Foster Garvey

Liquor & Cannabis Law

Is a Cannabis Lease Void as an Illegal Contract?

10.04.17

A fundamental rule of contract law is that "illegal" contracts are not enforceable. But what constitutes an "illegal contract"? Generally speaking, an illegal contract is one where the performance of the contract results in an illegal act. Illegal contracts are considered "void and unenforceable," meaning neither party can sue the other party for nonperformance of the contract.

What if a tenant enters into a commercial lease that contemplates illegal activities by the tenant on the property? This is the situation for many tenants who are leasing property for cannabis operations. In many cases, the activity may be properly licensed and permitted under state recreational marijuana laws, but the activity is illegal under federal law (such as the Controlled Substances Act). A recent Arizona Court of Appeals case addressed this issue directly.

In *Green Cross Medical, Inc. v. Gally* (April, 2017), the landlord and tenant entered into a lease agreement for the tenant to operate a medical marijuana dispensary. Less than two weeks after entering into the lease, the tenant received a letter from the landlord's attorney stating the lease was being revoked. In response, the tenant filed a breach of contract complaint against the landlord seeking damages, and also sought injunctive relief to prevent the landlord from terminating the lease. The landlord responded by arguing the lease was illegal, and therefore unenforceable.

The court reviewed the issue of illegality under state and federal law to determine whether the lease was enforceable. The court first reviewed the Arizona Medical Marijuana Act (AMMA) and concluded that the lease of property to a medical marijuana dispensary that is in compliance with the AMMA is not illegal under Arizona law.

The court then reviewed whether the lease was illegal under federal law, specifically the Controlled Substances Act (CSA). The CSA makes it illegal to lease property knowing it will be used for the illegal production or distribution of controlled substances. The court concluded that the lease should not be void simply because it violated the CSA. The court reasoned, in part, that voiding leases relating to property used for marijuana dispensaries could lead to unjust enrichment or "an unconscionable windfall" for the person who breaches the lease:

© 2026 Foster Garvey PC. All Rights Reserved.

"To allow a landlord carte blanche to void the lease simply because it might violate the CSA, even though the landlord knew the proposed use of the land when he entered into the lease, would undermine the sanctity of contracts and leave a dispensary without a remedy for any monetary losses caused by the breach. Conversely, it would allow lessees to breach leases when it suited their needs to relocate."

While each state has its own case precedents for when a contract is considered illegal and unenforceable, marijuana operators in Arizona can take some comfort that the lease in this case was upheld.

Posted in Real Estate

Tagged as arizona, Arizona Medical Marijuana Act (AMMA), commercial lease, Controlled Substances Act (CSA), Court of Appeals, dispensaries, Federal Law, illegal contract, landlord

Authored by

Joseph W. West

Principal (Retired)|Portland

503.553.3130 joseph.west@foster.com

© 2026 Foster Garvey PC. All Rights Reserved.