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11 *Pick Axe Holding, LLC and Christopher Williams*

**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego  
**02/23/2022** at 01:43:00 PM  
Clerk of the Superior Court  
By Nicole Adams, Deputy Clerk

12 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
13 **FOR THE COUNTY OF SAN DIEGO**

14 RICARDO VIDAL, d.b.a. SCHNELLZUG  
15 CAPITAL,

16 Plaintiff,

17 vs.

18 PICK AXE HOLDING, LLC, A California Limited  
19 Liability Company; CHRISTOPHER WILLIAMS,  
20 an individual; and DOES 1-50 inclusive;

21 Defendants.

Case No.: 37-2018-00044217-CU-BC-CTL

Judge: Hon. Ronald F. Frazier  
Dept.: 65

**DEFENDANTS' REQUEST FOR  
STATEMENT OF DECISION**

Action Filed: August 31, 2018  
Trial Date: October 26-27, 2021

22 And Related Cross-Complaints

23  
24 Defendants/Cross-Complainants Christopher Williams and Pick Axe Holding, LLC  
25 ("Defendants") by and through undersigned counsel, and pursuant to the Court's instructions, hereby  
26 submit their Request for Statement of Decision pursuant to Rule 3.1590 Cal. Rules of Court.

On October 26 and 27, 2021, the parties appeared for a bench trial. At the conclusion of that

1 bench trial, the Court entered its Tentative Ruling. [ROA 104] The Tentative Ruling was delivered to  
2 counsel on October 28, 2021. [ROA 105] Based upon the content of the Tentative Ruling, and pursuant  
3 to Rule 3.1590(d), Defendants request a statement of decision to address the following principal  
4 controverted issues:

5 1. The denial of Defendant and Cross-Complainant’s Motion in Limine No. 1 to Exclude  
6 the Introduction of Any Evidence or Documents That Were Requested But Not Disclosed During  
7 Discovery. [ROA 93]

8 2. The denial of Defendants’ motion to amend the Complaint and Cross-Complaint to add  
9 party Schnellzug Capital, Inc. in light of, among other authority, *Greenspan v. LADT, LLC*, 191  
10 Cal.App.4th 486 (2010).

11 3. The determination that a condition precedent to the parties’ performance under the  
12 contract required the property to be zoned C-1, C-2, C-3, RLI, MU, I-P, or M-1 in light of, among other  
13 evidence: (i) the parties’ discussion of zoning and Plaintiff’s statement that an application for re-zoning  
14 could be filed and takes approximately 6 months prior to entering into the contract (TE 7<sup>1</sup> at PIC041);  
15 (ii) the parties’ actual performance of the contract, as evidenced by the \$5,000 payment to Plaintiff and  
16 Defendants’ best efforts to help Plaintiff identify a tenant, while the property was zoned O-P; (iii) the  
17 repeated language in the contract that Defendants’ right in the property was “to apply for” a conditional  
18 use permit (TE 1 at PIC011, PIC014); (iv) the lack of evidence or legal authority that prohibits a CUP  
19 application from being filed if the property is zoned O-P (as opposed to the potential that the application  
20 may ultimately be denied); and (v) the lack of any contractual language identifying zoning as a  
21 condition precedent.

22 4. The determination that it would have been impossible to rezone the property within  
23 Defendants’ 5-year option period in light of, among other evidence: (i) the parties’ discussion of zoning  
24 and Plaintiff’s statement that an application for re-zoning could be filed and takes approximately 6  
25 months (TE 7 at PIC041); (ii) the presence of C-1 zoning adjacent to the property (TE 25); and (iii) the  
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<sup>1</sup> “TE” means “Trial Exhibit.”

1 potential for changes to the zoning code, as evidenced by the history of Measure Z (TE 9) and Section  
2 5.94 (reflecting adoption or revision dates of 12/11/18, 6/25/19, 7/26/19 and 11/22/19).

3 5. The conclusion that the impossibility of one condition in a contract voids the entire  
4 contract.

5 6. The conclusion that a condition precedent voids the entire contract.

6 7. The issuance of a conditional use permit was a condition precedent to the parties'  
7 performance under the contract in light of, among other evidence: (i) the parties' discussion of zoning  
8 and Plaintiff's statement that an application for re-zoning could be filed and takes approximately 6  
9 months prior to entering into the contract (TE 7 at PIC041); (ii) the parties' actual performance of the  
10 contract, as evidenced by the \$5,000 payment to Plaintiff and Defendants' best efforts to help Plaintiff  
11 identify a tenant while the property was zoned O-P; (iii) the express language in the contract that states  
12 Defendants purchased "the properties rights *to apply for* a conditional use permit for medical or  
13 recreational marijuana activity" (TE 1 at PIC011, PIC014; Verified Cross-Compl. at ¶ 10; Verified  
14 Answer at ¶ 1) (iv) the absence of any language in the contract related to the zoning of the property  
15 (*see* TE 1); (v) the absence of any evidence that the zoning of the property prohibited either party from  
16 applying for a conditional use permit; (iv) Plaintiff had an option to purchase Defendants' right *to apply*  
17 *for* a conditional use permit for the agreed upon amount of \$3,000,000 (TE 1); and (iv) Plaintiff  
18 terminated the contract on the date the City approved a ballot initiative to allow marijuana uses  
19 (Verified Cross-Compl. at ¶¶ 42-43; Verified Answer at ¶ 1).

20 8. The denial of Defendants' breach of the implied covenant of good faith and fair dealing  
21 claim.

22 9. The denial of Defendants' fraud claim, including, but not limited to, the establishment  
23 of the fair market rental rate in light of, among other evidence: (i) Plaintiff's representation to  
24 Defendants in the contract to fair market rental value (TE 1 at PIC013); (ii) Plaintiff's admission that  
25 the fair market value was \$1.39 per square foot (Compl. at ¶ 19); (iii) Plaintiff's admission and  
26 testimony that an illegal marijuana dispensary had rented the second floor at the rate of \$9,000 per  
month, which was a premium given its illegality (Verified Cross-Compl. at ¶ 7; Verified Answer at ¶

1 1); (iv) Plaintiff's post-contract demand for rent at the rate of "\$3-4.50/sq ft" (TE 7 at PIC056); (v)  
2 Defendants' attempts to lease the property far exceed efforts, if any, made by Plaintiff; and (vi) the  
3 property has remained vacant since prior to November 2017.

4  
5  
6 Dated: November 5, 2021

Respectfully submitted,

TIFFANY & BOSCO, P.A.

8  
9 By: Brandon Mika

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