

COMMONWEALTH OF KENTUCKY
LESLIE CIRCUIT COURT
CIVIL ACTION NO.: 97-CI-00239

NOV 10 1 13 PM '97
LESLIE CIRCUIT COURT
DISTRICT COURT
PLAINTIFF
D.C.
BY: HYDEN, KY 41749

SIDNEY WHITEHEAD

-vs-

SEPARATE ANSWER ON BEHALF OF
GENE SEARS SUPPLY COMPANY

DIKAR, S. COOP. LTDA and
GENE SEARS SUPPLY COMPANY

DEFENDANTS

Comes now the defendant, GENE SEARS SUPPLY COMPANY, and, for its separate answer to the complaint, states as follows:

(1) That the complaint should be dismissed on the grounds that it fails to state a claim against this answering defendant for which the Court can properly grant relief.

(2) That the plaintiff is barred from recovery herein, either in whole or in part, by reason of his own contributory negligence.

(3) That the plaintiff is barred from recovery herein, either in whole or in part, by reason of his failure to mitigate damages.

(4) That the plaintiff is barred from recovery herein, either in whole or in part, by operation of the Kentucky Worker's Compensation Act.

(5) That if the plaintiff was injured or damaged, as set out in the complaint, but which is denied, that such injuries or damages were the result of actions or omissions on the part of a party or parties other than this answering defendant.

(6) That this answering defendant relies upon, adopts and incorporates by reference herein, as if set out at length, each and every affirmative defense provided to it under the terms of the Kentucky Products Liability Act and asserts same as a complete and affirmative defense to this action.

(7) That this answering defendant adopts and incorporates by reference herein, as if set out at length, each and every term and provision of Article II of the Kentucky Uniform Commercial Code pertaining to sales, warranties and disclaimers, including, but not limited to, said provisions, as a complete and affirmative defense to this action.

(8) That this answering defendant states that the claims of the plaintiff are barred, either in whole or in part, by operation of the applicable statute of limitations.

(9) That the plaintiff has failed to provide reasonable notice of the claimed product defect or breach of warranty and that by reason thereof the time within which this action must or should have been brought is time barred.

(10) That this answering defendant states that the imposition of punitive damages against it would constitute a taking of property without due process of law in violation of the Constitutions of the United States of America and the Commonwealth of Kentucky.

(11) That this answering defendant relies upon and asserts the Kentucky Punitive Damage Statute as a complete and affirmative defense to this action.

(12) That this answering defendant lacks sufficient knowledge or information to form a belief as to the truthfulness of the allegations contained in Numerical Paragraphs 1, 2 & 4 of the complaint and therefore denies said allegations.

(13) That this answering defendant admits the allegations contained in Numerical Paragraph 3 of the complaint.

(14) That this answering defendant admits so much of Numerical Paragraph 5 of the complaint as states that Gene Sears Supply Company is in the business of selling and distributing muzzle loading firearms, among other items, but lacks sufficient knowledge or information to form a belief as to the truthfulness of the remaining allegations contained in Numerical Paragraph 5 of the complaint and therefore denies said allegations.

(15) That this answering defendant lacks sufficient knowledge or information to form a belief as to the truthfulness of the allegations contained in Numerical Paragraph 6 of the complaint and therefore denies said allegations.

(16) That this answering defendant denies the allegations contained in Numerical Paragraphs 7, 8, 9, 10, 11, 12, 13, 14, 15, 16 & 17 of the complaint.

(17) That this answering defendant denies each and every other statement, allegation and demand contained in the complaint not heretofore expressly admitted.

WHEREFORE, having fully answered, the defendant, Gene Sears Supply Company, demands that the complaint be dismissed and that the plaintiff take nothing thereby, for its costs herein

expended, for trial by jury, and for any and all other relief to which it may appear entitled, either at law or in equity.

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By: 
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COUNSEL FOR DEFENDANT,
GENE SEARS SUPPLY COMPANY

CERTIFICATE OF SERVICE:

I certify to mailing a true and correct copy of the foregoing Answer to:

Hon. Edmond Collett
Attorney at Law
P. O. Box 1810
Hyden, Kentucky 41749

Hon. Asa P. Gullett, III
Gullett & Combs
109 Broadway
P. O. Drawer 1039
Hazard, Kentucky 41702

This 7th day of November, 1997.


Michael J. Schmitt