

FBT-CV15-6048103-S

DONNA L. SOTO, ADMINISTRATRIX OF THE ESTATE OF VICTORIA L. SOTO et al.	:	SUPERIOR COURT
	:	
Plaintiffs,	:	JUDICIAL DISTRICT OF FAIRFIELD
	:	
v.	:	AT BRIDGEPORT
	:	
BUSHMASTER FIREARMS INTERNATIONAL, LLC, et al.	:	MAY 4, 2016
	:	
Defendants.	:	

**DEFENDANTS CAMFOUR, INC.’S AND CAMFOUR HOLDING, INC.’S REPLY
MEMORANDUM IN FURTHER SUPPORT OF THEIR MOTION TO STAY
DISCOVERY**

Defendants Camfour, Inc. and Camfour Holding, Inc. s/h/a Camfour Holding, LLP a/k/a Camfour Holding, Inc. (collectively referred to as “Camfour”) respectfully submit this reply memorandum in further support of their Motion to Stay Discovery until this Court determines whether Plaintiffs’ claims are barred by the Protection of Lawful Commerce in Arms Act, 15 U.S.C. §§ 7901 et seq. (“PLCAA”).

I. ARGUMENT

A. The PLCAA Prohibits Discovery from Being Conducted in a Qualified Civil Liability Action

Plaintiffs claim that Camfour’s motion to stay discovery should be denied because the “PLCAA contains no provision requiring or even advising a stay of discovery.” Pls. Obj. at 4. This is incorrect. The PLCAA explicitly prohibits even filing a “qualified civil liability action,” which is defined as a:

civil action . . . brought by any person against a . . . seller of a [firearm] . . . for damages, punitive damages, injunctive or declaratory relief, or penalties or other relief resulting from the criminal or unlawful misuse of a [firearm] by . . . a third party

in any state or federal court, unless one or more narrow exceptions apply. 15 U.S.C. §§ 7902(a) & 7903(5)(A). A statute expressly prohibiting certain actions from even being filed necessarily prohibits discovery from being conducted in such a case, and provides substantially stronger protection to a defendant than a statute, such as the Private Securities Litigation Reform Act, that simply provides that discovery is stayed during the pendency of a motion to dismiss unless the court orders otherwise.

Plaintiffs' claim that Camfour "agrees that Section 13-5 controls the Court's decision [regarding whether to stay discovery], and that decision is discretionary," Pls.' Obj. at 3, is also incorrect. Paragraph 6 of Camfour's Motion to Stay merely quoted Practice Book § 13-5, which is the procedural provision through which a motion to stay is filed. The statute that provides the substantive basis for Camfour's motion to stay discovery is the PLCAA, and the PLCAA does not provide any discretion for a court to allow discovery to be conducted before it has determined whether plaintiffs' claims against defendant constitute a qualified civil liability action that should have never been filed.

In its Motion to Stay Discovery, Camfour noted that in the more than a decade long period since the PLCAA was enacted, no other court has allowed discovery to proceed before determining whether the claims at issue constituted a prohibited qualified civil liability action. Plaintiffs do not dispute this, and have no valid response as to why this Court should disregard the clear

language of the PLCAA and allow discovery to proceed before it determines whether their claims against Camfour are prohibited. Instead, plaintiffs have simply chosen to pretend that this is an ordinary motion to stay discovery based on the general “annoyance, embarrassment, oppression, or undue burden or expense” factors listed in Section 13-5 and respond to Camfour’s Motion to Stay Discovery based on that premise. Pls.’ Opp’n at 3, 8.

Plaintiffs further contend that Camfour is conflating the immunity from suit provided by the PLCAA with sovereign immunity. Pls.’ Obj. at 8. The Connecticut cases that Camfour cited with regard to immunity being intended to protect a defendant from having to respond to discovery did not deal with sovereign immunity, which prevents an action from being filed against the United States or a State unless it consents to be sued. Rather the cases cited addressed qualified immunity, which protects a defendant from being sued for certain types of claims, and held that until the court determined whether the defendant was entitled to immunity from the claims at issue, it should not be subjected to discovery. *Kelly v. Albertsen*, 970 A.2d 787, 790 (Conn. App. Ct. 2009) (qualified immunity involving hospital physician); *Manifold v. Ragaglia*, 891 A.2d 106, 122 (Conn. App. Ct. 2006) (qualified immunity involving state government officials being sued in their individual capacities). Whether Camfour is even subject to being sued for plaintiffs’ claims, or they constitute a qualified civil liability for which the PLCAA provides it with immunity (by prohibiting the action from even being filed) is an issue that needs to be decided before Camfour is required to engage in discovery.

B. Camfour Promptly Moved to Dismiss Plaintiffs' Clams Pursuant to the Statutory Immunity Provided to it by the PLCAA

Camfour promptly raised its statutory immunity pursuant to the PLCAA and sought to have plaintiffs' claims against it dismissed on that basis. Plaintiffs' claims that this "case was ready to commence discovery on January 26, 2015," Pls.' Obj. at 5, is false. On January 14, 2016, prior to the return date, defendants Remington Arms Company, LLC and Remington Outdoor Company, Inc. exercised their right to remove this case to the U.S. District Court for the District of Connecticut. This case was not returned to this Court until or about October 21, 2015, and plaintiffs then filed a First Amended Complaint on October 29, 2015. Camfour responded to plaintiffs' First Amended Complaint by filing a motion to dismiss for lack of subject matter jurisdiction based on the PLCAA.

Although this Court concluded that the PLCAA does not affect the Superior Court's subject matter jurisdiction to decide this case, at the time Camfour filed its motion to dismiss, the only Connecticut court to have considered the issue had held that the PLCAA does affect subject matter jurisdiction and is properly raised on a motion to dismiss. *Gilland v. Sportsmen's Outpost, Inc.*, No. X04CV095032765S, 2011 WL 2479693, at *2-*17 (Conn. Super. May 26, 2011). This Court's April 14, 2016 Order cited to the May 26, 2011 decision in the *Gilland* case, and stated that the *Gilland* court:

characterized the motion before it as a "motion to dismiss and/or strike the plaintiffs' second amended complaint" and then went on to decide the hybrid motion under a motion to dismiss standard without providing any reason for doing so. In the absence of any analysis by the *Gilland* court as to whether PLCAA implicates subject matter jurisdiction, and in light of the fact that trial court

decisions are not binding, the court does not find the Gilland decision persuasive on this point.

Apr. 14, 2016 Order at 10. Although this Court was correct with regard to the *Gilland* court's May 26, 2011 order, the *Gilland* court had been asked to reconsider its holding that the PLCAA was properly raised through a motion to dismiss for lack of subject matter jurisdiction based on the decision by the Second Circuit Court of Appeals in *City of New York v. Mickalis Pawn Shop, LLC*, 645 F.3d 114 (2d Cir. 2011). In a decision dated September 15, 2011, the *Gilland* court specifically addressed the issue of whether the PLCAA was properly raised through a motion to dismiss in light of the *Mickalis* decision and maintained its position that in Connecticut, the PLCAA is properly raised through a motion to dismiss. *Gilland*, 2011 WL 4509540, at *5-*6 (Conn. Super. Sept. 15, 2011). Although this Court was certainly within its prerogative to reach a different conclusion than the *Gilland* court, by following the procedure adopted by the only Connecticut court to have previously addressed the issue, Camfour certainly acted reasonable in raising the PLCAA through a motion to dismiss for lack of subject matter jurisdiction.

This Court did not issue its decision concluding that the PLCAA does not deprive it of subject matter jurisdiction and should be raised as a defense through a motion to strike until April 14, 2016 and, until it resolved the issue of subject matter jurisdiction, no discovery could be conducted. Accordingly, despite plaintiffs' misleading claim that this case has been pending for fifteen months without any discovery being conducted, Pls.' Obj. at 4-5, it has only been possible to conduct discovery in this case for less than three weeks. Camfour filed its motion to strike plaintiffs' complaint pursuant to the PLCAA on April 22, 2016, approximately a week after this

Court's decision holding that the PLCAA should be raised through a motion to strike instead of a motion to dismiss. Oral argument on the motion to strike is scheduled for June 20, 2016. It is certainly appropriate to stay any discovery during the period from April 14, 2016 until this Court decides Camfour's motion to strike pursuant to the PLCAA, which, if granted, will preclude the need for any discovery to be conducted.

II. CONCLUSION

WHEREFORE, Camfour respectfully requests that this Court grant its Motion to Stay Discovery until this Court has determined whether it has statutory immunity from Plaintiffs' claims pursuant to the PLCAA.

Dated: White Plains, New York
May 4, 2016

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply Brief in Further Support of the Camfour Defendants' Motion to Stay Discovery was served on all counsel of record on May 4, 2016 by virtue of the State of Connecticut Judicial Branch's electronic filing system as well as by first class mail, U.S. postage prepaid to the following addresses:

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