***Yates v. Hartman*, 2018 COA 31 (AKA *Frosted Leaf*)**

Summary by Cole White – Legal Research Intern
AGA Cannabis Project – Cannabis Litigation Tracker / Blog

Executive Summary

This case focused on a divorce between a Colorado couple who jointly owned several licensed marijuana related businesses. During the divorce proceeding the trial court was asked to appoint a receiver over the marital property, including the marijuana establishment Frosted Leaf and other licensed marijuana businesses, in order to make an accurate accounting of all such property. The court appointed a receiver who was not licensed to operate marijuana businesses under Colorado Law. Colorado's State Licensing Authority (SLA) intervened in the case, arguing that a court appointed receiver must be licensed under Colorado law to operate marijuana businesses. The trial court denied the SLA's motion to modify the receivership order, and this appeal followed. The court of appeals reversed and remanded the case back to the trial court, deciding that the trial court's authority to appoint a receiver did not trump state licensing requirements, and that any court appointed receiver over licensed marijuana businesses must be licensed to operate such businesses under Colorado law.

Summary of the Facts

Kelsey Yates and Kiri Humphrey were the joint owners of several licensed marijuana-related businesses in Colorado. Upon the dissolution of their marriage in 2016, Ms. Yates asked the court to appoint a receiver over their joint marital property, which included the several marijuana-related businesses such as Frosted Leaf. The court appointed Sterling Consulting Corporation as the receiver, who was authorized to take immediate control over the businesses and operate them on behalf of the court. The Colorado State Licensing Authority for marijuana businesses intervened in the case, because Sterling Consulting Corporation and its employees did not have the requisite licenses to run the marijuana-related businesses under Colorado Law (See §§ 12-43.3-103(2)(e); 12-43.4-104(4), C.R.S.). The trial court allowed the SLA to intervene in the case, but denied its motion to modify the receivership order. The trial court concluded that its power to appoint a receiver trumped state law pertaining to marijuana licensing. (*Yates v. Hartman* 2018 at 12) The SLA appealed the decision of the trial court, and the case moved to the court of appeals.

Issue on appeal

Whether a court may appoint a receiver to operate a marijuana business in Colorado, if that receiver does not possess the license required by Colorado's marijuana licensing laws to operate such a business. (*Yates v. Hartman*, 2018 COA 31, ¶¶ 1)

Appellant – Colorado State Licensing Authority's Argument

In this case, the SLA (Appellant) argued a measured approach: it did not challenge the trial court's inherent authority to appoint receivers for marijuana businesses, only that the court's authority to appoint receivers must comply with Colorado law. (*Id*. ¶¶ 7) In its opening brief, the SLA outlined two primary issues on appeal.

First, the SLA argued that the trial court exceeded its authority by appointing an unlicensed person to take control of licensed marijuana businesses, essentially ordering the commission of an unlawful act. (*Yates v. Hartman* 2018 at 2, 14, and 18). Their argument was that a court's power to appoint a receiver is subject to applicable state statutes, and no party can ask a court of equity to perform an unlawful act through its receiver. (*Id*. at 34; Citing to *Kourlis v. Dist. Court*, 930 P.2d 1329, 1333 (Colo. 1997); *Louisville Trust Co. v. Cincinnati Inclined Plane R. Co.*, 78 F. 307, 316 (C.C.S.D. Ohio 1897))

Next, the appellant argued that the trial court violated the separation of powers doctrine by carving out an exception where none exists in the statute. (*Id*. at 2-3, 14, 18-19) Colorado Law stipulates that *every* person who owns, operates, manages, controls and/or works in a licensed marijuana business must hold an occupational license issued by the SLA. (See § 12-43.3-201(1)) The Colorado Constitution, the Colorado Medical Marijuana Code, and the Colorado Retail Marijuana Code all delegate the licensing authority explicitly to the SLA, and there are no exceptions to the licensing requirement. (*Id*. at 1, 5; Citing to Colo. Const. Art. XVIII, § 16(5); § 12-43.3-101 *et seq.*, C.R.S.; § 12-43.4-101 *et seq.*, C.R.S.)

Therefore, the SLA asked the court of appeals to vacate the receivership order and remand the case back to the trial court for a new order requiring the receiver to become licensed under state law, or to appoint a receiver who is licensed under state law.

Appellee - Sterling Consulting Corporation's Argument

Sterling Consulting Corporation's (SCC/Appellee) answer brief outlined three primary issues on appeal. First, they argued that the trial court did not abuse its discretion by appointing the receiver, since there was no other way to accurately obtain the information required to divide the estate fairly. (*Yates v. Hartman* 2018 at 6) Appellee further argued that a court sitting in equity has the inherent power to appoint a receiver pending litigation (*Id.* at 8-10), and that the legislative and executive branches may not interfere with a court's inherent powers. (*Id*. at 12-13)

Next, appellee argued that it is not actually the receiver who operates the marijuana businesses, but it is the court. They argued that receivers are essentially "arms" of the court, and that receivers have no power to act except that power which the court gives them. (*Id*. at 32-33; Citing to 1 Ralph Ewing Clark, *Clark on Receivers*, §36(a) [3d Ed. 1959]; *Marker v. City Sav. Building & Loan Ass'n*, 73 P.2d 991 (Colo. 1937); *Hendri & Bolthoff Mfg Co. v. Parry*, 86 P.113 (Colo. 1906)) Therefore, requiring the receiver to obtain a state-issued license would also require a court to obtain a license in order to appoint a receiver over a marijuana business. (*Id*. at 32)

Finally, appellee argued that allowing state administrative agencies to set requirements for court appointed receivers would make it more difficult for courts to appoint receivers over marijuana businesses, and would therefore be bad public policy. (*Id*. at 34,37)

Summary of judicial opinion

Judge Berger authored the court's opinion. Although the court of appeals agreed that courts of equity have the inherent power to appoint receivers, the court explained that power does not authorize ordering the violation of their jurisdiction's laws. (*Yates v. Hartman*, 2018 COA 31, ¶¶ 9) After thoroughly analyzing Colorado's Medical Marijuana Code and Retail Marijuana Code, the court concluded that "*no person* may operate a marijuana establishment without the required licenses" and that "to operate a marijuana establishment without these licenses is a criminal offense."(*Id*. ¶¶ 14, emphasis added)

The court of appeals reasoned that because the trial court's power to appoint receivers for marijuana businesses was not in conflict with Colorado's licensing laws, the trial court's decision that its appointment authority trumped state licensing requirements was erroneous. (*Id*. ¶¶ 15) Citing *Kourlis*, 930 P.2d at 1337 (Colo. 1997), the court stated that it was not within the trial court's power to make licensing decisions specifically delegated to a state agency by statute. (*Id*. ¶¶ 15)

Next, the court of appeals rejected the receiver's argument that a receiver is actually an arm of the court. Citing *Cromelin*, 177 F.2d 275, 277 (5th Cir. 1949), the court stated that a receiver is "in no sense an agent or employee or officer of the United States," and is therefore a "person" subject to the licensing requirements under Colorado law. (*Id*. ¶¶ 16) Finally, the court refused to address the policy arguments brought up by the receiver, since Colorado Law was unambiguous regarding the requirement of licensure to operate a licensed marijuana business. (*Id*. ¶¶ 18). Thus, the court reversed the decision of the trial court, vacated the receivership order, and remanded the case back to the trial court for the appointment of a receiver who complies with Colorado's marijuana business licensing requirements. (*Id*. ¶¶ 20)

References

1. Opening Brief of Appellant BARBARA J. BROHL, Executive Director of the Colorado Department of Revenue and the State Licensing Authority for the Marijuana Enforcement Division, *Yates v. Hartman* 2018 COA 31 (No. 16DR30252).
2. Answer Brief of Appellee Sterling Consulting Corporation as Receiver, *Yates v. Hartman* 2018 COA 31 (No. 16DR30252).
3. *Yates v. Hartman*, 2018 COA 31 (No. 2016CA1869)

| THE AG ALLIANCE CANNABIS PROJECT |
| Austin P. Bernstein - Director - ABERNSTEIN@AGALLIANCE.ORG |
| Cole White - Legal Researcher - CWHITE@AGALLIANCE.ORG |

| WWW.AGALLIANCE.ORG/CANNABIS-PROJECT |