

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION**

City of Chicago, an Illinois municipal corporation,	)	
	)	
Plaintiff,	)	Hon. Clare J. Quish
v.	)	No. 2021 CH 01987
	)	Calendar 14
Westforth Sports, Inc.,	)	
	)	
Defendant.	)	

**MEMORANDUM OPINION AND ORDER**

This matter comes for ruling on Plaintiff City of Chicago’s (“the City”) Motion to Compel Production of Documents directed to Defendant Westforth Sports, Inc.’s (“Westforth”) Section 2-619 Motion to Dismiss for Lack of Personal Jurisdiction. The Court considered the Motion to Compel, Westforth’s response, the City’s reply, and Defendant’s Notice of Supplemental Authority in Opposition to Plaintiff’s Motion to Compel, and the arguments from both parties at the hearing on March 11, 2022. For the following reasons, this Court grants the City’s Motion to Compel.

**The Complaint**

In its complaint, the City alleges the following: Westforth is a federal firearms licensee (“FFL”), a retail dealer in firearms located in Gary, Indiana, approximately ten miles from Illinois. Westforth transacts business within Illinois and with Illinois residents by selling firearms, ammunition and other products directly to Illinois residents at its retail counter; advertising to out-of-state residents generally and Illinois residents in particular; selling firearms over the Internet to Illinois residents; and shipping firearms to Illinois dealers for transfer to Illinois residents.

The City further alleges that Westforth knows, or reasonably should know, that many of its gun trafficking customers are bringing Westforth’s firearms to Chicago. Westforth creates a public nuisance by knowingly selling firearms to “straw purchasers,” who purchase guns and

subsequently resell them to other people, typically those who cannot legally purchase firearms themselves. The complaint alleges that Westforth sold firearms to “at least 40 separate purchasers who have since been charged with federal firearms crimes in connection with their transactions at the store.” Compl. ¶ 52. The complaint specifically names 14 such purchasers.

The City alleges that Westforth “has engaged in a pattern of illegal sales that has resulted in the flow of hundreds, if not thousands, of illegal firearms into the City” and that it “feeds the market for illegal firearms by knowingly selling its products to an ever-changing roster of gun traffickers and straw (sham) purchasers who transport Westforth’s guns from Indiana into Chicago, where they are resold to individuals who cannot legally possess firearms, including convicted felons and drug traffickers.” Compl. ¶1. This allegation underlies the complaint’s four counts: Count I, Public Nuisance; Count II, Municipal Cost Recovery Ordinance (seeking to recover the City’s investigation, response, and litigation costs); Count III, Negligence; and Count IV, Negligent Entrustment.

The complaint alleges that Westforth supplies many guns recovered by law enforcement (described as “crime guns”) and that studies conducted between 2009-2016 consistently rank Westforth as the highest out-of-state supplier of crime guns in Chicago. A large percentage of crime guns traced to Westforth have a short “time-to-crime,” defined as the period between the date of the retail sale and the date of recovery by law enforcement. The complaint alleges that according to the ATF, a time-to-crime of three years or less is a “significant trafficking indicator” that “suggests illegal diversion or criminal intent associated with the retail purchase.” Compl. ¶31. More than 40% of Westforth crime guns recovered in Chicago between 2009 and 2016 had a time-to-crime of less than three years.

Additionally, the complaint explains gun sale regulations, specifically gun dealers’ obligation to guard against straw purchasing. When selling guns, an FFL such as Westforth is

required to have purchasers complete ATF Form 4473. Compl. ¶34-39. This form asks, among other things:

Are you the actual transferee/buyer of the firearm(s) listed on this form...?  
Warning: You are not the actual transferee/buyer if you are acquiring the firearm(s) on behalf of another person. If you are not the actual transferee/buyer, the dealer cannot transfer the firearm(s) to you.

Compl. ¶37. According to the complaint, a seller is prohibited from completing the sale if the seller knows or has reason to know that the information in the form is inaccurate. Sellers certify that it is their “belief that it is not unlawful [ ] to sell, deliver, transport, or otherwise dispose of the firearm(s) listed on this form to the [buyer].” Compl. ¶38. The complaint alleges that Westforth received various citations from the ATF, some of which involve Westforth’s failures to ensure that a customer was the actual buyer/transferee, rather than a straw purchaser.

The City alleges that this Court has personal jurisdiction over Westforth under 735 ILCS 5/2-209 because Westforth transacts business within Illinois. Westforth advertises to residents of other states online. Westforth’s Google.com business listing includes a question-and-answer section with guidance specifically for Illinois residents interested in purchasing firearms that informs Illinois customers that they will be required to provide their FOID (Firearm Owners Identification) cards and follow Illinois-specific waiting periods. The City alleges that this indicates that Westforth specifically targets Illinois residents as potential customers and that Westforth does regular business with Illinois residents at its retail store. The complaint cites a May 2018 Facebook advertisement in which Westforth promoted itself as “open to qualifying residents of all 50 states of the US,” soliciting customers who “live outside of Indiana” to “contact us for help finding a participating dealer near you.” Compl. ¶19.

#### Westforth’s Section 2-619 Motion to Dismiss for Lack of Personal Jurisdiction

Westforth filed a Section 2-619 Motion to Dismiss for Lack of Personal Jurisdiction, arguing that Illinois lacks personal jurisdiction, either general or specific, over Westforth. In sum,

Westforth argues that all of the activity about which the City complains involves retail firearm sales in Indiana to Indiana residents who provided valid, government-issued photo IDs proving their Indiana residency. Westforth argues that its conduct was not purposefully directed toward Illinois, which would be necessary to establish specific jurisdiction. Therefore, Westforth argues, the acts of anyone other than Westforth subsequent to such sales cannot create personal jurisdiction over Westforth, and the City's claims must be dismissed.

Westforth attaches the affidavit of Earl Westforth ("Mr. Westforth"), the president and secretary of Westforth. Mr. Westforth avers that "For each transaction specifically addressed in Plaintiff's complaint, the purchasers, under penalty of perjury and other consequences, indicated on multiple lines that they were Indiana residents and provided valid, government-issued photo identification as required under the Gun Control Act to prove their Indiana residence." MTD Ex. A-1 at ¶32. The affidavit discusses each of the 14 purchasers named in the City's complaint and attaches hundreds of pages of firearm transaction records related to those purchases.

Mr. Westforth also averred that Westforth has never sold handguns at retail to anyone other than Indiana residents. *Id.* at ¶¶9-14. He denied that Westforth ever conducted or solicited business in Illinois. As for long guns, he testified that Westforth "is permitted to sell long guns legally at retail to residents of other states only within the State of Indiana and only if such sales are legal both in Indiana and the purchaser's state of residence." *Id.* at ¶15. He averred that from January 2011 to the present, Westforth has never targeted advertising to Illinois. Mr. Westforth also testified that Westforth "made occasional transfers of firearms directly to other FFLs pursuant to 27 C.F.R. § 478.94 on rare occasions." *Id.* at ¶27. He also averred that Westforth "currently does not sell firearms to Illinois residents even if they come to Indiana and meet the requirements for a lawful purchase." *Id.* at ¶21.

### The City's Motion to Compel

As the parties conducted discovery on the issue of personal jurisdiction raised in Westforth's Motion to Dismiss, the City provided Westforth with an updated list of 49 purchasers whose transaction records it sought, which included the 14 alleged straw purchasers named in the complaint as well as 35 new names. The City also sought Westforth's records relating to its sales of guns to Illinois customers. After Westforth objected to these discovery requests, the City filed this motion to compel.

In the instant motion, the City moves to compel Westforth to produce its business records that the City argues are necessary to respond to Westforth's Motion to Dismiss under Supreme Court Rule 201(l)(1) in the following two categories:

1. Records of Westforth's transactions with the 35 additional purchasers identified by the City; and
2. Records pertaining to Westforth's sales to Illinois customers (both over the counter and via other gun stores). The City subsequently narrowed this request to include only log book entries for three years of these sales.

The City contends that Westforth put these records at issue in its motion to dismiss and Mr. Westforth's affidavit and the City needs them to verify Westforth's statements. It also contends that these records are relevant to the issue of this Court's personal jurisdiction over Westforth or are reasonably calculated to lead to the discovery of such information, including whether and how Westforth was on notice of straw purchasing. In response, Westforth argues that the transaction records for the additional 35 purchasers are not relevant to the causes of action and that producing these documents would be overly burdensome and invasive to its customers' privacy. Westforth also argues that its present sales to Illinois residents are few in number and that the complaint is based on Westforth's alleged straw purchase sales, not direct sales, and therefore, these documents are irrelevant.

## Analysis

Supreme Court Rule 201(l)(1) allows a plaintiff to obtain discovery on the issue of personal jurisdiction when a defendant challenges such jurisdiction through a motion to dismiss. Ill.Sup.Ct.R. 201(l)(1). Where the defendant contests the circuit court's personal jurisdiction and plaintiff requests discovery on the issues raised, the trial court, pursuant to the provisions of Rule 201(l), "must allow that inquiry." *Falstad v. Falstad*, 152 Ill.App.3d 648, 655 (1st Dist. 1987). See also *Sabados v. Planned Parenthood*, 378 Ill.App.3d 243, 245 (1st Dist. 2007) (allowing discovery pursuant to Rule 201(l) after defendant filed a motion to dismiss challenging the court's personal jurisdiction). The court may issue such orders as are necessary and reasonable to protect the defending party against misuse of discovery, and must, under Rule 201(l), limit the inquiry to those matters raised by the motion. *Falstad*, 152 Ill.App.3d at 655. The scope of information considered "relevant" is broad, including not only evidence that would itself be admissible at trial, but also information leading to the discovery of admissible evidence. *Kunkel v. Walton*, 179 Ill.2d 519, 531 (1997).

The plaintiff has the burden to establish a *prima facie* basis to exercise personal jurisdiction over a nonresident defendant. *Russell v. SNFA*, 2013 IL 113909, ¶28. Illinois applies the minimum contacts test to determine whether personal jurisdiction, either general or specific, exists. *Id.* at ¶36. "Specific jurisdiction requires a showing that the defendant purposefully directed its activities at the forum state and the cause of action arose out of or relates to the defendant's contacts with the forum state. Under specific jurisdiction, a nonresident defendant may be subjected to a forum state's jurisdiction based on certain 'single or occasional acts' in the state but only with respect to matters related to those acts." *Id.* at ¶40 (internal citations omitted).

This Court, therefore, must determine if the discovery sought by the City is admissible, or could lead to the discovery of admissible evidence, related to whether Illinois has personal

jurisdiction over Westforth in this case and the issues raised by Westforth in its motion to dismiss.

First, the City seeks the production of documents relating to 35 more alleged straw purchasers, arguing, *inter alia*, that they are relevant because they may show that Westforth knew the person completing the form was not the actual purchaser of the gun and that the actual purchasers were Illinois residents. Westforth argues that the City's claims relate to sales at its retail store in Indiana to individuals who provided government identification showing Indiana residency, citing the records it voluntarily produced about the 14 purchasers named in the complaint. In its motion to dismiss, Westforth argues that those sales do not demonstrate that Westforth purposefully directed its activities towards Illinois. Now Westforth appears to argue, in response to the motion to compel, that the records of the additional 35 purchasers would not be sufficient to establish personal jurisdiction over Westforth based on the allegations of the City's complaint and they are not relevant.

The Court holds that the documents requested are relevant, within the meaning of *Kunkel*, to the claims raised in the City's complaint to determine whether these purchasers were Illinois or Indiana residents. The Court also agrees with the City that Westforth has made an issue of the residency of these 35 alleged straw purchasers by the arguments and facts raised in its motion to dismiss for lack of jurisdiction. Therefore, the City has the right to obtain discovery that could lead to admissible evidence related to Westforth's assertions about its gun sales to the remaining 35 alleged straw purchasers, including the serial numbers for the firearms issued and names of Westforth employees who participated in the transactions.

The Court also finds that the transaction records of these 35 alleged straw purchasers are relevant to the determination of whether Westforth, when selling to these purchasers, believed that they were purchasing the guns to transfer them to others, an allegation central to the City's complaint and the personal jurisdiction analysis. Therefore, discovery on the issue of Westforth's

awareness that its guns would be sold in Illinois is relevant to the analysis of specific jurisdiction.

Although Westforth voluntarily attached the transaction records of 14 of these purchasers to its motion to dismiss, it now refuses to provide those records as to the remaining 35 purchasers, arguing that doing so would be unduly burdensome. However, Westforth provides no explanation or details as to how or why this production would be burdensome, such as the cost or number of hours needed to search for and produce such records, from which the Court could evaluate Westforth's claim. Westforth argues that producing the records would violate its consumers' privacy, but the parties could address this concern with the appropriate redactions and/or a protective order. Accordingly, the Court grants the City's motion to compel as to these records.

Second, the City seeks records pertaining to Westforth's sales to Illinois customers (both over the counter and via other gun stores). At oral argument, the City explained that it narrowed this request to include only log book entries for the year Westforth claims to have stopped selling to Illinois customers, plus the three preceding years.

The Court finds that these records are relevant to when and under what circumstances Westforth sold guns to Illinois residents because the records relate to whether Westforth directed its activities at the forum state of Illinois and whether the causes of action alleged by the City in its complaint arise out of such contacts, all of which is related to the application of specific jurisdiction over Westforth in this case.

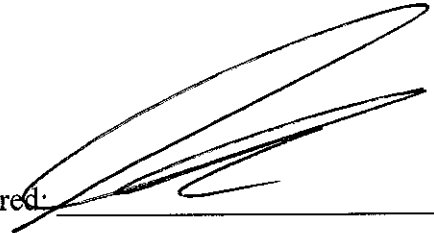
In Westforth's Motion to Dismiss, Westforth argues that it does not "currently" sell to Illinois residents, and only sends firearms to other FFLs (which include Illinois gun stores) for sale to Illinois residents "on rare occasions." MTD at p. 3, 4. Westforth admits that its contacts with Illinois "are of jurisdictional significance." MTD at p. 10. With this argument, Westforth has placed information concerning its direct sales to Illinois residents at issue. Although Westforth argues that retail long gun sales to Illinois residents at Westforth's place of business in Indiana



cannot confer specific jurisdiction over Westforth on Plaintiff's claims, that is not the issue in this motion to compel. At this stage, the Court does not decide whether it would be proper to exercise personal jurisdiction over Westforth—only whether the documents and discovery sought by the City are relevant or could lead to the discovery of admissible evidence related to this jurisdictional analysis. Although Westforth offered to provide aggregate information of annual handgun and long gun shipments to Illinois, derived from an "Acquisition and Disposition" book, its offer is not responsive to the discovery request and would not provide the City with the necessary information to conduct its own analysis and review of Westforth's Illinois sales.

**Conclusion**

For the foregoing reasons, this Court grants the Plaintiff's Motion to Compel Discovery and orders Westforth to produce: (1) records of Westforth's transactions with the 35 additional purchasers identified by the City; and (2) log book entries pertaining to Westforth's sales to Illinois customers (both over the counter and via other gun stores) for the year Westforth stopped selling to Illinois customers and the preceding three years.

Entered: 

Judge Clare J. Quish

April 8, 2022

Judge Clare J. Quish  
APR 08 2022  
Circuit Court - 2160