

Cannabis Co. Seeks Early Win In Suit Against Bank

By **Sarah Jarvis**

Law360 (July 11, 2022, 6:33 PM EDT) -- A California cannabis company is seeking a summary judgment win in its suit accusing an industry banking firm of withholding funds and failing to make tax payments on the company's behalf, telling a Golden State federal court the facts show their claims are true.

Plaintiffs CCSAC Inc. and Cann Distributors Inc. alleged in a **summary judgment motion** filed Friday that the defendants — Pacific Banking Corp., its CEO Justin Costello and GRN Funds LLC — currently hold at least \$1.86 million of the plaintiffs' funds.

The plaintiffs said the defendants haven't provided any requested documents supporting their denial of a breach of contract claim and filed a counterclaim the plaintiffs called a "post-hoc, litigation-based allegation, unsupported by any material, admissible facts."

"In the context of this lawsuit, rather than owning up to their obligations, defendants have instead asserted meritless affirmative defenses and a baseless counterclaim," CCSAC and Cann said.

"Defendants' affirmative defenses and counterclaim for breach of contract and companion claims are unsupported by any material facts," they said.

The plaintiffs alleged that Pacific Banking and the defendants lied about making a \$1 million tax payment to California regulators and never processed another \$1.2 million tax payment.

The company also accused the bank of failing to pay vendors, delaying payroll payments and withholding funds from CCSAC after it terminated so-called capital management agreements it had with Pacific. Due to these actions, CCSAC said vendors threatened to halt services and impose penalties on the company.

The defendants **urged the court** last year to toss five of seven claims filed by CCSAC and Cann, saying the plaintiffs failed to prove either fraud or plausible injuries. But in March, U.S. District Judge James Donato denied the defendants' request.

Pacific Banking's motion for dismissal followed **its disclosure** to the court that there were impending federal securities and banking criminal charges against Costello.

At the time, the bank said the suit should be stayed until the criminal matter was resolved, but the court eventually denied that motion, according to court records.

CCSAC and Cann said Friday that undisputed facts show the defendants breached the agreements, not the plaintiffs. The defendants haven't produced requested evidence supporting their denial that they breached the contract, nor have they shown the plaintiffs breached the agreements, defrauded the defendants or defamed them in any way.

"To the contrary, defendants have systematically shirked their discovery obligations, in defiance of a court order," the plaintiffs argued. "For these reasons, plaintiffs are entitled to summary judgment in their favor on their claims and on defendants' counterclaims."

The defendants have violated the court's discovery order from April, which ordered they weren't entitled to withhold information or documents responding to any discovery. Among other things, Costello's testimony was "woefully inadequate," and violated his witness obligations, CCSAC and Cann alleged.

CCSAC and Cann said they have conclusively shown that the defendants breached the agreements by not returning funds and by failing to process a March 2020 payroll request.

They have also shown that the defendants defrauded them and that they were damaged by the defendants actions, the plaintiffs said.

"Under the circumstances, the court would be well within its rights to issue a discovery sanction in this case in the form of a dismissal of defendants' counterclaim or other issue, claim or witness preclusion, which in turn would further support an order granting the immediate motion," plaintiffs said.

Counsel for the parties declined to comment Monday.

CCSAC is represented by Steven M. Selna and Robert W. Selna of Selna Partners LLP.

Pacific Banking is represented by Stephen M. Lobbin and Austin J. Richardson of SML Avvocati PC.

The case is CCSAC Inc. et al. v. Pacific Banking Corp et al., case number 3:20-cv-02102, in the U.S. District Court for the Northern District of California.

--Additional reporting by Katryna Perera. Editing by Stephen Berg.