

IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY, OHIO
CIVIL DIVISION

FILED

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CLERK OF COURTS
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EUGENE ROBERTS)
4512 Riverside Dr. Apt. D)
Dayton, Ohio 45405)

Plaintiff,)

CASE NO. 97-3015

JUDGE

PRE-H.B. 350 CASE

vs.)

Coru

CONNECTICUT VALLEY ARMS, INC.)
a Georgia Corp. by and through their)
statutory agent,)
CT Corporation System)
One Commercial Plaza)
Hartford, CT 06103)

and)

REMINGTON ARMS CO., INC., a)
Delaware Corp. By and through their)
statutory agent,)
CT Corporation System)
815 Superior Ave. NE)
Cleveland, Ohio 44114)

and)

SAM'S CLUB, a division of WAL-MART)
STORES, INC., by and through their)
statutory agent)
CT Corporation System)
815 Superior Avenue N.E.)
Cleveland, Ohio 44114)

ANSWER OF CONNECTICUT VALLEY ARMS, INC., and SAM'S CLUB,
a Division of WAL-MART STORES, INC.

COME NOW CONNECTICUT VALLEY ARMS, INC. (hereinafter referred to as "CVA") and SAM'S CLUB, a division of Wal-Mart Stores, Inc., (hereinafter referred to as "SAM's CLUB"), and for their Answer to Plaintiff's Complaint, show as follows:

COUNT ONE

In answer to the numbered Paragraphs of Plaintiff's Complaint, these Defendants show:

FIRST DEFENSE

PARTIES / FACTS

1.

These Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph One (1) and, therefore, same are denied.

2.

The allegations of Paragraph Two (2) are admitted.

3.

These Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph Three (3) and, therefore, same are denied.

4.

The allegations of Paragraph Four (4) are denied and Defendant Sam's Club a division of Wal-Mart Stores, Inc., further states that it is a Delaware Corporation with its principal place of doing business at Bentonville, Arkansas.

5.

These Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph Five (5) and, therefore, same are denied.

6.

These Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph Six (6) and, therefore, same are denied.

7.

These Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph Seven (7) and, therefore, same are denied.

8.

These Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph Eight (8) and, therefore, same are denied.

9.

These Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph Nine (9) and, therefore, same are denied.

10.

These Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph Ten (10) and, therefore, same are denied.

11.

These Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph Eleven (11) and, therefore, same are denied.

12.

These Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph Twelve (12) and, therefore, same are denied.

13.

The allegations of Paragraph Thirteen (13) are denied.

COUNT TWO

PRODUCT LIABILITY

14.

CVA and SAM's CLUB incorporate by reference herein their responses set forth herein in paragraphs 1 through 13 above.

15.

As far as CVA and SAM's CLUB are concerned, the allegations of Paragraph Fifteen (15) are denied.

16.

The allegations of Paragraph Sixteen (16) are denied.

17.

The allegations of Paragraph Seventeen (17) are denied.

18.

The allegations of Paragraph Eighteen (18) are denied.

19.

The allegations of Paragraph Nineteen (19) are denied.

20.

The allegations of Paragraph Twenty (20) are denied.

21.

The allegations of Paragraph Twenty-one (21) are denied.

22.

The allegations of Paragraph Twenty-two (22) are denied.

COUNT THREE

BREACH OF WARRANTIES

23.

CVA and SAM's CLUB incorporate by reference herein their responses set forth herein in paragraphs 1 through 22 above.

24.

The allegations of Paragraph Twenty-four (24) are denied.

25.

The allegations of Paragraph Twenty-five (25) are denied.

COUNT FOUR

SUPPLIER'S NEGLIGENCE

26.

CVA and SAM's CLUB incorporate by reference herein their responses set forth herein in paragraphs 1 through 25 above.

27.

The allegations of Paragraph Twenty-seven (27) are denied.

28.

The allegations of Paragraph Twenty-eight (28) are denied.

29.

The allegations of Paragraph Twenty-nine (29) are denied.

COUNT FIVE

SUPPLIER STRICT LIABILITY

30.

CVA and SAM's CLUB incorporate by reference herein their responses set forth herein in paragraphs 1 through 29 above.

31.

The allegations of Paragraph Thirty-one (31) are denied.

32.

The allegations of Paragraph Thirty-two (32) are denied.

COUNT SIX

NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

33.

CVA and SAM's CLUB incorporate by reference herein their responses set forth herein in paragraphs 1 through 32 above.

34.

The allegations of Paragraph Thirty-four (34) are denied.

35.

The allegations of Paragraph Thirty-five (35) are denied.

36.

The allegations of Paragraph Thirty-six (36) are denied.

COUNT SEVEN

PERSONAL INJURY OF EUGENE ROBERTS

37.

CVA and SAM's CLUB incorporate by reference herein their responses set forth herein in paragraphs 1 through 36 above.

38.

The allegations of Paragraph Thirty-eight (38) are denied.

39.

The allegations of Paragraph Thirty-nine (39) are denied.

COUNT EIGHT

PUNITIVE DAMAGES

40.

CVA and SAM's CLUB incorporate by reference herein their responses set forth herein in paragraphs 1 through 39 above.

41.

The allegations of Paragraph Forty-one (41) are denied.

42.

The allegations of Paragraph Forty-two (42) are denied.

44.

The allegations of Paragraph Forty-four (44) are denied.

COUNT NINE

45.

CVA and SAM's CLUB incorporate by reference herein their responses set forth herein in paragraphs 1 through 44 above.

46.

The allegations of Paragraph Forty-six (46) are denied.

COUNT TEN

47.

CVA and SAM's CLUB incorporate by reference herein their responses set forth herein in paragraphs 1 through 46 above.

48.

The allegations of Paragraph Forty-eight (48) are denied.

PREAMBLE TO AFFIRMATIVE DEFENSES

Defendants reserve the right to rely upon any of the following defenses to claims asserted by Plaintiffs to the extent that such defenses are supported by information developed through discovery or by evidence at trial.

SECOND DEFENSE

Plaintiff's claim for punitive damages against these Defendants cannot be sustained, because any award of punitive damages under Ohio law without bifurcating the trial of all punitive damages issues would violate these Defendants' due process rights guaranteed by the Fourteenth Amendment to the United States Constitution and by the due process provisions of the Constitution of the State of Ohio and would be improper under the common law of the State of Ohio.

THIRD DEFENSE

Plaintiff's claim for punitive damages against these Defendants cannot be sustained, because an award of punitive damages under Ohio law by a jury that (1) is not provided a standard of sufficient clarity for determining the appropriateness, or the appropriate size, of a punitive damage award, (2) is not instructed on the limits on punitive damages imposed by the applicable principles of deterrents and punishments, (3) it is not expressly prohibited from awarding punitive damage, or determining the amount of an award of punitive damages, in whole or in part, on the basis of invidiously discriminatory characteristics, including the corporate status of these Defendants, (4) is permitted to award punitive damages under a standard for determining liability for punitive damages that is vague and arbitrary and does not define with sufficient clarity the conduct or mental state that make punitive damages permissible, (5) is allowed to base the size of a punitive damages award on activities and finances of these Defendants not directly related to the alleged acts or omissions specified in the Complaint, and (6) is not subject to judicial review on the basis of objective standards, would violate these Defendants' due process and equal protection rights guaranteed by the fourteenth Amendment to

the United States Constitution and by the provisions of the Ohio Constitution providing for due process and equal protection and would be contrary to Ohio public policy.

FOURTH DEFENSE

Any award of punitive damages based on anything other than these Defendants' conduct in connection with the sale of the specific product that is the subject of this lawsuit would violate the due process clause of the Fourteenth Amendment to the United States Constitution and the provisions of the Ohio Constitution providing for due process and Ohio public policy, because any other judgment for punitive damages in this case cannot protect these Defendants against impermissible multiple punishment for the same wrong.

FIFTH DEFENSE

As a matter of law, Plaintiff's claim for punitive damages cannot be sustained, because there are no sufficient standards for determining whether punitive damages will or should be awarded or, if so, the amount of punitive damages that should be awarded under Ohio law, and because Ohio law does not state with sufficient clarity the consequences of conduct giving rise to a claim for punitive damages. Any award of punitive damages, therefore, would violate these Defendants' due process rights under the United States and Ohio Constitutions and would be improper under the common law of the State of Ohio.

SIXTH DEFENSE

Unless both these Defendants' liability for punitive damages and the appropriate amount of punitive damages are required to be established by clear and convincing evidence, any award of punitive damages would violate these Defendants' due process rights guaranteed by the Fourteenth Amendment to the United States Constitution and by the due process provisions of

the Constitution of the State of Ohio and would be improper under the common law of the State of Ohio.

SEVENTH DEFENSE

As a matter of law, Plaintiff's claim for punitive damages cannot be sustained because the subject product complied with all standards, thus creating a rebuttable presumption that the product was reasonably safe and not defective. There is, therefore, an absence of the sufficient mental state for an award of punitive damages under Ohio law.

EIGHTH DEFENSE

Plaintiff's Complaint, including each and every Count thereunder, fails to state a claim against these Defendants upon which relief can be granted.

NINTH DEFENSE

At the time the subject product left the custody and control of these Defendants, there was no defect in said product either causing or contributing to whatever injury or damage Plaintiff may have sustained.

TENTH DEFENSE

These Defendants say the Plaintiff EUGENE ROBERTS assumed the risk of injury, if any he sustained, and therefore is not entitled to recover.

ELEVENTH DEFENSE

These Defendants say that the negligence of Plaintiff EUGENE ROBERTS contributed proximately to his damages, if any he sustained, as he was not exercising ordinary or due care for his own safety at the time it is claimed he was damaged.

TWELFTH DEFENSE

In the event that Plaintiff has sustained any injuries or damages claimed, then these Defendants assert that they were caused in whole or in part by the acts or omissions of others for whose conduct and/or independent proximately intervening negligence these Defendants are not responsible and whose conduct these Defendants had no reason to anticipate or foresee. Further, said acts or omissions by others constitute an intervening proximate cause of the alleged injuries or damages of Plaintiff and act as a bar to any recovery against these Defendants.

THIRTEENTH DEFENSE

Defendants CVA and SAM'S CLUB respectfully reserve the right to Move, or to Supplement or Amend this Answer as the proof develops in this civil action.

FOURTEENTH DEFENSE

Defendants preserve the defense of insufficiency of process.

FIFTEENTH DEFENSE

Defendants preserve the defense of insufficiency of service of process.

SIXTEENTH DEFENSE

Defendants preserve the defense of lack of jurisdiction over the person.

SEVENTEENTH DEFENSE

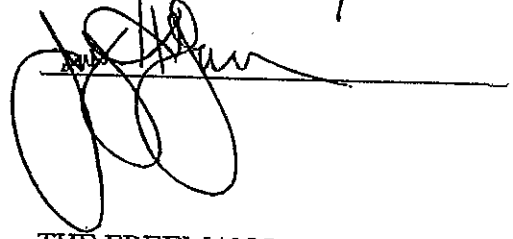
Defendants preserve the defense of lack of venue.

WHEREFORE, the Defendants respectfully demand that Plaintiff's prayers be denied and that judgment be rendered in its favor.

Bieser, Greer & Landis
400 National City Center
6 North Main Street
Dayton, Ohio 45402-1908

3166 Mathieson Drive, N.E.
Atlanta, Georgia 30305

DAVID C. GREER 64

A handwritten signature in black ink, appearing to read 'David C. Greer', is written over a horizontal line. The signature is stylized and somewhat cursive.

THE FREEMAN LAW FIRM
Joe C. Freeman, Jr.
Georgia Bar No. 275700

Douglas P. McManamy
Georgia Bar No. 497735