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

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

MOTION TO COMPEL DEFENDANT TO ANSWER

PLAINTIFF'S FIRST SET OF INTERROGATORIES

NOW COMES the plaintiff, YULING ZHAN, in support of her Motion to Compel Defendant to Answer Plaintiff's First Set of Interrogatories, states as follows:

I. INTRODUCTION

On December 22, 2004, plaintiff filed the instant lawsuit against a car dealership Napleton Buick Inc. ("Buick"). On January 27, 2005, defendant failed to serve papers upon plaintiff at the start of the instant suit. And on October 20, 2005, the moment after defendant's Motion To Dismiss And/Or Strike was stricken, Buick became in default for failure to plead because it did not move for leave to file an Answer.

On March 17, 2006, Plaintiff served defendant the First Set of Interrogatories ("Interrogatories"), and Instruction and Definition for Plaintiff's Interrogatories,

Requests for Production and Request for Admission ("Instruction"). The Instruction had been incorporated as Exhibit A into Plaintiff's First Set of Request for Admissions, which was filed in the Court on the same day.

On April 14, 2006 defendant sent out Defendant's Response to Plaintiff's First Set of Interrogatories ("Response") improperly. A true and correct photocopy of the Response is attached as Exhibit I.

Again as usual, defendant claimed it had simultaneously serve court papers upon Ford Motor Company; it is a false statement on oath for improper purpose. See "Certificate of Service" of the Response. Further, defendant asserted objections without any merit, provided irreconcilably contradictory statement in the Response, and misstate the law in order to avoid answering the Interrogatories.

In order to resolve the dispute without Court action regarding the fatal defects in defendant's Response, plaintiff wrote letters to its counsel, but no success. Therefore, plaintiff will address fatal flaws in the Response and move to compel defendant to answer all interrogatories.

II. ALL OBJECTIONS DEFENDANT ASSERTED ARE IMPROPER OR WITHOUT ANY MERIT

1. In its general objection A, defendant asserted it objects "all statements in Plaintiff's First Set of Interrogatories to the extend they call for information protected from the disclosure by the attorney-client privilege, work product doctrine or any other applicable privilege." Defendant's argument is patently without any merit for the following reasons:
   (a) As the Honorable Court can see, at Interrogatories ¶14, plaintiff raised a question of fact, Defendant's objection has no legal ground,

because protection of attorney-client privilege extents only to communication and not to facts. See *United States v. United Shoe Machinery Corp*. 89 F Supp. 357 (D. Mass. 1960) at 396. As well known, the party asserting a claim of privilege shall bear the burden of proof to establish the necessary elements in support the privilege. See *United States v. Kelly*, 569 F. 2d 928, 938 (5th Cir.), cert. Denied, 438 U. S. (1978); *In re LTV Sec. Litig.,* 89 F. R. D. 595, 600. (N. D. Tex. 1981). In this respect, defendant completely failed. Further, the attorney-client privilege and work product doctrine will not apply where legal advice has been obtained in furtherance of any illegal or fraudulent act. See *In re Antitrust Grand Jury* (Advance Publications), 805 F. 2d 155, 162 (5th Cir. 1988); see also *In re Grand Jury Subpoenas Duces Tecum*, 773, F. 2d 204, 206 (8th Cir. 1985).

(b) At Response ¶16, again, defendant asserted protection under attorney-client privilege and work product doctrine. As the Honorable Court can see, defendant's contention is not only wanton, but also scandalous. Answering the specific interrogatory has nothing to do with any privilege.

2. Plaintiff offers Instructions in her Interrogatories for the benefit and convenience for all parties to avoid misunderstanding and unnecessary delay. Although defendant complains at Response in General Objections B that it imposes "obligations beyond those permissible under Illinois Supreme Court Rule 201, Illinois Supreme Court Rule 213 and other applicable rules," but defendant fails to elaborate how.
3. In General Objections C, defendant counts the number of statements in plaintiff's Interrogatories as more than thirty. Defendant is wrong. Plaintiff's first set of interrogatories included only 19 specific questions of fact. The rule is that, an interrogatory can ask both a general question and several follow-up questions and still count as one interrogatory, if the subparts are logically and factually related to the primary question. See

Nyfield v. Virgin Is. Tel. Co., 200 F. R. D. 246, 247-48 (D. V. I. 2001). *Kendall v. GES Exposition Serv. Inc.*, 174 F. R. D. 684, 685-76 (D. Nev. 1997), As such, defendant is equally wrong when it argues that the interrogatory is "compound in form" at Response ¶¶5-9, ¶¶12-13, ¶17, ¶19. Further, because defendant's Answer does not meet the Illinois pleading standard, plaintiff has a good reason to move for leave of the Court to increase the number of interrogatories when neccessary, pursuant Illinois Supreme Court Rule 213 (c).

4. In General Objections D, defendant argues plaintiff's statements "impose burden, expense, and undue detail upon Defendant". Here, defendant's argument has no merit. It is the defendant who provides wanton argument in the instant Response in order to avoid answering interrogatories. Defendant should be responsible for the waste of invaluable resources and time of the Court.
5. At Response ¶1, defendant contends: "Defendant has no burden to identify facts supporting its denial." As the Honorable Court can see, this is not a correct statement of law. Denial without factual support is either frivolous, or false, or fraudulent, which is exactly what defendant has been providing in and out of the Court.
6. Illinois is a fact pleading, not a notice pleading jurisdiction. See *Teter v. Clemens*, 112 Ill. 2d 252, 492 N. E. 2d 1340 (1986). No party shall assert that Illinois pleading standard requires "a vast amount of unspecific information" as defendant complaints at ¶1, ¶8, ¶13, and ¶17
7. 735 ILCS 5-610 (c) explicitly states: "Denial must not be evasive, but must fairly answer the substance of the allegation denied." As such, defendant's argument at Responses ¶1 is patently without any merit when it argues that Interrogatories 1 is "vague", "ambiguous", "unduly burdensome", "unintelligible" and "oppressive." For the same reason, defendant has no basis to label Interrogatories ¶ 2, ¶¶5-9 ¶13, ¶ 15, ¶17 as "vague" or "ambiguous;" Interrogatories ¶2, ¶5-9, ¶17 as "unduly burdensome", Interrogatories ¶2, ¶5, ¶¶7-9, ¶¶12-13 and ¶17 as

"oppressive," and Interrogatories ¶2, ¶¶6-9, ¶¶12-13 and ¶17 as "overly broad."

8. Under Illinois UCC, Illinois Fraud Act and common law fraud, oral warranty is enforceable, oral misrepresentation of material facts during and after sale shall be held responsible. As such, there is no basis for defendant to complaint that Interrogatories ¶5 "seek narrative response." For the same reason, defendant argument has no ground at Responses ¶7 and ¶9.
9. When contending Interrogatories ¶9 "assumes facts not in evidence," defendant's aburd argument is in violation of Illinois Supreme Court Rule 137 ("Rule 137"): At Response ¶15, defendant and its counsel assert the same objection. As the Honorable Court can see, it is equally frivolous and wanton.
10. At Response ¶2, defendant contends that the interrogatory "seeks a vast amount of information that has no tendency to prove the veracity of any material fact contained in the pleading at issue." This is not true. Here, defendant violates Rule 137 in failing to make reasonable inquiry of plaintiff's Complaint. During purchase, several persons were at the scene when the salesmen persuaded plaintiff to buy the subject car. More than half a dozen defendant's employees have discoverable information in the instant suit. Plaintiff's has the right to know who they are, what their positions they held at defendant, etc.
11. At Response ¶6, defendant argues that the interrogatory "seeks irrelevant information." This is incorrect. For the subject car, plaintiff has seen three different versions of the "Buyer's Guide," and she has two of them at hand. It is fair to ask whether defendant has done the same to all used car it sold.
12. At Response ¶12, defendant asserts the interrogatory "seeks irrelevant information" again. Here, defendant and its counsel are fighting with themselves. After the lawsuit was filed, defendant's counsel Ms. Elaine S. Vorberg argued in her letter dated March 9, 2005, that defendant contacted plaintiff "on several occasions." defendant's another counsel

Mr. Ryan A. Haas presented the same letter as “evidence” to the Arbitration Panel. When responding to plaintiff’s first set of request for admission ¶31 defendant and its counsel quibbled Buick “attempted response by telephone.” Defendant and its counsel have been providing false statements on this specific issue. Any reasonable person would ask why they spent a lot of energy on an irrelevant issue in the past. They have no excuse not to answer the specific interrogatory.

13. At Response ¶13, defendant argues that the interrogatory “seeks a vast amount of information that has no tendency to prove the veracity of any material fact contained in the pleading at issue.” Defendant is plain wrong. Defendant has the duty to inspect every car before sale; defendant claimed it did perform mechanic-check on the subject car, after the lawsuit was filed, defendant eagerly wanted to “inspect” the car in dispute. Defendant cannot avoid submitting a required answer to this interrogatory.
14. At Responses ¶¶14 and 16, defendant asserts the interrogatory “seeks irrelevant information.” Here, defendant and its counsel are plain wrong. The specific interrogatories are not only relevant but also essential to investigate whether fraud and violation of Rules of Illinois Professional Conduct have been occurred.
15. At Responses ¶19, again, defendant contends that the interrogatory “seeks irrelevant information that has no tendency to prove the veracity of any material fact at issue.” The argument is frivolous and wanton, as the credibility of defendant and its “witnesses” are certainly at issue in the instant suit.

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III. DEFENDANT FAILED TO ANSWER THE UNOBJECTED INTERROGATORIES

1 At Response ¶3, defendant fails to follow Illinois Supreme Court Rule 213 (f). It did not even identify each of its witnesses as “lay witness” or “independent witness” or “controlled expert witness.” Further, defendant and its witnesses provide wanton, absurd and fraudulent statement to claim “abandonment” of the car.

2 At Response ¶4, defendant fails to answer the interrogatory for the purpose of concealing material information. At time of sale, defendant claimed the car had one owner only. To answer this specific interrogatory, defendant has the duty to identify the real owner or all previous owners, and provide all information plaintiff has been requiring. When defendant states that it “conducts a thorough check on all vehicles, “ it has the duty to produce documents.

3 At Response ¶10, defendant’s answer is in direct contradiction to the statement in its Fifth Affirmative Defense filed on November 28, 2005. Defendant and its counsel have a duty either to admit Buick’s Answer and Affirmative Defenses are a frivolous filing, or to answer the specific interrogatory.

4 At Response ¶11, defendant is providing a fraudulent statement by arguing “Any defects are unknown at the present time”, as defendant and/or its counsel certainly know the subject car is under safety recall by Ford Motor Company. Also such assertion is in direct contradiction with defendant’s laboring effort to “inspect’ the car, by Mr. Bob Caridi and Mr. Nicholas D’Andrea

5 At Response ¶15, defendant fails to answer the interrogatory completely. Defendant has no excuse not to answer the complete interrogatory, and provide dollar figures of the car before and after plaintiff’s purchase.

6 At Response ¶18, defendant fails to list name, and other information for each of its counsel.

IV. SUPREME COURT RULE 219 (a) SHOULD BE ENFORCED IN THE INSTANT CASE

As the Honorable Court can see, after sixteen-month proceedings, the instant suit is still at pleading stage. Discovery started just one month ago. No party shall use frivolous filing to stall the case further. A party must be held responsible for further delay and it should pay the unnecessary cost pursuant Rule 219 (a).

WHEREFORE, for the reason stated, plaintiff request that the Court issue an Order compelling defendant to answer the interrogatories, and grant plaintiff additional relief that this Court deems just and proper.

Respectfully submitted,

_____ _____

(Plaintiff's Signature) (Date)

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