

**Stephens v Dore**

2016 NY Slip Op 30243(U)

January 25, 2016

Supreme Court, Bronx County

Docket Number: 303056/2013

Judge: Julia I. Rodriguez

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**SUPREME COURT STATE OF NEW YORK  
COUNTY OF BRONX TRIAL TERM- PART 27**

**INDEX #: 303056/2013**

MARC A. STEPHENS, an individual,  
DOREWAY TRANSPORTATION SERVICES, LLC,

Plaintiff(s),

-against-

EVAN DORE, an individual, JOY HENRY ~~OGUAGUA~~  
an individual and DOREWAY, LLC,

Defendants.

DECISION and ORDER

Present:  
Hon. Julia I. Rodriguez  
Supreme Court Justice

Recitation, as required by CPLR 2219 (a), of the papers considered in review of: (1) Plaintiff's order to show cause and motion for summary judgment in his favor and dismissal of Defendant's counterclaims; and (2) Defendant's order to show cause to dismiss the action.

<u>Papers Submitted</u>	<u>Numbered</u>
Stephens' Order to Show Cause & Affidavit	1
Stephens' Notice of Motion , Affidavit, Table of Contents, Statement of Fact, Motion for Summary Judgment, Proposed Order	2
Dore's Order to Show Cause & Affidavit	3
Transcripts of hearings on January 21, 2015 and June 8, 2015	4
Judge Barone's Decision dated July 13, 2015	5
Amended Verified Complaint	6
Verified Answer with Counterclaims	7
Promissory Note	8
Certificate of Formation with Exhibits A, B, C & D of Operating Agreement	9
Exhibit 1 - Receipt from Division of Corporations and State Records	10
Exhibit 5 - Operating Agreement	11
Exhibit 9 - Stephens' compilation of revenue & expenses for 7/2012 - 8/2013	12
Exhibits 10, 11, 12 & 13 - Chase monthly statements 11/2012 thru 2/2013	13, 14, 15, 16
Exhibit 16 - Email to mquatrone dated 11/19/2012	17
Exhibit A - Casino customer totals from 6/2013 thru 12/2013	18

This action involves control of a transportation business now under the name of Doreway, LLC. Plaintiff commenced this action seeking damages for *inter alia*, breach of contract, breach of implied covenant of good faith and fair dealing, and breach of fiduciary duty. Defendant denied all liability and interposed counterclaims sounding in intentional infliction of emotional distress, harassment and breach of duty of good faith and fair dealing.

Prior to his retirement the Honorable John Barone conducted hearings on January 21, 2015 and June 8, 2015. In his Decision dated July 13, 2015 Judge Barone made some findings of fact, however, he declined to rule on the ultimate issues in this case, stating:

many of the issues in the case remain unresolved. My imminent retirement will not permit me to proceed further in this matter. Mr. Dore and Mr. Stephens appear to be experienced businessmen. If they devote their time and energy in resolving this matter, they may preserve their business and save themselves considerable time and expense.

Judge Barone referred to the parties to the Mediation Part; mediation was not successful and the parties returned to Part 12 with new respective motions for summary judgment and to dismiss the action. In the interests of judicial economy, this court entertained oral argument of the parties' respective motions on December 2, 2015.

\* \* \* \* \*

By their arguments on Dec. 2<sup>nd</sup> Mr. Stephens and Mr. Dore made clear that they were still at an impasse and had not been able to resolve their dispute(s). Mr. Dore maintained that on May 21, 2012 he incorporated Doreway Transportation for the purpose of transporting customers to the casino; that he needed a business loan and that Mr. Stephens loaned him \$10,000.00 which was payable in one month with \$2,000.00 interest; that the "business didn't take off until August" 2012; that in September 2012 Mr. Stephens told Dore that Dore owed him \$15,000.00. According to Dore, he paid back Stephens \$1000.00 in September, October and November 2012. In February 2013 Dore discovered that Stephens had withdrawn \$6,000.00 from the business bank account. In March 2013 Dore changed the business name to Doreway, LLC and barred Stephens from the new business.

Mr. Stephens maintained that he was the owner of Doreway Transportation Services because he provided the initial \$10,000 to fund the operation of the business; that he communicated with the casino to start the application of authority; that he marketed the business and took out its insurance policy dated Nov. 9, 2012; and that he opened the business account with Chase Bank.

\* \* \* \* \*

After consideration of the parties' testimony on December 2, 2015, after review of the transcripts dated January 21 and June 8, 2015 and the exhibits, the Court finds that the parties entered into a business venture but were not able to develop a long term functioning relationship as partners. The court finds that it was Mr. Dore who took the initiative to begin a transportation

operation,<sup>1</sup> and that Mr. Stephens lent the \$10,000 as start up funds. Inasmuch as Stephens may have developed expectations to become a member of the business because he was performing functions for Dore Transportation, such as communicating with Ms. Quatrone at the casino or with Mr. Jay Lin regarding the insurance policy, the Promissory Note dated June 5, 2012, the only written agreement between the parties, did not contemplate a business relationship at all. The Promissory Note was specific as to its value and its purpose: Dore owed Stephens “\$10,000 plus 20% interest on unpaid balance,” and stated

PURPOSE OF LOAN: The Lender is providing start up funding to Borrower solely towards acquiring a business loan for Doreway Transportation Services. Borrower is currently pre-approved for a bus loan from TFC Equipment Finance (Atlantic Bus Sales) in the amount of \$97,370.00 of which 30% down payment is required to close the loan. It is further agreed that the \$10,000 provided by Lender will not be used for personal use by Borrower.

Mr. Stephens contends that Doreway Transportation is governed by the Company Operating Agreement adopted as of July 4, 2012; this agreement is purportedly signed by (1) **Joy Henry-Oguguo**, Chief Executive Manager, percent: 60% and (2) **Marc A. Stephens**, Managing Member, percent: 40% [Henry-Oguguo is Dore’s sister]. Exhibit C of the Operating Agreement, titled CAPTIAL CONTRIBUTIONS, also signed by Oguguo and Stephens, lists Oguguo as contributing zero dollars, and states that Stephens “has made a \$1,000 capital contribution and has provided the Company with a \$10,000 loan.” Exhibit D is titled RESPONSIBILITIES OF EACH MEMBER and reads:

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<sup>1</sup> See Exhibit 1: Filing receipt from the Division of Corporations and State Records dated 5/21/2012 for Article of Organization for DOREWAY TRANSPORTATION SERVICES, LLC, filed by Evan Dore. And see testimony by Marissa Quatrone on 1/21/15 that the only person she spoke with about the “route and all of the transportation service needs” was Evan Dore [pg. 16] from “prior to August 2012” [pg. 16] and that Stephens was not “involved until maybe November of that year” [pg. 18].

Joy Henry-Oguguo has agreed to be responsible for the following:

1. Oversee Business Operations
2. Driver to and from Empire City Casino

Marc A. Stephens has agreed to be responsible for the following:

1. Business Development
2. Bookkeeping
3. Marketing, Promoting and Advertising
4. Search Engine Optimization & Search Engine Marketing
5. Web Design & Development

Notably, no salary or amount of compensation is listed for the performance of these services. While the agreement stated that **Joy Henry-Oguguo** as Chief Executive Manager would get 60%, and **Marc A. Stephens** as Managing Member would get percent 40%, presumably of profits, the operating agreement is silent on how profits would be generated and/or determined, and inexplicably omitted a designation for Evan Dore, an obvious participant in the venture.

Only months into the business venture Stephens became suspicious that Dore was not disclosing all the cash transactions, and Dore became frustrated with Stephen's demands. In February 2013 Stephens unilaterally removed \$6,000 from the business account and this action ensued. However, as set forth on the record on Dec. 2, 2015, a comparison between the number of customer/riders for the months of November/ December 2012 and January/ February 2013 [Exhibit 9], with the deposits and withdrawals listed in the Chase Bank statements for these months [Exhibits 10 -13], did not reveal a discrepancy or raise a flag that Dore was not utilizing the revenue for the expenses of the business, and deducting a reasonable income for the drivers and himself. Consequently, the court finds that Stephens failed to establish that Dore was misappropriating funds for his personal use, and his suspicions were unfounded.

On December 2, 2015 Ms. Henry-Oguguo denied being involved in any of the business operations, and further denied signing the Operating Agreement; Mr. Stephens admitted that he never saw her sign the agreement in his presence. Significantly, both Stephens and Dore agreed that Ms. Henry-Oguguo was never involved in the business. So, while the Operating Agreement may present an attempt by Stephens to formalize his title and role in the

business, the Operating Agreement was not between Dore and Stephens, and does not establish a meeting of the minds between Dore and Stephens. Notably, the day-to-to day operations by Dore and Stephens did not comport with Operating Agreement's best intentions, as it appears that Ms.Oguguo did not have any job with the business and the business did not maintain optimal bookkeeping and tax records. Finally, any belief by Stephens that there existed an ongoing enterprise between him and Dore was belied when Stephens withdrew the \$6000 from the business account; Stephens made this withdrawal without consultation with Dore or Henry-Oguguo, without permission from Dore or Oguguo and without an accounting.

For the foregoing reasons, Stephens' Order to Show Cause for a preliminary injunction against Doreway LLC, to appoint Stephens as a receiver and further relief is **denied** in its entirety. Stephens' motion for summary judgment is **granted** solely to extent that Defendant's counterclaims are dismissed and Stephens is awarded a money judgment as follows.

On Dec. 2, 2015 the court considered the causes of action alleged in the Amended Verified Complaint. The evidence adduced from the documentary admissions and testimony did not establish the existence of a binding operation agreement between Plaintiff and Evan Dore. Consequently, the complaint's ten causes of action stemming from the alleged breach of said non-existing contract were not sustained. However, the evidence adduced did establish that Plaintiff loaned Defendant \$10,000.00 and that Defendant agreed to repay \$12,000.00. As it is undisputed that Stephens removed \$6,000 from the Chase Account, and that Dore made three payments of \$1,000 in Sept., Oct. and Nov. 2012, , the remaining balance is \$3,000.00

For the foregoing reasons, Dore's Order to Show Cause to dismiss the complaint is **granted** and the complaint is dismissed *except* as to the \$3,000.00 debt owed by Dore; and it is

ORDERED that Plaintiff is granted a money judgment in the sum of \$3,000.00 to be paid by Dore on or before March 15, 2016 by certified check payable to Stephens; and it is further

ORDERED that upon payment by Defendant Dore as hereinabove directed then the parties' respective business obligations are forever extinguished.

Dated: Jan. 25, 2016

  
Hon. Julia I. Rodriguez