

The Honorable Marsha J. Pechman

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

THE BASKETBALL CLUB OF SEATTLE, LLC, a Washington limited liability company,)	(DERIVATIVE ACTION)
)	
Nominal Plaintiff,)	No. C08-623MJP
)	
and)	ANSWER OF PROFESSIONAL
)	BASKETBALL CLUB, LLC, TO FIRST
CANARSIE HOLDINGS LLC, a Washington limited liability company,)	AMENDED COMPLAINT
)	
Derivative Plaintiff,)	
)	
v.)	
)	
THE PROFESSIONAL BASKETBALL CLUB, LLC, an Oklahoma limited liability company,)	
)	
Defendant.)	

ANSWER TO COMPLAINT

Defendant The Professional Basketball Club, LLC (“defendant”) hereby answers the
Complaint as follows:

1. Answering paragraph 1, defendant denies same.
2. Answering paragraph 2, defendant lacks sufficient information to admit or deny whether The Basketball Club of Seattle (“BCOS”) is a limited liability company organized under the laws of the State of Washington. Defendant admits the remainder of the paragraph. It is also defendant’s understanding that BCOS owned the Seattle Storm.

1 3. Answering paragraph 3, defendant is without knowledge or information sufficient
2 to form a belief as to the truth or falsity of this paragraph of the Complaint and therefore denies
3 the same.

4 4. Answering paragraph 4, the allegations are admitted.

5 5. Answering paragraph 5, this purports to be a statement of law which requires no
6 answer.

7 6. Answering paragraph 6, defendant denies the allegations in this paragraph.

8 7. Answering paragraph 7, defendant is without knowledge or information sufficient
9 to form a belief as to the truth or falsity of the allegations in this paragraph and therefore denies
10 the same.

11 8. Answering paragraph 8, defendant is without knowledge or information sufficient
12 to form a belief as to the truth or falsity of the allegations in this paragraph and therefore denies
13 the same.

14 9. Answering paragraph 9, defendant lacks sufficient information to formulate an
15 answer and therefore denies same.

16 10. Answering paragraph 10, defendant contends that venue in this district is
17 improper because pursuant to Fed. R. Civ. P. 19, there are indispensable parties to the dispute
18 over whom jurisdiction and venue would not be proper.

19 11. Answering paragraph 11, defendant admits that BCOS entered into a contract to
20 sell both the Seattle Storm and the Seattle Supersonics, along with other assets and obligations as
21 fully set forth in the Purchase Agreement. It is consistent with defendant's understanding that
22 the contract was contingent on approval by a majority of the BCOS ownership and that a
23 majority of BCOS members approved the sale.

24 12. Answering paragraph 12, defendant states that in the Purchase Agreement it is
25 stated as follows:

26 For a period of 12 months after the Closing Date, Buyer shall use
 good faith best efforts to negotiate an arena lease, purchase, use or

1 similar arrangement in the King, Pierce, or Snohomish Counties of
2 Washington as a venue for the Teams' games, to be used as a
3 successor venue to KeyArena; provided, however, that the process
4 described in this Section 5.3 and the entering into of any such
arena lease, purchase, use or similar arrangement shall be at
Buyer's sole discretion.

5 Statements by Messrs. Bennett and Evans were consistent with the statement in the Purchase
6 Agreement. All other allegations contained in paragraph 12 are denied.

7 13. Answering paragraph 13, defendant admits that on July 18, 2006, a letter was sent
8 to Mr. Schultz, the content of which speaks for itself. Except as otherwise admitted in this
9 paragraph, all other allegations of paragraph 13 are denied.

10 14. Answering paragraph 14, except as otherwise admitted in paragraphs 12 and 13,
11 the allegations of paragraph 14 are denied.

12 15. Answering paragraph 15, defendant admits that press reports appeared in the
13 media. Except as otherwise admitted, the allegations in this paragraph are denied.

14 16. Answering paragraph 16, defendant states that the Purchase Agreement and July
15 18, 2006, letter, speak for themselves, and all other allegations in paragraph 16 are denied.

16 17. Answering paragraph 17, defendant denies the allegations in paragraph 17 and its
17 subparts and states that each of the emails referenced in this paragraph speaks for itself and has
18 been mischaracterized in the allegations of the Complaint.

19 18. Answering paragraph 18, defendant denies the allegations.

20 19. Answering paragraph 19, defendant denies the allegations.

21 20. Answering paragraph 20, defendant admits that Mr. Bennett stated at a press
22 conference that his April 17, 2007, email was intended to convey that he was committed to
23 continuing to try to work for a solution in Seattle. It is further admitted that the prospects for a
24 solution in Seattle were not bright. Except as otherwise admitted, the allegations are denied.

25 21. Answering paragraph 21, the allegations are denied.

26 22. Answering paragraph 22, the allegations are denied.

1 23. Answering paragraph 23, defendant repeats and reasserts its responses to the
2 above-listed paragraphs.

3 24. Answering paragraph 24, defendant denies the allegations.

4 25. Answering paragraph 25, defendant denies the allegations.

5 26. Answering paragraph 26, defendant denies the allegations.

6 27. Answering paragraph 27, defendant denies the allegations.

7 28. Answering paragraph 28, defendant denies the allegations.

8 29. Answering paragraph 29, defendant repeats and reasserts its responses to the
9 above-listed paragraphs.

10 30. Answering paragraph 30, defendant denies the allegations.

11 31. Answering paragraph 31, defendant denies the allegations.

12 32. Answering paragraph 32, defendant denies the allegations.

13 33. Answering paragraph 33, defendant repeats and reasserts its responses to the
14 above-listed paragraphs.

15 34. Answering paragraph 34, the allegations are admitted.

16 35. Answering paragraph 35, the agreement speaks for itself.

17 36. Answering paragraph 36, defendant denies the allegations.

18 37. Answering paragraph 37, defendant denies the allegations.

19 **AFFIRMATIVE DEFENSES**

20 Wherefore, defendant denies that plaintiffs are entitled to any relief and further asserts the
21 following deficiencies and affirmative defenses without assuming the burden of proof on such
22 deficiencies or defenses (or failures of proof) that would otherwise rest on plaintiffs:

- 23 1. The complaint fails to state a claim upon which relief can be granted.
24 2. Plaintiffs have not complied with the requirements of Fed. R. Civ. P. 23.1.
25 3. Plaintiffs have failed to comply with the demand requirements for bringing a
26 purported derivative action and there is no justifiable ground for failure to make a demand.

1 4. Plaintiffs' claims are barred in whole or in part by the doctrine that requires a
2 rescission claim to be brought promptly. Under plaintiffs' own allegations (which are untrue),
3 this action is untimely.

4 5. Plaintiffs' claims are barred in whole or in part by the doctrines of waiver,
5 estoppel, laches and/or other equitable defenses including unclean hands and conflicts of interest.

6 6. Plaintiffs' claims are barred in whole or in part by plaintiffs' lack of standing.

7 7. Plaintiffs have not sustained any cognizable injury by reason of any action of
8 defendant.

9 8. Plaintiffs have not tendered the purchase price.

10 9. Plaintiffs' claims are barred because Mr. Schultz and BCOS are not willing to
11 tender or make restitution from BCOS to defendant. In this regard, Mr. Howard Schultz, the
12 plaintiff here, has by written statement admitted that the complaint is not intended to "regain
13 ownership" and that the complaint does "not ask the court to return the team to BCOS or in any
14 way obligate any BCOS member to participate in repurchasing the Sonics."

15 10. Plaintiffs' claims against PBC were unconditionally released in the "Release and
16 Indemnification" signed by BCOS on or about November 1, 2006, in conjunction with the
17 NBA's approval of the sale of the Sonics and Storm to PBC.

18 11. Plaintiffs' claims are barred because at least one indispensable party (the City of
19 Oklahoma City) exists that has not been brought before the Court and cannot be brought before
20 the Court such that dismissal is required under Fed. R. Civ. P. 19.

21 12. Plaintiffs' claims are barred because it is impossible to unwind the sale of the
22 Sonics and Storm to PBC as a result of major multiple transactions and actions that have
23 occurred since the closing including, without limitation, approval of PBC as owners of the
24 Sonics and the Storm, player signings and trades, coach and assistant coach signings, sale of the
25 Storm, leases and subleases of office space, votes of the people of the City of Oklahoma City,
26 enactment of legislation by the Oklahoma Legislature, actions by the City of Oklahoma City and

1 PBC including the binding contractual obligation of the City to install upgrades to Ford Center
2 and construct a new practice facility, both of which are currently underway, and the binding
3 contractual obligation of PBC to cause the Sonics to play home games at Ford Center no later
4 than the 2010-11 NBA season, and the approval of relocation by the NBA Board of Governors,
5 among many other events, binding contracts and transactions.

6 13. Plaintiffs' requested remedy is fatally flawed, because NBA teams may only be
7 transferred in compliance with Article 5 of the NBA Constitution.

8 14. Plaintiffs' prayer for specific enforcement is without merit because such an effort
9 was made by PBC to no avail. Further, any additional effort was and would be futile as
10 evidenced by the failure of the Washington Legislature (and a poll of Washington residents) to
11 support the effort and proposal put forth by the "Ballmer" group.

12 15. Defendant hereby gives further notice that it intends to rely upon any other
13 affirmative defense that may become available or appear available during discovery and hereby
14 reserves its right to assert any such other affirmative defense or failure of proof of plaintiffs or
15 inadequacy of the plaintiffs' claims.

16 **PRAYER FOR RELIEF**

17 Wherefore, having fully answered the Complaint, defendant requests that the Court grant
18 it the following relief:

- 19 A. Judgment in its favor against all claimants;
20 B. Attorneys' fees and costs in its favor; and
21 C. Such other or additional relief as justice permits.

22 DATED this 4th day of June, 2008.

23 BYRNES & KELLER LLP

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*Attorneys for Defendant
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CERTIFICATE OF SERVICE

The undersigned attorney certifies that on the 4th day of June, 2008, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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