

COURT OF APPEAL, STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION ONE

**CERTIFIED  
TRANSCRIPT**

UL CHULA TWO LLC,	)	
	)	FROM SAN DIEGO COUNTY
Plaintiff and Appellant,	)	HON. RICHARD E.L. STRAUSS,
	)	JUDGE
vs.	)	
	)	COURT OF APPEAL NO.:
CITY OF CHULA VISTA et al.	)	D079215
	)	
Defendants and Respondents;	)	SUPERIOR COURT CASE
	)	NO.:
MARCH AND ASH CHULA VISTA,	)	37-2020-00041554-CU-MC-
INC., et al.,	)	CTL
	)	
Real Parties in Interest	)	
And Respondents.	)	

REPORTER'S APPEAL TRANSCRIPT

MAY 21, 2021

Volume 3 of 3

Pages 30 to 44

STEPHANIE Y. BRYANT, CSR NO. 13160  
OFFICIAL REPORTER PRO TEMPORE  
SAN DIEGO SUPERIOR COURT

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN DIEGO - CENTRAL DIVISION  
DEPARTMENT C-75 HONORABLE RICHARD E.L. STRAUSS

UL CHULA TWO LLC,	)	
	)	
Petitioner/Plaintiff,	)	
	)	Case No.:
vs.	)	37-2020-00041554-CU-
	)	WM-CTL
CITY OF CHULA VISTA, a	)	
California public entity;	)	
CHULA VISTA CITY MANAGER, and	)	
DOES 1-20,	)	MOTION HEARING
	)	
Respondents/Defendants,	)	HEARING ON PETITION
	)	
MARCH AND ASH CHULA VISTA,	)	
INC.; TD ENTERPRISE LLC; and	)	
DOES 23 through 50,	)	
	)	
Real Parties In Interest.)	)	

REPORTER'S TRANSCRIPT - MS TEAMS

SAN DIEGO, CALIFORNIA

MAY 21, 2021

STEPHANIE Y. BRYANT, RPR, CSR NO. 13160  
PRO TEMPORE REPORTER  
SUPERIOR COURT OF SAN DIEGO

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1 SAN DIEGO, CALIFORNIA; FRIDAY, MAY 21, 2021

2 10:02 A.M.

3 -o0o-.

4 THE CLERK: Next items, Items 31 through 32,  
5 UL Chula Two versus City of Chula Vista.

6 MR. BRUCKER: Good morning, your Honor.  
7 Gary Brucker for the petitioner.

8 THE COURT: Good morning.

9 MS. SHAMOS: Good morning, your Honor.  
10 Alena Shamos for City of Chula Vista and the  
11 Chula Vista City Manager.

12 THE COURT: Good morning.

13 MS. RILEY: Good morning, your Honor.  
14 Heather Riley on behalf of the real party in  
15 interest March and Ash.

16 THE COURT: Good morning.

17 Is that everyone?

18 MR. TENCER: Good morning, your Honor.  
19 Philip Tencer on behalf of the real party in  
20 interest TD Enterprise.

21 THE COURT: Good morning.

22 THE CLERK: Your Honor, I have notated that we  
23 have a court reporter on this matter. I did not receive  
24 the appointment form from the reporter. Oh, my  
25 apologies. I do have it.

26 Court reporter, are you present?

27 THE REPORTER: I am. Thank you.

28 THE CLERK: Thank you.

1           THE COURT: All right. Any comments on this  
2 tentative ruling?

3           MR. BRUCKER: Yes, your Honor.

4           Can you hear me okay?

5           MS. SHAMOS: Gary, may I, or do you want to go  
6 ahead?

7           MR. BRUCKER: I'd like to go ahead, if you  
8 don't mind.

9           MS. SHAMOS: That's fine.

10          MR. BRUCKER: Thank you.

11          All right, your Honor. Can you hear me okay?

12          THE COURT: Go ahead.

13          MR. BRUCKER: Okay. First, I want to thank you  
14 for the tentative. I thought it was very thorough, and  
15 I'm not going to spend a lot of time going over the  
16 majority of it. I just want to address one point within  
17 the tentative where I believe the tentative ruling is  
18 erred, and then cover some procedural issues in the  
19 event that the tentative is confirmed.

20                On the merits, we disagree that a zoning  
21 ordinance that is unrelated to cannabis can be deemed  
22 related to commercial cannabis activity or be deemed  
23 unlawful commercial cannabis activity. Now, the  
24 tentative states petitioner would like to apply a future  
25 standard to past conduct which could lead to absurd  
26 results. We respectfully disagree.

27                There is no future standard. There is only one  
28 standard, and it's the standard adopted by the City in

1 the municipal code. That standard could have been  
2 written differently. It could have been far broader.  
3 It could have disqualified applicants for any reason,  
4 but it didn't. It was confined to commercial cannabis  
5 activity, and that didn't exist in the state of  
6 California before 2016.

7 Second, if the standard in the tentative ruling  
8 is the law, that would lead to unintended consequences.  
9 And let me explain by pointing to Chula Vista Municipal  
10 Code Section 5.19.190(B), which is located in the  
11 administrative record at Page 421. And it says it shall  
12 be the responsibility of the city licensees, owners,  
13 officers, and managers of a commercial cannabis business  
14 to ensure that a commercial cannabis business is at all  
15 times operating in a manner compliant with all  
16 applicable federal, state, and local laws and  
17 regulations.

18 The last time I checked, cannabis is still  
19 illegal under federal law, and any licensee would  
20 violate the code the day they opened their doors. That  
21 cannot have been the City's intent in enacting the  
22 rules. Similarly here, it cannot have been the City's  
23 intent to disqualify applicants that engaged in unlawful  
24 commercial cannabis activity in the city in any other  
25 jurisdiction when "any other jurisdiction" means federal  
26 law.

27 And I understand the tentative ruling cites  
28 that the term "jurisdiction" is defined in the code, but

1 it is not. There is no definition for "jurisdiction."  
2 The City's opposition brief confirms that the term  
3 "jurisdiction" is not admitted, and when the municipal  
4 code uses the term "local jurisdiction," it means local  
5 jurisdiction. You can see examples of that in the  
6 administrative code -- administrative record at Page 402  
7 and 425.

8 Here we're dealing with any other jurisdiction.  
9 That means precisely what it says. We can't ignore  
10 federal jurisdiction. And as the code makes clear,  
11 licenses must comply with federal jurisdiction. So  
12 keeping this in mind, the reading advanced by the City  
13 and adopted by the Court in the tentative ruling would  
14 disqualify every applicant, because every applicant has  
15 to have experience and you can only get experience if  
16 you engage in a federally unlawful activity.

17 So it can't be that any unlawful activity  
18 qualifies. And that's why the City enacted the  
19 ordinance the way it did. The City said "commercial  
20 cannabis activity," to take it out of the broader, more  
21 general legalities.

22 Now, I understand the Court fears that this  
23 could lead to poor results where perhaps a bad applicant  
24 would not be able to be disqualified, and that's just  
25 not the case. There are specific disqualifying factors  
26 in the Chula Vista Municipal Code. You can bounce an  
27 applicant for a felony conviction, a crime of moral  
28 turpitude, offenses involving a weapon, and other

1 reasons. Lots of reasons to get rid of an applicant  
2 that is not desirable.

3 But when we're dealing with an industry that is  
4 illegal everywhere in the country and the City wants  
5 experienced applicants that have never been engaged in  
6 unlawful activity, it just can't work. The only fair  
7 and reasonable reading of the code is to limit the  
8 illegality, limit the disqualifiers to those violations  
9 that were enacted in 2016 in California, in 2018 in the  
10 City of Chula Vista; otherwise, the result is you  
11 disqualify every single applicant and you have no code.

12 And just like the City couldn't have required  
13 applicants and licensees to follow federal law when  
14 federal law doesn't allow what they're licensed to do,  
15 they can't disqualify applicants that didn't engage in  
16 unlawful commercial cannabis activity.

17 And that is all I have on the merits, and I'll  
18 allow Ms. Shamos to respond before we talk about  
19 procedures.

20 THE COURT: All right. Ms. Shamos.

21 MS. SHAMOS: Your Honor, the City submits on  
22 the tentative. We agree with the standard that the  
23 Court applied. The jurisdiction permitting such  
24 commercial cannabis activity is defined under  
25 5.19.040(A)(1)(e)(i). It is clear with respect to local  
26 jurisdictions. The City of San Diego sanctioned  
27 Mr. Senn for prior illegal marijuana dispensary  
28 activity. It was very clear on the face of the notice



1 of violation. It was very clear on the face of the  
2 abatement complaint. The City acted well within its  
3 jurisdiction and within the substantial evidence  
4 standard, and, accordingly, we submit on the tentative.

5 And with respect to your Honor's question on  
6 the procedural issues, everything arises out of the same  
7 primary right, which is the writ-of-mandate action.

8 There should be no further proceedings. And, in fact,  
9 the stipulation the petitioner was willing to agree to  
10 stated that everything was going to be resolved at the  
11 merits hearing, and that is in accordance with the law  
12 being that injunctive relief is a remedy and declaratory  
13 relief is subsumed in an administrative mandamus.

14 Thank you, your Honor.

15 THE COURT: All right. To answer the first  
16 question, then, I am confirming the tentative ruling.

17 What else, sir, did you want to bring up,  
18 procedurally?

19 MR. BRUCKER: Thank you, your Honor.

20 Procedurally, one, as Ms. Shamos stated, we did  
21 submit a stipulation to have everything determined at  
22 once, but the stipulation was not signed by the Court.  
23 I think procedurally the proper thing for us to do is to  
24 dismiss the remaining claims that were not ruled upon by  
25 the Court to perfect our appeal.

26 And as my appellate lawyers, sitting next to  
27 me, are telling me, I have to remind the Court we did  
28 ask for a statement of decision in our opening brief.

1           And then, finally, we would ask that under  
2 CCP1094.5(g), the Court stay the -- or essentially  
3 continue the TRO and stay the issuing licensing until  
4 the time for our appeal has expired so it would allow us  
5 to bring an appeal and file a writ of supersedeas.

6           THE COURT: All right. Ms. Shamos, your  
7 comments about his further comments?

8           MS. SHAMOS: Your Honor, with respect to the  
9 statement of decision, it is my understanding that  
10 according to the code and the Rules of Court that this  
11 tentative ruling can become the statement of decision.

12           (Technical interference.)

13           MS. SHAMOS: I don't know why the echo is. I  
14 apologize.

15           But we object to the stay because this affects  
16 a number of parties. And as the Court articulated on  
17 the preliminary injunction motion, it was denied. So  
18 there is no basis for extending the stay.

19           THE COURT: Would you repeat all of that again?  
20 I was having a very difficult time hearing you.

21           MS. SHAMOS: Can you hear me now?

22           THE COURT: I can.

23           MS. SHAMOS: Okay. I apologize, your Honor, if  
24 it is a problem on my end.

25           We agree that a statement of decision was  
26 requested. And according to my understanding of the  
27 code and the Rules of Court, the tentative ruling can  
28 become that statement.

1           With respect to the stay, the Court denied the  
2 preliminary injunction. The stay should not be  
3 continued because it would prejudice other parties.

4           THE COURT: I did not hear your last point  
5 about the statement of decision. You said that --

6           MS. SHAMOS: Your Honor, I'm sorry.

7           THE COURT: You said that you agree that one  
8 was requested, and then I couldn't understand what --

9           MS. SHAMOS: I'm sorry.

10          THE COURT: Go ahead.

11          MS. SHAMOS: That this tentative ruling could  
12 become the statement of decision.

13          THE COURT: All right.

14          MS. SHAMOS: And then the other point was that  
15 we object to continuing the stay in that the preliminary  
16 injunction was denied, and it will prejudice other  
17 parties as the City's process is proceeding.

18          THE COURT: Counsel, is this tentative ruling  
19 descriptive enough to serve as the statement of decision  
20 that you have requested?

21          MR. BRUCKER: Your Honor, it is very thorough.  
22 You know, I do consult with my appellate lawyers, and  
23 they do tell me that, you know, there are portions of it  
24 that don't cite to the record, et cetera. If your Honor  
25 would like to make this the statement of decision, then  
26 I guess your Honor can make that the statement of  
27 decision. It's kind of outside of my area of expertise  
28 of what the statement of decision should or should not

1 have.

2 THE COURT: All right. Well, in that case, it  
3 is very thorough. If you're not objecting to that  
4 happening, that this be the statement of decision, then  
5 that's what I'll deem it as, and we'll go on from there.

6 MR. BRUCKER: No objection, your Honor. That  
7 is fine.

8 And then as to the points on the stay, you  
9 know, our motion for preliminary injunction was also a  
10 motion to stay licensure. It was a dual-purpose motion.  
11 And I think the standard for the stay is a little  
12 different. It's not necessarily reliant upon the -- you  
13 know, showing minimal merit or showing probability. And  
14 so here we are. I'm not sure how long it will take to  
15 get an appeal and a writ of supersedeas on file. I  
16 can't imagine it will take very long. And so at least  
17 some sort of short stay, perhaps four to six weeks,  
18 would be enough for us to get that on file and give us a  
19 chance with the Court of Appeal.

20 And I can't say at this point whether another  
21 four to six weeks is going to impact the City. The City  
22 has not updated its website on the status of licensing,  
23 so I don't know how close anyone is to a license. But  
24 from our perspective, about four to six weeks may be  
25 enough for us to, you know, get us through the hurdle of  
26 the Court of Appeal.

27 MS. RILEY: Your Honor, may I be heard?

28 THE COURT: Yes, of course.

1 MS. RILEY: This is Heather Riley, with  
2 Allen Matkins, on behalf of March and Ash, one of the  
3 real parties.

4 Your tentative not only denied the preliminary  
5 injunction, it also denied the stay of decision, and I  
6 would urge you to maintain that. We have had no notice  
7 of an extension of the temporary restraining order.  
8 That was not part of the motion that was filed. I  
9 object to it procedurally, but I also object to it  
10 substantively.

11 If petitioner wants to move quickly towards an  
12 appeal, they can and should do that. But I don't think  
13 the temporary restraining order should stay in effect.

14 MR. TENCER: Your Honor, this is Phillip Tencer  
15 on behalf of TD Enterprise. I join in that.

16 MR. BRUCKER: Your Honor, the way the code  
17 reads, if you were to grant the stay, the stay would  
18 last through the notice of appeal period. And we did  
19 ask for a stay. And while your tentative is to deny, I  
20 guess what we're asking for the Court to do is to  
21 reconsider that at least for a short period of time.

22 THE COURT: Anybody else have a comment about a  
23 stay?

24 Ms. Shamos?

25 MS. SHAMOS: Your Honor, the City joins with  
26 real parties in objecting to the stay.

27 THE COURT: All right. I'm not going to extend  
28 out -- confirm this tentative ruling, of course, and I'm

1 not going to extend the stay.

2 Thank you very much.

3 MR. BRUCKER: Thank you, your Honor.

4 MR. TENCER: Thank you, your Honor.

5 MS. RILEY: Thank you, your Honor.

6 THE COURT: Thank you.

7 (Proceedings concluded at 10:16 a.m.)

8 -o0o-

1 STATE OF CALIFORNIA)  
2 :  
3 COUNTY OF SAN DIEGO)

4  
5 UL CHULA TWO LLC

6 vs

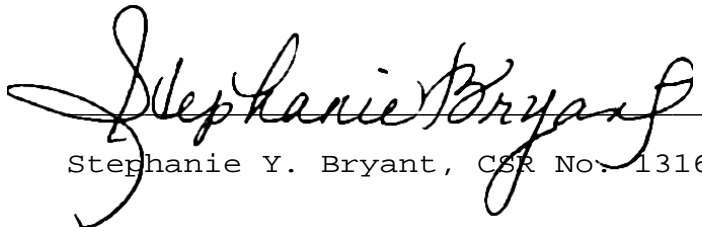
7 CITY OF CHULA VISTA

8 CASE NO. 37-2020-00041554-CU-WM-CTL  
9

10 I, Stephanie Y. Bryant, Certified Shorthand  
11 Reporter licensed in the State of California, License  
12 No. 13160, hereby certify:  
13

14 I reported stenographically the proceedings had  
15 in the above-entitled cause, and that the foregoing  
16 transcript is a full, true, and correct transcription of  
17 my shorthand notes taken during the proceedings had on  
18 May 21, 2021.  
19

20 Dated at San Diego, California, on  
21 September 16, 2021.  
22

23  
24   
25 Stephanie Y. Bryant, CSR No. 13160  
26  
27  
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