

STATE OF NEW YORK  
SUPREME COURT : COUNTY OF ERIE

WAYNE JONES, Individually and as  
Administrator of the Estate of CELESTINE CHANEY,

Plaintiff,

**DECISION AND ORDER**

Motion # 3

Index No.: 810316/2023

v.

MEAN LLC; VINTAGE FIREARMS, LLC;  
RMA ARMAMENT, INC.; ALPHABET INC.,  
GOOGLE, LLC, YOUTUBE, LLC,; REDDIT, INC.;  
PAUL GENDRON; and PAMELA GENDRON,

Defendants.

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HON. PAULA L. FEROLETO, J.S.C.

Argued by: Eric Tirschwell, Attorney for Wayne Jones  
Sean R. List, Attorney for Vintage Firearms, LLC

**DECISION AND ORDER**

Defendant Vintage Firearms, LLC has brought a Motion to Dismiss pursuant to CPLR §§3211(a)(1), (3) and (7) filed on November 9, 2023 (NYSCEF Doc. Nos. 32 to 49). An affidavit and exhibits in opposition along with a memorandum of law in opposition are documents 74 to 76. A reply memo of law is at document number 90. These have all been considered in this decision along with the plaintiff’s Complaint (NYSCEF Doc. No. 2).

Facts as they relate to Vintage Firearms

The specific allegations as to Vintage are set forth at ¶¶ 147-152 of the Complaint and for purposes of this motion must be taken as true (NYSCEF Doc. 2).

Plaintiff alleges Vintage sold Gendron an illegal assault weapon, the Bushmaster XM-15 with an attached Mean Arms Lock (hereinafter “lock”). *Id.* at ¶147. This alleged illegal rifle was then used by Gendron to commit the mass shooting. *Id.* Vintage owner, Robert Donald, is alleged to have known the lock was easily removable and therefore did not permanently change the rifle’s capabilities. *Id.* at ¶148. Further, Plaintiff alleges Vintage helped the shooter understand how to remove the lock and either knew or was willfully blind to the shooter’s purpose in using the weapon. *Id.* at ¶149. Vintage is alleged to have known that New York law banned assault weapons with removable large-capacity magazines, but sold the rifle to the shooter anyways in violation of the law. *Id.* at ¶150. If the shooter had a less lethal weapon than the rifle sold by Vintage, plaintiffs allege victims would have more likely than not escaped or avoided injury. *Id.* at ¶152.

#### Protection of Lawful Commerce in Arms Act

There are three causes of action asserted against Vintage in plaintiff’s complaint (NYSCEF Doc. No. 2). Vintage alleges that the Protection of Lawful Commerce in Arms Act (PLCAA) requires dismissal of those causes of action. The stated purpose of this federal immunity statute is “to prohibit causes of action against manufacturers, distributors, dealers, and importers of firearms or ammunition products, and their trade associations, for the harm solely caused by the criminal or unlawful misuse of firearm products or ammunition products by others when the product functioned as designed and intended.” 15 U.S.C. §7901(b)(1). A claim is barred if it is a “qualified civil liability action.” A “qualified civil liability action” is defined as a “civil action or proceeding or an administrative proceeding brought by any person against a manufacturer or seller of a qualified product or a trade association, for damages, punitive

damages, injunctive or declaratory relief, or penalties or other relief resulting from the criminal or unlawful misuse of a qualified product by the person or a third party.” § 7903(5)(A). It is undisputed that Vintage is a federally licensed firearms dealer and is therefore a qualified seller under PLCAA (NYSCEF Doc. 40, Exhibit 7). Vintage further claims the rifle is a qualified product as defined in §7903(4).

Here, plaintiff argues that the claims against Vintage for negligent entrustment and for violations of New York statutes are exceptions to the “qualified civil liability actions” definition because they are specific exceptions set forth in PLCAA. (NYSCEF Doc. 76 page 10). PLCAA states a “qualified civil liability action” shall not include “an action brought against a seller for negligent entrustment” or “an action 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, and the violation was a proximate cause of the harm for which relief is sought.” §7903(5)(A)(ii) & (iii). A plaintiff must present a cognizable claim and also allege a knowing violation of a “predicate statute” i.e. a state or federal statute applicable to the sale or marketing of firearms (*Ileto v Glock, Inc.* 565 F3d 1126 at 1132).

Defendant argues plaintiff has failed to allege facts establishing that Vintage knowingly violated any state or federal law (NYSCEF Doc. 49 Page 17). PLCAA does not define knowingly. The Court in *Bryan v. United States*, held that knowing violation of a statute “merely requires proof of knowledge of the facts that constitute the offense.” *Bryan v. United States*, 524 US 184, 193 (1998) (distinguishing between “willfully” and “knowingly” violating a statute).

Taking the facts alleged as true, plaintiffs have met this burden. Plaintiff’s complaint alleges Vintage knowingly violated New York’s SAFE ACT by the sale of an assault weapon

under Penal Law §265.10(3) and GBL § 898-b. (NYSCEF Doc. 76 page 13-17; NYSCEF Doc. 2 ¶¶148 - 149).

Plaintiff alleges Vintage acted unreasonably by selling the rifle knowing the lock was easily removable to the shooter who was “interested or planning to remove the lock” (NYSCEF Doc. 76 page 17). Plaintiff argues the sale by Vintage violated the SAFE Act as Vintage knew the lock was easily removable and therefore not in compliance with New York Law (NYSCEF Doc. 2 ¶¶147 - 151). The SAFE Act requires any change to an assault weapon, to make it compliant with New York Law, be permanent. Therefore by pleading that Vintage knew the lock was easily removable, and not permanent, it is alleged Vintage violated state law.

In their complaint, Plaintiff alleges that prior to the shooting, Vintage firearms “helped the Shooter understand that he could remove the lock and fixed magazine by simply extracting its screw and knew or was willfully blind to the Shooter’s objective of possessing and using an illegal assault weapon” (NYSCEF Doc. 2 ¶149).

Vintage points out that they were investigated post incident and Vintage was never “found in violation of state or federal law by government regulators” (NYSCEF Doc. 33 ¶ 16). Despite the lack of charges plaintiff has still pled allegations of a SAFE Act violation.

The law is very well settled on a CPLR 3211 motion that as long as the complaint states a claim on its face the court must accept as true the facts as alleged and accord plaintiffs the benefit of every possible favorable inference. See, *Rovello v. Orofino Realty Co., Inc.* 40 NY2d 633 (1976).

Of particular relevance here and as noted above, a "qualified civil liability action" does not include "an action 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, and the violation was a proximate cause of the harm for which relief is sought" (15 USC § 7903 [5] [A] [iii]). Finding sufficient facts have been alleged to bring the claim within the PLCAA's predicate exception, i.e. the knowing sale of an AR-15 with a nonpermanent lock there is no need to address each claim under PLCAA. *Williams v Beemiller, Inc.* 100 AD3rd 143 (4<sup>th</sup> Dept. 2023)(reversing grant of CPLR 3211 motion to dismiss allowing further discovery); *King v. Klocek*, 187 A.D.3d 1614, 1616 (4<sup>th</sup> Dept. 2020). See also *Chiapperini v. Gander Mtn. Co.*, 48 Misc. 3d 865, 876 (Monroe County Sup. Ct. Dec. 23, 2014). This case at this juncture needs further discovery as to the facts and circumstance surrounding the sale of the weapon to the shooter.

Based on the facts alleged in the complaint it is premature to dismiss the Plaintiff's causes of action against Vintage under 3211(a)(1), (3), or (7).

Vintage has also claimed that GBL §898-b is unconstitutionally vague and further requires dismissal. There is a pending constitutional challenged to GBL §898 in the United States Circuit Court of appeals for the Second Circuit. The case has been argued and is on submission. *National Shooting Sports Foundation, Inc. V. James*, No. 22-1374. This decision does not address the constitutionality of that General Business Law Section but at such time as a decision is issued this court will reconsider this argument.

THEREFORE, IT IS HEREBY

ORDERED, Vintage Firearms, LLC's motion to dismiss is denied in its entirety.

This constitutes the Decision and Order of this court. Submission of an Order by the parties is not necessary. Receipt of notice of the uploading of this Decision and Order by the court to

NYSCEF shall not constitute notice of entry.

Signed this 7th day of March, 2024 at Buffalo, New York.



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Hon. Paula L. Feroletto, J.S.C.