

FILED

IN THE CIRCUIT COURT OF OUACHITA COUNTY, ARKANSAS
SIXTH DIVISION

2003 SEP 10 AM 9:56
Betty Lemons
CLERK
PLAINTIFF

SHANE CURTIS

VS.

NO. CV-2003-186-6

CONNECTICUT VALLEY ARMS, INC., et. al.

DEFENDANTS

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

Defendant Dikar, S. Coop. LTDA. ("Dikar") for its answer to the amended complaint:

First Defense

1. States that it is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 1 and therefore denies same.
2. States that paragraphs 2, 3, 4, and 5 do not pertain to Dikar and for that reason do not require any response from Dikar. To the extent that any averment in these paragraphs might be interpreted to pertain to Dikar, Dikar denies such averment.
3. Denies the averments in paragraph 6, except it states that:
 - a) it is a Spanish cooperative located at Urate Kalea 26, Paligono Industrial San Lorenzo, E-20570 Bergara, Spain;
 - b) it is the owner of United States Patent Numbers 4,843,747 and 5,109, 622;
 - c) it is the owner of United States Trademark Registration Numbers 1408400 and 1836706;
 - d) it owns United States Copyrights on statues under numbers VAu-119-409, VAu-119-410, VAu119-411, and VAu 119-412; and
 - e) it has shipped products directly to third parties in the United States.

4. States that paragraphs 7, 8, 9, 10, 11, 12, 13, and 14 do not pertain to Dikar and for that reason do not require any response from Dikar. To the extent that any averment in these paragraphs might be interpreted to pertain to Dikar, Dikar denies such averment.

5. States that the averments in paragraph 15 are a legal conclusion that requires no answer.

6. Denies the averments in paragraph 16.

7. States that the averments in numerical paragraph 17 are a legal conclusion that requires no answer.

8. Denies the averments of paragraph 18 to the extent that they pertain to Dikar, except it admits that it is in the business of designing and manufacturing muzzleloading rifles and states that the averments that do not pertain to Dikar do not require any response to them.

9. States that it is without knowledge or information sufficient to respond to the averments of paragraphs 19, 20, and 21.

10. Denies the averments of paragraph 22.

11. Denies the averments of paragraphs 23, 24, 25, 26, and 27 to the extent that they pertain to Dikar and states that the averments that do not pertain to Dikar do not require any response to them.

12. Denies the averments of paragraphs 28, 29, 30, 31, 32.

13. Admits that, in paragraph 33, Plaintiff has demanded a trial by jury, but states that the demand is a matter of law to be decided by the Court.

14. Denies each and every averment of the amended complaint that pertains to it and is not specifically addressed herein.

Second Defense

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

Third Defense

16. Dikar asserts and relies upon each and every defense and presumption contained in the Product Liability Act of Arkansas, Ark. Code Ann. § 16-116-101 et seq., as a bar, in whole or in part, to the claims asserted against it.

Fourth Defense

17. The injuries alleged by Plaintiff 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.

Fifth Defense

18. Plaintiff Shane Curtis 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.

Sixth Defense

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

Seventh Defense

20. Plaintiff failed to minimize or mitigate his alleged damages which bars Plaintiff's claims against Dikar in whole or in part.

Eighth Defense

21. Plaintiff's alleged injuries were caused by a misuse of the subject firearm.

Ninth Defense

22. Plaintiff's alleged injuries were caused by a modification or alteration of the subject firearm.

Tenth Defense

23. Plaintiff 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 plaintiff seeks to recover damages.

Eleventh Defense

24. 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.

Twelfth Defense

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

Thirteenth Defense

26. Plaintiff's claim for punitive damages violates the Fourteenth Amendment of the United States Constitution and the Amendments thereof to the extent incorporated to the States through the Fourteenth Amendment in that:

a) 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. Arkansas law fails to provide such a burden of proof.

b) 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 violate the due process clause of the Fourteenth Amendment of the United States Constitution.

c) 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.

d) 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.

e) 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 Fourteenth Amendment of the United States Constitution and the equal protection clause of the Fourteenth Amendment of the United States Constitution.

f) The due process clause of the Fourteenth Amendment precludes the award of punitive damages against Dikar based upon activities outside Arkansas and the United States.

g) 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.

h) The due process clause of the Fourteenth Amendment and Arkansas law preclude the award of punitive damages against Dikar based merely upon negligent or grossly negligent conduct.

i) 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 feors, 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 Fourteenth Amendment to the United States Constitution and deprive it of its property without due process of law.

j) 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 feors, 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.

k) 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 feors, 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

27. Plaintiff's claim for punitive damages violates the Constitution of the State of

Arkansas 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

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

Seventeenth Defense

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

Eighteenth Defense

30. The due process clause of the Fourteenth Amendment precludes the award of punitive damages against Dikar based upon injuries allegedly incurred by persons other than Plaintiff.

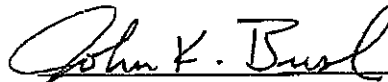
Nineteenth Defense

31. 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 amended 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,



John K. Bush

Arkansas Bar No. 89169

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was mailed via United States Mail, first-class, postage prepaid, on this 9th day of March, 2004, to:

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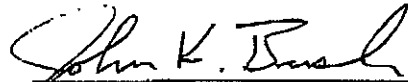
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