IN THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

WELBORN CHEVROLET, INC. d/b/a RIVERSIDE CHEVROLET CADILLAC, **Petitioner,**	:	
	:	**Docket No.:**
v.	:	**OSAH-REV-MVFPA-1635899-60-Malihi**
GENERAL MOTORS, LLC, **Respondent.**	:	

ORDER GRANTING RESPONDENT'S MOTION TO DISMISS

I. SUMMARY OF PROCEEDINGS

Welborn Chevrolet, Inc. d/b/a Riverside Chevrolet Cadillac (hereinafter "Welborn Chevrolet"), Petitioner in the above-docketed matter, filed a Petition on or about February 8, 2016, alleging violations of the Motor Vehicle Franchise Practices Act, O.C.G.A. §§ 10-1-620 to -670, (hereinafter "the Act") on the part of Respondent General Motors, LLC (hereinafter "GM"). Specifically, Welborn Chevrolet sought relief under the Act for GM's refusal to approve an "Exchange Agreement" between Welborn Holdings, LLC and RHC, Inc.—neither of whom are a party to this proceeding—asserting that the refusal violated Code Section 10-1-653.

On April 5, 2016, GM filed a Motion to Dismiss, asserting that, as Welborn Chevrolet was neither a prospective purchaser nor a prospective seller under the Exchange Agreement, it lacked standing to bring an action against it for an alleged violation of Code Section 10-1-653.

Welborn Chevrolet responded to GM's Motion on April 15, 2016, and simultaneously sought leave to add Welborn Holdings, LLC as a party to the instant proceeding. In its responsive brief, Welborn Chevrolet claimed standing under Code Section 10-1-623 of the Act, and argued that any defects in standing would be rendered "moot" should the Court add Welborn Holdings as a party. GM filed a brief in support of its original motion and a memorandum in

opposition to adding Welborn Holdings, LLC as a party on April 26, 2016.

For the reasons provided here, the Court finds that Welborn Chevrolet lacks standing. Therefore, GM's Motion to Dismiss is **GRANTED** and Welborn Chevrolet's Petition is **DISMISSED**.

In addition to the filings discussed *supra*, the following filings are currently before the Court:

(1) Petitioner's First Request for Production of Documents to Respondent and Notice to Produce filed February 22, 2016;
(2) Respondent's First Request for Documents and/or Notice to Produce filed April 13, 2016
(3) Petitioner's Proposed First Amended Petition for Violation of the Georgia Motor Vehicle Franchise Practices Act, Declaratory Judgment and Injunction filed April 19, 2016;
(4) Petitioner's Motion for Entry of Default Judgment and Brief in Support filed May 5, 2016;
(5) Respondent's Memorandum in Opposition to Petitioner's Motion for Entry of Default Judgment filed May 6, 2016;
(6) Petitioner's Reply Brief in Support of its Motion for Entry of Default Judgment filed May 10, 2016; and
(7) Respondent's Surreply Memorandum in Opposition to Petitioner's Motion for Entry of Default Judgment filed May 12, 2016.

Having determined that Welborn Chevrolet lacks standing, it is unnecessary for the Court to resolve any other pending motions, and they are **DENIED** as moot.[1]

II. BACKGROUND

1.

Welborn Chevrolet is an authorized franchise dealer of Chevrolet and Cadillac motor vehicles. It has been an authorized GM dealer since 1974. Its dealership, Riverside Chevrolet

[1] In an attempt to establish standing in this proceeding, Welborn Chevrolet moved for leave to add Welborn Holdings, LLC as an additional party. Since the Court has decided that Welborn Chevrolet lacks standing, the Court cannot entertain any motion filed by Welborn Chevrolet. Further, the Court is not convinced that the party in chief, who lacks standing, can establish standing by adding another party. Finally, based on the facts presented by the parties, it is not entirely clear that Welborn Holdings, LLC has standing to challenge GM's denial of the Exchange Agreement. As discussed *infra*, O.C.G.A. § 10-1-653 grants standing to the selling franchisee, which in this instance is RHC, Inc.

Cadillac, is located at 100 Highway 411 East in Rome, Georgia ("the Highway 411 Location"). (Petition for Violation of the Georgia Motor Vehicle Franchise Practices Act, Declaratory Judgment and Injunction [hereinafter Pet.] 1).

2.

Welborn Holdings, LLC (hereinafter "Welborn Holdings") is an authorized franchise dealer of Hyundai motor vehicles. Its dealership, Riverside Hyundai, is also located at the Highway 411 Location. (Proposed First Amended for Violation of the Georgia Motor Vehicle Franchise Practices Act, Declaratory Judgment and Injunction [hereinafter Am. Pet.] 2).

3.

RHC, Inc. (hereinafter "RHC") is a dealer of Buick and GMC motor vehicles. It operates Heritage Buick-GMC, a dealership located at 965 Veterans Memorial Highway in Rome, Georgia (hereinafter "the Veterans Memorial Location"). (Pet. 4).

4.

GM is a Delaware limited liability company that operates in Georgia as a motor vehicle franchisor. (Pet. 1).

5.

On or about October 23, 2015, Welborn Holdings and RHC entered into an agreement (hereinafter "the Exchange Agreement") for the exchange and relocation of Heritage Buick-GMC from the Veterans Memorial Location to the premises of Riverside Hyundai at the Highway 411 Location, in return for the exchange and relocation of Riverside Hyundai from the Highway 411 Location to the Veterans Memorial Location. Pursuant to the Exchange Agreement, Riverside Hyundai and Heritage Buick-GMC would effectively switch locations; Riverside Hyundai would operate at the Veterans Memorial Location alongside a Honda

dealership, and Heritage Buick-GMC would operate at the Highway 411 Location alongside Riverside Chevrolet Cadillac. (Pet. 4; Am. Pet. 4–5).

6.

Welborn Holdings and RHC sought GM's approval in order to finalize the Exchange Agreement. In December 2015, GM notified Andrew G. Welborn, principal of both Welborn Holdings and Welborn Chevrolet, that it refused to approve the Exchange Agreement. Shortly thereafter, Welborn Chevrolet filed the Petition at issue. (Am. Pet. 6).

III. ANALYSIS

1.

Standing is a threshold jurisdictional inquiry, and one that must be resolved at the outset of the proceeding, "prior to and independent of the merits of a party's claims." Ass'n for Disabled Ams., Inc. v. Integra Resort Mgmt., 385 F. Supp. 2d 1272, 1277 (M.D. Fla. 2005) (citing Bochese v. Town of Ponce Inlet, 405 F.3d 964, 974 (11th Cir. 2005)); Blackmon v. Tenet Healthsystem Spalding, Inc., 284 Ga. 369, 371 (2008). Essentially, the standing inquiry concerns "whether [a] litigant is entitled to have the court decide the merits of the dispute or of particular issues. . . ." Sherman v. City of Atlanta, 293 Ga. 169, 172 (2013) (internal quotation omitted). As GM has challenged Welborn Chevrolet's standing to institute the present action, the Court must carefully examine the allegations in the Petition to ascertain whether Welborn Chevrolet is entitled to an adjudication of the particular claims asserted therein. Allen v. Wright, 468 U.S. 737, 752 (1984). As the party claiming standing, Welborn Chevrolet bears the burden of proving that it is entitled to an adjudication of its claims. Sherman, 293 Ga. at 173 (citing Dep't of Human Res. v. Allison, 276 Ga. 175 (2003); see also City of Miami v. Bank of Am. Corp., 800 F.3d 1262, 1272 (11th Cir. 2015).

2.

The present case concerns a legislatively conferred cause of action. Therefore, the Court must determine, using traditional tools of statutory interpretation, whether the statutorily-created cause of action at issue encompasses Welborn Chevrolet's particular claim. Lexmark Int'l Inc. v. Static Control Components, Inc., 134 S. Ct. 1377, 1387 (2014). In other words, the Court must determine whether the legislature authorized an entity like Welborn Chevrolet to institute an administrative proceeding for a violation of Code Section 10-1-653. Id.

3.

Welborn Chevrolet claims standing pursuant to the following provision of Code Section 10-1-623:

> [A]ny person who is or may be injured by a violation of a provision of this article or any party to a franchise who is so injured in his or her business or property by a violation of a provision of this article relating to that franchise . . . may file a petition with the Department of Revenue as provided in Code Section 10-1-667 or may bring an action in any court of competent jurisdiction for damages and equitable relief including injunctive relief.

O.C.G.A. § 10-1-623(a).

4.

Read in isolation, Code Section 10-1-623 would appear to authorize *any* party to institute an administrative proceeding, provided he or she could make a showing of injury, or even possible injury, traceable to a violation of the Act. However, Code Section 10-1-623 does not, by itself, create a cause of action, but rather authorizes suit for violations of other provisions of the Act. See, e.g., Ellison v. Georgia R. & B. Co., 87 Ga. 691, 699 (1891) ("[A] cause of action is some particular legal duty of the defendant to the plaintiff, together with some definite breach of that duty which occasions loss or damage."); see also Bryant v. Randall, 244 Ga. 676, 682 (1979) ("There can be no right of action until there has been a wrong, that is, a violation of a

legal right or breach of a legal duty, which right of action is given by the adjective or remedial law. To give a right of action there must be a right given by substantive law in the plaintiff and some invasion of that right by the defendant."). Therefore, the breadth of standing conferred by the legislature must be discerned by referencing the substantive provisions under which Welborn Chevrolet seeks relief. The Court is disinclined to conclude that Code Section 10-1-623 confers standing upon all factually injured persons, particularly in light of the plain meaning of, and clear legislative intent behind, the substantive provisions at issue. See, e.g., Lexmark Int'l Inc., 134 S. Ct. at 1388 (Congress did not grant standing to all factually injured plaintiffs through statute authorizing suit by "any person who believes that he or she is likely to be damaged" by false advertising).

5.

Welborn Chevrolet seeks redress for GM's purported violation of Code Section 10-1-653, which provides, in pertinent part, as follows:

> If a new motor vehicle dealer desires to make a change in its executive management or ownership or to sell its principal assets, the new motor vehicle dealer will give the franchisor prior written notice of the proposed change or sale. The franchisor shall not arbitrarily refuse to agree to such proposed change or sale and may not disapprove or withhold approval of such change or sale unless the franchisor can prove that its decision is not arbitrary and that the new management, owner, or transferee is unfit or unqualified to be a dealer based on the franchisor's prior written, reasonable, objective, and uniformly applied, within reasonable classifications, standards or qualifications which directly relate to the prospective transferee's business experience, moral character, and financial qualifications. . . .

O.C.G.A. § 10-1-653.

6.

The cardinal rule of statutory interpretation requires the Court to "'ascertain the legislative intent and purpose in enacting the law, and then to give it that construction which will

effectuate the legislative intent and purpose.'" Cardinale v. City of Atlanta, 290 Ga. 521, 524 (2012) (quoting Carringer v. Rodgers, 276 Ga. 359, 363 (2003)). Further, the Court must "'consider the consequences of any proposed interpretation and not construe the statute to reach an unreasonable result unintended by the legislature.'" Id. (quoting Haugen v. Henry County, 277 Ga. 743, 745 (2004)). The plain language of Code Section 10-1-653 and the related provisions of the Act evince the statute's purpose of "regulat[ing] the relationship between automobile franchisors and their franchise dealers in the State of Georgia" and the legislature's clear intent to "protect dealerships from being treated improperly by automobile franchisors. . . ." DaimlerChrysler Motors Co. v. Clemente, 294 Ga. App. 38, 47–48 (2008); see also Toirkens v. Willett Toyota, 192 Ga. App. 109, 110 n.1 (1989) (noting that the Franchise Practices Act "applies to transactions between automobile manufacturers and their franchisees. . . .").

7.

By its plain language, Code Section 10-1-653 imposes a duty on the franchisor to not arbitrarily refuse its franchisee's proposal to sell its principal assets. See O.C.G.A. § 10-1-653 ("[t]he franchisor shall not arbitrarily refuse to agree to [a] proposed . . . sale and may not . . . withhold approval of . . . [the] sale . . ."). The statute does not render the franchisor liable to entities that may incidentally benefit from the sale; the duty contemplated by the substantive provision is that which the franchisor owes to its franchisee. See id.; DaimlerChrysler Motors Co., 294 Ga. App. at 47–48. Third parties—namely, prospective transferees—are mentioned in the substantive provision for the limited purpose of defining parameters for the franchisor's refusal of the sale; i.e., a franchisor may disapprove of the sale if (1) the disapproval is not "arbitrary" and (2) the prospective transferee is unfit or unqualified to be a dealer. O.C.G.A. § 10-1-653. However, the clear purpose of the statute is to protect the selling franchisee from the

franchisor's arbitrary interference in the proposed sale. DaimlerChrysler Motors Co., 294 Ga. App. at 47.

8.

The class of "persons" whom the legislature authorized to institute an administrative proceeding for a violation of Code Section 10-1-653 is further clarified upon examination of the statutory context in which the substantive provision appears. See Dolan v. United States Postal Serv., 546 U.S. 481, 486 (2006) ("Interpretation of a word or phrase depends upon reading the whole statutory text, considering the purpose and context of the statute, and consulting any precedents or authorities that inform the analysis."); Mathis v. Cannon, 276 Ga. 16, 26 (2002) ("'It is an elementary rule of statutory construction that a statute must be construed in relation to other statutes of which it is a part, and all statutes relating to the same subject-matter, briefly called statutes "in pari materia," are construed together.'") (citing Butterworth v. Butterworth, 227 Ga. 301, 303–04 (1971)). Code Section 10-1-653 is entitled "Ownership and management protections for motor vehicle dealers," and appears in Part 4 of the Act, which is known as the "Motor Vehicle Franchise Continuation and Succession Act" (hereinafter "the Continuation and Succession Act"). O.C.G.A. §§ 10-1-653, 10-1-650. The Continuation and Succession Act contains numerous provisions designed to protect franchisee dealers against improper conduct on the part of franchisors in the context of the franchise relationship; it is concerned with the franchisee's ownership interest in the dealership, and limits the franchisor's ability to interfere with that interest. See O.C.G.A. § 10-1-651 to -654. Where the Continuation and Succession Act affords protections to a party outside of the franchise relationship, such as a designated successor to the franchise, it does so expressly. O.C.G.A. § 10-1-652 (governing the franchisor's refusal to honor the succession to the ownership of a franchise following the death or incapacity

of the owner).

9.

Based on the plain language of the provisions at issue, the clear intent of the legislature, and the purpose of the Act, the Court concludes that the Act confers standing on franchisees that are factually injured by their franchisor's refusal to approve of the sale of their principal assets. The Act does not allow motor vehicle dealers who were not a party to the sale to seek an administrative remedy for a violation of Code Section 10-1-653, regardless of whether they suffered a factual injury traceable to such a violation. See O.C.G.A. § 10-1-653.

10.

Welborn Chevrolet was not a party to the Exchange Agreement; GM did not refuse to approve of the sale of Welborn Chevrolet's principal assets, arbitrarily or otherwise. As alleged in the Petition, GM refused to approve of a sale proposed by RHC, its franchisee. Therefore, the statutory right to seek an administrative remedy against GM for its allegedly improper refusal to approve of the Exchange Agreement belongs to RHC. Third parties who may have benefited from the Exchange Agreement, such as Welborn Chevrolet, are not contemplated in the cause of action created by the legislature. Accordingly, Welborn Chevrolet lacks standing to bring an action against GM for refusing to approve the Exchange Agreement and its Petition must be dismissed.

11.

In its Petition, Welborn Chevrolet also alleges that, by failing to approve the Exchange Agreement, GM violated:

(1) O.C.G.A. § 10-1-631(a)(1)[2] (a franchisor must "act in good faith with any dealer in connection with the sale, transfer, termination or succession of a

[2] Although Welborn Chevrolet directly quotes the provision from Code Section 10-1-631(a)(1) in its Petition, it incorrectly gives the citation as 10-1-661(b)(1). (Pet. 8, Am. Pet. 10).

franchise . . .");

(2) O.C.G.A. § 10-1-662(a)(7) (a franchisor must "observe good faith in any aspect of dealings between the franchisor and the dealer");

(3) O.C.G.A. § 10-1-662(a)(11) (a franchisor shall not "take any adverse action against a dealer");

(4) O.C.G.A. § 10-1-662(a)(17) (a franchisor must not "restrict a dealer from maintaining, acquiring, or adding a sale or service operation"); and

(5) O.C.G.A. § 10-1-661(b)(3) (a franchisor shall not prevent a dealer from participating in "the acquisition of any other line of motor vehicle or related products . . .").

For reasons identical to those identified *supra*, Welborn Chevrolet lacks standing to bring an administrative action for GM's alleged violation of the foregoing provisions. Like Code Section 10-1-653, these provisions govern the relationship between the franchisor (in this case, GM) and franchisee (in this case, RHC), and do not confer a cause of action on an entity that is not a party to the franchise relationship.

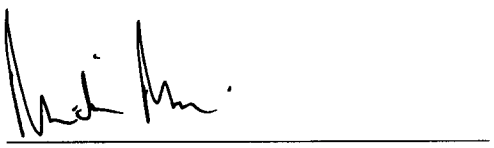
12.

Welborn Chevrolet's Petition is primarily concerned with the Exchange Agreement. However, Welborn Chevrolet also alleges in its Petition that GM improperly changed its "Area of Primary Responsibility" and failed to provide it with sufficient new motor vehicles, in violation of O.C.G.A. § 10-1-663(b)(5) and O.C.G.A. § 10-1-662(a)(1). It is unclear from the Petition whether Welborn Chevrolet intended to include these alleged violations on the part of GM as independent claims, or whether the allegations are cited in support of its claim that GM violated Code Section 10-1-653. If Welborn Chevrolet intended to include the allegations as independent claims separate and unrelated to those pertaining to Code Section 10-1-653, it has ten (10) days in which to file a brief in support of its position and of maintaining the instant proceeding for the purpose of adjudicating any remaining issues. Otherwise, its Petition shall stand dismissed in its entirety.

IV. ORDER

For the foregoing reasons, GM's Motion to Dismiss is **GRANTED** and Welborn Chevrolet's Petition is hereby **DISMISSED**.

SO ORDERED, this 25th day of May, 2016



Michael Malihi, Judge