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IN THE SUPREME COURT OF THE STATE OF NEVADA

DENNIS KOGOD,

Case No. 71147

Appellant,

vs.

GABRIELLE CIOFFI-KOGOD,

Respondent.

**REPLY IN SUPPORT OF MOTION FOR ALTERNATIVE SECURITY TO
ENABLE APPELLANT TO SELL HOUSE AND REPLACE SECURITY**

COMES NOW the Appellant DENNIS KOGOD, by and through his
counsel, Daniel Marks, Esq., and Nicole M. Young, Esq., of the Law Office of
Daniel Marks, and submits his Reply in Support of Motion for Alternative
Security to Enable Appellant to Sell House and Replace Security. The grounds for
Appellant's Reply are set forth in the following memorandum of points and
authorities.

DATED this 24 day of October, 2017.

LAW OFFICE OF DANIEL MARKS



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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. FACTUAL BACKGROUND**

3 The instant appeal is the result of a highly contentious divorce. Throughout
4 all of the divorce proceedings, including this appeal, Respondent Gabrielle Cioffi-
5 Kogod (hereinafter "Gabrielle") has taken the position that she will oppose
6 anything proposed by Appellant Dennis Kogod (hereinafter "Dennis") for the sole
7 purpose of disagreement. She has consistently shown that she will ignore logic
8 when making a decision. This is the only explanation for why Gabrielle refuses to
9 sign a release of lien on the Oak Pass residence despite the fact that Dennis has
10 blocked over \$4,000,000.00 to secure her interests on appeal. Gabrielle knows that
11 she received the bulk of the parties' liquid assets. She knows that Dennis received
12 assets that are not liquid. Because he is attempting to sell one of those non-liquid
13 assets, he does not have \$1,955,292.00 in cash to transfer the lien. He does have
14 an account that has over \$4,00,000.00, which is not liquid, and when he sells the
15 Oak Pass residence, he would transfer the lien to a separate account.

16 Based on the order of the district court, Dennis is not placed in an absurd
17 position. He cannot sell the Oak Pass home since there is a lien on that home, and
18 he cannot establish a separate account until the home is sold. When the parties
19 were negotiating the Stipulation and Order to resolve this issue, Dennis made
20 Gabrielle aware of this issue. Before the Stipulation was drafted, Dennis sent
21 Gabrielle a statement of the account that he would use to secure her interests and
22 notified her that he was in the process of having UBS block that account. Gabrielle
23 knew this was the account that Dennis was going to use. Her objection to signing
24 the release is shocking based on the conversations between counsel and the
25 documents provided to her counsel during the negotiation of the stipulation and
26 order. To this day, Gabrielle has failed to show how she will be harmed or
27 prejudiced by having over \$4,000,000.00 securing her interest on appeal until the
28 Oak Pass residence is sold.

1 **II. LEGAL ARGUMENT**

2 Dennis followed this Court's rules relating to the instant motion. First,
3 pursuant to Rule 8 of the Nevada Rules of Appellant Procedure, he filed a motion
4 before the district court to modify this Court's previous order allowing Dennis to
5 provide alternative security for a stay of execution of judgment. NRAP 8(a)(1)(C).

6 Second, after filing a motion before the district court, Dennis is permitted to
7 file a motion in this Court if "the district court denied the motion or failed to
8 afford the relief requested." In this case, the district court "failed to afford the
9 relief requested."

10 The district court denied Dennis' motion even though he was using an
11 account valued at over \$4,000,000.00 to secure Gabrielle's interests on appeal.
12 The court denied that motion stating that "[a] condition precedent to Plaintiff
13 releasing the existing security requires that Defendant 'deposit \$1,955,292.00 into
14 a blocked account at UBS.'" (*See Order*, entered on October 4, 2017, attached to
15 Appellant's Motion as Exhibit 4.) This order is based on a highly technical reading
16 of the parties' stipulation. The district court even acknowledged this technical
17 reading when it stated, "Although sufficient security would seemingly be
18 established by 'blocking' an existing account . . . that holds well in excess of the
19 stated amount of security, it is not this Court's prerogative to question or modify
20 the express terms of the Stipulation." (*See Order*, entered on October 4, 2017,
21 attached to Appellant's Motion as Exhibit 4.)

22 Dennis is not seeking to "side-step" an agreement between the parties. If
23 Dennis had known that Gabrielle would refuse to sign the release based on
24 wanting the money in a separate account with only \$1,955,292.00 in that account,
25 then he would never have entered into that stipulation with her. At the time the
26 parties negotiated that Stipulation, he notified her that her interest would be
27 secured in the account holding over \$4,000,000.00. It was not until after the
28 stipulation was entered with the district court that Gabrielle notified him that she

1 would not accept that security. This Court should also reverse the award of
2 attorney's fees and costs in favor of Gabrielle.

3 **III. CONCLUSION**

4 Based on the foregoing, this Court should grant Dennis' instant motion by
5 releasing the lien on the Oak Pass residence, ordering that the UBS account
6 ending in 45 shall be security for Gabrielle's interests on appeal until the Oak Pass
7 residence is sold, and once the Oak Pass residence is sold, \$1,955,292.00 can be
8 placed in a blocked account until the conclusion of this appeal. Further, this Court
9 should reverse the district court's award of attorney's fees and costs against
10 Dennis.

11 DATED this 24 day of October, 2017.

12 LAW OFFICE OF DANIEL MARKS

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1 **CERTIFICATE OF COMPLIANCE**

2 I hereby certify that this motion complies with the typeface requirements of
3 NRAP 32(a)(5) and the type style requirements of 32(a)(6) because this motion
4 has been prepared in a proportionally spaced typeface using WordPerfect 11 in
5 Times New Roman style in size 14-point font.

6 I further certify that this motion complies with the page limitations of
7 NRAP 27(d)(2) because it does not exceed ten (10) pages.

8 Finally, I hereby certify that I have read this motion, and to the best of my
9 knowledge, information, and belief, it is not frivolous or interposed for any
10 improper purpose. I understand that I may be subject to sanctions in the event that
11 the accompanying motion is not in conformity with the requirements of the
12 Nevada Rules of Appellate Procedure.

13 DATED this 24 day of October, 2017.

14 LAW OFFICE OF DANIEL MARKS


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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I am an employee of the LAW OFFICE OF DANIEL
3 MARKS, and that on the 24 day of October, 2017, I did serve by Electronic Filing
4 a true and correct copy of the **REPLY IN SUPPORT OF MOTION FOR**
5 **ALTERNATIVE SECURITY TO ENABLE APPELLANT TO SELL HOUSE**
6 **AND REPLACE SECURITY**, as follows:

7 Radford J. Smith, Esq.
8 Garima Varshney, Esq.
9 Radford J. Smith, Chartered
10 2470 St. Rose Parkway, Suite 206
11 Henderson, Nevada 89074
12 Counsel for Respondent

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14 _____
15 An employee of the
16 LAW OFFICE OF DANIEL MARKS
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