10-20-2015

Non-Party John W. Robinson III's Application for Protective Order

John J. Goger
Fulton County Superior Court

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

JOHN W. ROBINSON III,	)	
	)	
Petitioner,	)	
	)	
v.	)	**Civil Action File No.**
	)	**2015CV259408**
WELLSHIRE FINANCIAL SERVICES, LLC d/b/a LOANSTAR TITLE LOANS, d/b/a MOONEYMAX TITLE LOANS, and d/b/a LOANMAX; et al.,	)	**BUS 4**
	)	
Respondents.	)	

ORDER

Before this Court is Non-Party John W. Robinson III's Application for Protective Order under O.C.G.A. § 24-13-116. John W. Robinson, III, TitleMax's former CEO, has been issued a subpoena to appear for a deposition in a matter pending in Texas, *Wellshire Fin. Servs., LLC et al.("LoanStar") v. TMX Finance Holdings, Inc., et al, ("TitleMax")* No. 2013-33584 (152nd Judicial District, Harris Cnty, Tex.). The underlying Texas litigation involves allegations that TitleMax illegally procured customer information from its automobile title loan competitor, LoanStar, by sending employees to canvas LoanStar's parking lots for customers and illegally pulling information from DMV records. Mr. Robinson filed the instant Motion seeking protection from this subpoena under O.C.G.A. § 24-13-116. On June 1, 2015, the Court issued a temporary protective order until the Texas Court of Appeals issued an opinion on the propriety of related depositions. The Texas Court of Appeals rendered its decision on August 20, 2015.

The Texas Court of Appeals found that TitleMax's current CEO, Mr. Tracy Young, did not have unique or superior personal knowledge of the alleged misconduct at Texas stores and only knew some facts secondhand by reason of his position as CEO. LoanStar failed to show

that he was personally involved or exerted any control over marketing efforts at TitleMax. Therefore, the Court determined that the trial court erred by compelling the deposition of Young and, under Texas's apex doctrine, LoanStar should obtain discovery through less obtrusive means before it could depose Young. However, the Texas Court found that former Senior Vice-President of Operations and current COO, Mr. Otto Bielss, must sit for a deposition because he was aware of day-to-day operations at the Texas stores, regularly discussed marketing strategies with local managers in Texas, visited Texas stores, and implemented an aggressive growth strategy for the Texas market. His involvement put him in a unique position to testify about the scope of the alleged misconduct.

In Georgia, "[p]arties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party." O.C.G.A. § 9-11-26(b)(1). Under O.C.G.A. § 9-11-26(c), the Court may "make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense." "The trial court in its discretion balances the right of a party to obtain discovery and the right of individuals to be protected from unduly burdensome or oppressive inquiries." *In re Callaway*, 212 Ga. App. 500, 501 (1994).

Like Young, Robinson asserts that he has no firsthand personal knowledge of the matters at issue in the Texas litigation. Robinson avers that he was only involved "at the very top of layers of managing TMX Finance, LLC's Business" and "did not have firsthand personal knowledge of the day-to-day operations or marketing activities of any particular TitleMax store in Texas." He does admit in his Affidavit: "It is possible that John McCloskey, the General Counsel of Select Management Resources, LLC, may have complained to me about what he

thought some TitleMax employees were doing in Texas. But I do not presently remember receiving any specific information about these allegations."

LoanStar, on the other hand, points to the deposition testimony of Linda McDonald, TitleMax's Vice-President of Operations, to show that Robinson knew of the alleged misconduct and therefore, it should have a right to depose Robinson. McDonald testified Robinson texted her in November of 2011 to say that, according to LoanStar, TitleMax employees were going on competitors' lots to solicit customers and she should check into it and make sure it was not occurring. McDonald also testified that she had been coached by Robinson that TitleMax employees should not go to competitors' lots to solicit business because it was not an ethical practice.

The extent to which TitleMax's upper management knew of the alleged marketing misconduct, their position on these types of marketing strategies, and the actions they took on behalf of TitleMax as a result of their knowledge are relevant to the case. While Robinson avers that he was not involved with the day-to-day affairs or marketing at Texas TitleMax stores, McDonald's testimony is enough to show that he did have knowledge that certain employees may have been engaging in misconduct. When and how he learned of these allegations and his actions or inactions upon learning of this conduct are relevant. Therefore, LoanStar should have the opportunity to depose Robinson. As such, the Application for Protective Order under O.C.G.A. § 24-13-116 is **DENIED.**

SO ORDERED this 20 day of October, 2015.

The Honorable John J. Goger
Superior Court of Fulton County
Atlanta Judicial Circuit

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