

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

CITY OF CHICAGO, an Illinois Municipal Corporation,)	
)	
)	
Plaintiff,)	
)	No. 2021 CH 01987
v.)	
)	Calendar 14
WESTFORTH SPORTS, INC.,)	
)	
Defendant.)	
)	

MEMORANDUM OPINION AND ORDER

This matter comes for ruling on Defendant Westforth Sports, Inc.’s Section 2-619 Motion to Dismiss for Lack of Personal Jurisdiction (“Motion to Dismiss”). The Court considered Defendant’s Motion to Dismiss, Plaintiff City of Chicago’s Opposition to Defendant’s Section 2-619 Motion to Dismiss for Lack of Personal Jurisdiction, City of Chicago’s Unopposed Motion to Supplement the Record and to Extend the Date for Defendant’s Reply, and Defendant’s Reply Memorandum in Support of its Section 2-619 Motion to Dismiss for Lack of Personal Jurisdiction and all attached exhibits, Plaintiff’s complaint, and relevant authorities as well as the parties’ oral arguments on January 31, 2023. For the following reasons, the Court grants Defendant’s Motion to Dismiss with prejudice.

BACKGROUND

The City’s Complaint

In its complaint, Plaintiff The City of Chicago (“the City”) alleges, in relevant part, the following: Westforth Sports, Inc. (“Westforth”) is a federal firearms licensee (“FFL”), a retail dealer in firearms located in Gary, Indiana, approximately ten miles from Illinois. Westforth transacts business within Illinois and with Illinois residents by selling firearms (handguns and “long guns” (rifles and shotguns)), ammunition and other products directly to Illinois residents at its retail counter; advertising to out-of-state residents generally and Illinois residents in particular; selling firearms over the Internet to Illinois residents; and shipping firearms to other FFL Illinois dealers for transfer to Illinois residents.

The City further alleges that Westforth knows, or reasonably should know, that many of its gun trafficking customers are bringing Westforth’s firearms to Chicago. The City alleges that Westforth creates a public nuisance by knowingly selling firearms to “straw purchasers,” who purchase guns and subsequently resell them to other people, typically those who cannot legally purchase firearms themselves. The complaint alleges that Westforth sold firearms to “at least 40 separate purchasers who have since been charged with federal firearms crimes in connection with their transactions at the store.”

The City alleges that Westforth engaged in a pattern of illegal sales resulting in the flow of hundreds, if not thousands, of illegal firearms into the City and that Westforth “feeds the market for illegal firearms” by knowingly selling its products to straw purchasers who transport Westforth’s guns from Indiana into Chicago where they are resold to individuals who cannot legally possess firearms. This allegation underlies the complaint’s four counts: Count I, Public Nuisance; Count II, Municipal Cost Recovery Ordinance (seeking to recover the City’s costs in investigating and responding to Westforth’s violations of federal law and litigation costs); Count III, Negligence; and Count IV, Negligent Entrustment.

The City alleges that this Court has personal jurisdiction over Westforth under 735 ILCS 5/2-209 because Westforth “transacts business within Illinois.” Westforth’s advertising targets out-of-state residents in general and Illinois residents in particular. The City cites Westforth’s Google.com business listing which includes a question-and-answer section with guidance specifically for Illinois residents interested in purchasing firearms from Westforth that informs prospective Illinois customers that they will be required to provide their FOID (Firearm Owners Identification) cards and follow Illinois-specific waiting periods. The City alleges that this indicates that Westforth “specifically targets Illinois residents as potential customers” and that Westforth “does regular business with Illinois residents at its retail store.” The City’s complaint seeks compensatory and exemplary damages as well as injunctive relief and attorney’s fees and costs.

Westforth’s Motion to Dismiss

Westforth filed this Motion to Dismiss, arguing that Illinois lacks personal jurisdiction, either general or specific, over Westforth. In sum, Westforth argues that all of the activity about which the City complains involves retail firearm sales in Indiana to Indiana residents who provided valid, government-issued photo IDs proving their Indiana residency. Westforth contends that its conduct was not purposefully directed toward Illinois, which would be necessary to establish specific jurisdiction. Westforth argues that the acts of anyone other than Westforth subsequent to Westforth’s sales of firearms in Indiana to Indiana residents (such as alleged straw purchasers) cannot create personal jurisdiction over Westforth in Illinois, and the City’s claims must be dismissed.

Westforth attaches the affidavit of Earl Westforth (“Mr. Westforth”), the president and secretary of Westforth. Mr. Westforth stated that Westforth is an Indiana corporation with its principal and only place of business in Gary, Indiana. He averred that every firearm Westforth sold at retail, including every one sold as part of the specific transactions cited in the City’s complaint, was sold in Indiana.

Mr. Westforth averred that “For each transaction specifically addressed in Plaintiff’s complaint, the purchasers, under penalty of perjury and other consequences, indicated on multiple lines that they were Indiana residents and provided valid, government-issued photo identification as required under the Gun Control Act to prove their Indiana residence.” The affidavit discusses each of the 14 purchasers named in the City’s complaint and attaches hundreds of pages of firearm transaction records related to those purchases.

Mr. Westforth also averred that Westforth has never sold handguns at retail to anyone other than Indiana residents. He denied that Westforth conducted or solicited business in Illinois. As for long guns, he testified that Westforth “is permitted to sell long guns legally at retail to residents of other states only within the State of Indiana and only if such sales are legal both in Indiana and the purchaser’s state of residence.” Mr. Westforth also averred that from January 2011 to the present, Westforth never targeted advertising to Illinois.

At the City’s request, the parties conducted extensive discovery on the issue of personal jurisdiction raised in Westforth’s Motion to Dismiss. After that discovery concluded, the City filed its response to the Motion to Dismiss.

The City responds that Westforth is subject to specific jurisdiction in this case because Westforth has minimum contacts with Illinois residents which relate to the City’s claims in three ways: (1) selling handguns to Illinois residents and delivering the firearms to Illinois via FFL intermediaries; (2) selling long guns to Illinois residents directly at Westforth’s retail store; and (3) knowingly selling guns to straw purchasers who present Indiana identification at Westforth’s Indiana store, but then those straw purchasers transfer or resell those guns to Illinois residents. The City supports its response with the affidavits of attorney James Miller, Sergeant Randolph Nichols, Gregory Lickenbrock and Joseph Bisbee, ATF records and reports, deposition transcripts, FFL transaction records and various other documents.

ANALYSIS

The plaintiff has the burden to establish a *prima facie* basis upon which to exercise personal jurisdiction over a nonresident defendant. *Russell v. SNFA*, 2013 IL 113909, ¶28. “Any conflicts in the pleadings and affidavits must be resolved in the plaintiff’s favor, but the defendant may overcome plaintiff’s *prima facie* case for jurisdiction by offering uncontradicted evidence that defeats jurisdiction.” *Russell*, 2013 IL 113909 at ¶28.

Illinois applies the minimum contacts test to determine whether personal jurisdiction, either general or specific, exists. *Russell*, 2013 IL 113909 at ¶36. The court considers whether the defendant has minimum contacts with Illinois and whether subjecting it to litigation in Illinois is reasonable under traditional notions of fair play and substantial justice. *Rios v. Bayer Corp.*, 2020 IL 125020, ¶18. The parties agree that Illinois has no general jurisdiction over Westforth. The issue, then, is whether Illinois has specific jurisdiction over Westforth in this case.

Specific jurisdiction is case-specific. *Aspen Am. Ins. Co. v. Interstate Warehousing, Inc.*, 2017 IL 121281, ¶14. A defendant’s general connections with the forum are not enough for specific jurisdiction. *Bristol-Myers Squibb Co. v. Superior Court*, 582 U.S. 255, 264 (2017). Specific jurisdiction exists when the plaintiff’s cause of action arises out of or relates to the defendant’s contacts with the forum state. *Aspen Am. Ins. Co.*, 2017 IL 121281 at ¶14.

“Specific jurisdiction requires a showing that the defendant purposefully directed its activities at the forum state and the cause of action arose out of or relates to the defendant’s contacts with the forum state. Under specific jurisdiction, a nonresident defendant may be subjected to a forum state’s jurisdiction based on certain ‘single or occasional acts’ in the state but only with

respect to matters related to those acts.” *Russell*, 2013 IL 113909 at ¶40 (internal citations omitted).

The City identifies two ways in which, it argues, Westforth purposefully directed its activities at Illinois and argues that the City’s causes of action arise out of or relate to these contacts with Illinois such that this Court should exercise specific jurisdiction over Westforth in this case.

1. Westforth’s sales of firearms to Illinois residents in Illinois.

First, the City points to Westforth’s advertising which targets Illinois residents and its sales to Illinois customers, either over the counter or through Illinois FFLs. The City alleges that the store’s business listing on Google includes a question-and-answer section directed toward Illinois residents, explaining the requirements for Illinois residents to purchase firearms from Westforth. This advertising relates to Westforth’s sales of handguns to Illinois residents through Illinois FFLs and long guns over the counter at Westforth’s store.

The City also analyzes the amount of revenue Westforth derives from its sales to Illinois customers over the counter or through Illinois FFLs intermediaries, citing that between 2018 and 2021, Westforth sold at least 538 handguns and long guns to Illinois residents, generating more than \$320,000, or 2.7% of the store’s total revenue. The City argues that through these sales and advertising, Westforth purposefully availed itself of the privilege of doing business in Illinois.

Westforth agrees that it transacts business with Illinois customers, by legally selling handguns to Illinois residents via FFL intermediaries and long guns to Illinois residents directly at Westforth’s retail store and agrees that some of its advertising reaches Illinois customers. However, Westforth argues that none of the City’s claims arises out of or relates to Westforth’s sales of guns in Illinois or through FFLs in Illinois and thus, these transactions are not sufficient for specific jurisdiction purposes.

Rather, Westforth argues, all of the City’s claims arise out of or relate only to Westforth’s sales of guns directly to Indiana consumers in Indiana at its Indiana store. Specifically, Westforth points to the City’s allegations in the complaint that “Westforth feeds the market for illegal firearms by knowingly selling its products to an ever-changing roster of gun traffickers and straw (sham) purchasers who transport Westforth’s guns from Indiana into Chicago” and that “guns are frequently brought into Chicago from Indiana and Wisconsin.” These claims, based on the City’s own allegations, all relate to alleged straw purchases, Westforth’s transfers of guns directly to Indiana consumers in Indiana, and not to Westforth’s transfers of guns to Illinois residents or to FFL’s in Illinois.

This Court agrees with Westforth. At oral argument, counsel for the City agreed that its complaint does not allege any claims based on Westforth’s direct sales of guns to Illinois customers, either through Illinois FFLs or at the counter.¹ The City admits that “as the complaint

¹ Although the City frequently mentions additional claims that it may later seek to add in an amended complaint to “create” jurisdiction, the City agreed that the Court cannot consider any such potential claims not pled in the current complaint to establish specific jurisdiction over Westforth. (Trans. of 1-31-23 hearing at p. 17-19).

is drafted, there's not a causal connection between [Westforth's] sales to Illinois customers and the City's claims." The City conceded that its injuries and claims do "not arise out of those Illinois sales."

The City argues, however, that even though the City's causes of action do not "arise out of" Westforth's direct sales of guns to Illinois residents or through Illinois FFL's, because Westforth sells the same guns through straw purchasers that it sells to Illinois residents, the City's causes of action "relate to" Westforth's direct sales of guns to Illinois residents and through Illinois FFL's and thus, those Illinois sales establish specific jurisdiction here.

In support of this argument, the City relies on *Russell and Harding v. Cordis Corp.*, 2021 IL App (1st) 210032. However, those cases are distinguishable. First, both cases involve defendant manufacturers of alleged defective products who placed their products into the stream of commerce through distributors who then sold the manufacturers' products in Illinois. Westforth is neither a manufacturer nor a distributor of any product: it is a retailer. Another important distinction between *Russell and Harding* and the present case is that the City does not allege that any of the products sold by Westforth are defective. The City cites no case where a court applied this stream of commerce theory to a retailer or a case involving the sale of a nondefective product.

While *arise out of* "asks about causation," *relate to* "contemplates that some relationships will support jurisdiction without a causal showing." *Ford Motor Co.*, 141 S.Ct. at 1026. Although this "relate to" standard is "lenient or flexible," (*Russell*, 2013 IL 113909 at ¶83), the Court finds that the City's argument to apply specific jurisdiction to Westforth in this case would stretch this standard beyond reasonable limits. Thus, the Court finds that the City's causes of action do not arise out of or relate to Westforth's sales of firearms to Illinois residents sufficient to exercise specific jurisdiction over Westforth in this case. *See Ford Motor Co. v. Mont. Eighth Judicial Dist. Court*, 141 S.Ct. 1017, 1021 (the "essential foundation" of specific jurisdiction is a strong "relationship among the defendant, the forum, and the litigation"); *Aspen Am. Ins. Co.*, 2017 IL 121281 at ¶14.

2. Westforth's sales of firearms to alleged straw purchasers in Indiana.

Second, the City argues that Westforth's sales of guns to straw purchasers in Indiana who then resold them to Illinois residents are sufficient to show that Westforth purposefully directed its activities at Illinois. The City cites evidence that Westforth persisted in selling guns even though those sales involved signs of straw purchasing and that it was on notice that some of its guns "were headed to Illinois." The City agrees that its claims against Westforth are based solely on these straw purchases and its theory that Westforth knew or should have known that guns sold by Westforth at its store in Indiana to Indiana residents would then be resold or transferred to Illinois residents not eligible to possess firearms who would then bring them into Illinois.

Westforth responds that all of the gun sales alleged in the City's complaint involve retail firearm sales made by Westforth in Indiana to Indiana residents who provided valid, government-issued photo IDs proving their Indiana residency. Westforth contends that the fact that these buyers may have been straw purchasers who resold the guns to Illinois residents and brought the guns into Illinois is the unilateral activity of third parties and is not sufficient to establish that

Westforth itself purposefully directed its activities at Illinois.

The Court agrees with Westforth. In a specific jurisdiction analysis, the focus is on the contacts that the “defendant *himself*” creates with the forum state, and not the plaintiff or third parties. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985). *See also Walden v. Fiore*, 571 U.S. 277, 284 (2014). “The unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum State. The application of that rule will vary with the quality and nature of the defendant’s activity, but it is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.” *Russell*, 2013 IL 113909 at ¶42, quoting *Burger King Corp.*, 471 U.S. at 474-75. “Due process requires that a defendant be haled into court in a forum State based on his own affiliation with the State, not based on the ‘random, fortuitous, or attenuated’ contacts he makes by interacting with other persons affiliated with the State.” *Walden*, 571 U.S. at 286, citing *Burger King Corp.*, 471 U.S. at 475. *See also Russell*, 2013 IL 113909 at ¶42.

Here, the City’s claims are based on the unilateral activity of third parties, the straw purchasers, and not the actions of the nonresident defendant, Westforth. The City fails to cite to an act by which Westforth purposefully availed itself of the privilege of conducting activities within Illinois with these straw purchases. The City argues that the fact that these straw purchases occurred through “middlemen, and not directly to Illinois consumers,” does not deprive this Court of personal jurisdiction over Westforth. With this argument, the City equates illegal straw purchasers of guns from Westforth’s retail store in Indiana to “middlemen,” intermediaries and distributors of products.

As with its first theory of specific jurisdiction, the City relies solely on cases involving defective products and the stream of commerce theory of specific jurisdiction with defendants who were manufacturers or distributors of those allegedly defective products. *See, e.g., World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980); *Russell*, 2013 IL 113909 at ¶1; *Harding*, 2021 IL App (1st) 210032 at ¶1. Those cases also involve some kind of an intentional relationship, either contractual or otherwise, between the defendant and the “middleman” or intermediary. *See Hernandez v. Oliveros*, 2021 IL App (1st) 200032, ¶21 (defective product case where the defendant used authorized retailers to market and sell its products throughout Illinois); *Schaefer v. Synergy Flight Center, LLC*, 2019 IL App (1st) 181779, ¶4 (defendant overhauled a plane engine and shipped it to a company in Indiana which then shipped the parts to an Illinois company).

Although a party’s purposeful availment need not be direct, the “purposeful availment requirement can be achieved through another entity, as long as the other entity makes contact with the forum state *bilaterally* rather than *unilaterally*.” *Hernandez*, 2021 IL App (1st) 200032 at ¶23. “Bilateral acts can occur when two parties have a business relationship or contractual understanding that contemplates one party’s acting for the benefit of both in the forum state.” *Id.*

Here, Westforth is a retailer, not a manufacturer or distributor. There is no evidence of a bilateral relationship between Westforth and the straw purchasers whereby Westforth uses the illegal straw purchasers to distribute its guns in Illinois. There is no evidence that both Westforth and various straw purchasers had a business relationship or contractual understanding which

contemplates the straw purchasers acting for the benefit of both the straw purchasers and Westforth in Illinois. Even if Westforth should know that some of the purchasers of guns at its retail store are straw purchasers, there is no evidence that Westforth works with these straw purchasers to distribute guns sold at its Indiana store to Illinois residents. The City's analysis is too attenuated to satisfy the requirements of due process necessary to subject Westforth to specific personal jurisdiction in Illinois based on the claims alleged by the City in this case.

Here, the City's claims alleged in its complaint relate solely to the actions of straw purchasers, Indiana residents who purchase guns from Westforth in Indiana. These claims do not arise out of or relate to the contacts Westforth has with Illinois (direct sales to Illinois residents either over the counter or through Illinois FFLs). There is no affiliation or connection between Westforth and the straw purchasers and Illinois sufficient to support the exercise of specific personal jurisdiction over Westforth. "When there is no such connection, specific jurisdiction is lacking regardless of the extent of a defendant's unconnected activities in the State." *Bristol-Myers Squibb Co.*, 582 U.S. at 264, citing *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 931 (2019).

CONCLUSION

For the foregoing reasons, this Court holds that the City's causes of action do not arise out of or relate to Westforth's contacts with Illinois sufficient to exercise specific personal jurisdiction over Westforth in this case. Accordingly, the Court grants Defendant Westforth Sports, Inc.'s Section 2-619 Motion to Dismiss for Lack of Personal Jurisdiction with prejudice. Case disposed.

Entered: _____

Judge Clare J. Quish
May 25, 2023

Judge Clare J. Quish
MAY 25 2023
Circuit Court - 2160