

SUPREME COURT OF NEW JERSEY

Docket No. 089378

NEW JERSEY COALITION OF
AUTOMOTIVE RETAILERS,
INC., a non-profit New Jersey
Corporation

Plaintiff-Respondent,

v.

FORD MOTOR COMPANY d/b/a
LINCOLN MOTOR COMPANY,

Defendant-Petitioner.

:
: A Petition for Certification from the
: April 4, 2024 Judgment of the
: SUPERIOR COURT OF NEW
: JERSEY, APPELLATE DIVISION
: Docket No. A-001051-22
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: CIVIL ACTION
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**REPLY IN SUPPORT OF PETITION FOR CERTIFICATION BY
DEFENDANT/PETITIONER FORD MOTOR COMPANY d/b/a
LINCOLN MOTOR COMPANY**

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REPLY IN SUPPORT OF ALLOWING CERTIFICATION

NJCAR unintentionally highlights why the Court should grant certification. NJCAR argues in its opposition to the petition that Ford’s goal is to “abolish associational standing.” That contention fundamentally misunderstands the issue on appeal and conflates the concept of statutory standing with associational standing—just as the Appellate Division did in its decision. NJCAR’s argument shows the need for the Court to grant certification in order to disentangle these two distinct concepts.

Ford’s core position in this appeal does not turn on associational standing at all. Rather, Ford argues that the uniquely restrictive language of the New Jersey Franchise Practices Act (“NJFPA”) creates a statutory cause of action only for “franchisees.” That argument addresses statutory standing in the specific context of the NJFPA, not the general application of associational standing in New Jersey. The question is whether the Legislature’s clear and unambiguous choice to allow only a “*franchisee* [to] bring an action against *its franchisor*” for an NJFPA violation also authorizes a statutory cause of action for a non-franchisee, like NJCAR. N.J.S.A. 56:10-10 (emphasis added).

NJCAR’s continued failure to recognize the basic distinction between statutory standing and associational standing underscores the need for certification in this case. The Court should accept this appeal to clarify that

statutory standing asks only “whether a statute creating a private right of action authorizes a particular plaintiff to avail herself of that right of action.” Radha A. Pathak, *Statutory Standing and the Tyranny of Labels*, 62 Okla. L. Rev. 89, 91 (2009). That question is resolved by using traditional canons of statutory construction. *See, e.g., Siller v. Hartz Mountain Assocs.*, 93 N.J. 370, 381 (1983) (holding that, as a matter of statutory interpretation, only a homeowners’ association, and not individual condominium owners, can assert causes of action under the Condominium Act for damage to the condominium’s common elements). Associational standing cannot expand access to a cause of action that the Legislature has chosen to bestow on a limited class of persons that excludes associations.

NJCAR confirms that it has missed the point by citing a litany of cases that address only associational standing, not statutory standing. (NJCAR Br. at 10, 15-16.)¹ These cases are irrelevant to the question whether the text of the NJFPA precludes anyone other than a “franchisee” from asserting a cause of

¹ Of the cases NJCAR cites, only *In re Team Academy Charter School*, 459 N.J. 111, 126-27 (App. Div. 2019), addresses statutory standing. That case is distinguishable because it involved standing to appeal an administrative action, raised matters of “great public interest” about public education, and concerned the constitutional rights of children in the Newark school district, who had no one else to advocate for them. *Id.* at 125, 127. Those concerns are wholly absent from NJCAR’s lawsuit against Ford.

action under the statute. On NJCAR's view, it has statutory standing under the NJFPA merely because it satisfies the test for associational standing. That position conflates the distinct concepts of statutory and associational standing, and illustrates the need for the Court to bring clarity to this area of law.

NJCAR also highlights that the Court should grant certification to resolve the split in authority under the NJFPA that NJCAR's own litigation has created. In *New Jersey Coalition of Automotive Retailers v. Mazda*, Civ. A. No. 18-14563, 2023 WL 2263741 (D.N.J. Feb. 28, 2023), a federal court reached the opposite conclusion as the Appellate Division in this case. The court held that, although NJCAR had associational standing, it could not challenge Mazda's alleged violations of the NJFPA because NJCAR was not a franchisee and therefore lacked statutory standing. *Id.* at *4-5.

While NJCAR now argues that *Mazda* was "poorly reasoned" and conflicts with Third Circuit precedent, NJCAR notably chose *not* to appeal that decision. Instead, NJCAR pursued this lawsuit against Ford, ultimately obtaining a different ruling on statutory standing. NJCAR's litigation strategy has resulted in a clear decisional conflict that this Court should resolve.

For these reasons and the additional reasons set forth in Ford's petition, the Court should allow certification in this appeal.

REPLY TO NJCAR'S ARGUMENTS ON THE MERITS

I. NJCAR Cannot Overcome the Legislature's Decision to Restrict the Availability of Claims Under the NJFPA to Franchisees.

According to NJCAR, the fact it is not a “franchisee” under the NJFPA—and therefore is not within the universe of plaintiffs permitted under the statute—is “irrelevant” because its *members* are franchisees. (NJCAR Br. at 12.) NJCAR ignores that the NJFPA is unique because it specifically defines a limited class of persons that “has a cause of action under the statute.” *Lexmark Int’l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 128 (2014). It treats the NJFPA like any other statute that more broadly provides a cause of action to any “injured person,” “person claiming to be aggrieved,” or “interested party.” *See* N.J.S.A. 56:4-2; N.J.S.A. 10:5-13; N.J.S.A. 40:55D-17(a). NJCAR’s view of associational standing would overwhelm and nullify the Legislature’s decision to limit the availability of claims under the NJFPA to franchisees. Courts should give effect to that unambiguous legislative choice. *Matter of Ridgefield Park Bd. of Educ.*, 244 N.J. 1, 18 (2020).

NJCAR is similarly incorrect that *Tynan v. General Motors Corp.*, 248 N.J. Super. 654 (App. Div. 1991), and *Horn v. Mazda Motor of America*, 265 N.J. Super. 47 (App. Div. 1993), are irrelevant because the plaintiffs in those cases were not associations. Both decisions confirm that the Legislature meant what it said when it limited NJFPA plaintiffs to “franchisees.” Until this case,

New Jersey courts have consistently held that “plaintiffs who are not franchisees do not have standing to invoke the protection of the New Jersey Franchise Practices Act,” even when policy considerations would favor a more permissive interpretation. *Horn*, 265 N.J. Super. at 61.

In a similar vein, NJCAR ignores or misstates the relevance of the NJFPA’s statutory defense to NJCAR’s statutory standing. Ford is not claiming—and has never claimed—that it is entitled to judgment in its favor in this case because of the statutory defense provided by N.J.S.A. 56:10-9. Rather, the statutory defense is critical to interpreting the NJFPA correctly because it shows that associations like NJCAR *cannot* be proper plaintiffs.

Indeed, NJCAR gives away the game on this point by admitting for the first time that this case is just the first case in a multi-step process. NJCAR contends that it is mounting what it calls a “facial” challenge to Ford’s Lincoln Commitment Program in this case. If NJCAR prevails, individual dealers would then need to sue Ford for monetary damages in follow-on cases. Only in those later cases could Ford assert its statutory defense. (NJCAR Br. at 16.)

In other words, NJCAR has pursued this lawsuit to clear the way for multiple additional lawsuits by its members, while preventing Ford from using the statutory defense that the Legislature provided in *every* NJFPA case. Statutory standing prevents precisely this kind of litigation gamesmanship and

ensures that courts reach “expeditious determinations on the *ultimate merits* of deserving controversies.” *N.J. State Chamber of Commerce v. N.J. Election Law Enforcement Comm’n*, 82 N.J. 57, 69 (1980). By NJCAR’s design, this case will *not* reach the ultimate merits and, in the meantime, Ford is being forced to litigate with one hand tied behind its back.

For this reason, NJCAR’s claim that Ford has waived the statutory defense is off base. Allowing NJCAR to be a plaintiff under the NJFPA deprives Ford of the opportunity to assert the statutory defense to the NJFPA claim in this case. The statutory defense is an integral part of the NJFPA because it permits a franchisor to defeat all liability by showing that the franchisee breached the franchise agreement. *See Mall Chevrolet, Inc. v. General Motors LLC*, 99 F.4th 622, 637 (3d Cir. 2024); *Simmons v. Gen. Motors Corp.*, 180 N.J. Super. 522, 541 (App. Div. 1981). By interpreting the NJFPA to allow associations—not individual franchisees—to bring lawsuits, the Appellate Division’s decision rendered illusory this statutory protection given to franchisors. Such an interpretation runs afoul of the mandate to interpret “each part or section” of a statute “in connection with every other part or section to provide a harmonious whole.” *Burnett v. County of Bergen*, 198 N.J. 408, 421 (N.J. 2009).

Despite multiple opportunities to do so, NJCAR has never once proffered an explanation for how an association can be a plaintiff to an NJFPA action without completely negating the availability of the statutory defense. In fact, there is none. And because this Court should construe statutes to give effect to all their provisions, the only logical conclusion is that associations *cannot* be proper plaintiffs. The Appellate Division was wrong to hold otherwise, and this Court should grant certification and reverse.

NJCAR's new admission that this lawsuit is only the first of many also highlights the fundamental problem with NJCAR's use of the Declaratory Judgment Act to manufacture a "facial" challenge to the Lincoln Commitment Program. As multiple New Jersey courts have made clear, "relief by way of a declaratory judgment should be withheld when the request is in effect an attempt to have the court adjudicate in advance the validity of a possible claim or defense in some expected future law suit." *Indep. Realty Co. v. Twp. of N. Bergen*, 376 N.J. Super. 295, 302 (App. Div. 2005) (brackets omitted) (quoting *Donadio v. Cunningham*, 58 N.J. 309, 325 (1971)). That sort of impermissible pre-adjudication is exactly NJCAR's goal. NJCAR seeks a declaration that the Lincoln Commitment Program violates the NJFPA so that its members can sue Ford for monetary damages without having to litigate that issue. Because

neither the NJFPA nor the Declaratory Judgment Act permit such artifice, this Court should reinstate the trial court's order dismissing NJCAR's claims.

II. NJCAR Cannot Show Injury in the Form of Competitive Harm.

As Ford argued in its petition, NJCAR also lacks standing because it cannot show that any of its members suffered cognizable injury from the Lincoln Commitment Program. NJCAR again mischaracterizes Ford's argument, focusing on the question of damages and monetary harm, not injury.

NJCAR's lawsuit is premised on its contention that the Lincoln Commitment Program "creates competitive obstacles negatively impacting dealership operations" because different dealers get different offsets. (NJCAR Br. at 19.) But dealers only get these offsets *after* they have spent money to participate in the program by, for example, providing amenities or improving their facilities. (Pa191.) Thus, the offsets could only conceivably create "competitive obstacles" if, considering *both* the costs *and* the offsets, there were some disparate impact on the dealers.

NJCAR has no evidence of that disparate impact. While NJCAR recites evidence that different dealers receive different offsets, NJCAR admitted that it has *no* evidence at all about the dealers' costs. (Pa182.) In fact, NJCAR never even asked its members for information about costs. (Pa141.) Without a full financial picture of both the costs and benefits of the Lincoln Commitment

Program, NJCAR has no evidence of any “competitive obstacles.” In other words, it cannot show that the protections afforded by the NJFPA are even implicated. Therefore, NJCAR cannot substantiate its claim to associational standing based on its members’ injuries.

CONCLUSION

For the reasons set forth here and in the Petition for Certification, this Court should grant the petition and reverse the Appellate Division’s judgment.

Respectfully submitted,

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