

IN THE SUPREME COURT OF THE STATE OF NEVADA

DENNIS KOGOD,

Appellant/Cross-
Respondent,
v.

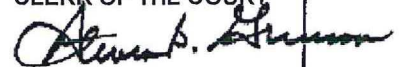
GABRIELLE CIOFFI-KOGOD,

Respondent/Cross-
Appellant.

Supreme Court No. 71147
District Court Case No. D-13-
489442-D

RESPONDENT/CROSS-APPELLANT'S OPPOSITION TO
APPELANT/CROSS RESPONDENT'S MOTION FOR ALTERNATIVE
SECURITY TO ENABLE APPELLANT TO SELL HOUSE AND REPLACE
SECURITY

EXHIBIT "A"



NEOJ

DISTRICT COURT

CLARK COUNTY, NEVADA

GABRIELLE ROSE CIOFFI-KOGOD,)

Plaintiff,)

v.)

CASE NO. D-13-489442-D

DEPT NO. Q

DENNIS L. KOGOD,)

Defendant.)

NOTICE OF ENTRY OF ORDER

TO: ALL PARTIES AND/OR THEIR ATTORNEYS

Please take notice that an Order has been entered in the above-entitled matter, a copy of which is attached hereto. I hereby certify that on the above file stamped date, I caused a copy of this Notice of Entry of Order to be:

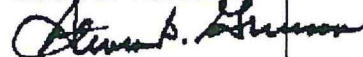
☒ E-Served pursuant to NEFCR 9 on, or placed in the folder(s) located in the Clerk's Office of, the following attorneys:

Radford Smith, Esq.

Daniel Marks, Esq.

/s/ Kimberly Weiss

Kimberly Weiss
Judicial Executive Assistant
Department Q



1
2 ORDR

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4 DISTRICT COURT

5 CLARK COUNTY, NEVADA

6
7 GABRIELLE ROSE CIOFFI-KOGOD,)

8 Plaintiff,)

9 v.)

CASE NO. D-13-489442-D

DEPT NO. Q

10
11 DENNIS L. KOGOD,)

12 Defendant.)

13
14 ORDER

15
16 Defendant filed an Emergency Motion to Release Lien on Oak Pass Residence
17 (Sep. 18, 2017) (hereinafter referred to as Defendant's "Motion"). Following entry of
18 an Order Shortening Time (Sep. 25, 2017), Defendant's Motion was set on this
19 Court's September 28, 2017 Chamber Calendar. Plaintiff filed an Opposition to
20 Defendant's Emergency Motion to Release Lien on Oak Pass (Sep. 19, 2017)
21 (hereinafter referred to as Plaintiff's "Opposition"). This Court has reviewed and
22 considered the papers on file and finds as follows:
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24
25 Preliminarily, the matter before this Court is ancillary to the issue currently on
26 appeal before the Nevada Supreme Court. In this regard, the matter before this Court
27 relates to the enforcement of the Stipulation and Order Resolving Defendant's Ex Parte
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2 Motion Filed on September 8, 2017 (Sep. 14, 2017) (hereinafter referred to as
3 "Stipulation"). The parties' Stipulation provides, in relevant part, as follows:

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5 3. The parties agree that Gabrielle will agree to execute
6 documents necessary to remove the lien (Lien Number 20170559132) on
the Oak Pass residence upon the completion of the following:

7 A. Dennis shall deposit \$1,955,292.00 into a blocked
8 account at UBS calculated as follows:

9 a. \$1,649,792 as security for the payment of the
10 judgments identified in paragraph 2 above;

11 b. \$75,500 as security for the judgment entered
12 by the Court by Order dated December 5, 2017 against
Dennis and in favor of Gabrielle for reimbursement for
expert fees and costs;

13 c. \$230,000 as security for legal interest that has
14 accrued to date on the aforementioned judgments, and one
additional year of legal interest on those judgments.

15 B. Dennis shall provide written confirmation from UBS that
16 the [sic] it will not allow any transfer of funds from the account
17 established above without further direction from this Court, the Nevada
Supreme Court or the Nevada Court of Appeals.

18 Stipulation, 2-3.

19
20 The terms of the Stipulation are neither vague nor ambiguous. A condition
21 precedent to Plaintiff releasing the existing security requires that Defendant "deposit
22 \$1,955,292.00 into a blocked account at UBS." *Id.* Although sufficient security would
23 seemingly be established by "blocking" an existing account (UBS Account No. 745)
24 that holds well in excess of the stated amount of security, it is not this Court's
25 prerogative to question or modify the express terms of the Stipulation. The Stipulation
26 requires Defendant to "deposit \$1,955,292.00 into a blocked account at UBS." Based
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2 on this Court's review of the record, Defendant has not established an account into
3 which the specified sum has been deposited.

4 The Stipulation also expressly requires that Defendant "provide written
5 confirmation from UBS that the [sic] it will not allow any transfer of funds from the
6 account established above without further direction from this Court, the Nevada
7 Supreme Court or the Nevada Court of Appeals." *Id.* Although the email
8 correspondence to Defendant's Motion suggests that a letter may be sent "attesting to
9 the same," no such written confirmation has been provided to the Court. Based on the
10 express terms of the Stipulation, this Court finds that a second condition precedent to
11 Plaintiff's release of security should be written confirmation from UBS (i.e., the letter
12 referenced in the attached email correspondence) that mirrors their stipulated language.

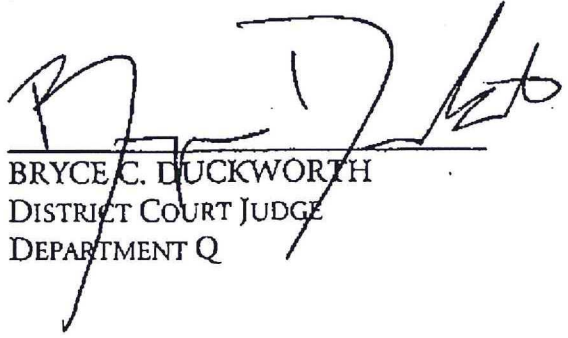
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16 Plaintiff is entitled to an award of attorney's fees pursuant to EDCR 5.501 and
17 EDCR 7.60. This Court has considered the factors set forth in *Brunzell v. Golden Gate*
18 *National Bank*, 85 Nev. 345, 455 P.2d 31 (1969). Plaintiff should file and serve the
19 billing statements that reflect the actual time spent in opposing Defendant's Motion.
20 Thereafter, Plaintiff should submit a separate Order for fees with a blank left for the
21 amount to be determined by the Court.

22
23 Based on the foregoing findings, and good cause appearing therefor,

24
25 It is hereby ORDERED that Defendant's Motion is DENIED. It is further
26 ORDERED that, upon satisfaction of the conditions set forth in the Stipulation (and
27 discussed herein), Plaintiff shall sign the documents necessary to release the existing
28 security. It is further ORDERED that Plaintiff's request for an award of fees is

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2 GRANTED. It is further ORDERED that the issue of fees shall be addressed by way
3 of separate Order submitted by Plaintiff upon Plaintiff's filing of her billing statements
4 associated with this matter.
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6 DATED this 2nd day of October, 2017.

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8 
9 BRYCE C. DUCKWORTH
10 DISTRICT COURT JUDGE
11 DEPARTMENT Q
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BRYCE C. DUCKWORTH
DISTRICT JUDGE

FAMILY DIVISION, DEPT. Q
LAS VEGAS, NEVADA 89101

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2
3 DENNIS KOGOD,

4 Appellant/Cross-Respondent,

5 v.

6 GABRIELLE CIOFFI-KOGOD,

7
8 Respondent/Cross-Appellant.

Supreme Court Electronically Filed
District Court Case No. 2017-08542-ADM.
Oct 17, 2017 08:51 am
Elizabeth A. Brown
Clerk of Supreme Court

9
10 **RESPONDENT/CROSS-APPELLANT'S OPPOSITION TO APPELLANT/CROSS**
11 **RESPONDENT'S MOTION FOR ALTERNATIVE SECURITY TO ENABLE**
12 **APPELLANT TO SELL HOUSE AND REPLACE SECURITY**

13 Respondent/Cross-Appellant GABRIELLE CIOFFI-KOGOD ("Gabrielle"),
14 through her counsel Radford J. Smith, Esq. and Garima Varshney, Esq., of the firm
15 Radford J. Smith, Chartered, submit the following points and authorities in Opposition to
16 the Motion for Alternative Security to Enable Appellant to Sell House and Replace
17 Security filed October 9, 2017 by Appellant/Cross-Respondent DENNIS KOGOD
18 ("Dennis"), and request that the Court deny that Motion in its entirety.
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21 **I. STATEMENT OF FACTS**

22 In its Findings of Fact, Conclusions of Law and Decree of Divorce filed August 22,
23 2016, the district court, Judge Bryce Duckworth, ordered Dennis to pay Gabrielle
24 \$1,630,292 in lump sum alimony, and \$19,500 for as sanctions for Dennis's 39 violations
25 of the district court's Joint Preliminary Injunction. By Order dated January 26, 2017 the
26 Court granted Dennis's request for stay of execution on those judgments based upon his
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1 providing security for payment of the judgments in the form of a lien in the amount of
2 \$1,649,792.00 on the lot and residence located at 9716 Oak Pass Road, Beverly Hills,
3 California 90201 (APN 4348-007-050) ("Oak Pass residence") granted to him under the
4 Decree.
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7 On September 8, 2017, Dennis filed in the district court an Ex Parte Motion to
8 Place Cash Bond Security for Spousal Support and Sanctions. On September 11, 2017,
9 Gabrielle filed her Opposition to that Motion. The parties then entered negotiations and
10 resolved all issues associated with Dennis's Motion. The resolution was memorialized
11 into a Stipulation and Order executed by both parties. The district court approved,
12
13 executed, the Stipulation and Order on September 14, 2017.
14

15 The September 14, 2017 Stipulation and Order reads:
16

17 1. The parties agree that Gabrielle will agree to execute documents
18 necessary to remove the lien (Lien Number 20170559132) on the Oak Pass
19 residence upon the completion of the following:

20 A. Dennis shall deposit \$1,955,292.00 into a blocked account at UBS
21 calculated as follows:

22 a. \$1,649,792 as security for the payment of the judgments
23 identified in paragraph 2 above;

24 b. \$75,500 as security for the judgment entered by this Court by
25 Order dated December 5, 2017 against Dennis and in favor of Gabrielle for
26 reimbursement for expert fees and costs;

27 c. \$230,000 as security for legal interest that has accrued to date
28 on the aforementioned judgments, and one additional year of legal interest
on those judgments.

1 B. Dennis shall provide written confirmation from UBS that the [sic] it
2 will not allow any transfer of funds from the account established above
3 without further direction from this Court, the Nevada Supreme Court or the
4 Nevada Court of Appeals.

5 *See*, Exhibit “2” attached to Dennis’s present motion.

6 Dennis has not met the conditions precedent to Gabrielle’s execution of
7 documents necessary to release the Oak Pass lien. He has not deposited \$1,955,292.00
8 into a blocked account at UBS. Instead, he has designated one of his existing accounts,
9 containing approximately \$4M as a blocked account. The language of the agreement
10 indicates that Dennis will “establish” the account. The stipulation does not permit
11 Dennis to commingle other funds with the designated monies for obvious reasons; his
12 death, and his children with another woman during marriage could complicate
13 Gabrielle’s ability to cause the funds necessary to satisfy her judgment upon affirmance.
14 Dennis can easily transfer the agreed amount to a new account at UBS.¹

15
16 Moreover, Dennis has failed to provide “written confirmation from UBS that the
17 [sic] it will not allow any transfer of funds from the account established above without
18 further direction from this Court, the Nevada Supreme Court or the Nevada Court of
19 Appeals.” Dennis contends that he complied with that condition by providing an email
20 from Peter. L. Waldron to his counsel, Nicole Young, Esq. That email states:
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27 ¹ In its March 9, 2017 Order, this Court directed Gabrielle to place \$2,043,931.50 from monies granted
28 to her in UBS accounts into a blocked, interest-bearing account within 7 days of the Order. Gabrielle
accomplished that task within a week by transferring monies from the existing account to the account
designated to hold the specified sums. Dennis has provided no evidence either to the district court or
this Court that suggests he could not do the same.

1 Hi Nicole,

2 Per the Stipulation and Order we received dated September 14th, Dennis
3 currently has set aside the account ending in 45, which is funded at
4 \$4,662,070.32, for security as payment of the prior August 22, 2016 order.

5 This account is intended to be restricted from transfers and withdrawals
6 without first receiving directions and instructions from the appropriate legal
7 sources.

8 Per our conversation, you may receive a letter from our office attesting to
9 the same. Please let me know how to best help.

10 *See*, Exhibit “3” attached to Dennis’s. The email from Mr. Waldron does not evidence
11 the “establishment” of any account, but instead references an existing account. It does
12 not indicate that Mr. Waldron has the authority to bind UBS regarding its confirmation
13 of its duties under the stipulation. The emails statement that the account is “intended to
14 be restricted from transfers and withdrawals is not an affirmative statement that UBS
15 “will not allow” any transfers or withdrawals as required by the language of the
16 Stipulation and Order. The emails reference to “appropriate legal sources” is not an
17 acknowledgement by UBS that it will not allow transfers or withdrawals “without
18 further direction from this [the District Court], the Nevada Supreme Court or the Nevada
19 Court of Appeals” as required by the Stipulation and Order. Though Mr. Waldron’s
20 email states a willingness of UBS to provide a letter complying with the terms of the
21 “September 14th” Stipulation and Order, Dennis did not provide either the district court,
22 nor has he provided this court, with any evidence of a letter from UBS complying with
23 the terms of the Order.
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1 On September 18, 2017, Dennis filed an Emergency Motion to Release Lien on
2 Oak Pass Residence, and on September 19, 2017, Gabrielle filed her Opposition and
3 Countermotion for Attorney's fees. By written Order filed October 4, 2017, the district
4 court denied Dennis's Motion, finding that he had not complied with the September 14,
5 2017 order's first condition precedent by failing to deposit the specified sum
6 (\$1,955,292.00) into a blocked account at UBS, and that he had failed to comply with
7 the second condition precedent by failing to provide a letter from UBS that "mirrors [the
8 parties] stipulated language." See Exhibit "A" attached hereto. The district court further
9 found that Dennis should pay Gabrielle's reasonable attorney's fees.
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14 **I. DENNIS'S MOTION DOES NOT MEET THE PREREQUISITES FOR**
15 **A MOTION FOR STAY UNDER NRAP 8**

16 The parties agreed to a stipulation and order defining the steps Dennis must
17 accomplish to cause Gabrielle to release her lien on the Oak Pass property. Dennis cites
18 NRAP 8(a)(1) to support his request that the Nevada Supreme Court alter its January 26,
19 2017 Order by substituting alternative security for the Oak Pass lien. NRAP 8(a)(2)(A)
20 states that a motion for stay in the Nevada Supreme Court *shall*:
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- 22
23 (i) state that moving first in the district court would be impracticable; or,
24 (ii) state that, a motion having been made, the district court denied the motion
25 or failed to afford the relief requested and state any reasons given by the
26 district court for its action;

27 Here, Dennis's motion states neither. Dennis moved the court for an order for
28 alternative security in the district court, and the parties stipulated to a complete

1 resolution of that Motion. The district court did not deny the motion for alternative
2 security, but instead entered its order consistent with the parties' stipulation. Dennis's
3 motion is not property brought under NRAP 8 because the district court did not deny his
4 motion.
5

6
7 Dennis's present motion requests that this Court overturn a decision in which the
8 district court interpreted the language of the stipulated September 14, 2017 Order.
9 Dennis argues that the district court should have found that he met the conditions
10 precedent in the stipulated order. Thus, Dennis's motion is not a motion for alternative
11 security, but instead it is a challenge to a district court's exercise of discretion to enforce
12 its order. Dennis's right to review does not lie in a Motion under NRAP 8.
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15 **II. DENNIS HAS NOT COMPLIED WITH THE SEPTEMBER 14, 2015** 16 **STIPULATED ORDER**

17 The parties' agreement memorialized in writing constitutes an enforceable
18 stipulation cognizable under EDCR 7.50. A district court has the discretion to enforce
19 the stipulated order as a contract. *See, Grisham v. Grisham*, 128 Nev. 679, 685, 289
20 P.3d 230, 234 (2012)(stipulated settlement agreement enforced by application contract
21 principles). Dennis seeks to sidestep the plain language of the stipulation. For the
22 reasons stated above, the district court properly determined that Dennis has not complied
23 with the conditions precedent in the parties' agreement, and thus Gabrielle is under no
24 duty of performance.
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1 Where a contract is thus conditional -- that is, where it rests upon a condition
2 precedent -- until the performance of the condition it cannot be enforced,
3 because, until that time, there is not true contract. * * * The fact that a
4 contract depends upon a condition precedent, which has not yet been
5 performed, is always a complete defense to a suit for its specific
6 enforcement. Equity, therefore, never relieves against the nonperformance or
7 breach of conditions precedent, since no estate vests, or right accrues, as
8 long as the condition thus remains unperformed.

9 *East Oregon Land Co. v. Moody*, 198 F. 7, 16 (9th Cir. 1912). Gabrielle requests that
10 this Court find that Dennis has not met the conditions precedent in the stipulated
11 September 14, 2017 order, and deny his motion in its entirety.

12 DATED this 16 day of October, 2017

13 RADFORD J. SMITH, CHARTERED

14 By: 
15 _____

16 RADFORD J. SMITH, ESQ.
17 Nevada State Bar No. 002791
18 2470 St. Rose Parkway, Suite 206
19 Henderson, Nevada 89074
20 Attorneys for Respondent/Cross-Appellant
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