

Hon. Marsha J. Pechman

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

THE BASKETBALL CLUB OF SEATTLE, LLC, a Washington limited liability company,

Nominal Plaintiff,

and

CANARSIE HOLDINGS LLC, a Washington limited liability company,

Derivative Plaintiff,

v.

THE PROFESSIONAL BASKETBALL CLUB, LLC, an Oklahoma limited liability company,

Defendant.

(DERIVATIVE ACTION)

No. 08-CV-00623-MJP

FIRST AMENDED COMPLAINT FOR RELIEF ARISING OUT OF FRAUD, MISREPRESENTATION AND BREACH OF CONTRACT

INTRODUCTION

1. In early 2006, when The Basketball Club of Seattle (“BCOS”) offered the Seattle SuperSonics for sale, it was critical to BCOS that any potential buyer be committed to keeping the team in Seattle. Defendant, a group of Oklahoma City businessmen, knew that BCOS would only sell it the team if defendant persuaded BCOS that it wanted to keep the Sonics in Seattle. For that reason, the Oklahoma City group told BCOS at the time it purchased the team that “it is our desire to have the Sonics and the Storm continue their

1 existence in the Greater Seattle Area and it is not our intention to move or relocate the  
2 team.” That statement was false from the moment it was made. The Oklahoma City  
3 group’s true intention, as later described candidly by one of its principal owners, was to  
4 move the team to Oklahoma City at the earliest possible time: “We didn’t buy the team to  
5 keep it in Seattle, we hoped to come here [to Oklahoma City].”  
6

7 Defendant fraudulently induced BCOS to sell the Sonics to it, and actively  
8 concealed that deception. These Oklahoma City businessmen wanted a team that would  
9 play in Oklahoma City—not in Seattle. They were willing to lie, and did lie, to complete  
10 the deal. Under these circumstances, principles of law and equity do not permit defendant  
11 to continue to own the property it fraudulently obtained.  
12

13 This lawsuit is brought derivatively on behalf of BCOS by BCOS member Canarsie  
14 Holdings LLC, a limited liability company owned by Howard Shultz, who served as  
15 Chairman of the BCOS Board at the time the Sonics were sold. The lawsuit seeks to  
16 deprive the Oklahoma City group of the fruits of its deception. BCOS asks this Court to  
17 find that the fraudulently-procured property constitutes a constructive trust that must be  
18 conveyed to an honest buyer whose true intention is to keep the Sonics in the Seattle area.  
19 BCOS also seeks a declaratory judgment that the sale of the Sonics was fraudulently  
20 induced and is therefore voidable at the option of BCOS. Finally, BCOS seeks specific  
21 performance of defendant’s contractual obligation to use good faith best efforts to negotiate  
22 an arena lease in the Seattle area.  
23  
24  
25  
26

**PARTIES**

1  
2 2. Nominal plaintiff The Basketball Club of Seattle (“BCOS”) is a limited  
3 liability company organized under the law of the State of Washington. Until it sold the  
4 team to defendant, BCOS owned and operated the National Basketball Association  
5 (“NBA”) professional basketball team known as the Seattle SuperSonics from 2001 to  
6 2006.  
7

8 3. Derivative plaintiff Canarsie Holdings LLC is a limited liability company  
9 organized under the law of the State of Washington and is a member of BCOS. Howard  
10 Schultz is the sole member of Canarsie Holdings LLC.

11 4. Defendant The Professional Basketball Club LLC is an Oklahoma limited  
12 liability company registered to do business in the State of Washington and that does  
13 business in King County, Washington. Currently, defendant owns and operates the Sonics.  
14

**DERIVATIVE ALLEGATIONS**

15  
16 5. Plaintiff is entitled to bring this action pursuant to RCW 25.15.370, which  
17 permits a member of a limited liability company to sue in the right of a limited liability  
18 company to recover a judgment in the company’s favor.

19 6. Plaintiff is bringing this action because BCOS is not able to do so, and an  
20 effort to cause BCOS to bring this action is not likely to succeed. BCOS has not been in  
21 operating mode since the sale of the Sonics to defendant was approved on August 21, 2006;  
22 BCOS is not able to reconstruct a decision-making process in a timely manner, given the  
23 need to file this lawsuit at this time; and BCOS currently does not have the financial  
24 resources to finance this litigation.  
25  
26



1 Board of Directors was considering whether to approve the sale, Clay Bennett and G.  
2 Edward Evans both told the BCOS Board that it was their desire to keep the Sonics in the  
3 Puget Sound area. Messrs. Bennett and Evans knew or should have known when they made  
4 these statements that the Board would rely on their statements in making its decision  
5 whether to approve the sale of the Sonics.  
6

7 13. To ensure that defendant's representations—which were critical to BCOS—  
8 were memorialized, Howard Schultz, who was Chairman of the BCOS Board of Directors,  
9 insisted that Clay Bennett, his counterpart in the Oklahoma City group, execute a side letter  
10 confirming the Oklahoma City group's statements. The Oklahoma City group agreed, and  
11 in a letter dated July 18, 2006, on the stationary of defendant The Professional Basketball  
12 Club, LLC, Mr. Bennett wrote to Mr. Schultz that "it is our desire to have the Sonics and  
13 the Storm continue their existence in the Greater Seattle Area," and specifically denied any  
14 "intention to move or relocate" the Sonics if the group could negotiate a lease arrangement.  
15 In fact, the Oklahoma City group did not desire to continue ownership of the Sonics in  
16 Seattle under any circumstances, even if it could negotiate a favorable lease.  
17

18 14. In Section 5.3 of the Purchase Agreement, the Oklahoma City group also  
19 made a contractual commitment "for a period of 12 months" to use "good faith best efforts  
20 to negotiate an arena lease, purchase, use or similar arrangement in the King, Pierce or  
21 Snohomish Counties of Washington as a venue for the Teams' games, to be used as a  
22 successor venue to Key Arena; provided, however, that the process described in this Section  
23 5.3 and the entering into of any such arena lease, purchase, use, or similar arrangement shall  
24 be at Buyer's sole discretion." Mr. Bennett also reaffirmed this commitment in his July 18,  
25 2006 side letter to Mr. Schultz.  
26

1           15.     During the period that Mr. Bennett and his group were lobbying BCOS  
2 members and the Seattle public to secure their approval of the sale, Mr. Bennett made  
3 numerous public statements confirming the commitments and representations he had made  
4 to BCOS. For example:

5           a.     At a news conference in Seattle on July 18, 2006 announcing the proposed  
6 sale, Mr. Bennett was reported as saying: “The Sonics and the Storm are synonymous with  
7 Seattle, and it is our desire to have the Sonics and Storm build upon their great legacies in  
8 the greater Seattle area. We believe with the right dynamics on the court, the right  
9 community support, the right business model and a financially committed ownership group  
10 that recognizes and respects Seattle, we can succeed here for decades to come.”

11           b.     At a press conference on August 9, 2006—less than two weeks before the  
12 BCOS membership voted to approve the sale—Mr. Bennett said: “Our commitment is to  
13 this area and this marketplace. That’s why we bought the team, was to invest in what we  
14 believe is a compelling opportunity in a very important, emerging, international city that we  
15 are very excited about being part of. We’re committed to this.”

16           16.     Thus, in the Purchase Agreement, in the side letter, and in numerous  
17 statements made at the time, the Oklahoma City group represented and committed that *as of*  
18 *the time they signed the Purchase Agreement, and continuing to the time the BCOS*  
19 *members approved the sale, it was the Oklahoma City group’s desire and intention to keep*  
20 *the Sonics in the Seattle area, and for the group to remain invested in the Sonics over the*  
21 *long term.*

22           17.     However, from statements later made by members of the Oklahoma City  
23 group (and from emails recently disclosed in pending federal court litigation), it is clear—  
24  
25  
26

1 contrary to the representations and commitments defendant made at the time it signed the  
2 Purchase Agreement—that defendant’s representations were false. Indeed, defendant did  
3 not desire or intend to keep the team—or itself—in the Seattle area any longer than  
4 necessary. For example:

5  
6 a. In an email written by Clay Bennett just *two days* before the sale, Mr.  
7 Bennett confided to his co-owners that he was comfortable with the Purchase Agreement’s  
8 good faith provision because, in the event a Seattle arena deal could be negotiated, the  
9 Oklahoma City group could simply sell the team in a “sweet flip,” and leave Seattle, and  
10 the Oklahoma City group “would still be in good shape for something in OKC.” This  
11 recently-discovered email makes clear that the Oklahoma City group never intended to own  
12 a team that would continue playing in Seattle and that Mr. Bennett lied when he told BCOS  
13 and the Seattle public on August 9, 2006 that “our commitment is to this area and this  
14 marketplace.”  
15

16 b. In a July 2006 email to his co-owners celebrating the sale, Aubrey  
17 McClendon, one of the four principal members of the Oklahoma City group, boasted that  
18 the team should be called “the OKLAHOMA CITY SONIC BOOM (or maybe SONIC  
19 BOOMERS!) baby!!!!!!”  
20

21 c. In August 2007, Mr. McLendon stated for the public record that: “We didn’t  
22 buy the team to keep it in Seattle, we hoped to come here [Oklahoma City]. We know it’s a  
23 little more difficult financially here in Oklahoma City, but we think it’s great for the  
24 community and if we could break even we’d be thrilled.” In response to Mr. McClendon’s  
25 candor, the NBA fined him a record-breaking \$250,000—for telling the truth.  
26

1           d.       In another email written during the period in which the Oklahoma City  
2 group was required to use good faith best efforts to keep the team in Seattle, Mr. Bennett  
3 stated that he “is a man possessed” and that the group would “do everything we can” to  
4 move the team to Oklahoma City for the following season.

5           e.       And, most recently, Mr. Bennett was reported as admitting at a press  
6 conference in New York on April 18, 2008 that “perhaps all along [owners McClendon and  
7 Tom Ward] wanted to have a team in Oklahoma City.”

8           18.     During the period that Mr. Bennett and his group were lobbying BCOS  
9 members and the Seattle public to secure their approval of the sale, Mr. Bennett and his  
10 group not only misrepresented and omitted material facts, but also actively concealed  
11 material facts from BCOS. Among other things, Mr. Bennett and his group did not disclose  
12 to BCOS that they did not want to own a Seattle based team even if appropriate lease  
13 arrangements for an arena could be secured, and that they only wanted to continue  
14 ownership of the team if it could be moved to Oklahoma City. This concealment is  
15 demonstrated by Mr. Bennett’s “sweet flip” email, in which he makes it clear that if  
16 appropriate lease arrangements were secured for the team to remain in Seattle, he and his  
17 group would sell the team and attempt to secure another NBA franchise in their hometown,  
18 Oklahoma City.

19           19.     Defendant also failed to use good faith best efforts for a period of 12 months  
20 to negotiate an arena lease, purchase, use, or similar arrangement in the greater Seattle Area  
21 as required by Section 5.3 of the Purchase Agreement. The Oklahoma City group  
22 reluctantly went through the motions to arrange a new arena plan, but never wanted or  
23 intended that their effort be successful. On information and belief, the group (i) failed to  
24  
25  
26

1 negotiate or propose a reasonable arena plan, instead proposing an arena substantially  
2 exceeding the team's needs and requiring unprecedented amounts in public subsidies; (ii)  
3 insisted that any arena agreement contain terms that were not commercially necessary and  
4 that defendant knew would be unacceptable to the Washington legislature and others; (iii)  
5 ceased meaningful efforts to negotiate an arena plan by April, 2007, instead of making good  
6 faith best efforts for 12 months (through August, 2007), as required by the Purchase  
7 Agreement; and (iv) failed to consider viable proposals to expand Key Arena. Defendant's  
8 failure to make good faith best efforts is further evidence of the false and deceptive  
9 commitments and representations made by the Oklahoma City group.  
10

11         20. As recently as April, 2008, defendant engaged in further attempts to conceal  
12 its fraud by making additional false statements to the public. Mr. Bennett stated in a  
13 videotaped press conference that his April 17, 2007 "man possessed" email was intended to  
14 convey that "I am only beginning; I will do everything I can to get this done in Seattle." In  
15 fact, the email's reference plainly was to getting it done in Oklahoma City. This is clear  
16 from Mr. Bennett's other statements contemporaneous with the email. For example, in an  
17 email to an NBA representative on April 23, 2007 (just six days after the man possessed  
18 email), Mr. Bennett told the NBA representative that there were no reasonable prospects for  
19 an arena in Seattle. Mr. Bennett went on in the email to tout the Oklahoma City group's  
20 "unique relationship with the [Oklahoma City] corporate community and . . . fan base." He  
21 concluded that the notion of the NBA being the "only game in [Oklahoma City] and indeed  
22 the only professional franchise in the state is compelling."  
23  
24

25         21. The Oklahoma City group fraudulently and/or negligently induced BCOS to  
26 enter into the Purchase Agreement by failing to disclose to BCOS at the time the Purchase

1 Agreement was signed that the group's desire was to move the Sonics to Oklahoma City at  
2 the earliest possible time. BCOS would not have sold the Sonics to the Oklahoma City  
3 group if BCOS had known at the time that the group's true intention was to move the  
4 Sonics to Oklahoma City.

5 22. BCOS's ability to obtain, and the Court's ability to fashion, appropriate  
6 equitable relief based on the foregoing allegations requires the disclosure of complete  
7 information regarding the Sonics' current financial condition. BCOS presently lacks this  
8 information. BCOS does not know, for example, the amount of loans incurred by  
9 defendant, the amount of losses sustained by the Sonics since the sale by BCOS (which  
10 amount is alleged to be much larger than expected as a result of the Oklahoma City group  
11 having intentionally mismanaged the Sonics to improve their case for breaking their lease),  
12 the nature and extent of long term contracts or other financial commitments.

13  
14  
15 **FIRST CLAIM FOR RELIEF**

16 **(Fraudulent Inducement)**

17 23. BCOS repeats and realleges each of the allegations set forth above.

18 24. Defendant made material misrepresentations of fact, including that it was the  
19 Oklahoma City group's desire to keep the Sonics in the greater Seattle area, and that the  
20 group wanted to own a Seattle-based team over the long term. These representations were  
21 false when made because, in fact, the Oklahoma City group desired to move the Sonics to  
22 Oklahoma City at the earliest possible time and intended to sell the team in a "sweet flip"  
23 even if a favorable arena arrangement could be obtained.

24 25. BCOS had a right to rely on the representations of the defendant regarding  
25 the Oklahoma City group's desire to keep the Sonics in Seattle.  
26



1 **THIRD CLAIM FOR RELIEF**

2 **(Breach of Contact)**

3 33. BCOS repeats and realleges each of the allegations set forth above.

4 34. The Purchase Agreement constituted a valid and enforceable contract.

5  
6 35. The Purchase Agreement obligated defendant for a period of 12 months to  
7 use good faith best efforts to negotiate an arena lease, purchase, use or similar arrangement  
8 in the King, Pierce or Snohomish Counties of Washington as a venue for the Sonics' games,  
9 to be used as a successor venue to Key Arena.

10 36. Defendant breached the Purchase Agreement's "good faith best efforts"  
11 provision by, *inter alia*:

12 (a) Failing to negotiate or propose a reasonable arena plan, instead  
13 proposing an arena substantially exceeding the team's needs and requiring unprecedented  
14 amounts in public subsidies;

15 (b) Insisting that any arena lease, purchase, use or other similar arrangement  
16 contain terms that were not commercially necessary to defendant and that defendant knew  
17 would be unacceptable to the Washington legislature and others; and

18 (c) Ceasing meaningful efforts to negotiate an arena plan in April, 2007,  
19 instead of continuing to make good faith best efforts for 12 months (through August, 2007),  
20 as required by the Purchase Agreement.  
21

22 37. BCOS has been harmed by defendant's breach.  
23  
24  
25  
26

**REQUEST FOR RELIEF**

1  
2 WHEREFORE, in light of the uncertainty surrounding the current condition of the  
3 assets fraudulently obtained by defendant, plaintiff requests the following relief:

4 1. For a declaratory judgment that the Purchase Agreement was induced by  
5 fraud and is therefore voidable at the option of BCOS;  
6

7 2. For equitable relief, including but not limited to the imposition of a  
8 constructive trust from which defendant can be ordered to convey the Sonics to an honest  
9 buyer who desires to keep the Sonics in Seattle, and an order compelling specific  
10 performance of defendant's obligation to use good faith best efforts to negotiate an arena  
11 lease, purchase, use or similar arrangement in the greater Seattle area to serve as a venue for  
12 Sonics games;  
13

14 3. For an order appointing a receiver in equity to manage the assets at issue in  
15 this litigation for the benefit of the beneficiary of the constructive trust referenced in  
16 Paragraph 2, above;

17 4. For an order requiring defendant to provide plaintiff a full and complete  
18 accounting of the financial condition of the Sonics, so that BCOS and potential buyers can  
19 fairly and accurately assess its financial condition;  
20

21 5. For a preliminary injunction prohibiting defendant from taking any action  
22 that would compromise the value of the Sonics or otherwise interfere with the Court's  
23 ability effectively to render the relief sought by BCOS in this Complaint;

24 6. For plaintiff's attorneys fees and costs of suit; and

25 7. For whatever additional relief the Court may determine to be just and  
26

///

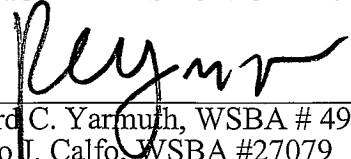
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

equitable.

Dated: May 20, 2008.

YARMUTH WILSDON CALFO PLLC

By:



Richard C. Yarmuth, WSBA # 4990

Angelo J. Calfo, WSBA #27079

Seth Wilkinson, WSBA #31607

925 Fourth Avenue, Suite 2500

Seattle, Washington 98101

Telephone: (206) 516-3800

Facsimile: (206) 516-3888

E-mail: [yarmuth@yarmuth.com](mailto:yarmuth@yarmuth.com)

[acalfo@yarmuth.com](mailto:acalfo@yarmuth.com)

[swilkinson@yarmuth.com](mailto:swilkinson@yarmuth.com)

Counsel for Plaintiff

VERIFICATION

I, Howard Schultz, being first duly sworn, verify that Canarsie Holdings LLC is the Plaintiff in the above-captioned matter, that I have read the foregoing Complaint and know the contents thereof, and, to the best of my knowledge, believe the allegations set forth therein to be true.

DATED this 19 day of May, 2008, at Seattle, Washington.

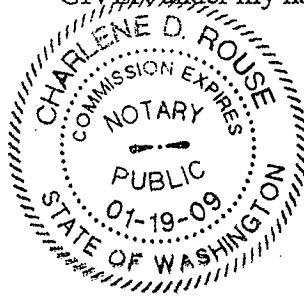
*Howard Schultz*  
Howard Schultz

STATE OF WASHINGTON )

COUNTY OF KING ) ss.

On this day personally appeared before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, Howard Schultz, to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that he signed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 19 day of May, 2008.



*Charlene D. Rouse*

NOTARY PUBLIC in and for the State of Washington

Residing at *Maple Valley, WA*

My commission expires: *01/19/09*