



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  
503-588-5160  
Fax: 503-588-5117

February 28, 2020

Darian Stanford  
Tonkon Torp LLP  
888 SW 5<sup>th</sup> Ave Ste 1600  
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Stoel Reeves LLP  
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Kenneth Crowley  
Michael Kron  
Oregon Department of Justice  
1162 Court St NE  
Salem, OR 97301

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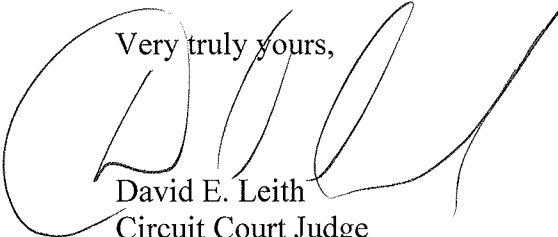
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marketplace. But it is not for this Court to anticipate or create such exemptions ahead of legislature.

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

DEL/bh  
cc: File

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IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF MARION

SBTECH MALTA LIMITED, a foreign  
limited liability company,,

Plaintiff,

v.

OREGON DEPARTMENT OF JUSTICE,  
acting by and through Attorney General  
ELLEN F. ROSENBLUM; OREGON STATE  
LOTTERY, an agency of the State of Oregon;  
BARRY PACK, in his official capacity as the  
Director of the Oregon State Lottery;  
ADVANCE LOCAL MEDIA LLC, dba, THE  
OREGONIAN, a New York limited liability  
company; and CATENA MEDIA, a foreign  
limited liability company;

Defendants.

Case No. 20CV02217

GENERAL JUDGMENT

**ORS 20.140 - State fees deferred at filing**

THIS MATTER came before the Court for hearing on February 6, 2020 and on February 25, 2020, on plaintiff’s motion for preliminary injunction.

Pursuant to ORCP 79 C(2), the parties appearing in this matter formally stipulated that the trial of the action on the merits shall be advanced and consolidated with the hearing on the motion for preliminary injunction. As a result, the parties agreed that the Court’s ruling on the motion for preliminary injunction should serve as the basis for entry of judgment in this action.

The Court received and fully considered testimony, both live and through declarations, exhibits, documents submitted with written briefs and declarations, the unredacted contract submitted for the Court’s *in camera* consideration, and the written and oral arguments of the parties.

Based upon the evidence and argument submitted by the parties and the pleadings on file in this case, the Court issued a written letter opinion dated February 28, 2020, denying the

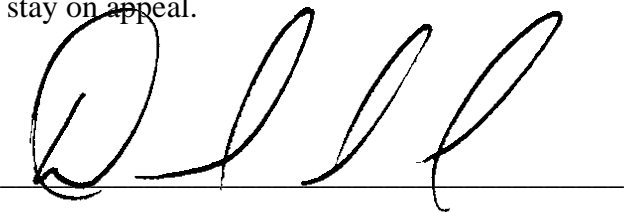
1 motion for preliminary injunction, declaring the relief sought to be unavailable under the law, but  
2 granting a 30 day stay after judgment is entered so that relief may be sought in the court of  
3 appeals. The contents of the Court's February 28, 2020, ruling are fully incorporated as if  
4 restated herein.

5 NOW, THEREFORE, based on the record, pleadings, and applicable law, IT IS  
6 HEREBY ORDERED AND ADJUDGED that judgment is entered in favor of Defendants on  
7 both claims for relief as follows:

8 Plaintiff SBTech Malta Limited's motion and claims for declaratory and injunctive relief,  
9 both preliminary and permanent, are DENIED as SBTech Malta Limited is entitled to no relief  
10 on its claims; the Court finds and declares that the relief sought by SBTech Malta Limited is  
11 unavailable under the Oregon Public Records Law and the Oregon Uniform Trade Secrets Act.

12 However, a motion to stay is GRANTED IN PART in favor of Plaintiff SBTech Malta  
13 Limited. Specifically, the STATE DEFENDANTS Attorney General Rosenblum, The Oregon  
14 State Lottery, and Lottery Director Pack are ordered to withhold disclosure of the unredacted  
15 public records that are the subject of this action for 30 days from entry of this judgment to allow  
16 Plaintiff SBTech Malta Limited to seek a further stay on appeal.

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18 Signed: 4/2/2020 10:04 AM



19  
20 **Circuit Court Judge David Leith**

21 Submitted by: Christina L. Beatty-Walters  
22 Senior Assistant Attorney General  
23 Attorneys for Defendants  
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1 **CERTIFICATE OF READINESS**

2 This proposed **JUDGMENT** is ready for judicial signature because:

3 1.  Each party affected by this order or judgment has stipulated to the order or  
4 judgment, as shown by each opposing party's signature on the document being submitted.

5 2.  Each party affected by this order or judgment has approved the order or judgment,  
6 as shown by each party's signature on the document being submitted or by written confirmation  
7 of approval sent to me.

8 3.  I have served a copy of this order or judgment on each party entitled to service  
9 and:

10 a.  No objection has been served on me.

11 b.  I received objections that I could not resolve with a party despite  
12 reasonable efforts to do so. I have filed a copy of the objections I received and indicated which  
13 objections remain unresolved.

14 c.  After conferring about objections, [role and name of objecting party]  
15 agreed to independently file any remaining objection.

16 4.  Service is not required pursuant to subsection (3) of this rule, or by statute, rule,  
17 or otherwise.

18 5.  This is a proposed judgment that includes an award of punitive damages and  
19 notice has been served on the Director of the Crime Victims' Assistance Section as required by  
20 subsection (5) of this rule.

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1 6. [ ] Other:\_\_\_\_\_.

2 DATED this 11 day of March, 2020.

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s/ Kenneth C. Crowley  
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Tina.BeattyWalters@doj.state.or.us  
Of Attorneys for Oregon State Lottery

1 **CERTIFICATE OF SERVICE**

2 I certify that on March 11, 2020, I served the foregoing GENERAL JUDGMENT upon  
3 the parties hereto by the method indicated below, and addressed to the following:

4 Darian Stanford  
5 Tonkon Torp LLP  
6 900 SW Fifth Avenue Suite 2600  
7 Portland, OR 97204  
8 Counsel for Plaintiff

HAND DELIVERY  
 MAIL DELIVERY  
 OVERNIGHT MAIL  
 SERVED BY E-FILING

9 Brad S. Daniels  
10 Stoel Rives LLP  
11 760 SW Ninth Ave, Ste 3000  
12 Portland, OR 97205

HAND DELIVERY  
 MAIL DELIVERY  
 OVERNIGHT MAIL  
 SERVED BY E-FILING

13 Counsel for Defendant Advance  
14 Local Media

15 s/ Kenneth C. Crowley

16 KENNETH C. CROWLEY #883554  
17 Senior Assistant Attorney General  
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25 Of Attorneys for Oregon State Lottery  
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