

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
MUNICIPAL DEPARTMENT, FIRST DISTRICT

Yuling Zhan, )  
Plaintiff )  
V. ) No: 04 M1 23226  
Napleton Buick Inc, )  
Defendant )

**PLAINTIFF’S ANSWER AND AFFIRMATIVE DEFENSE TO COUNTERCLAIM**

NOW COMES the plaintiff, YULING ZHAN, in support of her Answer and Affirmative Defense to defendant’s counterclaim, states as follows:

- A. Plaintiff filed the instant lawsuit on December 22, 2004 against a car dealership Napleton Buick Inc. (“Buick”). On June 23, 2005, Buick filed an untimely counterclaim. See Exhibit A. Plaintiff firmly believes all orders entered in November of 2005 should be void and null, and her Motion To Strike and Motion To Dismiss The Counterclaim are still pending.
- B. Answer to the counterclaim:
1. Plaintiff admits as to the extent that Buick is registered as a car dealership. But taking the counterclaim in whole, Buick and its counsel are pretending defendant being a storage facility. In reality, Buick is a business running a scam operation. Here, plaintiff incorporates paragraphs 1-101 and all Exhibits in her Amended Complaint.
  2. Plaintiff admits as to the extent she is a resident of Cook County. But here, Buick fails to realize plaintiff is also a consumer protected by Magnuson-Moss Act and Illinois Fraud Act.
  3. Plaintiff admits on September 4, 2003 she purchased a 1999 Ford Taurus from defendant.

4. Plaintiff admits as to the extent that she requested Buick towed back the car. But, here, defendant fails to elaborate why plaintiff made such request.
5. Plaintiff admits as to the extent Buick towed back the car, but defendant failed to elaborate why it did so.
6. Plaintiff has no comment on defendant admits it fails in anything.
7. Plaintiff denies defendant has any right to charge plaintiff such a fee. It is irrelevant how much defendant would routinely charge for fees. Here, plaintiff incorporates paragraphs 1-101 and all Exhibits in her Amended Complaint.
8. Plaintiff admits as to the extent Buick possesses the car since September of 2003.
9. Plaintiff denies Buick has a right to charge plaintiff \$19,620.00. No contract, no invoice, no notice. Here, plaintiff incorporates paragraphs 1-101 and all Exhibits in her Amended Complaint. In this paragraph, defendant provides the best evidence in support plaintiff's claims.
10. Plaintiff admits as to the extent she filed a lawsuit on several counts against defendant. Plaintiff incorporates paragraphs 1-101 and all Exhibits in her Amended Complaint. Here, Buick fails to elaborate what the "controversy" is. Every defendant has a "controversy" with the civil society when it really violates the law or breaks the rules, if such defendant and its counsel think they can make a profit or living from their wrongdoings and misconduct, it is a direct attack on our judicial system, and an insult to the legal profession.
11. Plaintiff admits as to the extent Buick possesses the car since September of 2003. Plaintiff denies she has any power to "force" defendant to do anything. Defendant has the duty to preserve evidence after plaintiff's revocation. It is the law and rules. See 810 ILCS 5/2-515 and IRPC 3.4.

12. Plaintiff denies the incorrect legal argument. It is Buick and its counsel, in their court filings, who suggested among other things, there is no private cause of action under Magnuson-Moss Act; revocation is not a viable claim under Magnuson-Moss Act, Illinois Fraud Act and Illinois UCC. Such outrageous contention is asserted in Buick's Motion to Dismiss And Strike filed on June 21, 2005. One motion, Buick's counsel filed it twice to the Court, and presented to three Judges on four occasions. In addition to an orally ruling "denied" by Honorable Judge Healy, there are two written orders on Buick's above-mentioned argument, one is "stricken" entered by Honorable Judge Healy on October 20, 2005, another is "denied" entered by Honorable Judge Davis on November 8, 2005.

Wherefore, plaintiff denies Buick has any right to demand judgment in its favor listed as (a)(b)(c)(d) purported in the counterclaim, and plaintiff is entitled to a judgment from the Honorable Court in her favor

C. Plaintiff's Affirmative Defense Pursuant to 735 ILCS 5/2-613(d)

**I. Affirmative Defense I: No Cause Of Action**

1. Buick fails to list any authority in its counterclaim.
2. 735 ILCS 5/2-608 states, in part, "Every counterclaim shall be pled in the same manner and with the same particularity as a complaint."
3. When Buick provides no cause of action, the counterclaim has no legal effect except it is the best evidence in support plaintiff's claims.
4. Here, plaintiff incorporates paragraphs 1-101 and all Exhibits in her Amended Complaint.

**II. Affirmative Defense II: No Set Of Facts In Support of The Counterclaim**

1. Buick is not a storage facility. In 2003 and 2004, plaintiff had an urgent need for a reliable car, she had no intention to contact a storage facility for anything.
2. 735 ILCS 5/2-608 states, in part, "Every counterclaim shall be pled in the same manner and with the same particularity as a complaint."
3. Buick fails to elaborate why plaintiff requested defendant to tow the car back
4. Buick fails to elaborate why it towed the car back
5. Buick fails to provide any contract, invoice or notice regarding the storage fee.
6. Buick has no right to charge plaintiff any fees. It is the plaintiff who is entitled for full relief listed in her Amended Complaint. Here, plaintiff incorporates paragraphs 1-101 and all Exhibits in her Amended Complaint.

**III. Affirmative Defense III: Violation Of A Court Order**

1. On June 8, 2005, a Court Order is issued, which set a deadline for Buick to file an Answer, counterclaim or other pleading.
2. Buick failed to file the instant counterclaim on or before June 22, 2005.
3. Buick did not request for leave from the Court to extend the deadline.
4. Therefore, the counterclaim has no legal effect except it is the best evidence in support plaintiff's claims. Here, plaintiff incorporates paragraphs 1-101 and all Exhibits in her Amended Complaint.

**IV. Affirmative Defense IV: Violation Of 735 ILCS 2-608(b)**

1. 735 ILCS 2-608(b) states, in part, "The counterclaim shall be a part of the answer, and shall be designated as a counterclaim."

2. On June 23, 2005, Buick did not file an Answer.
3. On November 28, 2005, Buick filed an Answer, which is legally and factually insufficient. There is nowhere to be found with a counterclaim in the Answer.
4. Therefore, the counterclaim has no legal effect except it is the best evidence in support plaintiff's claims. Here, plaintiff incorporates paragraphs 1-101 and all Exhibits in her Amended Complaint.

**V. Affirmative Defense V: Violation Of Illinois Supreme Court Rule (ISCR) 92 (b)**

1. ISCR 92(b) states in part "The award shall dispose of all claims for relief" in the Court annexed arbitration
2. Buick and its counsel did not present the counterclaim to the Arbitration Panel.
3. On August 24, 2005, during a hearing, a Buick counsel admitted Buick did not present the counterclaim to Arbitration Panel.
4. Therefore, the counterclaim has no legal effect except it is the best evidence in support plaintiff's claims. Here, plaintiff incorporates paragraphs 1-101 and all Exhibits in her Amended Complaint.

**VI. Affirmative Defense VI: Violation Of ISCR 137**

1. Illinois Supreme Court Rule 137 ("Rule 137") requires that every pleading, motion and other paper of a party shall not "interpose for any improper purpose, such as to harass or cause unnecessary delay or needless increase the cost of litigation".
2. In a letter dated May 17, 2005, Buick's counsel Ms. Elaine S. Vorberg ("Vorberg") wrote to plaintiff by suggesting "we hereby offer to repair the vehicle, putting into operable condition."
3. In the same letter Ms Vorberg indicated Buick and its counsel would file a counterclaim if plaintiff would not accept her offer.
4. At best, Buick and its counsel were trying to extract an unwarranted settlement by filing the instant counterclaim.

5. At worst, the counterclaim is a product of consumer fraud, collusion, and fraud upon a tribunal.
6. Therefore, the counterclaim has no legal effect except it is the best evidence in support plaintiff's claims. Here, plaintiff incorporates paragraphs 1-101 and all Exhibits in her Amended Complaint.

**VII. Affirmative Defense VII: Fraud Upon Tribunal**

1. The Arbitration Panel shall be considered as a tribunal according to American Bar Association. See ABA Model Rules of Professional Conduct, Rule 1.0 (m) (2004); ABA Formal Opinion 93-375 (Aug. 6, 1993), cited in ISBA Advisory Opinion 99-04 (Oct., 1999).
2. The Circuit Court of Cook County is a tribunal.
3. It is a material fact that Buick filed an untimely counterclaim in Court, and its face value was much greater than a defective car.
4. Buick's counsel Mr. Ryan Haas ("Haas") did not present the counterclaim to the Arbitration Panel.
5. Buick has not withdrawn its counterclaim in the Court, has not informed the Court in writing it did not present the counterclaim during arbitration.
6. Concealment of material facts constitutes fraud. Plaintiff reserves the right to amend her Complaint during or after discovery, adding the claim fraud upon tribunal, with leave of the Court.

**VIII. Affirmative Defense VIII: Violation of ISCR 201(k)**

1. On March 16, 2005, at plaintiff's surprise, Mr. Haas demanded car keys in the open court.
2. On March 16, 2005, Buick had not filed an Answer yet, and discovery could not start. Further, if there was a dispute in discovery, a written motion had to be filed.
3. Before, on and after March 16, 2005, Buick did not file a written motion, did not serve a notice of motion, did not serve certificate of service for demanding car keys.

4. Buick had no legitimate reason to demand the car keys, and it did not and could not file the instant counterclaim before receiving the car keys on April 1, 2005.
5. Plaintiff was surprised and prejudiced by the wrongdoings and misconduct from Buick and its counsel. Buick and its counsel have deprived plaintiff 's right to conduct the easiest and the fastest discovery in the future.

**IX. Affirmative Defense IX: Spoliation**

1. On February 28, 2005 and March 9, 2005, Buick's counsel Ms. Vorberg wrote two letters to plaintiff, asked for car keys.
2. On March 2 and March 14, 2005, plaintiff politely but explicitly persuaded Vorberg not to provide false statement.
3. Buick and its counsel did not need car keys in order to participate in joint inspection or settlement negotiation. They had never been honest in and out of the Court on this issue.
4. As late as April 4, 2005, just after Ms. Vorberg received the car keys, during a hearing presided by Honorable Judge Healy, plaintiff stated that she did not misuse the car. Ms. Vorberg concurred immediately: "that is right."
5. On April 15, 2005, Vorberg filed her Affidavit to the Court, volunteered to testify at trial as a witness. On May 17, 2005, contrary to her previous position, she contended in a letter sent to plaintiff: " any stalling of the vehicle may have been due to an insufficient amount of fuel in the vehicle."
6. Apparently, spoliation had taken place, to say the very least, plaintiff was surprised and prejudiced, and her right had been deprived to conduct a discovery in the fastest, most economic way. Plaintiff reserves the right to amend her Complaint during or after discovery, adding the claim spoliation, with leave of the Court.

**X. Affirmative Defense X: Laches**

1. Buick towed back the car in September 2003. In a letter and a fax dated September 9, 2005, Plaintiff requested Buick to respond in writing by fax in three days in order to solve the problem in one week. For more than two years, Buick has failed to do so.
2. For more than fifteen months, Buick shows no intention to solve the problem in any reasonable way; plaintiff was forced to file the instant lawsuit.
3. Buick did not mention storage fees before it possessed both the car and the keys. There is no contract, no invoice, and no notice whatsoever. Plaintiff was surprised and prejudiced by the outrageous wrongdoings and misconduct from Buick and its counsel
4. Therefore, Buick has no right to ask for storage fees. It is the plaintiff who is entitled for relief of consequential damage, for compensation of loss of use a car in three years.

**XI. Affirmative Defense XI: Violation of Magnuson-Moss Act 15 U. S. C §2301 et. seq. while playing tricks with the Buyer's Guide**

1. Playing tricks with the Buyer's Guide of a used vehicle is a per se violation of Magnuson-Moss Act.
2. Here, plaintiff incorporates paragraphs 1-101 and all Exhibits in her Amended Complaint.
3. The counterclaim has no legal effect except it is the best evidence in support plaintiff's claims. Storage fees have nowhere to be found either in original or modified Buyer's Guide.
4. State law governs this issue and the issue of remedies. Under Illinois Fraud Act and UCC, plaintiff is entitled to full relief listed in her Amended Complaint.

**XII. Affirmative Defense XII: Violation of Magnuson-Moss Act 15 U. S. C §2301 et. seq., Exclusion or Modification of Warranties, 810 ILCS 5/2-316, and Express Warranties 810 ILCS 5/2-313.**

1. Storage fees have nowhere to be found either in original or in a modified Buyer's Guide. The counterclaim has no legal effect except it is the best evidence in support plaintiff's claims.
2. Here, plaintiff incorporates paragraphs 1-101 and all Exhibits in her Amended Complaint.
3. State law and common law govern this issue and the issue of remedies.
4. Warranty is part of a contract. A party who materially breaches a contract cannot take advantage of the terms of the contract that benefit him, nor can he recover damages from the other party to the contract. See *Goldstein v. Lustig*, 154 Ill. App. 3d at 599, 507 N. E. 2d at 168

**XIII. Affirmative Defense XIII: Violation of Magnuson-Moss Act 15 U. S. C §2301 et. seq. and Implied Warranty of Merchantability UCC 810 ILCS 5/2-314 and 810 ILCS 5/2-315**

1. Here, plaintiff incorporates paragraphs 1-101 and all Exhibits in her Amended Complaint.
2. State law and common law govern this issue and the issue of remedies.
3. Whenever there is a written warranty, implied warranty cannot be disclaimed.
4. For the reasons stated in Affirmative Defense XII 4, Buick has no right to collect any storage fees. It is the plaintiff who is entitled to full relief listed in her Amended Complaint.

**XIV. Affirmative Defense XIV: Violation of Magnuson-Moss Act 15 U. S. C §2310(d), Revocation of Acceptance, UCC 810 ILCS 5/2-601 et. seq. and 810 ILCS 5/2-701 et. seq.**

1. Here, plaintiff incorporates paragraphs 1-101 and all Exhibits in her Amended Complaint.
2. State law governs this issue and the issue of remedies.

3. Plaintiff lost faith in the defective car in dispute, which put her life in danger once; also she lost faith in the way Buick had been doing business. Under UCC and Illinois Fraud Act, revocation is a remedy for consumers. See UCC 810 ILCS 5/2-601 et. seq., 810 ILCS 5/2-701 et. seq. and 815 ILCS 505/2 et seq.; *Siarabba v. Chrysler Corp.*, 173 Ill. App. 3d 57, 122 Ill. Dec. 870, 527 N. E. 2d 368 (1 Dist. 1988) ( a person claiming to be the victim of contract fraud may accept the contract and sue in tort on a fraud theory, \*\*\* or contend that he was induced to enter into the contract as a result of fraud and ask to have the contract rescinded and restitution ordered.)
4. Buick has no right to collect any storage fees. It is the plaintiff who is entitled to full relief listed in her Amended Complaint.

**XV. Affirmative Defense XV: Violation of the Illinois Consumer Fraud and Deceptive Business Practice Act 815 ILCS 505/2 et. seq.**

1. Here, plaintiff incorporates paragraphs 1-101 and all Exhibits in her Amended Complaint.
2. Buick and its counsel concealed the counterclaim to the Arbitration Panel, did not withdraw it in the Court; and Buick purposely withheld the information in the Court that it did not present it during arbitration. As a result, the counterclaim has no legal effect except it is the best evidence in support plaintiff's claims.
3. For the reasons stated here and in Affirmative Defense XIV (3), Buick has no right to collect any storage fees. It is the plaintiff who is entitled to full relief listed in her Amended Complaint.

**XVI. Affirmative Defense XVI: Violation Of Common Law Fraud**

1. Here, plaintiff incorporates paragraphs 1-101 and all Exhibits in her Amended Complaint.
2. Buick and its counsel have never been honest with the Court. They never inform the Court why they asked for car keys and what was the purpose of the instant counterclaim. As a result, the

counterclaim has no legal effect except it is the best evidence in support plaintiff's claims.

3. Therefore, Buick has no right to collect any storage fees. It is the plaintiff who is entitled to full relief listed in her Amended Complaint.

**XVII. Affirmative Defense XVII: Estoppel en pais**

1. Here, plaintiff incorporates paragraphs 1-101 and all Exhibits in her Amended Complaint.
2. In letter and advertisement, provided by Buick and received by plaintiff, from September of 2003 to December of 2004, Buick failed to mention any warranty, repair or inspection of the car, and any storage fees. Buick forfeited its right to collect any fees long time ago, even if its counsel would argue there had been such right two years ago..

**XVIII. Affirmative Defense XVIII: Statute of Frauds**

1. Here, plaintiff incorporates paragraphs 1-101 and all Exhibits in her Amended Complaint.
2. In the counterclaim, Buick and its counsel want to keep or dispose the subject car, keep the money plaintiff already paid, charge plaintiff \$19,600 and more
3. Before plaintiff filed the instant lawsuit against Buick, there was no contract, note, memorandum or anything in writing regarding the so-called storage fees.

Respectfully submitted,

\_\_\_\_\_  
(Plaintiff's Signature)

\_\_\_\_\_  
( Date )

Yuling Zhan

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