

PRAYER FOR LEAVE TO APPEAL

Pursuant to Supreme Court Rule 315, Plaintiff respectively petitions this Court for leave to appeal from the decision of the Appellate Court dated September 30, 2008. Alternatively, she seeks appeal by right under Rule 317.

JURISDICTION

The Appellate Court issued its opinion in this matter on September 30, 2008 (the "Order"). (A1-A21¹). Plaintiff timely filed a petition for rehearing, and the petition was denied on October 30, 2008 (A22). This Court has jurisdiction pursuant to Supreme Court Rules 315 and 317.

POINTS RELIED UPON FOR REVERSAL

1. Plaintiff's motion for substitution of judge as of right was filed on November 3, 2005, and it was eventually granted on December 8, 2005. The Appellate Court erred in holding, at page 7 of its Order, that Plaintiff has misapprehended the record. Such an assertion should be reversed for the following reasons:

- (1) Plaintiff's statutory right under 735 ILCS 5/2-1001(a)(2) was deprived;
- (2) Such an assertion does not have any factual ground;
- (3) The Appellate Court disregarded the holding of this Court in In re Dominique F. 145 Ill. 2d 311, 324, 583 N. E. 2d 555 (1991).
- (4) The Appellate Court disregarded an unbroken line of precedents in Illinois.
- (5) The instant decision from the Appellate Court will render 735 ILCS 5/2-1001(a)(2) meaningless;

¹ Citations to the appendix required by Rule 315(b)(6) are noted as A__. Citations to the appellate court record are noted as RC__, RS__, and RA__ respectively, for common law record, supplemental record and appendix therein.

2. In the reviewing process, the Illinois Supreme Court Rules 323 (c) and 341(i) have been ignored. The Appellate Court erred, at page 1 of its Order, in adopting the Defendant/Car Dealer's version of Plaintiff's issues for review; erred at page 4 of its Order, in adopting Defendant's version of Plaintiff's allegations in the Complaint. And the Appellate Court continues to err, in failing to strike the Dealer's "Bystander's Report" which was improperly and untimely filed and it was rife with outright falsehoods. And the Appellate Court erred in failing to address several important issues for review, such as whether Plaintiff's constitutional rights had been deprived before, at and after the trial. Also on the face of the text in the Order, the Appellate Court erred in failing to identify and rule on Plaintiff's claims on Count IV - Revocation of Acceptance. Further, some Defendant's false statements in its purported Bystander's Report were quoted in the "Background" Section of the Order. In this case, Defendant's counsel acted as an advocate/witness and submitted false evidence at trial; the Appellate Court erred in failing to reject such impermissible practice.

3. The Appellate Court erred in failing to reject Defendant's argument that Fraud on Court was not a cause of action in Illinois;

4. In this case, Defendant was in flagrant violation of Magnuson-Moss Act, 15 U. S. C §2301 et. seq. and MVICSA, 49 U. S. C. § 32701 et seq. The Appellate Court erred in holding that Plaintiff waved the issue of illegality of the sale at trial.

STATEMENT OF FACTS

On September 4, 2003, Plaintiff spent \$7812.67, buying a used car from the Defendant, after several salesmen there convinced her or induced her to believe

that the subject vehicle was safe and Plaintiff could get a better deal than that from Toyota or CarMax dealerships. The Dealer presented the car as a trade-in at Defendant, it had no prior repair record; it was sold at low mileage because some people were rich. (RS 7-9, at ¶¶12-27). Defendant did not show the original car title to Plaintiff, and the Dealer did not incorporate a copy of the Buyer's Guide as a warranty paper into the sales documents (RS 9, at ¶¶28-30). On September 8, 2003, when Plaintiff drove the car at highway speed to and from work for the first time, the car engine stalled abruptly, and Plaintiff was lucky that she did not involved in a fatal accident. (RS 10, at ¶34). On the same day, the Dealer towed back the car and Plaintiff expected to get her money back (RS 10-11, at ¶¶37-38).

In addition to already-existed dispute in warranty terms, at Plaintiff's surprise, after searching on the Internet, she found out that, contrary to salespersons' presentation at sale, the subject vehicle had extensive prior repair records (RS 11 at ¶41). Therefore, Plaintiff sent a revocation notice to Defendant on September 9, 2003, requesting it to respond in writing by fax within three days (RS 11, at ¶39). Since then, in about one year, not only Defendant did not send her any fax, but also the Dealer had no direct communication with Plaintiff except sending her "Thank You" notes and mailing advertisement asking for trade-in. (RS 11, at ¶¶42-44; RS 030-031; RS 12-13 at ¶¶50-54) In the meantime, Plaintiff had only two options in order to keep her job in the suburb far away from Chicago: every weekday in a year, either she had to rent a car, or she had to spend about five hours on the road by taking bus and pace for transportation (RS 12 at ¶¶51-52).

After Plaintiff filed a lawsuit against the Dealer, the jury-trial case was originally assigned to Courtroom 1304, by Judge Healy at Courtroom 1501 (RC 660), and Judge Lewis at Courtroom 1304 was supposed to preside the rest of the court proceedings. But after an argument with Judge Lewis on October 11, 2005, Defendant's counsel contended, in writing, that the case was initially assigned to Courtroom 1307 instead, not 1304 (RS 181 at ¶2; RS 211-212 at ¶4 and RS 213). And at that time, Judge Davis was the only judge presiding at Courtroom 1307, and he only processed non-jury trials. On October 20, 2005, Defendant's motion to dismiss was stricken, but the case was reassigned to Judge Davis at Courtroom 1307 as Defendant previously demanded. (RC023). As such, Plaintiff filed a motion for substitution of judge as of right on November 3, 2005 (RS 187-189). The specific motion was ignored on November 8, 2005; it was initially denied on November 17, 2005, but eventually it was granted on December 8, 2005 (A 27, RS 220), and the case was reassigned to Judge Rhine at Courtroom 1104, who was then an associate judge, with a heavy caseload of small claims.

ARGUMENT

I. Why Review By the Supreme Court Is Warranted

A. The Appellate Court's Decision, In Effect, Deprived Plaintiff's Statutory Right Under 735 ILCS 5/2-1001(a)(2)

The record shows that it is the Plaintiff who requested the December 8, 2005 hearing on her "Plaintiff's Motion for Reconsideration on November 17, 2005 Order" (A24-27; RS 210-213). And on December 8, 2005, Judge Davis eventually granted Plaintiff's motion for substitution of judge professionally (A 27; RS 220).

When filing its Brief, at Plaintiff's surprise, for the first time, Defendant provided an evasive, misleading and fraudulent per se statement as follows: "**For reasons that are unclear from the record**, on December 8, 2005, Judge Ronald Davis transferred the matter to the presiding judge for reassignment to another judge **for hearing on Plaintiff's motion**, (S00220)." (Emphasis added) (Defendant's Brief, in the Section of its own "Statement of Facts" at page 6). Misled by Defendant, the Appellate Court, at page 8 of its Order, asserted that: "On December 8, 2005, the court entered an order to **transfer the case to another courtroom**", although the Appellate Court did notice that, at page 3 of its Order, the transfer was for "reassignment to another judge '**on Plaintiff's motion**'" (Emphasis added). Here, even with a cursory reading of Plaintiff's motion (A 24-27), one will reach an affirmative conclusion that the Appellate Court erred in asserting: "Plaintiff has not attempted to show that the trial court erred in denying the motion [for a substitution of judge]." And the Appellate Court further erred in concluding: "However, upon careful review of the record, it is clear that plaintiff has misapprehended the record."

B. When Misinterpreting The December 8, 2005 Order, The Appellate Court Disregarded Our Supreme Court's Holding.

It has been the law in Illinois that if a petition for substitution of judge is timely made and in proper form, the trial court has no discretion to deny it, and any other order entered after its presentation is a nullity. See In re C.M.A. 306 Ill. App. 3d 1061, 715 N. E. 2d 674, 680 (First Dist. 1999), citing In re Dominique, F., 145 2d 311, 324. 583 N. E. 2d 555 (1991). In Scroggins v. Scroggins, 327 Ill. App.

3d 333, 762 N. E. 2d 1195, 1198 (Fourth Dist. 2002), the court states that “[T]he substitution of judge as a matter of right is absolute where the motion requiring the substitution **is filed** before the judge presiding in the case has made a substantial ruling” (Emphasis added), citing Alcanter v. Peoples Gas & Coke Co., 288 Ill. App. 3d 644, 681 N. E. 2d 993, 995 (1997). In Kern v. DaimlerChrysler Co., 364 Ill. App. 3d 708, 848 N. E. 2d 125, 128 (Fifth Dist. 2006), the court holds that the Illinois Supreme Court reviewed section 2-1001 (a)(2) and concluded that its provisions were founded upon the long-standing principle “that a party should not be compelled to plead his case before a judge who is prejudiced, whether actually or only by suspicion”, citing In re Dominique, F., 145 2d 311, 319, 583 N. E. 2d 555, 599 (1991). For this reason, at 129 of Kern, the court concludes that “[T]he well-grounded principle of judicial impartiality provides the foundation for the rule requiring **an immediate decision** on a motion for substitution of judge.” (Emphasis added).

In its Brief at pp. 13-16, ignoring the plain text of 735 ILCS 5/2-1001(a)(2) as shown in A 23, contrary to all existing court opinion, Defendant argues that the term of **presentation date** of a motion under the statute, should be different from its **filing date**, instead, Defendant contends that the specific term means the **hearing date** of a motion. Here, it is well known that the hearing date of a motion is normally set by a clerk, not by a party, as such, according to Defendant’s misinterpretation of the statute, a judge would have authority to enter a substantial adverse ruling after a motion for substitution of judge is filed. Defendant further argues that its motion to dismiss, although it was stricken, it had been submitted

first. Then, Defendant raises a phony priority-of-motion issue. Without question, misinterpretation of the law and fact by the Defendant like this would essentially make the specific State Statute meaningless. And the Appellate Court erred in failing to reject any of these Defendant's frivolous contentions.

C. Review By This Court Is The Most Expedient Way To Resolve The Dispute On Whether The Specific Judge And The Specific Trial Court Had Proper Jurisdiction

First of all, Plaintiff has never challenged the Jurisdiction of the Circuit Court of Cook County as implied by the Order at page 6. It is clear that, again, the Appellate Court was misled by the Defendant. At pp 10-12 of its Brief, as the subtitle I B showed, Defendant insinuated that Plaintiff did, but it failed to quote a single sentence from Plaintiff on this important issue.

It is uncontested or indisputable that the instant case was processed as or like a small claims suit, while Plaintiff's claim was \$25,789.33 (RA 015). At the time of filing, Plaintiff's claim was within the monetary jurisdiction limit of the Municipal Division as stated in the Complaint (RA 007). But, without question, it exceeded the jurisdictional limit of a small claims court. Defendant contended in its Brief at page 12 that "Cook County rules and orders do not differentiate between 'small claims' and other Municipal Division cases." This is not a correct statement of fact and law. In 2006, Judge Rhine put his written notice outside of Courtroom 1104, which said: "The Illinois Supreme Court has amended the definition of a small claims to amount up to \$10,000 effective January 1, 2006." Further, the instant suit was transferred to Courtroom 1104 on December 8 of 2005. At that time, the monetary jurisdictional limit for small claims court was \$5,000 according

to Illinois Supreme Court Rule 281. Contrary to Defendant's contention, it is well-established that local rules may not be construed to modify, limit, abrogate, or otherwise conflict with Illinois Supreme Court rules and the existing laws of Illinois. See 134 Ill. 2d R. 21(a); People v. Schroeder, 102 Ill. App. 3d 133, 137, 429 N. E. 2d 573, 577 (1981).

Furthermore, the Appellate Court pointed out that “[T]he Municipal Division hears civil cases at law, which seek compensatory and consequential money damage under \$30, 000. General Orders of the Circuit Court of Cook County No. 1, 2. Sec. 2.3 (b)(1) “ (Order p 6.). At page 6 of its Order, the Appellate Court assessed Defendant's counterclaim was \$30,000; but according to Defendant's account, the Dealer “would ask for in **excess** of \$30,000 in its Counterclaim.” (Emphasis added) (RS 50 at ¶10). Additionally, on July 10, 2006, Plaintiff's claim on Count IX pursuant to the MVICSA was granted (RA 140 at ¶3), the reward Plaintiff sought would be three times of \$10,789.33 as the least. As such, this case should be transferred to Law Division in the Circuit Court on or after that day.

Also it is important to note that some orders issued in 2006 are based on those rendered in November of 2005, which should be void according to In re Dominique, F. 145 Ill. 2d at 324. Further, without conducting a trial and without hearing testimony from witnesses, the trial judge wrote down a note or judgment for a three-months-later trial (RC 662 or RA 073), which, on the face of the text, conflicted with 735 ILCS 5/2-1203. In her Brief, Plaintiff raises an extremely important issue, that is, whether her constitutional and statutory rights had been deprived, before, at and after trial. Plaintiff has provided serious and strong

arguments and she has listed evidence in support of her position (Plaintiff's Brief pp.34-42; Plaintiff's Reply pp.13-15). Therefore, Plaintiff has a good reason to believe that the trial judge and/or the trial court lacked or had lost proper jurisdiction in this case. Austin v. Smith, 312 F. 2d 337, 343, (1962); Potenz Corp. v. Petrozzini, 170, Ill. App. 3d 617, 525 N. E. 2d 173, 175 (1988).

Furthermore, on February 1, 2007 and later on, Defendant and its counsel vigorously argued that the trial court had no jurisdiction in certifying a Bystander's Report. When Defendant and its counsel succeeded in challenging the applicability of Rule 323(c) in the circuit court, indeed, once again, they put a presiding judge in an improper position.

D. Whether Fraud On Court Is A Cause Of Action In Illinois Is An Important Issue, Which Warrants a Review By This Court

When reviewing a motion to dismiss on Count X, Plaintiff's allegations should be taken as true and the review should be de novo. In this case, the Defendant argues that Fraud Upon Tribunal is not a cause of action in Illinois (Defendant's Brief at page 20). This is not a correct statement of law and fact. As well established, "[O]utright fraud on the court of this State is not to be countenanced. A judgment procured by fraud is void and will not be enforced." Tomm's Redemption, Inc., v. Jae Park, 333 Ill. App. 3d 1003, 777 N. E. 2d 522, 528 (1st District, 2002). ("We do not expect that a party should be rewarded because it was able to conceal the true nature of the contract it seeks to enforce."). Further, the U. S. Supreme Court held that a court had the power to conduct an independent investigation in order to determine whether it had been the victim of fraud.

Universal Oil Products Co. v. Root Refining Co., 328 U. S. 575, 580 (1946). And the inherent power of the courts to “fashion appropriate sanction(s) for conduct which abuses the judicial process” was reaffirmed in Chambers v. NASCO, Inc., 501 U. S. 32, 44 (1991).

II. Why The Decision Of The Appellate Court Should Be Reversed Or Modified

A. Plaintiff Should Prevail When Defendant Waves Its Right To Argue With Respect To Count IV – Revocation Of Acceptance.

Contrary to the Dealer’s contention in its motion to dismiss filed in 2005 (RS 109-123), Counts I - IV in the Complaint are viable causes of action under 15 U. S. C. § 2310(d)(1), where Counts I and IV alleged Defendant failed to comply with “any obligation under this chapter” in the statute, Count II addressed violation of “written warranty” (and expressed warranty under Illinois UCC), Count III alleged violation of “implied warranty.” When evaluating Count I, with respect to the dispute in different versions of a Buyer’s Guide, “obligation under this chapter” stated in 15 U. S. C. § 2310(d)(1) does include those under FTC Rules, State law and common law. As to Count IV, revocation of acceptance is a viable cause of action or a remedy for violation of Magnuson-Moss Act, Illinois UCC, Illinois Consumer Fraud Act and common law fraud. It is a fact that several Judges in the Circuit Court of Cook County firmly rejected Defendant’s practice of misstating and misinterpreting Plaintiff’s allegations, and no Judge there agreed Defendant’s misinterpretation of law as to Counts I - IV. Therefore, as a preliminary matter, Defendant shall not be allowed to repeat the same practice of evading material issues. When Defendant provided misleading assertion on Plaintiff’s allegations in

the Complaint, when Defendant failed to respond Count IV – Revocation of Acceptance and forfeited its right to argue, Plaintiff should prevail.

B. Defendant Did Not “Re-file” Its Motion to Dismiss After It was Stricken – The Dealer Became at Default for Failure to Plead After October 20, 2005.

At page 5 of Defendant’s Brief in its “Statement of Facts,” it argued “Defendant’s Motion to Strike And Dismiss Plaintiff’s Amended Complaint was stricken, without prejudice, **in order to allow the trial judge to decide the motion.**” (Emphasis added). Here, Defendant is insulting the Judge who issued the order, since every judge knows the difference between continuing a motion and striking it. In deed, Judge Healy had very good reasons to strike Defendant’s motion. Plaintiff does not have to repeatedly point out that it is the Dealer’s counsel who drafted the order, and added a phrase “without prejudice” in the October 20, 2005 Order (RS 206 at ¶5). For sure, Defendant realized that it can not fool any distinguished law professionals with this, therefore, at page 6 of its Brief, it provided another deliberate false statement like this: “[T]he matter was **continued** to November 8, 2005, Judge Ronald Davis entered rulings on Defendant’s **re-filed** Motion to Strike ***.” (Emphasis on irreconcilable phrases added). Here, it is important to note that the November 8, 2005 order was issued after a motion for substitution of judge was filed, and the specific order should be void as a matter of law. Furthermore, from October 20 to November 8, 2005, Defendant **re-filed** nothing except drafting a November 8, 2005 court order, after Plaintiff submitted copies of four pending motions including the motion for substitution of judge as of right at the start of the hearing (RS 203-209).

At page 12 of its Order, the Appellate Court quoted the following phrases from the November 8, 2005 order as follows: “[T]his matter coming before the Court upon Defendant’s 2-615 Motion to Strike and Dismiss Plaintiff’s Amended Complaint, [] with all parties given due notice and the Court fully advised in the premises[.]” The problem here is, these phrases are false as well, and the order was drafted by Defendant’s counsel. Without question, it is incorrect to use one false statement to “prove” other false contentions are true. In fact, there is no possibility that Defendant can produce a Notice of Filing and an official copy of the “re-filed” motion, because Defendant did not create them in the first place. Also this can be easily confirmed by looking at the electronic filing record of this case in the Circuit Court of Cook County.

C. Defendant’s Counsel Has No Standing To Address The Trial Court After August 7, 2006, Because She Did Not File An Appearance Form.

In its Brief at page 8, as part of “Statement of Fact,” Defendant argued that: “On that date, Attorney Elaine S. Vorberg was granted leave to appear as counsel for Defendant, in lieu of Childress Duffy Golblast, Ltd., withdrawn. (C00515) [sic].” The record shows that Childress Duffy Golblast, Ltd, had never filed a written motion to withdraw. Additionally, also in violation of Illinois Supreme Court Rule 13 (c), lawyer Vorberg failed to submit a written substitution or supplemental appearance form on and after August 8, 2006.

D. The Appellate Court’s Decision Modifies Existing Interpretation of MVICSA In Illinois Courts, But Not For The Better.

First of all, the Appellate Court, once again, was misled by Defendant’s incorrect statements on Plaintiff’s position as to the legal standard for evaluating

Count IX, violation of MVICSA (Order page 16; Defendant's Brief p 23; and Plaintiff's Brief pp 18-20). As a preliminary matter, Plaintiff had never argued in anywhere, let alone "in her Brief", that an "intent to defraud" "is not a requested element of a claim under [49 U. S. C. § 32705 (a)(2)] [**sic.**]" as Defendant had contended. In fact, all citations in Plaintiff's Brief show that different jurisdictions including our State Court, interpreted 49 U. S. C. § 32710 as it was written.

In fact, Plaintiff has a similar but stronger case than Owens v. Samkle Automotive Inc 1318, 1321; 425 F. 3d 4 (11th Cir. 2005), which both Defendant and Plaintiff cited and relied on. In Owens, the court concluded that, a dealer violated MVICSA, when it used its own title transfer procedure to conceal the car history (diminished value because once it was a car for rental), and in that case, the dealer did not show the original title to a customer. As a stark comparison, the Dealer in the instant suit did not even have a title at the time of the sale but pretended it did; the subject car was not a trade-in at Defendant, it had extensive prior repair record. Here, Defendant claims that the "intent-to-defraud" standard governs the issue, but it actually misleads the Appellate Court to apply a standard of "intent to defraud with respect to mileage" as the Owens court criticized at. Even so, Plaintiff should prevail also, because at the time of the sale, the Dealer did not have a car title, it did not own the vehicle legally under 49 U. S. C. § 32702 (7). Also the Dealer contended that it "bought" the car without any financial transaction record (RS323, Answer13), as such, the Dealer had never financially owned the car. Further, even as of this day, the Defendant failed to produce a copy of the original title. Nine months after a trial, the Dealer started arguing "only six-

mile discrepancy” occurred, which was patently without any factual ground. Furthermore, the Dealer produced two self-conflicting Odometer Disclosure Statement forms (A29-30; RS 36-37). Notably, there were several blank spaces on the October 6, 2003 form, which was in stark violation of 49 U. S. C. § 32705 (a)(3). Also without question, an odometer of a car cannot run backwards as the Dealer suggested. Therefore, the readings on these forms or the entire October 6, 2003 form must be fabricated for illegal purposes. This alone will beat any of the Dealer’s arguments.

At page 19 of the Order, the Appellate Court cited Buechin v. Ogden Chrysler-Plymouth, Inc. 159 Ill. App. 3d 237, 511 N. E. 2d 1330, 1336 (1987). Clearly, this case does not support the Appellate Court’s analysis and decision. Addressing the issue that the odometer form showed 10 miles but there were actually 650 miles on the car, the court in Buechin states that, “[I]n our analysis of whether fraud had been committed, **we do not focus on the number of miles on the car**, but on whether [plaintiff] got a “new” car ***.” (Emphasis added). This further shows that, in our State Courts, MVICSA is interpreted as it was written, that means, title transfer procedure counts, so does the disclosure of the car history. And the existing holding from State Courts is also consistent with this Court’s opinion in Connick v. Suzuki Motor Co., 174 Ill. 2d 482, 504, 675 N. E. 2d 584, 595 (1996), where omission or concealment of a material fact in the conduct of trade or commerce was considered as consumer fraud. On the other hand, if “intent to defraud with respect to mileage” interpretation is employed, the MVICSA will lose its essential meaning and its intended purpose, a car dealer would be able to

legalize an illegal sale in a court of law. And our State might become an ideal place for “title laundry” of rental cars, flood-damaged vehicles etc.

E. Under Extraordinary Circumstances In This Case, Plaintiff Should Not Be Prejudiced Because Of The Defects In The Record On Appeal.

On December 1, 2006 the trial judge presided the trial; the next day he retired. As a result, few files were left behind. The instant appeal was filed on January 5, 2007. After a half-a-year search, more than half of the documents filed in this case still could not be located. The situation became worse when Defendant’s June 13, 2006 48-pages motion was duplicated, separated and scattered into the record (RA 147-150). In the meantime, after February 1, 2007, Defendant vigorously argued that the trial court had no jurisdiction in certifying a Bystander’s Report after an appeal started. The same thing happened when Plaintiff requested the trial court to certify a supplemental record. After the Appellate Court issued an order, Plaintiff submitted one set of documents in perfect condition and order as supplemental record, but on July 30, 2007, when the whole record was due, again, it had been messed up (RA 151-154), and the Deputy Clerk, showing a fax from Defendant, stated that Defendant did not follow an order from the Appellate Court, it mailed out its purported Bystander’s Report as late as July 24, 2007. As a result, the page numbers of the record had been changed a couple of times, and there was no time for the clerks to do it all over again or to reorganize all of the files. (See Plaintiff’s Motion to Strike Defendant’s Bystander’s Report). Without question, it is Plaintiff’s best interest to have a complete and proper record to work on. But when Defendant went all out to stonewall the record certifying process, it would be

extremely unfair for Plaintiff to go through all the frustrating process and, eventually, she was prejudiced.

For the reason stated above, the Appellate Court misplaced Gilmore v. City of Zion, 237 Ill. App. 3d 744, 754 (1992) at page 12; it misplaced Midwest Builder Distributing, Inc. v. Lord and Esser, Inc., 891, N. E. 2d 1, 13 (2007) at page 17 of the Order. Further, when the Defendant did not re-file its motion to dismiss, which had been stricken, when Defendant's counsel did not file a motion to withdraw or appear, when Defendant did not incorporate the Buyer's Guide into the sales documents, these are not "incompleteness of the record", or "a gap in the record", Plaintiff shall not be prejudiced for Defendant's failure and falsehoods.

F. Fabrication Of False Evidence Should Not Be Rewarded. Defendant And Its Counsel Committed And Are Still Committing Fraud On Court.

In the instant case, it is a matter of fact that Plaintiff's November 3, 2005 Motion for Substitution of Judge as of right was granted on December 8, 2005; and it is a matter of law that the motion should be granted. But in order to derail the appeal process, Defendant evaded the fact, misstated the law and devoted a lot of energy to submit misleading contentions on the dismissal of Counts VI and VII, laced with other phony issues. This constitutes Fraud on Court. Even for this reason alone, both Defendant and its counsel should be sanctioned pursuant to Illinois Supreme Court Rule 375. Bright v. Dick, 166 Ill. 2d 204, 210 (1995)

On January 5, 2007 Plaintiff filed a proposed Bystander's Report pursuant to Rule 323(c). On February 1, 2007, Defendant failed to file a response, but at the hearing, it rigorously argued that the Circuit Court of Cook County had no

jurisdiction in certifying a Bystander's Report. Also, as late as July 24, 2007, in violation of Rule 323(c), in failing to comply an order from the Appellate Court as well, Defendant mailed out its purported Bystander's Report, which was a collection of false statements, which was created nine months after a trial, and more than six months after Plaintiff filed her proposed Bystander's Report. Therefore, it is an accurate assessment that Defendant's purported Bystander's Report is a product of fraud in both procedural and substantive matters.

In its Brief, Defendant heavily relied or solely relied on its purported Bystander's Report, while failing to list any of its trial court filings or other permissible evidence to support the document, because none of those existed. And in violation of Rule 341(i), in order to mislead the Appellate Court, Defendant created its own version of "Plaintiff's issue for review", "Statement of Facts", and "Plaintiff's allegations in the Complaint" without any explanation or justification; also Defendant concocted its own version of Plaintiff's positions and assertions.

At page 20 of the Order, the Appellate Court noticed that two copies of a "Buyer's Guide" were admitted into evidence at trial. Actually, those copies are two versions of a "Buyer's Guide" with different contents in them. In reality, Defendant created four versions of a Buyer's Guide for a single used car: (1) Version I with only WARRANTY box was checked at the time of the sale; (2) Version II, only its front side was faxed to Plaintiff, with 50% warranty stamp on it, where SERVICE CONTRACT box was unchecked (A31; RS 475); (3) Version III was produced with part of front side and part of backside (A32-33; RS 326-327); (4) Version IV was served to Plaintiff with front side and part of a backside

(A 34-35; RC 180-181). By looking at the handwritings, scales, contents on these Buyer's Guides and looking at the similar or identical stains on A33 and A35, one can readily conclude that Defendant has been fabricating evidence for illegal purposes. And even as of this day, Defendant still did not and cannot produce one piece of a document – a Buyer's Guide with both front side and backside for the subject car. Such a business practice blatantly violates FTC Rules under 15 U. S. C. § 2310(d)(1). Currie v. Spencer, 772 S. W. 2d 309, 310-311 (Ark. 1989).

From page 13 to page 16 in the Order, the Appellate Court noticed that four letters, written by Defendant's counsel Vorberg, along with three other documents including a letter written by Ed Earley, were submitted at trial by Defendant, and six of them including Vorberg's four letters were admitted as "evidence." (RS 40-42; RS 44-45). At page 14 and page 15, the Appellate Court neither identify the correct author of the March 9, 2005 letter, nor did it quote its real content. At trial, the Dealer heavily or solely relied on its counsel's four letters, because all Defendant's witnesses had no first hand knowledge on what happened during the sale, at the time of engine stall and when Defendant towed back the car (RA 065 at ¶69 and RS 057 at ¶53). It is clear that, by submitting these four letters of her own, Defendant's counsel was acting as an advocate/witness. And it is well established that Illinois Rule of Professional Conduct (IRPC) 3.7 prohibits such a practice. Jones v. City of Chicago, 610 F. Supp. 350, 354 (N. D. Ill. 1984).

Further, Defendant intended to hide those four letters, and purposely did not incorporate them into its purported bystander's report, as the Dealer knew very well that there were deliberate false statements in there as follows:

First, since Defendant has never refunded money on purchase made except after selling car to minor (RA 064-065 at ¶ 68 and RS 061-062 at 79), there was no need for the Dealer to ask for “inspection” of the car in 2003. After the lawsuit was filed, Defendant’s counsel became eager and eager in asking for car keys, but she did not have a legitimate motive and purpose for that, as neither Defendant nor its counsel had to hold car keys to participate in a so-called joint inspection or settlement discussion. It is a fact that as early as March 2, 2005, Plaintiff advised Defendant’s counsel not to provide false statements on this issue (RA 052). And Defendant’s counsel told Judge Healy that they wanted to look at the car and seek a settlement, but after receiving the car keys, Defendant changed the car’s condition, then, filed a counterclaim, later the car was vandalized at Defendant’s premise (RS 317 at Answer # 13). This is one of the several reasons why Defendant’s motion to dismiss was stricken. It is also a fact that Defendant’s “investigation” on the car lasted for one and half a year. On December 6, 2006, Defendant, in concert with its counsel, smashed the car and dumped it in front of Plaintiff’s door (RS 467-468 at ¶31; RS 526-529). Further, even as this day the car keys are still held or lost by Defendant’s counsel.

Second, in the May 17, 2003 letter, Defendant’s counsel created an “expert mechanic” who had no name, no testimony, and nonexistence in the record or in the real world (RC 232). Driving with “insufficient fuel” is one form of misuse of the car. Before the trial, the presiding judge already denied such outright fraudulent contentions (RA 133 at ¶1). Therefore, Defendant’s counsel should not be allowed to recycle her own false contentions at trial. Also even according to

Defendant’s account, falsity of such statements has been proven (RS 52 at ¶¶26; RS58 at ¶58; RC 234). Furthermore, Defendant’s witness Ed Earley, in concert with or induced by Defendant’s counsel, testified that he called or “tried” to call Plaintiff about ten times, but he did not even know the area code or number to reach Plaintiff (RS 17 at ¶¶92-93). Finally, the Dealer did admit that its counsel provided self-conflicting statements on a material fact, and the counsel, when doing that, was caught by the presiding judge (RS59-60, ¶¶ 71-72). In sum, the trial became so embarrassing and so chaotic, that it had to be stopped on November 22, 2006, and restarted later on December 1, 2006, although the presiding judge wrote down a judgment for this case three months before the trial (RC662 or RA 073). As this Court can see, lawyer Vorberg’s misconducts, at the very least, constitute flagrant violation of IRPC 1.2, 3.3, 4.1 and 8.4, which are part of Article VIII of Illinois Supreme Court Rules.

Conclusion

Plaintiff-Petitioner Yuling Zhan respectfully requires that the Court grant her Petition for Leave to Appeal, Or, In the Alternative, For Appeal As Of Right..

Date: _____

Respectfully submitted.

Signature of Yuling Zhan

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