

A homeowner from State A sued a mortgage lender in a federal court located in State A. The mortgage lender is incorporated and maintains its principal place of business in State B. The homeowner's complaint alleged that the lender charged her an interest rate on her home loan that exceeded the maximum rate allowed under a federal statute. The homeowner requested \$250,000 in damages and a release from the mortgage.

The mortgage lender filed a pre-answer motion to dismiss the homeowner's suit for failure to state a claim, which the court denied. The lender then filed an answer and moved to dismiss the suit for failure to join a required party. The lender claims that the homeowner's husband must be joined in the suit because he cosigned the mortgage and his name is on the deed to the home. The homeowner and her husband have been separated for five years, and he permanently resides in State B.

Should the court grant the mortgage lender's motion to dismiss for failure to join a required party?

- A. No, because although the husband is a required party, joining him to the suit is feasible.
- B. No, because the lender waived this defense by failing to assert it in the pre-answer motion.
- C. Yes, because joining the husband to the suit would destroy proper venue.
- D. Yes, because joining the husband to the suit would destroy subject-matter jurisdiction.

Explanation:

Under Federal Rule of Civil Procedure (FRCP) 19, an absent party *must* be joined (ie, added) to a suit in certain circumstances. This **required (ie, compulsory) joinder** rule provides a process for determining whether joinder is necessary. The **first step** in this process considers whether the absent party is a **required party** because:

- **complete relief cannot be granted** without that party's presence
- the party's absence will subject the other parties to a **substantial risk of multiple or inconsistent obligations** *or*
- the party's absence will **prejudice** his/her **ability to protect an interest** related to the lawsuit—as seen with the husband here because he cosigned the mortgage and his name is on the deed.

The **second step** considers whether it is **feasible to join** the required party. When it is feasible to join the required party, the court will deny the motion to dismiss for failure to join the party and instead order that the party be joined to the suit. Here, it *is* feasible to join the husband because:

- the court can obtain personal jurisdiction over him because the suit arises from his ownership of the home in State A (ie, minimum contacts with State A)
- **subject-matter jurisdiction** will be preserved after joinder because the homeowner's suit is based on a federal statute (ie, arises from federal-question jurisdiction) **(Choice D)** *and*
- **proper venue** will remain because the home is located in State A **(Choice C)**.

Therefore, the court should deny the lender's motion to dismiss.

(Choice B) Under FRCP 12(h), a defendant **waives** certain defenses that are not asserted in a pre-answer motion or an answer, whichever occurs first. But a defense based on failure to join a required party can be asserted at *any* time before the end of trial, so it was not waived by failing to assert it in the pre-answer motion.

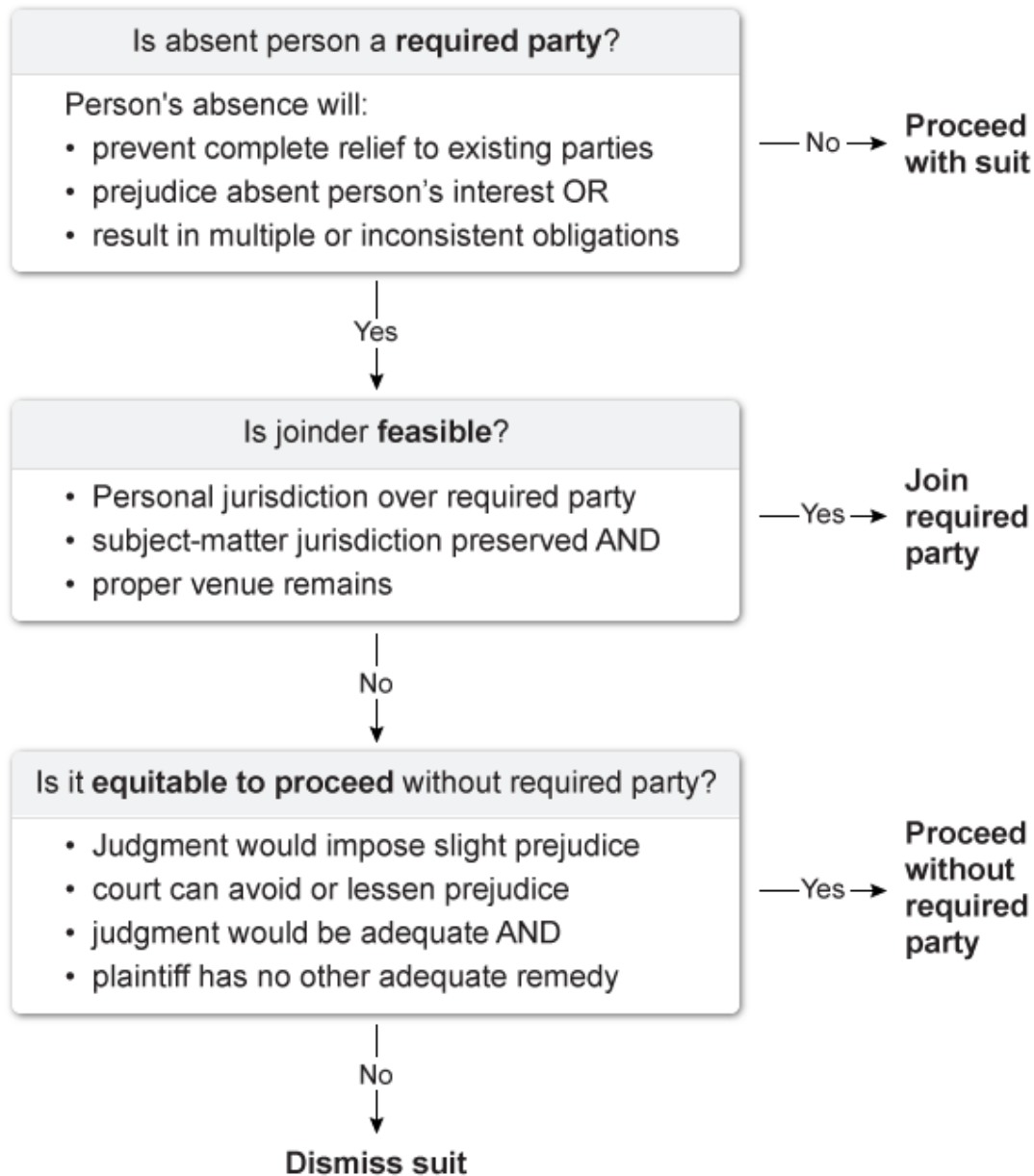
Educational objective:

A required party must be joined in a suit when feasible—ie, when (1) the court can obtain personal jurisdiction over the required party, (2) subject-matter jurisdiction will be preserved after joinder, and (3) proper venue will remain.

References

- Fed. R. Civ. P. 19 (required joinder of parties).

Required joinder of parties (FRCP 19)



FRCP = Federal Rule of Civil Procedure