

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DISTRICT COURT OF APPEALS OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

AMY SHERLOCK, ET AL., ,	}	CERTIFIED TRANSCRIPT
Plaintiffs & Appellants,		District Court of Appeal
vs.		No. D081109
		Case No.37-2021-00050889
GINA M. AUSTIN, ET AL.,,	}	CU-AT-CTL
Defendants & Respondents.		

FROM THE SUPERIOR COURT OF SAN DIEGO COUNTY
Honorable JAMES MANGIONE, Judge
Department 75

Reporter's Appeal Transcript

Volume 1 of 1
August 12, 2022
(Pages 1 - 7)

Appearances:

For The Plaintiffs & Appellants: Andrew Flores, Esq.
427 C Street, Suite 220
San Diego, California 92101

For the Defendants & Respondents: Pettit Kohn Ingrassia Lutz & Dolin PC
11622 El Camino Real, Suite 300
San Diego, California 92130
Douglas Pettit, Esq.

Darla Kmety, RPR, CSR No. 12956
Court-Approved Pro-Tem Official Court Reporter
San Diego Superior Court

In The Superior Court Of The State Of California
In And For The County Of San Diego
Department 75; Hon. JAMES MANGIONE, Judge

AMY SHERLOCK, ET AL.,,
Plaintiff,

vs.

GINA M. AUSTIN, ET AL.,
Defendants.

Case No. 37-2021-00050889

Reporter's Transcript

AUGUST 12, 2022

Appearances:

For The Plaintiffs & Appellants: Andrew Flores, Esq.
427 C Street, Suite 220
San Diego, California 92101

For the Defendants & Respondents: Pettit Kohn Ingrassia Lutz & Dolin PC
11622 El Camino Real, Suite 300
San Diego, California 92130
Douglas Pettit, Esq.

Darla Kmety, RPR, CSR 12956
Court-Approved Pro-Tem Official Court Reporter
San Diego Superior Court
San Diego, California 92101

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 your Honor, is predicated on disclosure of these
2 individuals who are attempting to get these interests.
3 Transparency is key and what, in essence, the defense has
4 done is they supplied their clients through the proxy
5 practice with these straw men to apply for these licenses
6 and obtain them so that they don't get found out that the
7 fact they've been engaged in illegal marijuana activity
8 prior to the legalization

9 So the Business & Professions Code clearly lays
10 out this is illegal. The Penal Code clearly lays out this
11 is illegal. You cannot provide a false document to a
12 government agency with the intention of fraud, which is
13 clearly what they're doing.

14 I think as far as the first prong of the
15 anti-SLAPP, I don't even think we get there, your Honor,
16 because of the illegality issue. now, even if we were to
17 get past --

18 THE COURT: Let me interrupt you for a second.

19 MR. FLORES: Sure.

20 THE COURT: what evidence have you submitted,
21 and I do mean evidence vis-a-vis the illegality?

22 MR. FLORES: Your Honor the defendants' own
23 declarations states it. They don't -- they're hiding
24 behind the guise of this is discretionary and, therefore,
25 not illegal. It's not. They -- there's no question that
26 they're using -- engaging in the proxy practice and
27 they're not disclosing their principals, and that's
28 admitted by their own declaration.

1 It's part of the reason why I didn't submit
2 anything else, your Honor. I want to be very clear that
3 this a very limited issue as to whether or not this is
4 legal or not. I think that they've admitted to the fact
5 they've done these acts. They just don't think they're
6 illegal, or they're arguing they're not illegal

7 with my reading of the CCP, your Honor, you have
8 to take everything, even their declaration. Their
9 declaration admits it. I mean, that's as far as it goes.

10 THE COURT: All right. Let me hear from
11 Mr. Smith. Go ahead, sir.

12 MR. SMITH: Thank you.

13 Your Honor, your question was exactly correct:
14 There is no evidence to support the illegality issue.
15 There's nothing. Nothing in the declarations as to
16 legality. In fact, the vast majority of Ms. Austin's
17 declaration is saying, I didn't participate in the
18 connection with this submission or this submission or this
19 submission because the complaint lodges -- lumps together
20 a bunch of different parties with a bunch of different
21 activities.

22 The law is as clear as the court set out in its
23 tentative. There are only two ways you can establish the
24 illegality exception is if we admit, we concede, which we
25 don't, or they submit evidence on it, and they haven't.
26 This really is a pretty clear one, and the tentative is
27 100 percent correct.

28 I'm happy to answer any question the court may

1 have; otherwise, I'd ask the court to confirm the
2 tentative.

3 THE COURT: I'm going to keep a running score
4 from now of the phrase "the law is clear" or "the facts
5 are clear." There's a lot of clarity going on in
6 Department 75. Okay. Final word from the plaintiff.

7 MR. FLORES: Your Honor, I think the issue here
8 is that the facts have been admitted to. So their
9 interpretation that it's illegal or not illegal is really
10 up to the court. I think the court has to decide whether
11 or not the Business & Professions Code has been violated,
12 whether the Penal Code has been violated by their
13 submission of these documents that they know are submitted
14 to acquire an interest in a marijuana dispensary when
15 their clients are legally barred from obtaining that.

16 THE COURT: well, the criminal exception, as you
17 know, is only applied in rare cases in which there is
18 uncontroverted and uncontested evidence that establishes
19 the crime as a matter of law. I just don't see it in this
20 case. So I'm going to confirm the tentative.

21 MR. FLORES: Thank you, your Honor.

22 MR. SMITH: Thank you.

23 THE COURT: You saw, Mr. Smith, at the end --
24 not that I'm inviting it -- but if you so desire to file a
25 motion for attorney fees it will be in a separate
26 pleading, do you understand that, separate proceeding?

27 MR. SMITH: Understood.

28 THE COURT: Very well. Thank you, both.

1 STATE OF CALIFORNIA

2 COUNTY OF SAN DIEGO

3

4 I, Darla Kmety, Official Pro-Tem Reporter for
5 the Superior Court of the State of California, do hereby
6 certify:

7

8 That as such reporter, I reported in machine
9 shorthand the proceedings held in the foregoing case;

10

11 That my notes were transcribed into typewriting
12 under my direction and the proceedings held on
13 August 12, 2022, are a true and correct transcription, to
14 the best of my ability.

15

16

17 Dated this 28th of November 2022.

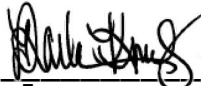
18

19

20

21

22



Darla Kmety, CSR 12956
Court Reporter

23

24

25

26

27

28