

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PROVIDENCE, Sc. SUPERIOR COURT

GLADDING SHOPS, LLC, ROCKET)
REAL ESTATE, LLC, FEDERAL)
PROPERTIES OF R.I., INC.,)
11 STATE STREET, LLC,) PM/2019-1871
STEPHEN MACGILLIVRAY, ESQUIRE)
)
)
)
V.)
)
RHODE ISLAND COMMERCE CORPORATION,)
JESSE SAGLIO)

HEARD BEFORE THE HONORABLE JUSTICE MELISSA A. LONG

JUNE 28, 2019

APPEARANCES:

NICOLE MATTEO, ESQUIRE.....FOR THE PLAINTIFFS
CHRISTOPHER FRAGOMENI, ESQUIRE.....FOR THE DEFENDANTS

PAMELA A. NEWBERG
COURT REPORTER

C E R T I F I C A T I O N

I, PAMELA A. NEWBERG, hereby certify that the following pages 1 through 10 are a true and accurate copy of my stenographic notes.


Pamela A. Newberg
Court Reporter

1 JUNE 28, 2019

2 P.M. SESSION

3 THE COURT: Good afternoon.

4 THE CLERK: Good afternoon, Your Honor.

5 The matter before the Court is PM/2019-1871,
6 Gladding Shops, LLC, Rocket Real Estate, LLC, Federal
7 Properties of R.I., Inc., 11 State Street, LLC,
8 Stephen MacGillivray, Esquire vs. Rhode Island Commerce
9 Corporation and Jesse Saglio.

10 MS. MATTEO: That's ready. Nicole Matteo for the
11 Plaintiffs.

12 MR. FRAGOMENI: Chris Fragomeni for the Defendants,
13 Your Honor.

14 THE COURT: Thank you for coming back. I'm ready to
15 give you my decision on the Plaintiffs' Motion for
16 Summary Judgment and the Defendants' Motion for Summary
17 Judgment. First off, I'll put some facts and travel on
18 the record.

19 James Roiter, Managing Member of SAT Development,
20 LLC, and on behalf of SAT Development, LLC, applied to
21 the Rhode Island Commerce Corporation for tax credits
22 under the Rebuild Rhode Island Tax Credit program and
23 the Tax Increment Financing tax credit program.

24 Mr. Roiter attests that in connection with applying for
25 these programs, SAT voluntarily submitted to the Commerce

1 Corporation a Rebuild Rhode Island Tax Credit Application
2 and a Rhode Island Tax Increment Financing Supplement
3 Application to Rebuild Rhode Island Application for a
4 proposed project: That being Belvedere at Bristol. He
5 further attests that some information contained in the
6 two applications is information that SAT would not
7 customarily release to the public.

8 Jesse Saglio, President and Chief Operating
9 Officer of the Corporation, attests that in administering
10 these tax incentive programs, the Commerce Corporation
11 receives and reviews confidential and proprietary
12 information from applicants to determine whether a
13 proposed project meets minimum requirements; whether
14 public subsidy is required and prudent; and whether a
15 project is financially sustainable. Mr. Saglio further
16 attests that upon receipt of an application for tax
17 credits, the Commerce Corporation and the applicant
18 negotiate the terms of a proposed tax credit based upon
19 the confidential information in the application.

20 On February 27, 2017, the Commerce Corporation
21 issued a resolution authorizing the issuance of tax
22 credits to SAT Development, LLC in an amount not to
23 exceed \$995,000, subject to execution of an Incentive
24 Agreement, verification of compliance with Eligibility
25 Requirements, and such additional conditions as any

1 Authorized Officers of the Commerce Corporation shall
2 deem appropriate. On that same date, the Providence
3 Journal quoted Jesse Saglio in describing SAT's proposed
4 development project.

5 On May 10, 2018, the Planning Board and the
6 Historic District Commission for the Town of Bristol
7 held a public meeting regarding 423 Hope Street
8 Redevelopment, LLC. At that public meeting, various
9 representatives of SAT Development testified about
10 different aspects of a proposed development project in
11 Bristol, including Mr. Roiter, an attorney, an architect,
12 a real estate expert, and a land use planner. That
13 meeting was continued to June 7, 2018, for further
14 discussion of the proposed development project. It is
15 undisputed that the Applications submitted to the
16 Commerce Corporation were not submitted at either public
17 meeting.

18 In addition to the discussion of the proposed
19 development project at the public meetings in May and
20 June of 2018, it appears that there is at least one
21 publicly available document that also contains
22 information about a proposed development project in
23 Bristol: that is, a Master Plan Application stamped
24 May 4, 2018.

25 On or about November 6, 2018, Plaintiff

1 Stephen MacGillivray filed a request with the
2 Commerce Corporation pursuant to the Access to
3 Public Records Act, also known as APRA, on behalf of
4 himself and the other Plaintiffs in this matter:
5 Gladding Shops, LLC; Rocket Real Estate, LLC; Federal
6 Properties of R.I., Inc.; and 11 State Street, LLC.
7 That request sought the, quote, "complete application
8 package including all attachments and updates, to the
9 Commerce Corporation from SAT Development, LLC for
10 Mixed Use Project located at 423 Thames Street, Bristol,
11 Rhode Island leading to Commerce Corporation Resolution
12 Authorizing the Issuance of Tax Credits, dated
13 February 27, 2017."

14 In December of 2018, the Commerce Corporation
15 responded to the request and provided some records,
16 but redacted portions of the documents citing to
17 Sections 38-2-2(4)(A)(I)(b) and Section 38-2-2(4)(B).
18 On December 19, 2018, MacGillivray objected to the
19 Commerce Corporation's response because he alleged
20 the redacted information had been publicly disclosed
21 on the record; thus, he argued it was public
22 information.

23 In January 2019, Commerce Corporation contacted
24 SAT Development, LLC and agreed to lift some but not all
25 of the redactions.

1 On February 22, 2019, Plaintiffs filed the
2 instant Complaint against the Commerce Corporation and
3 Saglio. The one count Complaint asserts that this
4 Court has jurisdiction pursuant to Sections 38-2-9
5 and 42-35-15(b) of the Rhode Island General Laws.
6 Plaintiffs do not seek injunctive or declaratory relief
7 per se, but maintain that Plaintiff MacGillivray was
8 entitled to inspect and/or copy the records requested
9 on November 6, 2018, because the records described in
10 the request do not fall within any exceptions to the
11 definition of "public records" as set forth in
12 Section 38-2-2(4) of the Rhode Island General Laws.
13 Plaintiffs demand judgment in their favor and seek an
14 order requiring Commerce Corporation to provide
15 unredacted copies of the requested records, as well as
16 civil fines and attorneys' fees.

17 The parties have filed Cross-Motions for Summary
18 Judgment regarding the redactions made pursuant to
19 Section 38-2-2(4) (B) of the Rhode Island General Laws,
20 which provides an exception for quote "trade secrets
21 and commercial or financial information obtained from a
22 person, firm, or corporation that is of a privileged or
23 confidential nature."

24 "In passing on a motion for summary judgment, the
25 trial justice must determine whether there is a genuine

1 issue of material fact, and if not, the trial justice
2 must determine whether the moving party is entitled to
3 judgment as a matter of law."

4 Once the party seeking summary judgment satisfies
5 this burden, then "the burden shifts to the opponent of
6 the motion to respond with specific facts that would
7 constitute a genuine issue for trial. Such party may not
8 rest upon the mere allegations or denials set forth in
9 his pleadings." In doing so, "the non-moving party must
10 identify any evidentiary materials already before the
11 court and/or present its own competent evidence
12 demonstrating that material facts remain in genuine
13 dispute."

14 Turning first to Plaintiffs' Motion for Summary
15 Judgment, they ask the Court to find, as a matter of
16 law, that they are entitled to inspect and/or copy,
17 in unredacted form, the Records requested on
18 November 6, 2018. Plaintiffs maintain that Section
19 38-2-2(4)(B) of the Rhode Island General Laws is not
20 applicable, because when confidential information is
21 disclosed to the public, it is in the public domain and
22 therefore no longer confidential. In pressing this
23 argument, Plaintiffs highlight several aspects of the
24 project that were discussed or referred to publicly --
25 I'm sorry, the Plaintiffs highlight several aspects of

1 the project that were discussed or referred to publicly
2 between February 27, 2017, and June 7, 2018.

3 The Rhode Island Supreme Court has not addressed
4 this question directly. However, as then-Superior Court
5 Justice Indeglia stated when assessing a similar
6 argument in Fuka v. Department of Environmental
7 Management, quote "information that is considered to be
8 private does not lose that status or character just by
9 being placed in the public domain at one time."

10 Moreover, the Department of the Attorney General, the
11 agency empowered to enforce APRA, has evaluated waiver
12 of confidentiality when interpreting APRA in a similar
13 factual situation, and has rejected the waiver argument.
14 See the Providence Journal v. Rhode Island Office of the
15 General Treasurer; see also Harris v. The City of
16 Providence and Chrabaszc v. Johnston School Department.
17 Although not binding on this Court, this Court
18 nevertheless agrees with these opinions.

19 Even accepting as true that several aspects of
20 the project were discussed or referred to publicly
21 between February 27, 2017, and June 7, 2018, the
22 information deemed confidential did not lose that status
23 as a matter of law. As such, Plaintiffs have not met
24 their burden, and the Court denies their Motion for
25 Summary Judgment.

1 Turning to the Defendant's Motion for Summary
2 Judgment, they argue that the redactions to the records
3 requested on November 6, 2018, were proper pursuant to
4 38-2-2(4) (B) .

5 In construing the language of this section, the
6 Rhode Island Supreme Court has adopted the test set
7 forth in Critical Mass Energy Project v. Nuclear
8 Regulatory Commission, for determining when financial
9 or commercial information may be deemed confidential.
10 Confidential information is, quote "any financial or
11 commercial information whose disclosure would be
12 likely either '(1) to impair the Government's ability
13 to obtain necessary information in the future; or (2) to
14 cause substantial harm to the competitive position of
15 the person from whom the information was obtained,'" and
16 -- end quote, as well as "'financial or commercial
17 information provided to the Government on a voluntary
18 basis if it is of a kind that would customarily not
19 be released to the public by the person from whom it was
20 obtained.'"

21 Here, it is undisputed that SAT voluntarily
22 submitted to the Commerce Corporation a Rebuild Rhode
23 Island Tax Credit Application and a Rhode Island Tax
24 Increment Financing Supplement Application. It is also
25 undisputed that some information contained in the two

1 applications is information that SAT would not
2 customarily release to the public. Moreover, the Record
3 shows that in administering these tax incentive programs,
4 the Commerce Corporation receives and reviews
5 confidential and proprietary information from applicants,
6 and uses that information to negotiate the terms of a
7 proposed tax credit. Defendants have therefore met their
8 burden of showing that the redactions to the records
9 requested on November 6, 2018, were proper pursuant to
10 Section 38-2-2(4) (B).

11 Plaintiffs do not respond with any affidavits or
12 other competent evidence that would constitute a genuine
13 issue for trial, but argue strenuously that SAT released
14 the redacted information to the public in prior
15 statements. However, after reviewing the unredacted
16 records and the aspects of the project that were
17 discussed or referred to publicly between
18 February 27, 2017, and June 7, 2018, the Court does not
19 agree that the information lost its confidential status
20 as a matter of law. As such, Plaintiffs have not met
21 their burden.

22 The Court therefore grants the Defendants' Motion
23 for Summary Judgment. Thank you.

24 MS. MATTEO: Thank you.

25 MR. FRAGOMENI: Thank you, Your Honor. Have a

1 good weekend.

2 MS. MATTEO: Thank you, Your Honor.

3 THE COURT: You do the same. Thank you.

4 (ADJOURNED)

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