

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF NEW HAMPSHIRE

ZAP'D GAMES, L.L.C., a)
New York Limited Liability Company;)
ZEV SHLASINGER, a Florida resident;))
PAUL GERARDI, a New York resident,))

Plaintiffs,)

Case No. 1:16-cv-290-JL

v.)

MYRIAD GAMES, L.L.C., a New)
Hampshire Limited Liability Company;))
DANIEL YARRINGTON, a New)
Hampshire resident,)

Defendants.)

**ANSWER OF MYRIAD GAMES, L.L.C. AND
DANIEL YARRINGTON TO THE AMENDED COMPLAINT**

The Defendants, Myriad Games, L.L.C. ("Myriad") and Daniel Yarrington ("Yarrington") answer the Plaintiffs' Amended Complaint as follows:

Introduction

Myriad and Yarrington deny all allegations of mismanagement, impropriety, fraud and breach.¹

Shlasinger and Gerardi misconstrue the parties' business relationship, which was defined by two legal documents: the Operating Agreement for Zap'd Games, LLC ("Zap'd Games") and the Store Agreement between Zap'd Games and Myriad. Zap'd Games was an investment vehicle to invest money in Myriad's Staten Island store.

¹ Myriad and Yarrington note that neither counts I or II are pled against Myriad. Also, Zap'd Games is not identified as a plaintiff in counts I or II.

Zap'd Games had no role in the operation of Myriad's Staten Island store.² Myriad is Yarrington's business.

Under the Store Agreement, Myriad received a management fee, and was required to pay annually Zap'd Games a percentage of total receipts, minus adjustments for discounts, returns and allowances. The Store Agreement stated that Zap'd Games and Myriad were independent entities and that no partnership or joint venture was formed between Zap'd Games and Myriad.

Under the Operating Agreement, Shlasinger and Myriad were to be paid equal disbursements until they had each received \$100,000 from Zap'd Games. At that time, disbursements received by Zap'd Games were to be split equally among Shlasinger, Gerardi and Myriad.

The store opened in January 2013 and closed in April 2014. Myriad paid Zap'd Games Shlasinger's share of the percentage for 2013. Shlasinger's share was approximately \$5,500. Because of the parties' legal dispute, Myriad has withheld the final payment of the percentage for 2014. Shlasinger's share is approximately \$2,000.

Myriad's Staten Island store failed for a number of reasons. One reason was Hurricane Sandy, which blasted Staten Island in the fall of 2012, disrupting the lives of hundreds of thousands of people. Another was less dramatic: Gerardi failed to build shelves for the store on time (and on budget), delaying the store's planned opening for several months.

² In this Answer, references to the "store" are meant to refer to Myriad's Staten Island store.

When Myriad's Staten Island store finally opened in January 2013 – having missed the Christmas shopping season – its expenses held to projections, while its revenues fell short. Through no fault of Myriad or Yarrington, it became no longer economically feasible to operate the store. In the end, Myriad and Yarrington lost more money on the failed business venture than Shlasinger and Gerardi.

Parties

1. Myriad and Yarrington lack knowledge or information sufficient to form a belief whether Paragraph 1 is true.

2. Myriad and Yarrington lack knowledge or information sufficient to form a belief whether Paragraph 2 is true.

3. Myriad and Yarrington lack knowledge or information sufficient to form a belief whether Paragraph 3 is true.

4. Admitted.

5. Admitted.

Jurisdiction and Venue

6. This paragraph states a legal conclusion. As a result, it requires no answer.

7. This paragraph states a legal conclusion. As a result, it requires no answer.

Factual Allegations

8. Myriad and Yarrington lack knowledge or information sufficient to form a belief whether Paragraph 8 is true.

9. Myriad and Yarrington admit that Yarrington and Shlasinger discussed operation of the store and Yarrington's operation of Myriad's other stores. Myriad and Yarrington deny the remaining allegations in Paragraph 9. Myriad and Yarrington further answer that Shlasinger suggested a three-way partnership in the operation of a store, a proposal that Myriad and Yarrington rejected.

10. Myriad and Yarrington admit that, in 2012, Shlasinger, Gerardi and Yarrington discussed the operation of the store and agreed to form Zap'd Games. Myriad and Yarrington deny the remaining allegations in Paragraph 10. Myriad and Yarrington further answer that Zap'd Games was intended to serve as investment vehicle in the store that Myriad, an independent entity, operated under a separate Store Agreement.

11. Denied.

12. Myriad and Yarrington admit that Shlasinger, Gerardi and Yarrington entered into an Operating Agreement for Zap'd Games and filed Articles of Incorporation with the State of New York. Myriad and Yarrington further answer that the Amended Complaint contains no **Exhibit A**.

13. Admitted.

14. Myriad and Yarrington admit that Shlasinger agreed to contribute \$100,000.00 to Zap'd Games and admit that Shlasinger was to make his contribution in his individual capacity. Myriad and Yarrington admit that Myriad agreed to contribute additional funds. Myriad and Yarrington deny the remaining allegations in Paragraph

14. Myriad and Yarrington further answer that under the Store Agreement, Zap'd Games agreed to contribute \$100,000 to Myriad.

15. Admitted.

16. Admitted. Myriad and Yarrington further answer that Shlasinger and Gerardi authorized Yarrington to enter into a lease on behalf of Zap'd Games.

17. Myriad and Yarrington admit the allegations in Paragraph 17. Myriad and Yarrington further answer that the Amended Complaint contains no **Exhibit B**.

18. Denied. Myriad and Yarrington further answer that under the Operating Agreement Shlasinger and Myriad were to be paid equal disbursements until they had each received \$100,000 from Zap'd Games. At that time, disbursements received by Zap'd Games were to be split equally, in a percentage of net profits, among Shlasinger, Gerardi and Myriad.

19. Admitted.

20. Admitted.

21. Myriad and Yarrington admit the allegations in the first sentence of Paragraph 21. Myriad and Yarrington admit that Gerardi was hired as the general manager of the store for a \$30,000.00 annual salary. Myriad and Yarrington deny the remaining allegations in Paragraph 21. Myriad and Yarrington further answer that Gerardi was an at-will employee.

22. Admitted.

23. Denied. Myriad and Yarrington further answer that Shlasinger signed the lease as a guarantor.

24. Denied. Myriad and Yarrington further answer that with the parties' consent, Yarrington executed the lease in the name of Zap'd Games and Shlasinger signed the lease as a guarantor.

25. Denied. Myriad and Yarrington further answer that the Amended Complaint contains no **Exhibit C**.

26. Myriad and Yarrington admit that in August 2012 Yarrington opened a bank account for Zap'd Games and a separate account for Myriad's Staten Island store. Myriad and Yarrington admit that Gerardi was asked to be a signatory on the accounts. Myriad and Yarrington deny all remaining allegations in Paragraph 26. Myriad and Yarrington further answer that Section 2 of the Store Agreement required Zap'd Games to deliver its monetary contribution (totaling \$100,000) to Myriad. Additionally, Section 12 of the Store Agreement provided that all monies received for Zap'd Games were to be invested into Myriad's operating account and the use of the operating account was at the sole use and discretion of Myriad.

27. Myriad and Yarrington admit that the Zap'd Games's bank account was closed. Myriad and Yarrington deny all remaining allegations in Paragraph 27. Myriad and Yarrington further answer that notice was given to the parties regarding the account's closure. Additionally, a Zap'd Games account that had been opened in August 2012 at the Richmond County Savings Bank was closed because Gerardi complained that the branch was inconvenient and asked that an account be opened at Sovereign Bank. Gerardi made deposits into and withdrawals from the Myriad account at Sovereign Bank.

28. Denied. Myriad and Yarrington further answer that while the store operated Shlasinger and Gerardi had direct access to the point of sale system so they could access reports of the store's performance.

29. Denied.

30. Denied.

31. Denied.

32. Myriad and Yarrington admit that Gerardi complained about inventory. Myriad and Yarrington deny the remaining allegations in Paragraph 32.

33. Myriad and Yarrington admit that Yarrington took out a line of credit to cover the store's expenses. Myriad and Yarrington deny the remaining allegations in Paragraph 33. Myriad and Yarrington further answer that Yarrington personally guaranteed the line of credit and did not encumber Zap'd Games.

34. Myriad and Yarrington admit that Shlasinger did not have access to the Myriad operating account and that Gerardi had check writing access to it. Myriad and Yarrington deny all remaining allegations in Paragraph 34. Myriad and Yarrington further answer that Section 12 of the Store Agreement provided that the use of the account was at the use of the sole use and discretion of Myriad. Additionally, the Store Agreement did not provide for Shlasinger to have access to the account.

35. Myriad and Yarrington lack knowledge and information sufficient to form a belief whether Paragraph 35 is true. Myriad and Yarrington further answer that Section 12 of the Store Agreement specifically provided that use of the operating account was at the sole use and discretion of Myriad. Section 13 of the Store Agreement

stated that no partnership or joint venture was formed between Zap'd Games and Myriad. Additionally, Zap'd Games was formed as an LLC with members Shlasinger, Gerardi and Myriad. Finally, the Store Agreement did not provide for Shlasinger to have access to the account.

36. Denied.

37. Myriad and Yarrington lack knowledge or information sufficient to form a belief whether the first sentence of Paragraph 37 is true. Myriad and Yarrington deny the remaining allegations in Paragraph 37.

38. Denied.

39. Myriad and Yarrington admit that the parties agreed to meet in New Hampshire. Myriad and Yarrington deny the remaining allegations in Paragraph 39. Myriad and Yarrington further answer that Zap'd Games was formed as an LLC with members Shlasinger, Gerardi and Myriad.

40. Myriad and Yarrington admit that the parties met on September 24, 2013. Myriad and Yarrington deny the remaining allegations in Paragraph 40. Myriad and Yarrington further answer that the parties discussed all outstanding issues, including Gerardi's retention of funds from cash sales at the store.

41. Denied.

42. Myriad and Yarrington lack knowledge or information sufficient to form a belief whether Paragraph 42 regarding Gerardi's alleged observations is true. Myriad and Yarrington admit that the parties communicated by email, but has not recently reviewed any such email by Gerardi and therefore lacks knowledge or information

sufficient to form a belief whether the second sentence of Paragraph 42 is true. Myriad and Yarrington further answer that they deny all allegations of mismanagement.

43. Myriad and Yarrington admit that Gerardi was fired. Myriad and Yarrington deny the remaining allegations in Paragraph 43. Myriad and Yarrington further answer that Gerardi was an at-will employee who was fired for poor performance, insubordination, and for withholding over \$10,000 in cash that was required to be deposited.

44. Myriad and Yarrington admit that Gerardi's access to the store's limited inventory register was canceled upon Gerardi's termination. Myriad and Yarrington deny the remaining allegations in Paragraph 44. Myriad and Yarrington further answer that an employee was promoted to manager to replace Gerardi.

45. Myriad and Yarrington admit that a copy of the Store's financial reports were provided to Shlasinger and Gerardi. Myriad and Yarrington deny the remaining allegations in Paragraph 45.

46. Myriad and Yarrington admit that Yarrington had closed Myriad's Staten Island store. Myriad and Yarrington deny the remaining allegations in Paragraph 46. Myriad and Yarrington further answer that Shlasinger and Gerardi were informed that the store's month-to-month lease would not be renewed.

47. Denied.

48. Paragraph 48 states a legal conclusion. As a result, it requires no answer. Myriad and Yarrington further answer that the Store Agreement is governed by the laws of New Hampshire.

Count I - Fraud in Inducement
Shlasinger and Gerardi v. Yarrington

Note: Count I is not pled against Myriad. Also, Zap'd Games is not identified as a plaintiff for Count I.

49. Yarrington repeats, as if stated fully herein, his answers to Paragraphs 1 through 48.

50. Paragraph 50 characterizes the legal claim in Count I. To the extent it alleges that Yarrington is liable for fraud in the inducement, Yarrington denies Paragraph 50.

51. Denied. Yarrington also specifically denies subparts (i)-(iii) of Paragraph 51.

52. Denied.

53. Denied.

54. Denied.

WHEREFORE, Yarrington requests that judgment be entered in his favor on Count I and that he be awarded costs and reasonable attorney's fees.

Count II - Breach of Contract
Shlasinger and Gerardi v. Yarrington

Note: Count II is not pled against Myriad. Also, Zap'd Games is not identified as a plaintiff for Count II.

55. Yarrington repeats, as if stated fully herein, his answers to Paragraphs 1 through 54.

56. Paragraph 50 characterizes the legal claim in Count II. To the extent it alleges that Yarrington is liable for breach of contract, Yarrington denies Paragraph 56.

57. Yarrington admits that he, Shlasinger and Gerardi executed an Operating Agreement on or about June 25, 2012. Yarrington admits that the Operating Agreement set forth procedures for conducting business and made Shlasinger Chief Executive Officer and Managing Member, Gerardi Treasurer and Member, and Yarrington as Secretary and Member. Yarrington denies the remaining allegations in Paragraph 57.

58. Denied. Yarrington also specifically denies subparts (i)-(xii) of Paragraph 58.

59. Denied.

WHEREFORE, Yarrington requests that judgment be entered in his favor on Count II and that he be awarded costs and reasonable attorney's fees.

Request for Jury Trial

Myriad and Yarrington request a jury trial as to all counts.

Affirmative Defenses

1. The complaint fails to state a cause of action.
2. The plaintiffs are estopped.
3. The applicable statute of limitations bars the plaintiffs' claims.
4. The Operating Agreement and Store Agreement bar the plaintiffs' claims.
5. The plaintiffs have waived their claims.

Myriad and Yarrington reserve the right to supplement their defenses.

Respectfully Submitted,

MYRIAD GAMES, L.L.C.
DANIEL YARRINGTON

By Their Attorneys,
ORR & RENO, P.A.

Dated: October 21, 2016

By: /s/ Robert S. Carey
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Answer was forwarded, this 21st day of October 2016, via electronic delivery, to Howard A. Roever and Joseph A. Davidow, counsel for the Plaintiffs.

Dated: October 21, 2016

/s/ Robert S. Carey
Robert S. Carey

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