

# **EXHIBIT C**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**FFCO**

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**CARY KATZ, an individual,  
Plaintiff,**

**Case No. A-18-773251-C  
Dept. No. XXII**

**Vs.**

**CRTV LLC, a Delaware limited liability  
company,**

**Defendant.**

**MARK STEYN, an individual; MARK  
STEYN ENTERPRISES, INC., a New  
Hampshire Corporation; and OAKHILL  
MEDIA, INC., a Vermont Corporation,**

**Plaintiffs-in-Intervention,**

**Vs.**

**CARY KATZ, an individual; and CRTV  
LLC, a Delaware limited liability company,**

**Defendants-in-Intervention.**

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

These matters, concerning:

1. Defendant/Defendant-in-Intervention CRTV LLC'S Motion to Dismiss filed June 27, 2018; and
  2. Plaintiff/Defendant-in-Intervention CARY KATZ'S Motion to Dismiss Plaintiffs-in-Intervention MARK STEYN'S, MARK STEYN ENTERPRISES (US), INC.'S and OAK HILL MEDIA, INC.'S Complaint-in-Intervention filed June 28, 2018,
- both came on for hearing on the 31<sup>st</sup> day of July 2018 at the hour of 8:30 a.m. before Department

SUSAN H. JOHNSON  
DISTRICT JUDGE  
DEPARTMENT XXII

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

XXII of the Eighth Judicial District Court, in and for Clark County, Nevada, with JUDGE SUSAN H. JOHNSON presiding; Plaintiff/Defendant-in-Intervention CARY KATZ appeared by and through his attorneys, JEFFERY A. BENDAVID, ESQ. and STEPHANIE J. SMITH, ESQ. of the law firm, MORAN BRANDON BENDAVID MORAN; Defendant/Defendant-in-Intervention CRTV LLC appeared by and through its attorney, ERIKA PIKE TURNER, ESQ. of the law firm, GARMAN TURNER GORDON; and Plaintiffs-in-Intervention MARK STEYN, MARK STEYN ENTERPRISES (US), INC. and OAK HILL MEDIA, INC. appeared by and through their attorney, SCOTT D. FLEMING, ESQ. of the law firm, KOLESAR & LEATHAM. Having reviewed the papers and pleadings on file herein, heard oral arguments of the attorneys and taken these matters under advisement, this Court makes the following Findings of Fact and Conclusions of Law:

**FINDINGS OF FACT AND PROCEDURAL HISTORY**

1. On April 20, 2018, CARY KATZ filed his Complaint against CRTV LLC, seeking damages for anticipatory repudiation of two \$10,000,000 promissory notes or loans MR. KATZ made to CRTV LLC in 2017 and 2018. According to the Complaint, CRTV LLC “clearly and positively indicated to Mr. Katz that it would not, and could not, perform its Obligations pursuant to the” 2017 and 2018 promissory notes. Given such “direct express representations,” MR. KATZ believed CRTV LLC will not fulfill its obligations under the promissory notes.

2. Five days later, on April 25, 2018, MARK STEYN, MARK STEYN ENTERPRISES (US), INC. and OAK HILL MEDIA, INC. filed its motion to intervene in this action. In their view, the \$20,000,000 in loans made by MR. KATZ, who owns the majority of units in CRTV LLC, are sham transactions and designed to prevent the limited liability company’s assets from being collected pursuant to an arbitration award rendered against CRTV LLC in favor of MR. STEYN, MARK STEYN ENTERPRISES (US), INC. and OAK HILL MEDIA, INC. Ultimately, this Court’s predecessor, JUDGE JOANNA S. KISHNER granted the motion to intervene in hearing

SUSAN H. JOHNSON  
DISTRICT JUDGE  
DEPARTMENT XXII

1 held May 17, 2018, and the Complaint-in-Intervention was filed the following day. This pleading  
2 seeks damages for fraudulent conveyance, civil conspiracy between MR. KATZ and CRTV LLC, as  
3 well as declaratory relief.

4 3. One day after the motion to intervene was filed, April 26, 2018, MR. KATZ and  
5 CRTV LLC filed a Confession of Judgment whereby CRTV LLC, by and through its president,  
6 GASTON MOONEY, confessed to a judgment in favor of MR. KATZ in the total amount of  
7 \$20,265,753.43 with interest accruing at a rate of 10 percent per annum. They further stipulated,  
8 upon the filing of the Confession of Judgment, a final, binding and enforceable judgment would be  
9 entered in favor of MR. KATZ as against CRTV LLC.  
10

11 4. MR. KATZ and CRTV LLC now move this Court in separate papers to dismiss the  
12 Complaint-in-Intervention for failure to state a claim for relief pursuant to Rule 12(b)(5) of the  
13 Nevada Rules of Civil Procedure (NRCPP). They argue the first cause of action seeking damages for  
14 fraudulent conveyance is not stated with particularity as required by NRCPP 9(b). Further, the civil  
15 conspiracy claim should be dismissed as MR. KATZ, who is the “majority owner, founder, lone  
16 investor, and effective manager”<sup>1</sup> of CRTV LLC cannot conspire with himself. Thirdly, the claim  
17 for declaratory relief should be dismissed as MR. STEYN, MARK STEYN ENTERPRISES (US),  
18 INC. and OAK HILL MEDIA, INC. admit CRTV LLC has not made any “fraudulent conveyance”  
19 to MR. KATZ as the complaint’s allegations indicate this entity only “intends” to transfer its assets  
20 to MR. KATZ.<sup>2</sup> Further, MR. STEYN, MARK STEYN ENTERPRISES (US), INC. and OAK  
21 HILL MEDIA, INC. admit the arbitration award has not been reduced to judgment whereby they  
22 cannot engage any collection efforts. That is, no “actual, present controversy” exists between the  
23 parties, a requirement that must be met before seeking declaratory relief. Lastly, MR. KATZ  
24  
25  
26

27  
28 <sup>1</sup>See Complaint-in-Intervention filed May 18, 2018, p. 2, paragraph 2.

<sup>2</sup>*Id.*, p. 7, paragraph 43.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

challenges the ability of MR. STEYN, MARK STEYN ENTERPRISES (US), INC. and OAK HILL MEDIA, INC. to intervene as a “final judgment” has been rendered.

MR. STEYN, MARK STEYN ENTERPRISES (US), INC. and OAK HILL MEDIA, INC. oppose both motions, arguing the debt owing to them by CRTV LLC does not need to be reduced to judgment and they need only prove they have a right to payment. Here, there is an arbitration award in their favor and a New York court has confirmed the award by order. Further, they have stated a claim for fraudulent conveyance as MR. KATZ and CRTV LLC have executed two promissory notes, which elevates MR. KATZ’S status in terms of priority of payment, that being from investor in the limited liability company to CRTV LLC’S creditor. In addition, CRTV LLC has already confessed to the judgment in favor of MR. KATZ. That is, a transfer has occurred and such is designed to thwart or dilute the other creditors’ collection efforts. MR. STEYN, MARK STEYN ENTERPRISES (US), INC. and OAK HILL MEDIA, INC. also disagree with their adversaries’ position they have not stated their fraudulent conveyance claim with particularity as, in their view, they have identified the who (MR. KATZ and CRTV LLC), the what (two promissory notes and confession of judgment), the when (dates the promissory notes were executed and the confession of judgment filed), the where (Nevada, the place where MR. KATZ resides). Lastly, in the view of MR. STEYN, MARK STEYN ENTERPRISES (US), INC. and OAK HILL MEDIA, INC., there is an actual and present controversy, and the judgment by confession is entered without action, whereby it is permissible for them to intervene in this case.

**CONCLUSIONS OF LAW**

1. NRCP 12(b) provides every defense, in law or fact, to a claim for relief shall be asserted in the responsive pleading thereto if one is required, except that certain defenses, including plaintiff’s failure to state a claim upon which relief may be granted, may be made by motion. A complaint will not be dismissed for failure to state a claim unless it appears beyond a doubt the

SUSAN H. JOHNSON  
DISTRICT JUDGE  
DEPARTMENT XXII

1 plaintiff could prove no set of facts which, if accepted by the trier of fact, would entitle him to relief.

2 Simpson v. Mars, Inc., 113 Nev. 188, 190, 929 P.2d 966, 967 (1997).

3 2. NRS 12.130(1) provides: "*Before the trial*, any person may intervene in an action or  
4 proceeding, who has an interest in the matter in litigation, in the success of either of the parties, or an  
5 interest against both." (Emphasis added) NRS 12.130(2) also indicates when an intervention can  
6 take place; it states: "An intervention takes place when a third person is permitted to become a party  
7 to an action or proceeding between other persons, either by joining the plaintiff in claiming what is  
8 sought by the complaint, or by uniting with the defendant in resisting the claims of the plaintiff, or  
9 by demanding anything adversely to both the plaintiff and the defendant." The plain language of  
10 NRS 12.130 clearly indicates intervention is appropriate only during ongoing litigation where the  
11 intervenor has an opportunity to protect or pursue an interest which will otherwise be infringed. *See*  
12 Lopez v. Merit Insurance Company, 109 Nev. 553, 556, 853 P.2d 1266, 1268 (1993); *also see* Ryan  
13 v. Landis, 58 Nev. 253, 259, 75 P.2d 734, 735 (1938) ("in all cases [intervention] must be made  
14 before trial."); *also see* McLaney v. Fortune Operating Co., 84 Nev. 491, 499, 444 P.2d 505, 510  
15 (1968) ("[t]he lower court allowed [appellants] to intervene...subsequent to the trial and after  
16 judgment. The motion to intervene came too late and should have been denied."). Further, the plain  
17 language of NRS 12.130 does not permit intervention subsequent to the entry of a final judgment.

18 3. Notably, in refusing to allow intervention subsequent to entry of final judgment, the  
19 Nevada Supreme Court has not distinguished between judgments entered following trial and  
20 judgments entered by default or by agreement of the parties. Ryan, 58 Nev. at 259-260, 75 P.2d at  
21 735. In Ryan, 58 Nev. at 260, 75 P.2d at 735, the high court quoted Henry, Lee & Co. v. Cass  
22 County Mill & Elevator Co., 42 Iowa 33 (1875), stating:

23 The intervention must be made before the trial commences. After the verdict all would admit  
24 it would be too late to intervene. But a voluntary agreement of the parties stands in place of  
25 a verdict, and, as between the parties to the record as fully and finally determines the  
26

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

controversy as a verdict could do. ...It is not the intention of the statute that one not a party to the record should be allowed to interpose and open up and renew a controversy which has been settled between the parties to the record, either by verdict or voluntary agreement.

3. In this case, MR. KATZ and CRTV LLC entered into and filed a Confession of Judgment on April 26, 2018. A "confession of judgment" is addressed in NRS 17.090, which states: "A judgment by confession may be entered without action, either for money due or to become due or to secure any person against contingent liability on behalf of the defendant, or both, in the manner prescribed by this section and NRS 17.100 and 17.110." Upon fulfilling the form requirements identified in NRS 17.100, "[t]he statement must be filed with the clerk of the court in which the judgment is to be entered. The clerk shall endorse upon it and enter in the judgment book a judgment of the court for the amount confessed,...The judgment and affidavit, with the judgment endorsed, thereupon becomes the judgment roll." Because MR. STEYN, MARK STEYN ENTERPRISES (US), INC. and OAK HILL MEDIA, INC. were not named as parties to the action, they could not properly intervene after the disputed judgment was obtained. In this Court's view, the previous grant of intervention by JUDGE KISHNER was erroneous, and MR. STEYN, MARK STEYN ENTERPRISES (US), INC. and OAK HILL MEDIA, INC. should not be considered parties to this lawsuit. Accordingly, MR. KATZ'S motion to dismiss is granted.

4. In so concluding, this Court appreciates the position taken by MR. STEYN, MARK STEYN ENTERPRISES (US), INC. and OAK HILL MEDIA, INC. the lawsuit filed by MR. KATZ against CRTV LLC, a limited liability company of which he owns the majority of units, is a sham and, in essence, results in a fraudulent conveyance. However, intervention is appropriate only during ongoing litigation, perhaps because there is no pending action to which the intervention might attach. See Eckerson v. Rudy, 72 Nev. 97, 295 P.2d 399 (1956). Further, this circumstance is not one where the purported intervenors' opportunity to protect or pursue their interest has been infringed. Indeed, there is nothing precluding MR. STEYN, MARK STEYN ENTERPRISES (US),

SUSAN H. JOHNSON  
DISTRICT JUDGE  
DEPARTMENT XXII

1 INC. and OAK HILL MEDIA, INC. from instituting separate litigation regarding claims of  
2 fraudulent conveyance, civil conspiracy and action for declaratory relief. This Court also  
3 appreciates MR. STEYN, MARK STEYN ENTERPRISES (US), INC. and OAK HILL MEDIA,  
4 INC. took a step to intervene, by way of motion, prior to the Confession of Judgment being filed.  
5 However, a motion merely seeks permission by a party to intervene; it is not the actual intervention  
6 permitted by the Court.

7  
8 5. Counsel for MR. STEYN, MARK STEYN ENTERPRISES (US), INC. and OAK  
9 HILL MEDIA, INC. also argued at hearing the filing of a confession of judgment within an existing  
10 litigation or action was not appropriate as NRS 17.090 provides such may be entered *without* action.  
11 While a confession of judgment *may* be entered *without* action, there is nothing within this statute to  
12 suggest such may *only* be entered *without* action, or it cannot be entered within a pending action. If  
13 experience acts as a guide, this Court notes countless collection cases filed in the Eighth Judicial  
14 District Court have been resolved by way of the debtor's confession of judgment. To wit, this Court  
15 declines to interpret NRS 17.090 in the manner suggested by the purported intervenors.

16  
17 6. As its ruling concerning MR. KATZ'S motion to dismiss resolves the matter in its  
18 entirety, this Court declines to address the other issues raised in the parties' motions and/or  
19 opposition. Accordingly,

20  
21 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** Plaintiff/Defendant-in-  
22 Intervention CARY KATZ'S Motion to Dismiss Plaintiffs-in-Intervention MARK STEYN'S,  
23 MARK STEYN ENTERPRISES (US), INC.'S and OAK HILL MEDIA, INC.'S Complaint-in-  
24 Intervention filed June 28, 2018 is granted;

25 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** the Complaint-in-  
26 Intervention filed May 18, 2018 is dismissed as filed against both CARY KATZ and CRTV LLC;  
27 and  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** Defendant/Defendant-in-  
Intervention CRTV LLC'S Motion to Dismiss filed June 27, 2018 is denied as moot, although, given  
this Court's ruling concerning MR. KATZ'S motion, the Complaint-in-Intervention is also  
dismissed as to CRTV LLC.

DATED this 8<sup>th</sup> day of August 2018.

  
SUSAN H. JOHNSON, DISTRICT COURT JUDGE

**CERTIFICATE OF SERVICE**

I hereby certify, on the 8<sup>th</sup> day of August 2018, I electronically served (E-served), placed  
within the attorneys' folders located on the first floor of the Regional Justice Center, or mailed a true  
and correct copy of the foregoing FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER  
to the following counsel of record, and that first-class postage was fully prepaid thereon:

JEFFERY A. BENDAVID, ESQ.  
STEPHANIE J. SMITH, ESQ.  
MORAN BRANDON BENDAVID MORAN  
620 South Fourth Street  
Las Vegas, Nevada 89101  
[j.bendavid@moranlawfirm.com](mailto:j.bendavid@moranlawfirm.com)

ERIKA PIKE TURNER, ESQ.  
GARMAN TURNER GORDON, LLP  
650 White Drive, Suite 100  
Las Vegas, Nevada 89119  
[eturner@gtg.legal](mailto:eturner@gtg.legal)

ALAN J. LEFEBVRE, ESQ.  
SCOTT D. FLEMING, ESQ.  
KOLESAR & LEATHAM  
400 South Rampart Boulevard, Suite 400  
Las Vegas, Nevada 89145  
[alefebvre@klnevada.com](mailto:alefebvre@klnevada.com)  
[sfleming@klnevada.com](mailto:sfleming@klnevada.com)

  
Laura Banks, Judicial Executive Assistant

SUSAN H. JOHNSON  
DISTRICT JUDGE  
DEPARTMENT XXII