IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE
TWENTIETH JUDICIAL DISTRICT, DAVIDSON COUNTY

GREG GONZALES, solely in his capacity as Commissioner of the TENNESSEE DEPARTMENT OF FINANCIAL INSTITUTIONS, Plaintiff, v. ORION FEDERAL CREDIT UNION, a federally chartered credit union, FINANCIAL FEDCORP, INC., a Tennessee corporation, and FINANCIAL FEDERAL BANK, a Tennessee state-chartered bank and wholly-owned subsidiary of FINANCIAL FEDCORP, INC. Defendants.	)	No. 21-1037-I

MEMORANDUM AND ORDER ON CROSS MOTIONS FOR PARTIAL SUMMARY JUDGMENT

This matter came before the Court for hearing on May 4, 2022, on Plaintiff's *Motion for Summary Judgment*, Defendant Orion Federal Credit Union's *Motion for Summary Judgment*, and Defendants Financial FedCorp, Inc. and Financial Federal Bank's *Motion for Summary Judgment*. Participating in the hearing were Senior Assistant Attorney General Timothy R. Simonds, representing Plaintiff Greg Gonzales, Commissioner of the Tennessee Department of Financial Institutions (the "Department"), Attorney W. Scott Sims, representing Defendant Orion Federal Credit Union ("Orion"), and Attorney Brigid Carpenter, representing Defendants Financial FedCorp, Inc. ("FedCorp") and Financial Federal Bank (the "FFBank") (collectively, "FinFed Defendants").

I. BACKGROUND AND STATEMENT OF CASE

This case involves the Department's challenge to a proposed transaction by Orion, a federal credit union, to purchase all or substantially all of the assets and assume the liabilities of FFBank, a Tennessee state-chartered bank that is wholly-owned by FedCorp. The Department contends the proposed transaction constitutes an acquisition of a bank under the Tennessee Banking Act, Tenn. Code Ann. § 45-2-107(a)(2), and Orion, as a federally chartered credit union, is not authorized to acquire FFBank under § 45-2-107(a)(3) of the Banking Act.

Defendants contend the transaction is not prohibited because the term "acquire" or "acquire a bank" is limited to the acquisition of a bank as an entity by acquiring the bank's stock or charter. They argue the Department has construed "acquire" for purposes of the Banking Act too broadly, and the term does not extend to Orion's proposed purchase of the assets and assumption of the liabilities of FFBank.

The Department filed this action under the Banking Act, Tenn. Code Ann. § 45-1-107(a)(6) and § 45-2-107(a)(4), and the Declaratory Judgment Act, Tenn. Code Ann. § 29-14-101, *et seq.* The Department initially moved for a temporary injunction, as authorized under the Banking Act and Rule 65.04 of the Tennessee Rules of Civil Procedure, which Defendants opposed. The Court entered a temporary injunction on November 17, 2021, enjoining the Defendants from completing the proposed transaction in order to maintain the status quo pending a decision on the merits.

Defendants answered the complaint, and the parties engaged in discovery.[1] The Department, Orion, and the FinFed Defendants filed their respective motions for summary

[1] Defendants filed a *Joint Motion to Compel the Production of Documents*, which the Court granted in part and denied in part. *See* April 4, 2022 Order. The Department sought and was granted a Tenn. Rule of App. P. 10 Application for Extraordinary Appeal by Permission of the Tennessee Court of Appeals on the April 4, 2022 Order. By Order entered April 12, 2022, this Court entered the parties' Agreed Order for Partial Stay of the Court April 4, 2022 Order, pending the Rule 10 appeal. *See* April 12, 2022 Order.

judgment, each party contending that there are no material facts in dispute and each is entitled to summary judgment in its favor under Rule 56 of the Tennessee Rules of Civil Procedure.

For the reasons discussed below, the Court concludes that there are no genuine issue of disputed material facts[2] and, as a matter of law, the proposed asset purchase transaction is not a prohibited transaction under Tenn. Code Ann. §45-2-107(a). Accordingly, Department's motion for summary judgment should be denied, and Defendants' respective motion for summary judgment should be granted.

II. SUMMARY JUDGMENT STANDARDS

"Summary judgment is appropriate when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Tenn. R. Civ. P. 56.04; *Rye v. Women's Care Center of Memphis, MPLLC*, 477 S.W.3d 235, 250 (Tenn. 2015). In determining if summary judgment is appropriate, trial courts must decide "(1) whether a *factual* dispute exists; (2) whether the disputed fact is *material* to the outcome of the case; and (3) whether the disputed fact creates a *genuine* issue for trial." *Byrd v. Hall*, 847 S.W.2d 208, 214 (Tenn. 1993) (emphasis in original). A disputed fact is "material" if it is one that "must be decided in order to resolve the substantive claim or defense at which the motion is directed." *Id.* at 215. Irrelevant or unnecessary facts are not material. *Rye*, 477 S.W.3d at 251. Disputed, material facts do not include "mere legal conclusions" to be drawn from those facts. *Byrd*, 847 S.W.2d at 215. A "genuine issue" exists when "a reasonable jury could legitimately resolve that fact in favor of one side or the other." *Id.*

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[2] The Department, in response to Orion's statement of undisputed facts, submitted additional undisputed facts, instead of additional *disputed* facts as contemplated by Rule 56.03. *See* Orion's Resp. to Comm'r Addt'l Stmt. of Facts. Even if otherwise proper, the Court finds the additional fact statements regarding the Commissioner's conversations with others in the banking and credit union industries about Orion's proposed purchase transaction of FFBank's assets are not material to the question of law presented.

In deciding a motion for summary judgment, the court must "take the strongest legitimate view of the evidence in favor of the nonmoving party." *Id.* at 210. Further, the court does not weigh competing evidence, but overrules a motion for summary judgment when there is a genuine dispute as to any material fact. *Id.* at 211. "Mere conclusory generalizations will not create a material factual dispute." *Davis v. Campbell*, 48 S.W.3d 741, 747 (Tenn. 2001). "If the evidence and inferences to be reasonably drawn from the evidence would permit a reasonable person to reach only one conclusion, then there are no material factual issues in dispute and the question can be disposed of as a matter of law." *Id.* (internal citations omitted). Conversely, however, "[i]f reasonable minds could justifiably reach different conclusions based on the evidence at hand, then a genuine question of fact exists." *Id.* Even where it appears that the parties have no disputes regarding the material facts, if they disagree about the inferences and conclusions to be drawn from those facts, summary judgment is precluded. *See CAO Holdings, Inc. v. Trost*, 333 S.W.3d 73, 87 (Tenn. 2010); *Price v. Mercury Supply Co., Inc.*, 682 S.W.2d 924, 929 (Tenn. 1984).

Cross motions for summary judgment are claims by each side that he or she alone is entitled to summary judgment. *CAO Holdings*, 333 S.W.3d at 83. A court is to rule on each party's motion "on an individual and separate basis." *Id.* (citations omitted). The denial of one motion for summary judgment does not necessarily require the grant of the other party's motion. *Id.*

III. ANALYSIS

The parties agree the central issue presented in this case is one of statutory interpretation of §45-2-107(a) of the Tennessee Banking Act (the "Banking Act"), and it is a question of first impression in Tennessee.

A. The Parties and the Proposed Transaction.

Plaintiff is the Commissioner of the Department and has regulatory authority over banks and other financial institutions under the Tennessee Banking Act, Tenn. Code Ann. § 45-2-101, *et*

seq. Under Tenn. Code Ann. § 45-1-107(a)(1), the Commissioner is granted the power to "[i]nterpret" chapter 1 and 2 of the Banking Act and "regulate banking practices." The Commissioner also is granted the authority under Tenn. Code Ann. § 45-1-107(a)(6) and has a statutory duty under Tenn. Code Ann. § 45-2-107(a)(4), to bring legal action and seek equitable relief to enjoin a proposed acquisition of a state-chartered bank if the transaction violates Tenn. Code Ann. §§ 45-2-107(a)(2) or (3).

Orion is a federally chartered credit union under Title 12, Chapter 14 of the United States Code, and is located in Shelby County, Tennessee. Orion states it has over $1 billion in total assets and is a not-for-profit entity owned by its members.

FFBank is a state-chartered bank under the Tennessee Banking Act, and is also located in Shelby County, Tennessee. It is a wholly-owned subsidiary of FedCorp, a Tennessee corporation. FFBank states that it holds approximately $526,000,000 in deposits in Tennessee.

On August 6, 2021, Orion entered into an agreement with FFBank and FedCorp to purchase the assets and assume the liabilities of FFBank.[3] In late August 2021, FFBank filed an application with its regulatory body, the Federal Deposit Insurance Corporation ("FDIC"), and Orion filed an application with its regulatory body, the National Credit Union Administration ("NCUA"), requesting federal regulatory approval of the proposed transaction. Upon receiving FDIC and NCUA approvals, Defendants plan to complete their purchase transaction and dissolve and terminate the existence of FFBank. At the time of the summary judgment hearing, federal regulatory approval remains pending, but review has been suspended until this lawsuit is resolved.

In reviewing the proposed transaction, the Department contends two questions must be answered: (1) does "acquire" as used in Tenn. Code Ann. § 45-2-107(a)(2) include the purchase

[3] The Purchase and Assumption Agreement between Orion and the FinFed Defendants was filed under seal with this Court. *See* Nov. 18, 2021 Order.

of all or substantially all of the assets and assumption of the liabilities of FFBank, and (2) if so, is Orion, as a federally chartered credit union, authorized to acquire FFBank, a Tennessee state-chartered bank, under Tenn. Code Ann. § 45-2-107(a)(3). The Department claims the purchase transaction is an acquisition, and Orion is not authorized to acquire FFBank under the Banking Act. The Department requests a declaration that Orion's proposed purchase of FFBank's assets is a prohibited transaction under the Banking Act and a permanent injunction against Defendants from proceeding with the transaction.

Defendants contend the asset purchase transaction is not the acquisition of a bank under Tenn. Code Ann. § 45-2-107(a)(2) and (a)(3), but is a purchase of substantially all of the assets of a bank, which is a permitted transaction under a different statutory provision governing the sale of assets, Tenn. Code Ann. § 45-2-609. As a result, Defendants submit the Court need not reach the second question.

B. Principles of Statutory Construction

Issues of statutory construction present questions of law. *Bryant v. Genco Stamping & Mfg. Co.*, 33 S.W.3d 761, 765 (Tenn. 2000). A court's duty in construing a statute is "to ascertain and give effect to the intention and purpose of the legislature." *Lipscomb v. Doe*, 32 S.W.3d 840, 844 (Tenn. 2000) (quotation omitted). Legislative intent is determined from "the natural and ordinary meaning of the language used, without forced or subtle construction that would limit or extend the meaning of the language." *Id.* (internal quotation omitted). Where the statute is clear and unambiguous, courts are to apply the plain language of the statute. *Id.*; *Carson Creek Vacation Resorts, Inc. v. Tenn. Dep't of Revenue*, 865 S.W.2d 1, 2 (Tenn. 1993). Where the statute is ambiguous, courts look to the entire statutory scheme and elsewhere to ascertain legislative intent and adopt a reasonable construction. *Eastman Chem. Co. v. Johnson*, 151 S.W.3d 503, 507 (Tenn. 2004) (citations omitted). "The statute must be construed in its entirety, and it should be assumed

that the legislature used each word purposely and that those words convey some intent and have a meaning and purpose." *Id.* The background, purpose, and circumstances of the words used are to be considered, without taking a word or few words from their context and determining their meaning in isolation. *Id.*

C. Relevant Provisions of the Tennessee Banking Act

The Tennessee Banking Act, Tenn. Code Ann. § 45-2-107(a), provides as follows regarding bank acquisitions:

> (2) No bank holding company or other banking institution ***shall acquire, form or control a bank***, as defined herein, unless the bank:
>
> (A) Accepts deposits in Tennessee that the depositor has a legal right to withdraw or demand; and
>
> (B) Engages in the business of making commercial loans in Tennessee.
>
> (3) No company that is not a bank holding company ***shall acquire, form or control a bank***.

Tenn. Code Ann. § 45-2-107(a)(2) and (a)(3) (emphasis added).

Section 45-2-107(a)(1) of the Banking Act defines "bank" as "any company that accepts deposits in Tennessee that are eligible for insurance under the Federal Deposit Insurance Act (12 U.S.C. § 1811 et seq.)." *Id.*, § 45-2-107(a)(1)(A). "Bank holding company" is defined as "any company that is a bank holding company (12 U.S.C. §1841 et seq.)."[4] *Id.*, § 45-2-107(a)(1)(B). "Banking institution" is defined as "any institution organized under this title, or under title 12, chapter 2 of the United States Code." *Id.*, § 45-2-107(a)(1)(C). "Company" is defined in accordance with the "meaning set forth in subsection 2(b) of the Bank Holding Company Act of

[4] Under 12 U.S.C. § 1841, federal law defines "bank holding company" as "any company which has control over any bank or over any company that is or becomes a bank holding company . . . ."

1956 (12 U.S.C. § 1841(b))."[5] Notably, the Banking Act does not define the term "acquire" or "acquire . . . a bank" for purposes of § 45-2-107(a).

Section 45-2-609 of the Banking Act regarding "Sale of Assets" provides:

> A bank may sell any asset in the ordinary course of business, but the sale of all or substantially all of the assets of a bank shall entitle dissenting shareholders to the rights provided by § 45-2-1309.

Tenn. Code Ann. § 45-2-609.

D. Meaning of "Acquire" or "Acquire a Bank" under the Banking Act.

In the absence of a specific statutory definition of "acquire" or "acquire a bank" within § 45-2-107, general principles of statutory construction apply. The meaning should be derived from the plain and unambiguous language used to give effect to the statute's legislative intent and purpose. The Department argues in support of a construction of "acquire" that would include the proposed transaction at issue here involving the purchase of all or substantially all of a state-chartered bank's assets for purposes of § 45-2-107(a)(2).

In support of its interpretation of the statutory term "acquire" or "acquire a bank," the Department first points to the Defendants' August 11, 2021 press release, announcing Orion's "*acquisition* of Financial Federal Bank of Memphis, Tennessee." The Department suggests the parties' own description of the transaction is "perhaps the best evidence" of the natural and ordinary meaning of "acquire." Defendants disagree, claiming that the language used in the press release was not precise language or agreed to by both Defendants.[6] In any event, Defendants argue the announcement, itself, is not material to the statutory construction question presented, where

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[5] The federal Bank Holding Company Act defines "company" broadly as "any corporation, partnership, business trust, association, or similar organization, or any other trust . . . ." 12 U.S.C. § 1841(b).

[6] The representative of the FinFed Defendants testified that they requested a change to the press release, specifying that the transaction was an asset purchase transaction, but the change was not made. The Court finds any dispute as to these facts is not material to the issue presented.

the Commissioner, himself, acknowledged in his deposition that he places no importance on press releases or public announcements and conducts his own review of proposed banking transactions. Further, it is undisputed in this case that each Defendant more particularly described the proposed transaction in their respective regulatory filings as the purchase of substantially all of the assets and assumption of liabilities of FFBank. The Court does not consider the public announcement to be material to the issue presented.

Defendants next rely on the definition of "acquire" in Black's Law Dictionary (11th ed. 2019), which is "to gain possession or control of; to get or obtain," as including Defendants' proposed asset purchase transaction, but this definition provides little guidance. In purchasing the assets of FFBank, Orion is acquiring ownership or control of those assets, but the definition does not answer the more specific question of whether Orion is acquiring ownership or control of a bank under the Banking Act. The Department continues that, if the proposed transaction is completed, FFBank will cease to exist and its operations, customers, employees, and substantially all of FFBank's assets will be in the possession and control of Orion and, under the Department's administrative rules, FFBank's certificate of authority "shall become null and void." Tenn. Comp. R & Regs. 0180-07-.03(13).[7] The Department is correct that upon purchasing FFBank's assets Orion will own those assets, it overlooks the remainder of the Rule regarding the voiding of the certificate of authority only where substantially all of the assets are purchased "***without acquiring the charter.***" *Id.* The Department's administrative rule seems to recognize the distinction to be drawn between the purchase of substantially all of the assets of a bank ***without the acquisition of the charter*** (which voids the bank's certificate of authority), as contrasted with a transaction ***with the acquisition of the charter*** (which presumably would leave the bank's certificate of authority

[7] Rule 0180-07-.03(13) provides that a bank's certificate of authority "shall become null and void whenever substantially all of the assets of a bank are purchased without acquiring the charter."

in effect). The Court finds the administrative rule undercuts rather than supports the Department's construction of the term "acquire a bank."

Moving away from its plain language arguments, the Department turns to the statutory definitions of "acquire" included in other chapters of Title 45, including the Bank Structure Act of 1974, Tenn. Code Ann. § 45-2-1402, and the Reciprocal Savings Institution Act. *Id.*, § 45-3-1402. The Department contends these other definitions, which expressly include asset purchases, lend support to applying a more expansive definition of "acquire" for purposes of the Banking Act. The Bank Structure Act specifically defines the "acquisition of a branch" of a bank as "the acquisition of all or substantially all of the assets other than loans, cash or securities and the assumption of all or substantially all of the liabilities of . . . a branch . . . without the acquisition of the entire bank. *Id.*, § 45-3-1402(1). The Reciprocal Savings Institution Act sets forth multiple, specific definitions of "acquire," including "the direct or indirect acquisition of all or substantially all of the assets of an association or savings and loan holding company." *Id.*, § 45-3-1402(1)(C).

In response, Defendants argue the canon of statutory construction, *expressio unius est exclusion alterius*, applies to defeat the Department's reliance on other statutes in construing § 45-2-107(a): that is, the General Assembly's expression of one thing implies its intended exclusion of others. *See Effler v. Purdue Pharma L.P.*, 614 S.W.3d 681, 688 (Tenn. 2020) (courts must "presume[e] that the Legislature means what it says – and does not mean what it does not say"). Thus, by including a specific definition of "acquire" that expressly includes asset purchase transactions in other banking statutes, but not similarly defining the term "acquire" in another context, such as § 45-2-107(a) of the Banking Act, the legislature intended the two terms to have different meanings. *See Coffman v. Armstrong Int'l, Inc.*, 615 S.W.3d 888, 894 (Tenn. 2021); *State v. Welch*, 595 S.W.3d 615, 623 (Tenn. 2020).

The Department replies that a different canon of statutory construction, *in pari materia*, supports its position that the more specific definitions of acquisition set forth in the other banking statutes, which expressly include asset purchase transactions, should be read into § 45-2-107(a) of the Banking Act: that is, where two or more statutes relate to the same subject, a court should take those statutes together and consider the other statutes when construing any one of them. *Lyons v. Rasar*, 872 S.W.2d 895, 897 (Tenn. 1994). While all three statutes appear in Title 45 relating to financial institutions, each statute appears in a different act under Title 45 – the Banking Act, the Bank Structure Act of 1974, and the Reciprocal Savings Institution Act – and the Court declines to read into the Banking Act the definitions appearing in two other Acts.

The Department's acceptance of a more specific definition of acquire in some contexts, as contrasted with § 45-2-107(a) of the Banking Act, is further reflected in the Department's administrative rules regarding acquisitions in general. Tenn. Comp. R. & Regs. 0180-15-.01 to -.06. These rules define "acquire" to include, for example, the "direct or indirect acquisition by a financial institution holding company of all or substantially all of the assets of another financial institution holding company or of a financial institution;" or the "acquisition by a bank holding company of direct or indirect ownership or control of voting shares of another bank holding company or bank . . . ." The Department's Rules recognize the difference between asset purchase acquisitions on the one hand and acquisitions of voting shares on the other hand.

The Court concludes the inclusion of one express definition of "acquire" under the Bank Structure Act and the inclusion of another express, but different, definition of "acquire" under the Reciprocal Savings Institution Act, when contrasted with the omission of any definition of acquire for purposes of he Banking Act, leads to the conclusion that the legislature intended different meanings, tailored to the purpose of each Act. The Court declines to read the term "acquire" for purposes of Tenn. Code Ann. § 45-2-107(a)(2) as including purchases of all or substantially all of

the assets" of a bank, where the General Assembly knew how to define that term for purposes of other banking statutes, but omitted any definition of "acquire" or "acquire a bank" from § 45-2-107(a).

Finally, the Department turns to federal statutes and regulations governing activities of federal banks, credit unions and other federal institutions to support its construction of "acquire." The Department cites 12 U.S.C. § 1823(f)(8), regarding the FDIC, which defines acquire as including acquisition of shares, acquisition of assets and assumption of liabilities, and mergers and consolidations. *See also* 12 U.S.C. § 1467a(a)(1)(j); 12 U.S.C. § 215c(d); 12 U.S.C. § 1842(a). To the extent federal statutes and regulations are persuasive on this issue and for the same reasons discussed above, the Court finds the more specific and broader definitions used under federal law undermines extending those definitions to the term "acquire" under the Banking Act, where the term "acquire" and "acquire a bank" are undefined and left to their plain and ordinary meaning.

Defendants' arguments in opposition to the Department's motion and in support of their own summary judgment motions mirror their respective positions as discussed above. Defendants argue that the term "acquire" should be limited to the acquisition of a bank as a corporate entity, by acquiring its charter or stock. They contend the language of the statute should not be not extended or enlarged beyond the plain meaning of the term used, "acquire a bank," so as to include the purchase of all or substantially all of a bank's assets. Like the Department, the Defendants also cite to Black's Law Dictionary's definition of "acquire" in support their position, meaning "to gain ownership of," "come to have," or "get as one's own." Defendants also point to the corporate world of mergers and acquisitions and the provisions of the Tennessee Corporation Act, which recognize that the purchase of all or substantially all of a company's assets is a purchase transaction and not an acquisition of the company itself.

Defendants' position is grounded in the general powers granted to banks under Tenn. Code Ann. § 45-2-609, which permit banks to "sell any asset in the ordinary course of business," including the sale of "all or substantially all of the assets of a bank" subject only to dissenting shareholders rights provided by § 45-2-1309. Defendants point out that the Department has largely ignored this provision of the Banking Act. In addition, the FinFed Defendants rely on the Department's response to their Statement of Undisputed Material Facts ("FinFed's SUMF"), in which the Department acknowledged it had approved or did not object to other asset purchase transactions where either Tennessee state-chartered banks or out-of-state banks acquired all or substantially all of the assets of Tennessee state-chartered banks through merger. *See* Pltf's Resp. to FinFed's SUMF, ¶¶ 10, 11.[8] In this case, FFBank is a wholly-owned subsidiary of FedCorp, and FedCorp—as the sole shareholder—has consented to the sale of all or substantially all of the assets of FFBank to Orion. The legislature could have included a limitation in § 45-2-609 on the types of entities permitted to purchase the assets of a state-chartered bank, but it did not do so.

Defendants further argue that the Court should not defer to the Commissioner's interpretation of Tenn. Code Ann. § 45-7-107(a); notwithstanding his authority to interpret chapters 1 and 2 of Title 45 and regulate banking practices. Courts generally defer to a state agency's interpretation of its own administrative rules, based on respect for the agency's knowledge, expertise and experience. *Pickard v. Tenn. Water Quality Control Bd.*, 424 S.W.3d 511, 522 (Tenn. 2013). And while an agency's interpretation of controlling statutes is entitled to due consideration, it "remains a question of law subject to *de novo* review," and is not binding on the courts. *Id.* at 523 (citations omitted).

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[8] The Department disputed the statements as worded, but acknowledged its prior responses to interrogatory no. 3, on which the statements were based.

Finally, Defendants argue that the Department's interpretation of § 45-2-107(a) does not comport with the purposes of the Banking Act, because that interpretation expands the language of the statute to prohibits a transaction that the Generally Assembly did not intend to prohibit. Defendants highlight the Commissioner's deposition testimony stating that the purpose of the Banking Act is to ensure a safe and sound banking system in Tennessee and nothing in the record establishes that the purpose of the Banking Act will not be served by allowing this asset purchase transaction.

The statutory construction to be given the term "acquire" or "acquire a bank" for purposes of § 45-2-107(a) is a question of law. The Court construes the plain language of that term as limited to the acquisition of a bank as a corporate entity, and does not extend to the purchase of all or substantially all of the assets of a bank. Instead, the sale of bank's assets is otherwise provided for in § 45-2-609, which permits a bank to sell all or substantially all of its assets without limitation as to the acquiring entity, subject only to the rights of dissenting shareholders. To the extent the term "acquire" or "acquire a bank" is deemed ambiguous, the Court relies on sound principles of statutory construction that the exclusion of any definition of "acquire" or "acquire a bank" for purposes of § 45-2-107(a), but the inclusion of specific definitions in other banking statutes, leads to the conclusion that a different definition was intended in § 45-2-107(a). Finally, while the Court has considered the Department's interpretation of "acquire" or "acquire a bank" for purposes of § 45-2-107(a), that interpretation is not controlling and the statutory construction issue remains a question of law. Accordingly, the Court concludes that the proposed asset purchase transaction is not a prohibited transaction under § 45-2-107(a)(2).

E. Is Orion Authorized to Acquire FFBank?

According to the Department, the remaining question, whether Orion as a federally chartered credit union is authorized to acquire FFBank under Tenn. Code Ann. § 45-2-107(a)(3),

needs to be addressed only if Orion's proposed asset purchase transaction is deemed to be an acquisition of a bank for purposes of § 45-2-107(a)(2).[9]

Having found Defendants' proposed transaction is not an acquisition of a bank for purposes of subsection (a)(2), but is the purchase of FFBank's assets without acquiring the bank's stock or charter, the same analysis applies to subsection (a)(3). As a result, subsection (a)(3) does not apply to the proposed asset purchase transaction.

IV. CONCLUSION

Based on the foregoing, the Court concludes under Rule 56 of the Tennessee Rules of Civil Procedure that there are no genuine issues of disputed material facts, and the central issue presented is a question of law under the Banking Act. The Court construes the term "acquire" or "acquire a bank" for purposes of Tenn. Code Ann. § 45-2-107(a)(2) and (a)(3) as limited to the acquisition of a bank, by acquiring its charter or stock, and does not include the purchase of all or substantially all of the bank's assets. To hold otherwise, would be to expand or enlarge the meaning of the statute to include transactions not covered by the plain language used in the statute.

It is, accordingly, ORDERED, ADJUDGED and DECREED that Plaintiff's *Motion for Summary Judgment* is hereby DENIED.

It is further ORDERED, ADJUDGED and DECREED that Defendant Orion Federal Credit Union's *Motion for Summary Judgment* and Defendants Financial FedCorp Inc. and Financial Federal Bank's *Motion for Summary Judgment* are hereby GRANTED.

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[9] Orion also challenges the Department's position that a federally chartered credit union is prohibited from purchasing the assets of a state chartered bank on the grounds of federal preemption. Orion contends that the Federal Credit Union Act permits federally chartered credit unions to purchase the assets of state-chartered banks, 12 U.S.C. § 1757 (granting federal credit unions the power to contract and to purchase, hold and dispose of property necessary or incidental to its operations), and would preempt state law. The Court does not reach this argument.

It is further ORDERED, ADJUDGED and DECREED that the November 17, 2021 Temporary Injunction Order is hereby VACATED.

It is further ORDERED, ADJUDGED and DECREED that this Memorandum and Order is hereby entered as a final judgment pursuant to Rule 58 of the Tennessee Rules of Civil Procedure.

PATRICIA HEAD MOSKAL
CHANCELLOR, PART I

CLERK'S RULE 58 CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing is being forwarded by U.S. Mail, first-class, postage prepaid, with a courtesy copy by electronic mail, to the following:

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