

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

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

EMERGENCY RENEWED MOTION

TO DISQUALIFY MS. ELAINE S. VORBERG AS COUNSEL

IN THE INSTANT SUIT

Plaintiff, Yuling Zhan, respectfully submits this Emergency Renewed Motion: to Disqualify Elaine S. Vorberg as Counsel for Defendant Napleton Buick, Inc., (“Defendant” “Buick”) in the Instant Suit, and states as follows:

I. Factual Background

1. On October 7 and 25, 2005, Plaintiff filed a Motion to Disqualify and/or Sanction (Motion to Disqualify”), and a Motion to Sanction Defendant’s Counsel Ms. Elaine S. Vorberg for Her Recent Misconduct (Motion to Sanction”), respectively.
2. After the instant case was assigned to Court Room 1307, on November 3, 2005, plaintiff filed a motion for substitution of Judge as of right, which was granted on December 8, 2005.
3. In the meantime, on November 8, 2005, plaintiff’s Motion to Disqualify and Motion to Sanction were denied.

4. If the November 8, 2005 Order is valid, based on evidence emerged during discovery, Plaintiff respectfully submits the instant renewed motion to disqualify Ms. Elaine S. Vorberg (“Vorberg”) as a counsel in the instant lawsuit.

II. Ms. Vorberg Should Be Disqualified As a Matter of Law

(A) Ms. Vorberg Identified Herself as a Potential Witness

1. On April 13, 2006, when responding to Plaintiff’s Requests for Admission of Fact No. 71, as it provided, “On April 15, 2005, Buick’s counsel, Ms. Vorberg filed an affidavit to the Court, identifying herself as a potential witness in the instant lawsuit,” Buick responded: “Defendant Napleton admits that its counsel, Ms. Vorberg, filed an Affidavit and that the Affidavit speaks for itself. Defendant denies that Ms. Vorberg is a potential witness in the instant lawsuit.”
2. It is beyond reasonable dispute that Defendant provided a false statement on this material issue during discovery. The Affidavit in question is incorporated into here, as Exhibit A. As the Honorable Court can see, Ms. Vorberg’s writing would defeat any wanton denial from Defendant.
3. Without question, after the lawsuit was filed, Defendant has no legitimate reason to demand car keys. Apparently, there is no need to hold car keys for participating any settlement discussion or a joint inspection of the subject car. For more than one year of court proceedings, Ms. Vorberg fails to inform the Court why she was eager to demand the car keys, and what was her motive to file an Affidavit in the Court.
4. In fact, after April 1, 2005, Ms. Vorberg becomes the only witness who knows whether, when and how Defendant used the car keys, accessed the vehicle and changed its condition – if that happened, it was a conduct of spoliation of evidence.
5. As well known, an attorney who has critical information regarding an issue important to the client’s case will be normally disqualified from further

representing the client unless that evidence can be introduced through other source. See *United States v. Spears*, 965 F. 2d 262 (7th Cir. 1992); *National Wrecking Co. v Midwest Terminal Corp.* 601 N. E. 2d 999 (Ill. App. 1st Dist. 1992)

(B) Ms. Vorberg Acts as A Witness and Fabricates Evidence

1. On June 14, 2006, Defendant was compelled by a Court Order to respond Plaintiff's Requests for Production. When drafting a response, Ms. Vorgberg evaded or ignored Plaintiff's requests, but filed her own letters and re-submitted her above-mentioned Affidavit to the Court.
2. As stated, Ms. Vorgberg failed to inform the Court what was her motive to file her own Affidavit twice in the Court, and once again, she failed to show how such a filing was permissible. When Defendant denies its counsel is a potential witness, Ms. Vorgberg, by her own writing, insists telling the Court and all parties that she really is.
3. One of Ms. Vorgberg's letters is incorporated here as Exhibit B, and Plaintiff's response to those letters is attached as Exhibit C.
4. When Ms. Vorgberg filed her letters and re-submitted her Affidavit to the Court, it is noteworthy that, at the same time, Buick admits: "Defendant is not in possession of any such documents," in response to Plaintiff's Request for Production No.7 "Produce all documents and records from local telephone company for each occasion Buick asserts it called plaintiff or sent a fax to plaintiff from September 10, 2003 to December 22, 2004."
5. It is beyond any reasonable doubt that Defendant and Ms. Vorgberg fail to provide any admissible evidence during discovery that, after Buick Towed back the car and before the lawsuit was filed, Defendant has ever called Plaintiff, faxed Plaintiff or wrote Plaintiff regarding inspection of the subject car.
6. It is well established that, in court proceedings, a counsel can only submit or present evidence, but not to create or fabricate it. As such, Ms. Vorgberg, at best, fails to comply discovery rules and fails to submit

documents responsive to Plaintiff's requests. The worst is she has been trying to present impermissible or false statement on a material issue in the instant suit.

7. As well known, Illinois Rules of Professional Conduct (IRPC) 3.7 prohibits a lawyer from playing roles of advocate and witness in Court proceedings. See *Greater Rockford Energy & Technology Corp. v. Shell Oil Co.*, 777 F. Supp. 690 (C. D. Ill. 1991).

(C) Ms. Vorberg Knowingly and Willingly Provides False Statement During Her Representation

1. During discovery, Plaintiff served Interrogatory No. 10 upon Defendant as following:

“Did plaintiff misuse the car? If so, identify and list all the ways in which that plaintiff misused the car for the cause of engine stalling at highway speed, provide all documentation related to this issue defendant created from September 8, 2003 to December 22, 2004, from December 22, 2004 to April 1, 2005, and from April 1, 2005 to the present day, respectively.”

2. On June 14, 2006, under a Court Order, Defendant was compelled to file an Answer to the specific Interrogatory. Ms. Vorberg drafted the following response:

”Yes. Upon information and belief, Plaintiff’s misuse includes, but is not limited to, failure to maintain sufficient fuel in the vehicle. Defendant is not in possession of any documents related to Plaintiff’s use or misuse of the subject vehicle.”

3. It is a general rule that a person's statements are fraudulent when his/her/its contentions on the face of themselves are irreconcilable. Here, Ms. Vorberg provides a perfect example.
4. Also, Ms. Vorberg is well aware of the fact that Defendant filed an Affirmative Defense – Misuse the Car, which was stricken by this Court on March 28, 2006. As such, Defendant and Ms. Vorberg cannot raise the same issue to waste invaluable time and resources of the Court.
5. Further, on April 14, 2006, when responding to the same Interrogatory, Defendant asserted: "Unknown at present time. Investigation continues." This will defeat any wanton argument provided by Defendant and its counsel, Ms. Elaine S. Vorberg.
6. During discovery, Plaintiff submitted Request for Admission of Fact No. 9 as following:

"There were maintenance records on the subject car. The car in dispute (VIN 1FAFP53S0XG106195) was repaired on 07/05/2001, 05/21/2003 and 06/26/2003. The odometer reading on 06/26/2003 was 24514 miles. See <http://www.carfax.com> or <http://www.autocheck.com>. Buick failed to disclose such information during the sale."

7. On May 16, 2006, under a Court Order, confronted with documentary evidence, Defendant had to admit there were repair records on the subject car, and Defendant was compelled to file a response drafted by Mr. Vorberg as following:

Defendant admits maintenance records relative to the subject vehicle exist. Defendant affirmatively states that the mileage on the car on or about October 6, 2003 was 24509. Defendant neither admits nor denies the allegations relative to any repairs, as it has no direct knowledge of repairs. Defendant denies any duty to disclose, and

denies all remaining allegations contained within this Request to Admit.

8. Without question, Defendant and Ms. Vorberg cannot deny Buick did have a duty to disclose information of repair records at Plaintiff's request at time of the sale, and any material false presentation of the car condition is enforceable under Federal and State law.
9. It is important to note: Defendant and its counsel claim the odometer reading for the subject car was 24510 mile on August 21, 2003, and assert it was 24520 miles on September 4, 2003, but, affirmatively state that "the mileage on the car on or about October 6, 2003 was 24509." As such, any reasonable person can conclude: Defendant and its counsel Ms. Vorberg, at a minimum, have shown reckless disregard for the truth.
10. On April 25, 2006, Ms. Vorberg drafted a Request to Admit Facts and attempted serving it upon Plaintiff. Defendant and Ms. Vorberg suggested a hand-written document was the official "Buyer's Guide" for the subject car. Without question Defendant and its counsel fail to show when the document was created and who was the author, also Ms. Vorberg has no way to explain why, for a single used car, there exist different versions of official "Buyer's Guide" with different contents.
11. IRPC 3.3(a)(1) provides a lawyer shall not "make a statement of material fact to a tribunal which the lawyer knows or reasonably should know is false." Without question, in this respect, Ms. Vorberg has failed.

(D) In Concert with Defendant, Ms. Vorberg Is Still Concealing Essential Information

1. During discovery, Defendant refuses to produce a copy of the previous title of the subject car. Defendant and Ms. Vorberg should know, under Federal and State law, Plaintiff is entitled to know who was the previous

owner of the subject car even at the time of the “sale”, that was three years ago.

2. Buick claims it purchased the subject car from Precision Motors Inc., but Defendant and its counsel fail to provide any admissible evidence to show “Precision Motors Inc.” was on the previous title, which was a proof of ownership.
3. Buick claims it purchased the subject car from Precision Motors Inc., but Defendant and its counsel contend they are not in possession of any financial transaction records. Beyond any reasonable doubt, this is a fraudulent statement.
4. Even close to the trial date, Defendant and Ms. Vorberg still did not or refused to produce copies of documents Buick sent to the Office of Secretary of State for title transfer of the subject car. This is a stark violation of Illinois Supreme Court Rule 219
5. On June 14, 2006, under Court Order issued by Honorable Judge Rhine, Defendant was compelled to submit documents produced by defendant in any other litigations, where defendant’s business practice and credibility are or were at issue. Although Defendant has been sued in several cases, only one of them, *Watkins v. D’Andrea Buick et. al*, is disclosed. Ms. Vorberg participated in drafting the response. When doing so, she shows no respect to a Court Order.

WHEREFORE, plaintiff prays that this Honorable Court consider this motion and disqualify Ms. Vorberg as a counsel in the instant lawsuit

(Plaintiff’s Signature)

(Date)

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