

IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
May 13 2021 11:41 a.m.

CHERI RENE WIMAN,
Appellant,

Supreme Court Clerk
Elizabeth A. Brown
District Court Clerk
A. Brown

VS.

COTY REFAELY,

Respondent.

DOCKETING STATEMENT EXHIBITS PART ONE

EXHIBITS 1-3

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
Attorney for Appellant

EXHIBIT 1

Plaintiff Cheri Rene Wiman's
Complaint for Declaratory Relief
October 18, 2019

EXHIBIT 1



COMP

Gary S. Fink, Esq.
Nevada State Bar No. 8064
REZA ATHARI & ASSOCIATES, PLLC
3365 Pepper Lane, Ste. 102
Las Vegas, Nevada 89120
(702) 727-7777 tele
(702) 458-8508 fax
garyfink@atharilaw.com
Attorney for Plaintiff

CASE NO: A-19-803928-C
Department 29

**EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA**

CHERI RENE WIMAN,

Plaintiff,

CASE NO.:

DEPT. NO.:

vs.

COTY REFAELY; DOES I through X, and ROE
CORPORATIONS I to X, inclusive,

Arbitration Exemption:

Defendants.

*Declaratory Relief Requested Pursuant to
NRS 30.040*

COMPLAINT FOR DECLARATORY RELIEF

COMES NOW Plaintiff, CHERI RENE WIMAN, by and through her undersigned
counsel, Gary S. Fink, Esq. of REZA ATHARI & ASSOCIATES, and hereby complains and
alleges as follows:

PARTIES

1. At all relevant times, Plaintiff CHERI RENE WIMAN has been a resident of Clark
County, State of Nevada.

1
2 2. Upon information and belief, at all relevant times, Defendant COTY REFAELY has
3 been a resident of Clark County, State of Nevada.

4 3. DOES or I through X, inclusive ("DOES I- X") and ROE CORPORATIONS, I through
5 X, ("ROE CORPORATIONS I- X") inclusive, are persons, corporations or business
6 entities who are, or which may also be, responsible for or who directed or assisted in
7 the wrongful actions of the named Defendants, or who may be individual officers,
8 employees or agents of the named Defendants. The true identities of the DOES, I- X,
9 and ROE CORPORATIONS, I- X, are unknown to Plaintiff at the current time.
10 Plaintiff therefore alleges that DOES I- X and ROE CORPORATIONS I- X, are and/or
11 may be responsible in part for the damages or injuries suffered by Plaintiff as a result of
12 their wrongful actions and/or those of their agents and/or employees. Plaintiff will seek
13 leave to amend this Complaint as soon as the true identities of DOES I- X and ROE
14 CORPORATIONS I- X, inclusive, are revealed to her.

15 **JURISDICTION AND VENUE**

- 16 4. Jurisdiction is proper in this Court pursuant to the Nevada Constitution and the Nevada
17 Revised Statutes (NRS), Chapter 30.
18 5. Venue is proper in this Court because the parties reside within Clark County Nevada.

19 **BRIEF STATEMENT OF FACTS**

- 20 6. The Plaintiff and Defendant resided together and had a personal relationship for
21 approximately 13 years.
22 7. The Plaintiff and Defendant were never married.
23 8. In June of 2019 Plaintiff left the relationship.
24 9. The Plaintiff acquired property during the relationship.
25 10. In an effort to move on from the relationship in a dignified manner, Plaintiff entered
26 into discussions regarding helping the Defendant also move on from the relationship.
27
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- 1 11. Plaintiff engaged a law firm seeking legal advice and to assist in drafting a proposed
2 agreement between the parties.
- 3 12. On Friday June 28, 2019, Plaintiff emailed her attorney requesting feedback on
4 "agreement points" that were included in the email. The email to Plaintiff's attorney
5 states: "Can you please review the agreement points below and give me your
6 feedback".
- 7 13. Upon information and belief, the Defendant was cc'd on the email Plaintiff sent to her
8 counsel.
- 9 14. Upon information and belief, the Defendant copied the "agreement points" from the
10 email into another document, signed and notarized the same. A copy of that document
11 is attached hereto as Exhibit 1.
- 12 15. On July 3, 2019, following consultation with her attorney, Plaintiff emailed a proposed
13 agreement to Defendant for her review.
- 14 16. In an email to Plaintiff on July 3, 2019 at 6:27 PM, the Defendant unequivocally
15 rejected the proposed agreement sent by the Plaintiff earlier that day.
- 16 17. Defendant is alleging that the parties entered into the agreement attached hereto as
17 Exhibit 1.
- 18

19 **FIRST CAUSE OF ACTION – DECLARATORY RELIEF**

- 20 18. Plaintiff hereby incorporates by reference the allegations contained in the above
21 paragraphs as though fully pled again herein.
- 22 19. At no time did the Plaintiff communicate an offer to the Defendant to enter into the
23 alleged agreement attached hereto as Exhibit 1.
- 24 20. At the time the Plaintiff emailed her attorney on June 28, 2019, she did not intend to be
25 bound by any terms included in the email.
- 26 21. Transfers of real property must be in writing and signed by the party by whom the
27 transfer be made.
- 28

1 **WHEREFORE**, based on the foregoing, Plaintiff respectfully prays for the following
2 relief;

- 3 1. For a judicial declaration that the document attached hereto as Exhibit 1 is not a
4 binding agreement on the Plaintiff.
- 5 2. For an Award of reasonable Attorney's Fees and Costs associated with this suit; and
- 6 3. For such other relief the Court may deem equitable, just and appropriate.


7

8 DATED this 18th day of October, 2019.

9

10 REZA ATHARI & ASSOCIATES

11

12 Submitted By: 

13 Gary S. Fink, Esq., #8064
14 Nevada State Bar No. 8064
15 REZA ATHARI & ASSOCIATES, PLLC
16 3365 Pepper Lane, Ste. 102
17 Las Vegas, Nevada 89120
18 (702) 727-7777 tele
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20 garyfink@atharilaw.com
21 Attorney for Plaintiff

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EXHIBIT 1

Agreement between Cheri Wiman and Coty Refaely

At any time within the next year Coty Refaely can purchase the following properties for the amount owned on the current mortgage. She is responsible to pay for all cost incurred on the properties from June 1, 2019 forward up to and including all cost for the sale.

5509 Oak Street
Las Vegas NV 89120
5005 Churchill Ave
Las Vegas NV 89115

Cheri will sign authorization letters needed for Coty to pull and pay for permits needed on properties listed above.

If Coty defaults on mortgage or other expenses that affect Cheri's credit then Cheri has the right to sell the properties. The proceeds will be given to Coty less any tax impact to Cheri.

When the property at 5658 Oak st is sold the proceeds will be divided with the following priorities

1. Mortgage payoff
2. Leaf Wallace is paid his original contribution of \$109,910.73
3. Cheri will have her tax professional calculate any capital gain impact if any. These funds will be put aside for Cheri.
4. Cheri is paid \$781.27 for water bill payment made
5. Remaining balance to be split 50% Leaf Wallace, 25% Coty Refaely, and 25% Cheri Wiman

Until the sale of 5658 Oak Street, all expenses will be split in the same manner. It is Coty's responsibility to pay 25% and to collect Leaf's 50% portion.

Business Assets

Coty is responsible for all business activities of 330 Investments LLC DBA KC Cars and LV Sheds LLC. This includes any and all Federal, State, or Regulator requirements. Coty also agrees to open her own business and/or personal account of which to conduct any business or personal transactions within the next 60 days

Coty will file and complete the closure of LV Sheds LLC within the next 90 days.

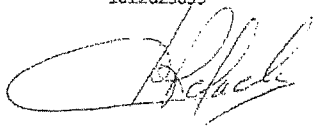
Coty is responsible to move her GMC truck, two trailers, and the Jayco Motorhome into her name only.

Coty acknowledges the investment of 6 20ft containers that are located at 5509 Oak Street. Upon the sale of any container Coty agrees to pay Cheri \$9410 and 25% of the profits.

Coty acknowledges that the glasses given to her by her great grandmother is located in the China cabinet on Oak Street. Coty agrees to cooperate in returning these glasses to Cheri

Coty acknowledges the value of all personal property retained such as Coty's other cars, Modi's cars, Storage items, etc offsets the difference in equity and is an equitable division of all assets.

Upon notarized signature of this agreement Cheri will transfer \$10,634 to Wells Fargo account 1012623839



State of Nevada
County of Clark
This instrument was acknowledged before
me on 7/9/2019 by Coty Refaely

Notary Public

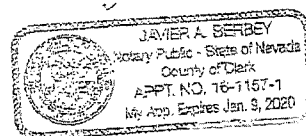


EXHIBIT 2

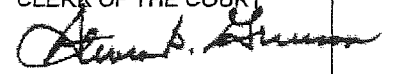
Defendant Coty Refaely's Answer and Counterclaim

November 8, 2019

EXHIBIT 2

MICHAEL S. STRANGE & ASSOCIATES, LLC
501 S. RANCHO DR., SUITE A-7
LAS VEGAS, NEVADA 89106
PHONE: (702) 456-4357; FAX (702) 464-3042

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Steven D. Grierson
CLERK OF THE COURT



AACC
Michael S. Strange, Esq.
Nevada Bar No. 9429
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Telephone: (702) 456-4357
Fax: (702) 464-3042
mstrange@mikestrangelaw.com
Attorney for Defendant

**DISTRICT COURT
CLARK COUNTY, NEVADA**

CHERI RENE WIMAN,

Plaintiff,

CASE NO.: A-19-803928-C
DEPT. NO.: XXIX

vs.

COTY REFAELY; DOES I through X, and
ROE CORPORATIONS I to X, inclusive,

Defendants.

COTY REFAELY, an individual,

Counterclaimant,

vs.

CHERI RENE WIMAN,

Counter-defendant.

DEFENDANT COTY REFAELY'S ANSWER AND COUNTERCLAIM

COMES NOW, Defendant COTY REFAELY, by and through her attorney of record,
MICHAEL S. STRANGE, ESQ. of the law offices of MICHAEL S. STRANGE &
ASSOCIATES, LLC, and answers the Plaintiff's Complaint as follows:

PARTIES

I: Answering Paragraph 1 of Plaintiff's Complaint, Defendant admits each and every

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1 allegation contained therein.

2 2. Answering Paragraph 2 of Plaintiff's Complaint, Defendant admits each and every
3 allegation contained therein.

4 3. Answering Paragraph 3 of Plaintiff's Complaint, Defendant is without knowledge
5 or information sufficient to form a belief as to the truth of an averment and on such basis denies
6 the same.

7
8 4. Answering Paragraph 4 of Plaintiff's Complaint, Defendant admits each and every
9 allegation contained therein.

10 5. Answering Paragraph 5 of Plaintiff's Complaint, Defendant admits each and every
11 allegation contained therein.

12 6. Answering Paragraph 6 of Plaintiff's Complaint, Defendant admits each and every
13 allegation contained therein.

14
15 7. Answering Paragraph 7 of Plaintiff's Complaint, Defendant admits each and every
16 allegation contained therein.

17 8. Answering Paragraph 8 of Plaintiff's Complaint, Defendant denies each and every
18 allegation contained therein.

19 9. Answering Paragraph 9 of Plaintiff's Complaint, Defendant denies each and every
20 allegation contained therein.

21
22 10. Answering Paragraph 10 of Plaintiff's Complaint, Defendant denies each and
23 every allegation contained therein.

24 11. Answering Paragraph 11 of Plaintiff's Complaint, Defendant admits each and
25 every allegation contained therein.

26 12. Answering Paragraph 12 of Plaintiff's Complaint, Defendant denies each and
27 every allegation contained therein.

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13. Answering Paragraph 13 of Plaintiff's Complaint, Defendant admits each and every allegation contained therein.

14. Answering Paragraph 14 of Plaintiff's Complaint, Defendant denies each and every allegation contained therein.

15. Answering Paragraph 15 of Plaintiff's Complaint, Defendant denies each and every allegation contained therein.

16. Answering Paragraph 16 of Plaintiff's Complaint, Defendant denies each and every allegation contained therein.

17. Answering Paragraph 17 of Plaintiff's Complaint, Defendant admits each and every allegation contained therein.

FIRST CAUSE OF ACTION
(Declaratory Relief)

18. Answering Paragraph 18 of Plaintiff's Complaint, Defendant denies each and every allegation contained therein.

19. Answering Paragraph 19 of Plaintiff's Complaint, Defendant denies each and every allegation contained therein.

20. Answering Paragraph 20 of Plaintiff's Complaint, Defendant denies each and every allegation contained therein.

21. Answering Paragraph 21 of Plaintiff's Complaint, Defendant denies each and every allegation contained therein.

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AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Neither the complaint, nor any cause of action alleged therein, states facts sufficient to constitute a cause of action against defendant.

SECOND AFFIRMATIVE DEFENSE

Plaintiff failed to satisfy conditions precedent necessary to recover on the claims asserted in plaintiff's complaint.

THIRD AFFIRMATIVE DEFENSE

Plaintiff has not suffered any damages.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff has brought this matter for an ulterior purpose other than resolving a legal dispute and therefore, plaintiff's claims should be dismissed and defendant should be awarded fees and costs incurred in defending this matter.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the doctrine of unclean hands.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the doctrine of laches.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred because defendant performed under the contracts in question, except for those things defendant were prevented or excused from doing.

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EIGHTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred because defendants never agreed to the modified terms or amendments to contracts that plaintiff now claims exist.

NINTH AFFIRMATIVE DEFENSE

Defendant is excused from performance of the contracts in question because of a lack of consideration.

TENTH AFFIRMATIVE DEFENSE

Plaintiff ratified defendant's acts which she now complains, and therefore, her claims are barred.

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiff's claims against the Defendant is barred by the doctrine of estoppel.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff's claims against the Defendant is barred by the doctrine of accord and satisfaction.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff's claims against the Defendant is barred by the doctrine of laches.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff's claims against the Defendant are subject to Defendant's right to offset.

EIGHTH AFFIRMATIVE DEFENSE

Pursuant to NRCP 11, all possible affirmative defenses may not have been alleged herein, insofar as sufficient facts were not available after reasonable inquiry upon filing of this Answer and Counterclaim, therefore, this answering Defendant reserve the right to amend his Answer and Counterclaim to add affirmative defenses should the necessity arise.

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NINTH AFFIRMATIVE DEFENSE

Plaintiff's action is barred because of their commercially unreasonable conduct.

TENTH AFFIRMATIVE DEFENSE

Plaintiff's action is barred by virtue of the parties' prior course of dealings.

ELEVENTH AFFIRMATIVE DEFENSE

The complaint, and each purported cause of action or claim for relief contained therein, is barred because the violations, losses, harms, injuries, or damages alleged in the complaint were proximately caused by the acts, omissions, or breach of obligations by plaintiff or third-parties over which defendants have no control.

TWELFTH AFFIRMATIVE DEFENSE

Plaintiff has failed to mitigate her damages, if any, and, therefore, plaintiff's claims against defendant are barred. Assuming, arguendo, that recovery were permitted to plaintiff, plaintiff's claims against defendant must, therefore, be reduced by the amounts not mitigated.

THIRTEENTH AFFIRMATIVE DEFENSE

Defendant currently has insufficient knowledge or information on which to form a belief as to whether it may have available additional, as yet unstated, affirmative defenses. Defendant reserves the right to file an amended answer asserting additional defenses in the event that discovery indicates that such defenses are appropriate.

FOURTEENTH AFFIRMATIVE DEFENSE

It has been necessary for defendant to employ the services of an attorney to defend this action and a reasonable sum should be allowed for attorneys' fees, together with the costs expended in this action because, among other reasons, defendant is entitled to indemnification by plaintiff.

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1 WHEREFORE, Defendant, Coty Refaely requests that the Court enter judgment against
2 Plaintiff as follows:

- 3 1. That Plaintiff takes nothing by way of her complaint;
4 2. For Defendant's attorney's fees and costs; and
5 3. For such other and further relief that the Court deems proper.
6

7
8 Dated this 8th day of November, 2019

9 By: /s/ Michael S. Strange
10 MICHAEL S. STRANGE, ESQ.
11 501 S. Rancho Dr.; Suite A-7
12 Las Vegas, NV 89106
13 (702) 456-4357
14 Attorney for Defendant Coty
15 Refaely
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COUNTERCLAIM

Counterclaimant, Coty Refaely ("Coty"), counterclaim against Cheri Rene Wiman ("Cheri" or "counter-defendant") as follows.

PARTIES AND JURISDICTION

1. Coty Refaely is an individual residing in Clark County, Nevada.
2. Cheri Rene Wiman is an individual residing in Clark County, Nevada
3. At all times relevant the real and personal property in question was acquired here in Clark County, Nevada.

GENERAL ALLEGATIONS

4. The parties were in a committed exclusive relationship for over thirteen (13) years.
5. The parties lived together during that relationship.
6. The parties became engaged in approximately 2010 and Coty gave Cheri an engagement ring.
7. The parties held themselves out as a married couple after that point.
8. The relationship ended May 15, 2019.
9. During the relationship the parties both deposited money into bank accounts that both parties used to pay bills and purchased items.
10. During the relationship the parties jointly purchased real and personal property from the money in these bank accounts.
11. Due to an issue Coty had with the state board of equalization which the parties were aware of and as a result that was the reason the properties were not jointly titled despite the fact that joint funds were used to purchase them
12. Coty would be the only one that would manage and renovate the properties so as to be able to rent them or sell them.

1 13. Cheri would constantly tell Coty and other people that these were "their" properties.

2 14. The parties broke up in 2017 whereby they entered into negotiations to divide their
3 properties.

4 15. The parties subsequently reconciled after the break up in 2017 and continued their
5 relationship until 2019.

6 16. When the parties broke up in 2019 Cheri told Coty that she would make sure that
7 their properties and assets were fairly divided.

8 17. Cheri also told the mediator that the parties used that the properties would be divide
9 50/50 equally.

10 18. The parties negotiated back and forth and Cheri emailed Coty a proposed agreement
11 dividing the jointly acquired properties and the other assets.

12 19. When the parties resolved the division of the real properties through the mediator,
13 Cheri stated she wanted the agreement to go into effect as of June 1, 2019.

14 20. Cheri also told Coty that she would have to put all the utilities and all the bills for
15 5509 Oak Street Las Vegas, NV 89120 5005 Churchill Ave, Las Vegas NV 89117 into her own
16 name.

17 21. Cheri was the party who drafted the proposed agreement to divide the jointly
18 acquired properties and other assets.

19 22. Coty per the terms of the offer, signed the offer to show acceptance before a notary
20 public and sent it to Cheri.

21 23. Since that agreement was signed by Coty the parties have been acting in accordance
22 with the terms and conditions of that agreement.

23 24. Cheri on July 5, 2019 deposited \$7,000.00 into the Wells Fargo banking account of
24 #3294 that Coty was using.

1 25. Cheri did not give Coty the full \$10,634.00 as required by the agreement as she was
2 keeping \$3,634.00 back as her "share" of the containers.

3 26. Coty has been paying the mortgages to the properties awarded to her under the
4 Settlement Agreement to Cheri as required by the Settlement Agreement.

5 27. Cheri sent a Notice of Unlawful Detainer to Coty regarding 5509 Oak Street Las
6 Vegas, NV 89120 which is one of the properties awarded to Coty in the Settlement Agreement
7 on September 16, 2019.

8 28. Accordingly, counterclaimant became justifiably concerned by counter-defendant's
9 actions and refusal to follow the Settlement Agreement.

10 29. Cheri had a letter sent from an attorney on September 27, 2019 claiming that there
11 was no agreement but that Cheri would like to negotiate some resolution.

12 30. Coty responded to that letter indicating clearly that there was an agreement and that
13 said agreement needed to be followed.

14 31. Cheri went to the tenants at 5005 Churchill Ave, Las Vegas NV 89117 on November
15 4, 2019 and has instructed them to send her the rents to the property in violation of Coty's rights
16 to the property pursuant to the Settlement Agreement.

17 32. Cheri has also been checking the price of 5005 Churchill Ave, Las Vegas NV 89117
18 online in what Coty's believes is an attempt to sell the property.

19 33. When the parties separated, Cheri took some of Coty's personal items from a safe
20 both parties have used and is refusing to return those items to Coty.

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LAS VEGAS, NEVADA 89106
PHONE: (702) 456-4357; FAX (702) 464-3042

FIRST CAUSE OF ACTION
(Breach of Contract- Failure to Comply with Settlement Agreement)

34. Counterclaimant refers to and incorporates the allegations in the preceding paragraphs herein by reference.

35. Counter-defendant has failed to comply with the Settlement Agreement by sending a Notice of Unlawful Detainer to Counterclaimant threatening to evict her from the property at 5509 Oak Street, Las Vegas NV 89120, identified by Clark County, Nevada parcel number 162-25-801-002 in violation of Counterclaimant's rights to said property.

36. Counter-defendant has failed to comply with the Settlement Agreement by going to the tenants at 5005 Churchill Ave, Las Vegas NV 89117 on November 4, 2019 and instructing them to send her the rents to the property in violation of Coty's rights to the property pursuant to the Settlement Agreement.

37. Counter-defendant has gone to the tenants at 5005 Churchill Ave, Las Vegas NV 89117 and tried to get them to sign new leases with her.

38. Counter-defendant has also failed to comply with the Settlement Agreement by trying to pressure Coty to sell these properties prior to her right to purchase them has expired.

39. Counter-defendant is obligated to perform by the terms of the Settlement Agreement and not engage in conduct to undermine Counterclaimant's rights to properties awarded to her.

40. Since Counter-defendant has failed to abide by the terms as set forth in the Settlement Agreement she has breached the Settlement Agreement.

41. As a result of Counter-defendant's, breach of the Settlement Agreement, Counterclaimant has suffered damages in an amount of Fifteen Thousand Dollars (\$15,000.00).

42. It has also become necessary for Counter-defendant to retain the services of an attorney to commence this action, and Counter-defendant is therefore entitled to attorney's fees and costs of this suit.

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SECOND CAUSE OF ACTION
(Breach of Implied Contract- Violation of Joint Ownership of Real Property
acquired during parties' relationship as if they were married)

43. Counterclaimant refers to and incorporates the allegations in the preceding paragraphs herein by reference.

44. The real properties purchased by the parties during the relationship were purchased from money both parties contributed to bank accounts that they both used;

45. The only reason the real properties were titled in Counterclaimant's name only is due to an issue Counterclaimant had with the state board of equalization.

46. The parties always agreed that these properties were jointly owned by them.

47. As part of the agreement that these properties were jointly owned, Counterclaimant would manage these properties and would help restore them so that they could be rented or sold.

48. The parties always agreed that these properties were jointly owned by them.

49. Counter-defendant has failed to comply with the joint ownership of the real properties as she is unilaterally taking actions in violation of Cheri's rights in said real properties.

50. Counter-defendant is failing to acknowledge Coty's interest in said real properties.

51. Counter-defendant is obligated to perform by the terms of the implied contract whereby these parties agreed to jointly purchase real property and would each have a one-half interest in said property.

52. Since Counter-defendant has failed to abide by the terms of the implied contract as she is undermining Coty's legal ownership rights in said real properties, she has breached the contract.

53. As a result of Counter-defendant's, breach of the contract, Counterclaimant has suffered damages in an amount of Fifteen Thousand Dollars (\$15,000.00).

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PHONE: (702) 456-4357; FAX (702) 464-3042

1 54. It has also become necessary for Counter-defendant to retain the services of an
2 attorney to commence this action, and Counter-defendant is therefore entitled to attorney's fees
3 and costs of this suit.

4 **THIRD CAUSE OF ACTION**
5 **(Breach of Implied Covenant of Good Faith and Fair Dealing)**

6 55. Counterclaimant repeats and realleges each and every allegation contained within all
7 previous paragraphs and by this reference incorporate the same as though fully set forth herein.

8 56. All contracts entered into in the State of Nevada impose upon the contracting parties
9 the duty of good faith and fair dealing.

10 57. The Counter-defendant's intentional failure to comply with the terms of the Settlement
11 Agreement constitutes a breach of the implied covenant of good faith and fair dealing.

12 58. Based on the Counter-defendant's breach of the implied covenant of good faith and
13 fair dealing, Counterclaimant has suffered damages in an amount of Fifteen Thousand Dollars
14 (\$15,000.00).

15 59. It has also become necessary for Counter-defendant to retain the services of an
16 attorney
17 to commence this action, and Counter-defendant is therefore entitled to attorney's fees and costs
18 of this suit.
19

20 **FOURTH CAUSE OF ACTION**
21 **(Intentional Interference with Contractual and/or Business Relationship)**

22 60. Counterclaimant refers to and incorporate the allegations in the preceding paragraphs
23 herein by reference.

24 61. As part of Counterclaimant's ongoing business operations she has valid leases with
25 third-parties (tenants) in the real property 5005 Churchill Ave, Las Vegas NV 89117.
26

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1 62. Counter-defendant has knowledge of these existence of the contractual and/or business
2 relationships that exist between counterclaimant and these various third-parties.

3 63. Counter-defendant has committed various intention acts, including making public
4 statements, including going to these tenants and advising them to deal only with her and not the
5 Counterclaimant with the intention to disrupt the contractual and/or business relationship or to
6 cause the third-party to breach contracts and/or business relations with counterclaimant and each
7 of them. The Counter-defendant has brought new leases to the tenants demanding that they sign
8 them with her.

9
10 64. That the intentional actions committed by the Counter-defendant are causing these
11 third parties to actually break their contractual relationships with the Counterclaimant.

12 65. Because of Counter-defendant's wrongful and unjustified intentional actions,
13 Counter-defendant has caused counterclaimant's contractual and business relationships to cease
14 and/or be disrupted.

15 66. Counterclaimant's ability to conduct their business has been severally damaged by
16 counter-defendant's wrongful and unjustified actions in an amount in excess of fifteen thousand
17 dollars (\$15,000) to be determined at trial.

18 67. Counter-defendant's acts were malicious and intended to cause harm and injury to
19 counterclaimant and thus counterclaimant is entitled to an award of punitive damages in an
20 amount to be determined at the time of trial

21
22 68. As result of Counter-defendant's wrongful and unjustified actions, counterclaimant
23 has been forced to retain counsel and are entitled to recover their attorneys' fees and costs in the
24 action.

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MICHAEL S. STRANGE & ASSOCIATES, LLC
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LAS VEGAS, NEVADA 89106
PHONE: (702) 456-4357; FAX (702) 464-3042

FIFTH CAUSE OF ACTION
(Unjust Enrichment)

69. Counterclaimant refers to and incorporates the allegations in the preceding paragraphs herein by reference.

70. During the course of the dealings between Counterclaimant and Counter-defendant, the Counter-defendant has wrongfully received and enjoyed the benefits and use of real property and income from said property which is duly owed by or belongs to Counterclaimant.

71. During the term of the dealings, Counter-defendant has taken, purloined and stolen Counter-defendant's personal property.

72. Counter-defendant has wrongfully retained valuable benefits which in equity and good conscience belong to Counterclaimant.

73. Due to Counter-defendant's inexcusable conduct she has been unjustly enriched and continues to be unjustly enriched.

74. Due to the extreme and oppressive nature of Counter-defendant's conduct, as well as Counter-defendant has suffered damages and is entitled to be compensated for her losses, together with an award of punitive damages against Counter-defendant in an amount in excess of \$15,000.00 together with attorney's fees incurred in this action.

75. It has also become necessary for Counter-defendant to retain the services of an attorney to commence this action, and Counter-defendant is therefore entitled to attorney's fees and costs of this suit.

SIXTH CAUSE OF ACTION
(Conversion)

76. Counterclaimant repeats and realleges each and every allegation contained within all previous paragraphs and by this reference incorporate the same as though fully set forth herein.

1 77. Counter-defendant did deliberately, maliciously, and intentionally convert, and are
2 actually presently in the course and practice of presently converting Counterclaimant's personal
3 property including but not limited to jewelry and other items belonging to Counterclaimant and
4 that said conversion has substantially and materially interfered with Counterclaimant's rights.

5 78. As a direct and proximate result of said Counter-defendant's intentional acts,
6 Counterclaimant has suffered and continues to suffer damages in an amount which cannot yet be
7 fixed and will be subject to proof at the time of trial, but which are in excess of Fifteen Thousand
8 Dollars (\$15,000.00) and which are ongoing and progressive.

9 79. Because said Counter-defendant's actions in breaching her duties to Counterclaimant
10 were undertaken fraudulently, maliciously, willfully and in total disregard and violation of
11 Counter-defendant's rights, Counterclaimant is entitled to punitive damages against said Counter-
12 defendant to punish said Counter-defendant and to set an example thereof, in an amount at least
13 treble the actual damages suffered by the Counterclaimant.

14 80. It has also become necessary for Counter-defendant to retain the services of an
15 attorney to commence this action, and Counter-defendant is therefore entitled to attorney's fees
16 and costs of this suit.

17 **SEVENTH CAUSE OF ACTION**
18 **(Trespass to Chattels)**

19 81. Counterclaimant repeats and realleges each and every allegation contained within all
20 previous paragraphs and by this reference incorporate the same as though fully set forth herein.

21 82. Counter-defendant has intentionally converted the personal property and chattels of
22 Counter-defendant and has committed a trespass to the chattels of Counterclaimant.

23 83. Counter-defendant has wrongfully and intentionally interfered with Counterclaimant's
24 right to possess Counter-defendant's chattels, by failing to allow Counter-defendant possession
25 and by allowing herself to possess or obtain Counter-defendant's chattels.

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1 84. As a direct and proximate result of the unlawful and/or unjustified actions of
2 Counter-defendant, Counterclaimant has suffered damages in an amount to be determined at the
3 time of trial in this matter but which is valued to Counterclaimant in excess of Fifteen Thousand
4 Dollars (\$15,000.00) and which are ongoing and progressive.

5 85. It has also become necessary for Counter-defendant to retain the services of an
6 attorney to commence this action, and Counter-defendant is therefore entitled to attorney's fees
7 and costs of this suit.
8

9 **EIGHTH CLAIM FOR RELIEF**
10 **(Injunctive Relief)**

11 86. Counterclaimant repeats and realleges each and every allegation contained within all
12 previous paragraphs and by this reference incorporate the same as though fully set forth herein

13 87. Counter-defendant's acts as described herein are wrongful and of a continuing nature
14 for which Counterclaimant has no adequate remedy at law.

15 88. Counterclaimant possesses a reasonable likelihood of success on the merit of her
16 claims against Counter-defendant by virtue of their wrongful actions.

17 89. Counter-defendant will continue to wrongfully undermine Coty's interest in the real
18 property and withhold her personal property in violation of Counter-defendant's rights.
19

20 90. The potential damages proximately caused by these deprivations of property and
21 interests are difficult to assess and as such can only adequately be remedied through injunctive
22 action, including prevention of the wrongful transfer of any real property in violation of
23 Counterclaimant's rights.

24 91. Counter-defendant's acts as described herein are harmful and of a continuing nature
25 for which Counterclaimant has no adequate remedy at law.
26

27 //

28 ///

1 92. Unless enjoined, Counter-defendant will continue the systematic destruction,
2 alienation and interference in Counterclaimant's affairs, the same which is causing irreparable
3 harm to Counterclaimant.

4 93. It has also become necessary for Counter-defendant to retain the services of an
5 attorney to commence this action, and Counter-defendant is therefore entitled to attorney's fees
6 and costs of this suit.
7

8 **NINTH CLAIM FOR RELIEF**
(Specific Performance of Settlement Agreement)

9 94. Counterclaimant repeats and re-alleges the allegations contained in the above
10 paragraphs as if fully set forth herein.

11 95. The parties entered into a Settlement Agreement to divide all real and personal
12 property that they had jointly acquired during the course of their relationship.
13

14 96. As these real and personal properties are unique, no amount of monetary damages
15 can adequately compensate Counterclaimant for the unique and irreplaceable value of this
16 property and Specific Performance of Counter-defendant's obligation to transfer ownership and
17 possession of the real and personal property is the only remedy which can adequately protect
18 Counterclaimant's interest under the rights, facts and circumstances at bar.
19

20 **TENTH CLAIM FOR RELIEF**
(Declaratory Relief)

21 97. Counterclaimant repeats and re-alleges the allegations contained in the above
22 paragraphs as if fully set forth herein.

23 98. An actual controversy now exists between the parties (including regarding the
24 obligations and rights of the respective parties under the Settlement Agreement) as between
25 Counterclaimant and Counter-defendant related to the obligations related therein, as the Counter-
26 defendant is not complying with the terms of that Settlement Agreement.
27
28

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1 99. Counterclaimant is entitled to a declaration of rights that the Settlement Agreement is
2 a lawful and binding contract that the Counter-defendant is legally obligation to comply with.

3 100. An actual controversy now exists between Counterclaimant and Counter-defendant
4 regarding the obligations and rights of the parties under the Settlement Agreement.

5 101. These controversies are ripe for judicial determination as Counterclaimant has
6 been harmed and will continue to be harmed by Counter-defendant's continued acts and
7 omissions.
8

9 102. Counterclaimant desires a judicial determination of the respective rights and
10 obligations of the parties with respect to the Settlement Agreement.

11 103. Such a judicial determination is necessary and appropriate in order that
12 Counterclaimant may ascertain and enforce Counterclaimant's rights and obligations.
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1 WHEREFORE, Counterclaimant request that the Court enter judgement against
2 counter-defendant as follows:

- 3 1. For Judgement against counter-defendant for compensatory damages in excess of
4 \$15,000;
5 2. For judgement against counter-defendant for punitive damages in excess of
6 \$15,000;
7 3. Punitive and/or exemplary damages in an amount appropriate to punish and/or set
8 an example of the Counter-defendant, including exemplary damages pursuant to
9 Chapter 41 of the Nevada Revised Statutes;
10 4. Specific Performance of the Settlement Agreement;
11 5. Declaratory and Injunctive Relief;
12 6. For Counterclaimant's attorneys' fees and costs; and
13 7. For any other relief as the Court deems just and proper.
14

15 DATED this 8th day of November, 2019

16 Respectfully Submitted,

17 MICHAEL S. STRANGE & ASSOCIATES, LLC
18

19
20 By: /s/ Michael S. Strange
21 MICHAEL S. STRANGE, ESQ.
22 501 S. Rancho Dr.; Suite A-7
23 Las Vegas, NV 89106
24 (702) 456-4357
25 Attorney for Defendant Coty
26 Refaely
27

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PHONE: (702) 456-4357; FAX (702) 464-3042

CERTIFICATE OF SERVICE

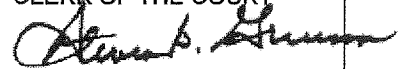
I HEREBY CERTIFY that service of the foregoing DEFENDANT COTY REFAELY'S ANSWER AND COUNTERCLAIM, was made on this 8th day of November, 2019, pursuant to NRCP 5(b)(2)(D), and EDCR 8.05, by electronic service via the Court's EFiling System to the following counsel:

Gary S. Fink, Esq., Attorney for Plaintiff at garyfink@atharilaw.com.

By: /s/ Michael S. Strange
MICHAEL S. STRANGE, ESQ.
501 S. Rancho Dr.; Suite A-7
Las Vegas, NV 89106
(702) 456-4357
Attorney for Defendant Coty Refaely

EXHIBIT 3

EXHIBIT 3



MOT

Michael S. Strange, Esq.
Nevada Bar No. 9429

Michael S. Strange & Associates, LLC

501 S. Rancho Dr.; Suite A-7

Las Vegas, NV 89106

Telephone: (702) 456-4357

Fax: (702) 464-3042

mstrange@mikestrangelaw.com

Attorney for Defendant Coty Refaely

**DISTRICT COURT
CLARK COUNTY, NEVADA**

CHERI RENE WIMAN,

Plaintiff,

vs.

COTY REFAELY; DOES I through X, and
ROE CORPORATIONS I to X, inclusive,

Defendants.

CASE NO.: A-19-803928-C

DEPT. NO.: XXIX

Date of Hearing:

Time of Hearing:

HEARING REQUESTED

NOTICE: YOU ARE REQUIRED TO FILE A WRITTEN RESPONSE TO THIS MOTION WITH THE CLERK OF THE COURT AND TO PROVIDE THE UNDERSIGNED WITH A COPY OF YOUR RESPONSE WITHIN TEN (10) DAYS OF YOUR RECEIPT OF THIS MOTION. FAILURE TO FILE A WRITTEN RESPONSE WITH THE CLERK OF THE COURT WITHIN TEN (10) DAYS OF YOUR RECEIPT OF THIS MOTION MAY RESULT IN THE REQUESTED RELIEF BEING GRANTED BY THE COURT WITHOUT HEARING PRIOR TO THE SCHEDULED HEARING DATE.

**DEFENDANT COTY REFAELY'S MOTION TO ENFORCE SETTLEMENT
AGREEMENT AND ADDENDUM AND TO REQUIRE PLAINTIFF TO EXECUTE
FINAL TRANSFER DOCUMENTS FOR CHURCHILL PROPERTY**

COMES NOW MICHAEL S. STRANGE, ESQ. of the law offices of MICHAEL S. STRANGE & ASSOCIATES, LLC, the attorney of record for the Defendant COTY REFAELY, and hereby moves the Court to enforce the Settlement Agreement and require the Plaintiff to sign the necessary documentation to complete the transfer of title of real property for Churchill to Coty.

Motion- 1

MICHAEL S. STRANGE & ASSOCIATES, LLC
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LAS VEGAS, NEVADA 89106
PHONE: (702) 456-4357; FAX (702) 464-3042

1 This Motion is made and based upon the attached Points and Authorities and all papers
2 and pleadings on file herein, as well as any evidence and argument of counsel presented at the
3 hearing.

4 Dated this 30th day of November, 2020

5
6 By: /s/ Michael S. Strange
MICHAEL S. STRANGE, ESQ.
7 501 S. Rancho Dr.; Suite A-7
Las Vegas, NV 89106
8 (702) 456-4357
Attorney for Defendant Coty
9 Refaely

10 **NOTICE OF MOTION**

11 **TO: CHERI RENE WIMAN, Plaintiff**

12 **TO: GARY S. FINK, ESQ., Attorney for Plaintiff**

13 **YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE**, that the undersigned
14 attorney by this notice does hereby request this Court to grant this DEFENDANT COTY
15 REFAELY'S MOTION TO ENFORCE SETTLEMENT AGREEMENT AND ADDENDUM
16 AND TO REQUIRE PLAINTIFF TO EXECUTE FINAL TRANSFER DOCUMENTS FOR
17 CHURCHILL PROPERTY.
18

19 **PLEASE TAKE FURTHER NOTICE**, that the undersigned attorney will bring the
20 above and foregoing **Motion** on for hearing on:

21 **DATED** this 30th day of November, 2020
22

23 By: /s/ Michael S. Strange
MICHAEL S. STRANGE, ESQ.
24 501 S. Rancho Dr.; Suite A-7
Las Vegas, NV 89106
25 (702) 456-4357
Attorney for Defendant Coty
26 Refaely
27
28

POINTS AND AUTHORITIES

I.

STATEMENT OF FACTS

Defendant, COTY REFAELY ("Coty") was in an exclusive relationship with the Plaintiff, CHERI RENE WINMAN a/k/a CHERI SCHROEDER ("Cheri") for over thirteen (13) years. During that relationship the parties lived together and they became engaged in approximately 2008. (See Declaration of Coty Refaely). The parties held themselves out as a married couple after that point. During the relationship both Coty and Cheri deposited money into bank accounts that both parties used to pay bills and purchased items including real and personal property. IN fact over the course of the relationship the parties bought over 12 properties (some of which were flipped, some were sold, and some were rented). *Id.* At the time of the break up the parties had 6 properties, of which Cheri took 3 and Coty was to take 2. The remaining one was sold and the money was split as agreed between Coty and Cheri. *Id.*

Specifically, two of the real properties that were purchased during the relationship are 5509 Oak Street Las Vegas, NV 89120 and 5005 Churchill Ave, Las Vegas NV 89117. The real properties in question are titled only in Cheri's name due to the fact that Coty had an issue with the state board of equalization and that was the reason the parties agreed the properties would only be titled in Cheri's name. Coty would be the only one that would manage and renovate the properties so as to be able to rent them or sell them. Cheri on multiple occasions wanted Coty to be on the title to these properties but Coty only declined because of the issue with the state board of equalization. Cheri and Coty agreed that after they were married, Coty would go on the title to these all the real properties that they owned. (See Declaration of Coty Refaely) There are additional properties that were purchased during the relationship by the parties that are still presently owned by the Plaintiff. *Id.*

1 The basis of the lawsuit initiated by the Plaintiff was the dispute over these properties and
2 to resolve these claims and issues, the parties executed a Settlement Agreement and Release on
3 February 7, 2020. (See Settlement Agreement and General Release executed on February 7, 2020
4 as Exhibit A) Hereinafter it will be referred to as the "Settlement Agreement".

5 The Settlement Agreement dealt with both real and personal property (the personal
6 property issues have been fully resolved). The two real properties of Oak and Churchill were
7 addressed in the Settlement Agreement with the key terms as follows:
8

9 **2.1** COTY shall have the right to purchase the residence at 5509 Oak Street, Las Vegas,
10 Nevada 89120 until July 31, 2020 for the amount of the actual loan subject to the terms stated
11 herein. As of January 31, 2020 the loan balance owed on the property is \$210,759.97.....At the
12 time of purchase COTY will pay CHERI an additional \$12,500.00 for this property above the
13 loan amount. The payment will be paid directly from the funds of the sale....In the event that
14 COTY does not complete the purchase of the property as herein required, she acknowledges that
15 the property would then be the sole and separate property of CHERI.

16 **2.2** COTY shall also have the right to purchase the residence at 5005 Churchill Ave until July
17 31, 2020 at the actual loan amount subject to the terms stated herein. As of January 31, 2020 the
18 loan balance on the property is \$128,458.86....At the time of purchase COTY will pay CHERI an
19 additional \$12,500.00 for this property above the loan amount. The payment will be paid directly
20 from the funds of the sale....In the event that COTY does not complete the purchase of the
21 property as herein required, she acknowledges that the property would then be the sole and
22 separate property of CHERI.

23 (See Exhibit A; pg. 2)

24 As this Court is well aware, there was the COVID-19 pandemic that has affected the
25 entire planet and this Court can take judicial notice that there was a non-essential business
26 shutdown ordered in Nevada and elsewhere made the performance impossible within the original
27 timeframe. The parties executed an Addendum to the Settlement Agreement on July 24, 2020.
28 (See Addendum to Settlement Agreement as Exhibit B) Hereinafter, this will be referred to as the
"Addendum". Pursuant to that Addendum there was no change to the purchase price of the
properties only an extension of time to perform from July 31, 2020 to October 31, 2020. (See
Exhibit B; pgs. 1-2)

1 The Addendum's specific terms for the two properties are as follows:

2 **2.1** COTY shall have the right to purchase the residence at 5509 Oak Street, Las Vegas,
3 Nevada 89120 until October 31, 2020 for the amount of the actual loan subject to the terms stated
4 herein. As of January 31, 2020 the loan balance owed on the property is \$210,759.97.....At the
5 time of purchase COTY will pay CHERI an additional \$12,500.00 for this property above the
6 loan amount. The payment will be paid directly from the funds of the sale....In the event that
7 COTY does not complete the purchase of the property as herein required, she acknowledges that
8 the property would then be the sole and separate property of CHERI.

9 **2.2** COTY shall also have the right to purchase the residence at 5005 Churchill Ave until
10 October 31, 2020 at the actual loan amount subject to the terms stated herein. As of January 31,
11 2020 the loan balance on the property is \$128,458.86....At the time of purchase COTY will pay
12 CHERI an additional \$12,500.00 for this property above the loan amount. The payment will be
13 paid directly from the funds of the sale.... In the event that COTY does not complete the
14 purchase of the property as herein required, she acknowledges that the property would then be the
15 sole and separate property of CHERI.

16 (See Exhibit B; pgs. 1-2)

17 The transfer of the real property at Oak Street has been completed and finalized. The
18 transfer for the Churchill property was ready to occur on October 24, 2020. As Coty's lender was
19 in Los Angeles (a Mr. Alon Yehezkeloff) he used the California Escrow company, which told
20 Coty that when they ran a title report it indicated title on the property showed two open liens --
21 one to Geneva Financial, LLC in the amount of \$133,500 and the second, to Paramount
22 Residential Mortgage Group, LLC in the amount of \$128,458.86. (See Letter from Gigi-Baez
23 Rosa dated November 9, 2020 as Exhibit C; *see also* Declaration of Coty Refaely)

24 Specifically, the issue was that the lien from Paramount Residential Mortgage Group was
25 still showing on the title report and needed to be removed. (See email from Gigi-Baez Rosa dated
26 November 3, 2020 as Exhibit D) The lien should have been removed back when the home was
27 refinanced in 2017. *Id.* Given this issue, Ms. Baez Rosa could not in good faith, execute loan
28 documents and transfer funds to escrow without the lien removed. *Id.* Ms. Baez Rosa advised
Sheree Edwards for additional assistance in removing the lien and once done the funds would
transfer the same day. (See Exhibit D)

1 Coty did obtain a "Settlement Statement" from the Plaintiff and Coty forwarded it to Ms. Baez
2 Rosa who in turn sent it to her legal department but that statement alone was insufficient. (*See*
3 Exhibit C). Ms. Baez Rosa spoke on October 28th to Sheree Edwards of Driggs Title Agency and
4 explained the issue with Title, but that they hoped to close/fund on October 30th. Ms. Edwards
5 indicated that a closing on the 30th would not be possible, as Nevada observes a holiday. *Id.* In
6 response they indicated that they could proceed with loan documents with a projected funding
7 date of November 4th, to allow time to sign/notarize all pertinent loan documents. *Id.*

9 Coty let the Plaintiff know about this issue as well on October 23, 2020. (*See* text from
10 Defendant to Plaintiff dated October 23, 2020 as Exhibit E; *see also* email from Defendant to
11 Plaintiff dated October 23, 2020 at Exhibit F; *see also* Declaration of Coty Refaely).
12 Undersigned counsel reached out to Plaintiff's counsel on October 28th to advise of the situation
13 and indicate that a brief extension of up to two weeks was needed to finalize the transfer. (*See*
14 email from October 28th from undersigned counsel as Exhibit G) No response was received to
15 that email.

17 Paramount Residential Group finally responded after multiple inquiries as to the status of
18 the loan (due to a shortage of employees) on October 30, 2020 and confirmed that there was no
19 lien and that had been paid back when the house was refinanced in 2017. (*See* Declaration of
20 Coty Refaely)

22 On November 4th funds were schedule to be wired transferred, and funds were effectively
23 received on November 5th into Driggs Title' Escrow account accompanied by all pertinent loan
24 documentation. (*See* Exhibit C)

26 At the status check hearing on November 4, 2020 Plaintiff's counsel tried to get this
27 matter dismissed with Coty obviously opposed to a dismissal. Plaintiff's position is that because
28 the transfer did not occur by October 31st that the matter is finalized while Coty's position is that

1 the transfer should be finalized as the delay was due to issues not related to her as she was ready
2 and able to perform on October 20th. (See Exhibit C)

3 At this time as the Plaintiff is refusing to execute on the final documents to complete the
4 transfer and seeks to have this case dismissed, Coty is left with no choice but to file a Motion
5 asking the Court to enforce the Addendum and require Cheri to execute any documents to
6 complete the transfer of Churchill to Coty's name as.
7

8 II.

9 LEGAL ARGUMENT

10 A. The Court should enforce the Addendum and require Cheri to execute
11 any documents necessary to finalize the transfer of the Churchill
12 property to Coty as the delay was unforeseen and was not due to
13 Coty's failure to perform and is a frustration of purpose as Cheri
14 should have cleared up that issue immediately.

15 **NRCP Rule 70. Enforcing a Judgment for a Specific Act**

16 (a) **Party's Failure to Act; Ordering Another to Act.** If a judgment requires a party to
17 convey land, to deliver a deed or other document, or to perform any other specific act and the
18 party fails to comply within the time specified, the court may order the act to be done — at the
19 disobedient party's expense — by another person appointed by the court. When done, the act has
20 the same effect as if done by the party.

21 (b) **Vesting Title.** If the real or personal property is within this state, the court — instead of
22 ordering a conveyance — may enter a judgment divesting any party's title and vesting it in others.
23 That judgment has the effect of a legally executed conveyance.

24 (c) **Obtaining a Writ of Attachment or Sequestration.** On application by a party entitled
25 to performance of an act, the clerk must issue a writ of attachment or sequestration against the
26 disobedient party's property to compel obedience.

27 (d) **Obtaining a Writ of Execution or Assistance.** On application by a party who obtains a
28 judgment or order for possession, the clerk must issue a writ of execution or assistance.

(e) **Holding in Contempt.** The court may also hold the disobedient party in contempt.

The Nevada Supreme Court has held that "because a settlement agreement is a contract,
its construction and enforcement are governed by principles of contract law." See *May v.*
Anderson, 121 Nev. 668, 672, 119 P.3d 1254, 1257 (2004). Those principles of interpretation
state, "where a document is clear on its face, it "will be construed from the written language and

1 enforced as written.” *Ellison v. California State Auto. Ass’n*, 106 Nev. 601, 603, 797 P.2d 975,
2 977 (1990).

3 “The ‘ultimate goal is to effectuate the contracting parties’ intent.” *See In re Mapes*
4 *Enterprises, Inc.*, 15 B.R. 192, 194–95 (Bankr. D. Nev. 1981) (*citing* Restatement (Second) of
5 Contracts § 1, (1979); *see also In re Amerco Derivative Litig.*, 252 P.3d 681, 693 (Nev.2011)).

6 The Nevada Supreme Court also has rejected a party’s attempt subsequent intent or desire
7 get out of a settlement agreement once made. *See May*, 121 Nev. at 668, 119 P.3d at 1254. Even
8 in *May* the Court found that a party who had agreed to a settlement (with all essential terms) but
9 then who refused to execute said settlement did not render that settlement invalid. *Id.*

10 Of course, one may only enforce a contract if they are in compliance with the contract. A
11 plaintiff can claim breach of contract only after fulfilling his or her duties and obligations unless
12 there is an excuse to the performance. *See Bradley v. Nev.-Cal.-Or. Ry.*, 178 P. 906, 908 (1919).
13 Some valid excuses for nonperformance are as follows: Non-occurrence of conditions: something
14 that has to happen after the contract has not yet happened; Amendment, modification, waiver, or
15 estoppel: through later words or conduct, both parties to a contract agree to change the contractor
16 or give up rights under the contract; Impossibility, impracticability, frustration of purpose:
17 something unanticipated happens after the contract that significantly affects the performance of
18 the contract; Repudiation: post-contract statement or conduct by one of the parties after the
19 contract unambiguously indicating her unwillingness or inability to do what she agreed to do).
20 *See* David G. Epstein, Bruce A. Markell & Lawrence Ponoroff, *Making and Doing Deals:*
21 *Contracts in Context* ch. 5 (2d ed., Lexis 2006)

22 Both the Settlement Agreement and Addendum contain language regarding the conditions
23 for the transfer of Oak and Churchill. As Oak has been completed the only remaining issue is the
24 completion of the transfer of the property at Churchill and the Addendum is the operative
25
26
27
28

1 document for the current conditions for Churchill (given that the Addendum extended the time to
2 complete the transfer of these properties from the time established in the Settlement Agreement).

3 Cheri is going to try and articulate to the Court that because there was this "lien" issue that
4 delayed the final transfer of ownership of the Churchill residence, that Coty violated the
5 Addendum as the transfer of Churchill wasn't completed by October 31st. However, this was not
6 due to Coty's failure to perform but due to a title company raising an issue and causing a delay in
7 the transfer (along with there being the Nevada Day holiday) further delaying the finalization.
8 Also, the fact that Cheri did not have the complete documents in her possession showing that this
9 lien was paid out when the Churchill residence was refinanced further delayed the transfer. Cheri
10 told Coty that she has thrown all the paperwork of Churchill and kept only one document. (*See*
11 Declaration of Coty Refaely) The fact that Paramount Residential Group didn't respond to
12 October 30, 2020 to confirm that there was no lien also delayed this process.
13

14 The Nevada Supreme Court has held that a party's "performance would be excused if the
15 promisor's performance 'is made impossible or highly impractical by the occurrence of
16 unforeseen contingencies but if the unforeseen contingency is one which the promisor should
17 have foreseen, and for which he should have provided, this defense is unavailable to him.'" *See*
18 *Helms Const. and Development Co. v. State, ex rel. Dept. of Highways*, 634 P.2d 1224, 97 Nev.
19 500 (Nev. 1981) *quoting Nebaco, Inc. v. Riverview Realty Co.*, 87 Nev. 55, 57, 482 P.2d 305, 307
20 (1971)
21

22 The doctrine of commercial frustration also applies to discharge a party's contractual
23 obligation when "[p]erformance remains possible but the expected value of performance to the
24 party seeking to be excused has been destroyed by a fortuitous event, which supervenes to cause
25 an actual but not literal failure of consideration." *See Graham v. Kim*, 111 Nev. 1039, 899 P.2d
26 1122 (1995) *quoting Lloyd v. Murphy*, 25 Cal.2d 48, 153 P.2d 47, 50 (1944).
27
28

1 The 2nd Restatement of Contracts also discusses “frustration of purpose” as follows:

2 Restatement Second of Contracts § 265

3 **Discharge by Supervening Frustration**

4 Where, after a contract is made, a party's principal purpose is substantially frustrated
5 without his fault by the occurrence of an event the non-occurrence of which was a basic
6 assumption on which the contract was made, his remaining duties to render performance
7 are discharged, unless the language or the circumstances indicate the contrary.

8 Given that both parties knew that the Paramount Residential Mortgage Group, LLC lien
9 was paid off in 2017 when the Churchill residence was refinanced, for this “lien” to now show up
10 on a title report is not only unforeseen but is absolutely an issue that substantially frustrated
11 Coty’s ability to perform the terms of the Addendum. (*See* Declaration of Coty Refaely)

12 Coty was ready to complete the transfer of the Churchill property on October 24th with the
13 funds being ready and the documents prepared. (*See* Exhibit C) When preparing the transfer of
14 funds, the company Coty was using on the front end indicated title on the Churchill property
15 showed two open liens – one to Geneva Financial, LLC in the amount of \$133,500 and the
16 second, to Paramount Residential Mortgage Group, LLC in the amount of \$128,458.86. (*See*
17 Exhibit C; *see also* Declaration of Coty Refaely)

18 As was noted by the company Coty was using, this lien from Paramount Residential
19 Mortgage Group should have been removed back when the home was refinanced in 2017. (*See*
20 Exhibit D) Until this lien issue was cleared up Ms. Baez Rosa could not in good faith, execute
21 loan documents and transfer funds to escrow without the lien removed. *Id.* This was a situation
22 that would not have been foreseen based on everything Coty knew and was told about the status
23 of Churchill (including from Cheri). (*See* Declaration of Coty Refaely) Coty could not force this
24 company to release the money until this issue was resolved. (*See* Declaration of Coty Refaely;
25 *see also* Exhibit C)

26
27 ///

1 Coty proceeded to get whatever documents she could to Ms. Baez Rosa so as to
2 immediately resolve this issue but as she was not in possession of any of the refinance documents
3 from 2017 it required her to have the Plaintiff's cooperation. The title issue was ultimately
4 cleared up and Ms. Baez Rosa spoke on October 28th to Sheree Edwards of Driggs Title Agency
5 and explained the issue with Title, but Ms. Baez Rosa was hopeful to be able to close/fund
6 Churchill on October 30th. (See Exhibit C) Ms. Edwards indicated that a closing on the 30th
7 would not be possible, as Nevada observes a holiday. *Id.* In response Ms. Baez Rosa indicated
8 that they could proceed with loan documents with a projected funding date of November 4th, to
9 allow time to sign/notarize all pertinent loan documents. *Id.* It is important to stress again that
10 the money was already with Ms. Baez Rosa at this point ready to be transferred over with the
11 documents but for this "lien issue". (See Declaration of Coty Refaely)

12
13
14 This delay was due to a title company having concerns re: a lien showing on the property
15 and not due to Coty being able to perform and Coty was not in possession of the documents
16 showing that this lien had been paid off which would have immediately rectified the problem.
17 The intent of the parties was for the transaction to be completed by end of October and Coty was
18 ready on October 24th. The company delaying the transfer of funds as a result of a confusion
19 about a lien on the property should be not a basis to allow a party to refuse to comply with the
20 intent of the Addendum, especially given that had the Plaintiff had the documents showing the
21 payoff of the lien back in 2017 (which she should have had as the property owner) this issue
22 would not have caused any delay to where it prevented closing before October 31, 2020.

23
24 Coty let the Plaintiff know about this issue as well on October 24, 2020. (See Exhibits E
25 and F; *see also* Declaration of Coty Refaely). Ms. Baez Rosa advised Sheree Edwards for
26 additional assistance in removing the lien and once done the funds would transfer the same day.
27 (See Exhibit D) Undersigned counsel reached out to Plaintiff's counsel on October 28th to advise
28

1 him of the situation and indicate that a brief extension of up to two weeks (with the expectation
2 that this would be completed by the week after October 30th) was needed to finalize the transfer.
3 (See Exhibit G)

4 To suggest that an extension of a few days to complete the transfer due to a lien issue that
5 arose on the property should preclude Coty from being able to exercise the intent of the
6 Addendum which is to transfer the property to her is unconscionable and makes no sense. The
7 Plaintiff is not prejudiced by a delay of few days especially wherein it was due to an “issue” that
8 was of a surprise to both her and Coty.
9

10 The Plaintiff should have been able to provide immediate proof of payout of the lien from
11 Paramount Residential Mortgage Group, LLC to Ms. Edwards or Coty to clear that issue up and
12 allow the finalization of the transfer of Churchill to be completed. As Ms. Baez Rosa indicated
13 the funds would transfer the same day the “lien issue” was resolved. This lien was removed when
14 that residence was refinanced in 2017. To believe that the Plaintiff didn’t have proof of that lien
15 being paid off in her possession is hard to fathom. (See Declaration of Coty Refaely) Her
16 inability to provide immediate proof of that lien being paid off delayed the completion of the
17 transfer of the property and frustrated Coty’s ability to perform the obligations of the Addendum
18 as to Churchill.
19

20 On November 4th the funds were scheduled to be wired transferred, and funds were
21 effectively received on November 5th into Driggs Title’ Escrow account accompanied by all
22 pertinent loan documentation. (See Exhibit C) The money to pay off Churchill is still being held
23 in Escrow and can be released to Cheri as soon as she authorizes the final documents to be
24 executed. (See Declaration of Coty Refaely)
25

26 If the Plaintiff will not comply with this Court’s order to sign the necessary
27 documentation to finalize the transfer of Churchill into Coty’s name, then NRCP 70 provides the
28

1 vehicle to have the clerk of the court sign off on any paperwork necessary to effectuate a transfer
2 of property when a party has been disobedient in complying with the judgment or order. The
3 purpose of the rule is to prevent a non-complaint party from frustrating the orders of the Court.
4 “Rule 70, Nevada Rules of Civil Procedure, provides that a judgment directing execution or
5 delivery of documents may be enforced by contempt.” *See Caplow v. Eighth Judicial Dist. Court*
6 *In and For Clark County*, 72 Nev. 265, 302 P.2d 755 (1956).
7

8 Here, Coty was ready to effectuate transfer of the Churchill property on October 24th (*see*
9 Exhibits C and D) but was prohibited due to an unexpected “lien” issue on the property. Coty
10 took immediate steps to remedy the lien issue and even advised Cheri of the situation as she
11 needed her assistance to clear it up so that the transfer could be completed. Due to the delay of
12 the title/escrow companies (not Coty’s delay) that is what required an extension to finalize the
13 transfer of the Churchill property (which was anticipated to be November 4th but Ms. Baez Rosa
14 wanted two weeks as a buffer). A request was made to Cheri’s attorney to give an extension to
15 Coty for two weeks out of abundance of caution (but that the anticipate resolution would likely by
16 the week right after October 30th) to which no response was received. (*See Exhibit G*)
17

18 This is a situation that was due to no issues under Coty’s control (and frankly should have
19 been resolved with the Plaintiff providing the requisite documentation to the escrow company and
20 allowing the transfer to be completed before the deadline in the Addendum), was clearly not
21 foreseen and does not warrant the position of the Plaintiff now in refusing to execute the
22 documents to finalize the transfer of the Churchill property. Coty was clearly ready to perform
23 the terms of the Addendum for Churchill on October 24th and only because of the “lien” issue that
24 caused the title company to delay in releasing the funds is what caused the delay beyond the
25 October 31st deadline. Such a delay due to the title company’s action is clearly a “frustration of
26 purpose” and excuses the failure of the transfer to be completed by October 31, 2020.
27
28

MICHAEL S. STRANGE & ASSOCIATES, LLC
501 S. RANCHO DR.; SUITE A-7
LAS VEGAS, NEVADA 89106
PHONE: (702) 456-4357; FAX (702) 464-3042

1 The Court should order that Cheri sign whatever documentation is needed to finalize the
2 transfer of the Churchill property to Coty so that the intent of the parties in executing the
3 Addendum is fulfilled.

4
5 **III.**

6 **CONCLUSION**

7 Therefore, based upon the foregoing evidence, exhibits, and testimony before the Court,
8 Defendant, COTY REFAELY respectfully requests that this Court enforce the Addendum and
9 require the Plaintiff to sign any necessary documentation to finalize the transfer of the Churchill
10 property to Coty's name.

11 Respectfully Submitted,

12 **MICHAEL S. STRANGE & ASSOCIATES, LLC**

13
14 By: /s/ Michael S. Strange
15 MICHAEL S. STRANGE, ESQ.
16 501 S. Rancho Dr.; Suite A-7
17 Las Vegas, NV 89106
18 (702) 456-4357
19 Attorney for Defendant Coty
20 Refaely
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MICHAEL S. STRANGE & ASSOCIATES, LLC
501 S. RANCHO DR., SUITE A-7
LAS VEGAS, NEVADA 89106
PHONE: (702) 456-4357; FAX (702) 464-3042

DECLARATION OF COTY REFAELY

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

I, COTY REFAELY, says that I am over the age of 18 and I make this declaration pursuant to NRS 53.045 based upon facts that I have personal knowledge of and I believe the facts below are true upon my information and belief

1. That I am the Defendant in the above-entitled action in the Eighth Judicial District Court and am the Affiant for this declaration to this MOTION TO ENFORCE SETTLEMENT AGREEMENT AND ADDENDUM AND TO REQUIRE PLAINTIFF TO EXECUTE FINAL TRANSFER DOCUMENTS FOR CHURCHILL PROPERTY.

2. That Affiant has read the MOTION TO ENFORCE SETTLEMENT AGREEMENT AND ADDENDUM AND TO REQUIRE PLAINTIFF TO EXECUTE FINAL TRANSFER DOCUMENTS FOR CHURCHILL PROPERTY and hereby certifies that the fact set forth in the Points and Authorities attached thereto are true of Affiant's own knowledge, except for those matters therein contained stated upon information and belief, and as to those matters, Affiant believes them to be true. Affiant incorporates these facts into this Declaration as though fully set forth herein.

3. I declare under penalty of perjury that the foregoing is true and correct.

4. Further, I say not.

Dated this 30th day of November, 2020


COTY REFAELY

MICHAEL S. STRANGE & ASSOCIATES, LLC
501 S. RANCHO DR., SUITE A-7
LAS VEGAS, NEVADA 89106
PHONE: (702) 456-4357; FAX (702) 464-3042

DECLARATION OF MICHAEL S. STRANGE, ESQ.

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

I, MICHAEL S. STRANGE, ESQ., says that I am over the age of 18 and I make this declaration pursuant to NRS 53.045 based upon facts that I have personal knowledge of and I believe the facts below are true upon my information and belief.

1. That I am licensed to practice law in all Courts of the State of Nevada.

2. I was retained by the Defendant to represent her in the above-entitled matter.

3. I reached out to Plaintiff's counsel on October 28th to advise of the situation regarding a supposed "lien" issue on Churchill that was causing a delay in finalizing the transfer and indicated that a brief extension of two weeks (but with the belief that it should be done by the week following October 30th) was needed to finalize the transfer. No response was received to that email.

4. Further I say naught.

Dated this 30th day of November, 2020

/s/ Michael S. Strange
MICHAEL S. STRANGE, ESQ.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that service of the foregoing DEFENDANT COTY REFAELY'S MOTION TO ENFORCE SETTLEMENT AGREEMENT AND ADDENDUM AND TO REQUIRE PLAINTIFF TO EXECUTE FINAL TRANSFER DOCUMENTS FOR CHURCHILL PROPERTY, was made on this 30th day of November, 2020, pursuant to NRCP 5(b)(2)(D), and EDCR 8.05, by electronic service via the Court's EFiling System to the following counsel:

Gary S. Fink, Esq., Attorney for Plaintiff at garyfink@atharilaw.com.

By: /s/ Michael S. Strange
MICHAEL S. STRANGE, ESQ.
501 S. Rancho Dr.; Suite A-7
Las Vegas, NV 89106
(702) 456-4357
Attorney for Defendant Coty Refaely

MICHAEL S. STRANGE & ASSOCIATES, LLC
501 S. RANCHO DR.; SUITE A-7
LAS VEGAS, NEVADA 89106
PHONE: (702) 456-4357; FAX (702) 464-3042

EXHIBIT A

SETTLEMENT AGREEMENT AND GENERAL RELEASE

This Settlement Agreement and General Release ("SETTLEMENT AGREEMENT") is made as of the date it is fully executed by all parties, ("EFFECTIVE DATE") between Cheri Rene Wiman ("CHERI"), and Coty Refaely ("COTY"), and on the other hand, (all collectively referred to as the "PARTIES"), on behalf of themselves, their antecedents, successors, former, present and future assigns, and heirs, with reference to the following:

1. RECITALS

1.1 The PARTIES were in a 13-year relationship that ended in May 2019. During that relationship they held themselves out as life partners and certain real and personal properties were purchased during that relationship.

1.2 CHERI filed suit in Clark County under Case No. A-19-803928-C against COTY on October 18, 2019. COTY filed an Answer and Counterclaim on November 8, 2019. The case is referred to as "ACTION." In the ACTION, CHERI seeks a declaration from the Court regarding a certain document dated July 3, 2019. COTY's counterclaims include 1) Breach of Contract; 2) Breach of Implied Contract; 3) Breach of Implied Covenant of Good Faith and Fair Dealing; 4) Intentional Interference with Contractual and/or Business Relationship; 5) Unjust Enrichment; 6) Conversion; 7) Trespass to Chattels; 8) Injunctive Relief; 9) Specific Performance of Settlement Agreement; and, 10) Declaratory Relief.

1.3 WHEREAS the PARTIES have agreed to resolve all issues in any way related to the ACTION and their relationship, and it is the intent of the PARTIES to release all known and potential causes of action against each other arising out of or in any way related to the ACTION or their relationship, as more fully set forth herein.

1.4 WHEREAS, the above Recitals, are incorporated by reference into the SETTLEMENT AGREEMENT below.

1.5. WHEREAS, time is the essence with respect to all aspects of each PARTIES' performance of any obligation under this SETTLEMENT AGREEMENT.

NOW, THEREFORE, for good and sufficient consideration, the receipt and sufficiency of which is acknowledged, the PARTIES agree as follows:

2. AGREEMENT

2.1 COTY shall have the right to purchase the residence at 5509 Oak Street, Las Vegas, Nevada 89120 until July 31, 2020 for the amount of the actual loan subject to the terms stated herein. As of January 31, 2020 the loan balance owed on the property is \$210,759.97. COTY will be solely responsible for the monthly mortgage of the property and all other expenses associated with the property and, for all expenses associated with the purchase. Timely payment of the monthly mortgage is defined as "full payment of the monthly mortgage obligation (including principal, interest, taxes and insurance) deposited into CHERI's checking account no later than the

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1st of every month. If payment is not received into the account by the 10th of the month, a material breach has occurred and COTY's rights to purchase the property shall be terminated without notice. If COTY's rights to purchase are terminated, any monies previously paid shall be considered monthly rent for the property. Any monies paid after material breach has occurred shall also be considered monthly rent for the property. CHER will ensure that COTY can deposit the monthly payments into her checking account and will in no way impede her ability to make the timely monthly payments. During the period from the present until July 31, 2020, if COTY is in compliance with the payment of the expenses to the property, CHERI will in no way interfere or infringe on COTY's rights to the property including but not limited to, filing eviction notices, changing the locks, filing deeds, listing the property for sale, soliciting offers, etc. In the event COTY does not purchase the property, COTY will be liable to CHERI for any damages caused to the property while COTY is in possession of the property. At the time of purchase COTY will pay CHERI an additional \$12,500.00 for this property above the loan amount. The payment will be paid directly from the funds of the sale. If required to ensure direct payment or to secure financing, COTY can and/or will provide a copy of this SETTLEMENT AGREEMENT to the escrow company or lender handling the purchase. In the event that COTY does not complete the purchase of the property as herein required, she acknowledges that the property would then be the sole and separate property of CHERI.

2.2 COTY shall also have the right to purchase the residence at 5005 Churchill Ave until July 31, 2020 at the actual loan amount subject to the terms stated herein. As of January 31, 2020 the loan balance on the property is \$128,458.86. COTY will be solely responsible for the monthly mortgage of the property and all other expenses associated with the property and, for all expenses associated with the purchase. Timely payment of the monthly mortgage is defined as "full payment of the monthly mortgage obligation (including principal, interest, taxes and insurance) deposited into CHERI's checking account no later than the 1st of every month. If payment is not received into the account by the 10th of the month, a material breach has occurred and COTY's rights to purchase the property shall be terminated without notice. If COTY's rights to purchase are terminated, any monies previously paid shall be considered monthly rent for the property. Any monies paid after material breach has occurred shall also be considered monthly rent for the property. CHER will ensure that COTY can deposit the monthly payments into her checking account and will in no way impede her ability to make the timely monthly payments. During the period from the present until July 31, 2020, if COTY is in compliance with the payment of the expenses to the property, CHERI will in no way interfere or infringe on COTY's rights to the property including but not limited to, filing eviction notices, changing the locks, filing deeds, listing the property for sale, soliciting offers, etc. In the event COTY does not purchase the property, COTY will be liable to CHERI for any damages caused to the property while COTY is in possession of the property. At the time of purchase COTY will pay CHERI an additional \$12,500.00 for this property above the loan amount. The payment will be paid directly from the funds of the sale. If required to ensure direct payment or to secure financing, COTY can and/or will provide a copy of this SETTLEMENT AGREEMENT to the escrow company or lender handling the purchase. In the event that COTY does not complete the purchase of the property as herein required, she acknowledges that the property would then be the sole and separate property of CHERI.

2.3 For the Ashwood property COTY agrees to take over all obligations and all expenses of this property as of January 1, 2020 and upon the sale of the Ashwood property, COTY will pay CHERI \$13,300.00 for her interest in that property. The payment will be paid directly from the funds of the sale. If required to ensure direct payment or to secure financing, COTY can and/or will provide a copy of this SETTLEMENT AGREEMENT to the escrow company or lender handling the purchase. Additionally, COTY agrees to reimburse CHERI \$474.00 for the January 2020 mortgage payment and agrees to pay that amount at the time of escrow for the sale of Ashwood making a total payment for Ashwood from COTY to CHERI of \$13,774.00.

2.4 The Glasses and the Rolex watch will be returned immediately to CHERI and, at the same time, CHERI will immediately return the ring that is still in CHERI's possession.

2.5 COTY will remove the contents from the container located on the Carey property by no later than February 13, 2020 and she further agrees not remove the container itself. CHERI cooperate in ensuring that COTY and/or the necessary people have access to the containers on a mutually agreeable date as well as access to the property so as to allow them to remove the contents by the deadline. If COTY does not remove the property by February 13, 2020 then CHERI will keep those contents as her property.

2.6 Upon signing of this SETTLEMENT AGREEMENT, the PARTIES will submit a Stipulation and Order to the Court to stay the litigation until the terms outlined herein are completed or terminated. Upon completion or termination of the terms outlined herein the parties will dismiss the litigation with prejudice and each side will bear their own attorneys' fees and costs.

3. RELEASE

3.1 The PARTIES release and forever discharge any and all claims that they may have against one another, including, but not limited to, any and all causes of action, claims, allegations of liability, damages, restitution, equitable, legal and administrative relief, interest, demands or rights whatsoever, including, without limitation, for all claims of actual monetary damages, for claims of injunctive or equitable type of relief, and for claims of mental anguish and/or punitive or exemplary damages, whether such claims are based on federal, state, or local law, statute, ordinance, or regulation, contract, common law, or any other source, that were asserted or could have been asserted against one another in the ACTION or their relationship.

4. NO ASSIGNMENTS

4.1 The PARTIES acknowledge that they have not heretofore assigned or transferred or purported to assign or transfer to any person any released matter or any part or portion thereof, and agree to indemnify and hold harmless each other from and against any claim, demand, controversy, damage, debt, liability, account, reckoning, obligation, cost, expense, lien, action or cause of action (including the payment of attorney's fees and costs actually incurred whether or not litigation be commenced) based on, in connection with, or arising out of any assignment or transfer or claimed assignment or transfer.

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5. RESPONSIBILITY FOR ATTORNEY'S FEES AND COSTS

5.1 Other than as set forth in this SETTLEMENT AGREEMENT (specifically Paragraph #11), each of the PARTIES shall be responsible for the payment of his, her or its own attorney's fees and costs, if any.

6. ENTIRE AGREEMENT

6.1 This document contains the entire agreement and understanding concerning the subject matter between the PARTIES and supersedes and replaces all prior negotiations, proposed agreements and agreements, written and oral. The PARTIES acknowledge that none of the PARTIES, their agents or attorneys have made any promise, representation or warranty whatsoever, express or implied, not contained herein concerning the subject matter hereof, to induce the PARTIES to execute this instrument, and acknowledge that the PARTIES have not executed this instrument in reliance on any such promise, representation or warranty not contained herein.

7. SEVERABILITY

7.1 The provisions of this SETTLEMENT AGREEMENT are severable and, if any part of it is found to be unenforceable, the remainder of this SETTLEMENT AGREEMENT shall remain in full force and effect.

8. BINDING EFFECT

8.1 This SETTLEMENT AGREEMENT shall be binding upon and inure to the benefit of the PARTIES and their respective executors, administrators, heirs, successors, and assigns.

9. REPRESENTATION OF COMPREHENSION OF DOCUMENT

9.1 In entering into this SETTLEMENT AGREEMENT, the PARTIES represent that they have relied upon the legal advice of attorneys of their own choice. The PARTIES further represent that the terms of this SETTLEMENT AGREEMENT have been completely explained to them by their attorneys, and that those terms are fully understood and voluntarily accepted by them after the consultation with their attorney and that they are signing this SETTLEMENT AGREEMENT voluntarily and understand it to be a complete resolution of all issues between them.

10. EXECUTION BY COUNTERPARTS/FACSIMILE

10.1 This SETTLEMENT AGREEMENT may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This SETTLEMENT AGREEMENT may be executed by means of facsimile or scan and e-mail, and each copy of this SETTLEMENT AGREEMENT bearing the facsimile transmitted or scanned and e-mailed signature of a PARTY and/or a PARTY's authorized representative shall be deemed an original.

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11. ATTORNEY'S FEES AND COSTS

11.1 In the event of any dispute between the PARTIES concerning the terms and provisions of this SETTLEMENT AGREEMENT, the party prevailing in such dispute shall be entitled to collect from the other party all costs incurred in such dispute, including reasonable attorney's fees.

IN WITNESS THEREOF, the PARTIES have executed this SETTLEMENT AGREEMENT AND GENERAL RELEASE on the dates indicated below effective as of the Effective Date.


THE PARTIES HAVE FURTHER initialed each page of the SETTLEMENT AGREEMENT effective as of the Effective Date.

Dated: 2-7-2020



CHERI WIMAN

Dated: 2-7-2020



COTY REFAELY

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EXHIBIT B

ADDENDUM TO SETTLEMENT AGREEMENT AND GENERAL RELEASE

This Addendum to Settlement Agreement and General Release ("ADDENDUM") is made as of the date it is fully executed by all parties, ("EFFECTIVE DATE") between Cheri Rene Wiman ("CHERI"), and Coty Refaely ("COTY"), and on the other hand, (all collectively referred to as the "PARTIES"), on behalf of themselves, their antecedents, successors, former, present and future assigns, and heirs, with reference to the following:

1. RECITALS

1.1 The PARTIES executed a Settlement Agreement and General Release on February 7, 2020 to resolve their issues that arose in a lawsuit in Clark County under Case No. A-19-803928-C against COTY on October 18, 2019. COTY filed an Answer and Counterclaim on November 8, 2019. The case is referred to as "ACTION."

1.2 The PARTIES stayed the proceedings in the ACTION to fulfill the terms and obligations of the SETTLEMENT AGREEMENT before dismissing the ACTION.

1.3 WHEREAS it appears COTY will be unable to timely fulfill her obligations under Sections 2.1 and 2.2 of the SETTLEMENT AGREEMENT due to the unexpected COVID-19 situation, the parties agree to a one time modification of Sections 2.1 and 2.2 of the SETTLEMENT AGREEMENT to extend the deadline for COTY to complete her obligations under those sections from July 31, 2020 to October 31, 2020. The PARTIES agree that all other terms and conditions in those sections and the rest of the SETTLEMENT AGREEMENT remain in full force and effect and are hereby incorporated into this ADDENDUM by reference as if they were fully laid out.

1.4 WHEREAS, the above Recitals, are incorporated by reference into the ADDENDUM SETTLEMENT AGREEMENT below.

1.5. WHEREAS, time is the essence with respect to all aspects of each PARTIES' performance of any obligation under this ADDENDUM TO SETTLEMENT AGREEMENT.

NOW, THEREFORE, for good and sufficient consideration, the receipt and sufficiency of which is acknowledged, the PARTIES agree as follows:

2. AGREEMENT

2.1 COTY shall have the right to purchase the residence at 5509 Oak Street, Las Vegas, Nevada 89120 until October 31, 2020 for the amount of the actual loan subject to the terms stated herein. As of January 31, 2020 the loan balance owed on the property is \$210,759.97. COTY will be solely responsible for the monthly mortgage of the property and all other expenses associated with the property and, for all expenses associated with the purchase. Timely payment of the monthly mortgage is defined as "full payment of the monthly mortgage obligation (including principal, interest, taxes and insurance) deposited into CHERI's checking account no

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later than the 1st of every month. If payment is not received into the account by the 10th of the month, a material breach has occurred and COTY's rights to purchase the property shall be terminated without notice. If COTY's rights to purchase are terminated, any monies previously paid shall be considered monthly rent for the property. Any monies paid after material breach has occurred shall also be considered monthly rent for the property. CHER will ensure that COTY can deposit the monthly payments into her checking account and will in no way impede her ability to make the timely monthly payments. During the period from the present until July 31, 2020, if COTY is in compliance with the payment of the expenses to the property, CHERI will in no way interfere or infringe on COTY's rights to the property including but not limited to, filing eviction notices, changing the locks, filing deeds, listing the property for sale, soliciting offers, etc. In the event COTY does not purchase the property, COTY will be liable to CHERI for any damages caused to the property while COTY is in possession of the property. At the time of purchase COTY will pay CHERI an additional \$12,500.00 for this property above the loan amount. The payment will be paid directly from the funds of the sale. If required to ensure direct payment or to secure financing, COTY can and/or will provide a copy of this SETTLEMENT AGREEMENT to the escrow company or lender handling the purchase. In the event that COTY does not complete the purchase of the property as herein required, she acknowledges that the property would then be the sole and separate property of CHERI.

2.2 COTY shall also have the right to purchase the residence at 5005 Churchill Ave until October 31, 2020 at the actual loan amount subject to the terms stated herein. As of January 31, 2020 the loan balance on the property is \$128,458.86. COTY will be solely responsible for the monthly mortgage of the property and all other expenses associated with the property and, for all expenses associated with the purchase. Timely payment of the monthly mortgage is defined as "full payment of the monthly mortgage obligation (including principal, interest, taxes and insurance) deposited into CHERI's checking account no later than the 1st of every month. If payment is not received into the account by the 10th of the month, a material breach has occurred and COTY's rights to purchase the property shall be terminated without notice. If COTY's rights to purchase are terminated, any monies previously paid shall be considered monthly rent for the property. Any monies paid after material breach has occurred shall also be considered monthly rent for the property. CHER will ensure that COTY can deposit the monthly payments into her checking account and will in no way impede her ability to make the timely monthly payments. During the period from the present until July 31, 2020, if COTY is in compliance with the payment of the expenses to the property, CHERI will in no way interfere or infringe on COTY's rights to the property including but not limited to, filing eviction notices, changing the locks, filing deeds, listing the property for sale, soliciting offers, etc. In the event COTY does not purchase the property, COTY will be liable to CHERI for any damages caused to the property while COTY is in possession of the property. At the time of purchase COTY will pay CHERI an additional \$12,500.00 for this property above the loan amount. The payment will be paid directly from the funds of the sale. If required to ensure direct payment or to secure financing, COTY can and/or will provide a copy of this SETTLEMENT AGREEMENT to the escrow company or lender handling the purchase. In the event that COTY does not complete the purchase of the property as herein required, she acknowledges that the property would then be the sole and separate property of CHERI.

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2.3 After the signing of this ADDENDUM, and once the completion or termination of the terms outlined herein the parties will dismiss the litigation with prejudice and each side will bear their own attorneys' fees and costs.

3. RELEASE

3.1 The PARTIES release and forever discharge any and all claims that they may have against one another, including, but not limited to, any and all causes of action, claims, allegations of liability, damages, restitution, equitable, legal and administrative relief, interest, demands or rights whatsoever, including, without limitation, for all claims of actual monetary damages, for claims of injunctive or equitable type of relief, and for claims of mental anguish and/or punitive or exemplary damages, whether such claims are based on federal, state, or local law, statute, ordinance, or regulation, contract, common law, or any other source, that were asserted or could have been asserted against one another in the ACTION or their relationship.

4. NO ASSIGNMENTS

4.1 The PARTIES acknowledge that they have not heretofore assigned or transferred or purported to assign or transfer to any person any released matter or any part or portion thereof, and agree to indemnify and hold harmless each other from and against any claim, demand, controversy, damage, debt, liability, account, reckoning, obligation, cost, expense, lien, action or cause of action (including the payment of attorney's fees and costs actually incurred whether or not litigation be commenced) based on, in connection with, or arising out of any assignment or transfer or claimed assignment or transfer.

5. RESPONSIBILITY FOR ATTORNEY'S FEES AND COSTS

5.1 Other than as set forth in this ADDENDUM OR THE SETTLEMENT AGREEMENT (specifically Paragraph #11), each of the PARTIES shall be responsible for the payment of his, her or its own attorney's fees and costs, if any.

6. ENTIRE AGREEMENT

6.1 This ADDENDUM and the SETTLEMENT AGREEMENT contain the entire agreement and understanding concerning the subject matter between the PARTIES and supersedes and replaces all prior negotiations, proposed agreements and agreements, written and oral. The PARTIES acknowledge that none of the PARTIES, their agents or attorneys have made any promise, representation or warranty whatsoever, express or implied, not contained herein concerning the subject matter hereof, to induce the PARTIES to execute this instrument, and acknowledge that the PARTIES have not executed this instrument in reliance on any such promise, representation or warranty not contained herein.

7. SEVERABILITY

7.1 The provisions of this ADDENDUM are severable and, if any part of it is found to be unenforceable, the remainder of this ADDENDUM shall remain in full force and effect.

PW An

8. BINDING EFFECT

8.1 This ADDENDUM shall be binding upon and inure to the benefit of the PARTIES and their respective executors, administrators, heirs, successors, and assigns.

9. REPRESENTATION OF COMPREHENSION OF DOCUMENT

9.1 In entering into this ADDENDUM, the PARTIES represent that they have relied upon the legal advice of attorneys of their own choice. The PARTIES further represent that the terms of this ADDENDUM have been completely explained to them by their attorneys, and that those terms are fully understood and voluntarily accepted by them after the consultation with their attorney and that they are signing this ADDENDUM voluntarily and understand it to be a complete resolution of all issues between them.

10. EXECUTION BY COUNTERPARTS/FACSIMILE

10.1 This ADDENDUM may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This ADDENDUM may be executed by means of facsimile or scan and e-mail, and each copy of this ADDENDUM bearing the facsimile transmitted or scanned and e-mailed signature of a PARTY and/or a PARTY's authorized representative shall be deemed an original.

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11. ATTORNEY'S FEES AND COSTS

11.1 In the event of any dispute between the PARTIES concerning the terms and provisions of this ADDENDUM, the party prevailing in such dispute shall be entitled to collect from the other party all costs incurred in such dispute, including reasonable attorney's fees.

IN WITNESS THEREOF, the PARTIES have executed this ADDENDUM TO SETTLEMENT AGREEMENT AND GENERAL RELEASE on the dates indicated below effective as of the Effective Date.

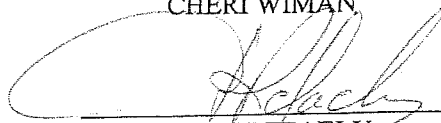
THE PARTIES HAVE FURTHER initialed each page of the ADDENDUM TO SETTLEMENT AGREEMENT effective as of the Effective Date.

Dated: 7-23-2020



CHERI WIMAN

Dated: 7-24-2020



COTY REFAELY

EXHIBIT C

From: [Gigi Baez-Rosa](#)
To: [coty_refaely](#); mstrange@mikestrangelaw.com
Subject: Refaely Letter
Date: Monday, November 9, 2020 3:23:05 PM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)
[Refaely Funds Transfer.docx](#)

Hi Coty and Mike,

Please see attached.

Thank you,

Gigi Baez-Rosa
Director of Property Management



Real Estate Professionals Dedicated to Delivering an Unparalleled Client Experience Through Collaboration & Integrity

Peak Professional Plaza

5900 Canoga Ave., Suite 400

Woodland Hills, CA 91367

Tel: (818) 206-3172

Cel: (323) 896-7054

Fax: (818) 591-2990

Email: GigiB@peakcorp.com

Website: www.peakcorp.com

CalDRE# 02061827

Company overview: [Click here for an overview on the Peak Corporate Network](#)

Follow us:



Gigi-Baez Rosa
5900 Canoga Ave., Suite #400
Woodland Hills, CA 91367

November 9th, 2020

Michael S. Strange
501 S. Rancho Dr., Suite #A-7
Las Vegas, NV 89106

Hi Michael,

Below is a timeline of events for your records. As indicated on our previous conversations, our team has had funds ready for distribution since October 20th – although we did not have completed loan documents for Coty Refaely until October 22nd. Our team was aware of the October 31st, 2020 deadline – as Ms. Refaely stressed the date on our first call – and moved quickly to ensure a successful transfer of funds and execution of appropriate documents.

Before executing loan documents, I emailed Ms. Refaely on October 23rd and indicated title on the property showed two open liens – one to Geneva Financial, LLC in the amount of \$133,500 and the second, to Paramount Residential Mortgage Group, LLC in the amount of \$128,458.86. Per my conversation with Ms. Refaely, she immediately called Cheri Wiman to advise her of the open liens on Title. Ms. Refaely was able to obtain a Settlement Statement from Ms. Wiman and this was forwarded to our legal department for review.

Unfortunately, the Settlement Statement was insufficient, and our team worked to clear Title to close by the new projected date of October 30th, 2020. On October 28th, I spoke to Sheree Edwards of Driggs Title Agency and explained the issue with Title, but our hopes remained to close/fund on October 30th. Ms. Edwards indicated that a closing on the 30th would not be possible, as Nevada observes a holiday.

At this point, our team understood there would be a further delay caused by the observed holiday on October 30th. We informed Ms. Refaely that Title was now clear, and we could proceed with loan documents with a projected funding date of November 4th, to allow time to sign/notarize all pertinent loan documents. On November 4th funds were scheduled to be wired transferred, and funds were effectively received on November 5th into Driggs Title' Escrow account accompanied by all pertinent loan documentation.

Please feel free to reach out to our team should you have any questions.

My best,

Gigi Baez-Rosa

EXHIBIT D

From: [Gigi Baez-Rosa](#)
To: mstrange@mikestrangelaw.com
Cc: [coty refaely](#)
Subject: Status of 5005 Churchill
Date: Tuesday, November 3, 2020 2:11:03 PM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)
[B4876063.pdf](#)

Hi Michael,

Thank you for your call earlier. As I indicated to Coty and Sheree, our funds are immediately available for use. Unfortunately, we cannot proceed until the lien from Paramount Residential Mortgage Group is removed. Title should have completed this once the home was refinanced in 2017, and I'm not sure why title wasn't checked before issuing any settlement agreement between both parties.

I cannot, in good faith, execute loan documents and transfer funds to escrow without the lien removed. This obviously jeopardizes Coty position, through no fault of her own, for an error that should have caught and corrected in 2017.

I've reached out Sheree for additional assistance in removing the lien and will advise. As soon as this is completed, we can transfer funds on the same day.

Please let me know if you need anything else from me. I'm hoping to have this resolved as quickly as possible.

Thank you,

Gigi Baez-Rosa
Director of Property Management



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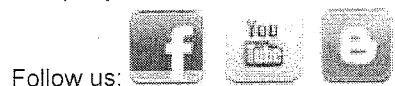
Fax: (818) 591-2990

Email: GigiB@peakcorp.com

Website: www.peakcorp.com

CalDRE# 02061827

Company overview: [Click here for an overview on the Peak Corporate Network](#)



Follow us:

EXHIBIT E

From: coby refaely
To: Esq. Michael S. Strange
Subject: Oct 23
Date: Thursday, November 12, 2020 3:33:28 PM

3:32 ck  



< New conversation

Cheri Cell



11:30 AM

maybe...



I think I did
but not sure

11:50 AM

Read
11:51 AM

Ok

Friday, October 23, 2020

Read
11:05 AM

Please call
emergency



Cheri Cell



In a meeting

11:18 AM

Thursday, November 5, 2020



**Enter
message**



Sent from Yahoo Mail on Android

EXHIBIT F

From: [coty.refaely](#)
To: [Esg. Michael S. Strange](#)
Subject: Fw: Churchill
Date: Monday, November 23, 2020 3:15:58 PM

Sent from Yahoo Mail on Android

----- Forwarded Message -----

From: "coty refaely" <coty0607@yahoo.com>
To: "cheriwiman@gmail.com" <cheriwiman@gmail.com>
Sent: Fri, Oct 23, 2020 at 3:30 PM
Subject: Re: Churchill

Ok Escrow will try to get ahold of the 1st loan and get it squared...i hope it wont take long to fix this problem as i am ready on my side to close escrow on Monday..but if it does and hoes beyond 31st of Oct its not me to blame...

Sent from Yahoo Mail on Android

On Fri, Oct 23, 2020 at 2:14 PM, Cheri Wiman
<cheriwiman@gmail.com> wrote:

Dont have it

On Fri, Oct 23, 2020, 1:00 PM coty refaely <coty0607@yahoo.com> wrote:
What about the jacket we had with the refi?

Sent from Yahoo Mail on Android

On Fri, Oct 23, 2020 at 12:28 PM, Cheri Wiman
<cheriwiman@gmail.com> wrote:

This is what I keep for taxes

EXHIBIT G

From: mstrange@mikestrangelaw.com
To: "Gary S. Fink"
Cc: "coty refaely"
Subject: Wiman v. Refaely; A-19-803928-C
Date: Wednesday, October 28, 2020 4:28:00 PM

Hello Gary,

Hope you are doing well. I am sure you have been made aware but the parties completed the transfer of the Oak property. They are working on transferring the Churchill property and in speaking with my client they are almost done but the holdup is a lien that remains on the property that should have been removed when that property was refinanced but it wasn't. I know your client has been informed and has been assisting in providing paperwork to the escrow company to aid in getting the lien removed. I spoke with the escrow lady today and she indicates that with the delay in having to remove the lien (that was unexpected to all) and the Nevada day holiday on Friday that they won't be able to complete the transfer until next week most likely but that on the safe side a buffer of two additional weeks would for sure allow the process to be completed. I know we had a deadline of October 31st and a status check for November 4th on this matter but I wouldn't think your client would object to an extension of two weeks from October 31st to complete the transfer of Churchill.

Michael S. Strange, Esq.
Michael S. Strange & Associates, LLC
501 S. Rancho Dr.; Suite A-7
Las Vegas, NV 89106
Phone: (702) 456-4357
Fax: (702) 464-3042

NOTICE: The above information is for the sole use of the intended recipient and contains information belonging to Michael S. Strange & Associates, LLC, which is confidential and may be legally privileged. If you are not the intended recipient, or believe that you have received this communication in error, you are hereby notified that any printing, copying, distribution, use or taking of any action in reliance on the contents of this e-mail information is strictly prohibited. If you have received this e-mail in error, please immediately (1) notify the sender by reply e-mail; (2) call our office at (702) 456-4357 to inform the sender of the error; and (3) destroy all copies of the original message, including ones on your computer system and all drives. Thank you.

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Docket 82763 Document 2021-13775

CHERI RENE WIMAN,) **Supreme Court No.: 82763**
Appellant,) District Court Case No. A803928
)
vs.)
)
COTY REFAELY,)
)
Respondent.)

* * * *

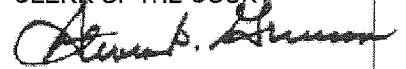
CHERI RENE WIMAN,) **Supreme Court No.: 82763**
Appellant,) District Court Case No. A803928
)
vs.)
)
COTY REFAELY,)
)
Respondent.)

EXHIBITS 4-7

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
Attorney for Appellant

EXHIBIT 4

EXHIBIT 4



1 **OPPS**
2 Gary S. Fink, Esq.
3 Nevada Bar No. 8064
4 **REZA ATHARI & ASSOCIATES, PLLC**
5 3365 Pepper Lane, Suite 102
6 Las Vegas, Nevada 89120
7 Tel (702) 727-7777
8 Fax (702) 458-8508
9 *Attorney for Plaintiff*

6 **EIGHTH JUDICIAL DISTRICT COURT**
7
8 **CLARK COUNTY, NEVADA**

9 **CHERI RENE WIMAN,**
10 **Plaintiff,**

11 vs.

12 **COTY REFAELY; DOES I through X, and**
13 **ROE CORPORATIONS I through X**
14 **Defendant.**

15 **COTY REFAELY, an individual,**
16 **Counterclaimant,**

17 vs.

18 **CHERI RENE WIMAN,**
19 **Counterdefendant.**

Case No.: A-19-803928-C
Dept. No.: XXIX

OPPOSITION TO DEFENDANT COTY
REFAELY'S MOTION TO ENFORCE
SETTLEMENT AGREEMENT AND
ADDENDUM AND TO REQUIRE
PLAINTIFF TO EXECUTE FINAL
TRANSFER DOCUMENTS FOR
CHURCHILL PROPERTY and
COUNTERMOTION TO ENFORCE
SETTLEMENT AGREEMENT AND
DISMISS CASE WITH PREJUDICE

ORAL ARGUMENT REQUESTED

22 COMES NOW, Plaintiff/Counterdefendant CHERI RENE WIMAN, by and through her
23 attorney of record, Gary S. Fink, Esq. of Reza Athari & Associates, PLLC, and hereby opposes
24 Defendant's motion and submits this Countermotion to Enforce Settlement Agreement and Dismiss
25 Case with Prejudice.
26

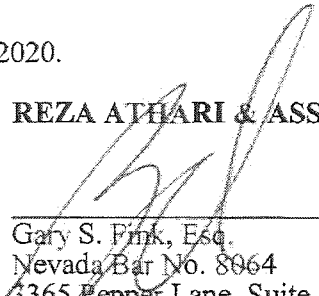
27 ///

28 ///

1 This Opposition and Countermotion is made and based upon the attached memorandum of
2 points and authorities and any referenced exhibits, as well as any argument the Court may entertain
3 at the hearing on this matter.

4 DATED this 9th day of December, 2020.

5 **REZA ATHARI & ASSOCIATES, PLLC.**

6
7 
8 Gary S. Fink, Esq.
9 Nevada Bar No. 8064
10 3365 Pepper Lane, Suite 102
11 Las Vegas, Nevada 89120
12 Tel (702) 727-7777
13 Fax (702) 458-8508
14 *Attorney for Plaintiff*

15 **I.**

16 **STATEMENT OF RELEVANT FACTS**

- 17 1. Plaintiff filed a Complaint in this matter on October 18, 2019.
- 18 2. Defendant filed an Answer and Counterclaim on November 8, 2019.
- 19 3. On February 7, 2020 the parties entered into a Settlement Agreement and General
20 Release that, inter alia, gave the Defendant a time limited right to purchase two pieces of real
21 property from the Plaintiff. A copy of the Settlement Agreement and General Release is attached
22 hereto as Exhibit 1.
- 23 4. On or about July 24, 2020 the parties entered into an Addendum to Settlement
24 Agreement and General Release allowing the Defendant additional time to purchase the properties
25 from the Plaintiff. A copy of the Addendum to Settlement Agreement and General Release is
26 attached hereto as Exhibit 2.
- 27 5. The Defendant completed the purchase of one of the properties within the time specified
28 by the Addendum to Settlement Agreement and General Release but did not purchase the second
property (Churchill property).

6. As of the deadline to purchase the Churchill property (October 31, 2020), the purchase did not occur, the Defendant's loan had not funded and no closing documents other than a promissory note and deed of trust had been prepared.

7. Pursuant to the terms of the Settlement Agreement and General Release and the Addendum to the Settlement Agreement and General Release; once there is completion or termination of the terms outlined in the Release and Addendum the parties are to dismiss the litigation with prejudice.

8. The termination date of the Addendum was October 31, 2020 and Defendant has refused to agree to dismiss the action.

II.

POINTS AND AUTHORITIES

1. The Parties Resolved the Matter with Written Settlement Agreement

A settlement agreement is a contract governed by general principles of contract law. *May v. Anderson*, 121 Nev. 668, 672, 119 P.3d 1254, 1257 (2005). Contracts are construed from their written language and enforced as written. *Kaldi v. Farmers Ins. Exch.*, 117 Nev. 273, 278, 21 P.3d 16, 20 (2001). Thus, when a contract's language is unambiguous, the court is to construe and enforce it according to that language. *See In re Amerco Derivative Litig.*, 127 Nev. 196, 252 P.3d 681, 693 (2011). In short, the court will enforce so long as the settlement agreement's material terms are certain. *May v. Anderson*, 121 Nev. at 672, 119 P.3d at 1257 (2005).

In the present case, the Settlement Agreement and the Addendum to the Settlement Agreement allowed the Defendant nearly 9 months to complete the purchase of two properties identified in the agreement. The Defendant completed the purchase of one of the properties but not the other. As the Settlement Agreement and Addendum both unambiguously state, the Defendant has the right to purchase the properties until a date certain. The original deadline was July 31, 2020 and the Addendum extended the deadline until October 31, 2020. The Settlement Agreement and Addendum also state that in the event the purchase is not completed by that date, the property would then be the sole and separate property of the Plaintiff. (See Settlement Agreement 2.1 and 2.2, and

1 Addendum 2.1 and 2.2).

2 Additionally, the Settlement Agreement and Addendum state that "time is the essence with
3 respect to all aspects of each PARTIES' performance of any obligation under this SETTLEMENT
4 AGREEMENT" and "ADDENDUM TO SETTLEMENT AGREEMENT". (See Settlement
5 Agreement 1.5 and Addendum 1.5). As required under the terms of the Settlement Agreement and
6 Addendum, the case is to be dismissed with prejudice.

7 **2. Time is the Essence and Defendant Did Not Timely Complete Sale.**

8 A fundamental principle of contract law is that the time for performance under a contract is not
9 considered of the essence unless the contract expressly so provides or the circumstances of the
10 contract so imply. *Mayfield v. Koroghli*, 124 Nev. 343, 349, 184 P.3d 362, 366 (2008). If time is of
11 the essence, performance must occur at the "stated and unquestionable time" and parties are not
12 entitled to a reasonable time to perform thereafter. *Holmby, Inc. v. Dino*, 98 Nev. 358, 361, 647 P.2d
13 392, 394 (1982).

14 As cited above, the Settlement Agreement states:

15 "WHEREAS, time is the essence with respect to all aspects of each
16 PARTIES' performance of any obligation under this SETTLEMENT
17 AGREEMENT" (See Settlement Agreement 1.5).

17 and, the Addendum states:

18 "WHEREAS, time is the essence with respect to all aspects of each
19 PARTIES' performance of any obligation under this ADDENDUM TO
20 SETTLEMENT AGREEMENT" (See Addendum to Settlement Agreement
21 1.5)

21 As a "time is the essence" clause is incorporated into the Settlement Agreement and
22 Addendum, the Defendant is not entitled to a reasonable time to perform after the expiration of the
23 term of the contract. As the Supreme Court stated in *Holmby*, performance **must** occur at the stated
24 and unquestionable time. *Id.* (**Bold added**).

25 **3. Title Defect Existed Prior to Entering into Settlement Agreement as Was Publicly
26 Available Information.**

27 In Las Vegas residential real estate transactions typically set closing 30 to 45 days from the
28 time a sales contract is entered into. One reason this is done is to check to see if there are any

1 defects in title that need to be cured before closing. In the present case, the Defendant had 266 days
2 to cure any title defects that would prevent a timely closing.

3 Defendant argues that a defect on title of the Churchill property prevented her from timely
4 fulfilling her obligations under the terms of the Settlement Agreement and Addendum. The defect
5 at issue is a lien on the property that resulted from a loan taken out in 2014 and paid back with a
6 refinance of the property in 2017. For some unexplained reason the lien was not released at the
7 time the loan was paid back. The defect on title existed at the time the original Settlement
8 Agreement was signed on February 7, 2020 and was also a matter of public record¹. A copy of the
9 Recorder's page that is available to the public showing the 2014 Deed of Trust is attached hereto
10 as Exhibit 3.

11 Even though the defect was publicly available information throughout the time allotted for the
12 sale of the property, the Defendant took no action to cure the defect until at least October 23, 2020
13 (some 261 days after signing the Settlement Agreement). It is also Plaintiff's belief that the
14 Defendant's intent was not to purchase the property, but instead, refinance the existing loan and
15 require the Plaintiff to remain on title with the Defendant. This belief is based on a phone call
16 Plaintiff received from the Defendant's escrow agent handling the transaction, Sheree Edwards.
17 On or about November 3, 2020 (after the expiration of the deadline) Plaintiff received a call from
18 Sheree Edwards advising her that they were ready to move forward with the transaction, however,
19 in order to do so, Plaintiff would be required to prepare and record a new deed replacing the
20 existing deed which identifies the Plaintiff as the sole owner and adding the Plaintiff and the
21 Defendant as co-owners of the property. In short, Defendant was attempting to refinance the
22 property and not purchase the property as required by the Settlement Agreement.

23 Common documents needed for closing a real estate transaction include a loan application,
24 promissory note, mortgage, rider, truth in lending(TIL), closing disclosure, settlement statement,
25 IRS authorizations, deed, affidavits and disclosures. At the Status Check on November 4, 2020,
26

27 ¹ It should also be noted that the Plaintiff and Defendant were together at the time of the
28 loan and refinance, and Defendant alleged in her Counter-Complaint that she was an owner of
the property at issue.

1 counsel for Defendant appeared to represent that the sale was ready to take place, however, after
2 the status check, counsel for Plaintiff spoke with counsel for Defendant and requested to review the
3 closing documents. On November 6, 2020, counsel for Defendant advised that, other than a
4 promissory note and a deed of trust, no other closing documents had been prepared.

5 The Defendant cites *Helms Const. And Development Co. v. State, ex rel. Dept. of Highways*,
6 634 P.2d 1224, 97 Nev. 500 (Nev. 1981) in support of her argument to excuse her performance or
7 lack thereof. However, the *Helms* case directly contradicts her rationale for excusing her
8 performance. As cited in Defendant's brief, the Supreme Court held "performance would be
9 excused if the promisor's performance 'is made impossible or highly impractical by the occurrence
10 of unforeseen contingencies but if the unforeseen contingency is one which the promisor should
11 have foreseen, and for which he should have provided, this defense is unavailable to him."
12 (Defendant's brief 9:15-20. **Bold added**)

13 At the very least, Defendant was on constructive notice of the defect with title at the time she
14 entered into the agreements with Plaintiff. Therefore, she should have foreseen the issue, thus
15 making the defense unavailable to her. Typical real estate transactions set closing 30 to 45 days
16 from the time a sales contract is entered into. This is done for several reasons. One of those
17 reasons is to check to see if there are any defects in title that need to be cured before closing. Here,
18 the Defendant had 266 days to cure the defect and did nothing and now asks the Court to alter the
19 terms of the Agreement.

20 Defendant also argues that the time limit expressly stated in the agreements and the "time is
21 the essence of the agreement" clause should be ignored based on Restatement Second of Contracts
22 265. The Restatement states "Where, after a contract is made, a party's principal purpose is
23 substantially frustrated without his fault by the occurrence of an event the non-occurrence of which
24 was a basic assumption on which the contract was made, his remaining duties to render
25 performance are discharged, unless the language or the circumstances indicate the contrary." Here
26 again, nothing occurred after the agreements were made that would relieve the Defendant from her
27 obligations under the agreements.

1 The doctrine of frustration of purpose as cited by Defendant is inapplicable to the present
2 matter. Although the doctrine may be available where “a change in circumstances makes one
3 party’s performance virtually worthless to the other,” thereby frustrating the principal purpose in
4 making the contract. *PPF Safeguard, LLC v. BCR Safeguard Holding, LLC*, 85 A.D.3d 506, 508
5 (N.Y. App. Div. 1st Dep’t 2011) (citing Restatement (Second) of Contracts § 265 (1981)), the
6 Restatement (Second) of Contracts § 265 provides that “[w]here, after a contract is made, a party’s
7 principal purpose is substantially frustrated without his fault by the occurrence of an event the
8 non-occurrence of which was a basic assumption on which the contract was made, his remaining
9 duties to render performance are discharged, unless the language or the circumstances indicate the
10 contrary.” In the present case, there was no change in circumstance or subsequent occurrence of an
11 event that would give rise to a “frustration of purpose” argument. The defect in title existed at the
12 time of the original Agreement and the Addendum.

13 The Restatement commentary further explains that Section 265 requires that (1) the purpose
14 that is frustrated was a “principal purpose” in making the contract, such that without it the
15 transaction “would make little sense”; (2) the frustration is substantial; and (3) the non-occurrence
16 of the frustrating event was a basic assumption on which the contract was made. Restatement
17 (Second) of Contracts § 265, comment. a.

18 Even if frustration of purpose were applicable to this matter, the frustration itself must be so
19 completely the basis of the contract that, as both parties understood, without it, the transaction
20 would have made little sense. Frustration of purpose is applied narrowly and is limited to instances
21 where the event rendering the contract valueless, is unforeseeable. *Crown IT Servs.*, 11 A.D.3d at
22 265; *A + E Television Networks, LLC v. Wish Factory Inc.*, 2016 WL 8136110, at *12 (S.D.N.Y.
23 Mar. 11, 2016); *Warner v. Kaplan*, 71 A.D.3d 1, 6 (N.Y. App. Div. 1st Dep’t 2009) (frustration of
24 purpose “is not available where the event which prevented performance was foreseeable and
25 provision could have been made for its occurrence”).

26 Clearly the defect on title did not render the Agreement valueless. To the contrary, the
27 Defendant is requesting that the Court alter the terms of the Agreement as opposed to requesting
28 the Defendant’s forgiveness of obligations under the Agreement. And again, the defect on title was

1 absolutely foreseeable, and provision was made in the Agreements for any contingencies that need
2 to be addressed, as the Defendant had nearly 9 months to close the sale of the property.

3 Finally, frustration of Purpose has been most commonly applied by courts upon the death or
4 incapacity of a person necessary for performance, the destruction or deterioration of a thing
5 necessary for performance, or a change in the law that prevents a person from performing. *Bayou*
6 *Place Ltd. P'ship v. Aleppo's Grill, Inc.*, 2020 WL 1235010, at *8 (D. Md. Mar. 13, 2020); see also
7 *Warner*, 71 A.D.3d at 6. Here, there is no death or incapacity, nor destruction or deterioration of
8 the property, or change in law that prevented the Defendant from performing.

9
10 **III.**
CONCLUSION

11 Plaintiff and Defendant entered into binding agreements to resolve the disputes associated
12 with this litigation. The terms of the agreements are clear and unambiguous. "Time is the essence"
13 is an express term of the Settlement Agreement and Addendum and the Defendant did not perform
14 within the time allowed for under the Agreements. The Defendant now asks the Court to ignore the
15 terms of the Agreements and impose new terms on the parties.

16 At Defendant's request, Plaintiff graciously agreed to extend Defendant's time to complete
17 the transactions from July 31, 2020 to October 31, 2020. As of October 31, 2020, the Defendant did
18 not have monies available to purchase the property and the required closing/sales documents were
19 not prepared. For the reasons herein stated, and the documents attached hereto, Plaintiff requests
20 that her motion to dismiss with prejudice be granted and Defendant's motion be denied in its
21 entirety.

22 DATED this 9th day of December, 2020.

23 **REZA ATHARI & ASSOCIATES, PLLC.**

24
25 Gary S. Fink, Esq.
26 Nevada Bar No. 8064
27 3365 Pepper Lane, Suite 102
28 Las Vegas, Nevada 89120
Tel (702) 727-7777 Fax (702) 458-8508
Attorney for Plaintiff

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Declaration (NRS 15.010)

I, Cheri Wiman declare as follows:

I am the Plaintiff in the above entitled action. I have read foregoing Opposition and
Counter-motion and know the contents thereof; that the same is true of my own knowledge except
as to those matters therein stated on information and belief, and as to those matters I believe them
to be true,

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is
true and correct.

Executed this 8th day of December, 2020 at Las Vegas, Nevada.



Cheri Wiman

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EXHIBIT 1

SETTLEMENT AGREEMENT AND GENERAL RELEASE

This Settlement Agreement and General Release ("SETTLEMENT AGREEMENT") is made as of the date it is fully executed by all parties, ("EFFECTIVE DATE") between Cheri Rene Wiman ("CHERI"), and Coty Refaely ("COTY"), and on the other hand, (all collectively referred to as the "PARTIES"), on behalf of themselves, their antecedents, successors, former, present and future assigns, and heirs, with reference to the following:

1. RECITALS

1.1 The PARTIES were in a 13-year relationship that ended in May 2019. During that relationship they held themselves out as life partners and certain real and personal properties were purchased during that relationship.

1.2 CHERI filed suit in Clark County under Case No. A-19-803928-C against COTY on October 18, 2019. COTY filed an Answer and Counterclaim on November 8, 2019. The case is referred to as "ACTION." In the ACTION, CHERI seeks a declaration from the Court regarding a certain document dated July 3, 2019. COTY's counterclaims include 1) Breach of Contract; 2) Breach of Implied Contract; 3) Breach of Implied Covenant of Good Faith and Fair Dealing; 4) Intentional Interference with Contractual and/or Business Relationship; 5) Unjust Enrichment; 6) Conversion; 7) Trespass to Chattels; 8) Injunctive Relief; 9) Specific Performance of Settlement Agreement; and, 10) Declaratory Relief.

1.3 WHEREAS the PARTIES have agreed to resolve all issues in any way related to the ACTION and their relationship, and it is the intent of the PARTIES to release all known and potential causes of action against each other arising out of or in any way related to the ACTION or their relationship, as more fully set forth herein.

1.4 WHEREAS, the above Recitals, are incorporated by reference into the SETTLEMENT AGREEMENT below.

1.5. WHEREAS, time is the essence with respect to all aspects of each PARTIES' performance of any obligation under this SETTLEMENT AGREEMENT.

NOW, THEREFORE, for good and sufficient consideration, the receipt and sufficiency of which is acknowledged, the PARTIES agree as follows:

2. AGREEMENT

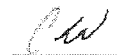
2.1 COTY shall have the right to purchase the residence at 5509 Oak Street, Las Vegas, Nevada 89120 until July 31, 2020 for the amount of the actual loan subject to the terms stated herein. As of January 31, 2020 the loan balance owed on the property is \$210,759.97. COTY will be solely responsible for the monthly mortgage of the property and all other expenses associated with the property and, for all expenses associated with the purchase. Timely payment of the monthly mortgage is defined as "full payment of the monthly mortgage obligation (including principal, interest, taxes and insurance) deposited into CHERI's checking account no later than the

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1st of every month. If payment is not received into the account by the 10th of the month, a material breach has occurred and COTY's rights to purchase the property shall be terminated without notice. If COTY's rights to purchase are terminated, any monies previously paid shall be considered monthly rent for the property. Any monies paid after material breach has occurred shall also be considered monthly rent for the property. CHER will ensure that COTY can deposit the monthly payments into her checking account and will in no way impede her ability to make the timely monthly payments. During the period from the present until July 31, 2020, if COTY is in compliance with the payment of the expenses to the property, CHERI will in no way interfere or infringe on COTY's rights to the property including but not limited to, filing eviction notices, changing the locks, filing deeds, listing the property for sale, soliciting offers, etc. In the event COTY does not purchase the property, COTY will be liable to CHERI for any damages caused to the property while COTY is in possession of the property. At the time of purchase COTY will pay CHERI an additional \$12,500.00 for this property above the loan amount. The payment will be paid directly from the funds of the sale. If required to ensure direct payment or to secure financing, COTY can and/or will provide a copy of this SETTLEMENT AGREEMENT to the escrow company or lender handling the purchase. In the event that COTY does not complete the purchase of the property as herein required, she acknowledges that the property would then be the sole and separate property of CHERI.

2.2 COTY shall also have the right to purchase the residence at 5005 Churchill Ave until July 31, 2020 at the actual loan amount subject to the terms stated herein. As of January 31, 2020 the loan balance on the property is \$128,458.86. COTY will be solely responsible for the monthly mortgage of the property and all other expenses associated with the property and, for all expenses associated with the purchase. Timely payment of the monthly mortgage is defined as "full payment of the monthly mortgage obligation (including principal, interest, taxes and insurance) deposited into CHERI's checking account no later than the 1st of every month. If payment is not received into the account by the 10th of the month, a material breach has occurred and COTY's rights to purchase the property shall be terminated without notice. If COTY's rights to purchase are terminated, any monies previously paid shall be considered monthly rent for the property. Any monies paid after material breach has occurred shall also be considered monthly rent for the property. CHER will ensure that COTY can deposit the monthly payments into her checking account and will in no way impede her ability to make the timely monthly payments. During the period from the present until July 31, 2020, if COTY is in compliance with the payment of the expenses to the property, CHERI will in no way interfere or infringe on COTY's rights to the property including but not limited to, filing eviction notices, changing the locks, filing deeds, listing the property for sale, soliciting offers, etc. In the event COTY does not purchase the property, COTY will be liable to CHERI for any damages caused to the property while COTY is in possession of the property. At the time of purchase COTY will pay CHERI an additional \$12,500.00 for this property above the loan amount. The payment will be paid directly from the funds of the sale. If required to ensure direct payment or to secure financing, COTY can and/or will provide a copy of this SETTLEMENT AGREEMENT to the escrow company or lender handling the purchase. In the event that COTY does not complete the purchase of the property as herein required, she acknowledges that the property would then be the sole and separate property of CHERI.



2.3 For the Ashwood property COTY agrees to take over all obligations and all expenses of this property as of January 1, 2020 and upon the sale of the Ashwood property, COTY will pay CHERI \$13,300.00 for her interest in that property. The payment will be paid directly from the funds of the sale. If required to ensure direct payment or to secure financing, COTY can and/or will provide a copy of this SETTLEMENT AGREEMENT to the escrow company or lender handling the purchase. Additionally, COTY agrees to reimburse CHERI \$474.00 for the January 2020 mortgage payment and agrees to pay that amount at the time of escrow for the sale of Ashwood making a total payment for Ashwood from COTY to CHERI of \$13,774.00.

2.4 The Glasses and the Rolex watch will be returned immediately to CHERI and, at the same time, CHERI will immediately return the ring that is still in CHERI's possession.

2.5 COTY will remove the contents from the container located on the Carey property by no later than February 13, 2020 and she further agrees not remove the container itself. CHERI cooperate in ensuring that COTY and/or the necessary people have access to the containers on a mutually agreeable date as well as access to the property so as to allow them to remove the contents by the deadline. If COTY does not remove the property by February 13, 2020 then CHERI will keep those contents as her property.

2.6 Upon signing of this SETTLEMENT AGREEMENT, the PARTIES will submit a Stipulation and Order to the Court to stay the litigation until the terms outlined herein are completed or terminated. Upon completion or termination of the terms outlined herein the parties will dismiss the litigation with prejudice and each side will bear their own attorneys' fees and costs.

3. RELEASE

3.1 The PARTIES release and forever discharge any and all claims that they may have against one another, including, but not limited to, any and all causes of action, claims, allegations of liability, damages, restitution, equitable, legal and administrative relief, interest, demands or rights whatsoever, including, without limitation, for all claims of actual monetary damages, for claims of injunctive or equitable type of relief, and for claims of mental anguish and/or punitive or exemplary damages, whether such claims are based on federal, state, or local law, statute, ordinance, or regulation, contract, common law, or any other source, that were asserted or could have been asserted against one another in the ACTION or their relationship.

4. NO ASSIGNMENTS

4.1 The PARTIES acknowledge that they have not heretofore assigned or transferred or purported to assign or transfer to any person any released matter or any part or portion thereof, and agree to indemnify and hold harmless each other from and against any claim, demand, controversy, damage, debt, liability, account, reckoning, obligation, cost, expense, lien, action or cause of action (including the payment of attorney's fees and costs actually incurred whether or not litigation be commenced) based on, in connection with, or arising out of any assignment or transfer or claimed assignment or transfer.

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5. RESPONSIBILITY FOR ATTORNEY'S FEES AND COSTS

5.1 Other than as set forth in this SETTLEMENT AGREEMENT (specifically Paragraph #11), each of the PARTIES shall be responsible for the payment of his, her or its own attorney's fees and costs, if any.

6. ENTIRE AGREEMENT

6.1 This document contains the entire agreement and understanding concerning the subject matter between the PARTIES and supersedes and replaces all prior negotiations, proposed agreements and agreements, written and oral. The PARTIES acknowledge that none of the PARTIES, their agents or attorneys have made any promise, representation or warranty whatsoever, express or implied, not contained herein concerning the subject matter hereof, to induce the PARTIES to execute this instrument, and acknowledge that the PARTIES have not executed this instrument in reliance on any such promise, representation or warranty not contained herein.

7. SEVERABILITY

7.1 The provisions of this SETTLEMENT AGREEMENT are severable and, if any part of it is found to be unenforceable, the remainder of this SETTLEMENT AGREEMENT shall remain in full force and effect.

8. BINDING EFFECT

8.1 This SETTLEMENT AGREEMENT shall be binding upon and inure to the benefit of the PARTIES and their respective executors, administrators, heirs, successors, and assigns.

9. REPRESENTATION OF COMPREHENSION OF DOCUMENT

9.1 In entering into this SETTLEMENT AGREEMENT, the PARTIES represent that they have relied upon the legal advice of attorneys of their own choice. The PARTIES further represent that the terms of this SETTLEMENT AGREEMENT have been completely explained to them by their attorneys, and that those terms are fully understood and voluntarily accepted by them after the consultation with their attorney and that they are signing this SETTLEMENT AGREEMENT voluntarily and understand it to be a complete resolution of all issues between them.

10. EXECUTION BY COUNTERPARTS/FACSIMILE

10.1 This SETTLEMENT AGREEMENT may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This SETTLEMENT AGREEMENT may be executed by means of facsimile or scan and e-mail, and each copy of this SETTLEMENT AGREEMENT bearing the facsimile transmitted or scanned and e-mailed signature of a PARTY and/or a PARTY's authorized representative shall be deemed an original.

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11. ATTORNEY'S FEES AND COSTS

11.1 In the event of any dispute between the PARTIES concerning the terms and provisions of this SETTLEMENT AGREEMENT, the party prevailing in such dispute shall be entitled to collect from the other party all costs incurred in such dispute, including reasonable attorney's fees.

IN WITNESS THEREOF, the PARTIES have executed this SETTLEMENT AGREEMENT AND GENERAL RELEASE on the dates indicated below effective as of the Effective Date.

THE PARTIES HAVE FURTHER initialed each page of the SETTLEMENT AGREEMENT effective as of the Effective Date.

Dated: 2-7-2020



CHERI WIMAN

Dated: 2-7-2020



COTY REFAELY

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EXHIBIT 2

ADDENDUM TO SETTLEMENT AGREEMENT AND GENERAL RELEASE

This Addendum to Settlement Agreement and General Release ("ADDENDUM") is made as of the date it is fully executed by all parties, ("EFFECTIVE DATE") between Cheri Rene Wiman ("CHERI"), and Coty Refaely ("COTY"), and on the other hand, (all collectively referred to as the "PARTIES"), on behalf of themselves, their antecedents, successors, former, present and future assigns, and heirs, with reference to the following:

1. RECITALS

1.1 The PARTIES executed a Settlement Agreement and General Release on February 7, 2020 to resolve their issues that arose in a lawsuit in Clark County under Case No. A-19-803928-C against COTY on October 18, 2019. COTY filed an Answer and Counterclaim on November 8, 2019. The case is referred to as "ACTION."

1.2 The PARTIES stayed the proceedings in the ACTION to fulfill the terms and obligations of the SETTLEMENT AGREEMENT before dismissing the ACTION.

1.3 WHEREAS it appears COTY will be unable to timely fulfill her obligations under Sections 2.1 and 2.2 of the SETTLEMENT AGREEMENT due to the unexpected COVID-19 situation, the parties agree to a one time modification of Sections 2.1 and 2.2 of the SETTLEMENT AGREEMENT to extend the deadline for COTY to complete her obligations under those sections from July 31, 2020 to October 31, 2020. The PARTIES agree that all other terms and conditions in those sections and the rest of the SETTLEMENT AGREEMENT remain in full force and effect and are hereby incorporated into this ADDENDUM by reference as if they were fully laid out.

1.4 WHEREAS, the above Recitals, are incorporated by reference into the ADDENDUM SETTLEMENT AGREEMENT below.

1.5. WHEREAS, time is the essence with respect to all aspects of each PARTIES' performance of any obligation under this ADDENDUM TO SETTLEMENT AGREEMENT.

NOW, THEREFORE, for good and sufficient consideration, the receipt and sufficiency of which is acknowledged, the PARTIES agree as follows:

2. AGREEMENT

2.1 COTY shall have the right to purchase the residence at 5509 Oak Street, Las Vegas, Nevada 89120 until October 31, 2020 for the amount of the actual loan subject to the terms stated herein. As of January 31, 2020 the loan balance owed on the property is \$210,759.97. COTY will be solely responsible for the monthly mortgage of the property and all other expenses associated with the property and, for all expenses associated with the purchase. Timely payment of the monthly mortgage is defined as "full payment of the monthly mortgage obligation (including principal, interest, taxes and insurance) deposited into CHERI's checking account no

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later than the 1st of every month. If payment is not received into the account by the 10th of the month, a material breach has occurred and COTY's rights to purchase the property shall be terminated without notice. If COTY's rights to purchase are terminated, any monies previously paid shall be considered monthly rent for the property. Any monies paid after material breach has occurred shall also be considered monthly rent for the property. CHER will ensure that COTY can deposit the monthly payments into her checking account and will in no way impede her ability to make the timely monthly payments. During the period from the present until July 31, 2020, if COTY is in compliance with the payment of the expenses to the property, CHERI will in no way interfere or infringe on COTY's rights to the property including but not limited to, filing eviction notices, changing the locks, filing deeds, listing the property for sale, soliciting offers, etc. In the event COTY does not purchase the property, COTY will be liable to CHERI for any damages caused to the property while COTY is in possession of the property. At the time of purchase COTY will pay CHERI an additional \$12,500.00 for this property above the loan amount. The payment will be paid directly from the funds of the sale. If required to ensure direct payment or to secure financing, COTY can and/or will provide a copy of this SETTLEMENT AGREEMENT to the escrow company or lender handling the purchase. In the event that COTY does not complete the purchase of the property as herein required, she acknowledges that the property would then be the sole and separate property of CHERI.

2.2 COTY shall also have the right to purchase the residence at 5005 Churchill Ave until October 31, 2020 at the actual loan amount subject to the terms stated herein. As of January 31, 2020 the loan balance on the property is \$128,458.86. COTY will be solely responsible for the monthly mortgage of the property and all other expenses associated with the property and, for all expenses associated with the purchase. Timely payment of the monthly mortgage is defined as "full payment of the monthly mortgage obligation (including principal, interest, taxes and insurance) deposited into CHERI's checking account no later than the 1st of every month. If payment is not received into the account by the 10th of the month, a material breach has occurred and COTY's rights to purchase the property shall be terminated without notice. If COTY's rights to purchase are terminated, any monies previously paid shall be considered monthly rent for the property. Any monies paid after material breach has occurred shall also be considered monthly rent for the property. CHER will ensure that COTY can deposit the monthly payments into her checking account and will in no way impede her ability to make the timely monthly payments. During the period from the present until July 31, 2020, if COTY is in compliance with the payment of the expenses to the property, CHERI will in no way interfere or infringe on COTY's rights to the property including but not limited to, filing eviction notices, changing the locks, filing deeds, listing the property for sale, soliciting offers, etc. In the event COTY does not purchase the property, COTY will be liable to CHERI for any damages caused to the property while COTY is in possession of the property. At the time of purchase COTY will pay CHERI an additional \$12,500.00 for this property above the loan amount. The payment will be paid directly from the funds of the sale. If required to ensure direct payment or to secure financing, COTY can and/or will provide a copy of this SETTLEMENT AGREEMENT to the escrow company or lender handling the purchase. In the event that COTY does not complete the purchase of the property as herein required, she acknowledges that the property would then be the sole and separate property of CHERI.

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2.3 After the signing of this ADDENDUM, and once the completion or termination of the terms outlined herein the parties will dismiss the litigation with prejudice and each side will bear their own attorneys' fees and costs.

3. RELEASE

3.1 The PARTIES release and forever discharge any and all claims that they may have against one another, including, but not limited to, any and all causes of action, claims, allegations of liability, damages, restitution, equitable, legal and administrative relief, interest, demands or rights whatsoever, including, without limitation, for all claims of actual monetary damages, for claims of injunctive or equitable type of relief, and for claims of mental anguish and/or punitive or exemplary damages, whether such claims are based on federal, state, or local law, statute, ordinance, or regulation, contract, common law, or any other source, that were asserted or could have been asserted against one another in the ACTION or their relationship.

4. NO ASSIGNMENTS

4.1 The PARTIES acknowledge that they have not heretofore assigned or transferred or purported to assign or transfer to any person any released matter or any part or portion thereof, and agree to indemnify and hold harmless each other from and against any claim, demand, controversy, damage, debt, liability, account, reckoning, obligation, cost, expense, lien, action or cause of action (including the payment of attorney's fees and costs actually incurred whether or not litigation be commenced) based on, in connection with, or arising out of any assignment or transfer or claimed assignment or transfer.

5. RESPONSIBILITY FOR ATTORNEY'S FEES AND COSTS

5.1 Other than as set forth in this ADDENDUM OR THE SETTLEMENT AGREEMENT (specifically Paragraph #11), each of the PARTIES shall be responsible for the payment of his, her or its own attorney's fees and costs, if any.

6. ENTIRE AGREEMENT

6.1 This ADDENDUM and the SETTLEMENT AGREEMENT contain the entire agreement and understanding concerning the subject matter between the PARTIES and supersedes and replaces all prior negotiations, proposed agreements and agreements, written and oral. The PARTIES acknowledge that none of the PARTIES, their agents or attorneys have made any promise, representation or warranty whatsoever, express or implied, not contained herein concerning the subject matter hereof, to induce the PARTIES to execute this instrument, and acknowledge that the PARTIES have not executed this instrument in reliance on any such promise, representation or warranty not contained herein.

7. SEVERABILITY

7.1 The provisions of this ADDENDUM are severable and, if any part of it is found to be unenforceable, the remainder of this ADDENDUM shall remain in full force and effect.

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8. BINDING EFFECT

8.1 This ADDENDUM shall be binding upon and inure to the benefit of the PARTIES and their respective executors, administrators, heirs, successors, and assigns.

9. REPRESENTATION OF COMPREHENSION OF DOCUMENT

9.1 In entering into this ADDENDUM, the PARTIES represent that they have relied upon the legal advice of attorneys of their own choice. The PARTIES further represent that the terms of this ADDENDUM have been completely explained to them by their attorneys, and that those terms are fully understood and voluntarily accepted by them after the consultation with their attorney and that they are signing this ADDENDUM voluntarily and understand it to be a complete resolution of all issues between them.

10. EXECUTION BY COUNTERPARTS/FACSIMILE

10.1 This ADDENDUM may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This ADDENDUM may be executed by means of facsimile or scan and e-mail, and each copy of this ADDENDUM bearing the facsimile transmitted or scanned and e-mailed signature of a PARTY and/or a PARTY's authorized representative shall be deemed an original.

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II. ATTORNEY'S FEES AND COSTS

11.1 In the event of any dispute between the PARTIES concerning the terms and provisions of this ADDENDUM, the party prevailing in such dispute shall be entitled to collect from the other party all costs incurred in such dispute, including reasonable attorney's fees.

IN WITNESS WHEREOF, the PARTIES have executed this ADDENDUM TO SETTLEMENT AGREEMENT AND GENERAL RELEASE on the dates indicated below effective as of the Effective Date.

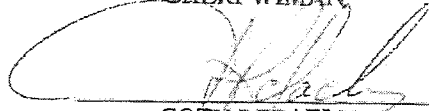
THE PARTIES HAVE FURTHER initialed each page of the ADDENDUM TO SETTLEMENT AGREEMENT effective as of the Effective Date.

Dated: 7-23-2020



CHERI WIMAN

Dated: 7-24-2020



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EXHIBIT 3

Home (/AcclaimWeb/) > Search (/AcclaimWeb/Search) > Search By Parcel (/AcclaimWeb/Search/SearchByParcel)

Parcel

Parcel #	<input type="text" value="138-36-514-028"/>		
Parcel #	Exact		▼
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From Date	04/03/1905		📅
To Date	12/01/2020		📅
Document Type	Select DocTypes...		
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Privacy - Terms

[Reset](#) [Search](#)

Help

Parcel Number

Parcel #: Enter the specific legal parcel, such as 176-15-301-024

Parcel #: Use this to either begin your Search with "Starts With", "Contains", or is an "Exact" match of your entry.

Date Range

You can choose a specific recording date range or choose from pre-selected date ranges to narrow your search.

Document Type

Limit your search by specific types of documents, or by groups of similar document types.

Search by Address

To search by address, please click here: Assessor Search (<https://maps.clarkcountynv.gov/assessor/AssessorParcelDetail/site.aspx>)

[Export to CSV](#)

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Record (/A...	Parcel # (/Acclaim...	First Party...	First Cros...	# ...	Instru...	D...	M...	Recor...	Legal Description (/A...
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Search

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Add To Cart	138-36-514-028	RECONTRUST COMPANY NA	DENNETT, WALTER T	2	20060824...	SUBS...	08/24/2006 8:31:5 AM	APN 138-36-514-02

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, in accordance with Rule 5(b) of the Nevada Rules of Civil Procedure, on this 9th day of December 2020, I served a true and correct copy of the foregoing **OPPOSITION TO DEFENDANT COTY REFAELY'S MOTION TO ENFORCE SETTLEMENT AGREEMENT AND ADDENDUM AND TO REQUIRE PLAINTIFF TO EXECUTE FINAL TRANSFER DOCUMENTS FOR CHURCHILL PROPERTY and COUNTERMOTION TO ENFORCE SETTLEMENT AGREEMENT AND DISMISS CASE WITH PREJUDICE** on the parties addressed as shown below:

- ☐ Via US Mail by placing said document in a sealed envelope, with postage prepaid (N.R.C.P. 5(b))
- ☐ Via Electronic Filing (N.E.F.R. 9(b))
- ☒ Via Electronic Service (N.E.F.R. 9)
- ☐ Via Facsimile (E.D.C.R. 7.26(a))
- ☐ Hand Delivery

MICHAEL S. STRANGE, ESQ.
Michael S. Strange & Associates, LLC.
501 S. Rancho Dr., Suite A-7
Las Vegas, Nevada 89106
EMAIL: mstrange@mikestrangelaw.com
TELE NO.: (702) 456-4357
Attorney for Defendant,
COTY REFAELY

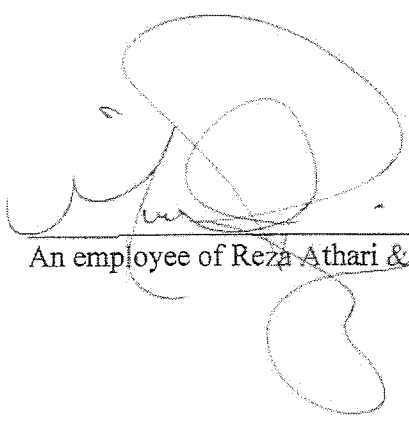

An employee of Reza Athari & Associates, PLLC

EXHIBIT 5

EXHIBIT 5



1 RPLY

2 Michael S. Strange, Esq.
3 Nevada Bar No. 9429

4 **Michael S. Strange & Associates, LLC**

5 501 S. Rancho Dr.; Suite A-7

6 Las Vegas, NV 89106

7 Telephone: (702) 456-4357

8 Fax: (702) 464-3042

9 mstrange@mikestrangelaw.com

10 Attorney for Defendant Coty Refaely

11 **DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

13 CHERI RENE WIMAN,

14 Plaintiff,

15 vs.

16 COTY REFAELY; DOES I through X, and
17 ROE CORPORATIONS I to X, inclusive,

18 Defendants.

CASE NO.: A-19-803928-C

DEPT. NO.: XXIX

Date of Hearing: January 7, 2021

Time of Hearing: 10:15AM

19 **DEFENDANT'S COTY REFAELY'S REPLY TO PLAINTIFF'S OPPOSITION TO**
20 **DEFENDANT COTY REFAELY'S MOTION TO ENFORCE SETTLEMENT**
21 **AGREEMENT AND ADDENDUM AND TO REQUIRE PLAINTIFF TO EXECUTE**
22 **FINAL TRANSFER DOCUMENTS FOR CHURCHILL PROPERTY and**
23 **COUNTERMOTION TO ENFORCE SETTLEMENT AGREEMENT AND DISMISS**
24 **CASE WITH PREJUDICE**

25 COMES NOW MICHAEL S. STRANGE, ESQ. of the law offices of MICHAEL S.
26 STRANGE & ASSOCIATES, LLC, the attorney of record for the Defendant COTY REFAELY,
27 and hereby moves the Court to enforce the Settlement Agreement and require the Plaintiff to sign
28 the necessary documentation to complete the transfer of title of real property for Churchill to Coty
and for the Court to deny any of the relief requested in the Plaintiff's Opposition and
Counter-motion.

///

Reply- 1

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1 This Reply is made and based upon the attached Points and Authorities and all papers and
2 pleadings on file herein, as well as any evidence and argument of counsel presented at the
3 hearing.

4 Dated this 24th day of December, 2020

5
6 By: /s/ Michael S. Strange
MICHAEL S. STRANGE, ESQ.
7 501 S. Rancho Dr.; Suite A-7
8 Las Vegas, NV 89106
9 (702) 456-4357
Attorney for Defendant Coty
Refaely

10 **POINTS AND AUTHORITIES**

11 **I.**

12 **STATEMENT OF FACTS**

13 As stated in her motion the transfer for the Churchill property was ready to occur on
14 October 24, 2020. (See Defendant's Motion Exhibit C) When the title company ran a search on
15 the Churchill residence it indicated title on the property showed two open liens – one to Geneva
16 Financial, LLC in the amount of \$133,500 and the second, to Paramount Residential Mortgage
17 Group, LLC in the amount of \$128,458.86. *Id.*

18
19 Coty incorporates by reference the remainder of her statement of facts in her motion for
20 brevity.

21 Cheri argues in her opposition that “Even though the defect was publicly available
22 information throughout the time allotted for the sale of the property, the Defendant took no action
23 to cure the defect until at least October 23, 2020 (some 261 days after signing the Settlement
24 Agreement). It is also Plaintiffs belief that the Defendant's intent was not to purchase the
25 property, but instead, refinance the existing loan and require the Plaintiff to remain on title with
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1 the Defendant. This belief is based on a phone call Plaintiff received from the Defendant's escrow
2 agent handling the transaction, Sheree Edwards. (See Plaintiff's Opposition; pg. 5; ln. 11-22)

3 That is not correct at all. Coty was ready to purchase the property and in fact secured a
4 loan from Mr. Alon Yehezekeloff (see Loan Agreement between Alon Yehezekeloff and Coty as
5 Exhibit H) for the purchase price and executed a deed of trust (see Deed of Trust as Exhibit I).
6 The purchase money for Churchill has been sent and is in escrow. Furthermore, Plaintiff fails to
7 account that as the seller of the property SHE has a duty to ensure that clean title is available so
8 that a transaction can be completed. Plaintiff fails to address in her opposition that she is the
9 SOLE person on the title to Churchill (this was only because Coty had an issue with the state
10 board of equalization). Regardless as Cheri is the only one on title and the only whose name is
11 on the loan(s) she is the only person who can resolve any title issues (outside of the lienholder
12 themselves).
13

14 Cheri now tries to argue that "It should also be noted that the Plaintiff and Defendant
15 were together at the time of the loan and refinance, and Defendant alleged in her Counter-
16 Complaint that she was an owner of the property at issue." (See Plaintiff's Opposition; pg. 5; fn.
17 1) Yet at the end of the day Cheri is the only person on title, the only person to whom any finance
18 documents and/or title documents were sent to in 2017. How convenient that Cheri didn't retain
19 any of those documents that would have immediately resolved the lien issue.
20

21 Coty has no documents or ability to "clear" the title as that would be Cheri's obligation to
22 perform under the Settlement Agreement. Cheri fails to address how she does not have the
23 documentation from the Churchill refinance from 2017? That would have immediately cleared up
24 this title issue. That is something that has the owner of the property she has a duty to retain. If
25 Cheri's position is that this is "public information" then that implies that she was aware of this
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1 issue and took no action to clear it up let alone advise Coty of it after executing either the
2 Settlement Agreement or the Addendum.

3 The Plaintiff also argues that "counsel for Defendant appeared to represent that the sale
4 was ready to take place, however, after the status check, counsel for Plaintiff spoke with counsel
5 for Defendant and requested to review the closing documents. On November 6, 2020, counsel for
6 Defendant advised that, other than a promissory note and a deed of trust, no other closing
7 documents had been prepared." (See Plaintiff's Opposition; pg. 6; ln. 3-4). The Plaintiff fails to
8 mention one thing, that it was SHE that ordered no closing documents to be prepared. (See Email
9 from Ms. Edwards dated November 5th as Exhibit J)

10 Coty did her part in getting her necessary documents and money into escrow despite the
11 delay caused by Cheri's failure to resolve the lien issue. Ms. Edwards would have drafted those
12 closing documents BUT FOR Cheri ordering her not to. *Id.* Ms. Edwards confirmed she
13 received the documents forwarded by Coty. (See email from Ms. Edwards dated November 5,
14 2020 as Exhibit K)

15 The purchase money for Churchill is still in escrow, Ms. Edwards has the documents from
16 Coty, and all that needs to be done is for Cheri to instruct Ms. Edwards to draw up the closing
17 documents for Cheri to sign and the transfer of the Churchill property can be finalized.

18 ///

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II.

LEGAL ARGUMENT

A. The Court should enforce the intent of the Addendum and require Cheri to execute any documents necessary to finalize the transfer of the Churchill property as Cheri acted in bad faith by not immediately removing the clouded title and not granting a brief extension to Coty to complete the transaction.

i. The lien "issue" is absolutely an unforeseeable event that frustrated Coty's ability to perform the transaction and a public records search is not the same as a title search.

The "lien issue" (meaning specifically the error in believing the Paramount lien was still active on the Churchill property) is absolutely an unforeseeable event that frustrated Coty's ability to perform the terms of the Settlement Agreement. That lien was paid off when the Churchill residence was refinanced by Cheri in 2017.

As mentioned previously, Coty was ready to perform the purchase and transfer of Churchill into her name on October 24, 2020. A title search then discovers a supposed outstanding lien. Coty has no authority or ability to be able to clear that issue up on her own as any and all documentation would be in Cheri's name and possession. Coty immediately sought Cheri's assistance to clear this "lien" issue up but Cheri failed to keep the documentation showing payoff of that lien from the refinance in 2017. That left Coty to get the former lien holder Paramount to confirm that the lien HAD been paid and was no longer in effect on the property.

The Plaintiff in her opposition argues: "At the very least, Defendant was on constructive notice of the defect with title at the time she entered into the agreements with Plaintiff. Therefore, she should have foreseen the issue, thus making the defense unavailable to her." (See Plaintiff's Opposition; pg. 6; ln. 13-19) The problem is that the burden of providing clean title or to clean up property issues is Cheri as she is the seller. Cheri failed to give a heads up to Coty that there was an additional lien still showing in public records search.

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1 The Settlement Agreement contains the authorization for Coty to purchase these
2 properties (and the amount of purchase) but contains no information regarding the properties'
3 status, etc. That would be done as part of a regular real estate transaction. Furthermore, a public
4 records search is not the same as a title search conducted by a title company pursuant to the
5 process to finalize a sale/transfer of property. Public records are often incomplete, not updated,
6 contain erroneous entries, etc. They are not an official title search.

7
8 Additionally, how is Coty supposed to have foreseen that Cheri did not keep ANY of the
9 refinance documents from when she refinanced the property in 2017? How is Coty to have
10 foreseen that Cheri did not ever check to see if that lien was removed when she refinanced the
11 property in 2017 and that it just remained there?

12 The Plaintiff also argues that: "Here, the Defendant had 266 days to cure the defect and
13 did nothing and now asks the Court to alter the terms of the Agreement." (See Plaintiff's
14 Opposition; pg. 6; ln. 18-19) That is again a mistaken position by Cheri. Cheri as the seller of the
15 property has the obligation to ensure that title is clear not Coty. It is not Coty's obligation to cure
16 title defects in a property that she is purchasing and that Cheri is selling and has had in her name
17 since purchasing in 2014.

18
19 Simply put, there is no way Coty could have foreseen that Cheri failed to ensure a lien
20 was removed after she refinanced the property in 2017, let alone that Cheri would not keep any
21 documentation in her possession showing that the lien was paid off in 2017. There is no way that
22 Coty would have foreseen that when entering into a Settlement Agreement. The "lien issue" is
23 absolutely an event that is unforeseeable and absolutely frustrated Coty's ability to perform the
24 transaction.

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In Nevada, every contract contains a covenant of good faith and fair dealing which requires a party to act in good faith in performance and enforcement of the contract. It also provides justifiable expectation by the parties to receive certain benefits consistent with the spirit of the agreement; and the other performed in a manner that was in violation of or unfaithful to the spirit of the contract (the terms of the contract are complied with in a literal sense, but the spirit of the contract is breached). See *Klein v. Freedom Strategic Partners, LLC*, 595 F. Supp. 2d 1152 (D. Nev. 2009); *Nelson v. Heer*, 123 Nev. 217, 163 P.3d 420 (2007); *System v. Sutton*, 120 Nev. 972, 989, 103 P.3d 8, 19 (Nev. 2004);

Cheri cannot sit back and allow a title issue to derail a transaction, refuse to grant an extension of a few days to complete the transaction, and then demand the strict enforcement of the Settlement Agreement. Such an outcome is inequitable and violates the spirit and intent of the Settlement Agreement.

///

1 iii. The “time of the essence” clause has been vitiated given that the Plaintiff agreed to
2 a previous extension of the deadline and Coty was ready to perform on October
3 24th but for Cheri’s failure to clear title and grant a reasonable extension when
4 Coty had to resolve it on her own.

5 The Plaintiff argues that because there was a “time of the essence clause” in the
6 Addendum that the failure to perform by the deadline in the Addendum ends the analysis. (*See*
7 *generally* Plaintiff’s Opposition; pg. 14; ln. 7-24)

8 However, in *Mosso v. Lee*, 53 Nev. 176, 182, 295 P. 776, 777-78 (1931) the Nevada
9 Supreme Court held that: “Even where time is made material, by express stipulation, the failure
10 of one of the parties to perform a condition within the particular time limited will not in every
11 case defeat his right to specific performance, if the condition be subsequently performed, without
12 unreasonable delay, and no circumstances have intervened that would render it unjust or
13 inequitable to give such relief.”

14 That is the exact situation here. As Coty stated in her motion the transfer for the Churchill
15 property was ready to occur on October 24, 2020. (*See* Defendant’s Motion; Exhibit C) When the
16 title for Churchill was ran an “issue” was raised regarding a supposed outstanding lien. Cheri
17 should have been able to immediately clear that issue up but could not. By the time the lien issue
18 was resolved (by having to contact the former lien holder with multiple calls, etc.) and due to the
19 Nevada day holiday, a brief extension was needed to finalize the transaction. Such a situation is
20 not egregious and given that the money is still in escrow today the transaction could have been
21 finalized had Cheri allowed it to go through. Cheri directed Ms. Edwards to not complete the
22 transfer. (*See* Email from Ms. Edwards dated November 5th as Exhibit J)

23 Cheri had previously agreed to an extension of the deadline to complete the transfer of the
24 two properties (*see* Defendant’s Motion; Exhibits A and B) from July 31, 2020 to October 31,
25 2020 with no other changes or consideration. There was no prejudice to Cheri when she did that.
26 Coty continued to maintain all other requirements upon her under the Settlement Agreement and
27 Reply- 8
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1 Addendum. A delay of a few extra days beyond October 31, 2020 does not cause Cheri any
2 unreasonable delay or unjust harm given that SHE did not immediately clear up the title issue.
3 She cannot now claim that "time is of the essence" when an extension was given once to Coty,
4 then time was not of the essence clearly.

5 Had Cheri not directed Ms. Edwards to stop the process she would already have had the
6 transaction completed and been paid her amount as required under the Addendum. She cannot
7 fail to immediately clear up a lien issue, then sit back and refuse to grant a minimum extension
8 for the time it took Coty to clear it up on her own.

9 Coty in good faith substantially performed for Churchill (as it has clearly been shown she
10 was ready to perform on October 24th). The failure to perform by October 31st was due to an
11 issue that was outside of Coty's control and that she remedied as quickly as possible (despite
12 Cheri not having any documents in her possession that would have immediately resolved the
13 situation) and even proceeded to give Cheri a heads up on this issue. Cheri cannot grant an
14 extension of the deadline before (which was not of any prejudice to her) but not refuse to perform
15 alleging some prejudice to her.

- 16
17
18 iv. Cheri should be equitable estopped from using the "time is of the essence" defense
19 due to her bad conduct in not clearing the title issue up immediately to allow the
20 transaction to be completed before the deadline.

21 Even if the "time of the essence" clause is still valid despite the fact that an extension was
22 granted previously of the deadline to perform, Cheri should be equitably estopped from asserted it
23 now due to her bad conduct. Equitable estoppel operates to prevent a party from asserting legal
24 rights that in equity and good conscious they should not be allowed to assert because of their
25 conduct. To establish equitable estoppel, a party must show (1) the party was apprised of the true
26 facts; (2) the party intended that his conduct shall be acted upon; (3) the party asserting estoppel
27 must be under the true state of facts; and (4) the party asserting estoppel must have relied to his
28

1 detriment on the conduct of the party to be estopped. *See* NGA #2 Limited Liability Company v.
2 Rains, 113 Nev. 1151, 946P.2d 163 (1997); *see also* *Hermanson v. Hermanson* 110 Nev. 1400,
3 887 P.2d 1241 (1994); *see also* *Southern Nev. Mem. Hosp. v. State*, 101 Nev. 387, 391, 705 P.2d
4 139, 142 (1985)

5 Cheri knew or should have known that she didn't have the documentation for the property
6 at Churchill and that the lien somehow was still showing on a public records search and failed to
7 tell Coty. Such a failure to advise an issue with title led Coty to act upon that lack of
8 representation (or conversely to the representation that title was fine). Coty as she was not on the
9 title nor on any of the liens to the property had no way of knowing that this Paramount lien was
10 somehow still showing up despite being paid off. Coty clearly relied to her detriment as Cheri's
11 failure to clear the title up (again which should have been done easily had she had the paperwork)
12 puts her at loss of the Churchill residence.
13

14 Coty has no ability or authority to clear up any title/lien issue as the property (and liens for
15 the property) were in Cheri's name alone. Cheri would be the person who would have any
16 records on that property. Cheri should have been able to clear that issue up as she should have
17 had the paperwork from the refinance back in 2017 showing that the lien to Paramount
18 Residential Mortgage Group was satisfied and should have been removed. (*See generally*
19 Defendant's Motion; Exhibit D)
20

21 Cheri could not do that as she supposedly didn't have any of the documentation left. How
22 is Coty going to have documentation showing a lien was paid off when she is not on the lien? A
23 public records search is NOT the same as a title search. Cheri was the party who had a duty to
24 get that lien issue resolved so that the transaction could be completed. Coty was not made aware
25 of any potential lien issue until she was ready to complete the transaction. Coty relied on the
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1 fact that the property was ready and able to be immediately transferred and that Cheri was on top
2 of the property's situation (clear title, liens, etc.).

3 Cheri cannot sit back, refuse to immediately clear the lien issue up, refuse to grant Coty a
4 few days extension (for which she suffers no prejudice) to finalize the transaction after the lien
5 issue is resolved, then use that "failure" of Coty to perform by October 31st as a basis to scuttle
6 the intent of the Settlement Agreement and Addendum which is to effectuate a transfer of the
7 Churchill property to Coty. That is the epitome of bad conduct on the part of the Plaintiff.
8

9 The Court should order that Cheri instruct Ms. Edwards to draw up the closing documents
10 and for Cheri to sign whatever documentation is needed to finalize the transfer of the Churchill
11 property to Coty so that the intent of the parties in executing the Addendum is fulfilled.
12

13 **III.**

14 **CONCLUSION**

15 Therefore, based upon the foregoing evidence, exhibits, and testimony before the Court,
16 Defendant, COTY REFAELY respectfully requests that this Court enforce the intent of the
17 Addendum and require the Plaintiff to sign any necessary documentation to finalize the transfer
18 of the Churchill property to Coty's name and to deny all the relief requested in the Plaintiff's
19 countermotion.

20 Respectfully Submitted,

21 **MICHAEL S. STRANGE & ASSOCIATES, LLC**

22
23 By: /s/ Michael S. Strange
24 MICHAEL S. STRANGE, ESQ.
25 501 S. Rancho Dr.; Suite A-7
26 Las Vegas, NV 89106
27 (702) 456-4357
28 *Attorney for Defendant Coty*
Refaely

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that service of the foregoing DEFENDANT'S COTY REFAELY'S
REPLY TO PLAINTIFF'S OPPOSITION TO DEFENDANT COTY REFAELY'S MOTION TO
ENFORCE SETTLEMENT AGREEMENT AND ADDENDUM AND TO REQUIRE
PLAINTIFF TO EXECUTE FINAL TRANSFER DOCUMENTS FOR CHURCHILL
PROPERTY and COUNTERMOTION TO ENFORCE SETTLEMENT AGREEMENT AND
DISMISS CASE WITH PREJUDICE, was made on this 24th day of December, 2020, pursuant to
NRCP 5(b)(2)(D), and EDCR 8.05, by electronic service via the Court's EFiled System to the
following counsel:

Gary S. Fink, Esq., Attorney for Plaintiff at garyfink@atharilaw.com.

By: /s/ Michael S. Strange
MICHAEL S. STRANGE, ESQ.
501 S. Rancho Dr.; Suite A-7
Las Vegas, NV 89106
(702) 456-4357
*Attorney for Defendant Coty
Refaely*

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EXHIBIT H

LOAN AGREEMENT

\$145,000.00

Date: November 09, 2020

For value received, the undersigned Coty Refaely (the "Borrower"), at 5509 Oak Street, Las Vegas, Nevada 89102, promises to pay to the order of Alon Yehezkelof (the "Lender"), at 14000 Chandler Blvd, Sherman Oaks, California 91401 (or at such other place as the Lender may designate in writing), the sum of \$145,000.00 with interest from November 09, 2020, on the unpaid principal at the rate of 10% per annum.

I. TERMS OF REPAYMENT

A. Payments

The unpaid principal and accrued interest shall be payable in monthly installments of \$1,264.38, beginning on December 9, 2020, and continuing until November 9, 2030, (the "Due Date"), at which time the remaining unpaid principal and interest shall be due in full.

THE BORROWER UNDERSTANDS THAT THE PAYMENT OF THE ABOVE INSTALLMENT PAYMENTS MAY NOT FULLY AMORTIZE THE PRINCIPAL BALANCE OF THE NOTE, AND THEREFORE, A BALLOON PAYMENT MAY BE DUE ON THE DUE DATE.

B. Application of Payments

All payments on this Note shall be applied first in payment of accrued interest and any remainder in payment of principal.

C. Acceleration of Debt

If any payment obligation under this Note is not paid when due, the remaining unpaid principal balance and any accrued interest shall become due immediately at the option of the Lender.

II. SECURITY

This Note shall be secured by a Deed of Trust to real property commonly known as 5005 Churchill Ave, Las Vegas, Nevada 89107. The Lender is not required to rely on the above security instrument and the assets secured therein for the payment of this Note in the case of default, but may proceed directly against the Borrower.

III. PREPAYMENT

The Borrower reserves the right to prepay this Note (in whole or in part) prior to the Due Date with no prepayment penalty. Any such prepayment shall be applied against the installments of principal due under this note in the inverse order of their maturity and shall be accompanied by payment of accrued interest on the amount prepaid to the date of prepayment.

IV. COLLECTION COSTS

If any payment obligation under this Note is not paid when due, the Borrower promises to pay all costs of collection, including reasonable attorney fees, whether or not a lawsuit is commenced as part of the collection process.

V. DEFAULT

If any of the following events of default occur, this Note and any other obligations of the Borrower to the Lender, shall become due immediately, without demand or notice:

- 1) the failure of the Borrower to pay the principal and any accrued interest when due;
- 2) the liquidation, dissolution, incompetency or death of the Borrower;
- 3) the filing of bankruptcy proceedings involving the Borrower as a debtor;
- 4) the application for the appointment of a receiver for the Borrower;
- 5) the making of a general assignment for the benefit of the Borrower's creditors;
- 6) the insolvency of the Borrower;
- 7) a misrepresentation by the Borrower to the Lender for the purpose of obtaining or extending credit; or
- 8) the sale of a material portion of the business or assets of the Borrower.

In addition, the Borrower shall be in default if there is a sale, transfer, assignment, or any other disposition of any real estate pledged as collateral for the payment of this Note, or if there is a default in any security agreement which secures this Note.

VI. SEVERABILITY OF PROVISIONS

If any one or more of the provisions of this Note are determined to be unenforceable, in whole or in part, for any reason, the remaining provisions shall remain fully operative.

VII. MISCELLANEOUS

All payments of principal and interest on this Note shall be paid in the legal currency of the United States. The Borrower waives presentment for payment, protest, and notice of protest and demand of this Note.

No delay in enforcing any right of the Lender under this Note, or assignment by Lender of this Note, or failure to accelerate the debt evidenced hereby by reason of default in the payment of a monthly installment or the acceptance of a past-due installment shall be construed as a waiver of the right of Lender to thereafter insist upon strict compliance with the terms of this Note without notice being given to Borrower. All rights of the Lender under this Note are cumulative and may be exercised concurrently or consecutively at the Lender's option.

This note may not be amended without the written approval of the holder.

VIII. GOVERNING LAW

This Note shall be construed in accordance with the laws of the State of California.

IX. SIGNATURES

This Note shall be signed by Coty Refaely and Alon Yehezkelof.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, this Agreement has been executed and delivered in the manner prescribed by law as of the date first written above.

Signed this 5th day of November, 2020, at Las Vegas NV.

Borrower:
Coty Refaely

By:  _____
Coty Refaely

Date: Nov 5/2020

Lender:
Alon Yehezkelof

By: _____
Alon Yehezkelof

Date: _____

ASSIGNMENT

[ONLY COMPLETE THE FOLLOWING INFORMATION TO ASSIGN PAYMENTS TO A NEW PARTY.]

For value received, the above Note is assigned and transferred to

_____, ("Assignee") of

_____,
(City)(State/province)

_____.
(Country)

Dated: _____

By: _____
Alon Yehezkelof

DO NOT DESTROY THIS NOTE

WHEN PAID this original Note together with the Deed of Trust securing the same, must be surrendered to the Borrower for cancellation and retention before any reconveyance can be processed.

EXHIBIT I

Prepared By:

After Recording Return To:

Alon Yehezkelof
14000 Chandler Blvd
Sherman Oaks, CA 91401

SPACE ABOVE THIS LINE FOR RECORDER'S USE

Parcel Number (APN): 138-36-514-028

DEED OF TRUST

THIS DEED OF TRUST (the "Trust") dated November 04, 2020, is made by and between:

Coty Refaely of 5509 Oak Street, Las Vegas, Nevada 89102
(the "Borrower")

-AND-

Alon Yehezkelof of 14000 Chandler Blvd, Sherman Oaks, California 91401
(the "Lender")

-AND-

Peak Foreclosure Services, Inc. of 5900 Canoga Ave, Suite #420, Woodland Hills, California
91367
(the "Trustee")

WITNESSETH:

THAT FOR AND IN CONSIDERATION OF the sum lent to the Borrower by the Lender, in the amount of \$145,000.00 U.S. Dollars (the "Principal Amount") as evidenced by the promissory note (the "Note") dated November 09, 2020, the receipt of which the Borrower does

hereby acknowledge itself indebted, the Borrower IRREVOCABLY GRANTS, TRANSFERS AND ASSIGNS to TRUSTEE IN TRUST, WITH POWER OF SALE, the following described real property (the "Property"), located at 5005 Churchill Ave in the County of Clark County, State of Nevada, with the following legal description:

(Please see the attached *Schedule A* for the legal description)

TOGETHER WITH all the improvements now or hereafter erected on the Property, and all easements, appurtenances, and fixtures now or hereafter a part of the Property. All replacements and additions will also be covered by this Trust.

BORROWER COVENANTS that Borrower is the legal owner of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower further warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

To Protect the Security of this Deed of Trust, the parties do hereby agree as follows:

TERMS RELATING TO PAYMENT

1. PROMISE TO PAY. The Borrower, for value received, promises to pay to the Lender the Principal Amount, interest and all fees and costs on the terms outlined in this Trust or in any amendment, extension, or renewal of the Trust and any additional amounts secured by this Trust on the terms elsewhere provided for such debts and liabilities.

2. INTEREST. The Borrower agrees to pay the Principal Amount with interest before and after maturity and before and after default at the rate of 10 percent (the "Interest Rate"). The Interest Rate will be calculated from the date this Trust begins on November 09, 2020 (the "Adjustment Date") and accrues until the whole of the Principal Amount is paid. The Loan will be repaid on the following terms:

- a. The Principal Amount with interest will be repaid in consecutive monthly installments of \$1,264.38.
- b. The Adjustment Date for this Trust is November 09, 2020;
- c. The balance, if any, of the Principal Amount and any interest thereon and any other moneys owed under this Trust will be due and payable on November 09, 2030 (the "Maturity Date").

3. PAYMENT LOCATION. The Borrower will make payments to 5900 Canoga Ave, Suite

#400, Woodland Hills, California 91367, or at such other place as may be designated by Lender at a later date.

4. FUNDS FOR ESCROW ITEMS. The Borrower will pay to Lender, on the day periodic payments are due under this Trust, until the Principal Amount is paid in full, a sum (the "Funds") to provide for payment for: (a) any taxes, assessments, or other items which can take priority over this Trust as a lien or encumbrance on the Property; (b) lease payments on the Property, if any; (c) premiums for any and all insurance, including Mortgage Insurance required by the Lender. These items are called "Escrow Items."

The Borrower must notify the Lender of all amounts to be paid under this Section. If the Lender requires, the Borrower must provide receipts evidencing such payments to the Lender. If the Borrower does not make payments on time, the Lender can, at its discretion, make any and all past due payments for Escrow Items and the Borrower will be obligated to repay the Lender for any such amount. The Lender may waive the Borrowers obligation to pay the Lender for any and all Escrow Items at any time by providing written notice to the Borrower. If such waiver occurs, the Borrower must pay directly, when and where payable, the amounts due for any and all Escrow Items. If the Borrower is obligated to pay Escrow Items directly, and the Borrower fails to make payments on time, then the Lender may exercise its rights under this Section and pay for any such amounts and Borrower will be obligated to repay Lender for any such amount.

The Borrower will collect and hold the Funds in accordance with the Real Estate Settlement Procedures Act (the "RESPA"). Lender will estimate the amount of Funds due in accordance with Applicable Law. If there is a surplus of Funds held in escrow, as defined under RESPA, the Lender must provide to Borrower the excess funds in accordance with RESPA. If there is a shortage or deficiency of Funds held in escrow, as defined under RESPA, Lender must notify Borrower in writing and Borrower must pay to Lender the amount necessary to make up the shortage or deficiency.

Upon payment in full of all Funds relating to Escrow Items, Lender will promptly refund to Borrower any excess Funds held by Lender.

5. OBLIGATION TO PAY. The Borrower agrees to pay all moneys payable pursuant to this Trust and all additional amounts secured by this Trust without abatement, set-off or counterclaim. Should the Borrower make any claim against the Lender either initially or by way of abatement, set-off or counterclaim, the Borrower agrees that any such claim will not reduce or postpone their obligation to make all payments as provided by this Trust.

6. APPLICATION OF PAYMENTS. All payments paid by the Borrower and received by the Lender will first be applied in payment of the interest calculated at the Interest Rate, and second in payment of the Principal Amount. Such payments will be applied in the order in which it became due. However, if the Borrower defaults on payment, then the Lender will have the right to apply any payments received while in default as the Lender so chooses.

7. PREPAYMENT PRIVILEGES. When not in default, the Borrower may prepay, without

penalty, only the full and then remaining unpaid balance including the Principal Amount plus Interest.

8. ADDITIONAL CHARGES AND ENCUMBRANCES. The Borrower must pay all taxes, assessments, charges, fines, and all other impositions attributable to the Property and all trusts, liens, and other encumbrances on the Property. To the extent that these items are Escrow Items, the Borrower will pay them in the manner provided in Section 4.

9. RELEASE AND RECONVEYANCE. Upon payment of all sums secured by this Trust, including the Principal Amount and interest, the Lender will request the Trustee to reconvey the Property and must surrender this Trust and the Note evidencing debt secured by this Trust to Trustee. Trustee must reconvey the Property without warranty to the person or persons legally entitled to it. Such person or persons will pay any recordation costs. The Lender may charge such person or persons a fee for reconveying the Property, but only if the fee is paid to a third party (such as the Trustee) for services rendered and the charging of the fee is permitted under Applicable Law.

10. NO SALE WITHOUT CONSENT. The Trustee will not sell, transfer, assign, or otherwise dispose of all or part of the Property or any interest in the Property, without the Borrower's and Lender's prior written consent.

11. PROPERTY INSURANCE. The Borrower must keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which the Lender requires insurance. The insurance carrier providing the insurance will be chosen by the Borrower. However, the Lender will have the right to disapprove the Borrower's choice, which right may not be unreasonable.

If the Borrower fails to maintain any of the coverage's described above, then Lender may obtain insurance coverage, at Lender's discretion and Borrower's expense. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of the insurance that the Borrower could have obtained. However, any amounts paid by Lender will become additional debt of the Borrower and secured by this Trust. The amounts paid by the Lender will bear interest at the Interest Rate from the date of payment and will be payable, with such interest, upon notice from Lender to Borrower requesting payment.

All insurance policies must include a standard mortgage and/or trust clause and will name Lender as mortgagee and/or as an additional loss payee, stating that any loss is payable to the Lender. Borrower further agrees to generally assign rights to insurance proceeds to the Lender up to the amount of the outstanding loan balance. If, at the request of the Lender, Borrower will provide Lender (a) a copy of the insurance policy; (b) all receipts of paid premiums and renewal notices.

In the event of loss, the Borrower must give prompt notice to the insurance carrier and to the Lender. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds must be applied to restoration or repair of the Property, if the restoration or repair is economically feasible.

If the restoration or repair is not economically feasible, the insurance proceeds will be applied to the remainder of this Trust, whether or not the balance of the Trust is then due, with the excess, if any, paid to the Borrower.

12. OCCUPANCY, MAINTENANCE, AND REPAIR. The Borrower will occupy, establish, and use the Property as Borrower's principal residence after the execution of this Trust. The Borrower will not allow the Property to become vacant without the written consent of the Lender. The Borrower will not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Whether or not the Borrower is residing at the Property, the Borrower will maintain the Property in order to prevent the Property from deteriorating or decreasing value due to its condition. Unless repair or restoration is not economically feasible, Borrower will promptly make all necessary repairs, replacements, and improvements to avoid any further deterioration or damage. The Lender may, whenever necessary, make reasonable entries upon and inspections of the Property. If the Borrower neglects to maintain the Property in good condition or allows the Property to deteriorate resulting in decreased property value, the Lender will have the right to make such repairs and improvements as it considers necessary to maintain the Property.

13. HAZARDOUS SUBSTANCES. The Borrower will not cause or permit the presence, use, disposal, storage, or release of any hazardous substances on the Property. Hazardous substances include pollutants, wastes, and those substances defined as toxic or hazardous substances by environmental law, as well as the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials. Furthermore, the Borrower will not, nor allow anyone else to do, anything affecting the Property involving any hazardous substances that would materially affect the value of the Property. The Borrower will promptly take all necessary remedial actions under federal, state, and local laws regarding hazardous substances.

DEFAULT AND REMEDIES

14. DEFAULT. The Borrower will be considered in default under the terms of this Trust if any of the following conditions are met:

- a. The Borrower fails to pay the sum of the Principal Amount, interest, or any other amounts due under this Trust.
- b. The Borrower fails to perform or comply with any of the terms and conditions or any obligations or responsibilities due under this Trust.
- c. The Borrower has given or made, at any time during the loan process, any materially false, misleading, or inaccurate information or statements to the Lender or any other party under this Trust in connection with the loan.
- d. If any action or proceeding, whether civil or criminal, is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's

interest in the Property or rights under this Trust.

e. If a lien is registered against the Property, or if default occurs under any other lien or encumbrance existing against the Property;

f. The Borrower abandons or fails to occupy the Property.

g. The Property or any material part of the Property is expropriated.

15. ACCELERATION. If at any time the Borrower should be in default under this Trust, the Lender must give notice to the Borrower. The notice must specify: (a) the default; (b) the action required to cure the default (if allowable); (c) a date, not less than 30 days from the date of the notice, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Trust and sale of the Property. If the default is not curable and/or if the default is not cured on or before the date specified in the notice, the Lender at its option may require immediate payment in full of all sums, including the Principal Amount, interest, and all other amounts secured by this Trust. If the default is cured, the Trust will be reinstated. If the default is not cured, the Lender may invoke the power of sale and begin foreclosure proceedings.

The Lender will at all times retain the right to require immediate payment in full in the event of default. Any forbearance on the part of the Lender upon default, which includes but is not limited to acceptance of late payment, acceptance of payment from third parties, or acceptance of payments less than the amount due, will not constitute a waiver to enforce acceleration on default.

16. PROTECTION OF LENDER'S INTEREST. If at any time the Borrower fails to perform the covenants and agreements under this Trust, or if there is a legal proceeding that significantly affects the Lender's interest in the Property, or if the Borrower has abandoned the Property, then the Lender may do and pay for whatever is reasonable or appropriate to protect the Lender's interest in the Property and/or rights under this Trust, which includes, but is not limited to:

a. Paying any sums secured by a lien which has priority over this Trust;

b. Appearing in court;

c. Paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Trust; and

d. Paying for reasonable costs to repair and maintain the Property.

The Lender will at all times retain the right to take action under this Section. However, the Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that the Lender will not incur any liability for not taking any or all actions to perform such tasks. Furthermore, any amounts paid by the Lender will become additional debt of the Borrower secured by this Trust.

17. POWER OF SALE. If at any time the Borrower is in default under this Trust, the Lender will have the right and authority to foreclose and force the sale of the Property without any judicial proceeding. Any delay in the exercising of this right will not constitute a waiver to exercise this right at a later date should the Borrower remain in default or subsequently default again in the future.

18. REMEDIES. The Lender will have the right to invoke all remedies permitted under Applicable Law, whether or not such remedies are expressly granted in this Trust, including but not limited to any foreclosure proceedings.

If the Lender invokes the power of sale, the Trustee will execute a written notice of the occurrence of an event of default and of the Lender's decision to sell the Property. The Lender or Trustee will mail copies of the notice to the Borrower and Guarantor and will also give public notice of sale in the manner provided by Applicable Law. After the time required by Applicable Law, the Trustee will sell the Property at a public auction to the highest bidder at the time and place and under the terms designated by the Trustee in the notice of sale. The Trustee may postpone sale of the Property by public announcement at the time and place of any previously scheduled sale. Furthermore, the Lender or its designee may purchase the Property at any sale.

MISCELLANEOUS TERMS

19. GOVERNING LAW. This Trust will be construed in accordance with the laws of the state of Nevada ("Applicable Law"). Applicable Law will include all controlling applicable federal, state and local statutes. All rights and obligations under this Trust are subject to any requirements and limitations of Applicable Law.

20. SEVERABILITY. If any portion of this Trust will be held to be invalid or unenforceable for any reason, the remaining provisions will continue to be valid and enforceable. If a court finds that any provision of this Trust is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision will be deemed to be written, construed, and enforced as so limited.

21. JOINT SIGNATURES. If the Borrower is more than one person or legal entity, each Borrower who signs this Trust will be jointly and severally bound to comply with all the obligations and liabilities of the other Borrower(s).

22. STATUTORY PROVISIONS. The provisions contained in this Trust are additional and supplemental, to the extent permitted by law, to the provisions set out in the Applicable Law as they relate to trusts.

23. SUBSTITUTE TRUSTEE. The Lender may, at its option, from time to time appoint a successor Trustee by an instrument executed and acknowledged by Lender and recorded in the office of the Recorder of the county in which the property is located. The instrument will contain

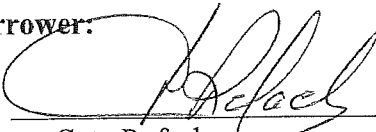
the name of the original Lender, Trustee, and Borrower, the book and page where this Trust is recorded and the name and address if the successor Trustee. Without conveyance of the Property, the successor trustee will succeed to all the title, powers and duties of the Trustee.

24. ASSUMPTION FEE. If there is an assumption of this loan, Lender may charge an assumption fee in accordance with Applicable Law.

25. NOTICE. All notice given by either party in connection with this Trust must be in writing. Notice will be considered sufficient when mailed by first class or certified mail to the address of the recipient. The recipient's address will be the property address as stated under this Trust unless another address has been designated. If there is a change of address by any party, that party must promptly notify all parties under this Trust of the change of address. Any notice will be considered effective on the same day that it was sent, unless the day falls on a national holiday, Saturday, or Sunday, in which case, the next business day will be considered as the day of receipt.

IN WITNESS WHEREOF this Trust has been executed by the Borrower in the manner prescribed by law as of November 04, 2020 as stated above.

Borrower:

By:  Date: Nov. 5/2020
Coty Refaely

[Notary Acknowledgment to Follow]

Borrower Acknowledgement

State of Nevada)
County of Clark County)

On November 5, 2020 before me, Kelle Orozco, A Notary Public, personally appeared Coty Refaely, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

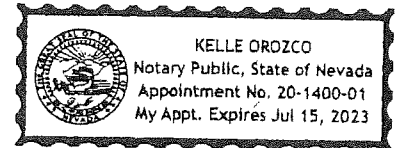
WITNESS my hand and official seal.

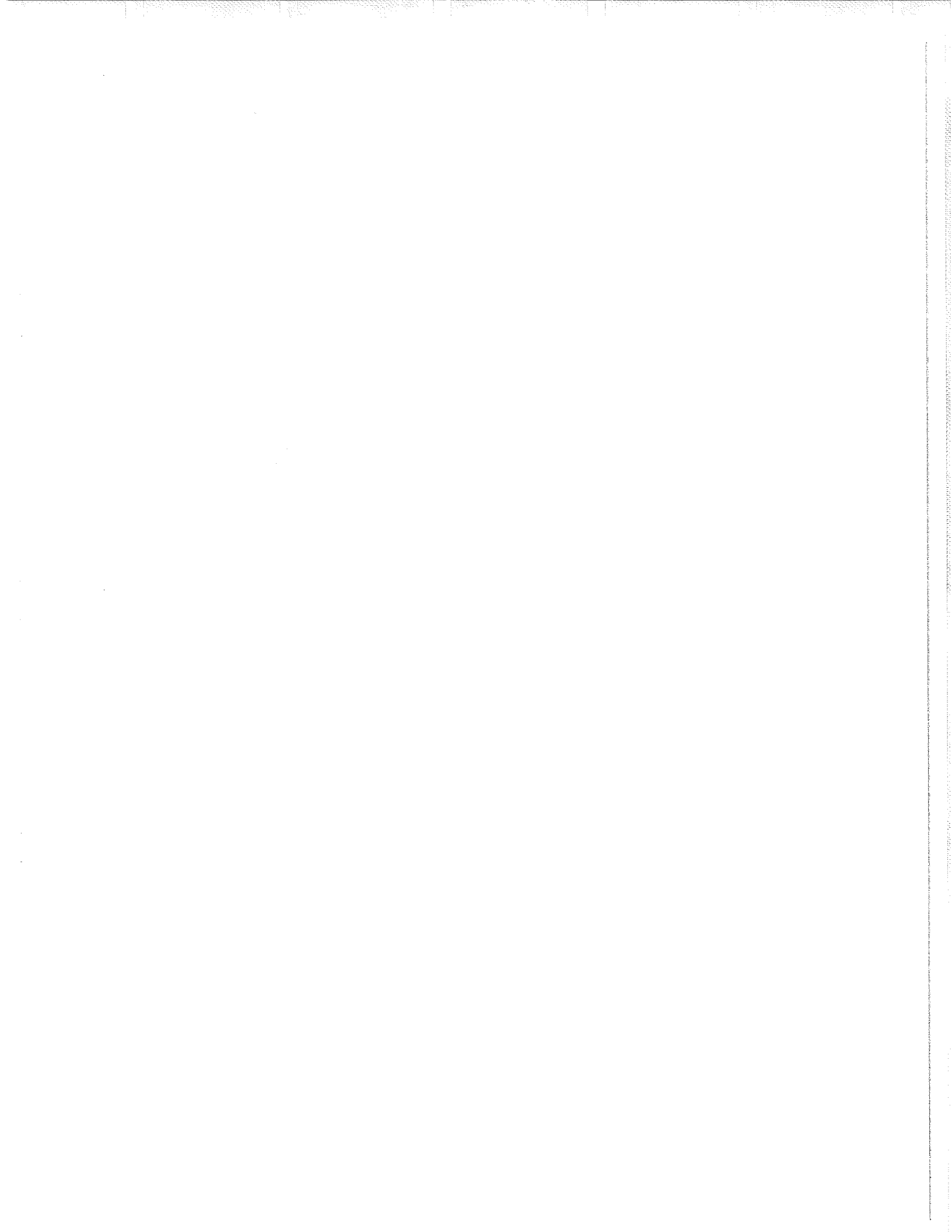
[Signature]
Notary Public

July 15, 2023

My commission expires

(Notary Seal)





SCHEDULE A
LEGAL DESCRIPTION OF REAL PROPERTY

Attached as a copy

EXHIBIT J

From: Sheree Edwards
To: mstrange@mikestrangelaw.com
Cc: coty0607@yahoo.com
Subject: RE: [EXTERNAL] Docs signed
Date: Thursday, November 5, 2020 3:54:11 PM

I have been instructed to hold off on this transaction. I have no documents.

My License #3540409
Driggs License #833225



Sheree Edwards
Escrow Officer

Driggs Title
5550 Painted Mirage #330
Las Vegas, NV 89149

702-860-2686 Cell
702-448-8032 eFax

From: mstrange@mikestrangelaw.com [mailto:mstrange@mikestrangelaw.com]
Sent: Thursday, November 5, 2020 3:49 PM
To: Sheree Edwards <sheree@driggstitle.com>
Cc: coty0607@yahoo.com
Subject: RE: [EXTERNAL] Docs signed

Ok. My client indicates that the money is being sent now. I assume after that is completed then there would be some final closing documents prepared correct?

Or do you have any documents showing that the property is now ready to be transferred upon Ms. Wiman's signature?

Michael S. Strange, Esq.
Michael S. Strange & Associates, LLC
501 S. Rancho Dr.; Suite A-7
Las Vegas, NV 89106

Phone: (702) 456-4357

Fax: (702) 464-3042

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From: Sheree Edwards <sheree@driggstitle.com>

Sent: Thursday, November 5, 2020 3:44 PM

To: mstrange@mikestrangelaw.com

Subject: RE: [EXTERNAL] Docs signed

Those are the only ones I have received too.

My License #3540409

Driggs License #833225



Sheree Edwards
Escrow Officer

Driggs Title

5550 Painted Mirage #330

Las Vegas, NV 89149

702-860-2686 Cell

702-448-8032 eFax

From: mstrange@mikestrangelaw.com [<mailto:mstrange@mikestrangelaw.com>]

Sent: Thursday, November 5, 2020 3:26 PM

To: Sheree Edwards <sheree@driggstitle.com>

Subject: RE: [EXTERNAL] Docs signed

Well opposing counsel wanted to have me provide the closing docs (which I don't have other than what Coty just emailed me this morning), so if you have those I would want them so I can forward them to him as he is going to talk to his client.

Michael S. Strange, Esq.
Michael S. Strange & Associates, LLC
501 S. Rancho Dr.; Suite A-7
Las Vegas, NV 89106
Phone: (702) 456-4357
Fax: (702) 464-3042

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From: Sheree Edwards <sheree@driggstitle.com>
Sent: Thursday, November 5, 2020 3:21 PM
To: mstrange@mikestrangelaw.com
Subject: RE: [EXTERNAL] Docs signed

What docs are you needing?

My License #3540409
Driggs License #833225



Sheree Edwards
Escrow Officer

Driggs Title
5550 Painted Mirage #330
Las Vegas, NV 89149

702-860-2686 Cell
702-448-8032 eFax

From: mstrange@mikestrangelaw.com [<mailto:mstrange@mikestrangelaw.com>]
Sent: Thursday, November 5, 2020 11:22 AM
To: Sheree Edwards <sheree@driggstitle.com>; 'coty refaely' <coty0607@yahoo.com>
Subject: RE: [EXTERNAL] Docs signed

Sheree,

Thank you for your email. I do understand you have been instructed to hold off on this. But do you have the closing docs that you can provide me? Cheri's attorney and I were talking on this and he was asking me if there were any other closing docs that I could provide him. If you could forward those to me I would appreciate it.

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Michael S. Strange & Associates, LLC
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From: Sheree Edwards <sheree@driggstitle.com>
Sent: Thursday, November 5, 2020 10:03 AM
To: coty refaely <coty0607@yahoo.com>; Esq. Michael S. Strange <mstrange@mikestrangelaw.com>
Subject: RE: [EXTERNAL] Docs signed

I have been instructed by Cheri to hold off on this.

My License #3540409
Driggs License #833225



Sheree Edwards
Escrow Officer

Driggs Title
5550 Painted Mirage #330
Las Vegas, NV 89149

702-860-2686 Cell
702-448-8032 eFax

From: coty refaely [<mailto:coty0607@yahoo.com>]
Sent: Thursday, November 5, 2020 10:01 AM
To: Sheree Edwards <sheree@driggstitle.com>; Esq. Michael S. Strange
<mstrange@mikestrangelaw.com>
Subject: [EXTERNAL] Docs signed

You will be receiving docs signed from the ups store
Sherree i will come by and drop the original one signed and notarized

Sent from Yahoo Mail on Android

EXHIBIT K

From: Sheree Edwards
To: mstrange@mikestrangelaw.com
Subject: RE: [EXTERNAL] Docs signed
Date: Thursday, November 5, 2020 3:44:42 PM

Those are the only ones I have received too.

My License #3540409
Driggs License #833225



Sheree Edwards
Escrow Officer

Driggs Title
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Las Vegas, NV 89149

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702-448-8032 eFax

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Sent: Thursday, November 5, 2020 3:26 PM
To: Sheree Edwards <sheree@driggstitle.com>
Subject: RE: [EXTERNAL] Docs signed

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Sent: Thursday, November 5, 2020 3:21 PM

To: mstrange@mikestrangelaw.com

Subject: RE: [EXTERNAL] Docs signed

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My License #3540409

Driggs License #833225



Sheree Edwards
Escrow Officer

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Sent: Thursday, November 5, 2020 11:22 AM

To: Sheree Edwards <sheree@driggstitle.com>; 'coty refaely' <coty0607@yahoo.com>

Subject: RE: [EXTERNAL] Docs signed

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was asking me if there were any other closing docs that I could provide him. If you could forward those to me I would appreciate it.

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From: Sheree Edwards <sheree@driggstitle.com>
Sent: Thursday, November 5, 2020 10:03 AM
To: coty refaely <coty0607@yahoo.com>; Esq. Michael S. Strange <mstrange@mikestrangelaw.com>
Subject: RE: [EXTERNAL] Docs signed

I have been instructed by Cheri to hold off on this.

My License #3540409
Driggs License #833225



Sheree Edwards
Escrow Officer

Driggs Title
5550 Painted Mirage #330
Las Vegas, NV 89149

702-860-2686 Cell
702-448-8032 eFax

From: coty refaely [<mailto:coty0607@yahoo.com>]

Sent: Thursday, November 5, 2020 10:01 AM

To: Sheree Edwards <sheree@driggstitle.com>; Esq. Michael S. Strange
<mstrange@mikestrangelaw.com>

Subject: [EXTERNAL] Docs signed

You will be receiving docs signed from the ups store
Sherree i will come by and drop the original one signed and notarized

Sent from Yahoo Mail on Android

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CHERI RENE WIMAN,) **Supreme Court No.: 82763**
Appellant,) District Court Case No. A803928
)
vs.)
)
COTY REFAELY,)
)
Respondent.)
_____)

EXHIBITS 6-7

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21
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28

EXHIBIT 6

EXHIBIT 6



1 **RPLY**
2 Gary S. Fink, Esq.
3 Nevada Bar No. 8064
4 **REZA ATHARI & ASSOCIATES, PLLC**
5 3365 Pepper Lane, Suite 102
6 Las Vegas, Nevada 89120
7 Tel (702) 727-7777
8 Fax (702) 458-8508
9 *Attorney for Plaintiff*

10 **EIGHTH JUDICIAL DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

12 **CHERI RENE WIMAN,**

13 **Plaintiff,**

14 **vs.**

15 **COTY REFAELY; DOES I through X, and**
16 **ROE CORPORATIONS I through X**

17 **Defendant.**

18 **COTY REFAELY, an individual,**

19 **Counterclaimant,**

20 **vs.**

21 **CHERI RENE WIMAN,**

22 **Counterdefendant.**

Case No.: A-19-803928-C
Dept. No.: XXIX

REPLY TO DEFENDANT COTY
REFAELY'S OPPOSITION TO
COUNTERMOTION TO ENFORCE
SETTLEMENT AGREEMENT AND
DISMISS CASE WITH PREJUDICE

23 COMES NOW, Plaintiff/Counterdefendant CHERI RENE WIMAN, by and through her
24 attorney of record, Gary S. Fink, Esq. of Reza Athari & Associates, PLLC, and hereby replies to
25 Defendant's Opposition to Countermotion to Enforce Settlement Agreement and Dismiss Case with
26 Prejudice.

27 ///

28 ///

1 This reply is made and based upon the attached memorandum of points and authorities and
2 any referenced exhibits, as well as any argument the Court may entertain at the hearing on this
3 matter.

4 DATED this 4th day of January, 2021.

5 REZA ATHARI & ASSOCIATES, PLLC.

6
7
8 Gary S. Fink, Esq.
9 Nevada Bar No. 8064
10 3365 Pepper Lane, Suite 102
11 Las Vegas, Nevada 89120
12 Tel (702) 727-7777
13 Fax (702) 458-8508
14 *Attorney for Plaintiff*

15 I.

16 **REPLY**

17 The Plaintiff is asking this Court to enforce the terms of the contract as written.
18 Alternatively, the Defendant is asking the Court to ignore the plan language of the contract and re-
19 write the Agreement imposing new duties and obligations on the Plaintiff.
20

21 **a. Defendant's lack of diligence is solely responsible for her inability to timely**
22 **purchase the property.**

23 Defendant failed to acquire funding to purchase the property at issue in this matter within in
24 the time specified in the Agreement. Throughout Defendant's Reply/Opposition she states that she
25 had no ability to clear a title defect and it was only the Plaintiff who could do so. (See Defendant's
26 Reply 3:11-13, 9:11-15, 10:15-16). She also states she was not made aware of any potential defect
27 issue until she was ready to complete the transaction. (See Defendant's Reply 10:25-26). Two
28 points: First, it was the Defendant's sole obligation to timely secure financing to purchase the
property. How ever she chose to finance the purchase, it was her responsibility to find out what her
lender would need to complete the transaction timely. Clearly she did not do this.

1 On information and belief, some time in October her lender refused to provide funding for
2 purchase the property because of a defect in title. Had the Defendant been diligent in securing
3 funding for the purchase, presumably her lender would have been able to advise her sooner about
4 their inability to fund the purchase timely. The second point to be made is that once the Defendant
5 took action to clear the defect in title, she was able to do so without the assistance of the Plaintiff in
6 a relatively short period of time (albeit after the time to purchase had expired).

7
8 **b. Nevada law does not allow for a reasonable time to perform after the expiration
9 where time is the essence of the contract .**

10 Defendant is now asking the Court to re-write the Agreement and order an extension of time
11 beyond the stated deadline. Defendant reaches back to a lone 1931 case (that has never been
12 followed by another Court) in support of her position. In *Mosso v. Lee*, 53 Nev. 176, 182, 295 P.
13 776, 777-78 (1931) the Court stated that even if time were material to the contract, the clause would
14 not defeat the right to performance in every case. A more recent Nevada Supreme Court case states
15 that "If time is of the essence, performance must occur at the "stated and unquestionable time" and
16 parties are not entitled to a reasonable time to perform thereafter. *Holmby, Inc. v. Dino*, 98 Nev. 358,
17 361, 647 P.2d 392, 394 (1982). The *Holmby* holding appears to effectively reverse the *Mosso*
18 decision and, *Holmby* has been followed numerous times in both Nevada state court cases as well
19 as by the Federal Court in the 9th Circuit. See generally, *ProLogis NA3 NV II, LLC v. IGT, Inc.*, U.S.
20 Dist. LEXIS 12205, 2014 WL 321126 (2014); *Greenland Super Mkt., Inc. v. KL Vegas, LLC*, Nev.
21 Unpub. LEXIS 1271, 452 P.3d 411 (2019).

22 As Defendant points out, Plaintiff did agree to extend the time to complete the transaction
23 from July 31, 2020 to October 31, 2020. However, the "time is the essence" clause remained in the
24 Addendum that extended Defendant's time to purchase.

25 ///

1 c. **Plaintiff always acted in good faith.**

2 Finally, it should be noted that Defendant's attempts to paint the Plaintiff in a bad light and
3 allege bad faith on her part should be summarily rejected. On Thursday September 24, 2020
4 Defendant sent a text message to Plaintiff requesting information on a mortgage payment for the
5 property. In just over 1 hour the Plaintiff had responded with the requested information. A copy of
6 the text exchange is attached hereto as Exhibit 2. The following month, the Plaintiff received a call
7 from Defendant on October 23, 2020 regarding the title issue. The Plaintiff immediately provided
8 a Final Settlement Statement showing the payoff to the prior lien holder. A copy of the Final
9 Settlement Statement is attached hereto as Exhibit 2.

10 Finally, Defendant appears to insinuate that the closing documents would have been prepared
11 timely but for Plaintiff ordering the escrow agent not to prepare them. (See Defendant's Exhibit J).
12 Plaintiff had no conversation with Defendant's escrow agent regarding the preparation of closing
13 documents until after the October 31, 2020 expiration of the Agreement.

14 On November 5, 2020 at 9:55 a.m. Plaintiff received a call from someone identifying herself
15 as Sheree from phone number 702-860-2868 (Driggs Title). The person stated that she had not
16 drawn up the documents for the Plaintiff to sign yet because she first needed the Plaintiff to record
17 a deed with the county recorder adding the Defendant's name onto the property. The person on the
18 phone stated that once that was done, the closing could occur.

19 On that same morning, Defendant sent text messages to the Plaintiff stating that the money
20 for the purchase of the property would be delivered to the escrow office that day (November 5,
21 2020). A copy of the text string is attached hereto as Exhibit 3.

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II.
CONCLUSION

For the reasons stated herein, and the documents attached hereto, Plaintiff requests that her motion to dismiss with prejudice be granted and Defendant's motion be denied in its entirety.

DATED this 4th day of January, 2021.

REZA ATEARI & ASSOCIATES, PLLC.

Gary S. Fink, Esq.
Nevada Bar No. 8064
3365 Pepper Lane, Suite 102
Las Vegas, Nevada 89120
Tel (702) 727-7777 Fax (702) 458-8508
Attorney for Plaintiff

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Declaration
(NRS 15.010)

I, Cheri Wiman declare as follows:

I am the Plaintiff in the above entitled action. I have read foregoing Reply and know the contents thereof; that the same is true of my own knowledge except as to those matters therein stated on information and belief, and as to those matters I believe them to be true,

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

Executed this 4 day of January, 2021 at Las Vegas, Nevada.


Cheri Wiman

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EXHIBIT 1

Thursday, September 24, 2020



Will you please check
how did i pay the
month of May the
Mortgages???I think
it was with a Cashier
check...will you help
me find it...Alicia
is missing that
monthPlease....

3:04 PM

You paid with your
check number 227
\$1655.36 you had a
credit that month for
something...insurance
refund

Read
4:16 PM



Thank you...

4:17 PM



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EXHIBIT 2

NATIONAL TITLE CO.

7251 W. Lake Mead Blvd., Suite 350, Las Vegas, NV 89128

Phone: (702) 873-7020 Fax: (702) 873-2223

Buyers/Borrowers Settlement Statement**Final**

Escrow No: 17004464 - 001CB1 Close Date: 07/13/2017 Proration Date: 07/13/2017 Disburse Date: 07/14/2017

Buyer(s)/Borrower(s): Cheri W. Schroeder
5509 Oak St
Las Vegas, NV 89120

Lender: Geneva Financial LLC

Loan #: 170613012

Property: 5005 Churchill Ave.
Las Vegas, NV 89107

Description	Debit	Credit
NEW AND EXISTING ENCUMBRANCES:		
New Loan from Geneva Financial LLC		133,500.00
NEW LOAN CHARGES: - Geneva Financial LLC		
Loan Point to Geneva Financial LLC	391.16	
Origination Fee to Geneva Financial LLC	1,495.00	
Appraisal Fee		
\$550.00 POC - Buyer		
Credit Report Fee to Geneva Financial LLC	60.94	
Flood Cert to Geneva Financial LLC	9.00	
Homeowner's Insurance Premium 12 mos.	313.02	
Prepaid Interest @ \$17.83 per day from 7/13/2017 to 8/1/2017	338.77	
Property Taxes 1st QTR to Clark County Treasurer	179.37	
Homeowner's Insurance to Geneva Financial LLC 5 mos. @ \$52.1700/month	260.85	
Property Taxes to Geneva Financial LLC 4 mos. @ \$57.8400/month	231.36	
Aggregate Adjustment to Geneva Financial LLC	(115.68)	
ESCROW CHARGES:		
Title - CPL to National Title Co.	25.00	
Title - Recording to National Title Co.	5.00	
Title - Escrow Fee to National Title Co.	350.00	
Title - Overnight to National Title Co.	25.00	
Title - ALTA Loan Policy w/ NV Mods (06-17-08) - Standard Coverage to National Title Co.	468.00	
Title - 8.10-06 REMs - Current Violations - Loan Policy to National Title Co.	100.00	
Title - 8.1-06 Environmental Protection Lien to National Title Co.	25.00	
TITLE CHARGES:		
Title - Signing fee to Direct Signings	60.00	
RECORDING FEES:		
Recording Fee For Mortgage to National Title Co.	59.00	
ADDITIONAL CHARGES:		
Lender Credits	(33.44)	
PAYOFFS:		
Payoff to PRMG	106,942.50	
Principal balance	106,895.61	
Interest From 07/14/2017 to 07/17/2017	46.89	
Sub Totals	111,209.85	133,500.00
Refund Due Buyer/Borrower	22,290.15	
Totals	133,500.00	133,500.00

Buyer(s)/Borrower(s):

Cheri W. Schroeder

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EXHIBIT 3

Thursday, November 5, 2020

Cheri why are you
doing this????why are
you making it ugly until
the last minute...you
are getting youre
money!!! You are going
to get rid of me like you
wanted....what else do
you want?????

10:49 AM

Please sign the
docs so we can be
done...there is 13 years
behind us that you
cannot deny...please
lets finish with
this....money will be at
the escrow today...

11:29 AM

1
2
3 **CERTIFICATE OF SERVICE**

4 I HEREBY CERTIFY that, in accordance with Rule 5(b) of the Nevada Rules of Civil
5 Procedure, on this 5th day of January 2021, I served a true and correct copy of the above **REPLY**
6 **TO DEFENDANT COTY REFAELY'S OPPOSITION TO COUNTERMOTION TO**
7 **ENFORCE SETTLEMENT AGREEMENT AND DISMISS CASE WITH PREJUDICE** on
8 the parties addressed as shown below:

- 9 ☐ Via US Mail by placing said document in a sealed envelope, with postage prepaid
10 (N.R.C.P. 5(b))
11 ☒ Via Electronic Filing (N.E.F.R. 9(b))
12 ☒ Via Electronic Service (N.E.F.R. 9)
13 ☐ Via Facsimile (E.D.C.R. 7.26(a))
14 ☐ Hand Delivery


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18 _____
19 Employee of Reza Athari & Associates, PLLC
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EXHIBIT 7

EXHIBIT 7



1 **NEOJ**
2 Michael S. Strange, Esq.
3 Nevada Bar No. 9429
4 **Michael S. Strange & Associates, LLC**
5 501 S. Rancho Dr.; Suite A-7
6 Las Vegas, NV 89106
7 Telephone: (702) 456-4357
8 Fax: (702) 464-3042
9 mstrange@mikestrangelaw.com
10 *Attorney for Defendant Coty Refaely*

11
12 **DISTRICT COURT**
13 **CLARK COUNTY, NEVADA**
14

15 **CHERI RENE WIMAN,**
16
17 **Plaintiff,**

18 **vs.**

19 **COTY REFAELY; DOES I through X, and**
20 **ROE CORPORATIONS I to X, inclusive,**
21
22 **Defendants.**

23 **COTY REFAELY, an individual,**
24
25 **Counterclaimant,**

26 **vs.**

27 **CHERI RENE WIMAN,**
28 **Counter-defendant.**

CASE NO.: A-19-803928-C
DEPT. NO.: XXIX

NOTICE OF ENTRY OF ORDER

21 **TO: CHERI RENE WIMAN, Plaintiff**
22 **TO: GARY S. FINK, ESQ., Attorney for Plaintiff**
23 **TO: S. DON BENNION, ESQ., Attorney for Plaintiff**
24

25 ///

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Notice of Entry of Order- 1

MICHAEL S. STRANGE & ASSOCIATES, LLC
501 S. RANCHO DR., SUITE A-7
LAS VEGAS, NEVADA 89106
PHONE: (702) 456-4357; FAX (702) 464-3042

1 PLEASE TAKE NOTICE that an ORDER from the January 20, 2021 hearing was duly
2 entered in the above-entitled matter on the 15th day of March, 2021.
3

4 Dated this 16th day of March, 2021
5

6 By: /s/ Michael S. Strange
7 MICHAEL S. STRANGE, ESQ.
8 501 S. Rancho Dr.; Suite A-7
9 Las Vegas, NV 89106
10 (702) 456-4357
11 *Attorney for Defendant Coty*
12 *Refaely*

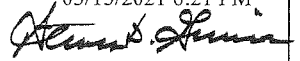
13 **CERTIFICATE OF SERVICE**

14 I HEREBY CERTIFY that service of the foregoing NOTICE OF ENTRY OF ORDER
15 AND ORDER, was made on this 16th day of March, 2021, pursuant to NRCP 5(b)(2)(D), and
16 EDCR 8.05, by electronic service via the Court's EFiling System to the following counsel:
17

18 Gary S. Fink, Esq., Attorney for Plaintiff at garyfink@atharilaw.com.

19 S. Don Bennion, Esq., Attorney for Plaintiff at don@bennionlaw.com.
20

21 By: /s/ Michael S. Strange
22 MICHAEL S. STRANGE, ESQ.
23 501 S. Rancho Dr.; Suite A-7
24 Las Vegas, NV 89106
25 (702) 456-4357
26 *Attorney for Defendant Coty*
27 *Refaely*
28


CLERK OF THE COURT

ORDR

Michael S. Strange, Esq.
Nevada Bar No. 9429
Michael S. Strange & Associates, LLC
501 S. Rancho Dr.; Suite A-7
Las Vegas, NV 89106
Telephone: (702) 456-4357
Fax: (702) 464-3042
mstrange@mikestrangelaw.com
Attorney for Defendant Coty Refaely

**DISTRICT COURT
CLARK COUNTY, NEVADA**

CHERI RENE WIMAN,

Plaintiff,

vs.

COTY REFAELY; DOES I through X, and
ROE CORPORATIONS I to X, inclusive,

Defendants.

CASE NO.: A-19-803928-C

DEPT. NO.: XXIX

Date of Hearing: January 20, 2021

Time of Hearing: 9:00AM

**ORDER ON DEFENDANT COTY REFAELY'S MOTION TO ENFORCE
SETTLEMENT AGREEMENT AND ADDENDUM AND TO REQUIRE PLAINTIFF TO
EXECUTE FINAL TRANSFER DOCUMENTS FOR CHURCHILL PROPERTY and
COUNTERMOTION TO ENFORCE SETTLEMENT AGREEMENT AND
DISMISS CASE WITH PREJUDICE**

This matter having come on for hearing January 20, 2021 at 9:00 a.m. on Defendant, COTY REFAELY's Motion to Enforce Settlement Agreement and Addendum and Require Plaintiff to Execute Final Transfer Documents for Churchill Property, and Plaintiff, CHERI RENE WIMAN's Countermotion to Enforce Settlement Agreement and Dismiss Case with Prejudice. Defendant being represented by and through Michael S. Strange, Esq., and Plaintiff represented by and through Gary Fink, Esq., The Court hearing oral argument, and having reviewed the papers and pleading and being otherwise fully advised in the premises, and good cause appearing therefore finds;

Order- 1

MICHAEL S. STRANGE & ASSOCIATES, LLC
501 S. RANCHO DR., SUITE A-7
LAS VEGAS, NEVADA 89106
PHONE: (702) 456-4357; FAX (702) 464-3042

1 That pursuant to the terms of the Settlement Agreement and General Release and the
2 Addendum to the Settlement Agreement and General Release, the Defendant had the right to
3 purchase two real properties from the Plaintiff; namely 5509 Oak Street, Las Vegas, Nevada
4 89120 and 5005 Churchill Ave. Las Vegas, NV 89117.

5 The Settlement Agreement and General Release contained a finalization date of July 31,
6 2020 to complete the purchase of both properties but the parties agreed to extend that deadline to
7 complete the purchase of both real properties to October 31, 2020 in the Addendum to the
8 Settlement Agreement and General Release.

9 The property at 5509 Oak Street, Las Vegas, Nevada 89120 has been successfully
10 purchased by the Defendant in accordance with the Addendum to the Settlement Agreement and
11 General Release. However, due to an unforeseeable event of a supposed "lien" still remaining on
12 the Churchill property which was mistaken and ultimately cleared up, and the fact the deadline to
13 purchase the real property fell on a holiday, there was a delay in performing the purchase of the
14 real property located at 5005 Churchill Ave, Las Vegas NV 89117 prior to October 31, 2020.

15 Even though the Addendum had a "time is of the essence clause" because of the
16 unforeseeable event and the fact the deadline to complete the transfer fell on a holiday, there was
17 no way to complete the purchase on that date and as such extended the deadline to complete the
18 transfer until the next business day which was November 5, 2020.

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THEREFORE, IT IS HEREBY ORDERED that Defendant's Motion to Enforce Settlement Agreement and Addendum an Require Plaintiff to Execute Final Transfer Documents for Churchill Property is hereby GRANTED and that the Plaintiff shall execute whatever documentation is needed to finalize the purchase of the real property located at 5005 Churchill Ave, Las Vegas NV 89117 to the Defendant, Coty Refaely.

IT IS HEREBY FURTHER ORDERED that Plaintiff's Counter-motion to Enforce the Settlement Agreement and Addendum and Dismiss Case With Prejudice is **DENIED**.

IT IS HEREBY FURTHER ORDERED that the Plaintiff must immediately contact Sheree Edwards and give authorization to call for the payoff amount for 5005 Churchill Ave, Las Vegas NV 89117 to allow Coty to finalize the Real Estate Offer and Acceptance Contract. The Real Estate Offer and Acceptance Contract is what must be completed and signed by the parties to allow Ms. Edwards to draft the closing documents to be executed to then complete the purchase of the Churchill property.

IT IS SO ORDERED.

Dated this 15th day of March, 2021

DATED AND DONE this of , 2021, at Las Vegas Nevada.

DISTRICT COURT JUDGE

598 B2B 33D1 DF72

David M Jones

District Court Judge Content

Submitted By:

By: Michael S. Strange
MICHAEL S. STRANGE, ESQ.
501 S. Rancho Dr.; Suite A-7
Las Vegas, NV 89106
(702) 456-4357
*Attorney for Defendant Coty
Refaely*

By: _____
GARY FINK, ESQ.
3365 Pepper Lane; Suite #102
Las Vegas, Nevada 89120
(702) 727-7777
Attorney for Plaintiff

1 CSERV

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA
4

5
6 Cheri Wiman, Plaintiff(s)

CASE NO: A-19-803928-C

7 vs.

DEPT. NO. Department 29

8 Coty Refaely, Defendant(s)
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District
12 Court. The foregoing Order was served via the court's electronic eFile system to all
13 recipients registered for e-Service on the above entitled case as listed below:

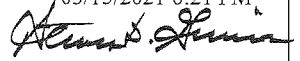
14 Service Date: 3/15/2021

15 Michael Strange mstrange@mikestrangelaw.com

16 State Department statedepartment@atharilaw.com

17 Gary Fink garyfink@atharilaw.com

18 S. Don Bennion don@bennionlaw.com
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CLERK OF THE COURT

ORDR

Michael S. Strange, Esq.
Nevada Bar No. 9429
Michael S. Strange & Associates, LLC
501 S. Rancho Dr.; Suite A-7
Las Vegas, NV 89106
Telephone: (702) 456-4357
Fax: (702) 464-3042
mstrange@mikestrangelaw.com
Attorney for Defendant Coty Refaely

**DISTRICT COURT
CLARK COUNTY, NEVADA**

CHERI RENE WIMAN,

Plaintiff,

vs.

COTY REFAELY; DOES I through X, and
ROE CORPORATIONS I to X, inclusive,

Defendants.

CASE NO.: A-19-803928-C

DEPT. NO.: XXIX

Date of Hearing: January 20, 2021

Time of Hearing: 9:00AM

**ORDER ON DEFENDANT COTY REFAELY'S MOTION TO ENFORCE
SETTLEMENT AGREEMENT AND ADDENDUM AND TO REQUIRE PLAINTIFF TO
EXECUTE FINAL TRANSFER DOCUMENTS FOR CHURCHILL PROPERTY and
COUNTERMOTION TO ENFORCE SETTLEMENT AGREEMENT AND
DISMISS CASE WITH PREJUDICE**

This matter having come on for hearing January 20, 2021 at 9:00 a.m. on Defendant, COTY REFAELY's Motion to Enforce Settlement Agreement and Addendum and Require Plaintiff to Execute Final Transfer Documents for Churchill Property, and Plaintiff, CHERI RENE WIMAN's Countermotion to Enforce Settlement Agreement and Dismiss Case with Prejudice. Defendant being represented by and through Michael S. Strange, Esq., and Plaintiff represented by and through Gary Fink, Esq., The Court hearing oral argument, and having reviewed the papers and pleading and being otherwise fully advised in the premises, and good cause appearing therefore finds;

Order- 1

1 That pursuant to the terms of the Settlement Agreement and General Release and the
2 Addendum to the Settlement Agreement and General Release, the Defendant had the right to
3 purchase two real properties from the Plaintiff; namely 5509 Oak Street, Las Vegas, Nevada
4 89120 and 5005 Churchill Ave. Las Vegas, NV 89117.

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9 The property at 5509 Oak Street, Las Vegas, Nevada 89120 has been successfully
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12 the Churchill property which was mistaken and ultimately cleared up, and the fact the deadline to
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15 Even though the Addendum had a "time is of the essence clause" because of the
16 unforeseeable event and the fact the deadline to complete the transfer fell on a holiday, there was
17 no way to complete the purchase on that date and as such extended the deadline to complete the
18 transfer until the next business day which was November 5, 2020.

19 ///

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THEREFORE, IT IS HEREBY ORDERED that Defendant's Motion to Enforce Settlement Agreement and Addendum an Require Plaintiff to Execute Final Transfer Documents for Churchill Property is hereby GRANTED and that the Plaintiff shall execute whatever documentation is needed to finalize the purchase of the real property located at 5005 Churchill Ave, Las Vegas NV 89117 to the Defendant, Coty Refaely.

IT IS HEREBY FURTHER ORDERED that Plaintiff's Countermotion to Enforce the Settlement Agreement and Addendum and Dismiss Case With Prejudice is **DENIED**.

IT IS HEREBY FURTHER ORDERED that the Plaintiff must immediately contact Sheree Edwards and give authorization to call for the payoff amount for 5005 Churchill Ave, Las Vegas NV 89117 to allow Coty to finalize the Real Estate Offer and Acceptance Contract. The Real Estate Offer and Acceptance Contract is what must be completed and signed by the parties to allow Ms. Edwards to draft the closing documents to be executed to then complete the purchase of the Churchill property.

Dated this 15th day of March, 2021

DATED AND DONE this _____ of _____, 2021, at Las Vegas, Nevada.

598 B2B 33D1 DF72

David M Jones

Appointed as a Judge

Submitted By:

By: Michael S. Strange
MICHAEL S. STRANGE, ESQ.
501 S. Rancho Dr.; Suite A-7
Las Vegas, NV 89106
(702) 456-4357
*Attorney for Defendant Coty
Refaely*

By: _____
GARY FINK, ESQ.
3365 Pepper Lane; Suite #102
Las Vegas, Nevada 89120
(702) 727-7777
Attorney for Plaintiff

1 CSERV

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA

4
5
6 Cheri Wiman, Plaintiff(s)

CASE NO: A-19-803928-C

7 vs.

DEPT. NO. Department 29

8 Coty Refaely, Defendant(s)

9
10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District
12 Court. The foregoing Order was served via the court's electronic eFile system to all
13 recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 3/15/2021

15 Michael Strange

mstrange@mikestrangelaw.com

16 State Department

statedepartment@atharilaw.com

17 Gary Fink

garyfink@atharilaw.com

18 S. Don Bennion

don@bennionlaw.com

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