

The Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

CITY OF SEATTLE, a first-class charter  
City,

Plaintiff,

v.

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

Defendant.

No. 07-1620 MJP

PRAECIPE

**[CLERK'S ACTION REQUIRED]**

TO: CLERK OF THE COURT;

AND TO: ALL PARTIES OF RECORD.

The City of Seattle hereby makes the following praecipe to its Opposition to Defendant's Motion in Limine to Exclude Sherman Alexie and Mitch Levy, filed on June 3, 2008 (Dkt. No. 72):

The sentence beginning on page 8, line 17 and ending on page 9, line 1 should read as follows:

PRAECIPE - 1

Case No. 07-1620 MJP

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1           **The fact that PBC made only minimal efforts to market the 19 year-old Mr.**  
2           **Durant – allowing him to appear no more than a few times on sports radio, and**  
3           **otherwise failing to attempt to create a bond between Mr. Durant and the Seattle**  
4           **community [fn] – suggests an intent by PBC to distance itself from its core audience for**  
5           **the purpose of easing its intended departure for Oklahoma City.**

6  
7       Copies of the corrected pages are attached to this praecipe as Exhibit A.

8           DATED this 4th day of June, 2008.

9  
10       KIRKPATRICK & LOCKHART  
11       PRESTON GATES & ELLIS, LLP

THOMAS A. CARR  
Seattle City Attorney

12       By: /s/ Michelle Jensen  
13       Slade Gorton, WSBA No. 20  
14       Paul J. Lawrence, WSBA No. 13557  
15       Jeffrey Johnson, WSBA No. 23066  
16       Jonathan Harrison, WSBA No. 31390  
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By: /s/ Gregory C. Narver  
Gregory C. Narver, WSBA No. 18127  
Assistant City Attorney

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26  
Attorneys for Plaintiff City of Seattle

Attorneys for Plaintiff City of Seattle

1 CERTIFICATE OF SERVICE

2 I hereby certify that on June 4, 2008, I electronically filed the foregoing with the Clerk  
3 of the Court using the CM/ECF system which will send notification of such filing to all  
4 counsel of record.  
5

6  
7 /s/ Judy Goldfarb  
8 Judy Goldfarb, Legal Assistant  
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PRAECIPE - 3

Case No. 07-1620 MJP

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# EXHIBIT A

1 seeking to be excused or exonerated from specific performance. Were the rule otherwise, one  
2 would derive a benefit from his or her own inexcusable neglect.” (citations omitted));  
3 *Carpenter v. Folkerts*, 627 P.2d 559, 562 (Wash. App. 1981) (specific performance ordered  
4 where defendants’ financial inability to fulfill the contract resulted from their own decisions  
5 to encumber the land subject to a lease-option; specific performance is appropriate where a  
6 defendant has “voluntarily assumed [] self-induced obligations and performance [i]s not  
7 prevented by an Act of God or through any fault of the [plaintiffs]”).

8 Contrary to PBC’s assertion that “[w]hat a radio personality does (or does not) know  
9 about the Sonics has no bearing on this case[,]”<sup>10</sup> Mr. Levy’s testimony will demonstrate  
10 PBC’s apparently intentional efforts to minimize public interest in the Sonics. This is a  
11 particularly troubling issue, as there appears to be no other plausible explanation for PBC’s  
12 deliberate effort to avoid marketing the team other than for purposes of this litigation. For  
13 example, the Sonics’ best player is the 2007-08 NBA rookie of the year, Kevin Durant. He  
14 was described by the Sonics’ CEO as a potentially transcendent player and potential super  
15 star. *See* Johnson Decl., Ex. D (30(b)(6) Deposition of Daniel Barth), 82:5-83:2. These  
16 terms are generally reserved for NBA legends, past and present, such as Magic Johnson, Larry  
17 Bird, Michael Jordan, Kobe Bryant and LeBron James. The fact that PBC made only minimal  
18 efforts to market the 19 year-old Mr. Durant – allowing him to appear no more than a few  
19 times on sports radio, and otherwise failing to attempt to create a bond between Mr. Durant  
20 and the Seattle community<sup>11</sup> – suggests an intent by PBC to distance itself from its core

21  
22 <sup>10</sup> *See* Defendant’s MIL at 2.

23 <sup>11</sup> Mr. Levy can also testify regarding the difference between the way the Mariners  
24 organization promoted Ken Griffey Jr. when he was a 18 year-old rookie, and the Sonics’  
25 complete failure to promote and introduce Kevin Durant adequately to the local community –  
despite very similar situations (i.e. struggling teams with young stars that needed to sell  
tickets).

26 THE CITY OF SEATTLE’S  
OPPOSITION TO DEFENDANT’S MOTION IN  
LIMINE TO EXCLUDE SHERMAN ALEXIE  
AND MITCH LEVY - 8

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audience for the sole purpose of easing its intended departure for Oklahoma City. Mr. Levy will shed light on this by testifying as follows:

1. In addition to being a Sonics season ticket holder for many years, he has covered the NBA, in his capacity as a sports reporter and commentator, since 1992, and served as the pre- and post-game sideline reporter for Sonics television broadcasts in 1995 and 1996. At trial, Mr. Levy will authenticate a City trial exhibit, consisting of one of his sideline reports at a 1995 Sonics game.
2. He for many years hosted "Mitch in the Morning" on KJR AM Sports Radio, which is one of the most popular sports radio shows in Seattle, and throughout that time has spent significant time on his show covering the NBA and specifically the Sonics' basketball team.
3. The Sonics know that KJR's listener demographic is a very important market for the team in terms of maintaining and increasing fan interest.
4. Prior to PBC's purchase and even during their first year of ownership, the Sonics used KJR to sell tickets by making players and coaches available on a regular basis to the station.
5. The Sonics get free advertising by providing access to their players and coaches for interviews with KJR radio personalities.
6. Despite the prospects of a dismal record and disinterest among fans caused by the Sonics' ownership announcing its intent before the start of the 2007-08 season to move the team to Oklahoma City, the team's management did not avail itself of the free publicity available from KJR. It first severely limited –

THE CITY OF SEATTLE'S  
OPPOSITION TO DEFENDANT'S MOTION IN  
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