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 STRIKE DEFENDANT'S RESPONSE

TO PLAINTIFF'S FIRST SET OF REQUESTS FOR ADMISSIONS

NOW COMES the plaintiff, YULING ZHAN, in support of her motion to strike Defendant's Response to Plaintiff's First Set of Request for Admissions, states as follows:

I. INTRODUCTION

On December 22, 2004, plaintiff filed the instant lawsuit against a car dealership Napleton Buick Inc. ("Buick"), and raised a variety of claims. On January 27, 2005, defendant failed to serve papers upon plaintiff at the start of the instant suit. And on October 20, 2005, the moment after defendant's Motion To Dismiss And/Or Strike was stricken, Buick became in default for failure to plead because it did not move for leave to file an Answer.

On March 17, 2006, Plaintiff served defendant the First Set of Request For Admission ("Request"). On April 14, 2006 defendant sent out Defendant's Response to Plaintiff's First Set of Request for

Admissions ("Response") improperly. The Notice of Filing and the first page of the Response have been attached as Exhibit A and B. As the Honorable Court can see, the defendant, once again, failed to serve plaintiff an official copy of the Response with court-stamp on it.

In the instant motion, plaintiff will address fatal flaws in defendants Response.

II. LEGAL GUIDEPOSTS

A. Illinois Supreme Court Rules

1. Illinois Supreme Court Rule 216 (a): Request for Admission of Fact.

   A party may serve on any other party a written request for the admission by the latter of the truth of any specified relevant fact set forth in the request.

2. Illinois Supreme Court Rule 216 (c): Admission in the Absence of Denial.

   Each of the matters of fact and the genuineness of each document of which admission is requested is admitted unless, within 28 days after service thereof, the party to whom the request is directed serves upon the party requesting the admission either (1) a sworn statement denying specifically the matters of which admission is requested or setting forth in detail the reasons why he cannot truthfully admit or deny those

matters or (2) written objections on the ground that some or all of the requested admissions are privileged or irrelevant or that the request is otherwise improper in whole or in part. If written objections to a part of the request are made, the remainder of the request shall be answered within the period designated in the request. A denial shall fairly meet the substance of the requested admission. If good faith requires that a party deny only a part, or requires qualification, of a matter of which an admission is requested, he shall specify so much of it as is true and deny only the remainder. Any objection to a request or to an answer shall be heard by the court upon prompt notice and motion of the party making the request.

3. Illinois Supreme Court Rule 219 (b) Expenses on Refusal to Admit.

   If a party, after being served with a request to admit the genuineness of any documents or the truth of any matters of fact, serves a sworn denial thereof, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter of fact, the requesting party may apply to the court for an order requiring the other party to pay the requesting party the reasonable expenses incurred in making the proof, including reasonable attorney's fees. Unless the court finds that there were good reasons for the denial or that the admissions sought were of no substantial importance, the order shall be made.

B. Definition of "fraud" and "fraudulent"

1 The Illinois Supreme Court, in Steven R. Jakubowski, Disciplinary case no. 93 CH 455, provides that:

> "The Court has broadly defined fraud as any conduct calculated to deceive, whether it be by direct falsehood or by innuendo, by speech or silence, by word of mouth, by look, or by gesture. (In *re Armenstrout* (1983) 99 Ill. 2d 242, 457 N. E. 2d 1262, 1268, 75 Ill. Dec. 703; In *re Segall* (1987) 117 Ill. 2d 1, 509 N. E. 2d 988, 991, 109 Ill. Dec. 149). Fraud includes the suppression of the truth, as well as the presentation of false information. (*In re Witt* (1991) 145 Ill. 2d 380, 583 N. E. 2d 526, 531, 164 Ill. Dec. 610)."

2 The American Bar Association defines "fraud" or "fraudulent" as conduct that is fraudulent under the substantive or procedural law of the applicable jurisdiction and has a purpose to deceive. See ABA Model Rules of Professional Conduct, Rule 1.0 (d).

III. DEFENDANT'S RESPONSE MUST BE STRIKEN BECAUSE ALL OBJECTIONS THEREIN ARE IMPROPER OR MERITLESS

1. In its general objections, defendant asserted it objects "all statements in Plaintiff's First Set of Requests for Admissions to the extend they call for information protected from the disclosure by the attorney-client privilege, work product doctrine or any other applicable privilege." As the Honorable Court can see, all the

statements in the Request are material facts; they have nothing to do with “attorney-client privilege or work-product doctrine.”

2. Plaintiff offers Instructions and Definitions in her Request for the benefit and convenience for all parties to avoid misunderstanding and unnecessary delay. Although defendant complains at Response ¶1, that it imposes “obligations beyond those permissible under Illinois Supreme Court Rule 201, and other applicable rules’, but defendant fails to elaborate how.
3. At Response ¶¶ 3-7, ¶13, ¶23, ¶¶ 26-27, ¶53, ¶60, ¶¶74-77, ¶¶83-84, ¶87, ¶91, ¶¶93-114, defendant and its counsel asserted improper objections and claimed: “it calls for a legal conclusion.” As the Honorable Court can see, all the statements in plaintiff’s Request are material facts, and there is absolutely no “speculation” in any single paragraph of the Request. Further, the Illinois Supreme Court holds that even requests for "ultimate facts" are proper and require a timely response. See P.R.S. *International, Inc v. Shred Pax Corp.*, 184 Ill.2d 224, 703 N.E.2d 71, 234 Ill. Dec. 459 (Ill. S. Ct. 1998) (“”[T]he question is whether a requested admission deals with a question of fact. Accordingly, requests for legal conclusions are improper, however, requests for factual admissions which might give rise to legal conclusion are not improper” 184 Ill. 2d at 237). To follow this teaching, in *Hubeny vs. Chairse*, 305 Ill.App.3d 1038, 713 N.E.2d 222 (2d Dist. 1999), an Appellate Court states that fact that the request required "some analytical step, no matter how small" to reach a legal conclusion made it a factual inquiry. See also *Szczeblewski v. Gossett*, 795 N. E. 2d 368, 277 Ill. Dec. 1 (5th Dist. 2003). As the Honorable Court can see, the holding from all Illinois Courts on this issue is consistent with Illinois Supreme Court Rule 216 (a).
4. At Response ¶¶12-16, ¶19, ¶21, ¶30, ¶32, ¶¶53-54, ¶58, ¶68, ¶77, ¶83, defendant and its counsel assert improper objections of

irrelevancy. As the Honorable Court can see, at Request ¶¶12-16, ¶19, ¶21, ¶30, ¶32, plaintiff raised questions of fact, which were not only relevant, but also essential to her claims. Further, defendant and its counsel can not wantonly argue Request ¶¶53-54, ¶58, ¶68, ¶77, ¶83 are irrelevant: when credibility of a party's counsel becomes an issue, the court proceedings might be tainted; the Illinois Rules of Professional Conduct have the force of law as a part of Illinois Supreme Court Rules; also, it is well established that under Illinois and Federal law, it is axiomatic that fraud, if it happens, vitiates everything, as such, all these are serious matters in the instant suit.

5. At Response ¶20, ¶33, ¶54, ¶59, ¶63, ¶ ¶65-66, defendant and its counsel contend plaintiff's statements are "vague and ambiguous" as objections. As the Honorable Court can see, they are plain wrong. Further, it is defendant and its counsel who provided evasive and deliberate false statements in their Response: for example, defendant and its counsel argued at Response ¶31, that Buick "attempted response by telephone." Here they purposely failed to state what the word of "attempted" meant, when it happened, and if it really happened, what the result was.

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IV. DEFENDANT'S RESPONSE MUST BE STRICKEN BECAUSE IT IS RIFE WITH FALSE STATEMENTS

At Response ¶8, ¶10, ¶17, ¶18, ¶22, ¶¶24-25, ¶¶28-31, ¶¶37-38, ¶¶41-43, ¶¶45-52, ¶¶55-57, ¶64, ¶67, ¶¶69-71, ¶¶84-85, ¶87, ¶89-91, ¶¶94-114, defendant and its counsel provided false statements, and plaintiff will address each of them in future court proceeding. Here in the instant motion plaintiff provides several examples as following:

1 For example, at Response ¶17, Buick's president, Mr. Nicholas J D'Andrea (D'Andrea"), Buick's counsel Mr. Ryan A. Haas claim they lack information on when defendant cleared a $7812.67 check. Beyond any reasonable doubt, they are providing fraudulent statement. Demanding "strict proof" without listing any authority is a wanton argument in a Response. Here, Mr. D'Andrea's Verification by Certification is attached as Exhibit C.

2 For example, at Response ¶¶45-46, defendant, its counsel and Mr. D'Andrea, provide fraudulent statements when they denied Buick sent plaintiff an ad for "trade in" and provided a Verification by Certification to it. The ad is attached as Exhibit D here, and it was incorporated in plaintiff's previous court filing as Mr. Haas was very well aware of.

3 For example, at Response ¶¶48-49, defendant, its counsel Mr. Haas and Mr. D'Andrea provide fraudulent statements by their denial: (a) Without question, while claiming they do not know "what document the alleged statement was made" at Response ¶48, at least, defendant's counsel, Mr. Haas is perfectly aware of what plaintiff meant in her Request, because Mr. Haas has identified the hearing date as February 3, 2005 and plaintiff's motion title as Plaintiff's Opposition to the Notice of Motion at Response ¶49; (b) Defendant's counsel drafted and mailed the subject Notice of Motion; plaintiff incorporated it in a previous court filing. Here, again, plaintiff attached it as Exhibit E; (c) During February 3, 2005 hearing, in front of Honorable Judge Healy, counsel for Ford Motor Company and plaintiff, one of Buick's counsel, name unknown, admitted defendant failed to serve the motion and any attachment; (d) Honorable Judge Healy ordered defendant to "do it all over again." This is why defendant filed a Re-notice of Motion on February 4, 2005; (e) here, plaintiff attaches the envelope of the mail as Exhibit F; (f) defendant and

its counsel could not pay $0.37 postage to mail 22 pages of paper. If they did, it is a Federal offence, mail fraud. (g) Buick drafted February 3, 2005 Order for the Court. Defendant's statement at Response ¶49 further shows how its counsel could play tricks and twist words then, and provides misleading and fraudulent argument now.

4 For example, at Response ¶64, defendant, its counsel and Mr. D'Andrea, provide fraudulent statements when they denied plaintiff's requests of admissions. (a) On April 4, 2005, Buick's counsel Ms. Elaine S. Vorberg ("Vorberg") provided the subject statement in front of Honorable Judge Healy, counsel for Ford Motor Company and plaintiff; (b) Plaintiff quoted Ms Vorberg's statement in several court filings, such as in July 12, 2005 Motion to Strike. Ms. Vorberg did not rebut during immediate hearing or any court filing; (c) For nine moths, Ms. Vorberg has never disputed this fact, she can hardly argue at this moment what she said or she did not say at a time of nine months ago; (d) No matter out of whatever motive, in any event, if Ms Vorberg really wants to rescind or deny Request ¶64, she should file a sworn statement for herself, but in defendant's instant filing, she failed to do so; (e) Ms. Vorberg certainly knows what a sworn statement is, because even though impermissible, on April 15, 2005, she filed an affidavit in the Court regarding the car keys, and she demanded plaintiff to provide affidavits on several occasions when drafting March 27, 2006 Motion to Strike Plaintiff's Affirmative Defenses (f) As the Honorable Court can see, at Response ¶64, Mr. D'Andrea is not in a position to file anything, because he is not an attorney for Ms. Vorberg, and he has no personal knowledge on what Ms. Vorberg stated during a hearing.

V. DEFENDANT'S RESPONSE MUST BE STRIKEN BECAUSE IT VIOLATES ILLINOIS SUPREME COURT RULE 216 (c)

1. Rule 216 (c) explicitly requires "[A] denial shall fairly meet the substance of the required admission." At Response ¶22, ¶¶24-25, ¶¶28-29, ¶¶33-38, ¶41, ¶43, ¶¶45-48, ¶50-51, ¶59, ¶64, ¶67, ¶69, ¶70, ¶ 78, ¶80, ¶¶81-82, ¶86, ¶92, ¶96, defendant failed.
2. Rule 216 (c) explicitly requires that sworn statement for each of the matters of fact shall be provided if the responding party denies the request or asserts objections. In this respect, defendant failed. As the Honorable Court can see, even when Mr. D'Andrea has personal knowledge on some issues, he would provide fraudulent statement on oath, he does the same when he is not qualified as a witness, let alone as an attorney for Buick's counsel.
3. Plain language of Rule 216 (c) demands a concise and straightforward answer, admitted or denied or objected, to each statement in a request from the responding party. At Response ¶¶28-29, ¶38, ¶43, ¶50, ¶52, ¶54, ¶63, ¶71, ¶¶73-76, ¶79, defendant used evasive phrase of document "speak for itself" to avoid an answer, such assertion is not a proper response to a request to admit. See *Safety-Kleen Corporation*, 194 F. R. D. at 80. Further, Rule 216 (c) prohibits the practice of raising arguments, wanton or not, beyond the scope of each request in order to avoid an admission. In this respect, defendant failed at Response ¶49, ¶58, ¶80, ¶83, ¶86, ¶92, ¶¶97-114. Plaintiff can understand perfectly that all Judges are reluctant to set default

against defendant simply because its counsel make fatal substantive or procedural mistakes, unless they are offended deliberately and repeatedly, and all Judges prefer prompt settlement in all cases for the benefit of all parties. But here in the Response, in plaintiff's view, defendant and its counsel show no appreciation and gratitude, instead, provide misleading and/or fraudulent information in the Response. At Response ¶49, defendant and its counsel insinuate that everyone including Honorable Judge Healy could be easily misled; at Response ¶58, citing Supreme Court Rule 201(c)(2), they indirectly argue that Honorable Judge Healy demanded the car keys and initiated a process; at Response ¶109 and Response ¶114, they suggest two Judges considered or agreed that a stricken motion was still pending. These are outrageous insult to Honorable Judges who processed the instant case considerately and professionally. Further, as the Honorable Court can see, defendant and its counsel are providing misleading information at Response ¶83, ¶92, ¶¶97-114, because they are not in a position to determine any issue has been addressed or is still under consideration by the Court.

4. According to the court holding in *P. R. S. International*, 184, Ill. 2d at 235-236, Rule 216 is not a suggestion, but rather, a rule that must be strictly obeyed and enforced.

VI. DEFENDANT'S RESPONSE MUST BE STRIKEN BECAUSE IT VIOLATES ILLINOIS SUPREME COURT RULE 137

1. Rule 137 requires every court paper of a party shall be signed. The signature constitutes a certification that to the best of knowledge, information, and belief formed after reasonable inquiry, the paper is well grounded in fact and warranted by existing law or good-faith argument for the extension, modification, or reversal of existing law, and it is not interposed for any improper purpose.
2. At Response ¶17, ¶22, ¶¶34-36, ¶¶39-40, ¶44, ¶61, defendant "demands strict proof" from plaintiff. This is not a correct statement of law. In defending against a civil lawsuit, it is not enough that an attorney files a denial based solely on the belief the plaintiff cannot prove the allegations, or that the defendant has the right to make plaintiff prove allegation to the jury. IRPC 3.1 allows only criminal defendants or civil litigants facing possibility of jail to defend solely by requiring every element of the case be established. See *Hernandez v. Williams*, 632 N. E. 2d 49 (Ill. App. 3rd District. 1994).
3. Rule 137 provides that a court paper cannot be filed unless there is reasonable inquiry as to whether the paper has meritorious factual and legal basis. In this respect, defendant's response is a complete failure. From cursory reading of Response ¶¶ 1-114, one can conclude, defendant and its counsel, at best, did not check out business transaction records and other documents they had at hand, did not bother to call the Illinois Attorney General's Office, did not visit the related commercial websites, at the same time, they ignored their own court filings, and at Response ¶¶48-49 they provided irreconcilably contradictory statements in the text of two adjacent paragraphs. And the worst is defendant and its counsel are providing deliberate false statement.

4. In *Pritzker v. Drake Tower Apartment, Inc.*, 670 N. E 2d 328 (ILL. App. 1st Dist. 1996), the Court holds that an attorney must ensure the truth of all facts relied upon in a court paper. If the Court believes a paper contains or is based upon a false statement, the Court could issue sanctions under Rule 137, even if the false statement was not the reason for dismissal of the case.

VII. SUPREME COURT RULE 219 (b) SHOULD BE ENFORCED IN THE INSTANT CASE

As the Honorable Court can see, after sixteen-month proceedings, the instant suit is still at pleading stage. Discovery started just one month ago. No party can use frivolous filing to block discovery and/or stall the case further. A party should be held responsible for further delay and it should pay the unnecessary cost pursuant Rule 219 (b), if it changes its position all the time, provides wanton arguments to prejudice the opposing party, increase litigation cost, or waste the invaluable time and resources of the Court

WHEREFORE, for the reason stated, plaintiff request that the Court issue an Order striking defendant's Response, and grant plaintiff additional relief that this Court deems just and proper.

Respectfully submitted,

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(Plaintiff's Signature) (Date)

Yuling Zhan
3121 S. Lowe Ave
Chicago, IL 60616 , Tel: (312) 225-4401