

CHAPTER 32-30

PROCEEDINGS AGAINST JOINT DEBTORS

32-30-01. Joint and several debtors - Procedure when summons not served on all.

When the action is against two or more defendants the plaintiff may proceed as follows:

1. If the action is against defendants jointly indebted upon contract and the summons is served on one or more, the plaintiff may proceed against the defendant served, unless the court otherwise directs, and if the plaintiff recovers judgment it may be entered against all the defendants thus jointly indebted to the extent only that it may be enforced against the joint property of all and the separate property of the defendants served, and, if they are subject to arrest, against the persons of the defendants served.
2. If the action is against defendants severally liable and one or more shall be served, the plaintiff may proceed against the defendants served in the same manner as if they were the only defendants.
3. Where all the defendants have been served, judgment may be taken against any of them severally, when the plaintiff would be entitled to judgment against any one or more of such defendants if the action had been against such defendants or any of them alone.
4. If the name of one or more partners for any cause shall have been omitted in any action in which judgment shall have been entered against the defendants named in the summons, and such omission shall not have been pleaded in such action, the plaintiff, in case the judgment therein shall remain unsatisfied, may recover by action of such partner separately upon proving such partner's joint liability, notwithstanding that partner may not have been named in the original action, but the plaintiff shall have satisfaction of only one judgment rendered for the same claim for relief.

32-30-02. Summons after judgment. When a judgment shall be recovered against one or more of several persons jointly indebted upon a contract by proceeding as provided in section 32-30-01, those who were not originally summoned to answer the complaint and did not appear in the action may be summoned to show cause why they should not be bound by the judgment in the same manner as if they had been summoned originally.

32-30-03. Requisites of summons. The summons provided in section 32-30-02 must be subscribed by the judgment creditor or the creditor's attorney, must describe the judgment and require the person summoned to show cause within twenty days after the service of the summons, and must be served in like manner as the original summons. It is not necessary to file a new complaint.

32-30-04. Accompanied by affidavit. The summons must be accompanied by an affidavit of the person subscribing it, that the judgment has not been satisfied to that person's knowledge or information and belief and must specify the amount due thereon.

32-30-05. Answer. Upon such summons the party summoned may answer within the time specified therein, denying the judgment or setting up any defense which may have arisen subsequently, and that party may make the same defense which the party originally might have made to the action, except the statute of limitations.

32-30-06. Further pleadings. Further pleadings and proceedings shall be as provided in the North Dakota Rules of Civil Procedure.

32-30-07. Pleadings verified. The answer and reply must be verified in the like cases and manner and be subject to the same rules as the answer and reply in a civil action.