

A plaintiff filed a diversity action against a defendant in a federal court in State A. The plaintiff claims that the defendant caused extensive damage to the plaintiff's summer cottage in State B. The complaint also alleges that the defendant has a nefarious reputation in the community. The defendant resides in State B and has no contacts with State A.

Before filing an answer, the defendant moved to strike from the complaint the assertion that she had a nefarious reputation in the community. The court granted the motion, finding that the assertion was scandalous and immaterial to the case. The defendant now moves to dismiss the complaint for lack of personal jurisdiction and improper venue.

How will the court likely rule on the motion?

- A. Deny the motion, because the defendant failed to include these defenses in her motion to strike.
- B. Deny the motion, because the defendant must assert each defense in a separate motion.
- C. Grant the motion for improper venue, because the defendant resides and the cottage is located in State B.
- D. Grant the motion for lack of personal jurisdiction, because the defendant has no contacts with State A.

Explanation:

A defendant must respond to a plaintiff's complaint by filing an answer or a **pre-answer motion**. For example, under FRCP 12 a party may file a pre-answer **motion to strike** from an opposing party's pleading any insufficient defense or any redundant, impertinent, scandalous, or immaterial matter—as the defendant did here.

When the defendant files a pre-answer motion, the **omnibus motion rule** requires that **all FRCP 12 defenses** be **consolidated in a single motion** for efficiency purposes. This means that the defendant cannot file a subsequent pre-answer motion raising an omitted FRCP 12 defense, except for lack of subject-matter jurisdiction, that was available when the initial motion was filed. Because of the omnibus motion rule, the following FRCP 12 defenses are **waived** and cannot be asserted later **if omitted from a pre-answer motion**:

- Lack of **personal jurisdiction**, which generally requires the defendant to have minimum contacts with the forum state
- Improper **venue**, which is proper in any judicial district where the defendant resides or a substantial portion of the property at issue is located
- Insufficient process or service of process

Here, the State A federal court likely lacks personal jurisdiction over the defendant because she has no contacts with State A (**Choice D**). Additionally, the State A federal court is likely an improper venue since the defendant resides and the cottage is located in State B (**Choice C**). However, since the defendant's initial pre-answer motion to strike failed to include these defenses, they are waived. As a result, the court will likely deny the defendant's motion to dismiss for lack of personal jurisdiction and improper venue.

(Choice B) FRCP 12 defenses that are raised after a pre-answer motion has been filed are generally waived under the omnibus motion rule. Therefore, the defendant *cannot* assert her lack of personal jurisdiction and improper venue defenses in separate motions.

Educational objective:

The defenses of (1) lack of personal jurisdiction, (2) improper venue, and (3) insufficient process or service of process are waived if they are not asserted in a *single* pre-answer motion or in an answer, whichever occurs first.

References

- Fed. R. Civ. P. 12(f)–(h) (motion to strike; consolidating and waiving pre-answer defenses).

Omnibus motion rule

FRCP 12 defenses

- Lack of personal jurisdiction
- Improper venue
- Insufficient process/service of process



Effect if omitted from pre-answer motion

- Subsequent pre-answer motion **prohibited**
- Defenses **waived**

- Failure to state claim on which to grant relief
- Failure to state legal defense
- Failure to join required party



- Subsequent pre-answer motion **prohibited**
- Defenses **not waived at trial**

- Lack of subject-matter jurisdiction



- Subsequent pre-answer motion **allowed**
- Defense **never waived**

FRCP = Federal Rule of Civil Procedure.

©UWorld