

A store owner from State A had a dispute with its supplier incorporated and headquartered in State B over the quality of the produce the supplier had delivered to the store. The store owner sued the supplier in a federal court in State A for breach of contract, seeking \$200,000 in damages.

The supplier filed a pre-answer motion to dismiss the case based solely on lack of personal jurisdiction, which the court denied. The supplier now seeks to assert that the federal court is an improper venue and that the store owner failed to state a claim on which relief can be granted.

Which of the following statements best describes the effect of the supplier's pre-answer motion on these two defenses?

- A. It has no effect on the supplier's "improper venue" or "failure to state a claim" defense.
- B. It resulted in a waiver of the supplier's "failure to state a claim" defense.
- C. It resulted in a waiver of the supplier's "improper venue" defense.
- D. It resulted in a waiver of the supplier's "improper venue" and "failure to state a claim" defenses.

### Explanation:

A defendant must respond to a plaintiff's complaint by filing an answer or a pre-answer motion. 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**: (1) lack of personal jurisdiction, (2) improper venue, and (3) insufficient process or service of process. Here, the supplier's pre-answer motion failed to include the "improper venue" defense, so this defense was waived (**Choice A**).

However, the following FRCP 12 defenses may still **be later asserted** in an **answer or post-answer motion** if omitted from a pre-answer motion: (1) failure to state a claim, (2) failure to state a legal defense, and (3) failure to join a required party. As a result, the supplier's omission of its "failure to state a claim" defense from the pre-answer motion did *not* waive this defense. It may still be asserted in the supplier's answer or in a post-answer motion (**Choices B & D**).

\*Lack of subject-matter jurisdiction is never waived and may be asserted at any time, including in a subsequent pre-answer motion.

### Educational objective:

The omnibus motion rule requires that all FRCP 12 defenses be consolidated in a single pre-answer motion. Lack of personal jurisdiction, improper venue, and insufficient process or service of process are waived if omitted. But failure to state a claim, state a legal defense, or join a required party may still be asserted in an answer or post-answer motion.

### References

- Fed. R. Civ. P. 12(g)–(h) (consolidating and waiving pre-answer defenses).
- 5C Charles Alan Wright et al., Federal Practice and Procedure § 1385 (3d ed. 2020) (explaining the omnibus motion rule).

## 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.

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