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10
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Windermere Real Estate Services Company
12

13 **UNITED STATES DISTRICT COURT**
14 **CENTRAL DISTRICT OF CALIFORNIA**

15 BENNION & DEVILLE FINE
HOMES, INC., a California
16 corporation, BENNION & DEVILLE
FINE HOMES SOCAL, INC., a
17 California corporation, WINDERMERE
SERVICES SOUTHERN
18 CALIFORNIA, INC., a California
corporation,

19 Plaintiffs,

20 v.

21 WINDERMERE REAL ESTATE
22 SERVICES COMPANY, a Washington
corporation; and DOES 1-10

23 Defendant.
24

25
26
27 **AND RELATED COUNTERCLAIMS**
28

Case No. 5:15-CV-01921 R (KKx)

Hon. Manuel L. Real

**DECLARATION OF JEFFREY A.
FEASBY IN SUPPORT OF
DEFENDANT AND
COUNTERCLAIMANT'S MOTION
IN LIMINE TO EXCLUDE
EVIDENCE RELATED TO ITS
OFFER TO PURCHASE
PLAINTIFFS AND COUNTER-
DEFENDANTS**

Date: May 15, 2017

Time: 10:00 a.m.

Courtroom: 880

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I, Jeffrey A. Feasby, declare:

1. I am an attorney at law, duly licensed to practice law in the State of California, and am one of the attorneys for defendant Windermere Real Estate Services Company (“WSC”) in the above-captioned matter. I have personal knowledge of the facts set forth in this declaration, and if called upon to testify thereto, would do so competently.

2. As one of the attorneys for WSC, I am intimately familiar with the discovery that has taken place in this case, including the production of documents by all parties and documents received from third parties pursuant to subpoenas. These documents are maintained in my office.

3. Attached hereto as Exhibit A is a true and correct copy of excerpts from the transcript of the deposition of Jill Wood taken on August 24, 2016 in this matter.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that this declaration was executed on May 1, 2017.

/s/ Jeffrey A. Feasby
Jeffrey A. Feasby

EXHIBIT A

1 UNITED STATES DISTRICT COURT
2 CENTRAL DISTRICT OF CALIFORNIA

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4 BENNION & DEVILLE FINE HOMES,)
INC., a California corporation,)
5 BENNION & DEVILLE FINE HOMES)
SOCAL, INC., a California)
6 corporation, WINDERMERE SERVICES)
SOUTHERN CALIFORNIA, INC., a)
7 California corporation,)
)
8 Plaintiffs,)
) No.
9 vs.) 5:15-cv-01921-R-KK
)
10 WINDERMERE REAL ESTATE SERVICES)
COMPANY, a Washington)
11 corporation; and DOES 1-10,)
)
12 Defendants,)
)
13
14 AND RELATED COUNTERCLAIMS)
)

15
16 VIDEOTAPED DEPOSITION UPON ORAL EXAMINATION OF:
17 JILL WOOD
18
19

20 Seattle Deposition Reporters

21 600 University Street, Suite 320

22 Seattle, Washington

23
24 DATE TAKEN: August 24, 2016
25 REPORTED BY: CYNTHIA A. KENNEDY, RPR, CCR 3005

Page 1

1 You were involved in emails during that time
2 period with Mr. Bennion and Mr. Deville?

3 A. I could have been.

4 Q. You don't recall any of this?

5 A. No, I don't recall any of this.

6 Q. Okay. And you are aware that negotiations
7 ensued in which Windermere discussed the purchase of
8 Mr. Bennion and Mr. Deville's business, correct?

9 A. Correct.

10 Q. And not just their area representative
11 business, but their entire real estate business?

12 A. Their -- their real estate --

13 Q. And that's --

14 A. -- business. It wasn't Windermere buying
15 it.

16 Q. Okay.

17 A. Okay.

18 Q. Who was buying it?

19 A. I believe that it was the four of us, my
20 four siblings. My -- my -- the four of us owners.

21 Q. And the four of you owners contemplated
22 buying Mr. Bennion and Mr. Deville's real estate
23 business then?

24 A. Uh-huh.

25 Q. Okay. And it was not going to be held by

1 information that you say you no longer have?

2 A. I believe Mr. Jacobi has it.

3 Q. And you're referring to your brother?

4 A. No. My dad.

5 Q. Oh. Thank you.

6 A. We never made copies. I never had a copy of
7 it or anything.

8 Q. What are you planning on doing with this
9 financial information that was provided to you by
10 Mr. Bennion and Mr. Deville?

11 A. Nothing.

12 Q. And I'll strike that.

13 What do you plan on doing with this
14 nonfinancial confidential information provided to you
15 by Mr. Bennion and Mr. Deville?

16 A. Nothing.

17 Q. Why do you still have it then?

18 A. I have it in a file.

19 Q. And after receiving this information from
20 Mr. Bennion and Mr. Deville, you made an offer to
21 purchase their business, didn't you?

22 A. Yes.

23 Q. And that offer was for \$13.5 million, right?

24 A. Yes.

25 (Whereupon Exhibit 103 was

1 marked for the record.)

2 Q. I'm handing you a document that I have
3 marked as Exhibit 103.

4 Do you recognize this?

5 A. (Reviewing Exhibit 103.) Yes.

6 Q. And if you look at the last page of the
7 document for me, Bates numbered 4646, your signature
8 is on it, isn't it?

9 A. Yes.

10 Q. And you signed this document as the buyer,
11 correct?

12 A. Yes.

13 Q. And you agreed to purchase Mr. Bennion and
14 Mr. Deville's real estate business pursuant to the
15 terms of this agreement, correct?

16 A. Yes.

17 Q. What happened to that transaction?

18 A. Probably couldn't come to terms.

19 Q. And you signed this before the parties were
20 able to come to terms?

21 A. I don't remember where we are. We went back
22 and forth a couple of times, if I remember correctly.

23 Q. And you went back and forth and sent another
24 letter concerning your offer to purchase Mr. Bennion
25 and Mr. Deville's business for an -- the same amount

1 but over different terms.

2 Do you recall that?

3 A. Yeah. I remember there being terms that we
4 were trying to negotiate.

5 Q. And there were some confusion as to what
6 amount would be offset from prior amounts owed.

7 Do you recall that?

8 A. Okay. I remember something about it. Not
9 specifics.

10 (Whereupon Exhibit 104 was
11 marked for the record.)

12 Q. I'm handing you a document that has been
13 marked as Exhibit 104. And this is another Stock
14 Purchase Agreement, correct?

15 A. It looks to be, yes.

16 Q. And it's very similar to the one we just
17 saw, Exhibit 103, right?

18 A. Yes.

19 Q. And you remember exchanging this with
20 Mr. Bennion and Mr. Deville?

21 A. I remember Paul doing -- I can't remember
22 how it happened.

23 Q. And this transaction died because Windermere
24 insisted that the royalties that were forgiven as part
25 of the modification agreement be deducted from this

1 transaction, correct?

2 A. I -- that's not how I remember it.

3 Q. What do you remember?

4 A. I remember it dying because of the down
5 payment, but I can't remember specifics, being -- it
6 was over about a \$500,000 down payment, if I remember
7 properly.

8 Q. And as part of this transaction, you were
9 going to keep Mr. Bennion and Mr. Deville in the
10 system for some time, weren't you?

11 A. Yes.

12 Q. And you were going to keep them in the
13 system because you -- you found them to be valuable
14 assets to Windermere?

15 A. To their operation, yes.

16 Q. You did not intend to have Mr. Bennion
17 involved with Windermere at all in Seattle?

18 A. I think at one point in our offers, we'd
19 offered to sell our Madison Park office to them so
20 that he could be an owner in Seattle also.

21 Q. And?

22 A. But what do you mean?

23 Q. And you offered to sell Madison Park to
24 Mr. Bennion because you found Mr. Bennion to be an
25 asset to Windermere?

1 A. Yes.

2 Q. And you understand that these negotiations
3 fell through because of the down payment, right?

4 A. I can't remember what it was. It was -- it
5 was a million-five now or a million -- I can't -- I
6 don't remember what the number was or what happened.
7 It was about the down payment, though, because I knew
8 the rest of the --

9 Q. And then were you aware --

10 A. -- (spoken over.)

11 THE COURT REPORTER: I'm sorry. "The
12 rest of the" --

13 THE WITNESS: I knew the rest of the
14 purchase price being \$13,500,000.

15 BY MR. ADAMS:

16 Q. And ultimately Mr. Bennion and Mr. Deville
17 were terminated from the Windermere System as area
18 representatives on September 30th, 2015, correct?

19 A. Correct.

20 Q. And their franchise agreements terminated at
21 the same time, correct?

22 A. Correct.

23 Q. So as of September 30th, 2015, Mr. Bennion
24 and Mr. Deville were no longer part of the Windermere
25 System, right?

