DOCKET NO: FBT-CV 23-6123457-S	:	SUPERIOR COURT
NATHANIEL GETZ, EXECUTOR OF THE ESTATE OF SUZANNE FOUNTAIN	:	J.D. OF FAIRFIELD
VS.	:	AT BRIDGEPORT
STURM, RUGER & COMPANY, INC.	:	AUGUST 23, 2023

DEFENDANT'S OBJECTION TO PLAINTIFFS' REQUEST TO AMEND

Defendant, Sturm, Ruger & Company, Inc. ("Ruger") objects to Plaintiffs' Request to Amend their Complaint dated August 8, 2023 (Getz/Stanisic Entry No. 120.00) in its entirety on the ground that the Proposed Amended Complaint sets forth an entirely new cause of action, based on five theories of liability (four of which were not previously pled), that is barred by the applicable two-year statute of limitations. The new cause of action is not saved by the relation-back doctrine because it is based on entirely new facts, none of which were pled by Plaintiffs in their original Complaint or their Revised Complaint (the "Operative Complaint").[1]

A "cause of action" is the group of facts claimed to have caused a plaintiff's injury and which is alleged to entitle the plaintiff to relief. *See Wagner v. Clark Equipment Co.*, 259 Conn. 114, 129 (2002). Connecticut law is clear that, even when based upon the same legal theory, an amended complaint does not relate back to the original complaint when it is premised on an entirely new set of facts. Plaintiffs' Proposed Amended Complaint does exactly that. Because Plaintiffs' new cause of action does not relate back to the original Complaint, they are time-barred from

[1] On July 14, 2023, the Court consolidated *Getz v. Sturm, Ruger & Company, Inc.*, FBT-CV-23-6123457-S, and *Stanisic, et. al. v. Sturm, Ruger & Company, Inc.*, FBT-CV23-6123659S, for pretrial purposes only. All references to Plaintiffs in this pleading refer to all Plaintiffs in both cases, and all references to the Revised Complaint or Operative Complaint refer to the operative Revised Complaints in both cases, which set forth identical claims and allegations. (*See Getz* Entry No. 114.00 and *Stanisic* Entry No. 114.00).

asserting it, and the Court should deny Plaintiffs' motions for leave to amend their Complaints. *See Dimmock v. Lawrence Memorial Hospital. Inc.*, 286 Conn. 789, 796 (2008) (affirming trial court's denial of request for leave to amend complaint on ground that new allegations did not relate back and the claims were time-barred).

I. Introduction

This lawsuit arises from a tragic criminal event that occurred in Boulder, Colorado on March 22, 2021 in which ten people, including Plaintiffs' decedents, were killed. On March 14, 2023 and April 5, 2023, respectively, Plaintiffs Getz and Stanisic filed their original Complaints, alleging wrongful death based on Ruger's marketing of the firearm used by the criminal assailant. Specifically, in their original Complaints, Plaintiffs alleged that Ruger promoted the firearm for "mass casualty assaults" through the words and images it used in its marketing materials, and that Ruger's alleged "unscrupulous" marketing practices violated the Connecticut Unfair Trade Practices Act ("CUTPA").

Ruger promptly filed requests to revise the Complaints, mostly seeking more complete or particular statements of Plaintiffs' allegations, which failed to identify with specificity any of the marketing materials about which they complained. With the exception of agreeing to revise a Scrivener's Error in the Complaint, Plaintiffs objected to Ruger's requested revisions, arguing that the Complaint "adequately and succinctly pled the material facts in support of [their] claim" and "fairly and sufficiently put the defendant on notice of the claims being asserted against them [*sic*]." (Getz/Stanisic Entry No. 111.00, p. 3). On July 7, 2023, Plaintiffs filed a Revised Complaint, correcting only the Scrivener's Error and deleting the request for injunctive relief, as ordered by the Court.

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Now, despite their prior protestation to this Court that they had pled "the material facts in support of their claims" necessary "to put the defendant on notice of the claims being asserted" against it, Plaintiffs seek to amend their Complaint, abandoning the claims in the Operative Complaint and instead asserting an entirely new set of facts and new legal theories. They no longer pursue their "unscrupulous" marketing cause of action, but rather present an entirely new cause of action based on the firearm's design, which they claim violates both the Gun Control Act, 18 U.S.C. §§ 921-931, and the National Firearms Act, 26 U.S.C. §§ 5801-5872. This cause of action is new and dramatically different from the "marketing" cause of action originally pled. It alleges entirely different conduct, involves an entirely different set of facts, and will require entirely different evidence and evaluation of entirely different laws. Relying upon this new factual predicate, Plaintiffs have entirely recast their CUTPA claim and added four new common law liability theories—negligence, public nuisance, negligence per se, and recklessness—all of which are subject to a two-year wrongful death statute of limitations and, as explained below, are untimely filed.

II. Comparison of the Revised Complaint to the Proposed Amended Complaint.

The complete and significant change from the allegations in the Operative Complaint to the allegations in the Proposed Amended Complaint cannot be overstated. The general theory upon which the Operative Complaint proceeds is summarized by Plaintiffs themselves in bold letters: "**Ruger's Marketing and Promotion of its AR-556 violated the Connecticut Unfair Trade Practice Act**." (Operative Complaint, p. 1.) These allegations follow:

- Ruger marketed its AR-556s by promoting their militaristic and assaultive uses.

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- Ruger's militaristic marketing promoted the image of its AR-556s as combat weapons used for the purpose of waging war and killing human beings.
- Ruger's marketing glorified the lone gunman.
- Ruger's marketing glorified the military design, functionality and appearance of its AR-556s.
- Ruger's marketing promoted its AR-556s for mass casualty assaults.
- Ruger promoted criminal use of its AR-556s by its target market.

Revised Complaint, ¶¶ 16-18, 22-23, 25. Plaintiffs alleged that this marketing was unethical, immoral, unscrupulous, oppressive, and reckless. *See* Complaint ¶¶ 32-36. In short, Plaintiffs alleged that the content of Ruger's advertisements—words and images that purportedly promote violent and criminal use—violated CUTPA. These claims would necessarily have required Plaintiffs to produce evidence of these alleged advertisements. To defend against these allegations, Ruger was prepared to present evidence demonstrating that Ruger's advertisements and promotional materials did none of what Plaintiffs alleged.

Now, in their Proposed Amended Complaint, Plaintiffs have abandoned these claims. They instead allege a whole new set of facts and legal theories as the basis for liability. In stark contrast to the Operative Complaint's "unscrupulous" marketing cause of action, the Proposed Amended Complaint is focused exclusively on the firearm's design and regulatory classification. Plaintiffs now assert that the design and configuration of the firearm was not that of a pistol but of a "short-barreled rifle," which Ruger allegedly sold unlawfully in violation of the National Firearms Act and the Gun Control Act. Plaintiffs' new claims no longer require consideration of the words and images used in Ruger's marketing materials, but instead require a consideration of evidence concerning the firearm's design and the Federal statutory definitions of a "rifle," "pistol," and a

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"short-barreled rifle." These claims also would require evidence concerning the activities of the Bureau of Alcohol, Tobacco, Firearms, and Explosives ("ATF") in regulating the manufacture and sale of similarly designed firearms—evidence wholly irrelevant to the claims in the Operative Complaint. The Operative Complaint never provided Ruger notice that these claims would be asserted against it or would be issues at trial.

Even a cursory review of the redlined comparison of the Operative Complaint and the Proposed Amended Complaint (Getz/Stanisic Entry No. 121.00) reveals that the two documents have nothing in common. Nearly every paragraph in the Operative Complaint has been either stricken or heavily revised. The Proposed Amended Complaint adds *more than one hundred new paragraphs*—every one of which involves an entirely different set of facts than those alleged in the Operative Complaint. To wit: Plaintiffs added seven paragraphs under the heading "Short-Barreled Rifle Basics." *See* Proposed Amended Complaint, ¶¶ 44-50. Another fifteen paragraphs (with sub-paragraphs) appear under the heading "The National Firearms Act and the Gun Control Act Regulate Short-Barreled Rifles." *See id.* at ¶¶ 51-65. Next, Plaintiffs added a section with the conclusory title "Ruger Knowingly Violated the National Firearms Act and the Gun Control Act." Plaintiffs devote an additional 45 paragraphs to this section. *See id.* at ¶¶ 66-110. Then, in a section titled "Ruger's Unlawful Conduct was a Proximate Cause of the Deaths of Suzanne Fountain and the Nine Other Victims of the King Soopers Mass Shooting," 11 paragraphs of new claims allege that Ruger's purported violations of the National Firearms Act and the Gun Control Act were a proximate cause and substantial factor in the deaths arising out of the King Soopers shooting. *See id.* at ¶¶ 111-121.

These claims have nothing in common with the claims set forth in the Operative Complaint, which focused entirely on Plaintiffs' claim that Ruger's marketing of the AR-556 promoted

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militaristic and assaultive uses, glorified the lone gunman, appealed to children, glorified its military design, encouraged use for mass casualty assaults, and promoted criminal use. *See* Revised Complaint, ¶¶ 16-25. Indeed, while the Proposed Amended Complaint focuses solely on Ruger's alleged violation of the National Firearms Act and the Gun Control Act as being the proximate cause of the harms alleged, the words "National Firearms Act" and "Gun Control Act" never appear in the Operative Complaint. Nor would they. Those Acts have no relevance to, nor bearing on, the claim of "unscrupulous" marketing that forms the basis of the Operative Complaint. There can be no question that the allegations in the Operative Complaint and the Proposed Amended Complaint arise out of different sets of facts.

III. Law and Analysis

Practice Book § 10–60(a)(3) permits a plaintiff to seek the Court's permission to amend a complaint when the time by which it could be amended by right has passed by "filing a request for leave to file such amendment . . . If an opposing party shall have objection to any part of such request or the amendment appended thereto, such objection in writing specifying the particular paragraph or paragraphs to which there is objection and the reasons therefore, shall . . . be filed with the clerk . . . and placed upon the next short calendar list."

As set forth in more detail below, pursuant to Practice Book § 10-60 and the relevant decisional law, the Court should deny Plaintiffs' request to amend their Complaints because the Proposed Amended Complaints consist of new allegations that do not relate back to the allegations of the Operative Complaint. Amendment is futile because Plaintiffs make these allegations beyond the applicable statutes of limitation.

A. Plaintiffs' Proposed Amendments are Barred by the Statute of Limitations

The statute of limitations for a wrongful death claim in Connecticut is two years from the

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date the cause of action accrues. Conn. Gen. Stat. § 52-555. This statute of limitations controls when the wrongful death claim is predicated on theories of liability arising out of the common law, such as negligence, negligence per se, public nuisance, and common law recklessness—as Plaintiffs have alleged in the Proposed Amended Complaint. *Cf. Soto v. Bushmaster Firearms Int'l, LLC*, 331 Conn. 53, 102 (2019) ("in the ordinary case, § 52-555 (a) supplies the controlling statute of limitations regardless of the underlying theory of liability.").

Our Supreme Court has further made clear that wrongful death claims predicated on CUTPA must comply with both the two-year wrongful death statute of limitations and CUTPA's three-year limitation period. *See id.* at 105 ("It is clear, then, that the plaintiffs' wrongful death claims must comply not only with the statute of limitations that governs wrongful death actions but also with CUTPA's statute of limitations."). *Cf. Harvey v. Dep't of Correction*, 337 Conn. 291, 299–300 (2020) ("[W]e held in Soto that, because CUTPA created a right of action that did not exist at common law, the plaintiffs were required to comply with both the two-year limitation period under the wrongful death statute and the three year limitation period under CUTPA.").

Here, Plaintiffs' decedents died on March 22, 2021. The two-year wrongful death statute of limitations applicable to all of the counts in the Proposed Amended Complaint bars claims raised after March 22, 2023. The amendments sought by Plaintiffs in their Proposed Amended Complaints dated August 8, 2023 are thus untimely, unless the proposed amendments relate back to the allegations of the Operative Complaint under the relation back doctrine.

B. The Relation Back Doctrine

The "relation back doctrine provides that an amendment relates back when the original complaint has given the party fair notice that a claim is being asserted stemming from a particular transaction or occurrence, thereby serving the objectives of our statute of limitations, namely, to

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protect parties from having to defend against stale claims . . . . To relate back to an earlier complaint, the amendment must arise from a single group of facts." *Grenier v. Commissioner of Transportation*, 306 Conn. 523, 559–60 (2012) (citation omitted; internal quotation marks omitted). *See also Alswanger v. Smego*, 257 Conn. 58, 64 (2001). "[A]n amendment cannot allege a new cause of action that would be barred by the statute of limitations if filed independently." *Miller v. Fishman*, 102 Conn. App. 286, 298 (2007). A "cause of action" is "a single group of facts which is claimed to have brought about an unlawful injury to the plaintiff and which entitles the plaintiff to relief." *Wagner*, 259 Conn. 114, 129 (2002). When "an entirely new and different factual situation is presented, a new and different cause of action is stated." *Id.*

"To summarize, in determining whether the relation back doctrine applies to an amended pleading, [the Court] inquire[s] whether the amendment expands or amplifies the original facts alleged in support of a cause of action, or whether the amendment presents a new and different factual situation that would require the presentation of different evidence." *Sherman v. Ronco*, 294 Conn. 548, 556 (2010). The analysis necessarily requires a comparison of "the allegations in the original complaint to those in the amended substitute complaint." *Id.* at 557.

Our Supreme and Appellate Courts have made clear that when the requested amendments present new and different factual situations, the relation back doctrine does not apply. *Compare Alswanger*, 257 Conn. at 61 (allegation of lack of informed consent regarding resident's participation in surgery did not relate back to allegation that defendants had failed to disclose all material risks in connection with plaintiff's surgery, care and treatment), *Sandvig v. A. Dubreuil & Sons, Inc.*, 68 Conn. App. 79, 86 (2002) (allegation that defendant negligently damaged floor tiles when it installed handicap access ramp did not relate back to allegation that defendant negligently installed tile floor on which plaintiff fell), appeal dismissed, 270 Conn. 90 (2004), and *Patterson*

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v. Szabo Food Service of New York, Inc., 14 Conn. App. 178, 183 (1988) (allegation that defendant installed or maintained highly polished and slippery terrazzo floor and employed method of food distribution that created dangerous condition on slippery floor did not relate back to allegation that defendant had failed to clean floor and keep it free of food deposits), cert. denied, 208 Conn. 807 (1988), *with Deming v. Nationwide Mutual Ins. Co.*, 279 Conn. 745, 777 (2006) (narrower amended claim subsumed within broader allegations of loss of insurance renewal commissions deemed to relate back); *Wagner v. Clark Equipment Co.*, 259 Conn. 114, 119 (2002) (allegation that forklift was defective because backup alarm failed to sound when forklift was engaged in reverse did relate back to allegations that forklift was defective because it lacked, inter alia, backup alarm that sounded sufficiently distinct to warn plaintiff), *Bielaska v. Waterford*, 196 Conn. 151, 154 (1985) (allegations that defendants failed to replace broken glass panel and failed to inspect corridor door amplified allegations that defendants failed properly to install and maintain replacement glass in door).

The Court's analysis in *Sharp v. Mitchell*, 209 Conn. 59 (1988) is instructive here. In that case, three men asphyxiated in an underground fuel storage facility during the course of their employment. The plaintiffs, administrators of the decedents' estates, brought a wrongful death action based on negligent supervision, alleging the defendant negligently caused the deaths of the plaintiffs' decedents by ordering them into a dangerous underground area. After expiration of the statute of limitations, the plaintiffs sought to amend their complaint to allege the defendant had negligently designed and constructed the storage facility. *Id.* The Connecticut Supreme Court affirmed the trial court's decision barring the amendment, finding the complaints "involve[ed] two different sets of circumstances and depend on different facts to prove or disprove the allegations of a different basis of liability." *Id.* at 73. The Court reasoned "the fact that the same defendant is

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accused of negligence in each complaint . . . does not make any and all bases of liability relate back to an original claim of negligence. *Id*. Because the defendants did not have fair notice of the negligent design cause of action in the timely filed original complaint, the action was barred.

Similarly, in *Dimmock*, 286 Conn. 789 (2008), the Court affirmed the trial court's denial of the plaintiff's request to amend her complaint to add a new claim asserting that her spinal surgery was performed negligently. The plaintiff's original complaint focused only on post-surgical treatment of her surgical wound and a resulting infection. The trial court found the new allegation that the defendant had deviated from the standard of care in performing the surgery was unrelated to treatment of the infection and did not relate back to those in the original complaint. Affirming the trial court, the Court held that the plaintiff was "attempting to substitute an entirely new theory of negligence," and under the relation back doctrine, the theory was barred by the statute of limitations. *Id.* at 806.

In so holding, the Court specifically rejected the plaintiff's argument that the amended allegations related back to the broad claims in the operative complaint that the defendant had failed "to adequately and properly care for, treat, monitor, diagnose and supervise the plaintiff for problems with her back and post operative care," and failed "to adequately and properly assess and inform the plaintiff of the risks involved in the surgery." The Court explained that "[t]hose broad allegations must be read contextually "to give effect to the pleading with reference to the general theory upon which [the complaint] proceeded." *Id.* at 805. And because "the overwhelming thrust of the operative complaint related to the plaintiff's infection," the new allegations did not relate back. *Id.* at 802.

In contrast, in *Gurliacci v. Mayer*, 218 Conn. 531, 546 (1991), the plaintiff claimed that she had suffered injuries when her vehicle was struck in the rear by a driver who had acted

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negligently in operating his automobile while he was intoxicated. After the relevant limitations period had passed, the plaintiff sought to amend her complaint to add allegations that the defendant had acted either willfully, wantonly and maliciously, or outside the scope of his employment. In distinguishing *Gurliacci* from *Sharp*, the Court explained that the amendment in *Sharp* was impermissible because "the defendant would have been required to gather different facts, evidence and witnesses to defend the amended claim." *Id.* at 549. In *Gurliacci*, by contrast, the amendment "did not inject two different sets of circumstances and depend on different facts." *Id.* Accordingly, the Court concluded that the amended complaint in that case related back to the original complaint. *Id.* at 546.

Like the plaintiffs in *Sharp* and *Dimmock*—and unlike the plaintiff in *Gurliacci*—Plaintiffs here have abandoned the factual allegations of their original complaints and replaced them with an entirely different set of facts and new legal theories. The Proposed Amended Complaint does not challenge the words and images allegedly used by Ruger to promote ownership of the firearm, which formed the sole basis of the Operative Complaint. Instead, they take issue with the firearm's design and Ruger's representation that the firearm was a lawfully manufactured, sold, and possessed pistol under federal law. To the extent that Ruger's "marketing" is implicated at all in these new counts, Ruger's designation of the firearm as a pistol forms the basis of the claims, not the words and images Ruger used to allegedly promote criminal use of the firearm. Like the Court found in *Sharp*, the Proposed Amended Complaint here "depend[s] on different facts to prove or disprove the allegations of a different basis of liability." *See Sharp*, 209 Conn. at 73.

Ruger anticipates Plaintiffs will argue the Operative Complaint pled a firearm design cause of action because it alleged that Ruger designed the firearm to "preserve its classification as a pistol for regulatory purposes." (Getz/Stanisic Entry Nos. 114.00 at ¶ 12). The Court should reject

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this argument. Alleging that Ruger designed the firearm to comply with applicable regulatory requirements is the exact opposite of alleging the product was designed and sold in violation of Federal law. *See Sherman*, 294 Conn. at 560-61 (rejecting argument that focused on the "superficial resemblance" between two complaints and "gloss[ed] over the essential differences between them."); *Dimmock*, 286 Conn. at 805 ("broad allegations must be read contextually "to give effect to the pleading with reference to the general theory upon which [the complaint] proceeded. . . ."). Moreover, like the Court found in *Dimmock*, "the overwhelming thrust of the operative complaint" here alleges that Ruger's marketing materials allegedly promote militaristic and assaultive uses, glorify the lone gunman, promote mass casualty assaults, and promote criminal use. Revised Complaint, ¶¶ 16-25. The Proposed Amended Complaint abandons those allegations in exchange for an entirely distinct legal theory and set of facts. These are precisely the type of amendments that *Sharp, Dimmock* and their progeny counsel against. Accordingly, because the Proposed Amended Complaint does not relate back to the Operative Complaint and the requested amendments are time-barred, this Court should not allow amendment.

WHEREFORE, Defendant Sturm, Ruger & Company, Inc. respectfully requests that this Court deny Plaintiffs' Request for Leave to Amend in its entirety, sustain Ruger's Objection to Plaintiffs' Proposed Amended Complaint, and order such other and further relief as the Court deems necessary.

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CERTIFICATION

I hereby certify that a copy of the above was mailed or electronically delivered on the 23rd day of August, 2023 to all counsel and pro se parties of record and that written consent for electronic delivery was received from all counsel and pro se parties of record who were electronically served.

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