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 REPLY TO ANSWER

NOW COMES the plaintiff, YULING ZHAN, pursuant to 735 ILCS 5/2-602, respectfully submits a reply to defendant's Answer and states as follows:

I. BACKGROUND

On December 22, 2004, plaintiff filed the instant lawsuit against a car dealership Napleton Buick Inc. ("Buick"), and raised a variety of claims. On May 5, 2005, Plaintiff filed an Amended Complaint ("Complaint"). One month later on June 21, 2005, Buick submitted its Motion To Dismiss And/or Strike. In several months, a single motion, Buick filed it twice, presented to three Judges on four occasions, there were one oral ruling, two written orders on the same motion.

In October of 2005 defendant repeatedly claimed the case was ready for trial, at the same time, it had no intention to file any Answer. On October 20, 2005 defendant's Motion To Dismiss was stricken by the Court. On November 3, 2005, before the case was reassigned to another trial court, plaintiff filed a motion for substitution of Judge, which was granted on December 8, 2005.

Defendant has never moved for leave to file an Answer. Instead, on November 28, 2005, it filed the instant Answer under November 8, 2005 Court Order which was void and a nullity because plaintiff's November 3, 2005, motion of substitution of Judge as of right was granted.

To the extend in case the Answer was not nullified at the time when the order became void, plaintiff submits a Motion To Strike Affirmative Defense, which is filed simultaneously in addition to this Reply.

II. REPLY TO THE ANSWER

1. Illinois is a fact pleading, not a notice pleading jurisdiction. See *Teter v. Clemens*, 112 Ill. 2d 252, 492 N. E. 2d 1340 (1986). It is not sufficient to merely state conclusion of law and conclusion of fact. See *Knox College v. Celotex*, 88 Ill. 2d 407, 430 N. E. 2d 976 (1981).

2. In the Answer, basically, defendant retyped plaintiff's Complaint and attached one of three kinds of labels to each paragraph, as "admitted", "denied" or "lack of information". As the Honorable Court can see, defendant's Answer cannot meet the Illinois pleading standard as a matter of law because it provide no facts.

3 On rare occasions in the Answer such as in its attached affirmative defense, defendant asserted one or two vague conclusions of facts as defense, which must be stricken. As 735 ILCS 5/2-613(d) (2002) clearly says: "[T]he facts constituting any affirmative defense *** and any ground or defense, affirmative or not, *** must plainly set forth in the answer or replay." If such practice from defendant is allowed, plaintiff will be surprised and prejudiced, since it has been proven that defendant and its counsel change their position from time to time in and out of the Court.

4. As 735 ILCS 5/2-610 (c) says: “Denials must not be evasive, but must fairly answer the substance of the allegation denied.” As the Honorable Court can see, wherever defendant pleads “denied” in the Answer without providing any factual or legal ground, its contention is either frivolous, or false or fraudulent. For examples, in Reply ¶ 8, defendant denies “Buick failed to produce maintenance record of the car at plaintiffs [sic] request”; in Reply ¶ 81 f, defendant denies “Legal fees to file and sustain the lawsuit, attorney fees if Plaintiff retains a lawyer when necessary”, and asserts “Plaintiff has incurred no legal fees and is not entitled to legal fees,” here and as everywhere, beyond any reasonable doubt, defendant knows these are false statement but presents them to the Court anyway. Plaintiff will address the rest of defendant’s denials in the further court proceedings.

5. Also wherever defendant pleads “lack of information” in the Answer, its argument is either frivolous, or false or fraudulent, and defendant’s counsel Mr. Ryan Haas provided affidavit of these contentions. For examples, in Reply ¶ 5 to the statement “Driving safety is the major concern when Plaintiff decided to buy another car”; and Reply ¶ 20 to the statement “Plaintiffs [sic] check was cleared by Buick the second day of the purchase on September 5, 2003”, here, beyond any reasonable doubt, defendant does have enough information, but chooses to evade the facts. As the Honorable Court can see, Reply ¶ 5 is inconsistent with defendant’s admission in Reply ¶ 4, and no reasonable person can believe defendant lacks information on the date it cleared a specific check as it asserted in Reply ¶ 20. Plaintiff will address the rest of defendant’s “lack of information” in the further court proceedings.

6. When filing the Answer, defendant failed to serve an official copy upon plaintiff, there is no Court stamp on either the Notice of Filing or

on the first page of the Answer. This is not the first time defendant fails to serve papers or provides false statement on oath. On January 27, 2005, after filing a motion, defendant could send plaintiff only a single piece of paper as Notice of Motion without any attachment. Such practice should not be allowed in Court.

7. It is a material fact that defendant filed an untimely counterclaim of $19000 and more on June 23, 2005 in the Court, which was not a small claim at all. Defendant and its counsel have perfect knowledge of this fact. On August 3, 2005 defendant failed to present the counterclaim to the Arbitration Panel, which constituted a omission and concealment, as Illinois Supreme Rule 92 (b) clearly required "[T]he award shall dispose of all claims for relief." Here again in the Answer, defendant failed to include the Counterclaim to the Answer.

8. The Illinois Code of Civil Procedure states: "[T]he first pleading by the defendant shall be designated as an answer." 735 ILCS 5/2-602, and "[t]he counterclaim shall be a part of the answer." 735 ILCS 5/2-608. See *Wilson v. MG. Gulo & Assoc.*, 294 Ill. App. 3d 897 (1998); *Citicorp Sav. Of Ill. v. Rucker*, 295 Ill. App. 3d 801 (1998). Whenever defendant and its counsel still argue the Counterclaim is still viable, after concealing to the Arbitration Panel and failing to include it in the Answer, they are wasting the invaluable resources of the Court. The existing issues should be whether the Counterclaim is a frivolous filing and whether defendant committed fraud upon a tribunal during arbitration.

9. 735 ILCS 5/2-612 (b) provides "No pleading is bad in substance which contains such information as reasonably informs the opposite party of the nature of the claim or defense which he or she is called upon to meet." As the Honorable Court can see, defendant's Answer is a complete failure, as plaintiff or any reasonable person cannot figure out

where a defense is. The Answer, as defendant's Counterclaim, provides no shred of fact or legal ground, they are not bad only in the sense defendant provides the best evidence for plaintiff.

10. In the Answer, defendant asserts several "Affirmative Defenses." As the Honorable Court can see, in ¶ 2 on page 21 of the Answer, defendant is suggesting there is no independent cause of action under Magnuson-Moss Act; and in ¶¶ 3 and 4 on the same page of the Answer, defendant is suggesting there is no private cause of action under Illinois UCC. In the Answer, defendant is recycling its argument in its Motion To Dismiss Or Strike, which was stricken already because these contentions are not only frivolous but also scandalous. To address the related issues further, plaintiff is filing a Motion To Strike Defendant's Affirmative Defense, together with the instant Reply.

Respectfully submitted,

_____ _____

(Plaintiff's Signature) (Date)

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