RCMOS – Multidisciplinary Scientific Journal The Knowledge.
ISSN: 2675-9128. São Paulo-SP.

Year VI, v.1 2026 | Submission: 20/02/2026 | Accepted: 22/02/2026 | Publication: 24/02/2026

The Defendant's Response in Brazilian Civil Procedure: Defense, Counterclaim, and the Legal Concept of Default Judgment

The Defendant's Response In Brazilian Civil Procedure: Contestation, Counterclaim, And The Legal Concept Of Default

Ruhan Ferreira da Mota - Civil lawyer. Bachelor of Laws from the Catholic University of Pernambuco (UNICAP). Postgraduate student in Contemporary Civil Procedure at the Federal University of Pernambuco (UFPE). Professional address at Rua Jacó Velosino, n. 290, 4th floor, Casa Forte, Recife/PE, CEP n. 52.061-410. Email address at ruhan@tizeimendonca.adv.br.

Vinícius de Souza Pedrosa - Attorney for the National Treasury. Bachelor of Laws from the Damas da Instrução Cristã Faculty (FADIC). Postgraduate degree in Public Law. Professional address: Av. Sete de Setembro, 1355 - Centro, Porto Velho - RO, 76801-097. Email address: vinicius.pedrosa@pgfn.gov.br

Summary

This article aims to develop a legal and doctrinal analysis of the defendant's response in legal proceedings, or the lack thereof, with a detailed focus on the defense, counterclaim, and default judgment. It begins with the constitutional principles of due process, adversarial proceedings, and the right to a full defense. It addresses the provisions of the 2015 Code of Civil Procedure. Furthermore, it examines the effects and consequences of a situation where the defendant fails to present a defense within the legal timeframe, resulting in the presumption of the plaintiff's allegations being true, analyzing legal exceptions and limitations, and noting that a defaulting defendant may subsequently intervene in the proceedings. It discusses the choice between a defense and a counterclaim as a legal strategy, depending on the specific case and factual reality. The goal is to demonstrate the correct use of these legal instruments, which are fundamental to ensuring justice, procedural efficiency, and the protection of the parties' rights, promoting a fair and expeditious resolution of disputes.

Keywords: defendant. Defense. Response. Counterclaim. Default judgment.

Abstract

This article aims to develop a legal and doctrinal analysis of the defendant's response in legal proceedings, or the absence thereof, with a detailed focus on the defense, counterclaim, and default judgment. It begins with the constitutional principles of due process, adversarial proceedings, and the right to a full defense. It addresses the provisions of the 2015 Code of Civil Procedure. Furthermore, it examines the effects and consequences of a situation where the defendant fails to present a defense within the legal timeframe, resulting in the presumption of the veracity of the plaintiff's allegations, analyzing legal exceptions and limitations, and noting that a defaulting defendant may subsequently intervene in the proceedings. It discusses the choice between a defense and a counterclaim as a legal strategy, depending on the specific case and factual reality. The article hopes to demonstrate the correct use of these legal instruments, which are fundamental to ensuring justice, procedural efficiency, and the protection of the parties' rights, promoting a fair and expeditious resolution of disputes.

Keywords: defendant. Defense. Defense. Counterclaim. Default.

1. Introduction

The main objective of this article is to analyze the defendant's response in detail.

and its absence in Brazilian civil procedure, with a specific focus on the defense, the counterclaim and

in the context of default judgment, as regulated by the 2015 Code of Civil Procedure. The aim is to explore...

the characteristics of each of these institutions, the legal requirements for their use or configuration,

Year VI, v.1 2026 | Submission: 20/02/2026 | Accepted: 22/02/2026 | Publication: 24/02/2026

the procedural effects of each and their practical implications throughout the process.

The methodology employed in this study is predominantly qualitative, based on a Bibliographical and documentary analysis. Legal texts will be examined, mainly the CPC/15, in addition to specialized doctrine and relevant case law.

In the context of Brazilian civil procedural law, the defendant's response, or lack thereof, assumes... important role in the unfolding of the procedural legal relationship.

And, regarding the concept of contestation, we can cite as one of the fundamental principles... constitutional rights, the guarantee of due process and the right to a full defense, provided for in item LV of article 5 of CF/88, together with the provision for due process of law, contained in item LIV:

> Article 5 (...)
> LIV - no one shall be deprived of liberty or property without due process of law;
> LV - to litigants in judicial or administrative proceedings, and to defendants in general are ensuring the right to a fair hearing and full defense, with the means and resources inherent to it;
> (BRAZIL, Constitution of the Federative Republic of Brazil of 1988)

Also deserving of mention is the provision in Article 7 of the CPC/15, which deals with ensuring to the parties, the *"parity of treatment in relation to the exercise of procedural rights and powers, Regarding the means of defense, the burdens, the duties, and the application of procedural sanctions, it is the judge's responsibility to decide. "to ensure effective adversarial proceedings."*

Therefore, the counterclaim and the reconvention are essential procedural mechanisms that allow when the defendant makes a statement in the proceedings, each with its own specific characteristics and effects, as well as In absentia.

It can be said that the defense is the conventional form of response from the defendant, where it is possible to present their defense, refuting the factual and legal allegations presented by the plaintiff, presenting their own evidence, arguments, and even proposing evidence to be produced.

The counterclaim, which can also be seen as a form of response from the defendant, in turn, It is a kind of counter-attack, allowing the defendant to formulate claims against the plaintiff in the same way. process.

Default judgment occurs when the defendant fails to present a defense within the legal timeframe, generating presumptions that... These factors can decisively influence the outcome of the process, and this should be the point of greatest attention. of the defendant in a legal proceeding.

Therefore, it becomes extremely important to understand and analyze these in depth. procedural figures, their peculiarities, and the way they influence and interfere with the dynamics of the process, both from a theoretical and practical perspective.

Throughout the research, the objectives of this article will be outlined, aiming to provide a comprehensive and well-founded view of the topic.

RCMOS – Multidisciplinary Scientific Journal The Knowledge.
ISSN: 2675-9128. São Paulo-SP.

Year VI, v.1 2026 | Submission: 20/02/2026 | Accepted: 22/02/2026 | Publication: 24/02/2026

2. Theoretical Framework

2.1 Objection

It can be said that contestation, from a macro perspective, is the main (and only) form of response.
of the defendant in the discovery phase of the Brazilian civil procedure. This is the instrument by which
The defendant presents his defense, refuting the factual and legal allegations brought by the plaintiff, presenting...
their evidence and legal arguments, and, if necessary, formulating requests contrary to those of the plaintiff.

Therefore, contesting the claim represents the exercise of the principle of adversarial proceedings and the right to a full hearing.
defense, considering that, with the proper summons and presentation of a defense by the defendant, it remained
ensured that both parties had the opportunity to present their versions of the facts and
legal arguments, contributing to a fair and equitable trial, the author with the initial pleading, and the
defendant with the defense.

For your information, previously, under the 1973 code, contesting the decision was not...
characterized as the defendant's only form of defense during the discovery phase, given that the
The legislator had dealt separately with the legal concept of exceptions; let us examine the provisions of articles...
Articles 300, 304, 305 and 306 of the CPC/73:

> Article 300. It is the defendant's responsibility to allege, in the answer, all matters of defense, setting forth the reasons.
> in fact and in law, challenging the plaintiff's claim and specifying the evidence that
> intends to produce.
> (...)
> Art. 304. It is lawful for either party to raise, by means of an objection, the lack of jurisdiction (art.
> 112), the impediment (art. 134) or the suspicion (art. 135).
> Article 305. This right may be exercised at any time or level of jurisdiction, and it is up to the judge to decide.
> apart from offering an exception, within fifteen (15) days, counted from the fact that gave rise to the
> incompetence, impediment or suspicion.
> Sole paragraph. In the exception of incompetence (article 112 of this Law), the petition may be
> filed with the court of the defendant's domicile, with a request for its immediate forwarding to
> court that ordered the summons.
> Article 306. Upon receipt of the objection, the proceedings shall be suspended (Article 265, III) until it is...
> definitively judged.
> (BRAZIL, Code of Civil Procedure of 1973)

Analyzing the legal provision and the system, it can be seen that the exception did not bring
Speed, economy, and efficiency are not brought to the process, considerably affecting its duration.
reasonable, considering the separate proceedings, with the suspension of the process until the judgment and
the most diverse developments, such as the filing of appeals.

Although its figure was abolished with the enactment of the CPC/15, which deals solely with
contestation as a means of defense, under the terms of article 335 *"The defendant may offer a contestation, by*

RCMOS – Multidisciplinary Scientific Journal The Knowledge.
ISSN: 2675-9128. São Paulo-SP.

Year VI, v.1 2026 | Submission: 20/02/2026 | Accepted: 22/02/2026 | Publication: 24/02/2026

petition, within 15 (fifteen) days, the starting date of which will be the date:", it is understood that the incorporation and unification of the exception in the form of a defense, through preliminary matters, which will be as discussed below, so that any and all decisions revolving around the action are made within the framework. own records.

Well, regarding the legal provisions for contesting the claim, it is important to begin by detailing the details. through the legal deadline and formalities.

According to the 2015 Code of Civil Procedure, specifically in article 335 and its subsections, We understand that the deadline for submitting a response is 15 business days, with the counting being in accordance with the terms. with the situation of each clause, which are:

> Art. 335. (...)
>
> I - from the conciliation or mediation hearing, or from the last conciliation session, when if any party fails to appear or, if they appear, there is no settlement;
>
> II - of the protocol of the request for cancellation of the conciliation or mediation hearing presented by the defendant, when the hypothesis of art. 334, § 4, item I occurs;
>
> III - provided for in article 231 , In other cases, it depends on how the citation was made.
>
> (BRAZIL, Code of Civil Procedure of 2015)

Thus, the time period can begin to run from the initial conciliation hearing, from the date of filing. Regarding the request to cancel the aforementioned hearing, when there is a waiver/cancellation request. jointly, or, in the form of article 312, depending on the method of service, whether electronic, by mail, by court officer and others.

With regard to the formalism of forensic practice, one can consider the inclusion of addressing, indication of the process number, full identification of the parties, the statement of facts, legal basis, requests and, if applicable, the presentation of documents and other evidence supporting the defendant's defense, all duly articulated in numbered points, subdivided into paragraphs, as provided for in article 336 of the CPC/15.

In this sense, we have that, in addition to these formalities, there is a structure resulting from the forecast. legal, related to the development of the defendant's legal reasoning in defense, as provided for in *The opening paragraph* of article 337 states that "It is incumbent upon the defendant, before discussing the merits, to allege:", legal figures referred to as preliminary and prejudicial issues on the merits, which may lead to the end of the process without... The merits of the plaintiff's or the defendant's allegations have not even been analyzed, so it is impossible to speak of... violation of the principle of prioritizing judgment on the merits.

Legal doctrine holds that preliminary objections fall under the category of Procedural defenses, or indirect defenses, which can be divided into dilatory and peremptory defenses. as raised by the jurist Daniel Amorim Assumpção Neves:

> These procedural defenses are divided according to the consequence of their acceptance in the case. Specifically. Traditionally, preliminary defenses are divided into dilatory defenses, whose Acceptance does not end the process, it only increases its duration.

RCMOS – Multidisciplinary Scientific Journal The Knowledge.
ISSN: 2675-9128. São Paulo-SP.

Year VI, v.1 2026 | Submission: 20/02/2026 | Accepted: 22/02/2026 | Publication: 24/02/2026

> procedure, of these peremptory ones, which, once accepted, cause the process
> be dismissed without a decision on the merits. (2024, pg. 657).

Therefore, it is necessary to list and provide brief explanations about each clause.
of the device indicated above.

Paragraph one deals with the non-existence or invalidity of the summons, allowing the defendant to argue that it was not served.
cited, or that the citation suffers from the defect of nullity, including due to the fact that the regular citation is
a condition of indispensability for the validity of the process, as stipulated in the *heading* of article 239.
of the CPC/15, therefore dealing with a matter of public order, which can be raised at any time.
stage of the process.

Paragraph two deals with the absolute and relative incompetence of the Court, at which point the defendant
has the right to challenge the court's jurisdiction to hear the case, in accordance with the
as set forth in the *heading* of Article 64 of the same legal instrument, which states, *"Incompetence, whether absolute or relative, will be alleged as a preliminary matter of contestation."* such incompetence may be
absolute, which deals with a matter of public order, and must even be declared ex officio by the Court,
and in case of acceptance, the case file must be sent to the competent court, or relative, which,
If not raised by the defendant, it leads to the extension of relative jurisdiction.

Paragraph three addresses the incorrect value of the case, in accordance with the provisions of article 293.
from the CPC/15, which states: *"The defendant may challenge, as a preliminary matter in the answer, the value attributed."*
to the cause by the author, under penalty of preclusion, and the judge will decide on the matter, imposing, if necessary, the supplementing the costs." Thus, the defendant may, upon identifying that the value of the case is not sufficient.
in accordance with the provisions of articles 291 and 292 of the aforementioned code, or with the provisions of any eventual
specific/special legislation, raise such irregularity as a preliminary matter.

Paragraph four deals with the inadequacy of the initial petition, a situation in which the defendant will demonstrate that the
The initial petition is inept and should be classified under one or more of the clauses of article 330, I, §1.

Sections I to IV of the CPC/15:

> Article 330. The initial petition will be dismissed when:
> I - for being inept;
> (...)
> § 1. The initial petition is considered inept when:
> I - it lacks a claim or a cause of action;
> II - the request is indeterminate, except in the legal cases where the request is permitted.
> generic;
> III - the conclusion does not logically follow from the narration of the facts;
> IV - contains mutually incompatible requests.
> (BRAZIL, Code of Civil Procedure of 2015)

Therefore, it is incumbent upon the defendant, preliminarily, to demonstrate that there is a lack of a claim or cause of action in the case.
initial petition, that the request is indeterminate, not falling within the legal exceptions, that there is no

RCMOS – Multidisciplinary Scientific Journal The Knowledge.
ISSN: 2675-9128. São Paulo-SP.

Year VI, v.1 2026 | Submission: 20/02/2026 | Accepted: 22/02/2026 | Publication: 24/02/2026

a logical conclusion from the narration of the facts, or that the requests are incompatible with each other.

Paragraph five deals with preclusion, which is nothing more than the loss of the right to legal action due to...

The author's negligence in previous proceedings led to three dismissals without resolution.

Regarding the merits of the case, as stipulated in Article 485, §3 of the Brazilian Code of Civil Procedure (CPC/15):

> Article 486. A judicial pronouncement that does not resolve the merits does not prevent the party from...
> propose the action again. (...) § 3 If the author gives rise, on 3 (three) occasions, to a judgment based on
> In abandoning the case, the plaintiff may not bring a new action against the defendant with the same subject matter.
> However, the possibility of asserting their right in defense is reserved for them.
> (BRAZIL, Code of Civil Procedure of 2015)

Paragraph six deals with lis pendens, which is simply the existence of another lawsuit.

identical in progress, which has a concept foreseen in paragraphs 1, 2 and 3 of article 337, VI of the CPC/15:

> Article 337. It is incumbent upon the defendant, before discussing the merits of the case, to allege:
> (...)
> VI - lis pendens;
> (...)
> § 1. Lis pendens or res judicata occurs when an action is reproduced that was previously filed.
> filed.
> § 2. An action is identical to another when it has the same parties, the same cause of action, and
> The same request. § 3 There is lis pendens when an action that is already in progress is repeated.
> (BRAZIL, Code of Civil Procedure of 2015)

Therefore, if there is another identical lawsuit pending concurrently, the defendant must...

to raise such an issue as a preliminary matter in the statement of defense, aiming at the dismissal of one of the proceedings.

Paragraph seven deals with res judicata, which is nothing more than the finding that a lawsuit has been filed.

repeated legal action, which already has a final and unappealable decision, which has a concept foreseen in

Paragraph 4 of Article 337, VII of the CPC/15:

> Article 337. It is incumbent upon the defendant, before discussing the merits of the case, to allege:
> (...)
> VII - res judicata;
> (...)
> § 4. Res judicata applies when an action is repeated that has already been decided by a final and unappealable decision.
> judged.

(BRAZIL, Code of Civil Procedure of 2015)

Paragraph eight deals with connection (and contiguity), which is nothing more than the finding of

filing two lawsuits that share a common claim or cause of action, possessing the concept

as provided for in the *heading* of article 55 of the CPC/15:

> Article 55. Two or more actions are considered connected when they have the same claim or purpose.
> cause of action.
> (BRAZIL, Code of Civil Procedure of 2015)

Given that joinder of actions occurs when there are two actions with identical parties and cause of action,

RCMOS - Multidisciplinary Scientific Journal The Knowledge.
ISSN: 2675-9128. São Paulo-SP.

Year VI, v.1 2026 | Submission: 20/02/2026 | Accepted: 22/02/2026 | Publication: 24/02/2026

since one request is broader, encompassing the request of the other, possessing a concept foreseen in

heading of article 56 of the CPC/15:

> Article 56. There is joinder of actions when there is identity as to the nature of the actions.
> to the parties and the cause of action, but the claim of one, being broader, encompasses that of the others.
> (BRAZIL, Code of Civil Procedure of 2015)

Situations that lead to the consolidation of cases for joint decision-making.

Paragraph nine deals with the incapacity of a party, defective representation, or lack of authorization.

which are remediable defects, through actions to be taken by the plaintiff. Both defects

They are perfectly conceptualized and explained by the jurist Daniel Amorim Assumpção Neves:

> The vice of incapacity of a party is linked to the capacity to be a party in court, a matter intimately connected with the legal capacity to be a party.
> related to the capacity to perform valid legal acts, that is, it concerns capacity.
> Regarding the exercise of power or in fact. The defect of representation relates to a flaw in capacity.
> pleading, consisting of the requirement that the parties be duly represented.
> by a lawyer duly registered with the Brazilian Bar Association. Finally, the lack of
> Authorization occurs in exceptional situations where the legal norm requires it of a particular subject.
> the authorization of another so that he may litigate. (2024, pg. 664).

Paragraph ten deals with the existence of an arbitration agreement, so that the defendant, in his defense,

This will indicate that an arbitration agreement has been signed between the parties, or that the contract in question...

There is an arbitration clause, under the terms of Law No. 9.307/1996, so that, pursuant to Article 337,

According to §6 of the CPC, if not raised by the defendant, it is understood as acceptance of state jurisdiction and waiver of jurisdiction.

of the arbitration process.

Paragraph eleven deals with the absence of standing or procedural interest, and the defendant may...

both indicate that it is an illegitimate party to be included in the passive side of the lawsuit, in accordance with

as set forth in articles 338 and 339 of the CPC/15, the plaintiff is not a legitimate party to appear in the case.

active claim. Or, demonstrate that the plaintiff lacks standing to sue, from the perspective of

"The need to obtain the requested judicial protection and the adequacy between the request and the protection."

jurisdictional effect that one seeks to obtain" (STJ, 4th Panel, REsp No. 954.5085/RS, rapporteur Minister Fernando

Gonçalves, judged on 08/28/2007).

Paragraph twelve deals with the lack of a security deposit or other provision that the law requires as a preliminary step.

the defendant must, in cases where the legal system provides for the condition of filing a lawsuit

and the progress of the process towards the provision of security or other services, the most prominent example being the provision

Article 968, II of the CPC/15, which conditions the rescissory action on the deposit of a security of 5% of the value of the

cause.

Paragraph thirteen deals with the improper granting of the benefit of free legal aid, and it is up to...

The defendant is challenging the request and the granting of said benefit improperly to the plaintiff.

Thus, once the preliminary issues have been resolved, we move on to the direct defense, or defense on the merits, which has

The actual connection is with the substantive law involved in the process.

Year VI, v.1 2026 | Submission: 20/02/2026 | Accepted: 22/02/2026 | Publication: 24/02/2026

The doctrine also differentiates between direct and indirect defenses on the merits, as follows:

As highlighted by the jurist Daniel Amorim Assumpção Neves:

> In a direct defense on the merits, the defendant confronts the facts and legal arguments head-on.
> narrated by the author in the initial petition, seeking to demonstrate that the facts did not occur.
> as narrated, or, alternatively, that the legal consequences intended by the author are not
> the most appropriate for the specific case.
> (...)
> An indirect defense on the merits is developed without challenging the facts and the reasoning.
> legal basis that constitutes the cause of action presented by the plaintiff in their initial petition,
> substantiated by the allegation of a new fact that is an impediment, a modification, or an extinction of
> copyright. (2024, pg. 658).

Thus, regarding impeding facts, the defendant raised the issue of the existence of prior facts.
or simultaneous, to the filing of the lawsuit and the consequent constitutive fact of the plaintiff's right, which
They prevent the effects of the aforementioned constitutive fact from occurring. As for the extinguishing effects, it can be said that
These are the acts that extinguish, that put an end to, copyright, and must occur after the constitutive fact.
of the law. While modifying factors would be those that lead to a modification of the constitutive fact,
being subsequent to its emergence.

Well, it's also worth highlighting the importance of specifically challenging the facts.
alleged by the plaintiff in the initial pleading, preventing a general denial of the facts, under penalty of them being presumed.
true or unchallenged, with exceptions as set forth in Article 341 of
CPC/15:

> Article 341. The defendant is also responsible for specifically addressing the factual allegations.
> The statements contained in the initial petition are presumed true, with those not challenged being presumed true, unless:
> I - confession is not admissible with respect to him/her;
> II - the initial petition is not accompanied by an instrument that the law considers necessary
> substance of the act;
> III - are in contradiction with the defense, considered as a whole.
> Sole paragraph. The burden of specifically challenging the facts does not apply to the defense attorney.
> public, to the court-appointed lawyer and to the special curator.
> (BRAZIL, Code of Civil Procedure of 2015)

And, after the defense has been presented, the defendant may only raise new allegations in certain situations.
specific ones, listed in the subsections of article 342 of the aforementioned legal instrument, namely, *"I -
relating to a supervening right or fact; II - it is the judge's responsibility to take cognizance of them ex officio; III - by
express legal authorization may be formulated at any time and at any level of jurisdiction.*

Therefore, since the situation does not fall under the aforementioned clauses, and no issue has been raised in the...
In other cases, the defendant's right to defend themselves on that point is forfeited.
In other words, the defendant suffers the loss of the right to perform a procedural act due to the expiration of the statute of limitations.
deadline or by performing an incompatible act.

RCMOS – Multidisciplinary Scientific Journal The Knowledge.
ISSN: 2675-9128. São Paulo-SP.

Year VI, v.1 2026 | Submission: 20/02/2026 | Accepted: 22/02/2026 | Publication: 24/02/2026

It can be said that the presented challenge has, as its main effects and consequences, the to clarify the controversial and uncontroversial issues of the process, making it possible to reach the next phase. of producing evidence or judging the case, depending on the cause and the situation.

The defense statement, therefore, is a procedural document of extreme importance for the defendant's defense. requiring strict attention to deadlines and legal formalities, as well as a well-structured system. well-founded and articulated, so that its absence or its incomplete presentation or Incorrectly, this can lead to very serious harm to the defendant, such as default judgment, as will be explained. This will be discussed in more detail later, but first, it is important to address the possibility of the defendant presenting... own claim against the author.

2.2 Counterclaim

A counterclaim can be understood as a way for the defendant to exercise their right to legal action within... of the process already underway, so it is possible to defend oneself against the author's allegations through Regarding the defense, as well as formulating a separate claim against the plaintiff within the same proceeding, there is whoever understands the similarity of such a demonstration to a kind of legal counter-attack, where The defendant assumes the position of counterclaimant, and the plaintiff that of counterclaim defendant.

It can be said that, among some of the purposes of using a counterclaim, both by Both the legislator and the defendant are committed to procedural economy, procedural speed, and avoiding conflicting decisions. conflicting, allowing related issues to be judged jointly.

Well, for a counterclaim to be admitted, certain conditions must be met. as set forth in the *heading* of article 343 of the 2015 Code of Civil Procedure, namely, the claim The defendant's own actions must be connected to the main action or to the basis of the defense.

Therefore, the court with jurisdiction to hear and decide the counterclaim must be the same as the court that handled the main action. principal, and there must be a link or interdependence between the facts and legal grounds of The defendant must observe the form and time limit for filing the main action and the counterclaim. The counterclaim can even be filed independently of the presentation of the defense.

Furthermore, the prediction in statement 45 of the Forum of Civil Procedure Specialists deserves highlighting. which deals with the formal waiver of the inclusion of the name of a counterclaim in order to consider it as a proposal, in the following terms:

> Statement 45: For a counterclaim to be considered filed, there is no need to use
> This legal term, or deduction from a separate chapter, is not applicable. However, the defendant must express...
> unequivocally the request for judicial protection that is qualitatively or quantitatively greater than
> the simple dismissal of the initial claim.

This issue has also been the subject of analysis and decision by the Superior Court of Justice (STJ) in the judgment of Special Appeal No. 1.940.016/PR, by the Third Panel, with Justice Ricardo Villas Bôas Cueva as rapporteur, remaining

RCMOS – Multidisciplinary Scientific Journal The Knowledge.
ISSN: 2675-9128. São Paulo-SP.

Year VI, v.1 2026 | Submission: 20/02/2026 | Accepted: 22/02/2026 | Publication: 24/02/2026

It has been decided that the mistaken designation of the counterclaim as a counterpoint request does not prevent the regular processing of the counterclaim:

> SPECIAL APPEAL. CIVIL PROCEDURE. COUNTERCLAIM.
>
> REQUIREMENTS. COMPLIANCE. NOMEN CIVIL PROVISIONS. IRRELEVANCE.
>
> 1. Special appeal filed against a judgment published while the Code of Civil Procedure was in effect.
> Civil Code of 2015 (Administrative Statements Nos. 2 and 3/STJ).
>
> 2. Based on the innovations introduced by the 2015 Code of Civil Procedure, the offering of
> The counterclaim began to be made within the answer itself, without further formalities, aiming to
> to ensure the reasonable duration of the process and maximum procedural economy.
>
> 3. The mistaken designation of the counterclaim as a cross-claim does not
> prevents the regular processing of the claim filed by the defendant against the plaintiff, provided that
> It is clearly defined in the defense and the plaintiff is guaranteed the full exercise of...
> contradictory and the right to a full defense.
>
> 4. The existence of an unequivocal statement by the defendant that is qualitatively or quantitatively greater.
> that the mere dismissal of the main claim is sufficient to consider
> proposed the counterclaim, regardless of the legal name given to the claim, in
> terms of Statement No. 45 of the Permanent Forum of Civil Procedure Specialists.
>
> 5. Special appeal granted.

Regarding the counterclaim procedure, it must be presented within the answer to the complaint itself. in the form of a topic, or, if no defense is presented, in a separate document, being the The author is hereby notified to submit a response within 15 days. This includes a counterclaim, when applicable. once presented, it becomes autonomous from the main action, so that, under the terms of article 343, Section 2 of the CPC/15, *"The withdrawal of the action or the occurrence of an extinguishing cause that prevents the examination of "Its merit does not preclude the continuation of the proceedings regarding the counterclaim."*

Another point, which confirms the independence between the main process and the counterclaim, is in the event of a loss arising from the counterclaim, as already decided by the Superior Court of Justice on different occasions, including since the enactment of the 1973 Code of Civil Procedure, in the following words of Rapporteur Minister Lis Felipe Salomão “the attorney's fees in the main action and in the Counterclaims are determined independently, according to the jurisprudence of this Superior Court. (AgInt in AREsp 1109022/SP, rapporteur Justice Luis Felipe Salomão, 4th Panel, decided on 29/4/2019, DJe 2/5/2019) and in the following words of the Rapporteur Minister Castro Filho "The fees Attorney's fees in a counterclaim are independent of those set in the main action, which is why "A different percentage may be established for its calculation." (AgRg in REsp 753.095/DF, Rel. Minister CASTRO FILHO, THIRD PANEL, decided on 08/23/2007, DJ 09/10/2007, p. 228).

Furthermore, given that this is a claim by the defendant against the plaintiff, there is understanding regarding the possibility and appropriateness of amending the counterclaim, in accordance with the understanding of part of the doctrine, in accordance with the provisions of statement 120 of the II Conference on Civil Procedural Law. from the Federal Justice Council:

RCMOS – Multidisciplinary Scientific Journal The Knowledge.
ISSN: 2675-9128. São Paulo-SP.

Year VI, v.1 2026 | Submission: 20/02/2026 | Accepted: 22/02/2026 | Publication: 24/02/2026

> Statement 120: The judge must also order the amendment in the counterclaim, allowing the...
> counterclaimant, in order to avoid its premature rejection, correct defects and/or irregularities.

Thus, the process follows its normal course, moving on to the evidentiary phase and subsequent trial.
preferably together.

Therefore, it can be said that the filing of a counterclaim leads to an expansion of the litigation.
primarily with regard to the object/asset in dispute, although expansion may also occur.
of parts, bringing greater scope and complexity to the process.

It is possible to verify that the counterclaim is a procedural mechanism of great importance.
Its importance in Brazilian civil procedural law, providing an active form of defense for the defendant.
and contributing to the efficiency and effectiveness of the judicial process.

Thus, it is observed that both institutions contribute to procedural efficiency.
To consolidate disputed issues into a single process, reducing costs and processing time.
The choice between contesting and counterclaiming will depend on the legal strategy adopted by the defendant and the...
specific details of the case, always aiming at the effective defense of the rights and interests of the party.
demanded.

Now, considering the analysis of the defense and the counterclaim, we move on to the sensitive topic.
of the concept of default judgment.

2.3 Default

Default judgment can be defined as a procedural institution that arises from the situation in which the defendant,
Even after being duly summoned, he fails to file a response within the legal timeframe, or even after filing his response.
The defense fails to challenge the factual allegations contained in the initial complaint.

As provided for in article 344 of the CPC/15, the absence of a defense implies the presumption of...
The veracity of the facts alleged by the plaintiff, therefore, default is characterized by the defendant's inaction and possesses
significant effects on the progress and outcome of the process.

And on this point, the words of the jurist Daniel Amorim Assumpção Neves deserve highlighting:

> The absence must necessarily be legal because default occurs even in cases where
> The defendant files a defense, which will factually exist. This factual existence, however, does not
> This is sufficient to dismiss the default judgment, provided that it legally exists.
>
> An untimely objection, for example, does not prevent the defendant from being declared in default[2], as the Superior Court has already ruled.
> The Court of Justice ruled that the objection was addressed and filed in a different court and
>
> Being far from the court where the case is being processed does not prevent default judgment[3]. (2022, pg. 667).

Regarding the effects of default judgment, three stand out as highlighted by legal scholars, namely,
presumption of truthfulness of the facts raised by the plaintiff, the unnecessary notification of the defaulting defendant.
and the possibility of an early judgment on the merits.

RCMOS - Multidisciplinary Scientific Journal The Knowledge.
ISSN: 2675-9128. São Paulo-SP.

Year VI, v.1 2026 | Submission: 20/02/2026 | Accepted: 22/02/2026 | Publication: 24/02/2026

The presumption of truthfulness allows the court, in the face of the defendant's inaction, to understand how...
The facts presented by the plaintiff are true, since they were not contested by the defendant; therefore, it is not a matter of fact.
dealing with a fictitious confession.

This presumption does not affect the legal matter involved in the dispute; the presumption only addresses...
Regarding the facts, for example, if the defendant files a defense, but in an untimely manner,
The defendant will suffer the consequences of default judgment, but their submission, with regard to legal grounds, may be reviewed.
by the court, therefore there is no need to remove the document from the case file.

Therefore, even if the defendant is in default, the plaintiff may still face a judgment of
The court dismissed their claims after analyzing the merits and legal grounds of the case.

Furthermore, it is important to highlight that the presumption of truthfulness is relative, as provided for by law.
exceptions to the production of the effects of default, according to the items of article 345 of the CPC/15, which deal with
the existence of a defense from one defendant, in the case of multiple defendants, or the fact that the litigation concerns
Regarding inalienable rights, in situations where the initial petition is not accompanied by an instrument.
that the law deems indispensable to proving the act, and finally, the situation in which *"the factual allegations*
The claims made by the author are implausible or contradict evidence presented in the case.
" remaining with the plaintiff to prove the facts that constitute their right,
as provided for in article 348 of the aforementioned legal instrument.

It is worth highlighting that, with regard to the case of a defense presented by a co-litigant,
The type of joint litigation must be observed; if it is unitary, the decision must have the same content.
for both co-litigants, or if simple, a situation that allows for different decisions, and should
A thorough analysis of the specific case will be necessary to determine if there is, between the co-litigant...
contesting party and the defaulting co-litigant, identical defensive matters, to benefit the defaulting party, setting aside
the effects of default.

The lack of need to notify a defaulting defendant is provided for in the *heading* of article 346, so that
A combination of circumstances must occur for the summons to be waived, namely, default and...
The absence of legal representation in the case file, given that the legal representative must be notified of all...
actions taken in the process.

Furthermore, as stipulated in the sole paragraph of the aforementioned article, the defaulting defendant *"may*
to intervene in the process at any stage, receiving it in the state in which it is found.", thus being able to
To participate in the evidence-gathering phase for the instruction of the case and subsequent judgment.

The early judgment of the case, as one of the effects of default, is not automatic and must...
to comply with the rules of article 355, II of the CPC/15, which provides the following:

> Article 355. The judge shall decide the case in advance, rendering a judgment with resolution of the matter.
> merit, when:
> (...)
> II - if the defendant is in default, the effect foreseen in article 344 occurs and there is no request for evidence,

RCMOS - Multidisciplinary Scientific Journal The Knowledge.
ISSN: 2675-9128. São Paulo-SP.

Year VI, v.1 2026 | Submission: 20/02/2026 | Accepted: 22/02/2026 | Publication: 24/02/2026

as per article 349.

(BRAZIL, Code of Civil Procedure of 2015)

Therefore, only if the defendant is in default, with the effect of the presumption of truthfulness, without having Only after a request for the production of evidence has been made can the case be decided summarily. in the modality of effect arising from default.

Thus, it is clear that default judgment is an extremely important legal concept in civil procedure. imposing on the defendant the consequences of their inaction, promoting procedural speed and efficiency. from justice to the author. However, Brazilian law provides for exceptions and limitations that seek to To balance the application of the effects of default judgment with the guarantee of the defendant's fundamental rights. In this way, even in a situation of default, the defendant retains some possibilities for defense and participation. in the process, ensuring compliance with due process of law and the principle of adversarial proceedings.

Final Considerations

As can be seen from this article, the nuances of the defendant's response become evident. In Brazilian civil procedure, focusing on the defense, counterclaim, and the legal concept of default judgment, It is emphasized that each of these institutions plays a crucial role in the procedural system. directly influencing the course of the process and guaranteeing the rights of the parties involved.

It has been demonstrated that contesting is the primary form of response to... The defendant is given the opportunity to respond to the plaintiff's allegations during the discovery phase, allowing the plaintiff to refute the facts and the law presented. in the initial petition. Besides being a fundamental right of the defendant, the defense is essential for the The right to a fair hearing and full defense, defining the controversial issues and guiding the judge. in forming their conviction.

While the counterclaim emerges as a procedural opportunity for the defendant not only to to defend, but also to formulate a claim of their own against the author in the same proceeding, being It has also been demonstrated that this legal mechanism promotes procedural economy and speed, by to allow all related issues to be resolved in a single request, avoiding decisions. contradictory and providing a broad solution to the dispute.

Issues that lead to the important analysis of default judgment, a situation that occurs when the defendant, duly summoned, fails to file a response within the legal timeframe, making it clear that, as a rule, As a primary consequence, such inaction leads to the presumption of truthfulness of the facts alleged by the plaintiff. with significant effects on the subsequent steps of the process. The legal provision for... is highlighted. Exceptions and limitations to the effects of default judgment, as a way to protect certain fundamental rights. of the defendant, allowing for their subsequent intervention and preserving the principles of adversarial proceedings and the right to a full defense.

Therefore, understanding these issues becomes necessary and crucial for making a subsequent choice.

Year VI, v.1 2026 | Submission: 20/02/2026 | Accepted: 22/02/2026 | Publication: 24/02/2026

and procedural strategy, including contesting and/or counterclaiming, which must be carefully considered, through a detailed analysis of the factual reality and the peculiarities of the specific case, always in the pursuit of best defense of the defendant's interests.

Furthermore, the concept of default judgment highlights the importance of complying with procedural deadlines. and the rigorous attention to the steps of the process, especially on the part of the defendant, to avoid consequences. unfavorable circumstances of default judgment.

Thus, the study highlights that it is essential not only to seek the guarantee of substantive justice, but also also to ensure the efficiency and effectiveness of the judicial system and process, considering that The proper conduct of the parties promotes not only the swift resolution of disputes, but also... Protection of rights and promotion of legal certainty, fundamental pillars of the State. Democratic Rule of Law.

References

BRAZIL. Constitution of the Federative Republic of Brazil of October 5, 1998. **Official Gazette of the Union.** Brasilia, DF. Available at in: https://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm. Accessed on January 20, 2026

BRAZIL. Law No. 13.105 of March 16, 2015. Code of Civil Procedure. **Official Gazette of the Union.** Brasilia, DF. Available at: https://www.planalto.gov.br/ccivil_03/_ato2015-2018/2015/lei/l13105.htm. Accessed on January 20, 2026.

BRAZIL. Law No. 5,869, of January 11, 1973. Code of Civil Procedure. **Official Gazette of the Union.** Brasília, DF. Available at: https://www.planalto.gov.br/ccivil_03/leis/l5869.htm. Accessed on 04/03/2024. Accessed on January 21, 2026.

BRAZIL. Superior Court of Justice. **AgInt in AREsp 1109022/SP.** 4th Panel. Rapporteur: Minister Luis Felipe Salomão, decided on April 29, 2019. DJe: May 2, 2019.

BRAZIL. Superior Court of Justice. **Appeal in Special Appeal No. 753.095/DF.** Third Panel. Rapporteur: Justice Castro Filho, decided on August 23, 2007. Official Gazette: September 10, 2007, p. 228.

BRAZIL. Superior Court of Justice. **REsp No. 1,940,016/PR (2021/0102946-0).** Third Panel. Rapporteur: Minister Ricardo Villas Bôas Cueva, decided on 06/22/2021. Published in the Official Gazette on 06/30/2021.

Statements from the II Conference on Civil Procedural Law of the CJF. Available at: https://www.cjf.jus.br/cjf/corregedoria-da-justica-federal/centro-de-estudos-judiciarios-1/publicacoes-1/i-jornada-de-direito-processual-civil/ii-jornada-de-direito-processual-civil-enunciados-aprovados-2013-2018 . Accessed on January 25, 2026.

Statements from the Permanent Forum of Civil Procedure Specialists (FPPC). Florianópolis, 24, 25 and 26 of

Year VI, v.1 2026 | Submission: 20/02/2026 | Accepted: 22/02/2026 | Publication: 24/02/2026

March 2017. Available at: https://institutodc.com.br/wp-content/uploads/2017/06/FPPC-Carta-de-Florianopolis.pdf . Accessed on January 25, 2026.

NEVES, Daniel Amorim Assumpção. ***Annotated Code of Civil Procedure.*** 9th ed. São Paulo: Ed. JusPodivm, 2024.

NEVES, Daniel Amorim Assumpção. ***Manual of Civil Procedural Law* – Single Volume.** 14th ed. São Paulo: Ed. JusPodivm, 2022.