

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
Austin Division

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| JANEEN DUNN, | § | |
| | § | |
| Plaintiff, | § | |
| | § | |
| v. | § | Civil Action No. 1:20-CV-177 |
| | § | |
| J & G II, INC., d/b/a J & G SALES, LTD., | § | |
| | § | |
| Defendant. | § | |

PLAINTIFF’S ORIGINAL COMPLAINT

Plaintiff JANEEN DUNN respectfully come before this Court and asserts the following factual allegations and causes of action against Defendant J & G II, INC., d/b/a J & G SALES, LTD.¹

I. CASE INTRODUCTION

1.1 This case concerns the severe personal injuries Plaintiff JANEEN DUNN suffered when her husband’s gun—sold by J&G—spontaneously discharged. Ms. DUNN now suffers permanent nerve damage and a partial amputation of her foot.

II. PARTIES

2.1 Plaintiff JANEEN DUNN is an individual and resident of Dale, Caldwell County, Texas.

2.2 Defendant J & G II, INC., d/b/a J & G SALES, LTD. is an Arizona corporation and federally licensed firearms dealer (License No. 9-86-025-01-8A-36972), maintaining its principal office in Prescott, Arizona. Defendant J&G may be

¹ “J&G.”

served with process via its Registered Agent, Brad J. Desaye, 720 Elrod Rd., Prescott, AZ 86301.

III. JURISDICTION, VENUE, and CONTROLLING LAW

3.1 This Court has federal diversity jurisdiction over the parties. Plaintiff DUNN is a domiciliary and citizen of the State of Texas. Defendant J&G maintains its principal place of business and therefore is a domiciliary and corporate citizen of the State of Arizona. Defendant J&G is not a domiciliary or citizen of the State of Texas. Complete diversity of jurisdiction lawsuit pursuant to 28 U.S.C. § 1332 therefore exists between the parties and the amount in controversy exceeds \$75,000.

3.2 This Court is the proper venue to hear this lawsuit pursuant to 28 U.S.C. § 1391(b)(2). A substantial part of the events and omissions giving rise to this claim occurred in the Western District of Texas.

3.3 As this case invokes this Court's diversity jurisdiction, and does not involve any other controlling Federal Question, the substantive law of the State of Texas is applicable to this lawsuit.²

IV. PERTINENT FACTS

4.1 Defendant J&G is an online firearms seller.

4.2 On or about October 30, 2017, David Dunn (Plaintiff JANEEN DUNN's husband) purchased two guns from J&G. One was a "STAR BM 9MM 4" VG" pistol.³ The Pistol carries Serial No. 37648.

² See *Ferguson v. Bank of N.Y. Mellon Corp.*, 802 F.3d 777, 780 (5th Cir. 2015).

³ "The Pistol."

4.3 The Pistol was originally manufactured by the Spanish company Star Bonifacio Echeverria, S.A.⁴

4.4 SBE discontinued business in or around 1997, filing for the Spanish equivalent of Chapter 7 Bankruptcy.

4.5 The DUNNs kept The Pistol on the shelf of a hall closet near their master bedroom. The closet's floor was granite tile.

4.6 On April 13, 2018, JANEEN DUNN was cleaning the hall closet where the DUNNs kept The Pistol. The DUNNs kept The Pistol cocked, locked, and loaded,⁵ with the safety on.

4.7 While moving clothes in the closet, Ms. DUNN inadvertently knocked The Pistol from the shelf.

4.8 The Pistol landed on the tile floor, muzzle-first, and discharged a round. The round entered the granite tile floor near Ms. Dunn's feet, causing shrapnel to propel into Ms. DUNN's right foot.

4.9 The discharge caused a severe impact mark to the end of The Pistol's barrel, confirming it was discharged against and into the tile floor (as opposed to being discharged in an open-air environment).

4.10 Pistols typically do not discharge without the trigger being pulled. A pistol typically discharges by pulling the trigger, which pushes a firing pin into the cartridge with sufficient force to ignite the primer, which in turn causes an explosion of gun powder to propel the bullet out of the chamber's muzzle.

⁴ "SBE"

⁵ Meaning that the pistol is ready to fire, only needing the safety removed and the trigger pulled.

4.11 In this case, The Pistol discharged because the inertia of the firing pin striking the hard granite tile floor pushed the firing pin far enough to indent the primer of the cartridge in the chamber with sufficient force to ignite the primer, initiating discharge.

4.12 At the time The Pistol was placed into the stream of commerce, alternatives to The Pistol included a firing pin lock that keeps the firing pin in place unless and until the trigger is pulled. For example, most Smith & Wesson pistols and the military-style Beretta pistols include this firing pin lock—a firing pin lock The Pistol lacked and that would have prevented the incident making the basis of this lawsuit.

4.12 As a result of the incident, JANEEN DUNN was forced to undergo multiple surgeries and is left with permanent nerve damage and impairment.

VI. CAUSES OF ACTION

A. *Cause of Action No. 1: Strict Products Liability - Design Defect*

6.1 DUNN incorporates by reference the preceding paragraphs.

6.2 The original manufacturer of The Pistol—Star Bonifacio Echeverria, S.A.—is insolvent. Even if it wasn't insolvent (which it is), it wouldn't be subject to the jurisdiction of this Court. Accordingly, Defendant J&G cannot claim liability limitations as a non-manufacturing seller.⁶

6.3 At all relevant times, Defendant J&G distributed firearms to the public.

6.4 The Pistol was defectively designed rendering it unreasonably dangerous. Specifically, the lack of a firing pin safety made The Pistol susceptible to accidental discharges like the one injuring Ms. DUNN.

⁶ Tex. Civ. Prac. & Rem. Code Sec. 82.003(a)(7).

6.5 A safer alternative design existed at the time The Pistol was placed into the stream of commerce. Specifically, the safer alternative design was to utilize a firing pin safety that prevented The Pistol from discharging unless and until the trigger is pulled.

6.6 The safer alternative design—the firing pin safety—was both technologically and economically feasible by the application of existing or reasonably achievable scientific knowledge. This is confirmed by many of The Pistols' substantially similar models (Smith & Wesson and Baretts) that contain the firing pin safety that would have prevented the incident making the basis of this lawsuit.

6.7 The Pistol's design defect was a producing and proximate cause of the incident making the basis of this lawsuit and Ms. DUNN's resulting severe injuries.

6.8 Accordingly, Defendant J&G is strictly liable for The Pistol's design defect.

B. *Cause of Action No. 2: Failure to Warn/Marketing Defect*

6.9 DUNN incorporates by reference the preceding paragraphs.

6.10 Defendant J&G distributed The Pistol into the stream of commerce.

6.11 As outlined above, The Pistol contained a risk of harm inherent in the product (that is, the lack of a firing pin safety) that could arise from the intended or reasonably anticipated use of The Pistol.

6.12 Defendant J&G actually knew or should have reasonably foreseen the risk of harm at the time the product was marketed and sold.

6.13 Defendant J&G failed to warn its customers, including the DUNNs, that The Pistol's lack of a firing pin safety could cause an accidental discharge like the one making the basis of this lawsuit.

6.14 The absence of such a warning rendered The Pistol unreasonably dangerous to DUNN as an ultimate user of The Pistol, creating a marketing defect.

6.15 This marketing defect was a producing and proximate cause of the incident making the basis of this lawsuit and Ms. DUNN's resulting severe injuries.

6.16 Accordingly, Defendant J&G is strictly liable for The Pistol's marketing defect.

C. *Cause of Action No. 3: Negligent Marketing*

6.17 DUNN incorporates by reference the preceding paragraphs.

6.18 As an alternative to the strict liability causes of actions in Subsection B above, Defendant is liable for its negligence in the marketing and sale of The Pistol.

6.19 Defendant J&G's negligence in the marketing and sale of The Pistol was a proximate cause of the incident making the basis of this lawsuit and DUNN's resulting personal injuries.

6.20 Defendant J&G is therefore liable to DUNN for negligent marketing.

D. *Cause of Action No. 4: Breach of Implied Warranties*

6.21 DUNN incorporates by reference the preceding paragraphs.

6.22 Defendant J&G sold The Pistol to DUNN's husband.

6.23 The Pistol was unmerchantable—that is, it contained a defect making it unfit for the ordinary purpose for which it was to be used because a lack of something necessary for adequacy—specifically, a firing pin safety preventing the gun from accidentally discharging like it did in the incident making the basis of this lawsuit.

6.24 DUNN notified J&G of its breach.

6.25 DUNN suffered a severe and permanent injury.

6.26 Accordingly, J&G is liable for breach of implied warranty.

VII. DAMAGES

7.1 DUNN incorporates by reference the preceding paragraphs.

7.2 As a direct and proximate result of Defendant J&G's acts and omissions as outlined above, DUNN has suffered the following actual damages:

7.2.1 Healthcare expenses paid and incurred in the past.

7.2.2 Healthcare expenses which will be necessary in the future.

7.2.3 Physical pain and mental anguish suffered in the past.

7.2.4 Physical pain and mental anguish that DUNN will suffer in the future.

7.2.5 Physical impairment, including loss of enjoyment of life, suffered in the past.

7.2.6 Physical impairment, including loss of enjoyment of life, that DUNN will suffer in the future. And:

7.2.7 Loss of earning capacity and loss of household services suffered in the past and future.

7.3 Pursuant to TEX. R. CIV. P. 47(c), if applicable, DUNN seeks monetary damages of more than \$200,000 but less than \$1,000,000.

VIII. RELIEF REQUESTED

8.1 DUNN requests that Defendant be cited to appear and answer, and that on final trial Judgment be entered against Defendant for:

8.1.1 An award of actual damages.


8.1.2 An award of pre-judgment interest.

- 8.1.3 An award of post-judgment interest.
- 8.1.4 An award of taxable court costs. And:
- 8.1.5 Any other relief the Court determines appropriate.

DATED: February 18, 2020.

Respectfully submitted,

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