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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN DIEGO  
CENTRAL DIVISION

LARRY GERACI, an individual,  
Plaintiff,  
v.  
DARRYL COTTON, an individual; and  
DOES 1 through 10, inclusive,  
Defendants.

CASE NO: 37-2017-00010073-CU-BC-CTL  
DECLARATION OF DARRYL COTTON IN  
SUPPORT OF DARRYL COTTON'S EX PARTE  
APPLICATION FOR TEMPORARY  
RESTRAINING ORDER AND ORDER TO  
SHOW CAUSE REGARDING PRELIMINARY  
INJUNCTION  
[IMAGED FILE]  
Assigned to:  
Hon. Joel R. Wohlfeil, Dept. C-73  
Date: December 7, 2017  
Time: 8:30 a.m.  
Dept.: C-73  
Complaint Filed: March 21, 2017  
Trial Date: May 11, 2018

AND RELATED CROSS-ACTION.

I, Darryl Cotton, declare as follows:

1. I make this declaration in support of my application for temporary restraining order and order to show cause why a preliminary injunction should not be issued against Larry Geraci and Rebecca Berry on the Conditional Use Permit Application – Project No. 520606 currently pending before the City.

DECLARATION OF DARRYL COTTON IN SUPPORT OF DARRYL COTTON'S EX PARTE APPLICATION FOR TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE REGARDING PRELIMINARY INJUNCTION

1           2.       All facts stated in this declaration are made on the basis of personal knowledge,  
2 and if called as a witness, I could and would competently testify to them.

3           3.       I am, and have been at all relevant times, the sole record owner of the real  
4 property located at 6176 Federal Boulevard, San Diego, California 92114 (“Property”).  
5 Neither Rebecca Berry nor Larry Geraci have an interest in the Property, whether as owner,  
6 agent, licensee, lessee or any other capacity.

7           4.       In or about August 2016, Geraci approached me and expressed interest in  
8 purchasing the Property.

9           5.       Geraci said he was interested in the Property because it was potentially eligible  
10 to be awarded a conditional use permit (“CUP”) by the City of San Diego for the operation of a  
11 Medical Marijuana Consumer Cooperative (“MMCC”).

12          6.       Geraci indicated that the permitting process would take several months but that  
13 he had special skills in obtaining the CUP that would benefit our application. Specifically, he  
14 represented there was a zoning issue that needed to be resolved before the CUP application  
15 could be filed and that he was uniquely qualified to resolve it. I believed him because Geraci  
16 told me he has successfully run other marijuana dispensaries in San Diego County.

17          7.       Over the course of the following weeks and months, Geraci and I continued to  
18 discuss the CUP application process and negotiated the terms of the possible sale of the  
19 Property.

20          8.       On September 24, 2016, for instance, I sent Geraci a proposed agreement. This  
21 proposal provides, in part, that Geraci would pay me a total of \$800,000.00 in consideration for  
22 the sale of my Property. This proposal was not executed. A true and correct copy of the  
23 proposed agreement is attached as Exhibit 1 to this declaration.

24          9.       On or around October 31, 2016, Geraci told me that that I had to sign a  
25 “Ownership Disclosure Statement” in order to allow Geraci to prepare the CUP application.  
26 The form had Berry listed as a tenant, even though I have never met her and have never rented  
27 my Property to her. Geraci explained that Berry was his trusted employee who was

1 knowledgeable and involved in the MMCC CUP process and procedure. I believed Geraci and  
2 executed the application based on Geraci's representations.

3 10. On or around November 2, 2016, Geraci and I spoke at his office about our  
4 CUP arrangement and the sale of the Property. We reached final agreement on the terms for  
5 the sale of the Property which included, but without limitation, the following key deal points:

6 (a) Geraci agreed to pay \$800,000.00 in cash consideration for the purchase of the  
7 Property, with a \$50,000.00 non-refundable deposit payable to me immediately and the  
8 remaining \$750,000.00 payable to me upon the City's approval of the CUP application for the  
9 Property;

10 (b) The parties agreed that the City's approval of a CUP application to operate a  
11 MMCC at the Property would be a condition precedent to closing the sale of the (i.e.: the sale  
12 of the Property would be completed and title transferred to Geraci only upon the City's  
13 approval of the CUP application and Geraci's payment of the \$750,000.00 balance of the  
14 purchase price to Cotton. If the City denied the CUP application, the parties agreed the sale of  
15 the Property would be automatically terminated and Cotton would be entitled to retain the  
16 entire \$50,000.00 deposit.)

17 (c) Geraci promised to give me a 10% equity stake in the MMCC that would  
18 operate at the Property following the City's approval of the CUP application;

19 (d) Geraci agreed that, after the MMCC started operations at the Property, Geraci  
20 would pay me 10% profits of the MMCC's monthly profits and that Geraci would guarantee  
21 that such payments would be at least \$10,000.00 per month; and

22 (e) The parties agreed to negotiate in good faith for execution of an agreement  
23 comprising all the foregoing binding provisions as well as provisions reasonable and  
24 customary for such an agreement.

25 11. Although Geraci and I came to a final agreement on the purchase price and  
26 deposit, Geraci asked me if he could pay me a partial deposit of \$10,000.00 towards the total,  
27 \$50,000.00 amount, as he needed some extra time to pay me the full \$50,000.00 deposit.

1 Geraci paid me the \$10,000.00, and we executed a receipt for that payment that very day,  
2 November 2, 2016 (“November Writing”). Attached at Exhibit 2 is a true and correct copy of  
3 the November Writing.

4 12. Later the same day that we executed the November Writing, I emailed Geraci  
5 and told him that, after further review, our November Writing failed to reflect a key term  
6 regarding my equity stake in the MMCC to be operated at the Property. In my email, I  
7 reminded Geraci that my ten percent equity in the MMCC was vitally important to me. I also  
8 told Geraci to confirm that my equity stake was a term of our agreement. He replied by saying  
9 “no problem.” A true and correct copy of this email is attached as Exhibit 3 to this declaration.

10 13. In the weeks and months after our November meeting, Geraci provided me  
11 writings that materially differed the terms of our agreement. On February 27, 2017, Geraci  
12 sent me a draft Purchase Agreement. A true and correct copy of this Purchase Agreement is  
13 attached as Exhibit 4. On March 2, 2017, Geraci mailed me a draft “side agreement” that was  
14 supposed to reflect my 10 percent equity interest in the MMCC. A true and correct copy of  
15 this agreement is attached as Exhibit 5 to this declaration. I expressed my displeasure at this  
16 non-conformity and brought this fact to Geraci’s attention. A true and correct copy of this  
17 statement is attached as Exhibit 6 to this declaration.

18 14. Nonetheless, over the months, I continually reiterated the terms of our contract  
19 by emailing Geraci a summary of the key terms our agreement. In the numerous emails that I  
20 sent Geraci, I reaffirmed the fact that he promised to pay me a \$50,000.00 non-refundable  
21 deposit; that he promised to pay me a 10 percent profit in the MMCC and a minimum of  
22 \$10,000.00 per month; and that he promised to negotiate with me to execute an agreement to  
23 contain all the foregoing bid’s terms. Never once did Geraci deny the terms of our agreement  
24 or aver that I misunderstood him. A true and correct copy of this email exchange is attached as  
25 Exhibit 7 to this declaration. Geraci also texted with me as to his progress on the project and  
26 the final deal documents and never disavowed the agreed terms. A true and correct copy of  
27 text exchanges is attached as Exhibit 9 to this declaration.

1           15.     On or about March 16, 2017, I first discovered that Geraci had filed the CUP  
2 application for the Property back on October 31, 2016—even though he had previously  
3 promised he would not do so until after we finalized our purchase agreement (as we had agreed  
4 that the remaining \$40,000.00 of his deposit would be payable upon filing the CUP  
5 application).

6           16.     On March 21, 2017, I sent him notice via email that our agreement with respect  
7 to the Property was terminated.

8           17.     Because of Geraci’s bad faith actions and breaches of the November Writing, I  
9 entered into a real-estate purchase-agreement with another buyer, RJ, for the subject property.  
10 This purchase-agreement originally provided that I would hold a 20% interest in any MMCC  
11 operated on the Property. In an effort to stymie this transaction, Geraci filed a lawsuit (Case  
12 No. 37-2017-00010073-CU-BC-CTL) against me.

13           18.     On March 22, 2017, Geraci’s attorney, Michael R. Weinstein (“Weinstein”),  
14 emailed me a copy of a lawsuit Geraci intended to file against me. On March 28, 2017,  
15 Weinstein emailed me and told me that Geraci was moving forward with the CUP process and  
16 that Geraci intended to post notices on the Property.

17           19.     I responded to Weinstein’s email and stated that Geraci is not allowed on the  
18 Property and that Geraci has no rights to the Property because our agreement had been  
19 terminated.

20           20.     I desire to have Geraci’s associate, Berry, immediately removed from my CUP  
21 application on my Property because she was never a tenant of the Property and never had any  
22 rights to the Property whatsoever and her refusal to cede control of the CUP application is  
23 impairing my property rights with respect to my Property.

24           21.     On May 19, 2017, the City sent a letter that stated, among other things: “In  
25 order to continue processing of your application, with your project resubmittal, please provide  
26 a new Grant Deed, updated Ownership Disclosure Statement, and a Change of Financial  
27 Responsible Party Form if the Financial Party has also changed.” Based on the City’s email, I  
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1 assumed that I need not take any affirmative steps to protect my rights. A true and correct  
2 copy of this letter is attached at Exhibit 8 to this declaration.

3 22. On September 22, 2017, my attorney, David S. Demian, sent a letter to the City  
4 of San Diego demanding that the City remove Berry from the CUP application and process the  
5 CUP in my name alone. A true and correct copy of this letter is attached as Exhibit 10 to this  
6 declaration.

7 23. On September 29, 2017, the City of San Diego responded to my attorney and  
8 indicated they would not remove Berry from the CUP. The City continues to refuse my  
9 request to remove Berry from my CUP on my Property even though I have provided evidence  
10 that I am the sole record owner of the Property and confirmed that Berry has no rights to the  
11 Property. Actually, the City did more than just refuse my request: It told me that it changed the  
12 way it was going to process the CUP application. For the very first time, the City told me to  
13 begin a new CUP application in my name alone and informed me that it would award the CUP  
14 application to the party whose application was first approved. This revision means that I  
15 would be unlikely ever to be awarded the CUP application because my original application,  
16 bearing Berry/Geraci name, had been pending a year or so before I ever was informed that I  
17 needed to file a CUP application in my own name. Until this time, I assumed I had control  
18 over the CUP application as owner.

19 24. To date, Geraci has never paid me the balance of the \$40,000.00 deposit that I  
20 am due. I am also concerned that the City's failure to honor my request will cause me to lose  
21 the competitive advantage that I will otherwise have in the marketplace because I will be  
22 forced to abandon my year-old application and resubmit under a new, entirely different, and  
23 potentially longer regulatory scheme beginning January 1, 2018. Per the November  
24 Agreement Geraci was to pay me \$800,000 and ensure I received at least \$10,000 a month  
25 from operations of the MMCC which would last for an estimated 10 year period at minimum.  
26 This is an obligation of approximately \$2,000,000. Were Geraci to acquire the Property for  
27 \$800,000 he would receive a windfall of at least \$1,200,000.

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25. I seek the Court's intervention now to help me protect my property rights and prevent the waste of my Property's business potential.

26. I seek the Court's intervention not out of animus, jealousy, or ill-will towards Geraci or Berry. I simply want to vindicate my rights as the owner of my property.


27. It is my understanding that Geraci is pursuing a dedication to the City of a portion of the Property and that this dedication is supposed to occur any day now, per Geraci's CUP consultant Abby Schweitzer. Attached at Exhibit 11 is a true and correct copy of the declaration of Mr. Schweitzer. Additionally, it is my understanding that Geraci has not paid a \$6,000 invoice necessary to the dedication. Attached at Exhibit 12 is a true and correct copy of the most recent invoice of the City in connection to the dedication. Although these matters affect the Property, I am not notified by Mr. Geraci or the City of these matters.

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 5 day of December 2017 in San Diego, California.

  
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DARRYL COTTON

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