

The Honorable Ricardo S. Martinez

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

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. C07-1620RSM  
DEFENDANT'S ANSWER AND  
AFFIRMATIVE DEFENSES

Defendant The Professional Basketball Club, LLC, by and through its counsel, answers plaintiff's complaint as follows:

**PRELIMINARY STATEMENT**

Answering paragraph 1 of the Preliminary Statement, defendant admits that the Lease says what it says, and denies each and every other or different characterization thereof. Except as so admitted, defendant denies the remainder of paragraph 1.

Answering paragraph 2 of the Preliminary Statement, defendant admits that the referenced documents say what they say, and denies each and every other or different characterization thereof. Except as so admitted, defendant denies the remainder of paragraph 2.

**PARTIES**

1. Answering paragraph 1, defendant admits same.
2. Answering paragraph 2, defendant admits same.

**JURISDICTION AND VENUE**

3. Answering paragraph 3, defendant admits same and further admits that the action has been properly removed to the United States District Court for the Western District of Washington.

**FACTS**

4. Answering paragraph 4, defendant admits the first sentence and denies the second.<sup>1</sup>

5. Answering paragraph 5, defendant admits all but the last sentence, which is too vague to permit a response, and is therefore denied.

6. Answering paragraph 6, defendant admits that it pays rent under the Lease and pays various taxes. Defendant further admits that although there is other spending associated with the operation of defendant's business, that spending does not generate any net increase in economic benefits for the City and/or local businesses. Defendant admits that the team has participated in charitable events and that local businesses have the opportunity to advertise with defendant. Except as so admitted, defendant denies each and every other or different allegation.

7. Answering paragraph 7, defendant denies the first sentence, admits the second sentence, and denies the third sentence.

8. Answering paragraph 8, defendant admits that the win-loss records are accurate. Except as so admitted, defendant denies the remainder of paragraph 8.

---

<sup>1</sup> Seattle's first professional franchise was the Metropolitans, who won the Stanley Cup in 1917.

1 9. Answering paragraph 9, defendant admits the win-loss records and the fact that  
2 attendance has declined. Except as so admitted, defendant denies the remainder of paragraph 9.

3 10. Answering paragraph 10, defendant admits same.

4 11. Answering paragraph 11, defendant admits that a 15-year lease was approved.  
5 Defendant lacks sufficient information upon which to formulate a response to the remainder of  
6 paragraph 11, and therefore denies same.  
7

8 12. Answering paragraph 12, defendant admits that the Coliseum was renovated with  
9 new seats and luxury suites, and renamed. Except as so admitted, defendant denies each and  
10 every other allegation of paragraph 12.

11 13-17. Answering paragraphs 13, 14, 15, 16 and 17, defendant admits that the Ordinance  
12 passed and that the Lease says what it says, and denies each and every other or different  
13 characterization thereof. Defendant further denies the remainder of these paragraphs.  
14

15 18. Answering paragraph 18, defendant lacks sufficient information upon which to  
16 formulate an answer and therefore denies same.

17 19. Answering paragraph 19, defendant admits that it purchased certain assets from  
18 BCOS in 2006, that it became a party to the Lease through the Instrument of Assumption, and  
19 that it was familiar with the Lease and with KeyArena. Defendant further admits that the  
20 Instrument of Assumption says what it says, and denies each and every other or different  
21 characterization thereof. Defendant denies the remainder of paragraph 19.  
22

23 20. Answering paragraph 20, defendant denies same.

24 21. Answering paragraph 21, defendant lacks sufficient information upon which to  
25 formulate an answer, and therefore denies same.  
26

1 22. Answering paragraph 22, defendant denies same.

2 23. Answering paragraph 23, defendant admits that it is an Oklahoma Limited  
3 Liability Company formed for the purpose of acquiring the franchise. Defendant further admits  
4 that Aubrey McClendon made a statement in his individual capacity, and not as a representative  
5 of TPBC, which has been taken out of context by the City and others. Except as so admitted,  
6 defendant denies the remainder of paragraph 23.  
7

8 24. Answering paragraph 24, defendant denies same.

9 25. Answering paragraph 25, defendant admits that the arbitration demand says what  
10 it says, and denies each and every other or different characterization thereof. Defendant further  
11 admits that the Lease says what it says, and denies each and every other or different  
12 characterization thereof. Except as so admitted, defendant denies the remainder of paragraph 25.  
13

14 **FIRST CAUSE OF ACTION**

15 26. Answering paragraph 26, defendant restates its answers to paragraphs 1-25.

16 27. Answering paragraph 27, defendant admits that the Lease says what it says, and  
17 denies each and every other or different characterization thereof. Except as so admitted,  
18 defendant denies the remainder of paragraph 27.

19 28. Answering paragraph 28, defendant admits that the Lease says what it says, and  
20 denies each and every other or different characterization thereof.  
21

22 29. Answering paragraph 29, defendant admits that it filed an arbitration demand.  
23 Except as so admitted, defendant denies the remainder of paragraph 29.

24 30. Answering paragraph 30, defendant denies same.  
25  
26

**SECOND CAUSE OF ACTION**

31. Answering paragraph 31, defendant restates its answers to paragraphs 1-30.

32. Answering paragraph 32, defendant admits that the Lease says what it says, and denies each and every other or different characterization thereof.

33. Answering paragraph 33, defendant denies same.

34. Answering paragraph 34, defendant denies same.

**AFFIRMATIVE DEFENSES**

BY WAY OF FURTHER ANSWER, and as AFFIRMATIVE DEFENSES, the defendant alleges as follows:

35. Plaintiff does not have clean hands and is not entitled to specific performance;

36. Plaintiff has failed to state a claim upon which relief can be granted;

37. Plaintiff is equitably estopped from seeking specific performance;

38. The requirements of Article II of the Lease are in the nature of a personal services contract, and not subject to specific performance; and

39. Plaintiff's claims are subject to mandatory arbitration.

**PRAYER FOR RELIEF**

WHEREFORE, having fully answered the Complaint, the defendants request that the Court grant them the following relief:

- a. Dismissal of plaintiff's claims with prejudice;
- b. An award of defendant's costs and attorney's fees; and
- c. Such other relief as the Court deems just and proper.

DATED this 16th day of November, 2007.

BYRNES & KELLER LLP

By: /s/ Paul R. Taylor  
Bradley S. Keller, WSBA #10665  
Paul R. Taylor, WSBA #14851

1 Byrnes & Keller LLP  
2 1000 Second Avenue, 38th Floor  
3 Seattle, WA 98104  
4 Telephone:(206) 622-2000  
5 Facsimile: (206) 622-2522  
6 Email: [bkeller@byrneskeller.com](mailto:bkeller@byrneskeller.com)  
7 [ptaylor@byrneskeller.com](mailto:ptaylor@byrneskeller.com)  
8 Attorneys for Defendant  
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 16th day of November, 2007, 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))  
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))  
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  
[bkeller@byrneskeller.com](mailto:bkeller@byrneskeller.com)