

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA**

UNVERFERTH MFG CO INC,)	
)	
Plaintiff,)	
)	
v.)	CAUSE NO.: 3:13-CV-97-TLS
)	
PAR-KAN CO,)	
)	
Defendant.)	

PAR-KAN CO,)
)
Counter Claimant,)
)
v.)
)
UNVERFERTH MFG CO INC,)
)
Counter Defendant.)

OPINION AND ORDER

This matter is before the Court on a Motion to Dismiss Par-Kan Co.’s Inequitable Conduct Counterclaim and to Strike Par-Kan Co.’s Inequitable Conduct Affirmative Defense [ECF No. 25] filed by the Plaintiff, Unverferth Mfg. Co., Inc., on April 22, 2013. In its Motion, the Plaintiff requests that the Court dismiss both the counterclaim of inequitable conduct and the affirmative defense of inequitable conduct asserted by the Defendant, Par-Kan Co., in its Counterclaim [ECF No. 12] and its Answer [ECF No. 13]. The Plaintiff states that dismissal of the inequitable conduct counterclaim and affirmative defense is appropriate because the Defendant failed to state the facts required to plead inequitable conduct. The Defendant entered a Response [ECF No. 28] to the Motion to Dismiss on May 9. In its Response, the Defendant stated that the Plaintiff’s Motion is “well-taken.” (Resp. 2, ECF No. 28.) The Defendant asked

for leave to file amended pleadings in accordance with the May 28 deadline for filing amended pleadings without leave of the Court, entered by Magistrate Judge Nuechterlein on April 23. Accordingly, on May 28 the Defendant entered an Amended Counterclaim [ECF No. 31] and an Amended Answer [ECF No. 32].

Because the Defendant has already filed an Amended Counterclaim and an Amended Answer, the Court DENIES AS MOOT the Motion to Dismiss [ECF No. 25] relating to the original Counterclaim and Answer.

SO ORDERED on June 11, 2013.

s/ Theresa L. Springmann
THERESA L. SPRINGMANN
UNITED STATES DISTRICT COURT
FORT WAYNE DIVISION