

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 26, 2016
	:	
Defendants.	:	

**REMINGTON’S MOTION TO MODIFY SCHEDULING ORDER**

Defendants REMINGTON ARMS COMPANY, LLC (“Remington Arms Company”) and REMINGTON OUTDOOR COMPANY, INC. (“Remington Outdoor Company” and, together with Remington Arms Company, “Remington”) move to modify the Court’s Scheduling Order as follows: Plaintiffs shall respond to Remington’s Motion for Summary Judgment (Dkt. # 218) by November 8, 2016; Remington shall reply to Plaintiffs’ response by November 29, 2016; and the Motion for Summary Judgment shall be argued on December 13, 2016, with all other Scheduling Order dates remaining in force and effect. In support of its motion, Remington states as follows:

1. On April 19, 2016, the Court entered a Scheduling Order that provided an October 6, 2017 deadline by which dispositive motions were to be filed and a December 4, 2017 date on which such motions were to be heard. (Dkt. # 147). The Court made it clear that the purpose of the dispositive motion deadline and hearing date was to ensure that dispositive motions would be argued at least four months before the April 2018 trial date. (Transcript of April 19, 2016 Hearing, pp. 9-10 attached as Exhibit A).

2. 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.” Practice Book § 17-44. Practice Book Section 17-47 provides that summary judgment “shall be entered forthwith if the pleadings, affidavits and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” Practice Book § 17-47. Connecticut courts consider the following factors when addressing motions to modify a scheduling order: whether good cause has been shown; whether there is prejudice to the opposing party; and whether modification would necessitate a lengthy continuance of the trial date. *See Marcucci v. General Growth Services*, 2016 Conn. Super. LEXIS at \*3 (Conn. Super. Ct. Jan. 11, 2016). Good cause exists to modify the Scheduling Order and consider Remington’s motion. Doing so will not prejudice Plaintiffs or delay trial.

3. On August 1, 2016, Remington filed a motion for summary judgment on Plaintiffs’ CUTPA and negligent entrustment claims. The motion is based only on Plaintiffs’ pleadings, publicly available information, and a Bushmaster Firearms International, LLC (“BFI”) invoice, and challenges Plaintiffs’ threshold ability to maintain their lawsuit against Remington. (Dkt. ## 218, 219). Remington’s motion establishes that Plaintiffs do not have standing to assert CUTPA claims against Remington, and the CUTPA claims they have attempted to assert were commenced after the applicable statute of limitations period.<sup>1</sup> The motion also establishes that BFI, the manufacturer of the firearm involved in the shooting, did not have a federal firearms “dealer” license, and therefore was not a “seller” of the firearm under the applicable definition of “seller” provided in the Protection of Lawful Commerce in Arms Act (“PLCAA”). 15 U.S.C. § 7903(6)(B). Under the operative provisions of the PLCAA, a negligent entrustment action can only be brought against a statutorily-defined “seller” of a firearm. 15 U.S.C. 7903(5)(A). The

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<sup>1</sup> Plaintiffs have not argued that they need discovery to respond to Remington’s motion for summary judgment on Plaintiffs’ CUTPA claims.

issues addressed in Remington's motion for summary judgment—standing, statute of limitations and immunity from suit—are threshold issues that are appropriately addressed early in a case.

4. Plaintiffs responded to Remington's Motion for Summary Judgment by arguing, in part, that they needed further discovery before they could respond to the merits of the motion. Plaintiffs did not specify what discovery they need on the question of whether BFI had a "dealer" license or why information relevant to this question is within the exclusive control of Remington. *See Dorazio v. M.B. Foster Electric Co.*, 157 Conn. 226, 230 (1968) (A party seeking more time to respond to a summary judgment motion 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."). BFI's status as a federal firearms licensee in 2010 is published on the Bureau of Alcohol, Tobacco, Firearms and Explosives' public website. Rather than making the required showing, Plaintiffs represented that they need discovery regarding Remington's corporate structure because they seek to attribute to BFI a "dealer" license held by a separate company that was owned by BFI's parent company, Freedom Group, Inc. Plaintiffs have not articulated any factual or legal basis for this theory, which departs from fundamental principles of corporate law. *See Angelo Tomasso, Inc. v. Armor Construction & Paving, Inc.*, 187 Conn. 544, 557 (1982) (Parent and subsidiary corporations are treated as separate and distinct legal entities absent "exceptional circumstances," such as where a corporation "is a mere shell, serving no legitimate purpose, and used primarily as an intermediary to perpetrate fraud or promote injustice.").

5. Remington does not seek to deprive Plaintiffs of any discovery that is reasonably calculated to lead to evidence material to the issues raised in its Motion for Summary Judgment. However, Remington's historical corporate structure is largely a matter of public record. Indeed,

Plaintiffs described the corporate structure in their First Amended Complaint, and any further discovery Plaintiffs may need on the subject will be minimal. Requiring Plaintiffs to respond to Remington's motion by November 8, 2016 affords Plaintiffs time to complete the discovery regarding Remington's corporate structure they deem necessary in order to respond to the merits of Remington's arguments.

6. A scheduling order should not impact any party's substantive right to have a motion for summary judgment on threshold legal issues heard expeditiously in order to avoid the expense of further litigation. After all, scheduling orders are entered "to reduce delay" in resolving cases. *McVerry v. Charash*, 96 Conn. App. 589, 600 (2006) ("It is well known that justice delayed, is justice denied."). Consistent with the purpose of scheduling orders, summary judgment "is designed to eliminate the delay and expense" incident to litigation "when there is no real issue" that needs to be tried. *Kakadelis v. DeFabritis*, 191 Conn. 276, 281 (1983). Remington has found no precedent for requiring modification of a scheduling order in order to perform a litigation task *earlier* than ordered. In any event, there is good cause for the Court to modify the Scheduling Order and hear argument on Remington's Motion for Summary Judgment "forthwith" because "the pleadings, affidavits and . . . other proof submitted show that there is no genuine issue as to any material fact" on Plaintiffs' CUTPA and negligent entrustment claims. Practice Book § 17-47. Because Remington's Motion for Summary Judgment raises discrete legal arguments that may be addressed on the current factual record, Plaintiffs will not be prejudiced by being required to respond by November 8, 2016, more than two months after Remington filed its Motion for Summary Judgment, and to participate in argument approximately 30 days thereafter. Addressing Remington's Motion for Summary Judgment promptly will not necessitate any continuance of the

trial date. Indeed, if the Court grants summary judgment in favor of Remington, there will not be a trial involving Remington.

7. The Court states in its September 14, 2016 Order (Dkt. # 232.10) that it “intends to hear all motions for summary judgment on the same date,” suggesting that if the Scheduling Order is modified and Remington’s Motion for Summary Judgment is heard prior to the current December 4, 2017 hearing date, the Court will not hear additional dispositive motions. Connecticut courts have recognized, however, that “[t]here is nothing in the rules of practice or in our case law ... that specifically restricts a party to one summary judgment motion.” *Fiaschetti v. Nash Engineering Company*, 47 Conn. App. 443, 445-56 (1998) (“We see no reason why a second motion for summary judgment, on a different ground, should not be considered.”); *Owens, Shine & Nicola, P.C. v. Travelers Casualty & Surety Co. of America*, No. CV095024601S, 2011 Conn. Super. LEXIS 1572 at \*19 (Conn. Super Ct. June 24, 2011) (“There is nothing in our rules of practice or in our case law ... that specifically restricts a party to one summary judgment motion.”); *Demeusy v. Town of Canton*, No. CV136040280S, 2016 Conn. Super. LEXIS 494 at \*6 (Conn. Super. Ct. Mar. 8, 2016) (A “second motion for summary judgment is permissible under our rules of practice as interpreted by our Supreme and Appellate Courts.”). Indeed, refusal to consider a second motion for summary judgment—in the event Remington elects to file such a motion—would frustrate “the desire for judicial efficiency inherent in the summary judgment procedure.” *Id.* at 446 (citing *Kakadelis*, 191 Conn. at 281).

WHEREFORE, REMINGTON ARMS COMPANY, LLC and REMINGTON OUTDOOR COMPANY, INC. request modification of the Court’s Scheduling Order as follows: Plaintiffs shall respond to Remington’s Motion for Summary Judgment (Dkt. # 218) by November 8, 2016; Remington shall reply to Plaintiffs’ response by November 29, 2016; and the Motion for

Summary Judgment shall be argued on December 13, 2016, with all other Scheduling Order dates remaining in force and effect.

THE DEFENDANTS,

REMINGTON ARMS CO., LLC and  
REMINGTON OUTDOOR COMPANY, INC.

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**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing was mailed on September 26, 2016 to the following counsel:

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# EXHIBIT A

NO: FBT-CV15-6048103 S : SUPERIOR COURT  
SOTO, DONNA L., ADMINISTRATRIX,  
ET AL. : JUDICIAL DISTRICT  
OF FAIRFIELD  
v. : AT BRIDGEPORT, CONNECTICUT  
BUSHMASTER FIREARMS  
INTERNATIONAL, ET AL. : APRIL 19, 2016

BEFORE THE HONORABLE BARBARA N. BELLIS, JUDGE

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Recorded and Transcribed By:  
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1           ATTY. RENZULLI: Federal Court, came back to  
2 you. It hasn't been before Your Honor very long.

3           THE COURT: No. But it's been -- my point was  
4 that it's been --

5           ATTY. RENZULLI: Correc.t

6           THE COURT: -- it's an old -- it's getting old  
7 so I want to move it towards trial. So I was  
8 thinking just a rough ballpark so that you can work  
9 back from it is I was thinking a trial date around  
10 two years from now. So that's the outset of what I  
11 was looking at. So that would be approximately,  
12 given everyone's trial schedules, could be sooner,  
13 you know, could be -- but not really later than that,  
14 so that would be April of 2018. And when you look at  
15 the return date of January, 2015, that's -- that's  
16 sort of the outset of what I'm comfortable with with  
17 the trial date. So maybe you work back from that.

18           The only other thing I would mention is that I  
19 don't need -- I think the scheduling order talks  
20 about eight months with respect to the motion for  
21 summary judgment. We don't need that eight months.  
22 All we need is for any motions for summary judgment  
23 that might be filed, we just need the motion for  
24 summary judgment argued four months before the trial  
25 date. So whatever your trial date -- if in fact your  
26 trial date is April, 2018, it really then would just  
27 need to be argued December of 2017 to give me the

1 four months that I'm entitled to for decision. So I  
2 don't need -- and you can actually pick -- you can  
3 actually pick the argument date now, just like you're  
4 going to pick the argument date for the motion to  
5 strike and such. I just want to remind you, because  
6 I might not remember, is that every month when we  
7 have these conferences, it's going to be incumbent  
8 upon counsel to go over to Case Flow and to pick the  
9 date for the next month. I may not remind you. But  
10 this way you can all have some input into the  
11 scheduling. Does that work?

12 Why don't I take a recess, you can work on  
13 scheduling orders, and just let Janice know, if you  
14 don't mind, when you're done and then I'll come back  
15 on the record, okay?

16 ATTY. RENZULLI: Thank you.

17 THE COURT: Take a recess.

18 **(THE COURT RECESSED AND RETURNED WITH THE**  
19 **FOLLOWING)**

20 THE COURT: Are we ready to go back on the  
21 record in Soto v Bushmaster?

22 ATTY. RENZULLI: Yes, Your Honor.

23 THE COURT: So maybe we can start with the  
24 motion for stay. Were you able to reach any  
25 agreement on what date I can go into the case, look  
26 at the motions for stay again, the objections which  
27 will be filed, and any replies which might be filed,

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BUSHMASTER FIREARMS  
INTERNATIONAL, ET AL. : APRIL 19, 2016

C E R T I F I C A T I O N

I hereby certify the foregoing pages are a true and correct transcription of the audio recording of the above-referenced case, heard in Superior Court, Judicial District of Fairfield, at Bridgeport, Connecticut, before the Honorable Barbara N. Bellis, Judge, on the 19<sup>th</sup> day of April, 2016.

Dated this 29<sup>th</sup> day of April, 2016, in Bridgeport, Connecticut.

  
\_\_\_\_\_  
Colleen Birney  
Court Recording Monitor