

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.	:	September 13, 2016
	:	
Defendants.	:	

REMINGTON’S RESPONSE TO PLAINTIFFS’ MOTION TO ENFORCE SCHEDULING ORDER AND/OR STAY RESPONSE TO MOTION FOR SUMMARY JUDGMENT

Defendants REMINGTON ARMS COMPANY, LLC (“Remington Arms Company”) and REMINGTON OUTDOOR COMPANY, INC. (“Remington Outdoor Company” and, together with Remington Arms Company, “Remington”) respond to Plaintiffs’ Motion to Enforce Scheduling Order and/or to Stay Response to Motion for Summary Judgment (“Pls.’ Mot.”). Remington respectfully requests that Plaintiffs’ motion be denied and that Plaintiffs be ordered to respond to Remington’s Motion for Summary Judgment (“MSJ”) by October 18, 2016.

I. INTRODUCTION

Remington’s Motion for Summary Judgment was filed to expedite the final and appealable resolution of claims that lack legal and factual merit, and run head-on into statutory immunity protecting firearm manufacturers from having to engage in litigation when a criminal misuses a lawfully manufactured firearm to cause harm. Neither Remington nor any party in any case is required to bear the substantial burdens of prolonged litigation when summary judgment is appropriate. *See* Practice Book § 17-49 (“The judgment *shall be entered forthwith* if the

pleadings, affidavits and other proof submitted show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law.”) (emphasis added). Remington’s motion for summary judgment is not a “procedural contortion,” as Plaintiffs argue. (Pls.’ Mot. at 1.)

Remington is entitled to summary judgment on Plaintiffs’ CUTPA and negligent entrustment claims based on indisputable evidence. Plaintiffs’ CUTPA claims fail because Plaintiffs do not have standing to pursue CUTPA claims against Remington, which were, in any event, commenced after the applicable statute of limitations period. (*See* MSJ, at 4–6.) Plaintiffs’ negligent entrustment claims are barred by the PLCAA because Bushmaster Firearms International, LLC (“Bushmaster”), the entity that manufactured the subject firearm (*see* MSJ at Exhibit 2), was not licensed as a “dealer” under federal firearms laws and regulations (*see* MSJ at Exhibit 4), and therefore does not meet the definition of a “seller” under the relevant provisions of the PLCAA. *See* 15 U.S.C. § 7903(6)(B).

Plaintiffs have wavered on when they intended to oppose Remington’s motion for summary judgment, including intimations to the Court that their filing in August 2016 would be an actual response brief. (*See* Dkt. ## 220, 228.) That did not happen, and instead Plaintiffs argue that they need not respond to Remington’s motion until “after the close of discovery” next year because Remington’s motion is supposedly premature and allegedly “raises factually complex issues” requiring extensive discovery. (Pls.’ Mot. at 1, 3.) In making this assertion, Plaintiffs have failed to follow the Practice Book provisions on obtaining discovery to oppose summary judgment. In any event, Remington’s motion is permitted under the Scheduling Order and Connecticut law, and Plaintiffs have failed to specify the discovery they claim to need with the precision required by the Practice Book. In short, it is Plaintiffs who seek to contort

Connecticut procedure and delay the resolution of claims.

II. ARGUMENT

A. Plaintiffs have failed to follow Practice Book Section 17-47.

Despite the narrow set of facts on which Remington's motion is based and their availability in the public record, Plaintiffs seek more than a year to respond to Remington's motion. However, Practice Book Section 17-47 sets forth the procedure for seeking a continuance of a summary judgment motion in order to obtain discovery necessary to respond to the motion:

Should it appear from the affidavits of a party opposing the motion that such a party cannot, for the reasons stated, present facts essential to justify opposition, the judicial authority may deny the motion for judgment or may order a continuance to permit affidavits to be obtained or discovery to be had or make other order as is just.

Practice Book § 17-47. Plaintiffs have not moved pursuant to Section 17-47 for time to obtain discovery, and the Affidavit submitted in support of their Motion falls substantially short of the showing required under Section 17-47.

A party seeking more time to respond to a summary judgment motion under Section 17-47 on the ground that discovery is needed "must show by affidavit precisely what facts are within the exclusive knowledge of the moving party and what steps he has taken to acquire these facts." *Dorazio v. M.B. Foster Electric Co.*, 157 Conn. 226, 230 (1968). A party cannot "successfully oppose a motion for summary judgment by merely averring that the defendant has exclusive knowledge about certain facts or that affidavits based on personal knowledge are difficult to obtain." *Id.*; see also *Altfeter v. Naugatuck*, 53 Conn. App. 791, 807 (1990) (trial court did not abuse its discretion in refusing to consider a motion for a continuance that did not comply with the requirements of Practice Book Section 17-47).

Here, the Affidavit submitted by Plaintiffs' counsel merely states, in a conclusory fashion, that until Remington produces unspecified documents, responds to not-yet-served discovery requests, and gives deposition testimony on unspecified topics, Plaintiffs cannot oppose Remington's motion "on the seller issue." (Pls.' Mot. at Koskoff Affidavit, ¶ 7.) (Plaintiffs do not even attempt to argue that they need discovery to respond to Remington's motion for summary judgment on Plaintiff's CUTPA claim.) Connecticut courts require substantially greater precision in an affidavit than Plaintiffs have provided. For example, what precisely do Plaintiffs need from Remington to counter the publicly available evidence that Bushmaster was not licensed as a "dealer" in 2009 and 2010? What facts relating to Bushmaster's licensed status are exclusively within Remington's knowledge? At bottom, Plaintiffs' professed need for discovery on "the seller issue" is impermissibly vague and falls substantially short.

Plaintiffs broadly state that further "discovery on the corporate identities and governance of Bushmaster and Remington and the relationship between them" is needed, but do not elaborate in any reasonably precise way what additional discovery would shed light on the narrow factual question presented in Remington's motion—did Bushmaster have a Type 01 dealer license when it manufactured and transferred the firearm? Plaintiffs contend that they should be permitted to engage in wide-ranging discovery because at least one entity in the Remington family of companies—but not the entity that manufactured the subject firearm—has held Type 01 dealer licenses. Courts, however, are required to evaluate the viability of claims against one company based on its own actions and attributes, not those of its sister companies. *See Jazlowiecki v. Nationwide Ins. Co. of Am.*, No. HHDCV126036618S, 2014 WL 279600, at *4 (Conn. Super. Ct. Jan. 3, 2014) ("The plaintiff's attempt to aggregate claims against

Nationwide, its parent corporation, and various other subsidiaries contravenes well-established principles of corporate law.”). Whether a business entity other than Bushmaster had a Type 01 dealer license is wholly immaterial to the question of whether Bushmaster was a “seller” of the firearm involved in the shooting.

B. The Scheduling Order does not preclude summary judgment in Remington’s favor now.

Plaintiffs argue that the Scheduling Order prohibits filing of a summary judgment motion before the deadline provided in the Order, or, at least, gives them 16 months to respond. This is nonsensical. The Scheduling Order (1) requires the parties to file motions for summary judgment “by” a specified date, not “on” a specified date, and (2) provides for a customary 30-day response period. Accepting Plaintiffs’ argument that the parties must wait until October 2017 to assert their rights to summary judgment would defeat the purpose behind summary judgment entirely – “to eliminate the delay and expense” incident to litigation “when there is no real issue to be tried.” *Kakadelis v. DeFabritis*, 191 Conn. 276, 281 (1983). In any event, Practice Book Section 17-44 provides that “[i]f a scheduling order has been entered by the court, either party may move for summary judgment as to any claim or defense as a matter of right *by the time* specified in the scheduling order” (emphasis added). The Connecticut Appellate Court has reiterated that a defendant may file a motion for summary judgment *at any time*. *See, e.g., Girard v. Weiss*, 43 Conn. App. 397, 416, *cert. denied*, 239 Conn. 946 (1996) (“If we were to hold that a motion for summary judgment cannot be made prior to pleading a statute of limitations as a special defense, we would negate that portion of [Practice Book 17-44] that provides that a motion for summary judgment can be made 'at any time,' without the necessity of closing the pleadings.”)

Remington was well within its rights to file a motion for summary judgment now.

Plaintiffs' argument that they have until November 6, 2017 to respond to the motion is absurd. Plaintiffs had 10 days from the date Remington filed its motion to request additional time to respond under Practice Book Section 17-45 and they had the right to adequately invoke Practice Book Section 11-47. They did neither.

C. Evidence that Remington Arms Company held dealer licenses at some business locations does not make Bushmaster a "seller" of the subject firearm.

Plaintiffs argue that a hearing on Remington's Motion for Summary Judgment should be delayed pending further discovery because Remington Arms Company, which in 2010 was a subsidiary of the same parent company that owned Bushmaster, held Type 01 dealer licenses at various business locations. (Pls.' Mot. at 10.) Plaintiffs appear to contend that Remington Arms Company's federally-licensed status at certain locations in 2010 is attributable to Bushmaster because both entities were wholly owned by the same parent company. Plaintiffs, however, do not articulate any legal basis on which to disregard the separateness of these distinct corporate entities and treat them as one enterprise. Plaintiffs' reticence is understandable, because their attempt to cure the defect in their negligent entrustment claims by attributing Remington Arms Company's Type 01 dealer licenses to Bushmaster is legally baseless on at least two levels.

First, the federal firearm licenses ("FFL") issued by the Bureau of Alcohol, Tobacco, Firearms and Explosives cover only specific business premises. 27 C.F.R. § 478.50 (*See* Dkt. # 194 at Ex. A, reflecting pertinent sections of the Code of Federal Regulation.) All firearm businesses, even those with multiple locations and sister companies with a common parent, are required to obtain specific FFLs for specific types of business activities taking place at different locations. As a result, Remington Arms Company's various FFLs at multiple locations have absolutely no bearing on Bushmaster's licensed status in Maine, where the subject firearm was

manufactured in 2010.

Second, Connecticut courts routinely reject attempts to treat separate corporate entities as one in order to establish threshold elements necessary for liability to attach. The leading case of *SFA Folio Collections, Inc. v. Bannon*, 217 Conn. 220 (1991), is instructive. In *SFA Folio*, the Connecticut Commissioner of Revenue Services sought to impose sales and use taxes on SFA Folio Collections, Inc. (“Folio”), a mail order company based in New York, on the theory that, because Folio and a Connecticut-based company “are linked by their common corporate parent . . . their separate corporate existence should be disregarded and they should be treated as one enterprise for the purposes of establishing a nexus for taxation.” *Id.* at 230. Affirming the judgment of the trial court finding that the taxation of Folio violated the Due Process and Commerce Clauses of the U.S. Constitution, the Connecticut Supreme Court expressly rejected the Commissioner’s theory, noting that it would require the Court to “abandon our traditional notions of corporate law and ignore Folio’s separate corporate existence under an enterprise theory.” *Id.* at 231; *see also Jazlowiecki*, 2014 WL 279600, at *5 (striking plaintiff’s CUIPA claims because “plaintiff’s effort to allege a ‘general business practice’ as required by General Statutes § 38a–816(6) depends on its ability to aggregate alleged acts of the various Nationwide entities . . . its failure to justify disregarding the corporate structure is fatal to its CUIPA claims, even if a CUIPA private right of action existed.”). Plaintiffs’ request for unspecified discovery “on the corporate identities and governance of Bushmaster and Remington and the relationship between them” is premised on a fundamentally flawed conception of corporate law.¹

¹ The law of Delaware, the state of organization for Bushmaster, Remington Arms Company and Remington Outdoor Company, is in accord with the law of this state in recognizing the distinct identity of separate corporate entities. *See, e.g., In re Sunstates Corp. Shareholder Litig.*, 788 A.2d 530, 534 (Del. Ch. 2001) (“For the purposes of the corporation law, the act of one corporation is not regarded as the act of another merely because the first corporation is a subsidiary of the other, or because the two may be treated as part of a single economic enterprise for some other purpose. Rather, to pierce the corporate veil

Without offering any reasoning grounded in the basic principles of corporate law, Plaintiffs argue that relationships between Bushmaster and its parent company and the parent's subsidiaries "might come into play" in the Court's analysis and extensive discovery into those relationships is required in order to respond to Remington's motion. (Pls.' Mot. at 3.) However, the evidence is that Bushmaster was the legal entity that manufactured the subject firearm, and that Bushmaster was not a "seller" of the firearm, as defined in the PLCAA, because it did not have a "dealer" license. MSJ at Exhibit 2 at ¶ 6; MSJ at Exhibit 4 (showing that Bushmaster did not have a Type 01 dealer license in 2010); *see also* 15 U.S.C. § 7903(6)(B) (defining a seller, in pertinent part, as "a dealer (as defined in section 921(a)(11) of Title 18) who is engaged in the business as such a dealer in interstate or foreign commerce *and who is licensed to engage in business as such a dealer under chapter 44 of Title 18*") (emphasis added). Remington Arms Company and Remington Outdoor Company fail to meet the definition of "seller" for a different, but equally indisputable reason: neither entity sold the firearm that was used in the shooting. *See id.* § 7903(6) ("The term 'seller' means, *with respect to a qualified product . . .*").²

based on an agency or 'alter ego' theory, 'the corporation must be a sham and exist for no other purpose than as a vehicle for fraud.')

(quoting *Wallace ex rel. Cencom Cable Income Partners II, Inc., L.P. v. Wood*, 752 A.2d 1175, 1184 (Del. Ch. 1999)); *accord Angelo Tomasso, Inc. v. Armor Construction & Paving, Inc.*, 187 Conn. 544, 557 (1982) ("Ordinarily, the corporate veil is pierced only under exceptional circumstances, for example, where a corporation is a mere shell, serving no legitimate purpose, and used primarily as an intermediary to perpetrate fraud or promote injustice."). Connecticut courts routinely grant motions to strike piercing the corporate veil counts where legal conclusions rather than facts are alleged. *Ward v. RAK Construction, LLC*, No. CV095010067S, 2010 Conn. Super LEXIS 835 at *21 (Conn. Super Ct. Apr. 7, 2010). Here, Plaintiffs have not even attempted to plead that corporate veils should be pierced.

² Plaintiffs continue to make the untenable argument that they need not show that Bushmaster was the statutorily-defined "seller" of the *specific firearm* used by Adam Lanza in the shooting. (Pls.' Mot. at 7, n.3). Rather, according to Plaintiffs, it is sufficient to show that Bushmaster *generally* devoted "time, attention, and labor to dealing in firearms as a regular course of trade or business." (*Id.*) However, the entire structure of the PLCAA is focused on immunity for harm resulting from criminal misuse of "a qualified product," and the exceptions to immunity are similarly focused on conduct relating to a specifically manufactured or sold "qualified product." *See, e.g.*, 15 U.S.C. § 7903(5)(A) (defining a "qualified civil liability action" to include civil actions for damages "resulting

Despite the law and the evidence, Plaintiffs misleadingly profess confusion over the identity of the company that manufactured the subject firearm because briefing in this case has defined “Remington”—for the sake of brevity—to refer jointly to Remington Outdoor Company and Remington Arms Company. (Pls.’ Mot. at 5.) Plaintiffs assert that because the motion to strike included the statement that “*Remington* sold the firearm it had manufactured to Camfour” (*id.*; emphasis in original), there is a question about whether Bushmaster actually manufactured the subject firearm. Plaintiffs’ claim that they are confused is baseless. As described above, the evidence establishes that Bushmaster transferred the subject firearm under its Type 10 manufacturer license in 2010, and that Bushmaster was subsequently merged into Remington Arms Company. Indeed, Plaintiffs have correctly pleaded that Bushmaster manufactured the subject firearm and that Bushmaster subsequently merged into Remington Arms Company in 2011. (FAC at ¶¶ 18-19.)³

Finally, Plaintiffs argue that Bushmaster’s federal firearms license “likely has no bearing” on the question of whether it was a “seller” of the subject firearm and “it is absurd for Remington to insist that Bushmaster’s 2010 license number conclusively establishes that defendants are not sellers under the PLCAA.” (Pls.’ Mot. at 7.) Remington, however, has not

from the criminal or unlawful misuse of a qualified product ... by a third party.”) It is illogical to conclude that a manufacturer or a seller may have or lose immunity based on its status or conduct that is wholly-unrelated to the specific firearm that was used by a criminal to cause harm.

³ Remington produced documents on August 1, 2016 establishing that in 2009 and 2010, when Bushmaster manufactured the subject firearm and sold it under its Type 10 Manufacturer of Destructive Devices license (*see* MSJ at Exhibit 2), Bushmaster was a limited liability company that was wholly owned by Freedom Group, Inc. (“FGI”). (REM 03200) Documents have also been produced demonstrating that in 2011—*after* the subject firearm was manufactured and sold—Bushmaster merged into Remington Arms Company, a separate subsidiary of FGI. (REM 03201; *see also* FAC at ¶ 16.) Remington Arms Company was the surviving entity following the merger, and Bushmaster ceased to exist as a separate entity. (REM 03201) Plaintiffs’ own pleading demonstrates that they know that FGI, the parent company of Remington Arms Company, has been renamed Remington Outdoor Company, Inc. (FAC at ¶ 23.)

argued that it is entitled to summary judgment because Bushmaster's manufacturer license proves that it was not a "seller" of the subject firearm. Bushmaster was not a "seller" of the subject firearm because government records demonstrate that it did not have a dealer license when the firearm was manufactured and transferred in 2009 and 2010. Further discovery will not change this indisputable fact.

III. CONCLUSION

Based on the foregoing, REMINGTON ARMS COMPANY, LLC and REMINGTON OUTDOOR COMPANY, INC. respectfully request that Plaintiffs' Motion to Enforce Scheduling Order and/or Stay Response to Motion for Summary Judgment be denied, and that Plaintiffs be ordered to respond to Remington's Motion for Summary Judgment by October 18, 2016.

THE DEFENDANTS,

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was e-mailed on September 13, 2016 to

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