

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 EMERGENCY MOTION TO COMPEL PRODUCTION

OF ADMISSIBLE EVIDENCE DURING TRIAL,

OR IN THE ALTERNATIVE,

MOTION FOR LEAVE TO REOPEN DISCOVERY

NOW COMES the Plaintiff, YULING ZHAN, respectfully moves to compel production of admissible evidence during trial, or in the alternative, moves for leave to re-open discovery, and in support of her motion, states as follows:

1. On November 22, 2006 at trial, Defendant's witness, general manager Mr. Ed Earley, stated he personally called Plaintiff more than ten times after Defendant towed back the car. Mr. Earley should produce records from telephone company or any other admissible evidence to support such statement, then explain why Defendant asserted no such record in its possession during discovery;
2. On November 22, 2006 at trial, Defendant's witness, general manager Mr. Ed Earley, stated he personally called Plaintiff more than ten times after

Defendant towed back the car. Mr. Earley is obliged to specify what date(s) and the content(s) of the call(s);

3. On November 22, 2006 at trial, Defendant's witness, general manager Mr. Ed Earley, stated he personally called Plaintiff more than ten times after Defendant towed back the car. Mr. Earley is obliged to explain why he would bother to make such alleged efforts, but for more than fifteen months, Defendant did not send a single fax to Plaintiff as she had required;
4. On November 22, 2006 at trial, Defendant's witness, general manager Mr. Ed Earley, stated he personally called Plaintiff more than ten times after Defendant towed back the car. Mr. Earley is obliged to answer in writing why his testimony here is consistent with his own letter responding to the inquiry of this matter from Illinois Attorney General's Office, where he wrote " We tried to respond by phone ***", but Plaintiff's answering machine was on 24 hour a day and seven days a week in 2003. As such, Mr. Earley is obliged to define what he meant with the word of "tried" -- it was just a thought, or dialing a number for one or two seconds then hanging up, or something else.
5. On November 22, 2006 at trial, Defendant's witness, general manager Mr. Ed Earley, stated he personally had a three-way telephone conversation with an insurance company and Plaintiff. Mr. Earley should produce admissible evidence to support such statement. And he is obliged to specify the date, person(s) involved and content of the call. Then explain why Defendant did not disclose such information or misinformation in its response to Plaintiff's Requests for Production No. 10, while May 11, 2006 Court Order compelled Defendant to produce. As Defendant knows the term of "person(s)" means any individual or entity, including, but not limited to, partnership(s), association(s), corporation(s), principal, agent, government institution, or other. And Defendant knew that an insurance company was a "person" under this definition during discovery.

6. On November 22, 2006 at trial, Defendant's witness, its general manager Mr. Ed Earley, stated during the sale Defendant did not have the car title at hand, but Defendant owned the car. Defendant should produce written statement to explain why Defendant owned the subject car legally.
7. On November 22, 2006 at trial, Defendant's witness, its general manager Mr. Ed Earley, stated Defendant did not have the car title at hand during the sale. Defendant asserted denials or lacking knowledge in its response to Plaintiff's statements in several paragraphs of her second amended complaint, see Exhibit A. Defendant should provide factual and legal ground for those responses by submitting a written statement;
8. On November 22, 2006 at trial, Defendant's witness, general manager Mr. Ed Earley, stated that Defendant owned the subject car during sale. Defendant should produce transaction record between Napleton Buick Inc. and Precision Motors Inc., or any admissible evidence, to show Defendant did own the car financially.
9. On November 22, 2006 at trial, Defendant's witness, its general manager Mr. Ed Earley, stated Defendant did not know the subject had repair record. Defendant should provide written statement on this assertion; At Plaintiff's First Set of Request for Admission No. 8, she states "Buick fails to disclose the history and maintenance record of the subject car during the sale on September 4, 2003." Defendant's response was "Denied." Defendant should provide written statement on why it did not know the existence of a record, but denied it failed to disclose it during the sale;
10. On November 22, 2006 at trial, Defendant's witness, its general manager Mr. Ed Earley, stated the purported September 10, 2003 letter was mailed via certified mail. Defendant should present an admissible proof for the statement.
11. On November 22, 2006 at trial, Defendant's witness, its general manager Mr. Earley stated, during a cross-examination conducted by Ms. Vorberg, that yesterday he talked with the author of the purported September 10, 2003 letter, Mr. Henry Holton, and he was still employed by Defendant,

- whereas a moment earlier both Mr. Earley and Ms. Vorberg asserted Mr. Holton was not available because he was not an employee at Defendant anymore. Both Mr. Earley and Ms. Vorberg are obliged to answer why this happened. Further, under May 11, 2006 Court Order, Defendant was compelled to file a response to Plaintiff's Requests for Production No. 10 and Defendant did not produce any document to show there was any communication between Mr. Earley and Mr. Holton. As such, Defendant should provide written statement to explain the inconsistency.
12. On November 22, 2006 at trial, Defendant's witness, its general manager Mr. Ed Earley, and Defendant's counsel Ms. Vorberg were shown a "trade-in" advertisement material. During discovery Defendant denied it had sent out the same document in its response to Plaintiff's First Set of Requests for Admission No. 45. See Exhibit B. Defendant should produce a written statement to explain why.
 13. On November 22, 2006 at trial, Defendant's witness, its general manager Mr. Ed Earley, was shown a "Thank you" note and a "trade-in" advertisement material. Defendant should provide a written statement why it did not bother to mention warranty, inspection or repair in those mails.
 14. On November 22, 2006 at trial, Defendant's witness, its general manager Mr. Ed Earley, stated that he was personally involved in applying a new vehicle title for Plaintiff. Defendant should provide written statement to explain why it did not produce such vital documents during discovery.
 15. On November 22, 2006 at trial, Defendant's witness, its general manager Mr. Ed Earley, provided testimony which was contrary to Defendant's counsel's statement and its discovery response. With a busy schedule and hundreds of cases at hand, the Honorable Judge was still familiar with the content of witnesses' testimony and the files of the instant case, and wisely pointed out inconsistencies of statements from Defendant and its counsel. Defendant's counsel, Ms. Elaine S. Vorberg, contended it was her mistake and the Honorable Judge announced a recess of the trial and ordered both parties to discuss the possibility of a settlement. Ms. Vorberg

- is obliged to provide written statement on what exactly her mistake was, and how many similar ones she had made before and during trial, and how many similar mistakes still remain in Defendant's discovery responses written by her, and then Defendant should make corrections of them before the conclusion of the trial.
16. On November 22, 2006 at trial, Defendant's witness, its president Mr. Nicholas J. D'Andrea was shown two versions of a Buyer's Guide with different contents. Defendant should provide written statement why this happened, and why, in Plaintiff's belief, two documents shared a single rear side.
 17. On November 22, 2006 at trial, Defendant's witness, its president Mr. Nicholas J. D'Andrea stated that he participated in an "inspection" conducted on April 11, 2005. Defendant should produce document(s) which shows step-by-step procedure of so-called inspection or investigation, or provide written statement on why it did not do it during discovery;
 18. Defendant towed back the subject vehicle on September 8, 2003. On November 22, 2006 at trial, during cross-examination conducted by Defendant's counsel Ms. Elaine Vorberg, Defendant's witness, its president Mr. Nicholas J. D'Andrea stated that he participated in an "inspection" conducted on April 11, 2005, also he asserted that the subject vehicle lacked sufficient fuel in the tank on April 11, 2005. Defendant's counsel Ms. Vorberg made the same suggestion during her opening statement. As such, Defendant should provide admissible evidence to support such statement. Mr. D'Andrea should provide how he could make a conjecture of fuel insufficiency. Ms. Vorberg knew very well Defendant's affirmative defense of misuse of the car had been stricken by the Court, she should explain how recycling the same argument was permissible during trial. Also during discovery, the Honorable Court ordered Defendant to provide expert's testimony on this issue but Defendant never did it; Defendant should provide written statement to explain why it did not follow

the Court Order, or show in open court where is the testimony from either a controlled or an independent expert, which was produced during discovery. Further, in Plaintiff's First Set of Interrogatories No. 10; under May 11, 2006 Court Order, Defendant has been compelled to file a response. See Exhibit C. Defendant should provide written explanation on why it is allowed to raise the same argument, which had been stricken as a failed affirmative defense; and how Defendant's statements in a single response are reconcilable by themselves

19. On November 22, 2006 at trial, Defendant's witness, its president Mr. Nicholas J. D'Andrea, stated he participated in an April 11, 2005 "inspection" of the subject car. Defendant should produce the exact odometer reading(s) on April 11, 2005 and at the present time.
20. On November 22, 2006 at trial, Defendant's witness, its president Mr. Nicholas J. D'Andrea, testified that for years as a salesperson or a car dealer, he never refunded money on purchase made, later, he stated that he did it once under circumstances. In Requests for Admission No. 41 Plaintiff stated "Buick had never required inspecting the car in dispute before the instant suit was filed on December 22, 2004." Mr. D'Andrea certified an answer as "Denied." As such, he is obliged to explain in writing how these statements are conceivable;
21. On November 22, 2006 at trial, Defendant's witness, its president Mr. Nicholas J. D'Andrea, stated he did not know when the purported September 10, 2003 letter was allegedly sent out to Plaintiff. Defendant should provide written statement to explain why, and produce any admissible evidence to show the alleged letter was created on the purported date, or even better submit a proof it was really mailed out on the specific date. And then, Mr. D'Andrea is obliged to explain that if Defendant did not know when the purported September 10 2003 letter was alleged mailed, why Defendant submitted it as its own evidence and how it is admissible and why Mr. D'Andrea testimony is inconsistent with

that from Mr. Earley as to whether the alleged letter was a first-class mail or not.

22. On November 22, 2006 at trial, Defendant's witness, its president Mr. Nicholas J. D'Andrea, stated although he did not know when the purported September 10, 2003 letter was allegedly sent out but he asserted it should be stamped on a specific unknown date. If Mr. D'Andrea meant Defendant sent out the alleged letter via first class mail, Mr. D'Andrea and Mr. Earley are obliged to provide written explanation on how their assertions are conceivable;
23. On November 22, 2006 at trial, Defendant's witness, its president Mr. Nicholas J. D'Andrea, was shown two versions of a Buyer's Guide and an October 6, 2003 odometer statement form. Defendant should produce all printed names on these documents and the dates of their creation, and provide written statement to explain why Defendant did not do this during discovery.
24. On November 22, 2006 at trial, Defendant's witness and its president Mr. Nicholas J. D'Andrea was shown two versions of a Buyer's Guide with different content in them. Defendant should produce admissible evidence to show, at any time after Defendant towed back the car and before the instant suit was filed, it informed Plaintiff that the subject vehicle was still under warranty, no matter whatever the warranty terms became,
25. On November 22, 2006 at trial, Defendant's witness, its president Mr. Nicholas J. D'Andrea, was shown two versions of a Buyer's Guide with different content in them. With one version, it only showed part of the front side. Defendant should provide original copies of the two documents, or at least, submit copies of the whole documents, both front sides and rear sides Then, Defendant should provide written statement to explain why it did not do this during discovery
26. On November 22, 2006 at trial, Defendant's witness, its president Mr. Nicholas J. D'Andrea, was shown a copy of Plaintiff's September 9, 2003 letter and fax, which specifically and explicitly required Defendant to

- respond by FAX in three days in order to solve the problem within one week. Defendant should provide a written statement to explain why it never did so by sending a FAX.
27. On November 22, 2006 at trial, Defendant's witness, its president Mr. Nicholas J. D'Andrea, was shown an October 6, 2003 Odometer Statement Form, which showed Defendant acted as a transferee. Defendant should provide a written statement on whether or not it showed the original title of the subject car to Plaintiff during the sale. If the answer is YES, explain how, and then, explain why it did not produce a copy of the specific document during discovery, and produce a copy of it for a fair trial.
28. On November 22, 2006, at trial, Defendant's counsel Ms. Elaine S. Vorberg, during conducting cross-examination, raised the car key issue again, by asking whether or not Plaintiff submitted the car keys to Defendant before its counsel requested a Court Order. Defendant should provide a written statement to explain why Defendant needed holding car keys to negotiate a settlement or participate a joint inspection of the subject car.
29. On November 22, 2006, at trial, during conducting cross-examination on Mr. Nicholas J. D'Andrea, Defendant's counsel Ms. Elaine S. Vorberg raised a vague question "Why a car can stall on a freeway?" Mr. D'Andrea answered "It could be anything, flat tires, bad gas, no gas etc." Mr. D'Andrea and Ms. Vorberg should produce written statements on how such a cross-examination is relevant to the instant suit, and why a leading question could be asked during cross-examination, and volunteering information, misleading or not, presented to the Court is allowed during trial.
30. On October 20, 2005 Defendant's motion to dismiss or strike Plaintiff's Amended Complaint was stricken. Defendant should produce documents to show when it served an official copy of its answer upon Plaintiff in response to her Amended or Second Amended Complaints with a Court

stamp on them. Or in the alternative, Defendant should produce a document it could show Defendant has filed a motion for reconsideration of the specific Court Order.

31. Plaintiff's Second Amended Complaint at paragraph 125 states, "As a common knowledge, the odometer reading shall be lower for prior title transfer as compared to that of later ones." Defendant's answer is "Napleton lacks information to form a belief as to the truth of the allegations in paragraph 125, and therefore neither admits nor denies the same, but demands strict proof thereof." Defendant's witness and its president Mr. Nicholas J. D'Andrea wrote a certification to the Answer. As such, Mr. D'Andrea should provide written statement on how a car dealer is entitled to hold a business license if he really lacks a knowledge that the odometer should run forward, not backward for a normal car. And Defendant should provide what kind of strict proof Defendant demands from Plaintiff in order to show Defendant had shown reckless disregard the accuracy of the odometer readings of the subject vehicle in support of her claims on Count IX.
32. On November 22, 2006, at trial, Defendant was shown several odometer readings on its submitted documents. Defendant is obliged to provide the dates of odometer readings on all documents in its possession, and explain why these readings are remotely conceivable;
33. On November 22, 2006, at trial, Defendant's counsel, Ms. Elaine S. Vorberg presented an argumentative counterclaim and purported a new dollar figure of more than \$30,000, at the same time, she knew perfectly that Plaintiff's related motion was still pending. Also during examination and cross-examination of witnesses, she volunteered to raise the issue of misuse of the car, and she was fully aware of Defendant's related "affirmative defense" had been stricken by the Court. As such, Ms. Vorberg is obliged to explain in writing why such practice is permissible under the Illinois Rules of Professional conduct;

34. As the Honorable Court can see, all the documents and/or written statements Plaintiff is demanding are closely related to material issues in the instant suit. Plaintiff is entitled to have such information to present her claims on all viable counts. When these documents are available, an expedite and just conclusion can be reached because evidence will speak for itself
35. As the Honorable Court can see, it is beneficial for both parties to put statement in writing in order to avoid any increase of litigation cost.
36. As the Honorable Court can see, Defendant has ample time to produce such materials in two-year span of time, the same issues have been raised by both parties again and again;
37. As the Honorable Court can see, the written materials Plaintiff is demanding in the instant motion is narrowly limited, and Defendant does have reasonable opportunity and enough time to produce during discovery and during trial. As Defendant presented the same arguments many times, and some of them had already been stricken by the Court, Defendant would have no difficulty to submit a written answer to Plaintiff's requests within half an hour in the Court. If Defendant needs several days or more time to do it, Plaintiff respectfully moves for leave to re-open discovery.

WHEREFORE, Plaintiff respectfully prays the Honorable Court to grant the motion to compel production of admissible evidence as following:

1. An original duplicates of the Buyer's Guide for two versions of them Defendant submitted, for each version, it should be one piece of paper with front and rear side, or copy of a full, not part, of front side and rear side of the Buyer's Guide, provide date of creation and printed names of all persons involved during creation;
2. Any and all admissible document(s) created in year 2003 after the date Defendant towed back the car, which had the "warranty" word on it;

3. Any and all admissible document(s) created in year 2003, after the date Defendant towed back the car, which had the "inspection" word on it;
4. Any and all admissible evidence to show the purported September 10, 2003 was created on the specific date;
5. Any and all admissible evidence to show the purported September 10, 2003 was mailed by certified mail or first class mail on the specific date;
6. An copy of previous title of the subject car;
7. Copy of transaction record for the subject car from either Defendant or Precision Motor Inc created before September 4, 2003.
8. Written response to each Plaintiff's statement of fact contained in each paragraph of the instant motion, and each Defendant's denial should fairly meet Plaintiff's statement denied;
9. Written answer to each Plaintiff's question in the instant motion, including all of each sub-sentence, truthfully and completely;
10. Written response to any other Plaintiff's requests, one by one, in the instant motion

Or, in the alternative, grant the motion for leave to re-open discovery.

(Plaintiff's Signature)

Yuling Zhan

3121 S. Lowe Ave

Chicago, IL 60616

Tel: (312) 225-4401

(Date)