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10 *and Mark Wesley Haile*

11 **IN THE SUPERIOR COURT OF ARIZONA**
12 **IN AND FOR THE COUNTY OF MARICOPA**

13 MICHELE RENE HAMMER, individually,
14 Plaintiff,

15 v.

16 TODAY'S HEALTH CARE II, a Colorado
17 corporation
18 Defendant.

19 **Case No: CV2011-051310**

20 **(CONSOLIDATED WITH**
21 **CV2011-051311)**

22 **JUDGMENT OF DISMISSAL**

23 (Assigned to the Honorable Michael R.
24 McVey)

25 _____
26 MARK W. HAILE, an unmarried man,
27 Plaintiff,

28 v.

29 TODAY'S HEALTH CARE II, a Colorado
30 corporation
31 Defendant.

32 This matter having come on for oral argument on January 18, 2012, the Court
33 having considered:

- 34 1. Plaintiffs' Motion for Summary Judgment;
- 35 2. Plaintiffs' Separate Statement of Facts in Support of their Motion for
36 Summary Judgment;
- 37 3. Today's Health Care II's Response to Plaintiff's Motion for Summary
38 Judgment;

- 1 4. Today's Health Care II Cross-Motion for Summary Judgment;
- 2 5. Today's Health Care II Controverting Statement of Facts and Separate
- 3 Statement of Facts in Support of Response to Plaintiffs' Motion for Summary Judgment
- 4 and Today's Health Care II's Cross-Motion for Summary Judgment;
- 5 6. Plaintiffs' Reply to Defendant's Response to Motion for Summary
- 6 Judgment and Plaintiffs' Response to Defendant's Cross-Motion for Summary Judgment;
- 7 7. Plaintiffs' Controverting Statement of Facts in Response to Defendant's
- 8 Cross-Motion for Summary Judgment and Supplemental Statement of Facts;
- 9 8. Plaintiffs' Notice of Errata to Supplemental Statement of Facts; and
- 10 9. Today's Health Care II's Reply to Plaintiffs' Response to Today's Health
- 11 Care II's Cross-Motion for Summary Judgment.

12 The Court having considered the pleadings on file herein and having heard oral
13 argument of counsel for the parties finds the following:

14 **Facts as Undisputed.**

- 15 1. On or about August 12, 2010, each of the Plaintiffs entered into separate
- 16 loan agreements with Defendant, Today's Health Care II, a Nevada corporation ("THC").
- 17 2. Each Plaintiff loaned THC \$250,000 for the stated purpose of financing a
- 18 "retail medical marijuana sales and growth center". Each loan was memorialized by a
- 19 loan agreement and a promissory note (the "loan documents").
- 20 3. These loan documents required THC to pay Plaintiffs interest at the rate of 12%
- 21 per annum on the 12th day of each month.
- 22 4. The agreement provided that in the event of a default, THC had five (5) days
- 23 within which to cure its default.
- 24 5. If THC failed to cure its default within five (5) days, Plaintiffs were entitled to
- 25 repayment of the principal loan amount at a default interest rate of 21%, plus any costs and
- 26 attorneys' fees associated with enforcement and collection.
- 27 6. THC failed to timely pay interest on the loans by March 12, 2011.
- 28 7. As of March 17, 2011, THC defaulted on its obligations under the loan obligation.

1 **Legal Analysis.**

2 The sole legal issue presented by both the Motion for Summary Judgment, as well as the
3 Cross Motion for Summary Judgment is whether the loan documents are enforceable, or whether
4 they are void and unenforceable due to illegality. As mentioned, both loan agreements
5 specifically provide as follows:

6 "Borrower shall use the loan proceeds for a retail medical marijuana
7 sales and grow center."

8 The retail medical marijuana sales and grow center was located in Colorado.
9 Colorado, like Arizona, has adopted a scheme by which patients may obtain amounts of
10 marijuana for medicinal purposes with a prescription from a physician. However, the United
11 States' Controlled Substances Act ("CSA") makes it illegal to manufacture, distribute, or
12 dispense or possess with intent to manufacture, distribute, or dispense a controlled substance. 21
13 U.S.C.A. § 841. The United States still categorizes marijuana as a Schedule I, controlled
14 substance pursuant to the CSA and Federal Criminal Statutes. 21 U.S.C.A. § 812. It is unlawful
15 to knowingly open, lease, rent, use or maintain property for the manufacturing, storing, or
16 distribution of controlled substances. 21 U.S.C.A. § 856. Finally, under Federal Law, it is
17 unlawful to aid and abet the commission of a Federal crime. 18 U.S.C.A. § 2.

18 In *Gonzales v. Raich*, 545 U.S. 1, 125 S.Ct. 2195, 162 L.Ed. 2d. 1, (2005), the U.S.
19 Supreme Court addressed the conflict between Federal Law, which continues to outlaw the
20 possession and distribution of marijuana, and state medical marijuana laws. In that case, the
21 Supreme Court held that prohibition of such sales of marijuana is properly within Congress'
22 authority under Art. I, Sec. 8 of the United States Constitution (The Commerce Clause). Thus,
23 dispensation of marijuana, even for medicinal purposes, remains illegal – state law
24 notwithstanding.

25 An agreement is unenforceable if the acts to be performed would be illegal or would
26 violate public policy. *White v. Maddox*, 127 Ariz. 181, 619 P.2d 9 (1980); *Mountain States Bolt,*
27 *Nut & Screw v. Best-Way Transp.*, 116 Ariz. 123, 568 P.2d 430 (App 1977).

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1 Plaintiffs argue the promissory notes are still enforceable despite the recitation of an
2 illegal purpose in the Loan Agreement, because the promissory notes can be enforced without any
3 proof of an illegal purpose. However, a contract which in itself is not unlawful either in what it
4 promises or in the consideration for the promise may nevertheless be rendered void as against
5 public policy as part of a general scheme to bring about an unlawful result. 8 Williston on
6 Contracts section 19:11 (4th Ed.).

7 The explicitly stated purpose of these loan agreements was to finance the sale and
8 distribution of marijuana. This was in clear violation of the laws of the United States. As such,
9 this contract is void and unenforceable. This Court recognizes the harsh result of this ruling.
10 Although Plaintiffs did not plead any equitable right to recovery such as unjust enrichment, or
11 restitution, this Court considered whether such relief may be available to these Plaintiffs.
12 Equitable relief is not available when recovery at law is forbidden because the contract is void as
13 against public policy. *Landi v. Arkules*, 172 Ariz. 126, 136, 835 P.2d 458, 468; DOBBS ON
14 REMEDIES § 13.5, at 994-47. The rule is that a contract whose formation or performance is
15 illegal is, subject to several exceptions, void and unenforceable. But this is not all, for one who
16 enters into such a contract is not only denied enforcement of his bargain, he is also denied
17 restitution for any benefits he has conferred under the contract. *Id.*

18 This Court finds that there are no genuine issues of material fact and that THC is entitled
19 to judgment as a matter of law. Therefore,

20 **IT IS ORDERED** granting summary judgment on Defendant's Cross Motion for
21 Summary Judgment and dismissing Plaintiffs' Complaint with prejudice.

22 **IT IS FURTHER ORDERED** denying Plaintiffs' Motion for Summary Judgment.

23 As the contracts are void as against public policy, no attorneys' fees are awarded to
24 Defendant. However,

25 **IT IS ORDERED** awarding Defendant its taxable costs in the amount of \$_____.

26 Dated _____

27
28 Honorable Michael R. McVey

Granted

Signed on this day, April 17, 2012



/s/ Michael McVey
Judicial Officer of Superior Court