

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

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

OPPOSITION TO DEFENDANT’S RENEWED MOTION

TO BAR EXPERTS’ TESTIMONY

The Plaintiff, Yuling Zhan, respectfully submits this Opposition to Defendant’s Renewed Motion to Bar Experts’ Testimony, and states as follows:

1. Defendant’s motion should be stricken or denied because the hearing notice of the motion violates Rule 2.1 of the Circuit Court of Cook County on its face.
2. Defendant certainly knows the fourth of July is a national holiday, not a court day, and Rule 2.1 explicitly demands, in part, “the notice shall be deposited in a United States Postal Office Box on or before the fifth (5th) court day preceding the hearing of the motion.” Once again, as always, Defendant shows no respect to the same rule. Such practice from Defendant should not be allowed.
3. In its instant filing, Defendant attaches two of its prior motions as “exhibits A and D.” But, Defendant does not even mention -- much less elaborate -- how it failed to serve discovery paper properly in the first place, how defendant’s counsel provided false statement and quibbled about the failure, and how Defendant violated Illinois Supreme Court Rule 201(f)

when filing similar motions on the same issue for the purpose to prejudice Plaintiff or waste the invaluable time and resources of the Court.

4. In its instant filing, Defendant attaches Plaintiff's Supplemental Answer as "exhibit F." In her Response to Interrogatories No. 1, Plaintiff reserved the rights to supplement additional lay witnesses. The reason is simple, and it is a fair and accurate assessment that Defendant has concealed names of key witnesses during discovery. Here, Plaintiff incorporates Exhibits A - D by reference. As the Honorable Court can see, even as of today, Defendant still refuses or fails to identify the persons who created those documents, although Defendant relies, heavily or solely, on one or two pieces of those papers in support of its defense or affirmative defense.
5. Under Illinois Supreme Court Rule 201(c)(2), any Honorable Judge may, under his discretion, supervise all or part of any discovery procedure. If the Honorable Court deems it is necessary to assign an independent expert to inspect the subject car, all parties shall be binding to the finding and determination of such inspection. As such, Defendant's motion should be stricken with prejudice if it really means Defendant could challenge Rule 201(c) and any decision from the Honorable Court.
6. As a striking contract to Defendant's concealment and evasion, Defendant could not argue, Plaintiff provides true, correct, up-to-date and responsive answer to each of Defendant's interrogatories.
7. Defendant is fully aware of, on March 31, 2005, and in the presence of defendant's president Mr. Nicholas D'Andrea, Mr. Mike, a mechanic, manager of an auto repair store at 2552 W. 71st Street, had a brief inspection of the subject car at Plaintiff's urgent request just before Defendant had unilateral and unlimited possession of the car and the keys.
8. Defendant's counsel, Ms. Elaine S. Vorberg definitely remembers that, during April 4, 2005 hearing, in front of Honorable Judge Healy, and in the presence of a counsel from Ford Motor company, Plaintiff stated a mechanic had briefly checked the car, and in his opinion, Plaintiff did not

misuse the car. Excited after receiving the car keys, Ms. Vorberg concurred immediately: "that is right."

9. During and after the brief inspection, Mr. Mike was concerned with the odometer reading of the subject car, which was substantially lower than average; and he seriously doubted defendant's assertion that the subject car had no repair record. Also he strongly urged plaintiff to write the Secretary of State, or visit websites to make sure who was the previous owner, what was the car history and what was the accurate odometer reading.
10. Internet search and later events have already confirmed Mr. Mike was right on these issues: the annual average mileage for the subject car should be 15,000 miles, not 5088 miles, see Exhibit E, and recently, in response to Plaintiff's Requests for Admission of Facts, under a Court Order, Defendant finally admitted that there were repair records on the subject vehicle. As the Honorable Court can see, testimony from Mr. Mike, either as an independent or as a controlled expert witness, if necessary, would in no way to surprise Defendant and its counsel.
11. On May 26, 2006, there was a change of the store ownership at 2552 W. 71st Street. This is unexpected, but it did happen. It would take extra time and effort to locate previous owner or the store manager Mr. Mike, but this can be done. Similar things happened to Defendant's witness Mr. Bob Caridi, he left Defendant recently, and started working at different address, and his telephone became unknown to Plaintiff. Defendant did not and could not argue that testimony from Mr. Caridi and Mr. Mike should be barred, simply because they started working for different employers or at different locations in the past one or two months.
12. In Illinois, although it is difficult to assess the remedy for each case, spoliation of evidence tort can be a viable cause of action. See e. g. *Boyd v. Travelers Ins. Co.*, 652 N. E. 2d 267 (Ill.1995). Further, it is well established, sanction in different forms, including discovery sanction, can be imposed upon the offending party. See. *Graves v. Daley*, 526 N. E. 2d

679 (Ill. App. Ct. 1988); American Family Ins. Co. v. Village Pontiac-GMC, Inc., 585 N. E. 2d 1115 (Ill. App. Ct. 1992).

13. In the instant case, when Defendant altered the condition of the subject car under the pretext of “investigation” or “inspection”, Plaintiff had already been prejudiced since Defendant deprived her opportunity to conduct a meaningful discovery in the most direct, economic and convincing way. By filing similar motions again and again, Defendant clearly intends to victimize Plaintiff further, and prevent her from presenting her case fairly at trial. Even for this reason only, Defendant’s motion should be stricken or denied as a matter of law.
14. On May 11, 2006, Honorable Judge Rhine explicitly orders Defendant to submit an expert testimony, but Defendant fails to do so. Furthermore, in response to Plaintiff’s Interrogatories and Request for Production of Documents, Defendant fails to identify its controlled or independent expert witnesses; and Defendant objects or refuses to produce related documents and records. As the Honorable Court can see, under Illinois Supreme Court Rule 219(c), it is warranted to impose discovery sanction upon Defendant.

WHEREFORE, Plaintiff prays the Honorable Court strike or deny defendant’s motion, and grant plaintiff additional relief that this Court deems just and proper.

(Plaintiff’s Signature)

(Date)

Yuling Zhan

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