

The Honorable Marsha J. Pechman

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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

CITY OF SEATTLE, a first-class charter city,	)	
	)	
Plaintiff,	)	No. C07-1620MJP
	)	
v.	)	PBC'S OPPOSITION TO MOTION IN
	)	LIMINE TO EXCLUDE EVIDENCE OF
THE PROFESSIONAL BASKETBALL CLUB,	)	DEFENDANT'S EFFORTS TO OBTAIN A
LLC, an Oklahoma limited liability company,	)	"SUCCESSOR VENUE" TO KEYARENA
	)	
Defendant.	)	NOTE ON MOTION CALENDAR:
	)	JUNE 6, 2008
	)	

**I. INTRODUCTION**

For months, the City has claimed that the PBC (i) never intended to keep the Sonics in Seattle, and (ii) made no effort to obtain a new arena. Finally, acknowledging that it was flat wrong, the City says it will not put on evidence regarding the PBC's efforts to find a successor venue. That is the City's right. However, the City also wants to *prevent* PBC from introducing such evidence. But, the PBC's efforts (and ultimate inability) to obtain a successor venue area go to the heart of why this matter is in litigation. Despite best efforts, neither the PBC nor the Sonics' prior ownership was able to obtain a successor venue. Accordingly, because (as the City concedes) KeyArena is inadequate for an NBA team, and because the PBC was unable to obtain a successor venue, the PBC intends to relocate subject to this Court's ruling.

1 Now, on the eve of trial, and after forcing taxpayers, the PBC, and several third parties to  
 2 collectively spend several hundred thousand dollars conducting discovery on these issues, the  
 3 City claims that whether the PBC acted in good faith is not relevant to the equitable issues before  
 4 the Court. The City is wrong, and its motion should be denied.

## 5 II. BACKGROUND AND ARGUMENT

### 6 A. The City Put the PBC's Good-Faith Efforts to Find a Successor Venue at Issue.

7 Throughout this lawsuit, the City has accused PBC of failing to make good faith attempts  
 8 to find a successor venue in the Seattle area, claiming its efforts to find a successor venue to  
 9 KeyArena were a sham. Indeed, the City's complaint opened with such accusations. It then  
 10 conducted far-reaching discovery, hoping to show that the PBC's intent, all along, was to move.  
 11 The City's motion practice in discovery was predicated on assertions of a secret plan to move,  
 12 the City's lawyers criss-crossed the country in pursuit of it, and the City also selected strategic  
 13 times to leak emails about the very issues they now claim are completely irrelevant to the  
 14 lawsuit. Those emails, taken completely out of context, ignited a media frenzy of unfair  
 15 accusations – all in the City's failed effort to thwart the PBC's relocation application with the  
 16 NBA.

17 The City's complaint alleged that the PBC did not try in good faith to find a successor  
 18 venue in the Seattle area. As supposed evidence of bad faith, the City accused the PBC of the  
 19 following:

- 20 • The PBC “rejected efforts by the City to put together a viable financial package to  
 21 renovate KeyArena with equal commitments of investment from the new owners  
 and the City”;
- 22 • The PBC’s “efforts in the 2007 State legislative session were, on any objective  
 23 basis, guaranteed to fail as their proposed legislation was filed too late in the  
 session, and relied on too much public subsidy (\$400 million combined with state  
 and local taxes), compared to their proposed investment (\$100 million)”;
- 24 • The PBC “rejected requests from some local selling owners and other local  
 25 partners to join the new Sonics ownership.”<sup>1</sup>

26  
<sup>1</sup> Complaint at 2:12-17.

1 In the Joint Status Report, the City proclaimed that it would need discovery on subjects  
2 including “the extent to which PBC made good faith efforts, if at all, to keep the Sonics in  
3 Seattle.”<sup>2</sup>

4 When it sought to compel the PBC to wade through hundreds of thousands of emails  
5 from PBC members, the City said that its justification was to find evidence of whether PBC  
6 complied with its good faith obligations to find a successor venue, and that such evidence was  
7 relevant to the equities of the matter:

8 If it is true that PBC entered into the Lease with the existing  
9 intention of breaking it, that is an additional reason to order  
10 specific enforcement of the City’s rights under the Lease. See  
11 Dean v. Gregg, 663 P.2d 502, 686 (Wn. App. 1983) (justice  
12 requires enforcement of plaintiff’s right to specific performance  
13 where defendant’s breach of contract is flagrant and its excuse for  
14 nonperformance—e.g., the assertion that it had entered into a bad  
15 bargain – is “woefully deficient”).<sup>3</sup>

16 The corollary is, of course, true. As detailed below, the fact that PBC tried, but was  
17 unable, to secure a successor venue weighs against specific performance.

18 In April, when the City moved to compel the NBA to produce documents, it publicly  
19 attacked the integrity of PBC members, and said the PBC never intended to keep the Sonics in  
20 Seattle.<sup>4</sup> Moreover, as intended, emails attached to the City’s motion ignited the media frenzy  
21 just before the NBA Board of Governors voted on April 18, 2008, and approved relocation of the  
22 Sonics to Oklahoma City.

23 Frankly, the City owes the public, the PBC, the NBA, and the Court an apology. Several  
24 hundred thousand dollars and countless hours were wasted on the City’s pet theory. But the fact  
25 that the City could not prove bad faith does not mean that the PBC’s good faith is somehow  
26 irrelevant.

<sup>2</sup> Status Report at 5:3-4 (Dkt. No. 9).

<sup>3</sup> Jt. Expedited CR 37 Submission (Dkt. No. 13) at 4:7-12.

<sup>4</sup> City’s Motion to Compel NBA, filed in the Southern District of New York, *passim*.  
Declaration of Paul R. Taylor in Opposition to Plaintiff’s Motions in Limine (“Taylor Decl.”),  
Ex. 6.

1 **B. The PBC's Efforts Are Relevant.**

2 The PBC tried hard to find a successor venue, and those efforts are relevant. They show  
3 that the PBC purchased the Sonics believing it would get a new arena built. The PBC's efforts to  
4 make that happen explain both (i) why it bought the team and (ii) why enforcing the lease  
5 imposes an undue economic burden. The PBC believed it would be completing the lease term at  
6 KeyArena (and possibly extending it, depending on construction timeframes) while the new  
7 facility was being constructed. It would then move into a new facility and make money going  
8 forward.

9 Moreover, it must be remembered that the City actively lobbied against the PBC's effort  
10 to obtain passage of arena legislation in Olympia.<sup>5</sup> Why? Because the proposed new arena was  
11 in Renton, not Seattle. But had the PBC been able to secure a new arena in Renton, it would  
12 have played out the lease term at KeyArena during construction of the new arena. By actively  
13 opposing the effort by PBC to obtain a new arena in Renton, the City created the very situation it  
14 now claims it is trying to prevent—a team leaving early because of the millions of dollars of  
15 losses being incurred due to its inability to obtain a successor venue to KeyArena.

16 Likewise, one of the central thrusts of the City's case is that the PBC knew the team was  
17 losing money, knew it was required to play in KeyArena, and knew that the lease lasted two  
18 more years. Tough, says the City, a deal is a deal. The PBC's belief that it would obtain a new  
19 arena and its efforts to make that happen explain why the PBC purchased the team, and why  
20 enforcing the lease imposes an undue economic burden. The PBC believed it would be  
21 transitioning out of KeyArena and into a new facility, making money going forward.

22 **III. CONCLUSION**

23 Unless the City will stipulate to the facts detailing the PBC's good-faith efforts to find a  
24 successor venue and finish out the lease term at KeyArena, PBC is entitled to introduce evidence  
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<sup>5</sup> Taylor Decl., Ex. 1, Ceis Dep. at 48:11-52:10; Id., Ex. 7, Conlin Dep. at 24:8-29:16.

1 of those efforts. PBC is well aware that it has three days to present its case. The City's motion  
2 should be denied.

3 DATED this 3rd day of June, 2008.

4 BYRNES & KELLER LLP

5 By: /s/ Paul R. Taylor, WSBA #14851  
6 Bradley S. Keller, WSBA #10665  
7 Paul R. Taylor, WSBA #14851  
8 Steven C. Minson, WSBA #30974  
9 Byrnes & Keller LLP  
10 1000 Second Avenue, 38th Floor  
11 Seattle, WA 98104  
12 Telephone: (206) 622-2000  
13 Facsimile: (206) 622-2522  
14 Email: [bkeller@byrneskeller.com](mailto:bkeller@byrneskeller.com)  
15 [ptaylor@byrneskeller.com](mailto:ptaylor@byrneskeller.com)  
16 [sminson@byrneskeller.com](mailto:sminson@byrneskeller.com)

17 Attorneys for Defendant  
18 The Professional Basketball Club, LLC

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**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](mailto:thomas.carr@seattle.gov))  
Gregory C. Narver ([gregory.narver@seattle.gov](mailto: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](mailto:slade.gorton@klgates.com))  
Paul J. Lawrence ([paul.lawrence@klgates.com](mailto:paul.lawrence@klgates.com))  
Jeffrey C. Johnson ([jeff.johnson@klgates.com](mailto:jeff.johnson@klgates.com))  
Michelle Jensen ([michelle.jensen@klgates.com](mailto: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](mailto:ptaylor@byrneskeller.com)