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IN THE SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO, CENTRAL DISTRICT

DEPARTMENT 73

HONORABLE JOEL R. WOHLFEIL, JUDGE

LARRY GERACI,

PLAINTIFF,

VS.

DARRYL COTTON,

DEFENDANT.

)
) CASE NO. 37-2017-00010073-
) CU-BC-CTL

)
) OCTOBER 25, 2019

)
) FRIDAY, 9:00 AM

)
) MOTION FOR A NEW TRIAL
) EX PARTE HEARING

REPORTER'S CERTIFIED TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

FOR THE PLAINTIFF:

MICHAEL R. WEINSTEIN, ESQ.
SCOTT H. TOOTHACRE, ESQ.
FERRIS & BUTTON, APC
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SAN DIEGO, CA 92101

FOR THE DEFENDANT:

EVAN P. SCHUBE, ESQ.
FOR: JACOB AUSTIN, ESQ.
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REPORTED BY:

ELIZABETH CESENA, CSR 12266
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LIZCEZ@GMAIL.COM

1 SAN DIEGO, CALIFORNIA, OCTOBER 25, 2019, FRIDAY, 9:00 AM

2 --000--

3 THE COURT: Item five, Geraci versus Cotton, case
4 number 10073.

5 MR. WEINSTEIN: Good morning, Your Honor.

6 Michael Weinstein and Scott Toothacre on behalf of
7 Mr. Geraci and Ms. Berry, who is not a part of this
8 conference.

9 THE COURT: And Counsel?

10 MR. SCHUBE: Good morning, Your Honor.

11 Evan Schube on behalf of Mr. Cotton.

12 THE COURT: All right. Did I hear you two say
13 that you were submitting?

14 MR. WEINSTEIN: Yeah. We are submitting, Your
15 Honor, with time to respond.

16 THE COURT: All right. Counsel?

17 MR. SCHUBE: Thank you. I'll get to the
18 illegality of the contract issue first. The fact is it
19 cuts to the heart of the motion that we filed and the
20 biggest issue.

21 A couple of items I wanted to raise with the Court, a
22 couple of factual items I wanted to raise with the Court.

23 First one, on Exhibit H of our motion, is a leave to
24 file the application to CUP Applications that were filed.
25 In general application, which is Trial Exhibit 4200, it's
26 states that "Notice of violation is required to be
27 disclosed," and skip back to page four of the same Trial
28 Exhibit, the Ownership Disclosure Statement, it also says,

1 "the name of any person of interest in the property must
2 also be disclosed," and it states to potentially attach
3 pages if needed.

4 THE COURT: So you are saying the contract is
5 unenforceable?

6 MR. SCHUBE: Yes.

7 THE COURT: As a matter of law?

8 MR. SCHUBE: Yes. CUP was a condition precedent
9 to the contract.

10 THE COURT: Counsel, up until this point in time,
11 this case was filed in 017. Your side has been screaming
12 at the Court and filed multiple writs asking me to
13 adjudicate the contract as a matter of law in favor of your
14 side.

15 Now you are asking me in, after an adverse finding, to
16 adjudicate the law for the other side? You are doing a 180.
17 Truly, you are doing a 180.

18 MR. SCHUBE: I came in on a limited scope. I
19 don't have the background.

20 THE COURT: I do. They do. They have been
21 sitting --

22 MR. SCHUBE: But my understanding was there were
23 the motions that were made were based upon my clients
24 understanding of what the agreement is which is not
25 specifically related to the November 2, 2016 agreement that
26 the jury found. Our motion is a bit more limited in that
27 regard. I may be wrong. That's my understanding of the
28 background of the case.

1 THE COURT: Again, from the Court's perspective as
2 a matter of law up to this point. You have been asking me
3 to adjudicate the contract in your favor. Now you're
4 asking the Court to adjudicate the contract as a matter of
5 law against the other side.

6 Counsel, shouldn't this have been raised at some
7 earlier point in time?

8 MR. SCHUBE: Should it have, Your Honor? My
9 personal opinion is that it should have been raised before
10 but it was not and we are where we are and so hence, the
11 reason why we're raising the issue now on a Motion for New
12 Trial.

13 I think what has been referred to before, the
14 illegality argument has been raised before and raised in the
15 context of reference to State Law and Section 2640 of the
16 California Business and Professions Code. I believe what
17 was not conveyed to the Court was that these requirements
18 for these forms, the specific provisions in the San Diego
19 Municipal Code that require those disclosures and require
20 applicant provide information.

21 The information was not provided. And --

22 THE COURT: Even if you are correct, hasn't that
23 train come and gone? The judgment has been entered. You
24 are raising this for the first time.

25 MR. SCHUBE: Your Honor, illegality of the
26 contract can be raised any time whether in the beginning or
27 during the case or on appeal.

28 THE COURT: So it's akin to a jurisdictional

1 challenge?

2 MR. SCHUBE: I don't know if it's akin to a
3 jurisdictional challenge, but the issue can be raised.

4 THE COURT: But at some point, doesn't your side
5 waive the right to assert this argument? At some point?

6 MR. SCHUBE: I am not suggesting we waived that.
7 The Case Law I saw in the motion cited that there is a duty
8 and the duty continues and so I am not aware if there is
9 anything that suggests that we waived that argument.

10 THE COURT: Anything else, Counsel?

11 MR. SCHUBE: The other thing I'd like to point
12 out, Section 11.0401 of San Diego Municipal Code
13 specifically states that "every applicant prior be
14 furnished true and complete information." And that's
15 obviously not what happened here. I think it's undisputed
16 and the reasoning for the failure to disclose, there is no
17 exception to either the San Diego Municipal Code or failure
18 to disclose.

19 THE COURT: Thank you, very much.

20 MR. SCHUBE: Thank you, Your Honor.

21 THE COURT: I am not inclined to change the
22 Court's view. Did either one of you need to be heard?

23 MR. TOOTHACRE: Just to make a record. One
24 comment with respect to the illegality argument.
25 Obviously, we agree with the comments of the Court but the
26 failure to make these disclosures in the CUP, it doesn't
27 make the contract between Geraci and Cotton unenforceable.
28 It's one thing to say that the contract or the form wasn't

1 properly filled out, that doesn't make the contract
2 unenforceable. That's all we have for the record.

3 THE COURT: Counsel, the Court observed this case
4 throughout the entirety, including at trial. Quite
5 frankly, I thought your client did well on the witness
6 stand. Truly.

7 But the jury categorically rejected your side's claim
8 and I am persuaded everybody got a fair trial here. The
9 Court confirms the tentative ruling as the order of the
10 Court. I will direct Plaintiff's side to serve Notice of
11 the Decision. Thank you very much.

12 MR. WEINSTEIN: Thank you, Your Honor.

13 MR. TOOTHACRE: Thank you, Your Honor.

14 (END OF PROCEEDING AT 9:23 AM)

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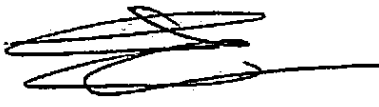
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SAN DIEGO, CALIFORNIA)
) SS:
COUNTY OF SAN DIEGO)

I, ELIZABETH M. CESENA, CSR 12266, A COURT-APPROVED REPORTER OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF SAN DIEGO, DO HEREBY CERTIFY THAT I REPORTED IN SHORTHAND THE PROCEEDINGS, TO THE BEST OF MY ABILITY, IN THE ABOVE-ENTITLED CAUSE AND THAT THE FOREGOING TRANSCRIPT, NUMBERED FROM PAGES 1 TO 7, IS A FULL, TRUE AND CORRECT TRANSCRIPT OF PROCEEDINGS HELD ON OCTOBER 25, 2019.

SAN DIEGO, CALIFORNIA, DATED THIS 9TH DAY OF JUNE, 2020.



ELIZABETH M. CESENA, CSR 12266
CERTIFIED SHORTHAND REPORTER