

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 MOTION TO DISMISS DEFENDANT’S COUNTERCLAIM**

Plaintiff, Yuling Zhan, pursuant to Illinois Supreme Rule (ISCR) 92 (b), 735 ILCS 5/2-615, 735 ILCS 5/2-619, 735 ILCS 5/2-602 and 735 ILCS 5/2-608, respectfully submits this motion to dismiss a counterclaim, which was originally filed on June 23, 2005 by Napleton Buick Inc. (“Buick”), and states as follows:

1. The instant suit was filed on December 21, 2004; after eleven months of court proceedings, Buick failed to file an Answer. On June 23, 2005, Buick ignored the deadline set by the Court, submitted a counterclaim. Plaintiff timely filed a Motion to Strike and Buick has failed to respond ever since.
2. On August 3, 2005, during a court- annexed arbitration, Buick did not present its counterclaim to the Arbitration Panel. Under ISCR 92 (b), “[T]he award shall dispose of all claims for relief”, in case Buick had already abandoned the counterclaim, the only issue left at a trial court for this matter is whether Buick and its counsel should be sanctioned for a frivolous filing.
3. The Arbitration Panel shall be considered as a tribunal according to American Bar Association. See ABA Model Rules of Professional Conduct, Rule 1.0 (m) (2004); ABA Formal Opinion 93-375 (Aug. 6, 1993), cited in ISBA Advisory Opinion 99-04 (Oct., 1999). It is a material fact that the face value of Buick’s counterclaim is larger than a defective car in dispute.

4. In case Buick argues the counterclaim is still viable after concealing it during arbitration, then, the conclusion must be reached: Buick and its counsel committed fraud upon a tribunal; and the counterclaim should be dismissed pursuant to 735 ILCS 5/2-619. Further, other than the Arbitration Panel and plaintiff, Buick's counsel, Mr. Ryan Haas, is the only witness and actor during the arbitration. Among other things, for this misconduct alone, Mr. Haas should be disqualified in the instant suit.
5. As the Honorable Court can see, Buick's counterclaim must be dismissed as a matter of law, because the filing violates the Illinois Code of Civil Procedure. As it is well known, "the first pleading by the defendant shall be designated as an answer." 735 ILCS 5/2-602. And "the 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).
6. Buick's counterclaim shows no cause of action, no set of facts to support the claim. Such failure is fatal. The counterclaim must be dismissed pursuant to 735 ILCS 5/2-615. Furthermore, under 735 ILCS 5/2-608 (d), "[A]n answer to a counterclaim and pleadings subsequent thereto shall be filed as in the case of a complaint and with like designation and effect." After plaintiff filed a Motion to Strike, Buick failed to respond in the past five months.
7. Drafting the counterclaim, Buick and its counsel Ms. Vorberg, demanded a Court Order to destroy evidence before discovery. This kind of outrageous request is flying in the face of 810 ILCS 5/2-515. Therefore, as a matter of law, the counterclaim must be dismissed or stricken. Buick and its counsel Ms. Vorberg should be sanctioned for such filing under ISCR 137.
8. In a letter dated May 17, 2005, Ms. Vorberg tried to extract unwarranted settlement for the instant suit by writing to plaintiff "we hereby offer to repair the vehicle, putting into operable condition." As the Honorable Court can see, in more than fifteen months before the lawsuit, Buick harassed and ridiculed plaintiff, ignored her request while providing false statement

to a government agency, Buick put plaintiff's life in danger once, and plaintiff has no reason to believe in Buick's competence to fix the car and honesty in keeping its promises. Also when plaintiff needed a reliable car in 2003 and 2004, it was not there.

9. In the same letter dated May 17, 2005, Ms Vorberg threatened that she would file a counterclaim if plaintiff would not accept her offer. As the Honorable Court can see, the counterclaim was patently for improper purpose, it must be dismissed, and Buick's counsel should be sanctioned under ISCR 137.
10. Beyond any reasonable doubt, after the lawsuit was filed, Buick or its counsel had no legitimate reason to seek unilateral and unlimited access to the car in dispute. Spoliation is a viable cause of action in Illinois. After everything happened, Buick and its counsel wanted to fix the car or alter its condition, then file a counterclaim in order to keep the car, keep the money, and make more illicit benefit. As the honorable Court can see, the counterclaim is nothing but a product of consumer fraud and fraud upon the court; it must be dismissed pursuant to 735 ILCS 5/2-619.
11. In the final analysis, if Buick and its counsel assert their counterclaim has not been abandoned during and after arbitration, there would be no doubt that collusion and fraud upon a tribunal have already taken place. And as the Honorable Court can see, plaintiff is entitled for full relief listed in her Amended Complaint.

WHEREFORE, Plaintiff prays the Honorable Court grant this motion and dismiss defendant Buick's Counterclaim.

\_\_\_\_\_  
(Plaintiff's Signature)

\_\_\_\_\_  
( Date )

Yuling Zhan

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