

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA
CIRCUIT CIVIL DIVISION

RICHARD CORCORAN, in his official
capacity as Speaker of the Florida House of
Representatives,

Plaintiff,

v.

Case No. 2016 CA 002718

PDR PRODUCTIONS, INC., a Florida
profit corporation,

Defendant.

**COMPLAINT FOR EXPEDITED DECLARATORY JUDGMENT THAT AVOIDS
UNJUSTIFIED TRADE SECRET CLAIM AND PERMITS UNFETTERED
LEGISLATIVE INVESTIGATION INTO EXPENDITURE OF PUBLIC FUNDS**

COMES NOW, Richard Corcoran, in his official capacity as Speaker of the Florida House of Representatives, and sues PDR Productions, Inc. (“PDR”) for an expedited declaratory judgment determining that the House, its members, and its committee staff may disclose the material terms of a contract entered into between PDR and the Florida Tourism Industry Marketing Corporation d/b/a Visit Florida (“Visit Florida”) in 2015 (the “Contract”),¹ which are neither trade secrets nor otherwise confidential, notwithstanding PDR’s claims to the contrary.

Introduction

1. The Legislature, in the exercise of its constitutionally delegated legislative power, utilizes committees and committee staff to conduct oversight of the expenditure of public funds and assesses the efficacy of those expenditures in conjunction with the development of an annual

¹In an abundance of caution but without conceding PDR’s trade secret confidentiality claim, the Contract is not attached to this complaint as an exhibit. Instead, the Speaker asks this Court for leave to file the document under seal for in camera review.

general appropriations act. To this end, legislative committees have broad powers to gather information and documents and to compel the testimony of witnesses. Visit Florida annually receives a specific appropriation of millions of dollars in public funds. In 2015 Visit Florida's Contract with PDR called for Visit Florida's payment to PDR in return for PDR's provision of certain services ostensibly within Visit Florida's statutory mandate and the purpose of the public funds appropriated to it.

2. The House Appropriations Committee is investigating Visit Florida's use of public funds, including the funds used to pay PDR under the Contract. PDR has made an overly broad, unjustified trade secret confidentiality claim regarding the material terms of the Contract, including the amount of public funds spent under the Contract; PDR in turn is impeding the House's legislative prerogative to publicly investigate the use of taxpayer dollars and interfering with the transparency of that process. The Speaker seeks this Court's intervention to stop PDR's unreasonable effort to conceal both what PDR was paid and what return taxpayers received—or did not receive—for their investment.

Parties

3. The plaintiff is the Speaker of the Florida House of Representatives and is the presiding officer for that institution pursuant to article III, section 2, of the Florida Constitution. The House's Rule 2.6 empowers the Speaker to initiate this suit on behalf of the House, its members, and its staff on a matter of significant interest to the House.

4. The defendant, PDR, is an active Florida profit corporation that does business throughout the State of Florida.

Jurisdiction and Venue

5. This suit seeks declaratory relief under sections 86.011, 86.021, 86.051, and 86.101, Florida Statutes. The relief sought is protective and anticipatory, and no damages or

other monetary relief is sought. This Court being a superior one general jurisdiction, it has jurisdiction in this case pursuant to sections 26.012, 86.011, and 86.051, Florida Statutes.

6. As set out in more detail below, because of the impending nature of legislative business that the House needs to conduct (committee hearings starting in January 2017 and regular session convening in March 2017), the need for relief is extremely urgent. In turn, the Speaker is proceeding pursuant to section 86.111, Florida Statutes, and asks that this Court grant a speedy hearing so that this matter can be resolved quickly, which will allow the House and its committees to conduct a full and transparent investigation into the expenditure of public funds by Visit Florida without interference by PDR.

7. Venue is proper in Leon County, Florida, pursuant to sections 47.011 and 47.051, Florida Statutes, because the operative facts and circumstances giving rise to the need for this suit occurred in Leon County. This controversy arises only because PDR directed correspondence to House committee staff in Leon County threatening suit if any House member or committee staff disclosed the material terms of the Contract. The House obtained the Contract from Visit Florida pursuant to section 11.143(2), Florida Statutes, by Visit Florida's physical delivery of the Contract in Leon County, and PDR knowingly agreed to that physical delivery in Leon County. Venue also is proper in Leon County because PDR has agreed that any litigation regarding the Contract shall be brought in Leon County. Finally, the principles behind the home venue privilege long-recognized by Florida courts dictate that venue is proper in Leon County.

General Allegations

8. Article III, section 1, of the Florida Constitution vests all legislative power of the State in the Florida Legislature. In turn, the Legislature's two houses have the power not only to appropriate public funds but also to subject recipients of those funds to legislative oversight to ensure those public funds are properly spent in the public interest in the manner intended by the

Legislature. As part of that oversight power, the Legislature has the authority to conduct investigations and compel the testimony of witnesses and the production of documents.

9. Section 11.143(2), Florida Statutes, entitles and authorizes legislative committees “to inspect and investigate the books, records, papers, documents, data, operation, and physical plant of any public agency in this state, including any confidential information.”

10. Enterprise Florida, Inc. (“EFI”) is a nonprofit corporation established by the Florida Legislature to serve as an economic development organization for the State of Florida. *See* § 288.901(1), Fla. Stat. It is governed by a board of directors chaired by the Governor of the State of Florida. EFI maintains a performance-based contract with the Department of Economic Opportunity (“DEO”). The Legislature annually appropriates public funds to EFI for its operations. In turn, the Legislature determined that “it is in the public interest and reflects the state’s public policy that [EFI] operate in the most open and accessible manner consistent with its public purposes.” § 288.901(1)(b), Fla. Stat. EFI, then, is expressly subject to Florida’s public records laws and government-in-the-sunshine requirements. *See id.*

11. Visit Florida is a nonprofit corporation established by the Florida Legislature to serve as a direct support organization of EFI. § 288.1226(2), Fla. Stat. Florida law requires that EFI contract with Visit Florida “to execute tourism promotion and marketing services, functions, and programs for the state.” § 288.923(3), Fla. Stat. By law, Visit Florida administers funds from the Tourism Promotional Trust Fund pursuant to a contract with EFI. *See* § 288.122, Fla. Stat. It annually receives a specific line-item appropriation from public funds; for Fiscal Year 2016-2017, that general revenue appropriation is \$2 million. In each of Fiscal Years 2015-2016 and 2016-2017, Visit Florida was specifically appropriated \$74 million in state trust funds, including from the Tourism Promotional Trust Fund. *Cf.* §§ 288.1201(1)(e), 288.122, Fla. Stat.

12. By law, EFI has within its organization a Division of Tourism Marketing (“DTM”). *See* § 288.923, Fla. Stat. DTM maintains and implements the contract between EFI and Visit Florida, and it accomplishes its marketing and advertising activities through Visit Florida through the use of both public and private funds. Florida law requires that Visit Florida employees staff DTM, *see* § 288.923(5), Fla. Stat., and officers of DTM are subject to various provisions of part III, chapter 112, Florida Statutes (Florida’s code of ethics) as public officers, *see* § 288.92(2), Fla. Stat.

13. The Legislature has declared its intent “to review the performance of [EFI] in achieving the performance goals stated in its annual contract with the department to determine whether the public is receiving a positive return on its investment in [EFI], *and its divisions.*” § 288.904(5), Fla. Stat. (emphasis supplied).

14. Ostensibly in furtherance of its contract with EFI “to execute tourism promotion and marketing services, functions, and programs for the state,” in 2015 Visit Florida entered into the Contract with PDR by which PDR would provide a music artist as a celebrity tourism ambassador/spokesperson for the State of Florida in return for significant compensation.

15. On November 22, 2016, the House held its organization session, and its members were seated and sworn. The Legislature will convene in regular session on March 7, 2017. In January 2017, the House will have its first committee meetings prior to the regular session. In order to conduct oversight and work on the 2017-2018 General Appropriations Act, in December 2016, the House Appropriations Committee, in the exercise of its authority under section 11.143(2), Florida Statutes, sought to obtain the Contract from Visit Florida. The House Appropriations Committee sought the document, among other reasons, as part of its

responsibility to assess “whether the public is receiving a positive return on its investment in [EFI], *and its divisions.*”

16. Visit Florida initially resisted the House Appropriations Committee’s effort to obtain the Contract, because counsel for PDR reportedly advised Visit Florida that the Contract contained trade secret information and must be kept confidential.

17. Ultimately, Visit Florida provided a copy of the Contract to the House, but not before PDR’s counsel directed a letter to the staff director and budget chief for the House Appropriations Committee advising that PDR deemed the Contract to be “confidential containing trade secrets” and that the Contract should “only be viewed on a ‘For Your Eyes Only’ basis.” Moreover, PDR’s counsel advised in the letter that “none of the material business terms will be disclosed to the media or elsewhere” and that PDR “reserve[s] all rights against any individuals violating” its trade secret confidentiality claim. Visit Florida has not made a claim of confidentiality for itself; it only has asserted the claim on behalf of PDR.

18. PDR’s trade secret confidentiality claim effectively covers the entire Contract with Visit Florida. It appears the only material not covered by the claim is the Contract’s introduction, its purpose, and the general scope of work. Notably included within the trade secret confidentiality claim are the amount of Visit Florida funds paid to PDR for the services rendered under the Contract, the specific deliverables, and their timetable. In September 2015, however, a Visit Florida news release described at least several of the deliverables under the Contract—items that PDR now claims are confidential trade secrets.

19. PDR’s overbroad trade secret confidentiality claim, and the attendant threat of litigation against anyone violating that claim, will impede the ability of the House, its members, and committee staff to fulfill their duties to monitor and investigate the expenditure of public

funds, to ensure that public funds are properly spent in the public interest in the manner intended by the Legislature, and to participate in the development of a General Appropriations Act for the coming fiscal year in an open and transparent process. Indeed, by law, a House committee or the whole House *must* conduct its meetings in public, so there is no feasible way that the Contract's details (and the expenditure of funds pursuant to that Contract) would not be publicly disclosed as part of legislative inquiry into and consideration of Visit Florida's past and future appropriations and expenditures.

20. Because of PDR's threat of litigation against House members and staff if they disclose any of the terms that PDR claims to be confidential, there is a real and immediate need for a declaration of the House's right to disclose those terms as they relate to the expenditure of public funds free from the threat of litigation by PDR.

Count I – Legislative Immunity from Civil Liability

21. The allegations set out in paragraphs 1 through 20 are incorporated here by reference and restated as if set out in full.

22. Under both the Florida Constitution and the English common law, as incorporated by section 2.01, Florida Statutes, both legislators and their legislative staff enjoy immunity from civil liability for actions taken in the course of their legislative duties.

23. A legislator or legislative staff acquiring information or documents pertaining to potential legislation or appropriations and then sharing that information or those documents with other legislators or staff is an essential part of the legislative process. A legislator or legislative staff publicly discussing information and documents relating to the expenditure of public funds while at a committee meeting or while the Legislature is in session also is an essential part of the

legislative process. In turn, legislators and legislative staff have legislative immunity from civil liability relating to these and other legislative functions.

24. The claim of confidentiality by PDR, albeit unjustified, is far outweighed by the need for legislators and legislative staff to engage in the legislative functions of monitoring and investigating the expenditure of public funds and assessing the prior use of those funds as part of the appropriations process. It also is far outweighed by the right of the public to see the Legislature exercise its oversight functions and to know how public funds are being spent.

25. The Speaker, on behalf of the House, its members, and its staff, is in immediate need of a declaration regarding the existence of their immunity from any civil liability to PDR in connection with the disclosure of the terms of PDR's Contract with Visit Florida in the course of exercising their legislative duties.

WHEREFORE, the Speaker of the Florida House of Representatives prays that this Court:

- 1) Permit the filing of the Contract between Visit Florida and PDR under seal for an in camera review;
- 2) Hold an expedited final hearing on this matter; and
- 3) Render judgment in his favor and against PDR declaring that notwithstanding PDR's claim of confidential trade secrets in its Visit Florida Contract, all House members and committee staff are immune from any civil liability to PDR for any disclosure of the material terms of the Contract in the course of performing their legislative duties.

Count II – No Actual Confidential Trade Secret Information

26. The allegations set out in paragraphs 1 through 20 are incorporated here by reference and restated as if set out in full.

27. Under Florida law, a “trade secret” is information that “(a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.” § 688.002(4), Fla. Stat.; *see also* § 812.081(1)(c), Fla. Stat. (criminal provision defining “trade secret” to mean, in pertinent part, the “compilation of information which is for use, or is used, in the operation of a business and which provides the business an advantage, or an opportunity to obtain an advantage, over those who do not know or use it.”).

28. The amount of compensation, the deliverables, and the timetable set out in the Contract between Visit Florida and PDR do not meet any definition of “trade secret” under Florida law, so they are not confidential and can be disclosed without there being a basis for civil liability, despite PDR’s claim to the contrary.

29. There is nothing else in the Contract that fits the definition of “trade secret” or otherwise warrants a claim of confidentiality, and there is no basis for any House member or committee staff who discloses the material terms of the Contract to be subject to civil liability or other penalty.

30. Moreover, and in the alternative, to the extent any information in the Contract was disclosed as part of a press release or otherwise publicly disclosed by Visit Florida or PDR, that information likewise does not meet the definition of “trade secret,” even if it may have constituted trade secret information prior to its disclosure.

31. The Speaker, on behalf of the House, its members, and its staff, is in immediate need of a declaration about PDR’s claimed existence of trade secret confidentiality in the

Contract between it and Visit Florida, which now has been provided to the House pursuant to section 11.143, Florida Statutes.

WHEREFORE, the Speaker of the Florida House of Representatives prays that this Court:

- 1) Permit the filing of the Contract between Visit Florida and PDR under seal for an in camera review;
- 2) Hold an expedited final hearing on this matter;
- 3) Render judgment in favor of the Speaker and against PDR declaring that notwithstanding PDR's claim of confidential trade secrets in its Visit Florida Contract, there is no confidential trade secret information contained therein; and declaring that the House, its members, and its staff may disclose the terms of the Contract without being subject to liability for doing the same.

Respectfully submitted,

/s/ Adam S. Tanenbaum

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