10/19/2020 7:23 AM
Marilyn Burgess - District Clerk Harris County
Envelope No. 47290228
By: Brenda Espinoza
Filed: 10/19/2020 7:23 AM

CAUSE NO. 2019-79857C

PATRICK A.P. DE MAN,	§	IN THE DISTRICT COURT OF
	§	
	§	
v.	§	HARRIS COUNTY, TEXAS
	§	
ELECTRIC RELIABILITY COUNCIL OF TEXAS, INC., GARNISHEE,	§	
	§	
	§	
RAIDEN COMMODITIES, L.P., and ASPIRE COMMODITIES, L.P.	§	
	§	61ST JUDICIAL DISTRICT

MOTION TO DISSOLVE WRIT OF GARNISHMENT

Plaintiff Patrick DeMan ("DeMan") improperly obtained A Writ of Garnishment After Judgment (the "Writ") against the Electric Reliability Council of Texas, Inc. ("ERCOT"), which transacts business with Movant Raiden Commodities, L.P. ("Raiden") (but not Movant Aspire Commodities, L.P. ("Aspire") (together with Raiden, "Movants")), based on the vague and unsupported assertions in the affidavit purportedly supporting the Writ.

Moreover, as detailed in Movants' Emergency Motion to Reconsider Order Denying Movants' Application for Temporary Injunction and, in the Alternative, Motion to Stay Enforcement of Judgment ("Motion to Reconsider"), filed in the underlying action in this Court (and attached hereto as Exhibit A), Movants have already extinguished any basis for the Writ by depositing with the Puerto Rico court, which originally issued the underlying judgment, the full amount of the judgment, plus applicable interest.

Accordingly, the Writ of Garnishment should be dissolved immediately because (1) the affidavit filed in support of the Writ of Garnishment is defective and (2) the total amount of the judgment, plus interest, sits with the court that issued the underlying judgment subject to that court's discretion to release the funds to DeMan.

BACKGROUND

On November 1, 2019, Mr. DeMan attempted to domesticate in this Court the Partial Judgment awarding him just over $690,000 in allegedly unpaid wages and just over $100,000 in attorneys' fees. Because the Partial Judgment did not account for mandatory tax withholdings from the payment of wages (among other reasons), Movants filed a motion to vacate the domesticated judgment, and in the alternative, requested clarification from the Court regarding the nature of any required payment to DeMan.

On January 9, 2020, Movants caused to be deposited in the Puerto Rico court's registry the net amount of wages ($439,868.19) and attorneys' fees ($93,264.34) required to satisfy the Partial Judgment pursuant to Puerto Rico law. Declaration of Adam Sinn, Exhibit B ¶ 6.

In May 2020, in accordance with both federal and Puerto Rico law, Movants deposited with the Puerto Rico and federal tax authorities $269,506.49, the amount required to be withheld from Mr. DeMan's wages. Exhibit B ¶ 7.

On August 14, 2020, Movants further deposited with the Puerto Rico court registry post-judgment interest in the amount of $47,434.45. Exhibit B ¶ 8. In September 2020, Movants deposited $10,362.71 with the proper taxing authorities to satisfy the tax obligations associated with the Puerto Rico court attorneys' fees award. Exhibit B ¶ 9.

On September 2, 2020, DeMan filed with this Court an Application for Writ of Garnishment After Judgment. Exhibit C. In support of the application, DeMan submitted an affidavit from his attorney asserting, without evidence or factual basis, that within the attorney's knowledge, "Defendants do not possess property within this state that is subject to execution and that is sufficient to satisfy the judgment."

Having done what they could to satisfy the Partial Judgment and comply with their tax obligations, Movants sought to enjoin Mr. DeMan from collecting in Texas monies Mr. DeMan is

no longer due. However, at the hearing on their application for injunctive relief, this Court held that it lacked jurisdiction and thus denied Movants' application.

Because Mr. DeMan's Texas collection efforts pose the threat of immediate and irreparable harm to Movants and are contrary to law, on September 28, 2020 Movants further sought to satisfy the Partial Judgment in Puerto Rico by depositing with the Puerto Rico court an additional $294,257.80, representing the balance of the gross amount of the Partial Judgment and post-judgment interest not already in the court registry. Exhibit B ¶ 10. Movants requested that the Puerto Rico court order Mr. DeMan to withdraw such sum as the Court deems Mr. DeMan entitled to, and, if the court determines Mr. DeMan is entitled to less than the gross amount, return to Movants any excess funds. *Id.* Movants further requested that the court declare the Partial Judgment satisfied. *Id*. Thus, Movants have squarely asked the Puerto Rico trial court to determine whether taxes should be withheld from the Partial Judgment and to determine the amount to which Mr. DeMan is entitled.

ARGUMENT

I. The Affidavit Supporting the Writ of Garnishment is Defective Because it Provides no Factual Basis for the Assertions Therein.

Tex. R. Civ. P. 658 requires that an application for a writ of garnishment "be supported by affidavits of the plaintiff, his agent, his attorney, or other person having knowledge of relevant facts." The "application and any affidavits shall be made on personal knowledge and shall set forth such facts as would be admissible in evidence; provided that facts may be stated based upon information and belief if the grounds of such belief are specifically stated." Tex. R. Civ. P. 658. That requirement applies "to both pre-and post-judgment garnishment proceedings." *Simulis, L.L.C. v. G.E. Cap. Corp.*, 276 S.W.3d 109, 115 (Tex. App.—Houston [1st Dist.] 2008, no pet.) (finding requirement applicable to post-judgment garnishment proceedings).

Where an attorney of record submits an affidavit based on his personal knowledge, the failure to "set forth any facts that would be admissible in evidence as required by rule 658" is fatal to the affidavit. *See Wilson v. HPSC, Inc.*, No. 05-09-00703-CV, 2010 WL 1713998, at *1 (Tex. App.—Dallas April 28, 2010, no pet.) (garnishment application and supporting affidavit defective where affidavit failed to set forth sufficient facts). Furthermore, where an affidavit is based on information and belief, an affiant must "specifically state the grounds for such relief." *See id.*

Counsel's affidavit purporting to support the Writ application fails to set forth any facts that would be admissible in evidence to prove his assertion that "Defendants do not possess property within this state that is subject to execution and that is sufficient to satisfy the judgment." The affiant's failure to include any facts supporting his statements in the affidavit render the affidavit, and thus the Writ, defective. Accordingly, the Writ should be dissolved.

II. The Writ of Garnishment Should be Dissolved Because the Full Amount of the Judgment Sits with the Puerto Rico Court That Originally Issued it.

As further explained in Movants' Motion to Reconsider attached hereto, Movants' deposit of the full amount of the judgment into the Puerto Rico court registry has obviated the need for the Writ. But instead of submitting to the Puerto Rico court a simple request for the full amount of the judgment now sitting in the registry, Mr. DeMan insists on pursuing collection through the Writ. Accordingly, the Court should dissolve this harrassive and unnecessary Writ and let the Puerto Rico court decide how and when to disburse to DeMan the amount of funds in that court's registry.

For the foregoing reasons, Movants respectfully request that the Writ be dissolved. Further, pursuant to Tex. R. Civ. P. 664a, the filing of this "motion shall stay any further proceedings under the writ, except for any orders concerning the care, preservation or sale of any perishable property, until a hearing" on the writ is had, and the issue determined.

Dated: October 19, 2020

Respectfully submitted,

/s/ Benjamin T. Pendroff

Benjamin T. Pendroff
State Bar No. 24094893
bpendroff@btlaw.com
BARNES & THORNBURG LLP
2121 N. Pearl St., Suite 700
Dallas, Texas 75201
Tel.: (214) 258-4200
Fax: (214) 258-4199

Attorneys for Raiden Commodities, L.P. and Aspire Commodities, L.P.

CERTIFICATE OF CONFERENCE

I hereby certify that on October 15, 2020, I conferred with counsel for Patrick DeMan who indicated that Mr. DeMan is opposed to this Motion.

/s/ Benjamin T. Pendroff
Benjamin T. Pendroff

CERTIFICATE OF SERVICE

I hereby certify that on October 19, 2020 a true and correct copy of the foregoing document was served via electronic service to all counsel of record in accordance with the Texas Rules of Civil Procedure.

/s/ Benjamin T. Pendroff
Benjamin T. Pendroff

Exhibit A

CAUSE NO. 2019-79857

PATRICK A.P. DE MAN,	§	IN THE DISTRICT COURT OF
	§	
	§	
	§	
v.	§	HARRIS COUNTY, TEXAS
	§	
	§	
RAIDEN COMMODITIES, L.P., and	§	
ASPIRE COMMODITIES, L.P.	§	61ST JUDICIAL DISTRICT
	§	

EMERGENCY MOTION TO RECONSIDER ORDER DENYING MOVANTS' APPLICATION FOR TEMPORARY INJUNCTION AND, IN THE ALTERNATIVE, MOTION TO STAY ENFORCEMENT OF JUDGMENT

TO THE HONORABLE JUDGE OF THIS COURT:

Movants Raiden Commodities, L.P. ("Raiden") and Aspire Commodities, L.P. ("Aspire" and with Raiden, "Movants"), file this Emergency Motion to Reconsider Order Denying Movants' Application for Temporary Injunction and, In the Alternative, Motion to Stay Enforcement of Judgment.

During the September 24, 2020 hearing on Movants' application for a temporary injunction (the "TI Hearing"), this Court held that it lacked jurisdiction to enjoin Patrick DeMan ("DeMan") from collecting on the Puerto Rico partial judgment (the "Partial Judgment") DeMan domesticated here.[1] However, contrary to Mr. DeMan's arguments, this Court has both the inherent power and statutory authority to enjoin DeMan's collection of the Partial Judgment.

And, the Court should exercise that power here because Movants have now deposited the full amount of the Partial Judgment with the Puerto Rico court that originally granted it, yet Mr.

[1] Despite ruling on the jurisdictional issue without Movants presenting witnesses or introducing evidence, the Order entered denying Movants' application states that the application "lacks merit." However, the Court made clear at the September 24, 2020 hearing that it denied the application based on lack of jurisdiction.

DeMan has not even sought to have those funds released to him. Movants have also requested that the Puerto Rico court disburse to Mr. DeMan as much of the Partial Judgment as it sees fit and to declare the Partial Judgment satisfied. Accordingly, the Puerto Rico court will determine how and when the Partial Judgment it granted is satisfied. Allowing Mr. DeMan to collect on the gross amount of the Partial Judgment in Texas has the potential to undermine and contradict the Puerto Rico court's ruling and subject Defendants to double payment, unjustly.

Thus, Movants respectfully request that this Court reconsider its denial of Movants' application for temporary injunction and reset a temporary injunction hearing at the earliest possible time. Alternatively, Movants request the Court to temporarily stay any enforcement of the Partial Judgment in Texas while the Puerto Rico court decides how and when to disburse the Partial Judgment amount to Mr. DeMan.

BACKGROUND

On November 1, 2019, Mr. DeMan attempted to domesticate in this Court the Partial Judgment awarding him just over $690,000 in allegedly unpaid wages and just over $100,000 in attorneys' fees. Because the Partial Judgment did not account for mandatory tax withholdings from the payment of wages (among other reasons), Movants filed a motion to vacate the domesticated judgment, and in the alternative, requested clarification from the Court regarding the nature of any required payment to DeMan ("Motion to Vacate").

On January 9, 2020, Movants caused to be deposited in the Puerto Rico court's registry the net amount of wages ($439,868.19) and attorneys' fees ($93,264.34) required to satisfy the Partial Judgment pursuant to Puerto Rico law. Declaration of Adam Sinn, Exhibit 1 ¶ 6.

In May 2020, in accordance with both federal and Puerto Rico law, Movants deposited with the Puerto Rico and federal tax authorities $269,506.49, the amount required to be withheld from Mr. DeMan's wages. Exhibit 1 ¶ 7.

On August 14, 2020, Movants further deposited with the Puerto Rico court registry post-judgment interest in the amount of $47,434.45. Exhibit 1 ¶ 8. In September 2020, Movants deposited $10,362.71 with the proper taxing authorities to satisfy the tax obligations associated with the Puerto Rico court attorneys' fees award. Exhibit 1 ¶ 9.

Having done what they could to satisfy the Partial Judgment and comply with their tax obligations, Movants sought to enjoin Mr. DeMan from collecting in Texas monies Mr. DeMan is no longer due. However, at the TI Hearing, this Court held that it lacked jurisdiction and thus denied Movants' application for temporary injunctive relief.

Because Mr. DeMan's Texas collection efforts pose the threat of immediate and irreparable harm to Movants and are contrary to law, on September 28, 2020 Movants further sought to satisfy the Partial Judgment in Puerto Rico by depositing with the Puerto Rico court an additional $294,257.80, representing the balance of the gross amount of the Partial Judgment and post-judgment interest not already in the court registry. Exhibit 1 ¶ 10; *see also* Certified Translation of Consignment Motion, attached hereto as Exhibit 2. Movants requested that the Puerto Rico court order Mr. DeMan to withdraw such sum as the Court deems Mr. DeMan entitled to, and, if the court determines Mr. DeMan is entitled to less than the gross amount, permit Movants to withdraw any excess funds. Exhibit 2 at 5. Movants further requested that the court declare the Partial Judgment satisfied. *Id*. Thus, Movants have squarely asked the Puerto Rico trial court to determine whether taxes should be withheld from the Partial Judgment and to determine the amount to which Mr. DeMan is entitled.

Mr. DeMan knows that the full amount of the Partial Judgment awaits him in Puerto Rico pending the decision of that court. Nevertheless, as he has consistently done in the past, Mr. DeMan refuses to take even the smallest step to obtain those funds, insisting instead on pursuing unnecessary collection efforts in Texas.

Despite Movants' efforts to avoid further burdening this Court, and obviating the need for injunctive relief, Mr. DeMan has rejected any suggestion from Movants that he stand down on his Texas collection efforts.

Movants must now respectfully request that this Court reconsider its ruling that it lacks jurisdiction to enjoin Mr. DeMan from enforcing the Partial Judgment in Texas, and immediately reset a hearing on Movants' application for temporary injunction. Alternatively, Movants request that the Court stay enforcement of the Partial Judgment in Texas to give the Puerto Rico court sufficient time to disburse to Mr. DeMan the amount of the Partial Judgment to which the Puerto Rico court deems Mr. DeMan entitled, and then declare the Partial Judgment satisfied.

ARGUMENT

1. Applicable Law.

A. Trial courts retain jurisdiction to enforce, and enjoin enforcement of, domesticated foreign judgments, even after the expiration of plenary power.

A "trial court retains statutory and inherent authority to enforce" a domesticated foreign judgment, even after plenary power expires. *BancorpSouth Bank v. Prevot*, 256 S.W.3d 719, 724 (Tex. App.—Houston [14th Dist.] 2008, no pet.) (holding trial court erred in determining it lacked jurisdiction to enforce domesticated foreign judgment after plenary power expired); *see* Tex. Civ. Prac. & Rem. Code § 35.003(c) (a "filed foreign judgment has the same effect and is subject to the same procedures . . . and proceedings for . . . staying, enforcing, or satisfying a judgment as a judgment of the court in which it is filed").

A trial court "retains at all times its inherent power to enforce its judgments, and it may employ suitable methods to do so," *Jaycap Fin., Ltd. v. Neustaedter*, No. 13-17-00680, 2019 WL 6793825, at *3 (Tex. App.—Corpus Christi-Edinburg Dec. 12, 2019, no pet.) (attached, hereto as Exhibit 3) (holding trial court acted within its jurisdiction when it enjoined execution of a domesticated foreign judgment). A temporary injunction "relates to enforcement of the judgment, a matter which is within the trial court's inherent power and for which it retains jurisdiction." *Id*.

B. Texas Civil Practice and Remedies Code § 65.023 is meant to ensure comity among the courts of this State, not deprive a trial court of jurisdiction over judgments in its own court.

In addition to the trial court's inherent power to enforce—and therefore enjoin—judgments, Section 65.013 of the Texas Civil Practice & Remedies Code allows a court to issue an injunction staying a judgment for "as much of the recovery . . . as the complainant in his petition shows himself equitably entitled to be relieved against and as much as will cover the costs." However, a writ of injunction to stay execution of a judgment "must be tried in the court in which the . . . judgment was rendered." Tex. Civ. Prac. & Rem. Code § 65.023(b). That jurisdictional limitation "only applies to a suit attacking the judgment, questioning its validity, or presenting defenses properly connected with the suit in which it was rendered, and which should have been adjudicated therein." *Counsel Fin. Servcs., L.L.C. v. Liebowitz*, No. 13-10-00200-CV, 2011 WL 2652158, at *7 (Tex. App.—Corpus Christi-Edinburg Jul. 1, 2011, review denied) (internal citation omitted) (attached hereto as Exhibit 4). Section 65.023 "is intended to ensure that comity prevails among the various ***trial courts of Texas***." *See McVeigh v. Lerner,* 849 S.W.2d 911, 914 (Tex. App.—Houston [1st Dist.] 1993, writ denied) (emphasis added); *see also Bruton v. Cantu*, 960 S.W.2d 91, 94 (Tex. App.—Corpus Christi-Edinburg 1997, no pet.) (same).

2. This Court has Jurisdiction to Enjoin Enforcement of the Partial Judgment.

A. The Court can enjoin enforcement of domesticated foreign judgments.

The Partial Judgment was domesticated in this Court, thus it now "has the same effect and is subject to the same procedures . . . and proceedings for . . . staying, enforcing, or satisfying a judgment as a judgment" filed in this Court. Tex. Civ. Prac. & Rem. Code § 35.003(c). This Court "retains at all times its inherent power to enforce its judgments, and it may employ suitable methods to do so," even where the judgment has been domesticated from a foreign jurisdiction. *See Neustaedter*, 2019 WL 6793825, at *3 (holding trial court acted within its jurisdiction when it enjoined execution of a domesticated foreign judgment); *see also Prevot*, 256 S.W.3d at 724 (holding trial court erred in determining it lacked jurisdiction to enforce domesticated foreign judgment after plenary power expired). Thus, this Court has jurisdiction to enjoin enforcement of the domesticated Partial Judgment.

B. Tex. Civ. Prac. & Rem. Code § 65.023(b) is inapplicable to Movants' request for injunctive relief.

Tex. Civ. Prac. & Rem. Code § 65.013 provides a statutory basis to enjoin enforcement of a judgment on equitable grounds. A movant must seek such relief in the court in which the judgment was rendered. Tex. Civ. Prac. & Rem. Code § 65.023(b). However, Section 65.023(b) only applies to suits "attacking the judgment, questioning its validity, or presenting defenses properly connected with the suit in which it was rendered, and which should have been adjudicated therein." *Liebowitz*, 2011 WL 2652158, at *7. The Court held at the TI Hearing that Section 65.023(b) divested it of jurisdiction to hear this matter, but Movants' application implicates no such jurisdictional issues and Section 65.023(b) is inapplicable here.

As Movants argued during the TI Hearing, the Court should enjoin Mr. DeMan from enforcing the Partial Judgment in Texas because Movants' payments into the Puerto Rico court,

coupled with Movants' payment of withholdings to the proper taxing authorities, satisfies the Partial Judgment. In other words, Movants are not arguing they should not have to pay the Partial Judgment, they are arguing that they already did so and thus should be equitably relieved from further payment. This Court has jurisdiction to enjoin collection of a satisfied domesticated foreign judgment. *See Neustaedter*, 2019 WL 6793825, at *3. Accordingly, the Court had, and still has, jurisdiction over Movants' application for injunctive relief.

A trial court's enforcement may not be "inconsistent with the original judgment or [] otherwise constitute[] a material change in substantial adjudicated portions of the judgment." *See Custom Corporates, Inc. v. Security Storage, Inc.*, 207 S.W.3d 835, 839 (Tex. App.—Houston [14th Dist.] 2006, no pet.) (internal citation omitted). Here, Movants' request to enjoin Mr. DeMan was entirely consistent with the original judgment and did not constitute a material change in the judgment. At the time of the TI Hearing, Movants had paid into the Puerto Rico court registry the net amount of the Partial Judgment. Movants also remitted to the proper taxing authorities statutorily-mandated withholdings. *See* Puerto Rico Internal Revenue Code § 1062.01(b) (requiring employers making a payment of wages to deduct and withhold a tax on the sum of all wages); *see also Kurio v. U.S.*, 281 F. Supp. 252, 254 n.1 (S.D. Tex. 1968) (requiring employers to withhold taxes from wages paid to employees by "deducting the appropriate amount from the employee's wages when paid"). And pursuant to Puerto Rico Tax Regulation 1062.01(a)(1)-(1)(e)(1), taxes required by code to be deducted from an employee's wages "shall be considered part of the employee's wages payable at the time the deduction is made."

Through their application, Movants sought to be relieved from at least that portion of the Partial Judgment that Movants had remitted to the proper taxing authorities. Because the taxes withheld and remitted pursuant to Puerto Rico Internal Revenue Code are considered part of the

employee's wages, it is entirely consistent with the Partial Judgment's award of wages to ask this Court to enjoin Mr. DeMan from collecting the taxes that were withheld and remitted. *See Martin v. H.B.B. Const. Co.*, 279 F.2d 495, 495–96 (5th Cir. 1960) (holding the withholding of tax from an award of compensation not only was "no abuse of discretion but the action of the district court was proper"). Movants' request is consistent with the judgment and should be heard by this Court.

C. Even if applicable, Section 65.023(b) does not divest this Court of jurisdiction to enjoin enforcement of the Partial Judgment.

At the TI Hearing, Mr. DeMan's counsel relied on one non-binding unpublished opinion to support the proposition that Section 65.023(b) divests this Court of jurisdiction over its own judgment. However, such reliance was misplaced for several reasons.

First, Section 65.023(b) does not require Movants to seek injunctive relief from the Puerto Rico court simply because the Partial Judgment was originally granted there. Section 65.023(b) "is intended to ensure that comity prevails among the various ***trial courts of Texas***." *See Lerner,* 849 S.W.2d at 914 (emphasis added); *see also Cantu*, 960 S.W.2d at 94. In other words, Section 65.023(b) is meant to ensure that one Texas court does not interfere with the judgment of another Texas court. It does not, and was not intended to, speak to foreign courts. Furthermore, Mr. DeMan domesticated the Partial Judgment in a Texas court specifically because he wanted it enforced here. And this Court entered the Partial Judgment and denied Movants' Motion to Vacate, holding the Partial Judgment is a "presently enforceable ***Texas*** judgment." (emphasis added). Thus, for purposes of enforcing the Partial Judgment, it was rendered by *this* Court, and this Court would be the *only* proper venue if Section 65.023(b) applied.

Next, contrary to Mr. DeMan's assertions, *Liebowitz* does not stand for the proposition that Section 65.023(b) denies jurisdiction to the Texas trial court that domesticated a foreign judgment. Rather, the purpose of Section 65.023(b) is just the opposite—to ensure that the court that entered

the judgment does not cede jurisdiction to another court of the State. In *Liebowitz*, the 370th District Court of Hidalgo County "enjoined execution on a judgment domesticated in the 285th District court of Bexar County." *Liebowitz*, 2011 WL 2652158, at *7. The court there held that Section 65.023(b) applied and thus "the underlying court lacked jurisdiction over the claims pertaining to execution and enforcement of the judgment." *Id*. at *8. In other words, *Liebowitz* did not hold that the Bexar County court lacked jurisdiction to enforce the very judgment it domesticated, rather, *Liebowitz* held that the Hidalgo County court lacked jurisdiction to enjoin the judgment domesticated in Bexar County. If, as Mr. DeMan's counsel argued, Section 65.023(b) applied here, it would mean this Court is the ***only*** court that could enjoin the domesticated Partial Judgment.

3. Alternatively, this Court Should Temporarily Stay Enforcement of the Partial Judgment Pending the Puerto Rico Court's Decision Regarding the Deposited Funds.

This Court should use its inherent power to allow the court in Puerto Rico to decide how much of the Partial Judgment should be disbursed to Mr. DeMan, and whether the Partial Judgment is satisfied. That court now holds in its registry the gross amount of the Partial Judgment, plus all applicable post-judgment interest. And that court will decide whether Mr. DeMan is entitled to all of the money in the registry, or if some was properly withheld and remitted to the proper taxing authorities. Accordingly, this Court should temporarily stay all enforcement in Texas of the Partial Judgment to allow time for the Puerto Rico court to decide the amount of money to which Mr. DeMan is entitled.

WHEREFORE, Movants respectfully request that this Court reconsider its holding that it lacks jurisdiction to grant Movants' application to enjoin Mr. DeMan from enforcing the Partial Judgment in Texas, or, alternatively, stay enforcement of the Partial Judgment in Texas to allow the Puerto Rico Court that originally rendered the Partial Judgment to determine how much of the Partial Judgment Mr. DeMan is entitled to receive.

Dated: October 18, 2020

Respectfully submitted,

/s/ Benjamin T. Pendroff

Benjamin T. Pendroff
State Bar No. 24094893
bpendroff@btlaw.com
BARNES & THORNBURG LLP
2121 N. Pearl St., Suite 700
Dallas, Texas 75201
Tel.: (214) 258-4200
Fax: (214) 258-4199

Attorneys for Raiden Commodities, L.P. and Aspire Commodities, L.P.

CERTIFICATE OF CONFERENCE

I hereby certify that on October 15, 2020, I conferred with counsel for Patrick DeMan who indicated that Mr. DeMan opposes this Motion.

/s/ Benjamin T. Pendroff
Benjamin T. Pendroff

CERTIFICATE OF SERVICE

I hereby certify that on October 18, 2020, the foregoing document was served on all counsel of record via the Court's electronic filing and service system.

/s/ Benjamin T. Pendroff
Benjamin T. Pendroff

Exhibit 1

DECLARATION OF ADAM SINN

I, ADAM SINN, declare under penalty of perjury:

1. My name is Adam Sinn. I am over 18 years of age, of sound mind and am capable of making this declaration. The following facts are true and correct and based on my own personal knowledge.

2. I indirectly own and direct the operations of both Raiden Commodities, L.P., now known as Aspire Power Ventures, LP ("Raiden") and Aspire Commodities, L.P., ("Aspire") (collectively "Movants") the entities identified in the action styled *Patrick A.P DeMan v. Raiden Commodities, L.P. and Aspire Commodities, L.P.*, Cause No. 2019-79857, in the 61st Judicial District Court of Harris County, Texas and the related action in the same court styled *Patrick A.P. DeMan, v. Electric Reliability Council of Texas, Inc.*, Cause No. 2019-79857C.

3. On May 7, 2018, Patrick DeMan ("DeMan") filed a motion for summary judgment in cause number DAC2016-2144 in the Commonwealth of Puerto Rico, seeking payment to him of the gross amount of just over $690,000 in allegedly unpaid wages.

4. On December 27, 2018, the Puerto Rico court entered the Partial Judgment in Mr. DeMan's favor, finding that the gross amount represented unpaid wages.

5. On November 1, 2019, Patrick DeMan filed in this Court an action to domesticate the Partial Judgment. Movants then filed a motion to vacate the domesticated judgment, and in the alternative, requested clarification from the Court regarding the nature of any required payment to DeMan.

6. On January 9, 2020, Movants and I caused to be deposited in the Puerto Rico court's registry the net amount of wages ($439,868.19) and attorneys' fees ($93,264.34), which represents the gross amount of the judgment at issue, minus federal and state taxes applicable to wages, which

I understand the law requires be withheld from the subject wages. Movants notified the Puerto Rico court and DeMan prior to the deposit of those amounts and the calculation of the federal and state taxes withheld. DeMan did not object to the proposed deposit and withholdings prior to such being made, only after, likely to create confusion and increase litigation costs associated with the collection of the judgment.

7. In May 2020, Movants and I caused to be deposited and paid to the Puerto Rico and federal tax authorities $269,506.49 which I understand represented income tax liabilities and withholdings applicable to the Partial Judgment.

8. On August 14, 2020, Movants and I further caused to be deposited with the Puerto Rico court registry post-judgment interest in the amount of $47,434.45.

9. In September 2020, Movants and I further caused to be deposited with the proper taxing authorities $10,362.71, which I understand represented tax liabilities and withholdings applicable to the Puerto Rico court attorneys' fees award.

10. On September 28, 2020, Movants and I further caused to be deposited with the Puerto Rico court registry an additional $294,257.80, which I understand represented the balance of the gross amount of the Partial Judgment and post-judgment interest not already in the registry of the Puerto Rico court. At that time, Movants requested that the Puerto Rico court determine how much of the gross amount of the Partial Judgment Mr. DeMan is entitled to, order Mr. DeMan to withdraw such amount, allow Movants to withdraw any excess amount, and declare the Partial Judgment satisfied.

11. I understand that DeMan has not attempted to obtain the funds that have been deposited in the Puerto Rico court registry.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 16th day of October, 2020 in Harris County, Texas

Adam Sinn

Exhibit 2

COMMONWEALTH OF PUERTO RICO
DISTRICT COURT
JUDICIAL CENTER OF BAYAMÓN
SUPERIOR DIVISION

PATRICK A.P. DE MAN; MIKA DE MAN (a.k.a. MIKA KAWAJIRI-DE MAN or MIKA KAWAJIRI); and the COMMUNITY PROPERTY COMPRISED BY BOTH OF THEM, Plaintiffs, v. ADAM C. SINN, *et al.,* Defendants.	Civil No. D AC2016-2144 (701) RE: FAILURE TO FULFILL FIDUCIARY DUTY, ETC...

[illegible date stamp]

URGENT MOTION TO SUPPLEMENT CONSIGNMENT IN SATISFACTION OF PARTIAL SUMMARY JUDGMENT AND REQUEST FOR AN ORDER

TO THE HONORABLE COURT:

NOW APPEARING are co-defendants Adam C. Sinn, Raiden Commodities, L.P., Raiden Commodities 1, LLC, Aspire Commodities, L.P., Aspire Commodities 1, LLC, and Gonemaroon Living Trust, (jointly, where appropriate, the "Defendants"), through the undersigned legal representation, who most respectfully report:

1. As follows from the record, on December 27, 2018, your Honorable Court pronounced the Partial Summary Judgment *("Partial Judgment")* in the plaintiffs' favor, which was served on January 3, 2019.[1] In said ruling, your Court concluded that co-plaintiff Parick [sic] A.P. De Man ("De Man") was an employee of one of the Defendants. Your Court thus ordered said Defendants to pay $690,847.00 as wages under Law No. 17 of 1931, 29 L.P.R.A. § 175, plus $103,627.05 in statutory attorneys' fees, awarded on account of this being a labor claim, in other words, a claim by an employee, for wages, against his employer. *See: Partial Judgment,* page 6. The *Partial Judgment* did not order anything regarding the payment [of] post-judgment interest or tax withholdings.

2. For purposes of satisfying the *Partial Judgment,* but without waiving their defenses and objections, on January 9, 2020, the net sums were consigned of

[1] *See: Motion to Consign Funds and Satisfy Partial Judgment,* submitted on January 9, 2020.

$439,868.19, corresponding to the wages awarded to co-plaintiff De Man, plus $93,264.34, corresponding to the statutory attorneys' fees ordered in the *Partial Judgment* (hereinafter, the "Consignment"). Prior to making the Consignment, the Defendants informed this Honorable Court of their intention to deposit the net sums owed in order to satisfy the *Partial Judgment*. *See, Informative Motion on Intention to Consign and Satisfy the Partial Judgment,* filed on December 27, 2019. The plaintiffs did not oppose nor raise an objection to said motion.

3. As has been explained in various motions,[2] the Defendants consigned the net payment on the *Partial Judgment,* because local and federal statutes impose upon the obligation on such Defendants, as occurs in the case at hand, to make certain tax withholdings on all payments of wages and services, and to remit those withholdings to the pertinent tax agencies. Specifically, it has been explained that since the *Partial Judgment* ordered the payment of wages ("wages") to employee De Man, Section 1062.01 of the Internal Revenue Code of 2011, as amended ("Code"), requires that employers Raiden LP and/or Aspire LP, on account of the judgment, withhold the tax at origin on said income and remit it to the Department of the Treasury. For its part, Section 1062.03 of the Code requires Raiden LP and/or Aspire LP to withhold taxes for services on the statutory attorneys' fees ordered in the *Partial Judgment* and remit said taxes to the Department of the Treasury. At the federal level, several statutes require the withholding of social security and Medicaid, among other withholdings.

4. In fulfillment of its statutory obligations, during the month of May 2020, Raiden LP remitted the tax withholdings to the corresponding local and federal tax authorities, made on the wages of co-plaintiff De Man. That was reported to this Honorable Court on June 16, 2020. *See, Informative Motion on Payment of Tax Withholdings,* filed on that date.

5. Such being the state of affairs, on July 31, 2020, that is, seven (7) months after the Consignment was made, this Honorable Court

[2] By way example, see: *Motion in Compliance with Order Regarding Consignment,* filed on February 4, 2020; *Rejoinder to "Brief reply"* filed on February 25, 2020; *Reply to "Motion in Reaction to Informative Motion on Payment of Tax Withholdings,"* filed on August 5, 2020; and *Motion for Reconsideration of the "Resolution" of July 31, 2020,* filed on August 27, 2020.

pronounced a Resolution *("Resolution"),* served on August 12 of that same year, declaring that the January 9, 2020 Consignment, was "badly" made. Your Court (Olguín Arroyo, A., Judge) maintained "that the defendants were not authorized to make the above-mentioned [tax] withholding." Thus, said party "cannot unilaterally modify the redress that was awarded." *Resolution,* page 2. At the same time, this Honorable Court concluded that post-judgment interest "is mandatory and applicable, even though it is not mentioned in the judgment" *Resolution,* page 2. As can be observed, taking a clearly contradictory position, this Honorable Court concluded, on the one hand, that tax withholdings on the payment of wages and services are improper and must be authorized by the court, even though they are required by law, while, on the other hand, it held that the payment of post-judgment interest is applicable and does not require judicial authorization because its payment is required by law. The *Resolution* did not cite any legal authority explaining why compliance with the tax laws requires judicial authorization, but compliance with the Rules of Civil Procedure and their interpretive case law does not.

6. In a timely fashion, on August 27, 2020, the Defendants filed a *Motion for Reconsideration of the Resolution ("Motion for Reconsideration").* In it, the Defendants provided strong legal arguments demonstrating that the consignment was properly made and in keeping with law. Said motion for reconsideration has not yet been heard by this Illustrious Court.

7. With respect to post-judgment interest, it is important to point out that it was requested by the plaintiffs/respondents for the first time through the *Motion Requesting the Setting of Interest under Rule 44.3(A)* filed on January 10, 2020, that is, after the Consignment was made. Said motion was finally granted in the *Resolution* as well, that is, seven (7) months after it was filed. In compliance with what the *Resolution* ordered in said regard, on August 14, 2020, the Defendants consigned the sum of $47,434.45 with this Honorable Court as post-judgment interest.

8. Nonetheless, the plaintiffs are fiercely opposed to the Defendants' making the tax withholdings that are required under our tax laws, and they insist that, in order to satisfy the *Partial Judgment,* the Defendants must make the gross payment of the sums ordered in the *Partial Judgment*, which undermines the clear mandate of the federal and local statutes, which require that, on all payments of wages and services, the

employer withhold the legally mandated taxes. To make matters worse, the plaintiffs also argue that, since the Consignment was declared as being badly made, the *Partial Judgment* has continued accruing interest, seven (7) months after the Consignment was made.

9. As if the foregoing were not sufficient, in their zeal to receive the gross payment of the *Partial Judgment,* the plaintiffs have brought a lawsuit in the State of Texas to validate the judgment in said jurisdiction and obtain the payment without any withholding whatsoever. For such purposes, the plaintiffs have attached the accounts of the Defendants in the State of Texas for the totality of the *Partial Judgment,* despite the fact that the Defendants made the Consignment and also deposited the post-judgment interest. This redundant attempt by the plaintiffs to attach the Defendants' accounts in the State of Texas, even though the Defendants already made the Consignment and deposited the post-judgment interest, represents a threat and has jeopardized not only the Defendants' reputation, but also the general operations of the Defendants in said State. Likewise, given that the *Motion for Reconsideration* on the Consignment and the payment of post-judgment interest is pending before this Honorable Court, the fact that the plaintiffs are in a court of the State Texas seeking the satisfaction of the same ruling being evaluated by your Court is an affront to the jurisdiction of your Illustrious Court and an abuse of the judicial mechanisms.[3]

10. It should also be pointed out that the fact that this Honorable Court took seven (7) months to declare that the Consignment was not proper has caused harm to the Defendants, given that the plaintiffs are now seeking to collect post-judgment interest for all the months that the Consignment was pending adjudication. Likewise, the Defendants already remitted the withholdings made on the wages and attorney's fees awarded in the *Partial Judgment* to the corresponding tax agencies within the term granted to the Defendants by our tax laws for doing so.

11. In order to put an end to this abusive collection attempt on the part of the plaintiffs, with full reserve of rights, and without waiving the multiple defenses and

[3] Therefore, on September 22, 2020, the Defendants filed an *Urgent Motion Requesting Orders* so as to have this Honorable Court decide in said regard, rule upon the August 27, 2020 *Motion for Reconsideration*, disburse the funds to co-plaintiff De Man, and order the plaintiffs to desist from any attempt to collect on the *Partial Judgment*, given that doing so is an abusive exercise of a right. Said *Urgent Motion* is also pending adjudication.

the pending objections, the Defendants hereby deposit the sum of **$294,257.80** (hereinafter, the "Deposit").[4] It is comprised as follows: (a) $261,341.52, which, added to the $533,132.53 already consigned, constitute payment of the gross principal ordered by virtue of the *Partial Judgment* for De Man's wages plus the statutory attorney's fees; and (b) $32,916.28, which, added to the $47,434.45 already consigned, constitute the payment of the post-judgment interest accrued on the *Partial Judgment* up to the present.[5] With this deposit, the Defendants satisfy the *Partial Judgment,* without making the withholdings mandated by law, subject to the results and final disposition of the various motions pending adjudication, and that of the action for nullification of the Partial Judgment, Civil Case No. BY2019CV05432.

FOR ALL OF THE REASONS SET FORTH ABOVE, the Defendants most respectfully request that this Honorable Court:

i) Determine and decide whether the net or gross (free of withholdings) payment of the *Partial Judgment* is applicable*;*

ii) Accept the Deposit made today, jointly with the Consignment made on January 9, 2020 and the payment of post-judgment interest made on August 14, 2020;

iii) Order co-plaintiff De Man to withdraw or order the disbursement to the employee of such sum as this Honorable Court determines satisfies the *Partial Judgment* and, if any excess was consigned, authorize the Defendants to withdraw the same; and

iv) Declare, without any delay whatsoever, that the *Partial Judgment* has been satisfied.

I CERTIFY: That on this same date, a true and exact copy of this motion has been served by e-mail on Attorney German J. Brau); on Attorney Antonio Bauzá Santos (antonio.bauza@bioslawpr.com), and on Attorney Alejandro J. García Padilla (agp@garciapadillalaw.com). **I FURTHERMORE CERTIFY,** that in accordance with Rule 67.5

[4] Just like with the Consignment, this Deposit is made under protest and absolute reserve of rights. For such purpose, we incorporate by reference the arguments and foundations of the "Motion on the Deposit of Wages under the Partial Judgment, Under Protest and with Reserves of Rights" filed in Case BY2019CUV05432 (701), as well as those for Nullification of Judgment, of December 27, 2019 and the "Informative Motion on the Intention to Make a Deposit and Satisfy the Partial Judgment" filed in the case referred to above on December 27, 2019.

[5] The Deposit is made through two checks: one for $$249,985.00 and another for $44,272.80.

on Civil Procedure, 32 L.P.R.A. Ap. V, R. 67.5, on this same date a courtesy copy of this motion has been served by messenger service on the Hon. Wanda Cintrón Valentin.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 28th of September of 2020.

ADSUAR MUÑIZ GOYCO
SEDA & PÉREZ-OCHOA, PSC
Attorneys for the Defendants
P.O. BOX 70294
San Juan, Puerto Rico 00936-8294
Tel: 787.756.9000 / Fax: 787.756.9010

By: [signature]
ERIC PÉREZ-OCHOA
Puerto Rican Bar No.: 9739
E-mail: epo@amgprlaw.com

By: [signature]
EDWIN J. SEDA-FERNÁNDEZ
Puerto Rican Bar No.: 9315
E-mail: seda@amg.prlaw.com

By: [signature]
MIRELIS VALLE-CANCEL
Puerto Rican Bar No.: 21115
E-mail: mvalle@amgprlaw.com

GSA LAW, LLC
Attorneys for co-defendant
Gonemaroon Living Trust
PO BOX 363505
San Juan, Puerto Rico 00936-3505
Tels. 787-963-0220, 0221, 0222

By: _____
GUILLERMO SAN ANTONIO ACHA
Puerto Rican Bar No.: 12971
E-mail: gsa@gsalawpr.com

BANCO POPULAR.

PO Box 362708 San Juan, Puerto Rico 00936-2708
POPULAR CENTER

OFFICIAL CHECK
CUSTOMER RECEIPT AND AGREEMENT

Payee: SECRETARIO DEL TRIBUNAL
["COURT CLERK"]

Check No. **103103000103300**

Date: 09/28/2020

Remitter: ADSUAR MUNIZ GOYCO SEDA PEREZ

Amount:	**$44,272.80**
Fee:	$10.00
Total:	$44,282.80

030 PR52870 663 09/28/2020 03:00 PM BankChecks

NOTICE TO CUSTOMERS:
You usually cannot stop payment of the attached check after you send it to the payee. If it is lost, stolen, or destroyed, notify Source Bank immediately. You may be required to buy an indemnity or surety bond before a replacement or refund is issued.

CHK-001 / 3-19

THIS DOCUMENT HAS A VOID PANTOGRAPH - BORDER CONTAINS MICROPRINTING AND A TRUE WATERMARK ON THE BACK - HOLD AT AN ANGLE TO VIEW

BANCO POPULAR.

PO Box 362708 San Juan, Puerto Rico 00936-2708
POPULAR CENTER

101-201
215

OFFICIAL CHECK

Check No. **103103000103300**

Date: 09/28/2020

$44,272.80

Over $25,000.00 Two Signature Required.

PAY: ***FORTY FOUR THOUSAND TWO HUNDRED SEVENTY TWO DOLLARS AND 80/100***

TO THE ORDER OF SECRETARIO DEL TRIBUNAL ["COURT CLERK"]

Remitter: ADSUAR MUNIZ GOYCO SEDA PEREZ
FDIC Member and Federal Reserve System

Authorized Signature

Authorized Signature

⑈030001033300⑈ ⑆021502011⑆ 000⑈010316⑈

BANCO POPULAR.

PO Box 362708 San Juan, Puerto Rico 00936-2708
POPULAR CENTER

Payee: SECRETARIO DEL TRIBUNAL
["COURT CLERK"]

Remitter: ADSUAR MUNIZ GOYCO SEDA PEREZ

030 PR52870 664 09/28/2020 03:00 PM BankChecks

OFFICIAL CHECK
CUSTOMER RECEIPT AND AGREEMENT

Check No. **103103000103301**

Date: 09/28/2020

Amount:	**$249,985.00**
Fee:	$10.00
Total:	$249,995.00

NOTICE TO CUSTOMERS:
You usually cannot stop payment of the attached check after you send it to the payee. If it is lost, stolent, or destroyed, notify Source Bank immediately. You may be required to buy an indemnity or surely bond before a replacement or refund is issued.

CHK-001 / 3-19

9D154300

THIS DOCUMENT HAS A VOID PANTOGRAPH - BORDER CONTAINS MICROPRINTING AND A TRUE WATERMARK ON THE BACK - HOLD AT AN ANGLE TO VIEW

BANCO POPULAR.

PO Box 362708 San Juan, Puerto Rico 00936-2708
POPULAR CENTER

OFFICIAL CHECK

101-201
215

Check No. **103103000103301**

Date: 09/28/2020

PAY: ***TWO HUNDRED FORTY NINE THOUSAND NINE HUNDRED EIGHTY FIVE DOLLARS AND 00/100***

$249,985.00

Over $25,000.00 Two Signature Required.

TO THE ORDER OF SECRETARIO DEL TRIBUNAL
["COURT CLERK"]

Remitter: ADSUAR MUNIZ GOYCO SEDA PEREZ
FDIC Member and Federal Reserve System

Authorized Signature

Authorized Signature

⑈030001033016⑈ ⑆021502011⑆ 000⑈010316⑈

Arts & Letters
language services

Language Services by Arts & Letters
Translation – Training – Interpretation
3002 Whetrock Lane
Sugar Land, TX 77479
Tel: 281.261.8994 Fax: 419.730.9761

AFFIDAVIT OF ACCURACY

CERTIFICATE OF TRANSLATION ACCURACY

This is to certify that the translation of Urgent Motion to Supplement Consignment in Satisfaction of Partial Summary Judgment and Request for an Order is, to the best of our knowledge and belief, a true and accurate translation carried out by translators competent to translate from Spanish into English in accordance with the highest professional standards.

Dated: October 1, 2020

Name of project manager
Dalia Kadoch

Signature of project manager
Dalia Kadoch

State of Florida
County of Dade

Sworn to and signed before me on the 1 day of Oct., 2020

by Dalia M. Kadoch.

Notary Public's Signature

FANNY LEON
Notary Public - State of Florida
Commission # HH 017881
My Comm. Expires Jul 24, 2024
Bonded through National Notary Assn.

Exhibit 3

2019 WL 6793825
Only the Westlaw citation is currently available.

SEE TX R RAP RULE 47.2 FOR
DESIGNATION AND SIGNING OF OPINIONS.

Court of Appeals of Texas, Corpus Christi-Edinburg.

JAYCAP FINANCIAL, LTD., Appellant,

v.

Alfred NEUSTAEDTER, Appellee.

NUMBER 13-17-00680-CV

|

Delivered and filed December 12, 2019

On appeal from the 404th District Court of Cameron County, Texas. Elia Cornejo Lopez, District Judge.

Attorneys and Law Firms

William F. Kimball, Attorney at Law, 312 East Van Buren Avenue, Harlingen, TX 78550, Attorney of Record for the Appellant.

Frank E. Perez, Attorney at Law, 300 Mexico Blvd., Brownsville, TX 78520, Attorney of Record for the Appellee.

Before Chief Justice Contreras and Justices Hinojosa and Tijerina

MEMORANDUM OPINION

Memorandum Opinion by Justice Hinojosa

***1** In this interlocutory appeal, appellant Jaycap Financial Ltd. challenges the trial court's temporary injunction. *See* Tex. Civ. Prac. & Rem. Code Ann. § 51.014(a)(4). By four issues, appellant contends that the trial court's injunction is improper and requests that we dissolve it. We reverse and remand.

I. Background

Appellee Alfred Neustaedter secured a loan from appellant for $4.3 million to purchase property in Canada. Appellee defaulted on the loan. Appellant sued appellee in Canada, and the Canadian court awarded appellant $4,416,578.60 plus interest "accruing at 17.5% per annum from December 18, 2013 to the date of judgment."[1] Appellant foreclosed on the Canadian property and sold it to satisfy the debt. Appellant received $5,833,186.36 in net sale proceeds after all taxes were paid.

On January 25, 2017, appellant filed the Canadian judgment in the trial court in Cameron County. On January 30, 2017, appellant filed a notice of filing pursuant to the Uniform Enforcement of Foreign Judgments Act. *See id.* § 36A.004. Appellant sent notice that it had filed the foreign judgment in the trial court to appellee's address in Texas and in Canada, and appellee signed that he received the notices on February 7, 2017 and February 23, 2017, respectively. On June 20, 2017, the Cameron County District Clerk issued a writ of execution for the sale of property owned by appellee in Laguna Vista, Texas (the Cameron County property).

On July 31, 2017, appellee filed a motion for "emergency" injunction and damages claiming that appellant was "attempting to sell [the Cameron County property], without appropriate notice, by fraud, or with no right to sell or dispose of such property." Appellee sought a trial on the merits of his claims and temporary injunctive relief to preserve the status quo during the pendency of the case. On July 31, 2017, the trial court issued a temporary restraining order preventing appellant from selling appellee's Cameron County property.

On August 11, 2017, appellant filed a "Motion to Overrule Debtor's Challenges to the Judgment" and plea to the jurisdiction seeking dismissal of appellee's claims for various reasons.[2] The trial court held a hearing on appellant's motions and appellee's motion for temporary injunction on August 14, 2017. At the hearing, evidence was presented that appellant was now seeking payment on the interest it alleges appellee owed as payment on the principal amount, which had been satisfied when appellant sold the Canadian property. Appellant argued that appellee was required to pay 17.5% interest on the $4.4 million judgment for two years. Appellee countered that the judgment only stated that he was required to pay 17.5% interest per annum from December 18, 2013 to the date of judgment. The trial court denied appellant's motions, and on November 27, 2017, the trial court signed a temporary injunction enjoining appellant "from proceeding with any execution of [the Cameron County property]." This appeal followed.

II. Jurisdiction

***2** By its first three issues, appellant claims the temporary injunction should be dissolved because the trial court lacked jurisdiction.

A. Standard of Review

"Subject matter jurisdiction is essential to the authority of a court to decide a case." *Tex. Ass'n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 443 (Tex. 1993). It is never presumed and cannot be waived. *Id.* at 443–44. An appellate court is obligated, even *sua sponte*, to determine the threshold question of jurisdiction. *See Hayes v. State*, 518 S.W.3d 585, 588 (Tex. App.—Tyler 2017, no pet.); *Walker Sand, Inc. v. Baytown Asphalt Materials, Ltd.*, 95 S.W.3d 511, 514 (Tex. App.—Houston [1st Dist.] 2002, no pet.). The existence of subject matter jurisdiction is a question of law that we review de novo. *Tex. Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 226 (Tex. 2004).

B. Applicable Law and Analysis

Appellant argues that the trial court lacked jurisdiction to determine whether the foreign judgment was previously satisfied. Appellant further argues that the trial court lacked jurisdiction to enjoin the execution of a foreign judgment. Finally, appellant argues that the trial court could not enjoin execution after its plenary power had expired. We disagree with appellant on each point.

Once appellant filed its petition and Canadian judgment in the trial court, the trial court had jurisdiction over the now-domesticated Canadian judgment. *See Moncrief v. Harvey*, 805 S.W.2d 20, 22 (Tex. App.—Dallas 1991, no writ) ("[T]he filing of a foreign judgment partakes of the nature of both a plaintiff's original petition and a final judgment: the filing initiates the enforcement proceeding, but it also instantly creates a Texas judgment that is enforceable."); *see also Hernandez v. Seventh Day Adventist Corp.*, 54 S.W.3d 335, 336 (Tex. App.—San Antonio 2001, no pet.) (explaining that the filing of the foreign judgment in the trial court "instantly creates an enforceable Texas judgment"). The Canadian judgment is subject to the same "procedures, defenses, and proceedings for reopening, vacating, staying, enforcing, or satisfying a judgment as a judgment of the court in which it is filed." Tex. Civ. Prac. & Rem. Code Ann. §§ 35.003(c), 36A.006 (providing that a foreign-country judgment is "enforceable in the same manner and to the same extent as a judgment rendered in this state"); *see also* Tex. R. Civ. P. 329b.

Under the then applicable Uniform Foreign Country Money-Judgment Recognition Act, a debtor to a foreign judgment had sixty days from the date he received notice of the filing of the foreign judgment in a Texas trial court to contest the trial court's recognition of the judgment.[3] *See* Act of 1989, 71st Leg., ch. 402 § 5, 1989 Tex. Sess. Law Serv. 402 (repealed). Moreover, the trial court's plenary power over a judgment expires thirty days after it is rendered. *BancorpSouth Bank v. Prevot*, 256 S.W.3d 719, 724 (Tex. App.—Houston [14th Dist.] 2008, no pet.) ("Like any Texas judgment, the trial court's plenary power expired [after] thirty days ... because no party filed a post-judgment motion attacking the judgment."); *Malone v. Emmert Indus. Corp.*, 858 S.W.2d 547, 548 (Tex. App.—Houston [14th Dist.] 1993, writ denied); *see also Walnut Equip. Leasing Co. v. Wu*, 920 S.W.2d 285, 286 (Tex. 1996) (per curiam) (concluding that the judgment debtor's amended answer, the creditor's amended petition, an ensuing bench trial, and the second judgment rendered by the trial court after the trial court's plenary power expired were nullities). Thus, "[w]hen a foreign judgment is acted on outside the plenary power of the trial court, the action is a nullity." *Bahr v. Kohr*, 928 S.W.2d 98, 100 (Tex. App.—San Antonio 1996, writ denied) (citing *Walnut Equip. Leasing Co.*, 920 S.W.2d at 285–86).

***3** We agree with appellant that the trial court's plenary power over the judgment had expired when it issued the temporary injunction. However, a trial court retains at all times its inherent power to enforce its judgments, and it may employ suitable methods to do so. *Kennedy v. Hudnall*, 249 S.W.3d 520, 523 (Tex. App.—Texarkana 2008, no pet.); *see* Tex. R. Civ. P. 308; *Arndt v. Farris*, 633 S.W.2d 497, 499 (Tex. 1982); *see also Miga v. Jensen*, No. 02-11-00074-CV, 2012 WL 745329, at *9 (Tex. App.—Fort Worth Mar. 8, 2012, no pet.) (mem. op.). In addition to its inherent authority, the trial court is vested with express statutory authority to enforce its judgments, including by issuing injunctive relief.[4] *See* Tex. Civ. Prac. & Rem. Code Ann. § 65.011; Tex. R. Civ. P. 308; *Bridas Corp. v. Unocal Corp.*, 16 S.W.3d 887, 889 (Tex. App.—Houston [14th Dist.] 2000, pet. dism'd w.o.j.). The only limit on a trial court's authority to issue enforcement orders is that they may not be inconsistent with the original judgment and must not constitute a material change in substantial adjudicated portions of the judgment. *See Custom Corporates, Inc. v. Security Storage Inc.*, 207 S.W.3d 835, 839 (Tex. App.—Houston [14th Dist.] 2006, no

pet.); *Cook v. Stallcup*, 170 S.W.3d 916, 920 (Tex. App.—Dallas 2005, no pet.).

Here, appellee sought to enjoin an execution sale for specific property on the basis that the judgment "has been fully or substantially paid[.]" The trial court signed a temporary injunction order enjoining appellant "from proceeding with any execution of [the Cameron County property]." The trial court's order is not inconsistent with the underlying judgment, and it does not materially change the judgment. Rather, the temporary injunction relates to enforcement of the judgment, a matter which is within the trial court's inherent power and for which it retains jurisdiction. *See Kennedy*, 249 S.W.3d at 523; *Ford v. Wied*, 823 S.W.2d 423, 424 (Tex. App.—Texarkana 1992, writ denied) (explaining that a party may seek to enjoin execution if the judgment has been satisfied); *see also* 34 Tex. Jur. 3d *Enforcement of Judgments* § 84 (2019) ("Execution may be enjoined where the judgment has been paid." (citing *Hart v. Harrell*, 17 S.W.2d 1093, 1094 (Tex. App.—Eastland 1929, no writ))). Therefore, we conclude that the trial court acted within its jurisdiction when it granted injunctive relief. We overrule appellant's first three issues.

III. Rule 683

By its fourth issue, appellant argues that the temporary injunction fails to satisfy Texas Rule of Civil Procedure 683's requirement that a temporary injunction set forth the reason for its issuance. Appellee agrees on this point, but he maintains that appellant is estopped from asserting error under the invited-error doctrine because appellant submitted the proposed order signed by the trial court.

A. Standard of Review and Applicable Law

We review a trial court's decision to grant a temporary injunction for an abuse of discretion. *See Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002). A trial court abuses its discretion if it rules in an arbitrary manner or without reference to guiding rules and principles. *Id.* at 211; *see Sargeant v. Al Saleh*, 512 S.W.3d 399, 409 (Tex. App.—Corpus Christi–Edinburg 2016, orig. proceeding). A trial court also abuses its discretion when it grants a temporary injunction if it misapplies the law to the established facts. *Sargeant*, 512 S.W.3d at 409.

***4** Texas Rule of Civil Procedure 683 requires that an order granting a temporary injunction state the reasons for its issuance and set the cause for trial on the merits. *See* Tex. R. Civ. P. 683; *Qwest Commc'ns Corp. v. AT & T Corp.*, 24 S.W.3d 334, 337 (Tex. 2000) (per curiam); *Conlin v. Haun*, 419 S.W.3d 682, 685–86 (Tex. App.—Houston [1st Dist.] 2013, no pet.). "These procedural requirements are mandatory, and an order granting a temporary injunction that does not meet them is subject to being declared void and dissolved." *Qwest*, 24 S.W.3d at 337; *see InterFirst Bank San Felipe, N.A. v. Paz Constr. Co.*, 715 S.W.2d 640, 641 (Tex. 1986) (per curiam) (stating that requirements of Rule 683 are mandatory and must be strictly followed); *Haun*, 419 S.W.3d at 686.

B. Analysis

We agree with the parties that the temporary injunction fails to comply with Rule 683's requirement that the order set forth the reason for its issuance. *See* Tex. R. Civ. P. 683. However, we do not agree with appellee that appellant is estopped from asserting error.

Appellee argues that appellant is estopped from arguing that the temporary injunction is erroneous because appellant submitted the proposed order that the trial court ultimately signed. Generally, a litigant is estopped from requesting a ruling from a court and then complaining that the court committed error in giving it to him. *Tittizer v. Union Gas Corp.*, 171 S.W.3d 857, 861 (Tex. 2005) (per curiam). Here, even though appellant submitted a proposed order granting injunctive relief, appellant did not request or agree to the injunction; rather, it responded in opposition. Therefore, appellant is not estopped from asserting error. *See Ulico Cas. Co. v. Allied Pilots Ass'n*, 262 S.W.3d 773, 777 (Tex. 2008) (concluding that the invited-error doctrine did not bar a party from complaining about a jury question it had requested because the party made clear that it objected to the submission of the question but wanted to make sure the instruction was properly drafted). The same would be true even if the injunction was an agreed order. *See In re Corcoran*, 343 S.W.3d 268, 269 (Tex. App.—Houston [14th Dist.] 2011, orig. proceeding) ("Agreed Mutual Temporary Injunction" order was void because it did not comply with Rule 683); *In re Garza*, 126 S.W.3d 268, 271 (Tex. App.—San Antonio 2003, orig. proceeding) ("[A] party who agrees to a void order has agreed to nothing.").

We conclude that the temporary injunction fails to comply with Rule 683. Therefore, it is void and must be dissolved. *See Qwest*, 24 S.W.3d at 337. We sustain appellant's fourth issue.

IV. Conclusion

We reverse the trial court's temporary injunction, dissolve the temporary injunction, and remand this case to the trial court for further proceedings.

CONCURRING AND DISSENTING MEMORANDUM OPINION

Concurring and Dissenting Memorandum Opinion by Justice Tijerina

I concur with the majority that the injunction should be dissolved. However, I dissent from the ruling that the trial court had jurisdiction to issue the injunction. In addition, because I would conclude that the trial court lacked jurisdiction, I would dissolve the injunction and render judgment. I would not address appellant's issue regarding the validity of the injunction.

Appellee received notice at his Canadian address on February 23, 2017. Thus, he had sixty days to file his motion for nonrecognition of the Canadian judgment. Although appellee did not file a motion of nonrecognition, he filed a motion for "emergency" injunction and damages on July 31, 2019. Construing this motion as a motion for nonrecognition of the Canadian judgment, appellee filed it well past sixty days. *See* Act of 1989, 71st Leg., ch. 402 § 5, 1989 Tex. Sess. Law Serv. 402 (repealed). And even assuming, without deciding, that the trial court maintained plenary power for thirty days after the expiration of the sixty days, appellee's motion for emergency relief was filed well after ninety days from the date he received notice on February 23, 2017. *See* Tex. Civ. Prac. & Rem. Code Ann. §§ 35.003(c), 36A.006; *Moncrief v. Harvey*, 805 S.W.2d 20, 23 (Tex. App.—Dallas 1991, no writ) ("[B]ecause filing a foreign judgment has the effect of initiating an enforcement proceeding and entering a final Texas judgment simultaneously, the Legislature must have intended to empower the judgment debtor with all those defenses and proceedings for reopening, vacating, or staying a judgment that any judgment debtor can bring postjudgment."); *see also Mathis v. Nathanson*, No. 03-03-00123-CV, 2004 WL 162965, at *1 (Tex. App.—Austin Jan. 29, 2004, pet. denied) (mem. op.). Therefore, because appellee did not file his motion for emergency relief within ninety days, I would conclude that the trial court lacked jurisdiction to issue the temporary injunction.

***5** For these reasons, although I concur in the judgment dissolving the temporary injunction, I dissent to the extent that the majority concludes that the trial court had jurisdiction to issue the injunction and remands the cause to the trial court. I would conclude that the trial court lacked jurisdiction and render judgment dissolving the injunction.

All Citations

Not Reported in S.W. Rptr., 2019 WL 6793825

Footnotes

1 The Canadian judgment states that the trial court pronounced it on Monday, December 19, 2013.

2 The trial court's denial of appellant's plea to the jurisdiction is not before us. *See* Tex. Civ. Prac. & Rem. Code Ann. § 51.014(b) (setting out that only governmental agencies may appeal a trial court's denial of a plea to the jurisdiction).

3 Former § 36.0044 entitled "Contesting Recognition," which is applicable here, provided that a party could contest the recognition of a foreign country's judgment within thirty days after the date the party received notice of the filing. *See* Act of 1989, 71st Leg., ch. 402 § 5, 1989 Tex. Sess. Law Serv. 402 (repealed). A party domiciled in a foreign country had to file the motion for nonrecognition not later than the sixtieth day after the date the party received notice of filing. *See id.*

4 A trial court also has express statutory authority to issue a writ of injunction staying execution on a judgment in circumstances not applicable here. *See* Tex. Civ. Prac. & Rem. Code Ann. § 65.023(b); *Campbell v. Wilder*, 487 S.W.3d 146, 150 (Tex. 2016); *Zuniga v. Wooster Ladder Co.*, 119 S.W.3d 856, 861 (Tex. App.—San Antonio 2003, no pet.) (noting that § 65.023 applies to suits attacking the judgment, questioning its validity, or presenting defenses properly connected with the suit in which it was rendered). A trial court is also authorized under the turnover statute to grant injunctive relief to aid a judgment creditor in reaching assets of a judgment debtor. *See* Tex. Civ. Prac. & Rem. Code Ann. § 31.002.

Exhibit 4

2011 WL 2652158
Only the Westlaw citation is currently available.

SEE TX R RAP RULE 47.2 FOR
DESIGNATION AND SIGNING OF OPINIONS.

MEMORANDUM OPINION
Court of Appeals of Texas,
Corpus Christi–Edinburg.

COUNSEL FINANCIAL SERVICES, L.L.C., Appellant,
v.
David McQuade LEIBOWITZ and David McQuade Leibowitz, P.C., Appellees.

No. 13–10–00200–CV.
|
July 1, 2011.
|
Rehearing Overruled Nov. 10, 2011.

On appeal from the 370th District Court of Hidalgo County, Texas, Noe Gonzalez, Judge.

Attorneys and Law Firms

Ellen B. Mitchell, Diann M. Bartek, Cox Smith Matthews Inc., Elliott S. Cappuccio, Lance H. Beshara, Pulman, Cappuccio, Pullen, San Antonio, for Appellants.

Peter J. Stanton, San Antonio, Fernando G. Mancias, Law Office of Fernando G. Mancias, Edinburg, David McQuade Leibowitz, Beeville, for Appellee.

Before Chief Justice VALDEZ and Justices RODRIGUEZ and BENAVIDES.[1]

MEMORANDUM OPINION

Memorandum Opinion by Justice BENAVIDES.

***1** Through this appeal, Counsel Financial Services, L.L.C. ("Counsel Financial") seeks to set aside an order granting a temporary injunction which prevents it from, *inter alia,* instituting legal proceedings to enforce a security agreement and collecting on a judgment in its favor. We reverse and remand.[2]

I. Background

Counsel Financial loaned the law firm of David McQuade Leibowitz, P.C. more than five million dollars. The loan was secured by David McQuade Leibowitz, P.C. and David McQuade Leibowitz individually (collectively "Leibowitz"). The promissory note evidencing the loan was secured by a security agreement and a guaranty executed by Leibowitz in his individual capacity. The note and security agreement were modified several times by the agreement of the parties over the course of several years. These documents provided Counsel Financial with a security interest in Leibowitz's legal fees,[3] accounts, and intangibles in the event of a default under the loan.

Leibowitz failed to make payments due under the loan, and Counsel Financial brought suit against Leibowitz in cause number 12008–010002 in the Supreme Court of the State of New York, in and for the County of Erie, styled *Counsel Financial Services, LLC, v. David McQuade Leibowitz, P.C. et al.,* for non-payment of the note and the guaranty. Following several trial court hearings, Counsel Financial obtained a summary judgment against Leibowitz in the amount of $5,506,180.96.[4] In the New York court system, Leibowitz unsuccessfully appealed the judgment.

On December 2, 2008, Counsel Financial filed an authenticated copy of the New York judgment in state district court in Bexar County, Texas. On December 29, 2008, Leibowitz filed a motion for relief from enforcement of foreign judgment, arguing that the trial court should apply the *Craddock* standard for motions for new trial with regard to the domestication of foreign judgments. *See Craddock v. Sunshine Bus Lines, Inc.,* 134 Tex. 388, 133 S.W.2d 124, 126 (1939) (holding that a default judgment should be set aside and a new trial granted if: (1) the failure to answer or appear at trial was not intentional or the result of conscious indifference but was due to a mistake or accident; (2) the defendant sets up a meritorious defense; and (3) the motion is filed at such time that granting a new trial would not result in delay or otherwise injure the plaintiff). On January 30, 2009, the trial court granted Leibowitz's motion and refused to enforce the New York judgment.

Counsel Financial appealed that determination. The San Antonio Court of Appeals held that the *Craddock* motion for new trial standard relating to default judgments does not apply to proceedings under the Uniform Enforcement of Foreign Judgments Act. *Counsel Financial Services, L.L.C., v. Leibowitz,* P.C., 31 S.W.3d 45, 47 (Tex.App.-San Antonio 2010, pet. denied). The court reversed and rendered judgment that the New York judgment is entitled to full faith and credit and is fully enforceable in Texas. *Id.* at 57. The Texas Supreme Court denied the petition for review of this cause on August 20, 2010 and further denied rehearing on October 15, 2010.

***2** In separate proceedings which underlie this appeal, Leibowitz represented Maria Alma Anzaldua in a personal injury lawsuit against Kmart Corporation ("Kmart") in the 370th District Court of Hidalgo County. Upon learning that Anzaldua and Kmart had reached a settlement, Counsel Financial filed a plea in intervention on the grounds that Leibowitz had refused to pay the New York debt and judgment. Counsel Financial sought "an order from the Court directing all Parties to pay directly to [Counsel Financial] all funds (up to the amount of CFS's lien) to which Leibowitz and the Law Firm may be entitled to as a result of this case and the settlement." In its intervention, Counsel Financial expressly stated that it "does not seek to disturb the proposed settlement agreement in the Lawsuit" and, likewise, "does not seek to disturb the rights of Plaintiff to receive the portion of the settlement that is rightfully hers, or the release of Defendant from the Lawsuit."

On October 9, 2009, Leibowitz also intervened in the Hidalgo County suit and asserted claims for affirmative relief against Counsel Financial, including claims for declaratory and temporary injunctive relief and damage claims for tortious interference and business disparagement. By his first amended pleading, Leibowitz sought an anti-suit injunction and an anti-execution injunction attempting to restrain Counsel Financial from enforcing the domesticated judgment or the security agreement. According to Leibowitz's pleadings, Counsel Financial claimed that it was entitled to Leibowitz's portion of the settlement funds based either on "a foreign default judgment which is not now enforceable under Texas law, or a Security Agreement which [Counsel Financial] has itself breached."

On March 19, 2010, the trial court signed an order granting interpleader of the settlement funds, releasing Kmart from "any and all liability" to Anzaldua, Leibowitz, and Counsel Financial, and severing all claims against Kmart into a separate cause. The order recites that "[a]ll claims or causes of action asserted by any party against Kmart Corporation" in the original cause number or the severed cause which were not expressly granted in the order were denied, and the order resolved "all claims" against Kmart. That same day, by separate order, the trial court granted Anzaldua's unopposed motion to release her share of the funds held in the registry of the court "as her share of the settlement funds."

On March 22, 2010, the trial court issued an order granting Leibowitz his requested relief. The temporary injunction states in relevant part:

> 1. COUNSEL FINANCIAL SERVICES, L.L.C. ("CFS") has submitted itself to the jurisdiction of this Court, and waived any objection to venue of this matter, by requesting affirmative relief against Leibowitz in this court in Counsel Financial Services, LLC's Plea in Intervention wherein it seeks not only to enforce the Security Agreement (the "Security Agreement"), but also invokes the jurisdiction of this Court to take possession of property which is alleged to belong to CFS pursuant to the terms of a judgment taken November 25, 2008 by default in the case styled *Counsel Financial Services, LLC, v. David McQuade Leibowitz, P.C. et al.,* Cause No.2008–10002, in the Supreme Court of the State of New York, New York in and for the County of Erie, ("the Default Judgment").
>
> ***3** ....
>
> 3. Leibowitz has shown a strong and substantial likelihood that he will prevail on the merits of his Declaratory Judgment Action and his action for damages. In particular, Leibowitz has shown that there is a strong and substantial likelihood that upon trial on the merits it will be established that:
>
> a. CFS has no right under the terms of the Security Agreement to contact any Defendant, Attorney for Defendant, and/or client, or any representative of any of those parties, in any case handled by Leibowitz, because such persons are "... not obligated with respect to any collateral ..." owned by CFS. CFS has no right to any contingency fees until they have matured, by judgment or otherwise.
>
> b. The negative covenants set out in paragraph 4(b) of the Security Agreement constitute an unconscionable interference with the attorney-client relationship in abrogation of the duty of utmost fidelity owed by

Leibowitz to his clients, and are unenforceable under Texas Law as against public policy;

c. The right given to CFs under paragraph 6(c) of the Security Agreement, to contact Defendants and their attorneys in Leibowitz's cases and direct them to pay funds to CFS requires a violation of the Texas Disciplinary Rules of Professional Conduct in that Leibowitz's clients have never consented to the release of confidential information relating to the amount and timing of their settlements;

d. Leibowitz has the right to offset any amounts that he may owe to CFS against the amounts that CFS and its agents owe him as a result of their wrongful conduct as shown by the evidence presented;

e. CFS has no right to assert claims under the Default Judgment until such time as the Judgment has been finally domesticated in the State of Texas and all appeals relating thereto are exhausted; and;

f. CFS has breached and defaulted under the terms of the Security Agreement. Being in default under the Security Agreement, CFS has excused any further performance thereof by Leibowitz, and Leibowitz has shown a probable right to collect damages proximately cause[d] by such breach.

....

In order to protect the jurisdiction of this Court, prevent CFs from rendering the declaratory relief sought by Leibowitz ineffectual, and to preserve the status quo until a trial on the merits can be had, IT IS ORDERED, ADJUDGED[,] AND DECREED as follows:

1. CFS, and its employees, agents, attorneys, and those acting in concert with such people who have actual knowledge of the terms of the Order are hereby immediately ENJOINED and RESTRAINED from:

a. Enforcing or attempting to enforce the terms of the Security Agreement, including but not limited to, communicating to any third parties that Leibowitz is in default of the Security Agreement and/or instructing third persons/parties to pay any monies over to CFS;

b. Instituting and/or maintaining, or seeking affirmative relief in an action in any other Texas State Court other than the 370th Judicial Court of Hidalgo County, Texas to enforce the terms of the Security Agreement, the Default Judgment[,] and/or claiming an interest in the proceeds of settlement of any of Leibowitz's cases;

***4** c. Pursuing any claim for recovery under the Security Agreement in any Court other than the 370th Judicial Court of Hidalgo County, Texas; and,

d. Attempting to levy, execute, or otherwise attempt to collect on the Judgment issued in cause No.2008–10002, in the Supreme Court of State of New York, New York in and for the County of Erie, styled *Counsel Financial Services, LLC, v. David McQuade Leibowitz, P.C. et al.* on November 25, 2008, unless and until:

i. the Default Judgment has been formally domesticated by an order of a Texas Court of competent jurisdiction, and all appeals relating thereto have been fully and finally exhausted, and/or not otherwise superceded pursuant to the Texas Uniform Enforcement of Foreign Judgments Act, by this Court or otherwise; and/or,

ii. all just and lawful recoupments and offsets which Leibowitz has to the amounts alleged to be owed under the Default Judgment have been finally determined by this Court.

Counsel Financial raises six issues on appeal: (1) the trial court abused its discretion by enjoining enforcement of or execution on the judgment domesticated in Bexar County because Leibowitz failed to establish a probable right to recover or probable, imminent, irreparable harm; (2) the trial court exceeded its jurisdiction by granting the anti-execution temporary injunction; (3) the trial court abused its discretion by granting the anti-suit temporary injunction because it does not come within any of the four bases recognized by the Texas Supreme Court for anti-suit injunctions; (4) the trial court exceeded its jurisdiction by granting the anti-suit temporary injunction; (5) the trial court abused its discretion by enjoining enforcement of Counsel Financial's rights under the security agreement because Leibowitz failed to establish a probable right to recover or probable, imminent, irreparable harm; and (6) the temporary injunction is void because it fails to specifically state why irreparable injury will occur if the temporary injunction is not granted. For purposes of clarity, we will address these issues out of order.

II. Standard of Review for Temporary Injunction

A trial court has broad discretion in deciding whether to grant or deny a temporary injunction. *Butnaru v. Ford Motor Co.,* 84 S.W.3d 198, 204 (Tex.2002). Appellate review is strictly limited to evaluating whether there has been a clear abuse of discretion. *See id.* The scope of review is limited to the validity of the temporary injunction order. *See Walling v. Metcalfe,* 863 S.W.2d 56, 58 (Tex.1993). We do not review the merits of the underlying case. *Davis v. Huey,* 571 S.W.2d 859, 861 (Tex.1978). Instead, we determine whether there has been an abuse of discretion by the trial court in granting or denying the requested relief. *Id.* at 862. In making this determination, we may not substitute our judgment for that of the trial court unless its decision was so arbitrary that it exceeded the bounds of reasonableness. *See Butnaru,* 84 S.W.3d at 204. We review the evidence in the light most favorable to the order and indulge all reasonable inferences in favor of the decision. *See Davis,* 571 S.W.2d at 862; *City of McAllen v. McAllen Police Officers Union,* 221 S.W.3d 885, 893 (Tex.App.-Corpus Christi 2007, pet. denied). A trial court does not abuse its discretion if it bases its decision on conflicting evidence where evidence in the record reasonably supports the trial court's decision. *Davis,* 571 S.W.2d at 862.

***5** The purpose of a temporary injunction is to preserve the status quo until a trial on the merits. *Butnaru,* 84 S.W.3d at 204; *Walling v. Metcalfe,* 863 S.W.2d 56, 58 (Tex.1993). The sole issue presented to a trial court at a temporary injunction hearing is whether the applicant is entitled to preserve the status quo pending trial on the merits. *Butnaru,* 84 S.W.3d at 204; *Davis v. Huey,* 571 S.W.2d 859, 862 (Tex.1978). The status quo is defined as the last, actual, peaceable, non-contested status that preceded the pending controversy. *In re Newton,* 146 S.W.3d 648, 651 (Tex.2004) (orig.proceeding); *Universal Health Servs., Inc. v. Thompson,* 24 S.W.3d 570, 577 (Tex.App.-Austin 2000, no pet.).

A temporary injunction is an extraordinary remedy that does not issue unless the applicant pleads and proves three elements: (1) a cause of action, (2) a probable right to the relief sought, and (3) a probable, imminent, and irreparable injury in the interim. *Butnaru,* 84 S.W.3d at 204; *Wilson N. Jones Mem'l Hosp. v. Huff,* 188 S.W.3d 215, 218 (Tex.App.-Dallas 2003, pet. denied). A probable right of success on the merits is shown by alleging a cause of action and introducing evidence that tends to sustain it. *Jennifer Yarto & DTRJ Invs., L.P. v. Gilliland,* 287 S.W.3d 83, 94 (Tex.App.-Corpus Christi 2009, no pet.).

III. Uniform Enforcement of Foreign Judgments Act

The United States Constitution requires each state to give full faith and credit to the public acts, records, and judicial proceedings of every other state. *See* U.S. Const. art. IV, § 1. Texas law provides two methods for enforcing a foreign judgment. *Charles Brown, L.L.P. v. Lanier Worldwide, Inc.,* 124 S.W.3d 883, 902 (Tex.App.-Houston [14th Dist.] 2004, no pet.). A judgment creditor may either bring a common law action to enforce a judgment, *see* Tex. Civ. Prac. & Rem.Code Ann. § 35.008 (West 2008), or the creditor may enforce a foreign judgment under the Uniform Enforcement of Foreign Judgments Act ("UEFJA"), as provided in chapter 35 of the Texas Civil Practice and Remedies Code. *See id.* §§ 35.001–.008 (West 2008). The UEFJA provides a means by which an authenticated copy of a foreign judgment may be filed in a court of competent jurisdiction in Texas and become enforceable as a Texas judgment. *See* Tex. Civ. Prac. & Rem.Code Ann. § 35.003(c) (West 2008); *see Walnut Equip. Leasing Co. Inc. v. Wu,* 920 S.W.2d 285, 286 (Tex.1996).

When a judgment creditor chooses to proceed under the UEFJA, the filing of a foreign judgment is in the "nature of both a plaintiff's original petition and a final judgment: the filing initiates the enforcement proceeding, but it also instantly creates a Texas judgment that is enforceable." *Moncrief v. Harvey,* 805 S.W.2d 20, 22 (Tex.App.-Dallas 1991, writ denied); *see Wu,* 920 S.W.2d at 286; *Counsel Fin. Servs., L.L.C.,* 311 S.W.3d at 50. A foreign judgment filed under the UEFJA is treated in the same manner as a judgment of the court in which the foreign judgment is filed. Tex. Civ. Prac. & Rem.Code Ann. § 35.003(b) (West 2008).

***6** When a judgment creditor files an authenticated copy of a foreign judgment under the UEFJA, he satisfies his burden to present a prima facie case for enforcement of the judgment; the burden then shifts to the judgment debtor to prove the foreign judgment should not be given full faith and credit. *Jonsson v. Rand Racing, L.L.C.,* 270 S.W.3d 320, 323–24 (Tex.App.-Dallas 2008, no pet.); *H. Heller & Co. v. La–Pac. Corp.,* 209 S.W.3d 844, 849 (Tex.App.-Houston [14th Dist] 2006, pet. denied). There are five well established exceptions to the requirements of full faith and credit: (1) the foreign judgment is interlocutory; (2) the foreign judgment is subject to modification under the law of the rendering state; (3) the rendering state court lacked jurisdiction; (4) the foreign judgment was procured by extrinsic fraud; and (5) the period to file a foreign judgment under the UEFJA had

expired. *Mindis Metals, Inc. v. Oilfield Motor & Control, Inc.,* 132 S.W.3d 477, 484 (Tex.App.-Houston [14th Dist.] 2004, pet. denied). A motion contesting enforcement of a foreign judgment operates as a motion for new trial. *Jonsson,* 270 S.W.3d at 324. A trial court has broad discretion in this regard. *Id.* The presumption of validity can only be overcome by clear and convincing evidence to the contrary. *Mindis Metals, Inc.,* 132 S.W.3d at 484; *Cash Register Sales & Servs. of Houston, Inc. v. Copelco Capital, Inc.,* 62 S.W.3d 278, 281 (Tex.App.-Houston [1st Dist.] 2001, no pet.).

Pursuant to section 35.003(c) of the UEFJA, such a foreign judgment has "the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating, staying, enforcing, or satisfying a judgment as a judgment of the court in which it is filed." Tex. Civ. Prac. & Rem.Code Ann. § 35.003(c); *Counsel Fin. Servs., L.L.C.,* 311 S.W.3d at 50. The UEFJA provision that a filed foreign judgment is subject to the same procedures, defenses, and proceedings for vacating a Texas judgment has been interpreted as referring to "the procedural devices available to vacate a Texas judgment." *Mindis Metals, Inc.,* 132 S.W.3d at 484. "It cannot mean that the judgment can be vacated for any reason sufficient to support a traditional motion for new trial." *Id.*

Further, in a collateral attack on a sister state's judgment, no defense may be set up that goes to the merits of the original controversy. *Russo v. Dear,* 105 S.W.3d 43, 46 (Tex.App.-Dallas 2003, pet. denied). In *Russo,* the court opined that it would be improper to raise a personal jurisdiction issue in Texas when it had been fully and fairly litigated in the foreign jurisdiction. *Id.* at 47. "The Texas court's scope of inquiry is limited to whether questions of jurisdiction were fully and fairly litigated and finally decided by a sister state, and if so, personal jurisdiction may not be raised again in the Texas court." *Id.; Jonsson,* 270 S.W.3d at 327 ("After considering the evidence, we conclude appellees provided clear and convincing evidence to overcome the presumption of validity that the California judgment should be given full faith and credit in Texas. Because appellees established an exception to the California court's jurisdiction, specifically that service of process was inadequate under the California service of process rules, the trial court did not misapply the law to the established facts of this case."); *see also Diesel Injection Sales & Serv. v. Diesel Heads & Parts Servs.,* No. 13–09–289–CV, 2010 Tex.App. LEXIS 2333, at ——3–5, 2010 WL 1254605 (Tex.App.-Corpus Christi Apr.1, 2010, no pet.) (mem.op.).

IV. Jurisdiction to Enjoin Execution

***7** Because jurisdiction is fundamental, we first address Counsel Financial's claims in its second issue that the trial court exceeded its jurisdiction by granting the anti-execution temporary injunction.

In this case, the 370th District Court of Hidalgo County enjoined execution on a judgment domesticated in the 285th District Court of Bexar County. A suit to enjoin the enforcement of the judgment of a court other than the one in which the action is brought is generally regarded as an impermissible collateral attack on that judgment. *Scott v. Graham,* 156 Tex. 97, 292 S.W.2d 324, 327 (Tex.1956); *In re Cantu,* 961 S.W.2d 482, 486 (Tex.App.-Corpus Christi 1997, orig. proceeding); *Butron v. Cantu,* 960 S.W.2d 91, 94 (Tex.App.-Corpus Christi 1997, no pet.); *McVeigh v. Lerner,* 849 S.W.2d 911, 914 (Tex.App.-Houston [1st Dist.] 1993, writ denied); *Martin v. Stein,* 649 S.W.2d 342, 345 (Tex.App.-Fort Worth 1983, writ ref'd n.r.e.).

"Actions to stay proceedings in a suit shall be brought in the county in which the suit is pending." Tex. Civ. Prac. & Rem.Code Ann. § 15.012 (West 2002). Actions to restrain execution of a judgment based on invalidity of the judgment or of the writ shall be brought in the county in which the judgment was rendered." *Id* . § 15.013 (West 2002). A suit to enjoin enforcement of a judgment must be brought in the court which rendered the judgment. *See id.* § 65.023 (West 1997); *Zuniga v. Wooster Ladder Co.,* 119 S.W.3d 856, 860–61 (Tex.App.-San Antonio 2003, no pet.); *McVeigh,* 849 S.W.2d at 915.

These provisions of the Texas Civil Practice and Remedies Code control not just venue of this type of suit, but also jurisdiction as well, so long as the judgment in question is valid on its face. *Hageman/Fritz, Byrne, Head & Harrison, L.L.P. v. Luth,* 150 S.W.3d 617, 629 (Tex.App.-Austin 2004, no pet.); *Butron,* 960 S.W.2d at 95; *McVeigh,* 849 S.W.2d at 914. However, this jurisdictional limitation only applies to a suit "attacking the judgment, questioning its validity, or presenting defenses properly connected with the suit in which it was rendered, and which should have been adjudicated therein." *Zuniga.,* 119 S.W.3d at 860–61; *Kruegel v. Rawlins,* 121 S.W. 216, 217 (Tex.Civ.App.-Dallas 1909), *writ ref'd,* 103 Tex. 86, 124 S.W. 419, 419–20 (Tex.1910); *Realty Trust Co.*

v. Gabert, 40 S.W.2d 869, 869 (Tex.Civ.App.-Waco 1931, no writ).

In determining the application of these statutes to the instant case, we look to Leibowitz's live pleadings to see if he attacks the judgment, questions its validity, or presents defenses properly connected with the suit in which it was rendered and which should have been adjudicated in that suit. *See Zuniga,* 119 S.W.3d at 860–61. In his pleadings, Leibowitz asserted generally that the summary judgment was unenforceable. Leibowitz's claims for affirmative relief concern, inter alia, alleged breaches of the original promissory note and security agreement, Counsel Financial's rights under the security agreement, and Leibowitz's alleged rights to offset "any amounts that he may owe under the Default Judgment and/or the Security Agreement against the amounts that CFS and its agents owe him as a result of their wrongful conduct as described herein." Leibowitz specifically asserts that:

> ***8** Leibowitz seeks the aid of this Court to put an end to CFS's piecemeal attempts to wrongfully collect the contested amounts due under the Note through the enforcement of the Security Agreement, and to provide a forum to allow Leibowitz to assert any offsets and/or recoupment he may have to the collection of the amount sought by CFS.

According to Leibowitz, "[a]ll of the claims raised by CFS relate to the rights of the parties under the Security Agreement and the Default Judgment."

As stated previously, the New York judgment has been domesticated in Texas pursuant to the UEFJA and is valid. Leibowitz's claims in the instant suit necessarily challenge that judgment and raise defenses that should have been adjudicated in New York. *See Russo,* 105 S.W.3d at 46. Thus, the underlying court lacked jurisdiction over the claims pertaining to execution and enforcement of the judgment. We sustain Counsel Financial's second issue.

Having so ruled, we need not address Counsel Financial's first issue contending that the trial court abused its discretion by enjoining enforcement of the judgment on grounds that Leibowitz failed to establish a probable right to recover or probable, imminent, irreparable harm. *See* Tex.R.App. P. 47.1, 47.4. We likewise need not address Counsel Financial's fifth issue, through which it asserts that the trial court abused its discretion by enjoining enforcement of Counsel Financial's rights under the security agreement because Leibowitz failed to establish a probable right to recover or probable, imminent, irreparable harm.[5] *See id.*

V. Voidness

By its sixth issue, Counsel Financial asserts that the temporary injunction is void because it fails to specifically state why irreparable injury will occur if the temporary injunction is not granted. Rule 683 of the Texas Rules of Civil Procedure states that every order granting an injunction must "set forth the reasons for its issuance" and "be specific in its terms." Tex.R. Civ. P. 683. The Texas Supreme Court "interpret[s] the Rule to require ... that the order set forth the reasons why the court deems it proper to issue the writ to prevent injury to the applicant in the interim; that is, the reasons why the court believes the applicant's probable right will be endangered if the writ does not issue." *Transp. Co. of Tex. v. Robertson Transps., Inc.,* 152 Tex. 551, 261 S.W.2d 549, 553 (Tex.1953). Accordingly, the order must provide a "detailed explanation of the reason for the injunction's issuance." *Adust Video v. Nueces County,* 996 S.W.2d 245, 249 (Tex.App.-Corpus Christi 1999, no pet.). The explanation must include specific reasons and not merely conclusory statements. *Kotz v. Imperial Capital Bank,* 319 S.W.3d 54, 56–57 (Tex.App.-San Antonio 2010, no pet.). Mere recitals regarding harm are insufficient. *See e.g., id.* (holding that an order stating that plaintiffs "will suffer irreparable injury in their possession and use of the Subject Property in the event that the requested injunctive relief is not granted, that they have no adequate remedy at law, and that the requested injunctive relief is necessary to preserve the status quo pending final trial" to be insufficient); *Indep. Capital Mgmt., L.L.C. v. Collins,* 261 S.W.3d 792, 795–96 (Tex.App.-Dallas 2008, no pet.) (holding that an order that recited the required elements for relief was conclusory and void); *AutoNation, Inc. v. Hatfield,* 186 S.W.3d 576, 581 (Tex.App.-Houston [14th Dist.] 2005, no pet.) (holding that the mere recital of "irreparable harm" does not meet Rule 683's specificity requirements); *Monsanto Co. v. Davis,* 25 S.W.3d 773, 788 (Tex.App.-Waco 2000, pet. dism'd w.o.j.) (concluding that a temporary injunction order was insufficiently specific where it stated that plaintiffs "will suffer probable injury"); *Byrd Ranch, Inc. v. Interwest Sav. Assoc.,* 717 S.W.2d 452, 453–55 (Tex.App.-Fort Worth 1986, no writ) (concluding that an order was insufficiently specific where it stated that the plaintiff "will suffer irreparable harm for which it has no adequate remedy at law"); *Univ. Interscholastic League v. Torres,* 616 S.W.2d 355, 358 (Tex.Civ.App.-San Antonio

1981, no writ) (same); *Gen. Homes, Inc. v. Wingate Civic Assoc.,* 616 S.W.2d 351, 353 (Tex.Civ.App.-Houston [14th Dist.] 1981, no writ) (finding that a temporary injunction order did not satisfy Rule 683 "because it only states the trial court's conclusion that immediate and irreparable harm will result if the injunction is not granted, with no specific reasons supporting the conclusion"); *Stoner v. Thompson,* 553 S.W.2d 150, 151 (Tex.Civ.App.-Houston [1st Dist.] 1977, writ ref'd n.r.e.) (finding a temporary injunction order insufficient under Rule 683 and noting that "[t]he conclusion [in the order] that the situation is harmful [to the plaintiff] is not a reason why injury will be suffered if the interlocutory relief is not ordered").

***9** This requirement for specificity is mandatory and must be strictly followed. *InterFirst Bank San Felipe, N.A. v. Paz Const. Co.,* 715 S.W.2d 640, 641 (Tex.1986); *City of Corpus Christi v. Friends of the Coliseum,* 311 S.W.3d 706, 708–09 (Tex.App.-Corpus Christi 2010, no pet.); *Monsanto Co.,* 25 S.W.3d at 788; *Big D Props., Inc. v. Foster,* 2 S.W.3d 21, 22–23 (Tex.App.-Fort Worth 1999, no pet.). If an order fails to comply with these requirements, it is void and should be dissolved. *InterFirst Bank,* 715 S.W.2d at 641; *City of Corpus Christi,* 311 S.W.3d at 708; *Monsanto Co.,* 25 S.W.3d at 788.

In the instant case, the injunction provides that if the relief requested by Leibowitz is not granted:

a. CFS will continue to contact defense attorneys and insurance companies in Leibowitz's cases and threaten them with legal action if settlement monies are not paid directly to CFS and such interference with the settlement of Leibowitz's cases will cause irreparable harm to Leibowitz and his clients;

b. CFS will continue to communicate to defense attorneys and insurance companies in Leibowitz's cases that they are required under the terms of the Security Agreement to disclose confidential client information to CFS, when they have no such duty, and such interference with the settlement of Leibowitz's cases will cause irreparable harm to Leibowitz and his clients;

c. CFS will continue to communicate to defense attorneys and insurance companies in Leibowitz's cases that payment to Leibowitz's clients will expose the Defendants to liability to CFS, when no such liability exists, and such interference with the settlement of Leibowitz's cases will cause irreparable harm to Leibowitz and his clients;

d. The continued interference by CFS in Leibowitz's cases has caused, and will continue to cause, severe irreparable harm to Leibowitz's business reputation, and impair his ability to maintain his practice, the degree of which is difficult to calculate and for which damages are no substitute; and

e. CFS will continue to do all the foregoing, during the pendency of this case, which will render the declaratory relief entered in this case ineffectual to protect Leibowitz and his clients.

The injunction further specifically states that if not granted, Counsel Financial will "continue to file numerous actions against Leibowitz," "continue the wrongful multiplication of proceedings with the intent to thwart this Court's jurisdiction, causing havoc and a waste of valuable judicial resources," "continue to harass and force Leibowitz and his clients, to their great personal and financial burden, and detriment, of having to defend themselves against vexatious proceedings, and the resulting disruption of the judicial process, risking the loss of his right to proceed to trial in Hidalgo County," "continue to attempt to prevent Leibowitz from fulfilling his contractual and legal obligations to his clients," and "alter the status quo and cause a miscarriage of justice."

***10** We conclude this language complies with the requirements of Rule 683 because it provides specific reasons why irreparable injury will result in the absence of a temporary injunction. The trial court has set forth underlying facts to support its finding that irreparable injury will occur. *See, e.g., Robertson Transps.,* 261 S.W.2d at 553 (concluding that an injunction was sufficiently specific where it stated that the defendant "would interfere with the markets established by the plaintiffs and would probably divert freight tonnage and revenue from the plaintiff" and "that such interference with customers and markets and diversion of freight tonnage and revenues would result in irreparable and inestimable damage to the plaintiffs"); *IAC, Ltd. v. Bell Helicopter Textron, Inc.,* 160 S.W.3d 191, 200 (Tex.App.-Fort Worth 2005, no pet.) (concluding that an injunction set forth sufficient reasons for its issuance where it explicitly stated that the defendants had data entitled to trade secret protection and were using that data to compete with the plaintiff and the defendants' product would be priced lower than the plaintiff's which would lead to "incalculable loss of business goodwill"); *Khaledi v. H.K. Global Trading, Ltd.,* 126 S.W.3d 273, 280 (Tex.App.—San Antonio 2003, no pet.) (concluding that an injunction was sufficiently specific where it stated that a business partner's actions prevented

other parties "from realizing the significant loan values" in specified properties and significantly impaired their ability to pay amounts owed under a promissory note and that their business plan and ability to obtain financing on properties were "adversely affected in a way that cannot be effectively measured in dollars").

Accordingly, we overrule Counsel Financial's sixth issue.

IV. Anti–Suit Injunction

By its third and fourth issues, Counsel Financial attacks the anti-suit aspect of the trial court's temporary injunction. Texas courts have the power, through anti-suit injunctions, to prevent persons from proceeding with litigation filed in other state courts. *Gannon v. Payne,* 706 S.W.2d 304, 305 (Tex.1986); *London Mkt. Insurers v. Am. Home Assur. Co.,* 95 S.W.3d 702, 706 (Tex.App.-Corpus Christi 2003, no pet.). When a suit is filed in a court of competent jurisdiction, that court is entitled to proceed to judgment and may protect its jurisdiction by enjoining the parties to a suit subsequently filed in another court of this state. *Gannon,* 706 S.W.2d at 305–06. However, this equitable power is to be exercised sparingly, and only in very special circumstances. *London Mkt.,* 95 S.W.3d at 706. The party seeking the injunction has the burden to show that a clear equity demands the injunction. *Id.* The applicant must demonstrate the potential for an irreparable miscarriage of justice in order to obtain the anti-suit injunction. *Id.* "There are no precise guidelines for judging the propriety of an anti-suit injunction; the circumstances of each situation must be carefully examined to determine whether the injunction is necessary to prevent an irreparable miscarriage of justice." *See AVCO Corp. v. Interstate Sw., Ltd.,* 145 S.W.3d 257, 262 (Tex.App.-Houston [14th Dist.] 2004, no pet.) (citing *Gannon,* 706 S.W.2d at 307).

***11** An anti-suit injunction is appropriate in four instances: (1) to address a threat to the court's jurisdiction; (2) to prevent the evasion of important public policy; (3) to prevent a multiplicity of suits; or (4) to protect a party from vexatious or harassing litigation. *Gonzalez v. Reliant Energy, Inc.,* 159 S.W.3d 615, 623 (Tex.2005) (citing *Golden Rule Ins. Co. v. Harper,* 925 S.W.2d 649, 651 (Tex.1996)). In addition to meeting the requirements necessary to obtain an anti-suit injunction, the traditional prerequisites to injunctive relief must be met by a party seeking an anti-suit injunction. *Cascos v. Cameron County Atty. (In re Cascos),* 319 S.W.3d 205, 221 (Tex.App.-Corpus Christi 2010, no pet.) (combined appeal & orig. proceeding); *see Yarto,* 287 S.W.3d at 88 n. 8 (collecting cases).

In reviewing the issuance of a temporary anti-suit injunction, we utilize an abuse of discretion standard. *Christensen v. Integrity Ins. Co.,* 719 S.W.2d 161, 163 (Tex.1986); *AVCO Corp.,* 145 S.W.3d at 262. A trial court abuses its discretion if its decision is "arbitrary, unreasonable, and without reference to guiding principles." *Am. Int'l Specialty Lines Ins. Co. v. Triton Energy Ltd.,* 52 S.W.3d 337, 339 (Tex.App.-Dallas 2001, pet. dism'd w.o.j .) (quoting *Goode v. Shoukfeh,* 943 S.W.2d 441, 446 (Tex.1997)). In reviewing the trial court's order, we draw inferences from the evidence in the manner most favorable to the trial court's ruling. *Ortiz v. Legal Concierge, Inc.,* 263 S.W.3d 385, 390 (Tex.App.-Dallas 2008, pet. denied).

By its fourth issue, Counsel Financial asserts that the trial court lacked jurisdiction to issue an anti-suit injunction. We disagree. Texas state courts have the power to restrain persons from proceeding with suits filed in other courts of this state by granting an "anti-suit injunction," abating proceedings in a second forum. *Gannon,* 706 S.W.2d at 305; *Henry v. McMichael (In re Henry),* 274 S.W.3d 185, 189 (Tex.App.-Houston [1st Dist.] 2008, pet. denied) (combined appeal & orig. proceeding). In applying Counsel Financial's logic, no trial court would be able to obtain subject matter jurisdiction to enjoin another court from litigating a matter unless the enjoined court agreed to be enjoined. This contention is not supported by case law on anti-suit injunctions. *See Harper,* 925 S.W.2d at 651; *Christensen,* 719 S.W.2d at 163; *Gannon,* 706 S.W.2d at 305; *see also Graybar Elec. Co. v. Gonzalez (In re Graybar Elec. Co.),* Nos. 13–08–00073–CV, 13–08–00294–CV, 13–08–00333–CV, & 13–08–00341–CV, 2008 Tex.App. LEXIS 6868, at *20, 2008 WL 3970865 (Tex.App.-Corpus Christi Aug. 26, 2008, no pet.) (combined appeal & orig. proceeding) (mem.op.). We overrule Counsel Financial's fourth issue.

In its third issue, Counsel Financial contends the trial court abused its discretion by granting the anti-suit temporary injunction because it does not come within any of the four bases recognized by the Texas Supreme Court for anti-suit injunctions. The trial court's order states, in relevant part:

> ***12** 4. The Court also finds that Leibowitz has established the existence of very special circumstances and the potential for an irreparable miscarriage of justice to warrant

an anti-suit injunction, CFS has demonstrated that, if unrestrained, CFS will:

a. continue to file numerous actions against Leibowitz in all the cases in which they believe Leibowitz to have an interest and raise claims identical to claims in this case;

b. continue the wrongful multiplication of proceedings with the intent to thwart this Court's jurisdiction, causing havoc and a waste of valuable judicial resources;

c. continue to harass and force Leibowitz and his clients, to their great personal and financial burden, and detriment, of having to defend themselves against vexatious proceedings, and the resulting disruption of the judicial process, risking the loss of his right to proceed to trial in Hidalgo County;

d. continue to attempt to prevent Leibowitz from fulfilling his contractual and legal obligations to his clients; and

e. alter the status quo and cause a miscarriage of justice.

The trial court's order invokes all four rationales for anti-suit injunctions. Drawing inferences from the evidence in the manner most favorable to the trial court's ruling, we nevertheless conclude that the facts underlying this case do not illustrate the "very special circumstances" and the "clear equity" required for issuance of the injunction. *London Mkt.,* 95 S.W.3d at 706.

The injunction states that Counsel Financial's interpleader was filed with the "intent to thwart this Court's jurisdiction" and that if the injunction was not issued, Leibowitz would be "risking the loss of his right to proceed to trial in Hidalgo County." While an anti-suit injunction may be issued to protect the court's jurisdiction, in the instant case, the trial court actually lacked jurisdiction over the claims pertaining to enforcement of the judgment. Thus, the order was not necessary to prevent a threat to the court's jurisdiction.

The anti-suit injunction also contains language suggesting that it was necessary to prevent the evasion of important public policy because Counsel Financial's intervention was "causing havoc and a waste of valuable judicial resources" and "the resulting disruption of the judicial process." However, as stated previously, the judicial process anticipates that issues regarding the enforcement of a judgment are devoted to the court issuing the judgment. Because the underlying court lacks jurisdiction over the enforcement issues—and the Bexar County court has that jurisdiction—we conclude that the injunction was not necessary to protect the judicial process.

The temporary injunction also recites that it is necessary to prevent a multiplicity of suits. We note that first, Counsel Financial was not instituting new legal proceedings but was instead intervening in existing litigation. Second, Leibowitz has not pointed out any case prohibiting a judgment creditor from intervening in an ongoing action to collect a debt. Typically, the multiplicity argument supports issuance of an anti-suit injunction when a party files numerous lawsuits to re-litigate issues in different courts. *AVCO Corp.,* 145 S.W.3d at 266.

***13** Finally, the injunction recites that it was necessary because of the vexatious and harassing nature of Counsel Financial's intervention. Texas cases that have approved injunctive relief to protect a party from vexatious or harassing litigation have done so based on evidence that a multiplicity of suits had been filed or on other evidence of harassment. *See, e.g., Nguyen v. Intertex, Inc.,* 93 S.W.3d 288, 299 (Tex.App.-Houston [14th Dist.] 2002, no pet.) (concluding that an anti-suit injunction was warranted where appellant filed at least five lawsuits relating to the same judgment); *Chandler v. Chandler,* 991 S.W.2d 367, 403 (Tex.App.-El Paso 1999, pet. denied) (concluding that an anti-suit injunction was warranted where appellant filed ten lawsuits attempting to relitigate matters which had been resolved against him and finding that the continuous barrage of lawsuits against appellant's former wife and all attorneys involved in case was vexatious and meant to harass); *In re Estate of Dilasky,* 972 S.W.2d at 767–68 (concluding that an anti-suit injunction was warranted where appellant filed at least seven lawsuits attempting to re-litigate same or similar issues); *In re Johnson,* 961 S.W.2d 478, 482 (Tex.App.-Corpus Christi 1997, no pet.) (concluding that an anti-suit injunction was warranted to protect the prevailing party from the continued issuance of temporary orders blocking enforcement of a judgment). Our review of cases deeming litigation "vexatious and harassing" leads us to conclude there is no justification for injunctive relief on that ground based on the specific facts and pleadings herein. *Cf. In re Johnson,* 961 S.W.2d 478, 482 (Tex.App.-Corpus Christi 1997, orig. proceeding) ("In the present case, the continued issuance of temporary orders blocking the enforcement of Butron's judgment against Cantu threatens the jurisdiction of the 138th District Court, as well as this Court's authority to settle the validity of that judgment on appeal. It has created a multiplicity of suits and has prevented Butron from obtaining satisfaction of his judgment. Accordingly, we conclude that

an injunction from this Court is appropriate to protect Butron from further harassment of this nature.").

In sum, we find no evidence in the record showing that the anti-suit injunction was appropriate to prevent a multiplicity of lawsuits, to provide protection from vexatious or harassing litigation, or to prevent a threat to the court's jurisdiction or the evasion of important public policy. We sustain Counsel Financial's third issue and hold that the trial court abused its discretion by issuing the anti-suit injunction.

VII. Conclusion

Regarding the anti-execution component of the injunction, the issues initially decided by the New York judgment and which Liebowitz and Counsel Financial litigated in Bexar County, and then appealed through the San Antonio Court of Appeals to the Texas Supreme Court, are final, enforceable, and immune from collateral attack. Accordingly, the trial court lacked jurisdiction to entertain Leibowitz's pleas to enjoin execution and enforcement of those prior decisions. Regarding the anti-suit component of the injunction, the trial court's order was not void, but it erred in its analysis regarding the application of the facts to the four bases for issuance of an injunction. Accordingly, we reverse the trial court's order granting the temporary injunction and remand this case to the trial court for further action in accordance with this opinion.

All Citations

Not Reported in S.W.3d, 2011 WL 2652158

Footnotes

1 The Honorable Linda Reyna Yañez, former Justice of this Court, heard this case at oral argument but did not participate in this opinion because her term of office expired on December 31, 2010. *See* Tex.R.App. P. 41.1(a). She was replaced on panel by Chief Justice Rogelio Valdez.

2 By separate appeal arising from the same trial court proceedings, Counsel Financial sought to challenge an order of the trial court denying Counsel Financial's motion to transfer venue. By opinion issued this same date, the Court dismissed that appeal for want of jurisdiction. *See Counsel Fin. Servs., L.L.C. v. Leibowitz,* No. 13–10–00693–CV, 2011 Tex.App. LEXIS, *—— (Tex.App.-Corpus Christi June 30, 2011, no pet. h.) (mem.op.). This Court also previously denied an original proceeding arising from this same lawsuit. *See In re Counsel Fin. Servs., L.L.C.,* No. 13–10–00157–CV, 2010 Tex.App. LEXIS 3112, at ——1–3, 2010 WL 1718878 (Tex.App.-Corpus Christi Apr.27, 2010, orig. proceeding) (per curiam mem. op.) (denying petition for writ of mandamus pertaining to venue on grounds of ripeness).

3 Neither party has briefed the issue regarding whether such an agreement violates rule 5.04 of the Texas Disciplinary Rules of Professional Conduct, and accordingly, this opinion does not address that issue. *See* Tex. Disciplinary R. Prof' l Conduct 5.04(a), *reprinted in* Tex. Gov't Code Ann., tit. 2, subtit. G, app. A (West Supp.2010) (providing generally that "[a] lawyer or law firm shall not share or promise to share legal fees with a non-lawyer").

4 The specific proceedings underlying the rendition of judgment in that case are detailed by the San Antonio Court of Appeals in *Counsel Financial Services, L.L.C., v. Leibowitz, P.C.,* 31 S.W.3d 45 (Tex.App.-San Antonio 2010, pet. denied).

5 To show a probable right of recovery, an applicant need not establish that it will finally prevail in the litigation, but it must, at the very least, present some evidence that, under the applicable rules of law, tends to support its cause of action. *Camp v. Shannon,* 162 Tex. 515, 348 S.W.2d 517, 519 (Tex.1961); *INEOS Group Ltd. v. Chevron Phillips Chem. Co., LP,* 312 S.W.3d 843, 848 (Tex.App.-Houston [1st Dist.] 2009, no pet.); *IAC, Ltd. v. Bell Helicopter Textron, Inc.,* 160 S.W.3d 191, 197 (Tex.App.-Fort Worth 2005, no pet.). A party proves irreparable injury for injunction purposes by proving that damages would not adequately compensate the injured party or cannot be measured by any certain pecuniary standard. *Butnaru v. Ford Motor Co.,* 84 S.W.3d 198, 204 (Tex.2002); *Frequent Flyer Depot, Inc. v. Am. Airlines, Inc.,* 281 S.W.3d 215, 227 (Tex.App.-Fort Worth 2009, pet. denied). However, an injunction is not proper when the claimed injury is merely speculative. *Frequent Flyer Depot, Inc.,* 281 S.W.3d at 228–29; *Matrix Network, Inc. v. Ginn,* 211 S.W.3d 944, 947–948 (Tex.App.-Dallas 2007, no pet.); *Fox v. Tropical Warehouses, Inc.,* 121 S.W.3d 853, 861 (Tex.App.-Fort Worth 2003, no pet.); *Jordan v. Landry's Seafood Rest. Inc.,* 89 S.W.3d 737, 742 (Tex.App.-Houston [1st Dist.] 2002, pet. denied) (op. on reh'g). The party applying for a temporary injunction has the burden of production, which is the burden of offering some evidence that establishes the requisite elements of a temporary injunction. *See, e.g., N. Cypress Med. Ctr. Operating Co. v. St. Laurent,* 296 S.W.3d 171, 175, 177 (Tex.App.-Houston [14th Dist.] 2009, no pet.); *Marketshare Telecom, L.L.C. v. Ericsson, Inc.,* 198 S.W.3d 908, 925 (Tex.App.-Dallas 2006, no pet.); *Dallas Anesthesiology Assocs., P.A. v. Tex. Anesthesia Group, P.A.,* 190 S.W.3d 891, 897 (Tex.App.-Dallas 2006, no pet.).

End of Document

Exhibit B

DECLARATION OF ADAM SINN

I, ADAM SINN, declare under penalty of perjury:

1. My name is Adam Sinn. I am over 18 years of age, of sound mind and am capable of making this declaration. The following facts are true and correct and based on my own personal knowledge.

2. I indirectly own and direct the operations of both Raiden Commodities, L.P., now known as Aspire Power Ventures, LP ("Raiden") and Aspire Commodities, L.P., ("Aspire") (collectively "Movants") the entities identified in the action styled *Patrick A.P DeMan v. Raiden Commodities, L.P. and Aspire Commodities, L.P.*, Cause No. 2019-79857, in the 61st Judicial District Court of Harris County, Texas and the related action in the same court styled *Patrick A.P. DeMan, v. Electric Reliability Council of Texas, Inc.*, Cause No. 2019-79857C.

3. On May 7, 2018, Patrick DeMan ("DeMan") filed a motion for summary judgment in cause number DAC2016-2144 in the Commonwealth of Puerto Rico, seeking payment to him of the gross amount of just over $690,000 in allegedly unpaid wages.

4. On December 27, 2018, the Puerto Rico court entered the Partial Judgment in Mr. DeMan's favor, finding that the gross amount represented unpaid wages.

5. On November 1, 2019, Patrick DeMan filed in this Court an action to domesticate the Partial Judgment. Movants then filed a motion to vacate the domesticated judgment, and in the alternative, requested clarification from the Court regarding the nature of any required payment to DeMan.

6. On January 9, 2020, Movants and I caused to be deposited in the Puerto Rico court's registry the net amount of wages ($439,868.19) and attorneys' fees ($93,264.34), which represents the gross amount of the judgment at issue, minus federal and state taxes applicable to wages, which

I understand the law requires be withheld from the subject wages. Movants notified the Puerto Rico court and DeMan prior to the deposit of those amounts and the calculation of the federal and state taxes withheld. DeMan did not object to the proposed deposit and withholdings prior to such being made, only after, likely to create confusion and increase litigation costs associated with the collection of the judgment.

7. In May 2020, Movants and I caused to be deposited and paid to the Puerto Rico and federal tax authorities $269,506.49 which I understand represented income tax liabilities and withholdings applicable to the Partial Judgment.

8. On August 14, 2020, Movants and I further caused to be deposited with the Puerto Rico court registry post-judgment interest in the amount of $47,434.45.

9. In September 2020, Movants and I further caused to be deposited with the proper taxing authorities $10,362.71, which I understand represented tax liabilities and withholdings applicable to the Puerto Rico court attorneys' fees award.

10. On September 28, 2020, Movants and I further caused to be deposited with the Puerto Rico court registry an additional $294,257.80, which I understand represented the balance of the gross amount of the Partial Judgment and post-judgment interest not already in the registry of the Puerto Rico court. At that time, Movants requested that the Puerto Rico court determine how much of the gross amount of the Partial Judgment Mr. DeMan is entitled to, order Mr. DeMan to withdraw such amount, allow Movants to withdraw any excess amount, and declare the Partial Judgment satisfied.

11. I understand that DeMan has not attempted to obtain the funds that have been deposited in the Puerto Rico court registry.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 16th day of October, 2020 in Harris County, Texas

Adam Sinn

Exhibit C

9/23/2020 1:32 PM
Marilyn Burgess - District Clerk Harris County
Envelope No. 46498330
By: Quandella Andrews
Filed: 9/23/2020 1:32 PM

CAUSE NO. 2019-79857C

PATRICK A.P. DE MAN, GARNISHOR	§	IN THE DISTRICT COURT
	§	
VS.	§	61ST JUDICIAL DISTRICT
	§	
ELECTRIC RELIABILITY COUNCIL OF TEXAS INC., GARNISHEE	§	
	§	
RAIDEN COMMODITIES, L.P. AND ASPIRE COMMODITIES, L.P.	§	
DEFENDANTS	§	HARRIS COUNTY, TEXAS

NOTICE OF GARNISHMENT

TO: RAIDEN COMMODITIES, L.P. AND ASPIRE COMMODITIES, L.P. BY SERVING ITS ATTORNEY OF RECORD, BENJAMIN T. PENDROFF OF BARNES & THORNBURG LLP, 2121 N. PEARL ST., SUITE 700, DALLAS, TEXAS 75201; PH: 214-258-4200; FAX: 214-258-4199; EMAIL: bpendroff@btlaw.com.

You are hereby notified that certain properties alleged to be owned by you have been garnished. If you claim any rights in such property, you are advised:

"YOU HAVE A RIGHT TO REGAIN POSSESSION OF THE PROPERTY BY FILING A REPLEVY BOND. YOU HAVE A RIGHT TO SEEK TO RETAIN POSSESSION OF THE PROPERTY BY FILING WITH THE COURT A MOTION TO DISSOLVE THIS WRIT."

RESPECTFULLY SUBMITTED

PATTERSON, BOYD & LOWERY, P.C.

BY: */s/ Richard L. Fason*

WILLIAM C. BOYD
T/B/A 02779000
Email: wboyd@pattersonboyd.com
RICHARD L. FASON
T/B/A 00797935
Email: rfason@pattersonboyd.com
2101 Louisiana St.
Houston, Texas 77002
Phone: 713-222-0351
Fax: 713-759-0642

Attorneys for Plaintiff,
PATRICK A.P. DE MAN

CERTIFICATE OF SERVICE

I certify that a true copy of the foregoing has been forwarded by E-service on the 23RD day of September, 2020, enclosed in a wrapper properly addressed to:

Benjamin T. Pendroff
Barnes & Thornburg LLP
Email: bpendroff@btlaw.com

/s/ Richard L. Fason
RICHARD L. FASON

CAUSE NUMBER 2019798570

COPY OF PLEADING PROVIDED BY PLT

RECEIPT NO: 877093 TRACKING #: 73785402 DEL TO: EML

GARNISHER:DE MAN, PATRICK A P

Vs.

GARNISHEE: ELECTRIC RELIABILITY COUNCIL OF TEXAS INC (A TEXAS CORPORATION)

In the 061stJudicial District Court of Harris County, Texas

WRIT OF GARNISHMENT AFTER JUDGMENT

STATE OF TEXAS
TO:ELECTRIC RELIABILITY COUNCIL OF TEXAS INC (A TEXAS CORPORATION) BY SERVING ITS REGISTERED AGENT BILL MAGNESS,GARNISHEE

7620 METRO CENTER DR, AUSTIN TX 78744

Whereas in the 061st District Court, of Harris County, Texas, in Cause Number 2019-79857, DE MAN, PATRICK A P was Plaintiff, and RAIDEN COMMODITIES L P and ASPIRE COMMODITIES L P was Defendant(s). The Plaintiff DE MAN, PATRICK A P, on NOVEMBER 1, 2019 secured a Judgment against said RAIDEN COMMODITIES L P and ASPIRE COMMODITIES L P, Defendant in the amount of $690,847.00 plus attorney's fees in the amount of $103,627.05 dollars, besides interest and cost of suit, has applied for a Writ of Garnishment against you; the said Garnishee: ELECTRIC RELIABILITY COUNCIL OF TEXAS INC

THEREFORE YOU ARE HEREBY COMMANDED to file a sworn written answer on or before ten o'clock A.M., on the Monday next following expiration of Twenty days from the date of service hereof, then and there to answer upon oath what, if anything, you are indebted to said defendant, and were, when this Writ was served upon you; and

1. What effects, if any of the said defendant you had in your possession, and had when this writ was served.

2. What other persons, if any, within your knowledge, are indebted to the said defendant, or have effects belonging to said defendant in their possession.

YOU ARE FURTHER COMMANDED not to pay to defendant any debt or to deliver to him any effects pending further order of this court.

TO DEFENDANT: RAIDEN COMMODITIES L P and ASPIRE COMMODITIES L P

You are hereby notified that certain properties alleged to be owned by you have been garnished. If you claim any rights in such property, you are advised:

"YOU HAVE A RIGHT TO REGAIN POSSESSION OF THE PROPERTY BY FILING A REPLEVY BOND. YOU HAVE A RIGHT TO SEEK TO REGAIN POSSESSION OF THE PROPERTY BY FILING WITH THE COURT A MOTION TO DISSOLVE THIS WRIT."

Herein fail not, but make due answer as the Law directs.

ISSUED AND GIVEN UNDER MY HAND and seal of said Court, at Houston, Texas, September 9, 2020.

DISTRICT COURT OF HARRIS COUNTY TEXAS

Marilyn Burgess

Marilyn Burgess, District Clerk
Harris County, Texas
201 Caroline, Houston, Texas 77002
Generated By: WANDA CHAMBERS

Issued at request of: BOYD, WILLIAM C.
2101 LOUISIANA
HOUSTON, TX 77002

02779000

Tracking Number: 73785402

CAUSE NUMBER: 201979857C

PLAINTIFF: DE MAN, PATRICK A P

Vs.

DEFENDANT: ELECTRIC RELIABILITY COUNCIL OF TEXAS INC (A TEXAS CORPORATION)

In the 061st Judicial District Court of Harris County, Texas

OFFICER'S / AUTHORIZED PERSON'S RETURN

Came to hand on the _____ day of _____, 20____, at _____ o'clock _____.M., and executed in _____ County, Texas, by delivering to the within named _____, in person, a copy of this Writ, having first endorsed thereon the date of delivery, together with the accompanying true and correct copy of Judge's Order, on the _____ day of _____, 20_____, at _____ o'clock _____. M., at _____, place of service.

NOT EXECUTED FOR THE FOLLOWING REASONS: _____

_____

_____

Returned: _____, 20_____

Fees: $_____

By: _____

_____ of

_____ County, Texas

SWORN TO AND SUBSCRIBED BEFORE ME, this _____ day of _____, 20____.

_____

Notary Public

9/2/2020 1:30 PM
Marilyn Burgess - District Clerk Harris County
Envelope No. 45916585
By: Lisa Thomas
Filed: 9/2/2020 1:30 PM

2019-79857C / Court: 061

CAUSE NO. 2019-79857C

PATRICK A.P. DE MAN, GARNISHOR	§	IN THE DISTRICT COURT
	§	
VS.	§	
	§	
ELECTRIC RELIABILITY COUNCIL OF TEXAS, INC., GARNISHEE	§	61ST JUDICIAL DISTRICT
	§	
	§	
RAIDEN COMMODITIES, L.P. and ASPIRE COMMODITIES L.P.,	§	
	§	
DEFENDANTS	§	HARRIS COUNTY, TEXAS

APPLICATION FOR WRIT OF GARNISHMENT AFTER JUDGMENT

TO SAID HONORABLE COURT:

PATRICK A.P. DE MAN, Plaintiff and Garnishor does hereby apply for issuance of Writ of Garnishment after judgment to be served upon Garnishee, ELECTRIC RELIABILITY COUNCIL OF TEXAS, INC., a Texas corporation, whose registered agent, Bill Magness, may be served with writ at the principal place of business of the corporation, 7620 Metro Center Dr., Austin, Texas 78744-1613 and would show:

1.

Garnishor has a valid, subsisting judgment against Defendants RAIDEN COMMODITIES, L.P. and ASPIRE COMMODITIES L.P. in the Judgment amount of $690,847.00 plus attorney's fee of $103,627.05 plus cost of court in Cause Number **2019-79857,** DISTRICT COURT, 61st JUDICIAL DISTRICT, HARRIS COUNTY, TEXAS. There is due on the judgment the full amount. Garnishor has reason to believe and does believe that Garnishee has property belonging to Defendant or is indebted to Defendant. Within Garnishor's knowledge, Defendant does not possess property within the state that is subject to execution and that is sufficient to satisfy the judgment. The garnishment is not sued out to injure either of the Defendants or Garnishee.

2.

Plaintiff is entitled to the issuance of a Writ of Garnishment on the grounds stated in the attached affidavit, which is incorporated into and made a part of this application as though set out in full. Plaintiff also seeks reasonable and necessary attorney's fees of at least $1,000.00 for prosecution of this Writ of Garnishment.

WHEREFORE, Garnishor prays that Writ of Garnishment be issued directed to Garnishee; that Defendants be served with a copy of the Writ of Garnishment, this application and the accompanying affidavit; that Garnishor be granted judgment against Garnishee for the full amount of the above judgment, plus interest and cost of court as the amount of Garnishor's judgment against Defendants for attorney's fees and for all additional relief to which Garnishor is entitled.

RESPECTFULLY SUBMITTED
PATTERSON, BOYD & LOWERY, P.C.

BY: _____

WILLIAM C. BOYD
T/B/A 02779000
Email: wboyd@pattersonboyd.com
RICHARD L. FASON
T/B/A 00797935
Email: ssboyd@pattersonboyd.com
2101 Louisiana St.
Houston, Texas 77002
Phone: 713-222-0351
Fax: 713-759-0642
Attorneys for Garnishor,
PATRICK A.P. DE MAN, GARNISHOR

CAUSE NO. 2019-79857C

PATRICK A.P. DE MAN, GARNISHOR	§	IN THE DISTRICT COURT
	§	
VS.	§	
	§	
ELECTRIC RELIABILITY COUNCIL OF TEXAS, INC., GARNISHEE	§	61ST JUDICIAL DISTRICDT
	§	
	§	
RAIDEN COMMODITIES, L.P. and ASPIRE COMMODITIES L.P.,	§	
	§	
DEFENDANTS	§	HARRIS COUNTY, TEXAS

AFFIDAVIT FOR WRIT OF GARNISHMENT AFTER JUDGMENT

THE STATE OF T E X A S §

COUNTY OF HARRIS §

BEFORE ME, the undersigned authority on this day personally appeared WILLIAM C. BOYD, who, after presenting government issued identification and being by me duly sworn on oath stated:

> "I am the duly authorized agent for Garnishor, PATRICK A.P. DE MAN. I have personal knowledge of the facts stated in this affidavit, and they are true and correct. I am authorized to make this affidavit and application for a Writ of Garnishment.
>
> Garnishor owns a judgment against Defendants, RAIDEN COMMODITIES, L.P. and ASPIRE COMMODITIES L.P.. The judgment was rendered on November 1, 2019, in the **2019-79857**, 61st JUDICIAL DISTRICT, DISTRICT COURT, HARRIS COUNTY, TEXAS. The judgment is valid, subsisting, and a supersedeas bond has not been approved and filed to suspend execution of the judgment. The full amount of the judgment, in the Judgment amount of $690,847.00 plus attorney's fee of $103,627.05 plus cost of court with interest at the statutory rate of 5.5% per annum."

"Within my knowledge, Defendants do not possess property within this state that is subject to execution and that is sufficient to satisfy the judgment. This garnishment is not sued out to injure either of Defendants or Garnishee.

I have reason to believe, and do believe, that Garnishee, ELECTRIC RELIABILITY COUNCIL OF TEXAS, INC., has property or effects belonging to Defendants or is indebted to Defendants."

WILLIAM C. BOYD

SIGNED AND SWORN to before me on the 2ND of September, 2020 to certify which witness my hand and seal of office.

MARGARET BERNER
Notary Public, State of Texas
Comm. Expires 03-27-2022
Notary ID 12563440-1

NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS

2019-79857 / Court: 061

No. _____

Patrick A.P. De Man	§	IN THE DISTRICT COURT OF
	§	
	§	
v.	§	HARRIS COUNTY, TEXAS
	§	
	§	
Raiden Commodities, L.P., and Aspire Commodities, L.P.	§	_____ JUDICIAL DISTRICT
	§	
	§	

NOTICE OF FILING OF FOREIGN JUDGMENT

TO: RAIDEN COMMODITIES, L.P., AND ASPIRE COMMODITIES, L.P.

You are hereby notified that on November 1, 2019, Patrick A.P. De Man by and through his attorney of record, Chris Reynolds, filed with the court and under the case style shown above an authenticated copy of a judgment for domestication under the Uniform Enforcement of Foreign Judgments Act.

The judgment was rendered on December 27, 2018, in a case styled *Patrick A.P. De Man, et al. v. Adam C. Sinn, et al.*, filed as civil number D AC2016-2144 (701) in the Commonwealth of Puerto Rico Trial Court, Superior Court of Bayamón, and awarded Patrick A.P. De Man the amount of $690,847.00 in the judgment amount, plus $103,627.05 in attorney's fees, against the judgment debtors named below:

Raiden Commodities, L.P.
1302 Waugh Drive #539,
Houston, Texas 77019

and

Aspire Commodities, L.P.
1302 Waugh Drive #539,
Houston, Texas 77019[1]

The name and address of the judgment creditor is:

Patrick A.P. De Man
URB Sabanera Dorado
544 Corredor del Bosque
Dorado, PR 00646

The name and address of the judgment creditor's attorney in Texas is:

Chris Reynolds
Reynolds Frizzell LLP
1100 Louisiana Street, Suite 3500
Houston, Texas 77002
(713) 485-7200 Telephone
(713) 485-7250 Facsimile

[1] Raiden Commodities, L.P., and Aspire Commodities, L.P., are also being served this notice at the following addresses:

200 Dorado Beach Dr., Ste. 3232
Dorado, PR 00646 USA

c/o KB Carlton PLLC
7800 Dallas Parkway, Suite 360
Plano, Texas 75024

c/o KB Carlton PLLC
2500 Dallas Pkwy, Suite 501
Plano, TX 75093 USA

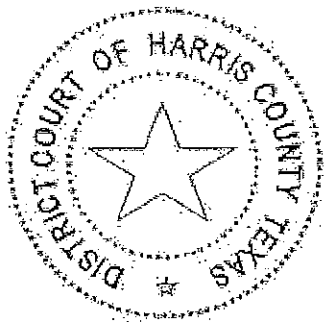
Respectfully submitted,

REYNOLDS FRIZZELL LLP

By: */s/ Chris Reynolds*

Chris Reynolds
Texas Bar No. 16801900
Matthew Sheehan
Texas Bar No. 24106881
1100 Louisiana Street, Suite 3500
Houston, Texas 77002
Telephone: (713) 485-7200
Facsimile: (713) 485-7250
creynolds@reynoldsfrizzell.com
msheehan@reynoldsfrizzell.com

ATTORNEYS FOR
PATRICK A.P. DE MAN



I, Marilyn Burgess, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.
Witness my official hand and seal of office this November 6, 2019

Certified Document Number: 87896961 Total Pages: 3

Marilyn Burgess, DISTRICT CLERK
HARRIS COUNTY, TEXAS

In accordance with Texas Government Code 406.013 electronically transmitted authenticated documents are valid. If there is a question regarding the validity of this document and or seal please e-mail support@hcdistrictclerk.com

COMMONWEALTH OF PUERTO RICO
GENERAL COURT OF JUSTICE
COURT OF FIRST INSTANCE
SUPERIOR COURT OF BAYAMON

PATRICK A.P. DE MÁN, et als Plaintiffs, v. ADAM C. SINN, et als Defendants.	CIVIL NO.: D AC2016-2144 (701) RE: BREACH OF FIDUCIARY DUTY; BREACH OF LIMITED LIABILITY COMPANY CONTRACT; DAMAGES; BAD FAITH AND MALICE; BAD FAITH IN CONTRACTING; UNJUST ENRICHMENT

CERTIFICATE

COMMONWEALTH OF PUERTO RICO
CITY OF BAYAMÓN

I, ANDINO OLGUÍN ARROYO, Superior Court Judge of the Commonwealth of Puerto Rico, in and for the City of Bayamón, do hereby certify that the foregoing attestation and certificate of Laura I. Santa Sánchez, Esq., is in due form of law, and that said Laura I. Santa Sánchez, Esq., is now, and at the time of making said certificate and attestation, was the Clerk of the Superior Court of the City of Bayamón, Puerto Rico; that she is the proper officer to make such certificate and attestation; that her signature, whether manual or electronic, thereto is genuine, and that as such Clerk of the Superior Court of the City of Bayamón, she is the sole custodian of papers, documents, records, and seal pertaining to said Court.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of said Court at my office in the City of Bayamón, in the Commonwealth of Puerto Rico, on October 10, 2019.

Superior Court Judge
Court of First Instance of the City of Bayamón
Commonwealth of Puerto Rico

ANDINO OLGUÍN ARROYO
JUEZ SUPERIOR

COMMONWEALTH OF PUERTO RICO

CITY OF BAYAMÓN, PUERTO RICO

LCDA. LAURA I. SANTA SÁNCHEZ

I, Secretaria Regional, Clerk of the Superior Court of the Commonwealth of Puerto Rico, in and for the City of Bayamón, do hereby certify that the Honorable Judge ANDINO OLGUÍN ARROYO, whose genuine signature, whether manual or electronic, appears on the foregoing certificate is now, and was at the time of signing said certificate, the Judge of the Superior Court of the City of Bayamón, Puerto Rico, duly commissioned and qualified in accordance with the laws of the Commonwealth of Puerto Rico, and that said attestation is in due form of law.

IN TESTIMONY WHEREOF, I have set my hand and affixed the Seal of said Court at my office in the City of Bayamón, in the Commonwealth of Puerto Rico, on October 21st, 2019.

ESTADO LIBRE ASOCIADO DE PUERTO RICO
TRIBUNAL DE PRIMERA INSTANCIA
SALA SUPERIOR DE BAYAMÓN
TRIBUNAL GENERAL DE JUSTICIA
D154

Laura I. Santa Sánchez
CLERK
Superior Court of the City of Bayamón
Commonwealth of Puerto Rico

ESTADO LIBRE ASOCIADO DE PUERTO RICO
TRIBUNAL GENERAL DE JUSTICIA
TRIBUNAL DE PRIMERA INSTANCIA
SALA DE BAYAMON-SUPERIOR

DE MAN, PATRICK A.P. Y OTROS
DEMANDANTE

VS.

SINN, ADAM C. Y OROS
DEMANDADO

CASO NÚM. D AC2016-2144
SALÓN NÚM.701

SOBRE:
INCUMPLIMIENTO DE CONTRATO

N O T I F I C A C I Ó N

A: LIC. BRAU RAMIREZ GERMAN J
german.brau@bioslawpr.com dannette.negron@bioslawpr.com

LIC. RAMÍREZ MACDONALD ALFREDO F
alfredo.ramirez@oneillborges.com virginia.martinez@oneillborges.com

LIC. RODRIGUEZ RIVERA ANA M
ana.rodriguez@oneillborges.com anamrodriguez81@yahoo.com

LIC. HERNÁNDEZ GONZÁLEZ ARTURO LUIS BIENVENID
arturo.hernandez@oneillborges.com vilna.cedano@oneillborges.com

EL[LA] SECRETARIO[A] QUE SUSCRIBE CERTIFICA Y NOTIFICA A USTED QUE CON RELACIÓN AL[A LA]: CASO DE EPÍGRAFE ESTE TRIBUNAL EMITIÓ UNA SENTENCIA EL 27 DE DICIEMBRE DE 2018.

SE ANEJA COPIA O INCLUYE ENLACE:

FDO.ANDINO OLGUIN ARROYO
JUEZ

SE LE ADVIERTE QUE AL SER UNA PARTE O SU REPRESENTANTE LEGAL EN EL CASO SUJETO A ESTA SENTENCIA , USTED PUEDE PRESENTAR UN RECURSO DE APELACIÓN, REVISIÓN O CERTIORARI, DE CONFORMIDAD CON EL PROCEDIMIENTO Y EN EL TÉRMINO ESTABLECIDO POR LEY, REGLA O REGLAMENTO.

CERTIFICO QUE LA DETERMINACIÓN EMITIDA POR EL TRIBUNAL FUE DEBIDAMENTE REGISTRADA Y ARCHIVADA HOY 03 DE ENERO DE 2019 ,Y QUE SE ENVIÓ COPIA DE ESTA NOTIFICACIÓN A LAS PERSONAS ANTES INDICADAS, A SUS DIRECCIONES REGISTRADAS EN EL CASO CONFORME A LA NORMATIVA APLICABLE. EN ESTA MISMA FECHA FUE ARCHIVADA EN AUTOS COPIA DE ESTA NOTIFICACIÓN.

NOTAS DE LA SECRETARÍA:
SENTENCIA SUMARIA PARCIAL

EN BAYAMON, PUERTO RICO, A 03 DE ENERO DE 2019.

MANUEL MOJICA SIERRA - INTERINO	Por:f/MARIA D. MEDINA HERNANDEZ
NOMBRE DEL (DE LA) SECRETARIO(A) REGIONAL	NOMBRE Y FIRMA DEL (DE LA) SECRETARIO(A) AUXILIAR DEL TRIBUNAL

OAT1812-Formulario Único de Notificación-Sentencias,Resoluciones,Órdenes y Minutas (Noviembre 2016)

ESTADO LIBRE ASOCIADO DE PUERTO RICO
TRIBUNAL DE PRIMERA INSTANCIA
SALA SUPERIOR DE BAYAMÓN

PATRICK A.P. DE MAN; MIKA DE MAN (A.K.A. MIKA KAWAJIRI-DE MAN OR MIKA KAWAJIRI); Y LA SOCIEDAD LEGAL DE BIENES GANANCIALES COMPUESTA POR AMBOS Demandantes v. ADAM C. SINN; RAIDEN COMMODITIES, L.P.; RAIDEN COMMODITIES 1 LLC; ASPIRE COMMODITIES, L.P.; ASPIRE COMMODITIES 1, LLC; SINN LIVING TRUST Demandados	CIVIL NÚM.: D AC2016-2144 (701) SOBRE: INCUMPLIMIENTO DE DEBER DE FIDUCIA; INCUMPLIMIENTO DE CONTRATO DE SOCIEDAD LIMITADA; DAÑOS Y PERJUICIOS; MALA FE Y DOLO; MALA FE EN LA CONTRATACIÓN; ENRIQUECIMIENTO INJUSTO

SENTENCIA SUMARIA PARCIAL

Considerada la Moción de Sentencia Sumaria Parcial presentada por la parte demandante el 7 de mayo de 2018, la oposición a dicha moción presentada por las partes codemandadas, los otros escritos en apoyo y oposición a la Moción de Sentencia Sumaria Parcial presentados por las partes, así como las argumentaciones de las partes durante la vista celebrada el 13 de diciembre de 2018, el Tribunal declara CON LUGAR la Moción de la parte demandante y emite la sentencia parcial solicitada.

A base de las alegaciones de las partes y los documentos y declaraciones juradas presentadas, el Tribunal determina que no existe una disputa sustancial sobre los siguientes:

HECHOS INCONTROVERTIDOS

1. El demandante Patrick De Man tuvo una relación contractual con las partes codemandadas.

2. En el párrafo 38 de su Demanda, presentada el 16 de diciembre de 2016, el demandante alegó que había comenzado a trabajar como empleado de la codemandada Aspire Commodities, LP, en 2011 en calidad de comerciante ("trader").

3. En su Contestación a la Demanda y Reconvención, presentadas el 30 de mayo de 2017, la parte demandada también alega que el demandante fue empleado de Aspire Commodities, LP.

4. En el párrafo 37 de su Contestación, la parte demandada alegó que el demandante "fue contratado como empleado" y que "prestó sus servicios y conocimiento en consideración a su salario y bono de productividad."

5. En el párrafo 40 de su Contestación, la parte demandada alegó que el demandante "únicamente desempeñó labores administrativas típicas de un empleado regular y no de un socio o miembro propietario." La parte demandada alegó que cualquier gestión del demandante "fue debidamente compensada a través del salario devengado por éste y el esquema de bonificaciones al que estaba sujeto."

6. En la porción pertinente del párrafo 28 de su Reconvención, la parte demandada alegó que "[c]omo compensación, Aspire Commodities, LP acordó verbalmente con el señor De Man pagarle un salario fijo y una comisión, la cual consistía en una porción de las ganancias netas que generaran las actividades comerciales del señor De Man en particular."

7. En el párrafo 23 de la Reconvención Enmendada, presentada el 22 de junio de 2017, la parte demandada similarmente expresó que "[c]omo compensación, Aspire Commodities, LP acordó verbalmente con el señor De Man pagarle un salario fijo y un bono. El bono se calcularía como un porciento de las ganancias netas que generaran Aspire Commodities, LP o Raiden Commodities, LP como producto de las estrategias comerciales del señor de Man, en particular en los mercados de ERCOT o ICE."

8. Ambas partes coinciden, de este modo, en que el señor De Man fungió como empleado de Aspire Commodities, LP.

9. Además de Aspire Commodities, LP, el demandante también llevó a cabo funciones como empleado para Raiden Commodities, LP. En el párrafo 47 de la Contestación, la parte demandada alegó, en este sentido, que toda gestión o acción llevada a cabo por el señor De Man "en beneficio de Raiden LP y/o Aspire LP" fue realizada "en calidad de empleado y en cumplimiento de sus deberes como empleado."

10. Existe controversia entre las partes en torno a si, además de prestar servicios como empleado, el demandante adquirió algún tipo de interés societario en las empresas codemandadas que le confiriera derecho a participar en las ganancias de las

empresas, no sólo con relación a las transacciones trabajadas por él, sino como producto de las actividades de los otros comerciantes. El demandante alega en su demanda que él se convirtió en socio, lo que es negado por la parte demandada. En el párrafo 54 de su Contestación, la parte demandada alega que cualquier alusión al señor De Man como "socio" o "miembro" de Aspire Commodities, LP "se debió a error o inadvertencia por parte de terceros."

11. Esta disputa de hecho existente sobre este aspecto de la controversia no impide que este Tribunal fije los derechos del demandante como empleado de Aspire Commodities, LP y Raiden Commodities, LP, asunto sobre el cual no existe controversia.

12. Para 2015, la parte demandada preparó un formulario K-1 para el señor De Man, informando sus ingresos para ese período al Internal Revenue Services. El formulario divulgaba la participación de socio correspondiente al demandante en Raiden Commodities, LP ("[p]artner's share of income, deduction, credits, etc.").

13. El récord refleja que la parte demandada también enviaba este tipo de formulario al demandado Adam C. Sinn.

14. Según la explicación ofrecida por el Sr. Gary G. Kleinrichert, perito de la parte demandada, en su declaración jurada del 31 de julio de 2018, el formulario K-1 es la planilla para ingreso de una sociedad del Gobierno Federal ("is the U.S. Return Partnership Income") y se usa para reportar ingresos, ganancias, pérdidas, deducciones, créditos, etc. ("is an information return used to report income, gains, losses, deductions, credits, etc. from the operation of the partnership").

15. Para el año 2015, el formulario K-1 del demandante reflejaba que éste tenía un ingreso ("income") de $1,890,847 y que se le habían pagado dividendos de $1,000,000 quedando un balance de ingreso no distribuido de $890,847.

16. El 26 de marzo de 2016, el demandante le escribió al demandado Adam C. Sinn y le propuso un itinerario para el pago de la suma que se le adeudaba ("half of the 891k now and the rest in late june"). El Señor Sinn manifestó estar de acuerdo. ("I think your email makes sense").

17. Según su declaración jurada y los documentos sometidos en apoyo a su moción de sentencia sumaria, al demandante se le pagaron $200,000 el 1ro de abril de 2016, quedando reducida la deuda a $690,847.

18. El demandante terminó su relación de trabajo con la parte demandada en 2016.

19. El 1ro de julio de 2016, el abogado de las partes demandadas le escribió un correo al demandante y le dijo que se le iba a pagar y que se estaba preparando un borrador de acuerdo de separación ("I am drafting your separation paperwork and I understand you will be paid in the normal course of performance").

20. El 18 de julio de 2018, el abogado de la parte demandada le escribió un nuevo correo a la representación del demandante, en la cual, entre otras cosas, manifestó que al demandante no se le iba a pagar, por existir ciertos asuntos que debían resolverse. En la comunicación enviada, la parte demandada admitió que al demandante se le adeudaban los dineros que reflejaba su formulario K-1, pero expresó que no se le pagaría porque, entre otras cosas, el demandante no había querido suscribir un borrador de acuerdo de separación que le fue sometido:

> For a variety of reasons, a wire will not be sent to Patrick today. The separation agreement attempted to fully resolve matters between all parties involved. While Mr. De Man is correct that his K-1 reflected income, the course of performance between the parties necessitated that certain capital be retained at the company. It is important that all issues be resolved prior to a final disbursement of the funds.

21. Al demandante no se le pagó la suma reflejada en su formulario K-1.

22. En su Reconvención, la parte demandada le reclama al demandante por daños y perjuicios por motivo de su incumplimiento de sus deberes de fiducia como empleado de la parte demandada. En el párrafo 56 de su Contestación, la parte demandada señala, entre otras cosas, que "cualquier salario y/o bonificación que se le deba al señor De Man por parte de Raiden LP y/o Aspire LP está sujeto a compensación por los daños causados por el señor De Man." En el inciso 17 de sus defensas afirmativas, la parte demandada alega que "[c]ualquier compensación o bonificación que los Demandados pudieran deberle al señor De Man está sujeta a ser compensada en función de los daños ocasionados por las actuaciones del señor De Man."

23. En los párrafos 10 y 11 de su Declaración Jurada del 1ro. de agosto de 2018, el Sr. Adam C. Sinn expresa las razones por las cuales la parte demandada entiende que no viene obligada a pagar al demandante los salarios y beneficios que se le adeudan:

> Mr. De Man voluntarily separated from Raiden in 2016. There was no agreement between Raiden and Mr. De Man which allowed Mr. De Man, upon such a separation, to compel payment to him of any undistributed amounts he may have earned. In fact, to the extent it applies, Raiden's Limited Partnership Agreement, ..., expressly stated that Mr. De Man had no such right and that any interest he had in Raiden at the time of his separation was subject to setoff for any harm he had caused Raiden. Similarly, Raiden's agreements with its employees required them to forfeit unpaid earnings upon a voluntary separation, like Mr. De Man's.
>
> Accordingly, Raiden did not owe Mr. De Man a payable debt of $890,847 at the end of 2015, and it does not currently owe Mr. De Man a liquid and payable debt of $690,847.

24. Junto con su Declaración Jurada, el señor Sinn acompañó un documento titulado "Second Amended & Restated Partnership Agreement" de Raiden Commodities, LP, con fecha del 30 de julio de 2013. Este documento sólo aparece firmado por el codemandado Adam Sinn y no tiene la firma del demandante.[1]

DISCUSIÓN

La Regla 36.3 de las de Procedimiento Civil autoriza a este Tribunal a dictar sentencia sumaria en un caso cuando no existe controversia real sustancial en cuanto a ningún hecho material en un caso. La Regla dispone que cuando se presente una moción de sentencia sumaria y se sostenga en la forma provista, la parte contraria "no podrá descansar solamente en las aseveraciones o negaciones contenidas en sus alegaciones, sino que estará obligada a contestar en forma tan detallada y específica, como lo haya hecho la parte promovente. De no hacerlo así, se dictará la sentencia sumaria en su contra si procede."

La Regla confiere discreción al Tribunal de Primera Instancia para dar por admitida toda relación de hechos expuesta en la moción, que esté debidamente formulada y apoyada en la forma en que lo exige el precepto, "a menos que esté debidamente controvertida conforme lo dispone la Regla." La Regla también dispone

[1] La parte demandante ha aducido en sus escritos que este documento es apócrifo. Al igual que la disputa sobre si el demandante es socio en las empresas demandadas, esta controversia es inmaterial y no impide que dictemos sentencia parcial porque el documento no está firmado por el demandante.

que "[e]l Tribunal no tendrá la obligación de considerar aquellos hechos" que no tienen una referencia a prueba documental o declaraciones juradas que establezcan una controversia.; véase, SLG Zapata-Rivera v. J.M. Montalvo, 189 D.P.R. 414, 433 (2013).

El Tribunal Supremo de Puerto Rico ha aclarado que, cuando no existe controversia real sustancial de hecho, se favorece el empleo de la sentencia sumaria como mecanismo para descongestionar los calendarios de los tribunales. Meléndez González v. M. Cuebas, Inc., 2015 T.S.P.R. 70; Ramos Pérez v. Univisión, 178 D.P.R. 200, 220 (2010). El promovido no puede valerse de "la lacónica aseveración de que los hechos están en controversia." Ramos Pérez v. Univisión, 178 D.P.R. a la pág. 226.

En este caso, hemos examinado los documentos, y éstos reflejan que no existe controversia real sustancial sobre los hechos. Al momento de terminar su relación con la parte demandada, al demandante se le adeudaban $690,847 por concepto de ingresos acumulados por él, según reportados al Gobierno de los Estados Unidos en la forma K-1 para 2015. Se trata de una suma líquida. Ramos y Otros v. Colón y Otros, 153 D.P.R. 534, 546 (2001).

Estas cantidades corresponden a los servicios prestados por el demandante como comerciante ("trader") para la parte demandada. Así lo esgrimió la propia parte demandada en sus alegaciones, al insistir que el demandante era su empleado (y nada más). La parte demandada está obligada por sus alegaciones. Díaz Ayala et al v. E.L.A., 153 D.P.R. 675, 693 (2001); Mariani v. Christy, 73 D.P.R., 782, 788-789 (1952); véase, además, Ernesto Chiesa Aponte, Tratado de Derecho Probatorio, Tomo II, pág. 655 ("cuando una parte hace una alegación ..., queda obligada por la alegación").

La parte demandada alegó que podía retener al demandante el dinero que se le debía por los servicios prestados, pero, la sección 5 de la Ley Núm. 17 de 1931, según enmendada, dispone expresamente que "ningún patrono podrá descontar ni retener por ningún motivo parte del salario que devengarán los obreros", salvo en las circunstancias que se exponen en el precepto, ninguna de las cuales está presente. 29 L.P.R.A. sec. 175; véase, Seafarers Int. Union de P.R. v. J.R.T., 94 D.P.R. 697, 704 esc. 4 (1967).

La sección 7 de la Ley dispone que la violación a la norma anterior se considera como un delito menos grave. 29 L.P.R.A. sec. 177.

Un patrono, de este modo, no puede compensar lo adeudado a un empleado por concepto de salario y beneficios, contra otras deudas que el patrono reclame del empleado. Lo contrario, naturalmente, expondría a los empleados a que se les retengan sus salarios bajo la alegación de que ellos adeudan sumas al patrono por el incumplimiento de sus deberes.

La contensión de la parte demandada es que el demandante renunció a su salario al marcharse de la empresa. Pero ello es contrario a la política pública de nuestra jurisdicción. Un empleado no puede ser penalizado por ejercer su derecho constitucional a escogér libremente su trabajo. Dolphin Int'l of P.R. v. Ryder Truck Lines, 127 D.P.R. 869, 885 (1991).

En su Declaración Jurada, el codemandado Adam C. Sinn alegó que el demandante renunció a su salario y bonificaciones por virtud del "Second Amended & Restated Partnership Agreement" de Raiden Commodities, LP. Este documento no aparece firmado por el demandante. El Artículo 1209 del Código Civil aclara que los contratos "sólo producen efecto entre las partes que los otorgan y sus herederos." 31 L.P.R.A. sec. 3374. Al no haber firmado el documento, el demandante no puede ser obligado a renunciar al cobro de lo que se le adeuda.

La renuncia de derechos nunca se presume. Eastern Sands, Inc. v. Roig Comm. Bank, 150 D.P.R. 703, 720 (1996). Aunque el Artículo 4 del Código Civil reconoce que los derechos se pueden renunciar, 31 L.P.R.A. sec. 4, el Tribunal Supremo de Puerto Rico ha aclarado que, para ser efectiva, una renuncia de derechos debe ser "clara, terminante, explícita e inequívoca. Aunque se concede que puede ser expresa o tácita, la renuncia de derechos en general no se presume y es de estricta interpretación. No es lícito deducirla de expresiones de dudosa significación." Quiñones Quiñones v. Quiñones Irizarry, 91 D.P.R. 225, 266 (1964).

Es un requisito indispensable de toda renuncia que ésta sea clara e inequívoca. Torres Solís et al. v. A.E.E et als., 136 D.P.R, 302, 314-315 (1994); Chico v. Editorial

Ponce, Inc., 101 D.P.R. 759, 778 (1973); Mendoza Aldarondo v. Asociación Empleados, 94 D.P.R. 564, 577 (1967).

En este caso, la parte demandada no ha ofrecido ninguna evidencia que tienda a establecer que el demandante renunció a su derecho a cobrar por sus servicios. Dicha renuncia no puede inferirse del hecho de que el demandante haya decidido abandonar la empresa.

La parte demandada alega que desea compensar la deuda del demandante contra los daños que le ocasionó el demandante a las empresas por su conducta torticera. Conforme al Artículo 1150 del Código Civil, para que dos deudas sean compensadas, se requiere que ambas sean líquidas y exigibles. 31 L.P.R.A. sec. 3222. Fuentes Leduc v. Aponte, 63 D.P.R. 194, 199 (1944) ("para que la compensación proceda es necesario que exista un crédito líquido y exigible").

La deuda de la parte demandada hacia el demandante, según hemos señalado, es líquida y exigible y surge de los servicios prestados por el demandante a las empresas. Esta deuda no puede ser compensada contra los daños y perjuicios que la parte demandada reclama contra el demandante, porque estos daños no constituyen una suma líquida ni son exigibles, hasta tanto el Tribunal los determine y adjudique.

En su oposición a la moción de sentencia sumaria, la parte demandada alega que la declaración jurada del señor Sinn "provee las razones por las cuales al señor de Man no se le adeudan los $690,847 que éste reclama." La conclusión del codemandado de que no se le adeuda nada al demandante es una cuestión de derecho que puede ser adjudicada sumariamente por este Tribunal.

Este foro entiende que las razones aducidas por la parte demandada para retenerle al demandante sus ingresos generados para 2015 no es válida. Procede, por lo tanto, que dictemos sentencia sumaria parcial concediendo el remedio solicitado.

POR LOS FUNDAMENTOS EXPRESADOS, se dicta sentencia parcial declarando con lugar la moción de sentencia sumaria parcial presentada por la parte demandante y se ordena a la parte demandada a pagar solidariamente al demandante la suma adeudada de $690,847 y que le fue retenida al demandante por las

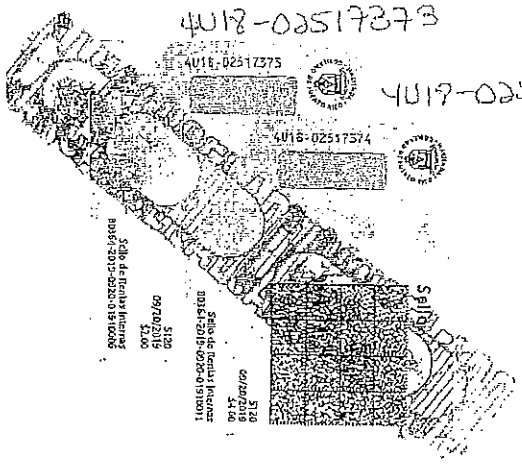
demandadas Aspire Commodities, LP y Raiden Commodities, LP. Se dicta sentencia parcial en esta etapa por no existir motivo para posponerla hasta el final del pleito. Tratándose de una controversia sobre el pago de los servicios y bonificaciones de un empleado, el Tribunal fija a la parte demandada honorarios de abogado a favor de la parte demandante en una cuantía del 15% del total, conforme a lo contemplado por la Ley, 32 L.P.R.A. sec. 3115, para un total de $103,627.05 por concepto de honorarios de abogado. Esta suma formará parte de la sentencia.

REGÍSTRESE Y NOTIFÍQUESE.

En Bayamón, Puerto Rico, a 27 de diciembre de 2018.

f/ANDINO OLGUIN ARROYO
JUEZ SUPERIOR

4U18-02517373



4U18-02517374

CERTIFICO que lo que antecede es copia fiel y exacta de su original que obra en los autos del caso.
☐ Previo pago de derechos
☐ Para uso oficial
En Bayamón, Puerto Rico, a 20 de Sept. de 2019
Por Lcda. Jaime I. Santa Sánchez
Secretaria Reg.
Por Marie Hernandez
Sec. Sala Trib

ESTADO LIBRE ASOCIADO DE PUERTO RICO
TRIBUNAL DE PRIMERA INSTANCIA SUPERIOR DE BAYAMÓN
SALA GENERAL DE JUSTICIA

DHH
D111

Certified Translation of Judgement from Puerto Rico

I, Mark W. (Marco) Hanson, certify that the following Spanish translation is complete, accurate and faithful to the best of my ability. I am a Texas Master Licensed Court Interpreter (1599) and American Translators Association (241783) certified Spanish to English translator. I hold a Master of Arts degree in Spanish from the University of Texas – Rio Grande Valley and have nineteen years of experience as a translator and interpreter.

Translator's signature: _____

Firma del traductor

Date signed: October 1, 2019

Fecha de firma: 1 de octubre de 2019

Traducción certificada de sentencia de Puerto Rico

Yo, Marco W. (Mark) Hanson, certifico que la traducción siguiente es completa, precisa y verdadera según mi mejor capacidad. Tengo la licencia de intérprete jurídico a nivel de maestría del Estado de Texas (1599) y la certificación de traductor del español al inglés de la American Translator's Association *[Asociación Norteamericana de Traductores]. Tengo el título de maestría en español de la* University of Texas – Rio Grande Valley, *y diecinueve años de experiencia como traductor e intérprete.*

TEXAN TRANSLATION
Accuracy Guaranteed - Certified Translation

American Translators Association
ata
Marco Hanson
Spanish into English
Certification #183576
Certified Translator
Verify at www.atanet.org/verify

ESTADO LIBRE ASOCIADO DE PUERTO RICO
TRIBUNAL DE PRIMERA INSTANCIA
SALA SUPERIOR DE BAYAMÓN

PATRICK A.P. DE MAN; MIKA DE MAN (A.K.A. MIKA KAWAJIRI-DE MAN OR MIKA KAWAJIRI); Y LA SOCIEDAD LEGAL DE BIENES GANANCIALES COMPUESTA POR AMBOS Demandantes v. ADAM C. SINN; RAIDEN COMMODITIES, L.P.; RAIDEN COMMODITIES 1 LLC; ASPIRE COMMODITIES, L.P.; ASPIRE COMMODITIES 1, LLC) SINN LIVING TRUST Demandados	CIVIL NÚM.: D AC2016-2144 (701) SOBRE: INCUMPLIMIENTO DE DEBER DE FIDUCIA; INCUMPLIMIENTO DE CONTRATO DE SOCIEDAD LIMITADA; DAÑOS Y PERJUICIOS; MALA FE Y DOLO; MALA FE EN LA CONTRATACIÓN; ENRIQUECIMIENTO INJUSTO

SENTENCIA SUMARIA PARCIAL

Considerada la Moción de Sentencia Sumaria Parcial presentada por la parte demandante el 7 de mayo de 2018, la oposición a dicha moción presentada por las partes codemandadas, los otros escritos en apoyo y oposición a la Moción de Sentencia Sumaria Parcial presentados por las partes, así como los argumentaciones de las partes durante la vista celebrada el 13 de diciembre de 2018, el Tribunal declara CON LUGAR la Moción de la parte demandante y emite la sentencia parcial solicitada.

A base de las alegaciones de las partes y los documentos y declaraciones juradas presentadas, el Tribunal determina que no existe una disputa sustancial sobre los siguientes:

HECHOS INCONTROVERTIDOS

1. El demandante Patrick De Man tuvo una relación contractual con las partes codemandadas.

2. En el párrafo 38 de su Demanda, presentada el 16 de diciembre de 2016, el demandante alegó que había comenzado a trabajar como empleado de la codemandada Aspire Commodities, LP, en 2011 en calidad de comerciante ("trader").

3. En su Contestación a la Demanda y Reconvención, presentadas el 30 de mayo de 2017, la parte demandada también alega que el demandante fue empleado de Aspire Commodities, LP.

COMMONWEALTH OF PUERTO RICO
TRIAL COURT
SUPERIOR COURT OF BAYAMON

PATRICK A.P. DE MAN; MIKA DE MAN (A.K.A. MIKA KAWAJIRI-DE MAN OR MIKA KAWAJIRI); AND THE COMMUNITY MATRIMONIAL ASSETS ACQUIRED BY BOTH SPOUSES

Plaintiffs

v.

ADAM C. SINN; RAIDEN COMMODITIES, L.P.; RAIDEN COMMODITIES 1 LLC; ASPIRE COMMODITIES, L.P.; ASPIRE COMMODITIES 1, LLC; SINN LIVING TRUST

Defendants

CIVIL NO.: D AC2016-2144 (701)

REGARDING:

BREACH OF FIDUCIARY DUTY; BREACH OF LIMITED LIABILITY COMPANY CONTRACT; DAMAGES; BAD FAITH AND MALICE; BAD FAITH IN CONTRACTING; UNJUST ENRICHMENT

PARTIAL SUMMARY JUDGMENT

Considering the Motion for Partial Summary Judgment filed by the Plaintiff on May 7, 2018, the opposition to said motion filed by the Co-Defendants, the other documents for and against the Motion for Partial Summary Judgment filed by the Parties, as well as the arguments of the Parties during the hearing held on December 13, 2018, the Court declares the Motion by the Plaintiff **GRANTED** and issues the requested partial judgment.

Based on the allegations of the Parties and the documents and sworn statements filed, the Court determines that there is no material dispute over the following:

UNCONTROVERTED FACTS

1. Plaintiff Patrick De Man had a contractual relationship with the Co-Defendants.

2. In paragraph 38 of his Suit, filed on December 16, 2016, the Plaintiff alleged that he had begun to work as an employee of the Co-Defendant Aspire Commodities, LP, in 2011 as a trader.

3. In its Answer to the Suit and Counterclaim, filed on May 30, 2017, the Defendant also alleges that the Plaintiff was employed by Aspire Commodities, LP.

[left blank intentionally] [*sin texto*]

4. En el párrafo 37 de su Contestación, la parte demandada alegó que el demandante "fue contratado como empleado" y que "prestó sus servicios y conocimiento en consideración a su salario y bono de productividad."

5. En el párrafo 40 de su Contestación, la parte demandada alegó que el demandante "únicamente desempeñó labores administrativas típicas de un empleado regular y no de un socio o miembro propietario." La parte demandada alegó que cualquier gestión del demandante "fue debidamente compensada a través del salario devengado por éste y el esquema de bonificaciones al que estaba sujeto."

6. En la porción pertinente del párrafo 28 de su Reconvención, la parte demandada alegó que "[c]omo compensación, Aspire Commodities, LP acordó verbalmente con el señor De Man pagarle un salario fijo y una comisión, la cual consistía en una porción de las ganancias netas que generarán las actividades comerciales del señor De Man en particular."

7. En el párrafo 23 de la Reconvención Enmendada, presentada el 22 de junio de 2017, la parte demandada similarmente expresó que "[c]omo compensación, Aspire Commodities, LP acordó verbalmente con el señor De Man pagarle un salario fijo y un bono. El bono se calcularía como un porciento de las ganancias netas que generaran Aspire Commodities, LP o Raiden Commodities, LP como producto de las estrategias comerciales del señor de Man, en particular en los mercados de ERCOT o ICE."

8. Ambas partes coinciden, de este modo, en que el señor De Man fungió como empleado de Aspire Commodities, LP.

9. Además de Aspire Commodities, LP, el demandante también llevó a cabo funciones como empleado para Raiden Commodities, LP. En el párrafo 47 de la Contestación, la parte demandada alegó, en este sentido, que toda gestión o acción llevada a cabo por el señor De Man "en beneficio de Raiden LP y/o Aspire LP" fue realizada "en calidad de empleado y en cumplimiento de sus deberes como empleado."

10. Existe controversia entre las partes en torno a si, además de prestar servicios como empleado, el demandante adquirió algún tipo de interés societario en las empresas codemandadas que le confiriera derecho a participar en las ganancias de las

4. In paragraph 37 of his Answer, the Defendant claimed that the Plaintiff "was hired as an employee" and that "he provided his services and knowledge in consideration of his salary and productivity bonus."

5. In paragraph 40 of his Answer, the Defendant claimed that the Plaintiff "only performed administrative duties typical of a regular employee and not of a partner or owner-member." The Defendant claimed that any actions performed by the Plaintiff "were duly compensated through his salary earned and the bonus scheme to which he was subject."

6. In the pertinent portion of Paragraph 28 of his Counterclaim, the Defendant claimed that "[a]s compensation, Aspire Commodities, LP, verbally agreed with Mr. De Man to pay him a fixed salary and a commission, which consisted of a portion of the net earnings generated by Mr. De Man's business activities in particular."

7. In Paragraph 23 of the Amended Counterclaim, filed on June 22, 2017, the Defendant similarly stated that "[a]s compensation, Aspire Commodities, LP verbally agreed with Mr. De Man to pay him a fixed salary and a bonus. The bonus would be calculated as a percentage of the net profits generated by Aspire Commodities, LP or Raiden Commodities, LP as a product of Mr. Man's business strategies, particularly in the ERCOT or ICE markets."

8. Both parties agree, therefore, that Mr. De Man served as an employee of Aspire Commodities, LP.

9. In addition to Aspire Commodities, LP, the Plaintiff also performed duties as an employee of Raiden Commodities, LP. In paragraph 47 of the Answer, the Defendant alleges, in this regard, that all actions or performances carried out by Mr. De Man "for the benefit of Raiden LP and/or Aspire LP" were carried out "as an employee and in fulfilling his duties as an employee."

10. There is controversy between the parties about whether, in addition to providing services as an employee, the Plaintiff acquired some type of corporate interest in the Co-Defendants' companies that granted him the right to share in the profits of the

---

[left blank intentionally] [*sin texto*]

empresas, no sólo con relación a las transacciones trabajadas por él, sino como producto de las actividades de los otros comerciantes. El demandante alega en su demanda que él se convirtió en socio, lo que es negado por la parte demandada. En el párrafo 54 de su Contestación, la parte demandada alega que cualquier alusión al señor De Man como "socio" o "miembro" de Aspire Commodities, LP "se debió a error o inadvertencia por parte de terceros."

11. Esta disputa de hecho existente sobre este aspecto de la controversia no impide que este Tribunal fije los derechos del demandante como empleado de Aspire Commodities, LP y Raiden Commodities, LP, asunto sobre el cual no existe controversia.

12. Para 2015, la parte demandada preparó un formulario K-1 para el señor De Man, informando sus ingresos para ese periodo al Internal Revenue Services. El formulario divulgaba la participación de socio correspondiente al demandante en Raiden Commodities, LP ("[p]artner's share of income, deduction, credits, etc.").

13. El récord refleja que la parte demandada también enviaba este tipo de formulario al demandado Adam C. Sinn.

14. Según la explicación ofrecida por el Sr. Gary G. Kleinrichert, perito de la parte demandada, en su declaración jurada del 31 de julio de 2018, el formulario K-1 es la planilla para ingreso de una sociedad del Gobierno Federal ("is the U.S. Return Partnership Income") y se usa para reportar ingresos, ganancias, pérdidas, deducciones, créditos, etc. ("is an information return used to report income, gains, losses, deductions, credits, etc. from the operation of the partnership").

15. Para el año 2015, el formulario K-1 del demandante reflejaba que éste tenía un ingreso ("income") de $1,890,847 y que se le habían pagado dividendos de $1,000,000 quedando un balance de ingreso no distribuido de $890,847.

16. El 26 de marzo de 2016, el demandante le escribió al demandado Adam C. Sinn y le propuso un itinerario para el pago de la suma que se le adeudaba ("half of the 891k now and the rest in late june"). El Señor Sinn manifestó estar de acuerdo. ("I think your email makes sense").

companies, not only in relation to the transactions he performed, but as a product of the activities performed by the other traders. The Plaintiff alleges in his claim that he became a partner, which the Defendant denies. In Paragraph 54 of his Answer, the Defendant alleges that any reference to Mr. De Man as a "partner" or "member" of "Aspire Commodities, LP "was due to error or oversight by third parties."

11. This dispute over facts concerning this aspect of the controversy does not prevent this Court from establishing the rights of the Plaintiff as an employee of Aspire Commodities, LP and Raiden Commodities, LP, a matter over which there is no controversy.

12. For 2015, the Defendant prepared a K-1 form for Mr. De Man, reporting his income for that period to the Internal Revenue Service. The form disclosed the Plaintiff's participation as a partner in Raiden Commodities, LP ("partner's share of income, deduction, credits, etc.".)

13. The record reflects that the Defendant also sent this type of form to Defendant Adam C. Sinn.

14. According to the explanation offered by Mr. Gary G. Kleinrichert, expert witness for the Defendant, in his sworn statement given on July 31, 2018, the K-1 form is used to report the income of a Federal Government company ("is the U.S. Return Partnership Income ") and is used to report income, profits, losses, deductions, credits, etc. ("is an information return used to report income, gains, losses, deductions, credits, etc. from the operation of the partnership").

15. For the year 2015, the Plaintiff's K-1 form reflected that he had an income of $1,890,847 and that he had been paid dividends of $1,000,000, leaving an undistributed income balance of $890,847.

16. On March 26, 2016, the Plaintiff wrote to the Defendant Adam C. Sinn and proposed a payment schedule for the amount owed to him ("half of the 891k now and the rest in late June"). Mr. Sinn stated that he was in agreement. ("I think your email makes sense").

[left blank intentionally] [*sin texto*]

17. Según su declaración jurada y los documentos sometidos en apoyo a su moción de sentencia sumaria, al demandante se le pagaron $200,000 el 1ro de abril de 2016, quedando reducida la deuda a $690,847.

18. El demandante terminó su relación de trabajo con la parte demandada en 2016.

19. El 1ro de julio de 2016, el abogado de las partes demandadas le escribió un correo al demandante y le dijo que se le iba a pagar y que se estaba preparando un borrador de acuerdo de separación ("I am drafting your separation paperwork and I understand you will be paid in the normal course of performance").

20. El 18 de julio de 2016, el abogado de la parte demandada le escribió un nuevo correo a la representación del demandante, en la cual, entre otras cosas, manifestó que al demandante no se le iba a pagar, por existir ciertos asuntos que debían resolverse. En la comunicación enviada, la parte demandada admitió que al demandante se le adeudaban los dineros que reflejaba su formulario K-1, pero expresó que no se le pagaría porque, entre otras cosas, el demandante no había querido suscribir un borrador de acuerdo de separación que le fue sometido:

> For a variety of reasons, a wire will not be sent to Patrick today. The separation agreement attempted to fully resolve matters between all parties involved. While Mr. De Man is correct that his K-1 reflected income, the course of performance between the parties necessitated that certain capital be retained at the company. It is important that all issues be resolved prior to a final disbursement of the funds.

21. Al demandante no se le pagó la suma reflejada en su formulario K-1.

22. En su Reconvención, la parte demandada le reclama al demandante por daños y perjuicios por motivo de su incumplimiento de sus deberes de fiducia como empleado de la parte demandada. En el párrafo 56 de su Contestación, la parte demandada señala, entre otras cosas, que "cualquier salario y/o bonificación que se le deba al señor De Man por parte de Raiden LP y/o Aspire LP está sujeto a compensación por los daños causados por el señor De Man." En el inciso 17 de sus defensas afirmativas, la parte demandada alega que "[c]ualquier compensación o bonificación que los Demandados pudieran deberle al señor De Man está sujeta a ser compensada en función de los daños ocasionados por las actuaciones del señor De Man."

17. According to his sworn statement and the documents submitted in support of his motion for summary judgment, the Plaintiff was paid $200,000 on April 1, 2016, reducing the debt to $690,847.

18. The Plaintiff terminated his employment relationship with the Defendant in 2016.

19. On July 1, 2016, the Defendant's attorney wrote an email to the Plaintiff and told him that he would be paid and that a draft separation agreement was being prepared ("I am drafting your separation paperwork and I understand you will be paid in the normal course of performance").

20. On July 18, 2018, the Defendant's attorney wrote a new email to the Plaintiff's attorney, in which, among other things, he stated that the Plaintiff was not going to be paid due to certain matters that had to be resolved. In the notice sent, the Defendant admitted that the Plaintiff was owed the money reflected on his K-1 form, but expressed that he would not be paid because, among other things, the Plaintiff had refused to sign a draft separation agreement that was submitted to him:

> For a variety of reasons, a wire will not be sent to Patrick today. The separation agreement attempted to fully resolve matters between all parties involved. While Mr. De Man is correct that his K-1 reflected income, the course of performance between the parties necessitated that certain capital be retained at the company. It is important that all issues be resolved prior to a final disbursement of the funds.

21. The Plaintiff was not paid the amount reflected on his K-1 form.

22. In its Counterclaim, the Defendant sues the Plaintiff for damages due to his breach of his fiduciary duties as an employee of the Defendant. In Paragraph 56 of his Answer, the Defendant indicates, among other things, that "any salary and/or bonus owed to Mr. De Man by Raiden LP and/or Aspire LP is subject to compensation for damages caused by Mr. De Man." In Subsection 17 of his affirmative defenses, the Defendant alleges that "any compensation or bonus that the Defendants may owe to Mr. De Man is subject to compensation depending on the damages caused by Mr. De Man's actions."

[left blank intentionally] [*sin texto*]

23. En los párrafos 10 y 11 de su Declaración Jurada del 1ro. de agosto de 2018, el Sr. Adam C. Sinn expresa las razones por las cuales la parte demandada entiende que no viene obligada a pagar al demandante los salarios y beneficios que se le adeudan:

> Mr. De Man voluntarily separated from Raiden in 2016. There was no agreement between Raiden and Mr. De Man which allowed Mr. De Man, upon such a separation, to compel payment to him of any undistributed amounts he may have earned. In fact, to the extent it applies, Raiden's Limited Partnership Agreement, ..., expressly stated that Mr. De Man had no such right and that any interest he had in Raiden at the time of his separation was subject to setoff for any harm he had caused Raiden. Similarly, Raiden's agreements with its employees required them to forfeit unpaid earnings upon a voluntary separation, like Mr. De Man's.
>
> Accordingly, Raiden did not owe Mr. De Man a payable debt of $890,847 at the end of 2015, and it does not currently owe Mr. De Man a liquid and payable debt of $690,847.

24. Junto con su Declaración Jurada, el señor Sinn acompañó un documento titulado "Second Amended & Restated Partnership Agreement" de Raiden Commodities, LP, con fecha del 30 de julio de 2013. Este documento sólo aparece firmado por el codemandado Adam Sinn y no tiene la firma del demandante.[1]

DISCUSIÓN

La Regla 36.3 de las de Procedimiento Civil autoriza a este Tribunal a dictar sentencia sumaria en un caso cuándo no existe controversia real sustancial en cuanto a ningún hecho material en un caso. La Regla dispone que cuando se presente una moción de sentencia sumaria y se sostenga en la forma provista, la parte contraria "no podrá descansar solamente en las aseveraciones o negaciones contenidas en sus alegaciones, sino que estará obligada a contestar en forma tan detallada y específica, como lo haya hecho la parte promovente. De no hacerlo así, se dictará la sentencia sumaria en su contra si procede."

La Regla confiere discreción al Tribunal de Primera Instancia para dar por admitida toda relación de hechos expuesta en la moción, que esté debidamente formulada y apoyada en la forma en que lo exige el precepto, "a menos que esté debidamente controvertida conforme lo dispone la Regla." La Regla también dispone

[1] La parte demandante ha aducido en sus escritos que este documento es apócrifo. Al igual que la disputa sobre si el demandante es socio en las empresas demandadas, esta controversia es inmaterial y no impide que dictemos sentencia parcial porque el documento *no* está firmado por el demandante.

23. In paragraphs 10 and 11 of his Sworn Statement given on August 1, 2018, Mr. Adam C. Sinn expresses the reasons why the Defendant believes he is not obliged to pay the Plaintiff the wages and benefits owed to him:

> Mr. De Man voluntarily separated from Raiden in 2016. There was no agreement between Raiden and Mr. De Man which allowed Mr. De Man, upon such a separation, to compel payment to him of any undistributed amounts he may have earned. In fact, to the extent it applies, Raiden's Limited Partnership Agreement, ..., expressly stated that Mr. De Man had no such right and that any interest he had in Raiden at the time of his separation was subject to setoff for any harm he had caused Raiden. Similarly, Raiden's agreements with its employees required them to forfeit unpaid earnings upon a voluntary separation, like Mr. De Man's.
>
> Accordingly, Raiden did not owe Mr. De Man a payable debt of $890,847 at the end of 2015, and it does not currently owe Mr. De Man a liquid and payable debt of $690,847.

24. Along with his Sworn Statement, Mr. Sinn attached a document titled, "Second Amended & Restated Partnership Agreement" of Raiden Commodities, LP, dated July 30, 2013. This document is only signed by Co-Defendant Adam Sinn and does not bear the Plaintiff's signature.[1]

DISCUSSION

Rule of Civil Procedure 36.3 authorizes this Court to issue summary judgment in a case when there is no real, substantial controversy regarding any material fact in a case. The Rule indicates that when a motion for summary judgment is filed and is sustained in the manner provided, the opposing party "may not rely solely on the assertions or denials contained in its allegations, but would be required to answer in such a detailed and specific manner, as the petitioning party has done. Failure to do so will cause the summary judgment to be issued against [the opposing party] if applicable. "

The Rule grants discretion to the Trial Court to admit any narrative of facts set forth in the motion, duly formulated and supported in the manner required by the provision, "unless it is duly contested as provided by the Rule." The Rule also decrees

[1] The Plaintiff has argued in his writings that this document is apocryphal. Like the dispute concerning whether the Plaintiff is a partner in the Defendants' companies, this controversy is immaterial and does not prevent us from giving a partial sentence because the document is not signed by the Plaintiff.

left blank intentionally] [*sin texto*]

que "[e]l Tribunal no tendrá la obligación de considerar aquellos hechos" que no tienen una referencia a prueba documental o declaraciones juradas que establezcan una controversia; véase, SLG Zapata-Rivera v. J.M. Montalvo, 189 D.P.R. 414, 433 (2013).

El Tribunal Supremo de Puerto Rico ha aclarado que, cuando no existe controversia real sustancial de hecho, se favorece el empleo de la sentencia sumaria como mecanismo para descongestionar los calendarios de los tribunales. Meléndez González v. M. Cuebas, Inc., 2015 T.S.P.R. 70; Ramos Pérez v. Univisión, 178 D.P.R. 200, 220 (2010). El promovido no puede valerse de "la lacónica aseveración de que los hechos están en controversia." Ramos Pérez v. Univisión, 178 D.P.R. a la pág. 226.

En este caso, hemos examinado los documentos, y éstos reflejan que no existe controversia real sustancial sobre los hechos. Al momento de terminar su relación con la parte demandada, al demandante se le adeudaban $690,847 por concepto de ingresos acumulados por él, según reportados al Gobierno de los Estados Unidos en la forma K-1 para 2015. Se trata de una suma líquida. Ramos y Otros v. Colón y Otros, 153 D.P.R. 534, 546 (2001).

Estas cantidades corresponden a los servicios prestados por el demandante como comerciante ("trader") para la parte demandada. Así lo esgrimió la propia parte demandada en sus alegaciones, al insistir que el demandante era su empleado (y nada más). La parte demandada está obligada por sus alegaciones. Díaz Ayala et al. v. E.L.A., 153 D.P.R. 675, 693 (2001); Mariani v. Christy, 73 D.P.R., 782, 788-789 (1952); véase, además, Ernesto Chiesa Aponte, Tratado de Derecho Probatorio, Tomo II, pág. 655 ("cuando una parte hace una alegación ..., queda obligada por la alegación").

La parte demandada alegó que podía retener al demandante el dinero que se le debía por los servicios prestados, pero, la sección 5 de la Ley Núm. 17 de 1931, según enmendada, dispone expresamente que "ningún patrono podrá descontar ni retener por ningún motivo parte del sálario que devengarán los obreros", salvo en las circunstancias que se exponen en el precepto, ninguna de las cuales está presente. 29 L.P.R.A. sec. 175; véase, Seafarers Int. Union de P.R. v. J.R.T., 94 D.P.R. 697, 704 esc. 4 (1967).

that "[t]he Court will not have the obligation to consider those facts" that do not have a reference to documentary evidence or sworn statements that establish a dispute.; see, SLG Zapata-Rivera v. J.M. Montalvo, 189 D.P.R. 414,433 (2013).

The Supreme Court of Puerto Rico has clarified that, when there is no real, substantial disagreement of fact, the use of the summary judgment is favored as a mechanism to clear the courts' dockets. Melendez Gonzalez v. M. Cuebas, Inc., 2015 T.S.P.R. 70; Ramos Perez v. Univision, 178 D.P.R. 200, 220 (2010). The Defendant cannot rely on "the laconic assertion that the facts are in dispute." Ramos Perez v. Univision, 178 D.P.R. on page 226.

In this case, we have examined the documents, and these reflect that there is no real, substantial controversy over the facts. Upon terminating his relationship with the Defendant, the Plaintiff was owed $690,847 for his accumulated income, as reported to the United States Government on the K-1 form for 2015. It is a liquid sum. Ramos and Others v. Colon and Others, 153 D.P.R. 534, 546 (2001).

These amounts correspond to the services provided by the Plaintiff as a trader for the Defendant. This was claimed by the Defendant itself in its allegations, insisting that the Plaintiff was its employee (and nothing more). The Defendant is bound by its allegations. Diaz Ayala et al v. E.L.A., 153 D.P.R. 675, 693 (2001); Mariani v. Christy, 73 D.P.R., 782, 788-789 (1952); see, in addition, Ernesto Chiesa Aponte, Probate Law Treatise, Volume II, page 655 ("when a party makes an allegation ..., it is bound by the allegation").

The Defendant claimed that it could withhold the money owed to the Plaintiff for the services rendered, but Section 5 of Act No. 17 of 1931, as amended, expressly states that "no employer may deduct or withhold any part of the salary earned by the worker for any reason," except in the circumstances set forth in the provision, none of which is present. 29 L.P.R.A. sec. 175; see, Seafarers Int. Union of P.R. v. J.R.T., 94 D.P.R. 697, 704 esc. 4 (1967).

[left blank intentionally] [*sin texto*]

La sección 7 de la Ley dispone que la violación a la norma anterior se considera como un delito menos grave. 29 L.P.R.A. sec. 177.

Un patrono, de este modo, no puede compensar lo adeudado a un empleado por concepto de salario y beneficios, contra otras deudas que el patrono reclame del empleado. Lo contrario, naturalmente, expondría a los empleados a que se les retengan sus salarios bajo la alegación de que ellos adeudan sumas al patrono por el incumplimiento de sus deberes.

La contensión de la parte demandada es que el demandante renunció a su salario al marcharse de la empresa. Pero ello es contrario a la política pública de nuestra jurisdicción. Un empleado no puede ser penalizado por ejercer su derecho constitucional a escoger libremente su trabajo. Dolphin Int'l of P.R. v. Ryder Truck Lines, 127 D.P.R. 869, 885 (1991).

En su Declaración Jurada, el codemandado Adam C. Sinn alegó que el demandante renunció a su salario y bonificaciones por virtud del "Second Amended & Restated Partnership Agreement" de Raiden Commodities, LP. Este documento no aparece firmado por el demandante. El Artículo 1209 del Código Civil aclara que los contratos "sólo producen efecto entre las partes que los otorgan y sus herederos." 31 L.P.R.A. sec. 3374. Al no haber firmado el documento, el demandante no puede ser obligado a renunciar al cobro de lo que se le adeuda.

La renuncia de derechos nunca se presume. Eastern Sands, Inc. v. Roig Comm. Bank, 150 D.P.R. 703, 720 (1996). Aunque el Artículo 4 del Código Civil reconoce que los derechos se pueden renunciar, 31 L.P.R.A. sec. 4, el Tribunal Supremo de Puerto Rico ha aclarado que, para ser efectiva, una renuncia de derechos debe ser "clara, terminante, explícita e inequívoca. Aunque se concede que puede ser expresa o tácita, la renuncia de derechos en general no se presume y es de estricta interpretación. No es lícito deducirla de expresiones de dudosa significación." Quiñones Quiñones v. Quiñones Irizarry, 91 D.P.R. 225, 266 (1964).

Es un requisito indispensable de toda renuncia que ésta sea clara e inequívoca. Torres Solís et al. v. A.E.E. et als., 136 D.P.R. 302, 314-315 (1994); Chico v. Editorial

Section 7 of the Law provides that the violation of the previous rule is considered a misdemeanor. 29 L.P.R.A. Sec. 177.

In this way, an employer cannot compensate what is owed to an employee for salary and benefits against other debts that the employer claims from the employee. Otherwise, it would naturally expose employees to their wages being withheld on the grounds that they owe sums to the employer for the breach of their duties.

The Defendant contends that the Plaintiff resigned his salary upon leaving the company. But that is contrary to the public policy of our jurisdiction. An employee cannot be penalized for exercising his constitutional right to freely choose his job. Dolphin Int'l of P.R., v. Ryder Truck Lines, 127 D.P.R. 869, 885 (1991).

In his Sworn Statement, Co-Defendant Adam C. Sinn alleged that the Plaintiff waived his salary and bonuses under the "Second Amended & Restated Partnership Agreement" of Raiden Commodities, LP. This document does not appear as signed by the Plaintiff. Article 1209 of the Civil Code clarifies that contracts only take effect between the issuing parties and their heirs." 31 L.P.R.A. Sec. 3374. Having not signed the document, the Plaintiff cannot be forced to waive the collection of what he is owed.

The waiver of rights is never presumed. Eastern Sands, Inc. v. Roig Comm. Bank, 150 D.P.R. 703, 720 (1996). Although Article 4 of the Civil Code recognizes that rights may be waived, 31 L.P.R.A. Sec. 4, the Supreme Court of Puerto Rico has clarified that, to be effective, a waiver of rights must be "clear, outright, explicit, and unequivocal. Although it grants that it may be express or tacit, the waiver of rights in general is not presumed and is strictly interpreted. It is not lawful to deduce it from expressions of doubtful significance." Quinones Quinones v. Quinones Irizarry, 91 D.P.R. 225, 266 (1964).

It is an indispensable requirement of any waiver that it be made in a clear and unequivocal manner. Torres Solis et al. v. A.E.E. et als., 136 D.P.R., 302, 314-315 (1994); Chico v. Editorial

---

[left blank intentionally] [*sin texto*]

Ponce, Inc., 101 D.P.R. 759, 778 (1973); Mendoza Addarando v. Asociación Empleados, 94 D.P.R. 564, 577 (1967).

En este caso, la parte demandada no ha ofrecido ninguna evidencia que tienda a establecer que el demandante renunció a su derecho a cobrar por sus servicios. Dicha renuncia no puede inferirse del hecho de que el demandante haya decidido abandonar la empresa.

La parte demandada alega que desea compensar la deuda del demandante contra los daños que le ocasionó el demandante a las empresas por su conducta tortícera. Conforme al Artículo 1150 del Código Civil, para que dos deudas sean compensadas, se requiere que ambas sean líquidas y exigibles. 31 L.P.R.A. sec. 3222. Fuentes Leduc v. Aponte, 63 D.P.R. 194, 199 (1944) ("para que la compensación proceda es necesario que exista un crédito líquido y exigible").

La deuda de la parte demandada hacia el demandante, según hemos señalado, es líquida y exigible y surge de los servicios prestados por el demandante a las empresas. Esta deuda no puede ser compensada contra los daños y perjuicios que la parte demandada reclama contra el demandante, porque estos daños no constituyen una suma líquida ni son exigibles, hasta tanto el Tribunal los determine y adjudique.

En su oposición a la moción de sentencia sumaria, la parte demandada alega que la declaración jurada del señor Sirn "provee las razones por las cuales al señor de Man no se le adeudan los $690,847 que éste reclama." La conclusión del codemandado de que no se le adeuda nada al demandante es una cuestión de derecho que puede ser adjudicada sumariamente por este Tribunal.

Este foro entiende que las razones aducidas por la parte demandada para retenerle al demandante sus ingresos generados para 2015 no es válida. Procede, por lo tanto, que dictemos sentencia sumaria parcial concediendo el remedio solicitado.

POR LOS FUNDAMENTOS EXPRESADOS, se dicta sentencia parcial declarando con lugar la moción de sentencia sumaria parcial presentada por la parte demandante y se ordena a la parte demandada a pagar solidariamente al demandante la suma adeudada de $690,847 y que le fue retenida al demandante por las

Ponce, Inc., 101 D.P.R. 759, 778 (1973) Mendoza Aldarondo v. Asociacion Empleados, 94 D.P.R. 564, 577 (1967).

In this case, the Defendant has not offered any evidence that establishes that the Plaintiff waived his right to charge for his services. Such waiver cannot be inferred from the fact that the Plaintiff decided to leave the company.

The Defendant alleges that it wishes to compensate the Plaintiff's debt against the damages caused by the Plaintiff to the companies for his tortious behavior. According to Article 1150 of the Civil Code, for two debts to be compensated, it is required that both be liquid and enforceable. 31 L.P.R.A. Sec. 3222. Fuentes Leduc v. Aponte, 63 D.P.R. 194; 199 (1944) ("for compensation to proceed a liquid and enforceable credit must exist").

The Defendant's debt to the Plaintiff, as we have stated, is liquid and enforceable and arises from the services provided by the Plaintiff to the companies. This debt cannot be compensated against the damages that the Defendant claims against the Plaintiff because these damages do not constitute a liquid sum, nor are they enforceable until the Court determines and adjudicates them.

In its opposition to the motion for summary judgment, the Defendant alleges that Mr. Sinn's sworn statement "provides the reasons why Mr. De Man is not owed the $690,847 he claims." The Co-Defendant's conclusion that the Plaintiff is not owed anything is a matter of law that can be summarily adjudicated by this Court.

This forum understands that the reasons adduced by the Defendant to withhold the income generated by the Plaintiff in 2015 are not valid. It is therefore appropriate that we issue a partial summary judgment granting the requested remedy.

DUE TO THE REASONS EXPRESSED, a partial judgment is issued sustaining the motion for partial summary judgment filed by the Plaintiff and the Defendants are ordered to jointly pay the Plaintiff the amount owed of $690,847, which was retained from the Plaintiff by the

---

[left blank intentionally] [*sin texto*]

demandadas Aspire Commodities, LP y Raldan Commodities, LP. Se dicta sentencia parcial en esta etapa por no existir motivo para posponerla hasta el final del pleito. Tratándose de una controversia sobre el pago de los servicios y bonificaciones de un empleado, el Tribunal fija a la parte demandada honorarios de abogado a favor de la parte demandante en una cuantía del 15% del total, conforme a lo contemplado por la Ley, 32 L.P.R.A. sec. 3115, para un total de $103,627.05 por concepto de honorarios de abogado. Esta suma formará parte de la sentencia.

REGÍSTRESE Y NOTIFÍQUESE.

En Bayamón, Puerto Rico, a 27 de diciembre de 2018.

[signature]
EDWIN OLQUIN ARROYO
JUEZ SUPERIOR

Número de Identificación:
SENTSUM092805

Defendants Aspire Commodities, LP and Raiden Commodities, LP. Partial sentence is granted at this stage because there is no reason to postpone it until the end of the lawsuit. In the case of a dispute over the payment for an employee's services rendered and bonuses, the Court sets the Defendants' attorney fees in favor of the Plaintiff in an amount of 15% of the total, as provided by Law, 32 L.P.R.A. Sec. 3115, for a total of $103,627.05 in attorney fees. This sum will form part of the judgment.

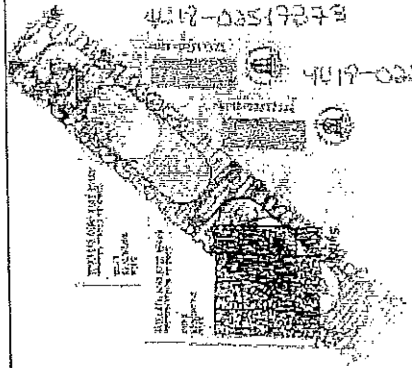
TO BE RECORDED AND NOTICE GIVEN.

In Bayamon, Puerto Rico, December 27, 2018.

[signature]
Signed ANDINO OLGUIN ARROYO
SENIOR JUDGE

Identifier Number:
SEN201800___0928000___

4419-02517373



4419-02517374

CERTIFICO, que lo que antecede es copia fiel y exacta de su original que obra en los autos del caso.

☐ Previo pago de derechos

☐ Para uso oficial

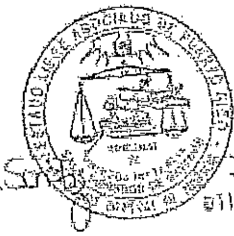
En Bayamón, Puerto Rico, a 20 de Sept de 2019

Por: Iris Jahira J. Santa Santiago

Secretaria Aux.

Por: Julie Hernandez

Sec. Serv. Sala



4U18-02517373

[tax stamp]

4U18-02517373
[gray security sticker]
[stamp partially covered by other stamp]
[circular logo]
•TAX OFFICE•
GOVERNMENT OF PUERTO RICO
5120
9/20/2019
$4.80
Internal Revenue Stamp
80364-2019-0920-01910006

4U18-0251-7374

[tax stamp]

4U18-0251-7374
[gray security sticker]
[circular logo]
•TAX OFFICE•
GOVERNMENT OF PUERTO RICO
Seal
[QR code]
5120
9/20/2019
$4.80
Internal Revenue Stamp
80364-2019-0920-01910011

[blue rubber stamp superimposed diagonally on tax stamps]
CANCELLED

[blue rubber stamp]
I CERTIFY that the preceding is an exact and faithful copy of the original found in the case files.
☒ Subject to payment of fees
☐ For official use
In Bayamon, Puerto Rico on
September 20, 2019
By: Laura I. Santa Sanchez,
Licensed Professional
Secretary
By: J Marie Hernandez
Assistant Court Secretary

[circular blue rubber stamp]
COMMONWEALTH OF PUERTO RICO
[crest with balance scales]
TRIAL COURT
SUPERIOR COURT OF BAYAMON
•GENERAL COURT OF JUSTICE•
[initials] *DHH*
D111

[end of translation] [*fin de la traducción*]

NO. _____

Patrick A.P. De Man	§	IN THE DISTRICT COURT OF
	§	
	§	
v.	§	HARRIS COUNTY, TEXAS
	§	
	§	
Raiden Commodities, L.P., and	§	_____ JUDICIAL DISTRICT
Aspire Commodities, L.P.	§	
	§	

DECLARATION OF PATRICK A.P. DE MAN

1. My name is Patrick A.P. De Man. I am over twenty-one (21) years of age, am of sound mind, and am otherwise capable of making this Declaration. The facts stated in this Declaration are within my personal knowledge and are true and correct.

2. I own a judgment against Raiden Commodities, L.P., and Aspire Commodities, L.P., Defendants. An authenticated copy of the judgment, a copy of the clerk's certification, a certified translation of the judgment, and the Notice of Filing of Foreign Judgment will be filed along with this Declaration pursuant to Chapter 35 of the Texas Civil Practice and Remedies Code.

3. The name and last known post office address of one judgment debtor is:

Raiden Commodities, L.P.
1302 Waugh Drive #539,
Houston, Texas 77019

4. The name and last known post office address of the other judgment debtor is:

Aspire Commodities, L.P.
1302 Waugh Drive #539,
Houston, Texas 77019

5. The name and post office address of the judgment creditor is:

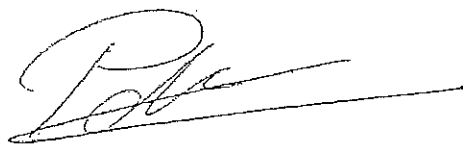
Patrick A.P. De Man
URB Sabanera Dorado
544 Corredor del Bosque
Dorado, PR 00646

6. The name and post office address of the judgment creditor's attorney is:

Chris Reynolds
Reynolds Frizzell LLP
1100 Louisiana Street, Suite 3500
Houston, Texas 77002
(713) 485-7200 Telephone
(713) 485-7250 Facsimile

My name is Patrick Antonius Petrus De Man, my date of birth is January 14, 1974, and my address is URB Sabanera Dorado, 544 Corredor del Bosque, Dorado, Puerto Rico, 00646, United States of America. I declare under penalty of perjury that the foregoing is true and correct.

Executed in the Municipality of Dorado, Commonwealth of Puerto Rico, on the 29th day of October, 2019.



Patrick A.P. De Man, Declarant