

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

CITY OF CHICAGO, an Illinois)
Municipal Corporation,)
)
Plaintiff,)
)
-vs-)
)
WESTFORTH SPORTS, INC.,)
Defendant.)
)

Case No.: 2021 CH 01987

Judge: Clare J. Quish

**WESTFORTH’S RESPONSE IN OPPOSITION TO
THE CITY’S MOTION TO MODIFY THE COURT’S MAY 25, 2023 ORDER
AND FOR LEAVE TO FILE AN AMENDED COMPLAINT**

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Dated: July 24, 2023

Now comes Defendant, Westforth Sports, Inc., to respectfully submit the following response in opposition to Plaintiff, City of Chicago's motion to modify the Court's May 25, 2023 order and for leave to file an amended complaint.

INTRODUCTION

Westforth is an Indiana corporation with its principal place of business in Indiana. It happens to be a large firearms dealer near the state line. All of the activity about which the City complained, however, involved retail firearm sales in Indiana to Indiana residents who provided valid, government-issued photo IDs proving their Indiana residency. Specifically, the City alleged that "Westforth feeds the market by knowingly selling its products to an ever-changing roster of gun traffickers and straw (sham) purchasers who transport Westforth's guns from Indiana to Chicago" and that "guns are frequently brought into Chicago from Indiana and Wisconsin – two neighboring states that have significantly weaker gun laws." Complaint, ¶ 1, 28. Thus, it is these theories – the City's theories -- that drove this Court's consideration of Westforth's motion to dismiss and the two years of litigation that led up to it.

On May 25, 2023 the Court properly dismissed the City's claims against Westforth for lack of personal jurisdiction. That dismissal was with prejudice and, as such, it is *res judicata* as to the issue litigated: whether Illinois has personal jurisdiction over Westforth for the claims set forth in the City's complaint. At oral argument on January 31, 2023 and again following the Court's announcement of its order on May 25, 2023, the City stated its intent to plead other claims. Prior to the Court's ruling, however, it never did.

Now, after Court's final order properly dismissing the City's claims for lack of personal jurisdiction, rather than litigate its original claims in the proper jurisdiction or bring new and

different claims in whatever venue it chooses to do so, the City is improperly attempting to use 735 ILCS 5/2-1203 and ILCS 5/2-616 to create an opening to amend its complaint for a second bite at the apple. The law does not support such a maneuver and, even if it did, it is within the Court's discretion not to countenance such blatant gamesmanship. Accordingly, the City's motion to modify the May 25, 2023 order and for leave to file an amended complaint should be denied.

ARGUMENT

I. THE CITY'S MOTION TO MODIFY SHOULD BE DENIED AS IT HAS NOT DEMONSTRATED THAT THE COURT COMMITTED ANY ERROR.

“A motion [under Section 2-1203 of the Illinois Rules of Civil Procedure] is designed to alert the trial court to errors it has committed and afford an opportunity for their correction. Such motion is addressed to the trial court's discretion.” *Dolido v. Zenith Radio Corp.*, 194 Ill. App. 3d 268, 271 (1st Dist. 1990); *see also, In re Marriage of Stuart*, 141 Ill. App. 3d 314, 316 (5th Dist. 1986).¹ Absent the demonstration of an actual error to correct, there are no sufficient grounds for a Section 2-1203 motion. As the movant, the City carries the burden of establishing sufficient grounds to justify the relief requested. *See, Espedido v. St. Joseph Hospital*, 172 Ill. App.3d 460, 467 (2nd Dist. 1988); citing, *Kosten v. St. Anne's Hospital*, 132 Ill. App. 3d 1073, 1080 (1st Dist. 1985).

Unless the City can demonstrate that the trial Court erred in ruling as it did, its motion under Section 2-1203 must fail. It cannot do so.

¹ “In deciding whether the trial court abused its discretion in this context, the question is not whether the appellate court agrees with the trial court, but whether the trial court acted arbitrarily without conscientious judgment, or, in view of all the circumstances, exceeded the bounds of reason and ignored recognized principles of law such that substantial prejudice resulted.” *Steiner v. Eckert*, 2013 IL App (2d) 121290, *P16 (2nd Dist. 2013).

A. The Court Properly Concluded That The City's Claims Did Not Arise Out Of Or Relate To Westforth's Contacts With Illinois.

The Court did not err in granting Westforth's motion to dismiss the City's claims for lack of personal jurisdiction. The City brought claims relating to retail sales of handguns in Indiana to individuals who presented government-issued Indiana identification to demonstrate their Indiana residence. The Court properly applied the applicable law to correctly conclude that the City's claims neither arose out of or related to Westforth's contacts with the Illinois and, therefore, specific personal jurisdiction could not be exercised over Westforth relating to claims based on those retail transactions. Nothing in the Court's analysis of Westforth's personal jurisdiction defense was erroneous, and the substance of the Court's ruling was proper.

B. The Court Properly Dismissed The City's Claims With Prejudice.

The Court did not err in granting Westforth's motion to dismiss the City's Claims for lack of personal jurisdiction with prejudice. Where an Illinois trial court finds that it lacks personal jurisdiction over a defendant, dismissal of those claims with prejudice is proper. *Sheikholeslam v. Favreau*, 2019 IL App (1st) 181703, *P28 (1st Dist. 2019); *Longo v. AAA-Michigan*, 201 Ill.App.3d 543, 549 (1st Dist. 1990) (affirming dismissal with prejudice for lack of personal jurisdiction.); *Rios v. Bayer Corp.*, 2020 IL 125020, *P35 (2020). In granting Westforth's motion to dismiss for lack of personal jurisdiction with prejudice, the Court put to rest -- subject to any appellate court ruling -- the question of whether Illinois could exercise personal jurisdiction over Westforth on the claims that the City had actually brought against it.

The City's argument seems to center on a mistaken concern that the Court's dismissal on jurisdictional grounds may have *res judicata* effect barring its ability to bring claims elsewhere. That argument is a red herring. "Unless the order of dismissal or a statute of this State otherwise

specifies, an involuntary dismissal of an action, other than a dismissal for lack of jurisdiction, for improper venue, or for failure to join an indispensable party, operates as an adjudication upon the merits.” Supreme Court Rule 273 (87 Ill. 2d R. 273) (emphasis added); see also, *Patzner v. Baise*, 144 Ill. App. 3d 42, 44 (2nd Dist. 1986) (dismissal for lack of jurisdiction did not operate as adjudication of the merits, and *res judicata* does not apply); *Stone v. Whalen*, 129 Ill. App. 2d 462, 464 (2nd Dist. 1970) (where the former action is dismissed for lack of jurisdiction, it will not bar a subsequent action).²

Numerous prior Illinois decisions support the Court’s dismissal the City’s claims against Westforth for lack of personal jurisdiction and to do so with prejudice. The City’s mistaken understanding of the effect of such is not indicative of any error which is prerequisite to relief under Section 2-1203, and the City’s motion to modify the Court’s May 25, 2023 order should be denied.

C. The City Cannot Properly Rely On Section 2-1203 To Plead New Claims.

A motion to vacate a judgment and open up proceedings for further pleading and proof should not be granted where it is merely an attempt to set up a new and different cause of action than in the original suit. *Herr v. Morgan*, 324 Ill. App. 16, 20 (upholding trial court’s denial of motion to vacate and request to file amended pleading). “Illinois courts have held that a motion for leave to amend a complaint is not a motion directed at the final judgment ... encompassed within relief provided for by section 2-1203.” *Shutkas Elec., Inc. v. Ford Motor Co.*, 366 Ill. App.3d 76, 81 (1st Dist. 2006; citing, *Andersen v. Resource Economics Corp.*, 133 Ill. 2d 342, 346 (1990); *Fultz v. Haugen, Vanderplow v. Krych*, 332 Ill. App.3d 53-54 (1st Dist. 2002).

² This is consistent with federal rules. In *Colucci v. Whole Foods Mkt. Servs.*, 2021 U.S. Dist. LEXIS 64063 (N.D. Ill 2021), the Northern District of Illinois recognized that its grant of dismissal for lack of personal jurisdiction is “with prejudice as to refileing in any Illinois court but without prejudice as to the merits of the plaintiffs’ claim.”

II. THE CITY'S MOTION FOR LEAVE TO FILE AN AMENDED COMPLAINT SHOULD BE DENIED.

Where a trial court's dismissal follows a final judgment, a plaintiff has no statutory right to amend its pleadings. *Folkers v. Drott Manufacturing Co.*, 152 Ill. App. 3d 58, 68 (1st Dist. 1987) Rather, under 735 ILCS 5/2-616, after a final judgment, a party may seek to amend pleadings only to conform the pleadings to the proofs, and the decision whether to grant such amendment is left to the discretion of the trial court. *Gomez v. Vitino's Pizza*, 192 Ill. App. 3d 1046, 1050 (1st Dist. 1990).³ However, "although this court encourages a liberal construction of section 2-616(c) as applied to prejudgment motions, it has recognized a separate discretionary standard for allowing amendments after judgment." *Mandel v. Hernandez*, 404 Ill. App. 3d 701, 707-708 (1st Dist. 2010) (upholding trial court decision to deny post-judgment motion for leave to amend); citing, *Compton v. Country Mut. Ins.*, 382 Ill. App. 3d 332 (noting that a trial court's decision to allow amendments before judgment is reviewed differently than a trial court's decision to allow amendments after judgment); *Colgan v. Premier Electrical Construction Co.*, 92 Ill. App. 3d 407, 412 (1st Dist. 2010).⁴

It is a proper exercise of discretion to deny a motion for leave to amend when a plaintiff had the opportunity to amend the complaint before the trial court entered its final judgment but failed to do so. *Hassan v. Yusuf*, 408 Ill. App. 3d 327, 360 (1st Dist. 2011). Here, the City was the master of its own claims when it crafted and filed its complaint on April 26, 2021 alleging claims based on sales of firearms in Indiana to Indiana residents that the City alleges to be straw purchasers seeking to avail themselves of Indiana's "significantly weaker gun laws." For over two years the parties litigated those claims. The City completed depositions of Westforth employees by early July 2022

³ Of course, such amendment is proper only to conform pleadings to match a finding, not to completely rewrite pleadings to allege new claims about different transactions and in essence start a whole new lawsuit.

⁴ The City's motion argues the factors applicable only to pre-judgment amendment motions. They do not apply.

and had all of Westforth's document production months prior to that and well over a year before the Court issued its May 25, 2023 decision dismissing the City's claims. At any time during the pendency of its claims, the City could have asked the Court for leave to amend its complaint and bring different claims based on different transactions involving different customers, but it did not do so. Instead, the City decided to wait and see how the Court ruled. Only now, after the issuance of a final order dismissing its claims, is the City taking steps to amend its pleadings. The law does not support what the City is trying to do.⁵

Ultimately, the City has choices. If it wants to sue Westforth regarding sales of firearms in Indiana to Indiana residents, it can attempt to do so in a court that actually has jurisdiction over those claims, and adding new and different theories now will not create jurisdiction over those transactions. Moreover, it wants to sue Westforth about something else in this Court or somewhere else, it can attempt to do that as well. What would not be proper would be for the Court to allow the City benefit from its "wait and see" gamesmanship by granting its motion for leave to file an amended complaint at this stage, and the City's motion for leave to amend should be denied.

CONCLUSION

The Court properly dismissed the City's complaint against Westforth with prejudice for lack of personal jurisdiction, and it committed no error in doing so. Absent error, Section 2-1203 does not provide any basis for the Court to modify or vacate its May 25, 2023 ruling. Likewise, a motion for leave to amend is improper under Section 2-1203 and likewise not supportable under 753 ILCS

⁵ As it stands, the City's claims are dismissed with prejudice and there is no longer any complaint to amend. "As the court's discretion to allow an amendment is curtailed following a final judgment," it is not abuse of discretion for a trial court to refuse to allow an amended complaint after it had dismissed the cause with prejudice. *Muirfield Vill-Vernon Hills, L.L.C. v. Reinke*, 349 Ill. App. 3d 178, 196 (2nd Dist. 2004) (internal citations omitted) (the Court of Appeals noted the plaintiffs' failure to seek amendment previously as well as their attempts to introduce new theories of recovery).

5/2-616 where the City's claims have been dismissed with prejudice and the City chose not to seek amendment to put forth new theories prior to dismissal.

WHEREFORE, for the reasons set forth above, Westforth respectfully requests that this Court deny the City's motion to modify the Court's May 25, 2023 order and for leave to file an amended complaint.

Dated: Dayton, Ohio

July 24, 2023

Respectfully submitted,

By:

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