
IN THE APPELLATE COURT OF MARYLAND

September Term, 2025

No. 787

THE DISTRICT OF COLUMBIA, *et al.*,

Appellants,

v.

ENGAGE ARMAMENT LLC, *et al.*,

Appellees.

On Appeal from the Circuit Court for Montgomery County

(Honorable Ronald B. Rubin, Judge)

RESPONSE BRIEF OF APPELLEE

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INTRODUCTION

Judge Ronald B. Rubin rightly dismissed the instant case with prejudice, holding that the “serious public policy issue” of “handgun violence” is, especially here, best addressed by the political branches of government. E. 43. There, the Maryland General Assembly can review the Designated Collector statute “which permits the sales *in this case* to take place” and determine whether changes need to be made. *Id.* (emphasis added).

The Court may quickly dispense of this appeal, since the sole grounds against United alleged by Appellants as the “red flags” they claim are well-pleaded are not pleaded against United.

Appellants’ brief against United includes demonstrable Appellant-made contradictions, complete failures of averment and mischaracterizations that cannot withstand appellate scrutiny, meriting this Court’s denial of its appeal. Most egregiously, Appellants claim repeatedly, that United Gun Shop sold “identical” firearms to Demetrius Minor and – in addition - that this somehow makes them culpable for lawful, State Police approved, sales to a licensed Designated Collector approved by the State of Maryland to make multiple purchases. But not only is this not true, Appellants did not plead this in their complaint. Appellants pleaded or attached exhibits, as outlined below, five different handguns with unique serial numbers lawfully sold by United¹. These are not minor discrepancies by Appellant; they are fundamental factual errors that pervade the entire complaint.

This Court is respectfully requested to affirm the dismissal.

¹ As discussed below, the complaint’s bald claim that the “two Draco pistols” are “identical” is unsupported by *any* pleaded facts and Appellants do not include or cite to United’s forms 77R. If facts existed to support this allegation, they would have been included and they are not. *See, United States v. Carney*, 387 F.3d 436, 442, 450 (6th Cir. 2004).

STATEMENT OF THE CASE

United Gun Shop adopts Appellee Engage’s procedural history. Appellants failed to allege any facts sufficient to show United Gun Shop knew or should have known Minor was a straw purchaser; the claims were time-barred; and any amendment would be futile.

QUESTIONS PRESENTED

1. Whether the Circuit Court Properly Held That The Complaint Failed to State Claims Against United.
2. Whether the Circuit Court Correctly Applied the Statute of Limitations.

STANDARD OF REVIEW

Motion to Dismiss

United Gun Shop agrees that the proper standard of review of an order granting a motion to dismiss is de novo. *See* App. Br. at 14. Maryland’s appellate courts “review the grant of a motion to dismiss de novo [and will] affirm the circuit court’s judgment on any ground adequately shown by the record, even one upon which the circuit court has not relied or one that the parties have not raised.” *Grier v. Heidenberg*, 255 Md. App. 506, 520 (2022) (citing *Sutton v. FedFirst Fin. Corp.*, 226 Md. App. 46, 74, (2015), cert. denied, 446 Md. 293 (2016)).

Motion for Leave to Amend

The circuit court has discretion in deciding whether to grant or deny leave to amend pleadings and appellate review looks for abuse of that discretion. *Bord v. Balt. Cnty.*, 220 Md. App. 529, 565 (2014). Under Md. Rule 2-341(a), a party may file an amended

pleading without leave of court “by the date set forth in a scheduling order or, if there is no scheduling order, no later than 30 days before a scheduled trial date.” Md. Rule 2-341(a). Otherwise, a party “may file an amendment to a pleading after the dates set forth in [Rule 2-341(a)] only with leave of court.” Md. Rule 2-341(b). “Rule 2-341(b), in turn, works in conjunction with Md. Rule 2-322(c), which provides that after a claim has been dismissed, ‘an amended complaint may be filed only if the court *expressly grants leave to amend.*’ Md. Rule 2-322(c).” “Denial of leave to amend is appropriate if the amendment would result in prejudice to the other party, undue delay, or where amendment would be futile because the claim is irreparably flawed.” *Eastland Food Corp. v. Mekhaya*, 486 Md. 1, 20 (2023) (internal citation omitted). Under this standard, where Appellants’ amendment would be futile, as here, affirmance of the Circuit Court’s denial of leave to amend is warranted.

STATEMENT OF FACTS

Appellants’ “statement of facts” in their brief are long on legal discussions and short on citations to the record of actual relevant factual allegations about United in support of their dismissed Complaint. Appellants’ brief, pgs. 4-14.

Appellants instead pivot in this Court to a newly stated list and bald allegations of “red flags, claiming four “obvious” “red flags” existed at the time of United’s five sales to Minor. Appellants’ brief, pgs. 15-18. Appellants do not appear to contest either the statutory framework or the complaint’s factual information set forth by Judge Rubin in his ruling (Memorandum Decision and Order, E. 25-31, dismissing with prejudice Complaint; see, e.g., Appellant’s brief, pgs. 4-5 (“a designated collector purchasing a handgun is not

subject to the one-firearm-every-30-days limit as long as the handgun is “for private collection or collector series.” Md. Code Ann., Pub. Safety § 5-129(a)(2)(i); and, “The form 77R requires the purchaser to certify under penalty of perjury that they are not ‘participating in a straw purchase of a regulated firearm’...).

It appears instead that Appellants’ in only one paragraph in their statement of facts section cite to the following pages in their Complaint to claim that Judge Rubin committed error by ruling on a “cherry-picked list” of their bald claims that United ignored “red flags” of a straw purchase. Appellants’ brief, pg. 12, ¶ 2, pg. 13, ¶ 2. Appellants claim they allege in their complaint a “plethora of red flags” but in their brief they fail to cite to *specific allegations or paragraphs* in support of that contention in their complaint - instead only citing broadly (at times between four to thirteen (13) *pages* of their complaint rather than specific paragraphs) claiming support, for example, as follows:

- “E. 50-57” (seven pages) – which is the “facts” section of the complaint not detailing any facts about United, but instead inserting seven pages about “crime” in general. Appellants’ brief pg. 12.
- “E.63-67” (four pages) – only six paragraphs of which reference United Gun Shop, and in those paragraphs they contradict the statements they make here before this Court (Compare: “two [different] Glock pistols...45 caliber and 9mm” and “sold in nine days”, E. 65, with “two pairs of identical models”... “sold...in eight days” Appellants’ brief, pg. 9, ¶ 4). Appellants’ brief, pg. 12.
- “E. 60” – which merely recites alleged training materials.
- “E. 69-82” (13 pages) – citing to its *causes of action*.

What Appellants do not tell the Court is what they argued at oral argument in the Court below (E.595-598) and in their complaint (paragraph 56, E. 61), namely, that the “distinct

physical characteristics” of an allegedly overweight² African-American licensed gun collector gave reason, at least on grounds of weight and alleged unemployment status, to United to refuse all of his five purchases because they were somehow known straw purchases. While it appears they have abandoned these false “red flags” in their present argument, at oral argument the government struggled and failed to adequately answer the Judge’s simple question offering to hear the alleged facts supporting their claims, with the following colloquy exposing the utterly flawed nature of the complaint:

THE COURT: What facts are alleged to show that any of the defendants knew?

MR. TIRSCHWELL: Okay. Let me turn to Engage....And I'm looking now at the complaint. This is paragraph 62, where we've set forth a chart of the sales to engage...over a five-month period....And I want to answer a question that's been raised by Your Honor and defense counsel about what we meant when we said Mr. Minor was a physically distinctive man. It's very simple. It's absolutely not about his race.

THE COURT: Okay.

MR. TIRSCHWELL: He is a large man, 400 pounds. It's listed in the paperwork that is in the record. And the point we were making simply –

THE COURT: Well, what does that have to do with whether he can or can't, should or shouldn't buy these things?

MR. TIRSCHWELL: The simple point we were making, Your Honor, is that -- ... that they would know it's the same person coming in each time, because he's someone who is easily recognized.

THE COURT: I see. Okay.

² The government told the court that a key fact making Defendants reasonably aware of the illicit intent of Mr. Minor to be a straw trafficker was that he was “400 lbs” (E. 596) however this allegation was not plead in the Complaint, and the Court questioned its relevance when cited at oral argument at all as to whether he was a lawful purchaser.

...

THE COURT: So what does 'unemployed' got to do with it?

MR. TIRSCHWELL: So Your Honor, there's a constellation of facts here.

THE COURT: Well, technically, I'm unemployed. I mean, I'm retired, so when I go into apply for a loan, the only honest answer I would write -- are you employed? No. So, I'm just trying to understand what you mean by that.

MR. TIRSCHWELL: Yes. So, let me take a step back for a second and talk about some of the red flags that we've alleged in our complaint, and that are sort of well-recognized red flags and we'll get to the question of unemployment.

THE COURT: What is the source of this well recognition?

MR. TIRSCHWELL: So Your Honor, we've alleged -- this repetitive buying of the same or similar firearms in a short period of time, ...

THE COURT: How does that dovetail, if it does, with a statute that the General Assembly enacted for reasons which somebody will tell me at some point on this collector business, which seems to say, if you have one of these permits or licenses, you can do it. So how do I square that circle? You're saying that more than two or whatever the number is, but the legislature in Maryland said no limit.

MR. TIRSCHWELL: ... With respect to Maryland, yes, there is a designated collector status. Yes, it says you can buy more than one gun at a time, and you are exempt from the one gun a month rule, but -- but it also says you have to be buying for a personal collection,

Oral argument excerpts, E. 595-599.

Not only did the Appellants fail to address what sources or facts exist as to support their claims, they wholly failed to cite to *any* facts regarding United's five sales to Minor.

The only facts that are clearly set forth in the complaint by Appellants regarding United is that it is undisputed that each of the five different guns sold to Minor by United Gun Shop were approved by the Maryland State Police, all background checks were dutifully passed, that Minor was a licensed and fully authorized Designated Collector authorized by the State of Maryland to purchase as many handguns as desired under Maryland State law (Md. Code, Public Safety § 5-128, 5-129)(exception allowed to the one-handgun-a-month limit), and that he was a valid holder of a Handgun Qualification License (“HQL”) also approved by the Maryland State Police with multiple “extensive” background checks. E. 248-250, 522-527.

On four different dates over two months, between August 13 and October 5, 2021, a State of Maryland licensed “Designated Collector” Demetrius Minor, a resident of Montgomery County, Maryland, bought five different handguns from United Gun Shop. E.88.³ These transfers were finalized on August 13, August 17, August 21, and October 5, 2021. For each transaction, Mr. Minor completed the required ATF Form 4473 and Maryland Form 77R, which required him to attest under oath the guns being purchased were for himself and not another, provide valid identification and his Collector’s License and a Handgun Qualification License, and pass all federal and state background checks. E.522-527. Each sale was approved by the Maryland State Police. E. 248-250.

United Gun Shop adopts by reference the brief of Appellee Engage Armament. United asks the Court to affirm the lower court’s dismissal with prejudice.

³ Defendant denies Plaintiffs’ representations on their “Exhibit 2” in the record that “Images are the make and model of the firearms sold...” *Id.*

ARGUMENT

I. THE STANDARD OF REVIEW IS DE NOVO.

An appellate court reviews without deference the grant of a motion to dismiss for failure to state a claim. *Elsberry v. Stanley Martin Cos., LLC*, 482 Md. 159, 178 (2022). A complaint is appropriately dismissed on this basis when, even accepting the allegations as true, “the plaintiff is not entitled to relief as a matter of law.” *Lubore v. RPM Assocs., Inc.*, 109 Md. App. 312, 322 (1996) (citing *Hrehorovich v. Harbor Hosp. Ctr.*, 93 Md. App. 772, 784 (1992)). In reviewing the ruling on the motion to dismiss, the court must accept all well-pled facts in the complaint and draw reasonable inferences from them, in the light most favorable to the non-moving party. *Davis v. Frostburg Facility Operations, LLC*, 457 Md. 275, 284 (2018). “[T]he facts comprising the cause of action must be pleaded with sufficient specificity,” or the complaint will be dismissed. *Adamson v. Correctional Med. Servs., Inc.*, 359 Md. 238, 246 (2000) (quoting *Bobo v. State*, 346 Md. 706, 708-09 (1997)). “Bald assertions and conclusory statements by the pleader will not suffice.” *Id.*; see also *John B. Parsons Home, LLC v. John B. Parsons Found.*, 217 Md. App. 39, 69 (2014) (“Mere conclusory charges that are not factual allegations need not be considered.” (quoting *Shenker v. Laureate Educ., Inc.*, 411 Md. 317, 334-35 (2009))). If a complaint contains allegations that are “doubtful and ambiguous, it will be construed most strongly against the pleader in determining sufficiency.” *Bobo*, 346 Md. at 709; see also *Shenker*, 411 Md. at 335 (holding that “[a]ny ambiguity or uncertainty in the allegations bearing on whether the complaint states a cause of action must be construed against the pleader”) (citation omitted).

II. THE CIRCUIT COURT CORRECTLY DISMISSED THE COMPLAINT FOR FAILURE TO STATE A CLAIM.

I. APPELLANTS' ALLEGATIONS OF "RED FLAGS" REQUIRE UNREASONABLE INFERENCES AND DO NOT ENTITLE APPELLANTS TO RELIEF.

Appellants' case rests on the allegation that United Gun Shop sold five "identical" firearms, which raised "red flags." Appellants' brief, pg. 15, ¶ 2. Yet that foundation crumbles upon examination of the complaint. Appellants never pleaded the five handguns were identical, only that the two "Draco" pistols allegedly were, while failing to set forth the data on each Form 77R in support of their conclusory claim. E. 66, ¶ 68.

It is important to note at the outset that Appellants make the majority of their arguments against Engage, while seeking to bootstrap non-existent "facts" to United ("Engage and United sell dozens of similar (and in some cases identical) handguns over a five month period"), Appellants' brief, TOC, pgs. 8, 9, 10, 16-18.

Appellants contradict their own complaint by arguing in their appeal brief – without factual support - that of the five handguns, United sold Minor four of them as "two identical pairs." Appellants' brief, pg. 9, ¶ 4, 10 ¶ 1. They claim these included: "[two identical] Century Arms Draco AK-style" pistols and two "identical" Glock 23s," within two months. But no facts were plead in the complaint alleging this, and thus it cannot be taken as true. The only material factual averments by Appellants – as opposed to innuendos and bald arguments - are that United received State of Maryland approval for each sale to Minor, who was a lawfully licensed buyer *and* a licensed Designated Collector (allowing him more than one handgun purchase a month), and that he certified under oath repeatedly that the

purchases were for himself and were not straw purchases. Appellants' brief, pg. 5, ¶ 4; E.65-67.

Appellants instead pivot to rely on a contrived list of “red flags” supposedly known to United Gun Shop at the time of sale, while wrongly suggesting the judge below “cherry-picked” a list of red flags out of Appellants' more substantive list. Yet none of that is true: there is no list of “red flags” plainly identified in the Complaint more less any which are legally actionable, nor any facts showing that United knowingly ignored any such alleged red flag, neither is there any evidence of the judge below “cherry-picking” his own “red flags” and ignoring the ones Appellants wanted considered.

Instead, the opposite is true as demonstrated on the pleadings and at oral argument; the judge asked for *Appellants' list* of “red flags” at oral argument as indicated *supra*, and the Appellants could not properly identify any cognizable list of “red flags” that are either legally or statutorily suggested, more less any that United violated or ignored. Indeed, Appellants failed and refused to identify in pleadings below, oral argument and the pleadings before this Court, any single demonstration of where the Complaint – or any proposed Amended Complaint (which they do not attach or even propose) – would suffice the standard of pleading a cause of action that does not credit “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); *Sheneker v. Laureate Education, Inc.*, 411 Md. 317, 335 (2009).

Appellants' complaint, as Judge Rubin pointed out, only “avers generally... [of straw purchasing]...[but] No factual support is given...and the complaint does not reference that

Minor was a Designated Collector authorized by the Maryland State Police to make multiple handgun purchases.” E. 34 (emphasis added).

The court below also found that Appellants’ averments ignored important differences “shown in the complaint’s [own] exhibit...that each handgun varies...” showing Appellants’ own averment to be contradicted by their own pleadings, that “the handguns Minor purchased are simply not ‘the same.’” E. 35. This is not a factual finding or “assum[ption]” (Appellants’ brief, pg. 13, ¶ 2), it is simply a recitation of the bald statements of Appellants in their complaint.

The court below noted that Appellants also made conclusory averments that “AK-style pistols such as the [Century Arms] Draco...is impractical for target shooting, home defense, and hunting” and that this somehow “‘signaled’ to United that Minor was, in all likelihood, intending to divert handguns into the criminal market.” E. 34. The court below thereupon properly applied the law in this State that “conclusory charges...need not be considered” on a motion to dismiss. *MCB Woodberry Dev., LLC v. Council of Owners of Millrace Condominiums, Inc.*, 253 Md. App. 279, 296 (2021).

Appellants again assert bald statements of how their “complaint is replete with detail on all the ways [sic] in which Engage and United’s sales raised the above red flags.” Appellant’s brief, pg. 16, ¶ 2. In support, they now list out four (4) so-called “red flags” which they then baldly state United “ignored.” *Id.* Those are: (1) Bulk purchases, (2) repetitive purchases, (3) payment of large amounts of cash, and (4) “AK-style pistols impractical for lawful purposes.” *Id.* at 16-18.

United addresses these so-called “red flags” now alleged, *seriatim*:

Bulk purchases. There is no allegation of any “bulk” purchase in the complaint and Appellants’ raise this as an aside on appeal as to United, even though they could not answer the judge below about how “two purchases” is a ‘bulk’ purchase with a Collector’s license. E. 598 (“So how do I square that circle? You’re saying that more than two or whatever the number is, but the legislature in Maryland said no limit. MR. TIRSCHWELL: -- Your Honor, ... With respect to Maryland, yes, there is a designated collector status. Yes, it says you can buy more than one gun at a time, and you are exempt from the one gun a month rule, but -- but it also says you have to be buying for a personal collection...”). United made *no* “bulk” sales to Minor, more less have Appellants even pleaded facts in support of their position. The sole allegation Appellant points to in the complaint, “United sold Minor two handguns on October 5 (E.65)”, makes no allegation of any “bulk” sales by United to Minor. It is merely a chart showing the individual, distinct and different calibers of the five guns and the dates of each of those sales. *Id.* This “red flag” thus has no pleading, or allegation, involving United.

Repetitive purchases. Appellants misconstrue Maryland law for Designated Collectors by averring “repetitive purchases of the same or similar commonplace or noncollective firearms” is a straw purchase “red flag” even in the face of the lower court’s admonition that no such provision exists in the statute. Below, the court found:

“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. [Both] occurred in this case. No statutory metrics on the number, type or caliber exist to preclude a purchase as a Designated Collector” showing that the complaint is not factual as it alleges “no facts to show that, at the time of the sale, [Appellee]

reasonably should have known that Minor was a straw purchaser and not simply someone exercising their rights as a private collector under Md. Code Ann., Pub. Safety § 5-129(a).” E. 37, citing, “for example,” Compl. ¶ 60.

Id.

This “red flag” thus also has no pleading, or allegation, involving United.

Payment of large amounts of cash. Appellants make *no* allegations at all in their complaint that United received “payment of large amounts of cash,” more less that they were on notice of a straw purchase because of large cash payments. E. 65-67.

In their brief before this Court they add an unsworn statement alleging they mistakenly stated a large cash payment amount in their complaint and that it should be amended to reflect about \$30,000 less than stated, “more than \$2000 spent at United.” Appellants’ brief, pg. 18, ¶ 1. Setting aside the entirely made-up averment by Appellants of “large cash payments” being accepted by United, and that any purchases of guns with cash is somehow a red flag of a straw purchase, there is nothing averred in the complaint that United actually accepted cash or if it did, that it in any way violated the law or put it on notice of any concern that Minor was a straw purchaser. Indeed, Appellants don’t even make that “cash red flag” argument in their complaint at all except for a footnote when discussing Engage, not United. E. 36, fn 44 This “red flag” thus as well has no pleading, or allegation, involving United.

AK-style pistols impractical for lawful purposes. This fourth and final “red flag” claimed by Appellants in their brief also fails. Appellants, as shown above, vehemently denied at oral argument the “distinct physical appearance” of Mr. Minor as an African American was in any way what they were referring to, pointing instead to his “400 pounds”

weight. However, in their brief before this Court they argue that AK-style pistols are a “red flag,” because their complaint alleges AK-style pistols are “especially appealing to people with criminal intentions.” Appellants’ brief, pg. 18, ¶ 2. However, Appellants fail to mention they provided no evidence of this averment in their complaint, but instead cited in a footnote therein to an online article discussing “**Rappers, Gang members...**”. *Id.* at fn 44 (emphasis added). Appellants here raise a red herring, not a red flag. Appellants made no attempt to plead – or even argue - that Mr. Minor was either a “Rapper” or a “Gang Member” nor to support such a made-up averment that AK-style pistols are “less practical for target shooting, home defense, or hunting – in other words, lawful uses...”. Appellants’ brief, pg. 18, ¶ 2. Instead, Appellants attempt to misuse Mr. Minor’s “physical characteristics” again before this Court by falsely claiming that United should have known that Minor’s “distinct physical characteristics” when combined with his purchase of two AK-style pistols over two months make his interests similar to “Rappers and Gang Members” when the same was never alleged. Mr. Demetrius Minor, instead, at the time of the purchases and interactions with United, was admitted by Appellants to be a fully licensed and back-ground checked Maryland man, fully authorized by the Maryland State Police for each purchase.

Appellants’ fourth “red flag” is therefore another invalid, non-factual, highly charged conclusory averment that does not support their inadequate and futile pleading. Memorandum Decision and Order, Judge Rubin, E. 43, ¶ 1. It should not be considered by this Court just as the court below rightly rejected this line of argument by Appellants. See oral argument excerpts, *supra*, pg. 11-12, citing E. 595-599.

Even, *arguendo*, taking Appellants’ now-stated “red flags” as if true, Appellants have not even alleged any of their so-called “red flags” as reasonably related to United. Not a single one of the above four so-called grounds for this lawsuit as averred by *Appellants* apply to United in any way.

2. THE COURT BELOW PROPERLY HELD THE VALIDITY OF THE DESIGNATED COLLECTOR STATUTE IS A QUESTION FOR THE MARYLAND GENERAL ASSEMBLY, NOT THE COURT.

Minor was an approved “Designated Collector,” a status that specifically authorizes the purchases of multiple firearms and is frequently held by retirees, hobbyists, and others without traditional employment. To impose a duty on dealers to scrutinize a purchaser’s interests in personally acquired collections, or reviewing their financial or employment background would not only exceed statutory requirements but also would raise serious privacy and discrimination concerns. Dealers are entitled to rely on the State’s approval of each transaction, just as regulated parties are entitled to rely on government agency determinations and regulations. *United States v. Pennsylvania Industrial Chemical Corp.*, 411 U.S. 655, 674 (1973). United Gun Shop did exactly that.

3. THE ATF’S OWN GUIDANCE CONFIRMS RETAILERS CANNOT BE HELD RESPONSIBLE FOR STRAW PURCHASES ABSENT CLEAR WARNING SIGNS.

Appellants’ reliance on industry guidance is misplaced. The materials cited by Appellants actually support United Gun Shop’s position that a retailer cannot reasonably detect or prevent straw purchases absent overt indicators. Appellants have never pleaded “over indicators” with any clarity; instead, they plead ever-morphing and appearing “red flags” they invent as binding, without a factual or legal ground. The guidance emphasizes

that a straw purchaser's deceit lies precisely in concealing intent and that law enforcement, not firearms dealers, must detect and prosecute such conduct. None of the indicators described in those materials applies to the instant case. Appellants agree that United obtained sworn statements on the Form 77Rs and 4473s including the statements under oath that the handguns were not for straw purchases, and were for a personal collection only. Minor displayed no reluctance to provide information, demonstrated no unfamiliarity with the firearms, and showed no signs of nervousness or coaching. He was forthright and compliant at every stage of the purchasing process, and he was licensed and approved for the purchases by the State of Maryland.

Here, the *government* failed to stop the sales at issue, approving all of them.

III. THE CRIMINAL ACTS OF THIRD PARTIES CONSTITUTE SUPERSEDING CAUSES THAT BREAK THE CHAIN OF CAUSATION.

Even if United Gun Shop breached some duty, which it did not, the intervening criminal acts of Minor, Willis, and other individuals sever any causal link as a matter of law. Maryland precedent is unequivocal that “a third-party’s criminal act often constitutes an unforeseeable superseding cause.” *Mitchell v. Rite Aid of Maryland, Inc.*, 257 Md. App. 273, 320 (2023).

Here, the sequence of events following the sales to Minor was extraordinary and criminal at every stage. Minor allegedly made false statements on federal and state purchase forms, crimes punishable by up to ten years and three years, respectively. He then is alleged to have illegally transferred several firearms to Willis, a convicted felon

prohibited from possession. Willis unlawfully acquired those guns, transferred them again, and ultimately used one during a criminal altercation in the District of Columbia. Additional unknown individuals later misused some of the same firearms in unrelated crimes. Each step in this chain involved deliberate, unlawful acts that were far beyond the scope of anything United Gun Shop could foresee or prevent.

Under Maryland law, courts evaluate proximate cause by asking whether the intervening act was a normal or extraordinary consequence of the situation, whether it stemmed from wrongful conduct by a third person, and the degree of that person's culpability. *Pittway Corp. v. Collins*, 409 Md. 218, 248 (2009). Every factor weighs decisively against liability here. The chain of events was not the “normal result” of a lawful retail sale. Each intervening act from the falsified forms to the subsequent violent crimes was intentional and highly culpable. Imposing liability on United Gun Shop would extend the concept of proximate cause beyond all reasonable limits, effectively making every dealer a guarantor against future criminal misuse of its products.

Courts nationwide have rejected such attempts. *City of Philadelphia v. Beretta U.S.A. Corp.*, 277 F.3d 415, 425 (3d Cir. 2002); *City of Chicago v. Beretta U.S.A. Corp.*, 213 Ill. 2d 351, 412 (2004); *Steinle v. United States*, 17 F.4th 819, 822 (9th Cir. 2021). These cases reflect the same principle recognized in Maryland. Criminal misuse of a lawfully sold product is an intervening act that cuts off liability as a matter of law.

The facts here fall squarely within that rule. United Gun Shop sold firearms in accordance with every regulatory requirement; federal and state authorities approved each transaction. Once the firearms left the store, multiple independent actors made conscious

criminal decisions that United Gun Shop neither caused nor could have anticipated. To hold otherwise would erase the well-settled distinction between lawful commerce and criminal misuse, transforming ordinary retailers into perpetual defendants whenever a product later features in a crime. The circuit court properly declined to reach that radical theory.

IV. THE CIRCUIT COURT CORRECTLY APPLIED THE STATUTE OF LIMITATIONS.

Appellants cannot escape the plain operation of Maryland's three-year statute of limitations. Md. Code Ann., Cts. & Jud. Proc. § 5-101. Their own allegations demonstrate that any supposed irregularities in these firearm sales would have been immediately apparent to state authorities at the time of purchase, triggering the limitations period years before this suit was filed. Appellants cannot claim ignorance when they, the State, approved the sales they attempt to make United liable for legally transferring. The harm they describe arising from the straw purchases occurred the moment Demetrius Minor completed the forms and received state approval, not when unrelated crimes occurred later. Because three of the five sales are indisputably time-barred and the remaining claims rest on inherently contradictory factual theories, the circuit court correctly found the complaint untimely in its entirety.

V. THE STATE DOES NOT POSSESS EXEMPTION FROM THE STATUTE OF LIMITATIONS FOR CIVIL CLAIMS, SUCH AS THIS CASE.

United adopts by reference Engage's brief on this point. Engage pgs. 29-30. This suit is *ultra vires* under Article V, § 3, of the Maryland Constitution ("commence, and prosecute or defend any civil suit...which the General Assembly by law or joint

resolution...shall have directed or shall direct to be investigated, commenced and prosecuted or defended.”). *Id.* at 3(a)(2). The Maryland General Assembly, as of the institution of this lawsuit, had not granted such authority to the Attorney General to bring this civil suit. Thus he lacks authority and has no standing to bring suit. On this ground alone, the suit fails.

Maryland’s general statute of limitations provides that “[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.” Md. Code, Cts. & Jud. Proc. § 5-101. The statute contains no exemption for the State acting as a plaintiff seeking damages for alleged private negligence because it cannot be acting in its sovereign capacity when acting *ultra vires* and when acting to advance a political narrative, not public rights, as here. Public rights do not include a right to be free from assaults or straw purchases from criminals. *Tadger v. Montgomery Cnty.*, 300 Md. 539, 553 (1984); Judge Rubin, E. 43 (“...particularly in this case, the issue [of gun violence] is best addressed by the political branches of government.”).

Accordingly, where the State of Maryland brings a negligence claim against a private citizen, and no statute provides a different limitations period, the claim must be filed within three years of accrual under Cts. & Jud. Proc. § 5-101.

A. “OBVIOUS” STRAW PURCHASES WOULD TRIGGER IMMEDIATE KNOWLEDGE.

Appellants’ own theory of liability renders their claims untimely. They repeatedly assert that the firearm sales at issue were “obvious straw purchases” marked by

unmistakable “red flags.” If that were true, then the very facts they allege demonstrate that the cause of action accrued immediately, when those supposedly obvious red flags first appeared. Under Maryland law, the statute of limitations begins to run when the plaintiff knew, or reasonably should have known, of the alleged harm. Md. Code Ann., Cts. & Jud. Proc. § 5-101.

If these purchases were as blatant as Appellants claim, the Maryland State Police had more information than United at the time of sale and therefore would have been on notice of any alleged irregularity. Further, they were the very agency that reviewed and approved each 77R Form, and the agency that would have direct knowledge of Minor’s purchases at multiple guns stores. United had no knowledge of Minor’s actions nor any possibility of the same. The State approved each transaction, and confirmed no disqualifying factor existed. Thus, the statute of limitations began to run no later than the date of each sale.⁴ Appellants cannot maintain that the transactions were simultaneously “obvious” violations that the dealer should have detected but “hidden” violations that plaintiffs could not have discovered for years. The contradiction is fatal. Either the alleged misconduct was apparent from the outset, which triggers limitations, or it was not apparent at all, which undermines the negligence claim itself.

⁴ In fact, the form 4473s in the record show that the dates of sale were actually *earlier* than those listed by Appellants; the later dates used by Appellants in its complaint were the final dates of transfer after approval of the sale that earlier occurred. See e.g., E. 523-27.

B. THE HARM, IF ANY, OCCURRED AT THE TIME OF THE FALSE STATEMENTS.

Even under Appellants' own theory, any alleged harm occurred when Demetrius Minor completed and submitted false information on the required purchase forms. It did not occur years later when other individuals misused the firearms. Both federal and Maryland law make clear that a straw purchase is complete the moment a buyer knowingly makes false statements to a licensed dealer. 18 U.S.C. § 922(a)(6); Md. Code, Pub. Safety § 5-139. Those statutes criminalize the act of deception itself, as the integrity of the background check and regulatory process depends entirely on truthful disclosures. The injury to the regulation system, if any, occurs instantaneously when the falsified forms are submitted and approved.

Minor's alleged false statements on the ATF Form 4473 and Maryland Form 77R each would constitute separate criminal offenses. A knowing misrepresentation on Form 4473 is a federal felony punishable by up to ten years' imprisonment. 18 U.S.C. § 924(a)(1)(A). Similarly, providing false information on Maryland's 77R is a state crime punishable by up to three years' imprisonment and a \$5,000 fine. Md. Code, Pub. Safety § 5-139(a)–(b). Any legal harm caused by Minor was completed once Minor made those misrepresentations. The State Police reviewed all forms and approved the transactions after the required waiting period, ending any potential causal connection to United Gun Shop.

Subsequent criminal misuse of the firearms by Willis and others represents entirely separate events with distinct perpetrators, motives, and time frames. Those later crimes were independent acts of willful misconduct and do not revive or extend the accrual date for any civil claim. Maryland's discovery rule provides that a cause of action accrues when

the claimant in fact knew or reasonably should have known of the wrong. *Cain v. Midland Funding, LLC*, 475 Md. 4, 35 (2021); *Poffenberger v. Risser*, 290 Md. 631, 636 (1981). Here, the “wrong” occurred when the falsified forms became known to the State and were documented in official records. The law does not allow liability to linger indefinitely based on remote or unrelated misconduct years later. To hold otherwise would nullify the purpose of statutes of limitation, which exist to ensure fairness, preserve reliable evidence, and provide finality to lawful actors like United Gun Shop.

C. AT LEAST THREE OF FIVE SALES ARE TIME-BARRED REGARDLESS OF THEORY.

Even if Appellants’ accrual theory were correct, which it is not, three of the five challenged transactions are indisputably time-barred under Maryland’s three-year statute of limitations. The complaint in this case was not filed until September 3, 2024. Yet three of the sales occurred in August 2021—more than three years earlier. Specifically, those transactions involved a Springfield Armory XD-S pistol sold on August 13, 2021, a Glock 23 Generation 2 sold on August 17, 2021, and a Century Arms Mini Draco sold on August 21, 2021. Each sale occurred well outside the three-year limitations window. The final two sales alleged by the Appellants actually occurred, according to the Form 4473, on or before September 28, 2021. E. 523-527. But neither of the two firearms sold on September 28, 2021 were alleged with any factual support in the complaint to have been involved in any criminal incidents. Nor could their inclusion extend the statute of limitations dates or reasonably be tried to a jury for negligence or any tort when they were “Designated Collector” State Police-approved sales.

The circuit court correctly found these claims untimely and properly dismissed them. Appellants have offered no plausible legal or factual basis to disrupt that finding. They do not contend that any statutory tolling provision applies, nor do they identify any newly discovered evidence that would delay accrual under Maryland’s discovery rule. Accrual turns on when a claimant knew or should have known of the alleged wrong, not when later consequences occur. *Poffenberger* at 636. Because the dates of sale, purchaser information, and form approvals were recorded and available to, and in the possession of, state authorities in 2021, any cause of action accrued at that time.

The statute of limitations serves a vital public purpose in protecting defendants such as United and commerce from indefinite exposure and encouraging diligent pursuit of alleged grievances. United Gun Shop’s transactions were lawful, transparent, and fully documented. The fact that Appellants waited more than three years to bring claims over events they now call “obvious” does not hold any weight.

Furthermore, the Appellants’ theory for illegal straw sales, as the lower court rightly points out, require “multiple instances of duplicate or near-duplicate purchases of commonplace guns and the pattern and rapid pace of the sales” E. 41, citing Compl. ¶ 8. Therefore, with the time-barred transactions disregarded, Appellants’ theory has no application to United and “evaporates.” *Id.*

The circuit court correctly applied Maryland’s statute of limitations in finding that the claims are barred as a matter of law.

VI. LEAVE TO AMEND WAS PROPERLY DENIED.

In general, the denial of a motion to alter or amend a judgment or for reconsideration is reviewed by appellate courts for abuse of discretion. *Wilson-X v. Dep't of Human Res. ex rel. Yasmin*, 403 Md. 667, 674-75 (2008). Nevertheless, amendments to pleadings are permitted “when justice so permits.” Md. Rule 2-341(c). Maryland courts have long held that leave to amend may properly be denied without any abuse of discretion when the amendment would cause prejudice, undue delay, or be futile because the claim is irreparably flawed. *Robertson v. Davis*, 271 Md. 708, 710 (1974).

This is precisely such a case. The prejudice against United Gun Shop has already been substantial and would only increase if further amendment were permitted. The litigation has required extensive briefing, imposed reputational harm on a small, minority-owned business, and inflicted significant expense and burden on a party that complied fully with all firearm regulations. Allowing continued litigation on claims already found defective would defeat the principles of judicial economy and fairness that underlie amendments under Md. Rule 2-341.

Moreover, an amendment would be futile because the claims are inherently unsustainable. The circuit court correctly found that the “plaintiffs’ claims are simply not viable, and any amendment would be futile,” citing *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). The court below further rightly found, as previously argued by United, that 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.” E. 43, ¶ 2. Such is impermissible under Maryland law. *C.f. Allen v. Allen*, 105 Md. App. 359, 374-376 (1995)(pre-trial deposition denied). The Appellants’ allegations are grounded in political disagreement rather than actionable law or fact. The firearm transactions at issue were reviewed and approved by both federal and state authorities, and the subsequent criminal acts of third parties occurred entirely outside United Gun Shop’s lawful conduct. Any amendment would merely restate the same discredited theories and prolong an unjust burden on an innocent business, United. Accordingly, the circuit court properly denied leave to amend, and this Court is requested to affirm that ruling.

CONCLUSION

WHEREFORE, based on the reasoning above, United Gun Shop respectfully requests this Court to affirm the lower court’s ruling of dismissal with prejudice.

Respectfully submitted,

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CERTIFICATION OF WORD COUNT AND COMPLIANCE WITH RULE 8-112

1. This brief contains 6,972 words, excluding the parts of the brief exempted from the word count by Rule 8-503.
2. This brief complies with the font, spacing, and type size requirements stated in Rule 8-112.

/s/ _____
Daniel L. Cox

CERTIFICATE OF SERVICE

This is to certify on this _16th_ day of December, 2025, that a copy of the foregoing was served on counsel of record via CM/ECF.

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