

A consumer filed an action against a bank in state court alleging improper deduction of fees from a checking account. Before the bank filed its answer, the consumer voluntarily dismissed the action without prejudice.

One month later, the consumer filed a suit alleging the same claims against the bank in federal court. The bank moved to dismiss the action for lack of personal jurisdiction. Instead of challenging the bank's assertion, the consumer dismissed the action by filing a notice of dismissal.

Two weeks later, the consumer sued the bank in a federal court located in another state on the same claims asserted in the previous two actions. The bank moved to dismiss this suit.

All the actions were filed within the applicable statute of limitations.

Should the court grant the bank's motion to dismiss?

- A. No, because the consumer filed all the actions within the applicable statute of limitations.
- B. No, because the first dismissal occurred in state court.
- C. Yes, because the consumer failed to obtain a court order before dismissing the second suit.
- D. Yes, because the second dismissal operated as an adjudication on the merits.

Explanation:

Federal Rule of Civil Procedure 41 allows a plaintiff to **voluntarily dismiss** a suit for any reason. A voluntary dismissal without a court order is permitted when (1) the parties signed a stipulation of dismissal or (2) the plaintiff unilaterally filed a notice of dismissal before the defendant served an answer or a summary judgment motion. Therefore, the consumer did not need a court order to dismiss the first or second action since he filed a notice of dismissal before the bank filed an answer or moved for summary judgment **(Choice C)**.

Most voluntary dismissals are *without* prejudice, thereby allowing the plaintiff to sue the defendant on the same claim in the future. However, a voluntary dismissal is **with prejudice** and operates as an **adjudication on the merits** when specified in a court order, notice, or stipulation of dismissal OR the **two-dismissal rule** applies. This rule applies when the plaintiff:

- voluntarily dismissed the **first action** in federal *or* state court **without a court order and**
- voluntarily dismissed the **second action** based on the **same claim** in federal court by filing a **notice of dismissal**.

Here, the consumer voluntarily dismissed the first action in state court. He then dismissed the second action in federal court by filing a notice of dismissal. Since these actions asserted the same claims, the second dismissal operated as an adjudication on the merits. Therefore, the court will likely grant the bank's motion to dismiss the third action **(Choice B)**.

(Choice A) Although the consumer filed all the actions within the statute of limitations, the two-dismissal rule precludes the third action.

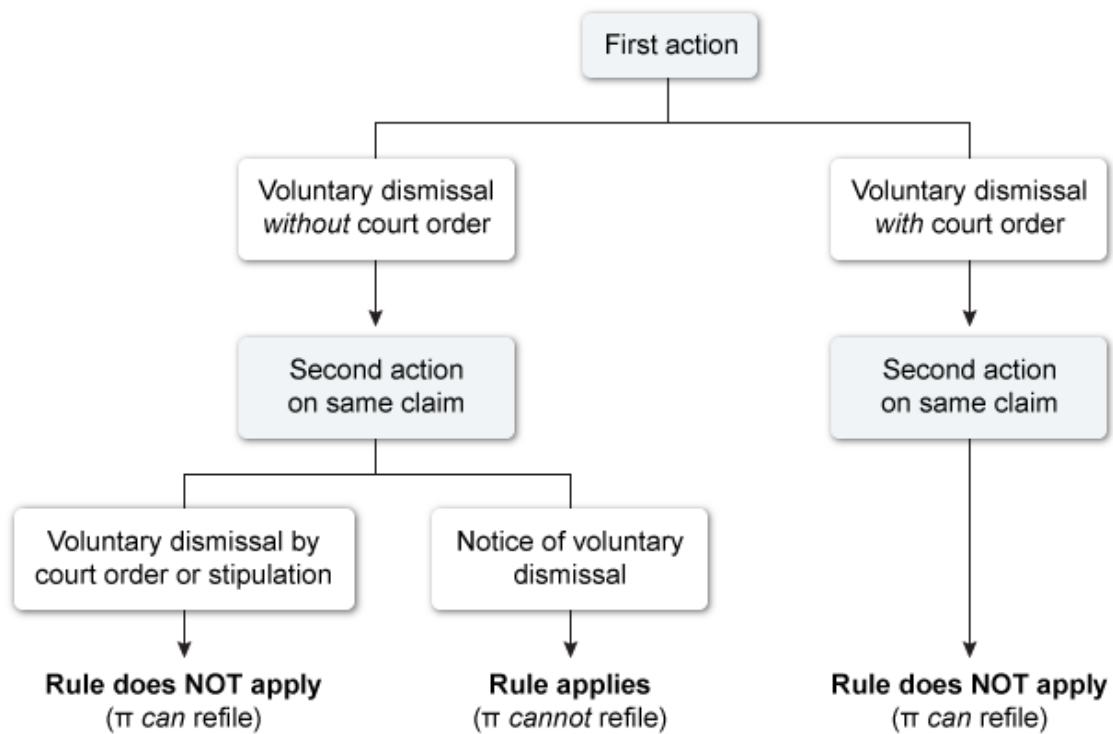
Educational objective:

A voluntary dismissal is with prejudice when stated in a court order, notice, or stipulation OR the two-dismissal rule applies. This rule applies when the plaintiff voluntarily dismissed (1) the first action in federal or state court without a court order and (2) the second action based on the same claim in federal court by filing a notice of dismissal.

References

- Fed. R. Civ. P. 41(a) (voluntary dismissals).

Two-dismissal rule on voluntary dismissals



π = plaintiff

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