
Geraci v. Cotton matter

Michael Weinstein <MWeinstein@ferrisbritton.com>
To: Jake Austin <jpa@jacobaustinesq.com>
Cc: Scott Toothacre <SToothacre@ferrisbritton.com>

Mon, Jun 4, 2018 at 8:38 AM

Dear Mr. Austin,

I do not know either Mr. Shapiro or Mr Magagna.

You allege that Mr. Bartell informed Ms. Young that he was getting *Mr. Cotton's* CUP application denied.

This is not evidence of a conspiracy between Mr. Geraci, Mr. Bartell and Mrs. Austin, on one hand, and Mr. Aaron Magagna and Mr. Shapiro on the other (the individuals that benefit from Mr. Bartell's use of his political influence to get a denial on Mr. Cotton's property). Moreover, it makes no sense as Mr. Geraci is paying Mr. Bartell to assist him with the pending CUP Application. What motive does Mr. Geraci/Ms. Berry have to seek denial of the pending CUP Application, the approval of which is the one thing that makes the property he purchased from Mr. Cotton valuable to Mr. Geraci. It is absurd.

Again, I have to wonder why Mr. Cotton is so adamant about delaying a trial on the merits when he purports to believe he will prevail.

Respectfully,

Michael R. Weinstein
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From: jacobaustinesq@gmail.com <jacobaustinesq@gmail.com> **On Behalf Of** Jake Austin
Sent: Tuesday, May 29, 2018 3:10 PM
To: Michael Weinstein <MWeinstein@ferrisbritton.com>
Subject: Re: Geraci v. Cotton matter

Mr. Weinstein,

I am following up on the below regarding one point - I just finished a lengthy conversation with Mr. Shapiro. We are going to attempt to settle the potential dispute between Mr. Cotton and Mr. Magagna. But, I want to stress the following – Mr. Shapiro explicitly admits to being at the meeting with Mr. Bartell and Ms. Young and that Mr. Bartell did comment on Mr. Cotton's CUP application. However, he alleges he does not remember clearly what Mr. Bartell said regarding Mr. Cotton's CUP application. I told him that Ms. Young was completely clear, remembered the conversation in detail as she had hoped it would be a good investment, and provided detailed responses to Mr. Cotton's questions before she realized that her testimony had a material impact on a litigation matter.

Mr. Shapiro responded by insinuating that Ms. Young is not a reliable witness for any number of reasons, including the allegation that she smokes marijuana and cannot be trusted.

Needless to say, irrespective of whether the issue with Mr. Shapiro and Mr. Magagna is resolved without litigation, his confirmation of the meeting and the fact that Mr. Bartell did make a statement regarding Mr. Cotton's CUP application is supporting evidence of the conspiracy that Mr. Cotton has been alleging for months.

Jacob

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On Tue, May 29, 2018 at 1:18 PM, Jake Austin <jpa@jacobaustinesq.com> wrote:

Mr. Weinstein,

Based on Mr. Geraci's last declaration filed with the Court in the *lis pendens* pleadings, I will be submitting a motion for Judgment on the Pleadings scheduled to be heard on June 22, 2018. I will have moving papers to you on or before June 1, 2018.

Also, yesterday, I was at a meeting with Mr. Cotton and Ms. Corina Young, who is a client of Mr. Jim Bartell. Ms. Young, approximately six months ago or so, was at a meeting with Mr. Bartell and asked him about her intent to invest in Mr. Cotton's CUP venture – Mr. Cotton was attempting to sell off a portion of his remaining interest in the property, with the disclosure that the property was under litigation, to finance his litigation defense. Mr. Bartell informed Ms. Young that he was getting Mr. Cotton's CUP application denied and that it was "because everyone hates Darryl."

Further, at that meeting with Ms. Young was her attorney, Mr. Matthew Shapiro. Mr. Shapiro has a strong relationship with Mrs. Austin. Mr. Shapiro's client, Mr. Aaron Magagna, is also the applicant on a CUP application filed last month on a property within 1,000 feet of Mr. Cotton's property that, if approved, would result in Mr. Cotton never being able to get a CUP application approved on his property.

Two months ago, before I became attorney-of-record and Mr. Shapiro knew I was associated with this case (and I personally know he has a strong relationship with Mrs. Austin), he sat down, at a hearing in the Geraci v. Cotton matter in front of Judge Wohlfeil, next to Mr. Cotton and his litigation investor in plain clothes. I walked in to the courtroom after he had been eavesdropping on them for a considerable amount of time. I asked him why he was there, he informed me that he was there to prepare for a case in front of Judge Wohlfeil for a client. Over this weekend, I asked him to produce the case number of the matter before Judge Wohlfeil and he asked for time. When I pressed him, explicitly stating that I believed he was buying time to find an attorney that has a case in front of Judge Wohlfeil to associate himself with, he admitted he was there to observe the Geraci v. Cotton matter, but that it was "truly a coincidence" he sat in the immediate vicinity of Mr. Cotton. To be clear, he explicitly lied to me at first and only told the truth when asked to provide proof of his alleged reason for being in front of Judge Wohlfeil.

Further, during the conversation with Ms. Young, Mr. Cotton was probing to make it very clear regarding the wording and intent of her conversation with Mr. Bartell. He is incredibly livid, Mr. Cotton asked Ms. Young to provide her testimony. She refused the request once she understood that her testimony would provide evidence of a conspiracy between Mr. Geraci, Mr. Bartell and Mrs. Austin, on one hand, and Mr. Aaron Magagna and Mr. Shapiro on the other (the individuals that benefit from Mr. Bartell's use of his political influence to get a denial on Mr. Cotton's property). She stated she would not get involved in any litigation because, in addition to not wanting to be involved in litigation for any reason, she has a significant amount of capital invested in another CUP application that Mr. Bartell was hired to facilitate its approval and she is scared that he will retaliate against her if she provides her testimony or appears to be a "snitch." Mr. Cotton is currently seeking the assistance of a private investigator to locate Ms. Young with the intent of subpoenaing her to be deposed.

Additionally, please see attached, an email exchange between myself and Mr. Shapiro regarding this factual allegation – that he was present at a meeting with Mrs. Young and Mr. Bartell and that Mr. Bartell made the aforementioned statement. Mr. Shapiro does not deny it.

Lastly, Mr. Cotton believes that the engineering company hired by Mr. Geraci to make a recommendation to the City of San Diego has been unduly influenced into making a denial recommendation. On the day of the soils sample, the company was supposed to bore to 50 feet at two locations, however, they only got to 9 and 13 feet before the drills bits broke because the property is essentially on a big rock. The geologist for the engineering company explicitly stated that there are absolutely no problems and they would recommend an approval. Mr. Cotton himself took many pictures while they were there and called me contemporaneously during the procedure letting me know the good news (he had anticipated that Mr. Geraci was using the soils sample as a ruse to have the CUP application denied). However, Mr. Cotton followed-up with the geologist last week to get a copy of the report and she sounded extremely anxious and scared, would not confirm the depths reached were only 9 and 13 feet and insinuated that the company would be recommending a denial.

Thus, based on:

- (i) Mr. Geraci's latest declaration with new sworn factual allegations;
- (ii) Ms. Young's statements regarding Mr. Bartell that I personally witnessed and will attest to;
- (iii) Mr. Shapiro's (a) lie to me regarding his reasoning for sitting down next to Mr. Cotton and his litigation investor, (b) his indirect admission that he was present and heard Mr. Bartell state he was getting Mr. Cotton's CUP application denied, (c) the fact that the competing CUP application is a client of Mr. Shapiro, and (d) the fact that he has a deep relationship with Mrs. Austin (an adverse party to Mr. Cotton); and
- (iv) the engineering company's apparent intent to go back on an explicit representation to recommend an approval (that appears to have been coerced);

Mr. Cotton will be seeking to amend his Cross-Complaint.

Please let me know if you would agree to stipulate to an amendment. Mr. Cotton will be seeking to amend his Cross-Complaint to, *inter alia*, respond to the new factual allegations raised by Mr. Geraci and to add as co-defendants the engineering company, Mr. Shapiro, Mr. Magana, and Mr. Bartell. He will also, at a minimum, be bringing forth a cause of action for conspiracy for the reasons stated above.

Also, please consider this notice for an ex-parte TRO scheduled for June 6, 2018 seeking to have the Court appoint a receiver to manage the CUP application. I realize that Mr. Cotton has made this request before, but I believe that with the newly discovered facts and Mr. Geraci's latest factual allegations in his declaration, Mr. Cotton

will be able to meet his burden and prove to the court that more likely than not he will prevail on the merits of his cause of action for breach of contract. I will forward the moving papers as soon as they are ready, but no later than 12:00 PM on June 5, 2018.

Lastly, I will have an updated disclosure response to you this week.

-Jacob

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