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HOUSE OF GUITARS

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ers, the Schaubrocks' attorney vigorously denied all allegations in both lawsuits. The pension plan suit, filed in U.S. District Court in Rochester, notches up a long-simmering, bitter dispute between the musicians and the music store. Both are local institutions.

The band, which bills itself as "neo-garage-rock royalty," has opened for national acts on tour and has played locally since the late 1970s.

The House of Guitars locally is famed for its homemade late-night commercials, its cavernous and dimly lit reaches crammed with a riot of rock and roll paraphernalia and for owner Armand Schaubroek's well-honed image as a bad boy gone straight.

Allegations in the pension plan suit include claims the Schaubrocks significantly and improperly changed terms of the House of Guitars' pension without telling plan beneficiaries and that Armand Schaubroek, as the plan's administrator and trustee, and Bruce Schaubroek, as a trustee, breached their duty as fiduciaries by putting plan assets into risky real estate ventures.

"You can file that under biting the hand that feeds you," said the Schaubrocks attorney, Sheldon Boyce of Chamberlain, D'Amanda, Oppenheimer & Greenfield LLP, commenting on allegations Prevost and Babjuk have so far made. "Their lawsuit(s) are totally unfounded. They have both been treated very well."

In court papers answering the royalty shortfall allegations, the Schaubrocks accuse Babjuk and Prevost of libel, citing statements the pair made to a local music critic who repeated them in a published piece. In accusing them of skimping on royalties, the reply brief states, Babjuk and Prevost violated "a duty of loyalty and a fiduciary duty to exercise the utmost good faith" toward their former employer, the House of Guitars.

Former workers file suit against House of Guitars

By WILL ASTOR

Two former House of Guitars Inc. workers who are well-known local musicians have filed new charges against the quirky local music store, alleging pension plan irregularities.

Already in court with the music store's owners over alleged royalty payment shortfalls, Andy Babjuk and Greg Prevost—founding members of the Chesterfield Kings—have filed a second action charging the brothers who own the store, Armand and Bruce Schaubroek, with pension plan improprieties and wrongful dismissal.

Speaking for the music store own-

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Babjuk, 43, and Prevost, 50, worked at the House of Guitars for 27 years and 32 years respectively. They met and formed the Chesterfield Kings in the late 1970s while working at the store. And when their band started recording, it signed with the Schaubrocks' Mirror Records label.

Babjuk started at the House of Guitars as a 16-year-old. He now is a father of six whose family's sole income comes from what his wife brings in working as a part-time dental assistant. He declines to say what he earned at the House of Guitars where, he said, he essentially ran much of the business, ordering and tracking most of its inventory and dealing with more than 100 suppliers as well as waiting on customers.

He claims his pay was meager but declined to say how much he was making when he was fired.

"And I made less than him," Prevost said. An 18-year-old student at St. John Fisher College when he started at the House of Guitars, Prevost said he had planned to study medicine at Cornell University but ran out of money and dropped out several times before settling in to long-term employment at the music emporium.

As band members, the pair conceded, the job had advantages that compensated somewhat for their pay level. "We could take off when we needed to if the band was touring, and I could book the way I wanted," Prevost said. Prevost has a spiky mane of shoulder-length, black-dyed hair, a bony frame and the pallid complexion of a man who has spent more nights in recording studios and playing bar gigs than days in the sun. He wears eye makeup and vaguely resembles Rolling Stones guitarist Keith Richards, whom he admires. Prevost and Babjuk are collaborating on a book about the Rolling Stones.

"We met them," Prevost said. "They're nice guys; smaller than you'd think, though." The House of Guitars pension plan was supposed to be another perk to offset low pay, Prevost said.

Such assurances were increasingly thin, Babjuk took their concerns to employment attorney Nelson Thomas of Dolin, Thomas & Solomon LLP, who agreed to take their case at no charge.

His attempts to wrest more definite details concerning the pension plan also proved fruitless, Thomas said. In the meantime, Babjuk said, he and Prevost started looking at their recording deal with Mirror Records label. They concluded that all was not right there and switched to a new label. In the new deal, he said, the Chesterfield Kings sold fewer records but earned more royalties, which seemed to confirm their suspicions.

As a House of Guitars employee, he noted, he was in a unique position to track his group's record sales.

"Our first album sold 20,000 copies," Babjuk said. "I know because I was the guy loading the pallets. I could see how many were going out."

In court papers, the Schaubrocks maintain Mirror paid Babjuk and Prevost every cent they were due and that any damages alleged by the pair in the royalty complaint were their own fault, due to their own "negligent, reckless, wrongful, intentional or otherwise constituted culpable conduct."

Paul Nunes, a copyright and royalty specialist with Underberg & Kessler LLP, is representing Babjuk and Prevost in the royalty claim. Both Nunes and Thomas took the case pro bono.

"My father was a professional musician," Nunes said. "I understand the kind of problems they face and know that they often do not make much money."

Nunes in addition is a guitarist who has

performed professionally and self-narrated his own recordings.

Thomas said he was simply moved by the musicians' plight and scant resources. In December, Nunes called a meeting in his office among the Schaubrocks, Babjuk, Prevost and Boyce to see if the parties could agree on an out-of-court settlement. Thomas did not attend. No agreement was reached. Nunes filed the royalty complaint in January.

Prevost and Babjuk were fired in February. Each said that they were not given prior notice or any reason for their dismissal but were called aside at the end of a full work day and told that the day had been their last.

U.S. Magistrate Judge Marian Fayson has scheduled a settlement conference for both cases in early June. If no agreement is reached then, Thomas said, he and Nunes have lined up a forensic accountant and plan to subpoena House of Guitars and pension plan books and records for a thorough probe.

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