

**PETITIONER’S MOTION FOR RECONSIDERATION, OR, IN THE  
ALTERNATIVE, MOTION TO ENTER A SUPERVISORY ORDER**

On November 25, 2008, pursuant to Supreme Court Rules 315 and 317, Plaintiff petitioned this Court for leave to appeal from the decision of the Appellate Court; and the petition was denied on January 29, 2009 (Exhibit A). For the following reasons, Petitioner respectfully submits the instant Motion For Reconsideration, Or In The Alternative, Motion To Enter A Supervisory Order.

**I. EXERCISE OF THIS COURT’S SUPERVISORY AUTHORITY IS  
WARRANTED AND NECESSARY**

**A. Documentary Evidence Shows That Multiple Clear And Fundamental  
Errors Exist In The Appellate Court’s Order**

1. Plaintiff filed the instant appeal on January 5, 2007. The Appellate Court issued its Order in this matter on September 30, 2008 (the “Order”). (A01-A21<sup>1</sup>). It is extraordinary that the Appellate Court accepts Defendant’s incorrect version of Plaintiff’s causes of action in the Complaint, then, without any justification required by Illinois Supreme Court Rule (“Rule”) 341(i), adopts Defendant’s misleading version of Plaintiff’s Issues For Review, and as to the fact that Plaintiff’ Motion for Substitution of Judge As of Right was granted on December 8, 2005, the Appellate Court turns Defendant’s evasive and false contention into an issue which became outcome-determinative for the

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<sup>1</sup> 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.

instant appeal. Further, the Appellate Court applies an incorrect review standard, and it rules on Defendant's invalid version of Plaintiff's position on several important issues. By doing so, the Appellate Court has addressed a different case concocted by the Dealer/Defendant. For example, on Count IV, Plaintiff alleged: "Buick [the Dealer] is in violation of Magnuson-Moss Act 15 U. S. C §2310(d), Revocation of Acceptance, UCC 810 ILCS 5/2-601 et. seq. and 810 ILCS 5/2-701 et. seq." (RA 006). Misled by the Defendant, the Appellate Court ignored the record on appeal and misidentified Plaintiff's allegation on Count IV as "breach of contract" under the common law (A 04, page 4 of the Order). Further, at page 1 and at the last paragraph of page 16 in the Order (A 01 and A 16), the Appellate Court disregards the record and incorrectly assumes that Plaintiff's allegation on Count IX was under State "Odometer Act" only, not under Federal law which provided more comprehensive protection to consumers. As such, these causes of action in the Complaint have never been addressed in the whole reviewing process.

2. In its Order, the Appellate Court provides several conclusions of material facts by presumption only, and Plaintiff's filings in the Courts Below were all ignored. On the other hand, comparison of the Order and the Dealer's Brief shows that Defendant's frivolous contentions, misleading insinuations and outright falsehoods had been taken as facts, became the main part of the Order. As a result, the Appellate Court's crucial assumptions of material facts have no factual ground at all, and they are very wrong indeed.

3. The instant case was assigned for Intake and Case Management to proceed on November 2, 2005, before Judge Ronald Davis. (Defendant's Brief at page 6, lines 1-20). The next day, Plaintiff filed a Motion For Substitution of Judge As of Right (RS 187-189). The specific motion was ignored at the November 8, 2005, hearing (RA 127), and it was denied on November 17, 2005, but it was eventually granted on December 8, 2005 (A 28 or RS 220). At page 8 of its Order (A 08, line 3), the Appellate Court stated that "[P]laintiff has not attempted to show that the trial court erred in denying the motion [on November 17, 2005]." But documentary evidence would convince any reasonable person that the Appellate Court had made an erroneous assumption of a material fact. (Plaintiff's Motion For Reconsideration On The November 17, 2008, Order, a copy of which was provided in the Appendix for the instant petition submitted to this Court, A 24- 27 or RA 210-213).
4. At pages 7 and 8, the Appellate Court states that "However, upon careful review of the record, it is clear that plaintiff has misapprehended the record. The record shows that plaintiff filed her motion for substitution of judge on November 3, 2005, and the court denied the motion on November 17, 2005." Without question, the Appellate Court ignored the whole applicable fact of the case, and was misled by the Defendant who provided a statement, which was half-truth-only and deceptive in nature. The truth is that Plaintiff requested a December 8, 2005, hearing on her Motion For Reconsideration On November 17, 2005 Order (A24 or RS 210). And Judge Ronald Davis ruled on Plaintiff's Motion For Reconsideration as follows: "It is **HEREBY ORDERED** that the

above cause be, and the same is hereby transferred to Room **1501**, for **reassignment to another judge on Plaintiff's Motion.**" (Emphasis of the Judge's handwriting added). Beyond any reasonable dispute, what Judge Davis wrote here has an unequivocal meaning – ruling on Plaintiff's motion, so does what **Plaintiff's motion** requested for – substitution of judge; and under no circumstance, having attended the specific hearing on an important motion, Plaintiff could misapprehend the plain and simple language in the specific order, as the Appellate Court erroneously assumed.

5. Notably, even the Defendant did not state that Plaintiff "misapprehended the record", and even the Defendant did not contend that Plaintiff's motion for substitution of judge was not granted, and more importantly, Defendant did not raise such an issue for review, because Defendant's lawyers knew for sure that, on December 8, 2005, after looking at a single piece of evidence (A 027 or RS 213), Judge Ronald Davis showed great courage, integrity and professionalism. When issuing the order, he made a clear statement that "Plaintiff's motion is granted; stricken is stricken; all my orders entered are void."
6. To clarify this issue, it is necessary to point out that in the Circuit Court of Cook County, in 2005, every trial judge was assigned or reassigned by a judge presiding at Courtroom 1501 for all civil cases under mandate arbitration. Without question, at the very least, Defendant's lawyer is aware of the fact that the December 8, 2005, Order is about judge substitution or judge reassignment; by no means it could be a courtroom transfer without a clear reason. It is amazing that an attorney can contend that he or she is not clear what happened

in the courtroom under the same circumstances. Therefore, it is the Appellate Court, not Plaintiff, who was misled by the Defendant, and who had misapprehended the December 8, 2005 Order.

7. The record shows that the Defendant, pretending to be a disinterested party, wrote in its Brief: **“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). In the same Brief, the Defendant wrote: **“Even if the November 8, 2005, dismissal of Counts VII and VIII is void,** other orders in the case are not affected.” (Defendant’s Brief at the third paragraph, page 16) (Emphasis added). Notably, Defendant has affirmatively concealed the title of **Plaintiff’s motion** and avoids specifying when and where such a **Plaintiff’s motion** had been or to be heard. Here, on the same subject and in the same Brief, Defendant provided irreconcilable statements. This further evinces that, under no circumstance, Defendant’s counsel was unclear why the trial judge was reassigned. It is an indisputable fact that, in the Appellate Court, for the first time after years-long court proceedings, Defendant had, knowingly and willingly, created confusion on whether Plaintiff’s motion for substitution of judge had been granted. Such an attempt to surprise and prejudice Plaintiff should not be allowed. And even for this reason only, an accurate assessment can be made that the Defendant procured the Appellate Court’s September 30, 2008, Order by fraud, as the legal term of fraud was

very well defined by This Court. In re Eugene Lee Armentrout et al., 99 Ill 2d 242, 75 Ill. Dec. 703, 457 N. E. 1262, 1288 (1983)

8. In order to reach a definite conclusion on this issue raised by Defendant's evasive and false contention of facts, it is also important to point out that 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). As such, everything would be clear from the moment whenever the title of **Plaintiff's Motion** is identified. Further, without question, the Appellate Court, in addition to analyze the plain language of the specific December 8, 2005 Order, does have the authority and resources to investigate and find out the truth on this issue, which is determinative to the outcome of the instant appeal. An evidentiary hearing on this simple but crucial subject could be arranged. And a several-minutes telephone call will clear all the confusion created by the Defendant. But the Appellate Court did nothing of these; as a result, a fatal error has not been corrected during the one-year reviewing process, and for no justifiable reason, the Appellate Court is not willing or ready to identify the title of the **Plaintiff's motion** on which the December 8, 2005 Order had ruled.
9. As to the dispute on the monetary jurisdictional limit of the trial court, at page 6 of the Order, the Appellate Court misstated that "defendant by its counterclaim sought \$30,000 for storage fees" (Line 1 at A 06). But the record shows that, at trial, Defendant was seeking "storage fees" of \$30/day from September 8, 2003 to November 22, 2006 for its Counterclaim (RS 124-127).

And, contrary to the Appellate Court's assertion, during appeal, the Dealer still contended that it "would ask for in **excess** of \$30,000 in its Counterclaim" (Emphasis added). (RS 50 at ¶10). It is apparent that, by doing so, the Defendant would have an excuse to challenge the trial court's jurisdiction at any time, in any event if any order might be adverse to the Dealer. Such a practice should not be allowed but that is exactly what the Dealer did after Plaintiff requested the trial court to certify a Bystander's Report in 2007.

10. At page 12 of its Order, the Appellate Court presumes that, between October 20 and November 8 of 2005, the Defendant had re-filed a stricken motion to dismiss. But the record shows that such an assumption is very wrong indeed. In the Courts Below, before filing her Brief, Plaintiff consistently pointed out that the Defendant was in default for failure to plead after October 20, 2005. (See e.g. the last paragraph at page 4, and page 14 of Plaintiff's Brief; RS 404-422); and the Defendant did not and could not deny such a material fact in the trial court. When submitting its Brief, the Defendant states: "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's contention is lubricious on the face of the text, as "strike" is a very well defined legal term. See e.g. Black Dictionary, Eight Edition, at page 1463. And, as Judge Donald Davis put it on December 8, 2005: "stricken is stricken," no legal professional should accept such a frivolous statement that "striking" a motion is equivalent to "continuing" it. The record shows that the Defendant had always been arguing that **the specific**

**stricken motion was still pending** on November 8, 2005 (Lines 5-6 at page 15 of Plaintiff's Brief; and Defendant's Admission at RC 163). As such, on the same issue, Defendant has presented shifted and irreconcilable contentions. And beyond dispute, there would be no possibility that the Dealer would "re-file" a motion when it considered the specific motion was still pending. No party should be allowed to present outright falsehoods in the court of law. The truth is that Defendant can never present a copy of the "Re-filed" Motion, a Notice of Filing or a Certificate of Service. As a result, no judge could or should rule on a motion of no legal existence.

11. As to the standing of the Dealer's counsel, for two years in the Courts Below, Plaintiff repeatedly points out several uncontested facts: (1) on and after August 8, 2006, lawyer Elaine S. Vorberg was not employed any more by her former employer, a law firm, Defendant's counsel Childress Duffy Goldblatt, Ltd; (2) the law firm did not present a written or oral motion for a purported withdraw; neither had lawyer Vorberg presented a supplemental or substitution Appearance Form in the trial court; but (3) Ms. Vorberg claimed that she represented the law firm and herself when addressing the trial court on August 8, 2006. When submitting its Brief, in part of its own version of "Statement of Fact," the Defendant started contending that: "[O]n that date, Attorney Elaine S. Vorberg was granted leave to appear as counsel for Defendant, in lieu of Childress Duffy Goldblatt, Ltd., withdrawn. (C00515) [sic]." The Appellate Court, at the last three lines at page 4 of the Order, in its Background Section,

concurrent Defendant's improper practice anyway, although stark violation of Rule 13(c) had occurred. See Illinois Supreme Court Rule 13(c).

**B. The Appellate Court Disregarded Illinois Supreme Court Rules And Applied An Incorrect Review Standard**

1. Under Rule 341(i), Invasive And Fraudulent Contentions of Facts Can Not Be Converted Into Issues For Review In The Middle of An Appeal

The record shows that before filing its Brief, the Defendant admitted or it had never contested the following indisputable material facts (1) Its motion to dismiss was stricken on October 20, 2005 (RC 23); (2) Defendant considered that the specific motion was still pending on November 8, 2005, even after it had been stricken (RC 163); (3) Plaintiff filed her original Complaint in December of 2004; and the Defendant filed and served an official copy of an Answer on July 19, 2006 (RC 578-609); (4) Defendant's counsel Childress Duffy Goldblatt, Ltd had never presented a written or oral motion to withdraw; (5) On August 8, 2006, lawyer Vorberg was not an employee of Childress Duffy Goldblatt, Ltd and she did not file and serve her Appearance Form. The record further shows that Defendant presented no Issue For Review of its own (Defendant's Brief). Therefore, according to Rule 341(i), Defendant should not be allowed to convert every untimely contention of facts into a material issue for review.

Furthermore, before the appeal started, from December of 2005 to January 5, 2007, in the trial court, Plaintiff consistently pointed out that her November 3, 2005, Motion For Substitution Of Judge As of Right was granted on December 8, 2005. (RS 223-232; RS 239-247; RS 404-422), Defendant had never contested

such a material fact. Again, under Rule 341(i), Defendant should not be allowed, in the middle of an appeal, to convert an evasive and fraudulent insinuation of a fact into an outcome-determinative Issue for Review. The Appellate Court is not supposed to raise a reviewing issue, simply because attorney of one party contends he or she is not clear what happened in the trial court. And even if the Appellate Court has the authority to do so, documentary evidence presented by Plaintiff should be considered. And it would be a simple matter and it would take little time to verify what happened at the hearing on December 8, 2005 and what the specific December 8, 2005 Order meant. For the sake of just and fairness to all parties, if necessary, with leave of the Court, Plaintiff is willing to contact Judge Donald Davis or other witness and ask for their clarification and confirmation.

2. Rule 323(c) Should Not Be Disregarded As It Protects Constitutional Rights of Due Process And Equal Protection For All Parties

Plaintiff filed a Proposed Bystander's Report in the trial court on January 5, 2007. The record shows that the Dealer failed to respond, but at a hearing on February 1, 2007, without any legal ground, its counsel contended that the trial court had no jurisdiction to certify a Bystander's Report. Several months later, disregarding Rule 323(c), the Appellate Court ordered the Defendant to submit its own Bystander's Report ("Report") before July 23, 2007, but the Dealer again failed to file it on time. It should be pointed out here that, at best, Defendant untimely "Report" contains hearsay, and irreconcilable statements because (1) on the record, all Dealer's witnesses were not at the scene during the sale and at the

time of towing back the vehicle, (2) Defendant affirmatively provided invalid identification of key witnesses, and was caught by the trial judge at trial; (3) Defendant's lawyer submitted her own letters as "evidence", in which an "expert mechanic" without a name and testimony was created; and (3) there were no other court filings would support the Dealer's major after-trial contentions in the Report. And the worst is that Defendant's Report is a collection of irreconcilable and frivolous contentions and outright falsehoods. (Plaintiff's Motion to Strike filed on October 10, 2007, which was taken with the case). Unfortunately, Defendant's such a Report was improperly and erroneously adopted by the Appellate Court.

### 3. Incorrect Review Standard

At page 17 of its Order, the Appellate Court adopts a "manifest weight of the evidence" review standard. By doing so, the Appellate Court has ignored important documentary evidence and the argument presented by the Plaintiff. The record shows that the trial judge entered an undisclosed court-stamped order, two months before a trial (Exhibit B of this motion or RA 073), the text of which is almost identical to part of the "final judgment" (RA 143), and both documents were in direct conflict with 735 ILCS 5/2-1203 (a) and (b), because a Judgment Order is not enforceable before a post-trial motion had been denied. Further, the record shows that all witnesses for Defendant had no first-hand knowledge of what happened at the subject sale (RA 146). As such, the Appellate Court has applied an incorrect standard of review on the related issues, since This Court holds that "[W]here the circuit court does not hear testimony and bases its decision on documentary evidence, the rational underlying a deference standard of review is

inapplicable and review is de novo.” Townsend v. Sears, Roebuck and Co., 227 Ill. 2d 147, 879 N. E. 2d 893, 899 (November 29, 2007), citing Dowling v. Chicago Options Associates, Inc., 226 Ill. 2d 277, 285 (2007).

## **II. REVIEW BY THIS COURT IS WRRANTED AND NECESSARY**

### **1. Without A Reversal Or Correction of The Appellate Court’s Order, Plaintiff’s Statutory Right Under 735 ILCS 5/2-1001(a)(2) Would Be Deprived**

Documentary evidence shows that, contrary to two of the Appellate Court’s assumptions, (1) Plaintiff did contest the November 17, 2005 Order, which denied her Motion for Substitution of Judge As of Right; and (2) the same motion had eventually been granted on December 8, 2005. (Petition A 24 – 28). On this issue, the language in the statute ILCS 5/2-1001(a)(2) is plain and simple. Plaintiff filed the motion for judge substitution at the earliest possible date; that is the next day of the Intake and Case Management conference (Defendant’s Brief at page 6, lines 1-20). As such, the motion should be granted as a matter of law under This Court’s holding. In re Dominique, F., 145 2d 311, 324. 583 N. E. 2d 555 (1991). The same presumption adopted by the Appellate Court must also apply to Judge Donald Davis, that judges in the trial court should know the law. But here the Appellate Court assumes otherwise. As a result, in the middle of an appeal, Defendant is allowed to start a frivolous contention that the “presentation date” is different from the “filing date.” That misinterpretation renders ILCS 5/2-1001(a)(2) meaningless because, according to Defendant’s wanton argument, a judge has the authority to enter an adverse ruling against a party who has filed a

motion for substitution of the judge. This Court must reject such erroneous interpretation of a statute leading to absurd results not intended by the Legislature.

2. Plaintiff Statutory Right Under Vehicle Information and Cost Savings Act (“MVICSA”), 49 U. S. C. § 32701 et seq. Had Been Ignored

On the face of the text in the Order, Plaintiff’s allegation on violation of MVICSA has never been addressed. 49 U. S. C. § 32702 (7) explicitly stated: “title means the certificate of title or other document issued by the State indicating ownership”. Documentary evidence shows that at the time of the sale, the Dealer did not own the subject car (A 29-30). As such, Defendant should not be allowed to legalize an illegal sale in a court of law. Further, under MVICSA, 49 C. F. R. § 580.5(c) requires a motor vehicle seller to reveal the mileage to the purchaser in writing on the title, as it provides that “[I]n connection with the transfer of ownership of a motor vehicle, each transferor shall disclosed the mileage to the transferee in writing on the title \*\*\*\* (emphasis added). At the time of sale, Plaintiff was entitled to have a copy of the original title. But even as of today the Dealer has never submitted it although the Plaintiff demanded it for years.

3. Plaintiff Statutory Right Under the Magnuson-Moss Act, 15 U. S. C §2301 et seq. had been Ignored

Under provision 15 U. S. C §2310(d)(1), causes of action exist for violations of failure to comply with a requirement of the Act or rules under it, for breach of “obligations” under other Federal Statutes, such as disclosure (16 CFR §701), pre-sale availability (16 CFR §702), FTC Used Car Rule (16 CFR Pt. 455). The record

shows that, even as of today, after requesting for years, Plaintiff has never received one piece of a document – a copy of the original Buyer Guide with both the front and back side, although under 16 C. F. R. Ch. I § 455.2 (a) and (b) (1-1-03 Edition), she was entitled to have one at the time of the sale.

4. The Illinois Consumer Fraud and Deceptive Business Practice Act (“CFA”) 815 ILCS 505/2 et seq. And Our Judicial System Had Been Undermined

Illinois CFA provides long and un-exhaustive list of deceptive or unfair business practices. Under Magnuson-Moss Act, 16 C. F. R. Ch. I § 455.2 (a) explicitly states: ” (a) It is a deceptive act or practice for any used car dealer, when that dealer sells or offers for sale a used vehicle in or affecting commerce as commerce is defined in the Federal Trade Commission Act: (1) To misrepresent the mechanical condition of a used vehicle; (2) To misrepresent the terms of any warranty offered in connecting with the sale of a used vehicle; and (3) To represent that a used vehicle is sold with a warranty when the vehicle is sold without any warranty.” In this case, record shows that the Dealer created four versions of one Buyer’s Guide (Petition at page 17-18; A 17-18 and A 31-35). Beyond dispute, three of them must be falsified. After putting Plaintiff’s safety at risk, even in a court of law, the Dealer still intended to collect storage fees from the first day it towed back the car; and for months, Defendant argued that under Magnuson-Moss Act, there was no private cause of action; and for years the Dealer contended that a stricken motion to dismiss was still pending; also it is fraudulent per se when the Dealer claimed that it “bought” the subject vehicle

without any transaction record; and it was an insult to our judicial system when the Defendant asserted that it lacked the knowledge of an odometer should run forward, not backward; further, it is beyond any doubt that the Dealer had fabricated an October 6, 2003 Odometer Form (A 030) in order to deceive the Secretary of State of Illinois and the Courts. Without question, it would never be a good public policy to allow dishonest car dealers to launch frivolous defense by using their resources. And our State should not be an ideal place for “title laundry” of used vehicles. Therefore, the Appellate Court’s Order must be reversed or vacated; the Dealer’s deceitful conduct should be condemned; and similar unlawful business practice should be deterred. Otherwise, if the Appellate Court’s Order is left to stand, our judicial system and legal profession would be brought into disrepute, and our State CFA will certainly be undermined.

**WHEREFORE**, Plaintiff-Petitioner Yuling Zhan respectfully prays that This Court would grant her motion for reconsideration, or, in the alternative, grant her motion to enter a supervisory order.

Date: \_\_\_\_\_

Respectfully submitted.

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Signature of Yuling Zhan

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