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Certified Word Count: 2,738

COURT OF APPEALS, STATE OF COLORADO Court Address: 2 East 14th Avenue Denver, CO 80203 Appeal From the El Paso County Dist. Court, 4th JD Honorable David Prince, Judge	
RASA KRASAUSKIENE, Plaintiff-Appellant, v. BAIBA SISCO, ELENA ZASYTIENE, and DIANA WOODARD, Defendants-Appellees.	· COURT USE ONLY · Case No: 08CA266 Tr. Ct.: 2007CV4480 Div: 2
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OPENING BRIEF

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Plaintiff-Appellant, Rasa Krasauskiene (hereinafter "Plaintiff"), by and through undersigned counsel, hereby submits her Opening Brief, and in support thereof, states as follows:

STATEMENT OF THE CASE

1. Plaintiff's Version of Events

The Plaintiff, who had an absolutely clean record and was the holder of two liquor licenses, was involved in two separate but related lawsuits in 2007. The first lawsuit was brought by the Plaintiff in an action for damages against several defendants for fraud and misrepresentation relating to a nightclub offered for lease, and counterclaims were filed against the Plaintiff in that case. Plaintiff was also named as a defendant in the second lawsuit, which sought monies owed for construction costs of a nightclub (the same premises at issue in the first suit). The second suit had been settled amicably between the parties.

Although Plaintiff was doing well financially, the pressure of the lawsuits caused the Plaintiff to think about how to protect her assets if disaster struck and a judgment was taken against her in either of the two lawsuits. *See* Expedited Transcript at pp. 5-6, attached hereto as Exhibit 1.[1] Prior to consulting a

[1] There are two separate transcripts from the hearing of October 12, 2007: the "Expedited Transcript," which contains only the testimony of Ms. Krasauskiene (Exhibit 1), and the "Transcriptionist's Transcript," which contains the testimony of all other witnesses called at the hearing (attached hereto as Exhibit 2).

bankruptcy attorney or getting other legal advice, Plaintiff transferred title of two assets to her "friends," Elena Zasytiene and Baiba Sisco.[2] *See* Ex. 1 at pp. 6-8. Plaintiff transferred 25% of her stock in a company known as Third World Fund to Defendant Zasytiene, and transferred title to her 2004 Jaguar to Defendant Sisco.[3] At the time these transfers were made, there were no creditors from either lawsuit and no money was owed to anyone.

The transfer of title to the vehicle 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. *See* Ex. 1 at p. 8. Plaintiff also provided Defendant Sisco with sufficient funds to cover the licensing and registration costs (in the amount of $1,200.00) and for insurance (an additional $300.00).[4] *See* Ex. 1 at pp. 8-10.

Defendant Sisco never inspected the Jaguar prior to the "sale," never took possession of the vehicle, was never provided with any of the items that would normally be transferred upon such a purchase (such as maintenance records,

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[2] At the time of the "transactions" between the Plaintiff and Defendants, there were no creditors from either lawsuit and no money was owed to anyone.

[3] The transfer of the stock to Elena Zasytiene was undone after Plaintiff consulted with a bankruptcy attorney 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.

[4] Defendant Sisco disputed that Plaintiff provided her with funds to purchase insurance, but admitted that she obtained insurance through Liberty Mutual (the same company used by Plaintiff to insure the vehicle), even though her Jeep was insured through 21st Century Insurance. Defendant Sisco explained that she made this decision because she "didn't want to mix up insurances." *See* October 12, 2007 Transcript at p. 26, attached hereto as Exhibit 2.

warranty documents, or keys), and no bill of sale was ever introduced into evidence. *See* Ex. 1 at pp. 18-19.

After consulting with an attorney, it was made clear to the Plaintiff that she would not be able to "hide" her assets through these types of transfers. *See* Ex. 1 at p. 10. Although, as noted above, Plaintiff was able to reverse the transfer of stock to Defendant Zasytiene, when Plaintiff set out to undo the transfer of title to Ms. Sisco, her efforts were thwarted. *See* Ex. 1 at p. 10. Instead of returning the title to the 2004 Jaguar to 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), which was subsequently signed over to Defendant Zasytiene. *See* Ex. 2 at pp. 29-31. Defendant Zasytiene then had the car towed away from the Plaintiff's home under the guise of the fraudulently obtained title. *See* Ex. 2 at pp. 96-97. Defendants have all ignored Plaintiff's requests to return the vehicle, which has resulted in the filing of the present action.

2. Defendants' Version of Events

As a preliminary matter, Defendant Sisco and Defendant Zasytiene maintain that they had no knowledge that Plaintiff sought to hide her assets from creditors.

See Ex. 2 at pp. 38-39, 86-87. Defendants claim that the sales of the 2004 Jaguar, from Plaintiff to Defendant Sisco, and from Defendant Sisco to Defendant Zasytiene, were all legitimate transactions.

According to Baiba Sisco, in June 2007, she was approached by her friend Elena Zasytiene who stated "that she knew someone who wanted to sell a car," and asked Defendant Sisco if she was interested. *See* Ex. 2 at p. 13; Affidavit of Baiba Sisco at ¶ 3, attached hereto as Exhibit 3.[5] Defendant Sisco was indeed interested in the opportunity, as she wanted a car that was "less expensive to own" than her Jeep. *See* Ex. 2 at pp. 14-15; Ex. 3 at ¶ 4. Defendant Sisco was provided with Plaintiff's phone number by Defendant Zasytiene, and she contacted Plaintiff in regard to the vehicle for sale. *See* Ex. 3 at ¶ 1. According to Defendant Sisco, Plaintiff offered to sell the Jaguar to Defendant Sisco for $13,000.00, stating that "she needed cash." *See* Ex. 3 at ¶ 2. An agreement was reached between Defendant Sisco and Plaintiff, whereby Plaintiff would keep the vehicle for one month after the purchase, at no charge, so that Plaintiff "would have time to purchase another car."[6] *See* Ex. 2 at p. 15; Ex. 3 at ¶ 2.

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[5] Although Defendant Sisco, in her affidavit, claimed not to know Plaintiff ("I met Ms. Krasauskiene at her several parties at her club. We exchanged greetings, but I did not know her." *see* Ex. 3 at ¶ 3), this was contradicted by the fact that Ms. Sisco was previously employed by the Plaintiff at two separate jobs, first as a retail associate and later as a waitress at Plaintiff's former nightclub, The Party Zone. *See* Ex. 2 at pp. 53-54. This statement was the first of many falsehoods represented to the trial court in this case by Ms. Sisco and Ms. Zasytiene, either by affidavit or live testimony.

[6] Defendants failed to make clear why the Plaintiff, who apparently "needed cash," would sell a

Although Defendant Sisco agreed to purchase the vehicle, she did not have the financial resources to close the deal at the time, so she contacted her good friend Defendant Zasytiene, who agreed to loan her $13,000.00. *See* Ex. 2 at pp. 15-16; Ex. 3 at ¶ 5. Pursuant to the "promissory note," Defendant Sisco borrowed $13,000.00, at ten per cent interest, from Defendant Zasytiene on July 8, 2007, which was to be paid back by May 31, 2007.[7] A copy of the "promissory note" is attached hereto as Exhibit 4.[8] The money for the loan was provided by Defendant Zasytiene to Defendant Sisco in cash, and although Plaintiff was supposedly selling her vehicle because "she needed cash," Defendant Sisco made two separate cash deposits into her account so that she could write a check to Plaintiff for the $13,000.00.[9] *See* Ex. 2 at pp. 16-20. (The two deposits violated the Cash Transaction Reporting Act.)

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car that she owned outright only to turn around and purchase yet another vehicle.

[7] This agreement called into question Defendant Sisco's claim that she wished to purchase the car because it would be less "expensive to own." *See* Ex. 2 at pp. 14-15; Ex. 3 at ¶ 4. At the time Ms. Sisco claimed to have entered into this agreement, she owned a Jeep Liberty for which she made payments of $430.00 per month. *See* Ex. 2 at p.15. If the terms of the "promissory note" are to be believed, Ms. Sisco would have been making monthly payments to Ms. Zasytiene in the amount of $1,181.82, excluding interest, or roughly three times what she was paying for her Jeep.

[8] The Defendants were unable to produce the "original" promissory note that was drafted and signed on July 8, 2007, as it was ruined by a "coffee spill." *See* Ex. 2 at pp. 34-37. The promissory note that was presented to the trial court at the hearing of October 12, 2007, was a rewritten "copy" of the original that was drafted on the same day as the "bill of sale," thus conveniently completing the paper trail the Defendants relied upon to establish ownership of the vehicle.

[9] As Ms. Sisco admitted in her testimony of October 12, 2007, she made separate cash deposits in order to avoid filing a cash transaction report with her bank. *See* Ex. 2 at pp. 12, 50).

According to Defendant Sisco, she completed the purchase of the vehicle from the Plaintiff on July 13, 2007, with the understanding that Plaintiff would keep the car for one month. *See* Ex. 3 at ¶ 6. However, when Defendant Sisco contacted Plaintiff on August 14, 2007, Plaintiff "refused" to give her the car, "stating that she needed more time." *See* Ex. 3 at ¶ 7. Defendant Sisco claimed that she "tried to contact Plaintiff several times between August 14 and the first part of September," but Plaintiff still refused to turn over the car.[10] *See* Ex. 3 at ¶ 8. (There are no telephone calls from Sisco to Krasauskiene to corroborate Sisco's version of the events.) When Defendant Sisco realized that Plaintiff had no intention of turning the car over to her, she decided that she would make a copy of the title and she would just go and take the car. *See* Ex. 2 at p. 29. Defendant Sisco even went so far as to have the Jaguar dealer make her a key to the car, but in the end, she "wasn't brave enough or something," and decided not to take possession of the vehicle. *See* Ex. 2 at p. 29. Instead, Defendant Sisco made the only sensible decision available to her (excluding, of course, contacting a member of law enforcement or consulting an attorney): she sold the car to Defendant Zasytiene for a $3,000.00 loss. *See* Ex. 2 at p. 32.

[10] Defendant Sisco's attempts "to contact Plaintiff" consisted of walking in to Plaintiff's bar a "couple or three times." *See* Ex. 2 at p. 28. Defendant Sisco never attempted to contact Plaintiff by phone during this period nor did she ever go to Plaintiff's home to discuss this issue. According to Defendant Sisco: "I didn't want to like, I don't know, bother her." *See* Ex. 2 at pp. 28-29.

On September 7, 2007, Defendant Zasytiene graciously volunteered to purchase the 2004 Jaguar from Defendant Sisco, the same vehicle for which she had loaned her $13,000.00 just two months prior, for $10,000.00. *See* Ex. 2 at pp. 91-92. Unlike the prior purchase from the Plaintiff (whom Defendant Sisco "did not know"), the transaction between Defendant Sisco and Defendant Zasytiene (who was her close friend) was reduced to writing in a "bill of sale," and title to the vehicle was signed over to Defendant Zasytiene. *See* Ex. 2 at p. 93. A copy of the "bill of sale" is attached hereto as Exhibit 5. The following day, September 8, 2008, Defendant Zasytiene went to Plaintiff's residence and had the vehicle towed to the dealer to have keys made. *See* Zasytiene Affidavit at ¶¶ 7, 9, a copy of which is attached hereto as Exhibit 6. On September 10, 2007, Defendant Zasytiene went to the County Clerk's office to have the title transferred and the vehicle registered in her name. *See* Ex. 6 at ¶ 10. In addition, Sisco claimed that Krasauskiene called her and threatened her with legal action and police involvement if Sisco did not return Krasauskiene's automobile. For Ms. Krasauskiene to make a demand to return the car is in itself proof that she was the owner of the vehicle. Ms. Krasauskiene would be insane to demand the return of an automobile that was someone else's (*i.e.* "Give me back the car that I just sold to you.").

3. The Ruling Below

A hearing was held on October 12, 2007, pursuant to Rule 104 of the Colorado Rules of Civil Procedure, to determine which party was entitled to possession of the 2004 Jaguar. At the conclusion of that hearing, the trial court awarded possession of Plaintiff's 2004 Jaguar to Defendant Elena Zasytiene, stating:

> The Court finds that if it accepts the Plaintiff's version of events, the purpose of the contract was to defraud creditors. It does not appear that any creditors were actually defrauded. It does appear, if one accepts the Plaintiff's version of events, that the Plaintiff tried to unwind the deal after it had been done. The record that is directly presented in writing is the title was transferred from the Plaintiff to Ms. Sisco. There is a title document, they are real signatures on them. The title was then transferred to [Elena Zasytiene]. Those signatures are real despite the disputes over exactly how they occurred. That means the state of title is that Elena [Zasytiene] owns legal title to the car. **The Plaintiff asked me to unwind that legal title on the basis of enforcement of a contract to defraud creditors. The Court finds that that would be violative of the basic legal principle that the law will not aid a contract against public policy**.

See Ex. 2 at pp. 161-62 (emphasis added). Plaintiff filed a motion for reconsideration with the trial court, but that motion was denied in an Order dated November 19, 2007, in which the trial court stated:

> The trial court is explicitly directed that when the contract at issue is illegal, fraudulent or immoral, "the court will not listen" to the dispute and will leave the parties "in the exact position in which they have placed

themselves." *Potter v. Swinehart*, 117 Colo. 23, 27, 184 P.3d 149, 151 (1947) (citations omitted).

A copy of the November 19, 2007 Order is attached hereto as Exhibit 7. Plaintiff's current appeal addresses the denial of her claim for relief below.

STATEMENT OF THE ISSUES PRESENTED

I. Whether the court below erred in awarding the vehicle to Defendant Elena Zasytiene.

SUMMARY OF THE ARGUMENT

Contrary to the findings of the trial court below, at no point did Plaintiff ask the court to unwind the legal title "on the basis of enforcement of a contract to defraud creditors," nor did the Plaintiff ever ask the court to "aid a contract against public policy." The only relief sought by the Plaintiff was for the trial court to recognize the fraudulent transfer of title perpetrated by the defendants and return ownership of the 2004 Jaguar to the Plaintiff.

ARGUMENT

I. Plaintiff Has Not Sought to Enforce the Illegal Contract

According to the facts in *Potter v. Swinehart*, the decision relied upon by the trial court below, the plaintiff entered into a contract with the defendant to purchase whiskey at wholesale, a purchase which was prohibited by certain state statutes at the time. When the defendant failed to deliver the whiskey, the plaintiff brought suit for breach of contract. In denying relief to the plaintiff, the Colorado

Supreme Court held: "Under such circumstances courts will leave the parties where they find them, and will not lend their aid to enforce the contract or grant relief to one of the parties because of a violation of the terms of such contract by the other." 184 P.2d at 151.

Unlike the plaintiff in *Potter v. Swinehart*, in the present case, Plaintiff has not sought the enforcement of an illegal contract. To the contrary, from the very beginning, Plaintiff has sought to undo the illegal contract. The only parties interested in enforcing the illegal contract are the Defendants, and they have sought to do so by committing perjury and fraud at every available instance since this case was filed. The Defendants built their answer to Plaintiff's replevin claim on their affidavits (which were shown to be false), and upon the "promissory note" and "bill of sale" (which were shown to be fabricated). At every turn, the Defendants have sought not only to prevent the Plaintiff from righting her wrong, but also to reap the benefit of the illegal agreement.

The position of the Plaintiff in this case is similar to that of an individual who has sought to withdraw from a conspiracy by taking affirmative steps, inconsistent with the objects of the conspiracy, to disavow or defeat the conspiratorial objectives, and make a clean and permanent break with the other conspirators. By contrast, the Defendants have sought to further the aim of the conspiracy (to "hide" Plaintiff's assets from her creditors) by not only refusing to

return the vehicle to Plaintiff but also by providing false testimony and fabricated materials to the trial court which documented the "sale" of the vehicle from Defendant Sisco to Defendant Zasytiene. By awarding the vehicle to the Defendants, the trial court accomplished that which made the contract illegal in the first place: a fraudulent transfer of the title to the vehicle to keep it out of the hands of Plaintiff's creditors.

The Defendants' shameless delight in the *Potter v. Swinehart* decision, and the subsequent windfall that accompanies their fraudulent behavior, should give this Court pause. First, this Court should be wary that the Defendants seek to use the "illegal contract" public policy argument as a sword for personal gain rather than a shield for the public good. *See, Joe O'Brien Investigations Inc. v. Zorn*, 263 A.D.2d 812, 814 (N.Y. App. Div. 1999). If there was any real concern for the "public good," the vehicle would be in the possession of Plaintiff, where it could satisfy a potential judgment by Plaintiff's creditors. Second, this Court should refuse to abide by the Defendants who seek to claim benefits under a transaction while at the same time repudiating their obligations. *See, Norlund v. Faust*, 675 N.E.2d 1142, 1151 (Ind. Ct. App. 1997). Third, this Court should consider whether recovery may be had upon the illegal contract in light of all the relevant circumstances. *See, Entertainment Publications, Inc. v. Goodman*, 67 F. Supp.2d 15, 18 (D. Mass. 1999). If anything, this Court should look favorably upon

Plaintiff's efforts to undo the illegal contract. Plaintiff could just as easily have stolen the car right back from Defendants, as they had done, and then used the title in her possession to register the car under her name once again. Of course, instead of taking the law into her own hands, Plaintiff attempted to address the situation with the help of the police and through the courts.

In the present case, a rigid application of *Potter v. Swinehart* would serve only to reward the Defendants for their reprehensible behavior. Such a decision would also serve as a lesson to others that not only should they refrain from engaging in illicit activity, but should push come to shove, they would be better served in **not** trying to remedy those activities or right their wrongs. In the absence of a benefit from withdrawing oneself from illicit conduct, as one could do from a criminal conspiracy, there is little or no incentive for one to cease the illicit activity in the first place. Plaintiff should not be punished for her attempts to undo the illegal contract while the Defendants reap the windfall of their fraudulent behavior.

CONCLUSION

In light of all of the above, the Plaintiff respectfully requests that this Court reverse the trial court's decision to award possession of the 2004 Jaguar to Defendant Krasauskiene.

Dated this 15th day of July, 2008.

Respectfully submitted,

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By: _____.

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CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of July, 2008, a true and correct copy of the foregoing **Opening Brief on Appeal** was placed in the U.S. Mail, postage prepaid, addressed to the following:

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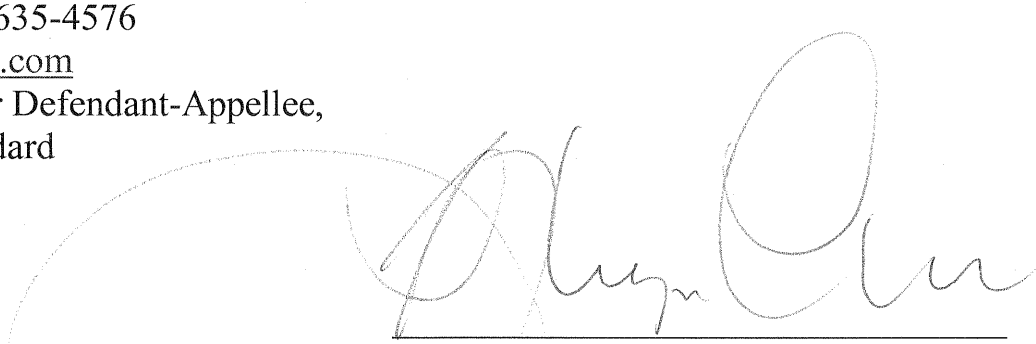

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EXHIBIT 1