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

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

MOTION TO RECONSIDER PART OF JULY 10, 2006 ORDER

The Plaintiff, Yuling Zhan, respectfully submits this Motion to Reconsider Part of July 10, 2006 Order, and states as follows:

Motion To Reconsider Dismissal Of Count X

I. Procedural Background

1. On June 6, 2006, Plaintiff filed a Motion for Leave to Supplement Amended Complaint, intending to add two counts against Defendant Napleton Buick Inc. ("Buick"). Plaintiff incorporated proposed supplement into her motion, and one of those two counts was that Buick committed Fraud Upon Tribunal.
2. On June 14, 2006, the Honorable Court granted Plaintiff to amend her complaint; and on June 28, 2006, Plaintiff timely submitted her Second Amended Complaint ("Complaint") pursuant to the Court Order.
3. On July 5, 2006, Defendant filed a motion to strike and dismiss; and requested a hearing on July 10, 2006. See Exhibit A. As the Honorable Court can see, Defendant's motion should not be heard on the date as Defendant required, because the hearing notice, on its face, violates Rule 2.1 of the Circuit Court of Cook County.

4. Defendant certainly knows Rule 2.1 explicitly demands, in part, "the notice shall be deposited in a United States Postal Office Box on or before the fifth (5^{th}) court day preceding the hearing of the motion."
5. Once again, as always, Defendant shows no respect for the same rule. In an attempt to surprise and prejudice Plaintiff, Defendant and its counsel have been trying everything to take unwarranted advantage. To the extreme, Defendant could even file a motion and request a next day hearing, then hand over all papers to Plaintiff in Court. See Exhibit B and Exhibit C at number 10. Similar willful practice should not be allowed, because Defendant's intention has always been to deprive Plaintiff's right to have fair hearings.

II. Defendant's Motion To Dismiss Count X Should Have Been Stricken As A Matter Of Law

6. In its motion to dismiss, Defendant contends, "'Fraud upon the Tribunal' is not a legally recognized cause of action in Illinois." Even because of this frivolous argument, Defendant's motion should be stricken as a matter of law.
7. The term "fraud upon tribunal" or "fraud upon court" "contemplates conduct so egregious that it undermine the integrity of the judicial process." See *Stone v. Stone*, 647 P. 2d 582, 586 n. 7 (Alaska 1982). As such, courts in all jurisdictions recognize fraud upon tribunal as a viable cause of action because it is an offence more serious than fraud between the parties.
8. In the same motion, Defendant admits fraud between parties is a cause of action, while arguing fraud upon tribunal is not. The logic is absurd. Defendant claims it has conducted a "thorough review of Illinois case law"; therefore, Buick knows or should have known its contention is scandalous. As a result, Defendant and its counsel should be sanctioned under Illinois Supreme Court Rule ("Rule") 137.
9. As a specific ground for relief, when fraud on the court occurs, it usually results in the setting aside of a judgment. In this respect, it is informative to read Rule 60 (b) of Federal Rules of Civil Procedure, which was promulgated

and amended by the U. S. Supreme Court, and further amended by Acts of Congress, and it is well settled that Rule 60(b) does not limit power of a Federal District Court to set aside judgment for "Fraud upon the Court." See 19 A. L. R. Fed. 761 (1974)

10. The Illinois Supreme Court has broadly defined fraud as any conduct calculated to deceive. See e. g. *In re Amenttrout* (1983) 99 Ill. 2d 242, 457 N. E. 2d 1262, 1266, 75 Ill. Dec 703. In Illinois, when a party and/or its counsel are engaged in fraudulent misconduct, which is directed at a tribunal, "fraud upon tribunal" is a viable cause of action. See *In re Ingersoll*, 710 N. E. 2d 390, 766-67 (Ill. 1999) (false representation made to the court during summary judgment proceedings regarding discovery amounts to fraud on the tribunal). The Attorney Registration and Disciplinary Commission (ARDC) Board determined that it was a fraud upon the court when an attorney aggravated the misrepresentation to the court by denying receipt of a motion and denying employment of the person who signed for receipt. *In re Wilson*, 95 CH 191 (Dec. 13, 1996),
11. In its motion, Defendant cites *Flynn v. Edmonds*, 236 Ill. App. 3d 770, 602 N. E. 2d 880 (4th Dist. 1992), but the same case rejects Defendant's contention on this important issue. The court in *Flynn* suggested that perjury during pre-trial deposition does not constitute a fraud on a tribunal until the deposition is entered into evidence in court. Without question, the court in *Flynn* recognized "fraud upon tribunal' was a cause of action, but raised a issue whether the term "tribunal" includes pre-trial deposition. Other courts in Illinois have held that the term "tribunal" includes the entire judicial process. See e.g. *Romano Brothers Beverage Co. v D'Agostino-Yerow Assc*. Inc. 1996 U. S. Dist. LEXIS 107, 57 (N. E Ill. 1996). ("False discovery responses taint the whole process, and may result in either the loss or abandonment of meritorious claims.")
12. Further, in *Flynn*, the perjury was committed by the opposing party's witness and the attorney exposed the perjury through impeachment during trial. As well known, there is a distinction between whether it is the attorney's own

client or another party who committed perjury during deposition. An attorney is prohibited from assisting fraud on a tribunal; and an attorney must take corrective measures if her/his client commits fraud on the court. See e.g. *Romano Brothers Beverage Co.*

13. As well known, a section 2-615 motion to dismiss attacks the legal sufficiency of a complaint. See *Lewis E. v. Spagnolo*, 186 Ill. 2d 198, 710 N. E. 2d 798 (1999). When reviewing a section 2-615 motion, all factual allegations in the complaint have to be taken as true, and all factual inference has to be drawn in favor to the Plaintiff. See *Urbaitis v. Commonwealth Edison*, 143 Ill. 2d 458, 575 N. E. 2d 548 (1991).
14. As the Honorable Court can see, Plaintiff has presented clear, unequivocal and convincing evidence with specialty and particularity in support of Count X in her Complaint. Defendant and its counsel cannot deny their own writing on the record, and Plaintiff firmly believes, based on evidence, Buick can hardly dispute the statement of the facts concisely stated in her claim on Count X. As such, Defendant's motion should have been stricken or denied as a matter of law.
15. In Defendant's motion, appropriate or not, its counsel speak for themselves, they "would like to remind the Court that the instant action was filed and served against Defendant, D'Andrew Buick, and not counsel for Defendant." On the face of the motion, Defendant's counsel have not complained the same for Buick's president, officers and salesmen. In its motion, Defendant asserts that Count X is directed "toward Counsel and not Defendant." This is not a correct statement of a fact and law.
16. As well established, a party retains counsel at its own peril, See *Bachman v. Kent*, 293 Ill. App. 3d 1078 (1st Dist. 1997) (Pleading is stricken and request to re-plead is denied because counsel and the law firm violates Rule 137). Defendant cannot escape liability when any of its counsel, just like its other employees, fails to comply with the law. See *Splegel v. Hollywood Towers Condominium Association*, 283 Ill. App. 3d 992 (1st Dist. 1996). In the instant suit, Defendant wanted a trial without an Answer and/or discovery. Defendant

became at default for failure to plead on October 20, 2005, because its counsel had no intention to submit an Answer and they failed to move for leave to file one, and Defendant's motion to dismiss Plaintiff's complaint was stricken by a Court Order. See Exhibit D.

17. In the motion, Defendant's counsel expect that their misconduct, let alone fraud, cannot be revealed, reported or judged on, simply because they are not a party in the instant suit at the moment. This is not a correct statement of law. It is important to note that under Rules 1.2 and 3.3, in Illinois, it is mandatory to report fraud and misconducts.
18. In Illinois, Rules of Professional Conduct are part of the Illinois Supreme Court Rules. They are the law and public policy in the State of Illinois. Specifically, when conduct toward a tribunal is at issue in the instant suit, all litigants, especially their counsel, should comply with Rule 3.3 (a)(1)-(7), 3.3(a)(10)-(13), Rule 8.3 (a), 8.4(a)(1)-(2) and Rule 8.4(a)(4).
19. In its motion, Defendant argues that, when any of its counsel violates these rules, "Plaintiff's appropriate course of action is making a claim with the Illinois ARDC." There is not a correct statement of law either. The Circuit Court of Cook County does have authority to enforce Illinois Supreme Court Rules. As well established, the Court may, in its legal discretion, impose sanctions, disqualify counsel, hear the fraud-on-the-court action before, during or after trial, and/or report it to ARDC after the conclusion of the case.
20. In its motion, suggesting that Count X "Fraud Upon Tribunal" is similar or identical to Count VI "Common Law Fraud," Defendant demands Plaintiff to provide five elements for the claim of fraud upon a tribunal. Beyond any doubt, Defendant is wasting everybody's time by pretending it is not aware of what is a fraud directed at a tribunal, and what is a fraud between parties.
21. In the instant suit, there are different pleading requirements for different claims. To assert Defendant committed fraud on Count IX at the time of sale, all five elements should be pleaded with legal sufficiency. To survive a motion to dismiss on Count X -- fraud upon tribunal, Plaintiff has to offer

evidence with specificity and particularity that Defendant and its counsel committed fraud in court proceedings, and the target of the fraud is a tribunal.

22. As concisely stated in the Complaint, on May 16, 2006, Buick president Mr. Nicholas J D'Andrea, in concert with Defendant's counsel Ms. Elaine S. Vorberg, "affirmatively states that the mileage on the car on or about October 6, 2003 was 24509." Such a fraudulent statement of a material fact was presented to the Court in a written response to Plaintiff's Requests for Admission. Trying to cover up fraud directed at a government agency and Plaintiff in the past, at the time of filing, Defendant targeted the Honorable Court to defraud. Even from this example, conclusion can be reached that Plaintiff's Complaint on Count X meets the Illinois fact-pleading standard.
23. Base on the authorities cited in the instant motion, it is Plaintiff's position that all fraudulent statements of material facts and law in Defendant's responses to Requests for Admission constitutes fraud upon tribunal.
24. Base on the authorities cited in the instant motion, it is Plaintiff's position that, at the very least, all fraudulent statements of material facts and law and concealment of material documents in Defendant's other court filings constitute fraud upon a tribunal, if Defendant fails to make prompt corrections before trial.
25. The First District Appellate Court holds, that the reliance by an attorney on the attorney's client and not making a full and complete review of the facts, as required by law, is indicative of fraud upon the court. See *Edwards v. Estate of Harrison*, 235 Ill. App. 3d 213, 601 N. E. 2d 862 (1st Dist. 1992) And both the litigant and the attorney have an affirmative duty under Rule 137 to conduct an investigation of the facts and law before the pleading. *Polsky v. BDO Siedman*, 293 Ill. App. 3d 414 (2nd Dist. 1997)
26. In sum, Buick's motion to dismiss should have been stricken or denied, because it misstates the law in outrageous ways. As the Honorable Court can see, a cause of action shall not be dismissed on the pleading unless it clearly appears no set of facts can be proved which will entitle the Plaintiff to

recover. See *Bryson v. News America Publications, Inc.,* 174 Ill. 2d 77, 86, 672 N. E. 2d 1207 (1996).

WHEREFORE, Plaintiff prays the Honorable Court reconsider the dismissal of Count X, and strike or deny Defendant's motion to dismiss with prejudice, and grant Plaintiff additional relief that this Court deems just and proper.

Motion To Reconsider The Denial of Plaintiff's Renewed Motion to Compel

I. Procedural Background

1. On March 17, 2006, Plaintiff served Defendant the First Set of Interrogatories ("Interrogatories"), First Set of Requests for Production of Documents ("Request"), and First Set of Requests for Admission of Facts ("Admission").
2. On April 13, 2006, Defendant objected to answer most of Plaintiff's Requests for Admission. It is Plaintiff's position that none of the objections is proper. On May 4, 2006, the Honorable Judge ordered Defendant to respond Requests for Admission Nos. 6, 9, 20, and 42.
3. On April 14, 2006, responding to thirty-one Requests for Production, Defendant asserted attorney-client privilege on nine occasions. None of Defendant's objections has any merit; at the very least, names of Defendant's counsel are not protected by any privilege in the instant suit. And names of counsel who attended February 3 and August 24, 2005 hearings are relevant and crucial for Plaintiff to prepare her case.
4. On May 11, 2006, the Honorable Judge ordered Defendant to answer Interrogatories Nos. 5, 6, 7, 8, 9, 10, 12, 13, 15, 17; and produce documents responsive to Requests Nos. 4, 7, 9, 10, 11, 12, 13, 20, 21, 29, on or before June 1, 2006.
5. On June 13, 2006, thirteen days after the deadline, Defendant filed its response to Interrogatories and Requests for Production in Court as an

Exhibit of a combined motion, and requested the motion to be heard the next day.

6. It is Plaintiff's position that Defendant's response to Plaintiff's discovery request is a complete failure; it is a product of evasion and concealment in an attempt to deprive Plaintiff's rights to conduct a meaningful discovery.
7. Illinois Supreme Court Rule 201(b)(1) explicitly states, in part, " a party may obtain by discovery full disclosure regarding **any matter relevant to the subject matter** involved in the pending action***" (Emphasis added). It is Plaintiff's position that the information required in all of her discovery requests is not only relevant, but also crucial for Plaintiff to prepare the case for a fair trial.

II. Defendant should be Compelled to Answer Interrogatories

8. In its response to Interrogatories No. 5, Defendant conceals crucial information when it asserts "Defendant is not aware of all persons present at the scene and/or all persons who communicated with Plaintiff during her purchase of the vehicle"; and when it further states "Defendant does not know *** who specifically, handed [sale] papers to Plaintiff, if anyone." As the Honorable Court can see, Defendant certainly knows the names of all salesmen who were on duty in the afternoon of September 4, 2003, and Defendant definitely recognizes all the signatures on those sale papers, while outsiders could not, but Defendant chooses to conceal.
9. Also in its response to Interrogatories No. 5, Defendant states: "Any written communications *** were produced in accordance with Defendant's First Response to Plaintiff's Request to Produce Documents." This should be stricken because Defendant failed to indicate which document(s) it referred to. In its response, Defendant not only fails to provide a responsive answer, but also repeats its false statement when it writes: "Additional statements by Defendant can be found previously produced at

D000007 and D000012. ” Here, Defendant certainly knows that D000007 and D000012 were not created on September 4, 2003.

10. In response to Interrogatories No. 6, Defendant fails to provide the number of versions of the Buyer’s Guide; Defendant fails to provide number of copies for each version of the Buyer’s Guide; instead, Defendant provides fraudulent statement again, by arguing “The Buyer’s Guide was removed and provided to Plaintiff after sale.” This sentence should be stricken because, at least, Defendant cannot provide non-responsive argument without support of any fact in its response to an interrogatory. During discovery, Defendant already provides two versions of a Buyer’s Guides with different contents written by different persons. Defendant fails to answer when each of those different versions of a Buyer’s Guide was created and who created each of them. Further, when Defendant contends different versions of a Buyer Guide may be available according to its “custom and practice,” Plaintiff has a good reason to request Defendant to produce copies of different versions of Buyer’s Guides for other used cars during the same time period.
11. In response to Interrogatories No. 7, Defendant fails to answer the most important part of the Interrogatory: “Identify the person who received phone call from plaintiff in the afternoon of September 4, 2003, regarding the warranty paper ***, describe in detail what that person did afterwards” Here, Defendant certainly knows who had access to its fax machine and faxed the front page of a content-changed Buyer’s Guide, but it chooses to conceal.
12. In response to Interrogatories No. 8, Defendant fails to produce inspection record of its own; Defendant fails to produce records on mechanical check-up during the sale at Plaintiff’s request; instead, Defendant states “ An inspection of the subject vehicle was conducted on or about April 11, 2005, *** Defendant is not in possession of any documents related to that inspection.” The whole paragraph should be

stricken because, as Defendant and its counsel are clearly aware of, April 11, 2005 is not the date Plaintiff made a purchase on September 4, 2003.

13. In response to Interrogatories No. 9, Defendant and its counsel assert: "Defendant specifically denies that the subject vehicle stalled at highway speed on September 8, 2003." This should be stricken as well, because, Defendant contradicts its own previous contention, and Defendant cannot provide non-responsive argument without support of any fact in its response to an interrogatory. When Buick argues "Defendant is not aware of the person, if any, who received calls", it is a perfect example of concealment: No reasonable person would believe Defendant does not know who its employee was on late evening shift on September 8, 2003, and who its employee was to tow back the car.
14. In response to Interrogatories No. 10, Defendant changed its position again as to whether Plaintiff had misused the subject car. As such, Defendant has an obligation to identify what information Defendant has for it to change its story again at this moment. Response to an Interrogatory is not a place for argument without support of a fact, let alone fraudulent statement.
15. In response to Interrogatories No. 12, Defendant repeats its years-long false statement. Further, Defendant fails to provide the date of its letter responding to the inquiry from the Illinois Attorney General's Office, and fails to fully disclose the identification, such as the job responsibility, of the person who created or fabricated the September 10, 2003 letter.
16. In response to Interrogatories No. 13, Defendant fails to name a person to control the "day-to-day access to the subject car," and fails to provide "step-by-step procedure" for any "inspection." Further, Defendant fails to submit any records and documents for each occasion when the subject car was "accessed", "inspected" and/or its condition was "altered."
17. Defendant's response to Interrogatories No. 15 should be stricken as to the extent that the following phrase is fraudulent: " as it has been left by its owner, exposed to the elements for nearly three years." At the very

least, such phrase should be stricken because it is non-responsive and argumentative, and an answer to an interrogatory is not a place to provide argument without support of any fact.

18. In response to Interrogatories 17, Defendant defies the Court Order issued by Honorable Judge Rhine. Defendant fails to submit any expert testimony as required. When Defendant refers D000012, it fails to answer what the date was when D000012 was created. Further, Defendant conceals crucial information on its communication with the Office of Secretary of State for title transfer of the subject car.

III. Defendant Should Be Compelled To Produce Documents

19. In response to Request No. 4, Defendant fails to produce repair records for the subject car; also Defendant fails to submit an invoice of any kind. Defendant provides or refers to some documents, which are not responsive to Plaintiff's Request.
20. In response to Request No. 9, when referring to D0000007 and D000012, Defendant pretends not to know Mr. Nicholas J. D'Andrea is not Mr. Ed Earley, or Mr. Henry Horton. As such, Defendant fails to respond the Request completely.
21. In response to Request No. 10, Defendant fails to produce copies of a complete set of documents Mr. Earley sent to the Illinois Attorney General Office; Defendant fails to produce copies of financial transaction records when Defendant acquired the subject car; Defendant fails to produce copies of a complete set of documentation of communication with the Office of Secretary of State during title transfer; Defendant fails to produce all "Thank You" notes and advertisement sent to Plaintiff. Further, Defendant fails to produce records of communication between Mr. Earley and other employees at Defendant.
22. In response to Request No. 11, Defendant defies the Court Order issued on May 11, 2006, by Honorable Judge Rhine, which requires Defendant to submit its expert's testimony. When Defendant claims it is not "in

possession of any such document," Mr. Bob Caridi has no personal knowledge on anything in the instant suit, except spoliation of evidence.

23. In response to Request No. 12, Defendant fails to include the information "regarding the dates and documents were created and the author(s) of the documents." Although three versions of a Buyer's Guide existed for a single car, during discovery, Defendant submitted only two of them, further, Defendant fails to provide when each of them was created and by whom. In response to Interrogatories No. 6, Defendant states more than one version of the Buyer's Guide may be available, and contends this is "consistent with Defendant's custom and practice." As such, it is reasonable to require Defendant to submit different versions of Buyer's Guides for some other cars as proof of the existence of "custom and practice" at Defendant
24. In response to Request No. 13, Defendant knows the existence of transaction records in its possession, but chooses to conceal them. Defendant is a car dealer, not a private consumer. When it claims there is no financial transaction record when it acquires a vehicle, it is patently fraudulent.
25. In response to Request No. 20, Defendant fails to produce the required documents. Defendant submits 21 pages of papers at D000020 through D000041, but they are not responsive to the specific Request.
26. In response to Requests No. 21, Defendant fails to produce required documents. Defendant submits D000042, but it is neither a notice of hearing, nor is it a motion, nor is it a certificate of service,
27. In response to Requests No. 29, Defendant contends its financial records should not be disclosed. It is Plaintiff's position that the timing of Defendant's acquisition of the subject vehicle from Precision Motors Inc. is vital for the instant suit. Therefore, in case Defendant refuses to provide such transaction records, Defendant's bank accounts in 2003 should be discoverable. Further, there is difference for one-time violation and related serious of violations of the federal Vehicle Information and Cost

Saving Act, 49 U. S. C. § 32701 et. seq., and Defendant's financial records in conjunction with other documents will be vital to assess civil penalty which may be imposed by the U. S. Government.

28. Illinois Supreme Court Rule 214 explicitly states, in part, "[T]he party producing documents shall furnish an affidavit stating whether the production is complete in accordance with the request." As the Honorable Court can see, Defendant, once again, fails to comply with the Illinois Supreme Court Rule.

IV. Conclusion

29. As well known, the major objective of interrogatories is to pin point key witnesses to depose, when necessary. Also Defendant does have the obligation to comply with discovery rules and produce essential documents. Plaintiff will be prejudiced if Defendant's evasion and concealment are tolerated.
30. Plaintiff has the fundamental right to conduct a meaningful discovery in order to have a fair trial. In the instant suit, the Honorable Judge is considerate enough when compelling Defendant to respond only four requests for admission of facts, ten interrogatories, and ten requests for produce documents. Plaintiff will be prejudiced if Defendant is allowed to evade its response to a well-selected and already narrowed scope of discovery.

WHEREFORE, Plaintiff respectfully requests the Honorable Judge to reconsider the denial of Plaintiff's Renewed Motion to Compel Defendant to Answer Interrogatories and Produce Documents, and issue an Order

a. Compelling defendant to provide true, correct and complete answer to Interrogatories Nos. 5, 6, 7, 8, 9, 10, 12, 13, 15, 17; and striking all text which is not responsive to a specific interrogatory, or which is argumentative without support of any fact;

b. Compelling Defendant to produce documents responsive to Requests for Production of Document Nos. 4, 9, 10, 11, 12, 13, 20, 21;
c. Compelling Defendant to produce copies of all financial transaction records of the subject car when Buick acquired the vehicle from Precision Motors Inc., and compelling Defendant to produce copies of a complete set of all title transfer documents including but not limited to the previous original title of the subject car Buick sent to the Office of Secretary of the State;
d. Compelling Defendant to provide names of counsel who attended February 3 and August 24, 2005 hearings respectively; and
e. Granting Plaintiff additional relief that this Court deems just and proper.

_____ _____

(Plaintiff's Signature) (Date)

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