

STATE OF NORTH CAROLINA  
WILKES COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
18 CVS 70

WINDOW WORLD OF NORTH  
ATLANTA, INC.; MICHAEL  
EDWARDS; and MELISSA  
EDWARDS,

Plaintiffs,

v.

WINDOW WORLD, INC.; WINDOW  
WORLD INTERNATIONAL, LLC;  
and ANDREW SAVILLE,

Defendants.

**ORDER ON REQUEST FOR  
BIFURCATED TRIAL OF  
PHASE I ISSUES**

1. **THIS MATTER** is before the Court concerning whether the Court should proceed with a bifurcated trial on Phase I Issues (as defined in the Court's Second Amended Case Management Order (the "Second Amended CMO"), (ECF No. 102), in the above-captioned case) or to stay this proceeding pending final adjudication of all claims in Case Nos. 15-CVS-1 and 15-CVS-2 ("15-CVS-1/15-CVS-2"), each now pending in Wilkes County, North Carolina Superior Court.

2. The Second Amended CMO provides as follows:

1. Discovery shall be divided into two phases. The first phase of discovery shall be limited to discovery on the following issues ("Phase I Issues"):
  - a. Whether one or more of the Plaintiffs reached an enforceable oral agreement with Window World, Inc. ("Window World") giving Plaintiffs exclusive rights to use the Window World trademarks in the entire Atlanta market, as alleged in paragraphs 13, 14, and elsewhere in Plaintiffs' complaint.
  - b. If an enforceable oral agreement was reached, each and every term comprising the agreement and the consideration supporting the oral agreement.

Discovery on all other factual and legal issues, including, by way of example only, those relating to the validity and enforceability of any written documents signed by any Plaintiff and Window World, and whether the terms of any such written documents govern the parties' relationship or superseded any prior oral agreements between them ("Phase II Issues"), will be stayed pending final adjudication of all legal claims in Case Nos. 15-CVS-1/15-CVS-2.

(Second Amended CMO 1–2.)

3. The Second Amended CMO also requires the filing of dispositive motions on Phase I Issues following completion of discovery on those issues. (Second Amended CMO 2.)

4. The Second Amended CMO then provides:

If the Court determines that genuine issues of material fact exist to preclude summary judgment as to the above Phase I Issues, the Court may order, in its discretion, a bifurcated trial on one or more of the Phase I Issues. Alternatively, in the exercise of its discretion, the Court may order that Phase I Issues be tried in conjunction with any other Phase II Issues for trial that remain following completion of Phase II discovery and Phase II dispositive motions. In conjunction with the Court's consideration of whether there should be a bifurcated trial on one or more of the Phase I Issues, the Parties may present to the Court in writing their respective positions on the issue.

(Second Amended CMO 3–4.)

5. After the completion of Phase I discovery, Defendants Window World, Inc. ("Window World"), Window World International, Inc., and Andrew Saville ("Saville") (collectively, "Defendants") moved for summary judgment on all Phase I Issues. (Defs.' Mot. Summ. J. [CORRECTED] – Original Filed Dec. 11, 2020, ECF No. 153.) The Court denied Defendants' motion on 22 September 2021. *See Window World of*

*N. Atlanta, Inc. v. Window World, Inc.*, 2021 NCBC LEXIS 61 (N.C. Super. Ct. Sept. 22, 2021) (ECF No. 191).

6. Consistent with the Second Amended CMO, the Court thereafter ordered the parties to meet, confer, and submit position statements, (Scheduling Order ¶ 3, ECF No. 192), and subsequently responses to those position statements, (Scheduling Order ¶ 2, ECF No. 197), concerning whether trial should proceed now on Phase I Issues or instead should proceed in conjunction with Phase II Issues after final adjudication of 15-CVS-1/15-CVS-2. The parties timely submitted position statements and responses, and the Court held an in-person hearing on the matter on 16 November 2021, at which all parties were represented by counsel.

7. The parties dispute whether a trial on Phase I Issues should proceed now. Plaintiffs Window World of North Atlanta, Inc. (“WW-North Atlanta”) and Michael Edwards (“Edwards”; together, “Plaintiffs”) contend that all Phase I and Phase II Issues should be tried in a single trial after the final adjudication of 15-CVS-1/15-CVS-2. Plaintiffs argue that bifurcated trials on Phase I and Phase II Issues will be costly and inefficient because overlapping evidence relevant to each Phase will need to be presented in both trials. (Pls.’ Position Statement on Bifurcated Phase I Trial 3 [hereinafter “Pls.’ Position Statement”], ECF No. 195; Pls.’ Resp. in Opp’n Joint Position Statement of Defs. 3, 7 [hereinafter “Pls.’ Resp.”], ECF No. 199.) Plaintiffs further contend that they will suffer unfair prejudice if they must carry their burden to two different juries based on the same overlapping evidence. (Pls.’ Position Statement 3–4.) Plaintiffs also assert that Defendants, specifically Saville, will not

suffer prejudice from a single trial after the adjudication of 15-CVS-1/15-CVS-2 because Plaintiffs have not interfered or threatened to interfere with Saville's business operations during the pendency of this action. (Pls.' Resp. 4–5.)

8. Defendants, in contrast, argue that a trial should proceed now on all Phase I Issues, contending, in particular, that Saville will be prejudiced by delaying trial until after the adjudication of 15-CVS-1/15-CVS-2 because his business has been, and will continue to be, "held hostage" by the pendency of this action. (Defs.' Joint Position Statement Requesting Trial on Phase I Issue Only 7 [hereinafter "Defs.' Position Statement"], ECF No. 196.) While Defendants agree that two trials will involve some overlapping evidence, they contend that the overlap is insubstantial and that bifurcation will promote judicial economy by potentially eliminating or narrowing the issues to be determined in a Phase II trial. (Defs.' Position Statement 9–10.)

9. Rule 42(b)(1) of the North Carolina Rules of Civil Procedure ("Rule(s)") provides that "[t]he court may in furtherance of convenience or to avoid prejudice and shall for considerations of venue upon timely motion order a separate trial of any claim, cross-claim, counterclaim, or third-party claim, or of any separate issue or of any number of claims, cross-claims, counterclaims, third-party claims, or issues." N.C. R. Civ. P. 42(b)(1). Generally, courts will permit bifurcation only where it will "(1) promote greater convenience to the parties, witnesses, jurors, and the court, (2) be conducive to expedition and economy, and (3) not result in undue prejudice to any party." *F & G Scrolling Mouse, L.L.C. v. IBM Corp.*, 190 F.R.D. 385, 387 (M.D.N.C.

1999).<sup>1</sup> Nonetheless, the Supreme Court of North Carolina has recognized that “[t]he discretion reposed in the trial judge by [Rule 42(b)(1)] is extremely broad.” *In re Will of Hester*, 320 N.C. 738, 742 (1987); *see also State v. Ward*, 364 N.C. 157, 163–64 (2010) (“We have recognized the discretion of trial courts to conduct bifurcated proceedings, or the propriety of that approach, in a number of other contexts.”).

10. Our appellate courts have viewed bifurcation with caution, instructing that “[t]he better practice is to retain the same jury for all issues[,]” *In re Will of Hester*, 320 N.C. at 743, and preferring a single trial to two, *see Wallace v. Evans*, 60 N.C. App. 145, 149–50 (1982) (describing a separated trial as the exception rather than the rule); *see also* 2 G. Gray Wilson, *North Carolina Civil Procedure* § 42-3 (3d ed. 2007) (“Since a single trial usually reduces the delay, expense and inconvenience to all participants, severance should not be ordered unless it is clearly necessary.”). Further, when courts have ordered separate trials, the case has typically sounded in tort—not, as here, in contract. *See In re Will of Hester*, 320 N.C. at 743 (noting that “Rule 42(b) has most frequently been applied in complicated tort proceedings”); *see, e.g., Hoots v. Toms & Bazzle, P.A.*, 100 N.C. App. 412, 417 (1990) (affirming separate trials of negligence claims).

11. After careful consideration of the parties’ competing arguments, both written and oral, the relevant facts and circumstances, and the applicable law, the

---

<sup>1</sup> North Carolina courts will look to federal courts for guidance when interpreting similar or identical rules of civil procedure. *See, e.g., Turner v. Duke Univ.*, 325 N.C. 152, 164 (1989) (“The North Carolina Rules of Civil Procedure are, for the most part, verbatim recitations of the federal rules[,]” so “[d]ecisions under the federal rules are thus pertinent for guidance and enlightenment in developing the philosophy of the North Carolina rules.”).

Court concludes, in the exercise of its discretion, that proceeding with a separate trial of Phase I Issues prior to the adjudication of 15-CVS-1/15-CVS-2 will unfairly prejudice Plaintiffs, will lead to judicial inefficiency and jury confusion, and should not be attempted here.

12. First, Plaintiffs intend to prove at a trial of Phase I Issues that an oral contract existed between WW-North Atlanta and Window World, in significant part, through proof of Edwards' communications with Window World's President, Todd Whitworth. Plaintiffs seek to use these same communications to defeat Defendants' defenses to contract liability based on waiver and statute of limitations.<sup>2</sup> Thus, Plaintiffs must not only establish the alleged oral contract, but they must also defeat Defendants' defenses to recover on their contract claim; Defendants need only defeat either aspect of Plaintiffs' proof to prevail on their defense. In these circumstances, the Court concludes that requiring Plaintiffs to prove their right to contract recovery, not once to a single jury, but through two trials to separate juries, is unfairly prejudicial when Defendants may succeed in defeating Plaintiffs' contract claim by persuading only one jury of the merits of one or more of their defenses. Such a two-trial process is also unnecessarily costly and an inefficient use of the Court's scarce judicial resources.

13. Moreover, if Plaintiffs must prove their alleged oral contract in a separate Phase I trial, the Court will likely be required to instruct the jury to disregard

---

<sup>2</sup> The Court has previously determined that waiver and statute of limitations defenses are properly considered in a trial of Phase II Issues. *Window World of N. Atlanta, Inc.*, 2021 NCBC LEXIS 61, at \*28–29.

evidence, at least to the extent that it relates to Defendants' waiver and statute of limitation defenses, which are both Phase II Issues. The Court will also almost certainly be required to determine frequently throughout a Phase I trial whether evidence is properly offered as Phase I evidence or whether such evidence may only be presented at a Phase II trial. These evidentiary considerations in a Phase I trial will likely lead to judicial inefficiency and jury confusion, problems that will be avoided in a single trial of all Phase I and Phase II Issues.

14. In the face of these considerations favoring a single trial of all issues, Defendants have failed to show that Saville will suffer unfair or undue prejudice should the Phase I Issues be tried with the Phase II Issues after the final adjudication of 15-CVS-1/15-CVS-2—a possible outcome Saville agreed to when he proposed with the other parties the structure embraced in the Second Amended CMO, (Joint Mot. Modify Case Management Order to Permit Phased Disc., ECF No. 98). While Saville claims that the litigation has placed a figurative “Sword of Damocles” above his head, he has not offered evidence that the litigation has caused him to suffer harm or lose business. Nor has Saville offered evidence that Plaintiffs have threatened him, changed his territories, or otherwise sought to change in any way the method or manner in which he has conducted his business since this litigation commenced in 2018. Saville's fears that Plaintiffs will take such actions are not a substitute for proof.

15. For each of these reasons, therefore, the Court concludes, in the exercise of its discretion, that a bifurcated trial on Phase I Issues should not proceed at this time

and instead that this action and the further adjudication of all Phase I and Phase II Issues should be stayed pending the final adjudication of 15-CVS-1/15-CVS-2 or until otherwise ordered by the Court.

16. **WHEREFORE**, for the reasons set forth above, the Court, in the exercise of its discretion, hereby **ORDERS** that this action and all proceedings therein are hereby **STAYED** pending the final adjudication of the 15-CVS-1/15-CVS-2 or until otherwise ordered by the Court.

**SO ORDERED**, this the 7th day of December, 2021.

/s/ Louis A. Bledsoe, III  
Louis A. Bledsoe, III  
Chief Business Court Judge