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

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

REPLY TO DEFENDANT'S ANSWER

TO PLAINTIFF'S SECOND AMENDED COMPLAINT

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

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").
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 10, 2006. Honorable Judge Rhine ordered Defendant to answer Count IX in the Complaint.
4. On July 19, 2006, seemingly, Defendant attempted to answer Plaintiff's entire Complaint instead, and filed a Defendant's Answer to Second Amended Complaint (" Answer").

II. Defendant's Answer Is A Complete Failure

5. As the Honorable Court can see, Defendant fails to incorporate Plaintiff's Complaint as an Exhibit; Defendant fails to retype the Complaint correctly. As rambled and confusing as it could be, Defendant's instant Answer is a mixture of false assertion of procedural and substantive matters, and responses to Plaintiff's First Amended Complaint and Second Amended Complaint or some other court filings.
6. ILCS 5/2-610 (a) requires ""Every answer and subsequent pleading shall contain an explicit admission or denial of each allegation of the pleading to which it relates." Therefore, whenever Defendant claims it neither admits nor denies, such as at Answer ¶103, ¶¶107-108, ¶117, ¶119, ¶124, ¶130, Defendant's Answer does not meet Illinois statutory pleading requirement, and they must be deemed as judicial admission.
7. ILCS 5/2-610 (b) requires "Every allegation, except allegations of damages, not explicitly denied is admitted, unless the party states in his or her pleading that he or she has no knowledge thereof sufficient to form a belief, and attaches an affidavit of the truth of the statement of want of knowledge, or the party has had no opportunity to deny." As such, whenever Defendant claims lacking of knowledge in its Answer, the response must be deemed as admitted, because Defendant's affidavit has no legal effect, as Defendant definitely knows that Ms. Christina M. Phillips is a female, not a "he".
8. ILCS 5/2-610 (c) requires " Denial must not be evasive, but must fairly answer the substance of the allegation denied." Therefore, whenever Defendant claims denial without any fact in support of the denial, Defendant's response must be deemed as admitted.
9. Under Illinois Supreme Court Rule ("Rule") 137, a statement is sanctionable if it is not well grounded in fact. See Rule 137; *Chicago City Bank and Trust Co. v. Pi*ck, 235, Ill. App. 3d 252 (1st Dist. 1992) As such, at the very least, whenever Defendant claims "denied" without any fact in support of the denial, Defendant's response must be deemed as admitted.

III. Reply To Defendant's Response on Count I – VIII

10. Here, Plaintiff incorporates her Reply to Defendant's "Answer to the [First] Amended Complaint" as Exhibit A into the instant Reply, because Defendant simply submitted its answer to the first amended complaint as part of its instant Answer on Count I – VIII.
11. Plaintiff would like to point out, in both Answers, Defendant conceals a material fact: Buick became at default for failure to plead on October 20, 2005, as such, Count I – VIII in the First and Second Amended Complaint should stand.
12. On May 5, 2005, Plaintiff filed an Amended Complaint. One month later on June 21, 2005, Buick submitted its "Motion To Dismiss And/or Strike." And in several months, in order to solicit a ruling in its favor, a single motion, Buick filed it twice, presented it to two Honorable Judges on three occasions before October 20, 2005. Eventually, Defendant's motion was stricken. See Exhibit B.
13. It is well established that 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 violate a Illinois Supreme Court Rule).
14. Without question, after Defendant's motion to dismiss was stricken, it is Defendant's Counsel who had an affirmative duty to move for leave to file an Answer on October 20, 2005, but they had no intention to do so. In order to deprive Plaintiff's fundamental rights, Defendant wanted a trial without filing an Answer, without conducting a discovery. Accordingly, Defendant's failure is more serious than, or at least, as fatal as that in *Bachman.* As a result, Defendant has to face the consequences.
15. As to Counts VII and VIII, Plaintiff would like to point out, some respectful and knowledgeable professionals may suggest that Counts VII (negligent infliction of emotional distress) and VIII (intentional infliction of emotional distress) could be combined with or emerged into other Counts as

consequential damages. The relief for Plaintiff might be the same, but it is Plaintiff's position that these two Counts do constitute separate causes of action in Illinois, Defendant fails to respond these two Counts paragraph by paragraph, and factual allegations in Counts VII and VIII should be deemed as admitted.

IV. Reply To Defendant's Response on Count IX

16. At Answer ¶102, Defendant asserts denial. That is the only occasion Defendant follows ILCS 5/2-610 (c) when responding Count IX, but Defendant's contention is wrong. At March 13, 2006 hearing, when drafting an Order, Buick's counsel Mr. Ryan Haas already admitted the discovery "should remain open and START [not RESTART] within 7 days."
17. For the reason stated above at ¶6, Defendant responses at Answer ¶103, ¶¶107-108, ¶117, ¶119, ¶124 have to be deemed as judicial admission.
18. For the reason stated above at ¶7, Defendant responses at Answer ¶¶104-105, ¶113, ¶¶121-125 have to be deemed as admitted.
19. Further, when Defendant admits information contained in Exhibit L is true at Answer ¶103, regarding repair records and mileage, Defendant is not in a position to contend Buick lacks knowledge of the same information at Answer ¶104.
20. Further, Defendant and its counsel should be sanctioned under Rule 137 when they assert "lacking of information to the truth of the allegation" at Answer ¶105. It is Defendant who provides the mileage information of the subject car on the day of August 21, 2003, in its discovery response as D000020.
21. Further, Defendant and its counsel should be sanctioned under Rule 137 when they assert "lacking of information to the truth of the allegation" in it responses at Answer ¶113, ¶122-124, because Defendant did not legally own the previous title of the subject car at the time of "sale" in question. When Defendant did not have the previous title, it could not present it to

Plaintiff. Any attempt to deny such simplest logic and statement of fact, or claim lacking of knowledge of it would be frivolous.

22. Further, Defendant and its counsel should be sanctioned under Rule 137 when they assert “lacking of information to the truth of the allegation” in its responses at Answer ¶125. For any vehicle, the odometer reading shall be lower for prior title transfer as compared to that of later ones. It s absurd for Defendant and its counsel to argue such a fact or logic.
23. For the reason stated above at ¶¶ 8 and 9, Defendant responses at Answer ¶106, ¶¶110-112, ¶115, ¶123, ¶¶126-129, ¶¶130-135 fail to meet Illinois statutory pleading standard, they must be deemed admitted.
24. As the Honorable Court can see, while asserting denial at Answer ¶106, Defendant provides a false statement, and fails to illustrate how it investigates the reading accuracy or discrepancy on August 21, 2003.
25. As the Honorable Court can see, while asserting denial at Answer ¶¶110-111, Defendant fails to provide any fact in support of its denials.
26. As the Honorable Court can see, Defendant cannot challenge a statement of fact and law at Answer ¶112: when the mileage of the subject car is substantially lower than average, Defendant does have an affirmative duty to investigate the accuracy or discrepancy of the odometer reading.
27. As the Honorable Court can see, Defendant provides fraudulent statement in its response at Answer ¶115: Under the law, Defendant has the obligation to provide names of the persons who created the odometer statement from Precision Motors Inc. but it fails to do so
28. As the Honorable Court can see, Defendant provides fraudulent statement in its response at Answer ¶123, because, without question, on September 4, 2003, Defendant did not legally own the subject car and its title.
29. As the Honorable Court can see, Defendant provides fraudulent statement in its response at Answer ¶126, because Defendant provides irreconcilably conflicting mileage readings for the dates of September 4 and October 6, 2003. Without question, no odometer would run backward.

30. As the Honorable Court can see, Defendant provides fraudulent statement in its response at Answer ¶¶127-129, because even at this time, Defendant still refuse to provide all the documents including but not limited to a copy of the previous title of the subject car.
31. Further at Complaint ¶129, Plaintiff states that she "is entitled to conduct a meaningful discovery and have a fair trial." Defendant responds "Denied." Even for this egregious contention, Defendant must be sanctioned under Rule 137 as a matter of law.

V. Reply to Defendant's Affirmative Defenses

32. In its Answer, Defendant failed to incorporate its affirmative defenses, and Defendant did not even bother to state what their Affirmative Defenses numbers II and IV were. An Answer shall be complete in itself. As such, no matter what its affirmative defenses had been, Defendant has waived them all as both affirmative defenses and defenses.
33. Plaintiff would like to point out again, Defendant became at default for failure to plead on October 20, 2005. On November 28, 2005, Defendant filed an Answer, but failed to serve an official copy to Plaintiff; and Defendant provided false statement that Buick had served court papers to Ford Motor Company. Even for these reasons only, Defendant's Answer, including its Affirmative Defenses therein, should have no legal effect, except they are the best evidence in support of Plaintiff's claims.
34. To the extend Plaintiff is required to reply, on April 10, 2006, Plaintiff filed her reply to Defendant's affirmative defenses II and IV. On April 25, 2006, Defendant filed a motion to challenge Plaintiff's Reply. It is Plaintiff's position that after April 10, 2006, without a motion for leave to file a response, without Court's permission before hand, Defendant's filing should be stricken as a matter of law, because it violated 735 ILCS 5/2-602.
35. In additional to the reasons stated in Plaintiff's Reply to Defendant's Affirmative Defenses II and IV, it is Plaintiff's position that Defendant has no legal and factual ground to assert Affirmative Defense II, after Defendant

failed to provide a single piece of paper -- an official Buyer's Guide with both front side and rear side – at the time of "sale" and during court proceedings.

36. For almost three years, Defendant plays trick with the Buyer's Guide, changes its content of warranty terms, and during discovery Defendant admitted there were different versions of it. As a result, Defendant has no defense, let alone affirmative defense.
37. In additional to the reasons stated in Plaintiff's Reply to Defendant's Affirmative Defenses II and IV, it is Plaintiff's position that Defendant has no legal and factual ground to assert Affirmative Defense II, when Defendant fails to provide any evidence during discovery that it had contacted Plaintiff directly, seeking any opportunity to inspect and/or repair the subject car before the lawsuit was filed. As well known, by definition, an affirmative defense cannot attack factual and legal allegations in a Complaint.
38. In additional to the reasons stated in Plaintiff's Reply to Defendant Affirmative Defenses II and IV, it is Plaintiff's position that Defendant has no legal and factual ground to assert Affirmative Defense II. Beyond any doubt, Defendant's Affirmative Defense II becomes preposterous when its Affirmative Defense IV is considered: Even assuming *arguendo* all implied warranties had been disclaimed at the time of the sale, as Defendant fraudulently stated, conclusion can be reach as a matter of law that such a disclaimer would be a per se violation of Magnuson-Moss Act.
39. Without question, Defendant's Affirmative Defenses IV has been stricken by the Court, because it is a per se violation of Magnuson-Moss Act, Illinois UCC, Illinois Consumer Fraud Act, and it is an evidence that Defendant committed common law fraud. Defendant should be sanctioned under Rule 137, when it attempts to recycle its egregious argument again in the instant filing.

VI. Conclusion

40. As the Honorable Court can see, Defendant's Answer to Count IX shows Defendant did not own the subject car and its title, legally and financially,

when it acted as a “transferor.” Even for this reason only, Defendant has no defense in the instant case, let alone affirmative defense.

41. At discovery request, Defendant does have the obligation to submit financial transaction record created when it acquired the subject car from Precision Motors Inc.; and submit documents Defendant sent to the Office of Secretary of State, including but not limited to a copy of the previous title of the subject car.
42. When Defendant demands strict proof that the odometer reading was 24620 on April 11, 2005, Buick is obliged to provide the current odometer reading of the same car at the moment. The readings should be the same, unless Defendant spun the meter after April 11, 2005.
43. It is Plaintiff’s position that, to cover up their misconduct and failure, Defendant’s counsel might recycle more wanton arguments for the purpose to deprive Plaintiff’s right to conduct a meaningful discovery or delay the court proceedings indefinitely at their client’s cost. Under Rule 137 such practice should be sanctioned; and under Illinois Rules of Professional Conduct, counsel and their firm should be disqualified because conflict of interest exists for their continuing representation

Respectfully submitted,

_____ _____

(Plaintiff’s Signature) (Date)

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