

IN THE COMMON PLEAS COURT OF LUCAS COUNTY, OHIO

Estate of Allison Roebke,

Plaintiff,

v.

ADCO Firearms, et al.,

Defendants.

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Case No. G-4801-CI-0202202926

Judge Navarre

**PLAINTIFF’S MEMORANDUM CONTRA TO
DEFENDANTS’ MOTION FOR SUMMARY JUDGMENT**

This case turns on issues of material fact: whether Defendant Steven Thompson, owner of Defendant ADCO Firearms LLC and who is by his own admission an experienced firearm dealer, knowingly violated the law by willfully turning a blind eye to many red flags that made it obvious that a straw purchase was occurring, and whether the harm resulting from such an illegal sale was foreseeable.¹ As discussed below, numerous other courts have considered these same or similar issues of fact and allowed cases to proceed, denying summary judgment when reasonable minds could conclude that the firearm dealer knowingly violated the law by deliberately ignoring red flags indicating an illegal transaction, such as a straw sale, and when the misuse of that firearm later caused harm. This case is no different. Defendants’ motion for summary judgment should be denied.

I. INTRODUCTION

Allison Roebke was a vibrant, intelligent woman. She enjoyed traveling. She spoke Spanish and Greek. She graduated Magna Cum Laude from the University of Toledo, and obtained her master’s degree from the same. But Ms. Roebke, like so many others, battled with

¹ A “straw purchaser” is “a person who buys a gun on someone else’s behalf while falsely claiming that it is for himself.” *Abramski v. United States*, 573 U.S. 169, 171–72 (2014).

her mental health. And, at the age of 37, Ms. Roebke lost her battle when she took her own life using a gun.

But Ms. Roebke's death could have been prevented. Ms. Roebke's death was the foreseeable result of an illegal straw purchase. An illegal gun purchase that Defendants did not stop despite numerous red flags. By moving for summary judgment, Defendants seek to avoid responsibility for the role they played in Ms. Roebke's death. Defendants seek to avoid responsibility by arguing that Ms. Roebke's death was not foreseeable to them. **But a foreseeable result of a straw purchase is that the gun will be misused and cause harm.** And in this case, when construing the facts in a light most favorable to Plaintiff, as the Court must, Defendants turned a willfully blind eye to the numerous red flags surrounding the sale of the gun used in Ms. Roebke's death and did not stop the sale. Had Defendants stopped the sale, Ms. Roebke would not have had access to the gun that she used to take her own life. And, more likely than not, Ms. Roebke would still be alive today.

Defendants move for summary judgment on two grounds. First, Defendants argue that this action is barred under the Protection of Lawful Commerce in Arms Act, 15 U.S.C. §§ 7901–7903. Second, Defendants argue that there is no proximate cause. But Defendants' cursory motion misstates both the law and the facts. Simply put, there are material factual disputes concerning whether Defendants deliberately ignored the red flags of the straw purchase and whether Defendants should have reasonably foreseen that an injury would occur following an illegal straw purchase. And these factual disputes preclude judgment as a matter of law. A jury must decide these issues. Defendants' motion for summary judgment should be denied.

I. DISPUTED AND UNDISPUTED FACTS

A. Undisputed Facts

Defendant Steven Thompson is the holder of a federal firearms license and the owner of Defendant ADCO Firearms LLC, a gun dealer. (Thompson Dep. at 47:17–47:24.) As a firearm dealer, Defendants have a responsibility to ensure that the transfer of a firearm is lawful before making the sale. (Thompson Dep. at 41:2–41:25.) This includes identifying straw purchasers. (*Id.* at 36:8–36:11.)

On July 2, 2020, Ms. Roebke went to ADCO with Jerry Zohn, a male several decades her senior. At the time Ms. Roebke and Zohn were at ADCO, Thompson was the only salesperson there. (Thompson Dep. at 64:9–69:11.) Thompson told the police he believed there was a “strange dynamic” between Ms. Roebke and Zohn. (Police Report attached as Ex. 2 to Zohn’s Deposition at p. 6.) Even with the “strange dynamic,” Thompson did not ask how Ms. Roebke or Zohn knew each other. (Thompson Dep. at 66:3–66:5.) And even with the “strange dynamic,” Thompson had Zohn fill out a Form 4473 and sold Zohn a Ruger Wrangler, Serial No. 20090541, and two boxes of ammunition. (Firearm Transaction Record attached as Ex. 3 to Zohn’s Deposition; Order #23850 attached as Pl. Ex. 4 to Zohn’s Deposition.)²

A few days later, during the late hours between July 7 and 8, Ms. Roebke used the ADCO Firearm to fatally shoot herself. (*See* Police Report attached as Ex. 2 to Zohn’s Deposition). Following Ms. Roebke’s tragic death, Zohn pled guilty to making a false statement in acquisition of a firearm, in violation of 18 U.S.C. §§ 922(a)(6), 924(a)(2). *See United States v. Zohn*, Case No. 3:21-cv-395, ECF 27 (N.D. Ohio March 21, 2022). Specifically, Zohn pled guilty to being Ms. Roebke’s straw purchaser. (Zohn Dep. at 56:19.)

² A Form 4473, or Firearms Transaction Record, is a form created by the Bureau of Alcohol, Tobacco, and Firearms. The form must be completed when a person purchases a gun from a firearm dealer. 18 U.S.C. § 923; 27 C.F.R. § 478.124.

B. Disputed Material Facts

The factual dispute relevant to Defendants’ motion for summary judgment concerns what took place between Thompson, Zohn, and Roebke during the July 2 purchase of the ADCO Firearm. What occurred in the store is unquestionably material to Defendants’ arguments on summary judgment because what occurred during the transaction is material to whether Defendants knowingly violated the law by selling the gun to a straw purchaser. Notably, there is no video evidence of the sale nor were there any other people who witnessed the sale. Instead, the only evidence of the sale is Zohn and Thompson’s testimony. A comparison of Zohn and Thompson’s testimony is helpful.

Zohn Deposition	Thompson Deposition
Ms. Roebke and Zohn visited ADCO on two different days: during the end of June and on July 2, 2020. (<i>Id.</i> at 22:12–18).	Ms. Roebke and Zohn visited ADCO twice on July 2, 2020. (<i>Id.</i> at 60:10.)
During the first visit, Ms. Roebke looked at various guns and Ms. Roebke held a gun. Zohn asked a few questions, but the interaction was otherwise not meaningful. (<i>Id.</i> at pp. 22–24.)	During the first visit, Ms. Roebke pointed out a specific gun to Zohn. Other than a few comments when Ms. Roebke and Zohn entered the store, Ms. Roebke did not speak. Thompson only interacted with Zohn, and the two had a 15–20-minute conversation about different types of guns. (<i>Id.</i> at pp. 56–61.)
During the second visit, Ms. Roebke was talking to Thompson and pointed to the gun she wanted. Ms. Roebke handled the gun for about one minute. (<i>Id.</i> at pp. 34–42.)	During the second visit, Ms. Roebke did not ask any questions or hold the gun. (<i>Id.</i> at 63:23–64:5.)
During the second visit, Zohn was not engaged in the conversation between Ms. Roebke and Thompson, and instead looked around the store. (<i>Id.</i> at 37:9–22.)	During the second visit, Zohn expressed interest in the .22, so Thompson showed him and Ms. Roebke how to use the gun. (<i>Id.</i> at 62:14–63:17.)
Ms. Roebke paid for the gun in cash and handed the cash to Thompson. (<i>Id.</i> at pp. 45:15–45:19, 48:5–9.)	Zohn paid for the gun in cash and handed the cash to Thompson. (<i>Id.</i> at 79:5–79:10.)

II. Standard of Review

“Summary judgment is a procedural device to terminate litigation, so it must be awarded cautiously with any doubts resolved in favor of the nonmoving party.” *LaSalle Bank, N.A. v. Tirado*, 5th Dist. Delaware No. 2009-CA-22, 2009-Ohio-2589, ¶ 17, citing *Murphy v. Reynoldsburg*, 65 Ohio St.3d 356, 604 N.E.2d 138 (1992). Pursuant to Civ.R. 56(C):

A summary judgment shall not be rendered unless it appears from the evidence or stipulation, and only from the evidence or stipulation, that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence or stipulation construed most strongly in the party’s favor.

Summary judgment is proper under Civ.R. 56 when: (1) no genuine issues of material fact exists; (2) the moving party is entitled to judgment as a matter of law; and (3) construing the evidence in the light most favorable to the non-moving party, reasonable minds can come to but one conclusion and that conclusion is adverse to the non-moving party. *Heirless v. Willis Day Warehousing Company, Inc.*, 54 Ohio St.2d 64, 66, 375 N.E.2d 46, 8 Ohio Op.3d 73 (1978).

III. LAW AND ARGUMENT

The Gun Control Act “makes the dealer the principal agent of federal enforcement.” *Abramski*, 573 U.S. at 190; 18 U.S.C. § 921, *et seq.* A firearm dealer “has the responsibility to ensure that, in the course of sales or other dispositions weapons are not obtained by individuals whose possession of them would be contrary to the public interest.” *Abramski*, 573 U.S. at 190 (cleaned up). As part of this responsibility, a firearm dealer may only engage in lawful sales, which includes transferring firearms only to the actual purchaser of the firearm. 18 U.S.C. § 923, 27 C.F.R. 478. (*See also*, Firearm Transaction Record at p. 3, attached as Ex. 3 to Zohn’s Deposition; Blank Form 4473 at p. 4, **attached as Ex. 1.**) A firearm dealer violates The Gun Control Act if the dealer transfers a firearm to a person who the firearm dealer knows or who the firearm dealer has reason to believe that the person is not the actual purchaser. *Corporan v. Wal-*

Mart Stores E., LP, No. 16-2305-JWL, 2016 U.S. Dist. LEXIS 93307, at *8-9 (D. Kan. July 18, 2016) (citing *Shawano Gun & Loan, LLC v. Hughes*, 650 F.3d 1070, 1073 (7th Cir. 2011)). And a firearm dealer can be criminally convicted when he deliberately ignores red flags indicating that the buyer is not the actual purchaser yet transfers the firearm anyway. *See, e.g., United States v. Carney*, 387 F.3d 436, 448–50, 448 n. 7 (6th Cir. 2004).³

Here, Defendants seek to avoid their responsibilities as a firearm dealer on two grounds. **First**, without any case law or meaningful analysis, Defendants suggest that this action is barred by the PLCAA, 15 U.S.C. §§ 7901–7903. **Second**, Defendants suggest that summary judgment is warranted because Plaintiff cannot establish proximate cause. However, Defendants’ argument on both issues is really one in the same. Defendants’ underlying argument is that they should be awarded summary judgment because Defendants did not know that Ms. Roebke would commit suicide. But Defendants’ argument that they had to specifically foresee Ms. Roebke’s suicide is a red herring. Rather, if Defendants knew that the transaction was an illegal straw purchase, it was reasonably (if not entirely) foreseeable that the gun would be misused and cause *some type of harm*. And here, when construing the evidence in Plaintiff’s favor, reasonable minds could conclude as such. Accordingly, Defendants’ motion for summary judgment should be denied.

³ In *Carney*, the Sixth Circuit affirmed a conviction against a gun dealer, a conviction in which the jury found that the firearm dealer was deliberately indifferent to red flags beyond a reasonable doubt. *United States v. Carney*, 387 F.3d 436, 448–50, 448 n. 7 (6th Cir. 2004). Here, a jury need only conclude that Defendants were more likely than not deliberately indifferent to the red flags.

A. The PLCAA Does Not Bar This Case Because the Material Facts Satisfy Multiple Exceptions.

Without any meaningful analysis, Defendants ask this Court to ignore the facts, asserting that the Protection of Lawful Commerce in Arms Act, 15 U.S.C. §§ 7901–7903, bars this case.⁴ Defendants misunderstand the PLCAA and its application here.

The PLCAA provides gun manufacturers and sellers with certain protections from civil liability arising from the unlawful use of their products by third parties. 15 U.S.C. §§ 7902(a), 7903(5)(A).⁵ But there are six exceptions to this protection. 15 U.S.C. § 7903(5)(A). And two exceptions—the predicate exception and the negligent entrustment/negligence per se exception—apply here. 15 U.S.C. §§ 7903(5)(A)(ii), (iii).

1. The Predicate Exception Applies so Plaintiff's Claims are not Barred by the PLCAA.

A firearm dealer may be subject to civil liability when the gun seller “[i] knowingly violated a State or Federal Statute applicable to the sale or marketing of the product, and [ii] the violation was a proximate cause of the harm for which relief is sought.” 15 U.S.C. § 7903(5)(A)(iii). This exception, also known as the “predicate exception,” “allows common law claims for injury proximately caused by a defendant’s knowing violation of a predicate statute.” *Estados Unidos Mexicanos v. Smith & Wesson Brands, Inc.*, 1st Cir. No. 22-1823, 2024 U.S. App. LEXIS 1410, at *41 (Jan. 22, 2024). In this case, there are issues of fact concerning whether Defendants knowingly violated a statute and whether that violation was the proximate cause of the harm.

⁴ Indeed, Defendants cite only one case referencing the PLCAA, *Ramos v. Wal-Mart Stores, Inc.*, 202 F. Supp. 3d 457 (E.D. Pa. 2016). But the *Ramos* decision is an order remanding the case to state court, and the district court declined to opine on the PLCAA. *Id.* at 466.

⁵ The PLCAA is not an immunity statute. *See* 151 Cong. Rec. S9061 (remarks of Sen. Craig, Jul. 27, 2005) (**attached as Ex. 2**) (confirming that the PLCAA is “**not a gun industry immunity bill** because it does not protect firearms . . . sellers . . . from any . . . lawsuits based on their own negligence or criminal conduct”) (emphasis added).

- i. There is a genuine dispute of material fact concerning whether Defendants knowingly violated a statute applicable to the sale of a gun.

First, reasonable minds could conclude that Defendants knowingly violated a federal statute applicable to the sale of a gun when Thompson deliberately ignored red flags that made it obvious that Ms. Roebke, not Zohn, was the actual purchaser of the gun.

A “straw purchaser” is “a person who buys a gun on someone else’s behalf while falsely claiming that it is for himself.” *Abramski*, 573 U.S. at 171–72. Straw purchases violate The Gun Control Act. 18 U.S.C. § 922(a)(6) (unlawful for any person to make a false statement material to the lawfulness of the sale of a gun), § 924(a)(1) (unlawful for any person to make a false statement with respect to information required by to be kept by the Act).

Consistent with these rules, a firearm dealer can be held liable – either criminally or civilly – for knowingly consummating a straw sale when the dealer willfully blinds itself to red flags that make it obvious that a straw sale is occurring. *See, e.g., Carney*, 387 F.3d at 448–50, 448 n. 7 (upholding conviction of dealers for aiding and abetting straw purchasers’ false statements under 18 U.S.C. § 924(a)(1)(A) where pattern of behavior made clear straw purchases were occurring and approving “deliberate ignorance” instruction); *see also* 18 U.S.C § 922(m) (illegal for any person to make a false entry or failing to make an appropriate entry in any record which the dealer is required to keep under the Act); *Corporan*, 2016 U.S. Dist. LEXIS 93307, at *8-9 (“A dealer violates the Gun Control Act...if the dealer transfers a firearm based upon information in Form 4473 that he knows or has reason to believe is false.”).

Red flags of a straw purchase come in many forms, and firearm dealers must consider the whole transaction.⁶ *Cf. United States v. Carranza*, No. 2:10-cr-0532-RLH-GWF, 2011 U.S. Dist. LEXIS 100951 *32-35 (D. Nev., Aug. 5, 2011) (assessing the “totality of the circumstances” in deciding that law enforcement had reasonable suspicion to detain a suspected straw purchaser). For example, when two people enter a store, if the ultimate buyer does not participate in the purchase, and the actual purchaser selects the firearm and engages in questioning, that is a red flag of a straw purchase. *Carney*, 387 F. 3d at 442. (*See also* Thompson Dep. at 24:21–25:24; 26:18–26:29:25.) Or when two people enter a store and the ultimate buyer does not pay for the gun, but the actual purchaser pays for the gun in cash, that is a red flag of a straw purchase. *Carney*, 387 F. 3d at 442. (*See also* Thompson Dep. at 24:21–25:24; 26:18–26:29:25).

In this case, when considering the totality of the circumstances and construing the evidence in Plaintiff’s favor, reasonable minds could conclude that Defendants knowingly consummated a straw sale by deliberately ignoring the red flags that made it obvious that Zohn was a straw purchaser. Indeed, Thompson admits (albeit as a hypothetical) that these are red flags of straw purchases. (Thompson Dep. at 24:21–25:24; 26:18–26:29:25). For example:

- Thompson thought Zohn and Ms. Roebke had a “strange dynamic” (Police Report attached as Ex. 2 to Zohn’s Deposition at p. 6);
- Ms. Roebke picked out the gun she wanted by pointing to it (Zohn Dep. at pp. 34–42);
- Ms. Roebke handled the gun (*id.*);

⁶ The Bureau of Alcohol, Tobacco, and Firearms and the National Shoot Sports Foundation have produced training for firearm dealers regarding how to identify a straw purchase. (*See* Don’t Lie for the Other Guy, **attached as Ex. 3**). This booklet is self-authenticating. Ohio Evid. R. 902(5); *Dayton Invest. Group v. Holden*, 2d Dist. Montgomery C.A. Case No. 18309, 2000 Ohio App. LEXIS 4728, at *7 (Oct. 13, 2000) (HUD pamphlet self-authenticating). Moreover, Thompson has obtained this programming. (*See also* Thompson Dep. at 42:15-43:4).

- Ms. Roebke conversed with Thompson about the gun. Zohn was generally engaged in the conversation (*id.*); and,
- Ms. Roebke paid for the gun in cash, handing the cash directly to Thompson, (*id.* at pp. 45:15–19, 48:5–9).

Considering these facts, reasonable minds could conclude that Defendants violated federal law by deliberately ignoring the red flags and transferring the gun to a straw purchaser. So, the PLCAA predicate exception applies, and summary judgment should be denied.

And numerous other courts agree with this conclusion. Indeed, courts routinely deny summary judgment motions arguing that the case is barred by the PLCAA when reasonable minds could conclude that that a firearm dealer knowingly violated the law by willfully blinding itself to red flags, indicating a transaction was a straw purchase or otherwise illegal. *E.g.*, *Estate of Galliher v. Cabela’s Wholesale, LLC*, No. 2018 CVC-H 000309 (Ohio C.P. Nov. 8, 2019) (**attached as Ex. 4**) (denying motion for summary judgment because dispute of material fact concerning PLCAA exceptions); *Fox v. L&J Supply, LLC*, No. 2014-24619, (Pa. Ct. Cmmn. Pl. Nov. 26, 2018) (**attached as Ex. 5**) (denying motion for summary judgment because dispute of material fact concerning PLCAA exception in straw purchase scenario); *Englund v. World Pawn Exch., LLC*, No. 16-CV00598 (Ore. Cir. Aug. 13, 2018) (**attached as Ex. 6**) (same); *Lopez, v. Badger Guns*, No. 10-CV-18530 (Wis. Cir. Ct. Mar. 28, 2014) (Order Formalizing Mot. for Summ. J. Ruling) (**attached as Ex. 7**) (same).

As a final matter, to the extent Defendants try to claim that they had no reason to know that a straw sale was occurring, Defendants are asking this Court to make an improper credibility determination concerning the testimony of Thompson versus Zohn. *St. James Therapy Ctr., Ltd. v. Gomez Ents.*, 6th Dist. Lucas No. L-13-1279, 2014-Ohio-4116, ¶ 18 (“[I]n determining a motion for summary judgment, a trial court does not assess the credibility of the witnesses or weigh their testimony.”). Thompson and Zohn provided vastly different versions of the events

that took place during the straw purchase. Indeed, Thompson, who was present at Zohn’s deposition and was deposed nearly eight months after Zohn, testified that he disputed nearly the entirety of Zohn’s version of the facts. (Thompson Dep. at pp. 76–79.) A jury must be permitted to consider Zohn and Thompson’s testimonies, weigh their credibility, and decide if Defendants ignored the red flags of a straw purchase.

- ii. There is a genuine dispute of fact concerning whether Defendants’ knowing violation proximately caused Ms. Roebke’s death.

The crux of Defendants’ motion for summary judgment is that Plaintiff cannot establish proximate cause between the illegal straw purchase and Mr. Roebke’s death. Specifically, Defendants argue that there is no proximate cause because Ms. Roebke’s suicide was an intervening act. But Defendants argument must be rejected because harms caused by misused firearms are foreseeable when a firearm seller deliberately ignores red flags and transfers a firearm to a straw purchaser.

Straw purchases typically occur because a person who seeks to obtain a gun (i) cannot legally obtain a gun (*e.g.*, convicted felons, drug addicts, and those with mental illness, among others); or (ii) wants to conceal their purchase of the gun. *Abramski*, 573 U.S. at 180; 18 U.S.C. § 922(g); R.C. § 2923.13. And **a reasonably foreseeable result of a straw purchase is misuse of the gun, leading to harm to oneself or others.** *E.g.*, *Minnesota v. Fleet Farm LLC*, No. 22-2694 (JRT/JFD), 2023 U.S. Dist. LEXIS 110210, at *31 (D. Minn. June 27, 2023) (“Other courts have similarly concluded that firearm sales can give rise to the foreseeability of subsequent gun trafficking and violence.”); *United States v. Rocha*, No. 19 CR 625, 2019 U.S. Dist. LEXIS 156328, at *24 (N.D. Ill. Sep. 11, 2019) (“the underground aspect of straw-purchase firearms trafficking tends to increase access to these weapons by persons likely to have an intent to use them unlawfully”); *Smith v. Atlantic Gun & Tackle, Inc.*, 376 F.Supp.2d 291, 293 (E.D.N.Y.

2005) (“Evidence of a knowing straw sale by the retailer supports a finding of its liability for a killing using a gun it sold wielded by the purchaser or another.”). (*See also* Following the Gun: Enforcing Federal Laws Against Firearms Traffickers, Dept. of Treasury, Bureau of Alcohol, Tobacco, and Firearms, p. 18 (June 200), **attached as Ex. 8**) (“straw purchasers represent a significant overall crime and public safety problem”).⁷

And suicide, like any other harm resulting from the misuse of a firearm, is a foreseeable result of an illegal firearm sale. *See Brady v. Walmart Inc.*, No. 8:21-cv-1412-AAQ, 2022 U.S. Dist. LEXIS 135143, at *58 (D. Md. July 28, 2022) (denying defendant’s motion for judgment on the pleadings because dispute of fact concerning whether suicide was a foreseeable result when a firearm seller transferred a gun to a person with mental illness);⁸ *Sogo v. Garcia’s Nat. Gun, Inc.*, 615 So. 2d 184, 187 (Fl. Dist. Ct. App. 1993) (reversing dismissal of negligence claim against firearm seller who violated a state ordinance, which required a waiting period of three days, and the violation resulted in suicide); *Crown v. Raymond*, 159 Ariz. 87, 90, 764 P.2d 1146 (Ariz. App. 1988) (reversing grant of summary judgement to firearm seller who sold firearm, without parental consent and in violation of a statute, to a minor who used the firearm to commit suicide because injury was a foreseeable result of the violation).

Moreover, other firearm manufacturers and dealers have asserted arguments similar to Defendants, claiming that the intentional acts of third parties break the chain of causation. But courts have rejected this argument on summary judgment. *See, e.g., Englund*, No. 16-CV00598 (**attached as Ex. 6**) (denying motion for summary judgment because jury could reasonably conclude that gun dealer was aware of suspicious circumstances surrounding sale and failure to

⁷ This official publication is self-authenticating. *See* Ohio Evid. R. 902(5).

⁸ To counsel’s knowledge, *Brady* is the only case discussing an illegal firearm transfer, foreseeability, and suicide. Although *Brady* did not involve a straw purchase, *Brady* helps illustrate that that any suicide is a foreseeable result of any illegal firearm transfer

alert law enforcement of potential straw sale caused murder); *Fox*, No. 2014-24619 (**attached as Ex. 5**) (similar); *cf. Estados Unidos*, 2024 U.S. App. LEXIS 1410, at *57 (on motion to dismiss, gun manufacturers may be civilly liable for damages caused by products because reasonably foreseeable that gun would end up in the hands of the cartel and that cartel would use guns to cause criminal violence); *Williams v. Beemiller, Inc.*, 100 A.D.3d 143, 151 (on motion to dismiss, “allegations are sufficient to raise a question of fact whether it was reasonably foreseeable that supplying large quantities of guns for resale to the criminal market would result in the shooting of an innocent victim”). And ultimately, this begs the question, if a third-party’s homicide is not too attenuated to break the chain of causation between the gun dealer, the misuse of the gun by a third-party, and the injuries suffered, how can a suicide?

To be sure, suicide *may* “constitute[] an intervening force which breaks the line of causation stemming from the wrongful act.” *Fischer v. Morales*, 38 Ohio App. 3d 110, 526 N.E.2d 1098 (10th Dist. 1987). But suicide is not an intervening act when it is foreseeable. *Id.* As discussed, harm caused by misuse of a firearm, including suicide, is a foreseeable result of an illegal straw purchase. And Ohio courts have repeatedly denied motions for summary judgment to allow a jury to decide whether a suicide was an intervening act. *See e.g., Greco v. Am. Health Network*, C.P. No. 13CV-10-010947, 2015 Ohio Misc. LEXIS 8423, at *11 (Aug. 10, 2015) (whether suicide was foreseeable was issue for jury); *Williams v. Sweeney*, 1993 Ohio App. LEXIS 6102, *5, 1993 WL 535279 (Ohio Ct. App. 1993) (“reasonable minds could come to different conclusions regarding whether appellants’ decedent’s suicide was an intervening cause, or foreseeable result of appellee’s alleged negligence”).

Thus, reasonable minds could conclude that a reasonably foreseeable result of a straw purchase is misuse of the firearm, leading to harm. Proximate cause is an issue of fact for the jury, and summary judgment should be denied.

* * *

In short, when construing the facts in a light most favorable to Plaintiff, reasonable minds could conclude that Defendants knowingly violated the law by deliberating ignoring the red flags indicating a straw purchase. And that Defendants could have reasonably foreseen that a consequence of that knowing violation was misuse of the gun, resulting in harm, including suicide. The PLCAA predicate exception applies, and Defendants' motion should be denied.

2. *The Negligent Entrustment and Negligence Per Se Exception Applies, so Plaintiff's Claims are not Barred by the PLCAA.*

A gun seller may also be subject to civil liability "for negligent entrustment or negligence per se" claims. 15 U.S.C. §§ 7903(5)(A)(ii).⁹ Under a negligent entrustment theory, a gun seller may be liable when the seller supplies a gun "for use by another person when the seller knows, or reasonably should know" that the person "is likely to, and does, use the product in a manner involving unreasonable risk of physical injury to the person or others." 15 U.S.C. § 7903(5)(B).

Construing this section, courts have both explicitly and implicitly allowed claims to proceed when a gun dealer provides a gun to a straw purchaser, the straw purchaser transfers the gun to the eventual shooter, and the shooter causes harm. *E.g., Englund*, 16-CV00598 at 7–8 (**attached as Ex. 6**) (denying the gun dealer's motion for summary judgment where the dealer negligently entrusted the firearm to a straw purchaser who was not the ultimate shooter); *Chiapperini v. Gander Mountain Co., Inc.*, 13 N.Y.S.3d 777 (N.Y. Sup. Ct. 2014) (claim for negligent entrustment can be predicated on a gun dealer knowingly providing a gun to an obvious straw purchaser); *Fox*, No. 2014-24619 (**attached as Ex. 5**) (same); *cf. Galliher, supra*, No. 2018 CVC-H 000309 (**attached as Ex. 4**) (denying motion for summary judgment on negligent entrustment).

⁹ As to negligence per se, the same knowing statutory violations that satisfy the predicate exception, discussed *supra*, also satisfy PLCAA's negligence per se exception, so it is unnecessary to separately analyze the negligence per se exception.

Here, as discussed above, a reasonable jury could conclude that Defendants knowingly, or through willful blindness, provided a gun to an obvious straw purchaser. This second PLCAA exception also applies, and Defendants' motion should be denied.

B. Whether Defendants' Conduct Proximately Caused Ms. Roebke's Death is an Issue of Fact for the Jury.

In addition to arguing that this action is barred by the PLCAA, Defendants assert that Plaintiff's claims fail because there is no proximate cause. Again, Defendants suggest that Ms. Roebke's suicide is an intervening act because Defendants had no reason to know that Ms. Roebke would commit suicide. As discussed, this argument misses the mark. Whether Defendants specifically knew that Ms. Roebke would commit suicide is of no consequence. *See* Sec. A(1)(ii), *supra*. Rather, the question is whether Defendants could have foreseen that harm would result from an illegal straw purchase. And here, reasonable minds could conclude there is a genuine dispute of fact concerning this issue. Defendants' motion for summary judgment must be denied.

IV. CONCLUSION

Defendants cannot be given a free pass. Defendants owed a duty of care to ensure that guns do not end up in the hands of people who cannot legally obtain guns. Defendants breached that duty by ignoring the numerous red flags that would have alerted any reasonable gun dealer that a straw sale was occurring, which in turn allowed a gun to be transferred to a person with mental illness. Defendants cannot feign ignorance that a person with mental illness, a person who would not have possessed the gun but for Defendants' knowing violation, would foreseeably cause harm, including suicide, with said gun. In short, Allison Roebke would still be alive today but for Defendants' conduct. The Court should deny summary judgment.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing Memorandum Contra was filed electronically and served on the following counsel of record, by email transmission, this 9th day of February, 2024:

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