

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY SAN DIEGO

DEPARTMENT 75	HON. JAMES MANGIONE, JUDGE
) Case No.
) 37-2022-00000023-CU-MC-CTL
DARRYL COTTON,)
)
Plaintiff ,)
)
vs.)
)
LAWRENCE GERACI,)
)
Defendant .)
_____)

REPORTER'S TRANSCRIPT OF PROCEEDINGS
SAN DIEGO, CALIFORNIA
FEBRUARY 25, 2022

REPORTED BY: BRIDGET L. MASTROBATTISTA, CSR 7715
REGISTERED PROFESSIONAL REPORTER
REGISTERED MERIT REPORTER
CERTIFIED REALTIME REPORTER
OFFICIAL REPORTER PRO TEMPORE

1 APPEARANCES:

2 FOR THE PLAINTIFF:

3 TIFFANY & BOSCO, PA

BY: EVAN P. SCHUBE, ESQ. (Appearance MStTeams)

4 2525 East Camelback Road

Phoenix, Arizona 85016-9240

5 T: 602.255.6000

Email: eps@tblaw.com

6

FOR THE DEFENDANTS:

7

LAW OFFICES OF JAMES D. CROSBY

8 BY: JAMES D. CROSBY, ESQ..

550 West C Street, Suite 620

9 San Diego, California 92101

T: 619.450.4149

10 Email: crosby@crosbyattorney.com

11

12 PRESENT: DARRYL COTTON

6176 Federal Boulevard

13 San Diego, California 92101

T: 619.954.4447

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1 FRIDAY, FEBRUARY 25, 2022, 9:20 A.M.
2 SAN DIEGO, CALIFORNIA
3 DEPARTMENT 75 HON. JAMES MANGIONE, JUDGE
4 THE CLERK: Your Honor, this matter is being
5 reported.
6 MR. CROSBY: Good morning, Your Honor.
7 James Crosby for defendant Geraci.
8 THE COURT: Welcome.
9 MR. SCHUBE: Good morning, Your Honor.
10 MR. COTTON: Good morning.
11 MR. SCHUBE: Good morning, Your Honor. Evan
12 Schube on behalf of Mr. Cotton.
13 THE COURT: Okay. You can have a seat,
14 Mr. Cotton.
15 MR. COTTON: Thank you, sir.
16 All right. Go ahead, Counsel.
17 MR. SCHUBE: Your Honor, I'd like to address
18 the tentative ruling first.
19 And the tentative states that a direct attack
20 for final judgment is permitted by way of an independent
21 equitable action when the complaining party is prevented
22 from presenting his claim of defense in the action.
23 THE COURT: Okay. Sir, it sounds like you're
24 reading from something, A; B, we have a court reporter,
25 and so, please slow down either way.
26 MR. SCHUBE: Sure.
27 THE COURT: Thank you.
28 MR. SCHUBE: Okay. So the illegality issue was

1 raised in Cotton 1, and it was raised in the motion for
2 new trial, but the Court found that -- that that
3 argument was waived, but in the Supreme Court decision
4 of Lewis & Queen, it's 48 Cal.2d 141, Supreme Court
5 specifically stated that the issue of illegality cannot
6 be waived.

7 And so, the issue of the illegality was never
8 actually decided on the merits of the evidence
9 presented.

10 And then in case Rose v. -- I will butcher the
11 last party, F-U-Q-U-A, 200 Cal.App 2d 719, the Court
12 said denial of motion to vacate a judgment on the
13 grounds did not bar inequitable action to set aside the
14 judgment on the same grounds.

15 So we think here that the -- that the tentative
16 ruling, we should not be prevented, or I should say we
17 should be allowed to continue. And I'm looking at the
18 first paragraph of your tentative ruling.

19 THE COURT: All right. Thank you.

20 Mr. Crosby -- I'm sorry, sir. Go ahead.

21 MR. SCHUBE: I was going to say if you'd like
22 me to get into the issue of illegality, I would like to,
23 but at least -- I know that's the first hurdle of the
24 Court. So --

25 THE COURT: Well, let's start with the first
26 hurdle.

27 Go ahead, Mr. Crosby.

28 MR. CROSBY: This whole case is a fundamental

1 misunderstanding of how the law works. If you go try
2 something and you lose, you don't get to come back two
3 years later and say that it was all for nothing and it
4 was void and I can attack the judgment. There are final
5 judgments in cases that are litigated.

6 And the arguments Counsel has made are all the
7 same arguments that are made in both of their moving
8 papers, so there is nothing new.

9 But I think the one thing that they've not
10 addressed and never answered is how an erroneous call by
11 a trial judge on an illegality defense to a contract
12 action can morph into a void judgment.

13 A illegality defense is a contract defense. If
14 you lose, you lose; if you win, you win.

15 If the Court made an error in the first case,
16 it doesn't mean that the contract is just as a matter
17 of, you know, divine intervention an illegal contract
18 and therefore void.

19 So there is no law cited anywhere in all of
20 these filings, all of the filings in the federal court,
21 all these filings that they've made, every time they
22 make this argument, that establishes that erroneous --
23 allegedly erroneous call by the trial judge leads to a
24 void judgment. And that's still not been answered and
25 it's the crux of the whole thing.

26 THE COURT: All right. Thank you.

27 Mr. Schube, back to you, sir.

28 MR. SCHUBE: Sure, Your Honor. I can't speak

1 to what's been argued in other cases. I can't speak to;
2 what the motion for new trial argued and what's before
3 the Court right now, which is that the parties plainly
4 entered into a contract that stated there's for the
5 purpose of a marijuana dispensary and at that time
6 Mr. Geraci had had -- had been sanctioned in the
7 California Business Professions Code expressly stated
8 that -- that he could not own or operate a marijuana
9 dispensary for a period of three years.

10 And, of course, in their motion for new trial,
11 I'm not sure if you looked at it or not, but it's
12 also -- there's this component that his interest in the
13 property was not -- was not disclosed.

14 It was clear in the general application that --
15 that his purpose, entire purpose in this was to own and
16 operate a marijuana dispensary, but he failed to
17 disclose it in violation of several San Diego municipal
18 codes.

19 So when you tack on the non-disclosures for
20 the -- for the San Diego Municipal Code, plus the
21 California Business and Professions Code, the entire
22 purpose of that contract is illegal. He wasn't allowed
23 to operate a marijuana dispensary, but that's what the
24 very purpose of the contract was.

25 THE COURT: All right. Very well.

26 The Court is going to adopt its tentative
27 ruling in this matter. And in this case, it does not
28 appear that the complaining party did not have an

1 opportunity to present its case in the court and protect
2 himself from any fraud attempted by, in this case, the
3 defendant.

4 The plaintiff was not precluded from presenting
5 his illegality argument in court. There was a trial.
6 There was a motion for a new trial. There was an appeal
7 that was dismissed. So under these facts, the Court
8 will again adopt its tentative. And that will be the
9 order of the Court.

10 MR. CROSBY: Your Honor, may I request that
11 the -- that the corresponding lawsuit be dismissed as
12 well? There was a lawsuit filed and then this motion
13 was filed. They say the exact same thing. The exact
14 same thing.

15 THE COURT: All right. Let me hear from
16 Counsel. I don't have it before me, Mr. Crosby. Let me
17 hear from plaintiff counsel. Do you agree to dismiss
18 your lawsuit?

19 MR. SCHUBE: Your Honor, I will have to talk to
20 my client about that. I'm not -- I'm not prepared to
21 agree to it at this juncture. Certainly if I can reach
22 out to my client and then reach out to opposing counsel
23 and we can agree to dismiss it, or I think the opposing
24 counsel can go ahead and, you know, move to have it
25 dismissed after. And -- but I'm not prepared at this
26 point to --

27 THE COURT: Okay.

28 MR. CROSBY: What's going to happen is we'll

1 file a motion for judgment on the pleadings. The Court
2 will be duty-bound to dismiss the case based upon the
3 law of the case that has been established on this
4 motion, on the exact same issue.

5 So I would implore Counsel to consider
6 dismissing the action, retaining all their rights on
7 appeal, if that's what they want to do, or
8 reconsideration or whatever the heck else they're going
9 to do on this case.

10 THE COURT: Okay. Well, your position's been
11 known. You let in this case plaintiff's counsel know
12 your position and hopefully the two of you can work it
13 out.

14 MR. CROSBY: Thank you, Your Honor.

15 THE CLERK: Your Honor, as to the ex parte
16 application for the pro hac vice --

17 THE COURT: The ex parte application on the pro
18 hac vice will be -- I'm granting the pro hac vice
19 application --

20 MR. CROSBY: And --

21 THE COURT: -- as it's tentatively --

22 MR. CROSBY: I guess I do want to make clear
23 for the record that there were some issues about whether
24 the Supreme Court had vetted the pro hac vice candidate.
25 I want to make it clear that I've waived any defects
26 with respect to that, and I had no objection to
27 Mr. Schube appearing today, and we permanently waive any
28 claim or argument that that was inappropriate.

1 THE COURT: Thank you.
2 THE CLERK: Mr. Schube, can you please provide
3 your Bar number?
4 THE COURT: Mr. Schube, what is your Bar
5 number?
6 MR. SCHUBE: 028849.
7 THE CLERK: Thank you.
8 THE COURT: Thank you.
9 MR. CROSBY: Thank you, Your Honor.
10 THE COURT: You're welcome.

11 (Whereupon, the proceedings concluded at 9:36 a.m.)

12 -oOo-

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

REPORTER'S CERTIFICATE

STATE OF CALIFORNIA)
) SS:
COUNTY OF SAN DIEGO)

I, BRIDGET L. MASTROBATTISTA, CERTIFIED SHORTHAND REPORTER
NO. 7715, RPR, RMR, CRR, A COURT REPORTER PRO TEM
OF THE SUPERIOR COURT OF THE COUNTY OF SAN DIEGO, STATE
OF CALIFORNIA, DO HEREBY CERTIFY:

THAT I REPORTED IN MACHINE SHORTHAND THE PROCEEDINGS
HELD IN THE FOREGOING CAUSE;

THAT MY NOTES WERE TRANSCRIBED INTO TYPEWRITING
UNDER MY DIRECTION; AND THE FOREGOING PAGES, 3 to 9,
CONTAIN A CORRECT TRANSCRIPTION OF THE PROCEEDINGS.

DATED THIS 26th DAY OF February, 2022.

A handwritten signature in black ink, appearing to read 'Bridget L. Mastrobattista', written over a horizontal line.

BRIDGET L. MASTROBATTISTA, CSR NO. 7715
RPR, RMR, CRR
COURT REPORTER PRO TEM

(Government Code 69954(d): Any court, party, or person
who has purchased a transcript may, without paying a
further fee to the reporter, reproduce a copy or portion
thereof as an exhibit pursuant to court order or rule,
or for internal use, but shall not otherwise provide or
sell a copy or copies to any other party or person.)

<hr/> A <hr/> a.m 3:1 9:11 action 3:21,22 4:13 5:12 8:6 address 3:17 addressed 5:10 adopt 6:26 7:8 agree 7:17,21,23 ahead 3:16 4:20,27 7:24 allegedly 5:23 allowed 4:17 6:22 answered 5:10,24 appeal 7:6 8:7 appear 6:28 Appearance 2:3 APPEARANCES 2:1 appearing 8:27 application 6:14 8:16,17,19 argued 6:1,2 argument 4:3 5:22 7:5 8:28 arguments 5:6,7 Arizona 2:4 aside 4:13 attack 3:19 5:4 attempted 7:2	Certainly 7:21 CERTIFICATE 10:1 CERTIFIED 1:23 10:7 CERTIFY 10:10 cited 5:19 claim 3:22 8:28 clear 6:14 8:22,25 CLERK 3:4 8:15 9:2,7 client 7:20,22 Code 6:7,20,21 10:22 codes 6:18 come 5:2 complaining 3:21 6:28 component 6:12 concluded 9:11 consider 8:5 CONTAIN 10:15 continue 4:17 contract 5:11,13,16 5:17 6:4,22,24 copies 10:25 copy 10:23,25 CORRECT 10:15 corresponding 7:11 Cotton 1:6 2:12 3:10,12,14,15 4:1 counsel 3:16 5:6 7:16,17,22,24 8:5 8:11 COUNTY 1:2 10:4 10:9 course 6:10 court 1:1 3:8,13,23 3:24,27 4:2,3,4,11 4:19,24,25 5:15 5:20,26 6:3,25,26 7:1,5,7,9,15,27 8:1,10,17,21,24 9:1,4,8,10 10:8,9 10:21,22,24 Crosby 2:7,8 3:6,7 4:20,27,28 7:10 7:16,28 8:14,20 8:22 9:9 crosby@crosbyat... 2:10 CRR 10:8,21 crux 5:25 CSR 1:22 10:21	DATED 10:17 DAY 10:17 decided 4:8 decision 4:3 defects 8:25 defendant 1:10 3:7 7:3 DEFENDANTS 2:6 defense 3:22 5:11 5:13,13 denial 4:12 DEPARTMENT 1:4 3:3 Diego 1:2,16 2:9,13 3:2 6:17,20 10:4,9 direct 3:19 DIRECTION 10:14 disclose 6:17 disclosed 6:13 dismiss 7:17,23 8:2 dismissed 7:7,11,25 dismissing 8:6 dispensary 6:5,9,16 6:23 divine 5:17 duty-bound 8:2	filings 5:20,20,21 final 3:20 5:4 first 3:18 4:18,23,25 5:15 FOREGOING 10:12,14 found 4:2 fraud 7:2 FRIDAY 3:1 fundamental 4:28 further 10:23	judgment 3:20 4:12 4:14 5:4,12,24 8:1 judgments 5:5 juncture 7:21
<hr/> B <hr/> B 3:24 back 5:2,27 bar 4:13 9:3,4 based 8:2 behalf 3:12 BOSCO 2:3 Boulevard 2:12 BRIDGET 1:22 10:7,20 Business 6:7,21 butcher 4:10		<hr/> E <hr/> East 2:4 either 3:25 Email 2:5,10 entered 6:4 entire 6:15,21 eps@tblaw.com 2:5 equitable 3:21 erroneous 5:10,22 5:23 error 5:15 ESQ 2:3,8 established 8:3 establishes 5:22 Evan 2:3 3:11 evidence 4:8 ex 8:15,17 exact 7:13,13 8:4 exhibit 10:24 expressly 6:7	<hr/> G <hr/> general 6:14 Geraci 1:9 3:7 6:6 go 3:16 4:20,27 5:1 7:24 going 4:21 6:26 7:28 8:8 Good 3:6,9,10,11 Government 10:22 granting 8:18 grounds 4:13,14 guess 8:22	<hr/> K <hr/> know 4:23 5:17 7:24 8:11 known 8:11
<hr/> C <hr/> C 2:8 Cal.2d 4:4 Cal.App 4:11 California 1:1,16 2:9,13 3:2 6:7,21 10:3,10 call 5:10,23 Camelback 2:4 candidate 8:24 case 1:5 4:10,28 5:15 6:27 7:1,2 8:2,3,9,11 cases 5:5 6:1 CAUSE 10:12	<hr/> D <hr/> D 2:7,8 DARRYL 1:6 2:12	<hr/> F <hr/> F-U-Q-U-A 4:11 facts 7:7 failed 6:16 February 1:17 3:1 10:17 federal 2:12 5:20 fee 10:23 file 8:1 filed 7:12,13	<hr/> H <hr/> hac 8:16,18,18,24 happen 7:28 hear 7:15,17 heck 8:8 HELD 10:12 HON 1:4 3:3 Honor 3:4,6,9,11,17 5:28 7:10,19 8:14 8:15 9:9 hopefully 8:12 hurdle 4:23,26	<hr/> L <hr/> L 1:22 10:7,20 law 2:7 5:1,19 8:3 LAWRENCE 1:9 lawsuit 7:11,12,18 leads 5:23 let's 4:25 Lewis 4:4 litigated 5:5 looked 6:11 looking 4:17 lose 5:2,14,14
		<hr/> J <hr/> James 1:4 2:7,8 3:3 3:7 judge 1:4 3:3 5:11 5:23	<hr/> I <hr/> illegal 5:17 6:22 illegality 3:28 4:5,7 4:22 5:11,13 7:5 implore 8:5 inappropriate 8:28 independent 3:20 inequitable 4:13 interest 6:12 internal 10:24 intervention 5:17 issue 3:28 4:5,7,22 8:4 issues 8:23	<hr/> M <hr/> MACHINE 10:11 MANGIONE 1:4 3:3 marijuana 6:5,8,16 6:23 MASTROBATTI... 1:22 10:7,20 matter 3:4 5:16 6:27 mean 5:16 MERIT 1:23 merits 4:8 misunderstanding 5:1 morning 3:6,9,10 3:11 morph 5:12 motion 4:1,12 6:2 6:10 7:6,12 8:1,4 move 7:24 moving 5:7 MSTeams 2:3 municipal 6:17,20
			<hr/> J <hr/> James 1:4 2:7,8 3:3 3:7 judge 1:4 3:3 5:11 5:23	<hr/> N <hr/> never 4:7 5:10 new 4:2 5:8 6:2,10 7:6 non-disclosures 6:19 NOTES 10:13 number 9:3,5
			<hr/> O <hr/>	<hr/> O <hr/>

objection 8:26 OFFICES 2:7 OFFICIAL 1:24 Okay 3:13,23,28 7:27 8:10 oOo- 9:12 operate 6:8,16,23 opportunity 7:1 opposing 7:22,23 order 7:9 10:24	<hr/> Q Queen 4:4 <hr/> R raised 4:1,1 reach 7:21,22 reading 3:24 REALTIME 1:23 reconsideration 8:8 record 8:23 REGISTERED 1:22,23 reported 1:22 3:5 10:11 reporter 1:22,23,23 1:24 3:24 10:7,8 10:21,23 REPORTER'S 1:15 10:1 reproduce 10:23 request 7:10 respect 8:26 retaining 8:6 right 3:16 4:19 5:26 6:3,25 7:15 rights 8:6 RMR 10:8,21 Road 2:4 Rose 4:10 RPR 10:8,21 rule 10:24 ruling 3:18 4:16,18 6:27	states 3:19 Street 2:8 Suite 2:8 SUPERIOR 1:1 10:9 Supreme 4:3,4 8:24 sure 3:26 5:28 6:11 <hr/> T T 2:5,9,13 tack 6:19 talk 7:19 TEM 10:8,21 TEMPORE 1:24 tentative 3:18,19 4:15,18 6:26 7:8 tentatively 8:21 Thank 3:15,27 4:19 5:26 8:14 9:1,7,8 9:9 thereof 10:24 thing 5:9,25 7:13,14 think 4:15 5:9 7:23 three 6:9 TIFFANY 2:3 time 5:21 6:5 today 8:27 TRANSCRIBED 10:13 transcript 1:15 10:23 TRANSCRIPTION 10:15 trial 4:2 5:11,23 6:2 6:10 7:5,6 try 5:1 two 5:2 8:12 TYPEWRITING 10:13 <hr/> U use 10:24 <hr/> V v 4:10 vacate 4:12 vetted 8:24 vice 8:16,18,18,24 violation 6:17 void 5:4,12,18,24 vs 1:8 <hr/> W waive 8:27 waived 4:3,6 8:25 want 8:7,22,25 wasn't 6:22 way 3:20,25	we'll 7:28 welcome 3:8 9:10 West 2:8 win 5:14,14 work 8:12 works 5:1 <hr/> X <hr/> Y years 5:3 6:9 <hr/> Z <hr/> 0 028849 9:6 <hr/> 1 1 4:1 141 4:4 <hr/> 2 200 4:11 2022 1:17 3:1 10:17 25 1:17 3:1 2525 2:4 26th 10:17 2d 4:11 <hr/> 3 3 10:14 37-2022-0000002... 1:5 <hr/> 4 48 4:4 <hr/> 5 550 2:8 <hr/> 6 602.255.6000 2:5 6176 2:12 619.450.4149 2:9 619.954.4447 2:13 620 2:8 69954(d) 10:22 <hr/> 7 719 4:11 75 1:4 3:3 7715 1:22 10:8,21 <hr/> 8 85016-9240 2:4 <hr/> 9 9 10:14	9:20 3:1 9:36 9:11 92101 2:9,13
---	--	--	--	--