

Window World of Baton Rouge, LLC v. Window World, Inc.; Window World of St. Louis, Inc.
v. Window World, Inc., 2017 NCBC Order 6.

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. ROLAND,

Plaintiffs,

v.

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

Defendants.

**ORDER ON PLAINTIFFS'
MOTION FOR COMMISSIONS**

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. LOMAX 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., WINDOW
WORLD INTERNATIONAL, LLC,
and TAMMY WHITWORTH,

Defendants.

1. **THIS MATTER** is before the Court upon Plaintiffs’ Motion for Commissions (the “Motion”) in the above-captioned cases. A video conference hearing was held on the Motion on March 7, 2017. Counsel for each party participated in the video conference.

2. Plaintiffs seek to serve subpoenas *duces tecum* on Ruben Leon Whitworth (“Leon Whitworth”) and Marie Whitworth (together with Leon Whitworth, the “Whitworths”), former controlling stockholders in Window World, Inc. (“Window World”).

3. Plaintiffs contend that the documents they seek from the Whitworths relate to settlement or other agreements entered into between Window World and each of the Whitworths and are relevant to show whether the testimony of either Leon or Marie Whitworth will be biased, incomplete, or otherwise influenced by financial considerations or agreements with Window World.

4. Window World, Defendant Window World International, LLC (collectively the “Window World Defendants”), and Defendant Tammy Whitworth object to the

issuance of the commissions and argue that Plaintiffs' document requests to the Whitworths are overbroad as to scope and time period, unduly burdensome due to the volume of likely responsive documents, seek documents of, at most, marginal relevance, and, collectively, constitute an improper fishing expedition into the personal lives of the Whitworths and their family members.

5. Neither Plaintiffs nor Defendants dispute that both Leon and Marie Whitworth are likely to be called as witnesses at the trial of this matter.

6. The Court concludes that most of the document requests contained in Plaintiffs' proposed subpoenas, as currently framed, are overbroad and not narrowly tailored or targeted to discover specific information relevant to the Whitworths' alleged bias or motive in testifying in this case. *See, e.g., Kilgo v. Wal-Mart Stores, Inc.*, 138 N.C. App. 644, 648, 531 S.E.2d 883, 887 n.5 (2000) ("A subpoena *duces tecum* may not be proper for a variety of reasons, including, documents are not relevant, material is privileged, or request is over-broad."); *Bank of Am. Corp. v. SR Int'l Bus. Ins. Co.*, 2006 NCBC LEXIS 17, at *16 (N.C. Super. Ct. Nov. 1, 2006) (noting the courts' obligation to protect non-parties from burden and expense without sufficient justification); *AARP v. Am. Family Prepaid Legal Corp.*, 2007 NCBC LEXIS 4, at *16 (N.C. Super. Ct. Feb. 23, 2007) (granting motion to quash third-party subpoena and noting that it is improper to "blindly demand all paper that ever flowed between [party and third-party] with little regard for the relevance of that paper"); *Dworsky v. Travelers Ins. Co.*, 49 N.C. App. 446, 448, 271 S.E.2d 522, 524 (1980) ("While some

relevant and material evidence may be contained in [the discovery sought, a party is] not entitled to a fishing expedition to locate it.”).

7. Nevertheless, it does appear to the Court that among the documents broadly sought by Plaintiffs in their proposed subpoenas, settlement or other agreements between either Leon Whitworth or Marie Whitworth and Window World relating to the litigation between Marie Whitworth and Window World or to the current litigation between Plaintiffs and Defendants could potentially be relevant to the bias or motive that Leon Whitworth or Marie Whitworth may have in offering testimony in connection with the matters in dispute in this litigation. *See, e.g., Goodyear Tire & Rubber Co. v. Chiles Power Supply, Inc.*, 332 F.3d 976, 981 (6th Cir. 2003) (recognizing that a settlement privilege protects settlement negotiations from discovery but does not protect the final agreement from discovery). Accordingly, the Court concludes that it is proper in these circumstances to permit Plaintiffs to seek such settlement or other agreements from the Whitworths.

8. However, to protect the Whitworths’ legitimate privacy interests and Window World’s interest in maintaining the confidentiality of its confidential settlement agreements, the Court will review *in camera* any responsive agreements prior to their production to Plaintiffs to assure such documents bear on either Leon or Marie Whitworth’s bias or motive in testifying in this action. *See, e.g., Media Network, Inc. v. Mullen Adver., Inc.*, 2006 NCBC LEXIS 6 (N.C. Super. Ct. Apr. 21, 2006) (granting defendant’s motion to compel production from plaintiff of its settlement agreement with co-defendant after an *in camera* inspection of the

settlement agreement); *Tribune Co. v. Purcigliotti*, No. 93 Civ. 7222, 1996 U.S. Dist. LEXIS 8433 (S.D.N.Y. June 19, 1996) (granting defendants' motion to compel production of settlement agreement between plaintiffs and co-defendant employee after conducting an *in camera* review of the settlement agreement).

9. Accordingly, having considered the Motion, the briefs and other materials submitted in support of and in opposition to the Motion, and the arguments of counsel at the video conference in this matter, the Court, in the exercise of its discretion, hereby **GRANTS in part** and **DENIES in part** the Motion and orders as follows:

- a. The Motion is granted to the extent that the Court will issue commissions for subpoenas to Leon Whitworth and to Marie Whitworth to produce any and all settlement or other agreements between either Leon Whitworth or Marie Whitworth and Window World relating to the litigation between Marie Whitworth and Window World or to the current litigation between Plaintiffs and Defendants.
- b. The subpoenas to Leon Whitworth and to Marie Whitworth shall indicate that any responsive documents that either Leon Whitworth or Marie Whitworth are prepared to produce to Plaintiffs shall first be submitted to the Court, by email addressed to the Court's law clerk at mary.e.goode@ncbusinesscourt.net, after which the Court will determine whether the documents will

be produced to Plaintiffs, and if so, whether in redacted or unredacted form.

- c. Any proposed commissions tendered to the Court consistent with this Order shall include any terms required by the foreign jurisdiction to initiate the process of obtaining the requested discovery as well as the information specifically set forth in N.C. R. Civ. P. 45(f)(3)(a), (b) and (c).
- d. Except as specifically granted, the Motion is denied, without prejudice to Plaintiffs' right to renew the Motion for good cause shown.

SO ORDERED, this the 9th day of March, 2017.

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