

CAUSE NO. 2016-59771

RAIDEN COMMODITIES, LP, &	§	IN THE DISTRICT COURT
ASPIRE COMMODITIES, LP,	§	
	§	
Plaintiffs,	§	
	§	
vs.	§	OF HARRIS COUNTY, TEXAS
	§	
PATRICK DE MAN,	§	
	§	
Defendant.	§	125TH JUDICIAL DISTRICT

SPECIAL APPEARANCE TO OBJECT TO JURISDICTION

Defendant Patrick de Man makes this special appearance under Rule 120a of the Texas Rules of Civil Procedure to object to the exercise of personal jurisdiction by this Court. In support, Mr. de Man would show the Court as follows:

1. This special appearance is made under Texas Rule of Civil Procedure 120a for the purpose of objecting to the jurisdiction of the Court over Mr. de Man.
2. This special appearance is made as to the entire proceeding against Mr. de Man and as to each claim asserted against him, as none give rise to personal jurisdiction over him.
3. This special appearance is being filed prior to the filing of any other plea, pleading, or motion.
4. Plaintiffs Raiden Commodities, LP (Raiden), and Aspire Commodities, LP (Aspire), have not satisfied their burden of pleading sufficient allegations to bring Mr. de Man within the provisions of the Texas long-arm statute. Plaintiffs have not pleaded facts to allege a basis for personal jurisdiction over Mr. de Man, who is a resident of Puerto Rico.
5. Mr. de Man is not subject to general jurisdiction in Texas. At all times relevant to this lawsuit, Mr. de Man was a resident of New York, Connecticut, or Puerto Rico. Any contacts that Mr. de Man made with Texas during that time period were fortuitous, isolated, or attenuated.

Although Mr. de Man purchased and sold power contracts in the market administered by the Electric Reliability Council of Texas (ERCOT), he made those transactions when he was outside of Texas, not in his personal capacity, but on behalf of the Plaintiffs. *See Mort Keshin & Co., Inc. v. Houston Chronicle Pub. Co.*, 992 S.W.2d 642, 647 (Tex. App.—Houston [14th Dist.] 1999, no pet.) (“When an agent negotiates a contract for its principal in Texas, it is the principal who does business in this state, not the agent.”); *Hotel Partners v. Craig*, 993 S.W.2d 116, 121 (Tex. App.—Dallas 1994, pet. denied) (“When an agent arrives in Texas to represent his principal, only the principal is doing business in Texas.”). Mr. de Man has had no continuous and systematic contacts with Texas that would render him “essentially at home” in Texas. *Daimler AG v. Bauman*, 134 S. Ct. 746, 749 (2014) (quoting *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011)).

6. Mr. de Man never consented to the resolution of disputes involving Raiden in Harris County, Texas, and has no recollection of seeing a document that includes the forum-selection clause quoted by Plaintiffs in their Petition. To the extent that the document cited by Plaintiffs purports to be a partnership agreement for Raiden, that document is invalid because it was not adopted in compliance with the amendment procedures set forth in the September 20, 2013, partnership agreement. Mr. de Man cannot be bound by a document that he has never seen, and that he did not even know existed until Plaintiffs filed this lawsuit.

7. Mr. de Man is not subject to specific jurisdiction in Texas. At all times relevant to this lawsuit, Mr. de Man resided in New York, Connecticut, or Puerto Rico. He made no purposeful availment of the benefits and protections of Texas laws and could not reasonably have anticipated that he would be haled into Texas court. None of Plaintiffs’ causes of action arise from or relate to an activity conducted by Mr. de Man in Texas. *See Gonzalez v. AAG Las Vegas, L.L.C.*,

317 S.W.3d 278, 283 (Tex. App.—Houston [1st Dist.] 2009, pet. denied) (“Specific jurisdiction arises when the defendant’s alleged liability arises from or is related to an activity conducted within the forum.”); *id.* at 282 (“[W]e consider only the defendant’s own actions, not those of the plaintiff or any other third party.”). Plaintiffs have identified no substantial connection between any of Mr. de Man’s alleged Texas contacts and the operative facts of any of their claims:

a. Declaratory Judgment. The events leading to Mr. de Man’s business relationships with Plaintiffs are not related to his alleged contacts with Texas. At all times during his business relationships with Plaintiffs, Mr. de Man resided outside of Texas in New York, Connecticut, or Puerto Rico.

b. Conversion. When Mr. de Man’s relationship with Plaintiffs deteriorated, and ownership of various pieces of computer equipment became contested, Mr. de Man was in Puerto Rico. Mr. de Man currently resides in Puerto Rico, and any conduct by him that is the subject of this claim bears no connection to Texas.

c. Misappropriation of Trade Secrets. At all times during his business relationships with Plaintiffs, Mr. de Man lived and worked outside of Texas in New York, Connecticut, or Puerto Rico. Any actions taken by Mr. de Man that are the subject of this claim bear no connection to Texas.

d. Breach of Partnership Obligations. At all times during his business relationships with Plaintiffs, Mr. de Man lived and worked outside of Texas in New York, Connecticut, or Puerto Rico. Any actions taken by Mr. de Man that are the subject of this claim bear no connection to Texas.

8. The exercise of jurisdiction by this Court over Patrick de Man would offend traditional notions of fair play and substantial justice, depriving him of due process as guaranteed by the U.S. Constitution.

Conclusion

Defendant Patrick de Man prays that his special appearance be set for hearing, that the special appearance be granted, and that all proceedings against him be dismissed for lack of jurisdiction.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on this 7th day of November 2016, a true and correct copy of the foregoing instrument has been served upon counsel of record in accordance with the requirements of the Texas Rules of Civil Procedure, addressed as follows:

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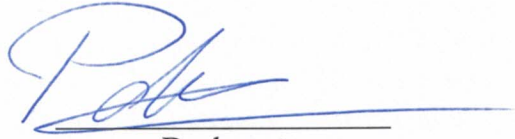
/s/ Chris Reynolds

VERIFICATION

This unsworn verification is presented in lieu of a written sworn verification, pursuant to Texas Civil Practice and Remedies Code §132.001.

My name is Patrick Antonius Petrus de Man, my date of birth is January 14, 1974, and my address is 544 Corredor del Bosque, Dorado, Puerto Rico, 00646, United States of America. I declare under penalty of perjury that the statements contained in the above Special Appearance are true and correct.

Executed in Dorado, Puerto Rico, on the 4th day of November, 2016.

A handwritten signature in blue ink, appearing to read 'P. de Man', is written over a horizontal line.

Declarant