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Code: 2490
SHAWN B MEADOR
NEVADA BAR NO. 338
WOODBURN AND WEDGE
6100 Neil Road, Suite 500
Post Office Box 2311
Reno, Nevada 89505
Telephone: (775) 688-3000
Facsimile: (775) 688-3088

KENT R. ROBISON
NEVADA BAR NO. 1167
ROBISON, BELAUSTEGUI, SHARP & LOW
71 Washington Street
Reno, Nevada 89503
Telephone: (775) 329-3151
Facsimile: (775) 329-7169
Attorneys for Plaintiff
ANDREW EARL FURER

IN THE FAMILY DIVISION
IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

ANDREW EARL FURER, Case No. DV04-01626
Plaintiff, Dept. No. 11

vs.

ELOISA BESADA FURER
Defendant.

**MOTION TO AUTHORIZE ANDREW FURER TO SELL INCLINE RESIDENCE,
TO PAY OFF OUTSTANDING MORTGAGE ON PROPERTY AND TO SELL
BOATS USED WITH PROPERTY AND TO REQUIRE MRS. FURER TO EXECUTE
THE DOCUMENTS REASONABLE AND NECESSARY TO COMPLETE THE
SALES OR IN THE ALTERNATIVE TO DIRECT THE CLERK OF COURT TO
EXECUTE THE DOCUMENTS ON BEHALF OF MRS. FURER**

Plaintiff, Andrew Furer, moves this Court for an Order allowing him to finalize negotiations and to sell the Incline Residence and to sell the two boats used in conjunction with that residence and requiring Mrs. Furer to immediately execute the deeds or other

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documents necessary to consummate the sale, or, in the event she refuses to execute the deeds or other documents, as is expected, that the Court will direct the clerk of the court to sign the documents on her behalf.

This Motion is supported by the accompanying memorandum of points and authorities.

DATED this 7th day of Sept, 2007.

KENT R. ROBISON
ROBISON, BELAUSTEGUI,
SHARP & LOW

WOODBURN AND WEDGE
By Shawn B Meador
Shawn B Meador
Attorneys for Andrew Earl Furer

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POINTS AND AUTHORITIES

Mr. Furer has received an offer to purchase the Incline Residence for \$11 million. Mr. Furer, thus, seeks permission to negotiate and finalize the transaction,¹ to pay off the \$1million mortgage and to invest the money in his name as he sees fit. Mr. Furer believes this is an extraordinarily good offer. Neither party resides in the home nor does either intend to reside there following the divorce. It is also a very good offer in terms of the purchase price, the quickness in which the property may be sold and the financial strength of the potential purchasers. Furthermore, there are very limited contingencies to the sale, primarily obtaining this Court's permission to finalize the sale.² Finally, the realtor who brought the offer to Mr. Furer is willing to accept a 4% commission rather than the standard 6% commission which represents a savings of \$220,000.

The potential purchasers have also expressed an interest in purchasing the two boats that Mr. Furer used in conjunction with the Incline Residence. Mr. Furer is no longer interested in owning the boats and would have no where to store them if the Incline residence is sold. Mrs. Furer has not expressed an interest in owning the boats.³ The mutual financial restraining order arguably precludes Mr. Furer from selling the residence or boats without court order. Mr. Furer will need Mrs. Furer to cooperate and to execute the documents necessary to consummate the sale or will need a Court Order directing the Clerk of the Court to sign the necessary deeds or other documents on her behalf. If the Court Order authorizing the sale is not obtained within 15 days of the date of the offer the purchasers can back out of the deal.

¹ It is not uncommon for the final deal to modify minor terms from original purchase offer although Mr. Furer does not intend to ask for a greater purchase price.

² The sale would be contingent upon the buyers' sale of their home, but their home is already in escrow and the realtor believes it is a good sale which will go through promptly, thus removing this contingency.

³ He's happy to sell the boats to Mrs. Furer at the same price the buyer may be willing to pay if she wants them for some reason.

1 On August 21, 2006, just over a year ago, Mr. Furer filed a motion seeking permission
2 to sell the Incline Residence and to pay off the mortgage. Mrs. Furer, who was represented by
3 counsel at the time, filed her response on September 1, 2006. As this Court noted in its Order
4 referenced below, Mrs. Furer did not object to the sale of the residence, she objected to Mr.
5 Furer selecting the realtor and otherwise having control of the sale. Mr. Furer filed his Reply
6 on September 5, 2006. This Court then entered its Order on September 26, 2006 (the
7 "September 26th Order). At the time the September 26th Order was entered the validity of the
8 parties' contracts was still in dispute.
9

10 In the September 26th Order, this Court authorized the sale of the Incline Residence,
11 but required the parties to cooperate, among other things, to select who the listing agent would
12 be. The September 26th Order also required both parties to sign any documents reasonable
13 and necessary to consummate a sale. As this Court is fully aware, the parties are unable to
14 reach agreement on essentially any issues. They were not able to reach agreement on a listing
15 agent. Thus, the property was never listed for sale.
16

17 However, subsequent to the September 26th Order, this Court entered its Order dated
18 November 14, 2006, which upheld the validity of the MSA. Pursuant to the MSA, the Incline
19 Residence and the two boats in question are confirmed to Mr. Furer has his sole and separate
20 property. Similarly, the \$1 million mortgage is Mr. Furer's obligation under the MSA. Thus,
21 under the contract affirmed by this Court, Mrs. Furer has no remaining interest in the Incline
22 Residence or the boats.
23

24 Although Mr. Furer was not able to list the property, his friend, Victor Lockhart, who
25 is a well-respected and experienced realtor in Incline Village, has presented him with an offer
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1 property that is awarded to Mr. Furer as his sole and separate property any more than he has
2 had a say in how she handled the \$3 million cash she received in July of 2004 or the monthly
3 support of \$112,500 she receives. More importantly, the issue now is not whether Mrs. Furer
4 likes Mr. Lockhart or not, but whether the \$11 million offer is reasonable and appropriate.
5 Unless Mrs. Furer has a better offer from a realtor willing to take a smaller commission she
6 should not be heard to complain.
7

8 The incredible volatility in the stock market, particularly in the sub-prime lending
9 market, makes the sale of this property even more important. Since July 9, 2007, when the
10 Phase III trial began, the parties' WAMU stock (one of the nation's largest mortgage lender)
11 has fluctuated dramatically, dropping by almost \$13 million in total value, a reduction of
12 more than 25%.⁵ As it is not clear when the divorce will be finalized, Mr. Furer should be
13 permitted to take advantage of this offer so that he can diversify his wealth as he deems
14 appropriate to protect against potential losses in the WAMU stock value.
15

16 Based upon the history in this case, Mr. Furer believes there is a reasonable
17 probability that Mrs. Furer will not sign the deeds or other documents necessary to complete
18 the sale of the residence and boats. Therefore, pursuant to NRCP 70 and this court's inherent
19 equitable power to control litigation before it, Mr. Furer asks that if Mrs. Furer does not sign
20 and return the necessary deeds or other documents immediately, the Clerk of the Court should
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⁵ It has recovered somewhat but continues to fluctuate dramatically.

1 to purchase the Incline Residence for \$11 million. The offer reflects that Mr. Lockhart will be
2 treated as the agent for both the buyer and seller.⁴ Mr. Lockhart and Dickson Realty have
3 agreed to a commission of 4% rather than 6%, a savings of \$220,000. Mr. Lockhart is
4 confident that the offer is solid and that the \$11 million is very fair and reasonable. See,
5 Affidavit of Victor Lockhart attached as Exhibit "A" hereto. The purchase offer is attached as
6 Exhibit "1" to the Affidavit of Victor Lockhart. This is a remarkable deal that is unlikely to
7 be replicated any time soon.
8

9 The only remaining issue is that pursuant to this Court's prior orders, any disputed
10 personal property would remain in the Incline residence. Mrs. Furer has made claims to
11 certain personal property located in the home. Mr. Furer believes her claims are without
12 merit. Her claim to these items was litigated in Phase III. However, to the extent that the sale
13 of the Incline home occurs prior to entry of decision on Phase III issues, there are some
14 disputed items in the home that would have to be stored somewhere other than in the Incline
15 home pending resolution of the Phase III issues.
16

17 In light of this Court's Order upholding the MSA, there is absolutely no reason why
18 Mr. Furer should not be permitted to sell his property. As this Court noted in the September
19 26th Order: "The court is aware that the parties have sufficient wealth to make each party
20 whole in relation to any conceivable final distribution of separate, community or marital
21 property, regardless of the ruling which the court may make in relation to the issues raised in
22 the pending motion. The court also appreciates the wish of each party to move on with life."
23 See, September 26th Order at p. 2, lns. 16-20.
24

25 At this time, there is no reason why Mrs. Furer should have any say in the sale of
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28 ⁴ Mrs. Furer will object to Mr. Lockhart's participation because he testified against her at the criminal trial against Mr. Furer before the D.A. dismissed the charges.

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be authorized to sign on her behalf.

DATED this 5th day of Sept, 2007.

KENT R. ROBISON
ROBISON, BELAUSTEGUI,
SHARP & LOW

WOODBURN AND WEDGE

By Shawn B Meador
Shawn B Meador
Attorneys for Andrew Earl Furer