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Electronically Filed
May 01 2021 06:50 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

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Supreme Court
Clerk of Supreme Court

No.: 82763
District Court Case No. A805928

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COMES NOW Plaintiff, Cheri Rene Wiman, by and through counsel of record, S. Don Bennion, Esq. of the Law Office of S. Don Bennion and pursuant to Nevada Rule of Appellate Procedure 3(f) submits this Case Appeal Statement for her appeal from the March 16, 2021 Notice of Entry of Order granting Defendant Coty Refaely's Motion to Enforce Settlement Agreement and Addendum and To Require Plaintiff To Execute Final Transfer Documents For Churchill Property, and denying Plaintiff Cheri Rene Wiman's Countermotion To Enforce Settlement Agreement Dismissing Case With Prejudice served electronically via the Court's ECF system in the above-referenced matter and states as follows:

1. Name of Appellant filing this Case Appeal Statement:

Cheri Rene Wiman

2. Identify the Judge issuing the Decision, Judgment or Order appealed

from: Honorable Judge David M. Jones, Department 29 of the Eighth Judicial District Court in Clark County, Nevada issued the Order from which this appeal is taken.

3. Identify each Appellant and the name and address of counsel for each

Appellant:

Appellant:

Cheri Rene Wiman

Counsel:

S. Don Bennion, Esq.

Nevada State Bar No. 4530

Law Office of S. Don Bennion

6980 O'Bannon Drive #400

Las Vegas, Nevada 89117

702-333-0777

702-333-0577f

don@bennionlaw.com

1 **4. Identify each Respondent and the name and address of counsel, if known,**
2 **for each**

3 **Respondent:**

4
5
6 Respondent:

7 Coty Refaely

8 Counsel:

9
10 Michael S. Strange, Esq.

11 Nevada Bar No.: 9429

12 Michael S. Strange & Associates, LLC

13 501 S. Rancho Dr. Suite A-7

14 Las Vegas, Nevada 89106

15 Telephone: (702)456-4357 Fax: (702)464-3042

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19 **5. Indicate whether any attorney identified above in response to question 3**
20 **or 4 is not**

21 **licensed to practice in Nevada and, if so, whether the District Court**
22 **granted that attorney permission to appear under SCR 42 (attach a copy**
23 **of any District Court Order granting such permission.):**
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1 All attorneys listed above are licensed to practice law in the State of
2 Nevada.

3 **6. Indicate whether Appellant was represented by appointed or retained**
4 **counsel in the**
5 **District Court:**

7
8 Appellant was represented by retained counsel in District Court.

9
10 **7. Indicate whether Appellant is represented by appointed or retained**
11 **counsel on appeal:**

12
13 Appellant is represented by retained counsel on appeal.

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16 **8. Indicate whether Appellant was granted leave to proceed in forma**
17 **pauperis, and the date of entry of the District Court Order granting such**
18 **leave:**

19
20
21 Appellant was not granted leave to proceed *in forma pauperis*.

22
23
24 **9. Indicate the date the proceedings commenced in the District Court (e.g.**
25 **the date of Complaint, indictment, information or petition was filed):**

1
2 Case No.: A-19-803928-C commenced in the District Court upon the filing of
3 the Complaint For Declaratory Relief on October 18, 2019.

4 **10. Provide a brief description of the nature of the action and the result in**
5 **the District Court, including they type of judgment or order being**
6 **appealed and the relief granted by the District Court:**
7

8
9 Plaintiff filed her Complaint in this matter on October 18, 2019. Defendant filed an
10 Answer and Counterclaim on November 8, 2019. On February 7, 2020, the parties
11 entered into a Settlement Agreement and General Release which provided Defendant
12 a time-limited right to purchase two pieces of real property from the Plaintiff. On
13 July 24, 2020, the parties entered into an Addendum to Settlement Agreement and
14 General Release allowing the Defendant additional time until October 31, 2020, to
15 purchase the properties from the Plaintiff. Defendant completed the purchase of one
16 of the properties within the time specified by the Settlement Agreement and General
17 Release but did not purchase the "Churchill" property as required by the subject
18 agreements. As of the deadline to purchase the Churchill property October 31, 2020,
19 the purchase did not occur, the Defendant's loan had not funded, and no closing
20 documents other than a promissory note and deed of trust had been prepared.
21 Pursuant to the terms of the Settlement Agreement and General Release and the
22 Addendum to the Settlement Agreement and General Release, once there is
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1 completion or termination of the terms therein, the parties were to dismiss the
2 litigation with prejudice. The termination date of the Addendum was October 31,
3 2020. The Addendum to the Settlement Agreement and General Release was a “one
4 time modification,” or extension of time for three months for Defendant to complete
5 the purchase of the Churchill property. Defendant failed to purchase the Churchill
6 property within the one-time extension under the terms of the Addendum by October
7 31, 2020.
8

9
10 The District Court’s March 16, 2021 Order granting Defendant’s Motion to
11 Enforce Settlement Agreement is a final order because the aforesaid Settlement
12 Agreement dated February 7, 2020, and the Addendum to the Settlement Agreement
13 dated July 24, 2020, require the dismissal of the above-entitled action.
14

15 The primary bases of the appeal of the District Court’s ruling concern two,
16 “unforeseeable” events, to wit: 1- “due to an *unforeseeable* event of a supposed
17 ‘lien’ still remaining on the Churchill property which was mistaken and ultimately
18 cleared, and the fact the deadline to purchase the real property fell on a holiday, there
19 was a delay in performing the purchase of the real property . . . prior to October 31,
20 2020;” and 2- “Even though the Addendum had a ‘time is of the essence clause’
21 because of the *unforeseeable* event and the fact the deadline to complete the transfer
22 fell on a holiday, there was no way to complete the purchase on that date and as such
23 extended the deadline to complete the transfer until the next business day which was
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1 November 5, 2021.” See Exhibit 1, District Court Order entered March 16, 2021, p.
2 2, ll. 12-20 (emphasis added). The holiday at issue was Nevada Day, which was
3 celebrated October 30, 2020.

4 On April 6, 2021, Plaintiff/Appellant filed her Motion to Certify the District
5 Court Order entered March 16, 2021, as a final order pursuant to Nev. R. Civ. P. 54.
6

7 **11. Indicate whether the case has previously been the subject of an appeal to**
8 **or original writ proceeding in the Supreme Court, and if so, the caption**
9 **and Supreme Court docket number of the prior proceeding:**
10

11
12 This case has not previously been the subject of an appeal or original writ
13 proceeding.
14

15
16 **12. Indicate whether this appeal involves child custody or visitations:**

17 This case does not involve child custody or visitation.
18

19 **13. If this is a civil case, indicate whether this appeal involves the possibility**
20 **of settlement:**

21 ///

22 ///

23 ///

24 ///

At this time, there is not a possibility of settling this case.

Respectfully submitted this 17 day of MAY ____ 2021.



S. Don Bennion, Esq.

Nevada State Bar No. 4530

Law Office of S. Don Bennion

6980 O'Bannon Drive #400

Las Vegas, Nevada 89117

(702)333-0777

Attorney for Appellant

Cheri Rene Wiman

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CERTIFICATE OF SERVICE

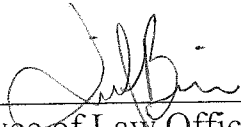
Pursuant to Nevada Rule of Appellate Procedure 27, and Nevada Rule of Civil Procedure 5(b)(2)(D), I certify that on the 15th day of May 2021, I caused the above and foregoing document entitled **CASE APPEAL STATEMENT** to be served upon those persons designated by the parties in the E-Service Master List for the above-referenced matter in the Nevada Supreme Court eFiling System in accordance with the mandatory electronic service requirements of Administrative Order 14-2 and the Nevada Electronic Filing and Conversion Rules addressed to the following persons, and by:

☒ [X] by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and

☐ [] hand delivery

to the party or their attorney(s) listed at the address below:

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Nevada Bar No.: 9429
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Las Vegas, Nevada 89106
(702)-456-4357
(702)464-3042F
Attorney for Respondent Coty Refaely


An Employee of Law Office of S. Don Bennion