



CIRCUIT COURT OF OREGON
THIRD JUDICIAL DISTRICT

MARION COUNTY COURTHOUSE
100 HIGH STREET NE
P.O. BOX 12869
SALEM, OREGON 97309-0869

DAVID LEITH
Circuit Court Judge
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February 28, 2020

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Re: SBTech Malta Limited v. DOJ, et al
Marion County Circuit Court Case No: 20CV02217

Dear Counsel:

This matter is before the Court following an evidentiary hearing on plaintiff (SBTech's) motion for preliminary injunction. During and following the hearing, the parties stipulated under ORCP 79C(2) to consolidation of the preliminary injunction with the trial on the merits. On the merits, the Court concludes that disclosure without redaction of the full contract, including Exhibit 4, is required by Oregon law.

FACTS

On May 14, 2018, the United State Supreme Court struck down a federal law that had precluded states from conducting sports betting. Defendant Oregon Lottery (Lottery) then sought entry into that new sports-betting marketplace. Lottery requested proposals in February 2019. After a selection process, Lottery

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chose SBTech to provide the service. SBTech and Lottery engaged in negotiations from March to May 2019. The ultimate contract, finalized in May of 2019, includes “Exhibit 4,” which contains definitions and formulas describing the parties’ mutual obligations, including revenue-sharing obligations.

The media defendants sought disclosure of the contract under the Oregon Public Records Law (PRL). Lottery disclosed most of the contract, but substantially redacted the contract’s Exhibit 4. The media defendants then sought the Attorney General’s review of Lottery’s redactions. By letter dated January 3, 2020, the Attorney General ruled that Lottery must disclose Exhibit 4 without redaction. SBTech brought this action to prevent that disclosure.

CONCLUSIONS

This case arises under the PRL and the Oregon Uniform Trade Secrets Act (OUTSA). SBTech contends Exhibit 4 to the contract was properly redacted to prevent disclosure of its trade secrets in accordance with OUTSA and the PRL. SBTech further contends that the redactions were appropriate to prevent disclosure of documents submitted to the State in confidence under the PRL.

As to SBTech’s trade secret argument, the Court is unpersuaded that the effective terms of this public contract, negotiated at arms’ length, constitute a trade secret. The Court does not categorically preclude the possibility that a term of a public contract could be a trade secret in some circumstances, but a trade secret is not established in this case. The record reflects, and the Court finds as a fact, that the terms set out in Exhibit 4 were intensively negotiated. Those terms are not a secret of either party.

The remaining issue is whether Exhibit 4 is exempt as a confidential submission. The Court will assume without deciding that SBTech’s initial presentation of its proposed pricing formula was made in confidence. The Court is unpersuaded that those proposed terms retain their status as a confidential submission when they are partially adopted—as amended through intensive, arms’ length negotiations—into a public contract.

The Court also is unpersuaded that the public interest would allow the terms of this contract to be held secret. Public contracts are a matter of significant public interest. That public interest is heightened where the contract relates to an emerging market for gambling. The legitimate public interest is further heightened by the initial deficits Lottery has thus far experienced under the contract.

The Court is not insensitive to the concern that disclosure could impair Lottery’s position and future dealings in the marketplace. Similar concerns perhaps led the legislature to adopt certain exemptions applicable, for example, to Treasury’s investment work. Given time, the legislature might see fit to make similar accommodations for Lottery’s participation in the emerging sports-betting

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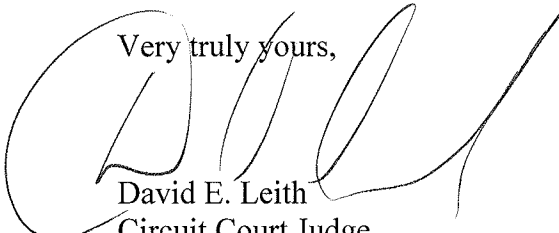
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marketplace. But it is not for this Court to anticipate or create such exemptions ahead of legislature.

SBTech's request for declaratory and injunctive relief precluding disclosure of the unredacted documents is denied. The Court would instead declare that the relief sought by SBTech is unavailable under the PRL and OUTSA. SBTech's motion for a stay is granted in part. The State defendants are directed to withhold disclosure of the unredacted public records for 30 days from this Court's judgment to allow time for SBTech to seek a further stay on appeal.

Mr. Crowley may submit an appropriate form of General Judgment.

Very truly yours,

A handwritten signature in black ink, appearing to read 'D. Leith', written over the typed name and title.

David E. Leith
Circuit Court Judge

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cc: File