

CLERK OF THE COURT

1 **NOTC**
2 G. MARK ALBRIGHT, ESQ.
3 Nevada Bar No. 001394
4 **ALBRIGHT, STODDARD, WARNICK & ALBRIGHT**
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6 Las Vegas, Nevada 89106
7 Tel: (702) 384-7111
8 Fax: (702) 384-0605
9 gma@albrightstoddard.com
10 bstoddard@albrightstoddard.com
11 *Attorneys for Plaintiff*

7 **DISTRICT COURT**
8 **CLARK COUNTY, NEVADA**

9 ERLINDA RIOS and ANNA MARIE
10 OSEGUERA,

11 Plaintiff,

12 vs.

13 LUIS TIPACTI,

14 Defendant.

CASE NO. A-16-740216-F

DEPT NO. III

**PLAINTIFFS' REPLY IN SUPPORT OF
NOTICE OF FILING APPLICATION FOR
FOREIGN JUDGMENT**

15
16 COMES NOW Plaintiffs ERLINDA RIOS and ANNA MARIE OSEGUERA (hereinafter
17 "Plaintiffs"), by and through their counsel of record, ALBRIGHT, STODDARD, WARNICK &
18 ALBRIGHT, and hereby respond to Defendant's Opposition to their Notice of Filing Application for
19 Foreign Judgment (hereinafter "Opposition"), as follows:

20 **FACTS**

21 Plaintiffs filed their Notice of Filing Application for Foreign Judgment and Affidavit of G.
22 Mark Albright, Esq., Attorney for Judgment Creditor on July 22, 2016 (hereinafter "Notice of Foreign
23 Judgment"), and Defendant filed his Opposition thereto on August 8, 2016, basing his Opposition on
24 the erroneous and false contention that the California judgment (which was domesticated herein) has
25 somehow been stayed pending appeal without the posting of any bond or security.

26 The California litigation was brought in the Superior Court of the State of California, for the
27 County of Los Angeles as Case No. LC101067, with Erlinda Rios and Anna Marie Oseguera as
28 Plaintiffs and Luis Tipacti, Sr. as Defendant (hereinafter the "California case"). The Defendant's

LAW OFFICES
ALBRIGHT, STODDARD, WARNICK & ALBRIGHT
A PROFESSIONAL CORPORATION
QUAIL PARK, SUITE D-4
801 SOUTH RANCHO DRIVE
LAS VEGAS, NEVADA 89106

1 Motion to Stay Execution of Judgment Pending Appeal came on for hearing in California on March
2 28, 2016 and was denied as evidenced by the Court's Minute Order dated March 29, 2016, a copy of
3 which is attached hereto as **Exhibit "A,"** and as further evidenced by the Amended Assignment Order
4 filed July 1, 2016, a copy of which is attached hereto as **Exhibit "B."** This Amended Assignment
5 Order allows the Plaintiffs to immediately execute on Defendant's assets and garnish his wages.
6 Defendant's allegations that the Judgment has somehow been magically or automatically stayed
7 pending appeal is absolutely false., and contrary to the court's express ruling. Defendant never even
8 offered to post a supersedeas bond to stay execution pending appeal, in either California or Nevada.

9 POINTS AND AUTHORITIES

10 Money judgments are **not** automatically stayed on appeal in California. *See, Code of Civ. Proc.*
11 § 917.1(a)(1). Although Defendant has filed a notice of appeal, that does not prevent Plaintiffs from
12 enforcing the Judgment entered in California, which has now been domesticated in Nevada against the
13 Defendant.

14 Even if a judgment is not automatically stayed on appeal, a party may obtain a stay of execution
15 by posting a bond or undertaking from a personal or corporate surety, or by depositing cash or
16 negotiable securities with the court. *See, Code of Civ. Proc.* § 917.1. Appeal bonds and undertakings
17 are subject to the Bond and Undertaking Law, *Code of Civ. Proc.* § 995.010., *et seq.*

18 Even if Defendant's appeal had merit, which it does not, a stay pending appeal can only be
19 obtained with the posting of an undertaking or bond as security. *Code of Civ. Proc.* § 917.1(a)
20 provides that "[u]nless an undertaking is given, the perfecting of an appeal **shall not stay enforcement**
21 **of the judgment** or order in the trial court if the judgment or order is for any of the following: (1)
22 Money or the payment of money...." The judgment in the California case is a money judgment, thus
23 *Code of Civ. Proc.* § 917.1(a)(1) requires the posting of an undertaking to stay enforcement of the
24 Judgment in California or Nevada.

25 *Code of Civ. Proc.* § 918 (b) provides as follows: "If the enforcement of the judgment or order
26 would be stayed on appeal only by the giving of an undertaking, a trial court shall not have power,
27 *without the consent of the adverse party,* to stay the enforcement thereof pursuant to this section for
28 a period which extends for more than 10 days beyond the last date on which a notice of appeal could

1 be filed.” (Italics added.) *See, also, Sharifpour v. Le* (2014) 223 Cal.App.4th, 730, 733-734.

2 Hence, the California court did not have the power to stay enforcement of the money judgment
3 without the consent of Plaintiffs, so the court denied Defendant’s request. Plaintiffs do not believe the
4 appeal has any merit and do not consent to a stay of enforcement of the judgment pending appeal
5 unless an undertaking is posted by Defendant pursuant to CCP §917.1(b) or pursuant to the laws of
6 the State of Nevada.

7 NRS 17.370(2) provides that if the Defendant had been able to show the court any ground upon
8 which enforcement of the Judgment would be stayed, the court would be required to stay enforcement
9 of the California Judgment which has been domesticated herein. Since Defendant failed to post a
10 supersedeas bond (in either California or Nevada), Defendant’s request for a stay of execution was
11 summarily denied in California and now again must similarly be denied in Nevada.

12 Plaintiffs had the right to domesticate the California Judgment in Nevada, and now Plaintiffs
13 have the absolute legal right to proceed with execution thereon. There is no automatic stay of
14 execution without posting a bond as security. The Defendant’s misrepresentation of the law and facts
15 must be similarly rejected. NRS 17.030 permits the Defendant to post security for satisfaction of the
16 foreign judgment. The amount of the bond is the “amount of the judgment.” *See, NRS 20.037.* The
17 stay only becomes effective “when the supersedeas bond is filed.” *See, NRCP 62(d).*

18 A concise summary of the applicable Nevada statute is set forth in the Nevada Civil Practice
19 Manual, Fifth Edition, at Section 27.28 as follows:

20 Meanwhile, the judgment debtor may seek a stay of enforcement of the foreign
21 judgment, providing: (1) an appeal is pending or will be taken from the foreign
22 judgment; (2) a court of competent jurisdiction has previously entered a stay of
23 execution; or (3) there are grounds upon which enforcement of the judgment could be
24 stayed if the same judgment had been entered in Nevada. If the debtor proceeds under
25 either of the first two grounds, **he must show that he has furnished security for
26 satisfaction of the judgment as required by the law of the sister state issuing the
27 judgment. If he proceeds under the third ground, the court will require as a
28 condition for stay that he post security for satisfaction fo the judgment. NRS
17.380.** [Emphasis added.]

Once the 30-day period has expired, the judgment creditor can enforce the foreign
judgment in the same manner as enforcing a Nevada judgment. However, the
exemplified judgment, once filed, is also subject to being set aside if grounds to set it
aside exist under Nevada law. NRS 17.350.

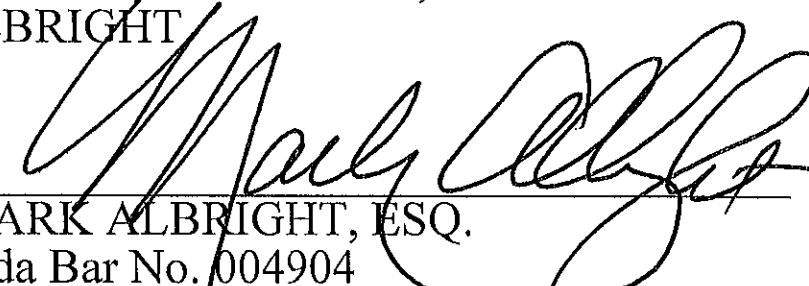
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CONCLUSION

Since the Defendant failed to post a bond on appeal, the California court denied his Motion for Stay Pending Appeal. The Defendant has similarly failed to post bond as a condition of any stay in Nevada. Therefore, the Plaintiffs had the absolute right to domesticate their California Judgment in Nevada, and now have the absolute right to proceed with execution thereon in Nevada.

DATED this _____ day of August, 2016.

ALBRIGHT, STODDARD, WARNICK
& ALBRIGHT

By 
G. MARK ALBRIGHT, ESQ.
Nevada Bar No. 004904
801 South Rancho Drive, Suite D-4
Las Vegas, NV 89106
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

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I certify that I am an employee of Albright, Stoddard, Warnick & Albright, and that on the 17 day of August, 2016, I served a true and correct copy of the foregoing **PLAINTIFFS' REPLY IN SUPPORT OF NOTICE OF FILING APPLICATION FOR FOREIGN JUDGMENT** upon all counsel of record by electronically serving the document using the Court's electronic filing system.

On the same date, I also placed a true and correct copy of the foregoing **PLAINTIFFS' REPLY IN SUPPORT OF NOTICE OF FILING APPLICATION FOR FOREIGN JUDGMENT**, enclosed in a sealed envelope, in the United States Mail at Las Vegas, Nevada, with first class postage thereon prepaid, addressed to the following

Luis Tipacti
Suite 200
14900 Ventura Boulevard
Sherman Oaks, California 91403

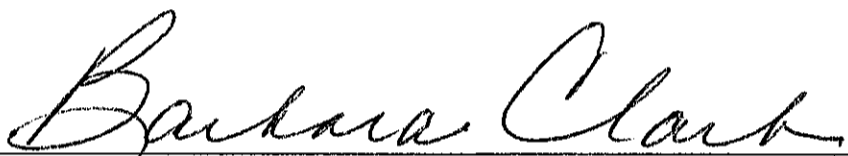

An employee of Albright, Stoddard,
Warnick & Albright

EXHIBIT "A"

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 03/29/16

DEPT. NWT

HONORABLE FRANK J. JOHNSON

JUDGE

K. TOBEY

DEPUTY CLERK

HONORABLE
11

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

L. VINCE CRUZ C.A.

Deputy Sheriff

NONE

Reporter

8:30 am

LC101067

Plaintiff

Counsel

ERLINDA RIOS, ANNA MARIE OSEGUE

NO APPEARANCES

VS

Defendant

LUIS TIPACTI SENIOR

Counsel

NATURE OF PROCEEDINGS:

NON APPEARANCE RULING ON SUBMITTED MATTER: DEFENDANT'S MOTION TO STAY EXECUTION OF JUDGMENT PENDING APPEAL

The Court has reviewed the moving papers, opposition and considered arguments made in open court on 3/28/16.

Based on grounds as set forth in the opposition papers, and again citing Code of Civil Procedure Section 917.1, the motion to stay execution of judgment pending appeal is denied.

True and correct copies of this minute order are sent via U.S. Mail to:
Chief Nnamdi A. Ekenna, Esq.
The Ekenna Law Firm
P.O. Box 9329
Calabasa, CA 91372

Shalem Shem-Tov, Esq.
Netzah & Shem-Tov
16601 Ventura Boulevard
4th Floor
Encino, CA 91436

CLERK'S CERTIFICATE OF MAILING

I, the below-named Executive Officer/Clerk of the

MINUTES ENTERED 03/29/16 COUNTY CLERK

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 03/29/16

DEPT. NWT

HONORABLE FRANK J. JOHNSON

JUDGE

K. TOBEY

DEPUTY CLERK

HONORABLE
11

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

L. VINCE CRUZ C.A.

Deputy Sheriff

NONE

Reporter

8:30 am

LC101067

Plaintiff

Counsel

ERLINDA RIOS, ANNA MARIE OSEGUE

NO APPEARANCES

VS

Defendant

LUIS TIPACTI SENIOR

Counsel

NATURE OF PROCEEDINGS:

above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the MINUTE ORDER upon each party or counsel named above by placing the document for collection and mailing so as to cause it to be deposited in the United States mail at the courthouse in Van Nuys, California, one copy of the original filed/entered herein in a separate sealed envelope to each address as shown above with the postage thereon fully prepaid, in accordance with standard court practices.

Dated: March 29, 2016

Sherri R. Carter, Executive Officer/Clerk

By: _____

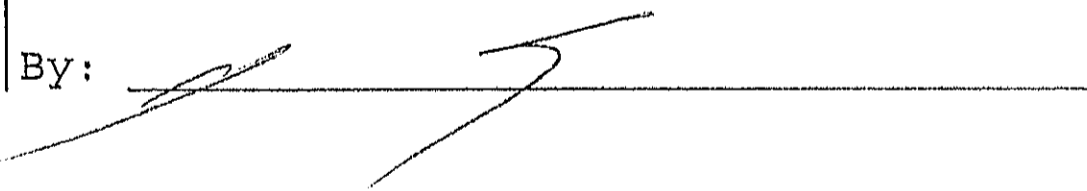


EXHIBIT "B"

1 Shalem Shem-Tov (SBN 257243)
NETZAH & SHEM-TOV, INC.
2 16601 Ventura Blvd., 4th Floor
Encino, CA 91436
3 Telephone: (818) 995-4200
Facsimile: (818) 783-6775
4 Email: shalem@netshemlaw.com
5 Attorneys for Judgment Creditors
ERLINDA RIOS and ANNA MARIE
OSEGUERA

ORIGINAL FILED
Northwest District

JUN 01 2016

LOS ANGELES
SUPERIOR COURT

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF LOS ANGELES

11 ERLINDA RIOS and ANNA MARIE
OSEGUERA,

12 Plaintiffs,

13 vs.

14 LUIS TIPACTI, SR.

15 Defendant.

Case No. LC101067

[Hon. Frank J. Johnson, Dept. NW-T]

AMENDED ASSIGNMENT ORDER

Date: June 15, 2016

Time: 8:30 AM

Location: NW-T

18 The motion of ERLINDA RIOS and ANNA MARIE OSEGUERA ("Judgment Creditors")
19 came on regularly for hearing on June 15, 2016, before Honorable Frank J. Johnson, Judge
20 Presiding in department NW-T of the above-entitled court, with appearances as follows: Shalem
21 Shem-Tov, Esq. of Netzah & Shem-Tov, Inc. appearing on behalf of Judgment Creditors. No
22 other appearance were made. The Court, having considered the motion and good cause appearing:
23

24 IT IS ORDERED:

- 25 1. That the following rights to payment of Judgment Debtor be, and hereby are, assigned to
26 Judgment Creditors until such time as the judgment herein is fully satisfied or this ordered
27 is amended: rental income; commissions related to his real estate broker services; and/or
28

RECEIVED

JUN 15 2016
L.A. DISTRICT COURT - Northwest

NETZAH & SHEM-TOV, INC.
16601 Ventura Blvd., 4th Floor - Encino, CA 91436
(818) 995-4200 - (818) 783-6775 FAX

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commissions or rights to payment related to any loans due to him, as well as any other
right to payment not specifically listed herein; and
2. Judgment Debtor is hereby enjoined and restrained from assigning, encumbering or
otherwise disposing any of his rights to payment for rental income and/or commissions
related to his real estate broker services and/or commissions or rights to payment related to
any loans due to him, as well as any other right to payment not specifically listed herein
until such time as the judgment is paid in full, including all accrued interest.

DATED: JUL 01 2016



Frank J. Johnson
Superior Court Judge
FRANK J. JOHNSON

1 Shalem Shem-Tov (SBN 257243)
2 NETZAH & SHEM-TOV, INC.
3 16601 Ventura Blvd., 4th Floor
4 Encino, CA 91436
5 Telephone: (818) 995-4200
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7 Email: shalem@netshemlaw.com

8 Attorneys for Judgment Creditors
9 ERLINDA RIOS and ANNA MARIE
10 OSEGUERA

ORIGINAL FILED
Northwest District
JUN 15 2016
LOS ANGELES
SUPERIOR COURT

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF LOS ANGELES

13 ERLINDA RIOS and ANNA MARIE
14 OSEGUERA,

15 Plaintiffs,

16 vs.

17 LUIS TIPACTI, SR.

18 Defendant.

19 Case No. LC085957
20 [Hon. Frank J. Johnson, Dept. NW-T]

21 ASSIGNMENT ORDER

22 Date: June 15, 2016
23 Time: 8:30 AM
24 Location: NW-T

25 The motion of ERLINDA RIOS and ANNA MARIE OSEGUERA ("Judgment Creditors")
26 came on regularly for hearing on June 15, 2016, before Honorable Frank J. Johnson, Judge
27 Presiding in department NW-T of the above-entitled court, with appearances as follows: Shalem
28 Shem-Tov, Esq. of Netzah & Shem-Tov, Inc. appearing on behalf of Judgment Creditors, and
_____ appearing on behalf of Luis Tipacti, Sr., Judgment Debtor. The Court,
having considered the motion and good cause appearing:

IT IS ORDERED:

1. That the following rights to payment of Judgment Debtor be, and hereby are, assigned to Judgment Creditors until such time as the judgment herein is fully satisfied or this ordered

NETZAH & SHEM-TOV, INC.
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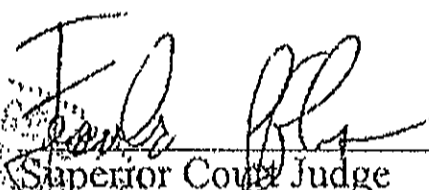
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is amended: rental income and/or commissions related to his real estate broker services and/or commissions or rights to payment related to any loans due to him, as well as any other right to payment not specifically listed herein; and

2. Judgment Debtor is hereby enjoined and restrained from assigning, encumbering or otherwise disposing any of his rights to payment for rental income and/or commissions related to his real estate broker services and/or commissions or rights to payment related to any loans due to him, as well as any other right to payment not specifically listed herein until such time as the judgment is paid in full, including all accrued interest.

DATED: 6/15/16



Superior Court Judge
FRANK JOHNSON
