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<p>COURT OF APPEALS, STATE OF COLORADO Court Address: 2 East 14<sup>th</sup> Avenue Denver, CO 80203</p>	<p>2008 SEP -3 P 1:31 COURT OF APPEALS D · COURT USE ONLY · Case No: 08CA266</p>
<p>Appeal From the El Paso County Dist. Court, 4<sup>th</sup> JD Honorable David Prince, Judge</p>	<p>Tr. Ct.: 2007CV4480 Div: 2</p>
<p>RASA KRASAUSKIENE, Plaintiff-Appellant, v. BAIBA SISCO, ELENA ZASYTIENE, and DIANA WOODARD, Defendants-Appellees. Attorney for Plaintiff-Appellant Dennis W. Hartley, Esq. (#788) DENNIS W. HARTLEY, P.C. 1749 S. 8<sup>th</sup> St., Ste. 5 Colorado Springs, CO 80906</p>	
<p><b>REPLY BRIEF</b></p>	

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

## ARGUMENT

### I. Plaintiff Has Not Sought to Enforce the Illegal Contract

Despite Defendants' repeated claims to the contrary, Plaintiff does not now seek, nor has she ever sought, to enforce the illegal contract. As was plainly stated in the Opening Brief:

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.

*See* Opening Brief at 10. It is precisely Plaintiff's attempt to **undo** the illegal contract which sets her apart from virtually every other case in the *Potter v. Swinehart* line of decisions, in which one of the parties sought to **enforce** the illegal contract. *See, e.g., Hope v. Linden Park Blood-Horse Ass'n*, 34 A. 1070 (N.J. 1896); *Drake v. Lauer*, 86 N.Y.S. 986 (N.Y. App. Div. 1904); *Russell v. Courier Printing & Publishing Co.*, 95 P. 936 (Colo. 1908); *Metropolitan Life Ins. Co. v. Roma*, 50 P.2d 1142 (Colo. 1935).

As noted in the Opening Brief, the only things that prevented the Plaintiff from undoing the illegal contract were the acts of theft, fraud, and perjury committed by the Defendants. It was through these acts that Defendants have sought not only to prevent the Plaintiff from righting her wrong, but also to reap the benefit of the illegal agreement. Gone from the Answer Brief is the delight the

Defendants showed in their filings below that although they lied, cheated and stole, there was nothing the Plaintiff could do about it. This unabashed air has been replaced, for purposes of this appeal, with nary a mention of Defendants' nefarious deeds save for the Defendants claim that they "disagree with many of the facts averred" by the Plaintiff.

Plaintiff simply urges this Court to look beyond the rigid application of *Potter v. Swinehart* and its ilk to recognize an exception for a party that has taken steps to disavow and undo an illegal contract. Again, the Plaintiff has not come to this Court, or the court below, in an attempt to enforce the illegal contract. This is not a case where the Plaintiff is asking the Court "to divide the loot." Rather, the Plaintiff has attempted, from the moment she consulted with a bankruptcy attorney, to undo the contract and reverse the fraudulent transfer of assets. However, Plaintiff has been impeded, at every opportunity, by the reprehensible conduct of the Defendants. In order to support their hastily created version of events, not only did the Defendants forge supporting documents (the "bill of sale" and the "promissory note"), but they offered perjured testimony to trial court below in support of those documents.<sup>1</sup> Not only did the Defendants fraudulently obtain title

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<sup>1</sup>The Defendants' version of events is so absurd as to warrant a brief review: first, neither of the Defendants acknowledge that they were part of, or had any knowledge of, Plaintiff's "scheme" to defraud creditors; second, Defendant Sisco purchased a vehicle, sight unseen, from a stranger, who was allowed to keep the vehicle for a month at no charge; third, when the vehicle was ultimately not delivered, Defendant Sisco did not contact the police or an attorney, but instead chose to sell the vehicle to her friend Defendant Zasytiene for \$10,000, the same person who had

to the vehicle, but they used that fraudulent title to steal the car.

This is not a simple case relating to an illegal contract, as the Defendants would have this Court believe. This is a case where the Defendants have used every nefarious tool at their disposal to deceive the Plaintiff and the courts in order to abscond with their ill-gotten gains. It is the Defendants, and not the Plaintiff, who are asking this Court to enforce the illegal contract, to ratify 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. It is the Defendants, and not the Plaintiff, who are asking this Court to sanction their behavior, and to reward their perjury, fraud, and illicit behavior with possession of the vehicle in question.

The ultimate finding by the trial court was to award the vehicle to Defendant Zasytiene because she had legal title "and because she had taken possession of the vehicle." *Id.* at p. 162. Of course, as demonstrated above, Defendant Zasytiene only came to possess the legal title to the vehicle as a result of forgery and fraud, and only came into possession of the vehicle as a result of theft. These actions are completely unrelated to Plaintiff's illegal contract, and under a replevin analysis, should have served as the basis for returning the vehicle to Plaintiff, who is without a doubt the rightful owner.

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loaned her \$13,000 to purchase the vehicle only weeks before, resulting in a \$3,000 loss to Defendant Sisco; and fourth, Defendants created a "bill of sale" and "promissory note" on the same day, signed the title of the vehicle over to Defendant Zasytiene, who then obtained title to the vehicle before stealing it from the Plaintiff's home.

**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 29th day of August, 2008.

Respectfully submitted,

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

By: \_\_\_\_\_



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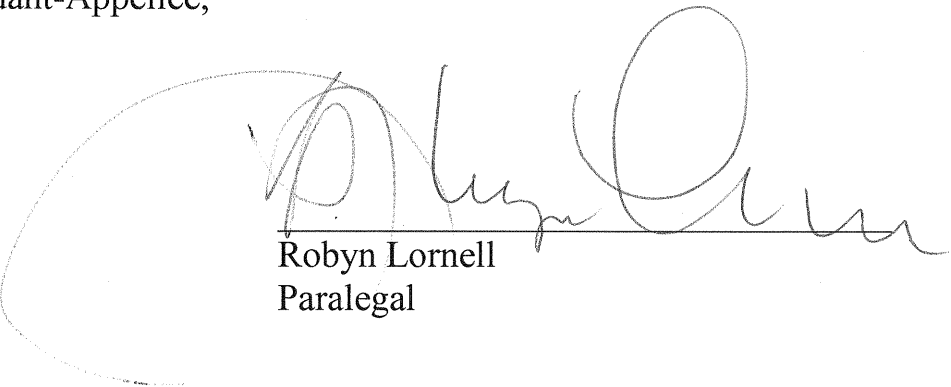
**CERTIFICATE OF SERVICE**

I hereby certify that on this 2<sup>ND</sup> day of September, 2008, a true and correct copy of the foregoing **Reply Brief** was placed in the U.S. Mail, postage prepaid, addressed to the following:

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