



07-CV-01620-CMP

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AT SEATTLE  
CLERK U.S. DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
DEPUTY

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

CITY OF SEATTLE, a first-class charter city, )  
Plaintiff, )  
v. )  
THE PROFESSIONAL BASKETBALL CLUB, )  
LLC, an Oklahoma limited liability company, )  
Defendant. )

No. **C07-1620** RSM

NOTICE OF REMOVAL FROM KING  
COUNTY SUPERIOR COURT

TO: CLERK OF UNITED STATES DISTRICT COURT

Pursuant to 28 U.S.C. §§ 1441 and 1446, Defendant gives notice that this matter, which had been pending in King County Superior Court as Cause No.07-2-30997-7 SEA, has been removed as follows:

1. The Professional Basketball Club ("PBC") was served with plaintiff's Complaint for Declaratory Relief on September 24, 2007. Therefore, this Notice of Removal is timely pursuant to 28 U.S.C. § 1446(b). Copies of plaintiff's Complaint and Summons, and all other papers filed in the King County Superior Court in this matter, along with an index thereto, are attached as Exhibit A.

2. This matter is subject to removal under 28 U.S.C. § 1441 because original jurisdiction exists pursuant to 28 § U.S.C. 1332(a)(1) as follows:

NOTICE OF REMOVAL FROM KING COUNTY SUPERIOR  
COURT - 1

BYRNES & KELLER LLP  
38TH FLOOR  
1000 SECOND AVENUE  
SEATTLE, WASHINGTON 98104  
(206) 622-2000

ORIGINAL

SFA 12598 no summons

1 a. Plaintiff, City of Seattle ("City"), is a municipal corporation and citizen of  
2 Washington.

3 b. Defendant PBC is an Oklahoma limited liability company, and all of its  
4 owners/members are citizens of Oklahoma and none of its owners/members are citizens of  
5 Washington. See Johnson v. Columbia Props. Anchorage, LP, 437 F.3d 894, 899 (9th Cir. 2006)  
6 (refusing to extend the corporate citizenship rule of 28 U.S.C. § 1332(c)(1) to limited liability  
7 companies, and holding that "like a partnership, an LLC is a citizen of every state of which its  
8 owners/members are citizens").

9 c. The parties' dispute arises under an Agreement<sup>1</sup> which provides for the  
10 Sonics to play their home games at KeyArena through the 2009-2010 NBA season. The  
11 Agreement contains an arbitration clause, and PBC filed an arbitration demand on September 21,  
12 2007. The arbitration demand seeks a declaratory judgment that specific performance is not  
13 available to force the Sonics to play the 2008-2009 and 2009-2010 seasons at KeyArena and that  
14 the City instead would be limited to the damages in the form of net rent due for those two  
15 remaining years. On September 24, 2007, the City filed its Complaint seeking declarations that  
16 (i) the dispute is not subject to arbitration, and (ii) the City is entitled to specific performance.

17 d. The amount in dispute exceeds \$75,000. The City alleges that if a court  
18 determines that specific performance is not available, the City "would be responsible for paying  
19 the debt service on the KeyArena re-construction without the promised income stream from the  
20 Sonics." Complaint, ¶ 24. The debt service is several million dollars per year. The City also  
21 claims that it would be "impossible" for the City to find a suitable alternative tenant, and that the  
22 Sonics' departure "would result in significant tangible and intangible losses to the City."  
23 Complaint, ¶ 24. Additionally, PBC lost \$17,000,000 last year due at least in part to the  
24 inadequacies of KeyArena as an NBA venue. If this Court were to order specific performance,  
25 PBC stands to lose many more millions of dollars. Accordingly, the value of the rights at issue  
26

<sup>1</sup> "Premises Use & Occupancy Agreement," attached to Complaint as Ex. A.

PBC stands to lose many more millions of dollars. Accordingly, the value of the rights at issue in this dispute exceeds \$75,000. See Hunt v. Wash. State Apple Adver. Comm'n, 432 U.S. 333, 347 (1977) ("In actions seeking declaratory or injunctive relief, it is well established that the amount in controversy is measured by the value of the object of the litigation.").

e. Furthermore, the City seeks its attorney fees under the Agreement. Complaint, 11:12-13. The amount in controversy includes the amount of damages in dispute, as well as attorney's fees, if authorized by statute or contract. Kroske v. U.S. Bank Corp., 432 F.3d 976, 980 (9<sup>th</sup> Cir. 2005), cert. denied, \_\_\_ U.S. \_\_\_, 127 S. Ct. 157 (2006). The Agreement has a prevailing party fee clause. Plaintiff's outside counsel, K&L Gates, has five (5) attorneys appearing on the Complaint, and Senator Gorton's hourly rate alone is widely reported to be \$685. Therefore, on this basis alone, the amount in controversy in this matter exceeds \$75,000.<sup>2</sup>


3. Removal to this Court is proper under 28 U.S.C. § 1441(a) because this is the United States District Court for the district and division embracing the place where this action is pending.

4. Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of Removal is being served upon counsel for Plaintiff and a copy is being filed with the Clerk of the King County Superior Court.

DATED this 9th day of October, 2007.

BYRNES & KELLER LLP

By



Bradley S. Keller, WSBA #10665

Paul R. Taylor, WSBA #14851

Attorneys for Defendant

The Professional Basketball Club, LLC

<sup>2</sup> The City reportedly has set aside \$1,000,000 for its attorney fees.

**DECLARATION OF SERVICE**

I, Steven C. Minson, declare and state:

1. I am a citizen of the State of Washington, over the age of eighteen years, not a party to this action, and competent to be a witness herein.

2. On the 9<sup>th</sup> day of October, 2007, I caused a true copy of the foregoing Notice of Removal from King County Superior Court No. 07-2-30997-7 SEA to be served on the following counsel of record via hand delivery:

Thomas A. Carr  
Seattle City Attorney  
600 Fourth Avenue, 4<sup>th</sup> Floor  
P.O. Box 94769  
Seattle, WA 98124-4769

Slade Gorton  
Paul J. Lawrence  
Jeffrey Johnson  
Kirkpatrick & Lockhart Preston Gates & Ellis, LLP  
925 4<sup>th</sup> Avenue, Suite 2900  
Seattle, WA 98104

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED in Seattle, Washington this 9<sup>th</sup> day of October, 2007.

  
Steven C. Minson, WSBA #30974