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IN THE DISTRICT COURT OF THE UNITED STATES
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

IN RE: MI WINDOWS AND) 2:12-MN-00001
DOORS, INC. PRODUCTS)
LIABILITY LITIGATION) Charleston,
) South Carolina
MI WINDOWS AND DOORS, INC.) January 15, 2014
)

TRANSCRIPT OF HEARING
BEFORE THE HONORABLE DAVID C. NORTON,
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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Proceedings recorded by mechanical shorthand,
Transcript produced by computer-aided transcription.

1 THE COURT: Okay. The 2014 meeting of the Windows
2 Club is now in session. All right. The usual suspects are
3 here, dwindling down. So I'm ready when y'all are. I hope
4 everybody had a good holiday. I guess, where is Mr. Lucey?
5 I guess his team didn't win on the national championship. I
6 don't know who he was for.

7 MR. BRYSON: Good afternoon, Your Honor. Mr. Lucey
8 was for Auburn, so he might still be sulking. But in
9 addition, he's in a trial, like right in the middle of a hot
10 and heavy trial in state court and could not be here today.

11 THE COURT: No problem.

12 MR. BRYSON: Ms. Harper Todd is standing in as
13 liaison counsel.

14 THE COURT: Sure. Your team won?

15 MS. LUMPKIN: Yes. Mr. Farrier and I are still
16 smiling.

17 MR. FARRIER: We had hoped to run into Justin
18 today.

19 THE COURT: You should have bet the case on the
20 game.

21 All right. So y'all -- are y'all meeting with
22 Magistrate Judge Hendricks tomorrow, I understand?

23 MR. BRYSON: I don't think Judge Hendricks, Your
24 Honor. I think --

25 THE COURT: Tom Wills.

1 MR. BRYSON: Tom Wills, yes, that's correct. And
2 that's set to resume tomorrow morning. And I think he has
3 been in contact with the Judge, perhaps they consulted, I'm
4 not sure, but she was pleased that he would be able to tag
5 off in her absence. She has been unavailable for a few weeks
6 with some other matters. And if the case doesn't --

7 THE COURT: To say the least, "other matters".

8 MR. BRYSON: Okay.

9 THE COURT: Yeah.

10 MR. BRYSON: That she would be able to resume in
11 early February should he not be able to get the case resolved
12 tomorrow. I think this will be about our fifteenth time
13 meeting, so we are optimistic. Hope springs eternal.

14 THE COURT: Hope springs eternal over here.

15 Are you the sand in the gears now?

16 MR. HAHN: No, sir. In fact -- and I think Mr.
17 Farrier will expand on this -- I've had conversations with
18 both Judge Hendricks and with Tom Wills. It is my
19 understanding from talking to them that a term sheet is
20 finally in place and signed by everybody.

21 So there are only two issues left. One is the
22 insurance issue and one is an attorney fee issue with the
23 homeowners. Given that, we don't have a dog in that fight,
24 and Mr. Wills has excused me from participating tomorrow.
25 But I'm on standby in the event --

1 THE COURT: Okay.

2 MR. BRYSON: I'm glad Mr. Hahn learned that because
3 Mr. Bundy, his co-counsel, signed the memorandum when that
4 was done, I guess now a month or two ago, several months ago.
5 But --

6 THE COURT: Well, Mr. Bundy does lots of things
7 without authorization. It's impossible to control. Mr.
8 Bundy has a large engine, no brakes and no steering wheel
9 sometimes. But he's across the street, a neighbor, and I
10 love him.

11 All right. So, yes, sir, Mr. Farrier?

12 MR. FARRIER: That is where things stand, Your
13 Honor. We do have an agreement set forth in the terms sheet.
14 There are two contingencies in that term sheet. One is
15 insurer approval; the other is resolution of the attorney's
16 fees. Because of that, we today have proposed to the other
17 side that we set a date for a preliminary hearing. This
18 could blow up, but we think that it would move things along.
19 We would like for the preliminary hearing -- excuse me --
20 preliminary approval for the hearing on that to be
21 approximately 90 days out with the briefing on that to be 60
22 days out.

23 I spoke to Mr. Bryson early -- we didn't think of
24 this until today, I didn't propose it until today -- he needs
25 to get buy in from the rest of his group. If we can't go

1 forward under that schedule, we would like to have -- and we
2 need to modify it slightly -- we would like to have another
3 status conference in 30 days to discuss that. And it is
4 possible that either of these two remaining issues could blow
5 this up and possibly derail the preliminary hearing. But
6 we -- it's not set but it's -- we are looking for it to keep
7 rolling out in the future.

8 THE COURT: Okay. Well, 90 days from this week
9 starting on April 17th I've got a criminal case in Columbia
10 which is supposed to take a couple of weeks. So if you want
11 to roll that to the 1st of May and then back everything up on
12 that, then I'll be available, I think, unless y'all want to
13 come to Columbia. But I would suggest we probably do it the
14 first week in May or the second week in May or early May.

15 MR. BRYSON: Your Honor, quite candidly, if the
16 case were to resolve -- and I'm kind of shocked to hear an
17 acknowledgement that an insurance funding issue for the
18 settlement is now before the Court, but -- that has been a
19 significant holdup in this matter -- but if the case were to
20 resolve, we certainly would -- plaintiffs would have a motion
21 for preliminary approval before the Court in fairly short
22 order. And to the extent the Court could hear that in a
23 period lesser than 90 days, that would be our fondest wish
24 and desire.

25 THE COURT: Okay.

1 MR. FARRIER: Your Honor, just to clarify, because
2 I don't recall hearing myself say that there was an insurance
3 funding matter before the Court. The insurers have been
4 participating in the mediation. I would like to inform the
5 Court that a coverage case has been filed in South Carolina
6 State Court that's been moved for complex case designation,
7 and that is out there.

8 THE COURT: Okay. All right. I was just reminded,
9 my Columbia case is in March; not April. So I will be
10 around. I've got another case supposed to try the first 10
11 days of April. So the middle of April I think I'll be
12 available. I was wrong on that. But if in fact you settle
13 the case, I'll have a hearing tomorrow, okay? So if y'all
14 settle the case and you want to accelerate that, I'm
15 available, all right? Because I've got -- I have jury
16 selection tomorrow. Out of 10 cases we are going to select
17 two juries. One of them is going to take about 10 days; the
18 other is going to take about a day and a half. So I'm, for
19 all intents and purposes, I will rearrange my schedule to fit
20 your schedule. If, in fact, you need some quick hearings,
21 that would be fine with me.

22 MR. BRYSON: All right. Thank you, Your Honor.
23 We'll keep the Court apprised.

24 THE COURT: Okay. Do you want to go ahead and set
25 your preliminary approval hearing now and then with leave to

1 accelerate it if necessary? I mean, is that the best idea?

2 MR. FARRIER: We would like to.

3 MR. BRYSON: Yes, sir.

4 THE COURT: How about you, Mr. Bryson, is that okay?

5 MR. BRYSON: If possible -- I have not been able to
6 discuss this with Mr. Lucey, I think as Mr. Farrier said --
7 and if I could run that by him, I would appreciate it, Judge.

8 THE COURT: Why don't you run it by him, get back
9 with Mr. Farrier and Mr. Hahn, pick a date 90 days away, the
10 middle of April, and then back it off from there. And if
11 something happens between now and then, we'll have a hearing
12 on an accelerated basis, okay?

13 All right. So I guess that's 2A. 2B -- I guess
14 we've done 1. I guess we've done 2A. And 2B is other
15 related scheduling issues.

16 MR. BRYSON: I'm not really sure what that pertains
17 to.

18 MS. LUMPKIN: I think that relates to the stay. We
19 need to make sure that the stay that's in place with this
20 status conference gets continued.

21 THE COURT: Any problem with that?

22 MR. BRYSON: No, sir.

23 THE COURT: We'll continue the stay until further
24 order of the Court. How does that sound?

25 MS. LUMPKIN: Thank you, Your Honor.

1 THE COURT: Okay. And then of course the next thing
2 is additional discovery to be completed under the class
3 certification. And so --

4 MR. BRYSON: Well, Your Honor, I think all really,
5 quite candidly, 3 and 4 become a moot point until the stay is
6 lifted. Certainly under CMO 5 there is significant discovery
7 that's contemplated before there would be any sort of class
8 certification hearing of any type, contractors, homeowners,
9 whatever. And so, you know, again, we've not had a
10 discussion about it, but homeowners' position would be all of
11 this would be stayed pending, again, pending the lifting of
12 the stay.

13 I mean, we certainly think -- I know Mr. Hahn has
14 made representations about a contractor class cert
15 briefing -- we certainly feel that any briefing he does might
16 have some impact on our case with the homeowners since there
17 is discovery we want to take both his client, and because we
18 have a homeowner who lives in that subdivision, we haven't
19 had a chance to do that type of discovery, and of course
20 don't feel like, you know, because of the stay we wouldn't be
21 able to do that. But to the extent there is any sort of
22 briefing that's completed on the contractors' class
23 certification motion, that we be entitled to do, you know,
24 our discovery to protect our clients' interest. And
25 hopefully that would just be stayed, as well, until we find

1 out where we are on potential resolution.

2 THE COURT: So if I understand correctly, I mean,
3 you are not -- because we are going to extend the stay with
4 the anticipation that the case is going to settle, you
5 want -- you are okay with that, the energy should be targeted
6 at the settlement, as opposed to the discovery and the
7 resolution of the class certification. Is that what I'm
8 hearing?

9 MR. BRYSON: As long as there is a stay, there is a
10 stay. Let's see if we are going to get it done. We have
11 been at it a year now trying to get it done. But if we can't
12 get it done, at some point, maybe it's tomorrow, maybe it's
13 the next, if we don't get it tomorrow, at the last session
14 with Judge Hendricks, then we can kind of get back at it, I
15 guess, and discovery proceed and briefing schedules be
16 established and really plug back into what was contemplated
17 in CMO 5, which was a discovery plan leading up to class
18 certification issues, yes, sir.

19 MR. HAHN: I want to make sure I understand Mr.
20 Bryson correctly. You are talking about discovery if
21 settlement does not take place. If there is a settlement,
22 there is no more discovery needed, correct?

23 MR. BRYSON: That's correct. Unless there is some
24 sort of due diligence type discovery that would relate
25 directly to the settlement, and that would be something we

1 would negotiate and talk about, that's not -- I don't think
2 that would be any sort of problem.

3 THE COURT: But the settlement is conditioned
4 precedent on any discovery in any matter, right?

5 MR. BRYSON: Correct.

6 THE COURT: Okay.

7 MR. HAHN: I'll save comment on that until we see
8 what he's talking about, Judge.

9 As to our motion for class certification, I know the
10 Court directed us to file that on January 1st. We chose not
11 to, Your Honor, notwithstanding your instruction, because
12 the settlement was making progress.

13 THE COURT: Okay.

14 MR. HAHN: If at some point in time the settlement
15 discussions break down, then it would be our intention to at
16 that point file a motion for class certification.

17 THE COURT: Sure. That's fine.

18 MR. HAHN: Thank you.

19 THE COURT: No problem. Everybody gets to ignore
20 one order a year. You are finished for 2014. You have to
21 wait until 2015 to ignore another order, okay?

22 MR. HAHN: Thank you, Judge.

23 THE COURT: Sure.

24 Yes, sir? You are looking like you are springing.
25 I don't know if you are exercising your new hip or not.

1 MR. FARRIER: A lot of coffee. I think that takes
2 us down to 4C.

3 THE COURT: Okay.

4 MR. FARRIER: And we just want to confirm that
5 all -- there are no other cases out there. That what exists,
6 that in which the homeowners' counsel are involved, has been
7 consolidated into this MDL.

8 MR. BRYSON: Your Honor, we've heard of potential
9 cases in a number of additional states. Nothing has been
10 filed to our knowledge and we are trying to make sure that
11 doesn't happen pending these settlement negotiations. But to
12 my knowledge, nothing additional has been filed.

13 THE COURT: But everything that's been filed with
14 the MDL panel has been transferred to me?

15 MR. BRYSON: That's been transferred. That's
16 correct.

17 THE COURT: All right. So that solved that.

18 MR. FARRIER: So the final item is the next agenda
19 item, and this is really by way of information. There is
20 Jeff Leath's case up in York County. There is an issue
21 brewing there that we hope to handle in front of Judge Hayes
22 in which the discovery in this case Mr. Leath is seeking to
23 implicate into that case. We'll know in 45 days whether we
24 might come and ask the Court for some coordination with Judge
25 Hayes. I just wanted to note that.

1 THE COURT: I'll be glad to call him. Since we were
2 overlapping for attorneys before he left, okay?

3 MR. FARRIER: That's it from our side, Your Honor.

4 THE COURT: Okay. All right. The next thing is the
5 schedule, the next status conference for late February, early
6 March. I mean, do you want to wait until you talk to Mr.
7 Lucey and all that and then just give me a call and call Lisa
8 and set it up? Or I can do it.

9 MR. BRYSON: You mean in so far as a status
10 conference the next --

11 THE COURT: Yeah.

12 MR. BRYSON: Um, if Your Honor wouldn't mind just
13 holding that open, we can provide -- do you have now a couple
14 of dates in late February you could provide to us?

15 THE COURT: I mean, I think the only thing that
16 really I can't work around I think is something starting
17 March the 19th, that's that case in Columbia. I've got some
18 trials scheduled, one of them is February 3rd, and that's
19 going to take 10 days. The other one is only a couple of
20 days. So I'm really flexible after probably February the
21 15th. So just -- so any time after February the 15th, you
22 know, a Wednesday or Thursday, or whatever you want to do, I
23 think I'll be available.

24 MR. BRYSON: How about tentatively February 19th?

25 THE COURT: I was just -- I just thought back,

1 except for the week of February the 19th, of which I will be
2 in Seattle.

3 MR. BRYSON: Okay.

4 THE COURT: I don't know what the first day of that
5 week is.

6 MR. BRYSON: The first day of the week is the 17th,
7 the 19th was Wednesday.

8 THE COURT: So I'll be in Seattle until Thursday of
9 that week. So maybe the following week.

10 MR. BRYSON: Do you want to say then tentatively
11 the 26th?

12 THE COURT: Twenty-sixth?

13 MR. BRYSON: February 26th. That's a Wednesday.

14 THE COURT: Okay. Tentatively, okay? February 26th
15 at 2:00 again.

16 MR. BRYSON: Yes. We appreciate the accommodation
17 for those traveling.

18 THE COURT: No problem. So we'll tentatively
19 schedule it on February 26th at 2 PM.

20 MR. BRYSON: Correct.

21 THE COURT: Okay. All right. Is there anything
22 else?

23 MR. BRYSON: I think that's it, Judge.

24 THE COURT: All right. Go and litigate no more.

25 MR. FARRIER: Thank you, Your Honor.

1 THE COURT: Thanks. All right. Good luck tomorrow,
2 all right? Has Tom Wills been involved before or is this his
3 first foray into Windows?

4 MR. FARRIER: It's his first foray, but he's met
5 with all of us and Judge Hendricks.

6 THE COURT: Well, at least by reputation, if he
7 can't do it nobody can, all right? Thanks.

8 *****

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10 I certify that the foregoing is a correct transcript from the
11 record of proceedings in the above-titled matter.
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17 Amy C. Diaz, RPR, CRR June 2, 2014

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