IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

ILLINOIS AUTOMOBILE DEALERS ASSOCIATION, *et al.*,
Plaintiffs,

v.

OFFICE OF THE ILLINOIS SECRETARY OF STATE, *et al.*
Defendants.

No. 2021-CH-01438 JUDGE DAVID B. ATKINS

Calendar 16

DEC 19 2022
Circuit Court-1879

Judge David B. Atkins

MEMORANDUM OPINION AND ORDER

THIS CASE COMING TO BE HEARD on Defendant Illinois Secretary of State's Motion to Dismiss, and the Rivian and Lucid Defendants'[1] Motion to Dismiss, the court having considered the briefs submitted and being fully advised in the premises,

THE COURT HEREBY ORDERS that the Motions are GRANTED.

Background

This is a dispute over whether the Rivian and Lucid Defendants, who each manufacture electric vehicles, may also sell them directly to consumers consistent with Illinois law, or whether they must do so through third-party franchisees. The issue as it relates to those Defendants arose recently, but as Plaintiffs allege it in general goes back to at least 2009, when Plaintiff Illinois Automobile Dealers Association ("IADA") also opposed the Secretary's granting of dealer licenses at that time to another manufacturer, Tesla, Inc. ("Tesla," not a party to this action). Disputes over the details thereof continued intermittently for several years until apparently settled by an Administrative Consent Order in 2019 in an administrative proceeding over renewal of Tesla licenses. That Order, which characterized itself as a Settlement Agreement, allowed the continued direct operation of dealerships, provided several limitations including that Tesla could only maintain 13 such licenses in Illinois.

Thereafter in early 2020, being informed that Rivian intended to follow a similar business model of direct sales[2] rather than franchises and of the view that "litigation was inevitable,"[3] the Secretary requested an opinion

[1] Defendants Rivian Automotive, Inc., Rivian Automotive, LLC, Rivian, LLC, Lucid USA, Inc., and Lucid Group USA, Inc. collectively refer to themselves as the "Rivian" and "Lucid" Defendants respectively, and the court will do the same herein.
[2] A noteworthy difference being Rivian represents it does not intend to rely on distinct physical dealerships but on online sales.
[3] Am. Compl. Ex. 11

from the Illinois Attorney General on whether Illinois law required new vehicle sales to go through franchisees. On July 15, 2020 the Attorney General offered his Informal Opinion that the laws at issue did *not* contain any such requirement, nor any prohibition on "newly established" manufacturers selling directly.

The Defendant Secretary of State issued the Rivian and Lucid Defendants motor vehicle dealer licenses in June and July 2021. Plaintiffs in this matter are various such automobile dealers (and associations thereof), and in the 4 counts of their Amended Complaint seek a declaration that the Illinois Vehicle Code and the Illinois Motor Vehicle Franchise Act require all new vehicle sales to be made through franchisees, an injunction preventing Rivian and Lucid from selling their own vehicles directly, and an order of mandamus requiring the Secretary to revoke their dealer licenses. Defendants all move to dismiss, arguing Plaintiffs' claims fail as a matter of law.

Discussion

The parties spend significant argument on the policy merits of their respective positions, but neither such policy nor the substance of any of the facts alleged are apparently at issue – the primary dispute is whether Defendants' proposed business model is permitted under the Illinois Vehicle Code[4] and the Illinois Motor Vehicle Franchise Act ("IMVFA")[5] as a matter of law. And that question appears to be one of first impression: while at least one other company (Tesla) has operated in Illinois by a direct sales model, the disputes surrounding the legality of that operation were resolved by settlement[6] rather than by any industry-wide legislation or court ruling. The nearest thing to such a ruling is the Attorney General's Informal Opinion, which by its own terms is advisory and nonbinding.

The court must accordingly turn to the statutes themselves, and in doing so ascertain and give effect to the intent of the legislature.[7] It is axiomatic that such inquiry begins with the text of the law itself, and here the key provisions thereof are the portions of the Vehicle Code governing new motor ve-

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[4] 625 ILCS 5/1-100.

[5] 815 ILCS 710/1 *et seq.*

[6] The 2019 Administrative Consent Order by its own terms reflected no new understanding of the law. It instead appears to be a solution specifically tailored to the parties thereto. That being said, Plaintiff IADA's argument that a manufacturer *per se* cannot be a dealer consistent with Illinois law, and that allowing such business would be unfair and harmful to consumers, is somewhat less persuasive in light of its own agreement to an order allowing exactly such an entity 13 dealer licenses.

[7] *People v. Casler*, 2020 IL 125117, ¶ 24.

hicle dealers[8] and the related governing regulations of the IMVFA. In particular, the Vehicle Code requires that all persons (including legal entities) engaged in the business of selling new vehicles be "licensed to do so in writing by the Secretary of State."[9] That section also requires in subsection (d) that:

> "Anything in this Chapter 5 to the contrary notwithstanding no person shall be licensed as a new vehicle dealer unless:
> 1. He is authorized by contract in writing between himself and the manufacturer or franchised distributor of such make of vehicle to so sell the same in this State, and
> 2. Such person shall maintain an established place of business as defined in this Act."[10]

Plaintiffs' primary argument is that this language, taken as a whole, requires that the *only* persons who may be licensed to sell new vehicles are franchisees, as they must be contracted with the manufacturer (or other distributor) and obviously a manufacturer cannot contract with itself as any contract requires at least 2 distinct parties.

But that argument paints a very limited picture of the statutes as a whole. First, it is evident that franchisees are not the sole contemplated form of dealer, as the IMVFA defines "motor vehicle dealer" and "franchisee" separately, with the latter an outright subset of the former: all franchisees are *per se* dealers, but there must be some "motor vehicle dealers" who are not franchisees. This is further supported by various provisions referencing dealers with a "franchise or selling agreement," apparently contemplating other types of arrangements. The IMVFA also extends extensive consumer protection rules and liabilities (which Plaintiffs emphasize as a purpose of the law) to manufacturers along with dealers and franchisees. All of this, combined with the conspicuous absence of any provision specifying that manufacturers *cannot* be motor vehicle dealers (of their own vehicles or otherwise)[11] when that provision applies by its own terms to "any person" does not support Plaintiffs' argument that the legislature intended to exclude manufacturers from that role.

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[8] 625 ILCS 5/5-101

[9] *Id.*

[10] *Id.*

[11] The apparent possibility of a manufacturer acting as a dealer for *another* manufacturer's vehicles (thus resolving the contract requirement) further illustrates the strangeness of a result that carves out a unique exception for a manufacturer selling its own vehicles when no such exception is expressed anywhere in the laws at issue.

As such, the court is left with two resolutions of subsection (d) regarding contracting: either it operates to indirectly deny manufacturers dealer status as to their own vehicles, despite the absence of any apparent legislative intent to do so, by imposing an inherently impossible requirement on them, or that requirement simply does not apply[12] to such a situation. The latter interpretation is plainly more reasonable, particularly given the subsection includes "notwithstanding anything to the contrary"[13] language, which inherently contemplates some circumstances in which those provisions might not apply.[14] And one in which performance is legally impossible for obvious reasons is plainly such a circumstance. The legislature had extensive opportunities to exclude manufacturers from dealing vehicles: in the definitions of those terms, in the requirements to obtain a dealer license, or elsewhere in the statute. They did not do so, and the court declines to nevertheless read such an exclusion into the law[15] via a tortured application of inapplicable requirements.

While not necessary to examine as the court finds the text of the relevant laws does not prevent manufacturers from being dealers, it is also worth noting that to the extent 5/5-101(d) introduces any ambiguity the statutes' history further supports a conclusion that the legislature did not intend to exclude manufacturers from that role. As the Secretary argues, the Vehicle Code going back to 1941 and 1919 included explicit reference to sales of motor vehicles "by a manufacturer or dealer,"[16] and although that distinction was amended out in 1957, it was replaced by the even broader "all persons" language. The IMVFA for its part (introduced later) appears intended to address negotiating power imbalances (and related consumer protection concerns) between franchisees and manufacturers who *do* participate in the franchise sys-

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[12] Defendants also offer the alternative solution that a manufacturer may comply by contracting with its own affiliated entities, but the court finds such an arrangement both unnecessary and not substantively distinct under the other provisions of the law from dealing the vehicles directly.

[13] Plaintiffs heavily emphasize and repeatedly argue that the contract requirement has "no exceptions," but on the contrary it is the one requirement that apparently *does* contemplate exceptions. No other subsection but (d) in 5/5-101 includes this "notwithstanding" language, implying it was meant to have meaning.

[14] How the other "place of business" requirement may or may not apply to a seller such as Rivian who intends to sell primarily via online sales is not before the court in this matter, and the court herein rules only as to the contract requirement.

[15] The Attorney General's Informal Opinion found similarly, and while obviously not binding here the court generally finds its reasoning sound.

[16] (Ill. Rev. Stat. 1919, ch. 121, ¶ 269q; Ill. Rev. Stat. 1941, ch. 95½, ¶ 18). Additionally, contrary to Plaintiffs' argument those provisions do apparently contemplate sales to consumers, as they reference the purchaser operating those vehicles on public highways.

tem, not to force all manufacturers to do so.[17] As recently as 2017, the Illinois legislature expressly considered and *rejected* an amendment to the IMVFA (proposed by Plaintiff IADA itself)[18] that *would* have explicitly prohibited manufacturers from selling vehicles. By contrast, various states have enacted precisely the kind of prohibition Plaintiffs now ask the court read into the laws of Illinois, including Iowa, Louisiana, Michigan, and South Carolina.[19] The Illinois legislature has had ample opportunity, and has at least once expressly considered, explicitly prohibiting manufacturers of automobiles from being licensed as dealers thereof. It has declined to do so, and it is thus reasonable to conclude it had no such intent.

Finally, Plaintiffs in the alternative claim that if the court finds the law does allow manufacturers to sell vehicles directly that application of the law in such a way violates their due process rights by creating a "Bypass System" that harms their interest in the "Established Franchise System." Both terms appear to have no basis in law, but are conceived by the Plaintiffs to refer to the usual way of business in the automobile market for many years and the Rivian and Lucid Defendants' plan to disregard that approach in favor of a new one. But as described above there is no statutory requirement to participate in that "System," and thus no protectable property interest in the same. Plaintiffs cannot maintain a due process claim for harms allegedly done to a voluntary private system of established business (even if it is then regulated by statute) simply because the law allows for other means of doing business within the industry. The automobile industry may have largely adopted the "Established Franchise System" over many decades, and Illinois law may have even been updated to reflect and better regulate that reality, but that does not mean it ever *required* such a system or that Plaintiffs have any claim for generalized harms to the usual ways of business. And further still, Plaintiffs concede the Defendant Secretary has done no such harm, stating "it will not be the SOS that will have created the Bypass System if the Court rules in favor of Defendants in Count III. Rather, it will be the *Court* that creates the Bypass System."[20] The court makes no finding on the merits of any theoretical claim against itself for adverse rulings against the Plain-

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[17] Further, it is unclear how such concerns (e.g. a manufacturer fomenting unfair competition among its own franchisees) would apply to a manufacturer that simply sells its own vehicles.
[18] Am. Complaint Ex. 5.
[19] Iowa Code § 322.3(14) ("A manufacturer or importer shall not directly or indirectly be licensed as, own an interest in, operate, or control a motor vehicle dealer."); La. Rev. Stat. § 32:1261(A)(1)(k)(i) ("[i]t shall be a violation . . . [f]or a manufacturer . . . [t]o sell or offer to sell a new or unused motor vehicle directly to a consumer"); Mich. Comp. Laws § 445.1574(1)(i) (a manufacturer shall not "[s]ell any new motor vehicle directly to a retail customer other than through franchised dealers"); S.C. Code § 56-15-45(D) ("a manufacturer . . . may not sell, or lease, directly or indirectly, a motor vehicle to a consumer in this State").
[20] Response at 39 (emphasis in original)

tiffs, but the absence of a deprivation of interest or a denial of due process by any Defendant party to this case is also fatal to its claims as presented here.

For similar reasons, because the court finds there is no statutory prohibition on the conduct at issue there is by extension no basis for mandamus or an injunction relating to the same as sought in Counts I and II. Because the court finds Plaintiffs claims must be dismissed in their entirety on the grounds raised by the Defendant Secretary, it need not rule on the standing arguments raised by the Rivian and Lucid Defendants.

WHEREFORE, Defendant Illinois Secretary of State's Motion to Dismiss, and the Rivian and Lucid Defendants' Motion to Dismiss are hereby granted in that Plaintiff's Amended Complaint is dismissed with prejudice in its entirety. This is a final and appealable order.

JUDGE DAVID B. ATKINS
ENTERED:
DEC 19 2022
Circuit Court-1879

Judge David B. Atkins

The court.