

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

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

**MOTION TO SANCTION DEFENDANT’S COUNSEL**

**MS. ELAINE S. VORBERG FOR HER RECENT MISCONDUCT**

Plaintiff, Yuling Zhan, respectfully submits this Motion To Sanction Defendant’s Counsel Ms. Elaine S. Vorberg for Her Recent Misconduct, pursuant to Illinois Supreme Court Rule (“SCR”) 137, Rule 2.1 of this Court, Illinois Rules of Professional Conduct (IRPC) 3.3, and states as follows:

1. On December 21, 2004, plaintiff filed the instant lawsuit, and raised a variety of claims against a car dealership Napleton Buick Inc. (“Buick). Ms. Elaine S. Vorberg (“Vorberg”) from Childress Duffy Goldblatt, Ltd. (the “Firm”) is one of present counsel for defendant.
2. On October 11, 2005, during an Intake and Case Management Conference held at 9:00 a.m. in Court Room 1304, Vorberg insisted on setting a trial date and provided fraudulent statement in open court by asserting “All discovery is closed for this case.” After Honorable Judge Lewis asked defendant to present a witness list for trial; Vorberg showed a single name of a person plaintiff had never heard of. Lucky for Vorberg, the Honorable Judge did not order Buick to produce other documents, which defendant had no way to provide.
3. As the Court record shows defendant and its counsel, including Vorberg, interrupt and delay the court proceedings for ten months, as a direct result, Buick failed to file an Answer, discovery could not start, and in violation of Illinois Rules of Civil Procedure, Buick filed a frivolous

- counterclaim instead. As stated in plaintiff's Motion To Strike filed on July 12, 2005, the counterclaim is a product of consumer fraud and fraud upon the court. Further, when Vorberg demanded destruction of evidence before discovery, her outrageous request was flying in the face of 810 ILCS 5/2-515 and IRPC 3.4.
4. After failing to require a trial date order, a few minutes later, Vorberg provided other fraudulent statement to the Court, by contending "Plaintiff's motion for correction and clarification is still pending," "Plaintiff's motion for reconsideration is still pending." Citing the titles of the motions, Vorberg was very well aware of that those motions were not pending. The first motion is related to Arbitration Reward; and the second addresses Dismissal of Ford Motor Company as a defendant. As the record shows, Vorberg's contention is not only flagrantly false, but also contradictory to her assertion that the case was ready for trial.
  5. Honorable Judge Lewis indicated that she needed a certification about the case status from Court Room 1501. Half an hour later at a hearing in Honorable Judge Johnson's chamber room, Vorberg presented an old motion to dismiss one more time, the same one which defendant had filed to the Court twice already, and as plaintiff pointed out in her July 12, 2005 opposition, defendant's motion was not only frivolous but also scandalous.
  6. This is the second time Vorberg and another counsel Mr. Ryan Haas ("Haas") tried to seek a ruling on the same motion in their favor from Honorable Judge Johnson. In any event, no matter whether or not Vorberg and other counsel resent a ruling or comment from Honorable Judge Healy, she shall not play tricks, and waste invaluable time and resources of the Court, by seeking a ruling from different Judges again and again.
  7. In Honorable Judge Johnson's chamber room, Vorberg argued that Buick needed Judge Healy, who was in vacation, to clarify an order he entered on August 8, 2005. Later Vorberg drafted a Court Order and set a hearing date Judge Healy would preside. See Exhibit A.

8. As the Court can see, Vorberg knew the exact date when the subject order was issued, she knew the title of the subject motion, she certainly knew there was no ruling on Buick's Motion to Dismiss on August 8, 2005 while she was still seeking a ruling in her favor from Honorable Judge Johnson on October 11, 2005. Therefore, Vorberg needs nothing to clarify about from the very beginning. The subject order entered on August 8, 2005 was a ruling on plaintiff motion for reconsideration of the dismissal of Ford Motor Company as a defendant; and the motion was not pending, further, it had nothing to do with Buick. The fact is, beyond any reasonable doubt, just in two hours, Verberg had provided fraudulent statement in front of two Honorable Judges for improper purposes, which would become crystal clear when she took the next step in the open court.
9. During the scheduled hearing on October 20, 2005, Vorberg and Haas did not mention clarification for anything at all. Again, Vorberg asserted that the case was ready for trial, but surprisingly, she moved for leave to withdraw jury trial demand. Such practice from Buick counsel should not be allowed under Rule 2.1 of this Court, because Buick failed to file a motion and failed to serve a notice of hearing on this specific issue. Even if oral motion is permitted in the Court under different circumstances, beyond any reasonable doubt, Vorberg shows total lack of respect to a Court Order issued on September 23, 2005, as it says in part: "All other motions shall be presented in the assigned trial room." See Exhibit B. This means that if jury trial were the only concern for Vorberg, she had to present a motion to withdraw the jury demand in Court Room 1304, where she attended a conference and a hearing before Honorable Judge Lewis, and Vorberg had ample opportunity to do so, but she didn't say a word on this issue, then and there.
10. Under IRPC 3.3, candor to a tribunal is the obligation for every lawyer. Vorberg has the duty to explain why she provided fraudulent and self-conflicting statements to two Judges in two hours, to three Judges during a short time period of 10 days, why she incorporated her own false

statement into a drafted court order, why she demanded withdrawing jury demand, and why she failed to file a motion and failed to serve a notice of hearing on the specific issue. Plaintiff has a good reason to ask that whether Vorberg might rescind the informal withdraw of jury demand, if she dislikes a comment or a ruling from any Honorable Judge presiding a bench trial. Also it is natural for plaintiff to ask whether Vorberg could argue plaintiff's Motion to Strike filed on July 12, 2005 is still pending, in case some day she wants some other Judge to hear the case.

11. Rule 137 requires that every pleading, motion and other paper of a party shall not interpose for any improper purpose. A "paper" can include a filing of appearance and jury demand. See *Hernandez v. Williams*, 632 N. E. 2d 49, 52 (Ill. App. 3<sup>rd</sup> Dist. 1994). The court could issue sanction under Rule 137, if the court believes that a paper contains or is based upon a false statement. See *Pritzker v. Drake Tower Apartments, Inc.*, 670, N. E. 2d 328 (Ill. App. 1<sup>st</sup> Dist. 1996).
12. Due to Vorberg's recent misconduct, plaintiff has to attend two additional hearings and file the instant motion, for which she otherwise does not have to. Based on several grounds, plaintiff filed a motion to disqualify and/or sanction Vorberg, Haas and their Firm on October 7, 2005. But still, plaintiff is entitled for additional relief, and sanction is warranted upon Vorberg for each time when she showed total lack of respect to the Court, the Court Order, the Illinois Supreme Court Rules, Rules of this Court, and Illinois Rules of Professional Conduct.

WHEREFORE, plaintiff prays the Honorable Court grant this motion.

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(Plaintiff's Signature)

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( Date )

Yuling Zhan

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