CASE NO. DO75028

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT, DIVISION 1

SALAM RAZUKI, an individual,
Plaintiff and Respondent,
v.
NINUS MALAN; MONARCH MANAGEMENT CONSULTING, INC.; SAN DIEGO UNITED HOLDINGS GROUP, LLC; FLIP MANAGEMENT, LLC; BALBOA AVE COOPERATIVE, a California nonprofit mutual benefit corporation; CALIFORNIA CANNABIS GROUP, a California nonprofit mutual benefit corporation; DEVILISH DELIGHTS, INC. a California nonprofit mutual benefit corporation,
Defendants and Appellants.

CHRIS HAKIM; MIRA ESTE PROPERTIES LLC; ROSELLE PROPERTIES, LLC
Defendants and Cross-Appellants.

On Appeal from the Superior Court, County of San Diego,
Honorable Eddie C. Sturgeon, Department C-67; Tel. 619-450-7067
San Diego Superior Court Case No. 37-2018-00034229-CU-BC-CTL

REPLY BRIEF OF CROSS-APPELLANTS CHRIS HAKIM, MIRA ESTE PROPERTIES LLC, AND ROSELLE PROPERTIES, LLC

Charles F. Goria, Esq. (SBN68944)
GORIA, WEBER & JARVIS
1011 Camino del Rio South, Ste. 210
San Diego, CA 92108
Tel.: (619) 692 3555
Fax: (619) 296 5508
Attorneys for Defendants and Cross-Appellants CHRIS HAKIM, MIRA ESTE PROPERTIES, LLC and ROSELLE PROPERTIES LLC

TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES

Cases

Statutes

TO THE HONORABLE PRESIDING JUSTICE AND TO THE HONORABLE ASSOCIATE JUSTICES OF THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, FOURTH APPELLATE DISTRICT, DIVISION ONE:

Defendants and Cross-appellants Chris Hakim, Mira Este Properties, LLC and Roselle Properties LLC respectfully submit the following reply brief on appeal from the San Diego County Superior Court's Order and Preliminary Injunction dated September 26, 2018 Appointing Receiver at the Mira Este Facility:

SUMMARY OF ARGUMENT

The Opposition Brief of plaintiff and respondent Salam Razuki ("Razuki" or "Respondent") spins an entirely false narrative about the operations at the Mira Este Facility located at 9212 Mira Este Court, San Diego, California ("Mira Este Facility" or "Facility"). As it currently exists, the Facility is nothing more than a vacant and largely unimproved office building. Contrary to the "rosy" picture painted about the Facility in the Opposition, the true facts about operations at the Facility are as follows:

- Currently and since October 17, 2019, there is no licensing for any type of cannabis activities at the Facility. The conditions of the existing Conditional Use Permit allowing cannabis production and manufacturing activities cannot be fulfilled without extensive and costly improvements to the Facility. It is estimated that those improvements will take close to $1 million in expenditures and nine months of time for

them to be constructed and installed. (Declaration of Charles F. Goria Declaration of Charles F. Goria on Ex Parte Application of Plaintiff for Status Conference and Discovery Stay, filed January 13, 2020, Exhibit F to the Second Motion of Defendants and Cross-appellants Chris Hakim, Mira Este Properties, LLC and Roselle Properties LLC ("Cross-appellants) to Augment Record on Appeal ("SMTA Ex. F"), at 0036-0037);

- Currently and since the end of September 2019, there have been no producers, manufacturers, or any other tenants at the Facility, and the Facility is currently vacant (Declaration of Michael Essary in Support of Ex Parte Application, filed October 29, 2019, Exhibit D to the Second Motion of Defendants and Cross-appellants to Augment Record on Appeal ("SMTA Ex. D"), at 0002-0003;
- Currently, and since May 9, 2019, there have been no managers at the Facility, and the latest "would-be" manager, Allegiance Wellness and Saad Pattah, backed out of managing before its management agreement even started; (SMTA, Ex. D at 0002-0003);
- A court-ordered appraisal by an MAI appraiser valued the Facility at $3.150 million as of November 18, 2019, which is less than the combined amount of the first trust deed of $1,987,500 and second trust deed of $1,312,235, not to mention the third trust deed of $500,000. (Notice of Entry of Order and Order on Sale of Mira Este Facility,

dated November 18, 2019, Exhibit E to the Second Motion of Defendants and Cross-appellants to Augment Record on Appeal ("SMTA Ex. E"), at 0025, 0028; SMTA Ex. D at 0002 ¶7, 0008; SMTA Ex. F at 0046-0047). Based on the appraisal, the Facility is "under water" by approximately $650,000.

There are clearly no profits and have never been any profits derived from operations at the Facility during the time that the receiver has been in possession and custody of the Facility. The only income to the Facility has been for past due amounts from two producers who were in default for nonpayment during the time that they occupied the Facility. These payments, however, are insufficient to cover even the debt service and past-due excise taxes owing to the State of California. (SMTA, Ex. D, 0002-0004).

The Facility has been ordered sold by the trial court at the request of the receiver in an order made in November 2019. (SMTA, Ex. E, 0025, 0028). However, as noted, there is no equity in the Facility, and it is more probable that a foreclosure sale of the Facility due to take place on or about April 1, 2020, will occur before there is any arms-length sale to a third party.

The receiver has been wholly ineffective in procuring any producers, manufacturers, or even managers to operate at the Facility during the time that licensing existed. The receiver was not able to obtain a single signed

licensing agreement to enable a producer to locate its operations at the Facility during the receiver's 18-month tenure. There was only a single producer who was actually procured by Cross-appellant Chris Hakim ("Hakim"), but who was unwilling to sign any agreements with the receiver. That producer, Better Than Good or "BTG" vacated in September 2019 leaving a trail of unpaid excise taxes and other charges. (SMTA, Ex. D, 0002, ¶4).

Even if there were a previous need to establish the receivership, there certainly is not at this point. The receiver is performing virtually no functions at the Facility. In short, there is simply no need for the continuation of the receivership even if the original appointment was valid, which it certainly was not.

Beyond that, in their opening brief, Cross-appellants presented six reasons why the trial court's appointment of the receiver was erroneous and required this court's intervention. Those reasons consisted of the following: (1) the trial court exceeded its jurisdiction in appointing a receiver at the Mira Este Facility because none of the bases for jurisdiction under CCP §564 existed; (2) Respondent Salam Razuki ("respondent" or "Razuki") lacked standing to apply for the appointment of a receiver at the Mira Este Facility because Razuki had no protectable interest in the Facility; (3) Razuki's "unclean hands" barred his requested relief for a preliminary injunction and appointment of receiver at the Mira Este

Facility; (4) the trial court abused its discretion in appointing a receiver because the probability of success at trial, at least insofar as the Mira Este Facility was and is concerned, favored Mira Este Properties LLC ("MEP"), the owner of the Facility, and California Cannabis Group ("CCG") the owner of certain licensing to operate the Facility, and not Razuki; (5) the trial court abused its discretion in appointing the receiver and continuing the receivership at the Mira Este Facility because substantially more harm than good would result and has resulted from the appointment and continuation of the receivership; and, (6) the trial court abused its discretion in appointing the receiver and continuing the receivership at the Mira Este Facility because lesser remedies than the drastic remedy of receivership existed to protect whatever interest Razuki claimed in the Facility.

In his opposition, Razuki presents little substantive response to these six factors in Cross-appellants' Opening Brief. He fails to analyze or even to cite to most of the cases discussed in the Opening Brief. He also barely touches upon the governing statute, CCP §564.

Although Razuki also makes a number of factual claims in his Opposition, many of them are nowhere to be found in Razuki's evidence submitted to the trial court. More strikingly, some of the factual contentions made in Razuki's Opposition are directly contradicted by Razuki's own evidence submitted to the trial court.

ARGUMENT

1. Even if the appointment of the receiver was proper in September 2018, ensuing events completely undermine Razuki's contentions in his Opposition that the receivership has operated adequately to preserve the business at the Mira Este Facility, and at this point in time, the receivership can only be considered completely unnecessary.

As noted, the status of the Facility since September 2019 shows no producers, no managers, no business operations, and no foreseeable pathway to avoid foreclosure as early as April 2020.

Further, the receivership has indisputably failed to carry out basic functions, such as the supervision of the Mira Este Facility operations, the payment of excise taxes and filing of tax returns, and the maintenance of the licensing and corporate status of CCG in good standing.

The receivership also failed to pay debt service on the two pre-existing loans triggering the initiation of foreclosure proceedings on both the first trust deed loan and second trust deed loan. That situation then required the receiver to further encumber the Mira Este Facility with a third trust deed in the amount of $500,000. At or about the same time as the third trust deed transaction occurred in the fall of 2019, both the first and second trust deeds came due. To avoid foreclosure, the receiver was forced

to sign a forbearance agreement containing onerous terms to delay the foreclosure sale until April 1, 2020 and “buy time” to allow the receiver to attempt to sell the Facility. Among the one-sided terms of the forbearance agreement was the requirement that the receiver pay $400,000 of the $500,000 third trust deed proceeds to the holder of the two trust deed loans, The Loan Company (SMTA, Ex. D, 0002-0003, 0008-00016).

The October 29, 2019 declaration of the receiver, Michael Essary (SMTA Ex. D), stands in stark contrast to Razuki’s misleading narrative about the Facility contained in the Opposition brief filed in December 2019. That declaration provides a clearer view of what has been happening since his ex parte appointment on August 20, 2018. That declaration was submitted in support of the receiver's ex parte application to essentially “dump” the insolvent Facility in order to avoid a foreclosure. In pertinent part, the receiver's October 29, 2019 declaration reads as follows (at SMTA, Ex. D, 0002-0003):

> "3. On September 28, 2019, I was notified by Jennifer Peltier, the bookkeeper for California Cannabis Group, that Better Than Good ("BTG") was vacating the Mira Este Facility. This move was completed by the end of September.
>
> 4. BTG was supposed to be paying California Cannabis Group ("CCG") $30,000 per month in rent, as well as its California excise taxes, which CCG then remitted to the State. However, as

has been previously reported to the Court, BTG was significantly behind on both its rent and excise tax payments. . . .

5. I was previously authorized by this Court to enter into an agreement with Allegiance Wellness and Saad Pattah ("Allegiance"), pursuant to which Allegiance was supposed to attract new operators and manage operations at the Mira Este Facility.

6. Allegiance and I executed the agreement on September 13, 2019, with the expectation that Allegiance would begin operating at the Mira Este Facility on September 15. Despite previously requesting a start date of September 15, Allegiance then requested that the agreement be modified to begin October 1. I reluctantly agreed, but Allegiance never performed.

7. Allegiance provided the $500,000 loan to the receivership estate, which is secured by a deed of trust, but has otherwise stopped communicating with me and never began managing the Mira Este Facility despite repeated demands.

* * *

9. On October 17, 2019, The Loan Company and I executed a forbearance agreement that will delay any foreclosure proceeding until at least April 1, 2020. Upon execution of the agreement, I paid $425,000 to The Loan Company, all of which was

applied to the balance owed by Mira Este Properties, LLC to the I.oan Company. The forbearance agreement calls for monthly payments of $25,000 with the next one due on or before November 1, 2019. ***A key term of this agreement is that the Mira Este Facility will be refinanced or sold before April 1, 2020 or The Loan Company will proceed with its foreclosure***. A true and correct copy of the fully executed forbearance agreement is attached hereto as Exhibit A.

* * *

14. ***The financial situation of the Mira Este Facility is dire.*** Many factors have led to the present situation, including the following:

- Synergy failed to pay excise tax to the State of California.
- BTG defaulted on its rent and tax obligations and subsequently vacated the Mira Este Facility.
- Allegiance did not pay its $94,000 deposit or begin operating at the Mira Este Facility." (Emphasis added).

Regarding the delinquent excise taxes owed to the State of California, the receiver stated in his declaration filed August 29, 2019 that the amount of the delinquency is ***$1,150,000***. (Respondent's Appendix, volume 1 at 0061, ¶7 ("1 RA 0061, ¶7").

The first trust deed securing an interest only loan amounts to approximately $1,987,000. (1 RA 0052). The second trust deed, also an interest only loan, is for approximately $1,312,325 (1 RA 0052). The total of just the first and second trust deeds held by the Loan Company is approximately $3,299,325. This does not include the third trust deed in favor of Allegiance in the amount of $500,000. (SMTA Ex. D, 0002, ¶7). The total trust deed encumbrances thus amount to approximately $3,799,325.

The trial court granted the receiver's request to sell the Facility by its order filed November 18, 2019. As part of its order, the trial court also directed the receiver to obtain an appraisal by a MAI appraiser of the Facility including the conditional use permit. (SMTA Ex. E, 0006, ¶1). The appraisal obtained by the receiver valued the Facility at $3.150 million as of November 18, 2019 and determined that the Conditional Use Permit for cannabis operations was of "nominal" value given the "unproven history of business opportunity". In pertinent part, the appraiser stated (SMTA, Ex. F, 0046-0047):

> "Based on research and analyses contained in this report, our conclusion is that the market value of the fee simple estate in the subject property, as of November 18, 2019, was:
>
> **$3,150,000**

> The subject property has an Conditional Use Permit (No. 2065281) recorded on November 16, 2018 in the San Diego County Recorder's Office. The CUP grants the property owner and any successors the rights to operate a marijuana production Facility within the existing 15,950 sq. ft. building. The CUP will terminate on October 17, 2023.
>
> The contributory value of the CUP as an enhancement of the current market value of the subject property is considered nominal due to the type of use, unproven business opportunity during the past year, limited specialized furniture, fixtures and equipment in place, federal loan funding restrictions and limited real estate investor appeal. However, contributary of the CUP maybe realizable within a future business having demonstrated a successful marijuana production business." (Emphasis theirs).

Given the extremely insolvent condition of the Facility, the continuation of the receivership at the Facility represents an unnecessary luxury to say the least. Simply put, there is no business, no profits, no operations, no licensing, and no equity in the Facility for the receiver to protect. The order appointing the receiver, even if proper at the time of the September 26, 2018 Order Granting Preliminary Injunction for

Appointment of Receiver, is certainly no longer appropriate. The receivership at the Mira Este Facility should be ended.

Razuki also suggests that this court should only consider material that was submitted before the court made its order appointing the receiver on September 26, 2018. However, Razuki then proceeds to attach to his appendix various submittals from the receiver over the ensuing year, up to and including receiver reports filed in September 2019. Razuki thus attempts to have the court consider events occurring long after the September 26, 2018 order appointing the receiver. Obviously, Razuki cannot have it both ways.

This court is permitted to utilize all material before it, including evidence of events occurring after the entry of the September 26, 2018 order, in fashioning appropriate orders relative to the appointment and continuation of the receiver. *A. G. Col Co. v. Superior Court of County of Santa Clara*, 196 Cal. 604, 613, 622; *Golden State Glass Corp. v. Superior Court of Los Angeles County*, 13 Cal. 2d 384, 389. Furthermore, where, as here, the entire record of the proceedings is before the court, it is proper to review all the facts shown and render such relief as may be proper at the time of the decision. (*Golden State Glass Corp. v. Superior Court of Los Angeles County*, *supra* at 389).

Here, the very existence of the receivership has seriously damaged the profitability of the Facility. More than any other factor, the receivership

has blocked producers from operating at the Facility. Because of the decisions of the trial court in appointing and continuing the receivership, foreclosure on the existing encumbrances at the Facility totaling approximately $3.3 million is imminent. Since the existence of the receivership has essentially stripped the Facility of any money –making operations much less any potential for profitability, the ability to obtain new financing is also problematic, to say the least.

Moreover, if there is any other remedy less severe in its results, which will adequately protect the rights of the parties, a court should not take property out of the hands of its owners. (*Id*. at 393). And at any stage in the proceedings, a court *on its own* should terminate the receivership when there is a competent governing body ready to take possession. (*Id* at 394). Indeed, the owners of the company are prima facie entitled to administer the affairs of the company. (*Id* at 395). Additionally, the function of a receiver is "not to close up the corporation's affairs or to effect its dissolution but to preserve its business." (Id at 394).

In the present case, the receiver is not preserving the business of the Facility or MEP. Instead, the receiver is now moving ahead to sell any and all assets of the Facility in derogation of the rights of the owner of the Facility, MEP, as well as the rights of the members of MEP, Hakim and Malan. Without this court's immediate intervention to end the receivership at the Mira Este Facility, whatever chance exists for the preservation of the

business at the Facility will be irretrievably lost.

When it appears that no reasonably certain benefit will result to one litigant and a distinct disadvantage will result to another, courts should weigh carefully the propriety of appointing a receiver, and should not make the appointment when there is no benefit or advantage to be gained thereby (*Elson v. Nyhan* (1941) 45 Cal. App. 2d 1, 5*; Lowe v. Copeland* (1932) 125 Cal. App 315, 324).

In *Lowe v. Copeland* (1932) 125 Cal. App 315, the court of appeal affirmed the trial court's refusal to appoint a receiver, holding that a receiver should not be appointed when no benefit or advantage is to be gained thereby. In that case as in the present case, the profitability of the business over which the receivership was sought was nonexistent. There were no funds in the company's treasury, no means of raising funds from its stockholders, and no business prospect that would bring any funds into the treasury to enable it to carry on the business (*Id.* at 125 Cal. App 324).

In the present case, at the time that the receiver was initially appointed in late July 2018, SoCal Building Ventures, LLC ("SoCal") had already reneged on its management agreement, and there was no income whatsoever being generated at the Facility. When Judge Richard E. L. Strauss removed the receiver and Hakim hired Synergy as manager, they were able to immediately negotiate a signed sublicense agreement with Edipure in early August 2018. However, the monthly payment from

Edipure was less than that needed to pay debt service and overhead before the receiver was appointed.

The appointment of the receiver on an ex parte basis in late August 2018, which was made into a preliminary injunction on September 26, 2018, immediately terminated all negotiations with other producers, as noted in the Opening Brief. Moreover, the appointment was completely unnecessary because after SoCal was terminated on July 10, 2018, the Facility has not generated any profits. In fact, as noted, there have been no distributions since May 2018. No benefit or advantage has resulted since the receiver was appointed. No profit has been generated since the appointment of the receiver because no other producers or manufacturers have been willing to enter into a sublicense agreement so long as the receiver is in place.

As noted in Cross-appellant's Opening Brief, where a plaintiff's interest could be protected with other injunctive relief, and that where an injunction will protect all the rights to which the applicant for the appointment of a receiver appears to be entitled, a receiver will not be appointed. *Alhambra-Shumway Mines, Inc. v. Alhambra Gold Mine Corp.*, (1953) 116 Cal. App. 2d 869, and *Dabney Oil Co.* v. *Providence Oil Co.*, (1913) 22 Cal. App. 233.

Razuki makes no argument in his Opposition that a preliminary injunction to require MEP to either retain one half of the net profits or to

transfer to the Receiver one half of the net profits generated at the Facility would fully protect the rights and interests of Razuki. Either order would avoid the purported need for a receiver, and either order would be more than adequate to protect Razuki's interest in the "capital, profits, and losses" of the Facility.

Further, in its preliminary injunction appointing the receiver, the trial court also ordered that Synergy continue as manager, so any issues concerning the handling of cash by Synergy were not determinative of the order appointing the receiver. If the court were at all concerned about Synergy's handling of the cash, it would have replaced Synergy. Obviously, an order requiring Synergy to account to Razuki and the other parties would have sufficed and would have avoided the disastrous consequences of a receiver scaring away all potential producers.

The Opposition also makes a number of assertions without support in the record and that are palpably false.

First, Razuki claims that the receiver has performed his duties carefully and prudently and has not caused any losses to the Facility. This claim is insupportable given that the receiver has allowed no less than three separate licenses at the Facility to lapse and has failed to supervise the filing of excise tax returns and payment of excise taxes. As a result, there is now a delinquency in taxes and penalties of some $1.150 million owing to the State of California.

Secondly, Razuki asserts that SoCal was terminated for no good reason. This is also untrue. SoCal was terminated because, among other reasons, it failed to make the payments it was required to make. These defaults resulted in MEP being unable to pay the Loan Company for the outstanding loans against the Facility.

Thirdly, Razuki claims that the receiver "re-structured" the debt at the Facility. However, there was no restructuring. All that the receiver did was to further encumber (actually over-encumber) the Facility with a new third trust deed loan in favor of Allegiance. The proceeds from the third trust deed were used to pay the Loan Company in order to induce the Loan Company to delay the foreclosure until April 1, 2020.

Fourth, Razuki asserts that Cross-appellants' petition for a writ of supersedeas sought a stay of the receivership. The petition was not to seek a stay. It sought to have this court review the trial court's order for the posting of bonds in order to stay the receivership. The trial court had required some ten different entities and parties to post bonds in order to stay the receivership at the Facility. Ultimately, the trial court corrected this error in a later ruling in or about August 2019 that specified that only CCG and MEP need post bonds (though the amounts of those bonds were increased to a total of $3 million—an amount that does not reflect the value of the equity, or lack thereof, in the Facility).

Finally, Razuki misleadingly asserts that the receiver is in the process of effectuating a sale of the Facility, as if to suggest that such an activity is even appropriate for a receiver appointed to protect the business. In actuality, there is no prospective sale of the Mira Este Facility. It has been listed for sale at a list price of $5 million, more than 60% above its appraised value of $3.150 million with loans totaling in excess of $3.7 million and excise taxes owing of some $1.150 million. It is highly unlikely that any purchaser will pay $5 million or anywhere near that amount for an asset that has been appraised at only $3.150 million.

2. Razuki's Opposition completely fails to address Razuki's lack of standing to seek the appointment of a receiver.

The "substantial evidence test" upon which respondent so heavily relies does not apply to the issue of whether Razuki has standing to seek the appointment of the receiver at the Facility. The Court of Appeal reviews de novo the issue of standing. *Charpentier v. L.A. Rams Football Co.*, (1999) 75 Cal. App. 4th 301, 306-307.

Here, Razuki has never had standing to assert claims that belong to a different party. He also cannot seek and obtain the drastic remedy of receivership to aid in his pursuit of claims that he does not own.

Razuki offers flimsy opposition to the notion that he lacked standing to seek the appointment of a receiver. His argument is that since he contributed a portion of the down payment that was used to acquire the

Facility in August 2016, his position as some type of owner or partner provides him with standing.

However, as noted in Cross-appellants' opening brief, the mere payment that is used to acquire an asset does not create any recognizable interest in the asset acquired. Such payment could be considered a loan, repayment of a loan, a gift, a settling of unrelated accounts, or any one of several other purposes that are unrelated to ownership.

Significantly, Razuki does not contradict the points in Cross-appellants' opening brief that Razuki not only was not an owner or member of MEP or the Facility; Razuki was offered such interests but declined them. Instead, Razuki was satisfied with his "arrangement" or "understanding" with Malan that Razuki would share in distributions made to Malan from operations at the Facility.

This understanding between Malan and Razuki was supposedly documented by the November 17, 2017 "settlement agreement" that purported to create a holding company for various assets claimed by Malan and Razuki. The November 17, 2017 document specified that, "RAZUKI and MALAN have an understanding such that regardless of which party or entity holds title and ownership to the Partnership Assets, RAZUKI is entitled to a 75% interest in the capital, profits, and losses of each Partnership Asset…" (4 AA 1211 ¶1.2). This language is significant because at most, Razuki can assert an interest in the profits distributed to

Malan after Hakim as managing member has made the decision to pay distributions. Insofar as the Facility is concerned, the November 2017 settlement agreement listed Malan's "50% membership interest in Mira Este Properties LLC as the relevant Partnership Asset. (4 AA 1211, ¶1.11(d). Therefore, at most, Razuki has a 75% claim to the profits distributable to Malan from MEP. Razuki has no claim to any other asset of MEP or to the Facility itself. Thus, if Razuki's claim under the November 2017 agreement is valid, he would be entitled only to his share of the profits distributable to Malan and not to any membership interest in MEP or ownership interest in the Facility. As noted, however, there have been no distributions relative to the Facility since May 2018, some three months before the receiver was appointed.

Without a membership interest in MEP or an ownership interest in the Facility, Razuki lacks standing to seek the appointment of a receiver. This is particularly true since the trial court's order directed the receiver to take possession of not only the Facility, but all of MEP including the 50% ownership interest of Hakim that has nothing to do with the November 2017 settlement agreement.

Razuki's opposition also fails to even mention much less counter the additional points raised in Cross-appellants' opening brief showing a complete lack of standing in Razuki. Those additional factors included the participation of Razuki during all the discussions leading up to the

formation of MEP. He affirmatively decided not to become a member of MEP.

Secondly and even more significantly, section 8.8 of the MEP operating agreement specifically provides an avenue by which Razuki could become a member of MEP, but Razuki has always refused to pursue that option. As such, Razuki has decided not only before the formation of MEP, but at all times since then to forgo any involvement in the ownership or operation of MEP or the Facility.

In effect, any claim of standing by Razuki based on an ownership interest in the Facility has been completely undermined by Razuki's continuing refusal to acquire any interest in the Facility or in MEP. He has repeatedly renounced and disclaimed any participation or ownership interest in the Facility or MEP itself. It is therefore nonsensical to allow him the opportunity to seek the appointment of a receiver to take possession of an asset and business in which he has no recognizable interest.

Further, contrary to the excessive reliance in the Opposition on the November 2017 "agreement" between Malan and Razuki, that document is simply not binding on either Hakim or MEP. Whether or not Malan's entitlement to profits as a member of MEP is subject to some type of equitable interest in favor of Razuki does not change the ownership of MEP or the Facility, which is entirely owned by MEP. As such, Razuki has no

standing to seek the appointment of a receiver to take possession and control of both MEP and the Facility.

Additionally, Razuki's argument that he invested millions of dollars in the acquisition of the Facility is untrue. Hakim deposited some $420,000 to acquire the Facility; Razuki deposited less than $250,000. The loan officer handling the loan for The Loan Company, John Loyd, stated that the purchase money loan of $1,987,000 used to acquire the Facility was made "because of the participation of Mr. Hakim as the qualified borrower, as well as his (Hakim's) payment of $420,000 towards the down payment." (8 AA 2539). Razuki's role in the transaction was not even noted by Loyd as constituting any factor in the lender's decision to make the loan. (*Id*.)

An additional and significant factor at this point in time is that Hakim was required to sign a personal guaranty on the first and second trust deed loans in favor of the Loan Company. (SMTA Ex. F, 0037). Given the likelihood that the Facility is "underwater" by some $650,000 based on the subject appraisal, Hakim is threatened with liability on his guaranty. Otherwise stated, unless the Loan Company's loans are paid in full either from a sale or through foreclosure, Hakim may very well be faced with guaranty liability to make up any shortfall. Given the track record of this receiver in failing to protect this asset and allowing it to deteriorate in value, the continuation of the receivership is likely to have disastrous consequences for Hakim even beyond the loss of that asset.

In short, Razuki's assertion in his opposition that he has standing because of his alleged contribution to the acquisition of the Facility fails. Razuki never owned nor sought any interest in MEP or the Facility itself. His only claim has been to a share of the net profits that Malan receives. There have been no net profits generated, much less distributed, since May 2018, three months before this action was filed. For the trial court to appoint a receiver to "protect" Razuki's right to net profits distributable to Malan when there have been no net profits to distribute represents reversible error, and the receivership should be ended at the Mira Este Facility.

3. Razuki's Opposition also completely fails to establish jurisdiction of the trial court to appoint a receiver under CCP section 564.

In Cross-appellant's opening brief, the matter of lack of jurisdiction to appoint a receiver in this case was based upon the requirements of CCP §564 pertaining to the appointment of receivers. Those requirements are jurisdictional, and without a showing of the basis under CCP §564 for the appointment of a receiver, the court's order appointing a receiver is void. *Turner v. Superior Court*, (1977) 72 Cal. App. 3d 804, 811.

In his First Amended Complaint ("FAC") and in his Opposition, Razuki suggested that the basis for his request for the appointment of a receiver is CCP §564(b) (1). (1 AA 140, ¶127). He alleged that the

"Partnership Assets" (including the disputed 50% interest in the Facility) were in danger of being lost, removed, or materially injured". Section 564(b) (1) empowers the court to appoint a receiver:

"(1) In an action by a vendor to vacate a fraudulent purchase of property, or by a creditor to subject any property or fund to the creditor's claim, or between partners or others jointly owning or interested in any property or fund, on the application of the plaintiff, or of any party whose right to or interest in the property or fund, or the proceeds thereof, is probable, and where it is shown that the property or fund is in danger of being lost, removed, or materially injured."

However, in his Opposition, Razuki completely fails to address his decision not to become a member of MEP. Indeed, Razuki's decisions ***not*** to be a member, partner, or owner of either MEP or the Mira Este Facility was obviously dictated by his desire to avoid any liability, either criminal or otherwise, for his participation. As made clear by the opening brief of appellants Ninus Malan et al. ("Malan" or "Malan appellants"), Razuki had agreed not to involve himself in any marijuana operations in settlement of a lawsuit initiated by the City of San Diego years before the acquisition of the Mira Este Facility. Razuki had been charged with operating an illegal marijuana dispensary elsewhere in San Diego. As part of the terms of the December 2014 stipulated judgment against him, Razuki was prohibited from owning or operating an unlicensed or unpermitted dispensary. As

Razuki himself stated, out of concern for this judgment, he did not want his name associated with any other marijuana operation and hoped that Malan would "honor" their oral agreement to share distributions from the Facility. (4 AA 1202 ¶24). Razuki's position thus underlines the lack of ownership interest and absence of any partnership interest that Razuki has ever had in the Facility or in MEP that might otherwise support the trial court's exercise of jurisdiction under CCP §564.

Even as to the distributions to Malan, the November 2017 "agreement" is itself hardly enforceable. Among other defects, it states only that Malan and Razuki will use their best efforts to have the "Partnership Assets" transferred to RM Holdings LLC ("RM") by December 2017, and that they agreed to work in good faith to calculate each of their respective cash investment amounts in the Partnership Assets within 30 days. (4 AA 1212, ¶¶2.1, 2.2). Moreover, the settlement agreement also recites that the parties' "understanding" is that Razuki is entitled to a 75% interest in the "capital, profits and losses of each Partnership Asset". (4 AA 1211, ¶1.2). Nothing is said about Razuki having a 75% interest in the Partnership Assets themselves.

From another perspective, CCG has failed to pay the required City of San Diego Cannabis Business Tax arising from operations at the Mira Este Facility. (SMTA, Ex. D, 0003). That default constitutes an ongoing violation of the San Diego Municipal Code. Indeed, that failure was the

subject of certain correspondence from the City of San Diego to the Receiver dated September 24, 2019 (SMTA Ex. D, 0003, 0018). Such a violation would also likely constitute a violation of Razuki's December 2014 Stipulated Judgment with the City of San Diego if Razuki were considered to be an owner of the Facility or an owner of any entity that owned the Facility. (5 AA 1290, ¶10). Had the receiver not been appointed to act as a "shield" for Razuki, it is highly implausible that Razuki would now admit that he was an "owner" of the Facility or MEP when to do so would put him in violation of the December 2014 stipulated judgment. As Razuki himself has admitted, to avoid the very possibility of being in violation of the Stipulated Judgment, he disassociated himself from any ownership interest in MEP or the Facility and restricted his participation to only a share of the profits distributed to Malan. (4 AA 1202).

In any case, Razuki has no ownership interest in the Mira Este Facility, since that is owned exclusively by MEP. Razuki does not even own any recognizable interest in MEP. At most, Razuki's interest only goes to a membership interest in RM. And it is RM and not Razuki that has any colorable claim against Malan to a share of the profits, but only ***after*** those profits are distributed to Malan. Hakim never agreed to pay Razuki or RM. Hakim was not even aware of the November 2017 settlement agreement until this litigation was initiated in July 2018.

Further, under the terms of the MEP Operating Agreement, distributions of profits to the members could only occur if Hakim, as managing member, decided in his discretion and consistent with the MEP Operating Agreement to authorize a distribution. The last distribution was made in or about May 2018, months ***before*** the appointment of the receiver. There were therefore no distributions pending at the time of the appointment of the receiver. As such, the appointment of a receiver was not only unnecessary; it was void because there was no partnership property or fund in danger of being lost, removed, or materially injured" and no other basis for the appointment or continuation of the receivership under CCP section 564.

4. Although Razuki's Opposition touches upon his "murder for hire" plot, his Opposition completely fails to address the other important act of "unclean hands" as it pertains to the Mira Este Facility, namely, Razuki's June 2017 threat to "burn down" the Facility.

Again, contrary to Razuki's argument in his Opposition concerning the applicability of the substantial evidence test, the issue of unclean hands is subject to independent review by the Court of Appeal. The Court of Appeal reviews de novo whether the moving party had "unclean hands" that would render his or her application for the appointment of a receiver inequitable. *Brown v. Grimes*, (2011) 192 Cal. App. 4th 265, 274).

Razuki goes to great lengths to defuse his astonishing conspiracy to murder Malan by claiming that the charges have yet to be proved beyond a reasonable doubt. Of course, in this civil action, only proof by a preponderance of the evidence is required. Further, Razuki has never submitted any evidence denying such mind-boggling criminality.

In addition, Razuki has never denied or submitted any type of mitigating evidence concerning his outrageous threat to burn down the Mira Este Facility because Hakim would not loan him money. In his Opposition, Razuki does not even mention that felonious threat.

This court is not limited to any particular misconduct in determining whether to apply the unclean hands doctrine to deny a party access to equitable relief. Razuki's believable threat to burn down the Mira Este Facility because Hakim refused to loan money to him is itself enough to deny Razuki the equitable relief of the appointment of a receiver.

Significantly, Hakim's refusal to loan Razuki some $500,000, leading to Razuki's outrageous threat to burn down the Facility resulted in a number of retaliatory acts by Razuki. These acts included the interference by Razuki with the SoCal management agreements in which Razuki misrepresented to SoCal several facts that contributed to SoCal stopping its payments to MEP in May 2018. It also resulted in the termination of the pre-existing relationship between Hakim and Razuki.

The end of their relationship in turn led to a breakdown in communication between Razuki and Hakim. That breakdown occurred in June 2017. The Razuki-Malan settlement agreement did not occur until November 2017, some five months later. Hakim was thus never made aware of the November 2017 agreement, so Hakim never had any understanding that Razuki was asserting any claim to any share of Malan's distributions much less an ownership interest in MEP or the Facility. Therefore, Hakim continued to deal with Malan alone, not knowing anything about Razuki's claims or the November 2017 "settlement agreement".

In short, Razuki's plausible threat to burn down the Facility was intertwined with the failure of Razuki to receive any share of profits that were distributed to Malan and that Razuki now claims should have gone to him. As such, it is appropriate for this Court to apply the unclean hands doctrine and bar Razuki's claim for equitable relief and the appointment of the receiver. On that ground as well, the receivership at the Facility should be ended.

CONCLUSION

The appointment and continuation of the receivership was incorrect. As a matter of law, plaintiff did not have standing, the trial court did not have jurisdiction to appoint and continue the receivership, and plaintiff's application was barred by the unclean hands doctrine.

There was also an abuse of discretion in appointing the receiver and continuing the receiver because the likelihood of harm to Cross-appellants caused by the appointment and continuation of the receivership has and will continue to far outweigh any benefit to Razuki; the probability of success factor clearly favored Cross-appellants; and a lesser remedy than receivership would have adequately protected Razuki.

This court should therefore reverse the order appointing the receiver at the Mira Este Facility, end the receivership at that Facility, and order the return of the Facility to the parties entitled thereto.

Dated: February 6, 2020.

Respectfully submitted,

GORIA, WEBER & JARVIS

By: /s/ Charles F. Goria
Charles F. Goria, Esq.
Attorneys for Cross-Appellants, Mira Este Properties LLC, Roselle Properties LLC, and Chris Hakim

CERTIFICATE OF COMPLIANCE

I, Charles F. Goria, appellate counsel to Mira Este Properties LLC, Roselle Properties LLC, and Chris Hakim, certify that the foregoing reply brief is prepared in proportionally spaced Times New Roman 13 point type and, based on the word count of the word processing system used to prepare the brief, the brief is 6904 words long (not including the cover page, Table of Contents, Table of Authorities, and this certificate). I am relying on the computer program Microsoft Word for this word count.

Dated: February 6, 2020

/s/ Charles F. Goria
Charles F. Goria, Esq.
Attorneys for Cross-Appellants, Mira Este Properties LLC, Roselle Properties LLC, and Chris Hakim

PROOF OF ELECTRONIC SERVICE (Court of Appeal)	
Notice: This form may be used to provide proof that a document has been served in a proceeding in the Court of Appeal. Please read *Information Sheet for Proof of Service (Court of Appeal)* (form APP-009-INFO) before completing this form.	
Case Name: Salam Razuki (Pltff./Respondent) v. Ninus Malan et al. (Defs./Appellants Court of Appeal Case Number: D075028 Superior Court Case Number: 37-2018-00034229-CU-BC-CTL	

1. At the time of service I was at least 18 years of age.
2. a. My [ ] residence [x] business address is *(specify)*:
   1011 Camino del Rio S., Suite 210, San Diego, CA 92108
   b. My electronic service address is *(specify)*: Chasgoria@gmail.com
3. I electronically served the following documents *(exact titles)*:
   (See Attachment for identification of documents served, and names, addresses, and dates and places of service)
4. I electronically served the documents listed in 3. as follows:
   a. Name of person served:
   On behalf of *(name or names of parties represented, if person served is an attorney)*:
   b. Electronic service address of person served:
   c. On *(date)*:
   [x] The documents listed in 3. were served electronically on the persons and in the manner described in an attachment *(write "APP-009E, Item 4" at the top of the page)*.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: February 6, 2020

Charles F. Goria
(TYPE OR PRINT NAME OF PERSON COMPLETING THIS FORM)

(SIGNATURE OF PERSON COMPLETING THIS FORM)

Form Approved for Optional Use
Judicial Council of California
APP-009E [New January 1, 2017]

PROOF OF ELECTRONIC SERVICE
(Court of Appeal)

For your protection and privacy, please press the Clear This Form button after you have printed the form.

Print this form | Save this form | Clear this form

APP-009E, Item 3 and Item 4

ATTACHMENT TO PROOF OF ELECTRONIC SERVICE (COURT OF APPEAL)

3. I electronically served the following documents:

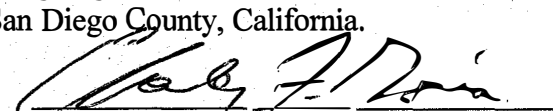
Cross-Appellants Reply Brief

4. I electronically served the documents listed in item 3, as follows and on the following addressees:

Steven A. Elia (steve@elialaw.com) Maura Griffin (maura@elialaw.com) James Joseph (james@elialaw.com) Law Offices of Steven Elia 2221 Camino del Rio S., #207 San Diego, CA 92108 Tel. (619) 444-2244 Fax (619) 440-2233 Attorneys for Plaintiff/Respondent	Daniel Watts (dwatts@galuppolaw.com) Galuppo & Blake 2792 Gateway Road, Suite 102 Carlsbad, California 92009 Tel.: (760) 431-4575 Fax (760) 431-4579 Attorrneys for Defendants/Appellants Ninus Malan et al.
WILLIAMS IAGMIN LLP *Jon R. Williams, Esq./162818 666 State Street San Diego, CA 92101 (619) 238-0370 williams@williamsiagmin.com	CALIFORNIA STATE SUPREME COURT 350 McAllister Street Room 1295 San Francisco, CA 94201-4797

XX VIA ELECTRONIC FILING SERVICE: Complying with Code of Civil Procedure section 1010.6, my electronic business address is chasgoria@gmail.com and I caused such document(s) to be electronically served through the TruFiling e-service system for the above entitled case to those parties on the Service List maintained on its website for this case on February 6, 2020. The file transmission was reported as complete and a copy of the Filing/Service Receipt will be maintained with the original document(s) in our office.

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on February 6, 2020, at San Diego County, California.



Charles F. Goria

PROOF OF SERVICE (Court of Appeal)

[X] **Mail** [ ] **Personal Service**

Notice: This form may be used to provide proof that a document has been served in a proceeding in the Court of Appeal. Please read *Information Sheet for Proof of Service (Court of Appeal)* (form APP-009-INFO) before completing this form. Do not use this form for proof of electronic service. See form APP-009E.

Case Name: Salam Razuki (plaintiff/respondent) v. Ninus Malan et al. (defendants/ap

Court of Appeal Case Number: D075028

Superior Court Case Number: 37-2018-00034229-CU-BC-CTL

1. At the time of service I was at least 18 years of age and **not a party to this legal action.**
2. My [ ] residence [X] business address is *(specify)*:
   1011 Camino del Rio S., Suite 210, San Diego, CA 92108
3. I mailed or personally delivered a copy of the following document as indicated below *(fill in the name of the document you mailed or delivered and complete either a or b)*:
   Cross-appellants' Reply Brief

   a. [X] **Mail.** I mailed a copy of the document identified above as follows:

      (1) I enclosed a copy of the document identified above in an envelope or envelopes **and**

         (a) [ ] **deposited** the sealed envelope(s) with the U.S. Postal Service, with the postage fully prepaid.

         (b) [X] **placed** the envelope(s) for collection and mailing on the date and at the place shown in items below, following our ordinary business practices. I am readily familiar with this business's practice of collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the U.S. Postal Service, in a sealed envelope(s) with postage fully prepaid.

      (2) Date mailed: February 6, 2020

      (3) The envelope was or envelopes were addressed as follows:

         (a) Person served:
            (i) Name: Clerk for the Honorable Eddie C. Sturgeon, Judge San Diego County Superior Court, Dept. 67
            (ii) Address:
            San Diego County Superior Court
            330 W. Broadway
            San Diego, CA 92101

         (b) Person served:
            (i) Name:
            (ii) Address:

         (c) Person served:
            (i) Name:
            (ii) Address:

         [ ] Additional persons served are listed on the attached page *(write "APP-009, Item 3a" at the top of the page).*

      (4) I am a resident of or employed in the county where the mailing occurred. The document was mailed from (city and state): San Diego, California

Case Name: Salam Razuki (plaintiff/respondent) v. Ninus Malan et al. (defendants/appellar	Court of Appeal Case Number: D075028
	Superior Court Case Number: 37-2018-00034229-CU-BC-CTL

3. b. ☐ **Personal delivery.** I personally delivered a copy of the document identified above as follows:

(1) Person served:
- (a) Name:
- (b) Address where delivered:
- (c) Date delivered:
- (d) Time delivered:

(2) Person served:
- (a) Name:
- (b) Address where delivered:
- (c) Date delivered:
- (d) Time delivered:

(3) Person served:
- (a) Name:
- (b) Address where delivered:
- (c) Date delivered:
- (d) Time delivered:

☐ Names and addresses of additional persons served and delivery dates and times are listed on the attached page *(write "APP-009, Item 3b" at the top of the page).*

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: February 6, 2020

Charles F. Goria
(TYPE OR PRINT NAME OF PERSON COMPLETING THIS FORM)

(SIGNATURE OF PERSON COMPLETING THIS FORM)

STATE OF CALIFORNIA California Court of Appeal, Fourth Appellate District Division 1	***PROOF OF SERVICE*** **STATE OF CALIFORNIA** California Court of Appeal, Fourth Appellate District Division 1

Case Name: **Razuki v. Malan et al.**
Case Number: **D075028**
Lower Court Case Number: **37-2018-000034229-CU-BC-CTL**

1. At the time of service I was at least 18 years of age and not a party to this legal action.

2. My email address used to e-serve: **chasgoria@gmail.com**

3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

Filing Type	Document Title
BRIEF - APPELLANTS REPLY BRIEF	2.6.20.Hakim.Appeal.REPLY.BRIEF.Final

Service Recipients:

Person Served	Email Address	Type	Date / Time
Charles Goria Goria, Weber & Jarvis 68944	chasgoria@gmail.com	e-Serve	2/6/2020 12:58:12 PM
Daniel Watts G10 Galuppo Law, APLC 277861	dwatts@galuppolaw.com	e-Serve	2/6/2020 12:58:12 PM
Jon Williams Williams Iagmin LLP 162818	williams@williamsiagmin.com	e-Serve	2/6/2020 12:58:12 PM
Steven Blake Galuppo & Blake, APLC 235502	sblake@galuppolaw.com	e-Serve	2/6/2020 12:58:12 PM
James Joseph Elia Law Firm, APC	james@elialaw.com	e-Serve	2/6/2020 12:58:12 PM
Maura Griffin Court Added	mg@mauragriffinlaw.com	e-Serve	2/6/2020 12:58:12 PM
Andrew Hall G10 GALUPPO LAW, APLC	ahall@galuppolaw.com	e-Serve	2/6/2020 12:58:12

257547			PM
Steven Elia Law Offices Of Steven A. Elia, APC	steve@elialaw.com	e-Serve	2/6/2020 12:58:12 PM
Linda Koller G10 Galuppo Law	lkoller@galuppolaw.com	e-Serve	2/6/2020 12:58:12 PM

This proof of service was automatically created, submitted and signed on my behalf through my agreements with TrueFiling and its contents are true to the best of my information, knowledge, and belief.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

2/6/2020

Date

/s/charles goria

Signature

goria, charles (68944)

Last Name, First Name (PNum)

Goria, Weber & Jarvis

Law Firm