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 THE MOTION TO STRIKE

PLAINTIFF'S AFFIRMATIVE DEFENSE

The Plaintiff, Yuling Zhan, respectfully submits this Opposition to the Motion to Strike Plaintiff's Affirmative Defense, and states as follows:

1. The Motion to Strike Plaintiff's Affirmative Defense filed by Napleton Buick Inc. ("Buick") should not be heard, or must be stricken or denied, because defendant and its counsel show no respect to the Illinois Supreme Court Rules, the Rules of the Circuit Court of Cook County, and Court Orders as usual.
    (1) In order to surprise plaintiff and take unwarranted advantage in a court proceeding, Buick filed the instant motion, requested a next day hearing, but served plaintiff papers via first class mail. See Exhibit A;
    (2) For the purpose of concealing identities, Buick did not provide a single printed name for its counsel in the motion, notice of motion and proof of service;

(3) Plaintiff does not know the name of the person, who showed up for defendant during the March 28, 2006 hearing;

(4) Recently, the same unknown person attempted to serve discovery papers upon plaintiff. See Exhibit B. As the Honorable Court can see, the "certificate of service" suggests either the person intended to reinstate Ford Motor Company as a party while defying a Court Order, or, Buick and its counsel might demand jury trial in the future in order to change another Judge, or, the same person has provided false statement on oath, or, at the very least, defendant and its counsel should be sanctioned for repeated violation of the Court Rules

(5) As well known, a stranger has no standing to address the court, especially when his/her violation of Ill. Rev. Stat. Chap. 110 Sec. 1-109 is at issue;

(6) Here, as a routine in their practice, Buick and its counsel failed to serve required attachments upon plaintiff. In the mail, nowhere defendant's Exhibits A and E [sic] could be found.

2. Defendant's motion must be stricken or denied, because it is rife with nonsensical arguments, and it fails to present any meaningful contention.

(1) When asserting or responding affirmative defenses, a party must know the applicable legal standard, which includes the definition of affirmative defense and the standard for pleading. In this respect, defendant has failed. When concocting their first Affirmative Defense in the Answer, defendant's counsel contend that revocation of acceptance is not a viable claim under Magnuson-Moss Act and Illinois UCC. The argument is not only frivolous, but also scandalous, it is an insult to the legal profession. Under such circumstance, no one can expect defendant and its counsel have the credibility and capability to file a motion, which is not frivolous, to strike plaintiff's affirmative defenses.

(2) Since defendant's motion is so evasive, so rambling and so wanton that no one can be sure what defendant and its counsel are talking about; apparently, they could confuse themselves too. For example, in ¶ ¶ 9, 12 and 13, when demanding "pleader attaches to his or her pleading an affidavit" etc, defendant has failed to realize that plaintiff's affirmative defenses are not a section 2-619 motion. When citing 735 ILCS 5/2-606 in ¶ 9, defendant and its counsel purposely avoid reading the statute in whole, and take part of a sentence out of its context. It is noteworthy that defendant and its counsel did not follow their own pleading standard in their affirmative defenses. This would defeat defendant's any laboring and redundant contention in the instant motion. Further, Illinois Supreme Court Rule 137 explicitly states, in part, "pleadings need not be verified or accompanied by affidavit."

(3) When raising a question in ¶ 16 on "how they (plaintiff's affirmative defenses) preclude any portion of Defendant's Counterclaim," here again, defendant has failed to realize what an affirmative defense is. As the Honorable Court can see, defendant's argument is superfluous, because the relief for its whole Counterclaim would be nil, zero and nothing, as long as any one of plaintiff's affirmative defenses can be proven as true at trial.

3. Contrary to defendant's frivolous, false or fraudulent statement, plaintiff's affirmative defenses meet the legal standard.

(1) It should be pointed out, defendant's statement in ¶ 2 contains misleading and false information: After defendant filed a motion pursuant to part of section 2-603 on January 24, 2005, the Court could not and did not strike any Complaint in the instant suit, instead, it is defendant's Motion To Dismiss And/Or Strike filed on June 21, 2005, which was stricken completely on October 20, 2005, as a result, defendant became in default for failure to plead because it did not move for leave to file an Answer. In their Motion

To Dismiss And/Or Strike, defendant and its counsel contended they could not "understand and/or answer" plaintiff's pleading, just like here in the instant motion. As the Honorable Court can see, their incompetence and/or dishonesty have already been proven in court filings.

(2) Defendant and its counsel should have noticed that, (a) in her Affirmative Defenses I -VI and XI – XVIII, plaintiff has incorporated paragraphs 1-101 and all Exhibits in her Amended Complaint; (b) beyond argument, in a response to Affirmative Defenses, defendant can not challenge plaintiff's Amended Complaint which is legally and factually sufficient; and (c) defendant and its counsel are fully aware of paragraphs 1-101 and all Exhibits in plaintiff's Amended Complaint contain material facts in support plaintiff's claim and Affirmative Defenses. Further, (d) defendant and its counsel certainly know that plaintiff have pleaded additional facts to support her Affirmation Defenses I -VI and XI – XVIII. Therefore, conclusion can be reached that defendant's contentions in ¶¶ 11 – 14 and 19 – 20 contain fraudulent statement.

(3) As the Honorable Court can see, in Affirmative Defenses VII – X, plaintiff has provided material facts with specificity and particularity to support her pleading. There would be no doubt that defendant's statements in ¶¶ 11 – 14 and 19 – 20 are completely false.

(4) Without question, attorneys are supposed to be court officers; their professional conduct is not only relevant, but also essential to the administration of justice. This is why Rules of Professional Conduct have been incorporated into the Illinois Supreme Court Rules, which shall have the force of law. As well known, court proceedings would be tainted when credibility of counsel is at issue, and if fraud upon tribunal occurs, a judgment might be set aside. Contrary to defendant's assessment of irrelevancy, these are serious matters.

Therefore, defendant's contentions in ¶¶ 15 and 16 are patently without any merit.

(5) Further, contrary to defendant's wanton arguments in ¶¶ 17 and 18 of its motion, plaintiff's Affirmative Defense I, ¶ 1; II, ¶ 6; III, ¶ 2; IV ¶ 3; V, ¶ 4 contain material facts in support of her Affirmative Defenses. For example, in Affirmative Defense I, ¶ 1, plaintiff's statement is definitely an indisputable fact. For another example, in Affirmative Defense III, ¶ 2, plaintiff states "Buick failed to file the instant counterclaim on or before June 22, 2005." It is absurd for defendant to categorize this as a "conclusion of law".

(6) In any event, "conclusion of law" is perfectly permissible in a pleading as long as it is supported by facts. Without question, plaintiff did present facts in Affirmative Defense V, ¶ 4, and as part of it, the statement "the counterclaim has no legal effect except it is the best evidence in support of plaintiff's claims" can be proven as true: Beyond any reasonable doubt, defendant did not include the "storage fee" in the original Buyer's Guide, did not show it in the modified Buyer's Guide, further, defendant did not enter the fees into the contract. As a result, judgment at trial should be entered on Count I, II, IV – VI in plaintiff's favor. By cooking up a Counterclaim, defendant's counsel already put their client in jeopardy, but still, defendant's counsel must think that was not enough, then, concocted their Affirmative Defense IV. This would suggest plaintiff is entitled to relief on Count I – VI. As the Honorable Court can see, no matter what defendant would label all of these statements, as "fact", "conclusion of fact" or "conclusion of law", it is the reality.

(7) The Illinois Supreme Court, in Steven R. Jakubowski, Disciplinary case no. 93 CH 455, provides that:

> "The Court has broadly defined fraud as any conduct calculated to deceive, whether it be by direct falsehood or by

innuendo, by speech or silence, by word of mouth, by look, or by gesture. (In *re Armenstrout* (1983) 99 Ill. 2d 242, 457 N. E. 2d 1262, 1268, 75 Ill. Dec. 703; In *re Segall* (1987) 117 Ill. 2d 1, 509 N. E. 2d 988, 991, 109 Ill. Dec. 149). Fraud includes the suppression of the truth, as well as the presentation of false information. (*In re Witt* (1991) 145 Ill. 2d 380, 583 N. E. 2d 526, 531, 164 Ill. Dec. 610)."

(8) As the Honorable Court can see, it is easy to prove that plaintiff's statement in Affirmative Defense VI, ¶ 5 is true: After the lawsuit was filed, it is the defendant's counsel who threatened to file a Counterclaim; it is a material fact that defendant did file a counterclaim, without dispute, defendant's counsel Mr. Haas did not present it to the Arbitration Panel. As concisely stated in plaintiff's court filings, defendant's counsel, Ms. Elaine S. Vorberg, provided false statements to three Judges in ten days in order to avoid or choose a Judge. Further, in front of Honorable Judge Rhine, during February 26 and March 13, 2006 hearings, for whatever motive, counsel Mr. Haas argued that the "storage fees" in the Counterclaim were $10/day; without question it was a fraudulent statement. All these facts would support plaintiff's Affirmative Defenses V and VI.

4. In sum, defendant's motion should not be heard, or it must be stricken or denied, because as a routine defendant and its counsel show no respect to the Illinois Supreme Court Rules, local rules of this Court and Court Orders. Ignorance of law or negligence cannot be an excuse for repeated offence. Further, defendant's motion is a complete failure: As the Honorable Court can see, even if Buick and its counsel do not know what an affirmative defense is and how to plead, this cannot be a basis for filing a motion to strike, which is full of nonsensical, false or fraudulent statements.

WHEREFORE, Plaintiff prays the Honorable Court strike or deny defendant's motion even if it can be heard, and grant plaintiff additional relief that this Court deems just and proper.

_____ _____

(Plaintiff's Signature) (Date)

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