

IN THE CIRCUIT COURT OF LITTLE RIVER COUNTY, ARKANSAS

CORY HODGE

PLAINTIFF

VS.

CIV. NO. 2000-27

CONNECTICUT VALLEY ARMS,
WAL-MART STORES, INC., DIKAR S.
COOP. LTDA and GENE SEARS
SUPPLY COMPANY

DEFENDANTS

MOTION FOR SUMMARY JUDGMENT
OF SEPARATE DEFENDANT GENE SEARS SUPPLY COMPANY

Comes the separate Defendant, Gene Sears Supply Company, and for its Motion for Summary Judgment states:

1. There are no material issues of fact in dispute, and Defendant Gene Sears Supply Company is entitled to summary judgment on the Complaint of Plaintiff Cory Hodge, and for summary judgment on its prayer for indemnity against Connecticut Valley Arms.
2. Plaintiff Hodge has sued various entities for alleged injuries which he claims to have sustained when a .50 caliber muzzle-loading rifle burst upon firing.
3. The Complaint asserts that the weapon was defective, and claims that Gene Sears Supply Company "was engaged in the design, testing, manufacture, assembly, sale and/or distribution" of the weapon. Further, the Complaint asserts that there was a failure to "warn, advise or otherwise instruct" regarding safety and this weapon. The Complaint further asserts a breach of merchantability in regard to this weapon. Finally, the Complaint asserts various specific acts of negligence in connection with the design, manufacture, and testing of the weapon.
4. The affidavit of Gene Sears is attached hereto as Exhibit I. Sears affidavit

FILED FOR RECORD
ON 23rd DAY Apr 20 01
AT 9:30 O'CLOCK A M.

DEANNA M BISHOP


Deputy

demonstrates that Gene Sears Supply Co. is a mere conduit, which has no role in the design, testing, manufacture or assembly of the weapon, and which has no means to provide any warranties to the ultimate user, since Gene Sears Supply Company has no contact with the ultimate user. Further, Gene Sears Supply Company gave no warranty, and the Plaintiff's failure to comply with the requirements of the UCC concerning breach of warranties bars any claim against Gene Sears Supply Company.

5. The allegations of negligence against Gene Sears Supply Company fail, because the affidavit of Gene Sears demonstrates that Sears had no role in the design, testing, or manufacture of this product, and merely was a conduit through which a sealed package, containing the firearm, was transferred.

WHEREFORE, separate Defendant Gene Sears Supply Company prays that the Court grant it summary judgment on the Complaint of Plaintiff, for summary judgment on its claim for indemnity against Connecticut Valley Arms; for its costs, and for all other relief to which it may be entitled.

Respectfully submitted,


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BY: 

SAM LASER, Bar No. 47010

CERTIFICATE OF SERVICE

I, Sam Laser, hereby certify that a copy of the foregoing pleading was mailed to all attorneys of record as listed below this 29th day of April, 2001.



SAM LASER

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