Gmail Jake Austin <

Geraci v. Cotton matter

Michael Weinstein <MWeinstein@ferrisbritton.com> Mon, Jun 4, 2018 at 8:34 AM
To: Jake Austin <jpa@jacobaustinesq.com>
Cc: Scott Toothacre <SToothacre@ferrisbritton.com>

Dear Mr. Austin,

Please accept my confirmation that you have fulfilled your meet and confer obligation with respect to your client's stated intention to file a second motion for judgment on the pleadings.

You have also stated your client's intention to file a motion seeking leave of court to amend Mr. Cotton's Cross-Complaint to add, *inter alia*, a cause of action for conspiracy and additional defendants.

My client will oppose both motions. My position is that your entire analysis is flawed. I will address whatever arguments you make in detail in my opposition briefs after you file the respective motions. For now, I will address just a few points.

You continue to insist that Mr. Geraci brought forth a meritless lawsuit and that Mr. Geraci's declaration filed in opposition to Mr. Cotton's motion to expunge the *lis pendens* strengthens that position. We disagree. Mr. Geraci's declaration supports the claim regarding the written agreement that was reached on November 2, 2016. Those issues will be decided at trial.

You state that the parol evidence rule (PER) allows the admission of his written confirmation and likewise bars as a matter of law his allegation that he called Mr. Cotton the next day and they ***orally agreed*** that Mr. Cotton was not entitled to a 10% equity position. Again, we disagree and contend that you are misapplying the parol evidence rule. First, our view is that the statute of frauds bars the latter email because it is parol evidence that is being offered to ***explicitly contradict*** the terms of the written agreement entered into on November 2. Second, Mr. Geraci does not contend that his call to Mr. Cotton on November 3, 2016, resulted in an oral agreement between them that Mr. Cotton was not entitled to a 10% equity position. Rather, Mr. Geraci's position is that there was ***never*** an oral agreement between them that Mr. Cotton would receive a 10% equity position. Even assuming for the sake of argument that the November 2 email is not barred by the parol evidence rule and admissible, the telephone call the next day is parol evidence that Mr. Geraci never agreed to a 10% equity position and, therefore, it is ***consistent*** with the November 2 written agreement and not barred by the statute of frauds.

A motion for judgment on the pleadings is like a demurrer in that the Court looks to the four corners of the pleading in the Complaint. California is a notice pleading jurisdiction. Mr. Geraci's Complaint sufficiently alleges all elements of the various causes of action alleged therein. Mr. Geraci's declaration filed in opposition to Mr. Cotton's motion to expunge the lis pendens does nothing to alter that analysis. In addition, even if Mr. Cotton brought a motion for summary judgment/summary adjudication, which he has not done, the declaration would be evidence creating a material factual dispute that would defeat such a motion. Your client's intended motion for judgment on the pleadings is frivolous and will be denied for the same reasons that it was denied the first time it was filed.
As for the motion for leave of court to amend the Second Amended Cross-Complaint to add a cause of action for conspiracy and additional defendants is simply a further transparent attempt to delay the trial in this action. By bringing in new defendants the trial will have to be continued to give them the opportunity to defend. That would substantially prejudice Mr. Geraci. Quite frankly, I do not see how such delay would be in Mr. Cotton's best interest either. The court should not allow that to happen.

I look forward to receiving service of your client's moving papers for each motion.

Respectfully,

Michael R. Weinstein
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From: jacobaustinesq@gmail.com <jacobaustinesq@gmail.com> **On Behalf Of** Jake Austin
Sent: Friday, June 01, 2018 4:42 PM
To: Michael Weinstein <MWeinstein@ferrisbritton.com>

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(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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