

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

DIONA PATTERSON, individually and as Adminsitrator
of the ESTATE OF HEYWARD PATTERSON, J.P., a minor;
BARBARA MAPPS, Individually and a Executrix of the
ESTATE OF KATHERINE MASSEY; SHAWANDA
ROGERS, Individually and as Administrator of the
ESTATE OF ANDRE MACKNEIL; A.M., a minor;
and LATISHA ROGERS,

Plaintiffs,

DECISION AND ORDER

Re: Motion #26

Index No. 805896/2023

vs.

META PLATFORMS, INC., formerly known as
FACEBOOK, INC.; SNAP, INC.; ALPHABET, INC.;
GOOGLE, LLC; YOUTUBE, LLC; DISCORD, INC.;
REDDIT, INC.; AMAZON.COM, INC.; 4CHAN, LLC;
4CHAN COMMUNITY SUPPORT, LLC; GOOD SMILE
COMPANY INC.; GOOD SMILE COMPANY US, INC.;
GOOD SMILE CONNECT, LLC; RMA ARAMENT;
VINTAGE FIREARMS; MEAN LLC.; PAUL GENDRON;
PAMELA GENDRON,

Defendants.

HON. PAULA L. FEROLETO, J.S.C.

Argued by: John V. Elmore, Esq., Attorney for Diona Patterson, et al.
Sean R. List, Esq., Vintage Firearms

DECISION AND ORDER

Defendant Vintage Firearms has brought a Motion to Dismiss pursuant to the Protection
of Lawful Commerce in Arms Act, 15 U.S.C. §§7901 - 7903 ("PLCAA"), and CPLR
§§3211(a)(1), (3) and (7) filed on November 3, 2023. (NYSCEF documents 353 to 369). An

opposition memorandum of law is at document 390 and a reply memo of law is at document number 391. These have all been considered in this decision.

Facts as they relate to Vintage

Specific allegations as to Vintage are at ¶¶ 481 - 502 of the Complaint and for purposes of this motion must be taken as true (NYSCEF Doc. 1).

The plaintiffs allege Payton Gendron was a frequent customer of Vintage Firearms in 2021 and 2022 making six purchases from Vintage. Somewhere between December 21, 2021 and January 11, 2022 Gendron identified the Bushmaster XM-15 rifle that he would ultimately purchase. The weapon had a fixed magazine. Plaintiffs allege that Gendron learned the fixed magazine could be drilled out and then with additional parts, the weapon would permit the use of detachable magazines. Plaintiffs allege the information Gendron learned regarding the modification of the Bushmaster came, at least in part, from Vintage Firearms employees. In addition plaintiffs allege that Gendron spoke to employees of Vintage regarding his modification of the Bushmaster after the purchase and prior to his deadly rampage on May 14, 2022.

Protection of Lawful Commerce in Arms Act

There are seven causes of action against Vintage (NYSCEF Doc. 1). The claims center around a theory of negligent entrustment and claimed violations of General Business Law §§ 898-b(1); 898-b(2) & 898-e . In the instant motion, Vintage asserts these causes of action must be dismissed. The central argument of Vintage is that the Protection of Lawful Commerce in Arms Act applies to the facts of this case and requires dismissal against Vintage. The stated purpose of this federal immunity statute is “to prohibit causes of action against manufacturers, distributors, dealers, and importers of firearms or ammunition products, and their trade

associations, for the harm solely caused by the criminal or unlawful misuse of firearm products or ammunition products by others when the product functioned as designed and intended.” 15 U.S.C. §7901(b)(1). A claim is barred if it is a “qualified civil liability action.” A “qualified civil liability action” is defined as a “civil action or proceeding or an administrative proceeding brought by any person against a manufacturer or seller of a qualified product or a trade association, for damages, punitive damages, injunctive or declaratory relief, or penalties or other relief resulting from the criminal or unlawful misuse of a qualified product by the person or a third party.” § 7903(5)(A). It is undisputed that Vintage is a federally licensed firearms dealer and is therefore a qualified seller under PLCAA (NYSCEF Doc. 361, Exhibit 7). Vintage further claims the rifle is a qualified product as defined in §7903(4).

Here, plaintiffs argue the claims against Vintage for negligent entrustment and for violations of New York statutes are exceptions to the “qualified civil liability actions” definition because they are specific exceptions set forth in PLCAA. (NYSCEF Doc. 390 page 10). The Act states a “qualified civil liability action” shall not include “an action brought against a seller for negligent entrustment” §7903(5)(A)(ii). “Negligent entrustment” is defined as the “supplying of a qualified product by a seller for use by another person when the seller knows, or reasonably should know, the person to whom the product is supplied to is likely to, and does, use the product in a manner involving unreasonable risk of physical injury to the person or others.” 15 U.S.C. § 7903(5)(B).

New York’s “tort of negligent entrustment” has been ruled to be “based on the degree of knowledge the supplier of a chattel had or should have had concerning the entrustee’s propensity to use the chattel in an improper or dangerous fashion . . . If such

knowledge can be imputed, the supplier owes a duty to foreseeable parties to withhold the chattel from the entrustee.” *Chiapperini v. Gander Mtn. Co.*, 13 N.Y.S.3d 777, 789-90 (Monroe Cnty Sup. Ct. Dec. 23, 2014) (collecting cases, and comparing PLCAA’s and New York’s negligent entrustment standards and not distinguishing them); see also Restatement (Second) of Torts § 390. Here, at paragraphs 655 through 663 of the complaint (NYSCEF Doc. 1) plaintiffs specifically detail their negligent entrustment theory. They allege Vintage employees “knew or should have known permitting Payton Gendron to obtain a Bushmaster XM15-E2S would result in unreasonable danger” (*Id.* at ¶655) and that from Vintage employees interactions with Payton Gendron “Vintage Firearms had or should have had a sufficient degree of knowledge concerning the shooter’s propensity to use the Bushmaster XM15-E2S improperly.” (*Id.* at ¶ 663).

The law is very well settled on a CPLR 3211 motion that as long as the complaint states a claim on its face the court must accept as true the facts as alleged and accord plaintiffs the benefit of every possible favorable inference. See, *Rovello v. Orofino Realty Co., Inc.* 40 NY2d 633 (1976).

Finding sufficient facts have been alleged to bring the claim within the PLCAA’s negligent entrustment exception there is no need to address any other “exceptions” under PLCAA. *Williams v Beemiller, Inc.* 100 AD3rd 143 (4th Dept. 2023)(reversing grant of CPLR 3211 motion to dismiss allowing further discovery); *King v. Klocek*, 187 A.D.3d 1614, 1616 (4th Dept. 2020). See also *Chiapperini v. Gander Mtn. Co.*, 48 Misc. 3d 865, 876 (Monroe County Sup. Ct. Dec. 23, 2014). This case at this juncture needs further discovery as to the facts and circumstance surrounding the sale of the weapon to the shooter.

Based on the facts alleged in the complaint it is premature to dismiss the causes of action against Vintage under 3211(a)(1), (3), or (7).

Vintage has also claimed that GBL §898-b is unconstitutionally vague and further requires dismissal. There is a pending constitutional challenge to GBL §898 in the United States Circuit Court of appeals for the Second Circuit. The case has been argued and is on submission. *National Shooting Sports Foundation, Inc. V. James, No. 22-1374*. This decision does not address the constitutionality of that General Business Law Section but at such time as a decision is issued this court will reconsider this argument.

THEREFORE, IT IS HEREBY

ORDERED, Vintage Firearms, LLC's motion to dismiss is denied in its entirety. This constitutes the Decision and Order of this court. Submission of an Order by the parties is not necessary. Receipt of notice of the uploading of this Decision and Order by the court to NYSCEF shall not constitute notice of entry.

Signed this 7th day of March, 2024 at Buffalo, New York.



Hon. Paula L. Feroletto, J.S.C. —