

1996

Interport, Inc., a corporation and William York v.  
Gary Delsignore and Shirley Nicholas, individually  
and doing business as Quality Military Weapons :  
Brief of Appellant

Utah Court of Appeals

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DOCKET NO. 960625 CA

# COURT OF APPEALS

INTERPORT, INC., a  
corporation, and WILLIAM YORK

Case No. 960625 CA

GARY DELSIGNORE and SHIRLEY )  
NICHOLAS, individually and doing business) )  
as QUALITY MILITARY WEAPONS, )

## Priority Number 15

## BRIEF OF APPELLANT

**JAMES M. PARK**  
**THE PARK FIRM**  
965 South Main, Suite 3  
Cedar City, UT 84720

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## **STATEMENT OF JURISDICTION**

Jurisdiction is conferred upon the Utah Supreme Court pursuant to Utah Code Annotated § 78-2-2(3)(j) whereby the Supreme Court has appellate jurisdiction over orders, judgments, and decrees of any court of record over which the Court of Appeals does not have original appellate jurisdiction. This case was then assigned to the Court of Appeals by the Supreme Court pursuant to Utah Code Annotated § 78-2-2(4).

## **CONSTITUTIONAL PROVISIONS, STATUTES, AND ORDINANCES**

The following constitutional provisions, statutes, and ordinances are determinative or of central importance to this appeal: Utah R. Civ. P. 56(c).

## **STATEMENT OF FACTS**

On or about October 7, 1987, Defendants submitted a written brokerage proposal to Plaintiff, Interport, Inc. concerning the sale of firearms owned by Plaintiff, Interport, Inc. This proposal was in the form of a letter to Mr. William York, a principal of Interport, Inc. Under the terms of the proposal, Defendants were to grade all weapons, store all weapons, prepare advertising, sell all firearms and ship them to purchasers, keep sales records and provide a detailed accounting to Plaintiff Interport, Inc. of all sales, receive 30% gross profits, and remit all other proceeds on a weekly basis to Interport, Inc..

The proposal was accepted by Plaintiff, Interport, Inc., and on or about November of 1987, Plaintiffs delivered to Defendants 1,380 firearms. At the end of January 1988, Defendants provided Plaintiff Interport, Inc. with a detailed accounting, supported by sales slips showing

customers' names, addresses, merchandise sold, dates of sales, and amounts received.

Subsequently, Defendants failed to provide Plaintiffs with proper accountings.

On or about April 24, 1990, Plaintiff Interport, Inc. brought an action in the Fifth Judicial District Court against Defendants praying for a full accounting and for a judgment of amounts owed by Defendants under the agreement. William York was then added as a Plaintiff. After much litigation, in February, 1995, Defendants filed a Motion for Summary Judgment along with a supporting memorandum and affidavit and then an Amended Memorandum in Support of Motion for Summary Judgment.

In those documents, Defendants alleged that Interport, Inc. was not a party to the agreement for Defendants to sell firearms and asked for Summary Judgment against Plaintiff Interport, Inc. This motion was supported by the Affidavit of Gary Delsignore in which he avers that the original proposal was not made to Interport and that William York made it perfectly clear to him that the agreement was to be with Mr. York personally and not with Interport, Inc. Affidavit of Gary Delsignore ¶¶ 3,4.

Plaintiffs filed a Memorandum in Opposition to Defendants' Motion for Summary Judgment along with an Affidavit of William M. York on April 24, 1995. Mr. York states in his affidavit that Defendants were always aware that he was acting for, and on behalf of, Interport, Inc. in the brokerage arrangements. Affidavit of William M. York ¶ 4. In addition he asserts that all shipments of firearms were picked up by the Defendants directly from the Interport, Inc. warehouse in St. George, Utah. Id. Furthermore, attached to Mr. York's affidavit were documents prepared by the Defendants reporting sales of the rifles. Those documents refer to "Interport guns" and "Interport's Net Profit."

A hearing on the matter was held before the Honorable Judge Robert T. Braithwaite and the Defendant's Motion for Summary Judgment was granted by an order signed on June 6, 1995, and a judgment to that effect was to be prepared by the Defendants. The Findings of Fact, Conclusions of Law, and Order were then signed on January 30, 1996. Final summary judgment against Plaintiff Interport, Inc. was entered by an Order of Certification signed by the Honorable Judge Robert T. Braithwaite on April 5, 1996. Plaintiff Interport, Inc. now appeals the final summary judgment entered against it by the District Court.

### **SUMMARY OF ARGUMENT**

Rule 56(c) of the Utah Rules of Civil Procedure states that summary judgment is appropriate only when there is no issue of material fact and the moving party is entitled to judgment as a matter of law. There are two issues before the court: whether there is a genuine dispute as to a material fact and whether the moving party was entitled to judgment as a matter of law. The Plaintiffs and Defendants in this case have each filed affidavits and pleadings with the trial court that indicate that there exists a dispute as to who the actual parties to the contract were. In light this dispute and because that fact is central to the litigation, there is a genuine issue of material fact. In addition, because the trial court considered this disputed fact when granting summary judgment, the Defendants were not entitled to judgment as a matter of law. Accordingly, Plaintiffs requests that summary judgment be overturned and the matter remanded to the trial court for further determination of that issue of fact.



## ARGUMENT

The standard for properly granting summary judgment is comprised of two parts. Rule 56(c) of the Utah Rules of Civil Procedure states that summary judgment is appropriate only when there is no issue of material fact and when the moving party is entitled to judgment as a matter of law. Mountain States Tel. & Tel. v. Garfield County, 811 P.2d 184, 192 (Utah 1991); B & A Assoc. v. L.A. Young Sons Constr., 796 P.2d 692, 694 (Utah 1990); Utah R. Civ. P. 56(c). Summary judgment is proper only if there are no material disputed facts and then, taking the undisputed facts into account, if the moving party is then entitled to judgment based on the law. The trial court's entry of summary judgment is to be reviewed for correctness, according no deference to the trial court's legal conclusions. Christensen v. Swenson, 874 P.2d 125, 127 (Utah 1994); Clover v. Snowbird Ski Resort, 808 P.2d 1037, 1039-40 (Utah 1991); Blue Cross & Blue Shield v. State, 779 P.2d 634, 636 (Utah 1989).

### **I. IN LIGHT OF THE PLEADINGS AND AFFIDAVITS PRESENTED TO THE TRIAL COURT, SUMMARY JUDGMENT AGAINST INTERPORT, INC. WAS IMPROPER BECAUSE A GENUINE ISSUE OF MATERIAL FACT EXISTS.**

#### **A. An issue of fact exists.**

As Rule 56(c) explains, for summary judgment to be proper, there must be no dispute as to any fact that is central to the determination of the case. This requirement encompasses two issues: first, are there facts in dispute; second, are any of those facts "material."

In the case before this Court, a dispute as to a fact exists between the Plaintiff Interport, Inc. and the Defendant Gary Delsignore. The parties have given conflicting information in pleadings and affidavits filed with the court. The dispute centers on whether or not Plaintiff

Interport, Inc. is a party to the contract for sale of weapons that is the subject of this litigation.

First, Plaintiff Interport, Inc. states in its complaint that “On or about October 7, 1987, Defendants submitted a written proposal to Plaintiff concerning sale of firearms owned by Plaintiff.” Complaint ¶ 3. The Plaintiff referred to in this document is Interport, Inc. because at this time William York was not a named Plaintiff. In their answer, Defendants deny that they ever entered into any proposal or agreement with Plaintiff Interport, Inc., but state that they entered into an agreement with William York. Answer ¶ 3.

The dispute over whether Interport is a party to the contract for sale of rifles is also evident in the parties’ Motions for Summary Judgment and accompanying affidavits. Mr. Delsignore’s affidavit states that his proposal was not made to Interport, Inc. Affidavit of Gary Delsignore ¶ 3. Furthermore, he states that Mr. York made it clear to him that the contract was not to be with Interport, Inc. but with Mr. York personally. *Id.* at ¶ 4. In conflict with that statement, Mr. York asserts in his affidavit that in all of his dealings with Defendants, Defendants were aware that Mr. York was acting for an in behalf of Interport, Inc. in his capacity as a principal for Interport, and that all shipments of firearms were picked up from Interport, Inc.’s warehouse. *Id.* In addition, attached to Mr. York’s affidavit are two documents prepared by Defendants in rendering an accounting of the sales of the guns; in those documents, there are references to “Interport guns” and “Interport’s Net Profit.”

It is important to note that “(I)t only takes one sworn statement to dispute averments on the other side of the controversy and create an issue of fact. This is analogous to the elemental rule that the fact trier may believe one witness as against many, or many against one.” Holbrook Co. v. Adams, 542 P.2d 191, 193 (Utah 1975). Furthermore, “it is not the purpose of the

summary judgment procedure to judge the credibility of the averments of parties, or witnesses, or the weight of evidence.” Id.

Given the pleadings and other papers in which the parties make contrary averments, it is apparent that there is a disputed issue of fact. The trial court judge cannot simply ignore the affidavit of Mr. York averring that the Defendants knew that Interport was the actual party to the contract. Nor can the trial court discount or weigh the credibility of that averment. As the Utah Supreme Court explained, that is not the job of the trial court in a summary judgment proceeding. Id.

**B. The disputed fact is material.**

The second requirement is that the disputed fact be material. The contract to broker rifles is the central issue of this case. Interport, Inc. brought this suit against the Defendants asking for a full accounting of the sales of Interport’s guns and also for judgment for any money owed to Interport, Inc. after the accounting is completed. Who the parties to the contract are is a central issue in this case. It determines who is bound by the contract and also to whom performance is to be rendered. The disputed fact is a material one.

**II. BECAUSE THE DEFENDANTS WERE NOT ENTITLED TO JUDGMENT AS A MATTER OF LAW, FINAL SUMMARY JUDGMENT AGAINST INTERPORT, INC. WAS IMPROPER.**

When making a determination on a motion for summary judgment, the trial court may only consider facts that are not in dispute, and then summary judgment should be granted only if all of the facts giving rise to the moving parties’ entitlement to summary judgment are clearly established or admitted. Sorenson v. Beers, 585 P.2d 458, 460 (Utah 1978). Furthermore,

because there is not a trial on the merits, in reviewing an entry of summary judgment, an appellate court must review the facts and inferences in the light most favorable to the party against whom the summary judgment has been granted. Christensen v. Swenson, 874 P.2d 125, 127 (Utah 1994); Blue Cross & Blue Shield v. State, 779 P.2d 634, 636 (Utah 1989); Atlas Corp. v. Clovis Nat'l Bank, 737 P.2d 225, 229 (Utah 1987).

In the case before this Court, the Defendants were not entitled to judgment as a matter of law. There is a dispute, as evident in the pleadings and affidavits, as to who is the proper party to the contract. Regardless of that dispute, the trial court determined that Interport Inc. was not a party to the contract. Whether or not Interport, Inc. is a party to the contract is a disputed fact and therefore should not be considered in determining whether a party is entitled to judgment as a matter of law. As the disputed fact is the exact matter on which the trial court granted summary judgment, it is impossible to conclude that the court did not consider the disputed fact in its decision. Because it was improper to do so, judgment as a matter of law is not warranted.

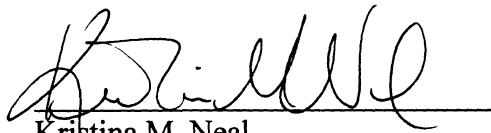
Furthermore, this Court must look at the facts and inferences in a light most favorable to the losing party below, in this case Interport, Inc. Viewing the competing affidavits in a light most favorable to Interport, this Court must conclude Interport, Inc. was the party to whom the proposal was made. This is based on Mr. York's own affidavit and also the documents prepared by the Defendants in which they refer to "Interport guns" and "Interport's Net Profit." The inference to be drawn from these documents when viewing them in a light most favorable to Interport is the Defendants knew Interport was party to the contract. case, in which case the Defendants would not be entitled to judgment as a matter of law in this case.

## CONCLUSION

If it is determined that there is a dispute regarding a genuine issue of material fact, then this Court must reverse the grant of summary judgment and remand the case for determination of that issue. Christensen v. Swenson, 874 P.2d 125, 127 (Utah 1994); Atlas Corp. v. Clovis Nat'l Bank, 737 P.2d 225, 229 (Utah 1987). Because a genuine issue of fact exists, and because the Defendants were not entitled to judgment as a matter of law, Interport, Inc. respectfully requests that the granting of summary judgment be overturned and the case remanded to the trial court for determination of the issue of fact.

DATED this 19th day of December, 1996.

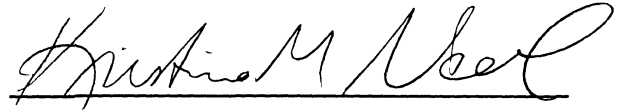
McDOUGAL & SMITH



Kristina M. Neal

### MAILING CERTIFICATE

I hereby certify that I mailed four true and correct copies of the foregoing,  
postage prepaid, to James M. Park, The Park Firm, 965 South Main, Suite 3, Cedar City,  
Utah 84720 on this the 19th day of December, 1996.

A handwritten signature in cursive script, reading "Kristina M. Abel", is written over a horizontal line.

## **ADDENDUM**

THE PARK FIRM, P.C.  
JAMES M. PARK (5408)  
P.O. Box 765  
965 South Main, Suite 3  
Cedar City, UT 84720  
Telephone: (801)586-6532

---

IN THE FIFTH JUDICIAL DISTRICT COURT IN AND FOR  
IRON COUNTY, STATE OF UTAH

---

INTERPORT, INC., a corporation )  
and WILLIAM YORK, )

Plaintiff, )

vs. )

GARY DELSIGNORE and SHIRLEY )  
NICHOLAS, individually and doing )  
business as QUALITY MILITARY )  
WEAPONS, )

Defendant. )

*AFFIDAVIT OF  
GARY DELSIGNORE*

Civil No. 900901098

Judge Robert T. Braithwaite

---

STATE OF UTAH )  
ss. )  
COUNTY OF IRON )

GARY DELSIGNORE, after being duly sworn deposes and says:

1. He is one of the Defendant above named.
2. On or about October 7, 1987, he was the Defendant who submitted a written proposal to William York regarding the sale of certain firearms. Said proposal is attached to Plaintiff's first Complaint and marked Exhibit "A".
3. Said proposal was not made to Interport, Inc.
4. Plaintiff made it perfectly clear that this agreement was to be with him only and no



Interport because of the problems Interport was having with the ATF. At this time the Agreement was entered into or shortly before this Defendant was president of Interport Inc Plaintiff wanted this agreement between himself and Defendant.

5. This Defendant has never received notification that the agreement attached to Plaintiff's Complaint and marked Exhibit "A", was ever assigned to Interport, Inc.

5. All payments made were to William York. No payments of any kind were made to Interport, Inc.

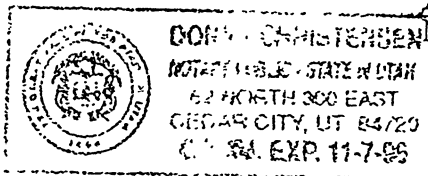
6. Shirley Nicholas was also never a part of the agreement between York and Delsignore.

DATED this 9th day of February, 1995.

  
GARY DELSIGNORE

SUBSCRIBED and SWORN to before me this 9th day of February, 1995

  
NOTARY PUBLIC



**WILLARD R. BISHOP, P.C.**  
Willard R. Bishop - #0344  
William H. Leigh - #5307  
Attorney for Plaintiffs  
P.O. Box 279  
Cedar City, UT 84720-0279  
Telephone: (801) 586-9483

**IN THE FIFTH JUDICIAL DISTRICT COURT OF IRON COUNTY**

**STATE OF UTAH**

INTERPORT, INC., a	)	
corporation; and WILLIAM YORK,	)	<b>AFFIDAVIT OF WILLIAM M. YORK</b>
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
GARY DELSIGNORE and SHIRLEY	)	Civil No. 900901098 CV
NICHOLAS, individually and	)	
doing business as QUALITY	)	
MILITARY WEAPONS,	)	
	)	
Defendants.	)	
	)	

STATE OF _____	)	
	)	:ss.
County of _____	)	

COMES NOW WILLIAM M. YORK, after first being duly sworn upon his oath, and testifies and asserts as follows, to wit:

1. Your affiant, William M. York, is an adult male and a resident of Douglas County, Nevada, and is a witness in the above-entitled action, and asserts the information set forth herein based upon personal knowledge.

2. Your affiant asserts that Shirley Renea Nicholas did own, operate, and held ownership interest jointly with Gary Delsignore

in a weapons business located in Iron County, Utah during and before the period having to do with the brokerage sale of the 1380+or- Enfield rifles and subject of this action.

3. Your affiant asserts that this joint ownership was revealed verbally to myself on a number of occasions personally both by Gary Delsignore, and by Shirley Renea Nicholas.

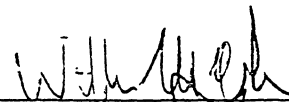
4. Your affiant asserts that in his initial and subsequent dealings with Defendants, Defendants were aware that affiant was acting for, and on behalf of Interport, Inc. in the brokerage arrangements. That all shipments of firearms were picked up directly from the Interport, Inc. warehouse in St. George, Utah, by Nicholas and/or Delsignore. Affiant also asserts that the brokerage contract between Interport, Inc. and Defendants was mostly verbal and trust.

5. Your affiant asserts that payments by Defendants on the brokerage "agreement" in the amounts of \$5,199.21, \$2,723.53 and \$2,500 were made to Interport, Inc.


6. Your affiant asserts that on the attached documents, which were either prepared by Delsignore or Nicholas as reports of the sales of the rifles they were brokering, Defendants acknowledged they were dealing with Interport, Inc. as the documents refer to "Total Sales of Interport Guns", and to "Interport's Net Profit".

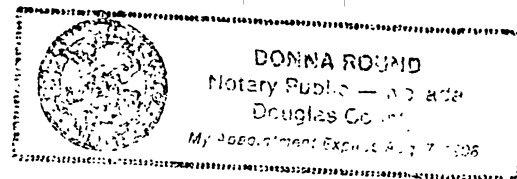
FURTHER, AFFIANT SAITH NOT.

DATED this 28<sup>th</sup> day of March, 1995.

  
\_\_\_\_\_  
WILLIAM M. YORK, Affiant

The attached AFFIDAVIT of William M. York was SUBSCRIBED AND  
SWORN TO before me this 28<sup>th</sup> day of March, 1995.

  
\_\_\_\_\_  
NOTARY PUBLIC  
My commission expires: Aug 7, 1998  
Residing in: Candlenwile, TN



Report for Nov., Dec. 1960 and Jan. 1961

51 guns were sold during this time for the amount of \$1300  
break down of sales as follows.

10 units of 4 guns for \$100	\$1200
1 unit of 3 guns for 100	<u>\$100</u>
	\$1300

Advertising for the period was as follows

Shot Gun News	\$325
Post And Prints for Postcards	<u>\$240</u>
	\$565

Our 30% of sales	<u>\$390</u>
	\$955

Your share of proceeds is \$345

TOTAL SALES OF INTERPORTS GUNS ~~IS~~ \$52 \$25235

Payments to you in the amount of \$14190 has been made. \$5760 has been paid to SGH and we have received \$5285.

The guns have sold for an average of \$45 ea.  
You have received from us an average of \$25.25 for each gun.  
We have received an average of \$39.40 for each guns sold.  
It cost an average of \$10.25 per gun to advertise.

We have approximately 540 guns left. We have projected an sales as follows. We have a lot of guns that are tottally unserviceable and will sale for \$10 ea. there are about 230 of these. and 250 guns at \$25 ea. and 160 at \$33 ea. *only 300 were any good on the lowest end of the scale*

Which is a total for these is \$13,830  
\$4605 is ours SGH for 4 year would be 12000 and you would receive \$6425. These figures are subject to change depending on the guns once we start selling them. We made find condition to be better of worst.

For K report you did not receive

150 2000 1500 2500 - 4000 -  
and weapons 3750  
7500 -

which was more than projected at this

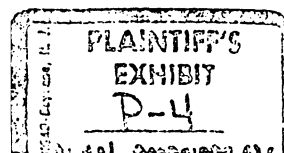
# THE ACCOUNTING

J 10 1988

TOTAL SALES, ALL ITEMS (SEE ATTACHED SLIPS)	\$ 7734.90
COST OF GOODS SOLD @ \$15 PER UNIT	1425.00
GROSS PROFIT	\$ 6309.90
LESS 30%	1892.97
	4416.93
LESS ADVERTISING*	642.72
INTERPORT NET PROFIT	\$ 3774.21
RETURNED COST OF GOODS	1425.00
TOTAL TO YORK	\$ 5199.21

\*

INCLUDES 1/8 PAGE JAN 10 ISSUE 1/2 PAGE JAN 20 —  
 RESIDUAL SALES UNTIL FEB 10 AD WILL NOT INCLUDE  
 DEDUCTION FOR ADVERTISING.



WILLARD R. BISHOP, P. C.  
Willard R. Bishop - #0344  
Attorney for Plaintiff  
P. O. Box 279  
Cedar City, UT 84721-0279  
Telephone: (801) 586-9483

FIFTH JUDICIAL DIST. COURT  
IRON COUNTY  
**FILED**  
APR 23 1990  
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DEPUTY

IN THE FIFTH JUDICIAL DISTRICT COURT OF IRON COUNTY

STATE OF UTAH

INTERPORT, INC., a corporation,

Plaintiff,

vs.

GARY DELSIGNORE and SHIRLEY  
NICHOLS, individually and doing  
business as "QUALITY MILITARY  
WEAPONS",

Defendants.

C O M P L A I N T

Civil No. 900901098  
90-1098  
K + 6462

COMES NOW PLAINTIFF, by and through counsel, who complains  
of Defendants and for cause of action alleges as follows:

PRELIMINARY ALLEGATIONS

1. Plaintiff INTERPORT, INC., is a corporation.
2. Defendants GARY DELSIGNORE and SHIRLEY NICHOLS are residents of Iron County, Utah, and at time pertinent to this action were and are doing business under the name of "QUALITY MILITARY WEAPONS"
3. On or about October 7, 1987, Defendants submitted a written proposal to Plaintiff concerning sale of firearms owned by Plaintiff, under the following terms:
  - A. Defendants were to grade all weapons.
  - B. Defendants were to store all weapons in Cedar City, Utah, at their expense.

C. Defendants were to prepare advertising.

D. Defendants were to sell all firearms, and ship them to the purchasers.

E. Defendants were to keep sales records and provide a detailed accounting of all sales.

F. Defendants were to receive and retain amounts equal to thirty percent (30%) of gross sales, and were to remit all other proceeds on a weekly basis.

A copy of the written proposal is attached, and is incorporated by this reference, marked as Exhibit "A".

4. Both Plaintiff and Defendant GARY DELSIGNORE were holders of the applicable federal firearms licenses at times pertinent to this action. Sellers of firearms are required by federal.

5. The proposal of Defendants was duly accepted by Plaintiff, and in or about November of 1987, Plaintiff duly delivered to Defendants, 1,380 firearms.

6. At the end of January of 1988, Defendants provided Plaintiff with a detailed accounting, supported by sales slips showing customers' names, addresses, merchandise sold, dates of sales, and amounts received. A copy of the accounting is attached, marked as Exhibit "B", and is incorporated by this reference.

7. Since January of 1988, reports/accountings furnished by Defendants have been incomplete. When detailed accountings were requested by Plaintiff, Defendants have responded evasively, abusively, and have failed to provide to information necessary to



document and back up their "reports". Since January of 1988, Defendants have failed to meet the standard established and provided in their first accounting, and have failed and refused to abide by the terms of their contract with Plaintiff.

FIRST CAUSE OF ACTION

(Declaratory Judgment)

8. Plaintiff incorporates the allegations made in paragraphs 1 through 6, above, as though fully set forth in this First Cause of Action.

9. A dispute now exists between the parties with reference to the agreement between them, including, but not limited to:

A. Provision of proper accountings, with underlying back up documentation, to which Plaintiff is entitled.

B. Payment of amounts owed by Defendants to Plaintiff.

C. Compliance by Defendants with federal law relating to the keeping of records relating to sales of firearms.

WHEREFORE, Plaintiff prays:

1. For judgment declaring the parties' rights, duties, and legal relationships between them under their agreement relating to the sale of Plaintiff's firearms, and for judgment requiring Defendants to furnish complete, detailed accountings.

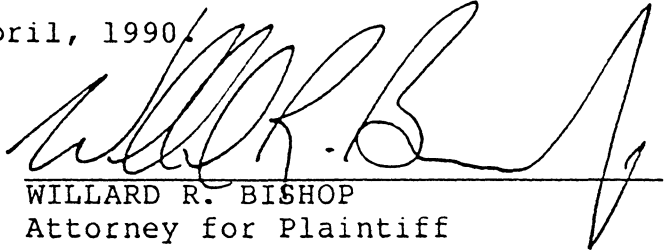
2. For judgment in favor of Plaintiff and against Defendants in the amount shown to be due and owing to Plaintiff from Defendants, if any.

3. For costs.

4. For attorney fees incurred by Plaintiff.

5. For such other relief as the Court deems proper.

DATED this 19<sup>th</sup> day of April, 1990.



WILLARD R. BISHOP  
Attorney for Plaintiff

Plaintiff's Address:

1091 Airport Road  
Douglas County, NV 89423-9030

Quality, Value, Weapons  
P.O. Box 158 Cedar City, UT 84720-0158  
(801) 586 2505

7 Oct '87

Dear Jitz -

Here is an unusual, frus, written  
proposal for brokerage of 1200 - odd gun  
lot now on the water - 30% of gross  
sales, you pay advertising. In this way,  
you can set prices, determine advertising  
intervals, etc, things about which we  
have divergent views. I write this  
because I have an increasingly faulty  
memory and would soon forget any  
details - for this, I will:

1. Grade all weapons
2. Store weapons in Cedar @ my expense
3. Prepare advertising
4. Sell all merchandise
5. Ship " "
6. Keep sales records & accounting
7. Submit weekly proceeds

a figure less than 30% won't do it, this  
is going to be a lot of work for you Bud

SCOTT M. BURNS - USB #4283  
Attorney at Law  
97 North Main, Suite #1  
P.O. Box 428  
Cedar City, Utah 84720  
Telephone: (801) 586-6694

FIFTH JUDICIAL DIST. COURT  
IRON COUNTY  
**FILED**  
JUN 12 1990

Caroline J. Brown CLERK  
DEPUTY

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IN THE FIFTH JUDICIAL DISTRICT COURT, IN AND FOR IRON COUNTY,  
STATE OF UTAH

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INTERPORT, INC., a corporation,	)	
Plaintiff,	)	<b>ANSWER</b>
vs.	)	
GARY DELSIGNORE and SHIRLEY	)	
NICHOLS, individually and doing	)	
business as "QUALITY MILITARY	)	Civil No. 900901098
WEAPONS",	)	
Defendants.	)	

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COME NOW Defendants, by and through Scott M. Burns, and  
answer Plaintiff's Complaint and allegations as follows, to wit:

1. Defendants admit paragraph 1 of Plaintiff's Complaint.
2. Defendants admit that GARY DELSIGNORE and SHIRLEY NICHOLS are residents of Iron County, State of Utah; however, SHIRLEY NICHOLS denies that she has ever done business under the name of "QUALITY MILITARY WEAPONS".
3. Defendants deny that they have ever entered into any proposal or agreement with Plaintiff INTERPORT, INC., but did, on or about the date alleged, enter into an agreement with one William York. Defendant GARY DELSIGNORE, doing business as "QUALITY MILITARY WEAPONS", admits all of the allegations contained in paragraph 3 of Plaintiff's Complaint. However,

Defendant SHIRLEY NICHOLS denies each and every allegation contained in paragraph 3 and affirmatively asserts that she has no connection with or liability associated with "QUALITY MILITARY WEAPONS". Moreover, Defendant GARY DELSIGNORE, doing business as "QUALITY MILITARY WEAPONS", asserts that he has previously submitted, and attached hereto, copies of all receipts therein representing a full accounting and has therein abided by all of the requirements of the written proposal of October 7, 1987.

4. With respect to paragraph 4 of Plaintiff's Complaint, Defendant GARY DELSIGNORE admits that he has been, and is, a holder of the applicable federal firearms license at all times pertinent to this action. However, Defendant GARY DELSIGNORE denies any knowledge of or cannot assert Plaintiff's status with respect to firearms licenses.

5. Pursuant to paragraph 5 of Plaintiff's Complaint, Defendant GARY DELSIGNORE admits that Plaintiff delivered several firearms and "parts of firearms" in or about November, 1987, but denies that exactly 1,380 firearms were delivered. Defendant SHIRLEY NICHOLS denies that any firearms were ever delivered to her.

6. Defendants admit the allegations contained and asserted in paragraph 6 of Plaintiff's Complaint.

7. Defendants deny the allegations contained in paragraph 7 with respect to assertions that the Defendants have been "evasive" and "abusive" but admit that they have not

furnished a full accounting to one William York, with whom the written agreement was entered into by GARY DELSIGNORE.

8. Defendants deny a dispute between them and Plaintiff INTERPORT, INC., but do admit that there is a dispute between Defendant GARY DELSIGNORE, individually and doing business as "QUALITY MILITARY WEAPONS", and William York with respect to a proper accounting and underlying documentation in that GARY DELSIGNORE believes that William York is attempting to (a) discern who his clients are, (b) cause trouble with said clients, or (c) appropriate said clients' business from said GARY DELSIGNORE.

#### **AFFIRMATIVE DEFENSES**

##### **FIRST DEFENSE**

Plaintiff's Complaint fails to state a cause of action for which relief may be granted.

##### **SECOND DEFENSE**

Defendant SHIRLEY NICHOLS has never done business as "QUALITY MILITARY WEAPONS" and has had no contractual dealings, whatsoever, with INTERPORT, INC., a corporation, or William York.

##### **THIRD DEFENSE**

Defendants GARY DELSIGNORE, SHIRLEY NICHOLS, and GARY DELSIGNORE individually and doing business as "QUALITY MILITARY WEAPONS" never entered into any "written proposal" with INTERPORT, INC., a corporation; however, GARY DELSIGNORE entered into a written proposal, dated October 7, 1987, with one William

York, individually, as evidenced by Exhibit "A" of Plaintiff's Complaint.

**FOURTH DEFENSE**

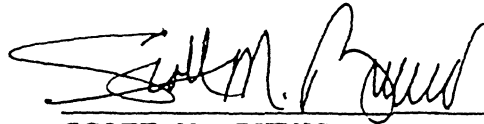
Defendants assert that their actions were and are proper, reasonable, and justified under the circumstances.

**FIFTH DEFENSE**

No affirmative link exists between the complained of events and Defendants' actions and, therefore, these Defendants cannot be liable and the Complaint should be dismissed as against them.

WHEREFORE, having answered Plaintiff's Complaint, Defendants pray that the Court find that the Plaintiff's action is frivolous, unreasonable, or without foundation and dismiss said action, and award Defendants costs and reasonable attorney's fees as allowed under law.

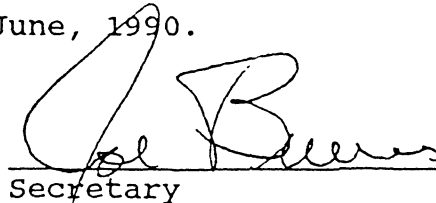
DATED this 11<sup>th</sup> day of June, 1990.



SCOTT M. BURNS  
Iron County Attorney

**CERTIFICATE OF HAND-DELIVERY**

I HEREBY CERTIFY that I hand-delivered a full, true and correct copy of the within and foregoing ANSWER to Mr. Willard R. Bishop, Attorney for Plaintiff, at 36 North 300 West, Cedar City, Utah, on this 11<sup>th</sup> day of June, 1990.

  
Secretary