INTRODUCTION

The appeal is from the circuit court's "final judgment order" entered on December 1, 2006 after a non-jury trial, which, at Part 1, was in favor of Defendant, Napleton Buick Inc., n/k/a D'Andrea Buick, Inc. (" Defendant" or the "Dealer").

Plaintiff bought the subject vehicle from the Dealer on September 4, 2003, but it stalled on the first day when she drove it to and from work at normal highway speed. The Dealer towed back the car, and plaintiff sent a fax and a letter to it as a notice of revocation of acceptance, requiring the Dealer to respond in writing by fax within three days. But before the lawsuit was filed, for more than one year, the Dealer had never contacted plaintiff directly except sending "Thank you" notes and "trade-in" advertisement to plaintiff. On December 22, 2004, plaintiff initiated the instant suit under Magnuson-Moss Act 15 U. S. C §2301 et. seq.(2000), the Illinois Consumer Fraud and Deceptive Business Practice Act 815 ILCS 505/1 et seq. (West 2002). ("ICFA"), Illinois UCC (810 ILCS 5/1-101 et seq.), and common law. On June 28, 2006, plaintiff filed her second amended complaint, adding two more counts against the Dealer, in which plaintiff alleged, inter alia, the Dealer violated Vehicle Information and Cost Savings Act ("MVICSA"), 49 U. S. C. § 32701 et seq. (2000), and the Dealer, in concert with its counsel, committed fraud upon tribunal. A copy of the Second Amended Complaint is included at pp. A6-55 [1] of plaintiff's separately bound appendix; and ten Counts therein directed at the Dealer are listed at A 6-7. In addition to other issues, questions on pleadings are brought for review as well, which

[1] The following abbreviations are used herein in referring evidence in the record: "A" for separate Appendix; "C" for Common Law Record and "S" for the Supplemental Record.

include whether plaintiff 's pleadings are legally sufficient to state a claim on Counts VII, VIII and X, and whether the Dealer's November 28, 2005 Answer was a nullity and/or whether it was timely filed or properly served.

ISSUES PRESENTED FOR REVIEW

1. Whether the dollar figures of plaintiff's claim and the Dealer's counterclaim exceeded the jurisdictional limit of the trial court;

2. Whether orders issued in November of 2005 shall be void which were entered after plaintiff submitted a motion for substitution of judge as of right;

3. Whether the Dealer should be allowed to proceed after it did not file a timely Answer or did not properly serve it upon plaintiff in 2005;

4. Whether the Dealer's Counterclaim is a non-meritorious filing; and whether sanction should be imposed under Illinois Supreme Court Rule 137;

5. Whether the Dealer's trial counsel, Ms. Vorberg had standing to address the court on and after August 7, 2006, after failing to file a substitution appearance form;

6. Whether the trial court erred in permitting the Dealer's counsel to present four letters of her own as trial exhibits, whether those letters contain inadmissible hearsay and deliberate false statement, and whether the Dealer's counsel had engaged in "court order shopping" or "judge shopping" activities;

7. Whether the trial court erred in deferring the ruling of plaintiff's motions, which raised issues on the court's jurisdictional limit, validity of some orders;

8. Whether the Dealer should be allowed to prevail after it misrepresented or concealed identities of key witnesses and provided false statements on material facts, and its counsel, when doing the same, was caught by the judge during trial;

9. Whether the trial court ignored plaintiff's constitutional rights before, during and after the trial, and whether plaintiff is entitled to additional relief;

10. Whether the December 1, 2006 "final judgment order" on its face runs counter with 735 ILCS 5/2-1203, and whether Part 1 of the "final judgment order" is intrinsically in contradiction with Part 2 of the same order.

11. Whether in Illinois punitive damages under ICFA constitutes "double recovery" if plaintiff can simultaneously prevail on ICFA and MVICSA claims.

JURISDICTION

After a trial held on November 22 and December 1, 2006, the trial court entered a "final judgment order" (A74). Plaintiff filed timely post-judgment motions: (A75-121 and S459-496), and they were denied on December 20, 2006 (A122), Plaintiff filed a notice of appeal on January 5, 2007 (A 123-145). This Court has jurisdiction pursuant to the Illinois Supreme Court Rules 301 and 303.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Pertinent portions of the following constitutional and statutory provisions are set out at pages A1-5 of plaintiff's separate appendix.

A. The First Amendment Of The U. S. Constitution

B. The Fourteenth Amendment Of The U. S. Constitution

C. The Magnuson-Moss Act 15 U. S. C §2301 et. seq.

D. Illinois Uniform Commercial Code (810 ILCS 5/)

E. The Vehicle Information and Cost Savings Act , 49 U. S. C. § 32701 et seq.

F. The Illinois Consumer Fraud Act 815 ILCS 505/2 et seq.

G. FTC Used Motor Vehicle Trade Regulation Rule (1-1-03 Edition)

H. 735 ILCS 5/2-1203 (a) and (b)

STATEMENT OF FACTS

A. Procedural Background

On December 22, 2004, plaintiff initiated the instant lawsuit, and on June 7, 2005, she filed an Amended Complaint. The Dealer filed its second motion to dismiss on June 21, 2005, which was stricken in its entirety on October 20, 2005 (C23 at ¶8).

Initially, the instant case was assigned to Courtroom 1304 on September 23, 2005 (C660). Plaintiff filed a motion to disqualify and/or sanction defendant's counsel on October 7, 2005 (S153-178). After a series of maneuver by the Dealer and its counsel, on October 20, 2005, the case was re-assigned to Courtroom 1307, which Defendant had chosen. Because of this, plaintiff filed a motion to sanction Defendant's counsel Ms. Elaine S. Vorberg ("Vorberg") on October 25, 2005 (S179-186), and a motion for substitution of judge as of right on November 3, 2005. On December 8, 2005, plaintiff's motion for substitute of judge was granted (C59) and the case was re-assigned to Courtroom 1104 – the trial court.

In the mean time, simply because the Dealer argued its motion to dismiss was still pending because it had been stricken "without prejudice," on November 8, 2005, an associate judge at Courtroom 1307 rendered an order (C26), overruling the October 20, 2005 order issued by a Judge, dismissing plaintiff's claims on Counts VII and VIII, and ordering the Dealer to file an Answer. The Dealer filed an Answer on

November 28, 2005 accordingly, but it did not serve an official copy of it upon plaintiff (S226-232).

On June 28, 2006, plaintiff filed her Second Amended Complaint ("Complaint")., and after nineteen months since the instant suit was initiated, the Dealer served its first official copy of an Answer upon plaintiff on July 19, 2006. The instant appeal started after a "final judgment order" was entered, and after the trial court denied plaintiff's Emergency Post-trial Motion ("Post-trial Motion")(A75-121) and Renewed Motion to Disqualify ("Motion to Disqualify")(S459-496).

B. Factual Background

Documentary evidence including admissions submitted by Defendant, pertinent statements in the complaint, either uncontested or incontestable, which outlined a large portion of the evidence introduced at trial, stated in Plaintiff's Bystander's Report ("Report") at A56-72, constitute facts for the instant appeal. Additionally, since the Dealer did not file a response to plaintiff's claims in Counts VII, VIII and Count X, pertinent factual allegations in the Complaint and other pleadings should be taken as true for the purpose of reviewing motions to dismiss.

1. What Happened Before Plaintiff Sent A Notice of Revocation of Acceptance

On September 4, 2003, plaintiff wanted to buy a more liable car from a Toyota or CarMax dealer although she had a 1990 Toyota Corolla in use, because she just found a new job in the suburb far away from Chicago. Driving safety was her priority concern. (Report at ¶¶12-13, A57). Plaintiff went to a Toyota dealer adjacent to Defendant's location; she did not find a satisfactory car. Then, when she stopped by at Defendant's lot, several salesmen there showed her the subject car. Plaintiff told them

she needed a reliable car, because she just found a new job, starting on September 8, 2003, in the suburb far away from Chicago. (Id at ¶¶16-17; A58). The salesmen claimed, "This car is still under warranty. There is only 24,000 miles. It is in excellent condition, absolutely safe. No accident. Engine, transmission and everything are in excellent shape, very dependable." When saying this, four or five Defendant's employees were present, surrounding plaintiff (Id. at ¶18). Plaintiff specifically asked why the previous owner sold the car while the mileage was low, she was told that the subject car was a one-owner, a trade-in; there was no repair record, and the previous owner sold the car at low mileage because some people were rich (Id at ¶21, A58 and ¶24, A59). There was a Buyer's Guide on the car window; in which only "WARRANTY" box was checked. This gave plaintiff an impression that the content of the Buyer's Guide was consistent with the salesmen's statements that the subject car was under one-hundred-percent warranty, full warranty. (Id at ¶19; A58), and the salesmen convinced plaintiff to believe what Defendant offered was similar or better than that from CarMax, it meant that a dealer would provide free parts and free labor for any repair within one month and customer could return a non-confirming car within 5 days (Id at ¶ 20, A58). Plaintiff asked the salesmen to conduct mechanical check on the car. Sometime later, she was told that the car was ready to go. And a salesman added, "Mechanical check-up is done. It is a good car, safety is guaranteed" (Id at ¶ ¶26-27, A59). After plaintiff drove the car home, she found out that the warranty paper was not included in the purchasing documents. She called Defendant, the Dealer asked her to return back and pick up the paper. Because plaintiff was busy in preparing for her new job, she asked Defendant to send it by fax instead. After

receiving a copy of the front page of a "Buyer's Guide", at plaintiff's surprise, she found out the content of the warranty was changed (Id at ¶¶29-30). On Monday, September 8 of 2003, the engine of the subject car stalled at the speed of about 60 miles/hr when plaintiff drove it on the first day going to and from work (Id at ¶34 A60). Plaintiff was lucky that there was no other car following her, otherwise, a fatal accident would definitely occur. But still, it was an extremely dangerous and scary moment. Plaintiff noticed the Dealer immediately, asked it to tow back the car, and expected to receive a refund (Id at ¶37). Defendant towed back the car accordingly (Id at ¶38 A60-61). In the morning of September 9, 2003, after searching on the Internet, plaintiff found out that, contrary to the Dealer's affirmative statement at the time of the sale, the subject vehicle had multiple repair records. Plaintiff called her bank and found out that the Dealer had already cleared the check on the second day of the purchase. As a result, plaintiff had to send Defendant a letter and a fax dated September 9, 2003 to repeat her request for refund (Id at ¶¶39, 41, A61).

2. What Happened After Plaintiff Sent A Notice of Revocation of Acceptance

In her September 9, 2003 letter and fax sent to the Dealer, plaintiff required Defendant to refund her the money and cover related expenses. Plaintiff demanded the Dealer to respond in writing by fax within three days in order to solve the problem within one week (Report at ¶ 39, A61). After receiving no response from the Dealer, plaintiff sent a letter to the Illinois Attorney General's Office (the "IAGO") (Id at ¶¶42-45). In its undated response to the inquiry from the IAGO, the Dealer contended it sent plaintiff a purported September 10, 2003 letter. In her second letter dated

October 14, 2003, plaintiff promptly informed the IAGO that the Dealer was providing false statement (Id. at ¶¶ 47-48, A62), and plaintiff pointed out that the Dealer sent her a "Thank you" note on September 9, 2003 after it towed back the car; it would be unlikely that Defendant would write her a letter on September 10, 2003, and plaintiff stated that she had never received the purported letter directly from Defendant. On October 17, 2003, the Dealer sent plaintiff another "Thank you" note after she contacted the IAGO (Id. at ¶49). On November 2, 2003, plaintiff sent her third letter to the IAGO, as a final attempt to solve the problem without filing a lawsuit (Id at ¶ 48 A62, Complaint at ¶148, A25 and Exhibit O, A50-51), again, plaintiff stated therein that the Dealer's purported September 10, 2003 letter was a fabrication. And the Dealer had never argued on this issue before the instant suit was filed.

In 2003, for three months, plaintiff had to rent a car going to and from work, while contacting the IAGO (Report at ¶ 51 A62). In 2004, after plaintiff knew a little bit better about the neighborhood of her new work place, she had to take bus, train and pace going to and from work, no matter what the weather condition was; and transportation alone would take more than five hours for each of the weekdays. At that time, plaintiff suffered severe emotional distress, as she could not work regular hours due to commuting difficulty in the suburb, because anything might happen when walking and waiting for a pace in a strange neighborhood, especially in the dark, during snowy winter and stormy summer. If she missed the pace service after dark in the afternoon, the situation would be worse (Id at ¶ 52, A62). Meanwhile, in the whole year of 2004 the Dealer had done nothing but sending a "trade-in" advertisement material to harass plaintiff (Id at ¶ 53).

3. A Major Event after Plaintiff Filed the Lawsuit

After plaintiff initiated the instant suit, the Dealer and its counsel started demanding car keys for the subject vehicle, under the pretext that they wanted to "inspect" the car and "settle the case" although they did not need to hold car keys to participate a joint inspection or take part in settlement discussions. The Dealer did not file a written motion, but request a court order (Complaint at ¶¶155-159, A26). After receiving the car keys, the Dealer filed a Counterclaim instead, for storage fees of $30/day, because plaintiff rejected its unwarranted settlement offer (Id. at ¶¶160-170, A27-28). From that moment, plaintiff would have no opportunity to conduct any meaningful inspection on the car, not only because the car keys were held or lost by Defendant's counsel, but also because, as the Dealer was compelled to admitted, the subject vehicle was vandalized at its premise after its counsel received the car keys and after the Dealer conducted its forensic "investigation." (Defendant's Answer #13, S317). And the Dealer did not, has not and cannot produce any report of its "inspection" or "investigation" which lasted for more than one and half a year.

4. What Has Been Revealed During Discovery

During discovery, the Dealer was compelled to disclose that the subject car was "brought" from Precision Motors Inc. (Report at ¶88 A67). The Dealer asserted it had no financial transaction record when it "bought" the car (Post-trial Motion ¶97, A97-98, Exhibit O, A117-119). Documentary evidence shows that several places were left blank in the odometer statement form created by Precision Motors Inc., and the Dealer did not have car title at hand before October 6, 2003, that was one month after the Dealer "sold" the subject car to plaintiff (Id. A119, and Report at ¶83 A66). Moreover,

the Dealer admitted that the odometer reading was 24514 miles on 06/26/2003 (Motion to Disqualify ¶15, S463; Exhibit L at S483); and the Dealer confessed that Defendant identified itself as a "transferor" on September 4, 2003, but it claimed to be a "transferee" on October 6, 2003 (Report at ¶75 A65). Also the Dealer "affirmatively stated that the odometer reading was 24509 miles on October 6, 2003" (Post-trial Motion, ¶93, A96; Exhibit M, A115). And Defendant asserted it lacked knowledge of "as a common knowledge, the odometer reading shall be lower for prior title transfer as compared to that of later ones" (Id, ¶21, A79; Exhibit A at A 99). Further, in court proceedings Defendant refused to produce a copy of documents it sent to the Office of Secretary of State for the title transfer of the subject car.

During discovery, the Dealer was compelled to confess that the subject car had several repair records; it admitted that Defendant was not in possession of any record to indicate the Dealer had performed any independent inspection of the subject car before the sale; the Dealer admitted it was not in possession of any record to indicate that Defendant had ever conduct mechanical check on the vehicle at the time of the sale (Post-trial Motion ¶32, A81; Exhibit E, A104); the Dealer stated that it did not know who handed sales papers including warranty paper(s) over to plaintiff (Motion to Disqualify, ¶11, S461-462; Exhibit G, S476-478); and the Dealer did not argue that Defendant had produced more than one version of a Buyer's Guide for a single used car (Report at ¶¶19-20, ¶¶29-32, A58 and A59-60).

5. Major Events At Trial

Just before the trial, the Dealer's counsel, Childress Duffy Goldblatt withdrew from the case, without filing a written motion or presenting any oral motion. Although

Ms. Vorberg became unemployed by the firm on and after August 7, 2006, she did not file an appearance of her own, but acted as the only counsel for Defendant ever since (Report at ¶4, A57). As such, whether Vorberg had standing to address the court became an issue for review. During trial, the Dealer called its two lay witnesses to testify - its president, Mr. D'Andrea, and its general Manager, Mr. Earley. It is important to note that both of them were not present at the scene during the subject sale, also they had never communicated with plaintiff directly at any time before the instant suit was filed. In its opening statement, the Dealer contended the dollar value of its Counterclaim amounted up to more than $ 30,000 (Id at ¶ 11, A57). In addition to a letter drafted by Mr. Earley addressed to the IAGO with an attachment, a copy of insurance billing notice, Vorberg presented four letters of her own, addressed to plaintiff, as trial exhibits (Id. at ¶58, A63; ¶111, A70). The presiding judge pointed out Mr. Earley and counsel Vorberg provided irreconcilable statements (Id at ¶ 8 A57; and at ¶¶96-99, A67-68), he stopped the proceedings and ordered the case to be settled (Id at ¶100, A68). After plaintiff rejected the settlement terms, and filed an emergency motion to compel admissible evidence from the Dealer (Id at ¶101), a "final judgment order" was issued on December 1, 2006 (Id. at ¶123, A71).

REVIEW STANDARD

Unless explicitly stated otherwise, plaintiff's statements in this brief are based on documentary evidence. On appeal, the issues as questions of law would be reviewed de novo. People v. Gherna, 203 Ill. 2d 165, 175 (2003). When reviewing motion to dismiss Counts VII, VIII and X, the same standard would apply. Ziemba v. Mierzwa., 142 Ill. 2d 42, 566 N. E. 2d 1365, 1366 (1991).

ARGUMENT

A. Some Orders Or Part of Them Entered in 2006 Should Be Void Or Voidable

1. The Dollar Figures of Claims And Counterclaims Exceed the Jurisdictional Limit of the Trial Court

In the original and the first amended Complaints, plaintiff asserted actual damages in dollar amount of $10789.33 and damages in emotion distress, etc. (S89). On December 8, 2005, when the instant case was re-assigned to Courtroom 1104, question arose as to whether the dollar amount of plaintiff's claims exceeded the jurisdictional limit of the trial Court. The trial judge was then an associate judge, presiding a small claims court. This can be confirmed by examining a list of all the cases processed at Courtroom 1104 in December of 2005. Furthermore, on June 28, 2006, plaintiff filed her second amended Complaint, in which plaintiff alleged the Dealer violated MVICSA, and the treble actual damages alone would be $32367.99 (statutory punitive damages included) (Complaint at ¶81 and ¶136, A15–16 and A23). And at trial, the Dealer demanded "storage fees' in excess of $30,000, which exceeded the jurisdictional limit not only for a small claims court, but also for the municipal division of the Circuit Court of Cook County. The Illinois Supreme Court has stated: "where a court, after acquiring jurisdiction of a subject matter, as here, transcends the limits of the jurisdiction conferred, its judgment is void." People v. Abney, 90 Ill. App. 3d 235, 243, 232 N. E. 2d 784, 788 (1967).

After plaintiff raised the jurisdictional issue, it is improper for the trial judge to defer his ruling on plaintiff's March 3, 2006 motion for reconsideration several times until the end of the trial (Notice of Appeal at ¶6 and ¶8, A124). And it is well