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Motion to Dismiss; Razuki v Malan

4 messages

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Mr. Elia,

I'm sending you this email in an attempt to give you enough information to present to the court which shows that the principal parties have engaged in unlawful activities whereby the court(s) cannot be used to further such activities. There is a significant amount of information I will be conveying here but the sum of it is this; the RAZUKI v MALAN case should not be going to trial. I also do not believe that the majority of the attorneys associated with this case had any idea of what it is I'm about to share here. It's just too incredible to think that it only took one attorney, Gina Austin, hellbent on establishing an adult-use cannabis monopoly in San Diego, that the law would take a backseat to her wants and needs. But, as you will see, that is precisely what has happened.

First, I would like you to be aware that neither Razuki nor Malan ever held a lawful title to the Conditional Use Permit (CUP) that would allow them to operate as an adult-use cannabis dispensary. One only has to follow the CUP transfer paths to see where the problems occur. I relied on the appellate court files during the receivership appeal to create a Steering Document which can be found @ http://www.justice4amy.org/wp-content/uploads/2023/02/23-04-11_Steering-Document-RAZUKI-v-MALAN-et-al-Appellate-Records-with-Links.pdf with the relevant CUP transfer information to be found on pages 3 and 4.

Secondly, I would ask you to consider when opposing parties arguments are so polar opposite to the other side, the court needs to consider not only the law but the credibility of the parties. To that I would point you to the original complaint. Simply review the language that was presented by Razuki in ROA-1 http://www.justice4amy.org/wp-content/uploads/2023/02/18-07-10_RAZUKI-v-MALAN-ET-AL-Complaint_ROA-1.pdf @ 5:24-6:50 to confirm that both Razuki and Malan engaged in the Strawman practice to not disclose Razuki's interests in these licensed cannabis operations. Where Razuki uses the phrase "on paper" he is doing so because in ANY of these cannabis licenses, should he have greater than a 20% interest it is mandatory his interests be disclosed. Nobody, experts, lawyers, accountants, etc., ever brought that up. Judge Sturgeon inherited the case and by the time he took ownership of it the parties centered upon how best to divide their ill-gotten gains. Unfortunately, numerous parties have gotten caught up in those issues and have been unaware of the foundational issues. The time to correct things is now, before a jury would have to get dragged through this.

What I ask for your high level consideration is that in 2020, Amy discovered that at the time of his death, December 3, 2015. Mr. Sherlock had ownership of, among other assets, the 8863 Balboa Avenue Property and the Balboa CUP. Amy had been told by her brother-in-law, Steven Lake, that Mr. Sherlock had lost ownership as a result of litigation. However, when she confronted Lake with evidence that the Balboa Property and Balboa CUP had been transferred *after* his death via forged documents, he admitted that he and Harcourt were responsible for the transfer. Further, in late 2022, Amy discovered that the Balboa CUP had been issued in *her* name at some point before there being issues to Harcourt pursuant to Freedom of Information Act requests by a third party made available online. In other words, the Balboa CUP was transferred from Mr. Sherlock to Mrs. Sherlock without her knowledge via forged documents. This evidence has never been addressed by any court.

Under California law, owners do not lose their right to possession of real or personal property (and a CUP is personal property) that they are deprived of via forged documents, even if pursuant to a judgment in the chain of title. (See, e.g., [OC Interior Services, LLC v. Nationstar Mortgage, LLC \(2017\) 7 Cal.App.5th 1318 \[213 Cal. Rptr. 3d 395\]](#) ("a void judgment in the chain of title has the effect of nullifying a subsequent transfer, including a transfer to a purported bona fide purchaser.")) The Balboa Property and CUP became the property of Amy and her children when Mr. Sherlock passed away without will upon his death. Both the Balboa Property and CUP must be returned to Amy and her children. This issue was raised with Judge Sturgeon who said that Amy and her children's claims were barred by laches, this was an error. There is no statute of limitations to recover property that was converted through forged documents – it is nullity. Further, the alleged agreements between Razuki and Malan are illegal agreements because it is illegal to secretly own a dispensary without being licensed by state and local authorities the way that Razuki and Malan agreed to. But, Gina, the cannabis expert, represented numerous times to Judge Sturgeon that such is lawful.

Notwithstanding Gina Austin's self-serving interpretation (which she will contradict in sworn declarations), the Strawman Practice is an illegal business practice because the permits and licenses are acquired via fraudulent applications submitted, under penalty of perjury, to state and local cannabis licensing agencies, which purposefully fail to disclose the true owners. Gina undertakes the Strawman Practice because her clients have had judgments entered against them and have been fined for operating illegal dispensaries. Consequently, they are barred by California Business & Professions Code (BPC) § 26057, formerly § 19323, from owning cannabis businesses for three years from the date of their last sanction for engaging in "unauthorized commercial cannabis activities." I find it quite telling that Gina, as a self proclaimed cannabis law expert, who is quite familiar with the BPC regarding the ownership disclosure requirements, never used it against Razuki because to do so would have exposed her both parties to having engaged in this practice.

The Court is acting outside of its jurisdiction as it cannot issue judgments or orders that enforce illegal contracts and activity. The recourse for creditors and parties damages by Razuki/Malan's representations that they are the lawful owners of the Balboa Property/CUP and the dispensary operated thereon is not to have those assets sold, but against them individually for engaging in fraudulent actions. Any judgment or order that the court issues based on the lawful ownership of the Balboa Property/CUP by Harcourt, Lake, Razuki, Malan or any other party is void because that property belongs to Amy and her children.

I believe that if you were to raise the evidence of forgery and the illegal transaction, without the rest of the conspiracy by Gina and her clients in other actions related to other dispensaries, the court would focus on it. Otherwise, you and your clients are going to end up in further litigation down the road because the judgments and orders issues will be held to be void and you will then be forced to proceed against Razuki and Malan for damages. You can obviously write that off, but you will be incurring additional costs now.

In addition to what can be found in the Steering Document, I can provide all the specific documents establishing the facts set forth above, as well as the legal authorities for the legal conclusions stated. From my perspective, keeping it as simple as possible, all you would have to show the court is that the Balboa Property and CUP were owned by Mr. Sherlock at the time of his death. Subsequently, public records show they were transferred as described above, but at that point they were the personal property of Amy and her children. I don't believe you would even have to get into the illegality of the Razuki and Malan agreement to have this case dismissed.

Hopefully this summary provides a basis upon which you would be willing to have Judge Sturgeon stay the case while it investigates the arguments that the Balboa Property/CUP were acquired through criminal actions – forged documents. (See, e.g., *Yoo v. Jho* (2007) 147 Cal.App.4th 1249, 1255 (“No principle of law is better suited than that a party to an illegal contract cannot come into a court of law and ask to have his illegal objects to be carried out. The courts generally will not enforce an illegal bargain or lend their assistance to a party who seeks compensation for an illegal act.”); *May v. Herron*, (1954) 127 Cal.App.2d 707, 710-12 (the Court has a duty to, “sua sponte,” refuse to entertain an action that seeks to enforce an illegal contract).)

I realize even this “plain” summary has a lot of moving parts, but stated most simply, both myself, Amy and her children were deprived of our ownership interests in valuable assets through forged documents that have been validated by the judiciary without ever addressing the evidence that establishes the documents are forged. It might also be worth considering that at some point we will want to explore why none of the parties ever addressed the member distributions with either Mr. Essary or Mr. Brinig. Instead, the use of shell corporations conveniently took that element of their operations off the courts radar but since Mr. Henkes, CPA would have been quite familiar with this requirement having been a defendant in *BECK v POINT LOMA PATIENTS CONSUMER COOPERATIVE CORPORATION ET AL*, a class action complaint @ http://www.justice4amy.org/wp-content/uploads/2023/02/37-2017-00037524-CU-BT-CTL_ROA-1_10-06-17_Complaint_1679706290511.pdf regarding member distributions or lack thereof, he would have been under no such illusions as to what the dispensary's financial responsibilities were as a non-profit entity.

If the above is not sufficient to persuade you to seek to help stop the trial from what I've set forth, please let me know what specific evidence/information that you would like to see I have not provided. Also, Amy Sherlock would also be willing to provide a supporting declaration for any moving papers should you require it.

If you would like to discuss any of the issues I've raised herein, I will do my best to address any questions or concerns you might have.

Thank you.

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