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**IN THE COMMON PLEAS COURT, LUCAS COUNTY, OHIO**

E. Elaine Roebke, Admin. of the  
Estate of Allison Roebke,

Plaintiff,

v.

ADCO Firearms, LLC, et al.,

Defendants.

Case No. G-4801-CI-0202202926-000

Judge Lindsay D. Navarre

**DEFENDANTS' REPLY TO PLAINTIFF'S  
MEMORANDUM CONTRA TO  
DEFENDANTS' MOTION FOR  
SUMMARY JUDGMENT**

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Now come Defendants ADCO Firearms, LLC and Steven E. Thompson, by and through counsel, and reply to Plaintiff's Memorandum Contra to Defendants' Motion for Summary Judgment. The basis for this reply is set forth in the accompanying memorandum.

**MEMORANDUM IN SUPPORT**

**I. ARGUMENT**

**A. Roebke's Suicide Breaks the Chain of Causation**

Defendants restate the argument made in their Motion for Summary Judgment. As previously argued, Ohio courts have also held that in the absence of evidence that suicide by the

decedent was foreseeable, no duty exists to prevent suicide by the alleged tortfeasor. *Clemets v. Heston*, 20 Ohio App.3d 132, 485 N.E.2d 287 (6th Dist.1985).

In their memorandum contra to Defendants' Motion for Summary Judgment, Plaintiff fails to acknowledge this argument. Plaintiff argues that the question "is whether Defendants could have foreseen that harm would result from an illegal straw purchase." (Plaintiff's Memorandum Contra to Defendants' Motion for Summary Judgment at 15). Plaintiff still fails to provide any specific evidence showing Defendants were on notice that Roebke was mentally unstable or a suicide risk. In fact, all concrete evidence points to the contrary. Jerry Zohn testified that he could not identify anything that would have alerted the clerk to the nature of the purchase. (Zohn Deposition, page 70). Zohn denied any knowledge that Roebke was going to harm herself. Zohn provided no evidence that Roebke's mental illness was plainly evident at any time while in Defendants' store by her conduct or anything she said. Zohn claimed that he was unaware that Roebke intended to harm herself with the weapon or he would never have gone along with purchasing it.

Additionally, as previously argued, Thompson testified that there were no red flags that he saw that indicated this was a straw purchase, let alone that one of the customers was suicidal. At most, he noticed a "strange dynamic" because of their age difference. Not any strange behavior that was alarming.

Nothing in the record leads to the conclusion that Defendants should have noticed anything unusual or contrary to the appearance intended by the couple. This has already been argued in Defendants' Motion for Summary Judgment and Plaintiff's response does little, if at all, to dispute that fact.

As such, the intentional, voluntary suicide by Roebke was an intervening cause of her death. Her estate cannot prove that Defendants are liable for her death as there is no evidence that Defendants should have foreseen that she was going to kill herself.

**B. The PLCAA Bars the Present Action**

Plaintiff argues that several exceptions apply to the PLCAA and their claim is thus not barred. This assertion is not correct.

15 U.S.C. §§ 7901-03 called the *Protection of Lawful Commerce in Arms Act* prohibits:

Any person from bringing what it calls a "qualified civil liability action," which it defines as "a civil action or proceeding or an administrative proceeding . . . against a manufacturer or seller of a [firearm or ammunition] . . . resulting from the criminal or unlawful misuse of a [firearm or ammunition] by . . . a third party," unless one of the Act's specifically enumerated exceptions applies. See 15 U.S.C. §§ 7902(a), 7903(4)-(5). Among those are exceptions for "an action brought against a seller for negligent entrustment or negligence per se," id. § 7903(5)(A)(ii), and "an action in which a manufacturer or seller of a [firearm or ammunition] knowingly violated a State or Federal statute applicable to the sale or marketing of the product, and the violation was a proximate cause of the harm for which relief is sought," id. § 7903(5)(A)(iii).

*Ramos v. Wal-Mart Stores, Inc.*, 202 F. Supp. 3d 457 (E.D.Pa.2016)

The Act defines negligent entrustment as the supplying of arms or ammunition:

for use by another person when the seller knows, or reasonably should know, the person to whom the product is supplied is likely to . . . use the product in a manner involving unreasonable risk of physical injury."

See 15 U.S.C. § 7903(5)(B)

Again, in this matter, there is no evidence that a reasonable person would have suspected that Roebke was going to harm herself. Plaintiff ignores the need to prove that Defendants knew or reasonably should have known that either of them intended to use the weapon to cause harm to themselves or others.

What is missing is the required nexus between the alleged negligence of Defendants and the proximate cause of the wrongful death of Roebke.

Proof of negligence, regardless of the circumstances, requires the presence of a duty that is breached and which in turn proximately causes damage in an unbroken chain. No exception to the PLCAA exists in this matter because there is no evidence of that required causation, both

because suicide breaks the chain of causation as an intervening cause and there is no evidence that any harm was foreseeable, so there was no breach of any duty. Duty is determined by the foreseeable harm to be avoided. *Jeffers v. Olexo* (1989), 43 Ohio St. 3d 140, 539 N.E.2d 614.

Plaintiff cites several cases denying summary judgment motions arguing the case is barred by the PLCAA when there are indications that a transaction was a straw purchase or otherwise illegal. However, the cases cited by Plaintiff are in no way comparable to the case at bar.

For example, Plaintiff cites to *Estate of Galliher v. Cabela's Wholesale, LLC*, 2019 WL 6037849 (Ohio Com. Pl. 2019). In that case, Cabela's sold a firearm to a convicted felon, which is prohibited under O.R.C. § 2923.13(A)(2). In contrast, Defendants did not violate any laws in selling the firearm.

Plaintiff also cites *Fox v. L&J Supply, LLC*, No. 2014-24619 (Pa. Ct. Cmmn. Pl. 2018). In that case, the straw buyer made repeated straw purchases with a clear pattern each time. This case involves a one-time purchase with no clear pattern to indicate any wrongdoing. Similarly, *Lopez v. Badger Guns*, 2010CV018530 (Wis. Cir. Ct. 2014) cited by Plaintiff also involves a repeat purchaser.

Finally, Plaintiff cites *Englund v. World Pawn Exchange, LLC*, 2017 WL 7518923 (Or. Cir. 2017). In that case, Jeffrey Boyce had a felony conviction and was thus ineligible to personally own or operate a firearm. Boyce had his mother firearms as a straw purchaser on his behalf. His mother made several straw purchases. The court held that due to the "nature and pattern of firearm purchases, the invoice and electronic messages that expressly identified Jeffrey Boyce as the purchaser, the shared online account associated with [his mother's] credit card, [and his] personal email address correspondence" the Court denied the motion for summary judgment. The facts of that case are a clear distinction between the case at bar.

Plaintiff's claims are barred by Federal law unless there is an applicable exception. No exception exists in the present matter for the foregoing reasons that show an absence of proof of a cause of action for negligent entrustment or negligence. As such, the bar of 15 U.S.C. §§ 7901-03 applies and Plaintiff may not pursue her claims against Defendants.

## II. CONCLUSION

WHEREFORE, Defendants urge the Court to grant their motion for summary judgment and dismiss Plaintiff's Complaint with prejudice.

Respectfully submitted,

/s/ Robert J. Bahret

Robert J. Bahret

Attorney for Defendants

### CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing **Defendants' Reply to Plaintiff's Memorandum Contra to Defendants' Motion for Summary Judgment** has been sent on this 8th day of March, 2024, by email transmission only to: Sean R. Alto, Esq. at [seana@cooperelliott.com](mailto:seana@cooperelliott.com), C. Benjamin Cooper, Esq. at [benc@cooperelliott.com](mailto:benc@cooperelliott.com), and Abigail F. Chin, Esq. at [abbyc@cooperelliott.com](mailto:abbyc@cooperelliott.com), attorneys for Plaintiff.

/s/ Robert J. Bahret

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