

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  
TO COMPEL PRODUCTION OF  
VANNOY COLVARD  
BILLING RECORDS**

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

Plaintiffs,

and

WINDOW WORLD OF ROCKFORD,  
INC.; WINDOW WORLD OF JOLIET,  
INC.; SCOTT A. WILLIAMSON;  
JENNIFER L. WILLIAMSON; and  
BRIAN C. HOPKINS,

Plaintiffs and  
Counterclaim  
Defendants,

v.

WINDOW WORLD, INC.; WINDOW  
WORLD INTERNATIONAL, LLC;  
and TAMMY WHITWORTH,  
individually and as trustee of the  
Tammy E. Whitworth Revocable  
Trust,

Defendants and  
Counterclaim  
Plaintiffs,

v.

WINDOW WORLD OF  
BLOOMINGTON, INC.,

Counterclaim  
Defendant.

1. **THIS MATTER** is before the Court on Plaintiffs' Motion to Compel (the "Motion"), (ECF No. 812)<sup>1</sup> in the above-captioned cases.
2. Relevant background concerning the Motion is set forth in the Court's Order for *In Camera* Review and Further Review and Briefing filed on 26 April 2022, (ECF

---

<sup>1</sup> For ease of reference, all ECF citations in this Order are to the Court's e-docket in 15-CVS-1.

No. 858), and the Court's Order Amending Order for *In Camera* Review and Further Review and Briefing filed on 16 May 2022 ("May 16 Order"), (ECF No. 863).

3. As relevant here, Plaintiffs seek through the Motion to compel the production of non-privileged billing descriptions redacted from five billing records (the "Billing Records")<sup>2</sup> produced to Plaintiffs by Defendants Window World, Inc. and Window World International's ("Defendants" or "WW") counsel, Vannoy, Colvard, Triplett & Vannoy, PLLC ("Vannoy Colvard").<sup>3</sup> WW and Vannoy Colvard argue that they properly withheld the billing descriptions in the Billing Records under an August 2021 agreement between Plaintiffs and Vannoy Colvard.<sup>4</sup>

4. Consistent with the May 16 Order, Plaintiffs, Defendants, and Vannoy Colvard have each filed supplemental opening and responding briefs in connection with their dispute over the production of the Billing Records' non-privileged billing descriptions.

5. It is undisputed that Plaintiffs and Vannoy Colvard reached an oral agreement on 4 August 2021, memorialized by an exchange of emails on 4 August 2021 and 5 August 2021, concerning Vannoy Colvard's required response to

---

<sup>2</sup> The Billing Records are identified as "Vannoy Colvard Billing Records (5 documents)" in Exhibit A to the Motion. (Mot. to Compel, Ex. A, ECF No. 812.1.) This Order addresses the Motion only to the extent that it relates to the parties' dispute concerning the Billing Records. The Court shall address all other relief sought in the Motion by separate order.

<sup>3</sup> (Br. Supp. Mot. to Compel 10, 17, 21, 22, 25 [hereinafter "Pls.' Supp. Mot. Compel"], ECF No. 813 (sealed), ECF No. 821 (redacted).)

<sup>4</sup> (Defs.' Br. Regarding Production Agreement Between Vannoy Colvard and Pls. 2 [hereinafter "Defs.' Br. Regarding Production Agreement"], ECF No. 868; Vannoy Colvard's Br. Supp. Enforcement of Agreement 3–4, 6–8, 13 [hereinafter "Vannoy Colvard's Br. Supp."], ECF No. 867.)

subpoenas duces tecum that were served on Vannoy Colvard and WW's in-house counsel, Beth Vannoy, on 6 July 2018 (the "August Agreement"). Particularly relevant here, under the August Agreement, Plaintiffs and Vannoy Colvard agreed that Vannoy Colvard would fully satisfy document requests 1–4 of Plaintiffs' subpoenas by "produc[ing] invoices for services performed prior to November 1, 2011, with the descriptions of the services redacted." (Vannoy Colvard's Br. Supp. Enforcement of Agreement, Ex. 1, ECF No. 867.2; Defs.' Br. Opp'n Pls.' Mot. to Compel, Ex. P, ECF No. 827.17.)

6. Plaintiffs argue that Vannoy Colvard and WW later produced documents that Plaintiffs could not have known about when they entered into the August Agreement and which demonstrate, contrary to WW's representations, that Beth Vannoy provided extensive legal services to WW on franchise law matters while she was still employed at Vannoy Colvard.<sup>5</sup> Accordingly, Plaintiffs contend that the Court should abrogate the August Agreement to require production of the Billing Records to Plaintiffs with the billing descriptions redacted only for privilege. (Pls.' Br. Concerning Vannoy Billing Records 8–9 [hereinafter "Pls.' Billing Records Br."], ECF No. 866.) Plaintiffs argue the Court should compel the production of the non-privileged billing descriptions as an appropriate exercise of the Court's inherent authority to manage discovery and because certain documents WW produced after

---

<sup>5</sup> The evidence on which Plaintiffs rely is discussed at length in the briefing on the Motion, (Pls.' Supp. Mot. Compel 19–20), and in the briefing on Plaintiffs' contemporaneously filed Motion Requesting Entry of Sanctions and Application of the Crime-Fraud Exception to Privilege (the "Sanctions Motion"), (*see* Br. Supp. Mot. Requesting Entry of Sanctions and Appl. of Crime-Fraud Exception to Privilege 8–9, ECF No. 808 (sealed), ECF No. 822 (redacted)).

the August Agreement have materially changed the circumstances under which the August Agreement was made. (Pls.' Billing Records Br. 5, 8–9.)

7. In opposition, Vannoy Colvard contends that the August Agreement should be enforced because (i) it is an enforceable contract under contract law principles, (ii) the August Agreement defined Plaintiffs' obligations under Rule 45(c)(1) of the North Carolina Rules of Civil Procedure, (iii) there are no changed circumstances between Plaintiffs and Vannoy Colvard as the relevant parties, and (iv) producing the non-privileged billing descriptions would be inconsistent with the August Agreement and impair Vannoy Colvard's right to contract freely under Article I Section 19 of the North Carolina Constitution. (Vannoy Colvard's Br. Supp. 3–4, 6–8, 13.) Defendants also argue in opposition that Plaintiffs have failed to show changed circumstances because deposition testimony from Beth Vannoy and Jay Vannoy prior to the Court's August 2019 Order<sup>6</sup> included discussion of Beth Vannoy's franchise law work for WW while she was employed at Vannoy Colvard. (Defs.' Br. Regarding Production Agreement 2–6.)

8. "Trial courts retain the inherent authority 'to do all things that are reasonably necessary for the proper administration of justice.'" *Red Valve, Inc. v. Titan Valve, Inc.*, 2019 NCBC LEXIS 57, at \* 39 (N.C. Super. Ct. Sept. 3, 2019) (quoting *Beard v. N.C. State Bar*, 320 N.C. 126, 129 (1987)), *aff'd per curiam*, 376 N.C. 798 (2021). This inherent authority includes the broad power to administer cases and manage discovery. *See Tumlin v. Tuggle Duggins P.A.*, 2018 NCBC LEXIS

---

<sup>6</sup> *See Window World of Baton Rouge, LLC v. Window World, Inc.*, 2019 NCBC LEXIS 54 (N.C. Super. Ct. Aug. 16, 2019), *aff'd per curiam*, 377 N.C. 551 (2021).

51, at \*29 (N.C. Super. Ct. May 22, 2018) (citing the proposition that a court has “inherent power to manage its own affairs” (quoting *Orbit One Communs., Inc. v. Numerex Corp.*, 271 F.R.D. 429, 435 (S.D.N.Y. 2010))); see also *State v. Warren*, 347 N.C. 309, 325 (1997) (“The trial court possesses ‘inherent authority’ to compel discovery in certain instances in the interest of justice.” (citation omitted)); *Morris v. Scenera Rsch., LLC*, 2011 NCBC LEXIS 34, at \*48 (N.C. Super. Ct. Aug. 26, 2011) (where the Court retained its discretion to determine what “further discovery procedures” beyond the procedures included in the parties’ discovery agreement “fairness dictates”). Further, “[t]he Court has a duty to protect the integrity of the legal process” and may use its inherent authority to ensure the truthfulness of parties’ representations to the Court. *Kixsports, LLC v. Munn*, 2019 NCBC LEXIS 62, at \*26 (N.C. Super. Ct. Sept. 30, 2019); see, e.g., *In re Investigation of the Death of Miller*, 357 N.C. 316, 334 (2003) (“As has been said, the chief function of our judicial machinery is to ascertain the truth.” (quoting *Estes v. Texas*, 381 U.S. 532, 544 (1965))).

9. After careful consideration of the parties’ briefs, supplemental briefs, supporting materials, and arguments at the hearing on the Motion on 21 April 2022, the Court concludes, pursuant to its inherent authority and in the interests of the administration of justice, that the August Agreement should not be enforced between Plaintiffs and Vannoy Colvard to the extent it relates to the redaction of the billing descriptions in the Billing Records and further that Vannoy Colvard should be

required to produce to Plaintiffs the non-privileged billing descriptions previously redacted from the Billing Records.

10. The non-privileged billing descriptions in these records will likely reflect contemporaneous descriptions of legal work Beth Vannoy performed and billed to Defendants prior to WW's retention of the Manning, Fulton & Skinner, P.A. law firm in June 2011 to provide legal advice to WW in connection with what WW terms its "conversion" to a franchise system that year. That legal work—and whether it included the rendering of legal advice to WW concerning franchise law or the drafting of a franchise disclosure document for WW—informs the resolution of the parties' dispute on the Motion and the Sanctions Motion, is central to certain of Plaintiffs' claims in these actions, and may directly bear on Beth Vannoy's and Jay Vannoy's credibility and the truthfulness of the Vannoys' and WW's representations to the Court about the nature and extent of Beth Vannoy's legal work for Defendants. The non-privileged portions of the unredacted Billing Records are therefore highly relevant and their production is in the interests of justice.

11. The Court thus concludes, in the exercise of its discretion and pursuant to its inherent authority, that the August Agreement, whatever its other merits, shall not be permitted to shield this information from production given that (i) both Beth Vannoy and Defendants represented to Plaintiffs prior to the August Agreement that Beth Vannoy had not provided legal advice to Defendants concerning franchise law or prepared a franchise disclosure document during her employment at Vannoy

Colvard;<sup>7</sup> and (ii) in light of those representations, Plaintiffs did not know—and with the exercise of reasonable diligence could not have known—at the time they entered into the August Agreement that the billing descriptions would likely reflect that Beth Vannoy performed franchise-law-related legal work for Defendants while she was employed at Vannoy Colvard.<sup>8</sup> The Court has considered each of the arguments advanced by Vannoy Colvard and Defendants in opposition to this aspect of the Motion and finds them without merit.

12. At the April 21 hearing, Defendants requested the opportunity to conduct a privilege review should the Court order that the non-privileged billing descriptions in the Billing Records be unredacted and thereafter advised the Court by email dated 11 May 2002 that Defendants had completed that review and are prepared to produce the Billing Records redacted only for privilege.

---

<sup>7</sup> (See Dep. Anna Elizabeth Vannoy, dated Apr. 19, 2018, at 35:24–36:8, ECF No. 869.1 (“Q. Okay. Am I correct in understanding that your testimony, when you were at the Vannoy law firm, that you did not provide advice, drafting documents or anything else for Window World relating to franchise law? . . . A. Correct.”); Resp. by Anna Elizabeth Vannoy to Pls.’ Mot. Requesting Entry of Sanctions and Appl. of Crime-Fraud Exception to Privilege 26, ECF No. 836 (“As of 2010–2011 I had little knowledge or experience in franchise law, so in my view advising WW on franchise law required outside counsel.” (quoting Defs.’ Resp. to Pls.’ Exceptions Special Master’s Report, Second Aff. Anna Elizabeth Vannoy, at ¶ 7, ECF No. 702.6)).)

<sup>8</sup> The Court is also persuaded that WW’s Court-ordered production of numerous documents to Plaintiffs after the August Agreement was made showing Beth Vannoy’s franchise-law-related legal work for Defendants while she was employed at Vannoy Colvard, (*see e.g.*, ECF Nos. 813.37, 813.46, 813.47, 813.48), reflect changed circumstances sufficient to set aside the August Agreement as to the non-privileged billing descriptions in the Billing Records and to compel the production of those non-privileged descriptions to Plaintiffs. *See, e.g., Morris*, 2011 NCBC LEXIS 34, at \*48 (recognizing that a trial court may revisit a discovery agreement in light of later developments in the litigation).

13. **WHEREFORE**, the Court, for the reasons stated herein and in the exercise of its discretion, hereby **ORDERS** as follows:

- a. No later than 15 June 2022, WW shall return the Billing Records to Vannoy Colvard, redacted only for privilege and identifying in a written privilege log all assertions of privilege or work-product immunity with adequate and accurate descriptions.
- b. No later than 17 June 2022, Vannoy Colvard shall produce to Plaintiffs the Billing Records, redacted only for privilege, together with WW's privilege log explaining the grounds for its assertion of privilege or work-product immunity.
- c. The Court **DEFERS** its ruling on Plaintiffs' request that the Court conduct an *in camera* review of Defendants' privilege redactions of the billing descriptions in the Billing Records until the Court has resolved the Sanctions Motion and the Motion to Compel. The Court intends to resolve those motions by separate order.

**SO ORDERED**, this the 13th day of June, 2022.

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