SUMMARY
August 8, 2024

2024COA85

No. 22CA0822, *HMLL LLC v. MJM Holdings Limited* — Administrative Law — Marijuana Enforcement Division — Retail Marijuana Rules; Remedies — Equitable Relief — Unclean Hands Doctrine; Contracts — Unenforceable as Against Public Policy

A division of the court of appeals considers whether a trial court erred when it denied a plaintiff equitable and legal relief based on findings that the plaintiff and the defendants all participated in a transaction that ran afoul of Colorado's marijuana industry regulations. The trial court's decision left the defendants, who were also found to be wrongdoers, with a substantial windfall at the plaintiff's expense.

The division concludes that the trial court's findings are supported by the record and that it didn't err in declining to grant plaintiff any relief. Therefore, the division affirms.

COLORADO COURT OF APPEALS **2024COA85**

Court of Appeals No. 22CA0822
City and County of Denver District Court No. 19CV32022
Honorable Andrew P. McCallin, Judge

HMLL LLC, a Florida limited liability company,

Plaintiff-Appellant,

v.

MJM Holdings Limited, a Colorado limited liability company, Avniel Wellner, and ORAM, LLC, a Colorado limited liability company,

Defendants-Appellees.

JUDGMENT AFFIRMED

Division VI
Opinion by JUDGE WELLING
Lipinsky and Gomez, JJ., concur

Announced August 8, 2024

Springer and Steinberg, P.C., Jeffrey A. Springer, Keith R. Scranton, Denver, Colorado, for Plaintiff-Appellant

David B. Bush, LLC, David B. Bush, Denver, Colorado; Sandomire & Kuberry, PLLC, Andrew I. Sandomire, Jaynie R. Kuberry, Jason D. Jovanovich, Denver, Colorado, for Defendants-Appellees

¶ 1 Colorado's marijuana industry is thoroughly regulated. The state's comprehensive regulatory scheme includes restrictions on who can own or hold a financial stake in a marijuana business and imposes robust disclosure, application, and licensing requirements on those who seek to participate in the industry. This case examines whether an aggrieved party's violations of this regulatory framework can be a basis for a court to deny that party relief.

¶ 2 This case involves a failed business deal between plaintiff, HMLL LLC, and defendants, Avniel Wellner; ORAM, LLC; and MJM Holdings Limited, involving agreements to transfer the ownership of a marijuana business from Wellner to HMLL. After the deal went south, HMLL asserted various equitable and legal claims against defendants, and Wellner asserted numerous counterclaims against HMLL.

¶ 3 Following a lengthy bench trial, the court denied relief to all of the parties on their various equitable and legal claims and counterclaims because all of the parties, the court found, "violated Colorado's regulatory scheme for approving and licensing those seeking to invest in and obtain an ownership interest in a marijuana business." Instead, the court left the parties where it

found them. As a consequence, defendants, who were also found to be wrongdoers, received a substantial windfall at HMLL's expense.

¶ 4 HMLL appeals the trial court's judgment, arguing that the trial court erred by denying it any relief, either in equity or at law, based on unclean hands and due to its illegal conduct — all based on alleged violations of Colorado's marijuana regulatory scheme. For the reasons discussed in this opinion, the trial court didn't err by declining to grant HMLL any relief. Therefore, we affirm.

I. Background

¶ 5 The trial court made the following findings, which are supported by the record.

¶ 6 HMLL is a Florida-based limited liability company with three members — Ori Darmon, Zbi Yosifon, and Tal Namzer — all of whom resided in Florida during the timeframe relevant to this case. In 2016, HMLL's members wanted to invest in the Colorado marijuana industry, but they couldn't do so legally because of the residency requirements set forth in the regulations promulgated by the Colorado Marijuana Enforcement Division (MED). HMLL's members devised a plan to enter the Colorado marijuana industry without changing their domiciles. First, HMLL would find a

Colorado-based "resident owner" or "proxy"[1] to obtain a MED-approved associated key license (ownership license) for a marijuana business. Second, the resident owner would, on paper, own and operate the business, while HMLL would provide funding and control the company's operations. Finally, if and when the MED approved HMLL's members for their own ownership license for a Colorado marijuana business, HMLL would buy the business from the resident owner. HMLL members Yosifon and Nemzer had previously employed a similar arrangement to acquire retail stores that sold perfume and cosmetics.

¶ 7 In 2016, MJM Holdings and Michael J. Mistretta became the first resident owners for HMLL. At this time, MJM and Mistretta acquired an existing marijuana business and renamed it Sticky Fingerz (the company). The MED approved this transaction and, on paper, it appeared that MJM and Mistretta were the sole owners of the company. In reality, however, all of the funds used to acquire the company came from HMLL, and Mistretta interacted with HMLL

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[1] These terms are in quotation marks because, while they aren't defined terms in Colorado's marijuana laws or regulations, these are the terms that HMLL's members used to refer to their arrangement with Michael J. Mistretta and Avniel Wellner.

as if it owned the business. Initially, HMLL provided $900,000 to MJM and Mistretta to acquire the company, remodel its space, and purchase new equipment for the company. By the spring of 2017, HMLL had provided more than $1 million to MJM and Mistretta to fund the company. During this period, however, the MED had no record of HMLL's involvement in the company other than as an "unsecured creditor" with an 18% "no equity" interest.

¶ 8 By early 2018, the members of HMLL still couldn't legally own a marijuana business in Colorado and decided they needed a new resident owner for the company. The members of HMLL turned to the members of Ecoland LLC, with whom they were friends and occasional business collaborators, for assistance in identifying a suitable new resident owner. A member of Ecoland recommended Avniel Wellner, a Colorado resident, to HMLL as a prospective new resident owner. In April 2018, Wellner agreed to serve as the new resident owner of the company for HMLL, with the understanding that he would transfer the company to HMLL if and when its

members qualified and were MED-approved for ownership licenses.[2] HMLL formed a new limited liability company, ORAM, to "hold the business" for HMLL under the new resident owner structure. ORAM identified Wellner as its sole member. HMLL provided all of the funds for ORAM to acquire 99% of MJM[3] and its associated licenses for $350,000.

¶ 9 HMLL hired an attorney, Roxanne Peyser, to oversee the change of ownership application that would effectuate the transfer of a 99% ownership interest in the company from MJM and Mistretta to ORAM. As part of the application process, Peyser disclosed to the MED HMLL's future plans to acquire ORAM. But due to the MED's prohibition on nonresident owners of Colorado marijuana businesses, the MED told Peyser that, before it could approve the application, she would need to remove any ownership

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[2] Wellner disputes that this was the nature of the agreement between him and HMLL. He contends that the parties agreed that he was the "true owner" of the company. But the trial court found "Wellner's version of the agreement not credible." We accept the trial court's resolution of this disputed factual issue and its characterization of the parties' April 2018 agreement because that resolution and characterization have record support.

[3] After this transaction, ORAM acquired 99% of the company and the associated licenses, while MJM and Mistretta retained a 1% interest in them.

language pertaining to HMLL from the financial declarations and amend the application to reflect that HMLL had no future interest, including a security interest, in ORAM. Peyser complied with the MED's instructions, removing all ownership interest and future interest language regarding HMLL before resubmitting the change in ownership application, together with an unsecured promissory note executed by HMLL and payable to MJM in the amount of the purchase price, $350,000. In September 2018, the MED approved the amended change in ownership application.

¶ 10 Shortly after the MED approved the amended change in ownership application, the relationship between Wellner and the members of HMLL deteriorated. By the end of September 2018, the member of Ecoland who had introduced Wellner to HMLL began to pressure Wellner to "sign the business over" to HMLL, consistent with the April 2018 agreement. Wellner refused. Protracted, and ultimately unsuccessful, negotiations ensued.

¶ 11 Having reached an impasse, in May 2019, HMLL filed a civil action against defendants, and Wellner asserted numerous counterclaims. In its amended complaint, HMLL sought specific performance of the April 2018 oral agreement with Wellner to

transfer the company to HMLL and a money judgment for the unpaid balance on the $350,000 unsecured promissory note that Wellner and ORAM had executed in connection with the purchase of 99% of MJM's ownership interest in the company.

¶ 12 In a thorough and detailed written order, the trial court denied relief to all the parties on all claims and counterclaims. With respect to HMLL's claims, the court concluded that "HMLL's violations of the MED regulatory process make equitable relief inappropriate" and its agreements with "Mistretta and Wellner for them to serve as resident owners without seeking prior MED approval render these contracts illegal and in violation of public policy." Similarly, the court denied Wellner any relief on his counterclaims on the grounds that "[h]e was a willing and knowing[] participant in HMLL's illegal plan to evade the MED's regulatory scheme."

¶ 13 HMLL appeals; Wellner does not.

II. Analysis

¶ 14 On appeal, HMLL argues that the trial court erred by (1) applying the doctrine of unclean hands to deny it relief on its unjust enrichment claims and (2) declining to enforce HMLL's

$350,000 unsecured promissory note on the grounds that its arrangement with Wellner was illegal and against public policy. The trial court didn't err.

A. Denial of Equitable Relief Based on Unclean Hands

¶ 15 HMLL contends that the trial court erred by applying the doctrine of unclean hands to deny it equitable relief, including its claims for unjust enrichment and for specific performance of the agreement to transfer ownership of ORAM to HMLL. We discern no error.

1. Legal Principles and Standard of Review

¶ 16 Generally, "[o]ne who comes into equity must come with clean hands," *Salzman v. Bachrach*, 996 P.2d 1263, 1269 (Colo. 2000) (citation omitted), and equitable doctrines "may not be used to enforce an agreement in favor of a wrongdoer," *Equitex, Inc. v. Ungar*, 60 P.3d 746, 750 (Colo. App. 2002). As a result, the unclean hands doctrine generally bars a party's equitable claim for relief when the party's "improper conduct relates in some significant way to the claim [they] now assert[]." *Salzman*, 996 P.2d at 1269. "In other words, the inequitable conduct must have an immediate and

necessary relation to the claims under which relief is sought." *Ajay Sports, Inc. v. Casazza*, 1 P.3d 267, 276 (Colo. App. 2000).

¶ 17 It's squarely within the trial court's discretion to determine "whether the facts support a finding of unclean hands" and "whether to grant equitable relief based on such a finding." *Premier Farm Credit, PCA v. W-Cattle, LLC*, 155 P.3d 504, 520 (Colo. App. 2006); *see also Conestoga Pines Homeowners' Ass'n v. Black*, 689 P.2d 1176, 1177 (Colo. App. 1984) (whether the doctrine of unclean hands applies to a claim is a question of fact (citing *McCann v. Jackson*, 163 Colo. 163, 165, 429 P.2d 265, 266 (1967))). Accordingly, we review a trial court's decision to invoke unclean hands for an abuse of discretion. *Perfect Place v. Semler*, 2016 COA 152M, ¶ 64, *rev'd on other grounds*, 2018 CO 74. A trial court abuses its discretion if its decision is manifestly unreasonable, arbitrary, or unfair, or it misapplies the law. *Id.* Under this standard, we must consider "whether the trial court's decision fell within a range of reasonable options," *E-470 Pub. Highway Auth. v. Revenig*, 140 P.3d 227, 231 (Colo. App. 2006), and reverse only if the evidence doesn't support the trial court's finding of improper

conduct, *see Conestoga Pines*, 689 P.2d at 1177; *see also Jameson v. Foster*, 646 P.2d 955, 958 (Colo. App. 1982).

2. Application

¶ 18 HMLL argues that the trial court erroneously invoked the doctrine of unclean hands by (1) rejecting HMLL's advice of counsel defense; (2) finding that HMLL was an illegally undisclosed owner of the company, when it was actually only an unsecured creditor; (3) failing to conclude that, as an unsecured creditor, HMLL didn't need to disclose its oral agreement with Wellner to the MED or seek Permitted Economic Interest (PEI) approval because the duty to disclose rested solely with the licensee of record; and (4) applying the doctrine in a manner that "worked a great injustice" by

permitting Wellner — a fellow wrongdoer — to retain a substantial windfall.[4] We address and reject each contention in turn below.

a. Reliance on Advice of Counsel

¶ 19 HMLL asserts that the trial court erred by applying the doctrine of unclean hands because HMLL relied on its counsel's advice and this mitigates any improper conduct on its part. We aren't persuaded.

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[4] HMLL repeatedly states in its opening brief that the trial court invoked the doctrine of unclean hands "sua sponte." Defendants respond that the court's invocation of the doctrine wasn't sua sponte because they asserted the defense in their answers to the complaint and amended complaint, and, in any event, HMLL didn't raise whether the court invoked the doctrine sua sponte in its C.R.C.P. 59 motion asking the court to reconsider its final order (instead, only arguing the merits of why the doctrine shouldn't have been relied on to bar relief). In its reply brief, HMLL points out that "the substantive issue being appealed here — whether the doctrine of unclean hand applies — was argued in [its C.R.C.P. 59] motion to reconsider." It appears that the gist of HMLL's contention with respect to whether the court raised unclean hands sua sponte is that, because it did so, HMLL is entitled to challenge the merits of that decision on grounds that it may not have raised in the trial court. *See Rinker v. Colina-Lee*, 2019 COA 45, ¶ 26 (Where "the trial court rules sua sponte on an issue, the merits of its ruling are subject to review on appeal."). We agree both that it wasn't improper for the court to consider the doctrine of unclean hands and that the court's decision to invoke the doctrine of unclean hands to bar relief is subject to appellate review on the merits.

¶ 20 The trial court found that, in the wake of the MED's rejection of HMLL's future interest in the company during the 2018 change in ownership application process, Peyser advised HMLL that there were two ways to move forward: (1) HMLL could cease investing in the company unless and until the MED allowed nonresidents to own an interest in a marijuana business, or (2) HMLL could move forward with Wellner as a resident owner until the MED approved HMLL's members for ownership licenses. But, as Peyser advised, this second choice carried substantial risk because it required that HMLL rely on Wellner to voluntarily hand over the company because Wellner was the only legal owner on paper. The trial court further found that, shortly after Peyser advised HMLL of these options, she withdrew from representing it and confirmed in her withdrawal letter that the MED had sought evidence that HMLL held no security or ownership interest in the company. The trial court also found that HMLL moved forward with its risky arrangement with Wellner "with full knowledge that their arrangement was illegal."

¶ 21 The evidence amply supports the trial court's finding that HMLL proceeded despite counsel's advice of the risks, and an advice

of counsel defense is not available in such circumstances. *See People v. Schnorenberg*, 2023 COA 82, ¶ 22 (concluding that the advice of counsel defense may only defeat a criminal securities charge if counsel's advice negates the elemental mental state because the defendant relied on counsel's advice) (*cert. granted* May 28, 2024).

b. Characterizing HMLL as an "Owner" Requiring Disclosure

¶ 22 HMLL next argues that, because it was only an unsecured creditor, the trial court improperly found that it owned and controlled the company. We aren't persuaded.

¶ 23 As the trial court noted, the MED's regulations provided a means by which nonresidents could become owners of marijuana businesses in 2016, when HMLL initially installed Mistretta as a resident owner, and again in 2018, when HMLL installed Wellner. Specifically, the members of HMLL, as natural persons, would have been eligible to seek PEI approval from the MED to own the company once the MED approved the members for ownership licenses. *See* Marijuana Enf't Div. Rule 103, 1 Code Colo. Regs. 212-2 (effective Nov. 30, 2015) (defining "Permitted Economic Interest"); Marijuana Enf't Div. Rule 103, 1 Code Colo. Regs. 212-2,

(effective Jan. 1, 2018) (same). Under the relevant rules, marijuana businesses seeking to obtain financing from a nonresident and the nonresident seeking to finance a marijuana business in exchange for an ownership interest first had to seek the MED's approval of the agreement. *See* Marijuana Enf't Div. Rules 201.5, 231.5, 1 Code Colo. Regs. 212-2 (effective Nov. 30, 2015); Marijuana Enf't Div. Rules 202.1, 231.2, 1 Code Colo. Regs. 212-2 (effective Jan. 1, 2018). In the 2018 regulations, the MED clarified that any financial interest in a marijuana business was "void and of no effect unless and until approved by the [MED]" and that any PEI holder "shall not provide funding to the [marijuana business] until the [PEI] is approved by the [MED]." Marijuana Enf't Div. Rule 202.1(E), (H)(2)(a), 1 Code Colo. Regs. 212-2 (effective Jan. 1, 2018). A PEI was defined as "an Agreement to obtain an ownership interest in a Retail Marijuana Establishment" in the future "contingent on the

holder qualifying and obtaining a license as a Direct Beneficial Interest Owner under the Retail Code or Medical Code."[5] *Id.*

¶ 24 In 2018, during the relevant change in ownership application period, the MED had two types of owners — a "Direct Beneficial Interest Owner" (DBIO) and an "Indirect Beneficial Interest Owner" (IBIO). *Id.* at Rule 103. The MED defined a DBIO as one who holds an ownership interest in a marijuana business and required that a DBIO hold an ownership license. *Id.* The MED defined an IBIO as a holder of a PEI, a recipient of a commercially reasonable royalty associated with the use of intellectual property, a profit-sharing employee, a qualified institutional investor, or "*another similarly situated Person*[6] as determined by the State Licensing Authority." *Id.* (emphasis added). At the time, the MED didn't require an IBIO to hold an ownership license but did require that the licensee seek

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[5] The "Retail Code" is the Colorado Retail Marijuana Code, sections 12-43.4-101 to -1101, C.R.S. 2017, and the "Medical Code" is Colorado Medical Marijuana Code, sections 12-43.3-101 to -1102, C.R.S. 2017. *See* Marijuana Enf't Div. Rule 103, 1 Code Colo. Regs. 212-2 (effective Jan. 1, 2018) (definitions of "Retail Code" and "Medical Code").

[6] A "Person" under the 2018 MED regulations included a "natural person, partnership, association, company, corporation, limited liability company, or organization." Marijuana Enf't Div. Rule 103, 1 Code Colo. Regs. 212-2 (effective Jan. 1, 2018).

approval for any IBIO "that constitutes a Financial Interest" before the IBIO could "exercise any of the privileges of ownership or interest" in the marijuana business. *Id.* Importantly, the MED defined a holder of a "Financial Interest" as "any [DBIO], . . . a Permitted Economic Interest Holder, and *any other Person who controls or is positioned so as to enable the exercise of control over the Retail Marijuana Establishment*." *Id.* (emphasis added).

¶ 25 The relevant MED regulations at the time of the 2018 change in ownership application, taken together with the trial court's finding that HMLL controlled the company, fatally undermine HMLL's assertion that it merely acted as an unsecured creditor. The trial court found, with record support, that HMLL controlled the company and acted as the de facto owner, and that, under the relevant MED regulations, HMLL held at least a "Financial Interest" in the company and acted more like an IBIO than merely an unsecured creditor. As such, HMLL and its members needed the MED's approval before investing in the company and exercising control over its operations.

¶ 26 The trial court found, with record support, that none of HMLL's members followed the MED's process before they invested

in the company or installed their resident owners in 2016 and 2018. The trial court also found, again with record support, that HMLL had an agreement with Mistretta and later with Wellner that effectively operated as a PEI arrangement because HMLL expected to own the company once the MED approved its members for ownership licenses.

¶ 27 While HMLL now argues that it was simply an unsecured creditor of the company, the trial court found that HMLL effectively owned and controlled it. This conclusion is supported by the evidence. Namely, the trial court found that HMLL maintained day-to-day control of sales, inventory, and operations; invested heavily in the company; and eventually decided to replace, and did replace, Mistretta with Wellner as the resident owner.

¶ 28 Further, the very nature of HMLL's equitable claim rests on the notion that it's entitled to ownership of the company, which belies — if not flatly contradicts — its contention that it's merely an unsecured creditor. As an unsecured creditor, HMLL wouldn't be entitled to an ownership interest in the company because, as the trial court found, the MED required that all references to HMLL's future interest in the company, including its security interest, be

removed from the change in ownership application. If it were merely an unsecured creditor, HMLL would be entitled to, at most, repayment of the debt, not ownership of the company.

¶ 29 Finally, testimony from HMLL's own witnesses further supports the trial court's finding that HMLL wasn't just an unsecured creditor. Mistretta testified that he understood that he was a "placeholder for the company" until HMLL could legally own the company, and that he agreed to hand the company over once the MED approved HMLL's members for ownership licenses. And Darmon, a member of HMLL, testified that Mistretta served as "our proxy until we would be qualified owners" and, regarding Wellner, that he "trust[ed] him very much to hold the license for me" when the MED didn't approve HMLL's proposed future ownership interest during the 2018 change in ownership application process.

¶ 30 The evidence supports the trial court's finding that HMLL acted as an owner of the company, and not as an unsecured creditor, and we won't disturb this finding on appeal.

c. HMLL's Duty to Disclose

¶ 31 HMLL also contends that, because it was only an unsecured creditor, it had no duty to disclose its relationship with the

company to the MED, and that such duty rested solely with the licensees of record — namely, Wellner and ORAM. Thus, it argues, any failure to disclose can't be attributed to it or weigh against it in an unclean hands analysis.

¶ 32 But, as previously discussed, the trial court found, with record support, that HMLL wasn't simply an unsecured creditor; it was the de facto owner of the company. As such, under the relevant MED rules, HMLL's members needed to disclose their interest in the company directly to the MED by applying for PEI status in 2016 and IBIO status under the 2018 regulations, and the MED required disclosure by the licensee of record, too. *See* Marijuana Enf't Div. Rules 201.5, 231.5, 1 Code Colo. Regs. 212-2 (effective Nov. 30, 2015); Marijuana Enf't Div. Rules 202.1, 231.2, 1 Code Colo. Regs. 212-2 (effective Jan. 1, 2018). As discussed above, the evidence supports the trial court's findings that HMLL acted as the de facto owner and that the MED rules at the time required disclosure by both the members of HMLL and the licensee of record. Accordingly, we won't disturb these findings on appeal, either.

d. A "Substantial Injustice"

¶ 33 Finally, HMLL argues that the trial court's application of unclean hands was improper in this case because it "worked a substantial injustice" by leaving defendants, whom the court found to be fellow wrongdoers, with a substantial windfall at HMLL's expense.

¶ 34 An equitable remedy is only available when one comes to court seeking equity with clean hands. *Rhine v. Terry*, 111 Colo. 506, 508, 143 P.2d 684, 684-85 (1943). Generally, courts will uphold the status quo where a party's improper conduct relates to the matter that initially brought the equitable claim to the court. *See id.*

¶ 35 As we have discussed at length above, the trial court found that HMLL acted improperly by attempting to evade the MED's regulations. Specifically, the trial court found that HMLL established the resident owner structure to circumvent the MED's regulatory residency ownership requirements. And it found that HMLL controlled the company's operations and acted as the company's de facto owner, when on paper it merely claimed to be

an unsecured creditor. This evidence supports the trial court's findings.

¶ 36 Accordingly, the trial court didn't abuse its discretion by invoking the doctrine of unclean hands to bar HMLL's unjust enrichment claims. We acknowledge — as did the trial court — that this result leaves defendants, who also participated in this illegal scheme, with a substantial windfall at HMLL's expense. But in a land of bad options, the court didn't abuse its discretion by leaving the parties where it found them. Indeed, doing so based on its unclean hands findings aligns with well-settled precedent. *See, e.g.*, *Potter v. Swinehart*, 117 Colo. 23, 28, 184 P.2d 149, 151-52 (1947) ("When relief is denied it is because the plaintiff is a wrongdoer . . . . The court's refusal is not for the sake of the defendant, but because it will not aid such a plaintiff." (quoting Restatement (First) of Contracts § 598 cmt. a (Am. L. Inst. 1932))); *Rhine*, 111 Colo. at 508, 143 P.2d at 684 ("Consistently, the courts deny affirmative relief for [fraudulent or unconscionable] conduct . . . . "); *White v. Baugher*, 82 Colo. 75, 76, 256 P. 1092, 1092 (1927) ("The rule as to 'clean hands' is one of public policy, for the protection of the integrity of the court, not for a defense.").

3. Summary

¶ 37 Because the evidence supports the trial court's findings of HMLL's improper conduct and because the trial court acted within the scope of its discretion to apply the unclean hands doctrine, we affirm its rejection of HMLL's equitable claims.

B. Denial of Legal Relief

¶ 38 HMLL also argues that the trial court erred by holding that HMLL wasn't entitled to legal relief on the $350,000 promissory note because the entire agreement between Wellner and HMLL was illegal and against public policy. We agree with the trial court.

1. Legal Principles and Standard of Review

¶ 39 Generally, a contract that violates the law or a regulatory scheme is unenforceable and void because enforcing it would violate public policy. *Amedeus Corp. v. McAllister*, 232 P.3d 107, 109 (Colo. App. 2009). Enforcement of a promissory note may also be precluded when the predicating agreement is void as against public policy. *See Rademacher v. Becker*, 2015 COA 133, ¶ 18. Courts need not enforce contracts that violate public policy even if the result creates a substantial injustice for one of the parties. *Ungar*, 60 P.3d at 750. Instead, a court must "leave the parties where [it]

find[s] them." *Swinehart*, 117 Colo. at 26-27, 184 P.2d at 151 ("To such disputes the courts will not listen, and the parties thereto they will leave in the exact position in which they have placed themselves."). We review whether a contract violates public policy de novo. *Calvert v. Mayberry*, 2019 CO 23, ¶ 13.

2. Application

¶ 40 The record supports the conclusion that HMLL's resident owner arrangement with Wellner (and Mistretta) violated the MED's regulations. The relevant MED regulations outlined "the process to be followed when a [marijuana business] applies to obtain financing or otherwise have a relationship with an [IBIO]." Marijuana Enf't Div. Rule 202.1, 1 Code Colo. Regs. 212-2 (effective Jan. 1, 2018). The MED made it abundantly clear that any agreement made in violation of its regulations is void. *Id.* at Rule 202.1(H)(2)(a). Specifically, the MED required that a PEI "or *any other person*" who held "[a]ny interest" in a marijuana business acquire such an interest "in accordance with the provisions of the . . . Code." *Id.* (emphasis added). The MED further clarified that "[t]he issuance of any Agreement or other interest in violation thereof shall be void." *Id.*

¶ 41 As discussed, HMLL behaved like an IBIO (not merely an unsecured creditor), held a financial interest in the company, and provided substantial financing to the company but never followed the MED's clearly defined processes in doing so. To now enforce the promissory note, which was used to further the illegal resident owner scheme, would run afoul of the MED's regulations and erode the clear purpose of the MED's disclosure process for IBIOs.

¶ 42 HMLL's own evidence at trial also supports the trial court's conclusion that the entire scheme was illegal. Two of HMLL's own witnesses, Mistretta and Darmon, testified that HMLL never reduced its resident owner agreements with Mistretta or Wellner to writing because the arrangements were illegal under Colorado law. Specifically, Mistretta testified that his resident owner agreement with HMLL was never committed to writing, and that he accepted financing from HMLL for the company even though the MED never approved HMLL for PEI status during his time as resident owner. Darmon testified that the resident owner deal with Wellner almost fell through because Wellner refused to sign a written agreement memorializing the arrangement given that it was an illegal agreement.

¶ 43 Additionally, evidence at trial established that the MED had a means by which the members of HMLL could have lawfully invested and sought ownership in a marijuana business as nonresidents, but that HMLL's members didn't follow this process. Instead, the evidence supports the trial court's finding that HMLL's members devised the elaborate resident owner scheme to evade the MED's regulations. Consequently, HMLL's arrangement with Wellner to serve as a resident owner until HMLL's members obtained ownership licenses from the MED, prompting Wellner's transfer of the company to HMLL, was an illegal contract. *See* Marijuana Enf't Div. Rules 201.5, 231.5, 1 Code Colo. Regs. 212-2 (effective Nov. 30, 2015); Marijuana Enf't Div. Rules 202.1, 231.2, 1 Code Colo. Regs. 212-2 (effective Jan. 1, 2018). Given that the $350,000 promissory note was executed in consideration of furthering this illegal resident owner scheme, it is per se void as against public policy. *Cf. Rademacher*, ¶¶ 18, 24 (refusing to enforce a promissory note predicated on "an agreement that conditions payment on the influence or hinderance of a criminal case" as "void as against public policy" because such influence over a criminal prosecution is illegal). The promissory note can't be separated from the illegal

scheme because it was integral in perpetuating it — the $350,000 promissory note executed by HMLL was used to transfer the ownership interest from MJM and Mistretta, the first illegal resident owners, to Wellner and ORAM, the second illegal resident owners. Because of its integral role in the perpetration of the illegal scheme, the trial court properly declined to enforce the promissory note on the basis that doing so would violate public policy.

¶ 44 Accordingly, we affirm the trial court's conclusion that HMLL's agreement with Wellner was illegal and unenforceable as against public policy, as is the $350,000 promissory note.

III. Disposition

¶ 45 We affirm the judgment.

JUDGE LIPINSKY and JUDGE GOMEZ concur.