

11.4
2 pages

Darryl Cotton <indagrodarryl@gmail.com>

Re: Case Update

1 message

Joe Hurtado <j.hurtado1@gmail.com>

Tue, Dec 5, 2017 at 8:46 PM

To: "David S. Demian" <ddemian@ftblaw.com>

Cc: Darryl Cotton <indagrodarryl@gmail.com>, "Rishi S. Bhatt" <rbhatt@ftblaw.com>, "Adam C. Witt" <awitt@ftblaw.com>

David, I am not completely clear on what you mean by "the termination of the deal." Does this help - at the November 2nd meeting, Darryl and Geraci came to terms and the agreement contained a condition precedent for closing, it being the issuance of the CUP.

In other words, Darryl and Geraci only anticipated one of two courses of action - the CUP would be granted, the condition precedent being met, Darryl would get the balance of the 800k and the 10%/10K a month. If the CUP was denied, Darryl keeps the \$50k non-refundable deposit and the parties part ways.

Does that help? They did not anticipate the deal terminating under any other scenario.

If not, let's discuss in the AM.

Thanks again.

On Tue, Dec 5, 2017 at 7:48 PM, David S. Demian <ddemian@ftblaw.com> wrote:

Thank you for the comments. The one issue I do want to discuss is the first – the others we can incorporate. The first issue is critical to deposition and other testimony. I am glad you pointed out this issue. Very very important to me we not lose Darryl's credibility on some **misunderstanding**. The language our brief includes now is:

"...Geraci to pursue the Cotton CUP on Cotton's behalf"

Joe's comment: Darryl was supposed to be the minority 10% owner in this joint venture. The language here makes it seem as if Geraci is acting solely as Darryl's agent in submitting the CUP and that Darryl would be the sole beneficiary of the CUP. Not sure if material, but thought I would raise in case it is worth clarifying.

My thoughts:

what was supposed to happen on termination of the deal as happened? It sounds like it was not discussed or agreed upon by the parties.

There would have been many options, including: (1) Geraci releases the permit back to Darryl and Darryl does not owe him any money for his costs in chasing the permit; (2) Geraci does not assign the permit to you and it is rejected by the City at the end as Geraci has no interest in the property, but you would have to reapply for your own permit as City says now; or (3) Geraci releases the permit to you and you pay him back the costs he spent on the permit; (4) there was no agreement so the court must decide what to do in that vacuum.

I suspect it wasn't discussed, let me know if I am wrong. So the declaration should be number 4. In the brief, I can argue for option 1, BUT I DO NOT WANT YOU TO DECLARE TO ANYTHING NOT EXACTLY WHAT WAS AGREED.

We can fix in the morning.

From: Joe Hurtado [mailto:j.hurtado1@gmail.com]
Sent: Tuesday, December 05, 2017 6:59 PM
To: Darryl Cotton <indagrodarryl@gmail.com>
Cc: David S. Demian <ddemian@ftblaw.com>; Rishi S. Bhatt <rbhatt@ftblaw.com>; Adam C. Witt <awitt@ftblaw.com>
Subject: Re: Case Update

David, please see attached for a few comments. Also -

Expedited Hearing. As discussed, please include a strong argument section and request for an expedited hearing in February. Most materialy, the fact that public hearings are expected in March per Geraci's own expert's declaration based on his ongoing communications with the City. Also, there is an incredibly limited amount of discovery case, which, if excluding CUP application materials that are not germane as to the issue of whether the November Agreement is the final agreement between the parties, represent less than 100 emails /documents. It can reasonably be expected that trial for this could be done in a day. Thus, there is no prejudice or due process concerns with an expedited hearing. If this is not resolved before the public hearings, then Darryl will continue to be prejudiced as he is suffering harm on a day to day basis now because of his inability to run his business with the specter of losing his commercial property from which he operates from.

Damages. Agree with your approach, no need to specify. If nothing else, per the terms of his own draft agreements and email, he is liable to Darryl for the 10K in income a month. The rest we can prove at trial.

All, thank you so much!

Best, Joe

Joe Hurtado