

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

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GREGORY BEAUCHAMP, in his individual capacity,  
and as a member of Port and Passage, LLC, a company  
organized under the laws of the State of New York,

Plaintiff,

**SUMMONS**

-against-

INDEX NO.:  
FILED:

JEREMY JOHNSTONE, in his individual capacity,  
and as a member of Port and Passage, LLC, a company  
organized under the laws of the State of New York,

Defendant.

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TO THE ABOVE NAMED DEFENDANT:

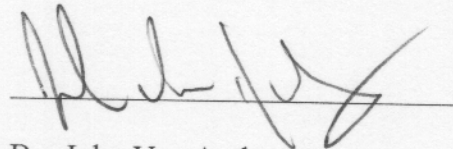
YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance on the plaintiff's attorney within 20 days after the service of this summons, exclusive of the day of service or within 30 days after completion of service where service is made in any other manner than by personal delivery within the State. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

The basis of Venue is the Plaintiff and Defendant's domiciles, which are respectively 242 West 21st Street, #2B, New York, NY 10011, and 83 Allen Street, #19, New York, NY 10002.

Dated: New York, New York

September 25, 2012

BOATTI VAN AMBURG PLLC

A handwritten signature in dark ink, appearing to read 'John Van Amburg', is written over a horizontal line.

By: John Van Amburg  
Attorney for Plaintiff  
2 Penn Plaza, Suite 1500  
New York, NY 10121  
(646) 481-4796

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X  
GREGORY BEAUCHAMP, in his individual capacity,  
and as a member of Port and Passage, LLC, a company  
organized under the laws of the State of New York,

Plaintiff,

**COMPLAINT**

-against-

INDEX NO.:

JEREMY JOHNSTONE, in his individual capacity,  
and as a member of Port and Passage, LLC, a company  
organized under the laws of the State of New York,

Defendant.  
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Gregory Beauchamp (hereinafter, "Plaintiff") by his attorneys Boatti Van Amburg PLLC, hereby submits this COMPLAINT and complains of JEREMY JOHNSTONE (hereinafter, "Defendant") and alleges as follows:

**THE PARTIES**

1. Plaintiff is a resident of the State of New York, with a primary residence at 242 West 21st Street, #2B, New York, NY 10011.
2. Upon information and belief, the Defendant is a resident of the State of New York, and resides at 83 Allen Street, #19, New York, NY 10002.

**FACTS**

3. In October of 2011, Plaintiff and Defendant created a business enterprise for the purpose of selling motion graphics and video production services for profit.



4. The parties agreed that the Plaintiff was the executive director in the aforementioned enterprise. The parties further agreed that the Defendant was to be the creative director of the aforementioned enterprise. Both Plaintiff and Defendant were responsible for generating business for the company.

5. On November 23, 2011, Plaintiff and Defendant filed articles of organization in the State of New York for Port and Passage, LLC (hereinafter, the "Company") with the intention of carrying on their motion graphics and video production business.

6. Plaintiff and Defendant did not execute a written operating agreement governing the conduct of the Company's affairs.

7. Notwithstanding the absence of a written operating agreement, Plaintiff and Defendant orally agreed that Plaintiff would retain a majority vote in the management of the Company.

8. On October 9, 2011, Plaintiff and Defendant agreed that the Company would make a loan to Defendant in the amount of \$10,000 (the "First Loan to Defendant"). To date, Defendant has not paid back the Loan to the Company.

9. On December 14, 2011, Defendant borrowed an additional \$2000 from the Company (the "Second Loan to Defendant").

10. On December 30, 2011, Defendant borrowed an additional \$2500 from the company (the "Third Loan to Defendant").

11. From November of 2011 through April of 2012, the Defendant and Plaintiff operated the Company.

12. By May of 2012, Plaintiff had become increasingly concerned with Defendant's conduct in the operation of the Company. Specifically, the Plaintiff became concerned with the



Defendant's failure to complete tasks that were within his realm of responsibility within the Company, including writing, directing, and editing of Company projects. In addition, Defendant failed to generate an appropriate share of the Company's business. Plaintiff generated \$289,924.21 in business for the company, while Defendant only brought in \$40,550 in business.

13. On or about May 9, 2012, Plaintiff approached the Defendant to discuss his concerns.

14. During this conversation on May 9, 2012 between the Plaintiff and Defendant, the Plaintiff and Defendant mutually agreed that the Defendant would withdraw from the Company.

15. Also on or about May 9, 2012, Defendant and Plaintiff executed an amendment to the statutory operating agreement of the Company, erroneously dated April 9, 2012, that governed Defendant's share of Company assets upon the Defendant's withdrawal from the Company (the "May 9 Agreement," attached as Exhibit 1).

16. Specifically, pursuant to the May 9 Agreement, Defendant and Plaintiff agreed in exchange for Defendant's withdrawal from the Company, Defendant would receive \$11,750, paid out partly as salary and partly as severance pay, plus the value of certain Company equipment that Defendant was to keep.

17. Furthermore, pursuant to the May 9 Agreement, the Company's remaining assets, including the Company's registered internet domains, were to transfer to Plaintiff.

18. On or about May 11, 2012, in contradiction of the Company's statutory operating agreement as amended by the May 9 Agreement, the Defendant withdrew \$27,500 from the Company's bank account, which withdrawn amount represented approximately half the funds in the account.

19. Also on or about May 11, 2012, the Defendant took the original copy of the May 9 Agreement from the Company's offices.

20. Since May 11, 2012, Plaintiff has been managing the Company's affairs with minimal assistance from Defendant.

21. Upon information and belief, Defendant was not pursuing any legitimate business purpose of the Company when he withdrew funds from the Company's bank account on May 9, 2012.

22. Upon information and belief, Defendant was not pursuing any legitimate business purpose of the Company when he certain papers, including the original copy of the May 9 Agreement, from the Company's office.

**AND AS FOR A FIRST CAUSE OF ACTION: BREACH OF STATUTORY  
OPERATING AGREEMENT**

23. Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs "1" through "22" herein with the same force and effect as if more fully set forth at length.

24. To the extent the Company operated without a written operating agreement, Plaintiff and Defendant's conduct in the operation of the Company is subject to New York's Limited Liability Company Law, which has the same force and effect as an executed agreement between Defendant and Plaintiff.

25. Defendant breached the Company's statutory operating agreement by taking funds and equipment belonging to the Company on May 11, 2012 without authority to do so and without furthering any legitimate business purpose of the Company.



26. Defendant further breached the Company's statutory operating agreement by failing to repay the First, Second, and/or Third loans to Defendant.

27. Defendant's breach caused damages to the Company and to Plaintiff in an amount to be determined at trial, but not less than \$42,000.

**AND AS FOR A SECOND CAUSE OF ACTION: BREACH OF CONTRACT**

28. Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs "1" through "27" herein with the same force and effect as if more fully set forth at length.

29. The May 9 Agreement was a valid contract between Plaintiff and Defendant governing the distribution of Company assets upon Defendant's withdrawal from the Company.

30. The Defendant breached the May 9 Agreement by withdrawing funds from the Company bank account in excess of those funds due to him under the May 9 Agreement.

31. Defendant's breach of the May 9 Agreement caused the Company and Plaintiff to suffer damages in an amount to be determined at trial, but not less than \$42,000.

**AND AS AND FOR A THIRD CAUSE OF ACTION: CONVERSION**

32. Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs "1" through "31" herein with the same force and effect as if more fully set forth at length.

33. On or about May 11, 2012, the Defendant, without authority to do so, intentionally assumed control over funds belonging to the Company.

34. Defendant's assumption of control over property and funds belonging to the Company interfered with the Company's right to possess such funds.



35. Defendant's assumption of control over funds belonging to the Company was not in furtherance of any legitimate business interest of the Company.

36. Defendant's assumption of control over funds belonging to the Company caused damages to the Company and to Plaintiff in an amount to be determined at trial, but not less than \$27,500.

**AND AS FOR A FOURTH CAUSE OF ACTION: BREACH OF FIDUCIARY DUTY**

37. Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs "1" through "36" herein with the same force and effect as if more fully set forth at length.

38. Defendant, as a member of the Company, owed a fiduciary duty to Plaintiff, a fellow member of the Company.

39. On May 11, 2012, Defendant breached his fiduciary duty to Plaintiff by taking funds belonging to the Company.

40. Defendant's taking of funds from the Company was not in furtherance of any legitimate business purpose of the company.

41. Defendant's taking of funds from the Company caused damages to the Company and to Plaintiff in an amount to be determined at trial, but not less than \$27,500.

**AND AS FOR A FIFTH CAUSE OF ACTION: FOR A DECLARATORY JUDGMENT FROM THIS COURT THAT DEFENDANT WITHDREW FROM THE COMPANY AS OF MAY 11, 2012**

42. Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs "1" through "41" herein with the same force and effect as if more fully set forth at length.

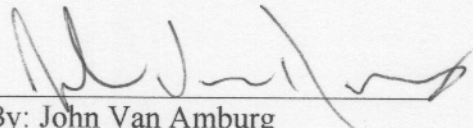
43. Pursuant to the May 9 Agreement, the Defendant agreed to withdraw from the Company. Defendant's subsequent withdrawal of half of the company's available funds from the Company's bank account on May 11, 2012 and continuing failure to initiate substantial contact with the Plaintiff following the withdrawal of funds represent confirmation of Defendant's withdrawal from the Company.

44. In order to clarify the rights and obligations of the parties going forward, Plaintiff requests that this Court issue a declaratory judgment that Defendant withdrew from the Company as of May 11, 2012.

WHEREFORE Plaintiff requests judgement against the Defendant, on the first, second, third, fourth and fifth causes of action in the amount of \$12,400 plus interest, and on the third cause of action an amount to be determined upon judgement in this action.

Dated: New York, New York  
September 25, 2012

BOATTI VAN AMBURG PLLC



By: John Van Amburg  
Attorney for Plaintiff Gregory Beauchamp  
2 Penn Plaza, Suite 1500  
New York, NY 10121  
(646) 481-4796

VERIFICATION

Greg Beauchamp affirms the truth of the following subject to the penalties of perjury:

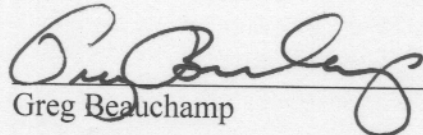
I am the Plaintiff in the within entitled action.

I have read the foregoing COMPLAINT and know the contents thereof, and that the same is true to my own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters, I believe them to be true.

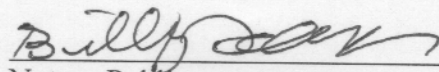
The source of my information is my first hand knowledge.

Dated: New York, NY

~~August~~ <sup>September</sup> 17<sup>th</sup>, 2012

  
Greg Beauchamp

Sworn before me this <sup>September</sup> 17<sup>th</sup> day of ~~August~~, 2012.

  
Notary Public

BILLY TYLER DONG  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 01DO6249219  
Qualified in Kings County  
My Commission Expires October 03, 2015

