

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
BOWLING GREEN DIVISION

FILED
JEFFREY A. APPERSON, CLERK

MAY 10 2004

U.S. DISTRICT COURT
WEST'N. DIST. KENTUCKY

TERRY EMBRY and
YULANDA EMBRY

Plaintiffs,

vs.

Civil Action No. 1:03CV-190-R

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

Defendants.

ANSWER OF DEFENDANT DIKAR, S. COOP. LTDA. TO COMPLAINT

Defendant Dikar, S. Coop. LTDA. ("Dikar"), without prejudice to its right to renew its motion to dismiss on the basis of lack of personal jurisdiction, respectfully submits this answer to the complaint.

First Defense

1. Dikar is without knowledge or information sufficient to form a belief as to the truth of the averments in numerical paragraphs 1, 3 and 6 of the complaint and therefore denies same.

2. Dikar is without knowledge or information sufficient to form a belief as to the truth of the averments in numerical paragraph 2, except admits that defendant Connecticut Valley Arms ("CVA") conducted a voluntary recall of in-line muzzleloading rifles manufactured in 1995 and 1996.

3. Dikar denies the averments in numerical paragraph 4 of the complaint, except states that it is a Spanish cooperative located at Urate Kalea 26, Paligono Industrial San Lorenzo, E-20570

Bergara, Spain, that it has designed and manufactured muzzleloading rifles with participation by CVA, and that it provided replacement barrels for a voluntary recall of muzzleloading rifles manufactured in 1995 and 1995 that CVA conducted.

4. Numerical paragraphs 5, 10 and 16 of the complaint contain legal conclusions to which no response is required.

5. Dikar has no obligation to respond to the averments in numerical paragraphs 7, 11, 12, 13, 14, 17, 18, 19, 21, 22, 23, 24, 25 and 27 of the complaint to the extent that those averments do not pertain to Dikar. Dikar denies the averments in those paragraphs to the extent that they do pertain to Dikar.

6. Dikar denies the averments in numerical paragraph 8 of the complaint except states that it is without knowledge or information sufficient to form a belief as to the truth of the averment in the first sentence.

7. In response to numerical paragraphs 9, 15, 20 and 26 of the complaint, Dikar restates each and every response stated above.

8. Dikar denies each and every averment of the complaint not specifically addressed herein.

Second Defense

The complaint fails to state a claim upon which relief can be granted.

Third Defense

The Court lacks personal jurisdiction over Dikar under the Kentucky long-arm statute and the due process clauses of the Fifth and Fourteenth Amendments of the United States Constitution.

Fourth Defense

Dikar asserts and relies upon each and every defense and presumption contained in the Product Liability Act of Kentucky, KRS 411.300 et seq., as a bar, in whole or in part, to the claims asserted against it.

Fifth Defense

The injuries alleged by plaintiffs were the direct and proximate result of the acts or omissions of third parties, over which Dikar had no control, or were the result of a superseding or intervening cause over which Dikar had no control.

Sixth Defense

Plaintiff Terry Embry was, himself, guilty of negligence which was a substantial factor in causing the alleged injuries, and his negligence bars plaintiffs' claims against Dikar in whole or in part.

Seventh Defense

To the extent plaintiffs have received or are entitled to receive benefits to which other third parties are subrogated, plaintiffs are not the owner of such claims or the real party in interest and, accordingly, those claims should be dismissed.

Eighth Defense

Plaintiffs failed to minimize or mitigate their alleged damages which bars plaintiffs' claims against Dikar in whole or in part.

Ninth Defense

Plaintiffs' alleged injuries were caused by a misuse of the subject firearm.

Tenth Defense

Plaintiffs' alleged injuries were caused by a modification or alteration of the subject firearm.

Eleventh Defense

Plaintiffs assumed the risk involved with the use of the subject firearm and such assumption of the risk was a direct and proximate cause of harm from which plaintiffs seek to recover damages.

Twelfth Defense

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

Thirteenth Defense

Plaintiffs' claims are barred by the doctrine of unclean hands and on the ground that plaintiffs' accident occurred as the direct and proximate result of plaintiffs' violation of law.

Fourteenth Defense

Plaintiffs' claim for punitive damages violates the Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments of the United States Constitution 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 plaintiff's satisfying a burden of proof which is less than the "beyond a reasonable doubt" burden of proof required in criminal cases. Kentucky law fails to provide such a burden of proof.

2. The procedures pursuant to which punitive damages are awarded fail to provide a reasonable limit on the amount of the award against Dikar, 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 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.

4. 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 clauses of the Fifth and Fourteenth Amendments of the United States Constitution and the equal protection clause of the Fourteenth Amendment of the United States Constitution.

6. The due process clauses of the Fifth and Fourteenth Amendments preclude the award of punitive damages against Dikar 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 clauses of the Fifth and Fourteenth Amendments and Kentucky law preclude the award of punitive damages against Dikar based merely upon negligent or grossly negligent conduct.

9. Dikar avers that if any award of punitive damages is rendered in this case, the same should be apportioned among the joint tort feors in accordance with their respective degrees of culpability or wrongdoing. Dikar avers that if a verdict is rendered against it in this case as a joint tort feisor, and judgment entered against it for punitive damages which is not apportioned in

accordance with its alleged culpability and/or wrongdoing, then such an award would violate the rights preserved to Dikar under the Fifth and Fourteenth Amendments to the United States Constitution and deprive it of its property without due process of law.

10. Dikar avers that if any award of punitive damages is rendered in this case, the same should be apportioned among the joint tort feors in accordance with their respective degrees of culpability or wrongdoing. Dikar avers that if a verdict is rendered against it in this case as a joint tort feor, and judgment entered against it for punitive damages which is not apportioned in accordance with its alleged culpability and/or wrongdoing, then such an award would violate the rights afforded to Dikar under the Eighth Amendment and Fourteenth Amendment of the United States Constitution in that the same would amount to an excessive fine.

11. Dikar avers that if any award of punitive damages is rendered in this case, the same should be apportioned among the joint tort feors in accordance with their respective degrees of culpability or wrongdoing. Dikar avers that if a verdict is rendered against it in this case as a joint tort feor, and judgment entered against it for punitive damages which is not apportioned in accordance with its alleged culpability and/or wrongdoing, then such an award would violate the rights afforded to Dikar under the Fourteenth Amendment to the United States Constitution in that it would amount to a denial of equal protection of the laws.

Fifteenth Defense

Plaintiff's claim for punitive damages violates the Constitution of the Commonwealth of Kentucky in that such an award would deprive Dikar of its property rights, would constitute an excessive fine and would deprive Dikar of property without due course or process of law.

Sixteenth Defense

Principles of international comity preclude the award of punitive damages against Dikar based upon activities that occurred outside the United States.

Seventeenth Defense

The commerce clause of the United States Constitution precludes the award of punitive damages against Dikar based upon activities that occurred outside of Kentucky and the United States.

Eighteenth Defense

The due process clauses of the Fifth and Fourteenth Amendments preclude the award of punitive damages against Dikar based upon injuries allegedly incurred by persons other than plaintiff.

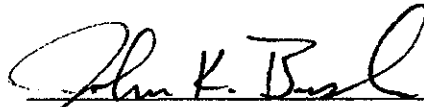
Nineteenth Defense

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

WHEREFORE, Dikar prays for judgment as follows:

- (1) dismissal of the complaint, with prejudice;
- (2) for its costs incurred in defense of this action; and
- (3) for such other and further relief to which it may appear entitled.

Respectfully submitted,



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Certificate of Service

I hereby certify that on May 10, 2004, a copy of the foregoing was served by mail on the following counsel of record:

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