

IN THE COURT OF COMMON PLEAS OF WESTMORELAND COUNTY, PENNSYLVANIA
CIVIL ACTION-LAW

THOMAS JOHN BROWN,)
Plaintiff)
-vs-)
MONTGOMERY WARD AND COMPANY,)
INC., a corporation and)
REMINGTON ARMS CO., INC., a) No. 865 April Term, 1971
corporation,)
Original Defendants,)
-vs-)
CHARLES KUNCHER,)
Additional Defendant)

ANSWER AND NEW MATTER

Montgomery Ward and Company, Inc., one of the original defendants in the above-captioned case, makes answer to the plaintiff's Complaint insofar as it has been advised that answer is necessary, and says that it has a full, just, true and legal defense to the whole of the plaintiff's Complaint, and further replies by asserting under "New Matter" its claim against Charles Kuncher as an additional defendant, pursuant to Pennsylvania Rule of Civil Procedure 2252(d).

ANSWER

1. The original defendant, Montgomery Ward and Company, Inc., avers that it has no knowledge of the truth or falsity of the facts averred in paragraphs 6, 7, 8, 9 & 10 of the plaintiff's

Complaint, to the effect that the plaintiff was injured by the rifle allegedly purchased from Montgomery Ward and Company, Inc., inasmuch as the means of proof of such facts are within the exclusive control of the plaintiff and additional defendant, Charles Kuncher, the adverse parties to this action. Therefore, the original defendant denies the averments of the aforesaid paragraphs and demands proof thereof on the trial.

WHEREFORE, the original defendant, Montgomery Ward and Company, Inc., demands judgment against the plaintiff, Thomas John Brown.

NEW MATTER

2. The plaintiff, Thomas John Brown, filed his Complaint in Trespass at the above number and term, alleging that he suffered personal injuries and damages as a result of an accident which occurred on December 12, 1970, whereby the plaintiff was allegedly injured by the discharge from a rifle owned by and in the possession of the additional defendant, Charles Kuncher.

3. A copy of the plaintiff's Complaint is attached hereto, made a part hereof, and incorporated herein by reference insofar as the allegations contained in said Complaint are pertinent to this claim against Charles Kuncher as an additional defendant.

4. The additional defendant, Charles Kuncher, is an individual who resides at 608 North Chestnut Street, Derry, Westmoreland County, Pennsylvania.

5. The plaintiff's Complaint in Trespass alleges and avers, inter alia, that the original defendant, Remington Arms Company, Inc., supplied Montgomery Ward and Company, Inc., a certain Remington 30.06 Model 700 rifle, which firearm was allegedly in a defective condition and caused the injuries and damages claimed by the plaintiff, Thomas John Brown.

6. The original defendant, Montgomery Ward and Company, Inc., avers that if the plaintiff suffered the injuries and damages set forth in his Complaint, said injuries and damages were caused

solely and wholly by reason of the negligence of the additional defendant, Charles Kuncher, in the following respects:

- (a) In unloading said rifle without taking proper safety precautions to insure the safety of others, including the plaintiff, in the vicinity;
- (b) In handling and unloading said rifle in a negligent, careless and reckless manner, without regard for the safety of others in the vicinity, particularly the plaintiff;
- (c) In handling, using, and operating said rifle without sufficient knowledge of the operation of said rifle;
- (d) In causing said rifle to be aimed at the plaintiff's body while being unloaded;
- (e) In failing to warn the plaintiff that he was unloading said rifle.

7. By reason of the foregoing, Charles Kuncher is joined as an Additional Defendant by Montgomery Ward and Company, Inc., and the original defendant, Montgomery Ward and Company, Inc., avers that the additional defendant, Charles Kuncher, is either alone liable to the plaintiff for the cause of action declared upon by said plaintiff for any amount which might be recovered by him, or that the additional defendant, Charles Kuncher, is jointly and severally liable with the original defendant, Montgomery Ward and Company, Inc., for any amounts which might be recovered by the said plaintiff, and the original defendant, Montgomery Ward and Company, Inc., by this joinder, seeks to preserve its right of contribution against the additional defendant in the event that it is determined that there is liability on the part of Montgomery Ward and Company, Inc. to the said plaintiff upon trial of this case.

WHEREFORE, the original defendant, Montgomery Ward and Company, Inc., hereby joins Charles Kuncher as an additional defendant in this case and alleges and avers that said additional defendant is either solely liable to the plaintiff upon the cause of action declared upon by said plaintiff, or, in the alternative, is jointly and severally liable with the said original defendant in this case in the event that Montgomery Ward and Company, Inc.

should be found liable to the plaintiff upon the trial.

STEWART, BELDEN, SENSENICH AND
HERRINGTON

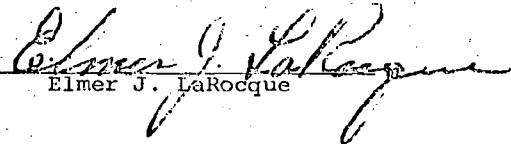
W. R. Belden

W. F. Mander

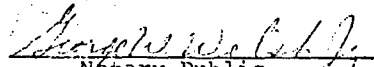
Counsel for Original Defendant,
Montgomery Ward and Company, Inc.

COMMONWEALTH OF PENNSYLVANIA)
) SS:
COUNTY OF WESTMORELAND)

Before me, the undersigned authority, in and for said commonwealth and county, personally appeared ELMER J. LaROCQUE, who, being duly sworn according to law, deposes and says that he is the Store Manager of the Original Defendant, Montgomery Ward and Company, Inc., that he is authorized to make this Affidavit and that the facts contained in the foregoing Answer and New Matter are true and correct as he verily believes.


Elmer J. LaRocque

Sworn to and subscribed
before me this 31st day
of August, 1971.


Notary Public

My Commission Expires:

GEORGE W. WELSH, JR., NOTARY PUBLIC
SOUTH GREENSBURG BOROUGH
WESTMORELAND COUNTY
MY COMMISSION EXPIRES NOV. 5, 1973