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CASE NUMBER: 12-2-21829-3 SEA

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' RESPONSE AND
CROSS-MOTION TO PLAINTIFFS'
MOTION FOR PARTIAL SUMMARY
JUDGMENT – BREACH OF
CONTRACT**

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,

DEFENDANTS' RESPONSE AND CROSS-
MOTION TO PLAINTIFFS' MOTION FOR
PARTIAL SUMMARY JUDGMENT –
BREACH OF CONTRACT - 1 of 12

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1 Thomas T. Osinski, Jr., of Osinski Law Offices, PLLC, and submit the following
2 Defendants' Answer and Cross-Motion to Plaintiffs' Motion for Partial Summary
3 Judgment—Breach of Contract:

4 INTRODUCTION

5 Defendants are the founding members of the multi platinum-selling band
6 Queensryche. In June of 2012, following a physical assault for which he showed no
7 remorse and other bizarre, escalating behavior, Defendants lawfully replaced Geoff Tate
8 as lead singer of the band and attempted to enter into good faith negotiations to buy out
9 his interest in the Queensryche corporations. Mr. Tate responded by filing the suit at bar
10 that same month. Subsequently, there were both preliminary injunction and partial
11 summary judgment motions brought and defeated.

12 Plaintiffs now bring the motion at bar claiming breach of contract. An
13 executed version of the contract was only recently unearthed and provided to all
14 parties. Although the contract does require an 80% threshold on its face for termination,
15 that is from when the band had five members with 20% shares each. When one member
16 left in 1997, his shares were redistributed per the agreement to 25% each, thus the only
17 logical way to read the contract now is as having an all but one member/75% threshold.
18 The alternative is that 80% is really 100%/unanimous since all four members, including
19 the one to be terminated, would have to agree to the termination to meet the 80%
20 requirement. Such a reading is nonsensical and not the intent of the parties.

21 That all but one member/75% threshold for termination of Mr. Tate was met,
22 thus, not only was the contract not breached, but it was followed for a rightful
23 termination per its terms. As a result, Defendants ask not only that Plaintiffs' motion be
24 denied, but that their own cross motion for partial summary judgment be granted with
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1 the Court finding the termination of Mr. Tate was lawful, and that any claims he has
2 brought based on his removal from the band being wrongful be dismissed.

3 **I. RELIEF REQUESTED**

4 Defendants request that the Court *deny* Plaintiffs' motion for partial summary
5 judgment and find that the employment contract at issue was not breached, and that it
6 was actually adhered to resulting in a lawful termination of Mr. Tate. As a result of that
7 lawful termination, Defendants request that Plaintiffs' claims for Declaratory Judgment,
8 Shareholder Oppression, Breach of Fiduciary Duty, Dissolution of the Queensryche
9 Corporations, Breach of Contract, Corporate Waste, Derivative Suit, and Permanent
10 Injunction all be dismissed.

11 **II. STATEMENT OF FACTS**

12 **A. Pre-litigation Queensryche Background**

13 Geoff Tate is not a "founding member" of Queensryche. Chris DeGarmo,
14 Eddie Jackson, Michael Wilton and Scott Rockenfield had been working together as a
15 band prior to Geoff Tate's involvement. See Declaration of Scott Rockenfield at 1-2. All
16 music during the Queensryche era of 1981 until 1997 was written, performed and
17 recorded by Chris DeGarmo, Eddie Jackson, Scott Rockenfield and Michael Wilton.
18 Geoff Tate has only ever written lyrics, and not all of them. He has never written any
19 music that was used for Queensryche. See id at 2.

20 After 1997, upon Chris DeGarmo's departure and as the years moved on,
21 Geoff Tate became much less interested in working on music with Eddie Jackson,
22 Michael Wilton and Scott Rockenfield, instead hiring outside writers and musicians.
23 This did not result in the Queensryche sound the band was known for. See id at 2-3 .
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1 More recently, a significant amount of the profit generated from Queensryche
2 merchandising while under the control of Geoff Tate and his family members was going
3 directly into the Tates' pockets through high salaries paid to Susan and Miranda Tate.
4 See id at 3. It was only after some very thorough investigation that the Defendants
5 discovered this and moved on to a more professional merchandising company. See
6 Declaration of Scott Rockenfield at 3-4.

7 Defendant bandmates Jackson, Rockenfield and Wilton have always followed
8 all of the guidelines and articles/bylaws of the corporations and the state of Washington
9 to schedule meetings. Geoff Tate was notified each and every time, but he consistently
10 refused to participate, and even hired an attorney to speak through and make legal
11 rebuttals to the meetings being scheduled. See id at 4. Because Geoff Tate continuously
12 refused to participate, Defendants were forced to have meetings without him, such as
13 the meeting prior to the Sao Paulo assault where they shut down the in-house
14 merchandising and terminated Susan Tate's management. That led to another
15 "emergency meeting" called by Geoff Tate in Brazil prior to the Sao Paulo assault. At
16 this meeting everything from the meeting Geoff Tate did not participate in was
17 discussed and ratified again. See id. Scott Rockenfield is also vehement he never said
18 anything to Geoff Tate prior to the Sao Paulo assault regarding "I'm firing you next" or
19 the like. See id.

20 Following the Sao Paulo assault, which included not only punching his
21 bandmates, but spitting on Defendant Scott Rockenfield throughout the performance as
22 seen later in several videos posted on YouTube, and Geoff Tate's escalating erratic
23 behavior, Defendants did vote to replace Geoff Tate as lead singer as a corporate
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1 decision that would then allow the band to continue Queensryche for a healthy and
2 positive future. See id at 5. Geoff Tate filed the suit at bar in response in June 2012.
3 Executed copies of Geoff Tate’s employment agreement and songwriter’s agreement
4 were recently unearthed and distributed to all parties. See Declaration of Counsel,
5 Exhibits 1, 2. These agreements were executed the same day as the Tri-Ryche
6 Shareholders Agreement. See id, Exhibit 3. All the other band members executed similar
7 agreements between them and Tri-Ryche, the main Queensryche entity. See Declarations
8 of Wilton, Jackson and Rockenfield at 6. Although those agreements had thresholds
9 requiring 80% votes to do things like terminate a member’s employment or make a
10 change in use of the Queensryche name, Defendant bandmates understood that as if
11 every member but one agreed on something, then it was okay. See id. So when Chris
12 DeGarmo left the band in 1997 and the four remaining members had 25% shares of
13 stock instead of 20%, they simply presumed that an all but one member/75% replaced
14 80% as the thresholds in all those corporate agreements. See id. Otherwise, it meant that
15 everything would have to be 100%/unanimous as a practical matter, and it was never
16 anyone’s intent that everything had to be unanimous. See id. They also never formally
17 changed anything in writing because the 80% or all but one member/75% threshold was
18 never an issue until they had to fire Geoff Tate after his assault on the other members
19 and other erratic behavior. See id.

20 III. ISSUES PRESENTED

- 21 1. Did Defendants breach Geoff Tate’s employment agreement by firing
22 him? No.
- 23 2. When one band member left in 1997, did the 80% thresholds in the
24 agreement automatically change to all but one member/75%? Yes.
- 25

1 redistributed, the 80% was *automatically* rewritten to all but one member/75%. It had to
2 be. Because once the portion of the agreement that redistributed the stock spoke, 80%
3 had to become all but one member/75% so as to continue to allow all but one member to
4 decide through supermajority to remove an errant member. This is the only reasonable
5 way to read the contract because the purpose of contract interpretation is to determine
6 the intent of the parties. See Berg at 663. And intent is found through focusing on the
7 objective manifestations of the agreement and application of legal principles to
8 determine the legal effect of contract terms. See Hearst Commc'ns, Inc. v. Seattle
9 Times Co., 154 Wash.2d 493, 502-03 (2005).

10 Moreover, Plaintiffs are not arguing that the Court read the “plain language” of
11 the document as 80%, because mechanical imposition of the 80% term is to read it
12 actually as 100%/unanimous since that is the practical effect once the shares were
13 redistributed. If the intention of the parties was 100%/unanimous decisions on
14 involuntary termination, including the to-be-fired member having a vote, the original
15 agreement would have been written that way. Therefore, the only logical conclusion is to
16 interpret the contract as having an all but one member/ 75% threshold for termination
17 once Mr. DeGarmo left and a redistribution of his stock occurred. Otherwise, there
18 simply would be no way to involuntarily terminate anyone and that entire portion of the
19 agreement would be inoperable, and the Supreme Court tells us an interpretation of a
20 writing which gives effect to all of its provisions is favored over one which renders
21 some of the language meaningless or ineffective. Wagner v. Wagner, 95 Wash.2d 94,
22 101(1980) As a result, not only was Mr. Tate’s employment contract not breached, but it
23 was followed resulting in his lawful termination by Defendants.

1 Plaintiffs' claims for Shareholder Oppression, Dissolution, Breach of Contract,
2 Waste, Derivative Suit, Breach of Fiduciary Duty, and Permanent Injunction all rely
3 on the Court finding that Mr. Tate's firing as lead singer was wrongful. See
4 Declaration of Counsel Ex. 4 (Complaint, claims 2-7, 9). But since there was an
5 employment contract in place allowing him to be terminated as described above, his
6 termination was lawful.

7 Geoff Tate assaulted his fellow bandmates and was fired as lead singer. He
8 claims this termination was wrongful and thus the basis for several of his claims. See
9 Declaration of Counsel Ex. 4 (Complaint, claims 2-7, 9). However, even if his firing did
10 justify any of his claims at first blush, once overreaching conduct has been
11 demonstrated, the burden shifts to the majority shareholders to show there were
12 legitimate business justifications for the conduct. See Scott v Trans-Sys., Inc., 148
13 Wash.2d 701, 707 (2003). Under the business judgment rule, corporate management is
14 immunized from liability in a corporate transaction where (1) the decision to
15 undertake the transaction is within the power of the corporation and the authority of
16 management, and (2) there is a reasonable basis to indicate that the transaction was
17 made in good faith. See id. The employment agreement supplies the power and
18 authority required by the first element, and the context of the assault and erratic
19 behavior alone supplies the good faith required by the second, as do the growing
20 problems the Defendant bandmates had with Mr. Tate leading up to those events. A
21 court must consider a plaintiff's claims for judicial dissolution "against the backdrop
22 of established deference to corporate governance." See id.¹

23
24 ¹ Defendants readily admit Scott is a shareholder oppression case, but the business judgment rule has broad
25 application to all corporate governance and, thus, all the claims based on Mr. Tate's firing at issue here.

1 RCW 23B.14.300 does not define the term "oppressive," nor does the MBCA.
2 Washington courts have adopted two tests for oppressive conduct. See Scott, 148
3 Wash.2d at 711. The "reasonable expectations" test defines oppression as a violation
4 by the majority of the reasonable expectations of the minority. See id. "Reasonable
5 expectations are those spoken and unspoken understandings on which the founders
6 of a venture rely when commencing the venture." See id. Under the reasonable
7 expectations test, the complaining shareholder has the burden of proof, by a
8 preponderance of the evidence, to establish the requisite jurisdictional facts and the
9 equitable grounds for dissolution. See id.

10 Geoff Tate claims he had a reasonable expectation to remain in Queensryche
11 forever, and, thus, is being oppressed by his bandmates' actions. See Declaration of
12 Counsel Ex. 4 (Complaint at 11). However, this fails to address the fact that he was
13 bound to a contract with an involuntary termination provision, and that provision
14 was exercised against him. Thus, although many other reasons for his firing as lead
15 singer can be raised, for the purposes of this Motion only, the Defendants rely on the
16 employment agreement as fully reasonable grounds for terminating him as lead
17 singer.

18 In Robblee, the minority shareholder tried to show that the majority
19 shareholder acted oppressively with evidence that, after a fight between the them, the
20 majority shareholder fired the minority shareholder, tried to have him removed as an
21 officer and director, and changed the organization of the corporation in order to take
22 over the minority shareholder's functions. See Robblee, 68 Wash. App. at 75. As
23 affirmed by Scott, the Court found that there was no oppression because there were
24 legitimate and reasonable explanations for the conduct the minority shareholder
25

1 characterized as oppressive. See id at 75-77. Here, as in Robblee, there is a legitimate
2 business reason for Geoff Tate’s removal, and that is the involuntary termination
3 provision of the employment contract. Court deference to such agreements is the
4 rule. It is fundamental in the law of corporations that the majority of its stockholders
5 shall control the policy of the corporation, and regulate and govern the lawful exercise
6 of its business, and courts of equity will not undertake to control the policy or
7 business methods of a corporation, although it may be seen that a wiser policy might
8 be adopted and the business more successful if other methods were pursued. See
9 Scott, 148 Wn.2d at 709 (“Courts are reluctant to interfere with the internal
10 management of corporations and generally refuse to substitute their judgment for that
11 of the directors.”).

12 Thus, to the extent that Mr. Tate’s claims rely on his firing being wrongful,
13 the legitimate business concerns of utilizing involuntary termination provisions the
14 employment agreement controls. This is not only true for Shareholder Oppression,
15 but for any of the Plaintiffs’ claims which rely on Mr. Tate’s termination for the
16 wrongful conduct triggering the claim. As such, Mr. Tate’s claims for Dissolution
17 (based on alleged wrongful termination and taking of his ownership), Breach of
18 Contract (for wrongfully “expelling” Mr. Tate), Waste (for damage to the corporations
19 caused by Mr. Tate’s removal), Derivative Suit (against the corporate directors for
20 harming the corporations by removing Mr. Tate), Breach of Fiduciary Duty (firing Mr.
21 Tate or taking his stock breached that duty), and Permanent Injunction (to give back
22 the stock, reinstate Mr. Tate, and give him control of corporate assets) should all be
23 dismissed on the grounds of the employment agreement alone. If the termination is
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1 allowed under the employment agreement and the business judgment rule, as the
2 Defendants argue it is, then Plaintiffs have nothing upon which to base these claims.²

3 **CONCLUSION**

4 Mr. Tate was bound to an executed employment agreement between him and
5 the Tri-Ryche corporation. It required an 80% threshold for involuntary termination
6 when the band had five members with 20% shares each. Thus, if everyone else agreed
7 someone had to go, they did. When one member left, his shares redistributed leaving
8 four members with 25% each. As a result, the 80% requirement had to change to all but
9 one member/75% otherwise it would become a defacto 100%/unanimous requirement
10 which is unreasonable and illogical and would nullify the entire existence of the
11 involuntary termination provision. As a result, Mr. Tate's termination was not a breach
12 of the employment agreement and a lawful exercise of it instead.

13 Since Mr. Tate was lawfully terminated, all of his claims except Defamation
14 fail and should be dismissed.

15 DATED this 14th day of November, 2013, at Tacoma, Washington, Pierce
16 County.

17
18 OSINSKI LAW OFFICES, PLLC

19 By s/ Thomas T. Osinski, Jr.

20 Thomas T. Osinski, Jr., Esq., WSBA #34154

21 Attorney for Defendants

22 Jackson, Rockenfield and Wilton

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

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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:

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DATED this 14th day of November, 2013, at Tacoma, Washington.

OSINSKI LAW OFFICES, PLLC

By s/ Thomas T. Osinski, Jr.
Thomas T. Osinski, Jr., Esq., WSBA #34154
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