
Seventh Circuit Rejects Permissive Approach to Assertion of Affirmative Defenses or Counterclaims in Response to an Amended Complaint

Date: 06/22/20

The Federal Rules of Civil Procedure do not address whether a defendant may assert, as a matter of right, previously unpleaded affirmative defenses or counterclaims in response to an amended complaint. Courts evaluating the propriety of newly-pleaded affirmative defenses or counterclaims typically employ one of three approaches: the narrow, permissive, or moderate rule. In *Burton v. Ghosh*, --- F.3d ---, 2020 WL 3045954 (7th Cir. June 8, 2020), the Seventh Circuit rejected the permissive approach — which permits a defendant to assert any affirmative defense or counterclaim whenever an amended complaint is filed — because such an approach “would drastically undermine district judges’ control over the pleading process under Rule 15 and would lose sight of Rule 1’s instruction to construe the Rules to secure the just, speedy, and inexpensive resolution of civil actions.” *Id.* at *5.

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