

**PETITIONER’S MOTION FOR LEAVE TO FILE A 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 or appeal as of right 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 leave to file a 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 an Order in this matter on September 30, 2008 (the “Order”). (A01-A21¹). 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, 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’s Order turns Defendant’s

¹ Citations to the Appendix in the November 25. 2008, Petition 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.

evasive and false contention into an issue which became outcome-determinative for the 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 case different from the instant one. 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 misidentified Plaintiff's allegation on Count IV as "breach of contract" under the common law (A 04, page 4 of the Order). Furthermore, at page 1 and at the last paragraph of page 16 in the Order (A 01 and A 16), the Appellate Court again misstates 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, whereas Plaintiff's filings in the Courts Below were all ignored. For example, trial exhibits 10(1) and (2) (A 20-30 or RS 36-37) show that Plaintiff has been arguing that the Dealer did not legally own the subject vehicle at the time of sale and the Dealer failed to comply with the title disclosure and transfer procedure, mandated by the Vehicle Information and Cost Savings Act ("MVICSA"), 49 U. S. C. § 32701 et seq. The language in 49 U. S. C. § 32702 (7) and 49 C. F. R. § 580.5(c) is clear and unequivocal. As

such, a car dealership is not allowed to pretend to be a legitimate transferor first, but act as a transferee later. Further, no odometer would run backward as suggested by the Dealer's court filing. Therefore, documentary evidence confirms that the Appellate Court erred, when assuming that Plaintiff did not raise this issue at trial (Second paragraph in the Order at page 18 or A 18).

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

1. Under Rule 341(i), Contentions of Facts Cannot Be Converted Into Issues For Review In The Middle of An Appeal

The record shows that before filing its Brief, the Defendant had never contested several indisputable material facts. The record further shows that Defendant presented no issue for review (Defendant's Brief). Therefore, under Rule 341(i), Defendant should not be allowed to convert every untimely contention of facts into a material issue for review. For example, 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. Under Rule 341(i), Defendant should not be allowed, in the middle of an appeal, to convert an evasive and false insinuation of a fact into an outcome-determinative Issue for Review.

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 on February 1, 2007, its counsel presented a frivolous contention 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, as Plaintiff stated in her Petition, (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 (4) there were no other court filings would support the Dealer's after-trial contentions in the Report. And the worst is that Defendant's Report is a collection of irreconcilable contentions and outright falsehoods. (Plaintiff's Motion to Strike filed on October 10, 2007, which was taken with the case). Unfortunately, the Appellate Court adopted such a Report.

3. Incorrect Review Standard

At page 17 of its Order, the Appellate Court applies a "manifest weight of the evidence" review standard. 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). At that time no testimony from witnesses was available. 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 rationale 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

Contrary to two major erroneous assumptions in the Appellate Court’s Order (A 07-08), documentary evidence shows that: (1) Plaintiff did contest the November 17, 2005 Order, which denied her Motion for Substitution of Judge As of Right (A 24-27); and (2) after requesting a December 8, 2005 hearing on her Motion to Reconsider the November 17, 2005 Order (Petition A 24), Plaintiff’s motion for substitution of judge as of right had eventually been granted (A 28). Further, the language of the statute ILCS 5/2-1001(a)(2) is plain and simple. Plaintiff filed a motion for judge substitution as of right at the earliest possible date; as Defendant put it, that is the next day of the Intake and Case Management conference

(Defendant's Brief at page 6, lines 1-20). As such, Judge Donald Davis did the right thing on December 8, 2005, with great courage, integrity and professionalism, since Plaintiff's 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). Therefore, the Appellate Court should not and could not reverse the trial court's December 8, 2005 Order without due process and without any factual and legal ground.

2. Plaintiff statutory right under Vehicle Information and Cost Savings Act

("MVICSA"), 49 U. S. C. § 32701 et seq. and Federal Regulations under it had been ignored, as Plaintiff's cause of action under this specific Federal Statute had never been addressed in the Appellate Court Order

3. Plaintiff statutory right under the Magnuson-Moss Act, 15 U. S. C §2301 et. seq.

had been ignored, although she is entitled to receive a copy of the original Buyer's Guide at the time of sale under 16 C. F. R. Ch. I § 455.2 (a) and (b) (1-1-03 Edition)

4. The Illinois Consumer Fraud and Deceptive Business Practice Act ("CFA") 815

ILCS 505/2 et seq. and our Judicial System had been undermined

Documentary evidence shows that, as a matter of law, the Dealer did not have the car title and it did not legally own the subject vehicle at the time of sale (A 29-30 or Trial Exhibits 10(1) and (2)). As such, the Defendant should not be allowed to legalize an illegal sale in a court of law. And the date and mileage on the October 6, 2003, Odometer Disclosure Statement form, by comparison of those in the September 4, 2003, form, show that, at least, the specific document must be fabricated (A 29-30). Further, at the time of sale and in court proceedings, the

Dealer has created four different versions of a Buyer's Guide for a single car. Beyond any doubt, three of them must be fabricated also (Plaintiff's Brief 17-18; A 31-35). Therefore, the Appellate Court's Order must be reversed or vacated because "[O]utright fraud on the court of this State is not to be countenanced." Tomm's Redemption, Inc., v. Jae Park, 333 Ill. App. 3d 1003, 777 N. E. 2d 522, 528 (1st District, 2002).

5. Additional material facts and further analysis have been included in Plaintiff's motion for reconsideration, or, in the alternative, motion to enter a supervisory order, which is submitted to this Court separately and simultaneously.

WHEREFORE, Plaintiff-Petitioner Yuling Zhan respectfully prays that this Court would grant her motion for leave to file a Motion for Reconsideration or in the Alternative Motion to Enter a Supervisory Order.

Date: _____

Respectfully submitted

Signature of Yuling Zhan

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