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d/b/a Delia's Gun Shop

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY, PENNSYLVANIA

City of Philadelphia	:	CASE NO.: 230702394
	:	
Plaintiff	:	CIVIL DIVISION
	:	
v.	:	
	:	
Tanner Operations, LLC, *et. al.*	:	
	:	
Defendants	:	

DEFENDANT MAD MINUTE ENTERPRISES, LLC'S REPLY BRIEF IN OPPOSITION TO PLAINTIFF'S MOTION TO COMPEL DISCOVERY PRODUCTION AND RESPONSES

AND NOW COMES, Mad Minute Enterprises, LLC, d/b/a Delia's Gun Shop (hereinafter "Delia's"), by and through its attorneys, Goldstein Law Partners, LLC, to file the following Reply Brief in Opposition to Plaintiff's Motion to Compel Discovery Productions and Responses, by averring as follows;

I. Matter Before the Court

Presently before the Court is Plaintiff's Motion to Compel Discovery Productions and Responses ("Motion").

II. Questions Presented

Should the Court deny Plaintiff's Motion?

Suggested Answer: Yes

III. Facts

Plaintiff filed a complaint seeking to hold Delia's liable under theories of public nuisance, negligence, negligence per se, negligent entrustment, and violation of 18 Pa.C.S.A. § 6111(g)(6), for the acquisition and misuse of firearms by third-party criminals beyond Defendants' control. In support of its claims, Plaintiff attempts to lay at Delia's feet, through baseless claims, generalizations and broad statics, essentially the entirety of the City of Philadelphia's scourge of gun violence based on 31 alleged straw purchases over a three-year period.

Plaintiff among other relief, seeks the appointment of a special master for a minimum of five years to oversee Defendants' operations, asks that Defendants be ordered to undertake administrative practices in excess of those required by federal and state law, ask Defendants to post a bond against future violations, ask Defendants to pay into an abatement fund to address "continuing harms", and demand monetary damages from Defendants including incurred costs [i.e., Plaintiff's costs for providing police and first responders services to the City of Philadelphia] as well as pre- and post-judgment interest, punitive and exemplary damages, and attorney's fees.

On March 5, 2024, Plaintiff served its first Request for Production ("RFP") and its first Interrogatories ("ROG") (together, the "Discovery Requests") upon Delia's. On May 14, 2024, Delia's provided Plaintiff's with its Answer and Objections to the Discovery Requests and an Amended Answer and Objections to the Discovery Request on July 18, 2024. Notwithstanding Delia's full response and production as permitted by statute, Plaintiff's have filed the motion at hand seeking further production in violation of Section 6111(i) and/or 18 U.S.C. § 926.

IV. Argument

1. Pennsylvania Uniform Firearms Act 18 PA. CONS. STAT. § 6111(i) and 18 U.S.C. §§ 927 prevent production of the requested discovery.

Section 6111(i) of the Uniform Firearms Act ("UFA") states in full:

> **CONFIDENTIALTY - - All information provided by the potential purchaser, transferee or applicant**, including, but not limited to, the potential purchaser, transferee or applicant's name or identity, furnished by a potential purchaser or transferee under this section or any applicant for a license to carry a firearm as provided by section 6109 **shall be confidential and not subject to public disclosure**. In addition to any other sanction or penalty imposed by this chapter**, any person, licensed dealer, State or local governmental agency or department that violates this subsection shall be liable in civil damages in the amount of $1,000 per occurrence or three times the actual damages incurred as a result of the violation, whichever is greater, as well as reasonable attorney fees.** (emphasis added).

To put it plainly, Section 6111(i) the disclosure of any information provided by the purchaser to the dealer is prohibited and any violation is subject to civil penalties. Thus, in this case, the disclosure of the purchaser information sought by Plaintiff is prohibited and would subject Delia's to civil liability should they violate the prohibition. *See Pa. Restaurant & Lodging Ass'n v. City of Pittsburgh*, 211 A.3d 810, 822 (Pa. 2019) (statutory interpretation "begins and ends with the plain language of the statute.")

When reviewing this very section, the Commonwealth Court agreed with this clear interpretation and stated,

> [w]e therefore interpret Section 6111(i) of the UFA to mean that "any person, licensed dealer, State or local governmental agency or department" **violates Section 6111(i) of the UFA by revealing an "applicant's name or identity" to a person not** (1) authorized to receive such information by statute; (2) involved in the operation or management of the sheriff's office; (3) representing a law enforcement or criminal justice agency; or (4) otherwise authorized by an applicant. **Disclosure to any other person constitutes "public disclosure" for purposes of this section. Any other**

> **interpretation of Section 6111(i) of the UFA where a License applicant's confidentiality is not safeguarded would be inconsistent with the UFA's purpose and structure.** (emphasis added).

Doe v. Franklin Cnty., 139 A.3d 296, 307 (Pa.Cmwlth. 2016), *rev'd* 174 A.3d 593 (Pa. 2017).[1] The Plaintiff is, without question, not one of the aforementioned exempted parties and therefore disclosure to them of the protected information would violate Section 6111(i) of the UFA and subject Delia's (and potentially Plaintiff) to civil liability.

Plaintiff nevertheless attempts to circumvent this clear prohibition in two ways. First, by seeking the production of the federal ATF 4473 forms, which contain the identical information of the confidential state forms. However, federal law likewise does not permit the disclosure of the purchasers' information as 18 U.S. Code § 927 cedes this regulatory authority to Pennsylvania, stating,

> No provision of this chapter shall be construed as indicating an intent on the part of the Congress to occupy the field in which such provision operates to the exclusion of the law of any State on the same subject matter, unless there is a direct and positive conflict between such provision and the law of the State so that the two cannot be reconciled or consistently stand together.

Because Pennsylvania law explicitly prohibits the disclosure of the purchasers' information, and there is no conflicting federal law, Pennsylvania law controls.

Secondly, Plaintiff attempts to claim that because they are permitted to seek discovery via the Rules of Civil Procedure, they should be considered "authorized to receive such information by statute." While creative, this is an absurd interpretation. In ascertaining the intent of the General Assembly, it is presumed "[t]hat the General Assembly does not intend a result that is absurd,

[1] The Pennsylvania Supreme Court reversed the Commonwealth Court's finding that the General Assembly did not specifically and intentionally abrogate high public official immunity such that the sheriff may be held liable pursuant to Section 6111(i). *Doe v. Franklin Cnty.*, 174 A.3d 593 (Pa. 2017). The Commonwealth later reaffirmed its prior analysis in *Doe 1 v. Franklin Cnty.*, 272 A.3d 1022, 1027 (Pa.Cmwlth. 2022).

impossible of execution or unreasonable" and intends "the entire statute to be effective and certain." Section 1922(1), (2) of the Statutory Construction Act, 1 Pa.C.S. § 1922(1), (2). The General Assembly, by enacting 6111(i), clearly and unequivocally intended to vigorously protect the privacy of purchaser, and by allowing this protection to be bypassed by simply issuing a subpoena in a civil proceeding would undoubtedly be contrary to their intent. *See Doe v. Franklin Cnty.*, 139 A.3d 296, 307 (Pa.Cmwlth. 2016), rev'd, 644 Pa. 1, 174 A.3d 593 (2017) ("Any other interpretation of Section 6111(i) of the UFA where a [purchasers] confidentiality is not safeguarded would be inconsistent with the UFA's purpose and structure.")

Plaintiff's suggestion that the confidential information could be disclosed via a protective order likewise runs afoul of Section 6111(i). While it is true this Court has broad discretion to issue a protective order under Rule 4012, the Commonwealth Court made it clear that within this context, nonpublic disclosure is restricted to the request of the purchaser or upon request of a county sheriff or a criminal justice agency, defined as any court, including the minor judiciary, **with criminal jurisdiction**. *Doe v. Franklin Cnty.*, 139 A.3d 296, 307 (Pa.Cmwlth. 2016), rev'd, 644 Pa. 1, 174 A.3d 593 (2017). This Court, sitting in civil jurisdiction, does not have the authority to require the disclosure of the protected information even under protective order.

Finally, Plaintiff's contention that the information they seek is already in the public domain, via the criminal proceedings, cuts against them. That is, if the information and documents sought have in fact been produced in the criminal proceedings, then it is within their ability to gather those items without requiring Delia's to violate Pennsylvania law.

V. Relief

For the foregoing reasons, Defendant Mad Minute Enterprises, LLC, respectfully requests that this Court deny Plaintiff's Motion.

Respectfully submitted,

Goldstein Law Partners, LLC

Date: 09/10/2024

Britain R. Henry, Esquire
Attorney for Defendant Mad Minute Enterprises, LLC