

DEFAULT JUDGMENTS OF MULTIPLE DEFENDANTS

If there are multiple defendants, the Clerk of Superior Court may enter entry of default and default judgment¹ against all defendants if all were served, defaulted, and if otherwise appropriate.

If there are multiple defendants, and any defendant defaults and other defendants do not, the Clerk of Superior Court will look to see if the complaint alleges joint liability or joint and several liability.² Joint liability or joint and several liability must be alleged in the complaint for the Clerk to make a determination. If neither liability is alleged in the complaint, the Clerk will treat a motion for default judgment as if joint liability is alleged.

JOINT LIABILITY:

Where multiple defendants are sued and joint liability³ is alleged in the complaint, the Clerk of Superior Court will not enter default judgment against any defendant if other defendants are not in default.⁴ The Clerk may only enter entry of default “against the defaulting defendant.”⁵

JOINT AND SEVERAL LIABILITY:

Where multiple defendants are sued and joint and several liability⁶ is alleged in the complaint, the Clerk of Superior Court may enter default judgment against any defaulting defendant even if other defendants are not in default.⁷ If joint and several liability is not pled in the complaint then the Clerk will not enter default judgment until the case is adjudicated as to the other defendants.

¹ See generally N.C.G.S § 1A-1, NC. R. Civ. P. 55.

² Harlow v. Voyager Communications, 348 N.C. 568, 501 S.E.2d 72 (1998) (explaining the holding of the *Frow* principle’s applicability to joint liability cases and inapplicability to joint and several liability cases). The *Frow* principle was enunciated by the U.S. Supreme Court in *Frow v. De La Vega*, 15 Wall 552, 21 L. Ed. 60 (1872) stating:

The true mode of proceeding where a bill makes a joint charge against several defendants, and one of them makes default, is simply to enter a default and a formal decree *pro confesso* against him, and proceed with the cause upon the answers of the other defendants. The defaulting defendant has merely lost his standing in court . . . but if the suit should be decided against the complainant on the merits, the bill will be dismissed as to all the defendants alike - the defaulter as well as the others. If it be decided in the complainant’s favor, he will then be entitled to a final decree against all.

Frow, 15 Wall at 554, 21 L. Ed. at 61.

³ Joint liability means the parties are “undivided” and “must therefore be prosecuted in a joint action against them.” *Black’s Law Dictionary* 837 (6th ed. 1990).

⁴ Moore v. Sullivan, 123 N.C. App. 647, 473 S.E.2d 659 (1996). “[I]n the default judgment situation when a plaintiff has alleged joint liability, a default judgment should not be entered against the defaulting defendant if one or more of the defendants do not default.” *Id.* at 650. The default judgment should wait for final adjudication as to the non-defaulting defendant. *Id.* See also, Harris v. Carter, 33 NC App. 179, 234 S.E.2d 472 (1977) (Stating that “[i]f the alleged liability is joint a default judgment should not be entered against a defaulting defendant until all defendants have defaulted; or if one or more do not default then, as a general proposition, entry of judgment should await and adjudication as to liability of the non-defaulting defendants.”).

⁵ See *Harlow*, 348 N.C. App. at 570, 473 S.E.2d at 74.

⁶ A liability is joint and several “when the creditor may demand payment or sue one or more of the parties to such liability separately, or all of them together at his option.” *Id.* at 570, 473 S.E.2d at 74.

⁷ “Where the plaintiff has alleged the defendants to be jointly and severally liable, the *Frow* principle will not apply.” *Id.* When the liability is joint and several, “the matter can be decided individually against one defendant without implicating the liability of other defendants.” *Id.*