

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA

Shande v. Zoox, Inc.

Shande · No. 22-cv-05821-BLF · Decided March 9, 2023

SUMMARY

The court denied Zoox, Inc.'s motion to seal an Employee Proprietary Information and Invention Assignment Agreement filed in support of its motion to dismiss and anti-SLAPP motion. The court held that Zoox had not shown compelling reasons to seal the agreement and ordered Zoox, within seven days, to publicly file it, submit a narrower sealing motion, or advise that it was withdrawn.

OPINION

1 2 3 UNITED STATES DISTRICT COURT 4 NORTHERN DISTRICT OF CALIFORNIA 5
SAN JOSE DIVISION 6 7 TAVERSHIMA SHANDE, Case No. 22-cv-05821-BLF 8 Plaintiff,
ORDER DENYING DEFENDANT'S 9 v. MOTION TO SEAL WITHOUT PREJUDICE 10
ZOOX, INC., [Re: ECF 31] 11 Defendant. 12 13 This action arises from the parties' dispute
regarding the rights to digital street scenery 14 ("Street Scenery Content") that Plaintiff
Tavershima Shande ("Shande") created while employed 15 by Defendant Zoox, Inc. ("Zoox") as a
Staff Technical Artist.

In that role, Shande created digital 16 street scenery for use in training Zoox's autonomous
vehicles to navigate an urban environment. 17 Shande contends that he created the Street Scenery
Content at issue separately from his work at 18 Zoox, without using any Zoox proprietary material
or equipment. Shande claims that he had every 19 right to create and sell the Street Scenery
Content on his own time, and that Zoox acted unlawfully 20 in interfering with his sale and
distribution of the Street Scenery Content.

Shande sues Zoox for 21 declaratory relief, copyright infringement, interference with contract,
and related claims. 22 Zoox has filed a motion to seal one of the exhibits it offers in support of its
pending motion 23 to dismiss and anti-SLAPP motion directed to the first amended complaint.
See Mot. to Seal, ECF 24 31.

The exhibit is an Employee Proprietary Information and Invention Assignment Agreement 25
("EPIIAA") executed by the parties when Shande accepted employment with Zoox. See EPIIAA,
26 ECF 31-2. Shande opposes Zoox's motion to seal the EPIIAA. See Opp., ECF 34. 27 Zoox's
motion to seal is DENIED WITHOUT PREJUDICE for the reasons discussed 1 I. LEGAL
STANDARD 2 "Historically, courts have recognized a 'general right to inspect and copy public

records 3 and documents, including judicial records and documents.” *Kamakana v. City and Cnty. of 4 Honolulu*, 447 F.3d 1172, 1178 (9th Cir.

2006) (quoting *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 597 & n.7 (1978)). Consequently, access to motions and their attachments that are 6 “more than tangentially related to the merits of a case” may be sealed only upon a showing of 7 “compelling reasons” for sealing. *Ctr. for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 8 1101-02 (9th Cir. 2016).

Filings that are only tangentially related to the merits may be sealed 9 upon a lesser showing of “good cause.” *Id.* at 1097. 10 Under this Court’s Civil Local Rules, a party moving to seal a document in whole or in 11 part must file a statement identifying the legitimate private or public interests that warrant sealing, 12 the injury that will result if sealing is denied, and why a less restrictive alternative to sealing is not 13 sufficient.

See Civ. L.R. 79-5(c)(1). A supporting declaration shall be submitted if necessary. See 14 Civ. L.R. 79-5(c)(2). Finally, the moving party must submit “a proposed order that is narrowly 15 tailored to seal only the sealable material[.]” Civ. L.R. 79-5(c)(3). 16 II. DISCUSSION 17 Zoxx offers the EPIIAA in support of its motion to dismiss and anti-SLAPP motion.

18 Because those motions go to the merits of Shande’s claims, the compelling reasons standard 19 applies. Zoxx asserts that compelling reasons exist to seal the EPIIAA because public disclosure 20 of the EPIIAA would put Zoxx at a competitive disadvantage.

However, the only evidence 21 provided by Zoxx to support that assertion is a declaration of Zoxx’s litigation counsel, Hala 22 Mourad, who states as follows: 23 The terms of Zoxx’s agreements with its employees, including the EPIIAA, are highly sensitive and confidential. Zoxx relies on a team of highly skilled engineers, 24 technical artists, and programmers.

Maintaining the confidentiality of the contents of Zoxx’s employment agreements, including the EPIIAA, is critical to Zoxx’s 25 ability to remain competitive in the marketplace for talent. 26 Mourad Decl. ¶ 2, ECF 31-1. Counsel does not offer any factual basis for the conclusory 27 statements that the EPIIAA is “highly sensitive and confidential.” Nor does Counsel lay a 1 In opposition to the sealing motion, Shande submits a declaration stating that Zoxx sent 2 him a copy of the EPIIAA with his job offer, without any indication that the EPIIAA was 3 confidential.

See Shande Decl. ¶¶ 2-4, ECF 34-1. Shande states that, “At no time, whether before, 4 during or after my employment with Zoxx, did anyone at the company describe the material in the 5 EPIIAA document as confidential or indicate that it could not be shared outside the company.” *Id.* 6 ¶ 3. According to Shande, the EPIIAA is a standard form agreement with terms similar to those in 7 comparable agreements used by other tech companies.

See id. 8 Courts in this Circuit have found compelling reasons to seal business contracts when 9 necessary to protect specific confidential information like cost and pricing information, customers' 10 identities, or the like. See *Virun, Inc. v. Cymbiotika, LLC*, No. 8:22-cv-00325-SSS-DFMx, 2022 11 WL 17401698, at *2 (C.D. Cal. Aug. 19, 2022). "However, boilerplate terms, generally 12 applicable contract conditions, and agreed-upon definitions of contract terms are generally not 13 considered sealable." Id. "Form contracts... that do not contain any confidential information 14 may nevertheless be sealed if" their dissemination would create a competitive disadvantage.

Id. 15 However, a party's "vague assertion that its competitors could use the information [contained in 16 the Agreements] to unfairly compete with [it]" is insufficient to meet the compelling reasons 17 standard for sealing. Id. (alterations in original). 18 In the present case, the EPIIAA appears to be a form contract, and most (if not all) of the 19 language in the EPIIAA appears to be boilerplate.

See EPIIAA, ECF 31-2. The statements of 20 Zoxx's litigation counsel offered to show that the EPIIAA nonetheless is sealable are conclusory 21 and lack foundation. Accordingly, the Court finds that Zoxx has failed to demonstrate the 22 existence of compelling reasons for sealing the EPIIAA that would outweigh the strong 23 presumption in favor of public access to court records.

This ruling is without prejudice to a 24 renewed motion to seal that is more narrowly tailored, if Zoxx believes that such a motion can be 25 made in good faith. 26 Zoxx's motion to seal is DENIED. Within 7 days after the date of this order, Zoxx shall 27 file the EPIIAA on the public docket, or file a renewed and more narrowly tailored sealing motion, 1 Il.

ORDER 2 (1) Zoxx's motion to seal is DENIED. 3 (2) Within 7 days after the date of this order, Zoxx SHALL file the EPIIAA on the 4 public docket, or file a renewed and more narrowly tailored sealing motion, or 5 advise the Court that the EPITAA is withdrawn (in which case it will not be 6 considered). 7 (3) This order terminates ECF 31. 8 9 Dated: March 9, 2023 BETH LABSON FREEMAN 11 United States District Judge a 12 13 © 15 16 & = 17 Z 18 19 20 21 22 23 24 25 26 27 28