

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 07/11/18 TIME: 10:30 A.M. DEPT: G CASE NO: FL1600084

PRESIDING: HON. BEVERLY WOOD

REPORTER:

CLERK: GINA COMPTON

PETITIONER: ERIC GREENBERG

and

RESPONDENT: CARMEL GREENBERG

NATURE OF PROCEEDINGS: OTHER – ENTER JUDGMENT PURSUANT TO CCP SECTION 664.6 AND FAMILY CODE 271 SANCTIONS [RESP] CARMEL GREENBERG

RULING

Carmel's moving papers asks the Court to:

- a. Include the terms recited on the record before the Court on 2/15/18 which terms are incorporated in the proposed judgment Exhibit A.
- b. Order terms for security for Eric's spousal support payments to Carmel, including the execution of security documents, which terms are listed in the Appendix of Additional Judgment terms, Ex. P
- c. Incorporate all terms in the appendix of additional judgment terms Ex. P
- d. 10,000K sanctions 271.

In general, the parties are in agreement about the terms of the MSA. The only issue appears to be the security Eric must post for the payments due to Carmel.

At their February 2018 settlement conference the parties agreed that Eric would secure the payments due to Carmel. The agreed upon payments and schedule are:

February 2019: \$1,750,000
February 2020: \$ 750,000
February 2021: \$ 750,000
February 2022: \$ 750,000

As a result of this schedule the amounts to be secured are:

July 11, 2018 to February 2019: \$4,000,000
February 2019-February 2020: \$2,250,000
February 2020-February 2021: \$1,500,000
February 2021-February 2022: \$ 750,000

When Carmel sought to reconfigure her monthly payments, Eric later withdrew his agreement for security in exchange for an agreement to the modification. (March 21, 2018 letter filed as Exhibit H to moving papers). Given the proposed modification does not appear to impose any additional burden on Eric, the demand for withdrawal of security was rejected. There was correspondence discussing the need and nature of the security (See exhibits K and M in moving papers) showing that Carmel made proposals to address security.

The parties eventually met to discuss and reached an agreement about security:

In Exhibit C, dated May 20, 2018 at 1:14 p.m. Carmel states:

Based on a successful in person discussion between Eric and me this morning, I am hereby canceling the ex parte hearing scheduled for tomorrow May 21st.

Eric's attorney will be sending a short MSA, 5 pages or less that established security through both San Francisco properties and enables me to establish the rental payments as discussed in prior communications, \$17,500 paid directly to me for housing expenses.

Both parties will work quickly to put this issue to rest.

Therefore it does appear that, as of May 20, 2018, Eric and Carmel agreed that the San Francisco properties would act as security for the outstanding payments. (The instant motion was filed May 18, 2018.) The Court also notes that when another draft of the MSA was forwarded to Carmel's attorney on June 25, 2018 it contained a clause identical to the one that Eric proposed and the only revision requested at that time was that Eric sign a Deed of Trust which he agreed to.

Carmel asserts that the SF properties contain only \$3,100,000 in equity and are therefore insufficient to secure the amounts due. She wants to secure the property in Ross as well. Eric asserts that is sufficient equity given other assets and that in event of sale the proceeds to Carmel be limited to 2/3 of any proceeds. Eric notes it is not possible to secure the Ross property as he must utilize that equity to meet cash flow, including significant monthly payments to Carmel.

The Court notes that the appraisal of the SF properties was conducted in October, 2016, it values the properties at \$4.6 million, resulting in about \$3 million of equity. It is common knowledge that the property values in SF, and in that area of SF have risen significantly in the almost two years since that appraisal was conducted. The Court concludes there is at least \$3 million in equity in the SF properties, and likely significantly more.

Given the above declining security needs (per above) securing the payments with the SF properties is only an issue for the next seven months. After that there is more than enough equity in those properties. Therefore, the Court orders that the SF properties act as security for the outstanding payment obligations. In the event of a default on the obligation, Carmel is not limited in what she receives (i.e. the 2/3 proposal by Eric).

Until the first installment is paid, Eric may access equity in the Ross property only after notice to Carmel pursuant to the following process. Any access to more than \$500,000 in equity (total equity withdrawal as of the July 11, 2018) shall require 15 days written notice to Carmel. Once the initial payment to Carmel is made, the obligation to provide notice shall cease as the security from SF properties is sufficient.

With respect to the fees request, to a certain extent Carmel created some of the conflict and appears to have changed her mind over the course of getting this MSA completed. Also, her demand to secure the Ross property is not reasonable, given the obligations that Eric has and the ongoing expense associated with maintaining two households.

The Court notes that Eric's position in "withdrawing" his agreement to security was also unreasonable (although short-lived) and his proposal that Carmel receive only a portion of any proceeds in the event of his default is not in keeping with the ordinary concept of security. The Court also cautions that failure to timely respond to inquiries has unnecessarily contributed to the conflict.

Both parties have more than enough money to retain counsel, and some of the fees incurred would have been incurred in the normal course of having an MSA finalized. The \$18,000+ is not in proportion to the dispute at hand, and as noted, Carmel bears some responsibility.

Accordingly, the Court awards fees of \$4000 to Carmel and instructs Mr. Blevans to prepare the final MSA, DOT for the SF properties, within the next ten days. Eric shall review and execute said documents within ten days of receipt, absent any bona fide dispute. The Court expects receipt of judgment by September 3, 2018. The \$4000 is due by September 30, 2018.

Pursuant to CRC 5.125 the Court will prepare the formal Order After Hearing

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 07/11/18 TIME: 9:00 A.M. DEPT: L CASE NO: FL1604555

PRESIDING: HON. MARK A. TALAMANTES

REPORTER:

CLERK: JENN CHARIFA

PETITIONER: SACHIKO WOOD

and

RESPONDENT: NATHANIEL WOOD

NATURE OF PROCEEDINGS: ATTORNEY FEES AND COSTS [PETR] SACHIKO WOOD

RULING

Petitioner Sachiko Wood (“Mother”) filed her Request for Order (“RFO”) on June 13, 2018, seeking a post-judgment award of reasonable attorney’s fees. Respondent Nathaniel Wood (“Father”) filed his late response on July 5, 2018 and supplemental response on July 6. Despite the tardiness of Father’s responsive papers, the court has broad discretion to consider the papers and finds no prejudice to Mother. [Cal. Rules of Court 3.1300(a).] Mother filed her reply on July 9, 2018.

Mother lives in San Francisco. Father lives in Marin and has the children for roughly 5 days per week during the school year. The schedule shifts during the summer months and most holiday weeks. The basis of Mother’s argument is a complaint that Father schedules sports and other extracurricular activities during her custodial time. The parties attended an interdisciplinary settlement conference on May 17, 2018; however, unfortunately no agreement was reached. Thereafter, a trial on the issues raised by Mother is now scheduled for August 30, 2018 in this department, with Mother now seeking fees.

Father reports in his income and expense report monthly gross income of \$10,833. He pays \$1,350 in monthly payments for child support, made in two payments each month, which reduces his monthly gross take home pay to \$9,483. He holds \$2,500 in checking and savings accounts, and property in which he reports equity of \$75,000. However, as to the value of his property, Mother claims the equity exceeds \$200,000.

Mother reports in her income and expense report monthly gross income of \$3,646. The monthly child support of \$1,350 paid by Father increases her household gross income to \$4,996. She reports cash and savings of roughly \$500, and also holds \$104,000 in liquid assets as part of the post-judgment equalizing payment.

Family Code §§2030 and 2032 empower the court to order the payment of fees and costs as between the parties based on their “relative circumstances” to ensure parity of legal representation. In consideration of the monthly income of each household, Mother’s request for attorney’s fees is granted. Although Father is not represented, he is the driving force behind a number of court appearances resulting in costly appearance fees by Mother’s lawyer. In consideration of the monthly income derived by both parties as well as litigious nature of the parties, Mother’s request for equalization attorney’s fees is GRANTED in the amount of \$8,000.

The court reserves the right to award post-trial fees pursuant to Family Code §271, which expressly permits fees awarded “in the nature of sanctions” for conduct that increases the scope of the litigation, resulting in frustrating settlement negotiations.

Equalizing attorney’s fees are due payable to Mother within 30 days, but not later than August 10, 2018.

Counsel for Mother to prepare the formal order.

Parties must comply with Marin County Superior Court Local Rules, Rule 6.12(B), (C) to contest the tentative decision. In the event no party requests oral argument in accordance with Rule 6.12(C), the tentative ruling shall become the order of the court.