

FILED  
1/13/2023 11:36 AM  
IRIS Y. MARTINEZ  
CIRCUIT CLERK  
COOK COUNTY, IL  
2021CH01438  
Calendar, 16  
21034099

**APPEAL TO THE APPELLATE COURT OF ILLINOIS,  
FIRST JUDICIAL DISTRICT**

**FROM THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION**

ILLINOIS AUTOMOBILE DEALERS  
ASSOCIATION, *et al.*,

Plaintiff-Appellants,

v.

OFFICE OF THE ILLINOIS SECRETARY  
OF STATE, JESSE WHITE, in his official  
capacity as the Illinois Secretary of State;  
RIVIAN AUTOMOTIVE, INC.; RIVIAN  
AUTOMOTIVE, LLC; RIVIAN, LLC;  
LUCID USA, INC., LUCID GROUP USA,  
INC.,

Defendant-Appellees.

Case No. 2021-CH-01438

The Hon. David B. Atkins

**NOTICE OF APPEAL**

Plaintiff-Appellants Illinois Automobile Dealers Association; Chicago Automobile Trade Association; Peoria Metro New Car Dealers Association; Illinois Motorcycle Dealers Association; ACIA CH Auto LLC d/b/a North City Honda; ACIA HN Auto LLC d/b/a Hyundai of Lincolnwood; ACIA KL Auto LLC d/b/a Kia of Lincolnwood; ACIA MOTORS LLC d/b/a Bloomington-Normal Auto Mall; ACIA PG Auto LLC d/b/a Chevrolet of Palatine; ACIA PH Auto LLC d/b/a Hyundai of Palatine; ACIA TC Auto LLC d/b/a Toyota of Lincoln Park; ACIA TN Auto LLC d/b/a Toyota of Lincolnwood; Al Cioni Ford, Inc.; Al Piemonte Cadillac, Inc.; Al Piemonte Ford Sales, Inc.; Al Piemonte Nissan, Inc.; Anderson Dealerships, Inc. d/b/a Anderson Mitsubishi, Hyundai Of Perryville, Rock River Ford and Rock River Kia; Anderson Dodge, Inc. d/b/a Anderson Chrysler Dodge Jeep Ram; Anderson Ford Of Clinton, Inc.; Anderson Motor Company Of Crystal Lake, Inc. d/b/a BMW of Crystal Lake, Mazda of Crystal Lake and Volkswagen Of Crystal Lake; Anderson Nissan, Inc. d/b/a Anderson Mazda and Anderson Nissan; Anderson Rockford Auto, Inc. d/b/a Anderson Toyota and Lexus of Rockford; Anthony Buick GMC,

Inc.; Apple Chevrolet, Inc.; Arlington Heights Ford, LLC; Arnie Bauer II, LLC; Arnie Bauer Inc.; ATVs and More, Inc.; Auffenberg Ford North, Inc.; Auffenberg Ford, Inc.; Auffenberg Hyundai, Inc.; Auffenberg Motors of Illinois, Inc. d/b/a Auffenberg Mazda; Autohaus On Edens, LLC; Barkau Brothers LLC d/b/a Barkau Chrysler Dodge Jeep Ram; Barkau Chevrolet, Inc.; Barker Chevrolet, Inc.; Barker Motor Co.; Baum Chevrolet-Buick Co. d/b/a Baum Motor Co.; Bettenhausen Motor Sales, Inc.; Bill Jacobs Aurora, Inc.; Bill Jacobs Naperville, L.L.C.; Bill Kay Ford, Inc.; Bill Kay Oldsmobile, Inc. d/b/a Bill Kay Honda; Bill Walsh Chevrolet-Cadillac, Inc.; BJL Automotive, Inc. d/b/a Bob Lindsay Acura; BMI Imports, Inc.; Bob Brady Dodge, Inc.; Bob Ridings Chrysler-Dodge, Inc. d/b/a Bob Ridings Pana; Bob Ridings Ford Of Jacksonville, Inc. d/b/a Bob Ridings Westown Ford, Lincoln; Bob Ridings Lincoln, Inc. d/b/a Bob Ridings Decatur; Bob Ridings, Inc. d/b/a Bob Ridings Taylorville; Bocker Chevrolet, Buick, GMC, Cadillac, Inc.; Brad Manning Ford, Inc.; Breese Motor Sales, Inc.; Brilliance Motor Sales, Inc. d/b/a Brilliance Honda of Crystal Lake; Bruce Foote Chevrolet, Inc.; Bryden Ford, Inc.; Buss Ford Sales, L.L.C. d/b/a Buss Ford and Buss Lincoln; Cadillac Of Naperville, Inc.; Carmack Car Capitol, Inc.; Carriages Of Illinois Ltd.; Castle Buick-GMC, Inc.; Castle Chevrolet North LLC; Castle Chevrolet, Inc.; Champion 444, LLC d/b/a Al Piemonte Buick-GMC; Chevrolet of Homewood, Inc.; Coffman Truck Sales, Inc.; Continental Autos, Inc.; Continental Classic Motors, Inc.; Court Street Ford, Inc.; Dan Hecht Chevrolet, Inc.; Dan Wolf Motors Of Naperville, Inc.; Dan Wolf's Chevrolet Of Naperville, Inc.; Davis Buick, GMC, Inc.; Deien Chevrolet, Inc.; Dempsey Dodge-Chrysler-Jeep II, Inc.; Diepholz Auto Group of Paris, Inc.; Diepholz Auto Group, Inc.; Dodge of Antioch, Inc.; Downers Grove Imports, Ltd. d/b/a Genesis of Downers Grove, Pugi Hyundai, Pugi Mazda and Pugi Volkswagen; Driscoll Motor Co., Inc.; Ed Napleton Calumet City Imports, Inc.; Ed Napleton Elmhurst Imports, Inc.; Ed Napleton Oak Lawn Imports, Inc.; Ed Napleton Westmont Imports, Inc.; Elmhurst Auto Group, Ltd. d/b/a Elmhurst Toyota; Elmhurst Auto Werks, Ltd. d/b/a Elmhurst BMW, Ltd.; Essig-Uftring Inc. d/b/a Essig-Motors Inc.; Ettleson Cadillac-Buick-GMC, Inc.; Ettleson Hyundai, LLC; Evans Farm Equipment, Inc. d/b/a Evans

Ford, Inc.; Federico Chrysler-Dodge, Inc.; Fields Imports, Inc. d/b/a Fields BMW; Fields Jeep, Inc. d/b/a Fields Chrysler Jeep Dodge Ram; Fields PAG, Inc. d/b/a Jaguar Land Rover Northfield; Finish Line Ford, Inc.; Flag Chevrolet, Inc.; Ford Square of Mt. Vernon, Ltd.; Fran Napleton Lincoln, Inc. d/b/a Napleton Cadillac of Oak Lawn and Napleton Lincoln of Blue Island; Fraternal Enterprises LP d/b/a Bredemann Ford; Freeway Ford Truck Sales, Inc.; Friendly Ford, Inc.; GDM Imports, Inc. d/b/a McGrath Volvo Cars Barrington; Gerald Ford, Inc.; Gerald Hyundai, Inc.; Gerald Imports, Inc. d/b/a Gerald Honda of Matteson; Gerald Motors, Inc. d/b/a Gerald Toyota of Matteson; Gerald Naperville, Inc. d/b/a Gerald Kia of Naperville; Gerald Nissan Of North Aurora, Inc.; Gerald Nissan, Inc.; Gerald North Aurora, Inc. d/b/a Gerald Kia Of North Aurora; Gerald Subaru Of North Aurora, Inc.; Gerald Subaru, Inc.; Gillespie Automotive LLC; Glenview Luxury Imports LLC; Goeckner Bros. Inc.; Gold Coast Exotic Imports LLC; Gold Coast Exotic Motors, LLC; Gold Coast Motor Cars, Inc. d/b/a Perillo BMW, Inc.; Golf Mill Motor Sales, Inc. d/b/a Golf Mill Ford; Graue Inc. d/b/a Graue Chevrolet-Buick-Cadillac; Green Automotive Limited, Inc. d/b/a Green Dodge, Green Kia, and Green Subaru; Green Chevrolet, Inc.; Green Family Hyundai, Inc.; Green Family Stores, Inc.; Green Lincoln, Inc. d/b/a Green Hyundai And Green Mazda; Green Nis, Inc. d/b/a Green Nissan; Gustafson Ford LLC; H.D.A. Motors, Inc. d/b/a Continental Honda; Haggerty Buick GMC, Inc.; Haggerty Ford, Inc.; Highland Park Automotive, Inc.; Hopkins Ford Of Elgin, Inc.; Howard Orloff Imports, Inc.; Hyundai Of Matteson LLC d/b/a World Hyundai Matteson; Incipe, LLC d/b/a Hawk Ford of Oak Lawn; Isringhausen Imports, Inc.; Jack Phelan Chevrolet, Inc.; Jack Phelan Dodge, LLC d/b/a Jack Phelan Chrysler Dodge Jeep Ram; Jack Schmitt Cadillac, Inc.; Jaguar Land Rover Peoria, Inc.; Jansen Chevrolet Co., Inc.; Jeff Perry Buick GMC, Inc.; Jeff Perry, Inc. d/b/a Jeff Perry Chevrolet Buick Cadillac and Jeff Perry Chrysler Jeep; Jennings Chevrolet, Inc.; Jerry Biggers Chevrolet, Inc.; Jerry Haggerty Chevrolet, Inc.; Jim McComb Chevrolet, Inc. d/b/a Uftring Weston Chevrolet Cadillac, Inc.; Joe Rizza Ford Of Orland Park, Inc.; Joe Rizza Imports, Inc.; Johawk LLC d/b/a Hawk Volkswagen of Joliet; JP Motors, Inc.; K&J Chevrolet Inc.; K&J Automotive, Inc. d/b/a K&J

Chrysler Dodge Jeep Ram; Kelly Nissan, Inc.; Ken Diepholz Chevrolet, Inc.; King City Chrysler Center, Inc.; Land Rover Hinsdale, L.L.C.; Larry Stovesand Of Southern Illinois, Inc. d/b/a Larry Stovesand Kia; Laura Buick-GMC, Inc.; Lexglen, Inc. d/b/a Fields Lexus Glenview; Liberty Auto City, Inc.; Liberty Chevrolet, Inc. d/b/a Bill Kay Chevrolet; Libertyville Chevrolet, Inc.; Libertyville Lincoln Sales, Inc.; Lighthouse Buick GMC, Inc.; Loquercio Automotive North LLC d/b/a Dundee Ford; Loquercio Automotive Northside, LLC d/b/a Toyota of Fox Lake; Loquercio Automotive South, Inc. d/b/a Honda City; Loquercio Automotive West LLC d/b/a Elgin Chrysler Dodge Jeep Ram; Loquercio Automotive, Inc. d/b/a Elgin Hyundai and Genesis Of Elgin; Loren Hyundai, Inc. d/b/a Napleton Hyundai Glenview; Lou Bachrodt Chevrolet Co.; M.E. Fields, Inc. d/b/a MINI of Glencoe North Shore; Mancari Chrysler Plymouth, Inc.; Mangold Ford, Inc.; Marion Ford, Inc.; Mattspell Motors, Inc. d/b/a Gurnee Chrysler Dodge Jeep Ram; Max Dye, Inc.; McGinley, Inc.; McGrath 1620, Inc. d/b/a McGrath Acura of Libertyville; McGrath Enterprises, Inc. d/b/a McGrath Honda; McGrath Imports, Inc. d/b/a McGrath Acura Of Morton Grove and McGrath Audi; McGrath Motors, Inc. d/b/a McGrath Honda of St. Charles; Meier Chevrolet-Buick, Inc.; Metro Ford Sales & Service, Inc.; Michael Robert Enterprises, Inc. d/b/a Chicago Northside Toyota; Mid-Continental Companies, Inc. d/b/a The Landmark Automotive Group; Mike Anderson Chevrolet of Chicago, LLC; Mike Miller Automotive, Inc. d/b/a Mike Miller Auto Park; Mike Murphy Ford, Inc.; Motor Werks of Barrington, Inc.; Napleton 1050 Inc. d/b/a Napleton Cadillac of Libertyville; Napleton 1527, Inc. d/b/a Napleton Audi of Naperville; Napleton 2363, Inc. d/b/a Napleton Mazda of Naperville; Napleton 6677, Inc. d/b/a Jaguar Rockford and Land Rover Rockford; Napleton Aurora Imports, Inc.; Napleton Automotive of Urbana, LLC; Napleton Autowerks Crystal Lake, Inc.; Napleton Libertyville, Inc. d/b/a Napleton Mazda of Libertyville; Napleton Motor Corp. d/b/a Napleton Cadillac and Napleton Subaru; Napleton River Oaks Cadillac, Inc.; Napleton Urbana Imports, LLC; Napleton's Arlington Heights Motors, Inc.; Napleton's Auto Werks, Inc.; Napleton's Goldcoast Imports, Inc.; Napleton's Park Ridge Lincoln, Inc. d/b/a Napleton Lincoln; Napleton's River Oaks

Motors, Inc.; NJRP, Inc. d/b/a Porsche Orland Park; Northwest Auto Sales, Inc. d/b/a Muller's Woodfield Acura; Oak Lawn Hyundai, Inc. d/b/a Happy Hyundai; OBG Imports, Inc.; Packey Webb Ford an Illinois Limited Partnership d/b/a Packey Webb Ford; Patrick Hyundai, LLC; Patrick Jaguar, L.L.C.; Patrick Schaumburg Automobiles, Inc.; Petersen Chevrolet-Buick, Inc.; Phelia, LLC d/b/a Hawk Chevrolet; Phillips Chevrolet, Inc.; Pialex Automotive, LLC; Piatoy Automotive, LLC; Piemonte's Dundee Chevrolet, Inc.; Prescott Brothers, Inc.; RA D'Orazio Ford, Inc.; Radio City Automotive, Inc.; Ray Dennison Chevrolet, Inc.; River Front Chrysler Jeep, Inc.; River Oaks Imports, Inc.; River View Ford, Inc.; Riverside Chevrolet, Inc.; Rizza Buick GMC Cadillac, Inc.; Robert Loquercio Enterprises, Inc. d/b/a Elgin Toyota; Roesch Finco, L.L.C. d/b/a Larry Roesch Volkswagen; Rogers Auto Group, Inc.; Roland Rich Ford, Inc.; Ron Tirapelli Ford, Inc.; Rosen Hyundai Enterprises, LLC; Roy Schmidt Motors, Inc. d/b/a Roy Schmidt Honda; RPG Imports, LLC; Sam Leman Chevrolet-Buick, Inc.; Scherer Automotive, Inc.; Schmidt Chevrolet of Mt. Vernon, Inc. d/b/a Schmidt Chevrolet Cadillac; Schmidt Ford Of Salem, Inc.; Schmitt Chevrolet, Inc. d/b/a Jack Schmitt Chevrolet of O'Fallon; Second Family, Inc. d/b/a Bredemann Toyota; Sessler Ford, Inc. d/b/a Napleton Ford Libertyville; Shields Auto Center, Inc.; Smoky Jennings Chevrolet, Inc.; Spellmatt Motors, Inc. d/b/a Du Page Chrysler Dodge Jeep Ram; Sponte Sales, Inc. d/b/a Hawk Chrysler Dodge Jeep Ram Fiat; St. Clair Imports, Inc. d/b/a Auffenberg Kia; St. Clair Motors, Inc. d/b/a Auffenberg Chrysler Dodge Jeep Ram; St. Clair Nissan Inc. d/b/a Auffenberg Nissan; St. Clair Volkswagen, Inc. d/b/a Auffenberg Volkswagen; Steve Foley Cadillac, Inc.; Steve Schmitt, Inc. d/b/a Steve Schmitt Chevrolet Buick GMC; Sullivan-Parkhill Automotive, Inc.; Sullivan-Parkhill Imports, Inc.; Sunnyside Auto Finance Co. d/b/a Sunnyside Co.; Sunset Ford of Waterloo, Inc.; Sutton Ford, Inc.; Taylor Belleville CDJR, Inc. d/b/a David Taylor Belleville Chrysler Dodge Jeep Ram; Taylor Chrysler Dodge Inc. d/b/a Taylor Chrysler Dodge Jeep Ram; Taylor Ford Of Manteno, Inc.; Terry's Ford/Lincoln-Mercury of Peotone, Inc. d/b/a Terry's Ford of Peotone; The Arlington Automotive Group, Inc.; Truck Centers, Inc.; TwoB'S Automotive, Inc. d/b/a Bob Lindsay Honda; Tyson Motor, LLC;

Uftring Chevrolet, Inc.; Uftring Chrysler, Inc.; Uftring Ford, Inc.; Uftring Nissan, Inc.; Uptown Motors, Inc. d/b/a Marino Chrysler Jeep Dodge; Vaessen Brothers Chevrolet, Inc.; VC Auto LLC d/b/a Countryside Mitsubishi; Velde Cadillac-Buick-GMC, Inc.; Velde Ford Sales, Inc.; Velde of Peoria, Inc.; Vermilion Auto Corporation; Via Carlita LLC d/b/a Hawk Ford of St. Charles and Hawk Nissan; Victor Ford, Inc.; VNF, Inc. d/b/a Fields Volvo Cars Northfield; Warren Chevrolet, Inc. d/b/a Green Family Chevrolet; Watseka Ford-Lincoln, Inc.; Webb Chevrolet Plainfield, Inc.; Webb Chevrolet, Inc.; West Jeff Auto Sales LLC d/b/a Hawk Cadillac, Hawk Chevrolet of Joliet, Hawk of Joliet, Hawk Mazda and Hawk Subaru; Wickstrom Auto Group, Inc.; Willowbrook Ford, Inc.; Wilson Chrysler Jeep, Inc.; Wolf Motors of Naperville, Inc.; Woody Buick-GMC, Inc.; Worden-Martin Lincoln Mercury, Inc.; World Automotive Joliet LLC d/b/a World Kia Joliet; Yemm Chevrolet, Inc. d/b/a Yemm Chevrolet-Buick-GMC and Yemm Chrysler-Dodge-Jeep-Ram; Zeigler Chevrolet Schaumburg, LLC; Zeigler Chrysler Dodge Jeep Downers Grove, LLC; Zeigler Chrysler Dodge Jeep, LLC; Zeigler Hoffman Estates I, LLC; Zeigler Hoffman Estates II, LLC; Zeigler Infiniti Orland Park, LLC; Zeigler Lincolnwood, LLC; Zeigler Lincolnwood II, LLC; Zeigler Motors, LLC; Zeigler Nissan Gurnee, LLC; Zeigler Nissan Orland Park, LLC; Zeigler North Riverside, LLC; Zeigler Orland Park, LLC; and Zeigler Schaumburg IV, LLC, by and through their counsel, Burke, Warren, MacKay & Serritella, P.C., and pursuant to Illinois Supreme Court Rules 301 and 303, hereby appeal to the Appellate Court of Illinois, First Judicial District, from the final order entered by the Circuit Court of Cook County, Illinois on December 19, 2022, which dismissed the above-captioned case with prejudice. A copy of the aforementioned final order of the Court is attached as Exhibit 1.

By this appeal, Plaintiff-Appellants will ask the Appellate Court to reverse the findings and order of the Circuit Court and to remand this matter back to the Circuit Court for further proceedings consistent with its ruling, in addition to any other relief to which Plaintiff-Appellants may be entitled in the context of their appeal.

Dated: January 13, 2023

Respectfully submitted,

**Illinois Automobile Dealers Association,  
Chicago Automobile Trade Association, Peoria  
Metro New Car Dealers Association, Illinois  
Motorcycle Dealers Association and All  
Individual Dealer-Plaintiff-Appellants.**

By: /s/ Ira Levin  
One of Their Attorneys

Ira M. Levin (ilevin@burkelaw.com)  
Danielle J. Gould (dgould@burkelaw.com)  
Eric P. VanderPloeg (evanderploeg@burkelaw.com)  
Brittany A. Martin (bmartin@burkelaw.com)  
Burke, Warren, MacKay & Serritella, P.C.  
330 North Wabash Avenue, Suite 2100  
Chicago, IL 60611  
Firm No. 41704  
Tel: 312-840-7000  
Fax: 312-840-7900

John S. Elias (JElias@emrslaw.com)  
Janaki Nair (jnair@emrslaw.com)  
Elias, Meghinnes & Seghetti, P.C.  
416 Main Street, Suite 1400  
Peoria, Illinois 61602  
Telephone: (309) 637-6000  
Firm ID No. 40077

/s/ Ira M. Levin  
*Attorneys for Plaintiff-Appellants*

# **EXHIBIT 1**



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

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

v.

OFFICE OF THE ILLINOIS SEC-  
RETARY 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'<sup>1</sup> 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<sup>2</sup> rather than franchises and of the view that "litigation was inevitable,"<sup>3</sup> the Secretary requested an opinion

---

<sup>1</sup> 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.

<sup>2</sup> A noteworthy difference being Rivian represents it does not intend to rely on distinct physical dealerships but on online sales.

<sup>3</sup> 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<sup>4</sup> and the Illinois Motor Vehicle Franchise Act (“IMVFA”)<sup>5</sup> 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<sup>6</sup> 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.<sup>7</sup> 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-

---

<sup>4</sup> 625 ILCS 5/1-100.

<sup>5</sup> 815 ILCS 710/1 *et seq.*

<sup>6</sup> 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.

<sup>7</sup> *People v. Casler*, 2020 IL 125117, ¶ 24.



hicle dealers<sup>8</sup> 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.”<sup>9</sup> 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.”<sup>10</sup>

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)<sup>11</sup> 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.

---

<sup>8</sup> 625 ILCS 5/5-101

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> 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<sup>12</sup> to such a situation. The latter interpretation is plainly more reasonable, particularly given the subsection includes “notwithstanding anything to the contrary”<sup>13</sup> language, which inherently contemplates some circumstances in which those provisions might not apply.<sup>14</sup> 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<sup>15</sup> 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,”<sup>16</sup> 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-

---

<sup>12</sup> 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.

<sup>13</sup> 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.

<sup>14</sup> 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.

<sup>15</sup> The Attorney General’s Informal Opinion found similarly, and while obviously not binding here the court generally finds its reasoning sound.

<sup>16</sup> (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.<sup>17</sup> As recently as 2017, the Illinois legislature expressly considered and *rejected* an amendment to the IMVFA (proposed by Plaintiff IADA itself)<sup>18</sup> 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.<sup>19</sup> 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.”<sup>20</sup> The court makes no finding on the merits of any theoretical claim against itself for adverse rulings against the Plain-

---

<sup>17</sup> 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.

<sup>18</sup> Am. Complaint Ex. 5.

<sup>19</sup> 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”).

<sup>20</sup> 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.