

## Action to Renew a Judgment – But Not Really

Many small claims magistrates hold court for years before encountering an action to renew a judgment, but when they do, they are often uncertain about it – and for good reason! North Carolina trial courts as well as appellate courts have stumbled over the nature of this unique claim for relief.

To understand this action, we have to back up ten years, to a plaintiff who goes to court [Lawsuit #1], wins the case, and obtains a money judgment [Judgment #1] against the defendant. Once that judgment has been entered, the plaintiff has ten years to try to collect it through the usual enforcement procedures available through the Clerk's and Sheriff's offices. [GS 1-234](#).

Sometimes, though, the defendant simply doesn't have sufficient property to satisfy the judgment, and it remains partially or completely unpaid. Near the end of ten years, when the judgment is about to expire, the plaintiff may seek a way to extend the enforceability of the judgment. After all, the defendant may win the lottery a few months from now! The legal mechanism for accomplishing this is for the plaintiff to bring Lawsuit #2, for the amount remaining due on the original judgment.

This lawsuit has nothing to do with the original dispute that led to Judgment #1. In this lawsuit, the plaintiff is contending that the defendant owes him money – and the debt that the defendant owes is the still-unpaid portion of Judgment #1. If the plaintiff wins this lawsuit (and this is an easy one to win), the result will be Judgment #2 – a brand-new judgment which – like all money judgments – is valid for ten years.

It's not surprising that plaintiffs – and lawyers, and judicial officials -- often call Lawsuit #2 “an action to renew a judgment.” Our appellate courts have pointedly reminded us, however, that there's no such thing: “There is no procedure now recognized in North Carolina by which a judgment may be revived or renewed.” See *NCNB v. Robinson*, 80 NC App. 154, 341 S.E.2d 364 (1986). Lawsuit #2 is instead an action on a debt, much like an action on a promissory note, installment sales contract, or other evidence of indebtedness. It just happens that the “debt paper” in this case is a judgment. *Raccoon Valley Investment Co. v. Toler*, 32 NC App 461, 232 S.E.2d 717 (1977).

### THE USUAL RULES

Thinking about Lawsuit #2 as just another small claims action for money owed can be helpful in understanding some of the legal rules applicable to this special lawsuit:

- *Judgment #1 may be a money judgment which was entered in an out-of-state court.* This makes sense because, again, we're talking about a lawsuit on a debt as evidenced by a judgment. The origin of the judgment, whether North Carolina or Maine, is irrelevant.
- *The plaintiff must prove the case by the greater weight of the evidence.* Typically, that

evidence consists of (1) a certified copy of the original judgment, entered within the last ten years, and (2) an affidavit from the Clerk showing the amount of the unpaid judgment and the current amount of accumulated post-judgment interest.

- *Only one bite at the apple.* The plaintiff is not allowed to bring Lawsuit #3 in ten years to once again extend the enforceability of the judgment. Just as in any other debt case, once the plaintiff comes to court and obtains a judgment, the plaintiff can't just turn around and bring the same lawsuit against the same defendant a second time. [One might argue that the same reasoning that allows Lawsuit #2 should also allow Lawsuit #3: after all, isn't the judgment in Lawsuit #2 just another debt? Thankfully, the General Assembly has answered that question in [GS 1-47](#), which specifies that "no such action may be brought more than once."]

## THE SAME . . . BUT DIFFERENT.

As is often true in The Law, the simplicity of the rule treating a judgment as "just another kind of debt" is a little misleading. There are, as usual, a few footnotes:

- Separate principal from interest in your judgment. The evidence in this action must establish both (1) the unpaid portion of the principal amount awarded in the original judgment, and (2) the post-judgment interest – calculated by the clerk – owed by defendant. You may have heard that North Carolina law prohibits a court from awarding "interest on interest." Consequently, the magistrate must write the unpaid principal amount in the block labeled "Principal Sum of Judgment," and the accumulated interest in the block immediately following, labeled "Pre-Judgment Interest." [I understand that it may be confusing to read that you should list the post-judgment interest in the block labeled "Pre-Judgment Interest." In truth, this amount accrued after (i.e., "post") the original judgment, but before (i.e., "pre-") the case you're hearing.] In any event, it's important to list the amounts separately, allowing the Clerk's office to use only the principal amount of the original judgment in determining interest henceforth.
- Your judgment will draw interest at the legal rate: If the original lawsuit involved a breach of contract that provided for post-judgment interest at a particular rate, the Clerk may have used that interest rate to calculate the amount of interest owed pursuant to Judgment #1. Take note, though, that Lawsuit #2 is NOT an action for breach of contract, and the provisions of the original contract are no longer important. For the judgment in this lawsuit, use the "other" boxes on the judgment form to make clear the nature of the debt. [Many magistrates also staple a copy of the material from the Clerk's office to their judgment.] Judgment #2 will earn post-judgment interest at the legal rate. See *NCNB*. And, as I said above, only the principal sum of the judgment will earn any interest at all.

One last issue: What if the complaint mistakenly states that the action is to "to renew a

judgment"? Because of the relaxed rules of notice pleading, this error is not fatal to the plaintiff's case. In *Raccoon Valley*, the plaintiff made this error, and even the trial judge used language about "renewing the judgment" in his judgment! On appeal, the defendant argued that the complaint was fatally defective and the judgment void. The Court of Appeals disagreed, stating that, while plaintiff may have used the wrong words in the complaint and the trial court's judgment may have been "inaptly expressed," the complaint provided adequate notice of the basis of the lawsuit, and the judgment was clear. In fact, the Court noted, "even our Supreme Court has on occasion spoken [of] 'an action to renew a judgment.' "

If you've never had one of these cases in your court, consider saving this post anyway—you may well need it one day!