

**IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT  
IN AND FOR LEE COUNTY, FLORIDA  
CIVIL DIVISION**

PrivateSky Aviation Realty LLC,

Plaintiff

Case No.

v.

Lee County Port Authority,

Defendant.

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**COMPLAINT FOR INJUNCTIVE RELIEF**

Plaintiff PrivateSky Aviation Realty LLC (“Private Sky”) sues Defendant Lee County Port Authority (the “Authority”) for a temporary and permanent injunction, alleging as follows.

**Preliminary Statement**

1. For more than two decades, Private Sky has served as the sole fixed-base operator (“FBO”) at Southwest Florida International Airport in Fort Myers, Florida (“RSW”). Private Sky operates the FBO through its affiliate, PrivateSky Aviation Services, Inc. Private Sky competes with the Authority’s FBO at nearby Page Field.

2. Private Sky’s FBO provides two separate but related lines of business: A) jet service, including hangar and ramp space rentals, lavatory & potable water servicing, catering, concierge services, rental cars and transportation services, satellite weather services, flight crew management, aircraft inspection services, repair and maintenance, customization, restocking, and aircraft appraisal services; and B) fuel service, including storage, transportation, and sale of Phillips 66 branded aviation jet fuel and Avgas to private and commercial users. There are two types of jet fuel sales: contract fuel for cargo jets, such as Fed Ex or UPS, and retail Jet-A sales.

The margins on contract fuel are so low that the line of business loses money to the fuel storage and transport costs. Retail Jet-A sales are usually the only profitable type of fuel sales for FBOs.

3. Private Sky is famous throughout the world for providing award winning service to international and domestic aviation clients. The tens of millions of dollars Private Sky has invested into its first-class facilities at RSW brings prestige, renown, and, importantly, high-value customers to RSW and the Fort Myers community. For example, when Air Force One visits the area, it is stationed and serviced at Private Sky. Private Sky has cemented a reputation as the premier Gulfstream (GII, GIII, GIV, GV, GVSP) Jet customization and service center in the world.

4. In addition to being Private Sky's competitor, the Authority is Private Sky's landlord under a long-term ground lease. As a government landlord, the Authority can, at any moment, attempt to wield its substantial power and discretion to destroy Private Sky's business.

5. Private Sky relies on the Authority's duty of good faith and fair dealing in the lease to ensure that the Authority does not entice Private Sky into spending millions of dollars on improvements to the Authority's property only to deal Private Sky a surprise death blow. The Authority did this to a different private FBO several years ago at Page Field. At Page, a single FBO was operating successfully. The Authority then permitted a second FBO to be built, though the fuel sales volume could not support two FBOs. The Authority ultimately took over both facilities.

6. The parties' landlord-tenant relationship has been fruitful for many years and should persist through 2060 pursuant to the Lease. Recently, however, turnover at positions of importance within the Authority have challenged this expectation. It appears some of the new guard do not particularly like the principals who own Private Sky and have decided to try to put it out of business so the Authority can take over the facilities, similar to what it did at Page Field.

7. To do this, the Authority is seeking proposals to open a second FBO to sell fuel at RSW. But, like Page Field, RSW cannot support two fuel FBO businesses. The industry standard necessary to support two FBOs at a single airport is three million gallons of Retail Jet-A fuel annually.

8. Private Sky discloses its fuel sales to the Authority pursuant to the Lease. The Authority is thus aware that the fuel volume at RSW is nowhere close to the standard typically required for two FBOs at one airport. The Authority has not been fully transparent with bidders under the new RFP, with the hope that they will not discover the inability of RSW to support the second FBO. For example, the Authority has not disclosed its own competition down the street, has not produced its forecasts, refuses to answer basic questions about limitations to the opportunity, and has not done an economic feasibility study, which is industry standard.

9. While the Authority has discretion to develop its property generally as it sees fit, exercising that discretion now to facilitate the development of another FBO will be a death sentence for Private Sky. Private Sky submits that the Authority has a duty of good faith and fair dealing to not exercise its contractual discretion in a way that will render the Lease worthless for the other contracting party.

10. Private Sky seeks an injunction to preclude the Authority from developing a second FBO at RSW at this moment in time, at least until the Retail Jet-A fuel volume meets the industry standard threshold to support two FBOs at one airport.

### **Parties and Jurisdiction**

11. Plaintiff Private Sky is a Florida limited liability company with its primary place of business located in Lee County, Florida.

12. Defendant Authority is a government agency located in Lee County, Florida.

13. Jurisdiction and venue are proper in this Court because Defendant resides in Lee County, Florida, and the facts and circumstances giving rise to this Complaint took place in Lee County, Florida.

**Private Sky**

14. Private Sky’s operator employs 25 team members who live and work in Ft. Myers. These Ft. Myers residents are known throughout the world as providing class-leading service to aviation customers, bringing awareness and prestige to the area from such remote locales as the Middle East, Asia, and Europe.

15. Private Sky’s presence at RSW is a “feather in the cap” of RSW; it brings substantial business and recognition to the airport that RSW would not otherwise enjoy. Indeed, on its website, the Authority holds out Private Sky as providing “award-winning FBO service,” being a “top-rated FBO in the Americas,” and having a “customer service program that stands for safety, honesty, quality and customer support.”<sup>1</sup>

16. The awards to which the Authority refers on its website include the prestigious FAA Diamond Awards of Excellence. Private Sky is one of only a few facilities in the U.S. to win such an award multiple times.

17. Private Sky has been recognized as a Top FBO in Aviation International News’s annual survey every year for more than two decades.

18. Private Sky was recently voted as the best Private Jet Service business in Gulfshore Business Magazine’s 2023 Best of Business Edition.

19. As a result of Private Sky’s excellent service, many customers come to RSW to be serviced by Private Sky, including Air Force One and many international customers.

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<sup>1</sup> <http://flyrsw.com/rswfbo/>

20. In addition to being a top-rated FBO and a major asset to the airport, Private Sky and its owners, the Wolanin family, are valued members of the Lee County community who are dedicated to giving back.

21. Private Sky and the Wolanin family have been deeply involved in humanitarian and other charitable efforts in the Lee County community for years.

22. For example, in November of 2022, the Authority passed a resolution honoring the Wolanin family for their assistance with the community's recovery from Hurricane Ian through Private Sky, including providing resources and converting their FBO into a temporary military base so that the Florida Air National Guard and Miami-Dade Search and Rescue could perform their operations to locate and save as many victims of Hurricane Ian as possible. The Authority recognized the Wolanin's extraordinary efforts to the community despite their devastating complete loss of their family home on Sanibel. The Resolution is attached hereto as **Exhibit A**.

23. The Wolanins also founded and operate the Rockin' Christmas Fund, a 501(c) charity, to support scholarships and grants for students that have suffered the loss of a parent. The Rockin' Christmas Fund currently has scholarships at 4 different universities, including Florida Gulf Coast University and Ave Maria University locally.

24. Private Sky and the Wolanins work together to match donations to the Rockin' Christmas Fund, and through their efforts they have raised over \$1 million to assist students with annual grants in addition to the established endowments around the country.

25. In addition, for many years Private Sky hosted in its main hangar "Rockin' Christmas", a holiday event with a high profile band that raised money for the Children's Hospital, and other community interests.

### The Lease

26. Private Sky leases its facilities from the Authority pursuant to a lease agreement and a first amendment to that lease (the “Lease”). A true and correct copy of the Lease is attached hereto as **Exhibit B**. The amendment is attached hereto as **Exhibit C**.

27. In 2018, Private Sky acquired options to extend the Lease by another ten years and twenty-eight years. *See Exhibit C*. To exercise the first option, Private Sky must invest an additional \$2 million in improvements to the Authority’s property before 2032. To exercise the second option, Private Sky must invest a total of \$5.6 million in improvements (inclusive of the \$2 million) to the Authority’s property by 2032. Private Sky has made almost \$600,000 in such improvements to date. Private Sky has made these additional investments to the Authority’s property in reliance on the understanding that the Authority would not alter the economic terms of the option that it bought.

28. Under the Lease, Private Sky pays rent and a portion of its fuel sales. Private Sky must account to the Authority for its sales of fuel. The Authority is thus aware of the volume of such sales.

### The viability of a second FBO at RSW

29. It is generally understood in the industry that a minimum of 3 million gallons of Retail Jet-A fuel is needed before two FBOs can be sustained at a single airport.

30. RSW does not come close to this volume.

31. Recently, retail sales of Jet-A fuel at RSW have trended downward significantly, falling from 1,220,181 gallons in 2022 to 902,504 gallons in 2023, a 26% drop in sales.

32. Retail Jet-A fuel volume has never reached the 3-million-gallon threshold to support a second FBO. This is why Private Sky has been the only FBO at RSW for more than two decades.

33. Indeed, prior to 2000, a second FBO, Jet South, was operating at RSW. Jet South and Private Sky recognized that they would be cannibalizing each other's sales and were destined to go out of business. To avoid this, Private Sky acquired Jet South.

34. Additionally, RSW is not growing. General aviation aircraft movements at RSW fell 32% from 9,161 in 2022 to 6,227 in 2023.

35. Yet, the Authority has represented to prospective bidders that RSW's traffic is growing and expects to grow rapidly in the future to support a second FBO.

36. Any FBO at RSW must compete with the Authority's own FBO at Page Field.

37. The Authority's FBO at Page Field has no development costs to pay back at an investment-worthy level of return, no rent to pay, and pays no taxes. The Authority's FBO at Page Field can compete unfairly on price with private enterprise because it is subsidized by the taxpayers.

38. The Authority's FBO at Page Field consistently beats Private Sky on price. Private Sky stays in business because of its better location and facilities.

39. Because of the competition from the government's unfairly low prices at Page Field, it is unlikely RSW will reach the minimum level of fuel to support a second FBO any time soon. Indeed, it is impossible that the necessary level of fuel sales will be reached before a second FBO at RSW will fail under the massive weight of the \$15 million initial build-out investment required by the Authority in its RFP.

40. This is of no concern to the Authority, of course. The Authority will simply take over the second FBO when it fails. The Authority will have a nearly brand new \$15 million facility at RSW to compete with Private Sky. This will negate Private Sky's location advantage in its competition with the Authority.

41. After the Authority takes over the new FBO at RSW, it will waive its own future rent and then use its tremendous cost advantage to drive Private Sky out of business, leaving the Authority as the sole operator at RSW with no cost of development. Goal achieved!

42. This is why the Authority is not concerned about making full and accurate disclosures to bidders in its RFP process. As a governmental agency, the Authority likely believes it is immune from claims it defrauded bidders. As a bonus, the Authority will be substantially rewarded when its misleading bidding process causes the new FBO to fail.

43. The dire consequences to Private Sky caused by the RFP for a second FBO at RSW are not side effects of some other goal that the Authority is trying to achieve. The consequences are the goal.

**The Authority's duty of good faith and fair dealing**

44. Sections 21.10 and 22.4 of the Lease provide the Authority with discretion to grant similar rights to other lessees on other parts of the airport or to develop the airport as the Authority sees fit.

45. Florida law implies a duty of good faith and fair dealing into Sections 21.10 and 22.4 of the Lease, meaning that the Authority cannot exercise its discretion under those provisions in bad faith with the intent to interfere with Private Sky's enjoyment of the fruits of the Lease.

46. That is exactly what the Authority is doing by authorizing the development of a second FBO when fuel sales are nowhere near the industry standard to support two FBOs and by misleading bidders in the RFP process.

47. Because the RFP process is effectively a “death sentence” for Private Sky, pursuing it constitutes a breach of the Authority’s implied covenant of good faith and fair dealing, especially when it is misleading bidders to accomplish its ends.

48. If the Authority is permitted to force Private Sky out of business, it would be unjustly enriched at Private Sky’s expense: the Authority would receive the benefit of the world-class facilities that Private Sky has built at RSW and the goodwill that it has earned over nearly 40 years of operations, and Private Sky would not receive fair compensation for its loss.

49. This Court should not permit the Authority to effectively steal Private Sky’s facilities, goodwill, and customers by forcing it out of business through the pretense of an RFP for a second FBO that it knows RSW cannot support.

### **Relief Requested**

50. Private Sky has a clear legal right to continue its business, to benefit from the performance of the lease, and to its enjoyment of the property it has built and leased from the Authority without unjust and unreasonable interference.

51. There is no adequate remedy at law for the injury that Private Sky would suffer if the RFP process is not terminated.

52. In the absence of injunctive relief preventing the RFP process from going forward, Private Sky will suffer irreparable harm; specifically: Private Sky will be forced out of business because it will be unable to continue operations sufficient to stay in business as a going concern.

53. Under the circumstances alleged herein, it would be inequitable to permit the RFP process to be completed and a second FBO to be built at RSW.

WHEREFORE Plaintiff PrivateSky Aviation Realty LLC requests that the Court enter temporary and permanent injunctions that order the Lee County Port Authority to terminate its Request for Proposals for a second fixed-base operator at Southwest Florida International Airport and preclude the development of a second fixed-base operator at Southwest Florida International Airport until such time as sales of Retail Jet-A Fuel reach the industry standard volume necessary to support two fixed-base operators at one airport.

Dated: July 8, 2024

Respectfully submitted,

/s/ Paul Thanasides

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