

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
BOWLING GREEN DIVISION
CIVIL ACTION NO. 1:03CV-190-R

2003 DEC -1 PM 1:19

TERRY EMBRY and
YULAND EMBRY

PLAINTIFFS

v.

ANSWER OF DEFENDANT D.C. 1980, INC.,
f/k/a CONNECTICUT VALLEY ARMS, INC.

CONNECTICUT VALLEY ARMS, INC.
and D.C. 1980, INC. f/k/a CONNECTICUT
VALLEY ARMS, INC. and
DIKAR, S. COOP. LTDA.

DEFENDANTS

Defendant, D.C. 1980, Inc., f/k/a Connecticut Valley Arms, Inc. ("D.C. 1980" or "this Defendant"), named as a Defendant in the above-styled matter, hereby responds to Plaintiffs' Complaint. However, as there is no such business entity known as Connecticut Valley Arms, there can be no jurisdiction, and this Defendant objects to same as to Connecticut Valley Arms; there was not proper service and this Defendant objects to same as to Connecticut Valley Arms; and these allegations are further completely denied as to Connecticut Valley Arms. Accordingly, to the extent Plaintiffs have named Connecticut Valley Arms as an independent and separate entity and this Defendant, this Answer is deemed to respond to Plaintiffs' Complaint as well.

FIRST DEFENSE

The Plaintiff's Complaint fails to state a claim against D.C. 1980 upon which relief may be granted.

SECOND DEFENSE

Responding to the specific allegations of Plaintiff's Complaint, D.C. 1980 shows the Court as follows:

1. D.C. 1980 is without knowledge or information sufficient to form a belief as to the truth of the matter asserted in paragraph 1 of Plaintiffs' Complaint and therefore denies the same.

2. D.C. 1980 denies the allegations in paragraph 2 of Plaintiffs' Complaint.

3. In response to paragraph 3 of Plaintiffs' Complaint, D.C. 1980 admits that it is a Georgia corporation with its principal place of business and registration as alleged. D.C. 1980 does not object to either the Court's jurisdiction or the service. D.C. 1980 further admits that prior to 1999, and apparently at all times relevant with respect to Plaintiff, D.C. 1980 was engaged in the business of marketing, distributing, and selling muzzle-loading rifles in the United States, including Kentucky. Further, D.C. 1980 admits that beginning in 1997 it began a voluntary recall of in-line muzzle-loading rifles imported into the United States by D.C. 1980 which had been manufactured in 1995 and 1996. D.C. 1980 specifically denies that it has ever designed, manufactured, constructed or assembled any such product, and the remainder of paragraph 3 of Plaintiffs' Complaint is denied.

4. In response to paragraph 4 of Plaintiffs' Complaint, D. C. 1980 states that the paragraph does not allege facts concerning D.C. 1980 that requires a response. In further response, to the extent any response is required, D.C. 1980 generally admits the allegations concerning the address of Defendant Dikar, S. Coop. LTDA. D.C. 1980 is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in the remainder of paragraph 4 and therefore denies the same.

5. D.C. 1980 is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in paragraph 5 of Plaintiffs' Complaint, and therefore denies the same. However, in further response, D.C. 1980 admits that the Court would generally have

jurisdiction over this matter under the statute as alleged, and that Plaintiffs have contended that the matter in controversy exceeds the value of \$75,000.

6. In response to paragraph 6 of Plaintiffs' Complaint, D.C. 1980 is without knowledge or information sufficient to form a belief as to the truth of where or when Plaintiff Terry Embry purchased rifle, and therefore denies that portion. D.C. 1980 is without knowledge or information sufficient to form a belief as to the truth of the matters concerning Mr. Embry's action or the ownership of the muzzle-loading rifle at issue and therefore denies the same. D.C. 1980 denies that D.C. 1980 manufactured the subject muzzle-loading rifle and further denies the remaining allegations in paragraph 6 of Plaintiffs' Complaint.

7. D.C. 1980 denies the allegations in paragraph 7 of Plaintiffs' Complaint.

8. D.C. 1980 denies the allegations in paragraph 8 of Plaintiffs' Complaint.

9. In response to paragraph 9 of Plaintiffs' Complaint, D.C. 1980 realleges and reasserts as if set forth herein each and every response to all other paragraphs of Plaintiffs' Complaint, as well as all defenses asserted by D.C. 1980, as if fully set forth herein.

10. D.C. 1980 denies the allegations in paragraph 10 of Plaintiffs' Complaint as D.C. 1980 did not design, manufacture, construct or assemble any product at issue.

11. D.C. 1980 denies the allegations in paragraph 11 of Plaintiffs' Complaint.

12. D.C. 1980 denies the allegations in paragraph 12 of Plaintiffs' Complaint.

13. D.C. 1980 denies the allegations in paragraph 13 of Plaintiffs' Complaint.

14. D.C. 1980 denies the allegations in paragraph 14 of Plaintiffs' Complaint and D.C. 1980 moves that same be stricken.

15. In response to paragraph 15 of Plaintiffs' Complaint, D.C. 1980 realleges and reasserts as if set forth herein each and every response to all other paragraphs of Plaintiffs' Complaint, as well as all defenses asserted by D.C. 1980, as if fully set forth herein.

16. D.C. 1980 denies the allegations in paragraph 16 of Plaintiffs' Complaint as D.C. 1980 did not design, manufacture, construct or assemble any product at issue.

17. D.C. 1980 denies the allegations in paragraph 17 of Plaintiffs' Complaint.

18. D.C. 1980 denies the allegations in paragraph 18 of Plaintiffs' Complaint.

19. D.C. 1980 denies the allegations in paragraph 19 of Plaintiffs' Complaint.

20. In response to paragraph 20 of Plaintiffs' Complaint, D.C. 1980 realleges and reasserts as if set forth herein each and every response to all other paragraphs of Plaintiffs' Complaint, as well as all defenses asserted by D.C. 1980, as if fully set forth herein.

21. D.C. 1980 denies the allegations in paragraph 21 of Plaintiffs' Complaint.

22. D.C. 1980 denies the allegations in paragraph 22 of Plaintiffs' Complaint.

23. D.C. 1980 denies the allegations in paragraph 23 of Plaintiffs' Complaint.

24. D.C. 1980 denies the allegations in paragraph 24 of Plaintiffs' Complaint.

25. D.C. 1980 denies the allegations in paragraph 25 of Plaintiffs' Complaint.

26. In response to paragraph 26 of Plaintiffs' Complaint, D.C. 1980 realleges and reasserts as if set forth herein each and every response to all other paragraphs of Plaintiffs' Complaint, as well as all defenses asserted by D.C. 1980, as if fully set forth herein.

27. D.C. 1980 denies the allegations in paragraph 27 of Plaintiffs' Complaint.

28. D.C. 1980 further denies all allegations of Plaintiffs' Complaint not specifically addressed herein.

THIRD DEFENSE

D.C. 1980 asserts or relies upon each and every defense and presumption contained in the Product Liability Act of Kentucky, K.R.S. 411.300 *et seq.*, as a bar, in whole or in part, to the claims asserted against it.

FOURTH DEFENSE

The injuries alleged by the Plaintiffs were a direct and proximate result of the acts or omissions of third parties, over which this D.C. 1980 had no control, or were a result of a superceding or intervening cause over which D.C. 1980 had no control.

FIFTH DEFENSE

Plaintiff, Terry Embry, was, himself, guilty of negligence which was a substantial factor in causing and contributing to the alleged injuries, and his negligence bars his claims against D.C. 1980 in whole or in part.

SIXTH DEFENSE

Plaintiff's injuries were caused by a misuse, modification or alteration of the firearm at issue and therefore D.C. 1980 is not liable to Plaintiffs in any respect.

SEVENTH DEFENSE

The design, manufacture, assembly, warranty and labeling of the firearm at issue were in conformity with the generally recognized state of the art at the time the subject firearm was designed, manufactured, and labeled.

EIGHTH DEFENSE

Plaintiffs' claims for punitive damages violate the Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendment of the Constitution of the United States in that: 1) it is a violation of the due process and equal protection clauses of the Fourteenth Amendment of the United States

Constitution to impose punitive damages, which are penal in nature, against a civil defendant upon the Plaintiffs satisfying a burden of proof which is less than the "beyond a reasonable doubt" burden of proof required in criminal cases, K.R.S. 411.184(2) fails to provide such a burden of proof.

1. The procedures pursuant to which punitive damages are awarded fail to provide a reasonable limit on the amount of the award against D.C. 1980 which thereby violates the due process clause of the Fourteenth Amendment of the United States Constitution.

2. The procedures pursuant to which punitive damages are awarded fail to provide specific standards for the amount of the award of punitive damages which thereby violates the due process clause of the Fourteenth Amendment of the United States Constitution.

3. The procedures pursuant to which punitive damages are awarded result in the imposition of different penalties for the same or similar acts, and thus, violate the equal protection clause of the Fourteenth Amendment of the United States Constitution.

5. The procedures pursuant to which punitive damages are awarded permit the imposition of punitive damages in excess of the maximum criminal fine for the same or similar conduct, which thereby infringes the due process clause of the Fifth and Fourteenth Amendments and the equal protection clause of the Fourteenth Amendment of the United States Constitution.

6. The due process clause of the Fifth and Fourteenth Amendments preclude the award of punitive damages against D.C. 1980 based upon activities outside Kentucky and the United States.

7. The procedures pursuant to which punitive damages are awarded permit the imposition of excessive fines in violation of the Eighth Amendment of the United States Constitution.

8. The due process clause of the Fifth and Fourteenth Amendments preclude the award of punitive damages against D.C. 1980 based merely upon negligent or grossly negligent conduct.

9. D.C. 1980 avers that if any award of punitive damages is rendered in this case, same shall be apportioned among joint tortfeasors in accordance with their respective degree of culpability or wrongdoing. D.C. 1980 avers that if a verdict is rendered against it in this case as a joint tortfeasor, and a judgment is entered against it for punitive damages which is not apportioned in accordance with its alleged culpability and/or wrongdoing, then such an award will violate the rights preserved to D.C. 1980 under the Fifth and Fourteenth Amendments of the United States Constitution and deprive it of due process of law, and would violate the rights afforded it under the Eighth Amendment and the Fourteenth Amendment of the United States Constitution and the same would amount to an excessive fine, and further be a denial of equal protection under the law.

10. Plaintiffs' claim for punitive damages violates Section 2, 14, and 17 of the Constitution of the Commonwealth of Kentucky in that such an award would result in absolute and arbitrary power over the property of D.C. 1980 in violation of Section 2; such an award would deprive D.C. 1980 of property without due process of law in violation of Section 14; and such an award would constitute an excessive fine against D.C. 1980 in violation of Section 17.

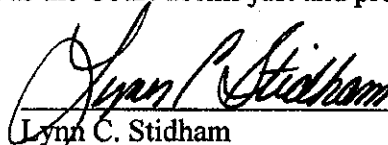
NINTH DEFENSE

D.C. 1980 will rely upon all defenses which become available during discovery or due to change in law.

WHEREFORE, Defendant D.C. 1980, Inc., f/k/a Connecticut Valley Arms, Inc.,

demands as follows:

- 1) Dismissal of the Complaint with prejudice;
- 2) Judgment in favor of D.C. 1980, Inc. f/k/a Connecticut Valley Arms, Inc. and against Terry Embry and Yulanda Embry as a matter of law;
- 3) All costs incurred in defense of this action;
- 4) Trial by jury on all triable issues; and
- 5) Such other and further relief as the Court deems just and proper.



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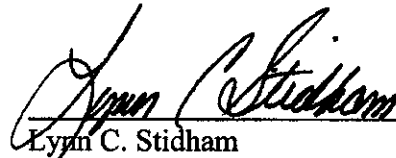
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CERTIFICATE OF SERVICE

This is to certify that a true and accurate copy of the foregoing Answer has been served via U.S. Mail on this the 24th day of November, 2003 to:

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