

Business booted from Chapter 11 over medical marijuana 'entanglement'

(May 24, 2019) - A company's legal dispute with a medical marijuana dispensary, which is an unlawful enterprise under federal law, requires the company's dismissal for "cause" from a Chapter 11 case, a Detroit bankruptcy judge has ruled.

In re Basrah Custom Design Inc., No. 18-56801, 2019 WL 2202742 (Bankr. E.D. Mich. May 21, 2019).

U.S. Bankruptcy Judge Thomas J. Tucker of the Eastern District of Michigan said the debtor's "unclean hands" constituted cause for dismissal, noting that its owner filed the bankruptcy to overcome a state court judgment regarding a lease dispute with the dispensary.

"This is not a normal case," the judge said.

Dispensary leases property

Basrah Custom Design Inc., owned by Weaam Nocha, operates a cabinetry business in Detroit out of two conjoined buildings also owned by Nocha, according to Judge Tucker's opinion.

In November 2016, MJCC 8 Mile LLC, making clear its intent to operate a medical marijuana dispensary, entered into a lease with a purchase option that listed Basrah as landlord and owner, the opinion said.

MJCC sued Basrah, Nocha and other defendants in Michigan state court in 2017, asserting a right to occupy and purchase the property.


Following a trial, the state court entered judgment in MJCC's favor on Dec. 7, 2018, finding that Nocha had not been tricked into entering into the lease and that he solely owned the property. But the court also found that Basrah had signed the lease as the property owner's agent, according to Judge Tucker's opinion.

MJCC then sought to close as soon as possible on its purchase of the property for \$1.2 million, the price set by the purchase option.

Basrah filed a Chapter 11 petition nine days later.

Dismissal for 'unclean hands'

The U.S. Trustee moved to dismiss the case under [Section 1112\(b\)\(1\) of the Bankruptcy Code](#), 11 U.S.C.A. § 1112(b)(1), which authorizes conversion or dismissal "for cause."

The UST said MJCC's violation of the federal Controlled Substances Act,  [21 U.S.C.A. § 812\(c\)](#), by dispensing a federally controlled substance provided cause to dismiss the bankruptcy.

Marijuana remains illegal under federal law despite state legalization, Judge Tucker said, citing [Gonzales v. Raich](#), 545 U.S. 1 (2005).

The judge noted that cause determinations require factual analyses focused on each debtor's specific circumstances.

He agreed with the reasoning of [In re Rent-Rite Super Kegs West Ltd.](#), 484 B.R. 799 (Bankr. D. Colo. 2012), which found cause under [Section 1112\(b\)\(1\)](#) based on a Chapter 11 debtor's "unclean hands" for deriving revenue from leasing space to marijuana growers.

Basrah, too, is pursuing bankruptcy relief with unclean hands because Nocha "obviously" filed the case to improve on the state court result by getting a higher sale price or rental amount than the amounts set by the lease, Judge Tucker said. The state court had found that the property is one of only a few in Detroit where medical marijuana dispensaries can be operated, Judge Tucker's opinion said.

The judge also noted that Nocha himself has been operating a marijuana dispensary on the property.

"This federal court cannot allow itself to be used in this way," he said.

The judge found that conversion to Chapter 7 was not a practical alternative to dismissal. MJCC also has unclean hands and therefore likely would not succeed in having bankruptcy's automatic stay lifted so it could take possession of the property from Nocha, the judge explained, noting that Nocha still runs his cabinet business there.

"The only practical solution is to 'cut the Gordian knot' by dismissing this case," the judge concluded.

By Michael Nordskog