THE HONORABLE JULIA GARRATT
HEARING W/ORAL ARGUMENT: DEC. 13, 2013 9:00 A.M.

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

GEOFF TATE and **SUSAN TATE**, a married couple, Plaintiffs, vs. **EDDIE JACKSON** and **TERESA GOLDEN-JACKSON**, a married couple; **SCOTT ROCKENFIELD** and **MISTY ROCKENFIELD**, a married couple; **MICHAEL WILTON** and **KERRIE LYNN WILTON**, a married couple; **TRI-RYCHE, CORPORATION**, a Washington corporation; **QUEENSRYCHE MERCHANDISING, INC**., a Washington corporation; and **MELODISC, LTD**., a Washington corporation, Defendants.	No. 12-2-21829-3 SEA **DEFENDANTS' REPLY ON CROSS-MOTION FOR SUMMARY JUDGMENT**

COMES NOW Defendants EDDIE JACKSON and TERESA GOLDEN-JACKSON, SCOTT ROCKENFIELD and MISTY ROCKENFIELD, and MICHAEL WILTON and KERRIE LYNN WILTON, by and through their attorney of record,

OSINSKI LAW OFFICES, P.L.L.C.
535 Dock St. Suite 108, Tacoma, Washington 98402
TEL (253) 383-4433 | FAX (253) 572-2223 | tto@osinskilaw.com

Thomas T. Osinski, Jr., of Osinski Law Offices, PLLC, and submit the following Defendants' Reply on Cross-Motion for Summary Judgment:

INTRODUCTION

Plaintiffs have responded with an extensive motion alleging multiple disputes of fact they claim precludes Defendants' Cross Motion for Summary Judgment. However, they have misunderstood the entire thrust of the motion. Mr. Tate was subject to an Employment Agreement allowing for his involuntary termination. That fact is not in dispute. Neither is the fact that Mr. DeGarmo left the band in 1997 giving the four remaining members 25% share each in the corporations. Thus, the Court is only faced with the purely legal question of interpreting the Employment Agreement. If the Court agrees with Defendants' analysis, then the termination of Mr. Tate was not only lawful under the contract, but immunized by the Business Judgment Rule. Once that is established, all but one of Plaintiff's claims must fail.

Most importantly the interpretation of the contract and the application of the Business Judgment Rule are purely legal issues, involving no issues of disputed fact, and thus rendering most of Plaintiff's briefing irrelevant and this matter is well positioned for disposition on summary judgment.

I. DEFENDANTS VALIDLY TERMINATED GEOFF TATE PER HIS EMPLOYMENT AGREEMENT

It is undisputed that once Chris Degarmo left the band, each remaining bandmember had a 25% share in the Tri-Ryche corporations. See Pleadings and Motions in this matter. It is also undisputed that Mr. Tate was subject to the Employment Agreement at issue in these motions for summary judgment. See Motions at Bar.

OSINSKI LAW OFFICES, P.L.L.C.
535 Dock St. Suite 108, Tacoma, Washington 98402
TEL (253) 383-4433 | FAX (253) 572-2223 | tto@osinskilaw.com

Therefore, all that is before the Court is a simple legal issue of interpretation of the contract which is proper for disposition on summary judgment.

As reiterated in their response/reply, Plaintiffs rely on the lead case of Berg v. Hudesman and its progeny to argue that the meaning of 80% is "plain" and not subject to any application of interpretation or context. 115, Wn.2d 657 (1990). They argue for rote application of the 80% term in paragraph 6 and claim that no context or interpretation can be applied.

But, that argument ignores the fact that once one band member left in 1997, and that member's stock was redistributed, the 80% threshold took on a whole new meaning if it was simply applied as is, and doing so would defeat the clear intent of the parties. The entire purpose of contract interpretation is to determine the intent of the parties. See Berg at 663. And intent is found through focusing on the objective manifestations of the agreement and application of legal principles to determine the legal effect of contract terms. See Hearst Commc'ns, Inc. v. Seattle Times Co., 154 Wash.2d 493, 502-03 (2005).

Once the portion of the agreement that redistributed the stock spoke, 80% has to be interpreted as all but one member/75% so as to continue to allow all but one member to continue to be able to decide through supermajority to remove an errant member, which is the original objective manifestation of the parties' intent. By comparison, Plaintiffs are not arguing that the Court read the "plain language" of the document as 80%, because mechanical imposition of the 80% term is to read it actually as 100%/unanimous since that is the practical effect once the shares were redistributed. This eliminates the entire clause and concept of involuntary termination, which is contrary to well established law (an interpretation of a writing which gives effect to all of its

OSINSKI LAW OFFICES, P.L.L.C.
535 Dock St. Suite 108, Tacoma, Washington 98402
TEL (253) 383-4433 | FAX (253) 572-2223 | tto@osinskilaw.com

provisions is favored over one which renders some of the language meaningless or ineffective). See Wagner v. Wagner, 95 Wash.2d 94, 101(1980). Reading the contract as all but one member/75% required for involuntary termination avoids all of these pitfalls, and reflects the true intent of the parties. Thus, when observing the objective manifestations of the intent and applicable legal principals, not only was Mr. Tate's employment contract not breached, but it was followed resulting in his lawful termination by Defendants.

II. THE BUSINESS JUDGMENT RULE DEFEATS MOST OF PLAINTIFFS' CLAIMS

Once it is established that Mr. Tate was properly terminated under the Employment Agreement, most of his claims fail by operation of law. The Business Judgment Rule immunizes management from liability in a corporate transaction where a reasonable basis exists to indicate that the transaction was made in good faith. See Interlake Porsche & Audi, Inc. v. Bucholz, 45 Wash.App. 502, 509,(1986). Additionally, it is not the Court's role to second-guess the decisions of directors absent a showing of fraud, dishonesty or incompetence. See Shinn v. Thust IV, 56 Wn.App. 827, 834 (Wash.App. Div. 1 1990).

Here we have three of four directors and 75% of the shareholders following the most reasonably and legally tenable interpretation of Mr. Tate's Employment Agreement to exercise their right to involuntarily terminate him. The only disputed portion of that statement is the interpretation of the Agreement. There is no dispute amongst the parties that Mr. Tate was subject to it or that the Defendant Bandmates acted under it. Thus, if the Court agrees with Defendants' interpretation of the Agreement, it is impossible as a matter of law to find a lack of good faith or any

OSINSKI LAW OFFICES, P.L.L.C.
535 Dock St. Suite 108, Tacoma, Washington 98402
TEL (253) 383-4433 | FAX (253) 572-2223 | tto@osinskilaw.com

showing of fraud, dishonesty, or incompetence. There simply is no better showing of good faith, competence, honesty or lack of fraud then following the Employment Agreement that binds all parties.

As a result, there is no need to reach any disputed fact, motive, or larger context, as the Employment Agreement is equivalent to an at-will agreement, with the only requirement being the requisite bandmember threshold to exercise the involuntary termination clause. The facts or circumstances surrounding the termination, be it the assault in Brazil or anything else, are irrelevant.[1] Once the involuntary termination clause is found to be properly exercised the Business Judgment Rule takes over to immunize the Defendant Bandmates. As a result, Plaintiffs' claims for Shareholder Oppression, Dissolution, Breach of Contract, Waste, Derivative Suit, Breach of Fiduciary Duty, and Permanent Injunction all fail. If the termination is allowed under the Employment Agreement, then it is immunized by the Business Judgment Rule. That leaves Plaintiffs with nothing upon which to base these claims.[2]

CONCLUSION

It is undisputed that Mr. Tate was bound to an executed employment agreement between him and the Tri-Ryche Corporation. It required an 80% threshold for involuntary termination when the band had five members with 20% shares each. Thus, if all but the member being expelled agreed on the termination, it was valid.

---

[1] Defendants only raised the issue of the Brazil Assault in response to Plaintiffs' original motion. The assault or any other fact Plaintiffs try to claim are material or disputed is of no consequence to the legal issues of interpretation of the contract or application of the Business Judgment Rule.

[2] Plaintiffs would still have their claim for slander and libel because it is the sole claim which cannot be challenged here. As such, the Defendants have reserved that issue for later resolution, as well as their extensive counterclaims.

OSINSKI LAW OFFICES, P.L.L.C.
535 Dock St. Suite 108, Tacoma, Washington 98402
TEL (253) 383-4433 | FAX (253) 572-2223 | tto@osinskilaw.com

When one member left, his shares redistributed leaving four members with 25% each. As a result, the 80% requirement has to be interpreted to all but one member/75% otherwise it would become a defacto 100%/unanimous requirement which would frustrate the intent of the parties and nullify the entire existence of the involuntary termination provision contrary to Washington Law. As a result, Mr. Tate's termination was not a breach of the employment agreement and a lawful exercise of it instead, immunized by the Business Judgment Rule. As a result, all of Plaintiffs' claims except Defamation fail and should be dismissed.

DATED this 6th day of December, 2013, at Tacoma, Washington, Pierce County.

OSINSKI LAW OFFICES, PLLC

By *s/ Thomas T. Osinski, Jr.*
Thomas T. Osinski, Jr., Esq.,WSBA #34154
Attorney for Defendants
Jackson, Rockenfield and Wilton

OSINSKI LAW OFFICES, P.L.L.C.
535 Dock St. Suite 108, Tacoma, Washington 98402
TEL (253) 383-4433 | FAX (253) 572-2223 | tto@osinskilaw.com

DECLARATION OF SERVICE

I declare under penalty of perjury under the laws of the State of Washington that on this date I caused the foregoing document to be served on the following persons via the method indicated:

Joshua C. Allen
Benjamin J. Stone
Denver R. Grant
VERIS LAW GROUP, PLLC
1809 Seventh Avenue, Suite 1400
Seattle WA 98101
206.829.9590 (tel)
206.829.9245 (fax)

☐ Overnight Delivery via Fed Ex
☐ First Class Mail via USPS
☐ Hand-delivered via ABC Legal Messenger
☐ Facsimile
☒ Email

DATED this 6th day of December, 2013, at Tacoma, Washington.

OSINSKI LAW OFFICES, PLLC

By *s/ Thomas T. Osinski, Jr.*
Thomas T. Osinski, Jr., Esq.,WSBA #34154
Attorney for Defendants
Jackson, Rockenfield and Wilton

OSINSKI LAW OFFICES, P.L.L.C.
535 Dock St. Suite 108, Tacoma, Washington 98402
TEL (253) 383-4433 | FAX (253) 572-2223 | tto@osinskilaw.com