

IN THE CIRCUIT COURT FOR MONTGOMEERY COUNTY, MARYLAND

THE STATE OF MARYLAND, *et al.* :

Plaintiffs :

v. : Case No. C-15-CV-24-4781

ENGAGE ARMAMENT LLC, *et al.*, :

Defendant :

Memorandum Decision and Order

The State of Maryland and the District of Columbia (“the plaintiffs”) have sued three Montgomery County, Maryland retail gun stores: Engage Armament LLC (“Engage”), United Gun Shop (“United”), and Atlantic Guns, Inc. (“Atlantic”) (collectively “the defendants”). The plaintiffs contend that each defendant, when they sold handguns to Demetrius Minor (“Minor”), over a several month period, had “reasonable cause to believe” that Minor was an “obvious straw purchaser.” That is, that Minor (who was lawfully allowed under Maryland law to buy and possess handguns) did not purchase the handguns for his own use but, instead, intended to transfer some or all of the handguns to persons who were not permitted to own them. Based on this core theory, that the defendants facilitated illegal straw purchases by Minor, the plaintiffs seek damages and other relief under theories of public nuisance, negligence, negligence per se, negligence by statute and negligent entrustment.

Each defendant has moved to dismiss the complaint for failure to state a claim for which relief can be granted. Md. R. 2-322(b)(2). All the defendants contend that, under the facts pled in the complaint, they neither knew, nor had reasonable cause to believe, that Minor was a straw

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purchaser. If that is correct, the defendants contend that the complaint does not state a cognizable claim for relief under any of the counts. The defendants also raise a number of other grounds in support of dismissal and the court will address those that are necessary for its decision.

The court held a hearing on January 16, 2025, and advised counsel that a written decision would be issued. The court's decision, and the reasoning behind it, is detailed below.

The Statutory Framework for Handgun Regulation in Maryland

In Maryland, handguns are considered to be regulated firearms and thus subject to a variety of restrictions. Md. Code Ann., Pub. Safety § 5-101(r)(l). Maryland's handgun regulatory scheme has been discussed at length in recent appellate decisions. *E.g., Maryland Shall Issue, Inc. v. Moore*, 86 F.4th 1308 (4th Cir. 2023); *Matter of McCloy*, 488 Md. 326 (2024). Only those provisions of federal and state law necessary to resolve the pending motions will be addressed.

Buying a handgun in Maryland is not like buying a car, or anything else for that matter. A person cannot simply walk into a retail gun shop, pick something out, pay, and leave with their purchase. There are many steps and time delays, and both the seller and the purchaser are subject to strict regulation, disclosure requirements, and background checks. Because it is important to the resolution of the claims asserted in this case, the rules and the process related to Minor's purchases are described, in brief, below.

The defendants are federally licensed firearms dealers, known as FFLs. Being a federally licensed FFL is not alone sufficient in Maryland to sell a handgun which, unlike most rifles, is defined by statute as a regulated firearm under Maryland. Pub. Safety § 5-101(r)(l). To sell a regulated firearm in Maryland, *i.e.*, a handgun, an FFL also must be a Maryland licensed dealer.

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Pub. Safety § 5-106(a). To be a Maryland licensed dealer, a person must submit an application to the Maryland State Police, Pub. Safety § 5-107, which then conducts an extensive background investigation of the person applying to be a dealer. Pub. Safety §§ 5-108, 5-109. A Maryland licensed dealer is required to maintain detailed and extensive records of all firearms sales, which the Maryland State Police may review or inspect upon request (*i.e.*, no warrant is required). MD. CODE REGS. (COMAR) 29.03.01.43.

All purchasers of any firearm (a rifle or a handgun) from an FFL are subject to a federal background check. This is conducted under the auspices of the FBI under the National Instant Criminal Background Check System ("NICS."). 18 U.S.C. § 922(t). Purchasers must fill out a federal form, known as Form 4473, which asks a series of questions to establish that the applicant is not a disqualified person under federal law (*e.g.*, a convicted felon or a perpetrator of domestic violence) and is, in fact, the actual purchaser and intended recipient of the firearm. Question 21a of Form 4473 in fact warns, in bold letters: **"If you are not the actual transferee/buyer, the licensee cannot transfer the firearm(s) to you."** (Emphasis in original). For handgun sales, the Maryland State Police is the point of contact within the NICS system and is responsible for contacting the NICS system for the federal background check for all handgun sales in Maryland. Minor completed Form 4473 for each sale.

If the dealer is selling two or more handguns within five days to a private person like Minor (*i.e.*, someone who is not a federally licensed FFL) the dealer also must fill out federal Form 3310.4. 18 U.S.C. § 923(g)(3)(A); 27 C.F.R. § 478.126a. This form is sent to the ATF and to State law enforcement. All defendants did so for each sale to Minor.

Maryland also extensively and separately (from federal law) regulates who may purchase a handgun. Before purchasing a handgun in Maryland, a person must obtain a Handgun

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Qualification License ("HQL") from the Maryland State Police. The person must submit to a fingerprint background check, complete a four-hour firearms safety training course (which includes a primer on Maryland laws on how to legally purchase and transfer firearms) and submit an application to the Maryland State Police, which then has 30 days to complete a background check and approve or disapprove the application. Minor did so in this case, was approved and obtained an HQL.

Maryland law limits handgun purchases to not more than one handgun in 30 days. Md. Code Ann., Pub. Safety § 5-128(b). However, the General Assembly created an exception to this limit for what is termed a Designated Collector. Thus, notwithstanding the typical one handgun in 30-day limit, "a person may purchase more than one regulated firearm in a 30-day period if: (1) the person applies for and the Secretary [of Public Safety] approves a multiple purchase; and (2) the purchase of the regulated firearms is for a private collection or a collector series." Pub. Safety § 5-129(a). The statute does not further define the meaning of a Designated Collector, or what constitutes a private collection, and the legislative history provides no additional guidance. In short, under the statute, there is no set limit to the number of handguns a Designated Collector may purchase.

Under Maryland State Police regulations, "[a] person shall be designated as a collector by the Secretary before applying for a multiple purchase of regulations as a collector." COMAR 29.03.01.25A. To become a Designated Collector, a person must submit an application and affidavit to the Maryland State Police. If approved, that individual has the right under Maryland law to purchase more than one handgun in a 30-day period. Minor applied for and was granted Designated Collector status by the Maryland State Police. Once issued, Designated Collector status does not expire. The statute does not limit what may be purchased by a Designated

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Collector by type (e.g., revolver or semi-automatic), caliber, size of frame or length of barrel, manufacturer, country of origin or any other characteristic, or how many handguns may be purchased.

But even with an HQL and Designated Collector status, each time Minor sought to purchase a handgun, he had to submit to the Maryland State Police an Application and Affidavit to Purchase a Regulated Firearm ("MSP Form 77R"). Every Form 77R has a space on the top right-hand corner of the first page that asks whether the individual is a Designated Collector. Minor answered this question "Yes" on each of his applications. Minor did so on each occasion and, when he did so, he stated under oath, in answer to Question 2 on Form 77R, that he was the actual purchaser and was not buying the handgun for, or with the intent to, transfer it to another.

Again, in each instance, before any handgun could be transferred to Minor by the FFL, the Maryland State Police run another background check and verify Minor's Designated Collector status. And, Minor cannot not take possession of the firearm unless the Maryland State Police notifies Minor that his application was "Not Disapproved." Under Maryland law, Minor's receipt of a notice of "Not Disapproved," also confirmed that he is not a prohibited person and that he was, in fact, a Designated Collector who is allowed by statute to purchase multiple handguns in a 30-day period.

Further, for each purchase, Minor also had to complete an ATF Form 4473. Minor answered Questions 21a and 21b, under the penalties of perjury, that he was both the actual purchaser (and not a straw purchaser) and that he did not intend to transfer the firearm to another.

Maryland law prohibits straw purchases. Md. Code Ann., Pub. Safety § 5-141(a) provides: "A dealer or other person may not be a *knowing participant* in a straw purchase of a regulated firearm for a minor or for a person prohibited by law from possessing a regulated

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firearm.” (Emphasis added). Similarly, Pub. Safety, § 5-134(b)(13) provides: “A dealer or other person may not sell, rent, loan, or transfer a regulated firearm to a purchaser, lessee, borrower, or transferee who the dealer or other person *knows or has reasonable cause to believe . . .* is a participant in a straw purchase.” (Emphasis added).

The principal question currently before the court is whether the complaint adequately alleges facts, as to each defendant, sufficient to state a claim for relief that the defendant knew or had reasonable cause to believe that Minor was a straw purchaser when he bought the handguns identified in the complaint.

Information That May Be Considered on a Motion to Dismiss

In ruling on a motion to dismiss, the court should consider the well pled factual allegations in the complaint. *Aleti v. Metro. Balt., LLC*, 479 Md. 696, 717 (2022). However, the court does not credit for purposes of a motion to dismiss conclusory assertions, inferences that are speculative, or statements in the complaint that are not allegations of fact. *RRC Northeast, LLC v. BAA Md., Inc.*, 413 Md. 638, 644 (2010); *Shenker v. Laureate Education, Inc.*, 411 Md. 317, 335 (2009).

In addition to the text of the complaint, the court also will consider documents referenced in the body of the complaint, *Margolis v. Sandy Spring Bank*, 221 Md. App. 703, 710 n.4 (2015), along with matters that are properly the subject of judicial notice, including the records of the Maryland State Police. *See Faya v. Almaraz*, 329 Md. 435, 443-44 (1993); *Abrishamian v. Washington Medical Group*, 216 Md. App. 386, 413 (2014).

Critically, in this case, the court will not consider allegations in the complaint (or arguments concerning those allegations) that are based on or derived from “trace” data. This is data maintained by the Bureau of Alcohol, Tobacco, Firearms and Explosives, largely for law

enforcement investigative purposes. Use of such data in civil cases is expressly barred by federal law which provides, among other things, that trace data “shall not be used, relied on, or disclosed in any manner, nor shall testimony or other evidence be permitted based on the data, in a civil action in any State . . . or Federal Court[.]” Pub. L. 112-55, 125 Stat. 552, 610 (Nov. 18, 2011) (codified at 18 U.S.C. § 923 note). *See Everytown for Gun Safety Support Fund v. BATF*, 984 F.3d 30 (2d Cir. 2020) (discussing this unique federal law and trace data in general); *Estados Unidos Mexicanos v. Smith & Wesson Brands, Inc.*, 2024 WL 3696388, at *8 (D. Mass. 2024) (rejecting use of trace data in a civil case based on this Congressional prohibition).

In short, what the court will consider are the actual handgun sales each defendant made to Minor and whether the well-pleaded facts and circumstances of these sales, as alleged in the complaint, show that each defendant knew, or had reasonable cause, to believe that Minor was a straw purchaser. The court will consider the legal sufficiency of the complaint as to each defendant’s actions separately because, as the plaintiffs conceded at oral argument, it is not alleged that any defendant was aware of sales made to Minor by any other defendant. Nor is it alleged, importantly, that any defendant knew what disposition, if any, Minor made of the handguns he purchased from them.

The Complaint

In Count I, both plaintiffs proceed under a theory of public nuisance. Complaint, ¶¶ 87, 88. It is contended that the defendants’ sales to Minor created a public nuisance in the District of Columbia, Prince George’s County, and Montgomery County, Maryland, causing harm to every resident. Again, the underlying theory is based on straw sales. Complaint, ¶ 93. The alleged harm is “societal” harm and the expenditure of public resources on a variety of public services. Complaint, ¶ 95.

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In Count II, both plaintiffs proceed on a theory of common law negligence. Complaint, ¶ 98. According to the plaintiffs, “the Defendants were subject to the general duty imposed on all persons and entities not to expose others to reasonably foreseeable risks of injury.” *Id.* And, they contend, “[e]ach defendant breached this duty by knowingly engaging in straw sales of firearms that it knew or should have known were being directly unloaded into illegal streams of commerce and into the hands of people ineligible to possess them.” *Id.*

In Count III, the District of Columbia seeks to invoke a theory of negligence per se on behalf of all residents of the District who were intended to be protected by federal and Maryland laws governing the operation of retail firearms businesses. Complaint, ¶¶ 110-12. Again, the cornerstone of the theory is that the defendants made straw sales to Minor. Complaint, ¶¶ 112-14.

The District of Columbia alleges that two of the firearms Atlantic sold to Minor were recovered in its jurisdiction. Complaint, ¶ 75.

In Count IV, the State of Maryland invokes a theory of negligence premised on the alleged violations of federal and Maryland statutes governing retail firearms businesses. Complaint, ¶¶ 117-18. This count is brought on behalf of all of the residents of Maryland. Complaint, ¶ 119. Once again, the cornerstone is straw sales to Minor. Complaint, ¶¶ 120, 122.

In Count V, both plaintiffs are proceeding against all of the defendants on the theory that the alleged straw sales to Minor constituted negligent entrustment. Complaint, ¶¶ 130-31.

Defendant Specific Allegations in the Complaint

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Throughout the complaint, and as a backdrop of their claims against the defendants in this case, the plaintiffs reference Minor's criminal prosecution in federal court in the District of Columbia. *E.g.* Complaint, ¶¶ 12, 13, 58. The court will take judicial notice of the verifiable facts from the records from Minor's federal prosecution for purposes of the motion to dismiss. Md. R. 2-501.

Minor was indicted on December 13, 2022, for selling firearms without a license and for conspiring with Donald Willis to illegally sell firearms. According to the indictment, Minor sold Willis firearms between April 6, 2021 and October 5, 2021, despite knowing that, due to a prior conviction, Willis was not lawfully allowed to possess them. The indictment alleges that the firearms Minor sold to Willis were purchased by Minor from the defendants in this case.

Minor reached a plea agreement with the United States on March 12, 2023. He pled guilty to engaging in the business of dealing in firearms without a license, 18 U.S.C. § 922(a)(1)(A), and agreed to forfeit all the firearms he purchased to the United States. Minor did not plead guilty to participating in straw sales.

The complaint in this case refers to the ATF's website, correctly noting that "firearms dealers are the first line of defense against gun crime." Complaint, ¶ 11. The reference in footnote 1 of the complaint is to the ATF's website on straw sales. The "red flags" specifically identified by the ATF on its website, as referenced in the complaint, are "a buyer who is reluctant to undergo a background check, unfamiliar with the firearm being purchased, or in communication with a third party via phone during the purchase." U.S. BUREAU OF ALCOHOL, TOBACCO, FIREARMS, AND EXPLOSIVES, DON'T LIE FOR THE OTHER GUY, www.atf.gov/firearms/dont-lie-other-guy. Critically, none of these "red flags" are alleged in the complaint with respect to any of the defendants' sales to Minor.

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The complaint also alleges generally that “Minor lacked a legitimate reason for obtaining multiple, substantially similar commonplace semiautomatic pistols over such a short timeframe.” Complaint, ¶ 55. Yet, the complaint is devoid of facts supporting this conclusory assertion. In addition, the language of the Designated Collector statute does not require collected firearms to be dissimilar or to be acquired over a particular period of time.

The complaint’s specific allegations are as follows. The plaintiffs allege that United sold five handguns to Minor. United sold three different handguns on August 13, 2021, August 17, 2021, and August 21, 2021, and, two months later, sold Minor two handguns on October 5, 2021. One handgun was chambered in .45 caliber, one in 9 mm, and one in .40 S&W. Two were chambered in 7.62 x 39 mm. Complaint, ¶ 67.

As to United, the complaint avers generally that the “volume, pattern, and type of Mr. Minor’s purchases in such a short period of time was an obvious sign that Mr. Minor was purchasing handguns to transfer to others and not for himself.” Complaint, ¶ 68. No factual support is given for this statement, and the complaint does not reference that Minor was a Designated Collector authorized by the Maryland State Police to make multiple handgun purchases.

The plaintiffs also aver, without factual support, that Minor’s purchase from United of two “AK-style” pistols, the first on August 21, 2021, and the second on October 5, 2021, Complaint, ¶ 67, “signaled” to United that Minor was, in all likelihood, intending to divert handguns into the criminal market.” Complaint, ¶ 68. The complaint continues, again without factual support, that “AK-style pistols such as the [Century Arms] Draco . . . is impractical for target shooting, home defense, and hunting.” *Id.* Such conclusory, factually unsupported allegations, are legally insufficient and are not “well-pleaded factual allegations.” *Bennett v.*

Ashcraft & Gerel, LLP, 259 Md. App. 403, 451 (2023). “[C]onclusory charges that are not factual allegations need not be considered” on a motion to dismiss. *MCB Woodberry Dev., LLC v. Council of Owners of Millrace Condominium, Inc.*, 253 Md. App. 279, 296 (2021).

The complaint alleges that Minor bought four handguns from Atlantic, three in August 2021, and one in September 2021. Complaint, ¶ 73. The plaintiffs allege that based on Minor’s purchase of these four handguns, Atlantic should have known that Minor was “engaged in straw purchasing or dealing firearms without a license.” Complaint, ¶¶ 75, 125. According to the plaintiffs, these four purchases indicated that Minor was not buying them for his own use. Complaint, ¶ 74.

The complaint alleges generally that these firearms “were all very similar, commonplace, concealed-carry striker-fired 9mm pistols.” This, the plaintiffs allege, “was a further indication that Mr. Minor was not buying the pistols for his own use.” Complaint, ¶ 74. Critically, as to Atlantic, the complaint focuses largely on the caliber as an indicium of a straw purchase and ignores the other important features of each firearm. (Notably, the complaint does not make this same sweeping statement as to United). The complaint, although it includes photos of the handguns Minor purchased, ignores the fact (shown in the complaint’s exhibit) that each handgun varies in, among other things, features, manufacturer, model, barrel length, country of origin, dimension, weight and design age. Most of this data also is contained in each Form 77R. With few exceptions, the handguns Minor purchased are simply not “the same.” Although they were chambered in 9mm, their other features are quite different.

Two handguns recovered from crime scenes in Washington, D.C., and which Minor was accused of illegally transferring, were not 9mm pistols. One was a Ruger-57, chambered in a .22 caliber cartridge, 5.7 x 28mm. The other was a Springfield XDS, a .45 caliber pistol. The facts

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about these guns recovered in the District of Columbia are set forth in paragraphs 4 and 5 of ATF Agent Donovan's Affidavit in support of Minor's arrest warrant, which is referenced in the complaint. This seems, at best, inconsistent with the main thrust of the plaintiffs' contention that Minor was an "obvious" straw purchaser because he was buying 9mm handguns.

The plaintiffs also aver generally, without factual support, that "Minor lacked a legitimate reason for obtaining multiple, substantially similar commonplace semiautomatic pistols over such a short timeframe." Complaint, ¶ 55. But there is no legal requirement in Maryland that the purchaser of a handgun, much less someone who has been approved by the Maryland State Police as a Designated Collector of regulated firearms, give a retail storeowner a reason for the purchase.

The complaint also ignores Minor's status, granted by the Maryland State Police, as a Designated Collector with an HQL. And it ignores the fact that two agencies, the Maryland State Police and the federal ATF, allowed each transaction despite knowing all pertinent details of each purchase. Both agencies knew more about Minor's purchases than any of the defendants. Quite simply, the complaint fails to allege any facts, or non-conclusory assertions, that to someone in the position of the defendants, Minor was anything other than a permitted Designated Collector of handguns.

As to Engage specifically, the complaint alleges that Minor purchased 25 handguns, in six different calibers, from five different manufacturers, over a period of six months, from April 6, 2021, and September 15, 2021. Complaint, ¶ 62. According to the data listed in and derived from the chart attached to the complaint, some were full-sized, some were mid-sized, and some were compact. One was a Polish "AK-style" pistol. These purchases, the plaintiffs say, show

that Minor was not a really a collector. But the complaint does not allege facts to show why this was not the case, much less why Engage reasonably should have known so.

There are very few empirical studies on gun ownership. Recent surveys find that some 40% of adults in the United States own a gun or live with someone who does. Lisa Dunn, *How Many People In The U.S. Own Guns?*, WAMU 88.5 AM. U. RADIO, / (Sept. 18, 2020), <https://wamu.org/story/20/09/18/how-many-people-in-the-u-s-own-guns>. One study shows that the top 14% of gun owners, some 7.7 million people, or 3% of American adults, own between 8 and 140 guns each. Lois Beckett, *Gun inequality: US study charts rise of hardcore super owners*, THE GUARDIAN (Sept. 19, 2016), <https://www.theguardian.com/us-news/2016/sep/19/us-gun-ownership-survey>. Another study shows that 29% of gun owners own more than 5 guns. Kim Parker,, et al., *America's Complex Relationship With Guns*, PEW RESEARCH CTR. (June 22, 2017), <https://www.pewresearch.org/social-trends/2017/06/22/americas-complex-relationship-with-guns/>.

Whether or not a person should be permitted to collect guns, and, if so, how many they should be permitted to have, are not questions for this court. The General Assembly of Maryland has decided that a Maryland resident may collect firearms, including handguns, if they are approved by the Maryland State Police as a Designated Collector and if each purchase is separately approved by the Maryland State Police. That occurred in this case. No statutory metrics on the number, type or caliber exist to preclude a purchase as a Designated Collector.

Other than to look retrospectively at what Minor did with the firearms he purchased from Engage, e.g., Complaint, ¶ 60, the complaint alleges no facts to show that, at the time of each sale, Engage reasonably should have known that Minor was a straw purchaser and not someone simply exercising their rights as a private collector under Md. Code Ann., Pub. Safety § 5-129(a).

Minor was a Designated Collector under Maryland State Police regulations. Each and every purchase was “not disapproved.” All details of each sale are set out in Form 77R. All background checks were passed. No facts are alleged in the complaint from which it reasonably can be inferred that Engage was a knowing participant in the straw purchase of a regulated firearm under Pub. Safety § 5-141, or had reasonable cause to believe that Minor was a straw purchaser under Pub. Safety § 5-134(b)(13).

Statute of Limitations

Apart from the deficiencies noted above, most of the sales in this case are barred by the statute of limitations. Those specific sales that are not time barred (and the facts and circumstances that are pled surrounding those sales), do not support the conclusion that the defendants knew, or had reason to know, that Minor was a straw purchaser. This is a separate and independent ground for dismissal.

In Maryland, “[a] civil action at law shall be filed within three years from the date it accrues unless another provision of the Code provides a different period of time within which an action shall be commenced.” Md. Code Ann., Cts. & Jud. Proc. § 5-101. Generally, the accrual date is “the time the plaintiff discovers, or through the exercise of due diligence, should have discovered the injury.” *Frederick Road Ltd. P’ship v. Brown & Sturm*, 360 Md. 76, 96-97 (2000). Dismissal on limitations grounds is warranted when it is clear from the facts and allegations on the face of the complaint that the statute has run. *Litz v. Md. Dep’t of the Env’t*, 434 Md. 623, 641 (2013).

The complaint was filed on September 3, 2024. All sales by Engage, except one, took place before September 3, 2021. Complaint, ¶ 62. A single sale took place on September 15, 2021. All sales by United took place in August 2021, except for two that occurred on October 5,

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2021. Complaint, ¶ 67. Of the four sales attributed to Atlantic, three occurred in August 2021, and one sale occurred on September 4, 2021. Complaint, ¶ 73. The lynchpin of the plaintiffs' claim is that Minor presented to the defendants when he sought to purchase each handgun with all of the "red flags" of a straw purchase at the time of each sale. Complaint, ¶¶ 53-55.

A straw purchaser transaction occurs, in this court's view, when the FFL transfers physical possession of the firearm to the putative straw purchaser. That is when the violation of law occurs, and when the statutory harm occurs. If the defendants knew or had reason to know that Minor was a straw purchaser, based on the pattern of and types of handguns at issue, the plaintiffs too had notice of these transactions on the date each handgun was physically transferred to Minor, based on the information in the hands of the Maryland State Police. This information was readily available to both governmental plaintiffs. Each and every sale is recorded in detail in Form 77R and Form 4473, records which the Maryland State Police had before authorizing each sale. The Form 77R contains all of the information and facts the plaintiffs claim support their contention that these were straw sales and that the defendants had reason to know that the purchases were such. And the Maryland State Police was the point of contact for each federal background check under NICS, and conducted its own independent investigation of each handgun sale to Minor. Critically, the Maryland State Police had more knowledge of the sales to Minor than any of the defendants individually. There is no allegation in the complaint, conceded by the plaintiffs at oral argument, that any defendant was aware of sales conducted by any other defendant, so the sales cannot be aggregated. The Maryland State Police had actual notice of each sale, purchaser information, model, caliber, and manufacturer of each handgun transferred to Minor. Yet, this is the exact same information the plaintiffs contend in the complaint that should have put the defendants on notice that Minor was a straw purchaser.

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If so, that same information put the plaintiffs on notice at the time of each sale. *O'Hara v. Kovens*, 305 Md. 280, 287 (1986). Respectfully, the plaintiffs cannot reasonably dispute that they could have discovered, through a reasonable investigation of Maryland's own records, all of the facts they now contend constituted straw purchases by Minor.

To avoid the bar of the statute of limitations, the plaintiffs contend that the statute does not run against them until they suffered damage, by reason of Minor's subsequent transfer of the handgun to someone who, in turn, was a disqualified person or used it in criminal activity, thus harming the public and endangering public safety. They contend, as well, that the statute is tolled by the continuing violation doctrine. Neither argument is persuasive. All of the elements of a cause of action occurred at the time of each alleged straw sale. The wrong alleged in this case is the "obvious" straw sale to Minor and the harm, which was the violation of the statutory prohibition against straw purchases, occurred at the time of the sale. *Shailendra Kumar, P.A. v. Dhanda*, 426 Md. 185, 195 (2012); *Mattingly v. Hopkins*, 254 Md. 88, 95 (1969). Each allegedly unlawful sale to Minor was a separate wrong and thus the statute began to run separately for each sale. That other injuries or harm may have occurred subsequently, such as those resulting from Minor's transfer of a firearm to someone who could not lawfully possess it or who used it in a crime, simply do not peg the commencement of the statute of limitations to some later date. Moreover, the statute did not begin to run, as the plaintiffs contend, only when law enforcement eventually recovered and traced the firearms back to Minor (and the defendants). The straw sale was complete, under the theory outlined in the complaint, at the time Minor took possession of each handgun he did not intend to put into his "collection." Had the plaintiffs looked at the Maryland State Police records at the time of each sale, they reasonably should have known of the wrong complained of in this case. *Cain v. Midland Funding, LLC*, 475 Md. 4, 35 (2021). Under

the plaintiffs' theory, which the court rejects, the statute of limitations would not commence until some indefinite time in the future, whenever Minor transferred the handgun to someone else, whenever that might occur. No case supporting this novel proposition have been cited. For these reasons, the court holds as a matter of law that claims based on any sale taking place before September 3, 2021, are time barred.

The overarching theory of the plaintiffs' complaint is that illegal straw sales are "demonstrated by factors such as the sheer number of firearms sold to Mr. Minor, multiple instances of duplicate or near-duplicate purchases of commonplace handguns, and the pattern and rapid pace of the sales." Complaint, ¶ 8. If the time barred transactions are disregarded, this theory evaporates.

The court is not saying that just because someone is a Designated Collector, they cannot be a straw purchaser, or that an FFL is "immunized" from the rules against straw sales simply because the purchaser is a Designated Collector. Under the *facts* pled in this case, the complaint fails to state a cognizable claim for relief against each defendant.

Other Grounds Raised for Dismissal

The defendants have raised a host of other issues in support of their motions to dismiss, and the plaintiffs have advanced counterarguments regarding these contentions. The considered doctrine of judicial restraint, however, militates against a trial court deciding issues that are not necessary to resolve the pending motions to dismiss. For that reason, those arguments are not addressed in this decision.

Request for Leave to Amend

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At the close of oral argument, the plaintiffs orally asked for leave to amend in the event the court were inclined for any reason to grant the motion to dismiss. Such a request can be made orally.

Ordinarily, leave to amend in Maryland is freely granted, particularly when a case is in an early stage, unless leave to amend would be futile or inappropriate for other reasons. This case presents such an occasion to deny the request.

First, the plaintiffs, particularly the State of Maryland, has for years had more information than any of the defendants about Minor's purchases. All of the sales by all of the defendants were known to the Maryland State Police at their inception and each and every document regarding the sales by the defendants to Minor were in the hands of State and federal law enforcement authorities before each and every handgun came into Minor's possession. The complaint and the plaintiffs' brief in opposition to the motions to dismiss show that the plaintiffs also have had access to all pertinent ATF records, Maryland State Police Records, and the federal criminal proceedings against Minor and the individuals to whom Minor transferred handguns, since at least July of 2022, including ATF Special Agent John C. Donovan's lengthy Affidavit in Support of a Criminal Complaint and Arrest Warrant for Minor which was filed in federal court. The plaintiffs also have the signed Plea Agreement with Minor, in which Minor agreed to all the government's allegations against him (Plea Agreement at p. 2) along with the forfeiture of the firearms (Plea Agreement at pp. 7-8).

If Minor shared information showing that the defendants knew of his intent to engage in straw purchases, such information would be in the complaint. It is not. If the plaintiffs had facts showing that the defendants knew that Minor was purchasing the firearms for someone else, those facts would be in the complaint. *See United States v. Carney*, 387 F.3d 436, 442, 450 (6th

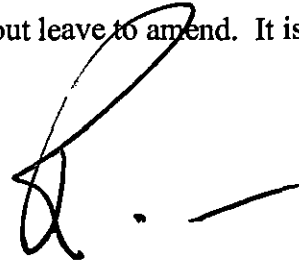
Cir. 2004) They are not. The plaintiffs' claims are simply not viable, and any amendment would be futile. *See Beyond Systems, Inc. v. Realtime Gaming Holding Co., LLC*, 388 Md. 1, 29 (2005); *Gaskins v. Marshall Craft Associates, Inc.*, 110 Md. App. 705, 716 (1996).

At bottom, in the court's view, the plaintiffs hope to use the discovery process in order to construct a case and, through that discovery, find facts sufficient to state a viable claim for relief. However, the discovery rules are not intended to allow a party to secure information needed to frame a proper complaint and state sufficient facts to constitute a cause of action. *Cf. Allen v. Allen*, 105 Md. App. 359, 374-376 (1995) (denying leave to take a pre-suit deposition under Md. Rule 2-404). *See also Sandmann v. Petron*, 404 N.W.2d 800, 802 (Minn. 1987) (pretrial discovery not allowed in order to ascertain facts to frame malpractice complaint).

Conclusion

To state the obvious, handgun violence is a serious public policy issue. As the plaintiffs cite in the first paragraph of their complaint: "Gun violence is an unacceptable daily reality in the Washington, D.C. metropolitan area." Complaint, ¶ 1. But to a large extent, and particularly in this case, the issue is best addressed by the political branches of government. Presumably, the Maryland General Assembly can amend or eliminate the Designated Collector statute, which permitted the sales in this case to take place. Then, the default rule, at least in Maryland, will be the purchase of one regulated firearm in a 30-day period. Md. Code Ann., Pub. Safety § 5-129(a). And, of course, any straw sale still will be illegal.

The complaint is dismissed, with prejudice, and without leave to amend. It is so ordered this 14th day of February, 2025.



Ronald B. Rubin, Senior Judge

Entered: Clerk, Circuit Court for
Montgomery County, MD
February 14, 2025