

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

ALL ABOARD FLORIDA – OPERATIONS
LLC,

Plaintiff,

vs.

Case No.:

STATE OF FLORIDA, DEPARTMENT OF
TRANSPORTATION; the GREATER
ORLANDO AVIATION AUTHORITY; the
ORLANDO-ORANGE COUNTY
EXPRESSWAY AUTHORITY; and
MATTHEW FALCONER,

Defendants.

**COMPLAINT FOR DECLARATORY JUDGMENT
AND INJUNCTIVE RELIEF**

Plaintiff, All Aboard Florida – Operations LLC (“AAF”) files this Complaint for Declaratory Judgment and Injunctive Relief (“Complaint”) against Defendants, the State of Florida, Department of Transportation (the “Department” or the “FDOT”), the Greater Orlando Aviation Authority (“GOAA”), the Orlando-Orange County Expressway Authority (“OOCEA”) and Mathew Falconer (“Falconer”).

Introduction

1. Pursuant to sections 812.081 and 815.045, Florida Statutes, the Declaratory Judgment Act (§ 86.011, Fla. Stat. *et seq.*), the Florida Uniform Trade Secrets Act (ch. 688, Fla. Stat. *et seq.*), and Florida Rule of Civil Procedure 1.610, AAF seeks: (1) a declaratory judgment that AAF’s All Aboard Florida Ridership and Revenue Study (the “Ridership Study”) and the information contained therein are trade secrets exempt from disclosure under Florida’s Public

Records Act, and (2) injunctive relief enjoining the Department, GOAA, and the OOCEA from publicly disclosing AAF's protected trade secrets and proprietary and confidential business information. In support of the requested relief, AAF states as follows:

Parties

2. AAF is a limited liability company organized under the laws of the State of Delaware, with its corporate headquarters located at 2855 LeJeune Road, 4th Floor, Coral Gables, Florida 33134. AAF is developing an intercity passenger rail service to operate between Miami and Orlando, Florida.

3. The Department is an agency of the Executive Branch of the State of Florida subject to Florida's Public Records Act (§ 119.01, Fla. Stat., et seq.) and Uniform Trade Secrets Act (§ 688.001, Fla. Stat., et seq.), and is headquartered in Leon County, Florida.

4. GOAA is an agency within the definition of the term included in chapter 119, Florida Statutes, is subject to both Florida's Public Records Act and Uniform Trade Secrets Act, and is headquartered in Orange County, Florida.

5. OOCEA is an agency within the definition of the term included in chapter 119, Florida Statutes, is subject to both Florida's Public Records Act and Uniform Trade Secrets Act, and is headquartered in Orange County, Florida.

6. Falconer is a resident of Orange County, Florida. Falconer requested records, including AAF documents containing trade secrets, from the Department, GOAA, and the OOCEA.

Jurisdiction and Venue

7. This is an action for a declaratory judgment as well as temporary and permanent injunctive relief. This Court has jurisdiction pursuant to sections 86.011 and 26.012, Florida Statutes.

8. Venue is proper because the Department is an agency of the Executive Branch of the State of Florida with its headquarters located in Leon County, Florida.

General Allegations

9. By email dated March 18, 2014, GOAA and the OOCEA received a request from Falconer seeking documents pursuant to Florida's Public Records Act. The documents requested by Falconer include, but are not limited to: (i) copies of the application for a federally guaranteed loan to create improvements to the railway; (ii) copies of easements and maps of easements over all public land that benefits AAF; (iii) plans and specifications for the terminal at the Orlando International Airport; (iv) economic development impact statements; and (v) environmental impact statements. A copy of Falconer's March 18, 2014, email is attached hereto as **Exhibit A**.

10. By email dated March 24, 2014, the Department received a request from Falconer seeking documents pursuant to Florida's Public Records Act. The documents requested by Falconer include, but are not limited to: (i) any document, email, or letter that involves the potential purchase of the Florida East Coast Industry rail lines in Southeast Florida by any governmental entity; and (ii) any documents or information on the use of taxpayer funds for the improvement of the Florida East Coast Industry rail line or potential subsidy of the rail service. A copy of Falconer's March 24, 2014, email is attached hereto as **Exhibit B**.

11. Although Falconer was advised of AAF's claim that certain documents included within his request included trade secrets, Falconer refused to omit such documents from his request and has insisted on production of documents containing AAF trade secrets.

12. On May 8, 2014, the Department notified AAF via email that it intends to disclose copies of all information in its possession responsive to Falconer's requests, including AAF's All Aboard Florida Ridership and Revenue Study ("Ridership Study"), unless AAF "take[s] appropriate action to protect the information it contends constitutes trade secrets" within 10 business days.

13. On May 14, 2014, GOAA notified AAF via email that it intends to disclose copies of all information in its possession responsive to Falconer's requests, including AAF's All Aboard Florida Ridership and Revenue Study ("Ridership Study"), unless AAF takes appropriate action to protect the information it contends constitutes trade secrets prior to May 23, 2014.

14. The OOCEA is in possession of the Ridership Study and has not yet advised AAF whether it intends to provide the Ridership Study in response to Falconer's public records request.

15. AAF's Ridership Study contains confidential and proprietary trade secret information, as defined in sections 812.081(c) and 688.002(4), Florida Statutes.

16. Section 812.081(c), Florida Statutes, provides that a "trade secret" is:

[T]he whole or any portion or phase of any formula, pattern, device, combination of devices, or compilation of information which is for use or is used, in the operation of a business which provides the business an advantage, or an opportunity to obtain an advantage, over those who do not know or use it. "Trade secret" includes any scientific, technical, or commercial information, including any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof. Irrespective of novelty, invention, patentability, the state of the prior art, and the level of skill in the business, art, or field to which the subject

matter pertains, a trade secret is considered to be:

- 1) Secret;
- 2) Of value;
- 3) For use or in use by the business; and
- 4) Of advantage to the business, or providing an opportunity to obtain an advantage over those who do not know or use it when the owner thereof takes measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes.

17. Trade secrets that meet the definition set forth in section 812.081(c), Florida Statutes, are exempted from disclosure under the Public Records Act. *See* § 815.045, Fla. Stat.

18. Section 688.002(4) defines a “trade secret” as:

[I]nformation, including a formula, pattern, compilation, program, device, method, technique, or process 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.

19. Trade secrets that meet the definition set forth in section 688.002(4), Florida Statutes, are protected from misappropriation by government agencies, including misappropriation by disclosure without express or implied consent, where knowledge of the trade secret was “[a]cquired under circumstances giving rise to a duty to maintain its secrecy or limit its use.” § 688.002(2)(b), Fla. Stat.

20. AAF’s Ridership Study is the result of AAF’s engagement of third-party consultants to develop and review a detailed ridership and revenue forecast that helped generate operating and financial models for the planned AAF passenger service. AAF’s passenger rail project will make AAF a new entrant into a competitive transportation market for both long-distance (Miami to Orlando) and short-distance (Miami to Fort Lauderdale to West Palm Beach)

service. The Ridership Study analyzes expected market share for AAF's service, including the effects of various pricing and travel time scenarios on AAF ridership. As such, the Ridership Study is an extremely sensitive and commercially valuable document, the disclosure of which to the public could place AAF at an unfair competitive disadvantage vis-à-vis airlines and other transportation alternatives.

21. AAF has protected the Ridership Study from disclosure, and provided the Ridership Study to the Department, GOAA, and the OOCEA with each page marked as proprietary and confidential.

Count I
Declaratory Judgment

22. AAF incorporates by reference paragraphs 1-21.

23. The Department, GOAA, and the OOCEA are prohibited from disclosing AAF's trade secrets pursuant to sections 688.002, 812.081, and 815.045, Florida Statutes. *See Coventry First, LLC v. State, Office of Ins. Regulation*, 30 So. 3d 552, 561 (Fla. 1st DCA 2010).

24. The Department and GOAA have provided written notice to AAF that they intend to disclose AAF's trade secrets unless AAF obtains declaratory and/or injunctive relief declaring that AAF's Ridership Study constitutes a trade secret and preventing it from disclosing such trade secrets. Falconer has refused to omit such trade secrets from his public records requests and has insisted on disclosure of such information. Thus, a bona fide dispute exists between the Department, GOAA, the OOCEA, Falconer, and AAF with regards to whether AAF's Ridership Study contains trade secrets, and AAF's right not to have its Ridership Study disclosed is in doubt.

25. AAF is entitled to a declaratory judgment that its Ridership Study contains trade secrets and is protected from disclosure to any party by the Department, GOAA, and the OOCEA under Florida law.

County II
Uniform Trade Secrets Act

26. AAF incorporates by reference paragraphs 1-21.

27. The Department and GOAA have provided written notice to AAF that they intend to disclose AAF's trade secrets unless AAF obtains declaratory and/or injunctive relief preventing it from doing so.

28. Such statements by the Department and GOAA constitute a threatened misappropriation of a trade secret under section 688.003(1), Florida Statutes, and are actionable under the Uniform Trade Secrets Act.

29. AAF is entitled to an injunction, in accordance with section 688.003(1), Florida Statutes, prohibiting the Department, GOAA, and the OOCEA from disclosing AAF's trade secrets.

Count III
Temporary and Permanent Injunctive Relief

30. AAF incorporates by reference paragraphs 1-21.

31. Disclosure by the Department, GOAA, or the OOCEA of AAF's Ridership Study and the information contained within will cause AAF immediate and irreparable injury because it will destroy the value of such information and damage AAF's competitive advantage in its marketplace.

32. AAF has no adequate remedy at law that could prevent the disclosure of its trade secrets or remedy the disclosure of such trade secrets. The only adequate remedy available is the

entry of injunctive relief to prevent the actual or threatened disclosure of its trade secrets and confidential, proprietary business information, which is specifically authorized and provided for in section 688.003, Florida Statutes.

33. Based on the statutory definition of trade secrets, the efforts undertaken by AAF to preserve the confidentiality of the trade secret material, and the statutory exemption under the Public Records Act extended to trade secret material, AAF has a clear legal right to the relief requested and there is a substantial likelihood that AAF will prevail in this action for injunctive relief.

34. Entering the requested injunction will serve the public interest in that the Florida Legislature has found that the public and private harm in disclosing trade secrets significantly outweighs any public benefit derived from disclosure and that the public's ability to scrutinize and monitor agency action is not diminished by maintaining the confidentiality of trade secrets. *See* § 815.045, Fla. Stat.

WHEREFORE, AAF respectfully requests that this Court take jurisdiction of this cause and the parties and grant the following relief:

- (a) Declare that AAF's Ridership Study and the information contained therein, are trade secrets under section 812.081, Florida Statutes, and confidential and proprietary business information;
- (b) Declare that AAF's Ridership Study and the information contained therein, are exempt from disclosure by the Department, GOAA, and the OOCEA under Florida's Public Records Act pursuant to section 815.045, Florida Statutes;
- (c) Enter a temporary and permanent injunction enjoining the Department, GOAA, and the OOCEA from disclosing AAF's Ridership Study and any information contained therein as described above; and
- (d) Award to AAF any and all additional relief this Court may deem just and equitable.

Dated: May 22, 2014

/s/ James A. McKee

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Counsel for the Plaintiff

From: Matthew Falconer [<mailto:mjf@falconddevelopment.net>]

Sent: Tuesday, March 18, 2014 10:54 AM

To: matthew@matthewfalconer.com

Subject: Public Information Request

Good morning. This email shall serve as a freedom of information request for details surrounding the "All Aboard Florida" project. My goal is to allow the general public to properly consider the use of taxpayer funds to advance this project. I am sending this email concurrently to OOCEA, GOAA, John Mica's office, Orange County, Florida, Orlando EDC, and the Florida Department of Economic Opportunity.

My concern, and that of many Floridians, is that as more than one billion taxpayer dollars are being invested into a business enterprise without a single customer. My brother recently took an express bus from Miami to Orlando for \$30 in the same time it will take a person to take this train. **So my first request is for a copy of the business plan submitted to any public agency confirming the demand for this service.**

My second request is for copies of the application for a federally guaranteed loan to create improvements to the railway owned by FECI (estimated to be \$1.5 billion). My understanding is FECI will receive a federally guaranteed loan to improve private property. Please detail the source and uses of the funds to be loan by the taxpayer.

My third request is for copies of easements and maps of same that benefit All Aboard Florida over all public land, including OOCEA and GOAA.

My fourth request is for plans and specifications for the terminal at the Orlando International Airport estimated to cost \$215 million and the people mover estimated to cost \$400 million. Please let me know who designed those facilities, when they were designed, and provide a budget. My research has shown a monorail can be built for \$25 million per mile so at \$400 million per mile this seems completely excessive in cost.

My fifth request is for an economic development impact statement showing the economic benefits of the project.

My sixth request is for an Environmental Impact Statement showing the effects the project will have on quality of life, noise and other concerns.

My final request is for copies of all emails and letters from OOCEA, GOAA, Congressman Mica's office, Florida Dept. of Economic Development and outside personal regarding this project. Outside personell include; All Aboard Florida staff and consultants, the Orlando Chamber of Commerce and Affiliates, including Jacob Stuart, Florida East Coast Railways and Flagler Development and afficialtes, AMEC Environment & Infrastructure, Inc. and Skidmore, Owings & Merrill LLP ("SOM") staff, and any lobbyist or consultants hired by the project developer to advance this project.

This project has been hailed by its promoter as a job creator and benefit to the people of Florida. The history of public investment in job creation has been inconsistent at best and I believe the taxpayers of Florida need a more comprehensive review of the risks associated with the project. For example, if the demand for rail service between Miami and Orlando is not sufficient to continue the operation of the train what happens to the \$615 million taxpayer dollars invested in the OIA train station? Is there an alternate use for this facility?

If the passenger service is terminated does FECI still benefit from the improvements to their railway?

If my research proves correct there has never been a profitable privately run passenger rail service. Why then are the taxpayers of Florida risking \$1 billion?

Thank you for your prompt consideration of my requests.

Matthew Falconer



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From: Matthew Falconer [<mailto:mjf@falconddevelopment.net>]
Sent: Monday, March 24, 2014 4:26 PM
To: Burdick, Robert
Subject: Public Information Request

Good morning. This email shall serve as an additional request for public information.

I am seeking any document, email, or letter that involves the potential purchase of the Florida East Coast Industry rail lines in SE Florida by any governmental entity.

Specifically, I need information on any purchase option, buy/sell agreement, or put whereby the rail lines and improvements owned by FECCI may in the future become owned by a governmental or quasi-governmental entity.

Further, I request any documentation on any use of taxpayer funds for the improvement of this rail line and any information on the potential subsidy of the rail service.

In summary, I believe it is possible this rail system is being developed by a private entity but will ultimately be owned and operated by the taxpayers of Florida.

Kindly forward these documents at your earliest convenience.

Thank you.

Matthew Falconer



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Best regards,

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