

Denied as moot. See Doc. 25

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION (CINCINNATI)



EXECUTIVE JET MANAGEMENT INC.,	:	CASE NO. 1:21-cv-74
Plaintiff,	:	(District Judge Susan J. Dlott)
	:	(Magistrate Judge Karen L. Litkovitz)
v.	:	
Longbow Enterprises LLC, <u>et al.</u> ,	:	DEFENDANT Longbow
Defendants.	:	AVIATION, LLC'S MOTION FOR
	:	<u>LEAVE TO FILE UNDER SEAL</u>

Pursuant to Fed. R. Civ. P. 5.2(d) and S.D. Ohio Civ. R. 5.2.1(a), Defendant Longbow Aviation, LLC ("Longbow Aviation") moves this Court for leave to file under seal the Aircraft Management Agreement (the "Agreement") between Longbow Aviation and Plaintiff Executive Jet Management, Inc. ("EJM"). The Agreement is attached as Exhibit 1 to Longbow Aviation's forthcoming Counterclaim. As shown in the following Memorandum in Support of this Motion, Longbow Aviation's compelling interest in sealing the Agreement outweighs the public's interest and the request is narrowly tailored.

A proposed Order granting Defendant Longbow Aviation, LLC's Motion for Leave to File Under Seal is attached as Exhibit A.

Respectfully submitted,

/s/ Brian D. Wright

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**MEMORANDUM IN SUPPORT OF
MOTION FOR LEAVE TO FILE UNDER SEAL**

Plaintiff Executive Jet Management, Inc. ("EJM") initiated this lawsuit in the Hamilton County Court of Common Pleas and asserted claims for breach of contract and unjust enrichment against Defendants Longbow Aviation, LLC ("Longbow Aviation") and Longbow Enterprises, LLC (collectively, the "Defendants"). Defendants properly removed this action to this Court and are preparing to file an Answer and assert two Counterclaims against EJM. Longbow Aviation seeks to incorporate the confidential Aircraft Management Agreement ("Agreement") that forms the basis for its Counterclaims as Exhibit 1. As detailed below, the terms of the Agreement are confidential information of the Parties (consistent with the agreement between the parties in Section 13 of the Agreement) and Longbow Aviation seeks to file the Agreement under seal to preserve the confidentiality of its terms.

Pursuant to S.D. Ohio Civ. R. 5.2.1(a), the Court grants leave to file documents under seal for good cause shown. In determining whether "good cause" exists, the proponent must demonstrate the following factors: "(1) a compelling interest in sealing the records; (2) that the interest in sealing outweighs the public's interest in accessing the records; and (3) that the request is narrowly tailored." Kondash v. Kia Motors Am., Inc., 767 F. App'x 635, 638 (6th Cir. 2019) (citing Shane Group, Inc. v. Blue Cross Blue Shield, 825 F.3d 299, 305-07 (6th Cir. 2016)).

The terms of the Agreement are confidential information of the Parties. Guidance Endodontics, LLC v. Dentsply Int'l, Inc., 708 F.Supp.2d 1209, 1237 (D.N.M. 2010) (applying Delaware law) ("[T]he parties crafted and negotiated the confidentiality provision as a means of prohibiting certain disclosures, thus the provision should govern whether the parties are free to

disclose certain facts."). Moreover, Longbow Aviation has a compelling interest in filing the Agreement under seal because attaching the Agreement to its Counterclaim may constitute a breach of contract. Preventing a breach of contract is a compelling interest recognized by this Court. See Inhalation Plastics, Inc. v. Medex Cardio-Pulmonary, Inc., No. 2:07-CV-116, 2016 U.S. Dist. LEXIS 191765, at *3-4 (S.D. Ohio Aug. 3, 2016). Here, the Parties' Agreement defines "Confidential Information" as "information in tangible or intangible form relating to and/or including . . . [t]he terms of this Agreement." Section 13.1(a). The Parties are obligated to "[t]ake reasonable security precautions, as least as great as the precautions the Receiving Party takes to protect its own confidential information, but no less than reasonable care, to keep confidential the Confidential Information." Section 13.3(a). Here, as in Medex Cardio-Pulmonary, Longbow Aviation's public disclosure of the Agreement may constitute a breach of contract.¹ Accordingly, Longbow Aviation has a compelling interest in filing the Agreement under seal.

Longbow Aviation's compelling interest outweighs the public's limited interest in accessing the Agreement and the request narrowly tailored. Since this case involves a private dispute between private parties, and the Parties' dispute will not have any impact on the public, the presumption of public access is reduced. See Shane Group, 825 F.3d at 305 ("[T]he greater the public interest in the litigation's subject matter, the greater the showing necessary to overcome the presumption of access."). Moreover, the request is narrowly tailored in that Longbow Aviation seeks only to protect the Agreement itself from public disclosure. Granting

¹ EJM selectively disclosed the provisions in support of its claims against Defendants by leaving such provisions unredacted in EJM's state court filings. Although selective waiver could be argued, Longbow Aviation remains under an obligation to comply with the Agreement's confidentiality provisions.

this Motion also alleviates the burden on the Court, because the Court will not have to piece together two selectively redacted versions of the same Agreement to analyze the Parties' respective contractual claims. Therefore, Longbow Aviation meets the Sixth Circuit's requirements from Shane Group and has demonstrated good cause.

For the foregoing reasons, the Court should grant Longbow Aviation leave to file the Agreement under seal.

Respectfully submitted,

/s/ Brian D. Wright

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CERTIFICATE OF SERVICE

I certify that on the 2nd day of February, 2021, I electronically filed the foregoing Defendant Longbow Aviation, LLC's Motion for Leave to File Under Seal with the Clerk of Courts using the CM/ECF system, which will send notification of such filing to CM/ECF participants, and I hereby certify that I have mailed by United States Postal Service the document to the non-CM/ECF participants:

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