

The Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

CITY OF SEATTLE, a first-class charter city, <div style="text-align: right;">Plaintiff,</div>	}	No. C07-1620MJP
v.	}	PBC'S OPPOSITION TO MOTION IN LIMINE TO EXCLUDE EVIDENCE RELATED TO SURVEY RESULTS
THE PROFESSIONAL BASKETBALL CLUB, LLC, an Oklahoma limited liability company, <div style="text-align: right;">Defendant.</div>	}	NOTED ON MOTION CALENDAR: JUNE 6, 2008

The Field Research survey is relevant because it goes to the heart of one of the City's claims. From the outset of this case, the City has contended that it is entitled to specific performance because the Sonics give Seattle "enhanced community pride, self-image, exposure, reputation, and prestige."¹ Likewise, they have an expert witness, Mr. Zimbalist, who the City intends to have testify about the "intangible" benefits of having a professional sports team. The City's expert claims that the "possibility of joining together with one's fellow denizens to root for a local sports team can provide one of the most meaningful outlets for the expression of community available in modern society."² He claims that the Sonics provide a "sense of community and identity and bonding that few other events in U.S. society are able to offer."³

¹ Complaint at ¶ 6.
² Declaration of Paul R. Taylor in Opposition to Plaintiff's Motions in Limine ("Taylor Decl."), Ex 2, Zimbalist report at 7-8.
³ Id. at 8.

1 Zimbalist is an economist, and it is not entirely clear what expertise an economist brings to such
2 matters – but that is what the City intends to put forth from him.

3 Likewise,

4 More generally, spectator sport offers personal and political
5 distraction, excitement, community spirit and identity, a basis for
6 social discourse and connection, hero worship and meaning, and a
socializing experience for integrating immigrants, among other
things.⁴

7 In other words, the City has put Seattle’s interest in – and its relationship with and feelings about
8 – the Sonics directly at issue, and claims those sorts of factors are a reason why the Court should
9 specifically enforce the lease.

10 The PBC disagrees that the interests of the public – third parties, or strangers, to the
11 contract – can even be considered in analyzing whether specific performance is appropriate.
12 That issue will be addressed in detail in the PBC’s proposed Conclusions of Law. Assuming for
13 purposes of this motion only that the City is permitted to introduce evidence of the type proffered
14 by expert Zimbalist, and to argue that the public’s interests should be considered, the survey is
15 relevant and admissible.

16 Indeed, given the thrust of the theme of the City’s case, the Field Research poll is
17 squarely relevant. It addresses whether Seattleites in fact care if the Sonics leave Seattle.
18 Contrary to the speculation and opinion offered by City expert Zimbalist (or a sports radio talk
19 show host), the survey demonstrates factually that the majority of people do not care if the team
20 leaves Seattle. Sixty-six percent of Seattleites either believe it would make no difference to them
21 if the Sonics left Seattle, or that they actually would be better off.⁵ Of the remainder, 13 percent
22 said they would be only “slightly worse off if the Sonics left,” 8 percent said they would be
23 “somewhat worse off,” and only 12 percent said they would be “much worse off.” The results of
24 the Field Research poll, significantly, are consistent with numerous polls regarding the Sonics.⁶

25 ⁴ Id. at 9.

26 ⁵ Those who say their life would be better off pointed to the traffic and congestion on nights the
Sonics play home games.

⁶ See, e.g., Taylor Decl., Exs. 3-5.

1 The City also quibbles with the survey methodology, dissecting the questioning. The
 2 survey asked whether the respondent would be better off, no different, or worse off, if the Sonics
 3 were to leave Seattle. Claiming this method is defective, the City says that the question should
 4 instead have been “whether the presence of the Sonics in Seattle brings any benefits to the
 5 community that would be lost if the team moved to Oklahoma City.”⁷ The City offers no survey
 6 expert to support this criticism. The City, of course, could have done (and apparently did do) its
 7 own survey posing that question. Indeed, at the same conference, the City suggested it also
 8 would be presenting survey evidence. As detailed in Exhibit 1 to the Second Declaration of Paul
 9 R. Taylor in Opposition to Plaintiff’s Motions in Limine, however, the City’s surveys did not
 10 yield the answers it wanted. Neither did the survey conducted by the Ballmer Group.⁸ In any
 11 event, the criticism goes to weight, not admissibility.

12 DATED this 3rd day of June, 2008.

13 BYRNES & KELLER LLP

14
 15 By: /s/ Paul R. Taylor, WSBA #14851
 16 Bradley S. Keller, WSBA #10665
 17 Paul R. Taylor, WSBA #14851
 18 Steven C. Minson, WSBA #30974
 19 Byrnes & Keller LLP
 20 1000 Second Avenue, 38th Floor
 21 Seattle, WA 98104
 22 Telephone:(206) 622-2000
 23 Email: bkeller@byrneskeller.com
ptaylor@byrneskeller.com
sminson@byrneskeller.com
 24 Attorneys for Defendant
 25 The Professional Basketball Club, LLC
 26

⁷ City’s Mot. at 4:14-15.

⁸ Taylor Decl., Ex. 8.

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

CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of June, 2008, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Thomas A. Carr (thomas.carr@seattle.gov)
Gregory C. Narver (gregory.narver@seattle.gov)
Seattle City Attorney
600 Fourth Avenue, 4th Floor
P.O. Box 94769
Seattle, WA 98124-4769

Slade Gorton (slade.gorton@klgates.com)
Paul J. Lawrence (paul.lawrence@klgates.com)
Jeffrey C. Johnson (jeff.johnson@klgates.com)
Michelle Jensen (michelle.jensen@klgates.com)
K&L Gates
925 4th Avenue, Suite 2900
Seattle, WA 98104

/s/ Paul R. Taylor
Paul R. Taylor, WSBA #14851
Byrnes & Keller LLP
1000 Second Avenue, 38th Floor
Seattle, WA 98104
Telephone: (206) 622-2000
Facsimile: (206) 622-2522
ptaylor@byrneskeller.com