

Window World of Baton Rouge, LLC v. Window World, Inc.; Window World of St. Louis, Inc.  
v. Window World, Inc., 2017 NCBC Order 1.

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

SUPERIOR COURT DIVISION

WILKES COUNTY

15 CVS 1

WINDOW WORLD OF BATON  
ROUGE, LLC; WINDOW WORLD  
OF DALLAS, LLC; WINDOW  
WORLD OF TRI STATE AREA, LLC;  
and JAMES W. BATON ROUGE,

Plaintiffs,

v.

WINDOW WORLD, INC. and  
WINDOW WORLD  
INTERNATIONAL, LLC,

Defendants.

**ORDER ON PLAINTIFFS' MOTIONS  
FOR LEAVE TO FILE THIRD  
AMENDED COMPLAINTS**

WILKES COUNTY

15 CVS 2

WINDOW WORLD OF ST. LOUIS,  
INC.;  
WINDOW WORLD OF KANSAS  
CITY,  
INC.; WINDOW WORLD OF  
SPRINGFIELD/PEORIA, INC.;  
JAMES T. ST. LOUIS III;  
JONATHAN GILLETTE; B&E  
INVESTORS, INC.; WINDOW  
WORLD OF NORTH ATLANTA,  
INC.; WINDOW WORLD OF  
CENTRAL ALABAMA, INC.;  
MICHAEL EDWARDS; MELISSA  
EDWARDS; WINDOW WORLD OF  
CENTRAL PA, LLC; ANGELL P.  
WESNERFORD;  
KENNETH R. FORD, JR.; WORLD  
OF WINDOWS OF DENVER, LLC;  
RICK D. ROSE; CHRISTINA M.  
ROSE; WINDOW WORLD OF  
ROCKFORD, INC.; WINDOW  
WORLD OF JOLIET, INC.; SCOTT A.  
WILLIAMSON; JENNIFER L.  
WILLIAMSON; BRIAN C. HOPKINS;

WINDOW WORLD OF LEXINGTON,  
INC.; TOMMY R. JONES; JEREMY  
T. SHUMATE; WINDOW WORLD OF  
PHOENIX LLC; JAMES BALLARD;  
and TONI BALLARD,

Plaintiffs,

v.

WINDOW WORLD, INC. and  
WINDOW WORLD  
INTERNATIONAL, LLC,

Defendants.

1. **THIS MATTER** is before the Court upon Plaintiffs’ Motions for Leave to File Third Amended Complaints in *Window World of Baton Rouge, LLC v. Window World, Inc.* (15 CVS 1) (“the Roland Action”) (“Motion to Amend the Roland Complaint”) and in *Window World of St. Louis, Inc. v. Window World, Inc.* (15 CVS 2) (“the Lomax Action”) (“Motion to Amend the Lomax Complaint”) (collectively, the “Motions” or “Motions to Amend”). Having considered the Motions, briefs in support of and in opposition to the Motions, the arguments of counsel at the hearing on October 31, 2016, supplemental written statements in support of and in opposition to the Motions, post-hearing letters of counsel, the proposed third amended complaints and their subsequent modifications<sup>1</sup>, and the appropriate evidence of record, the Court, in the exercise of its discretion, hereby **GRANTS** the Motions as provided herein.

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<sup>1</sup> Plaintiffs modified and filed their proposed third amended complaints under seal on December 6, 2016. Plaintiffs further modified the proposed third amended complaints in response to Defendants’ requests and submitted their second modified proposed third amended complaints to the Court by e-mail on December 14, 2016. For purposes of this Motion, the second modified proposed third amended complaints shall be referenced herein as the “Proposed Third Amended Complaints.”

2. Plaintiffs in the Roland Action and Plaintiffs in the Lomax Action (collectively, “Plaintiffs”) filed their original Complaints in both actions on January 2, 2015 (the “Original Complaints”). The Roland Plaintiffs filed their First Amended Complaint as a matter of right on February 16, 2015, and the Lomax Plaintiffs filed their First Amended Complaint as a matter of right on April 13, 2015. The Lomax Plaintiffs filed their Second Amended Complaint after obtaining leave of this Court on September 8, 2015, and the Roland Plaintiffs filed their Second Amended Complaint after obtaining leave of this Court on March 22, 2016 (collectively, the “Second Amended Complaints”).

3. The Roland Plaintiffs filed their Motion to Amend the Roland Complaint on August 12, 2016, and on the same day, the Lomax Plaintiffs filed their Motion to Amend the Lomax Complaint. Defendants oppose Plaintiffs’ Motions to Amend, contending that the proposed amendments relate to piercing the corporate veil, mere instrumentality, or alter ego theories of liability and will prejudice Defendants by unnecessarily expanding the scope of this litigation and the fair and efficient administration of justice by creating case management complexity and confusion.

4. Under N.C. R. Civ. P. 15(a), if a responsive pleading has been served, a party may amend its complaint only by leave of court. “It is well-settled in North Carolina that leave to amend should be freely given pursuant to [Rule 15].” *Saintsing v. Taylor*, 57 N.C. App. 467, 471, 291 S.E.2d 880, 883 (1982). However, there are reasons justifying denial of a proposed amendment, including “(a) undue delay, (b) bad faith, (c) undue prejudice, (d) futility of amendment, and (e) repeated

failure to cure defects by previous amendments.” *Mosley & Mosley Builders, Inc. v. Landin, Ltd.*, 97 N.C. App. 511, 516, 389 S.E.2d 576, 578–79 (1990) (quotation marks and citation omitted). “A motion to amend is directed to the discretion of the trial court.” *Id.* at 516, 389 S.E.2d at 578; *see also Rev. Concepts, Inc. v. Clements Walker PLLC*, 227 N.C. App. 102, 110, 744 S.E.2d 130, 136 (2013) (a trial court only abuses its discretion “when its decision is manifestly unsupported by reason or so arbitrary that it could not have been the result of a reasoned decision”); *NationsBank of North Carolina, N.A. v. Baines*, 116 N.C. App. 263, 268, 447 S.E.2d 812, 815 (1994).

5. Plaintiffs’ proposed amendments seek to expand the scope of this litigation to include as a party-defendant in each action Tammy Whitworth (“Ms. Whitworth”), whom Plaintiffs allege is the “sole and dominant” shareholder of Defendant Window World, Inc., contending that Ms. Whitworth is liable individually on each of the causes of action Plaintiffs have previously asserted against Defendants under the doctrines of piercing the corporate veil, mere instrumentality, and alter ego.

6. Although the Court has misgivings about the potential expansion of this already complex and lengthy litigation that may result from allowing the proposed amendments, the Court is mindful that Rule 15 encourages trial courts to permit amendment liberally and evinces our State’s “general policy of allowing an action to proceed to a determination on the merits.” *House of Raeford Farms, Inc. v. Raeford*, 104 N.C. App. 280, 282, 408 S.E.2d 885, 887 (1991).

7. Moreover, Plaintiffs have narrowed the scope of their proposed amendments to eliminate veil-piercing allegations that predate the time in 2010 when Ms. Whitworth is alleged to have become the “sole and dominant” shareholder of Window World, Inc. and have also clarified and narrowed the operative allegations of their proposed amended complaints by eliminating allegations relating to claims that the Court has previously dismissed in these actions.

8. Further, the Court is persuaded that Plaintiffs’ existing claims, particularly that Defendants fraudulently induced Plaintiffs to become Window World franchisees and improperly enriched themselves at Plaintiffs’ expense through misrepresentations and fraud during the course of the parties’ relationship, are sufficiently related to and intertwined with the allegations underpinning Plaintiffs’ theory of liability against Ms. Whitworth that allowing Plaintiffs’ amendments will not unduly or unfairly expand the scope of this litigation.

9. In addition, Plaintiffs contend that they will not need additional written discovery from Defendants in light of the proposed amendments, the fact discovery period remains open, depositions have not yet begun, the parties have forecast that collectively they plan to take as many as 60–80 depositions, and the Court has not yet set this matter for trial, all of which favor permitting the proposed amendments.

10. Based on the above, and in the exercise of its discretion, the Court concludes that in the circumstances presented here, justice requires that leave be freely given in this instance to permit Plaintiffs to file their Proposed Third

Amended Complaints in the form submitted to the Court by email on December 14, 2016.

11. The Court has considered but rejects Defendants' contention that Plaintiffs should not be permitted to include paragraphs 242, 261 and 262 in the Proposed Third Amended Complaint in the Lomax Action.

12. Although the Court has now permitted Plaintiffs leave to file amended complaints for a second time in this litigation, the Court anticipates—and thus puts the parties on notice—that after deposition discovery begins, requests for further amendment of the pleadings will merit enhanced scrutiny under the grounds set forth by our appellate courts. *See, e.g., Mosley & Mosley Builders, Inc.*, 97 N.C. App. at 516, 389 S.E.2d at 578–79.

13. **WHEREFORE**, the Court hereby **GRANTS** the Motions and **ORDERS** that Plaintiffs shall file their Third Amended Complaints as permitted by this Order no later than January 11, 2017.

**SO ORDERED**, this the 5th day of January, 2017.

/s/ Louis A. Bledsoe, III  
Louis A. Bledsoe, III  
Special Superior Court Judge  
for Complex Business Cases