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STATE OF COLORADO
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<p>COURT OF APPEALS, STATE OF COLORADO Court Address: 2 East 14th Avenue Denver, CO 80203</p>	<p>2008 FEB 11 A 8:18</p>
<p>Appeal From the El Paso County District Court, 4th JD Honorable David Prince, Judge</p>	<p>CHRISTOPHER T RYAN CLERK COURT OF APPEALS 08CA 266</p>
<p>RASA KRASAUSKIENE, Plaintiff-Appellant,</p>	<p>· COURT USE ONLY ·</p>
<p>v.</p>	<p>Case No: _____</p>
<p>BAIBA SISCO, ELENA ZASYTIENE, and DIANA WOODARD, Defendants-Appellees.</p>	<p>Tr. Ct.: 2007CV4480</p>
<p>Attorney for Plaintiff-Appellant Dennis W. Hartley, Esq. (#788) DENNIS W. HARTLEY, P.C. 1749 S. 8th St., Ste. 5 Colorado Springs, CO 80906</p>	<p>Div: 2</p>
<p>NOTICE OF APPEAL</p>	

COMES NOW, the above Plaintiff-Appellant and does hereby submit her
NOTICE OF APPEAL in compliance with C.A.R. 3(g) as follows:

NATURE OF THE CASE:

The Plaintiff-Appellant brought a replevin action to recover possession of personal property pursuant to Rule of Civil Procedure 104. A hearing was held on October 12, 2007, to determine possession of the property in question, a black 2004 Jaguar SD, Vehicle Identification Number SAJEA51C24WD71824, and any and all personal effects contained therein.

JURISDICTION:

Jurisdiction for this Appeal is proper pursuant to § 16-12-101, C.R.S.; § 18-1-409, C.R.S.; and C.A.R. 3.

ISSUES TO BE RAISED ON APPEAL:

Whether the trial court erred in awarding the property in question to Defendant-Appellee Elena Zasytiene.

NECESSITY OF TRANSCRIPT:

A transcript of the hearing of October 12, 2007 will be the only transcript required.

NAMES OF COUNSEL:

Counsel for the Plaintiff: *Dennis W. Hartley, P.C.*

Counsel for Defendants Baiba Sisco and Elena Zasytiene:
Debra Lynn Eiland, Esq.

Counsel for Defendant Diana Woodard: *Paul F. Lewis, Esq.*

APPENDIX:

A copy of the trial court's Order awarding the subject property to Defendants is attached. A copy of the trial court's Order allowing this matter to go to the Appellate Court is also attached. Further attached is Plaintiff-Appellant's Motion for Reconsideration.

Dated this 8th day of February, 2008.

Respectfully submitted,

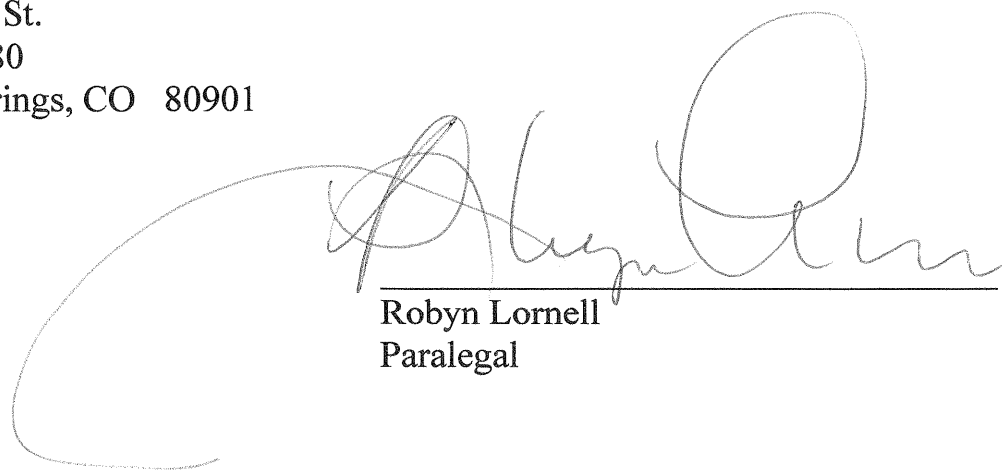
LAW OFFICE OF DENNIS W. HARTLEY, P.C.

By: _____



Dennis W. Hartley (#788)
Attorneys for Plaintiff-Appellant
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Mary Kunzelmann
Court Reporter
EL PASO COUNTY DISTRICT COURT
270 S. Tejon St.
P.O. Box 2980
Colorado Springs, CO 80901

A large, stylized handwritten signature in black ink, appearing to read 'Robyn Lornell', is written over a horizontal line. The signature is highly cursive and loops around to the left.

Robyn Lornell
Paralegal

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of February, 2008, a true and correct copy of the foregoing **Notice of Appeal** was placed in the U.S. Mail, postage prepaid, addressed to the following:

Clerk
COURT OF APPEALS
State of Colorado
2 E. 14th Ave.
Denver, CO 80203

Clerk
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Colorado Springs, CO 80901-2980

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Paul F. Lewis, Esq.
SHERMAN & HOWARD
90 S. Cascade, Ste. 1500
Colorado Springs, CO 80903-4015

Honorable David Prince
EL PASO COUNTY DISTRICT COURT
270 S. Tejon St.
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Colorado Springs, CO 80901

Debbie Hyatt
Court of Appeals Clerk
EL PASO COUNTY DISTRICT COURT
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Colorado Springs, CO 80901

This document constitutes a ruling of the court and should be treated as such.

Court: CO El Paso County District Court 4th JD

Judge: David S Prince

File & Serve

Transaction ID: 16708750

Current Date: Oct 18, 2007

Case Number: 2007CV4480

Case Name: KRASAUSKIENE, RASA vs. WOODARD, DIANA et al

Court Authorizer

Comments:

This written order confirms an oral order issued on October 12, 2007.

/s/ Judge David S Prince

<p>DISTRICT COURT, EL PASO COUNTY, COLORADO 270 South Tejon Street Colorado Springs, Colorado 80903 (719) 448-7599</p> <hr/> <p>Plaintiff: RASA KRASAUSKIENE</p> <p>vs.</p> <p>Defendants: BAIBA SISCO, ELENA ZASYTIENE, and DIANA WOODARD.</p> <hr/> <p>Attorney for Defendants: Debra Lynn Eiland, Atty. Reg. # 31127 LAW OFFICES OF DEBRA EILAND, P.C. 24 South Weber Street, Suite 300 Colorado Springs, Colorado 80903 Telephone: (719) 471-1545 Facsimile: (719) 471-1663 E-mail: edebra@qwest.net</p>	<p>EFILED Document CO El Paso County District Court 4th JB Filing Date: Oct 17 2007 11:52AM MDT Filing ID: 16708750 Review Clerk: Douglas Zinn</p> <hr/> <p style="text-align: center;">▲ COURT USE ONLY ▲</p> <hr/> <p>Case No.: <u>2007CV4480</u></p> <p>Div.: <u>2</u></p> <p>Ctrm.: <u>Judge Prince</u></p>
<p>ORDER RELEASING DEFENDANTS' BOND</p>	

THIS MATTER came before the Court on Friday, October 12, 2007, for a show-cause hearing for possession. Having heard the evidence presented by the Defendants and the Plaintiff, the Court awarded possession of the subject 2004 Jaguar, VIN # SAJEA51C24WD71824, to the Defendants. Pursuant to that award,

THE COURT FURTHER ORDERS that the Defendants' cash bond in the amount of \$25,000.00 shall be returned to the Defendants.

ENTERED this _____ day of _____, 2007.

BY THE COURT:

District Court Judge

DISTRICT COURT, EL PASO COUNTY, COLORADO	
Court Address: Post Office Box 2980 Colorado Springs, CO 80901	
Plaintiff(s): RASA KRASAUSKIENE, v.	▲ COURT USE ONLY ▲
Defendant(s): DIANA WOODARD, et al.	
Case Number: 07CV4480 Div.: 2	
ORDER RE: REQUEST FOR RULE 54(B) CERTIFICATION	

THIS MATTER comes before the Court on Plaintiff's request that the Court certify the existing judgment on the claim for replevin under C.R.C.P. 54(b). The position of each side is adequately set forth in the pleadings. The Court finds oral argument to be unnecessary.

The above captioned case was filed as a replevin action involving an automobile. The same plaintiff later filed a related case under Case No. 07CV4711 for tort claims arising out of the alleged improper seizure of the same automobile. The plaintiff apparently filed this second case to facilitate more extensive discovery than it anticipated would be available in the replevin action.

The original replevin action went to hearing and the Court issued an Order denying the request for replevin on October 12, 2007. At the time of ruling, the Court noted that the dispositive legal issue had received limited treatment by the parties and invited a request for reconsideration should legal research prove such a request warranted. Supplemental briefing was presented, and the Court denied the request for reconsideration on November 19, 2007,

leaving the original ruling in place.

On November 28, 2007, a defendant moved for consolidation of the two civil cases. Plaintiff filed a response agreeing to consolidation but raising some ancillary concerns. The Court granted the request to consolidate the two cases on January 2, 2008.

On January 4, 2008, Plaintiff then filed the pending motion requesting certification under C.R.C.P. 54(b). A defendant objects to certification. A request for certification under C.R.C.P. 54(b) requires the trial court to undertake a three step analysis. First, the trial court must determine if an order has resolved an entire claim for relief. Second the trial court must determine whether its decision was a final decision disposing of an individual claim. Third, the trial court must determine whether any just reason exists for delay in the entry of judgment on the claim at issue. *See Harding Glass Co., Inc. v. Jones*, 640 P.2d 1123 (Colo. 1982).

The consolidated action presents multiple claims for relief. One of those claims is the request for replevin. The Court has fully resolved the replevin claim for relief by its oral ruling of October 12, 2007, confirmed by its written order denying reconsideration dated November 19, 2007. These decisions finally resolved the replevin request. The Court also determines that no just reason exists for delaying entry of final judgment on the replevin claim. Moreover, the Court concludes that the interests of efficient use of judicial resources (and party resources) are best served by permitting an immediate appeal of the Court's ruling on the replevin action. Further proceedings in this Court will not develop or clarify the pivotal legal issue resolved in the replevin claim.

All parties represented by counsel are directed to serve a copy of this Order on pro se litigants without delay.

<p>DISTRICT COURT, EL PASO COUNTY, COLORADO Court Address: 270 S. Tejon St. P.O. Box 2980 Colorado Springs, CO 80901-2980 Telephone: (719) 448-7700</p> <hr/> <p>Plaintiff: RASA KRASAUSKIENE</p> <p>Defendant: BAIBA SISCO, ELENA ZASYTIENE, and DIANA WOODARD</p> <hr/> <p>Attorney for Plaintiff: LAW OFFICE OF DENNIS W. HARTLEY, P.C. Dennis W. Hartley, #788 1749 S. Eighth St., Ste. 5 Colorado Springs, CO 80906 Telephone: (719) 635-5521 Fax: (719) 635-5760</p>	<p>· COURT USE ONLY ·</p> <p>Case No. 2007CV4480</p>	
<table border="1"> <tr> <td data-bbox="1013 665 1141 886">Div: 2</td> <td data-bbox="1141 665 1481 886">Ctrm.:</td> </tr> </table>		Div: 2
Div: 2	Ctrm.:	
<p>MOTION FOR RECONSIDERATION</p>		

COMES NOW, the above Plaintiff, by and through her attorney of record, Dennis W. Hartley, P.C., and hereby moves this Honorable Court to reconsider its decision following the hearing of October 12, 2007, pursuant to Rule 60 of the Colorado Rules of Civil Procedure. As grounds therefor, the Plaintiff states as follows:

Preliminary Statement

On October 12, 2007, this Court awarded possession of the 2004 Jaguar owned by the Plaintiff to the Defendant Elena Zasytiene. Rule 104 of the Colorado Rules of Civil Procedure, Part G states "The Court . . . shall make a preliminary determination of which party, with reasonable probability, is entitled to possession, use, and disposition of the property pending final adjudication of the claims of the parties. Thus, right of possession entails ownership and not merely the holding of a physical title." *Amarillo Auto Auction, Inc. v. Hutchinson*, 135 Colo. 320, 310 P.2d 715 (1957).

Statement of Facts

The following is an abbreviated statement of the facts surrounding this cause of action:

The Plaintiff, a business owner and nightclub operator for twelve years, was facing two separate but related lawsuits in 2007. The first lawsuit was brought by the Plaintiff in an action for damages resulting from the failure to properly disclose information which would affect Plaintiff's ability to get a liquor license and the resulting counterclaim in that lawsuit. The

second lawsuit was for monies owed for building out a nightclub on the premises to be occupied in the first suit. However, there were no creditors from either lawsuit and no money was owed to anyone.

Although financially doing well, the pressure of the lawsuits caused the Plaintiff to think about how to protect her assets if disaster struck and judgment was taken against her. Before talking to a bankruptcy attorney or getting other legal advice, the Plaintiff transferred title of two assets to her "friends." Plaintiff transferred 25% of her stock in The Rendezvous and Third World Fund to Defendant Elena Zasytiene, and also transferred title to her 2004 Jaguar to Defendant Baiba Sisco.¹ The transfer was accomplished in the following manner: the Plaintiff gave Defendant Sisco \$13,000.00 in cash, and Defendant Sisco then issued a check to the Plaintiff for the same \$13,000.00. In addition, the Plaintiff provided Defendant Sisco with \$1,200.00 for licensing and registration and another \$300.00 for insurance. Defendant Sisco gave nothing to the Plaintiff, never took possession of the Jaguar (as far as the evidence shows, Defendant Sisco never even inspected the Jaguar), nor of any documents such as maintenance records or warranty records, keys, or other items that would normally be transferred upon a sale. In fact, Defendant Sisco's testimony showed no knowledge about the car whatsoever. In addition, no Bill of Sale and no Promissory Note or any other document was produced between the parties to evidence a sale. This transaction was **in case or on the chance** that the Plaintiff would have to file bankruptcy in the future. There was no evidence presented to support Defendants' claim that the Plaintiff was in need of any cash.

Instead of returning the 2004 Jaguar to its rightful owner, the Plaintiff, Defendants Sisco, Zasytiene and Woodard entered into a conspiracy to defraud the Plaintiff by faking a sale of the Jaguar to Defendant Zasytiene. This was accomplished by the generation of a Promissory Note and Bill of Sale between Defendants Sisco and Zasytiene. Defendant Sisco then had a duplicate title generated (the original title remained in possession of the Plaintiff), signed the title to Defendant Zasytiene who had the car towed away from the Plaintiff's home under the guise of the fraudulently obtained title. Contrary to Defendants' testimony, the phone records showed no communication between the parties after August 14, 2007.

At the hearing of October 12, 2007, the Defendants bore the burden of proof to establish the right of possession. Their only proof of possession presented at the hearing was the two fraudulent documents (Promissory Note and Bill of Sale) that were created on the same day, and the fraudulently obtained title. All these documents evidenced the Defendants' illegal transactions. Even the Defendant Sisco's statement in her Affidavit that she did not know the Plaintiff was utterly and completely false and produced only to continue the perpetration of the fraud upon this Court and the Plaintiff.

The Defendants did not obtain the 2004 Jaguar with the help of police or legal process, but instead "stole" the Jaguar from the Plaintiff's home.

¹ The transfer of the stock to Elena Zasytiene was undone after Plaintiff consulted with a bankruptcy attorney, John Eastlack (*see* Exhibits 29, 30, and 31), and thus is not at issue in this matter. Defendant Sisco refused to cooperate with Plaintiff's attempts to reverse the vehicle title transfer, which prompted the events leading to the present case.

Argument

Proper characterization of a replevin claim requires an analysis of its basic elements – the plaintiff’s ownership or right to possession, the means by which the defendant came to possess the property, and the detention of the property against the rights of the plaintiff. C.R.C.P. 104(b)(1) and (2). In this case, the analysis clearly shows that the Defendant Zasytiene came into possession of the Plaintiff’s property as the result of fraud and deceit in an illegal contract or a contract against public policy between the Defendants Sisco and Zasytiene. The object of the replevin action is to determine the right to possession and the evidence presented in a replevin case relates to proof of title and ownership. C.R.C.P. 104(b)(1), *Amarillo Auto Auction v. Hutchinson, supra*.

No Valid Contract Between The Parties

Under Colorado law, “[a] contract is an agreement which creates an obligation. Its essentials are competent parties, subject matter, a legal consideration, mutuality of agreement, and mutuality of obligations.” *Denver Truck Exchange vs. Perryman*, 307 P.2d 805, 810 (Colo. 1957). Assuming, *arguendo*, that Defendants could demonstrate the other required elements of a contract under Colorado law, there would still be no **consideration** provided by the Defendants to the Plaintiff. As Plaintiff demonstrated at the hearing of October 12, the money used to “purchase” the car was provided to Baiba Sisco, in cash, by the Plaintiff several days before the “sale” took place. Plaintiff provided bank and telephone records to detail the cash deposits and discussions between Plaintiff and Defendant Sisco in regard to this issue. Defendant Sisco made two separate cash deposits into her bank account (no doubt in an effort to avoid the relevant law concerning the reporting of cash transactions), and then returned the money to Plaintiff, in the form of a check, thereby completing the “transaction.” The “consideration” given to Plaintiff in exchange for her 2004 Jaguar was simply a return of her own money. In effect, Plaintiff paid \$13,000.00 to give her car away. No consideration was provided to Plaintiff by Defendants. Without consideration, there is no contract. *City of Arvada v. Concrete Contractors, Inc.*, 628 P.2d 170, 172 (“An agreement not supported by consideration is invalid and unenforceable”).² Again, no Bill of Sale, Promissory Note, or any other evidence was ever entered into between Defendant Sisco and the Plaintiff.

The Defendants’ hastily created version of events, which could have conceivably provided a basis for consideration in this matter, was absurd. According to the Defendants, the Plaintiff sought to sell her 2004 Jaguar for \$13,000.00 (or approximately \$10,000.00 less than its Blue Book value). Defendant Sisco, apparently knowing a good deal when she saw one, borrowed the money from her friend, Elena Zasytiene, in order to purchase the car. However, when Defendant Sisco realized that Plaintiff had no intention of turning the car over to her, she made the only sensible decision available to her (excluding, of course, contacting a member of law enforcement or consulting an attorney): sell the car to Defendant Zasytiene for a \$3,000.00 loss. This “story,” concocted by individuals (of whom this Court found to have virtually no

² Plaintiff would also note that this alleged “contract” is unenforceable under the Statute of Frauds: “[a] contract for the sale of goods for the price of five hundred dollars or more is not enforceable by way of action or defense unless there is some writing sufficient to indicate that a contract for sale has been made between the parties and signed by the parties against whom enforcement is sought [...]” C.R.S. § 4-2-201.

credibility), was the only basis for consideration presented to this Court at the hearing of October 12. The Defendants would have the Court believe that Defendant Sisco purchased a car from a perfect stranger and then gave the car back to the stranger to drive for a month. In addition, Defendant Sisco then bought an insurance policy and delivered it to the stranger who continued to drive the 2004 Jaguar. The absurdity of the Defendants' position is obvious. Then, when Defendant Sisco wanted to get her car back, she did not contact the Plaintiff but supposedly made a couple of trips to complain to the Plaintiff's husband. In addition, not only did she not complain to the police, but she ignored Officer Caro's telephone calls to inquire about the automobile. Instead, Defendant Sisco called Defendant Zasytiene for help. This is the same Elena Zasytiene who put Baiba Sisco in touch with the Plaintiff, loaned Baiba Sisco the money for the car, created the documents along with Defendant Sisco that are a fraud on this Court and purchased the car from Baiba Sisco at a loss to Sisco of \$3,000.00. How absurd can we get and how much perjured testimony must this Court digest before it punishes the mastermind behind this enterprise, who was rewarded with the 2004 Jaguar.

In the absence of consideration (and thus a valid and enforceable contract), there does not seem to be any legal basis for awarding the vehicle to Defendant Zasytiene. Plaintiff submits that, given the absence of a valid contract, the parties should be placed in the position they were in before the "agreement" was entered into. Therefore, Plaintiff respectfully requests that this Court reconsider its decision of October 12, 2007.

Contract In Contravention of Public Policy

Even if the "agreement" between the Plaintiff and Defendants could be described as a contract, it would still be invalid. "It is well established that contracts in contravention of public policy are void and unenforceable." *Pierce v. St. Vrain Valley School Dist.*, 981 P.2d 600, 604 (Colo. 1999), citing *Porter v. Swinehart*, 184 P.2d 149, 151 (Colo. 1947); *Waddell v. Traylor*, 64 P.2d 1273, 1275 (Colo. 1937); *Metropolitan Life Ins. Co. v. Roma*, 50 P.2d 1142, 1143 (Colo. 1935); *Russell v. Courier Printing & Publ'g Co.*, 95 P. 936, 938 (Colo. 1908); *Oliver v. Wilder*, 149 P. 275, 277 (Colo. App. 1915).

To the extent that this Court found that the "agreement" between the Plaintiff and the Defendants was against public policy, it should be declared void and unenforceable. However, by awarding the vehicle to Defendant Zasytiene, this Court has, in effect, **ratified** the contract, and has chosen to **enforce** the contract. This decision is contrary to almost a century of Colorado jurisprudence.

Further, **the contract that the Court ratified between Defendant Sisco and Defendant Zasytiene rewarded the fraudulent and illegal actions of Defendants Sisco, Zasytiene and Woodard.** The equitable decision would be to declare the alleged "contract" to be void and unenforceable and to return the parties to the position they found themselves in prior to entering into the "agreement." Therefore, Plaintiff respectfully requests that this Court reconsider its decision of October 12, 2007.

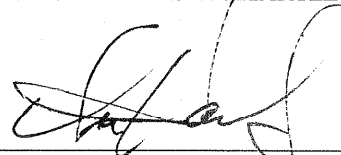
WHEREFORE, premises considered, and with good cause having been demonstrated, the Plaintiff prays for this Court to grant Plaintiff's Motion and grant possession of the vehicle to Plaintiff.

Dated this 18th day of October, 2007.

Respectfully submitted,

LAW OFFICE OF DENNIS W. HARTLEY, P.C.

By: _____



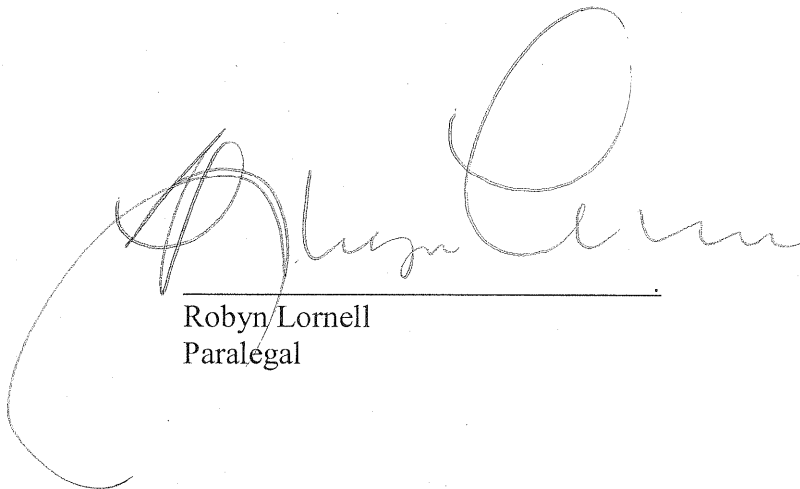
Dennis W. Hartley (#788)
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Fax: (719) 635-5760

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of October, 2007, a true and correct copy of the foregoing **Motion for Reconsideration** was e-filed and served through LexisNexis to the following:

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Attorney for Defendant,
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A large, stylized handwritten signature in black ink, appearing to read "Robyn Lornell". The signature is written over a horizontal line.

Robyn Lornell
Paralegal