

STATE OF CONNECTICUT

DOCKET NO. FST CV 15 6048103-S : SUPERIOR COURT

DONNA L. SOTO, ADMINISTRATRIX : JUDICIAL DISTRICT
OF THE ESTATE OF VICTORIA L. : OF FAIRFIELD
SOTO, DECEASED, ET AL. : AT BRIDGEPORT

V. :

BUSHMASTER FIREARMS : DECEMBER 11, 2015
INTERNATIONAL, LLC, ET AL.

MEMORANDUM OF LAW
IN SUPPORT OF RIVERVIEW SALES, INC. AND
DAVID LaGUERCIA'S MOTION TO DISMISS
THE FIRST AMENDED COMPLAINT

The Defendants Riverview Sales, Inc. and David LaGuercia (Riverview Defendants) hereby respectfully file this Memorandum of Law pursuant to Practice Book § 11-10 (a)(2).

The issue is whether the statutory immunity afforded the Riverview Defendants pursuant to the Protection of Lawful Commerce in Arms Act 15 U. S. Code §§ 7901 et seq. (PLCAA) enacts a lack of subject matter jurisdiction upon this Court of all matters in the instant case relating to the Riverview Defendants.

Introduction

Plaintiffs' case against the Riverview Defendants should be dismissed in its entirety under the immunity afforded to firearm manufacturers by the Protection of Lawful Commerce in Arms Act. 15 U.S.C. § 7901 *et seq.* ("PLCAA"). Contrary to federal law, Plaintiffs seek to hold the Riverview Defendants responsible for the tragic shooting at Sandy Hook Elementary School under various legal theories, including (1) negligent entrustment, (2) products liability, and (3) violation

of the Connecticut Unfair Trade Practices Act (“CUTPA”). (*See, e.g.*, Plaintiffs’ First Amended Complaint (“FAC”) at Count Three, ¶¶ 213-227.) None of these claims survive application of the plain language of the PLCAA.

Rather than duplicate the arguments of the Bushmaster Defendants herein, the Riverview Defendants request that this Court take judicial notice of the Bushmaster Defendants' arguments, standards of review, and citations found in the record of this file as the Remington Defendants' Memorandum of Law in Support of their Motion to Dismiss Plaintiffs' First Amended Complaint dated December 11, 2015 and incorporate those argument, standards of review and citations herein and make them a part hereof.

Negligent Entrustment

One of the exceptions to the immunities enacted within PLCAA is "an action against a seller for negligent entrustment...." 15 U.S.C. § 7903(5)(A)(ii). Said statute defines negligent entrustment as follows:

[T]he supplying of a qualified product by a seller for the use by another person when the seller knows, or reasonably should know, *the person to whom the product is supplied* is likely to, and does, use the product in a manner involving unreasonable risk of physical injury to the person or others.

Id. 7903(5)(B) (italic added).

The First Amended Complaint alleges that Riverview Sales transferred the Bushmaster rifle at issue to Nancy Lanza on March 29, 2010. Am. Comp. ¶ 224 (Count 3). They further allege that it was Adam Lanza (not Nancy Lanza) who used the Bushmaster rifle in "a manner involving unreasonable risk of physical injury to the person or others" two and a half years later on December 14, 2012. *Id.* ¶¶ 187-90, 201-02, 204-06.

Because the Plaintiffs fail to allege the Bushmaster rifle was entrusted by the Riverview Defendants to the person they allege caused "unreasonable risk of physical injury" to the Plaintiffs,

the Plaintiffs have failed to state a cause of action upon which relief can be granted. Their complaint fails to fall within the exception found in the PLCAA and therefore should be dismissed.

Rather than duplicate the discussion of the Camfour Defendants herein, the Riverview Defendants request that this Court take judicial notice of the Camfour Defendants' arguments and citations found in the record of this file as the Memorandum of Law in Support of Defendants Camfour Inc.'s and Camfour Holding, Inc.'s Motion to Dismiss the First Amended Complaint dated December 11, 2015 and incorporate those arguments and citations relating to negligent entrustment and CUTPA herein and make them a part hereof.

As discussed in the Camfour Defendants' Memorandum of Law, the Connecticut Superior Court for the Judicial District of Hartford, Complex Litigation Docket at Hartford decided a case, *Gillard v. Sportsmen's Outlet, Inc.*, X04CV09 50332765-S, 2011 Conn. Super. LEXIS 1320 (2011). In *Gillard*, the court dismissed the action because the facts alleged by Plaintiffs failed to come within the negligent entitlement exception to the PLCAA.

The instant case is similar in that the Plaintiffs have failed to allege that the Riverview Defendants supplied the Bushmaster rifle to the shooter, Adam Lanza "for his use", but rather supplied it to his mother, Nancy Lanza, two and a half years before the tragic event at Sandy Hook.

For this reason, the Plaintiffs claim of negligent entitlement against the Riverview Defendants should fail, and the instant matter should be dismissed.

CONCLUSION

For the above-stated reasons, the Riverview Defendants respectfully move that Counts 3, 6, 9, 12, 15, 18, 21, 24, 27, 30, and 33 of the Plaintiffs' First Amended Complaint be dismissed.

Respectfully submitted,

DEFENDANTS RIVERVIEW SALES, INC.
and DAVID LaGUERCIA

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CERTIFICATE OF SERVICE

I hereby certify that on the December 11, 2015, I caused to be served a copy of the foregoing document on all counsel of record listed below, via the Court's ECF system.

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Commissioner of the Superior Court