

Another Federal Court Abstains From Hearing A Cannabis Dispute

In *Left Coast Ventures, Inc. v. Bill's Nursery Inc., et al.*, No. C19-1297 MJP, 2019 U.S. Dist. LEXIS 210736 (W.D. Wash. Dec. 6, 2019), the United States District Court for the Western District of Washington abstained from adjudicating a contract dispute over a Florida medical marijuana license and remanded the case to state court. The Defendants sought to dismiss the case in its entirety based on a federal illegality defense, but the court ruled that a complete dismissal would discourage parties from complying with state cannabis regulations.

I. Nature of the Case

The parties' contract provided that disputes would be resolved in state or federal court in Washington and be governed by Washington law.¹ Plaintiff filed suit in state court but Defendants removed the case to federal court based on diversity jurisdiction.² Plaintiff claimed it had an option to acquire Defendants' medical marijuana license and sought damages and specific performance.³ The crux of the dispute was whether Defendants' license qualified as a "license to cultivate, process and dispense low-THC cannabis under Florida's Compassionate Medical Act of 2014," which was the language used in the parties' contract.⁴ On October 31, 2019, the Court issued an Order to Show Cause ("OSC") and asked the parties to explain why it should not dismiss the case for seeking relief that is illegal under the Controlled Substances Act ("CSA").⁵ In response to the OSC, Defendants argued that the Court cannot enforce a contract that is illegal under the CSA.⁶ Plaintiff argued that the Court could properly decide the case but, if it was unwilling to consider the case, it should abstain from hearing the case and should send it back to state court.⁷

II. The Court's Discussion of Abstention

The Court relied on the federal abstention doctrine set forth by the Supreme Court in *Burford v. Sun Oil Co.*, 319 U.S. 315, 63 S. Ct. 1098, 87 L. Ed. 1424 (1943). *Burford* held that abstention is appropriate "where there have been presented difficult questions of state law bearing on policy problems of substantial public import whose importance transcends the result in the case then at bar."⁸

Under Ninth Circuit precedent, the following three factors must be present for federal abstention to apply: (1) federal issues are not easily severable from complicated state law issues with which the state courts may have special competence; (2) federal review may disrupt state efforts to establish a coherent policy; and (3) "the state has concentrated suits involving the local issue in a particular court."⁹ The Court held the first factor was satisfied because Plaintiff's main argument in support of its claim "invites the court to evaluate state laws

¹ *Left Coast Ventures, Inc. v. Bill's Nursery Inc., et al.*, No. C19-1297 MJP, 2019 U.S. Dist. LEXIS 210736, at *3 (W.D. Wash. Dec. 6, 2019).

² *Id.* at *3-4.

³ *Id.* at *1.

⁴ *Id.* at *6.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Colorado River Water Conservation Dist. v. U.S.*, 424 U.S. 800, 814, 96 S. Ct. 1236, 47 L. Ed. 2d 483 (1976); *Left Coast Ventures, Inc.*, at *5.

⁹ *Tucker v. First Maryland Sav. & Loan, Inc.*, 942 F.2d 1401, 1405 (9th Cir. 1991).

that are in direct conflict with the CSA.”¹⁰ The Court found the second factor was satisfied because accepting an illegality defense would create “disincentives for businesses to comply with state cannabis regulations by rendering their contracts unenforceable in federal court” and could indicate to participants in the state legal cannabis industry that “federal jurisdiction operates as an absolute defense to private contract claims.”¹¹ Demonstrating its inclination to invoke the abstention doctrine and not to dismiss the case, the Court decided to abstain even though it found the third factor (concentration of suits in a particular court) was *not* satisfied.¹² This outcome is notable because prior case law held that all three factors must be present for federal abstention to apply.¹³

III. Key Takeaways

This is not the first time a federal court has abstained from deciding a cannabis case. In *Big Sky Sci. LLC v. Bennetts*, 776 F. App’x 541 (9th Cir. 2019), a case involving the seizure of hemp being shipped through Idaho, the Ninth Circuit applied a different abstention doctrine, which is set forth in *Younger v. Harris*, 401 U.S. 37, 91 S. Ct. 746 (1971), and ruled that the Idaho state court should decide the dispute.

Before filing a lawsuit related to state legal cannabis business activity in federal court, litigants must give careful consideration to whether the federal court will hear their case, abstain from hearing the case or, at worst, dismiss the case in its entirety. These same considerations apply when drafting a contract that sets forth how and where disputes will be resolved. Based on the cases to date, the Ninth Circuit has been unwilling to entertain requests for relief that would violate the CSA, but has also recognized that dismissing cannabis disputes outright would discourage parties in state-legal cannabis industry from honoring their obligations.

If you have any questions about the issues addressed in this memorandum, or if you would like a copy of any of the materials mentioned in it, please do not hesitate to reach out to:

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¹⁰ *Left Coast Ventures, Inc.*, at *6.

¹¹ *Id.* at *6-7.

¹² *Id.* at *6.

¹³ *City of Tucson v. United States W. Communs.*, 284 F.3d 1128, 1133 (9th Cir. 2002).