. THE CASES CITED IN SUPPORT OF THE LOWER COURT'S DECISION DO NOT SUPPORT IT.

The Lower Court's opinion was predicated on inapplicable cases. The cited cases do not apply because they are cases where exclusive federal jurisdiction existed, or the plaintiff did not avail itself of a renewal statute by choosing to file in federal court. Or the case gave no consideration to the procedural posture of the cited cases as compared to the case *sub judice* as to preclude any real analysis about the analogous quality of the cited case.

A. The Lower Courts Erred in Their Application of *Phillips v. United States* to the Subject Case Because *Phillips* Invoked Principles of Federal Jurisdiction. Neither of which were Implicated in the Case at Bar.

The Eleventh Circuit's Opinion

> "In *Phillips v. United States*, . . . [w]e reasoned that because a federal court looks to state law to define the time limitation applicable to a federal claim only when Congress has failed to provide a statute of limitations for a federal action and Congress expressly provided a six-month limitation period for FTCA claims the incorporation of diverse state renewal provisions into the FTCA 's six month time limitation would undermine the uniform application of the FTCA's six month time limitation . . . [therefore] the Georgia renewal could not extend the FTCA's limitations period. The same reasoning applies to FDCPA claims." *See*, App. 5 line 24-27 and App. 6 paragraph 1, line 1.

The Lower Courts erred when they cited *Phillips v. United States* as controlling authority and the main support for their position. *Phillips v. United States*, 260 F.3d 1316 (11th Cir. 2001). Such is the case because *Phillips v. United States* cannot be analogized with concurrent jurisdiction F.D.C.P.A. claims inasmuch as

the *Phillips v. United States* suit ***could only be brought in the District Court***. 28 U.S.C. § 1346 states "the District Courts . . . shall have exclusive jurisdiction of civil claims against the United States . . . caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment." This is distinguishable from our case where the F.D.C.P.A. statute gave the plaintiff the option to bring the case in either state or federal court per 15 U.S.C. § 1692(k). By filing and refiling in State Court, Consumer Edwards exercised and preserved his right to use Georgia's renewal provision. The same can be accomplished consistent with the Defendant's exercise of its removal right by this Court's remand and instructions that the District Court apply Georgia's renewal statute and continue this litigation in District Court to a result on the merits.

Additionally, the Eleventh Circuit in *Phillips v. United States* stated that in cases where "there is a specific waiver of the sovereign immunity of the United States it must be strictly construed." The Court reasoned that the "limitations and conditions upon which the Government consents to be sued must be strictly observed and exceptions thereto are not to be implied," and that the courts "should not take it upon [themselves] to extend the waiver [of sovereign immunity] beyond that which Congress intended [because] the waiver of sovereign immunity is an extraordinary imposition on the government to incur liability where it otherwise not be liable as per its sovereign immunity."

Id. The Eleventh Circuit rightfully denied the extension of that waiver by ruling that the state renewal statute did not apply. However, in the case *sub judice*, the Collections Law Firm is a private entity that has willfully denied Consumer Edwards' right to know the true contents of his loan and denied Consumer Edwards' ability to effectively pay off his loan with the intent to keep him in debt in perpetuity. This is not a case against the United States and because the case was rightfully brought in the state court and refiled in the state court, it was filed timely.

B. The Eleventh Circuit Erred in Their Application of *Phillips v. United States, E.E.O.C. v. W.H. Braum, Garrison v. Int'l Paper Co., and Beck v. Caterpillar Inc.* as Their Procedural Postures are Different from the Case *Sub Judice* Because the Plaintiffs in Those Cases did not Avail Themselves of the Renewal Provision.

The Eleventh Circuit's Opinion

> Edwards does not present any authority showing that either distinction matters. Moreover, other circuits have also reached the same holding as *Phillips* outside the FTCA context. *See*, *e.g.*, *E.E.O.C. v. W.H. Braum, Inc.*, 347 F.3d 1192, 1201 (10th Cir. 2003) (explaining that "[t]he federal scheme is complete and it is inappropriate to import state statutes of

> limitations, such as a savings clause, to time-bar an individual aggrieved employee under the ADA"); *Beck v. Caterpillar Inc.*, 50 F.3d 405, 407 (7th Cir. 1995) ("Where, as [in this hybrid suit under § 301 of the Labor Management Relations Act], the plaintiff voluntarily dismisses a lawsuit which was brought in federal court, asserts a purely federal claim, and is subject to a federal statute of limitations, state savings statutes do not apply."); *Garrison v. Int'l Paper Co.*, 714 F.2d 757, 759 n.2 (8th Cir. 1983) (noting that "[b]ecause Title VII actions are governed by a federal statute of limitations, the Arkansas saving clause is inapplicable"). App. 6, footnote 1, line 8.

Phillips v. United States,[1] as well as *E.E.O.C. v. W.H. Braum, Inc.,*[2] and *Beck v. Caterpillar Inc.*[3] do not apply because their procedural postures are very different from the subject case. In those cases, the Plaintiff originally filed their case in the District Court/ State Court within the statute of limitations, then voluntary dismissed the case and then refiled it in the district court after the statute of limitations had run claiming the renewal statute applied. The dismissal of the state court action and the refiling in federal court

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[1] 260 F.3d 1316 (11th Cir. 2001).

[2] 347 F.3d 1192, 1201 (10th Cir. 2003).

[3] 50 F.3d 405, 407 (7th Cir. 1995).

instead of the state court forfeited the Plaintiff's rights in the renewal provision. Additionally, filing and refiling a case in federal court prevents a Plaintiff from using the state's renewal provision because by filing in federal court the Plaintiff accepted the procedure, including the statute of limitations, of the forum. Those Plaintiffs needed to file both their initial suit and refiled suit in the state court to avail themselves of the renewal provision which is the scenario at issue. Consumer Edwards originally filed his claim in State Court within the statute of limitations, the case was removed to Federal Court by the Collections Law Firm where Consumer Edwards dismissed the case and later refiled the case in State Court taking advantage of the state renewal statute. If the claim had proceeded in state court, the refile would have been considered timely. Therefore, the reasoning in these cases does not apply here.

The Eleventh Circuit also mentioned *Garrison v. Int'l Paper Co.*,[4] in support of its argument. The Eleventh Circuit relied on the dicta included in the *Garrison* case as the case was affirmed for failure to prosecute. The dicta stated that because "Title VII actions are governed by a federal statute of limitations, the Arkansas saving clause is inapplicable." *Id.* at 761. The dicta, however, also stated that Arkansas' savings statute applied to *Garrison*'s § 1983 claim and referred to the reasoning in *Whittle v. Wiseman*, 683 F.2d 1128 (8th Cir. 1982). The Court in *Whittle v. Wiseman*

[4] 714 F.2d 757, 759 (8th Cir. 1983).

reasoned that "Because [42 U.S.C.] § 1983 does not contain its own statute of limitations, the general rule is to apply the state statute of limitations governing actions most analogous to the claim being asserted." *Id.* at 1128. Again the procedural posture is different from the case at bar. A case that was originally filed in federal court is not entitled to the renewal statute of the state it seats in if the there is a federal limitation. However, where Congress has granted concurrent jurisdiction and the Plaintiff filed and refiled its complaint in state court, the Plaintiff should be entitled to the state renewal statute because to do otherwise erodes the concurrent jurisdiction component of the statute. The case at bar would have been timely if allowed to proceed in State Court and the Collections Law Firm by the mere exercise of their right to removal created the self-serving statute of limitations issue.

C. The Eleventh Circuit Erred in Their Application of *Holmberg v. Armbretcht* Because the Case was Applied out of Context and does not Apply to This Case.

The Eleventh Circuit's Opinion

> "*Holmberg v. Armbrecht*, 327 U.S. 392, 395 (1945), If Congress explicitly puts a limit upon the time for enforcing a right which it created, there is an end of the matter. The

> Congressional statute of limitation is definitive." *See*, App. 5 line 27-31.

The Eleventh Circuit erred when it applied *Holmberg v. Armbrecht* to the case at bar. *Holmberg v. Armbrecht*, 327 U.S. 392 (1946). First, Consumer Edwards asks that the context be examined. *Holmberg v. Armbrecht* is a case where the Respondents argued that the State statute of limitations barred the Petitioners from bringing their lawsuit. However, *Holmberg v. Armbrecht* is not a case where a Petitioner had the right to choose their forum. In *Holmberg v. Armbrecht*, the suit was started in the Federal District Court and Federal Procedure was properly applied to the case. Unlike the case *sub judice* which was filed and refiled in State Court thereby availing use of the State's renewal statute.

The Eleventh Circuit emphasized the following statement from *Holmberg v. Armbrecht*: "If Congress explicitly puts a limit upon the time for enforcing a right which it created, there is an end of the matter." However, the premise and assumptions underlying that statement do not hold true for the case at bar. The Court in *Holmberg v. Armbrecht* illustrated this by citing *Herget v. Central Nat. Bank Trust Co. of Peoria*, a bankruptcy case that was brought in federal court and could only be brought in federal court. *Herget v. Central Nat. Bank Trust Co. of Peoria*, 324 U.S. 4, 65 S.Ct. 505, 89 L.Ed. 656 (1945). In that case, the Trustee claimed that the Illinois statute of limitation applied to the Bankruptcy case which was in error as the case arose under federal law and was initiated in federal court.

Such is different from the case *sub judice* wherein Congress granted concurrent jurisdiction to both federal and state courts. Here, Consumer Edwards availed himself of the State's renewal statute by filing both the initial and refiled suit in State Court as provided by the F.D.C.P.A. Consumer Edwards intended to proceed in State Court, but the Collections Law Firm removed to Federal Court. Although the Collections Law Firm has a right to removal, such a right to removal does not have to and should not extinguish Consumer Edwards nor any other consumer's availment of the renewal statute. Neither should the removal bar the claim as untimely because if the suit had proceeded in State Court as intended, the statute of limitation would be a non-issue as the suit would be considered timely.

D. The District Court Erred in Their Application of *Weldon v. Elec. Data Sys. Corp.*, *Ingmire v. Target Corp.,* and *Bruce v. Homeward Residential, Inc.,* as Their Procedural Posture's Impact on the Court's Decision were not Provided in the District Court Analysis and Because *Bruce v. Homeward Residential Inc.* Original/First Action was Filed After the Statute of Limitations Ran.

The Lower Circuit's Opinion

> The Circuit implied that plaintiff may not have been able to take advantage of Georgia's six-month refiling provision precisely because the

> case was removed to federal court. *See*, *id.* Finally, and most importantly, Eleventh Circuit precedent is clear that when a statute of limitations is set by Congress it cannot be extended by state law. *See*, *Phillips v. U.S.*, 260 F.3d 1316 (11th Cir. 2001) (plaintiff could not take advantage of Georgia savings statute in Federal Tort Claims Act case); *Ingmire. v. Target Corp*., 520 F. App'x 832 (11th Cir. 2013) (per curiam) (plaintiff could not take advantage of Georgia savings statute in Age Discrimination in Employment Act case); *Weldon v. Elec. Data Sys. Corp.*, 138 F. App'x 136, 138 (11th Cir. 2015) (per curiam) (plaintiff could not take advantage of Georgia savings statute in Title VII case); *see also*, *Bruce v. Homeward Residential, Inc.*, 1:14-CV-03325-MHC-AJB, 2015 U.S. Dist. LEXIS 138766 (N.D. Ga. Aug. 5, 2015), R&R adopted by, 2015 U.S. Dist. LEXIS 138203 (N.D. Ga. Aug. 31, 2015) (savings statute was not applicable to Fair Credit Reporting Act case).

The District Court cited *Weldon v. Elec. Data Sys. Corp*.,[5] *Ingmire v. Target Corp.*,[6] and *Bruce v. Homeward Residential, Inc.*[7] to support their position. In the

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[5] 138 F. App'x 136, 138 (11th Cir. 2005).

[6] 520 F.App'x 832 (11th Cir. 2013).

[7] 2015 U.S. Dist. LEXIS 138766 (N.D. Ga. Aug. 5, 2015).

first two cases the court failed to indicate where the plaintiffs filed the initial and the refiled suits. First, *Weldon v. Elec. Data Sys. Corp.*, like *Phillips, supra*, involved a case where jurisdiction was exclusive to federal court. Additionally, and more specifically *Weldon* was a Title VII case originally filed in Federal Court. Also, *Ingmire*, *supra*, like *Weldon* and *Phillips*, *supra*, also involved a federal claim (ADEA) that could only be brought in federal court and was filed and refiled in federal court. As stated earlier, if the lawsuit were initially filed in federal court, the use of the state renewal provision would not apply. Furthermore, if the plaintiff filed the case in state court, voluntarily dismissed and then refiled in federal court after the statute of limitations has run as in the case of *Burnett v. N.Y. Cent. R.R. Co.*,[8] or vice versa, the renewal statute will not apply. (*See*, *Dade County v. Rohr Industries*, *Inc.*, 826 F.2d 983 (11th Cir. 1987) where the Court ruled that the renewal statute will not apply because a voluntary dismissal has the effect of placing the parties in a position as if the suit had never been filed). Inasmuch as the procedural stature of both cases and their impact on the courts' decisions were not provided in the District Court analysis and because they clearly involve cases that invoked exclusive federal court jurisdiction the District Court erred in applying them to the case *sub judice* and so did the Eleventh Circuit by affirming the District Court's decision.

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[8] 380 U.S. 424, 433 (1965).

In *Bruce v. Homeward Residential, Inc.*, the plaintiff started his case in state court and with all state claims. The *Bruce* plaintiff did not initially have a federal claim that could be sued in federal and state court. The case was removed to federal court because of diversity. It was not until the plaintiff's case was removed to federal court after his renewal action that the plaintiff alleged a violation of the Fair Credit Reporting Act "FCRA". And by that time the FCRA statute of limitations had run on the FCRA claim that the plaintiff attempted to "boot strap" to his renewal action. Of course, that claim was timed barred as the claim was not raised prior to the statute of limitation running and was only tacked on to the renewal action as an addition to the plaintiff's previous claims. This is clearly distinguishable from our case where Consumer Edwards filed a timely F.D.C.P.A. claim in State Court and refiled his renewal action in State Court. Additionally, in *Bruce v. Homeward Residential, Inc.*, the court's annunciation that Georgia's renewal statute did not apply to federal cases was cited *dicta* and thus, predicated no decision upon the same.

IV. THE DISTRICT COURT ERRED WHEN IT REFUSED TO APPLY *ARIAS*' HOLDING NOTWITHSTANDING THE FACT THAT *ARIAS* (AMONG THE CASES CITED BY THE COLLECTIONS LAW FIRM AND/OR THE COURT) WAS MOST ANALOGOUS TO THE SUBJECT CASE.

The Eleventh Circuit's Opinion

> "Edwards' reliance on *Arias* is misplaced." *See*, App. 7, paragraph two, line 1.

In *Arias v. Cameron*, the plaintiff sued the defendants under state tort law and the defendants removed the case to federal court on the basis of diversity of jurisdiction. *Arias v. Cameron*, 776 F.3d 1262 (11th Cir. 2015). The District Court allowed the plaintiff to voluntarily dismiss the claim and the defendants argued that the court erred in granting the dismissal because the dismissal took away their statute of limitation defense. The Eleventh Circuit found the time bar claim to be the effect of the defendant's removal to federal court after the plaintiff renewed her suit under O.C.G.A. § 9-2-61. *Arias v. Cameron* at 1272-73. Although the facts are different, the scenario is essentially the same. Both plaintiffs filed in state court, voluntarily dismissed their suits, and refiled in state court utilizing the state renewal provision. Both intended to proceed in state court where the suit would have been deemed timely but was removed by the defendants to federal court causing a time bar issue. Because of the concurrent jurisdiction of the state and federal courts,

Consumer Edwards rightfully brought the case in the State Court and can use the state renewal statute. The removal of this action to Federal Court created the time bar defense for the Collections Law Firm and but for the Collections Law Firm's removal of this suit, the suit would have been deemed timely. Therefore, Consumer Edwards requests that the Court reverse the Eleventh Circuit's ruling and have the Lower Court apply *Arias v. Cameron* as the time bar defense is without merit.

CONCLUSION

For the aforementioned reasons, Consumer Edwards prays that the Court overrules the Lower Court's erroneous decision granting the Collections Law Firm's Motion to Dismiss as well as its refusal to apply Georgia's renewal statute. Consumer Edwards invoked a state law statute that allows for the refiling of the same lawsuit within the running of the statute of limitations or within six months of the dismissal, whichever comes last. *See*, O.C.G.A § 9-2-61. This statute does nothing to extend statutes of limitations. It simply holds the case in abeyance until a refile and it can only be refiled, revived, or renewed if the originally filed action was timely. This is not an extension of a federal statute of limitations. Instead, it is a request for the receipt of the rights and privileges that attend Consumer Edwards' invocation of concurrent jurisdiction as promulgated by the United States Congress for F.D.C.P.A. litigants. This Court should rule that

Consumer Edwards' lawsuit was filed timely and that Consumer Edwards' refile is allowed by Georgia's renewal statute.

Respectfully submitted on this 22nd day of February 2021.

RORY K. STARKEY
Bar No. 676450
Attorney for Petitioner

HILLIARD STARKEY LAW
561 Thornton Rd., Suite G
Lithia Springs, GA 30122
(678) 909-2096 (Office)
rkstarkey@hstarlaw.com