

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 CLARIFYING AND
AMENDING 26 NOVEMBER 2024
SUMMARY JUDGMENT
ORDER AND OPINION**

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.
WESNER-FORD; 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 *sua sponte* pursuant to Rules 54(b) and 60 of the North Carolina Rules of Civil Procedure (the “Rule(s)”) to reconsider certain portions of the Court’s recently-filed Order and Opinion on Cross-Motions for

Summary Judgment, Defendant Window World, International, LLC's Motion for Partial Summary Judgment, and Defendant Tammy Whitworth's Motion for Partial Summary Judgment, (2015-CVS-1 ECF Nos. 1073 (redacted), 1065 (sealed); 2015-CVS-2 ECF Nos. 1131 (redacted), 1123 (sealed)) (the "November 26 Opinion"), *see Window World of Baton Rouge, LLC v. Window World, Inc.*, 2024 NCBC LEXIS 153 (N.C. Super. Ct. Nov. 26, 2024).

2. On 26 November 2024, the Court entered the November 26 Opinion, which, in Paragraph 155, states as follows:

Plaintiffs allege in their Third Amended Complaint that "[t]he parties' agreements, *as reflected in their course of dealings*, included [Window World's] **promise to secure for Window World franchisees, including Plaintiffs, superior wholesale pricing for the products Plaintiffs purchased, sold, and installed as Window World franchisees**" (emphasis added). Plaintiffs allege that Window World **breached this promise** by "failing to secure superior wholesale pricing from suppliers, requiring that Plaintiffs purchase products and supplies at inflated prices from suppliers selected by [Window World], receiving undisclosed kickbacks or rebates on products and supplies purchased by franchisees from designated suppliers, providing undisclosed 'C' pricing to certain franchisees with lower levels of sales, requiring certain Plaintiffs to take on debt obligations owed to AMI by former franchisees in a manner not required of similarly situated franchisees, and failing to make franchise disclosures required by applicable law." (Emphasis in bold added).

3. While no party directly challenges through a motion the Court's wording of this paragraph, or related paragraphs, in the November 26 Opinion, Plaintiffs requested by email on 5 December 2024 that a table the Court emailed to the parties on 27 November 2024 listing the remaining issues for trial be amended to "clarify [that the breach of contract and related breach of covenant of good faith and fair dealing] claims are not premised only on [Window World's] alleged breach of its 'best

pricing’ promise, but also on the other alleged breaches discussed in Plaintiffs’ Complaints and interrogatory responses, the parties’ briefing, and the Court’s Order and Opinion (including Paragraphs 155 and 162).” Defendants contended in a response email sent on 9 December 2024 that Plaintiffs’ proposed “revisions to the table would improperly expand the scope of Plaintiffs’ claims for breach of contract and breach of the covenant of good faith and fair dealing . . . to include not just the ‘best pricing’ theory, but also unspecified ‘other theories’ as well.” Plaintiffs submitted an email reply to Defendants’ response on 10 December 2024.

4. The Court thereafter held a Webex video conference on 11 December 2024 (the “Conference”), at which all parties were represented by counsel and during which the parties were permitted to further explain their respective positions on Plaintiffs’ proposed revisions to the table listing the remaining issues for trial.

5. The Court first notes that the November 26 Opinion did not resolve all claims against all parties, and the Court did not enter the November 26 Opinion as a final judgment under Rule 54(b). Where, as here, a final judgment has not been entered, Rule 54(b) provides that “any order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.”

6. In addition, Rule 60(a) permits a judge to correct, upon his or her own initiative, “[c]lerical mistakes in judgments, orders, or other parts of the record and errors therein arising from oversight or omission.” While the trial court cannot generally modify an order or judgment which affects the substantial rights of a party,

Spencer v. Spencer, 156 N.C. App. 1, 10–11 (2003), the Court has the authority to reconsider his or her own summary judgment ruling, *see Miller v. Miller*, 34 N.C. App. 209, 212 (1977). *See also Carr v. Great Lakes Carbon Corp.*, 49 N.C. App. 631, 635 (1980) (“*Miller* presented the question whether a judge who rules on a motion for summary judgment may thereafter strike the order, rehear the motion for summary judgment, and allow the motion. Such procedure does not involve one judge overruling another, and is proper under Rule 60.”); *Barnes v. Taylor*, 148 N.C. App. 397, 400 (2002) (citing Rule 60 as a “grand reserve of equitable power” to hold that “the trial court had authority to set aside its earlier judgment on its own initiative.”)

7. The Court has considered the parties’ arguments made both by email and at the Conference as well as the record, briefing, and argument proffered in connection with the parties’ motions for summary judgment. After careful review, the Court concludes that the table emailed to the parties on 27 November 2024 should be revised to clarify that Plaintiffs’ breach of contract and related breach of covenant of good faith and fair dealing claims are “not premised only on [Window World’s] alleged breach of its ‘best pricing’ promise” and made a part of the Court’s Order. Indeed, Plaintiffs’ Third Amended Complaints, (2015-CVS-1 Third Am. Compl. ¶¶ 249, 256, ECF Nos. 252 (sealed), 257 (redacted); 2015-CVS-2 Third Am. Compl. ¶¶ 353, 360, ECF Nos. 275 (sealed), 280 (redacted)), make clear that Plaintiffs have alleged numerous breaches of the parties’ agreements. Defendants’ Motion for Summary Judgment, (2015-CVS-1 ECF No. 973), and supporting briefs, (2015-CVS-1 ECF Nos. 974 (sealed), 1001 (redacted), 1031 (sealed), 1037 (redacted)), also make clear that

Defendants only sought summary judgment on two of the multiple breach of contract theories advanced by Plaintiffs: failing to secure superior wholesale pricing from suppliers and providing undisclosed ‘C’ pricing to certain franchisees with lower levels of sales.¹ As a result, the Court finds it necessary to (1) amend Paragraph 155 of the Court’s November 26 Opinion to make clear that Plaintiffs have advanced multiple theories of breach of contract liability and (2) amend the attached table (*see* attached Exhibit A) and Paragraphs 159, 163, and 228 of the November 26 Opinion to reflect that all of Plaintiffs’ breach of contract theories of liability shall proceed to trial, except for the Jones/Shumate Plaintiffs’ claims that are based on the superior wholesale pricing theory and the undisclosed C pricing theory.

8. Accordingly, the Court hereby amends Paragraphs 155, 159, 163, and 228 as follows (the Court’s amendments are in **bold**):

155. Plaintiffs allege in their Third Amended Complaint that “[t]he parties’ agreements, *as reflected in their course of dealings*, included [Window World’s] promise to secure for Window World franchisees, including Plaintiffs, superior wholesale pricing for the products Plaintiffs purchased, sold, and installed as Window World franchisees” (emphasis added). Plaintiffs allege that Window World breached **the parties’ agreements** by “failing to secure superior wholesale pricing from suppliers, requiring that Plaintiffs purchase products and supplies at inflated prices from suppliers selected by [Window World], receiving

¹ Defendants noted at the Conference that the Court had entered summary judgment against the Ford, Ballard, Rose, and Jones/Shumate Plaintiffs and their related entities on their fraud claims based on Window World’s alleged rebate misrepresentations, *see Window World of Baton Rouge, LLC*, 2024 NCBC LEXIS at *44, 206, and argued that the Court should likewise enter summary judgment on these same Plaintiffs’ breach of contract and breach of covenant of good faith and fair dealing claims to the extent those claims are based on the same rebate misrepresentations. While the Court certainly appreciates the logic of Defendants’ argument, Defendants did not move for summary judgment on Plaintiffs’ breach of contract and breach of covenant of good faith and fair dealing claims based on Window World’s alleged rebate misrepresentations, and the Court therefore declines to order Defendants’ requested relief on their Motion.

undisclosed kickbacks or rebates on products and supplies purchased by franchisees from designated suppliers, providing undisclosed 'C' pricing to certain franchisees with lower levels of sales, requiring certain Plaintiffs to take on debt obligations owed to AMI by former franchisees in a manner not required of similarly situated franchisees, and failing to make franchise disclosures required by applicable law.”

159. Accordingly, the Court will deny Defendants' Motion for summary judgment on Plaintiffs' claims for breach of contract, except those claims advanced by the Jones/Shumate Plaintiffs **to the extent they are premised on Window World's alleged breach of contract based on its failure to secure superior wholesale pricing from suppliers or providing undisclosed 'C' pricing to certain franchisees with lower levels of sales.** As discussed previously, the Jones/Shumate Plaintiffs testified that Window World's "best pricing" representation concerned non-licensees within their trade area and were unable to produce evidence that Window World breached this alleged best pricing promise. The Court therefore will grant summary judgment for Defendants on the Jones/Shumate Plaintiffs' breach of contract claims **to the extent they are based on Window World's alleged breach of contract based on its failure to secure superior wholesale pricing from suppliers or providing undisclosed 'C' pricing to certain franchisees with lower levels of sales.**

163. Accordingly, the Court will deny Defendants' Motion on Plaintiffs' claim for breach of the implied covenant of good faith and fair dealing in the same manner and to the same extent as the Court has denied Defendants' Motion on Plaintiffs' breach of contract claim. Thus, the Court will likewise enter summary judgment against the Jones/Shumate Plaintiffs on their good faith and fair dealing claim **to the extent it is based upon Window World's alleged breach of contract based on its failure to secure superior wholesale pricing from suppliers or providing undisclosed 'C' pricing to certain franchisees with lower levels of sales,** as it did on those Plaintiffs' breach of contract claim **based on these same theories of liability.**

228. WHEREFORE, for the reasons set forth above, the Court GRANTS in part and DENIES in part the Motions and hereby ORDERS as follows:

d. Defendants' Motion is GRANTED with respect to Plaintiff Window World of Lexington, Inc., Tommy Jones, and Jeremy Shumate's claims for breach of contract and breach of the

covenant of good faith and fair dealing **to the extent they are based on Window World's alleged breach of contract based on its failure to secure superior wholesale pricing from suppliers or providing undisclosed 'C' pricing to certain franchisees with lower levels of sales**, and these Plaintiffs' claims **premised on these theories** are hereby DISMISSED with prejudice.

9. The Court determines that no other changes to the November 26 Opinion are necessary or appropriate at this time.

SO ORDERED, this the 12th day of December, 2024.

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