

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

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

**RENEWED MOTION TO DISQUALIFY AND / OR SANCTION**

**MS. ELAINE S. VORBERG**

**AS DEFENDANT'S COUNSEL**

Plaintiff, Yuling Zhan, respectfully submits this Renewed Motion: to Disqualify And/Or Sanction Elaine S. Vorberg as Counsel for Defendant Napleton Buick, Inc., ("Defendant" "Buick"), and states as follows:

**Procedural Background**

**A. Plaintiff's Motion to Disqualify Defendant's Counsel**

**Was Still Pending At Trial**

1. On October 7 and 25, 2005, Plaintiff filed a Motion to Disqualify and/or Sanction (Motion to Disqualify"), and a Motion to Sanction Defendant's Counsel Ms. Elaine S. Vorberg for Her Recent Misconduct (Motion to Sanction"), respectively.
2. On October 20, 2005, Defendant's Motion to Dismiss Plaintiff's Amended Complaint was stricken. See Exhibit A.

3. The instant case was originally assigned to Court Room 1304. See Exhibit B.
4. On October 11, 2005, after Ms. Vorberg asked for setting a trial date, Honorable Judge Lewis stated that Plaintiff was entitled to have An Answer first from Defendant, and asked Mr. Vorberg to submit a witness list for trial. Then, in order to avoid Trial Judge Lewis, Ms. Vorberg provided false written statement that the case was assigned to Court Room 1307. See Exhibit C.
5. Later, the case was eventually re-assigned to Court Room 1307 as Ms. Vorberg preferred, after her laborious maneuver in additional to false statements in front of Judges. On November 3, 2005, Plaintiff filed a motion for substitution of Judge as of right, which was granted on December 8, 2005 and the instant case was re-assigned to Court Room 1104 on the same day. See Exhibit D.
6. In the meantime, on November 8, 2005, plaintiff's Motion to Disqualify and Motion to Sanction were denied.
7. If the November 8, 2005 Order is void as it shall be, the motion to Disqualify and Motion to Sanction were still pending at the time of the trial. Ms. Vorberg has been concealing such important information ever since.

### **B. Ms. Vorberg Concealed that Defendant Had Been**

#### **At Default Before Trial**

8. Although the instant suit was filed on December 21, 2004 and Defendant's motion to dismiss was stricken on October 20, 2005, Defendant did not serve an official copy of its Answer upon Plaintiff until July 19, 2006. It is incontestable that Defendant had been at default for failure to plead from October 20, 2005 to July 19, 2006. Ms. Vorberg has been concealing such important information to the Trial Court ever since.

**In Concert With Defendant, Ms. Vorberg**

**Has Been Concealing Vital Information During Discovery**

9. Without question, under Vehicle Information and Cost Savings Act (MVICSA), 49 C. F. R. § 580.5(c), Defendant was obliged to disclose the original title of the subject car at the time of the sale. During discovery, under Court Order, at Plaintiff's discovery request, in concert with Defendant, Ms. Vorberg failed to do so. The original title should contain the name of the previous owner of the vehicle and an accurate reading of the odometer, which would reveal the car history etc. this information is essential for Plaintiff to conduct a meaningful discovery. Plaintiff was prejudiced by Ms. Vorberg's misconduct and Plaintiff has been deprived of her fundamental right to have a fair trial.
10. At the time of the sale, Plaintiff was told the subject vehicle was one-owner, a trade-in, it was sold at low mileage because some people were rich. During discovery, at Plaintiff's surprise, Defendant revealed it brought the vehicle from Precision Motors, Inc. and it was not a private consumer at all. It is reasonable for Plaintiff to demand a financial transaction record to establish whether the sale was illegal financially. In concert with Defendant, Ms. Vorberg drafted a response claiming Defendant was not in possession of such a record. See Exhibit E. Such response is fraudulent per se.
11. At the time of the purchase on September 4, 2003, Defendant purposely did not incorporate the Buyer's Guide into sale documents, on which only WARRANTY BOX was checked. After Plaintiff drove the car home, she found this out, called Defendant, Buick faxed the front page of a Buyer's Guide and the content was changed to 50% warranty. See Exhibit F. On September 8, 2003, in the late evening, the car stalled at about 60 miles/hr. when Plaintiff drove it from work for the first day. She called Defendant to tow back the car, expecting to get her money back. During discovery, in concert with Defendant, Ms. Vorberg did not provide the

name of Defendant's employee who handed over Plaintiff the Buyer's Guide, if any; in concert with Defendant, Ms. Vorberg did not provide the name of Defendant's employee who faxed Plaintiff the purported Buyer's Guide; further, in concert with Defendant, Ms. Vorberg did not provide the names of Defendant's employees who received Plaintiff's call and towed the subject vehicle on September 8, 2003. See Exhibit G. During discovery, in concert with Defendant, Ms. Vorberg knowingly and willingly concealed identities of key potential witnesses in order to prejudice Plaintiff. Such misconduct violated Illinois Supreme Court Rule ("Rule") 219.

12. Even as of today, under Court Order, Defendant and Ms. Vorberg still refuse to produce copies of documents Buick sent to the Office of Secretary of State for title transfer of the subject car. See Exhibit H. This is a stark violation of Rule 219
13. On June 14, 2006, under Court Order, Defendant was compelled to submit documents produced by defendant in other litigations, where defendant's business practice and credibility are or were at issue. Although Defendant has been sued in several cases, only one of them, *Watkins v. D'Andrea Buick et. al*, was disclosed. Ms. Vorberg participated in drafting the response. When doing so, again, she violated Rule 219.

### **In Concert With Defendant, Ms. Vorberg**

### **Provided False Statements During Discovery**

14. On May 16, 2006, under a Court Order, Defendant was compelled to answer Plaintiff's Requests for Admission See Exhibit I. Buick's response was certified by its president Mr. Nicholas J. D'Andrea, and drafted by its counsel Ms. Vorberg. In the response, Contrary to Defendant's statement at the time of sale, Defendant was compelled to admit there were repair records on the subject car for the first time, but it affirmatively stated that: "the mileage on the car on or about October 6, 2003 was 24509."

15. The October 6, 2003 odometer reading Mr. D'Andrea and Ms. Vorberg asserted is fraudulent, because it is lower than that Defendant provided on September 4, 2003. See Exhibit J. Further it is lower than the reading taken at the previous repair record. See Exhibit K. When answering Plaintiff's Second Amended Complaint, Ms. Vorberg co-drafted a response, in which Defendant admitted the odometer reading on 06/26/2003 was 24514 miles. See Exhibit L.
16. When answering Plaintiff's Second Amended Complaint, Ms. Vorberg co-drafted a response, in which Defendant contended it does not know, as a common knowledge, " the odometer reading shall be lower for prior title transfer as compared to that of later ones. See Exhibit M. Such response evidences Ms. Vorberg shows reckless disregard for the truth, closes her eyes on the truth, which infers intent to defraud.
17. On September 4, 2003, at the time of the sale, only WRRANTY box was checked on the Buyer's Guide for the subject vehicle, the spaces under SYSTEMS COVERED, and DURATION were all blank; this was consistent with salesman's statement that the subject car was under one-hundred-percent warranty, full warranty; at the time of the sale; when handing over sales documents to ask for Plaintiff's signatures, Defendant did not incorporate the Buyer's Guide into them; after Plaintiff drove the subject car home, she found out the Buyer's Guide had not been incorporated into the sales documents, she called Defendant immediately; Defendant faxed a front page of a Buyer's Guide at Plaintiff's request, the spaces under SYSTEMS COVERED, and DURATION were not blank, and the SERVICE CONTRACT box was not checked. See Exhibit F.
18. On April 25, 2006 Defendant filed a Request for Admit Facts, drafted by Ms. Vorberg without a printed name on it, provided one version of a purported Buyer's Guide for the subject car, and on that Buyer's Guide, the SERVICE CONTRACT box on the front side was checked, and only

part of the back side was given and the author's printed name was blocked. See Exhibit N.

19. On June 14, 2006, under a Court Order, Defendant was compelled to produce a response to Plaintiff's Request For Production of Documents No. 12, which was also drafted by Ms. Vorberg. In the response, Defendant submitted another version of a Buyer's Guide, in which the front side is not complete; the SERVICE CONTRACT box was blocked. See Exhibit O;
20. On June 14, 2006, under a Court Order, Defendant was compelled to answer Plaintiff's Interrogatory No. 6, and the response was drafted by Ms. Vorberg, in which Defendant contended that the Buyer's Guide was prepared by Mr. Charles Rollins, and Ms. Vorberg would recant such statement later at trial. See Exhibit P.
21. Beyond any reasonable dispute, Defendant fabricated multiple versions of a Buyer's Guide for a single used car according to Plaintiff's testimony and documents Defendant submitted. See e. g. Exhibits F, N, and O. Even at trial, Defendant and its counsel Ms. Vorberg could not and did not explain why Mr. Rollins provided three kinds of handwritings on two pieces of documents if Mr. Rollins was the real author; and why Mr. Henry Holton's printed name or handwriting on the back side of the two documents.
22. Further, at closer look at the handwritings and stain on what Defendant submitted, one can conclude two versions of the purported Buyer's Guides share the same backside. See Exhibits N and O. Defendant's counsel Ms. Vorberg knows it is impermissible to fabricate documents for business and litigation purposes. Therefore, Ms. Vorberg's misconduct, at a minimum, violates Rule 219 and Illinois Rules of Professional Conduct ("IRPC") 3.3.

**In Concert With Defendant, Ms. Vorberg**

**Committed Fraud Upon Tribunal At Trial**

23. In its Answer co-drafted by Ms. Vorberg, Defendant admits it acted as a “transferor” one month before it acted a “transferee”, in the mean time, Defendant towed back the subject car on September 8, 2003, but the transfer of ownership to Buick had not been completed until October 6, 2003. See Exhibit Q; further, without question there were several places were left blank when Defendant acted as a transferee; see Exhibit R; and it is incontestable that Defendant created multiple versions of a Buyer’s Guide. See e. g. Exhibits F, N, and O. Any of such business practices is in violation of MVICSA or Magnuson-Moss Act, Illinois Consumer Fraud Act and common law fraud.
24. Ms. Vorberg Knows the subject sale is illegal in several respects, and she is full aware of that Defendant has no defense for all of Plaintiff’s claims. But in concert with Defendant, Ms. Vorberg launched a frivolous defense at trial; also she recycled some non-meritorious Counterclaim of more than \$ 30,000 to harass Plaintiff and defraud the Court. Such misconduct constitutes fraud upon a tribunal, or, at minimum, it violated IRPC 3.1.
25. During her representation, Ms. Vorberg, knowingly and willingly, misinterpreted law in outrageous ways, such as under Magnuson-Moss Act, there is no private cause of action; Defendant had a right to cure after revocation took place etc. Such misconduct constitutes fraud upon a tribunal, or at minimum, violates IRPC 3.3.
26. During her representation, Ms. Vorberg filed her own affidavit to the Court, identifying herself as a potential witness. See Exhibit S. During trial, Ms. Vorberg knew her own credibility was at issue. Such practice is in stark violation of IRPC 3.7.
27. During her representation, Ms. Vorberg concocted a phony issue about car keys and spent a lot of energy on it. But she certainly knows neither Defendant nor she herself needed car keys to participate a settlement

discussion or a joint inspection. Ms. Vorberg wanted to created confusion, prolong the process, increase litigation costs for her own benefit, then, she provided fraudulent statement to the Court on the car key issue. Such misconduct constitutes fraud upon tribunal, or at a minimum, violates IRPC 3.3 and 1.7.

28. At trial, Plaintiff testified that after Defendant changed the terms of a warranty and the car stalled at highway speed, she sent a fax and a letter to Defendant, requesting it to respond in three days by fax. Also Plaintiff testified Defendant fails to respond accordingly ever since, and Plaintiff sent three letters to the Illinois Attorney General Office and pointed out Defendant fabricated a purported September 10, 2003 letter. See Exhibit T. Ms. Vorberg knows neither Defendant nor she could present admissible evidence to challenge Plaintiff's statements of material fact on this issue. It is the simplest fact that, for more than three years, Defendant did not deny all the facts listed in Plaintiff's letters sent to the Illinois Attorney General Office, and it is the simplest logic that Ms. Vorberg was not in a position to argue in any way for Defendant at trial.
29. In the morning of November 22, 2006, during trial, Ms. Vorberg recanted her story that the original Buyer's Guide was created by Mr. Charles Rollins and asserted the author should be Mr. Henry Holton instead, and Ms. Vorberg misinformed the Trial Court that Mr. Holton was not available because he was not employed by Defendant anymore. In the afternoon of the same day, Defendant's general manager Mr. Ed Earley testified Mr. Holton created the purported September 10, 2003 letter, it was the same person who allegedly created the original Buyer's Guide; and Mr. Earley stated that he talked to Mr. Holton the day before the trial. The Honorable Trial Judge wisely pointed out the inconsistency between Mr. Earley's testimony and Ms. Vorberg's statement. Ms. Vorberg augured it was her "mistake" whereas she certainly knew providing fraudulent statement on a material fact at trial should be categorized as fraud on court.



30. At trial, Defendant's general manager Mr. Ed Earley testified that he personally called Plaintiff more than ten times after Defendant towed back the car, he personally had a three-way telephone conversation with an insurance company and Plaintiff, and the purported September 10, 2003 letter was mailed via certified mail. Ms. Vorberg knew each and all of such statements from Mr. Earley constituted perjury. It is beyond any reasonable dispute, Mr. Earley's statements contradict to his own writing addressed to the Illinois Attorney General's Office, where he contended Defendant "tried to respond by phone." Mr. Earley fails to specify what a "try" meant. Further, during discovery, under Court Order, Defendant failed to submit any record to show that Mr. Ealey had contacted any natural person or the Office of Secretary of State regarding the entire subject matter. Also Defendant and Ms. Vorberg had already admitted Buick was not in possession of any record from local telephone company in support to their fraudulent statements. See Exhibit U. The simplest fact is, after Plaintiff sent Defendant a fax and a letter, and provided a timely notice of revocation; Buick did not call Plaintiff even once within the next fifteen months, but provided false statement to government agencies. See Exhibit T. Any reasonable person will conclude Defendant deceptive business practice is outrageous. When Defendant's key witness provided deliberate false statement on oath during Ms. Vorberg's "cross-examination", both Mr. Earley and Ms. Vorberg committed fraud on court, or, at minimum, Ms. Vorberg was in violation of IRPC 3.3(2).
31. At trial, Ms. Vorberg submitted four of her own letters as exhibits, such misconduct was in violation of IRPC 3.7. At best, Ms. Vorberg's letters contain inadmissible hearsay, in her March 9, 2005 letter, she mentioned Mr. Ryan Haas, but failed to remind the Court that Mr. Haas and his law firm had already withdrawn from the instant suit; in her May 17, 2005 letter Ms. Vorberg mentioned a expert mechanic, but she failed to list that gentleman as expert witness during discovery under Rule 213(f), also the same person did not show up at trial to back up Ms. Vorberg's malicious

contention which was out of her own imagination and conjecture. And the worst part is Ms. Vorberg provided fraudulent statements in all of her four letters: when Mr. Haas met Plaintiff at a hearing in Court for the first time, he did not and could not ask car keys for no reason; Defendant and Ms. Vorberg failed to produce any procedure and record for their so-called inspection, and without question it did not need an expert to measure fuel level in a gas tank. After three years of inaction, without a telephone call on December 6, 2006, Defendant dumped the subject car in front Plaintiff's door, its mileage was 24620 miles, and there was more than half tank of fuel in it. This alone defeats all of Ms. Vorberg's two-year wanton and fraudulent arguments.

### **Conclusion**

In sum, during her representation, Ms. Vorberg, knowingly and willingly, conceals essential information of procedural and substantive matters. In concert with Defendant, Ms. Vorberg provides fraudulent statements during discovery in an attempt to deprive Plaintiff's fundamental right to have a fair trial. Further, in concert with Defendant, during trial, Ms. Vorberg induced, encouraged, or kept silence on perjury from Defendant's key witness in order to prejudice Plaintiff. Such misconduct, if tolerated, would bring our judicial system into disrepair. As such, Ms. Vorberg should be disqualified and / or sanctioned.

WHEREFORE, Plaintiff respectfully prays this Honorable Court to grant her motion.

\_\_\_\_\_  
(Plaintiff's Signature)

\_\_\_\_\_  
( Date )

Yuling Zhan

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