

NO. 24-CI-0518

JEFFERSON CIRCUIT COURT
DIVISION THREE
JUDGE MITCH PERRY

DANA MITCHELL, et al.

PLAINTIFFS

v.

RIVER CITY FIREARMS, INC., et al.

DEFENDANTS

OPINION AND ORDER

This matter comes before the Court on Motions to Dismiss brought by all the Defendants. The parties have completed briefing, and the Court heard arguments from counsel. After careful consideration of the record and applicable law, the Court determines that the Defendants' Motion should be denied.

Factual Background

This case arises from one of the worst acts of mass violence this community has ever experienced. On April 10, 2023, five people were shot and killed at the Old National Bank building in downtown Louisville. Several others were seriously wounded. The shooter purchased the firearm he used, an AR-15, at River City Firearms six days beforehand on April 4, 2023. The shooter, who was allegedly a complete novice in regards to firearms, was additionally sold, during the same transaction, three large-capacity magazines, a red-dot sight, and a vertical grip to enhance his new firearm by River City.

The Plaintiffs have alleged in the Complaint that the shooter behaved erratically and suspiciously in River City Firearms such that another store patron contemplated calling the police. Instead of recognizing the outward manifestations of mental turmoil, the Plaintiffs allege that not only did River City sell the shooter a weapon not suited for his stated purpose of self-defense, but also upsold him enhancements to make the firearm even deadlier. The Plaintiffs further allege that Defendants Magpul, who manufactured the large-capacity magazine, and Defendant RSR, the distributor of the red-dot sight and vertical grip, incentivized upselling of these products by stores, regardless of the suitability or appropriateness for the customer.

The Plaintiffs contend that Magpul and RSR failed to adequately screen retailers who sell their products. The Plaintiffs assert that gun retailers are required to undergo training to recognize and identify individuals in distress who should not be allowed to purchase a firearm because they may be a threat to themselves or others. Specifically, the Plaintiffs allege that the store in this case, River City Firearms, was an irresponsible retailer. River City allegedly had an extensive history of regulatory issues with the Bureau of Alcohol, Tobacco, Firearms, and Explosives, as well as a disproportionate number of guns sold that were later recovered at crime scenes.

The Defendants have brought this Motion to Dismiss arguing that the Plaintiffs' claims are barred by federal law, the Protection of Lawful Commerce in Arms Act ("PLCAA"). The PLCAA provides immunity to manufacturers or sellers of a qualified product for damages resulting from a third party's misuse of that product. 15 U.S.C. §§ 7902(a), 7903(5)(A). The Defendants further argue that apart from the PLCAA, the Plaintiffs' claims are not recognized under state law. For the reasons discussed below, the Court disagrees with the Defendants' assertions here.

Legal Standard

In Kentucky, a complaint must contain "a short and plain statement of the claim showing that the pleader is entitled to relief and a demand for judgment for the relief to which he deems himself to be entitled." CR 12.02(1). In deciding whether to grant a motion to dismiss, Kentucky trial courts must consider the pleadings in a light most favorable to the plaintiff and view the allegations set forth in the complaint as true. *Gall v. Scroggy*, 725 S.W.2d 867, 869 (Ky. App. 1987). The court should grant a motion to dismiss only when "it appears the pleading party would not be entitled to relief under any set of facts which could be proved in support of his claim." *Pari-Mutuel Clerks' Union v. Kentucky Jockey Club*, 551 S.W.2d 801, 803 (Ky. 1977).

Legal Analysis

It is important at the outset to note the procedural posture of the case. This is a Motion to Dismiss brought before any discovery has been completed. As such, the bar for defense success is extremely high. "Kentucky is a notice pleading jurisdiction, where the central purpose of pleadings remains notice of claims and defenses." *Russell v. Johnson & Johnson, Inc.*, 610 S.W.3d 233, 240 (Ky. 2020). It is in that context that the Court proceeds with the analysis of the Defendants' Motion.

I. The PLCAA does not bar this action.

The PLCAA is a specialized federal law providing legal protection to the firearm industry. It bars lawsuits against a manufacturer or seller of a qualified product. 15 U.S.C. §§ 7902(a), 7903(5)(A). A “qualified product” is defined as a firearm, ammunition, or “a component part of a firearm or ammunition.” § 7903(4). Claims that do not involve “qualified products” are not affected by PLCAA. *See* § 7903(5)(A). Similarly, in relevant part, the PLCAA applies only to “manufacturers” or “sellers” of qualified products, which, as relevant here, are defined as entities “engaged in the business” of manufacturing or selling a qualified product and who are licensed under federal law to engage in such a business. *Id.* § 7903(2), 6(A)-(B).

The Plaintiffs here have carefully crafted their Complaint to avoid the protections of the PLCAA. The Plaintiffs have brought a negligent entrustment claim against River City, which is one of the claims explicitly allowed under the PLCAA. Claims “brought against a seller for negligent entrustment” are one of the enumerated claims specifically exempted from PLCAA protection. *See* § 7903(5)(A)(ii). Further, the Plaintiffs’ negligence claims are exclusively for the accessories sold to the shooter, not for the sale of the firearm itself. As explained further, none of the accessories are “qualified products” triggering PLCAA protection.

A. Negligent Entrustment specifically exempted from PLCAA protection.

As stated above, Negligent Entrustment actions are one of the few enumerated exceptions to the PLCAA. 15 U.S.C. § 7903(5)(A)(ii). The Defendants seem to take issue with the way the Plaintiffs have designed the Complaint to specifically avoid PLCAA protection. However, in Kentucky, a plaintiff is the master of his or her complaint. *Bradley v. Commonwealth ex rel. Cameron*, 653 S.W.3d 870, 879 (Ky. 2022). The Plaintiffs are free to craft their Complaint in whichever way they see fit, as long as it complies with the local and Civil Rules. It does so and is thus permissible.

B. Accessories are not “qualified products” under the PLCAA.

The more complex issue for the Court to resolve is whether the additional items sold with the firearm are qualified products under the PLCAA. Because they are accessories, and not component parts, they are not covered as qualified parts.

The PLCAA defines “qualified product” to mean only a firearm, ammunition, or “a component part of a firearm or ammunition.” § 7903(4) (emphasis added). A “mere firearm accessory,” not constituting a “component part,” is not covered by PLCAA. *Prescott v. Slide*

Fire Sols., LP, 341 F. Supp. 3d 1175, 1187 (D. Nev. 2018). *Green v. Kyung Chang Industry USA, Inc.*, No. A-21-838762-C, 2022 WL 987555 (Nev. Dist. Ct. Mar. 23, 2022). The Plaintiffs contend, and the Court agrees, that the large-capacity magazines, the red-dot sight, and the vertical grip are all accessories rather than component parts.

The distinction between an “accessory” and a “component part” is a simple one. That is, whether the item in question enhances the firearm’s effectiveness or aesthetics, or whether it is essential to the functioning of the firearm. *See, e.g., Prescott*, 341 F. Supp. 3d at 1188. If it is the former it is an accessory, if the later, it is a component. Under this simple framework, it is plain that all the items in question here are accessories rather than component parts. The firearm can be fired and used without a large-capacity magazine, a red-dot sight, or a vertical grip. Those items instead only serve to augment the efficacy of the firearm.

The Defendants argue that the large-capacity magazines are component parts, and while it is a closer call than the other items the Court still disagrees. While it is true that courts have concluded that items that replace a part of the firearm become component parts, for example an aftermarket “bump” stock replacing the standard existing stock, the same does not hold true for this large-capacity magazine. *Prescott*, 341 F. Supp. 3d at 1189. This is largely because, as the Plaintiffs allege, the firearm in question here does not require any magazine in order to function and fire a shot. When, as here, the large-capacity magazine is sold separately, and the firearm does not even require a magazine to properly function, the Court cannot say that the large-capacity magazine is a component part.

In the Court’s view, there is no question that both the sight and the grip are clearly accessories as well. The firearm plainly functions as intended without both. Instead, they make the firearm easier to use and more effective in that use. Therefore, as none of the items sold separately to the shooter are component parts, they are not eligible for protection under the PLCAA and the claims relating to those accessories may proceed against all Defendants.

II. The Plaintiffs have met the low bar to proceed under Kentucky law.

The Plaintiffs have brought claims under KRS 411.150, in addition to the negligent entrustment and general negligence claims against the Defendants. The Defendants have argued that the claim under KRS 411.150 against River City is precluded by the PLCAA, while the remaining state law claims are not cognizable.

A. KRS 411.150 Claim not precluded by PLCAA.

The Plaintiffs have brought a claim pursuant to KRS 411.150 against River City. KRS 411.150 states that “the surviving spouse and child...of a person killed by the careless, wanton or malicious use of a deadly weapon, not in self-defense, may have an action against the person who committed the killing and all others aiding or promoting, or any one or more of them.” River City contends that the PLCAA prevents this claim from proceeding while the Plaintiffs assert that this claim meets the predicate exception of the PLCAA.

The PLCAA permits “action[s] in which a manufacturer or seller of a qualified product knowingly violated a State or Federal statute applicable to the sale or marketing of the product.” 15 U.S.C. § 7903(5)(A)(iii). The Plaintiffs here are claiming that River City committed the predicate violation of KRS 411.150 by “aiding or promoting” the “malicious use of a deadly weapon” by supplying the allegedly disturbed shooter with the firearm and accessories to make the firearm even more deadly. The Court agrees with the Plaintiffs’ reading of the law.

The Defendants’ narrow reading of the predicate exception would effectively render it nonexistent. KRS 411.150 is clearly the type of statute envisioned when the predicate exception was codified. Whether River City knowingly violated KRS 411.150 through “aiding or promoting” the shooting is a fact question that must be decided after thorough discovery has occurred, and the record has been properly developed.

B. Negligence claims may proceed under state law.

The Plaintiffs have asserted claims of negligent entrustment against River City, general negligence against the remaining Defendants, the statutory KRS 411.150 claim previously discussed and seek punitive damages. The Court will briefly address each in turn.

1. Negligent Entrustment

Under the Restatement of Torts, which Kentucky courts have recognized, Section 390 explicitly provides that one who sells chattel to an unfit individual may be liable for negligent entrustment. Section 390 has been recognized as a basis for negligent entrustment liability by several Kentucky courts. *See Hercules Powder Co. v. Hicks*, 453 S.W.2d 583, 587 (Ky. 1970); *Burke Enters., Inc. v. Mitchell*, 700 S.W.2d 789, 793-94 (Ky. 1985). “One who supplies directly ... a chattel for the use of another whom the supplier knows or has reason to know to be likely because of his youth, inexperience, or otherwise, to use it in a manner involving unreasonable risk of physical harm ... is subject to liability.” *Hercules*, 453 S.W.2d at 587.

The Plaintiffs argue that River City aided the shooter in his criminal actions by equipping him with a deadlier firearm than he needed, made even deadlier by the accessories they upsold him, even though they should have reasonably known through his demeanor, behavior, and statements at the store that he was likely to dangerously misuse the firearm. The Plaintiffs contend that the shooter's manner was so suspicious that a patron in the store at the time was seriously concerned enough to consider calling the police. As asserted by the Plaintiffs, these are signs that retailers like River City are trained to recognize and prevent. River City failed to do so in this case, to tragic results. When viewed in the light most favorable to the Plaintiffs, this is a viable claim of negligent entrustment.

2. General Negligence

The Court further finds that the Plaintiffs have demonstrated sufficient support to sustain their claims of negligence against the Defendants.

The Plaintiffs' allege that the distributor Defendants breached their duty of ordinary care by continuing to supply their products to allegedly irresponsible retailers, and failing to take reasonable steps to ensure their products were not being supplied to dangerous individuals through those retailers. Instead, the distributor Defendants incentivized upselling of these dangerous accessories. River City then allegedly breached its general duty of care by upselling these dangerous accessories to the shooter despite his allegedly open and obvious mental disturbance. It was thus foreseeable that through upselling and incentivizing the sale of these dangerous accessories through irresponsible retailers, these products were more likely to be used to injure and kill people.

Further, there is a sufficient connection between the Defendants' alleged breach of duty and the injuries sustained by the Plaintiffs, unbroken by any superseding actions. The Plaintiffs allege that the accessories were a substantial "but-for" cause of the scale of the injuries sustained as each accessory enhanced the lethality of the firearm and enabled the shooter to wreak the havoc he did. Taking the allegations in the Complaint as true, the Court finds that there is a legally cognizable connection between the distributor Defendants incentivizing upselling of the accessories through irresponsible stores leading to an even deadlier catastrophe.

The Defendants argue that the criminal and intentional actions of the shooter are a superseding intervening cause that relieves them of liability. The Court disagrees. The fact that the shooter acted intentionally rather than negligently is not enough. "If the likelihood that a third

person may act in a particular manner is the hazard or one of the hazards which makes the actor [defendant] negligent, such an act ... whether innocent, negligent, intentionally tortious, or criminal, does not prevent the actor [defendant] from being liable for harm caused thereby.” *Britton v. Wooten*, 817 S.W.2d 443, 449 (Ky. 1991) (alterations in original) (quoting Restatement (Second) of Torts § 449 (1965)). Here, the hazard is that a noticeably disturbed person will be upsold dangerous accessories they do not need and embark on a murderous rampage, enabled and enhanced by those accessories. It was entirely foreseeable that this outcome would occur.

For these reasons, the Plaintiffs’ general negligence claim may proceed as well.

C. KRS 411.150

The Plaintiffs’ claims pursuant to KRS 411.150 have been discussed in greater depth previously, so the Court will not belabor the point here. The Court will add that an additional allegation in the Plaintiffs’ Complaint relevant here is that River City did not merely provide the firearm and accessories to the shooter, but encouraged him to purchase those items. Taking the allegations in the Complaint as true, as this Court is required to do under this procedural posture, that is sufficient to establish “aiding or promoting” within the meaning of KRS 411.150.

D. Punitive Damages

It is plain that if a jury believes the allegations asserted by the Plaintiffs, then punitive damages are proper. The Plaintiffs appear to be proceeding under the gross negligence standard for punitive damages, and in the light most favorable to the Plaintiffs, they have clearly alleged a set of facts that a jury could find rise to the level of gross negligence. The Plaintiffs may therefore proceed with their claim for punitive damages as well.

E. Kentucky Product Liability Act

Finally, Defendant RSR has contended that the claims against it are barred by the Kentucky Product Liability Act. The Court respectfully disagrees that the KPLA is applicable to this case. The Plaintiffs are not alleging injury from a defect or flaw in the design or manufacture of the accessories here. Rather, the Plaintiffs are asserting claims for the harms caused by these properly functioning items being upsold to, and utilized by, a person who should not have had them. It is the business practices of the entities involved that is at issue here, not the design or manufacturing of the specific accessories themselves.

Conclusion

The Court again reiterates the procedural nature of the motion before it. The Court is required to take the allegations in the Complaint as true and view the record in the light most favorable to the Plaintiffs. That is what this Court has done here. The Plaintiffs have sufficiently pled their claims under the liberal pleading standards of this Commonwealth. The Court finds that the PLCAA does not provide immunity to the Defendants here, and that the Plaintiffs have appropriately pled and supported their claims under Kentucky law for negligence and statutory violations. As such, the litigation may continue in the ordinary course. The Court expects further well-developed dispositive motions as the record is established. Accordingly, with the Court being sufficiently advised;

IT IS ORDERED that the Defendants' Motion to Dismiss is **DENIED**.



HON. MITCH PERRY, JUDGE

CC: All counsel of record.