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Attorneys for Plaintiff/Cross-Defendant LARRY GERACI and 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

DECLARATION OF LARRY GERACI IN OPPOSITION TO DEFENDANT DARRYL COTTON'S MOTION FOR SUMMARY JUDGMENT OR, ALTERNATIVELY, SUMMARY ADJUDICATION

[IMAGED FILE]

DATE: **May 23, 2019**
TIME: **9:00 a.m.**
DEPT: **C-73**

Filed: March 21, 2017
Trial Date: June 28, 2019

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

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

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

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

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

investment. I was willing to pay a price for the Property based on what I anticipated it might be worth if I obtained CUP approval. Mr. Cotton told me that he was willing to make the purchase and sale conditional upon CUP approval because if the condition was satisfied he would be receiving a much higher price than the Property would be worth in the absence of its approval for use as a medical marijuana dispensary. We agreed on a down payment of $10,000.00 and a purchase price of $800,000.00. On November 2, 2016, Mr. Cotton and I executed a written purchase and sale agreement for my purchase of the Property from him on the terms and conditions stated in the agreement (hereafter the "November Agreement"). A true and correct copy of the November Agreement, which was executed before a notary, is attached as Exhibit 1 to Defendant and Cross-Defendant, Larry Geraci's Notice of Lodgment of Exhibits in Opposition to Darryl Cotton's Motion for Summary Judgment and/or Summary Adjudication of Issues (hereafter the "Geraci NOL"). I tendered the $10,000 deposit to Mr. Cotton as acknowledged in the November Agreement.

6. Darryl Cotton and I did meet at my office on November 2, 2016, to negotiate the final terms of the sale of the Property and we reached an agreement on the final terms of the sale of the Property. That agreement was not oral. We put our agreement in writing in a simple and straightforward written agreement that we both signed before a notary. (See paragraph 5, *supra*, November Agreement, Exhibit 1 to Geraci NOL.)

7. I never agreed to pay Mr. Cotton a $50,000.00 non-refundable deposit. At the meeting, Mr. Cotton stated he would like a $50,000 non-refundable deposit. I said "no." Mr. Cotton then asked for a $10,000 non-refundable deposit and I said "ok" and that amount was put into the written agreement. After he signed the written agreement, I paid him the $10,000 cash as we had agreed. If I had agreed to pay Mr. Cotton a $50,000 deposit, it would have been a very simple thing to change "$10,000" to $50,000" in the agreement before we signed it.

8. I never agreed to pay Mr. Cotton a 10% equity stake in the marijuana dispensary. I never agreed to pay Mr. Cotton a minimum monthly equity distribution of $10,000. If I had agreed to pay Mr. Cotton a 10% equity stake in the marijuana dispensary and a minimum monthly equity distribution of $10,000, then it would have also been a simple thing to add a sentence or two to the agreement to say so.

9. What I did agree to was to pay Mr. Cotton a total purchase price of $800,000, with the balance of $790,000 due upon approval of a CUP. If the CUP was not approved, then he would keep the Property and the $10,000. So that is how the agreement was written.

10. Mr. Cotton refers to the written agreement (i.e., the November Agreement) as a "Receipt." Calling the Agreement a "Receipt" was never discussed during negotiations or at any time before signing the November Agreement. There would have been no need for a written agreement before a notary simply to document my payment to him of $10,000. In addition, had the intention been merely to document a written "Receipt" for the $10,000 payment, then we could have identified on the document that it was a "Receipt" and there would have been no need to put in all the material terms and conditions of the deal. Instead, the document is expressly called an "Agreement" because that is what we intended.

11. I did not promise to have attorney Gina Austin reduce the oral agreement to written agreements for execution. What we did discuss was that Mr. Cotton wanted to categorize or allocate the $800,000. At his request, I agreed to pay him for the property into two parts: $400,000 as payment for the property and $400,000 as payment for the relocation of his business. As this would benefit him for tax purposes but would not affect the total purchase price or any other terms and conditions of the purchase, I stated a willingness to later amend the agreement in that way.

12. Prior entering into the November Agreement, Darryl Cotton and I discussed the CUP application and approval process and that his consent as property owner would be needed to submit with the CUP application. I discussed with him that my assistant Rebecca Berry would act as my authorized agent to apply for the CUP on my behalf. Mr. Cotton agreed to Ms. Berry serving as the Applicant on my behalf to attempt to obtain approval of a CUP for the operation of a MMCC or marijuana dispensary on the Property. On October 31, 2016, as owner of the Property, Mr. Cotton signed Form DS-318, the Ownership Disclosure Statement for a Conditional Use Permit, by which he acknowledged that an application for a permit (CUP) would be filed with the City of San Diego on the subject Property with the intent to record an encumbrance against the property. The Ownership Disclosure Statement was also signed by my authorized agent and employee, Rebecca Berry, who was serving as the CUP applicant on my behalf. A true and correct copy of the Ownership Disclosure

Statement signed on October 31, 2016, by Darryl Cotton and Rebecca Berry is attached as Exhibit 2 to the Geraci NOL. Mr. Cotton provided that consent and authorization as we had discussed that approval of a CUP would be a condition of the purchase and sale of the Property.

13. After we signed the November Agreement for my purchase of the Property, Mr. Cotton immediately began attempts to renegotiate our deal for the purchase of the Property. This literally occurred the evening of the day he signed the November Agreement.

On November 2, 2016, at approximately 6:55 p.m., Mr. Cotton sent me an email, which stated:

> Hi Larry,
>
> Thank you for meeting today. Since we executed the Purchase Agreement in your office for the sale price of the property I just noticed the 10% equity position in the dispensary was not language added into that document. I just want to make sure that we're not missing that language in any final agreement as it is a factored element in my decision to sell the property. I'll be fine if you simply acknowledge that here in a reply.

I receive my emails on my phone. It was after 9:00 p.m. in the evening that I glanced at my phone and read the first sentence, "Thank you for meeting with me today." And I responded from my phone "No no problem at all." I was responding to his thanking me for the meeting. A true and correct copy of Mr. Cotton's November 2, 2016, email and my response later than evening is attached as Exhibit 3 to the Geraci NOL.

14. The next day, November 3, 2016, I read the entire email and I telephoned Mr. Cotton because the total purchase price I agreed to pay for the subject property was $800,000 and I had never agreed to provide him a 10% equity position in the dispensary as part of my purchase of the property. I spoke with Mr. Cotton by telephone at approximately 12:40 p.m. for approximately 3-minutes. A true and correct copy of the Call Detail from my firm's telephone provider showing those two telephone calls is attached as Exhibit 4 to the Geraci NOL. During that telephone call I told Mr. Cotton that a 10% equity position in the dispensary was not part of our agreement as I had never agreed to pay him any other amounts above the $800,000 purchase price for the property. Mr. Cotton's response was to say something to the effect of "well, you don't get what you don't ask for." He was not upset and he commented further to the effect that things are "looking pretty good—we all should make some money here." And that was the end of the discussion.

15. To be clear, prior to signing the November Agreement, Mr. Cotton expressed a desire to participate in different ways in the *operation* of the future MMCC business at the Property. Mr. Cotton is a hydroponic grower and purported to have useful experience he could provide regarding the operation of such a business. Prior to signing the November Agreement we had preliminary discussions related to his desire to be involved in the *operation* of the business (not related to the purchase of the Property) and we discussed the *possibility* of compensation to him (e.g., a percentage of the net profits) in exchange for his providing various services to the business—but we never reached an agreement as to those matters related to the operation of my future MMCC business. Those discussions were not related to the purchase and sale of the Property, which we never agreed to amend or modify.

16. Beginning in or about mid-February 2017, and after the zoning issues had been resolved, Mr. Cotton began making increasing demands for compensation in connection with the sale of the property. We were several months into the CUP application process which could potentially take many more months to successfully complete (if it could be successfully completed and approval obtained) and I had already committed substantial resources to the project. I was very concerned that Mr. Cotton was going to interfere with the completion of that process to my detriment now that the zoning issues were resolved. I tried my best to discuss and work out with him some further compensation arrangement that was reasonable and avoid the risk he might try to "torpedo" the project and find another buyer. For example, on several successive occasions I had my attorney draft written agreements that contained terms that I believed I could live with and hoped would be sufficient to satisfy his demands for additional compensation, but Mr. Cotton would reject them as not satisfactory. Mr. Cotton continued to insist on, among other things, a 10% equity position, to which I was not willing to agree, as well as on minimum monthly distributions in amounts that I thought were unreasonable and to which I was unwilling to agree. Despite our back and forth communications during the period of approximately mid-February 2017 through approximately mid-March 2017, we were not able to re-negotiate terms for the purchase of the property to which we were both willing to agree. The November Agreement was never amended or modified. Mr. Cotton emailed me that I was not living up to my agreement and I responded to him that he kept trying to change the deal. As a result, a re-negotiated written agreement regarding the purchase and sale of the property was never

signed by Mr. Cotton or me after we signed and agreed to the terms and conditions in the November Agreement.

17. Ultimately, Mr. Cotton was extremely unhappy with my refusal to accede to his demands and the failure to reach agreement regarding his possible involvement with the *operation* of the business to be operated at the Property and my refusal to modify or amend the terms and conditions we agreed to in the November Agreement regarding my purchase from him of the Property. Mr. Cotton made clear that he had no intention of living up to and performing his obligations under the Agreement and affirmatively threatened to take action to halt the CUP application process.

18. Mr. Cotton thereafter made good on his threats. On the morning of March 21, 2017, Mr. Cotton had a conversation with Firouzeh Tirandazi at the City of San Diego, who was in charge of processing the CUP Application, regarding Mr. Cotton's interest in withdrawing the CUP Application. That discussion is confirmed in an 8:54 a.m. e-mail from Ms. Tirandazi to Mr. Cotton with a cc to Rebecca Berry. A true and correct copy of that March 21, 2017, at 8:54 a.m. e-mail is attached as Exhibit 5 to the Geraci NOL.

19. That same day, March 21, 2017, at 3:18 p.m. Mr. Cotton emailed me, reinforcing that he would not honor the November Agreement. In his email he stated that I had no interest in his property and that "I will be entering into an agreement with a third party to sell my property and they will be taking on the potential costs associated with any litigation arising from this failed agreement with you. A true and correct copy of that March 21, 2017, at 3:18 p.m. e-mail is attached as Exhibit 6 to the Geraci NOL.

20. Four minutes later that same day, at 3:25 p.m., Mr. Cotton e-mailed Ms. Tirandazi at the City, with a cc to both me and Rebecca Berry, stating falsely to Ms. Tirandazi: "... the potential buyer, Larry Gerasi [sic] (cc'ed herein), and I have failed to finalize the purchase of my property. As of today, there are no third-parties that have any direct, indirect or contingent interests in my property. The application currently pending on my property should be denied because the applicants have no legal access to my property. A true and correct copy of that March 21, 2017, at 3:25 p.m. e-mail is attached as Exhibit 7 to the Geraci NOL. Mr. Cotton's email was false as we already had a signed agreement for the purchase and sale of the Property – the November Agreement.

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

22. Due to Mr. Cotton's clearly stated intention to not perform his obligations under the November Agreement and in light of his affirmative steps taken to attempt to withdraw the CUP application, I went forward on March 21, 2017, with the filing of my lawsuit against Mr. Cotton to enforce the November Agreement.

23. Since the March 21, 2017 filing of my lawsuit, we continued to diligently pursue our CUP Application and approval of the CUP. During the application process Mr. Cotton continued to make efforts to stall and delay approval of the CUP application. For example, he refused to allow my team to post on the property that an application had been applied for which was a requirement under the application process. He also refused to allow access to the property for a required soils analysis required by the City. My attorneys had to file a motion with the Court to obtain a Court Order permitting the soils testing analysis. Thereafter, Mr. Cotton refused to sign the consent form allowing the soils test analysis. My attorneys then had to return to court to have an elisor appointed to sign the consent form. This all resulted in a three to four month delay in the processing of our application.

24. We have learned through documents produced in my lawsuit that well prior to March 21, 2017, Mr. Cotton had been negotiating with other potential buyers of the Property to see if he could get a better deal than he had agreed to with me. As of March 21, 2017, Cotton had already entered into a real estate purchase and sale agreement to sell the Property to another person, Richard John Martin II.

25. Although he entered into this alternate purchase agreement with Mr. Martin as early as March 21, 2017, to our knowledge, neither Mr. Cotton nor Mr. Martin or other agent has submitted a separate CUP Application to the City for processing. During that time, we continued to process our CUP Application at great effort and expense.

26. I have incurred substantial expenses in excess of $300,000 in pursuing the MMCC project and the related CUP application.

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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 8 day of May, 2019, at San Diego, California.

LARRY GERACI