

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

Yuling Zhan, )  
Plaintiff )  
V. ) No: 04 M1 23226  
Napleton Buick Inc; Ford Motor Company, )  
Defendants )

**MOTION TO STRIKE**

The Plaintiff, Yuling Zhan, respectfully submits this motion to strike the Counterclaim, which was filed by Napleton Buick Inc. (“Buick”), pursuant to 735 ILCS 5/2-615, and states as follows:

1. The instant suit was filed on December 21, 2004. On January 27, 2005 Buick filed a section 2-615 motion, pursuant a part of 735 ILCS 5/2-603 instead, provided false statement on oath, failed to serve required papers on time. Here, again, ignoring the court order, Buick failed to file the instant Counterclaim on or before June 22, 2005.
2. By filing a Counterclaim, Buick violates the Code of Civil Procedure. As it is well known, “the first pleading by the defendant shall be designated as an answer.” See 735 ILCS 5/2-602. And “the counterclaim shall be a part of the answer.” See 735 ILCS 5/2-608.
3. In Plaintiff’s Amended Complaint, eight counts are against Buick. All allegations must be taken as admitted because Buick tried to file an answer but failed. Plaintiff is entitled for relief, which was concisely stated in her Amended Complaint. In wholesale violations of law, Buick has no legal ground to file the instant Counterclaim. Indeed, Buick failed to provide any cognizable cause of action. The Counterclaim is a frivolous filing because Buick provides no facts, no causation to support its absurd position.

4. Registered as a car dealership, Buick described itself as or pretended to be a storage facility in its Counterclaim. But as Plaintiff properly alleged in her Amended Complaint, Buick was running a sneaky business, engaging in a sham operation to prey unsuspecting consumers for illicit profit.
5. As the Amended Complaint shows, after the car stalled at highway speed, Buick towed back the car, failed to respond Plaintiff's request for more than 15 months. The longer the period becomes, the more liable Buick should be. Buick cannot file a Counterclaim based on its own liability.
6. According to Buick's logic, it can make itself rich quick by "selling" defective cars, cheating consumers, or towing any car on the street and collecting fees. But such practice is certainly prohibited by law.
7. After the instant suit was filed, beyond any reasonable doubt, Buick and its counsel did not need car keys to take part in a joint inspection. They have never been honest in and out of the Court regarding their real intention.
8. On April 15, 2005 Buick's counsel, Ms. Vorberg, filed an Affidavit, but failed to show how such filing was permitted. The Affidavit means nothing but an admission that Buick and its counsel all had an interest and opportunity to alter the car's condition.
9. After a join inspection on March 31, 2005, during a hearing on April 4, 2005, Plaintiff stated in open court that she did not misuse the car. Buick's counsel, Ms. Vorberg concurred immediately: "that is right."
10. On April 11, 2005, Buick tried to "start the car and take a ride." It used two chargers in a row, struggling with the car for about half an hour, but completely failed.
11. On May 17, 2005, surprisingly, Buick's counsel, Ms. Vorberg argued in a letter sent to Plaintiff: " any stalling of the vehicle may have been due to an insufficient amount of fuel in the vehicle." This clearly indicates Buick already went down the road of evidence tempering.
12. In similar cases of engine stalling, Ford Motor Company had an army of experts and attorneys, but no one of them dared suggest plaintiffs were mentally retarded or suicidal. Buick 's conduct in attempt to insult and

harass Plaintiff is outrageous which was done with malice, and with a reckless indifference toward Plaintiff's rights.

13. Any conduct to alter evidence in order to disrupt a case, to prejudice the adverse party constitutes spoliation. Courts of all jurisdictions have been willing to exclude evidence, including expert testimony, enter default judgment or dismiss a case for spoliation. See e. g. *Farley Metals, Inc. v Barber Colman Company*, 269 Ill App. 3d 104, 645 NE 2d 964 (1<sup>st</sup> D, 1994)
14. After the instant suit was filed, ignoring Plaintiff's request for 15 months, Buick and its counsel became eager and eager to have the car keys. By filing the Counterclaim, they clearly show desperation in need to destroy the evidence, cover up alteration, or force Plaintiff to repossess a nonconforming car and tolerate Buick's deceptive business practice.
15. Under Magnuson-Moss Act, UCC and Illinois Consumer Fraud Act, revocation is available as a remedy. See 15 U. S. C. §2310(d), 810 ILCS 5/2-601 et. seq. and 5/2-701 et. seq., *Sciarabba v. Chrysler Corp.*, 173 Ill. App. 3d 57, 122 Ill. Dec. 870, 527 N. E. 2d 368 (1 Dist. 1988). Buick's argument and demand simply fly in the face of Federal and State statutes.
16. In sum, Buick's Counterclaim must be stricken, since Buick failed to state a cause of action, there is no set of facts in support to the Counterclaim, further, Buick failed to follow the Court Order and Code of Civil Procedure. Plaintiff is entitled for additional relief the Court may deem just and proper.

WHEREFORE, Plaintiff prays the Honorable Court to grant this motion and strike Defendant Buick's Counterclaim.

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

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

Yuling Zhan

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