

PA 44(534)
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CLERK OF DISTRICT COURT
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2007 AUG 19 P 12:20
Word Count Certification: 3,309

<p>COURT OF APPEALS STATE OF COLORADO Colorado State Judicial Building 2 East 14th Avenue Denver, Colorado 80203 (303) 837-3785</p> <hr/> <p>Appeal from the El Paso County District Court Judge David Prince, Case No. 2007CV4480</p> <hr/> <p>Appellant: RASA KRASAUSKIENE,</p> <p>v.</p> <p>Appellees: BAIBA SISCO, ELENA ZASYTIENE, and DIANA WOODARD.</p>	<p>CLERK OF DISTRICT COURT STATE OF COLORADO COURT OF APPEALS</p> <p>▲ COURT USE ONLY ▲</p>
<p>Attorney for Appellees: 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>Case No.: <u>08CA266</u></p>
<p style="text-align: center;">ANSWER BRIEF</p>	

The Appellees, Baiba Sisco, Elena Zasytiene, and Diana Woodard (“Sisco, Zasytiene, and Woodard”), respectfully submit the following Answer to the Appellant’s, Rasa Krasauskiene’s (“Krasauskiene’s”), Opening Brief.

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STATEMENT OF THE ISSUE

WHETHER THE DISTRICT COURT CORRECTLY DETERMINED THAT, EVEN IF IT ACCEPTED KRASAUSKIENE'S TESTIMONY AS TRUE, KRASAUSKIENE WAS NOT ENTITLED TO RELIEF.

STATEMENT OF THE CASE

I. Krasauskiene's Testimony

On or about July 2007, Krasauskiene and Sisco entered into a contractual agreement concerning Krasauskiene's 2004 Jaguar. The parties dispute the nature and terms of that contract. At the Colo. R. Civ. P. 104 replevin hearing, held before the District Court on October 12, 2007, Krasauskiene testified she had designed a scheme to defraud her creditors by making it look like she had sold her car in a legitimate transaction. Krasauskiene testified as follows concerning the alleged transaction and the events that ensued:

Krasauskiene was involved in a lawsuit with a former commercial landlord. (Ex. Trans. at p. 5, lines 23-25; p. 6, lines 1-3.)¹ Krasauskiene was concerned about protecting her assets from recovery by the landlord should the landlord

¹All references to the transcript are to the expedited transcript ("Ex. Trans.") of the testimony of Plaintiff Rasa Krasauskiene or to the transcript ("Trans.") of the entire proceeding excluding the testimony of Plaintiff Krasauskiene. The cited transcript pages are attached for ease of reference in Appendices B and C of this Brief.

prevail on his counterclaims against her. (Ex. Trans. at p. 6, lines 1-7.)

Krasauskiene told Sisco that the court date for the suit with the landlord was coming up on August 7, 2007, and that if she lost she would file bankruptcy rather than pay the landlord and was, therefore, looking for ways to protect her assets. (Ex. Trans. at p. 7, lines 17-23.) Krasauskiene then asked Sisco if Sisco would hold title to her car for two to three months for this purpose. (Ex. Trans. at p. 7, lines 23-24.) Sisco agreed to help Krasauskiene with her predicament. (Ex. Trans. at p. 7, lines 13-14; p. 8, lines 3-5.)

To make the transaction look like a legitimate sale of the car, Krasauskiene told Sisco she would give Sisco cash in exchange for a check, and that they would go to the Motor Vehicle Department to transfer title of the car into Sisco's name. (Ex. Trans. at p. 7, lines 24-25; p. 8, lines 1-2.) On the evening of July 10, 2007, Krasauskiene met Sisco at the Marigold Café, and brought Sisco \$13,000 in cash. (Ex. Trans. at p. 8, lines 9-11.) Krasauskiene asked Sisco to deposit the money into her bank account as soon as possible, as Krasauskiene wanted to get the transaction completed as soon as possible. (Ex. Trans. at p. 8, lines 12-13.) Krasauskiene informed Sisco that she expected to meet with her again on July 13, 2007, to complete the transaction. (Ex. Trans. at p. 8, lines 13-14.)

On July 13, 2007, Sisco and Krasauskiene met at the Motor Vehicle Department, at which time Sisco wrote Krasauskiene a check for \$13,000. (Ex. Trans. at p. 8, lines 15-19.) Krasauskiene paid the Motor Vehicle Department \$1,200 in cash to register the car in Sisco's name. (Ex. Trans. at p. 8, lines 24-25; p. 9, lines 1-2.) Krasauskiene kept the car and the title to the car because she did not, and never intended to, actually sell the car to Sisco. (Ex. Trans. at p. 18, lines 15-24.) Krasauskiene reimbursed Sisco \$300 for insurance Sisco purchased to further the appearance that Sisco had bought the car. (Ex. Trans. at p. 9, lines 12-25; p. 10, line 1.)

While Sisco, Zasytiene, and Woodard disagree with many of the facts averred by Krasauskiene, they do not dispute that Sisco wrote a check to Krasauskiene for \$13,000, and that Krasauskiene conveyed title to the car to Sisco. (Trans. at p. 21, lines 19-25; p. 22, lines 1-6; p. 30, lines 15-22.) Further, the parties do not dispute that after Krasauskiene conveyed title to the car to Sisco, Sisco then conveyed title to Zasytiene, who took possession of the car. (Trans. at p. 101, lines 8-13.)

II. Findings and Ruling by the District Court

After a full day hearing at which the parties presented extensive documentary evidence and the testimony of numerous witnesses, the District Court found neither the Plaintiff's nor the Defendants' version of the facts credible. (Trans. at p. 160, lines 16-25; p. 161, lines 1-5.) However, the District Court found that if it were to accept Krasauskiene's version of the facts, the purpose of the contract was to defraud creditors. (Trans. at p. 161, lines 13-15.) The District Court also found that Zasytiene held legal title to the car at the time of the hearing. (Trans. at p. 161, lines 18-25.)

Based on these findings, the District Court correctly ruled it could not award possession of the car to Krasauskiene because to do so would violate the legal principal that the law will not enforce a contract that is void as against public policy. The District Court further ruled it must leave the parties in the position they were in when they came to the courthouse, and awarded possession of the vehicle to Zasytiene. (Trans. at p. 162, lines 1-10; p. 163, lines 21-25; p. 164, lines 1-4.) The District Court upheld this ruling on Krasauskiene's motion for reconsideration. See, Order RE: Motion for Reconsideration, dated November 19, 2007, attached to this Brief in Appendix D.

SUMMARY OF THE ARGUMENT

For more than a century Colorado courts have applied the legal principal that if one enters into an illegal contract, the courts will not come to her aid to enforce the agreement. This principal is predicated on the public's desire to discourage people from entering into contracts that are an affront to public policy. Relief is denied because the plaintiff is a wrongdoer. The court does not deny relief to benefit the defendant, but because it will not aid such a plaintiff.

Krasauskiene urges this Court to turn this long standing legal doctrine on its head by enforcing an illegal contract that she intentionally and knowingly initiated, and from which she ultimately was harmed. She cries "unfair," and asks this Court to help her, just like any honest citizen, to enforce the agreement and make her whole again.

This established legal doctrine, prohibiting court enforcement of illegal contracts, is, however, both punitive and just. It serves the purpose of discouraging people from entering into illegal contracts with the knowledge that if they do so, despite the law, they do so at their own risk. This doctrine squarely applies to Krasauskiene's scheme, and the District Court's ruling denying her relief should be affirmed.

ARGUMENT

Standard of Review

Appellate courts apply the *de novo* standard of review on any issue presenting a question of law. St. James v. People, 948 P.2d 1028, 1030-31 (Colo. 1997). Interpretation of a statute presents a question of law reviewed on appeal under the *de novo* standard of review. Colorado Bd. of Psychologist Examiners v. Dr. I.W., 140 P.3d 186, 187 (Colo. Ct. App. 2006). The issue presented herein concerns both the interpretation of a statute—the Colorado Uniform Fraudulent Transfer Act, and the applicability of the common law doctrine making illegal contracts void and unenforceable. Therefore, the proper standard of review is *de novo*.

A. The Court May Not Enforce an Illegal Agreement, and Must Leave the Parties as It Finds Them.

Colo. Rev. Stat. § 38-8-105, part of the codification of Colorado’s version of the Uniform Fraudulent Transfer Act, provides that a transfer is fraudulent as to present and future creditors where the transfer was made “with actual intent to hinder, delay, or defraud any creditor of the debtor” C.R.S. § 38-8-105(1)(a). While the statute contains a lengthy set of factors that the court might consider in

determining intent, consideration of those factors was not required below and is not required here since the centerpiece of Krasauskiene's claim of right to the car is her argument that her transfer of title to Sisco was specifically intended to defraud creditors. In other words, Krasauskiene readily admitted her "actual intent to hinder, delay, or defraud" her present or future creditors.

Under these circumstances, neither law nor equity will come to Krasauskiene's aid.

Where the contract or transaction in question is illegal, fraudulent, or immoral, and there is mutual misconduct of the parties with respect thereto, neither law nor equity will aid either to enforce, revoke, or rescind. To such disputes the courts will not listen, and the parties thereto they will leave in the exact position in which they have placed themselves.

Potter v. Swinehart, 117 Colo. 23, 27, 184 P.2d 149, 151 (1947), quoting Baker v. Couch, 74 Colo. 380, 221 P. 1089, 1090 (1923).

The reason courts are prohibited from coming to the aid of either party in an illegal contract is simple. The courts "will not act as referees to divide the loot, nor attempt to do equity between the enemies of society with respect to their wrangles concerning the profits of attacks upon her." Potter, 184 P.2d at 151, quoting Metropolitan Life Ins. Co. v. Roma, 97 Colo. 493, 495, 50 P.2d 1142, 1143 (1935). See also, Pierce v. St. Vrain Valley School Dist. Re-1J, 944 P.2d

646, 649 (Colo. Ct. App. 1997), rev'd on other grounds, 981 P.2d 600 (Colo. 1999) (“Contracts or provisions therein that are contrary to public policy are illegal and void This rule is not for the benefit of the parties seeking to avoid its obligations under the contract but rather, for the protection of the public.” [citations omitted]).

Krasauskiene implies that her actions did not harm the public and, that by failing to enforce the contract and grant her relief, the District Court is itself violating public policy. Krasauskiene’s reasoning is circular and illogical.

Even absent the statutory violation, Krasauskiene’s purposefully crafted scheme to defraud her creditors is similar to others that the courts have deemed immoral, palpably vicious, and corrupt in conception, consideration, and purpose. Oliver v. Wilder, 27 Colo. App. 337, 346, 149 P. 275, 278 (1915).

B. The Statute Prohibiting Fraudulent Transfers Renders Krasauskiene’s Actions Illegal and Unenforceable Regardless of Whether She Intended to Evade Present or Future Creditors.

Krasauskiene argues that the courts should nonetheless come to her aid in this matter because she did not yet have creditors to defraud, and because she tried to undo the transaction before any such creditors materialized. This argument is without merit as the language of the statute is clear that a transfer made with actual

intent to hinder, delay, or defraud any creditor is fraudulent “whether the creditor’s claim arose before or after the transfer was made.” C.R.S. § 38-8-105(1). When construing a statute, a court should give effect to every word of the statute. Colorado Dept. of Revenue v. City of Aurora, 32 P.3d 590, 591 (Colo. Ct. App. 2001).

Krasauskiene testified she entered into the fraudulent scheme because she was concerned about losing her assets to her former landlord. Krasauskiene admits her intent to hinder, delay, or defraud that potential future creditor.

Further, the language of the statute prohibits transfers made to avoid a creditor’s “claim.” The landlord brought one or more “claims” against Krasauskiene. Krasauskiene tried to hide her assets because she feared the landlord would prevail.

Even the title of the statute is definitive: “Transfers Fraudulent as to Present and Future Creditors.” C.R.S. § 38-8-105. The fraudulent transfer statute unquestionably and specifically applies to transfers made to avoid both present and future creditors. Krasauskiene cannot legitimately argue that her transfer to Sisco was legal simply because the landlord’s claim was not yet reduced to judgment.

C. The Facts Do Not Merit Reversing a 100 Year Old Body of Law.

It has been well established in Colorado for over 100 years that contracts in contravention of public policy are void and unenforceable. One of the first reported cases in Colorado involved a publishing company who improperly influenced a government official to secure a government printing contract.

Russell v. Courier Printing & Publishing Co., 43 Colo. 321, 95 P. 936 (1908). The Colorado Supreme Court clearly stated the rule of law that all contracts contrary to public policy are void. Id. at 325, 938. The Russell court elaborated as follows:

If either party to a contract of that character seeks redress from the other, he will be left by the courts in the position in which he placed himself. It does not sound well for a defendant to say that a contract which he deliberately entered into, and of which he had had the benefit, is void because contrary to public policy; but it is not for his sake, or for his protection, that the objection is allowed, but for the protection of the public, by thus preventing this character of contracts being made, and avoiding evils which naturally result therefrom.

Id. at 325-26, 938, citing Hope v. Linden Park Ass'n, 58 N.J. Law, 627, 34 Atl. 1070; 55 Am. St. Rep. 614; Drake v. Lauer, 93 App. Div. 86, 86 N.Y. Supp. 986.

Colorado courts have consistently applied this legal doctrine. See, e.g., Metropolitan Life Ins. Co. v. Roma, 97 Colo. 493, 50 P.2d 1142 (1935)

(“Countless instances might be cited where because of the refusal to enforce contracts which are against public policy one of the parties is left in a peculiarly

advantageous position, or the contrary. With that fact the courts do not concern themselves.”); and Equitex, Inc. v. Ungar, 60 P.3d 746, 750 (Colo. Ct. App. 2002) (“A court will not enforce a contract that violates public policy even if the failure to do so is “unfair” to one of the parties.”). The law is clear and unequivocal—a party to an illegal contract can neither recover damages for the breach thereof nor, by rescinding the contract, recover the performance that she has rendered thereunder or its value. 14 S. Williston on Contracts § 1630A (3rd ed. 1972).

In sum, Krasauskiene asks this Court to ignore a century of Colorado jurisprudence, and several centuries of Anglo-American jurisprudence, and to come to her aid by enforcing her contract to defraud creditors. This Court should reject this base misuse of the legal process.

REQUEST FOR ATTORNEY’S FEES & COSTS

Pursuant to C.A.R. 38(d), the appellate court may award just damages and single or double costs to an appellee if the court determines that an appeal is frivolous. Krasauskiene’s appeal is frivolous because she has presented no rational argument based on the evidence or law in support of her claim that she is entitled to possession of the car despite having entered into an admittedly illegal

contract. Double Oak Construction, LLC v. Cornerstone Dev. Int'l, LLC, 97 P.3d 140 (Colo. Ct. App. 2003).

Additionally, a court shall award reasonable attorney fees for any appeal that the court determines lacks substantial justification or is substantially frivolous and/or substantially vexatious. C.R.S. § 13-17-102. An appeal lacks substantial justification and is substantially frivolous when the appellant's brief fails to set forth an assertion of error supported by legal authority. Castillo v. Koppes-Conway, 148 P.3d 289 (Colo. Ct. App. 2006).

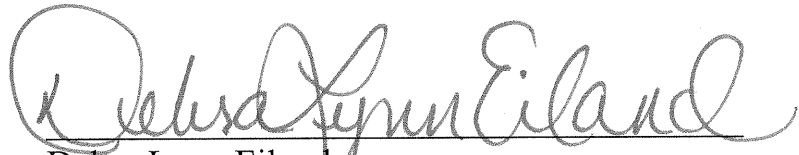
Krasauskiene's appeal lacks substantial justification and is substantially frivolous pursuant to C.R.S. § 13-17-102, because she has failed to adduce a colorable argument that the District Court made any error in applying the law, and she has failed to support her arguments with any legal authority. Finally, Krasauskiene's appeal is vexatious as she has brought it in bad faith to annoy and harass the Appellees. Mitchell v. Ryder, 104 P.3d 316 (Colo. Ct. App. 2004).

For the reasons stated herein, the Appellees are entitled to an award of their reasonable attorney's fees and costs of defending this appeal.

CONCLUSION

Appellees Sisco, Zasytiene, and Woodard respectfully request this Court affirm the judgment of the District Court, and award the Appellees their reasonable attorney's fees and costs on appeal.

RESPECTFULLY SUBMITTED this 18th day of August, 2008.



Debra Lynn Eiland
Attorney for Appellees

CERTIFICATE OF SERVICE

I hereby certify that on August 18, 2008, I served a true and correct copy of the foregoing ANSWER BRIEF by depositing the same in the United States Mail, first-class postage prepaid, addressed to the following:

Dennis W. Hartley, Esq.
Law Office of Dennis W. Hartley, P.C.
1749 S. Eighth Street, Suite 5
Colorado Springs, CO 80906

Paul F. Lewis, Esq.
Sherman & Howard
90 South Cascade Avenue, Suite 1500
Colorado Springs, CO 80903-4015



Appendix A

Title 38. Property--Real and Personal

↳ Frauds--Statute of Frauds

↳ Article 8. Fraudulent Transfers

→ § 38-8-105. Transfers fraudulent as to present and future creditors

(1) A transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:

(a) With actual intent to hinder, delay, or defraud any creditor of the debtor;
or

(b) Without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor:

(I) Was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or

(II) Intended to incur, or believed or reasonably should have believed that he would incur, debts beyond his ability to pay as they became due.

(2) In determining actual intent under paragraph (a) of subsection (1) of this section, consideration may be given, among other factors, to whether:

(a) The transfer or obligation was to an insider;

(b) The debtor retained possession or control of the property transferred after the transfer;

(c) The transfer or obligation was disclosed or concealed;

- (d) Before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit;
- (e) The transfer was of substantially all the debtor's assets;
- (f) The debtor absconded;
- (g) The debtor removed or concealed assets;
- (h) The value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred;
- (i) The debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred;
- (j) The transfer occurred shortly before or shortly after a substantial debt was incurred; and
- (k) The debtor transferred the essential assets of the business to a lienor who transferred the assets to an insider of the debtor.

CREDIT(S)

Added by Laws 1991, H.B.91-1080, § 1, eff. July 1, 1991.

Title 13. Courts and Court Procedure

Costs

Article 17. Attorney Fees

Part 1. Frivolous, Groundless, or Vexatious Actions

→§ 13-17-102. Attorney fees-definitions

- (1) Subject to the provisions of this section, in any civil action of any nature commenced or appealed in any court of record in this state, the court may award, except as this article otherwise provides, as part of its judgment and in addition to any costs otherwise assessed, reasonable attorney fees.
- (2) Subject to the limitations set forth elsewhere in this article, in any civil action of any nature commenced or appealed in any court of record in this state, the court shall award, by way of judgment or separate order, reasonable attorney fees against any attorney or party who has brought or defended a civil action, either in whole or in part, that the court determines lacked substantial justification.
 - (2.1) Notwithstanding any other provision of this part 1, the filing of a certificate of review pursuant to section 13-20-602 related to any licensed health care professional shall create a rebuttable presumption that the claim or action is not frivolous or groundless, but it shall not relieve the plaintiff or his attorney from ongoing obligations under rule 11 of Colorado rules of civil procedure.
- (3) When a court determines that reasonable attorney fees should be assessed, it shall allocate the payment thereof among the offending attorneys and parties, jointly or severally, as it deems most just, and may charge such amount, or portion thereof, to any offending attorney or party.
- (4) The court shall assess attorney fees if, upon the motion of any party or the court itself, it finds that an attorney or party brought or defended an action, or any part thereof, that lacked substantial justification or that the action, or any part thereof, was interposed for delay or harassment or if it finds that an attorney or party

unnecessarily expanded the proceeding by other improper conduct, including, but not limited to, abuses of discovery procedures available under the Colorado rules of civil procedure or a designation by a defending party under section 13-21-111.5(3) that lacked substantial justification. As used in this article, "lacked substantial justification" means substantially frivolous, substantially groundless, or substantially vexatious.

(5) No attorney fees shall be assessed if, after filing suit, a voluntary dismissal is filed as to any claim or action within a reasonable time after the attorney or party filing the dismissal knew, or reasonably should have known, that he would not prevail on said claim or action.

(6) No party who is appearing without an attorney shall be assessed attorney fees unless the court finds that the party clearly knew or reasonably should have known that his action or defense, or any part thereof, was substantially frivolous, substantially groundless, or substantially vexatious; except that this subsection (6) shall not apply to situations in which an attorney licensed to practice law in this state is appearing without an attorney, in which case, he shall be held to the standards established for attorneys elsewhere in this article.

(7) No attorney or party shall be assessed attorney fees as to any claim or defense which the court determines was asserted by said attorney or party in a good faith attempt to establish a new theory of law in Colorado.

(8) The provisions of this section shall not apply to traffic offenses, matters brought under the provisions of the "Colorado Children's Code", title 19, C.R.S., or related juvenile matters, or matters involving violations of local government ordinances and resolutions. For purposes of this subsection (8), "local government" shall mean a county, home rule county, home rule or statutory city, town, territorial charter city, or city and county.

CREDIT(S)

Added by Laws 1977, H.B.1210, § 2, eff. July 1, 1977. Repealed and reenacted by Laws 1984, S.B.182, § 2, eff. July 1, 1984. Amended by Laws 1986, S.B.70, § 4, eff. July 1, 1986; Laws 1990, H.B.90-1065, § 1, eff. July 1, 1990; Laws 2006, Ch. 73, § 6, eff. July 1, 2006.

Appendix B

COPY

El Paso _____ County, CO <u>X</u> District _____ County Court address: 270 South Tejon Street Colorado Springs, CO 80903 Phone Number: (719) 448-7650		Court Use Only
Rasa Krasauskiene, Plaintiff, vs. Diana Woodard, Elena Zasytiene and Baiba Sisco, Defendants.		
Attorney or Party without Attorney(Name and Address): Dennis W. Hartley, Esq., Attorney for Plaintiff Paul T. Lewis, Esq. Attorney for Defendant Woodard Debra Lynn Eiland, Esq., Attorney for Defendants Zasytiene and Sisco Phone Number: Email: FAX Number: Atty.Reg#:		Case Number: 2007CV4480 Division: 2 Courtroom: S-304
TRANSCRIPTIONIST'S TRANSCRIPT - EXCERPT OF PROCEEDINGS EXPEDITED TRANSCRIPT		

The above-entitled matter came duly on for Hearing on October 12, 2007, before the Honorable David S. Prince, Judge of the El Paso County District Court.

This transcript is the testimony of Plaintiff Rasa Krasauskiene only as requested by Scott Mikulecky, Esq.

B&M Legal Transcription, LLP
P.O. Box 873
Colorado Springs, CO 80901

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1 (Proceedings were had which are not herein transcribed pursuant to
2 request of ordering counsel. Excerpt of proceedings:)

3 THE COURT: Plaintiff, call your first witness.

4 MR. HARTLEY: Rasa Krasauskiene.

5 RASA KRASAUSKIENE

6 the Plaintiff herein, having been first duly sworn testified as
7 follows:

8 THE COURT: Tell us your full name and spell your last name.

9 MS. KRASAUSKIENE: Rasa, R-A-S-A; Krasauskiene K-R-A-S-A-U-S-K-
10 I-E-N-E.

11 THE COURT: Mr. Hartley.

12 DIRECT EXAMINATION OF RASA KRASAUSKIENE BY ATTORNEY HARTLEY

13 Q: What's your nationality, ma'am.

14 A: Lithuanian.

15 Q: Did you know Elena -- I don't know her last name.

16 A: (Zasytiene).

17 Q: (Zasytiene). In Lithuania?

18 A: No, we (did) met here in the United States.

19 Q: How did that come about?

20 A: Um, my husband's mother and Elena's mother been very good
21 friends forever, 50, 60 years as long as they know to. Remember
22 about, probably most likely about, 12 years ago (we) received a
23 phone call saying that Elena's mother asked my husband's mother can
24 we make them invitation to come in to visit the United States,
25 they'd like to come in for vacation. So that's how we met, actually

1 met, we made an invitation. And they came in to United States, try
2 a little bit, California, Las Vegas, stayed in our house for a
3 weekend. Then we became friends.

4 Q: So you sort of sponsored her, at least to start with?

5 A: Yes, I did -- was the one who arranged Elena permanent
6 residency card, for her and for husband.

7 Q: Did she work for you?

8 A: Yes, she did.

9 Q: And where was that?

10 A: Party Zone nightclub, the one I own for nine years, and the
11 Rendezvous Lounge, I own it for almost three years now, as a
12 cocktail waitress.

13 Q: She was a cocktail waitress?

14 A: Yes.

15 Q: And you've had liquor licenses at both locations?

16 A: Yes, sir.

17 Q: And still do have one for the Rendezvous?

18 A: Yes.

19 Q: Now, uh, did Elena, I'll just use her first name if I
20 could, and her husband loan you some money to start the Party Zone?

21 A: Yes.

22 Q: How much?

23 A: Hundred fifty thousand.

24 Q: And did you pay that back?

25 A: Yes, I did.

1 Q: With interest?

2 A: Yes.

3 Q: Ms. (Zasytiene) claims that you owe her \$45,000.00. Is
4 that true?

5 A: No, it's not.

6 Q: Then at some point did you enter into a stock purchase
7 agreement with her concerning the Rendezvous?

8 A: Yes, we did.

9 Q: And was that to protect the Rendezvous?

10 A: Yes.

11 Q: And what was that for?

12 A: Well, uh, shall I bring it in the lawsuit I'm involved
13 into?

14 Q: Well, we'll get to that.

15 A: Okay.

16 Q: What prompted you to do this?

17 A: Well, I -- this lawsuit, that's what would bring it into.

18 Q: What lawsuit was that?

19 A: I own a nightclub for nine years. I was trying to relocate
20 the nightclub to do new -- to new location. Landlord has not
21 disclosed quite a bit of information, was their previous tenant
22 about problems in the location. While I find out it I was too late,
23 I had invested over \$100,000.00 in the landlord's property. We
24 could not agree on a good term, so I end up suing the landlord to
25 recuperate my money.

1 Q: So you took steps to perhaps protect the Rendezvous from
2 bankruptcy?

3 A: Possibly. Because the landlord is countersuing me back.

4 Q: Did you see a bankruptcy attorney?

5 A: Yes, I did.

6 Q: Who was that?

7 A: John Eastlack.

8 Q: Now, let me hand you what's been marked for identification
9 as Defendants' -- or Plaintiff's Exhibits 31 and 30, ask you if you
10 can identify those.

11 THE COURT: (Are these in the book or (inaudible) the book?)

12 MR. HARTLEY: Yeah, they should be in the book, Your Honor. I
13 think that (it's actually) Exhibit 29 in the book, uh, and the
14 reason for the (inaudible) things are separated (inaudible).

15 A: This is a stock purchase agreement. And the second one is
16 agreement to rolling that agreement back.

17 Q: Now as to the stock purchase agreement, did Elena give you
18 any money for that?

19 A: No.

20 Q: And the -- was the agreement then that at some point in
21 time you could get the stock back if you asked? You could cancel
22 the agreement with her?

23 A: Yes.

24 Q: And get the stock back?

25 A: Yes.

1 Q: And is that what happened?

2 A: That's what had happened on August 24th.

3 Q: And did you give her any money on August 24th?

4 A: No, I did not.

5 Q: So no money ever changed hands?

6 A: No.

7 Q: Is that the same sort of scenario that you had with Baiba
8 Sisco?

9 A: Yes, sir.

10 Q: And what exactly was your agreement with Ms. Sisco?

11 A: What -- just tell the story from the beginning?

12 Q: Sure.

13 Q: On Elena's suggestion, Baiba Sisco called me. I explained
14 her my situation. She agreed to help me out. She felt like she
15 knows me for a long -- for many years and I done many favors for
16 her. I gave her quite a few jobs, she worked for me in the
17 nightclub for way over two years. I gave her job in (a cart). I
18 said look, this is situation, I do not know, my court date is coming
19 up closely. We were talking in July, my court date is coming up
20 August 7. Just in case if I lose this lawsuit I might be
21 considering bankruptcy option because I am not gonna want to pay the
22 landlord that will be the principle. So I said look, I'm looking
23 for ways to protecting my assets. Can you hold on on my car for
24 about two to three months? She said sure, no problem. Said we need
25 to make this transaction look legitimate. I will give you cash so

1 you can write me check back, and we'll go to motor vehicle
2 department and we'll make it all look like a legitimate transaction.

3 Q: When's the first date that you contacted or spoke to Baiba
4 Sisco?

5 A: July 10th.

6 Q: Did she call you or did you call her?

7 A: She called me. I did not have her phone number.

8 Q: And did you call her back?

9 A: I did. I call back her same day. Same night I drove,
10 which was about 10 o'clock in the evening, same night I drove to the
11 Marigold's Café, brought her \$13,000.00 in cash. She came out and I
12 said her deposit this money as soon as possible, I wanna get this
13 transaction done as soon possible. I said look, you have a couple
14 days, 11, 12, some 13th we will meet.

15 Q: Slow down. Okay. Did you later find out that she did
16 deposit the money?

17 A: Yes, she did.

18 Q: And did she write you a check back?

19 A: Yes, she did.

20 Q: Was she out one dime?

21 A: Did she?

22 Q: Was she out one single penny on that transaction?

23 A: No, it was exactly 13,000.

24 Q: Now -- did you -- did you pay her for the registration fee?

25 A: I did.

1 Q: And how did that come about?

2 A: Twelve hundred dollars in cash.

3 Q: Did you have insurance on the automobile?

4 A: Yes, I did.

5 Q: And when does -- was that insurance up?

6 A: The annual policy was expiring on August 14th.

7 Q: Now you heard Baiba state that she -- or you called her
8 sometime in the middle of August, August 12th or 11th, something like
9 that with regard to this car.

10 A: Yes, I did.

11 Q: What was that conversation about?

12 A: I did call her, I believe around August 11th, telling her
13 look, I'm just reminding you -- because I did ask -- told her about
14 that she's gonna need to get (inaudible) insurance policy and when
15 we were doing that transaction. So on 11th or, you know, could have
16 been 12th, I reminded her that I do need to make -- her to make a
17 phone call to my insurance company, Liberty Mutual, said it would be
18 convenient, you know, they do have all my information. I said look,
19 when we split off I took at the documents but I gave her one of the
20 copies of registration intentionally so she'll have a car VIN number
21 because she'll have to provide it information to the insurance
22 company. I said buy this policy for me for three months, and most
23 likely, you know, three months later we'll be able to roll this
24 transaction back.

25 Q: Okay. Was she paid for that policy?

1 A: She paid for it, \$300.00, and I reimbursed her for it.

2 Q: Now did you at some point in time after you consulted the
3 bankruptcy lawyer and other legal advice understand that you could
4 not do what you tried -- what you were trying to do?

5 A: Yes. You know, I find out the situation, I have a -- even
6 if I wanted to I won't be able to file the bankruptcy, I have way
7 too much assets.

8 Q: Did you -- you then reversed the Rendezvous situation with
9 Elena, correct?

10 A: Yes. That was on August 24th.

11 Q: And did you try to reverse the situation with Ms. Sisco?

12 A: Yes.

13 Q: Was she cooperative?

14 A: She never returned no one single phone call to me. She
15 never called me, she never returned not one single phone call to me
16 when I was calling to her.

17 Q: Did she -- when she did this transaction, did she ever ask
18 for the maintenance agreements?

19 A: No.

20 Q: Did you have maintenance agreements?

21 A: Absolutely.

22 Q: Let me call your attention in the exhibit book to Exhibit
23 Number 17.

24 WITNESS: Where do I find this 17? Six, nine, we're going all
25 the way to the end?

1 MR. HARTLEY: Seventeen (inaudible).

2 WITNESS: Seventeen? Okay, Stevenson Imports? Okay.

3 Q: Do you recognize those documents?

4 A: Yes.

5 Q: What are they?

6 A: They're my car maintenance records.

7 Q: Was there a particular problem with your car that you'd had
8 that was reoccurring?

9 A: Yes. I had engine light will come off, and I would take it
10 to the dealership, they supposedly will fix it and two days later it
11 will come back. So we took it (numerous) times back to the local
12 dealership until final I got completely frustrated and towed the car
13 to the Denver Stevenson Imports where they fixed the problem.

14 MR. HARTLEY: We'd move for Exhibit 17.

15 THE COURT: Any objection?

16 MR. EILAND: None from me, Your Honor.

17 THE COURT: Exhibit 17 is admitted.

18 Q: You heard that Ms. Sisco said that you told her that you
19 needed cash for -- for your car, is that true?

20 A: No, I did not. I mean I did heard what Ms. Sisco said. I
21 also saw what she wrote.

22 Q: Did you ever need cash at the time that you were dealing
23 with Ms. Sisco?

24 A: No. I do carry a significant amount of cash on me all
25 the time. Also matter of fact I do -- brought it in (here) in

1 the courthouse to show it.

2 Q: How much did you bring with you?

3 A: Fifty thousand.

4 Q: At this time were you going to Las Vegas with Elena?

5 A: Yes.

6 Q: And were you taking significant amounts of cash with you to
7 Las Vegas?

8 A: Yes. Approximate about 85-90,000 apiece, each of us.

9 Q: Now ...

10 A: I mean, I do own the business in Colorado Springs downtown.
11 I have one of the nicest upscale lounges, it's a cigar bar. So I do
12 making come from the bar too. The gambling is not my main income,
13 which I do actually make more money gambling than running the bar.

14 MR. LEWIS: Objection. Narrative.

15 THE COURT: Sustained.

16 MR. HARTLEY: Well, it may become relevant, Your Honor, because
17 it comes to (inaudible) and the motive (inaudible).

18 THE COURT: The objection wasn't relevance, it was narrative.

19 MR. HARTLEY: I understand.

20 THE COURT: Go ahead, Mr. Hartley.

21 Q: Were you operating as partners with Ms. -- Elena in Las
22 Vegas?

23 A: Yes, we were splitting profits 50/50.

24 Q: Now in July of 2007 did a problem arise between you two?

25 A: Yes.

1 Q: What was that about?

2 A: Well, we went to a trip. Her sister was visiting from
3 Lithuania. And the problem was she kind of wanted in to bring it in
4 her sister onto the gambling action, and our agreement before that
5 was that sister will not be gambling with us. It so happened her
6 sister lost \$5,000.00, then Elena was asking me, you know, us to
7 loan our gambling capital to her to win the money back. So anyway,
8 even I did agree to her to use our capital, my share of money which
9 was made on that trip, I did express my not wanting to do that. So
10 if she could not understand why would that be so unconcern to her
11 sister's concerns. I tried to explain to her like look, for me it's
12 a strictly business. I saw your sister twice, you know, I mean, in
13 my life. This gambling situation is strictly business so there's no
14 one should be involved. It's not a scenario that, you know, on the
15 next trip I'll be bringing in my husband, or my cousin and saying,
16 you know, now everybody's getting a part of the action.

17 Q: Did that seem to cause a problem between you and Elena?

18 A: Yes, our friendship ended.

19 Q: After that did you -- were you aware of things Elena was
20 doing to try to interfere with your life?

21 A: Not for the first week or two. Definitely nothing about
22 the car.

23 Q: When is the next time that you heard from her in action
24 that caused a problem?

25 A: She came into the Rendezvous and when she brought this

1 stock purchase agreement to my husband. They entered into the
2 argument. There was a dispute of it's ridiculous, it's a room
3 service charge bill, she was saying that I owe her hundred twenty
4 dollars. I was saying like look, you know, to my husband, that I
5 don't owe her any money. So it kind of -- a ridiculous situation
6 which would never had to go before, you know, who had how many cups
7 of coffee, and you know, was her sister had a breakfast that morning
8 or not. It was kind of nonsense situation, so I did ignore it but
9 up to the point where my husband was getting upset. He's like look,
10 I don't want to be part of your divorce here with your former best
11 friend. So I did wrote her e-mail and, you know, explained her
12 everything in a detail, pretty much penny to penny. And I said
13 look, I don't expect never (ever) to hear from you again.

14 Q: You have heard from her though?

15 A: Excuse me?

16 Q: You have heard from her, if not in words, at least in
17 picking up your car?

18 A: Yes.

19 Q: Did Baiba Sisco during the time between August the 14th and
20 September the 8th ever call you demanding (her car return)?

21 A: She had not made no one single phone call to me. And I was
22 -- our phone records, you know, proves that she never called me. I
23 mean, you know, if the truth to be heard, you know, she didn't have
24 a reason to call me because car was mine, and we was not rolling
25 transaction back yet, it's not like I was looking for her, and, you

1 know, she had to call me.

2 Q: Let me have you look at Plaintiff's Exhibit 11A, B and C.

3 A: Yes, I have them.

4 Q: And what -- what are they?

5 A: This is my phone bill, and this is the phone calls made
6 July 10th to Baiba, one minute and then again to Baiba on July 12th,
7 two minutes.

8 Q: And what was being arranged then?

9 A: Well, on July -- July 10th, that's when we're -- I -- this
10 is when I call her from the parking lot when I arrived to the
11 Marigold's, said Baiba, we're here, come out. I had my son with me
12 in back of my seat. He'd be perfect witness but he's four years
13 old.

14 Q: Did -- did Baiba come down to the Rendezvous when you were
15 there and -- and ask for her car back?

16 A: No.

17 Q: Do you know if she -- of your own knowledge, did you ever
18 know whether or not she contacted your husband ...

19 A: No.

20 Q: ... and asked for this car back?

21 A: No, no, no, absolutely not.

22 MR. HARTLEY: We would move for the admission of Plaintiff's
23 11A, B and C.

24 WITNESS: So this is on July 10th, this is ...

25 THE COURT: (inaudible).

1 MR. HARTLEY: (inaudible).

2 THE COURT: Any objection to 11A, B and C?

3 MS. EILAND: No, Your Honor.

4 MR. LEWIS: No objection.

5 THE COURT: 11A, B and C are admitted.

6 Q: What phone number is Baiba's phone number?

7 A: 321-0989.

8 Q: And that's the same phone number that was provided with her
9 records on her cell phone?

10 A: Yes.

11 Q: Now does that -- do your records show that she ever tried
12 to call you during that August of -- or in September period?

13 A: No, no, no.

14 Q: Did -- did Elena attempt to call your home on September the
15 8th when the car was being picked up?

16 A: They said that 10 o'clock in the morning. I do not get up
17 until, you know, late noon.

18 Q: And why is that?

19 A: I work nights. I work nights, I own the bar. I don't get
20 home until three in the morning, and earliest I get to bed is four
21 o'clock in the morning.

22 Q: Do you know if your husband saw Elena and Diana ...

23 A: Yes, he did.

24 Q: ... on the -- on the -- on the 8th of September?

25 A: Yes, he did. He was leaving to work. He saw my car was

1 blocked was -- from one side was Elena's car on other side was
2 Diana's car. He asked them what are you -- what's going on here,
3 ladies? And, you know, he made a joke, said are you babysitting my
4 wife's car here? And the answer was you are in for a big surprise.
5 So he came back home, he said something fishy is going on, let's
6 call Baiba. And so he called Baiba from his cell phone, I called
7 Baiba from home number, and we could -- she did not answer the
8 phone. And then, I mean, he left. I told him do not get in any
9 confrontations. And at the meantime I was calling you, my attorney,
10 to find out which direction to go here. And half an hour later car
11 was gone.

12 Q: Did you fill out a police report?

13 A: Yes, I did.

14 Q: Did you have conversations with the police officer?

15 A: Yes, I did.

16 Q: Was it explained to you that the -- Ms. Woodard, Ms. Sisco
17 and Elena were contacted to return calls to the police officer?

18 A: Yes. The police officer said that she's gonna call them ...

19 MR. LEWIS: Objection. Hearsay.

20 THE COURT: Sustained.

21 Q: Were there any liens of any type against your car?

22 A: No. I paid for car cash when I bought it in 2000 -- 2003,
23 I think, yes. 2003 I paid cash, over \$36,000.00 for it. I have all
24 the receipts. Yes, I wasn't cash-poor then, I'm not cash-poor now
25 still.

1 Q: Were there any other problems with Elena and your family in
2 Lithuania that caused you concern?

3 A: Uh, yes.

4 Q: What was that?

5 A: She had borrowed -- she and her sister had borrowed
6 \$20,000.00 from my husband's mother when her sister was opening the
7 kids' clothing store. The due date was repay the loan September 1st.
8 Elena refused to pay that back. So (inaudible) we did wire money to
9 ...

10 MR. LEWIS: Objection. Narrative.

11 Q: Did you do anything to alleviate any problems with your
12 mother-in-law?

13 A: Yes. I did wire her money to Lithuania. It shows in my
14 bank statements.

15 Q: After you made the transaction with Baiba Sisco, who held
16 the title?

17 A: I did.

18 Q: Whose name was on the title?

19 A: Baiba Sisco.

20 Q: And why did you hold the title?

21 A: I hold everything, not only the title, the maintenance
22 papers, the warranty documents, the keys, anything associated with
23 the car including the title, because car was mine. I was driving
24 it, car was in my possession, I never sold the car to Baiba.

25 Q: Did Baiba ever even look at the car?

1 A: No.

2 Q: Did she examine or ask for any maintenance records?

3 A: No.

4 Q: Did she ever ask for it period?

5 A: No.

6 Q: Now the car was picked up on September the 8th, 2007?

7 A: Yes.

8 Q: And did you witness it being picked up?

9 A: No, I did not.

10 Q: Were there items in the car that were not returned?

11 A: Yes. There are items still not returned. Even on our
12 first court appearance, actually the second one, attorney came in
13 and gave more stuff, gave -- gave back with the stuff.

14 MS. EILAND: Your Honor. Your Honor, if we're not dealing with
15 the additional items today I would object to this testimony.

16 THE COURT: My understanding is there is no dispute that the
17 items your client claims -- there is no dispute as to rights of
18 possession. So at the end of this I plan on having an order that
19 says she's entitled to possess those things. It would be for a
20 future date, whether they are in (contempt) because they haven't
21 handed it over.

22 MS. EILAND: And Your Honor, we contest that those items were
23 never in the car however.

24 THE COURT: I figured that out.

25 MS. EILAND: Okay. So that's still something we can try later.

1 THE COURT: The issue for me is possession.

2 MS. EILAND: Okay.

3 THE COURT: I'll issue an order 'cause it's -- I understand
4 it's not contested. I'll issue an order that says the Plaintiff is
5 entitled to possession of those items. My guess is at some point
6 he'll say you're in contempt because (inaudible) -- your clients are
7 in contempt because they (never) handed it over. And you will --
8 they'll try to prove that you got it, you'll try to prove that you
9 never had it, and decide it then on a contempt citation.

10 MS. EILAND: Thank you, Your Honor.

11 MR. HARTLEY: Let me call your attention to Plaintiff's Exhibit
12 -- Exhibits 12A, B and C. If I did not move for 11, Your Honor ...

13 THE COURT: You did.

14 MR. HARTLEY: I did, thank you.

15 A: Yeah, those are my bank statements.

16 Q: And on those -- in those bank statements, during the time
17 in -- between June, that is Exhibit 12A, June 19th '07 to July 19th
18 '07, did you deposit \$13,000.00 in that account?

19 A: Yes, I did, on the 16th.

20 Q: And that was the check from Baiba Sisco?

21 A: Check from Baiba Sisco, and I believe another check from
22 something, was couple checks at the same time.

23 Q: From vision something, a refund for some ...

24 A: I don't remember exactly.

25 Q: Did you ever withdraw any of that money to go to Las Vegas?

1 A: No, I did not. Actually on the 16th I was on a plane. I
2 could not possibly withdraw it.

3 Q: Did you -- did you need that money to pay your bills?

4 A: No, I do not. I mean, we need money. \$13,000.00 is a --
5 is money, it's not like, you know, you find them on a street. But I
6 did not withdraw -- withdraw any cash.

7 Q: So you did not need the money to go to Las Vegas?

8 A: No, I did not. I possible -- I physically could not --
9 would not be able even to do it because on the 16th I have a proof, I
10 was on a plane to Las Vegas.

11 MR. HARTLEY: Move for A -- 12A, B and C.

12 MS. EILAND: No objection.

13 MR. LEWIS: No objection.

14 THE COURT: They are admitted.

15 Q: Would you look at Plaintiff's Exhibit 13A, B and C.

16 A: This is my corporate -- one of my corporate accounts
17 statement, yes.

18 Q: Are there -- there are three of them there, are there not?

19 A: Are you referring to 13C to show the wire for -- foreign
20 wire going out? \$9,000.00?

21 Q: No, I'm just looking at the records period.

22 A: Oh, okay.

23 Q: 13A, B and C, they are your corporate accounts?

24 A: Yes. I have not withdrawn cash from those accounts either.

25 Q: Did you put the \$13,000.00 in the corporate account?

1 A: No, into my personal.

2 Q: And that's a (debit card account)?

3 A: Yes.

4 Q: And your corporate account was able to pay your bills?

5 A: Yes.

6 Q: Please take a look at Exhibit 14. What is Exhibit 14?

7 A: This is cash deposit, Mirage Hotel, Las Vegas.

8 Q: Were there similar cash deposits at the Mirage Hotel from
9 July through September?

10 A: Yes. I believe I -- the last one, the copy is not -- not
11 in there. I just came back from the trip two days ago.

12 Q: And were those ...

13 A: But they all similar in the hundred -- hundred to hundred
14 ten thousand dollars. That's how much money I will deposit, that's
15 how much is left in the casino, that's my account.

16 MR. HARTLEY: We'd move for 13A, B and C, Your Honor. We'd
17 move for 14.

18 THE COURT: Any objection?

19 MS. EILAND: No objection.

20 MR. LEWIS: No, no objection, Your Honor. And, Your Honor ...

21 THE COURT: 13 and 14 will be admitted. Go ahead.

22 MR. LEWIS: I'm sorry to interrupt. Ms. Sisco indicates she
23 needs to leave to get to work, and I'm just wondering if -- if she's
24 needed any longer by the Plaintiff here.

25 MR. HARTLEY: I'm not going to recall her.

1 THE COURT: She's been released from the witness stand. She
2 may leave.

3 FEMALE VOICE: Thank you.

4 MR. LEWIS: Thank you.

5 THE COURT: You're welcome.

6 Q: Can you tell the Court in your opinion why this transaction
7 with Elena and the car came down the way it did.

8 A: I don't think we're finished with the deposits yet, how
9 much money I'm making in the casino. How -- how ...

10 Q: I think on 14 ...

11 A: ... (inaudible). It shows in the third quarter I made
12 hundred sixty-two thousand dollars.

13 Q: Okay.

14 A: So that's another proof that I am not cash-starving person
15 here.

16 Q: All right, we'll we're talk ...

17 A: I don't have a reason to go in and sell \$25,000.00 vehicle.

18 MR. LEWIS: Objection. Narrative.

19 THE COURT: Okay, wait 'til Mr. Hartley asks you a question,
20 and respond to his question.

21 Q: We're -- we're talking about ...

22 A: Okay.

23 Q: ... at the time you did this transaction with Baiba Sisco.

24 A: Okay.

25 Q: Since then have you made some adjustments to your system

1 and it has become more profitable than it was before?

2 A: No, not -- not necessarily. I play difference systems.
3 Would you call them adjusting or -- it's very hard to explain, it's
4 very complicated.

5 Q: Who developed this gambling system?

6 A: I did.

7 Q: So when -- when Elena says that she developed it with you,
8 is that true?

9 A: No, actually it's not true. Because Elena was saying true
10 when she said she introduced me to the game. I did not know -- you
11 know, I mean, I knew the game of roulette exist. But she did
12 introduce me to the game. And we took a trip and I did lost the
13 money on my first trip, I lost \$10,000.00. That's not a secret, we
14 could (have) asked her then, too. And then, you know, I got upset,
15 I'm not a loser. So we spend quite a bit of time developing the
16 system and learning and experimenting and playing on internet on a
17 practice mode actual, not for the money, that be ridiculous to play
18 on internet for real money, until I developed this system. So about
19 two months later we went back and I won all my money back.

20 Q: Was it clear after the July trip with Elena that she was --
21 you were not going to go gambling with her (anymore)?

22 A: I will never, ever go gamble with her again. Special after
23 this soap opera.

24 Q: Was it ever your intent to -- to sell your Jaguar in 2007?

25 A: I was planning on selling it. Not actually selling it, I

1 was planning on trading in. I'm about ready to get a new car.

2 Q: Well, but that was when you would have possession of the
3 automobile, correct?

4 A: Yeah, when I'll get it back.

5 Q: And but at -- in the meantime did you ever intend to sell -
6 - actually sell the car to Baiba Sisco?

7 A: No, no, absolutely not.

8 Q: Did you ever give her permission to transfer whatever she
9 considered her interest is to Elena or anyone else?

10 A: No.

11 Q: Did you give permission to Elena to pick up and take your
12 car away from your residence?

13 A: No. I have not spoken, not to Elena, not to Baiba, for
14 significant long time. Diana I haven't even saw her in the past
15 probably at least six months.

16 Q: Did you ever approach Diana Woodard with the offer to sell
17 her your car?

18 A: No, I did not. There was a conversation between Elena and
19 Diana, like look, Rasa is looking to get this transaction done, do
20 you think you can do it. Said look, I need to ask my husband, I
21 wouldn't mind. Her husband (Chuck) said no, you're not getting
22 involved in this. Then Baiba suggested look, we know Baiba, Baiba's
23 reliable girl, she worked for me, I never had any problems with her,
24 she was reliable employee, she worked for me for a long time. In
25 the mall she was selling (inaudible), had a cash register, she

Appendix C

ORIGINAL

El Paso _____ County, CO <input checked="" type="checkbox"/> District _____ County _____ Court address: 270 South Tejon Street Colorado Springs, CO 80903 Phone Number: (719) 448-7650	Court Use Only
Rasa Krasauskiene, Plaintiff, vs. Diana Woodard, Elena Zasytiene, Baiba Sisco, Defendants.	
Attorney or Party without Attorney(Name and Address): Dennis W. Hartley, Esq., Attorney for Plaintiff Paul F. Lewis, Esq., Attorney for Defendant Woodard Debra L. Eiland, Esq., Attorney for Defendants Zasytiene and Sisco. Phone Number: _____ Email: _____ FAX Number: _____ Atty.Reg#: _____	Case Number: 2007CV4480 Division: 2 Courtroom: S-304
TRANSCRIPTIONIST'S TRANSCRIPT	

The above-entitled matter came duly on for a Rule 104 Hearing on October 12, 2007 before the Honorable David S. Prince, Judge of the El Paso County District Court.

This transcript is the Court proceeding in its entirety, excluding the testimony of Plaintiff Krasauskiene (provided under separate cover), as requested by Dennis W. Hartley, Esq.

B&M Legal Transcription, LLP
P.O. Box 873
Colorado Springs, CO 80901

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1 prepared to do that?

2 THE COURT: We can do it.

3 MS. EILAND: Okay.

4 THE COURT: Does she have the number for the courtroom phone?

5 MS. EILAND: That -- it would be my next question. What number
6 should she call?

7 THE COURT: I have to ask my clerk.

8 MS. EILAND: Okay. And I imagine ...

9 THE COURT: (inaudible)

10 MS. EILAND: Well, what I informed her we're gonna do, I've
11 done it this way before, but I -- I told her I thought we would call
12 her before her testimony and then have her call in, which would
13 involve a short recess.

14 THE COURT: (That's normally what we do.)

15 MS. EILAND: Okay, thank you, Your Honor.

16 THE COURT: Go ahead, Ms. Eiland.

17

BAIBA SISCO

18 a Defendant herein, having been first duly sworn, testified as
19 follows:

20 Q: Ms. Sisco, what is your address?

21 A: My address is 3555 Rialto Heights, Apartment 17, and zip
22 code 80907.

23 Q: And can you speak just a little louder for us.

24 A: Okay.

25 Q: 'Cause I'm not sure everyone can hear you, okay?

1 Q: Okay. Now where -- what location was that office?

2 A: Chapel Hills Mall.

3 Q: Okay. And did you and Ms. Krasauskiene meet there?

4 A: Yes.

5 Q: Now you said a minute ago that you talked to Ms.
6 Krasauskiene on the phone, is that correct?

7 A: Yes.

8 Q: Did you talk to Ms. Krasauskiene on July 13th?

9 A: The first time I talked to her when Elena gave me her
10 number, I called her on Tuesday. And Rasa wanted to meet with me to
11 sell car on Thursday. I said I cannot do on Thursday, first of all
12 I am working and I haven't made full deposits. So I cannot write
13 you a check on Thursday, I can write you a check on Friday.

14 Q: Okay. And so you agreed then to meet on Friday?

15 A: Yes, correct.

16 Q: Okay. So did you write the check to Ms. Krasauskiene at
17 the clerk and recorders office?

18 A: Yes.

19 Q: Ms. Sisco, do you recognize the document I've just handed
20 to you?

21 A: Yes.

22 Q: What is this document?

23 A: It's a check I wrote to Rasa Krasauskiene.

24 Q: And what is the date of that check?

25 A: It's 13th of July which is Friday.

1 Q: And what is the amount of that check?

2 A: Thirteen thousand dollars.

3 Q: And why did you write this check to Ms. Krasauskiene?

4 A: To buy car.

5 Q: And which car were you purchasing?

6 A: Jaguar 2004.

7 MS. EILAND: Your Honor, the Defendants move to admit Exhibit
8 D.

9 MR. HARTLEY: No objection.

10 THE COURT: D is admitted.

11 Q: Thank you. Now when you bought the car from Ms.
12 Krasauskiene, did you receive a registration for the car?

13 A: We had two copies of registration, one registration I took
14 and Rasa took another registration copy. It was two together, so
15 one went to Rasa and one I kepted (sic). And then Rasa took title.

16 Q: Okay. And why did you have two copies of the registration
17 printed?

18 A: I don't know why is I do that. It was two copies.

19 Q: And why did Ms. Krasauskiene take the title?

20 A: Because she was driving that car, and I thought if you
21 drive a car you need to have title.

22 Q: Okay. Ms. Sisco, could you please review the two documents
23 I've handed to you and tell me if you recognize them.

24 A: Yes.

25 Q: What is the document identified as Defendants' Exhibit E?

1 A: It's a check I made to county clerk for taxes for
2 \$12,000.00 -- I'm sorry, \$1,200.15.

3 Q: Okay. And what is the date of that check?

4 A: It's 13th of July.

5 Q: And that check was for taxes?

6 A: Yes.

7 Q: Was it for registering the car?

8 A: Yes, I believe it's taxes, registration, I don't know how
9 they put all this together, but yes.

10 Q: And what is Defendants' Exhibit F?

11 A: It's a registration of the car.

12 Q: Okay. And is that the registration you received when you
13 purchased the car?

14 A: Yes, it's correct.

15 MS. EILAND: Your Honor, we move to admit Defendants' Exhibits
16 E and F.

17 MR. HARTLEY: No objection.

18 THE COURT: It will be admitted.

19 Q: Thank you. How long do you think you were at the clerk and
20 recorders office completing this transaction?

21 A: Around -- we had to wait, when I took that number we had to
22 wait, so we had to wait like maybe half an hour, and then when we
23 were at the clerk's desk it happened maybe 15 minutes? Because I --
24 clerk lady asked me for my current insurance and I forgot to bring
25 it in, so I had to run out to get that insurance from my car, so

1 maybe 15 minutes we were at the table by clerk.

2 Q: And when you completed the transaction, did you and Ms.
3 Krasauskiene part ways or did you do something else?

4 A: No, we just walked out and said have a nice day and
5 goodbye.

6 Q: And Ms. Krasauskiene kept the car at that point?

7 A: Yes.

8 Q: And how long was she supposed to keep the car?

9 A: A month.

10 Q: When did you believe you were entitled to pick the car up?

11 A: Like in a month and 13th of August.

12 Q: Now while Ms. Krasauskiene was driving the car, who was
13 going to pay for insurance?

14 A: I knew that she has insurance still 14th of August, so she
15 already had insurance. And it was when I would pick up car I would
16 make another insurance in my name and I would drive a car.

17 Q: Did anything happen between July 13th when you bought the
18 car and August 13th to make you believe that you would not be picking
19 the car up on the 14th?

20 A: No.

21 Q: Did you take any measures to prepare yourself to pick the
22 car up on the 14th?

23 A: No, not from that point, from at that month's period no, I
24 didn't do anything, I was just waiting. And I was trying to sell my
25 car, too. I was looking for around (inaudible) how I can get rid of

1 my car so because I will have a Jaguar.

2 Q: Okay. So during that month you were ...

3 A: Yes.

4 Q: Okay. Did you at some point purchase insurance in
5 anticipation of picking up the car on the 14th?

6 A: Yes.

7 Q: Ms. Sisco, do you recognize the two documents I've just
8 handed to you?

9 A: Yes.

10 Q: Can you please tell me what these documents are.

11 A: One of them are insurance, proof of insurance for Jaguar.
12 And another document is proof of payment, I charged my American
13 Express card.

14 Q: Okay. And how did you -- on what day did you purchase
15 insurance for the Jaguar?

16 A: It was on 13th of August.

17 Q: And is that shown on any of these documents that I've just
18 placed in front of you?

19 A: On American Express transaction date.

20 Q: Is that on Exhibit G?

21 A: Yes, it's correct.

22 Q: Okay. And so did you purchase this insurance on-line or
23 did you call the ...

24 A: No, I went to the office.

25 Q: Oh, you went to the agent's office?

1 A: Yes.

2 Q: Okay. And this insurance card, Exhibit H, did you receive
3 this when you purchased the insurance?

4 A: No, I didn't receive, they did mail it in the mail in a
5 week.

6 Q: They mailed it later, okay.

7 A: Yes.

8 Q: Now why did you purchase this insurance?

9 A: I did purchase this insurance because for Jeep my insurance
10 is 21st Century Insurance, and I already paid for this insurance.
11 And I didn't want to mix up insurances and I wanted one insurance
12 for one car, another for another, because in one point I would
13 cancel 21st Insurance because I would get rid of Jeep and I would
14 have Jaguar with this insurance.

15 Q: Okay. So you were insuring the Jaguar and the Jeep with
16 two separate companies?

17 A: Yes, it's correct.

18 Q: Okay. And you purchased this insurance through Liberty
19 Mutual for the Jaguar?

20 A: Yes, it's correct.

21 Q: Okay. And why did you purchase this insurance on August
22 13th for the Jaguar?

23 A: Because on August 11th we had conversation with Rasa. She
24 asked if I have made insurance for a car, because her insurance was
25 expiring in couple days. I said I haven't done yet but I have been

1 shopping around and to getting quotes, and she recommend me to go to
2 Liberty Mutual because it's good insurance she said, and she knows
3 agents there, and she advised me to go there and I said okay, I will
4 try.

5 Q: Okay. And that was in anticipation of you picking the car
6 up on August 14th?

7 A: Yes. I would have already insurance and I didn't want her
8 to drive couple days without insurance because title is in my name
9 and, you know, if police stops what would happen.

10 Q: Okay.

11 A: I didn't want -- I just wanted to secure myself and her.

12 Q: And on Exhibit H, can you tell us what date this policy
13 became effective?

14 A: On 14th of August.

15 MS. EILAND: Your Honor, Defendants move to admit Exhibit G and
16 H.

17 MR. HARTLEY: No objection.

18 THE COURT: Be admitted.

19 Q: Thank you. Were you able to pick up the Jaguar on August
20 14th?

21 A: No.

22 Q: Why not?

23 A: Because I -- when I called Rasa on August 13th, I believe,
24 I told her that I have made insurance, so, and when I can pick up my
25 car, and she never returned my calls.

1 Q: Did she call you back?

2 A: No, she didn't call me back.

3 Q: Okay. And did you still have your Jeep at that point?

4 A: Yes.

5 Q: Did you contact Mr. Krasauskiene again about picking up the
6 Jaguar after August 13th?

7 A: Not her on phone calls, no. And I didn't see her. I was
8 hoping like me and Elena we would go for dinner in La Creperie and
9 Rendezvous is across the street, so when we would go to dinner I
10 thought it's like week later, it's okay, you know, I can still wait.
11 But we decided we will stop by in Rendezvous and see maybe Rasa is
12 working and I will ask her, but every time we went it was her
13 husband, (inaudible), and we would ask him and he said, no, we need
14 another week.

15 Q: Okay. So you'd only seen Rasa's husband at the restaurant?

16 A: Yes, yes.

17 Q: Okay. Did Ms. Krasauskiene ever contact you to indicate
18 why she hadn't given you the car?

19 A: No.

20 Q: How many times do you think you went to the Rendezvous to
21 try to find her so you could talk about it?

22 A: Couple or three times.

23 Q: Did you ever try to go to her house?

24 A: No.

25 Q: Why not?

1 A: I just, I don't know, I went to work. I don't know if she
2 would be at home or something. I didn't want to like, I don't know,
3 bother her. I don't know. I'm not person -- I don't know.

4 Q: At some point did you become concerned that Ms.
5 Krasauskiene had not delivered the car to you?

6 A: Yes.

7 Q: About when was that?

8 A: About end of August, like after like maybe couple weeks,
9 three weeks. And then I decided that I will make copy of title and
10 I would just go and take a car, 'cause it's my car. And I just made
11 a title on 30th of August and, uh, I was talking to Elena, so what to
12 do and how it's going, because I was afraid that I will never get
13 that car. And then on 4th of September I went to Jaguar dealer to
14 make a key for Jaguar and I was already decided that I will go and
15 pick up car, but I wasn't brave enough or something, I don't know.
16 And Elena told me so what you gonna do, you still owe me \$13,000.00,
17 how you gonna give me back money and you don't have car, you don't
18 have money, so you're stuck. And Elena told me she can buy that car
19 from me because she would make some money.

20 Q: Okay, let me stop you there and -- and we're gonna talk a
21 little bit more about some of those details, okay? Now you said you
22 made title. What do you mean by that?

23 A: I went to county clerk office in motor vehicle department
24 and I told that I need copy of my title, and they gave me copy of my
25 title.

1 Q: Okay. So you didn't make one, you went to the clerks
2 office and got one?

3 A: Yes, yes, yes. I didn't make it up.

4 Q: And do you remember about what date you did that?

5 A: On 30th of August.

6 Q: Now Ms. Sisco, if you could, please, there's a document
7 I've handed you I've marked -- I don't think it's marked on your
8 copy but it says certification of title information on the front
9 page, it's several pages. Do you have that in front of you?

10 A: Yes.

11 Q: Okay. If you could turn in to the fourth page of that
12 document, please. And do you see the document that says certificate
13 of title on the top, it looks like a car title?

14 A: Yes.

15 Q: Okay. Look at that page and the page following it and tell
16 me if you recognize that document.

17 A: Yes, I do.

18 Q: Please tell us what that is.

19 A: It's a title when Rasa sold me a car and she brought it and
20 I signed it to that I'm buying car.

21 Q: Okay, so this is the title Rasa signed over to you?

22 A: Yes, it's correct.

23 Q: Okay. If you would go 11 pages in, actually just let's
24 just say two pages from the end of this document to make it easier.

25 A: Okay.

1 THE COURT: Just a moment, just a moment. Okay, ma'am, would
2 you -- I'll take you word for it. Would you raise your right hand.
3 (WITNESS SWORN.) Okay. Ms. Eiland, you're gonna have to --
4 whoever's questioning's gonna have to come stand right next to the
5 telephone.

6 MR. HARTLEY: Your Honor, if Ms. Zasytiene is consulting with
7 somebody else, she needs to stop. Because there's whispering in the
8 background and she's obviously talking to somebody else.

9 THE COURT: Ma'am, do me a favor and just focus on the phone
10 while you're talking with us and don't talk to anybody else.

11 WITNESS: I'm not talking to anybody else.

12 THE COURT: Okay. Proceed, Ms. Eiland.

13 ELENA ZASYTIENE

14 a Defendant herein, having been first duly sworn, testified as
15 follows:

16 DIRECT EXAMINATION OF MS. ZASYTIENE BY ATTORNEY EILAND

17 Q: Ms. Zasytiene, do you know Ms. Krasauskiene, the Plaintiff?
18 Ms. Zasytiene, can you hear me?

19 A: Yes, I can -- not very well, though, but I can.

20 Q: Okay. Do you know Ms. Krasauskiene, the Plaintiff?

21 A: I knew very well.

22 Q: How do you know her?

23 A: Well, actually I met her (more than) 10 years ago.

24 Q: And would you say that you and Ms. Krasauskiene are
25 friends?

1 I mean, I can issue a writ and then we can later talk about whether
2 they can actually execute on the writ because you don't have the
3 material, that's a different issue. My only issue is who has the
4 right of possession.

5 MS. EILAND: Okay.

6 Q: Okay, Ms. Zasytiene, can you hear me? Can you hear me?

7 A: I can.

8 Q: Okay. We're gonna move on to another issue then. Did you
9 later register to have the car registered in your name?

10 A: Yes. Because this -- because we -- this was Saturday, so
11 Monday morning I went to the -- to department of motor vehicle and -
12 - and register the title in my name. Which was the 10th of
13 September.

14 Q: Okay. Could you please pull out of the packet I sent you,
15 Exhibit L and Exhibit M.

16 A: Okay, where -- but what?

17 Q: Okay. Exhibit L is a Colorado registration, and Exhibit M
18 is the title.

19 A: Okay.

20 Q: And the title has the word void all over it.

21 A: Yes.

22 Q: Okay. Do you have those two documents?

23 A: Yes, I do have in front of me.

24 Q: And are these the two -- did you receive these two
25 documents the day you registered the car?

1 that the story is actually exactly the way it was set -- told by my
2 client. She never did defraud anybody. And she tried to rectify
3 the situation before anyone was hurt or could be hurt. So when she
4 found out and went and got legal advice, the rectification of that,
5 it's just like a conspiracy, if you withdraw from the conspiracy and
6 if you rectify that, you are no longer a conspirator. And if the
7 clean hands doctrine, and I don't believe that a replevin is
8 actually an (inaudible) -- more in tort than it does in equity. I
9 think, in Colorado, clean hands, however, would say if you're gonna
10 do clean hands you've gotta have clean hands, the Defendants have no
11 more clean hands than -- than the Plaintiff does, then this Court
12 must put -- put things back at the beginning where -- and since no
13 one was hurt -- and the beginning is Ms. Krasauskiene has her car
14 back, no one is out a penny, not a dime.

15 **FINDINGS AND RULINGS BY THE COURT**

16 THE COURT: Thank you, Mr. Hartley. The Court has, as I've
17 said a couple of times, a very narrow issue before it at this stage
18 of the proceedings. The case involves a number of issues, but most
19 of those issues are not before me. Under Rule 104, I am to decide --
20 -- I am to make a preliminary determination of which party with
21 reasonable probability is entitled to possession, use and
22 disposition of in this case the car. I have been provided with
23 considerable testimony today. I find significant credibility issues
24 on the defense side. I find some credibility issues on the
25 Plaintiff's side. Frankly, neither version of the story of what was

1 supposed to happen or did happen hangs together very well. There
2 are a lot of inconsistencies that don't make a lot of sense. And so
3 credibility is a key issue here, and candidly I look for a way to
4 see if I can resolve this or if somehow narrow the credibility
5 issues. And in addressing those, or addressing that desire, I am --
6 I remember quite clearly, though no one has actually cited it to me
7 other than for a general statement by Mr. Lewis, having done a case
8 on it at great length some years ago, but not having looked at it
9 recently, that the law is that the law will not enforce a contract
10 that is quote illegal, but that is generally explained to be void
11 against public policy, because illegal tells you so little, other
12 than, you know, if it's a contract that put out a hit on somebody or
13 something like that, or a contract for illegal drugs. The Court
14 finds that if it accepts the Plaintiff's versions of events, the
15 purpose of the contract was to defraud creditors. It does not
16 appear that any creditors were actually defrauded. It does appear,
17 if one accepts the Plaintiff's version of events, that the Plaintiff
18 tried to unwind the deal after it had been done. The record that is
19 directly presented in writing is the title was transferred from the
20 Plaintiff to Ms. Sisco. There is a title document, they are real
21 signatures on them. That title was then transferred to Ella,
22 because I can't -- Elena, because I can't pronounce her name either,
23 to Elena. Those signatures are real despite the disputes over
24 exactly how they occurred. That means the state of title is that
25 Elena owns legal title to the car. The Plaintiff asked me to unwind

1 that legal title on the basis of enforcement of a contract to
2 defraud creditors. The Court finds that that would be violative of
3 the basic legal principle that the law will not aid a contract
4 against public policy. The argument was raised that I should
5 restore them to the status quo. Well, as I understand the law it's
6 to leave the parties in the position they are in when they come to
7 the courthouse, and the position they were in when they came to the
8 courthouse as I understand it was that legal title rested with Elena
9 and possession also rested with Elena because she had taken the
10 vehicle. This is a preliminary determination under Rule 104 and is
11 not a final decision. I expect to have some significant briefing,
12 quite frankly, on that legal issue, 'cause I may well be wrong since
13 I've not been given any actual authority by any party, but I have to
14 make the call the best I can based on my memory of the law and so I
15 do that. Which means I deny the request for writ of replevin. The
16 undertaking, I believe it's been referred to instead of bond, that
17 the bond is ordered released. The parties should confer consistent
18 with Rule 16 and 26 to decide on their path of proceeding in the
19 case and file a case management order within 30 days of today's
20 date.

21 With respect to the personal property that is described in
22 Exhibit 15, Plaintiff's Exhibit 15, there is no dispute that the
23 Plaintiff has full rights of possession in those items. There is
24 some dispute as to where they are, but in terms of the issues today
25 the Court grants the request for a writ of replevin with respect to

1 the items listed in Exhibit 15 or personal property excluding the
2 car. And we can have further proceedings if we need to if they are
3 not returned and if it is ultimately found that they are in the
4 possession of one or more of the Defendants.

5 Does the Plaintiff wish any clarification of the rulings
6 (inaudible)?

7 MR. HARTLEY: No.

8 THE COURT: Does the defense wish any clarification of the
9 ruling?

10 MS. EILAND: No, Your Honor.

11 MR. LEWIS: No, Your Honor, other than you had mentioned
12 significant briefing on this issue of enforcement of an illegal
13 contract. Would you like briefs on that? Is the Court requesting
14 those?

15 THE COURT: Ma'am, if you could keep your voice down, we are
16 still in court. Ma'am. I anticipate that you'll give me a briefing
17 if you want me to make an informed decision. I will defer to the
18 parties on how exactly you want to raise the legal issue, if whether
19 you want to leave it to trial briefs or do it ahead of that. But it
20 will need to be briefed at some point.

21 MR. LEWIS: Very well. And is it correct Your Honor's not
22 making any factual determinations concerning the actual events.

23 THE COURT: I don't believe I have to. Because if I accept the
24 Plaintiff's version of events -- I made a factual finding that there
25 are serious credibility issues with respect to the defense and that

1 there are some credibility issues with respect to the Plaintiff.
2 But I don't believe I need factual finding, because if I accept all
3 the allegations as presented by the Plaintiff, they're still not
4 entitled to the relief they are requesting.

5 MR. LEWIS: Very well, Your Honor.

6 THE COURT: Court is in recess.

7 (END OF RECORDED PROCEEDING, 07CV4480, 10/12/07, 3:13:20.)

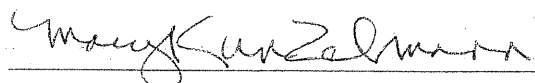
8 TRANSCRIPTIONIST'S CERTIFICATE

9 The above and foregoing is a true transcript of the hearing in
10 proceedings taken in the above-entitled case, which was audio
11 recorded in the El Paso County Combined Court at the time and place
12 set forth above, which was listened to and transcribed to the best
13 of my ability.

14 Done this 30th day of October, 2007.

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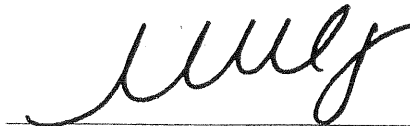


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Mary Kunzelmann, Transcriptionist

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Appendix D

DISTRICT COURT, EL PASO COUNTY, COLORADO Court Address: Post Office Box 2980 Colorado Springs, CO 80901	EFILED Document CO El Paso County District Court 4th JD Filing Date: Nov 19 2007 11:33AM MST Filing ID: 17294786 Review Clerk: Douglas Zinn
Plaintiff(s): RASA KRASAUSKIENE, v. Defendant(s): BAIBA SISCO, et al.	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> Case Number: 07CV4480 Div.: 2
ORDER RE: MOTION FOR RECONSIDERATION	

THIS MATTER comes before the Court on Plaintiff's Motion for Reconsideration. The position of each side is adequately set forth in the pleadings. The Court finds oral argument to be unnecessary.

The Court held an evidentiary hearing on Plaintiff's request for replevin on October 12, 2007. At the conclusion of the hearing, the Court found that the contract being asserted by Plaintiff was a contract intended to hide assets from creditors and, therefore, void as against public policy. Defendant Zasytiene held possession of the car at issue as well as title under the title documentation for the car. The Court denied Plaintiff's request to disturb this status quo by issuing an order enforcing the original contract between Plaintiff and Defendant Sisco.

Plaintiff now asks the Court to reconsider that ruling. Plaintiff essentially argues that the Court should restore the parties to the situation as it existed prior to the parties' contract to defraud creditors. Plaintiff cites little applicable authority for her request.

The Court has reviewed the available precedent. The Colorado Supreme Court answered

the question presented by the parties six decades ago. 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). This doctrine has remained unchanged since it was issued, and the Court finds no reason to depart from the rule of the Colorado Supreme Court in this case.

Plaintiff’s request to reconsider is DENIED. The temporary order to preserve property issued in this case is hereby VACATED. The Court DENIES the request to strike the attorney fee affidavit of Dennis Hartley and accepts the affidavit as timely filed in light of the circumstances presented. Defendants have 10 days to object to the amount of fees requested.

Within 30 days of the date of this Order, the parties are directed to file a joint status report and case management order addressing the remaining issues in the case. Failure to comply with this requirement may result in dismissal of the case for failure to prosecute.

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

DONE and ORDERED this 19th day of November, 2007.

BY THE COURT



David S. Prince
DISTRICT COURT JUDGE