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Cross-Defendant REBECCA BERRY

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO, CENTRAL DIVISION

LARRY GERACI, an individual,

Plaintiff,

v.

DARRYL COTTON, an individual; and
DOES 1 through 10, inclusive,

Defendants.

DARRYL COTTON, an individual,

Cross-Complainant,

v.

LARRY GERACI, an individual, REBECCA
BERRY, an individual, and DOES 1
THROUGH 10, INCLUSIVE,

Cross-Defendants.

Case No. 37-2017-00010073-CU-BC-CTL

Judge: Hon. Joel R. Wohlfeil
Dept.: C-73

**DECLARATION OF LARRY GERACI IN
SUPPORT OF MOTION BY
PLAINTIFF/CROSS-DEFENDANT
LARRY GERACI FOR A PRELIMINARY
INJUNCTION OR OTHER ORDER TO
COMPEL ACCESS TO THE SUBJECT
PROPERTY FOR SOILS TESTING**

[IMAGED FILE]

Hearing Date: March 23, 2018
Hearing Time: 9:00 a.m.
Department: C-73

Complaint Filed: March 21, 2017
Trial Date: May 11, 2018

I, Larry Geraci, declare:

1. I am an adult individual residing in the County of San Diego, State of California, and I am one of the real parties in interest in this action. I have personal knowledge of the foregoing facts and if called as a witness could and would so testify.

2. In approximately September of 2015, I began lining up a team to assist in my efforts to develop and operate a Medical Marijuana Consumer Cooperative (MMCC) business (aka a medical

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1 marijuana dispensary) in San Diego County. At the time I had not yet identified a property for the
2 MMCC business. I hired a consultant, Neal Dutta of Apollo Realty, to help locate and identify
3 potential property sites for the business. I hired a design professional, Abhay Schweitzer of TECHNE.
4 I hired a public affairs and public relations consultant with experience in the industry, Jim Bartell of
5 Bartell & Associates. And I hired a land use attorney, Gina Austin of Austin Legal Group.

6 3. The search to identify potential locations for the business took some time as there are a
7 number of requirements that had to be met. For example: a) only four (4) MMCCs are allowed in a
8 City Council District; b) MMCCs are not allowed within 1,000 feet of public parks, churches, child
9 care centers, playgrounds, City libraries, minor-oriented facilities, other MMCCs, residential facilities,
10 or schools; c) MMCCs are not allowed within 100 feet of a residential zone; and d) the zoning had to be
11 proper as MMCC's are allowed only in certain zones. In approximately June 2016, Neal Dutta
12 identified to me real property owned by Darryl Cotton located at 6176 Federal Blvd., City of San
13 Diego, San Diego County, California, Assessor's Parcel No. 543-020-02-00 (the "Property") as a
14 potential site for acquisition and development for use and operation as a MMCC. And in
15 approximately mid-July 2016 Mr. Dutta put me in contact with Mr. Cotton and I expressed my interest
16 to Mr. Cotton in acquiring his Property if our further investigation satisfied us that the Property might
17 meet the requirements for an MMCC site.

18 4. For several months after the initial contact, my consultant, Jim Bartell, investigated
19 issues related to whether the location might meet the requirements for an MMCC site, including zoning
20 issues and issues related to meeting the required distances from certain types of facilities and residential
21 areas. For example, the City had plans for street widening in the area that potentially impacted the
22 ability of the Property to meet the required distances. Although none of these issues were resolved to a
23 certainty, I determined that I was still interested in acquiring the Property.

24 5. Thereafter I approached Mr. Cotton to discuss the possibility of my purchase of the
25 Property. Specifically, I was interested in purchasing the Property from Mr. Cotton contingent upon
26 my obtaining approval of a Conditional Use Permit ("CUP") for use as a MMCC. As the purchaser, I
27 was willing to bear the substantial expense of applying for and obtaining CUP approval and understood
28 that if CUP approval was not obtained the purchase would not be consummated and I would lose my

1 investment. And I was willing to pay a price for the Property based on what I anticipated it might be
2 worth if such approval was obtained. Mr. Cotton told me that he was willing to make the purchase and
3 sale conditional upon CUP approval because if the condition was satisfied he would be receiving a
4 much higher price than the Property would be worth in the absence of its approval for use as a medical
5 marijuana dispensary. We agreed on a down payment of \$10,000.00 and a purchase price of
6 \$800,000.00. On November 2, 2016, Mr. Cotton and I executed a written purchase and sale agreement
7 for my purchase of the Property from him on the terms and conditions stated in the agreement
8 (hereafter the "Nov 2nd Written Agreement"). A true and correct copy of the Nov 2nd Written
9 Agreement, which was executed before a notary, is attached as Exhibit 2 to the Notice of Lodgment by
10 Plaintiff/Cross-Defendant, Larry Geraci, in Support of Motion for a Preliminary Injunction or Other
11 Order to Compel Access to the Subject Property for Soils Testing (hereinafter the "Geraci NOL"). I
12 tendered the \$10,000 deposit to Mr. Cotton the receipt of which he acknowledged in the Nov 2nd
13 Written Agreement.

14 6. Prior entering into the Nov 2nd Written Agreement, Darryl Cotton and I discussed the
15 CUP application and approval process and that his consent as property owner would be needed to
16 submit with the CUP application. I discussed with him that my assistant Rebecca Berry would act as
17 my authorized agent to apply for the CUP on my behalf. Mr. Cotton agreed to Ms. Berry serving as the
18 Applicant on my behalf to attempt to obtain approval of a CUP for the operation of a MMCC or
19 marijuana dispensary on the Property. On October 31, 2016, as owner of the Property, Mr. Cotton
20 signed Form DS-318, the Ownership Disclosure Statement for a Conditional Use Permit, by which he
21 acknowledged that an application for a permit (CUP) would be filed with the City of San Diego on the
22 subject Property with the intent to record an encumbrance against the property. The Ownership
23 Disclosure Statement was also signed by my authorized agent and employee, Rebecca Berry, who was
24 serving as the CUP applicant on my behalf. A true and correct copy of the Ownership Disclosure
25 Statement signed on October 31, 2016, by Darryl Cotton and Rebecca Berry is attached as Exhibit 1 to
26 the Geraci NOL. Mr. Cotton provided that consent and authorization as we had discussed that approval
27 of a CUP would be a condition of the purchase and sale of the Property.

1 7. As noted above, I had already put together my team for the MMCC project. My design
2 professional, Abhay Schweitzer, and his firm, TECHNE, is and has been responsible for the design of
3 the Project and the CUP application and approval process. Mr. Schweitzer was responsible for
4 coordinating the efforts of the team to put together the CUP Application for the MMCC at the Property
5 and Mr. Schweitzer has been and still is the principal person involved in dealings with the City of San
6 Diego in connection with the CUP Application approval process. Mr. Schweitzer's declaration
7 (Declaration of Abhay Schweitzer in Support of Motion by Plaintiff/Cross-Defendant, Larry Geraci, for
8 a Preliminary Injunction or Other Order to Compel Access to the Subject Premises for Soils Testing
9 dated February 27, 2018) has been submitted concurrently herewith and describes in greater detail the
10 CUP Application submitted to the City of San Diego, which submission included the Ownership
11 Disclosure Statement signed by Darryl Cotton and Rebecca Berry.

12 8. After we signed the Nov 2nd Written Agreement for my purchase of the Property, Mr.
13 Cotton immediately began attempts to renegotiate our deal for the purchase of the Property. To be
14 clear, prior to signing the Nov 2nd Written Agreement, Mr. Cotton expressed a desire to participate in
15 different ways in the *operation* of the future MMCC business at the Property. Mr. Cotton is a
16 hydroponic grower and purported to have useful experience he could provide regarding the operation of
17 such a business. Prior to signing the Nov 2nd Written Agreement we had preliminary discussions
18 related to his desire to be involved in the *operation* of the business (not related to the purchase of the
19 Property) and we discussed the *possibility* of compensation to him (e.g., a percentage of the net profits)
20 in exchange for his providing various services to the business—but we never reached an
21 agreement as to those matters related to the operation of my future MMCC business. Those discussions
22 were not related to the purchase and sale of the Property, which we never agreed to amend or modify.
23 After the November 2nd Written Agreement was signed, we had further discussions about this but
24 those discussions broke down because Mr. Cotton made what I believe were demands for excessive
25 compensation and even ownership of the business. I did not want to pay what he demanded for the
26 services he might offer. He kept demanding more and more and I decided that I did not want him to
27 have any involvement in the future business to be operated at the Property, let alone as a partner or
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1 owner. I told him I did not want him as a partner in my business and we never reached any agreement
2 on his involvement in the marijuana dispensary business to be operated at the Property.

3 9. Mr. Cotton was extremely unhappy with my refusal to accede to his demands and the
4 failure to reach agreement regarding his possible involvement with the operation of the business to be
5 operated at the Property and my refusal to modify or amend the terms and conditions we agreed to in
6 the Nov 2nd Written Agreement regarding my purchase from him of the Property. Mr. Cotton made
7 clear that he had no intention of living up to and performing his obligations under the Agreement and
8 affirmatively threatened to take action to halt the CUP application process.

9 10. Mr. Cotton thereafter made good on his threats. On the morning of March 21, 2017, Mr.
10 Cotton had a conversation with Firouzeh Tirandazi at the City of San Diego, who was in charge of
11 processing the CUP Application, regarding Mr. Cotton's interest in withdrawing the CUP Application.
12 That discussion is confirmed in an 8:54 a.m. e-mail from Ms. Tirandazi to Mr. Cotton with a cc to
13 Rebecca Berry. A true and correct copy of that March 21, 2017, at 8:54 a.m. e-mail is attached as
14 Exhibit 3 to the Geraci NOL.

15 11. That same day, March 21, 2017, at 3:18 p.m. Mr. Cotton emailed me, reinforcing that he
16 would not honor the Nov 2nd Written Agreement. In his email he stated that I had no interest in his
17 property and that "I will be entering into an agreement with a third party to sell my property and they
18 will be taking on the potential costs associated with any litigation arising from this failed agreement
19 with you. A true and correct copy of that March 21, 2017, at 3:18 p.m. e-mail is attached as Exhibit 4
20 to the NOL.

21 12. Four minutes later that same day, at 3:25 p.m., Mr. Cotton e-mailed Ms. Tirandazi at the
22 City, with a cc to both me and Rebecca Berry, stating falsely to Ms. Tirandazi: "... the potential buyer,
23 Larry Gerasi [sic] (cc'ed herein), and I have failed to finalize the purchase of my property. As of today,
24 there are no third-parties that have any direct, indirect or contingent interests in my property. The
25 application currently pending on my property should be denied because the applicants have no legal
26 access to my property. A true and correct copy of that March 21, 2017, at 3:25 p.m. e-mail is attached
27 as Exhibit 5 to the NOL. Mr. Cotton's email was false as we had a signed agreement for the purchase
28 and sale of the Property – the Nov 2nd Written Agreement.

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1 13. Fortunately, the City determined Mr. Cotton did not have the authority to withdraw the
2 CUP application without the consent of the Applicant (Rebecca Berry, my authorized agent).

3 14. Due to Mr. Cotton's clearly stated intention to not perform his obligations under the
4 written Agreement and in light of his affirmative steps taken to attempt to withdraw the CUP
5 application, I went forward on March 21, 2017, with the filing of my lawsuit against Mr. Cotton to
6 enforce the Nov 2nd Written Agreement.

7 15. Since the March 21, 2017 filing of my lawsuit, we have continued to diligently pursue
8 our CUP Application and approval of the CUP. Despite Mr. Cotton's attempts to withdraw the CUP
9 application, we have completed the initial phase of the CUP process whereby the City deemed the CUP
10 application complete (although not yet approved) and determined it was located in an area with proper
11 zoning. We have not yet reached the stage of a formal City hearing and there has been no final
12 determination to approve the CUP. The current status of the CUP Application is set forth in the
13 Declaration of Abhay Schweitzer.

14 16. Mr. Cotton also has made good on the statement in his March 21, 2017, at 3:18 p.m.
15 email (referenced in paragraph 11 above - see Exhibit 4 to NOL) stating that he would be "entering
16 into an agreement with a third party to sell my property and they will be taking on the potential costs
17 associated with any litigation arising from this failed agreement with you. We have learned through
18 documents produced in my lawsuit that well prior to March 21, 2017, Mr. Cotton had been negotiating
19 with other potential buyers of the Property to see if he could get a better deal than he
20 had agreed to with me. As of March 21, 2017, Cotton had already entered into a real estate purchase
21 and sale agreement to sell the Property to another person, Richard John Martin II.

22 17. During the last approximately 16 months we have diligently pursued the processing of
23 the CUP Application at great effort and expense. I have incurred substantial expenses to date in excess
24 of \$150,000.00 in pursuing the MMCC project and the related CUP application.

25 18. I have been advised by Abhay Schweitzer that another issue has recently arisen in
26 connection with the processing of the CUP Application and our attempts to obtain approval of
27 and issuance of the CUP, namely, we have been required by the City to perform soils testing at
28 the Subject Property. To conduct the soils testing we are required to file a permit with the San

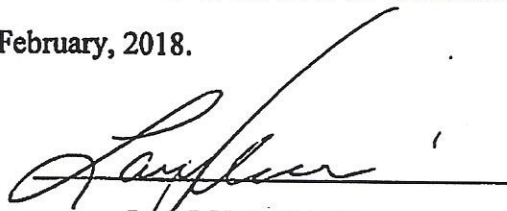
1 **Diego County Department of Environmental Health because the exploratory borings exceed 20**
2 **feet below ground surface. To obtain the permit we must include a signed Property Owner**
3 **Consent form evidencing consent by the property owner, Darryl Cotton.** In late January I was
4 advised by my counsel that Darryl Cotton had agreed to allow access to the property to conduct the
5 soils testing analysis.

6 19. As the required soils testing analysis needs to be performed by an engineering company,
7 Abhay Schweitzer has, on behalf of myself and my agent, Rebecca Berry, contracted with SCST, Inc. a
8 professional engineering firm headquartered in San Diego to conduct the soils testing analysis. Mr.
9 Schweitzer has advised me that SCST is comprised of over 130 professionals who provide geotechnical
10 engineering, environmental science & Engineering, special inspection & materials testing, and facilities
11 consulting service, and that SCST is comprised of skilled geotechnical engineers, civil and
12 environmental engineers, environmental scientists, engineering geologists, multi-credential inspectors
13 and technicians.

14 20. Abhay Schweitzer has further advised me that the soils testing analysis to be performed
15 by SCST necessitates drilling down more than 20 feet below the surface and that, whenever exploratory
16 borings exceed 20 feet below ground surface, a permit is required to be filed with the San Diego
17 County Department of Environmental Health which in turn requires the property owner to sign a
18 Property Owner Consent form. I am informed by Mr. Weinstein, counsel for Mr. Geraci and Ms.
19 Berry, that Mr. Weinstein provided the Property Owner Consent form to Mr. Cotton to sign but Mr.
20 Cotton has not signed and returned the form. **This action by the property owner, Mr. Cotton, is**
21 **directly interfering with our attempts to obtain the necessary Conditional Use Permit by**
22 **preventing the completion of the soils testing which is necessary to satisfy this requirement being**
23 **imposed by the City to obtain the Conditional Use Permit.**

24 21. SCST cannot conduct the required soils testing analysis without the consent of Darryl
25 Cotton, the property owner, on the Property Owner Consent form, and without access to the Property to
26 conduct the soils testing. I understand from Mr. Schweitzer that once Mr. Cotton has signed that form
27 and SCST is allowed access to the Property, SCST will conduct the required soils testing and submit
28 the results to the City.

1 I declare under penalty of perjury under the laws of the State of California that the foregoing is
2 true and correct. Executed this 2 day of February, 2018.

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6 LARRY GERACI
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