

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

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

**EMERGENCY MOTION TO TRANSFER THE CASE OUT OF A SMALL CLAIM  
COURT OR IN THE ALTERNATIVE EMERGENCY MOTION TO PROCEED  
PURSUANT ILLINOIS SUPREME COURT RULE 218**

Plaintiff, Yuling Zhan, respectfully submits this motion, pursuant to Illinois Supreme Court Rules 218 and 281, Illinois Civil Procedure, and states as follows:

1. On January 5, 2006 the instant case was reassigned to Court Room 1104, where Honorable Judge Wayne Rhine was presiding for small claim cases. But for the instant suit, the amount in either plaintiff's claim or defendant's counterclaim exceeds the jurisdictional limit for small claims defined by Illinois Supreme Court Rule ("Rule") 281.
2. On January 5, 2006 Honorable Judge Rhine indicated that he would talk to some other judge, then would decide whether he would take the case by himself, and the next hearing was scheduled on February 9, 2006.
3. As the Honorable Court can see, there is substantial difference in pretrial procedure for small claims and other civil lawsuits. For the instant case, all parties would be prejudiced, if they really have viable claim or counterclaim, when a Small Claim Court improperly acquires jurisdiction, and processes the case pursuant Illinois Supreme Court Rules 281-288, which govern small claims only.

4. On December 22, 2004, plaintiff filed the instant lawsuit against a car dealership Napleton Buick Inc. ("Buick"), and raised a variety of claims. After ten-month court proceedings, on October 20, 2005, defendant's Motion To Dismiss was stricken; as a result, Buick was in default for failure to plead unless it moved for leave to file an Answer, but defendant failed to do so.
5. In October of 2005 Buick claimed it was ready for trial during the process when the case was assigned to Court Room 1304 and later reassigned to Court Room 1307. On November 3, 2005 plaintiff filed a Motion For Substitution of Judge as of right because of her belief, based on indisputable evidence, that defendant and its counsel were playing tricks in Court and trying to avoid a Judge, or choose another Judge.
6. Illinois law firmly establishes that once a proper motion for substitution of judge is brought, any and all orders entered after the motion for substitution should have been granted are a nullity. See *In re C. M. A.*, 306, Ill. 3d 1061; 715 N. E. 2d 674, 239 Ill. Dec. 920 (Fist Dist. 1999) (All orders entered after the filing date for substitution of judge as of right are void and of no legal effect); see also *In re Dominique F.*, 145 Ill. 2d 311, 324, 583 N. E. 2d 555, 561 (1991); *Jiffy Lube International, Inc., v. Agarwal*, 277 Ill. 3d 722, 727, 661 N. E. 2d 463, 467 (1996); *Scoggins v. Scoggins*, 327 Ill. App. 3d 333, 336, 762 N. E. 2d 1195, 1198 (2002)
7. In ten-month court proceedings defendant showed no intention to submit an Answer. Eventually, on November 28, 2005, defendant filed one under November 8, 2005 Order. The Answer should be void automatically, at the moment it was filed, because after plaintiff's motion for substitution of judge was made, November 8, 2005 Order had no legal effect. Also the Answer became a complete nullity because it was accepted by November 29, 2005 Order, which should be vacated as a matter of law. For the same reason, at the moment, plaintiff's July 12, 2005 Motion To Strike defendant's counterclaim is still pending. In Illinois, void orders do not change the status of a case. See *National Bank of Monmouth v. Multi*

*National Industries, Inc.*, 286 Ill. App. 3d 638, 640, 678 N. E. 2d 7, 9 (1997).

8. Under Illinois Civil Procedure, plaintiff is entitled to have an Answer and is entitled to file a Reply before conducting discovery. See 735 ILCS 5/2-602. Illinois Supreme Court Rules 201 –224 provide guidelines for discovery, request for admission, and pretrial procedure for all civil lawsuits. According to Rule 201(g), for the instant suit, discovery is not subject to Rule 287. Plaintiff is entitled to conduct discovery and amend complaint with leave of the Court after the completion of discovery.
9. As concisely stated in all of her court filings, plaintiff was forced to file the instant lawsuit. Beyond any reasonable doubt, it is her prime interest to expedite the case. Justice delayed is justice denied, at the same time justice can be served only when Illinois Supreme Court Rules will be observed. Plaintiff will certainly be prejudiced, and will suffer irreparable harm if her right to conduct discovery is deprived by defendant, and the whole court proceedings, including the coming trial, would certainly be tainted if Illinois Supreme Rule 218 were not followed.
10. Illinois Supreme Court Rules have the force of law; they are binding on both the litigants and the courts. See *Bright v. Dicke*, 166 Ill. 2d 204, 210, 652 N. E. 2d 275, 277-278 (1995).

WHEREFORE, plaintiff prays the Honorable Court grant this motion, transfer the instant case out of a small claim court, or in alternative, proceed pursuant Illinois Rule 218.

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(Plaintiff's Signature)

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( Date )

Yuling Zhan

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