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Pot Giant's Acquisition Plans Stymied In Competition Dispute

By **Sam Reisman**

Law360 (August 23, 2019, 8:54 PM EDT) -- A Rhode Island state court has pumped the brakes on cannabis behemoth Acreage Holdings' proposed purchase of nonprofit dispensary Greenleaf after a regional cannabis outfit accused Acreage of a raft of misconduct.

The court agreed on Friday to bump a dispute between a New England-focused cannabis business CanWell and the publicly traded industry giant Acreage Holdings Inc. to arbitration and to put a temporary hold on one of Acreage's expansion efforts into the region.

In an arbitration demand, CanWell, which provides extraction and manufacturing services to New England cannabis businesses, accused Acreage and its CEO Kevin Murphy of engaging in "wrongful, unlawful and tortious conduct" in an effort to edge CanWell out of the alternative dosage space on its home turf.

In addition to the alleged misconduct regarding the Greenleaf purchase in Rhode Island, CanWell accused Acreage of attempting to unlawfully compete in Massachusetts and Maine, where the company owns and provides services to cannabis businesses.

The 51-page demand, filed Wednesday in Kent County, Rhode Island, Superior Court, lays out the byzantine business relationships among several entities as they evolved over nearly a decade, against the backdrop of New England's emerging medical and recreational cannabis markets.

The filing alleges that Acreage, Murphy and affiliated entities unlawfully attempted to stymie CanWell's expansion in New England in violation of a noncompete clause first memorialized in a 2015 contract.

"Having been made aware that CanWell would not simply go away into the night, Acreage and its CEO, Kevin Murphy, responded by commencing a bad faith, scorched earth campaign against CanWell in furtherance of its goal to dominate the New England cannabis market," the demand said.

Specifically at issue, the demand alleges that Acreage sought to acquire Rhode Island-based cannabis nonprofit Greenleaf Compassionate Care Center, which would compete with CanWell, while also attempting to take over a Maine dispensary with whom CanWell had a longstanding agreement.

According to the demand, Murphy dismissed concerns that Acreage was competing with CanWell in a June 13 phone call, positing that all legal cannabis companies are only in competition with "the black market."

As recounted in the filing, the parties' lengthy, tangled relationship began when Terence Fracassa, who is now CEO of CanWell, and Murphy first connected in 2011. The next year, Murphy invested in the Wellness and Pain Management Connection, an organization that had been created by Fracassa to provide services to a medical marijuana dispensary in Maine named the Wellness Connection of Maine.

According to the demand, it was Murphy's first venture in the cannabis space. And the episode is enshrined on Acreage's website as having "laid the foundation for who we are today."

The pair went on to co-create High Street Capital Partners Management LLC, with Fracassa serving as managing director and Murphy being responsible for capitalization.

"Notwithstanding Fracassa's efforts, as opportunities arose for the benefit of High Street and its founders, Murphy and High Street surreptitiously proceeded to cut out Fracassa, and failed to even acknowledge Fracassa's role(s) as owner, officer and/or manager," the demand alleges.

In 2015, Wellness Connection of Maine was seeking a vendor that could provide more sophisticated cannabis processing techniques, which had recently been approved by the state. CanWell — to which Fracassa had transferred his ownership interests in Wellness and Pain Management Connection — put in the winning bid.

Even though Murphy, via another entity, had lost the bid, he was still heavily involved in the contract negotiations with CanWell, owing to his role as an early investor in Wellness and Pain Management Connection, according to the demand.

CanWell and the Maine cannabis companies in October 2015 entered into the first agreement at issue in the present dispute. The contract included a robust clause that said the parties would not compete with CanWell in its areas of specialization, helping companies turn raw cannabis product into non-smokable products, such as edibles and oils.

In 2017, High Street Capital rebranded as Acreage Holdings and converted, by 2018, into a national, vertically integrated cannabis company, the demand recounts. The filing alleges that Acreage effectively dismantled and took over the Wellness and Pain Management Connection after acquiring a majority share, and within the last few weeks has tried to force CanWell to divest from the venture.

Things came to a head when the Maine dispensaries and Acreage terminated their agreement with CanWell in a July 12 letter, "referring for the first time ever to an alleged 'long history of non-compliance,'" allegations that are "completely meritless," the demand said.

The temporary restraining order entered by the court Friday enjoins the Rhode Island Department of Business Regulations from making a final decision on Acreage's proposed acquisition of Greenleaf.

An attorney for Acreage downplayed the importance of the court's order on Friday.

"This is short term until the judge gets back from vacation," Preston Halperin, counsel for Acreage, told Law360. "Nothing has actually happened of substance."

Halperin added that the respondents would have a robust response ready before the parties' hearing, which is scheduled for Sept. 3.

Counsel for the CanWell parties declined to comment on Friday.

Acreage Holdings did not respond to a request for comment submitted through their website. An email to their media representative was returned as undeliverable.

The CanWell entities allege breach of contract, breach of good faith and fiduciary duties, tortious interference, conversion and unjust enrichment. They are seeking unspecified compensatory and punitive damages, a declaratory judgment nullifying the termination notice, a punitive judgment keeping Acreage from competing with CanWell in New England and other relief.

The CanWell entities are represented by Jonathan T. Shepard and Eric D. Dowell of Pryor Cashman LLP, Vincent A. Indeglia of Indeglia & Associates, Thomas A. Tarro of Tarro & Marotti Law Firm LLC, John C. Revens Jr. of Revens Revens & St. Pierre, and W. Mark Russo of Ferrucci Russo PC.

Acreage is represented by Preston W. Halperin of Shechtman Halperin Savage LLP.

The case is Canwell LLC et al. v. High Street Capital Partners LLC et al., case number KM-2019-0948, in the Superior Court of Rhode Island, County of Kent.

--Editing by Michael Watanabe.

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