SUPREME COURT OF NEW JERSEY

DOCKET NO. 89378

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 Brief in Opposition to Petition for Certification from the April 4, 2024 Judgment of the SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION Docket No. A-001051-22 CIVIL ACTION

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR CERTIFICATION

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PRELIMINARY STATEMENT

Ford Motor Company d/b/a Lincoln Motor Company ("Ford"), filed its Petition for Certification appealing the New Jersey Superior Court's Appellate Division judgment from April 4, 2024. In a nutshell, Ford seeks to have the New Jersey Supreme Court abolish associational standing and turn decades of precedent on its head. Ford does not rely on any applicable, much less binding, case law nor authority for such argument—nor does it purport to represent that the New Jersey courts have accepted doing away with associational standing.

Rather, Ford incorrectly argues that to have associational standing, there must also be an additional showing of statutory standing by the trade organization bringing suit on behalf of its members. This is a plainly illogical outcome that would eviscerate associational standing in New Jersey. Ford's attempt to upend decades of binding precedent must be rejected, and certainly does not rise to "clear error" necessary for this Court to grant certification.

PROCEDURAL HISTORY

On January 31, 2020, NJCAR filed a two-count Complaint against Ford alleging that the LCP violated N.J.S.A. 56:10-7.4(h) and sought declaratory and injunctive relief. (Pa1-Pa14).[1] NJCAR was later granted leave to file an

[1] Consistent with Ford's Petition for Certification, Citations beginning with "Pa" are to the Appendix and Opening Brief filed by NJCAR in the Appellate Division. Whereas "Aa" are to Ford's Petition for Certification Appendix.

amended complaint. (Pa15-Pa28 & Pa29-30). Ford answered the amended complaint on September 21, 2020. (Pa39-Pa50). On December 17, 2021, the Parties filed cross-motions for summary judgment. (Pa71-Pa72; Pa178). On October 21, 2022, the Superior Court held a hearing and ruled that NJCAR lacked standing under the statute. (Pa294). Unelaborated written orders were issued that same day, granting summary judgment to Ford, denying summary judgment to NJCAR, and failing to address the remainder of the substantive arguments within the summary judgment motions. (Pa292-294).

On February 27, 2023, NJCAR filed its initial brief to the Superior Court of New Jersey Appellate Division ("Appellate Division") challenging the ruling that it lacked standing to bring a dispute on behalf of its members. Ford responded to the initial brief on May 17, 2023, making arguments reminiscent of those filed in the present Petition. By order dated April 4, 2024, the Appellate Division ordered: "NJCAR has associational standing to bring the action." (Aa4). It is this Order that Ford now seeks review of.

STATEMENT OF MATERIAL FACTS

Ford put into place the LCP in July of 2020. (Pa317). Under the LCP, Ford pays New Jersey Lincoln dealers a specified percentage of their applicable MSRP on each new vehicle retailed, and said percentage depends on each dealers' status under the LCP. (Pa74, ¶ 2). To receive LCP payments, New Jersey

Lincoln dealers must meet LCP criteria; Ford acknowledged that the LCP facility-related costs would vary from dealer to dealer, even within a given state, based on local market circumstances and the state of the staffing and facilities for the dealership's operations. *See* (Pa74, ¶ 3) and (Pa76, ¶11). Inevitably then, the LCP payments resulted in vehicle price differentials as between the monies paid to qualifying dealers. (Pa31-37)—which is prohibited under the NJFPA.

NJCAR is a trade association with its members being franchised new motor vehicle dealers in New Jersey. (Pa31 at ¶ 1). NJCAR provides services to its franchised motor vehicle members including education, training, and advocacy. (Pa31 at ¶ 2). NJCAR seeks relief on behalf of its motor vehicle members pursuant to the NJFPA. (Pa36-37). Through the NJFPA, the New Jersey Legislature reaffirmed the existence of the unequal stature as between motor vehicle franchisor and franchisee—and as a result passed numerous amendments to the NJFPA to address such abuses of power. (Pa33 at ¶ 9). One of these abuses includes price differentials created by manufacturers that result in one dealer in New Jersey having a lower cost for similarly equipped vehicles than another dealer. (Pa33 at ¶ 10). NJCAR filed its Amended Complaint *on behalf of* its New Jersey challenging such policy. (Pa32 at ¶ 6).

PETITIONER HAS FAILED TO SATISFY THE GROUNDS FOR CERTIFICATION SET FORTH IN RULE 2:12-4.

A petitioner seeking certification to review a final judgment of the Appellate Division must do more than simply argue that the appellate panel erred or should have reached a different conclusion. Rather, R. 2:12-4 provides that:

> Certification will be granted ***only*** if the appeal presents a question of general public importance which has not been but should be settled by the Supreme Court or is similar to a question presented on another appeal to the Supreme Court; if the decision under review is in conflict with any other decision of the same or a higher court or calls for an exercise of the Supreme Court's supervision and in any other matters if the interest of justice requires. Certification will not be allowed on final judgments of the Appellate Division except for special reasons.

R. 2:12-4 (emphasis added). "The rule recognizes that where the parties have had one appeal there must be 'special reasons' for granting certification." Brown v. Lins Pharmacy, 67 N.J. 392, 398-99 (1975) (Schreiber, J., dissenting).

In this case, Ford has failed to demonstrate that there are any "special reasons" or extraordinary circumstances warranting certification. Ford merely recites its prior arguments from below and argues that the Appellate Division erred in its interpretation of the law, (Pls. Br. 1-3). It's argument that the Appellate Division decision strays from a recent district court decision is of no merit, because that decision is not "of the same or higher court." For this reason alone, the Petition must be denied.

LEGAL ARGUMENT

I. Associational Standing Allows Trade Associations to Step into the Shoes of its Members and Sue on their Behalf.

Associational standing has been widely recognized by the New Jersey courts and permits associations, such as NJCAR, to have standing to litigate *on behalf* of its members on issues directly pertaining to the same. *e.g. Right to Choose v. Byrne*, 91 N.J. 287, 313-15, 450 A.2d 925 (1982); *N.J. Chamb. Commerce v. N.J. Elec. Law Enforce. Comm'n*, 82 N.J. 57, 67-69, 411 A.2d 168 (1980); *Am. Trial Lawyers v. N.J. Supreme Ct.*, 66 N.J. 258, 260, 330 A.2d 350 (1974). "The doctrine of associational standing recognizes…people join an organization… to create an effective vehicle for vindicating interests that they share with others." *Int'l Union, United Auto., Aerospace & Agr. Implement Workers of Am. V. Brock*, 477 U.S. 274, *275-76 (1986). If Ford's argument were accepted, associational standing would be rendered moot because the association (and not the member) would have to possess an affirmative right under the statute to file suit—contrary to binding precedent. *See Indiana Prot. & Advocacy Servs. Comm'n v. Indiana Family & Soc. Servs. Admin.,* 2022 WL 4468327, at *5 (S.D. Ind. Sept. 26, 2022)("the *Hunt* test [is] only [to] be called into play for associations that [themselves] lack statutory standing").

a. The plain language of the NJFPA applies to NJCAR's members and associational standing permits NJCAR to sue on their behalf.

Statutory standing seeks to determine whether the plaintiff "has a cause of action under the statute." *Lexmark Intern., Inc. v. Static Control Components, Inc.*, 572 U.S. 118, *128, n.4 (2014)(inquiry ensures the plaintiff falls within the class of authorized plaintiffs). However, the entitlement to invoke the court's jurisdiction is not limited to *only* plaintiffs who suffered the injury themselves. In *Hunt*, the Supreme Court explained when an association, who otherwise was not harmed, may bring suit on behalf of its members:

> Even in the absence of injury to itself…The association must allege that its members, or any one of them, are suffering immediate or threatened injury as a result of the challenged action of the sort that would make out a justiciable case had the members themselves brought suit….**So long as this can be established**, and so long as the nature of the claim and of the relief sought does not make the individual participation of each injured party indispensable to proper resolution of the cause, **the association may be an appropriate representative of its members, entitled to invoke the court's jurisdiction**.
> *Hunt v. Washington State Apple Advert. Com'n*, 432 U.S. 333, *342 (1977)(emphasis added).

Thereby, despite the fact that NJCAR does not assert an injury to itself—NJCAR is entitled to step into the shoes of its members who otherwise have statutory standing. *Id.; LDM, Inc. v. Princeton Reg'l Health Comm'n,* 336 N.J. Super. 277, 289 (Law. Div. 2000). N.J.S.A. 56:10-10 provides a cause of action to "any franchisee" so injured by a franchisors violation of the NJFPA. NJCAR's members are individual franchisees as defined within the statute. *See* N.J.S.A. 56:10-3. Such express designation undoubtedly constitutes as statutory standing

for NJCAR's dealer members who are subjected to the enforcement of the LCP, which violates N.J.S.A. 56:10-7.4(h). (Pa34 at ¶¶ 12-13) and (Pa36 at ¶ 22).[2]

Thus, Ford's assertion that NJCAR fails to meet statutory standing because it is not a 'franchisee' under the statute is irrelevant, as the Appellate Division did not order that NJCAR was a franchisee. *See* (Aa4) and (Pa31). More importantly, that is not the question asked by the binding precedent on associational standing. Rather, the Appellate Division correctly recognized that the individuals who are required to have statutory standing are the *members*.

b. Ford's argument relies on case law inconsistent with binding Third Circuit precedent.

i. *Tynan* and *Horn* are inapplicable.

The Appellate Division did not fail to address *Tynan* and *Horn*, as these respective holdings are irrelevant. In explaining who constitutes as a "franchisee" under the NJFPA, the court in *Tynan* and *Horn* rejected to extend the meaning to *proposed purchasers*. *Tynan v. General Motors Corp*. 248 N.J. Super. 654, *666 (App. Div. 1991), and *Horn v. Mazda Motor of Am.*, 265 N.J. Super. 47, *61 (App. Div. 1993). The reason for such rejection is simple—motor vehicle franchise protection acts are enacted "in recognition of the [] oppressive

[2] The *Hunt* test has been adopted by the New Jersey courts. *See N. Haledon Fire Co. No. 1 v. Borough of N. Haledon, 425 N.J. Super.* 615, 42 A.3d 901, *908 (App. Div. 2012)(citations omitted).

power of automobile manufacturers…in relation to their **affiliated dealers**." *Tynan*, 248 N.J. Super. 654, *664 (App. Div. 1991). Proposed purchasers are not "dealers" and are not subject to the same type different bargaining power between manufacturers and their affiliated dealers. Whereas, NJCAR's members are *presently existing* Ford-Lincoln motor vehicle dealerships with franchise agreements. *See* (PA32 at ¶ 6). It is these sorts of relationships that the NJFPA was designed to protect. *See* N.J.S.A. 56:10-2; *Tynan*, 248 N.J. Super. 654, *664 (App. Div. 1991). NJCAR's members are subjected to the LCP by virtue of their franchise agreements—which the prospective purchasers in *Tynan* and *Horn* did not have. Therefore, it cannot be said that the members of NJCAR are in the same position as prospective purchasers such that the same restrictive holding applies to NJCAR's representation. Perhaps more importantly, *neither Tynan or Horn* mentioned associational standing. Those cases were not brought by an association whose members are dealers. The insufficiency in the respective plaintiff's claims was due to the fact that neither plaintiff was in a current franchise relationship with the manufacturers they sought relief from. *Tynan*, 248 N.J. Super. 654 (App. Div. 1991) and *Horn*, 265 N.J. Super. 47 (App. Div. 1993). While it is true that the court limited *who* is a franchisee, it did not touch the question of associational standing much less hold that a trade association

was prohibited from bringing forth a lawsuit on behalf of "franchisees." Therefore, Ford is not permitted to rely on such principles.

ii. *Mazda III* is similarly inapplicable to the present proceeding.

Ford's reliance on *N.J. Coal. of Auto Retailers, Inc. v. Mazda*, Civ. A. No. 18-14563, 2023 WL 2263741 (D.N.J. Feb. 28, 2023)("*Mazda III*") is similarly unavailing. *Mazda III* is not only poorly reasoned, but directly conflicts with binding precedent. In *Mazda III,* the court cited *N.J. State AFL-CIO v. State of N.J.,* 747 F.2d 891, *892-893 (3d Cir. 1984) for the proposition that an association could not bring an ERISA suit because it was not a participant or beneficiary as required by the applicable statute and as a result, associational standing did not exist. *See Mazda III* at *6. However, such holding is a misreading of *N.J. AFL-CIO,* as *N.J. AFL-CIO* did not address associational standing at all. *N.J. AFL-CIO,* 747 F.2d 891 (3d Cir. 1984)(holding that the complaint *lacked subject matter jurisdiction*). In fact, a more recent Third Circuit case holds otherwise.

In *Pa. Psychiatric Soc. v. Green Spring Health Services, Inc.,* 28 F.3d 278, *283-87 (3d Cir. 2002), the Third Circuit held that associational standing can exist even though the plaintiff association itself was not a "participant or beneficiary" within the statute. The Third Circuit did not deem it necessary to

mention *N.J. AFL-CIO* nor did it express that associations must be expressly referenced within a statute to have associational standing. *Id.* Therefore, *Mazda III* is an outlier rather binding precedent. *See also S. Ill. Carpenters Welfare Fund v. Carpenters Welfare Fund of Ill.,* 326 F.3d 919 (7th Cir. 2003); *Self-Ins. Inst. of Am., Inc. v. Korioth,* 993 F.2d 479, *484 (5th Cir. 1993); and *Borrero v. United Healthcare of New York, Inc*., 610 F.3d 1296 (11th Cir. 2010). Moreover, New Jersey takes a liberal and broad approach to standing and reinforces the notion that express statutory standing conferred onto an association is not required to invoke associational standing. *See In re Team Acad. Charter Sch*., 459 N.J. Super. 111, 208 A.3d 10, *126-127 (App. Div. 2019), *aff'd as modified sub nom. In re Renewal Application of TEAM Acad. Charter Sch.,* 247 N.J. 46, 252 A.3d 1008 (2021)("that the statute does not explicitly allow for organizations…to appeal the Commissioner's decisions is inconsequential"); *Crescent Park Tenants Ass'n v. Realty Equities Corp. of N.Y.*, 58 N.J. 98, *111-112 (1971); *N. Haledon Fire Co. No. 1*, 425 N.J. Super. 615, *627-28 (App. Div. 2012; *N.J. Citizen Action v. Riviera Motel Corp.,* 296 N.J. Super. 402 (App. Div. 1997)*;* and *LDM, Inc.*, *v. Princeton Reg'l Health Comm'n*, 336 N.J. Super. 277, *289 (Law. Div. 2000). Therefore, Ford's argument must be rejected.

c. The statutory defense provided to manufacturers in the NJFPA does not prevent NJCAR from utilizing associational standing.

Ford may not be permitted to raise an argument based on a statutory defense that it has otherwise waived. Ford argues that because manufacturers have a defense, based on material breach of the franchise agreement, then the New Jersey Legislature meant to limit "franchisee" *only* to dealers. However, this defense was not raised within Ford's Amended Answer and thus was effectively waived. (Pa48-49); *Bailey v. Wyeth, Inc*., 422 N.J. Super. 343 (Law. Div. 2008)("An affirmative defense is waived if not pleaded or otherwise timely raised"). Again, NJCAR is seeking a declaratory judgment, **on behalf of,** its individual dealer members who each are subject to a Lincoln-Ford dealer agreement. *See generally* (Pa31). The present lawsuit is a facial challenge to the policy, which does not activate the specific defense Ford claims it is deprived of. Rather, the Court looks at the LCP terms / guidelines and those terms / guidelines alone, to determine whether there was a violation of the NJFPA. Moreover, Ford failed to identify any Lincoln member-dealers in breach in the first place. (Aa4). In the event, NJCAR receives a favorable judgment and the LCP is declared unlawful **then** an individual dealer asserts a claim for damages to recover based on the LCP payments—Ford would be free to utilize the statutory defense regarding material breaches to limit its own liability so long as it endeavored to provide evidence of material breach. Otherwise, Ford cannot invoke a defense of liability that is otherwise inapplicable to the present dispute.

Based on the applicable precedent, associational standing does not require an association have express statutory standing itself to bring an action on behalf of its members. So long as the association satisfies the prongs in *Hunt,* an association is permitted to bring suit.

II. NJCAR has Standing to Bring this Suit.

New Jersey applies a three-pronged test to determine whether an organization may step into the shoes of its members through associational standing: "[i] its members would have standing to sue [in their own right]; [ii] the interests it seeks to maintain are germane to the purposes of the organization; and [iii] neither the claim asserted nor the relief requested requires individual participation by the association's members." *N. Haledon Fire Co. No. 1 v. Borough of N. Haledon,* 42 A.3d 901, *908 (App. Div. 2012) Ford's challenges to the first and third prong lack merit and should be rejected.

a. NJCAR's members have standing for an NJFPA claim.

NJCAR has the ability to assert claims on behalf of its members because the record shows that its' members would have standing to bring the claims themselves. To satisfy the first prong of the associational standing test the association must allege that any one of its members "suffer[s] immediate or threatened injury as a result of the challenged action…that would make out a justiciable case had the members themselves brought suit." *LDM, Inc.*, 336 N.J.

Super. 277, *289 (Law. Div. 2000). Therefore, Ford's "statutory standing" argument is turned on its head, as the first prong of the associational standing accounts for whether NJCAR's members would have standing to bring the claim.

NJCAR's members have express statutory standing under the NJFPA to bring a claim for declaratory and injunctive relief. N.J.S.A 56:10-10 provides that any "franchisee" may bring an action against a franchisor for violation of the NJFPA and seek injunctive relief. Ford does not dispute, nor could it, that the individual NJCAR members are franchisees within the statute. (Pa32 at ¶ 6). Therefore, the individual members of NJCAR have satisfied the first element of the associational standing test on that basis alone. Despite the clear-cut statutory standing of NJCAR's members, Ford attempts to minimize this fact by improperly asserting within its Petition for Certification that NJCAR has not alleged an injury sufficient to create a live controversy. However, such assertion is incorrect—NJCAR is able to not only show damages on behalf of its members, but for actions for declaratory judgments, such proof is not required. What NJCAR must show is the existence of a "justiciable controversy." *Indep. Realty Co. v. Twp. Of N. Bergen,* 376 N.J.Super. 295, *302-03 (App. Div. 2005); *New Jersey Home Builders Ass'n v. Div. on Civil Rights in Dep't of Ed. Of State,* 81 N.J. Super. 243, *250 (Ch. Div. 1963). Several courts have recognized that claims alleging a violation of law which affects a party's rights or contractual

relationships will represent a legitimate case or controversy. *E.g., Hammond v. Doan*, 127 N.J.Super. 67, 71-72, 316 A.2d 68, 71-72 (Law. Div.1974); *O'Shea v. New Jersey Schools Const. Corp.*, 388 N.J.Super. 312, 317, (App. Div. 2006). Moreover, policies or programs that on their face violate applicable statutes, provides grounds for declaratory judgment and injunctive relief. *See VW Credit, Inc. v. Coast Auto. Grp., Ltd.,* 346 N.J. Super. 326, 346 (App. Div. 2002).Here, the implementation of the LCP its apparent violation of the NJFPA, evident on the face of the program materials and guidelines, presents such a controversy. *See* (PA74-74 at ¶¶ 4-8). The LCP, by virtue of providing different price differentials to its dealers, affects the NJCAR member's contractual relationships and rights under the NJFPA—as it creates competitive obstacles negatively impacting dealership operations. Therefore, any of NJCAR's members could have filed suit to determine whether Ford violated the NJFPA through the implementation of the LCP—even without the allegation of a monetary harm. Thereby, NJCAR has presented a real case or controversy.

b. Alternatively, NJCAR has demonstrated economic harm.

Ford believes facial violations are illegitimate and argues that NJCAR failed to demonstrate actual economic harm of its members and is thus prevented from asserting associational standing. Such argument is incorrect. For one, NJCAR has demonstrated such harm. And such economic harm is not required for a suit for declaratory relief nor had the Appellate Division mentioned such requirement to constitute an appealable issue.

Throughout this litigation, NJCAR obtained documentation from Ford that demonstrates the disparate LCP payments made to N.J. dealers. (Pa82 at ¶ 35). Specifically, Ford produced a spreadsheet that showed the total value of LCP payments to dealers in New Jersey—each of which contain price differentials based on the specific status of the individual dealer under the LCP. *See* (Pa 77 at ¶ 20); (Pa78 at ¶¶ 23-25); and (Pa80 at ¶¶ 29-30). This is the exact sort of bonus program that N.J.S.A. 56:10-7.4(h) forbids. Moreover, the differential bonuses are apparent from the LCP rules and guidelines on their face. (Pa316-317). Therefore, Ford's allegation that NJCAR has no evidence of damage, even if it were relevant, is contradicted by the filings on the record. Disappointingly, Ford emphasizes the falsehood that NJCAR submitted no evidence about financial impact on its members. It is otherwise clear that

NJCAR submitted record evidence of an economic injury entitling it to associational standing. Therefore, there is no question that Appellate Division correctly determined there was a live dispute. (Aa4 at *9).

c. Neither the claim asserted nor the relief requested requires individual participation by NJCAR's members.

NJCAR meets the third prong of the associational standing test. The Third Circuit explained that: "claims for monetary relief usually require individual participation, [therefore] courts have held associations cannot generally raise these claims on behalf of their members." *Pa. Psychiatric Soc. v. Green Spring Health Services, Inc.,* 28 F.3d 278, *284 (3d Cir. 2002). As such, the reason NJCAR did not provide any evidence from its individual dealer-members to support its claim in this case is simple—it is **not seeking affirmative damages for its individual members**. If NJCAR had done so, it would have been prevented from raising associational standing because a claim for damages typically requires the individual participation of its members. Rather, NJCAR seeks declaratory relief which does not require individual participation of its members. *Id.* Therefore, NJCAR satisfies the associational standing inquiry.[3]

[3] Ford's Petition for Certification does not challenge that compliance with the NJFPA is germane to NJCAR's mission nor could it. *See New Jersey Coalition of Auto. Retailers v. DaimlerChrysler Motors Corp.*, 107 F.Supp.2d 495 (D.N.J. 1999).

CONCLUSION

For these reasons, this Court should deny the Petition for Certification and affirm the Appellate Division's judgment.

Respectfully submitted,

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