

The Honorable Marsha J. Pechman

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.

PBC'S OPPOSITION TO MOTION IN LIMINE TO EXCLUDE
EVIDENCE OF DEFENDANT'S EFFORTS TO OBTAIN A
"SUCCESSOR VENUE" TO KEYARENA (C07-1620MJP) - 1

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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
22 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
24 session, and relied on too much public subsidy (\$400 million combined with state
25 and local taxes), compared to their proposed investment (\$100 million)";
- 26 • The PBC "rejected requests from some local selling owners and other local
partners to join the new Sonics ownership."¹

¹ 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."²

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
where defendant's breach of contract is flagrant and its excuse for
nonperformance—e.g., the assertion that it had entered into a bad
bargain – is "woefully deficient").³

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

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

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

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25 ² Status Report at 5:3-4 (Dkt. No. 9).

26 ³ Jt. Expedited CR 37 Submission (Dkt. No. 13) at 4:7-12.

⁴ 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.⁵ 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
25
26

⁵ 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.

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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:

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