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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.

No. 12-2-21829-3 SEA

**DEFENDANTS' MOTION FOR
PARTIAL SUMMARY JUDGMENT**

**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.

TO: CLERK OF THE COURT; and

TO: PLAINTIFFS AND THEIR COUNSEL OF RECORD

1 COMES NOW Defendants EDDIE JACKSON and TERESA GOLDEN-
2 JACKSON, SCOTT ROCKENFIELD and MISTY ROCKENFIELD, and MICHAEL
3 WILTON and KERRIE LYNN WILTON, by and through their attorney of record,
4 Thomas T. Osinski, Jr., of Osinski Law Offices, P.L.L.C., and submit the following Motion
5 for Partial Summary Judgment.

6 INTRODUCTION

7 Plaintiff Geoff Tate, along with his wife, have brought suit against his former
8 bandmates, Defendants Eddie Jackson, Scott Rockenfield and Michael Wilton, and the
9 corporations they do business through, under various theories designed to dissolve the
10 corporations and award assets of the corporations to the Plaintiffs.

11 There are several undisputed facts amongst the parties that render most of
12 Plaintiffs' claims and current actions untenable, and, thus, they should be dismissed and
13 restrained respectively. Namely, Plaintiff Geoff Tate admits that he engaged in a
14 workplace assault against his bandmates. Defendants Jackson, Rockenfield and Wilton
15 all readily admit that Mr. Tate still owns his twenty-five percent stake in the
16 Queensryche corporations, and all parties agree that TriRyche Corporation controls the
17 band name, Queensryche, and its related marks. Thus, Mr. Tate's firing is justified, his
18 claims based on loss of his twenty-five percent stake in the corporations are moot, and
19 unless and until Plaintiffs are successful in their suit, the Defendants control TriRyche
20 Corporation and have given no grant of authority to Geoff Tate to use the Queensryche
21 name, marks, or related media assets. In order to narrow the claims and factual
22 contentions for discovery, trial, and current misuse of corporate property, Defendants
23 bring this Motion for Partial Summary Judgment.

1 **I. RELIEF REQUESTED**

2 Defendants request that Plaintiffs’ Claims for Declaratory Judgment,
3 Shareholder Oppression, Breach of Fiduciary Duty, Dissolution of the Queensryche
4 Corporations, Breach of Contract, Corporate Waste, Derivative Suit, and Permanent
5 Injunction all be dismissed for mootness due to the admission that Mr. Tate still owns his
6 twenty-five percent stake, and that his firing as lead singer was justified because he
7 engaged in a workplace assault on his bandmates. Furthermore, Defendants ask the
8 Court to declare that Geoff Tate has no right to the Queensryche band name, marks, and
9 media assets since he has no grant of authority from the TriRyche Corporation that owns
10 them, unless and until he is able to succeed on his claims to dissolve the Queensryche
11 Corporations, and to enter a permanent injunction to the same.

12 **II. STATEMENT OF FACTS**

13 It is undisputed that on April 14, 2012, Plaintiff Geoff Tate assaulted
14 Defendants Scott Rockenfield, and Michael Wilton backstage just before a performance
15 at Sao Paulo, Brazil. See Declaration of Counsel Ex. 7 (*Plaintiffs’ Reply to Counterclaim* at
16 ¶ 14); Declaration of Counsel Ex. 2 and 3 (*Declarations of Geoff Tate in Support of Motion for*
17 *Preliminary Injunction* at p. 9, ¶ 31 (Ex. 2) and p. 5, ¶ 15 (Ex. 3). The fact of this workplace
18 assault is undisputed.¹

19 In a duly noticed meeting on June 2, 2012, Eddie Jackson, Scott Rockenfield and
20 Michael Wilton voted to replace Geoff Tate with a new lead singer. See Declaration of
21 Counsel Ex. 7 (*Plaintiffs’ Reply to Counterclaim*, ¶ 21. The Defendants fully admit that
22

23
24 ¹ Although the fact of the assault is undisputed that Mr. Tate assaulted Mr. Rockenfield and Mr. Wilton, it is of note
25 that the intensity of that assault has been more fully admitted by Mr. Tate as these proceedings have progressed. Starting with “attempts to hit” and “shoves” and eventually progressing to “hitting” and “slapping” in later documents.

1 Geoff Tate still owns his twenty-five percent stake in the three Queensryche
2 corporations. See Declaration of Counsel Ex. 6 (*Defendants' Answer and Counterclaim*, p. 6,
3 ¶¶ 98, 105). Thus, the fact of Mr. Tate's ownership is also not disputed.

4 Both parties agree the Queensryche name and associated marks belong to
5 TriRyche Corporation, one of the three Queensryche entities named in this suit. See
6 Declaration of Counsel Ex. 4 (*Plaintiffs' Motion for Preliminary Injunction* at 4); Declaration
7 of Counsel Ex. 2 (*Declaration of Geoff Tate in Support of Preliminary Injunction* at 6–7, ¶ 22).

8 It is also indisputable that all the business power of the corporation resides in the
9 directors, and that power is exercised by majority rule. See Declaration of Counsel Ex. 1
10 (*Articles and Bylaws of TriRyche Corporation*). Both parties also admit that the 1994
11 Shareholders Agreement is expired. See Declaration of Counsel Ex. 5 (*Complaint* at 7,
12 ¶ 66). Neither Geoff Tate nor any other individual member for that matter has been
13 granted the right to use the Queensryche name, marks, and associated media by
14 TriRyche, only the band as a whole which now consists of the Defendants. See
15 Declaration of Scott Rockenfield. Thus, Geoff Tate has no grant of authority from
16 TriRyche to use the Queensryche name in any capacity whatsoever.

17 III. ISSUES PRESENTED

18 1. Should Plaintiffs' claims that seek Mr. Tate's twenty-five percent stake
19 in the corporations be dismissed as moot since Defendants admit Mr. Tate still owns his
20 twenty-five percent stake? Yes.

21 2. Should Plaintiffs' claims that rely on Mr. Tate's wrongful firing as lead
22 singer be dismissed because Mr. Tate's admitted workplace assault is a proper legal
23 justification for his termination? Yes.

24 3. Does Mr. Tate have any grant of authority to use the Queensryche
25 Name and marks? No.

1 4. If Mr. Tate has no grant of authority to use the Queensryche name and
2 marks, should the Court declare the same and enjoin any use by Mr. Tate? Yes.

3 **IV. EVIDENCE RELIED UPON**

4 This Motion relies on true and correct copies of documents attached to the
5 Declaration of Counsel, the Declaration of Scott Rockenfield, and the pleadings and
6 filings in this case.

7 **V. LEGAL AUTHORITIES**

8 Under CR 56(b), "A party against whom a claim, counterclaim, or cross claim is
9 asserted or a declaratory judgment is sought may move with or without supporting
10 affidavits for a summary judgment in his favor as to all or any part thereof."

11 The moving party bears the burden of demonstrating there is no dispute as to a
12 "material fact," and all reasonable inferences must be resolved against him. As a
13 corollary to this proposition, the trial court must consider all evidence and reasonable
14 inferences in a light most favorable to the nonmoving party. Simons v. Tri-State Const.
15 Co., 33 Wash.App. 315, 655 P.2d 703 (1982). Here, as will be demonstrated below,
16 Summary Judgment is warranted because this Motion relies on undisputed facts either
17 admitted by both parties or irrefutable by Plaintiffs.

18 **A. GEOFF TATE RETAINS HIS TWENTY-FIVE PERCENT STAKE**
19 **IN THE QUEENSRYCHE CORPORATIONS**

20 Plaintiffs' claims of Declaratory Judgment, and possibly Breaches of Contract
21 and Fiduciary Duty, rely on the Defendants wrongfully taking Mr. Tate's twenty-five
22 stake in the Queensryche Corporations. However, the Defendants have readily admitted
23 that Mr. Tate still owns his twenty-five percent stake. Issues are moot when the Court
24 can no longer provide effective relief. See Pers. Restraint of Mattson, 166 Wash.2d 730,
25 736 (2009); Cross, 99 Wash.2d 373, 376-377 (1983). That is exactly the case here, as the

1 Court cannot grant Mr. Tate what he already has. Thus, to any extent they rely on
2 seeking return/control of Mr. Tate's twenty-five percent ownership stake, the claims
3 above should be dismissed.

4 ***B. DUE TO THE ASSAULT, GEOFF TATE'S FIRING WAS JUSTIFIED***

5 Plaintiffs' claims for Shareholder Oppression, Dissolution, Breach of Contract,
6 Waste, Derivative Suit, Breach of Fiduciary Duty, and Permanent Injunction all rely
7 on the Court finding that Mr. Tate's firing as lead singer was wrongful. See
8 Declaration of Counsel Ex. 5 (*Complaint*, claims 2-7,9). Mr. Tate fully admits he
9 engaged in a workplace assault on Defendants Rockenfield and Wilton. Therefore,
10 Defendants argue for the purposes of this Motion only that Mr. Tate's firing was fully
11 justified based on his assault on his fellow bandmates alone.²

12 Geoff Tate assaulted his fellow bandmates and was fired as lead singer. He
13 claims this termination was wrongful and thus the basis for several of his claims. See
14 Declaration of Counsel Ex. 5 (*Complaint*, claims 2-7, 9). However, even if his firing did
15 justify any of his claims at first blush, once overreaching conduct has been
16 demonstrated, the burden shifts to the majority shareholders to show there were
17 legitimate business justifications for the conduct. See Scott v Trans-Sys., Inc., 148
18 Wash.2d 701, 707 (2003). Under the business judgment rule, corporate management is
19 immunized from liability in a corporate transaction where (1) the decision to
20 undertake the transaction is within the power of the corporation and the authority of
21 management, and (2) there is a reasonable basis to indicate that the transaction was
22 made in good faith. See id. A court must consider a plaintiff's claims for judicial

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24 ² Defendant bandmates expressly reserve the right to argue alternative theories against any of these claims if they
25 survive this motion.

1 dissolution "against the backdrop of established deference to corporate governance."
2 See id.³

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

12 Geoff Tate claims he had a reasonable expectation to remain in Queensryche
13 forever, and, thus, is being oppressed by his bandmates' actions.⁴ See Declaration of
14 Counsel Ex. 2 (Plaintiffs' Motion for Preliminary Injunction at p. 8). However this fails to
15 address the fact that he engaged in a fully admitted assault on his bandmates at the
16 Sao Palo, Brazil performance. Thus, although many other reasons for his firing as lead
17 singer can be raised, for the purposes of this Motion only the Defendants rely on Mr.
18 Tate's assault as fully reasonable grounds for terminating him as lead singer.

19 In Robblee, the minority shareholder tried to show that the majority
20 shareholder acted oppressively with evidence that, after a fight between the them, the
21 majority shareholder fired the minority shareholder, tried to have him removed as an
22 officer and director, and changed the organization of the corporation in order to take

24 ³ 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 over the minority shareholder's functions. See Robblee, 68 Wash. App. at 75. As
2 affirmed by Scott, the Court found that there was no oppression because there were
3 legitimate and reasonable explanations for the conduct the minority shareholder
4 characterized as oppressive. See id at 75-77. Here, as in Robblee, there is a legitimate
5 business reason for Geoff Tate's removal, and that is the undisputed assault. Court
6 deference to such legitimate concerns is the rule. It is fundamental in the law of
7 corporations that the majority of its stockholders shall control the policy of the
8 corporation, and regulate and govern the lawful exercise of its business and courts of
9 equity will not undertake to control the policy or business methods of a corporation,
10 although it may be seen that a wiser policy might be adopted and the business more
11 successful if other methods were pursued. See Scott, 148 Wn.2d at 709 ("Courts are
12 reluctant to interfere with the internal management of corporations and generally
13 refuse to substitute their judgment for that of the directors.").

14 Thus, to the extent that Mr. Tate's claims rely on his firing being wrongful,
15 the legitimate business concerns of firing someone who assaults his fellow corporate
16 officers in the workplace controls. This is not only true for Shareholder Oppression,
17 but for any of the Plaintiffs' claims which rely on Mr. Tate's termination for the
18 wrongful conduct triggering the claim. As such, Mr. Tate's claims for Dissolution
19 (based on alleged wrongful termination and taking of his ownership), Breach of
20 Contract (for wrongfully "expelling" Mr. Tate), Waste (for damage to the corporations
21 caused by Mr. Tate's removal), Derivative Suit (against the corporate directors for
22 harming the corporations by removing Mr. Tate), Breach of Fiduciary Duty (firing Mr.
23 Tate or taking his stock breached that duty), and Permanent Injunction (to give back
24 the stock, reinstate Mr. Tate, and give him control of corporate assets) should all be
25 dismissed on the grounds of the assault alone, or the assault combined with the

1 admission that Mr. Tate still owns his 25% stake. If the termination due to the
2 workplace assault is allowed under the business judgment rule, as the Defendants
3 argue it is, and Mr. Tate still has his stock as established above, then Plaintiffs have
4 nothing upon which to base these claims.⁵

5 **C. MR. TATE HAS NO AUTHORITY TO USE THE QUEENSRYCHE NAME**

6 All parties agree the Queensryche name, marks, and associated media belong
7 to the TriRyche Corporation. All parties also agree the 1994 Shareholders Agreement
8 has expired. Therefore, it is the articles and bylaws that control. Under the bylaws of
9 TriRyche, only a majority of directors is a quorum, and a majority of those present
10 voting in the affirmative is enough to conduct business. See Declaration of Counsel
11 Ex. 1 (Bylaws of TriRyche Corp., ¶ 2.4). Therefore, all control of TriRyche is vested in the
12 majority and not the minority. See id.

13 Geoff Tate has no grant of authority from the TriRyche Corporation to use
14 the Queensryche name, marks, or associated media assets. See Declaration of Scott
15 Rockenfield. As such, the Defendants ask the Court to declare that Geoff Tate has no
16 right to use the Queensryche name, marks and associated media assets, and to
17 permanently enjoin the same.

18 **VI. CONCLUSION**

19 Almost all of Plaintiffs' claims rely on Mr. Tate being denied his twenty-five
20 percent stake in the Queensryche Corporations, or his alleged wrongful termination as
21 lead singer of Queensryche. As set forth above, Defendants all concede that Mr. Tate still
22 owns his twenty-five percent stake in the Queensryche Corporations. It is also

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24 ⁵ Plaintiffs would still have their claim for slander and libel because it is the sole claim which cannot be challenged
25 until after some discovery. As such, the Defendants have reserved that issue for later resolution, as well as their
extensive counterclaims.

1 uncontested that Mr. Tate engaged in a workplace assault on Scott Rockenfield and
2 Michael Wilton. The Defendants offer that for the purposes of this Motion only, that
3 assault is complete grounds for Mr. Tate's termination under the business judgment rule,
4 thus defeating the remainder of Plaintiffs' claims except Defamation. Therefore, all of
5 Plaintiffs' claims, save Defamation, should be dismissed.

6 Moreover, regardless of whether or not the Court dismisses Mr. Tate's claims
7 for the reasons stated above, Mr. Tate has no grant of authority to use the Queensryche
8 name and marks as long as they are still controlled by the TriRyche Corporation, as all
9 parties admit they currently are. Only Plaintiffs succeeding in their claims to have the
10 TriRyche and other Queensryche corporations dissolved, and the name and related
11 assets awarded to Mr. Tate can change that fact. Plaintiffs have had not achieved that
12 outcome as of yet, nor is it guaranteed they will. Therefore, the Court should declare that
13 Mr. Tate has no grant of authority to use the Queensryche Name, Marks, and associated
14 Media and enjoy any use of the same by him.

15 A proposed order accompanies this Motion.

16 SIGNED this 21st day of September, 2012.

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18 OSINSKI LAW OFFICES P.L.L.C.

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21 _____
22 Thomas T. Osinski, Jr., Esq.
23 WSBA #34154
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