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

19 ANDREW FURER,
 20
 21 Plaintiff,

Case No. DV04-01626
 Dept. No. 11

22 vs.

23 ELOISA FURER,
 24
 25 Defendant.

26 MOTION FOR PARTIAL STAY OF ENFORCEMENT OF JUDGMENT
 27 PENDING APPEAL

28 Pursuant to Nev. R. Civ. Proc. 62(d), Plaintiff Andrew Furer ("Mr. Furer") hereby moves this Honorable Court for an Order partially staying enforcement of its Findings of Fact, Conclusions of Law, and Decree of Divorce ("Judgment"), to the extent that it requires Mr. Furer to transfer shares of Washington Mutual stock to Defendant Eloisa Furer ("Ms. Furer") within

1 the remaining shares to Ms. Furer - has made it impossible for Mr. Furer to wait until he has filed
2 his Notice of Appeal before moving for a stay. So long as Ms. Furer's Motion to Amend is
3 pending, Mr. Furer cannot appeal the Judgment; however, as was demonstrated in his previous
4 Notice of Appeal, he anticipates appealing the Judgment on several points, including the Court's
5 decision to enforce the MSA rather than the PNA.
6

7 Under the MSA, Ms. Furer is entitled to 570,000 shares of Washington Mutual stock as
8 her separate property. Under the PNA, however, Ms. Furer is entitled to only 325,000 shares of
9 Washington Mutual stock. This is a difference of 245,000 shares in which, if Mr. Furer prevails
10 on appeal, Ms. Furer will have no rights or interest. Therefore, Mr. Furer requests that the Court
11 stay the enforcement of the Judgment to the limited extent that it requires him to transfer the full
12 570,000 shares of Washington Mutual stock¹ to Ms. Furer. Rather, Mr. Furer requests that he be
13 permitted to place the 245,000 shares that will be the subject of his appeal in a secure account.
14

1 The *Nelson* Court held that "the focus is properly on what security will maintain the
2 status quo and protect the judgment creditors pending [the stay], no how 'unusual' the
3 circumstances of a given case may be." 121 Nev. at 835-36, 122 P.3d at 1253-54. The *Nelson*
4 Court then adopted a five factor test to be used when determining whether or not the Court
5 should reduce or waive the bond requirement:
6

7 (1) the complexity of the collection process; (2) the amount of time
8 required to obtain a judgment after it is affirmed on appeal; (3) the
9 degree of confidence that the district court has in the availability of
10 funds to pay the judgment; (4) whether the defendant's ability to
11 pay the judgment is so plain that the cost of a bond would be a
12 waste of money; and (5) whether the defendant is in such a
13 precarious financial situation that the requirement to post a bond
14 would place other creditors of the defendant in an insecure
15 position.

16 121 Nev. at 836, 122 P.3d at 1254.

17 Applying these five factors to this case:

1. The collection process would be made less complex by issuing a stay and waiting
to make the appropriate transfer until after any appeals of the Judgment are decided. This is

19 and the possibility that the stock would be squandered by her by the time Mr. Furer was able to
20 recollect it.

21 2. Once the appeals are decided, the transfer can be completed in short order, as the
22 shares will be maintained in a secure account.

23 3. Mr. Furer has demonstrated throughout this case that he has sufficient funds to
24 pay any damages that Ms. Furer might suffer as a result of the stay requested. Moreover, the
25 stock itself will serve as sufficient security for the limited stay of its conveyance. *See, e.g., Ries*
26 *v. Olympia, Inc.*, 103 Nev. 709, 747 P.2d 910 (1987) (in which the Court held that the collateral
27 subject to the appeal was sufficient security because it exceeded the amount of the judgment
28

1 being appealed).

2 4. Mr. Furer's ability to pay these damages is so plain that posting a bond in addition
3 to securing the 245,000 shares of stock would, undoubtedly, be a waste of money.

4 5. Mr. Furer's financial situation is by no means precarious. This factor is really
5 irrelevant to this case.
6

7 IV. CONCLUSION

8 Mr. Furer will file a Notice of Appeal regarding the ownership of 245,000 of the 570,000
9 shares of Washington Mutual stock awarded to Ms. Furer by the Court once Ms. Furer's Motion
10 to Amend is resolved. Until then, he is precluded from appealing the Judgment. The Court,
11 however, has imposed a 30 day deadline for Mr. Furer to transfer the 570,000 shares (less that
12 amount sold to pay Ms. Furer's obligations) to Ms. Furer. It is likely that Ms. Furer's Motion to
13 Amend will not be disposed of before the deadline for Mr. Furer to transfer the shares to Ms.
14 Furer.
15

16 For the foregoing reasons, Mr. Furer respectfully requests that this Court stay
17 enforcement of its Judgment to the extent it Orders Mr. Furer to transfer to Ms. Furer all 570,000
18 shares awarded to Ms. Furer under the MSA. Mr. Furer requests that the Court stay the transfer
19 of 245,000 of those shares pending Mr. Furer's anticipated appeal of the Court's decision
20 upholding the MSA rather than the PNA. Mr. Furer should not be required to post any bond or
21 other security as a condition of the stay, as the 245,000 shares will be placed in a secure account
22 and served as adequate security, and Mr. Furer has adequate funds to pay Ms. Furer for any other
23 damages that could result from the stay.
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DC-9900020003-054
IN RE: ANDREW EARL & ELOISA
District Court 04/22/2008 08:45 AM
Washoe County 3060
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APR 22 2008

HOWARD W. CONYERS, CLERK
By: *[Signature]*
DEPUTY CLERK

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

ANDREW FURER,

Case No. DV04-01626

Plaintiff,

Dept. No. 11

vs.

ELOISA FURER,

Defendant.

ORDER GRANTING MOTION FOR PARTIAL STAY OF ENFORCEMENT OF
JUDGMENT PENDING APPEAL

The Court has reviewed Andrew Furer's (hereafter "Plaintiff") Motion for Partial Stay of Enforcement of Judgment Pending Appeal filed March 25, 2008. To date no Opposition has been received by this Court. The matter was submitted for decision on April 16, 2008. The Court now finds as follows:

Plaintiff brings the current Motion requesting an Order partially staying enforcement of the Findings of Fact, Conclusions of Law, and Decree of Divorce (hereafter "Judgment") to the extent that Plaintiff is required to transfer shares of Washington Mutual stock to Defendant within 30 days of the Judgment. Plaintiff requests this portion of the Judgment be stayed pending Plaintiff's anticipated appeal. Plaintiff further requests that the Court waive any bond requirement or security, other than the stock in question.

Within its Judgment, this Court ordered Plaintiff to make payments and offsets to Eloisa Furer (hereafter "Defendant"). These payments and offsets were to be paid out of dividends and interests arising out of the 570,000 shares of Washington Mutual stock

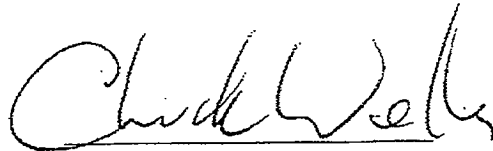
1 awarded to Defendant under the parties' Marital Settlement Agreement (hereafter
2 "MSA"). Under the Pre-Marital Agreement (hereafter "PSA"), Defendant is entitled to
3 325,000 shares of Washington Mutual stock. In the event that Plaintiff prevails on appeal,
4 Defendant will have no rights or interest to the difference between the MSA and the PSA,
5 245,000 shares. Plaintiff requests that he be permitted to place the 245,000 shares that will
6 be the subject of his appeal in a secure account pending his appeal.

7 Pursuant to DCR 13(3),

8 Within 10 days after the service of the motion, the opposing party shall serve
9 and file his written opposition thereto, together with a memorandum of points and
10 authorities and supporting affidavits, if any, stating facts showing why the motion
11 should be denied. Failure of the opposing party to serve and file his written
12 opposition may be construed as an admission that the motion is meritorious and a
13 consent to granting the same.

14 This Court construes Defendant's failure to serve and file a written opposition to
15 Plaintiff's Motion as an admission that Plaintiff's Motion is meritorious. As such,
16 Plaintiff's Motion is GRANTED. Plaintiff's obligation to transfer 245,000 of Washington
17 Mutual stock to Defendant is hereby stayed pending Plaintiff's appeal. Further, Plaintiff
18 will not be required to post any bond or other security as a condition of the stay.

19 Dated: April 22, 2008.

20 
21 District Court Judge

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Code: 2320
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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,
Plaintiff,

Case No. DV04-01626
Dept. No. 11

vs.

ELOISA BESADA FURER
Defendant.

**MOTION TO ENFORCE DECREE OR, IN THE ALTERNATIVE, MOTION TO
HOLD ELOISA FURER IN CONTEMPT OF COURT FOR FAILING TO COMPLY
WITH DECREE**

Plaintiff, Andrew Furer, moves this Court for an Order enforcing this Court's Decree of Divorce or, in the alternative, holding Eloisa Furer in contempt for failing and refusing to comply with the Decree. This motion is brought pursuant to this Court's inherent equitable authority to enforce its orders and decrees and NRS chapter 22 and is supported by the

//

1 accompanying memorandum of points and authorities.
2

3
4 DATED this 1 day of July, 2008.

5 KENT R. ROBISON
6 ROBISON, BELAUSTEGUI,
7 SHARP & LOW

8 WOODBURN AND WEDGE

9 By Shawn B Meador
10 Shawn B Meador
11 Attorneys for Andrew Earl Furer

12 Below is the portion of the Motion on
13 Alternative to hold Mrs. Furer in Contempt.
14

9
10 II. CONTEMPT

11 In the alternative, Mr. Furer asks this Court to use its contempt powers to enforce its
12 Decree. Mrs. Furer is in contempt of court. See, NRS § 22.010(3). "The use of the contempt
13 power to enforce the provisions of a divorce decree has been approved many times by this
14 state." Hildahl v. Hildahl, 95 Nev. 657, 601 P.2d 58, 62 (1979). As noted by the Nevada
15 Supreme Court over one hundred years ago: "The power of the courts to punish for contempt
16 and to maintain decency and dignity in their proceedings is inherent, and is as old as courts
17 are old." Lamb v. Lamb, 83 Nev. 425, 433 P.2d 265 (1967) quoting, In re Chartz, 29 Nev.
18 110, 85 P. 352 (1907). "[T]he inherent power of the courts to protect and defend their decrees
19 by contempt proceedings [is] beyond any power of the legislature to abridge." Id. citing,
20 McCormick v. Sixth Judicial Dist. Ct., 67 Nev. 318, 218 P.2d 939 (1950). See also,
21 Halverson v. Hardcastle, 123 Nev. 29, 163 P.3d 428, 444 (2007).

22
23 The Court's statutory and inherent powers of contempt are twofold: first, the Court
24 may use contempt to punish a party for failure to comply with a decree; and second, the Court
25

26
27 ¹ Expenses associated with the Gstaad lease are automatically deducted from the UBS account. Mrs. Furer must
28 be required to demonstrate that all expenses associated with the lease have been paid before the funds in the UBS
account are transferred to her. Mr. Furer believes that Mrs. Furer may have sublet the apartment and may be
receiving rental income from the apartment. But, the lease remains in his name and any obligations would be
reflected on his credit.

Portion of the February 22, Decree

1 dated May 5, 2004, and said Agreement is hereby ratified, approved, incorporated but not
2 merged into this Decree of Divorce, and the parties hereto are hereby ordered to comply
3 with the terms and conditions of the same.

4
5 3. Subject to the offsets set forth below, Mr. Furer shall be required to transfer
6 the 570,000 shares of Washington Mutual stock to Mrs. Furer within 30 days of the date of
7 this Order. Mrs. Furer shall be entitled to any dividends paid on the 570,000 shares after
8 November 14, 2006 together with any interest earned on those dividends. All other assets
9 to which Mrs. Furer is entitled under the MSA shall be transferred to her within 30 days
10 from the date of this order.

11 4. All support/attorney fee payments made to Mrs. Furer on or before
12 November 14, 2006 are hers pursuant to NRS 125.040 and that no reimbursement for
13 such amounts is due. All support/attorney fee payments made to Mrs. Furer after
14 November 14, 2006 are subject to the parties' Marital Settlement Agreement and Mr. Furer
15 is entitled to reimbursement of those payments from Mrs. Furer.

16 5. Mr. and Mrs. Furer shall be required to file their income tax returns for 2004,
17 2005, 2006, 2007 and each year thereafter consistent with the terms of this order and the
18 MSA. To the extent that either party filed any tax return or returns for any of those years in
19 a manner that is not consistent with the terms of this order and the MSA the party or
20 parties who did so shall file amended returns. The parties shall within 120 days from the
21 date of this order provide the other with copies of their returns and amended returns for the
22 years 2004 through the tax year following the year in which the Decree of Divorce is
23 entered.

24 6. Mrs. Furer shall personally make the annual tax free gifts for years 2004 -
25 2007 to the parties' son, Alexander within 90 days from the date of this order. Mrs. Furer
26 shall be responsible for any tax liability or obligation arising out of her failure to make such
27 gifts in a timely manner.

28 7. Mrs. Furer shall reimburse Mr. Furer the sum of \$6,735, without interest, that
he incurred in connection with providing automobile insurance for her vehicles.

DV04-01626
IN RE: ANDREW EARL & ELOISA
District Court
Washoe County
09/23/2008 10:45 AM
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FILED

SEP 23 2008

HOWARD W. CONNERS, CLERK
By: [Signature]
DEPUTY CLERK

5 IN THE FAMILY DIVISION
6 IN THE SECOND JUDICIAL DISTRICT COURT
7 OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF WASHOE
8

9 ANDREW EARL FURER,
10 Plaintiff,

Case No. DV04-01626
Dept. No. 11

11 vs.

12 ELOISA BESADA FURER,
13 Defendant.

14 _____/
15 ORDER GRANTING MOTION TO ENFORCE DECREE

16 The Court has reviewed Andrew Earl Furer's (hereafter "Plaintiff") Motion to
17 Enforce Decree or, in the Alternative, Motion to Hold Eloisa Furer in Contempt of Court
18 for Failing to Comply with Decree. To date, no Opposition has been received by this
19 Court. The Court now finds and orders as follows:

20 Plaintiff brings his current Motion alleging Eloisa Furer (hereafter "Defendant") has
21 failed to comply with provisions of the February 22, 2008 Findings of Fact, Conclusions of
22 Law and Decree of Divorce.

23 Pursuant to DCR 13(3),

24 Within 10 days after the service of the motion, the opposing party
25 shall serve and file his written opposition thereto, together with a
26 memorandum of points and authorities and supporting affidavits, if any,
27 stating facts showing why the motion should be denied. Failure of the
28 opposing party to serve and file his written opposition may be construed
as an admission that the motion is meritorious and a consent to granting
the same.

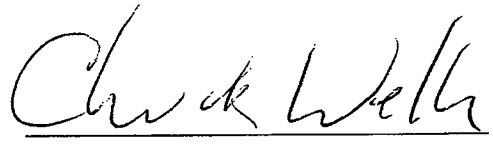
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This Court construes Defendant lack of opposition as an admission that Plaintiff's Motion is meritorious. As such, Plaintiff's Motion is granted.

Defendant shall have thirty (30) days from the date of entry of the Order to provide Plaintiff with appropriate deeds or other papers necessary to transfer the condominiums, Gstaad lease and foreign bank accounts to her and to provide proof that she has transferred all insurance, taxes, dues and other obligations relating to the properties to her name and that she has paid obligations. Alternatively Defendant must show cause as to why she should not undertake such action. If Defendant fails to comply with in thirty (30) days, the Court will appoint a receiver, at Defendant's expense, to determine what paperwork is necessary to complete the transfers and to obtain and provide the parties with the necessary paperwork.

IT IS SO ORDERED.

Dated: September 19, 2008.



District Court Judge