IN THE SUPREME COURT OF FLORIDA

Case No. 92,503

DWAYNE HAWKINS, et al.,

Plaintiffs-Appellants,

v.

FORD MOTOR COMPANY,

Defendant-Appellee.

Certified from the United States Court of Appeals
for the Eleventh Circuit (Case No. 96-2306)

ANSWER BRIEF OF APPELLEE FORD MOTOR COMPANY

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STATEMENT OF THE CASE AND OF THE FACTS

The statement of the case by Appellants Hawkins and Ripley (hereinafter collectively "Hawkins") is accurate, and Hawkins' statement of facts is generally accurate, but omits certain facts relevant to the certified question. Ford therefore supplements and clarifies Hawkins' statement of facts as follows:

Wilson Davis Ford, Inc. operated as a Ford dealer pursuant to a Ford Sales and Service Agreement. This Ford Sales and Service Agreement was a "franchise agreement" as that term is used in §§ 320.60(1) and 320.643(1), Florida Statutes, and is hereinafter referred to as the "franchise agreement." Paragraph F of the franchise agreement confirms the personal nature of the agreement itself and deals with proposed changes of ownership or executive management, making no distinction between stock sales and asset sales:

> F. In view of the personal nature of these Agreements and their objectives and purposes, the Company expressly reserves to itself the right to execute said Agreements with individuals or other entities specifically selected and approved by the Company. . . . These Agreements have been entered into by the Company with the Dealer in reliance (i) upon the representation and agreement that the following person(s), and only the following person(s), shall be the principal owners of the Dealer: [Wilson P. Davis, 80%; Wade A. Bodiford, Jr., 20%] . . .

> (ii) upon the representation and agreement that the following person(s), and only the following person(s), shall have full managerial authority for the operating management of the Dealer in the performance of these Agreements: [Wilson P. Davis, Wade A. Bodiford, Jr.]
>
> . . .
>
> The Dealer shall give the Company prior notice of any proposed change in the said ownership or managerial authority of said Dealer, ... No such change or notice, and no amendment or assignment of these Agreements or of any right or interest herein, shall be effective against the Company unless and until embodied in an appropriate amendment to or assignment of these Agreements as the case may be, duly executed and delivered by the Company and by the Dealer. The Company shall not unreasonably withhold its consent to any such change . . . .

(R2-54-Exh. A at HAW1 4090-91.)

Hawkins attempted to purchase the Wilson Davis dealership from its owners, Mr. Davis and Mr. Bodiford. Hawkins wanted to structure the proposed deal as an asset purchase, which is how all of Hawkins' other dealership acquisitions had been structured. The sellers, however, insisted on a stock sale instead of an asset

sale. (Folder 2-42-Hawkins Dep. 90.) Hawkins' partner, Appellant Ripley, recognized that "in terms of who owned the dealership" and "who was going to be running the dealership . . . the purchase of a hundred percent of the stock [was] the same thing as the purchase of all the assets." (Folder 1-41-Ripley Dep. 38-39.)

The stock purchase agreement between the sellers and Hawkins recognized that the franchise agreement could not be transferred without Ford's approval and expressly provided that, as a condition of the closing, the franchise agreement would need to be amended or replaced by a new agreement, to reflect the new owners as the new Dealer/Operators. (R1-44-App. 1, Exh. C, pp. 20-21 ¶¶ 8.2 and 9.1.1.)

The sellers notified Ford in writing that they were proposing a transfer under § 320.643, Florida Statutes, and a change of executive management control under § 320.644, Florida Statutes. (RI-44-App. 1, Exhs. D, E.) As required by subsection 320.643(1), regulating proposed transfers of "franchise agreements," their letter to Ford enclosed information concerning the financial qualifications and business experience of Hawkins and Ripley, as well as a statement from Hawkins and Ripley that they would comply with the terms of the franchise agreement. (*Id.*) Hawkins and Ripley submitted prospective dealer applications to Ford and provided additional information concerning their qualifications. (Folder 1-39-Stone Dec. ¶ 8 & Exh. B.)

After receiving the applications, Ford learned that Hawkins' Capital Lincoln-Mercury dealership in Tallahassee had a history of poor customer satisfaction and poor sales performance. (Folder 1-39-Stone Dec. ¶¶ 9, 10, 12 & Exh. C at HAW1 6665-71.) For the prior 3½ years, Capital Lincoln-Mercury had been in the bottom quartile of its group in customer satisfaction rankings. Indeed, Capital Lincoln-Mercury ranked dead last in its group in 1992, 26th out of 31 in 1993, and 24th out of 25 in 1994. (*Id*. ¶ 15 & Exh. C.) In addition, Capital Lincoln-Mercury's market penetration (a measure of sales performance) had been extremely poor (less than 60% of group average) for the previous 3½ years. (*Id*. ¶ 17.)

Ford also discovered that the financial picture of Hawkins and Ripley raised serious questions about their ability to capitalize the Wilson Davis dealership adequately. (*Id.* ¶¶ 29-31.) Ripley conceded that he would be required to borrow nearly all of the money required for his portion of the investment. (*Id*. ¶ 23; Folder 1-41-Ripley Dep. p. 67.) Moreover, several of Hawkins' other dealerships were in bankruptcy, and the obligations of Hawkins and the entities he controlled were cross-collateralized. (Folder 1-39-Stone Dec. Exh. B at HAW1 6148.)

Ford gave notice to Davis (the seller) and Hawkins (the prospective buyer) of its decision to object to the transfer of the franchise agreement and the change of executive management control. Ford objected on the grounds of poor customer satisfaction, poor

sales performance, and inadequate capitalization. (Folder 1-39-Stone Dec. ¶ 35 & Exhs. E, F.) Ford filed a complaint with the Florida Department of Highway Safety and Motor Vehicles, objecting to the proposed transfer, pursuant to Chapter 320. Davis and Bodiford then terminated the buy-sell agreement with Hawkins and Ripley, and only Hawkins and Ripley contested Ford's Chapter 320 complaint. Davis and Bodiford thereafter sold their dealership to Bodiford and two others, who were approved by Ford. (R1-44-App. 1, Davis Dep. 5, 9-10)

SUMMARY OF ARGUMENT

At issue in this appeal is the interplay between three closely related provisions of Chapter 320, Florida Statutes, which regulates the relationship between automobile manufacturers and their independent dealers. These provisions are Florida Statutes § 320.643, subsections (1) and (2)(a); and § 320.644. Taken together, these three provisions address the respective rights and obligations of a manufacturer and its franchised dealer when the dealer seeks to sell the dealership, or an interest in it, to someone else, as was done in this case. Here, the proposed sale of the dealership was structured as a stock transaction, in which the potential buyers were to purchase 100% of the stock of the existing dealer corporation, thereby replacing the existing ownership in its entirety.

Section 320.643(1) provides that, when the dealer proposes to transfer the franchise agreement to a new dealer, the manufacturer is entitled to consider the financial and business qualifications of the proposed transferee. Section 320.643(2)(a) provides that when an owner of an equity interest in a dealership proposes to transfer all or part of that equity interest to a third party, the manufacturer is entitled to consider the moral character of the proposed transferee. And Section 320.644 provides that when a dealer proposes a change in "executive management control" of the dealership, the manufacturer is entitled to consider the business

qualifications of the persons proposed for "executive management control." Nothing in Chapter 320 suggests that these three related provisions must operate independently of each other and never in tandem.

The question certified in this case is as follows:

> Does Fla. Stat. § 320.643(2)(a) provide the exclusive basis for objection by a motor vehicle manufacturer to the proposed transfer of all the equity in interest in a motor vehicle dealership?

Hawkins and Ripley argue that, because they structured their proposed purchase of the dealership as a stock transaction, instead of an asset purchase or some other mechanism, Ford was permitted to consider *only* their moral character, and not their financial or business qualifications. The linchpin of their argument and that of the amici dealer associations ("the Dealer Associations") is the assumption, without explanation, that because § 320.643 has two separate subdivisions, those subdivisions must be read as being mutually exclusive. This assumption -- that a dealership buy-sell transaction may trigger *either* subdivision (1) or subdivision (2) of § 320.643, *but not both* -- is a false dichotomy unsupported by the plain language of the statute, canons of statutory construction, or any policy reasons. It should be rejected.

The result for which Hawkins and the Dealer Associations argue would mean that the owner of a dealership could sell 100% of the stock of the dealership corporation, including all of the rights under the franchise agreement, to an unqualified stranger who could

be validly rejected if the proposal were to transfer the franchise agreement alone, without the corporate stock. Neither the language of the statute nor any conceivable policy requires this Court to create such an arbitrary distinction. To the contrary, the individual nature of a franchise agreement and an analysis of the interests sought to be balanced by Chapter 320 compel the conclusion that a sale of 100% of the stock of a dealership corporation is a proposed transfer of the franchise agreement for purposes of subsection 320.643(1), which permits the manufacturer to consider the financial and business qualifications of the proposed new dealer.

Public policy concerns also weigh heavily against Hawkins' and the Dealer Associations' reading of Chapter 320. Manufacturers, the public and franchised dealers all have an interest in seeing that dealers are well-qualified. That interest is served when the dealership is adequately capitalized and when the individuals owning, operating and controlling the management of the dealership have sound business qualifications and good moral character. The critical qualifications are those of the individual owners and operators, regardless of the formal legal structure of the dealership entity. That fact is recognized in Chapter 320, in Ford's franchise agreement, by the parties to this case, and in uniform case law dealing with similar statutes.

Moreover, in evaluating the interests protected by Chapter 320, there is no difference whatsoever between a sale of all of the assets of a dealership to a third party and the sale of 100% of the stock of the dealership to that same third party. As the transparently lame efforts of Hawkins and the Dealer Associations well illustrate, no reasonable policy basis can be offered for different legislative restrictions on a manufacturer's right to evaluate the transferee in those two situations. And again, no "plain" or other language of Chapter 320 requires that absurd result. The certified question must be answered "no."

Thus, Ford was entitled to consider the financial and business qualifications of Hawkins and Ripley, as proposed transferees of the franchise agreement. Ford also was permitted to consider Hawkins' business qualifications under the express terms of § 320.644, because the proposed dealership sale included a proposed change in "executive management control."

The Court should in addition reach a preliminary issue, which was not open for decision by the district court or the Eleventh Circuit, because of a prior (2-1) panel opinion of the Eleventh Circuit which ruled on an issue of first impression under Florida law. This is the issue of whether a prospective purchaser of a dealership -- in addition to the existing dealer -- has standing under Chapter 320 to challenge the manufacturer's decision to object to the proposed transfer. Courts considering similar

statutes in other states have concluded that those statutes protect dealers, not strangers to the franchise relationship, so that standing to sue for alleged violations of those statutes is limited to dealers. Ford respectfully submits that the Florida statute, properly construed, gives a selling dealer (*e.g.*, Davis) a right to sue for alleged violations, but does not give such a right to a prospective transferee (*e.g.*, Hawkins), and Ford respectfully requests that this Court so hold.

ARGUMENT

I. FORD WAS PERMITTED TO CONSIDER THE BUSINESS QUALIFICATIONS OF THE PROPOSED NEW OWNERS OF THE DEALERSHIP.

A. An Automobile Dealership Franchise Agreement Is a Relationship Among Individuals.

The interests of the manufacturer and the public in the qualifications of individuals who own and operate automobile dealerships are recognized in the franchise agreement, in Chapter 320, and in case law from all jurisdictions to have considered the issue. Manufacturers and customers place their confidence and trust in individual owners and operators, whatever the formal corporate structure of a dealership.[1] Thus, the franchise agreement emphasizes "the personal nature of these Agreements and their objectives and purposes," designates specific individuals as owning and managing the dealership and reserves the right to Ford to approve any proposed change in ownership or managerial authority through a consent to an assignment of the Agreement. (R2-54-Exh. A at HAW1 4090-91.)

Chapter 320 without question focuses on attributes of the individuals owning and operating the dealership, as opposed to the

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[1] The fact that the franchise agreement may be in the name of a corporate entity may mean that the corporate entity is a proper or necessary party to contracts and lawsuits involving the dealership, but that does not affect the individual character of the relationship or alter the conclusion that the agreement is transferred when entirely new owners acquire the corporation.

corporation (if that is the chosen form of operation). That can be tested by assuming that an incompetent, penniless individual purchased all the stock (and replaced the management) of a company which prior to that time had a fine record of business performance, and that the company the next day sought to buy the assets of a dealership. Even Hawkins would admit that § 320.643(1) would permit the manufacturer in that situation to consider the business qualifications of the transferee. And surely no one would argue that the manufacturer could consider only the fine record of the transferee corporation, and not the terrible record of the new owners and managers of the transferee corporation. Chapter 320 allows the manufacturer to consider financial qualifications, business qualifications and moral character of individuals in connection with a proposed transfer of a franchise agreement.

Other provisions of Chapter 320 also recognize the importance of the individual owners and operators. Section 320.27(4)(a), for example, permits a dealership name change to be effected through an amendment, unless "the majority ownership" or "the name of the person appearing as franchisee on the sales and service agreement" changes, in which case a new license, with an application identifying the owners, is required. And § 320.64(18) permits the manufacturer to refuse to accept a succession by heir or devisee of "*any* interest" in a dealership if the heir or devisee lacks

business qualifications or would otherwise be detrimental to the public interest or to the representation of the manufacturer.

The cases from other jurisdictions cited by amici AAMA and AIAM and *infra* at Section I.(D) likewise support the common sense notion that it is the individual owners and operators who are the key to the franchise relationship, not the corporate form (be it a corporation, partnership, sole proprietorship or other legal entity) through which those individuals exercise their ownership and control. And this was recognized by the parties to the buy-sell agreement at issue here, who expressly conditioned the deal on Ford's approval and on an amended or new franchise agreement reflecting the new individual owners. (R1-44-App.1, Exh. C, pp. 20-21 ¶¶ 8.2 and 9.1.1.)

B. There Is No Material Difference Between a Sale of All the Assets of a Dealership and the Sale of 100% of the Stock of the Dealership Corporation.

Hawkins and the Dealer Associations strain mightily to come up with any possible difference in substance between the transfer of all of the assets of a dealership and the transfer of 100% of the stock of the dealership corporation. Hawkins' own partner (Appellant Ripley) recognized that "in terms of who owned the dealership" and "who was going to be running the dealership . . . the purchase of a hundred percent of the stock [was] the same thing as the purchase of all the assets." (Folder 1-41-Ripley Dep. 38-39.) And, from the standpoint of the interests sought to be protected by Chapter 320, none of the possible differences in the form of the transaction makes any material difference whatsoever. This is illustrated by the following hypothetical:

Suppose the local Ford dealership is organized as "Dealer Corporation," 100% of the stock of which is owned by Mr. Dealer, and which is doing business as "Dealer Ford." The assets of Dealer Corporation, with an indication of how they are encumbered by financing and the total equity (capital) available as to each asset, might be hypothesized as follows:

Dealer Corp., d/b/a “Dealer Ford”

ASSETS	**GROSS VALUE**	**AMOUNT FINANCED**	**EQUITY (CAPITAL)**
Real property, facility and equipment	$2,000,000	$1,000,000	$1,000,000
Vehicle and parts inventories	$2,000,000	$1,000,000	$1,000,000
Cash	$1,000,000	-0-	$1,000,000
Totals	$5,000,000	$2,000,000	$3,000,000

In this example, Dealer Ford may also be hypothesized to have a franchise agreement with Ford and a “good will” value as an ongoing concern, over and above the value of the hard assets (land, equipment, and the like) of the dealership for the purposes of a possible sale. This possible additional value on sale (assumed to be $1,000,000 in this hypothetical), however, would not be considered part of the operating capital of the dealership, because the “good will” value is not realized until the dealership is sold. As shown above, this hypothetical Dealer Ford is well capitalized. The hypothetical further assumes that the manufacturer and the public are happy with Mr. Dealer, whose record of customer satisfaction and sales performance are exemplary.

Now suppose that Mr. Dealer wants to retire and realize the value on his investment (his equity plus “good will”). Mr. Buyer wants to buy. Mr. Buyer is short of cash, but has a finance source willing to loan plenty of money, as long as the loan can be collateralized with the dealership’s assets. Mr. Buyer has been

involved in other automobile dealerships, which have consistently achieved disastrously bad results in sales and customer service, and several of which are in bankruptcy. But Mr. Buyer himself cannot be proven to be of bad moral character under Chapter 320.

Mr. Buyer first proposes to Mr. Dealer an asset purchase, which is how Mr. Buyer has structured his other dealership acquisitions. In this asset purchase, Mr. Buyer will buy the dealership property, facilities, equipment, and inventory (assuming the liabilities on those assets), will have the franchise agreement assigned to (or a new agreement entered into with) Buyer Corp., and will also pay for the good will. On behalf of Dealer Corp, Mr. Dealer agrees to sell those assets to Buyer Corp. for $5,000,000. Dealer Corp. will keep its $1,000,000 in cash (and presumably will transfer it to Mr. Dealer as a dividend or bonus). Buyer Corp. will raise the $5,000,000 purchase price through a $1,000,000 capital contribution by Mr. Buyer and a $4,000,000 loan from Finance Corp. The dealership assets will serve as collateral for that loan.

The result of this proposed transfer would be Buyer Corp., owned by Mr. Buyer, doing business as "Buyer Ford," and operated by Mr. Buyer. Buyer Corp.'s assets, financing and capitalization would look like this:

Buyer Corp., d/b/a "Buyer Ford"

ASSETS	**GROSS VALUE**	**AMOUNT FINANCED**	**EQUITY (CAPITAL)**
Dealership property, facility and equipment	$2,000,000	$2,000,000	-0-
Vehicle and parts inventories	$2,000,000	$2,000,000	-0-
Cash	-0-	-0-	-0-
Totals	$4,000,000	$4,000,000	-0-

The result would be a dealership with no working capital, whose individual dealer principal had a disastrous prior record of sales and customer satisfaction and history of bankrupt dealerships. Hawkins apparently concedes that the manufacturer could consider both finances and business qualifications in that scenario under § 320.643(1). The manufacturer would of course reject Buyer Corp. as the proposed transferee, to the benefit of the manufacturer, the public, and other franchised dealers.

But suppose that after the asset deal is properly rejected, or instead of proposing an asset deal in the first place, Mr. Buyer decides to structure the deal as a stock transfer. In this scenario, Dealer Corp. could first dividend out (or pay as a bonus) the $1 million in cash to Mr. Dealer, and Mr. Buyer could then buy

all the stock of Dealer Corp. for the same $5 million, $4 million of which would be borrowed on the same terms as in the asset deal above.

The result would be Dealer Corp., owned by Mr. Buyer, doing business as "Buyer Ford," and operated by Mr. Buyer. Dealer Corp.'s assets, financing, and capitalization would look like this:

Dealer Corp., d/b/a "Buyer Ford"

ASSETS	**GROSS VALUE**	**AMOUNT FINANCED**	**EQUITY (CAPITAL)**
Dealership property, facility and equipment	$2,000,000	$2,000,000	-0-
Vehicle and parts inventories	$2,000,000	$2,000,000	-0-
Cash	-0-	-0-	-0-
Totals	$4,000,000	$4,000,000	-0-

The results would be exactly the same as the asset-sale hypothetical: a dealer with no capitalization (thus, no money in the bank to weather a down cycle, for instance), and an owner and dealer principal with disastrously bad customer satisfaction and sales records and a record of bankrupt dealerships. Hawkins argues that in this latter situation -- where the result is exactly the same as far as the manufacturer and consumers are concerned -- the manufacturer cannot consider Mr. Buyer's financial or business qualifications.

Thus, through the magic of a "stock transfer," Mr. Buyer's history of bankrupt dealerships, lackluster sales, and poor

customer service are made to disappear from the approval process. According to Hawkins and the Dealer Associations, because Mr. Buyer cannot be proven to be of bad moral character under Chapter 320, Ford must accept him as the new Ford dealer.[2]

It is little wonder that Hawkins and the Dealer Associations are unable to come up with any policy rationale that remotely supports such a distinction. They instead seek to preclude any such analysis by arguing repeatedly that the "plain language" of the statute requires this bizarre result, when in fact it does not. The plain language of the statute confirms that the related provisions of Chapter 320 are not mutually exclusive, and that all apply where 100% of the equity interest in a dealership corporation is being sold to a third party.

C. The Language of the Statute Permits Consideration of Business Qualifications.

1. Overview

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[2] The Dealer Associations suggest that the protection of the manufacturer in this situation is to accept the stock transfer and to object separately to the proposed change in management under § 320.644. As noted below, that of course provides no protection, because by definition the new ownership (and thus "executive management control") is unqualified and the totally under-capitalized dealership would be doomed to fail even if a competent day-to-day manager were ultimately named. That is why, consistent with the statutory language, § 320.643(1) must be construed to apply to the transfer of a franchise agreement through the sale of 100% of the stock of a dealership corporation, if the transfer provisions are to make any sense at all.

Under Florida law, full effect should be given to all statutory provisions, and related statutory provisions should be construed in harmony with one another. *Forsythe v. Longboat Key Beach Erosion Control Dist.,* 604 So. 2d 452, 455 (Fla. 1992). *See also Mehl v. State*, 632 So. 2d 593, 595 (Fla. 1993) (reading "provisions in *pari materia* as expressing a unified legislative purpose, since all of the three provisions at issue here are part of a unified package of law.") The three provisions of Chapter 320 at issue here are part of a unified package, and nothing in these provisions makes them mutually exclusive. Hawkins and the Dealer Associations, however, maintain that these three provisions are mutually exclusive and must operate independently of each other. Their entire argument is premised on the following fatally flawed syllogism, which U.S. District Judge Ralph Nimmons properly rejected:

(a) Sale of 100% of the stock of a dealership is a transfer of "an equity interest" in the dealership;

(b) Section 320.643(2)(a) applies to transfers of equity interests in dealerships;

Therefore,

(c) Section 320.643(2)(a) applies to a transfer of 100% of the stock of a dealership, and

(d) *No other provision of the statute can apply to such a transfer, regardless of whether the same transaction*

effects a transfer of the franchise agreement, per 320.643(1), or change in executive management control, per 320.644.

* * * *

The plain language of the statute and logical analysis carry one only through step "c." There is no basis in the language of the statute or in the legislative history for Hawkins' essential step "d." And every conceivable policy consideration and other aid to statutory construction compels the rejection of Hawkins' step "d." The provisions of Chapter 320 are not mutually exclusive, and when a dealer proposes to transfer 100% of the stock of the dealership to a third party, § 320.643(2)(a), § 320.643(1) and § 320.644 each apply, and the manufacturer may consider financial and business qualifications as well as moral character.

Indeed, as the parties to the Hawkins - Wilson Davis buy-sell agreement recognized, and Judge Nimmons found, a sale of 100% of the stock to third parties necessarily (and, in this case, expressly) contemplated a transfer of the franchise agreement. That is so because new individuals would be owning and operating the dealership.

Hawkins' statutory argument to the contrary is on all fours with the argument rejected by the court in *Chappell v. General Motors Corp.*, 511 F. Supp. 842 (D.S.C. 1980), *aff'd without op.*, 688 F.2d 830 (4th Cir. 1982). In that case, General Motors, like

Ford here, declined to approve a proposed stock transfer in a dealership. Two South Carolina code provisions were involved:

> Section 56-15-40(3)(h): [It shall be deemed a violation . . . for a manufacturer] to prevent . . . any motor vehicle dealer from changing the capital structure of his dealership . . . , provided the dealer at all times meets any reasonable capital standards . . . .
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> Section 56-15-40(3)(i): [It shall be deemed a violation . . . for a manufacturer] to prevent . . . any . . . stockholder of any motor vehicle dealer from . . . transferring any part of [his] interest . . . ; provided, however, that no dealer, officer, partner or stockholder shall have the right to sell, transfer or assign the franchise or power of management or control thereunder without the consent of the manufacturer, [which] shall not be unreasonably withheld.

511 F. Supp. at 847.

The plaintiff took the position that subsections (h) and (i) must be read separately, not in tandem. Plaintiff argued that the proposed transfer of a minority stock interest did not amount to a transfer of the franchise or of control, and so subsection (i) expressly provided that the manufacturer could not object. The court rejected that argument and held as follows:

> Such a position is untenable. It would result in completely depriving the manufacturer of the right granted it by subsection (h) to limit changes in a dealer's capital structure when said dealer was clearly under capitalized in contravention of a dealer sales and service agreement. The manufacturer would be helpless, in effect, to prevent changes in capital structure when such changes were accompanied by a transfer of stock that did not alter the control or power of

> management under the franchise agreement. Therefore, subsections (h) and (i) must be considered together and if the defendant has the right to reject an agreement pursuant to subsection (h), it cannot be held liable as a result of such rejection for a violation of subsection (i).

Id. at 847-48.

The situation here is analogous. Plaintiff in *Chappell* argued that because a specific provision relating to the transfer of stock applied, only the grounds for objection set out in that one provision were permissible. Another related provision of the statute, however, permitted objections by the manufacturer when a change in capital structure was anticipated which left an undercapitalized dealership. The court held that even if the change in capital structure also constituted a transfer of stock, so that subsection (i) might apply, the manufacturer was still entitled to object to the change in capital structure based on the provisions of subsection (h), because the latter subsection also applied. Likewise, where, as here, transfers of the franchise agreement and executive management control of the dealership were anticipated, Ford was entitled to consider the transferee's business qualifications (under §§ 320.643(1) and 320.644), even though the deal also involved a proposed transfer of stock (which triggered § 320.643(2) as well).

An examination of the three related statutory provisions at issue here confirms this analysis.

2. Section 320.643(1)

Section 320.643(1) applies when a dealer proposes to "transfer, assign, or sell a franchise agreement to another person." In that circumstance, the dealer must notify the manufacturer of the "prospective transferee's name, address, financial qualifications, and business experience during the previous five years." There is no language in § 320.643(1) limiting its application to proposed transfers or assignments of franchise agreements in the context of asset sales. *And nothing in that subsection bars its application when the transfer of the franchise agreement occurs as part of a stock transfer.*

As discussed above, the individual nature of an automobile franchise agreement, as reflected in other provisions of Chapter 320, Ford's franchise agreement and the expectations of the parties to this buy-sell transaction, is such that when the individual owners of a dealership corporation change entirely, the franchise agreement must be transferred, assigned or amended, or a new franchise agreement must be entered into, to establish a franchise relationship between the manufacturer and the new owners. An automobile franchise agreement in that regard is not like a piece of land or equipment or an impersonal contract right owned by a corporation. With respect to those types of corporate assets, a sale of the stock of the corporation might not effect a transfer of ownership of the assets themselves.

The question here is whether this proposed buy-sell of the Wilson Davis dealership contemplated the transfer of the franchise agreement, and the answer is that it expressly did. This key fact distinguishes *Robbinson v. Delk*, 468 So. 2d 986 (Fla. 1985), and *Cruising World, Inc. v. Westermeyer*, 351 So. 2d 371 (Fla. 2d DCA 1977), upon which Hawkins and the Dealer Associations rely.

In each of those cases, a corporation granted to a third party a right of first refusal to purchase specific tangible assets of the corporations -- in one case real estate and in another case a sewer system. The contracting parties had chosen to apply the right of first refusal only to the specific tangible property, and not to the stock of the corporations themselves, so the right of first refusal was held not to extend to the corporate stock. This Court found the intent of the contracting parties to be dispositive -- "absent any contrary intent in the contract, the unambiguous language of the contract controls." *Robbinson*, 468 So. 2d at 988.

Here, the intent of all parties plainly contemplated a transfer of the franchise agreement, thereby triggering § 320.643(1). The franchise agreement between Ford and Wilson Davis emphasized the personal nature of the relationship, recited that Davis and Bodiford would be the owners, and provided that no change in ownership would be effective until approved by Ford "embodied in an appropriate amendment to or assignment of these agreements." (R2-54-Exh. A at HAW1 4090-91.) The Wilson Davis - Hawkins stock

purchase agreement shows the same intent: That agreement was expressly conditioned on Ford's approval and expressly provided that the franchise agreement would need to be amended or replaced by a new agreement. (R1-44-App. 1, Exh. C, pp. 20-21 ¶¶ 8.2 and 9.1.1.)

In addition, unlike the inherently personal nature of the manufacturer/franchisee relationship at stake in this case, in neither *Robbinson* nor *Cruising World* was the identity or qualifications of the corporate stockholders of significance to the other party to the contract. This was because the corporate assets at issue in those cases -- the physical assets of a water and sewer system in *Robbinson* and a piece of land in *Cruising World* -- were not personal in nature, as a franchise agreement plainly is. A seller of land, for example, typically does not care about the business qualifications (or even the moral character) of a prospective buyer -- if the buyer can pay (with or without borrowed money), the seller will sell. The same cannot be said about the manufacturer-franchisee relationship, in which the manufacturer has good reason to care about the financial and business qualifications of a proposed transferee of the franchise agreement. The Florida legislature has recognized the manufacturer's -- and the public's -- legitimate interest in having qualified franchise-holders by enacting § 320.643(1).

Hawkins and the Dealer Associations complain that Judge Nimmons improperly relied on the terms of the franchise agreement in applying the statute. Analysis of the terms of the franchise agreement, however, is entirely appropriate in determining under what circumstances a sale of stock also constitutes a proposed transfer of the franchise agreement (and a change in executive management control) under the statute. Nothing in the franchise agreement is "inconsistent" with the terms of the statute in this regard. *See* § 320.63(3), Fla. Stat.

The cases cited by Hawkins and the Dealer Associations seeking to support a distinction between the sale of "assets" (a word which does not appear in § 320.643(1)) and a sale of 100% of the stock of a company arise in very different contexts and are not controlling or even persuasive here. In *State v. Dade County*, 142 So. 2d 79 (Fla. 1962), the county purchased all of the stock of private transportation companies which had previously operated under a franchise agreement from the city. The franchise agreements required that franchise taxes be paid by the companies out of operating profits or out of profits from the sale of assets. The Court found that the stock sale was not a sale of assets "in the sense used in the franchise agreement" for purposes of requiring taxes to be paid out of profits on asset sales. *Id*. at 88. But the Court went on to find in another context that the stock purchase was made for the purpose of "acquiring said companies in

their entirety including all of their assets," and that after the purchase the county would be the owner of the transportation system. *Id*. If the issue had been whether the stock sale effected a *transfer* (as opposed to a profitable sale) of the transportation system, the answer obviously would have been "yes."

Jameson Crosse, Inc. v. Kendall-Jackson Winery, Ltd., 917 F. Supp. 520 (N.D. Ohio 1996), is also distinguishable and unpersuasive here. The issue (decided after a bench trial) was whether advance consent of the winery had been required when the owners of a distributor had sold the stock of the distributor to a third party, when the officers, managers and mode of operation of the distributor company had remained the same. The winery apparently lacked good cause to object or to terminate, but sought to use the failure to request consent as a means to change distributors. The Ohio district court contrasted the Ohio wine distribution statute with the Ohio automobile dealer statute (where, as in every other state -- including, Ford submits, Florida -- a manufacturer may consider business qualifications on the proposed transfer of a controlling interest in a dealership corporation), and concluded on the facts of that case that advance notice was not required.

In short, there is no basis in the statute at issue here, or in the case law, to read § 320.643(1) to apply exclusively to "asset" sales. If a dealership buy-sell transaction, regardless of

the formal mechanism chosen to facilitate it, contemplates the transfer of the franchise agreement, as did the Hawkins deal, § 320.643(1) plainly applies.

3. Section 320.643(2)(a)

Section 320.643(2)(a) does apply, of course, to the transfer of an equity interest in a dealership. As in the case of the South Carolina statute construed in *Chappell, supra,* however, nothing within § 320.643(2)(a) dictates that it must always be applied *exclusively*, and never in tandem with § 320.643(1) or § 320.644, when a transfer of a controlling equity interest also effects a transfer of the franchise agreement or of executive management control.

Hawkins and the Dealer Associations rely extensively on the "in whole or in part" language of subsection 320.643(2)(a) to conclude that the subsection applies when 100% of the stock is to be sold. But again, that language does not support the argument that *only* subsection 320.643(2)(a) may apply in that circumstance. The term "in whole or in part" modifies "the equity interest" of "any motor vehicle dealer or any proprietor, partner, stockholder, owner, or other persons who hold or otherwise owns an interest" in a dealership. Thus, the "in whole or in part" language means, for example, that the subsection applies to a proposed sale of stock by a 10% owner, whether she is selling her entire 10% or only 2%. The language cannot reasonably be read to mean that neither subsection

320.643(1) nor § 320.644 can apply to a 100% stock sale that also effects the transfer of the franchise and a change in executive management control.

Subsection 320.643(2)(a) recognizes that a manufacturer has less reason to be concerned about business qualifications when the *only* role of a transferee would be to hold an equity interest in a dealership, which could be entirely passive. Thus, the only ground for objection to a transfer (in whole or in part) of an equity interest in a dealership -- when that is all that is being transferred -- is lack of good moral character. But, when the equity transfer also contemplates the transfer of the franchise agreement (as was the case here) and a change in executive management control (as was also the case here), the other provisions of Chapter 320 also apply to permit consideration of business qualifications. Nothing in Chapter 320 suggests that subsection 320.643(2)(a) cannot operate in tandem with subsection 320.643(1) and section 320.644 when all three are triggered by the same transaction.

4. Section 320.644

Section 320.644 also permitted Ford to consider the business qualifications of Hawkins in connection with Hawkins' proposed assumption of "executive management control" of the dealership. The Dealer Associations argue that when a change of executive management control is proposed as part of a proposed transfer of

all the stock of a dealership, the manufacturer is required to accept the stock transfer (unless bad moral character can be proven), and thereafter can object to the lack of qualifications of proposed management.

The Dealer Associations would apparently consider only the day-to-day manager's business qualifications for these purposes. But that would erase the words "executive" and "control" from the statute. The owners, of course, hire and fire the day-to-day managers --- that is the nature of "executive management control." If the owners of all of the stock of a dealership are not qualified, then those in "executive . . . control" are not qualified, and that deficiency cannot be remedied by hiring a new day-to-day general manager.[3] Section 320.644 certainly applies when an existing owner wishes to change the general manager of the dealership, but it also applies when an existing owner proposes to sell all the stock of the dealership, transfer the franchise agreement and turn over control of the dealership to an entirely new owner and manager. In such a case, § 320.644 provides additional authority for the manufacturer to consider the business qualifications of the proposed transferee.

[3] Ford submits that the interests of the consuming public (much less the manufacturers) are ill-served by a reading of the statute that would rely on incompetent dealership owners to hire competent day-to-day managers.

D. Policy Concerns Compel Consideration of Business Qualifications.

Strong public policy supports Judge Nimmons' construction of Chapter 320. Motor vehicle manufacturers have a substantial and legitimate business interest in reviewing the financial and business qualifications of those who seek to become their franchised dealers. A Ford dealer uses Ford's trademarks and trade names to sell Ford products and is Ford's primary link to consumers for selling and servicing Ford products.

Numerous cases have recognized that motor vehicle manufacturers have a substantial and legitimate business interest in choosing their dealers. *See Sundown Imports, Inc. v. Arizona Dep't of Transp.,* 565 P.2d 1289, 1290-94 (Ariz. Ct. App. 1977); *Tynan v. General Motors Corp.*, 591 A.2d 1024, 1028-33 (N.J. Super. Ct. App. Div. 1991), *rev'd in part on other grounds*, 604 A.2d 99 (N.J. 1992); *Statewide Rent-A-Car, Inc. v. Subaru of Am.*, 704 F. Supp. 183, 186 (D. Mont. 1988) ("The franchise system becomes meaningless if franchisors . . . are [required] to accept franchisees they did not choose."). *Cf. Yamaha Parts Distribs. v. Ehrman*, 316 So. 2d 557, 559-60 (Fla. 1975) ("The right of a manufacturer to maintain the integrity of his trade name in the marketplace is a valuable right which a disreputable franchisee can quickly destroy.").

The importance of these policies is recognized in the provisions of subsection 320.643(1) and section 320.644, which permit a manufacturer to consider the financial and business qualifications of a proposed transferee. These policy considerations are no different when the transfer is effected through a sale of 100% of the stock as opposed to all of the assets -- the substantive result, a new dealer, is exactly the same. Neither Hawkins nor the Dealer Associations has presented any policy consideration which would remotely support their proposed interpretation of Chapter 320. And counsel is unaware of any other comparable statute that has been construed in the fanciful manner urged by Hawkins and the Dealer Associations.

E. Absurd and Unconstitutional Interpretations of Statutes Should be Avoided.

Hawkins and the Dealer Associations argue for a reading of Chapter 320 that would mean that Ford could not object to a 100% sale of stock in a dealership on the basis of the transferee's poor financial or business qualifications. Under their proposed reading of the statute, if Ford properly objected to a proposed transferee in an asset buy-sell based on lack of business qualifications under § 320.643(1), the parties could simply restructure their deal as a 100% stock sale and Ford would then be stuck with the unqualified proposed transferee. Thus, Ford (and other automobile manufacturers) could be required to contract with individuals and

to entrust them with the company's trademarks and reputation, without any ability to screen out those who were demonstrably inept, wholly without capital, had a history of business failures and disastrous sales and customer relations, or lacked automotive experience or any other important business qualifications, as long as those persons could not be proven to be of bad moral character.

Hawkins' reading would thus have absurd and harsh consequences, and would be based on an unsupportable distinction. Because that reading is not required, it must be avoided. *See St. Petersburg v. Siebold*, 48 So. 2d 291, 294 (Fla. 1950). *Cf. also Mercedes-Benz of N. Am., Inc. v. Department of Motor Vehicles*, 455 So. 2d 404, 410 (Fla. 2d DCA 1984) ("Courts are not required to give a statutory provision a literal meaning where to do so would result in an almost absurd interpretation"), *rev. denied*, 462 So. 2d 1107 (Fla. 1985).

Further, if Hawkins' construction were the law, it would be an unconstitutional impairment of Ford's ability to contract, a denial of due process, and a denial of equal protection. It would destroy the opportunity for Ford to apply any meaningful business standards in selecting those with whom it would be contractually required to do business. *See Shevin v. International Inventors, Inc.*, 353 So. 2d 89, 93 (Fla. 1977) (invalidating statute as unconstitutionally vague and, in the alternative, as impairing "the right to do

business and to contract free from unreasonable government regulation” in violation of the Florida and U.S. constitutions).

Fortunately, for the foregoing reasons, the unconstitutional reading of the statute urged by Hawkins and the Dealer Associations is unnecessary. The principles of statutory construction provide that “%if a statute can be made constitutionally definite by a reasonable construction the court is under a duty to give it such a construction.&” *Magwood v. Smith*, 791 F.2d 1438, 1446 (11th Cir. 1986), *(quoting United States v. Thomas*, 567 F.2d 299, 300 (5th Cir. 1978)). Courts have repeatedly held that "as between two possible interpretations of a statute, by one of which it would be unconstitutional and by the other valid, our plain duty is to adopt [the one] which will save the act." *NLRB v. Jones & Laughlin Steel Corp.*, 301 U.S. 1, 30 (1937). For this additional reason, Hawkins’ and the Dealer Associations’ proposed reading of the statute must be rejected.

II. HAWKINS AND RIPLEY LACK STANDING TO SUE.

Hawkins and Ripley were proposed transferees, not the selling dealer, in the transaction at issue here. This Court should hold as a matter of Florida law that proposed transferees lack standing under Chapter 320 to challenge a manufacturer's decision not to approve the proposed transfer.

The Eleventh Circuit panel did not address this issue because it was bound, as a procedural matter, by the decision of a prior Eleventh Circuit panel in *Mike Smith Pontiac, GMC, Inc. v. Mercedes-Benz of N. Am., Inc.*, 32 F.3d 528, 531 (11th Cir. 1994), *cert. denied*, 516 U.S. 1044 (1996). Ford has preserved this issue by raising it in both the district court and the court of appeals. Moreover, the Eleventh Circuit's certification order states that the court's "statement of the question to be certified is intended as a guide and is not meant to restrict the scope of inquiry by the Supreme Court of Florida." *Hawkins v. Ford Motor Company*, 135 F.3d 1443, 1445 (11th Cir. 1998). Whether prospective transferees have standing under the Florida statute is an important issue of first impression in Florida, is squarely before this Court, and should be resolved before the merits of Hawkins' claims can be considered. *See Mike Smith*, 32 F.3d at 535 (Hill, J., dissenting) (standing issue was one of several "important, heretofore undecided, questions of Florida law and should be certified to the Florida Supreme Court").

Chapter 320 provides a right of action against an automobile manufacturer by "[a]ny person who has suffered pecuniary loss or who has been otherwise adversely affected because of a violation by a licensee of Secs. 320.60-320.70." § 320.697, Fla. Stat. The *Mike Smith* majority opinion focused solely on the phrase "any person" in § 320.697 to find that a would-be purchaser had standing under this provision. 32 F.3d at 531. In so doing, the court failed to apply the rules of statutory construction that full effect should be given to all statutory provisions and related statutory provisions should be construed in harmony with one another. *See Forsythe, supra*, 604 So. 2d at 455.

The *Mike Smith* majority also failed, as the dissent pointed out, to analyze the implications of its reading of § 320.697: if, "literally, any person damaged may sue[, d]o we include prospective managers and employees of transferees, building contractors engaged to construct the new dealership facilities, and others?" *Mike Smith*, 32 F.3d at 535 (Hill, J. dissenting). Finally, the *Mike Smith* majority neglected to address, let alone distinguish, the numerous cases reaching the opposite result on the standing issue.

Nearly every court that has addressed the issue has concluded that proposed transferees lack standing to sue under state statutes similar to Florida's. *See Key v. Chrysler Motors Corp.*, 918 P.2d 350 (N.M. 1996) (New Mexico dealer act, which provided that "any person" injured by violation of act could sue, did not allow claim

by prospective transferee); *Roberts v. General Motors Corp.*, 643 A.2d 956, 958-59 (N.H. 1994) (prospective franchisee had no claim under New Hampshire dealer act, despite language affording remedy to "any person" injured); *see also Pung v. General Motors Corp.*, 573 N.W.2d 80 (Mich. Ct. App. 1997) (proposed transferee lacked standing to sue under Michigan dealer law); *Tynan, supra*, 591 A.2d at 1027-31 (same; New Jersey statute), *rev'd in part on other grounds*, 604 A.2d 99 (N.J. 1992) (per curiam); *Knauz v. Toyota Motor Sales, USA, Inc.*, 720 F. Supp. 1327 (N.D. Ill. 1989) (same; Illinois law); *Statewide Rent-A-Car, supra,* 704 F. Supp. at 184-85 (same; Montana statute); *Beard Motors, Inc. v. Toyota Motor Distribs., Inc.*, 480 N.E.2d 303, 306-07 (Mass. 1985) (same; Massachusetts statute); *cf. Empire Distribs., Inc. v. Schieffelin & Co.*, 677 F. Supp. 847, 858-60 (W.D.N.C.) (wine wholesaler seeking to acquire another wholesaler's business lacked standing under North Carolina wine franchise act), *aff'd*, 859 F.2d 1200 (4th Cir. 1988).

These courts have recognized that state "dealer laws" regulate the relations between manufacturers and dealers and between dealers and consumers -- *not* between manufacturers and prospective transferees. "The clear intent of the non-consumer-oriented provisions is to protect the investment and property interests of those who are already dealers." *Roberts*, 643 A.2d at 959; *see also Beard Motors*, 480 N.E.2d at 306 ("It is clear from a reading of

[the Massachusetts dealer statute] as a whole that the intention of the Legislature was to protect motor vehicle franchisees and dealers . . ."); *Statewide Rent-A-Car*, 704 F. Supp. at 185 ("Montana's Automobile Dealership Law was intended to protect a franchisee who relies on a long-standing course of dealing with a franchisor."). Because prospective transferees have not yet made an investment in a dealership, the protections of the dealer laws do not -- and need not -- extend to them. *Pung*, 573 N.W.2d at 81. Moreover, the injuries alleged by a disappointed prospective transferee -- loss of anticipated profits from the sale of motor vehicles and the capital appreciation of the value of the dealership -- simply "are not injuries within the area of legislative concern that resulted in the enactment" of state dealer laws. *Beard Motors*, 480 N.E.2d at 306.

Like other state dealer laws, Florida's Chapter 320 is a web of regulations "enacted to facilitate the legislative intent of ensuring fair dealing between motor vehicle manufacturers, motor vehicle dealers, and motor vehicle consumers." *Dick Winning Chrysler-Plymouth of Fort Myers, Inc. v. Chrysler Motors Corp.*, 750 F.2d 895, 898 (11th Cir. 1985); *see also* § 320.605, Fla. Stat. (explaining legislative intent to "protect the public health, safety, and welfare of the citizens of the state"); *Bill Kelley Chevrolet, Inc. v. Calvin*, 322 So. 2d 50, 52 (Fla. 1st DCA 1975), *cert. den. mem.*, 336 So. 2d 1180 (Fla. 1996). Proscribed conduct

on the part of dealers includes, *inter alia*, requiring consumers to purchase physical damage insurance or unordered options; representing used or demonstrator vehicles as new; failing to provide an odometer disclosure statement; requiring consumers to finance purchases with any specific financing entity; and failing to disclose pre-sale damage to vehicles. § 320.27, Fla. Stat.

For their part, manufacturers are prohibited from terminating the franchise relationship without 90 days' notice; establishing a new franchise within an existing market area without following certain notice procedures; operating "company stores" except under certain circumstances; and failing to compensate dealers appropriately for warranty work. §§ 320.641, 320.642, 320.645, Fla. Stat. Manufacturers also are prohibited from imposing unreasonable restrictions on dealers' attempts to transfer their dealerships, §§ 320.643, 320.644, Fla. Stat., but these provisions -- along with the rest of the regulatory framework -- are intended to protect *dealers*, not prospective dealers who are strangers to the franchise relationship.[4] Chapter 320 does not govern manufacturers' dealings with prospective franchisees, does not create any independent right to acquire a dealership, and thus does

[4] Indeed, the only party with standing to challenge Ford's refusal to approve the transfer is the selling dealer who sold the dealership to another buyer and has not filed suit.

not supply a cause of action for unsuccessful franchise applicants like Hawkins and Ripley.

That Mr. Hawkins operates a Lincoln-Mercury dealership in Tallahassee (and other dealerships) does not alter this result, because Hawkins remains merely a *prospective* dealer with respect to the Wilson Davis Ford dealership at issue here. The New Mexico and Michigan courts have addressed the same factual scenario presented here -- an existing dealer attempting to acquire a second franchise with the same manufacturer -- and have held that the plaintiffs lacked standing to sue the manufacturer. *See Key*, *supra*, 918 P.2d 350; *Pung*, *supra*, 573 N.W.2d 80.

In *Pung*, a Chevrolet dealer who sought to expand his existing business by purchasing an Oldsmobile/AMC franchise sued General Motors under the Michigan Dealer Act for unreasonably withholding consent to the transfer. *Pung*, 573 N.W.2d at 81. The Michigan court held that the Michigan act "provides no remedy to an unsuccessful proposed purchaser, regardless of whether it is an existing dealership or not." *Id.* at 82. This was because, "the [Michigan act] is designed to prevent a manufacturer from abusing those with whom it has chosen to do business, but does not abrogate the manufacturer's right to choose with whom to do business." *Id.*

Likewise, in *Key*, the New Mexico Supreme Court ruled that an existing Chrysler Corporation franchisee who sought unsuccessfully to purchase another Chrysler franchise, had no claim against

Chrysler under the New Mexico dealer act. *Key*, 918 P.2d at 352-53. The facts of *Key* and *Pung* are materially indistinguishable from the facts of this case, and the same result should apply here: Hawkins' present ownership of a Lincoln-Mercury franchise cannot cloak him with standing to challenge Ford's actions with respect to a different franchise in which he has no ownership interest.

Aside from the Eleventh Circuit in *Mike Smith*, counsel is aware of only two other courts which have expressly ruled that prospective transferees have standing to sue manufacturers. *See Bertera Chrysler Plymouth, Inc. v. Chrysler Corp.*, ___ F. Supp. ___, No. Civ. A. 97-30224-FHF, 1998 WL 25751 (D. Mass. Jan. 12, 1998); *Big Apple BMW, Inc. v. BMW of N. Am., Inc.*, 974 F.2d 1358 (3d Cir. 1992), *cert. denied*, 507 U.S. 912 (1993). Those cases, however, involved different allegations and materially different statutes and thus have no bearing on this litigation.

In *Bertera*, a federal district court concluded that an existing Chrysler dealer (Bertera) had standing to challenge Chrysler's decision to award a second, nearby franchise that was for sale, not to Bertera, but to another local Chrysler dealer. The court recognized the general rule that prospective transferees lack standing under dealer laws. *Bertera*, 1998 WL 25751 at *4. The court found, however, that Bertera had standing because he alleged not merely lost opportunities for expansion (as Hawkins and Ripley claim here), but also increased competition from the dealer

who was awarded the franchise -- *i.e.*, an injury to an existing franchise relationship explicitly protected under the dealer laws. *Id.* at *5. *Bertera* does not help Hawkins, whose claim in this case -- concerning the Wilson Davis dealership in Plant City -- has nothing to do with any alleged harm to his Lincoln-Mercury franchise in Tallahassee.

Nor is *Big Apple BMW* helpful to Hawkins. That case involved the Pennsylvania act, which provided for a right of action on the part of "any person who is or may be injured by a violation of a provision of this act" *or* "any party to a franchise who is injured in his business or property by a violation of the act." 63 PA. STAT. § 818.20(a). The Pennsylvania act's explicit distinction between "any party to a franchise" and "any person" injured by a violation prompted the court in *Big Apple BMW* to interpret the "any person" provision expansively to include non-parties to the franchise relationship, *i.e.*, unsuccessful franchise applicants. 974 F.2d at 1382-83. The Florida statute, of course, is worded differently and does not permit the same interpretation.

In sum, Chapter 320 addresses the relationship between automobile manufacturers, dealers, and consumers. It neither regulates manufacturers' relations with proposed transferees nor provides any independent right to acquire a dealership. Accordingly, Hawkins and Ripley lack standing under the Florida

statute to challenge Ford's decision to object to the proposed transfer of Wilson Davis Ford to them.

CONCLUSION

For the foregoing reasons, and those set out in the brief of Amici AAMA and AIAM, Ford respectfully requests that this Court answer the certified question, "No" and in addition hold that Hawkins and Ripley lack standing to pursue this claim.

Respectfully submitted, this _____ day of April, 1998.

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