

CAUSE NO. 2019-79857C

PATRICK A.P. DE MAN	§	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

PATRICK A.P. DE MAN'S RESPONSE TO DEFENDANT'S MOTION TO DISSOLVE WRIT OF GARNISHMENT

PARTIES

1. PATRICK A.P. DE MAN is "Plaintiff, Judgment Creditor and Garnishor" and is represented by William C. Boyd and Richard Fason of Patterson, Boyd & Lowery, P.C., 2101 Louisiana St., Houston, Texas 77002.
2. RAIDEN COMMODITIES, L.P. and ASPIRE COMMODITIES, L.P. are "Defendants and Judgment Debtors" and are represented by Benjamin T. Pendroff of Barnes & Thornburg LLP, 2121 N. Pearl St., Suite 700, Dallas, Texas 75201.
3. ELECTRIC RELIABILITY COUNCIL OF TEXAS INC., GARNISHEE, (hereinafter "ERCOT") is represented by Elliot Clark of Winstead, PC, 401 Congress Avenue, Suite 2100 Austin, Texas 78701.

FACTS

4. On December 27, 2018, the Trial Court of the Superior Court of Bayamon, Commonwealth of Puerto Rico, issued a final judgment. The enforcement of the judgment has not been stayed. Judgment Debtors sought an appeal of the judgment in Puerto Rico which was subsequently affirmed by the Court of Appeals in Puerto Rico. In furtherance of the enforcement of that valid

final judgment, Plaintiff/Judgment Creditor domesticated the judgment in Texas on November 1, 2019, by filing a notice of filing of foreign judgment pursuant to the Uniform Enforcement of Foreign Judgments Act adopted in Texas in Tex. Civ. Prac. & Rem. Code Ann. § 35.001 (West 2015). Chapter 35 is usually cited as the “Uniform Enforcement of Foreign Judgments Act” or UEFJA (hereinafter “UEFJA”). § 35.002. The Court denied the motion to vacate brought by the judgment debtors on August 31, 2020 in cause #2019-79857. This Court issued a writ of garnishment in this cause #2019-79857C on September 9, 2020, for garnishment of ERCOT, Garnishee, in furtherance of collection of the judgment. On or about September 22, 2020, ERCOT was served with the writ of garnishment.

RESPONSE

5. The Court should deny Defendants’ Motion to Dissolve the Garnishment because Plaintiff complied with the Rules

A. A writ of garnishment is governed by several rules. *See Simulis, L.L.C. v. G.E. Capital Corp.*, 276 S.W.3d 109, 115 (Tex. App.—Houston [1st Dist.] 2008, no pet.)(discussing garnishments). "The only real issue in a garnishment action is whether the garnishee is indebted to the judgment debtor, or has in its possession effects belonging to the debtor, at the time of service of the writ on the garnishee, and at the time the garnishee files its answer." *Baytown State Bank v. Nimmons*, 904 S.W.2d 902, 905 (Tex. App.—Houston [1st Dist.] 1995, writ denied). Rule 658 applies to both pre-judgment and post-judgment writs for garnishment. The rule states,

Either at the commencement of a suit or at any time during its progress the plaintiff may file an application for a writ of garnishment. Such application shall be supported by affidavits of the plaintiff, his agent, his attorney, or other person having knowledge of relevant facts. The application shall comply with all statutory requirements and shall state the grounds for issuing the writ and the specific facts relied upon by the plaintiff to warrant the required findings by the court.... 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.
TRCP 658

The statutory requirements for a post-judgment writ are contained in the Texas Civil Practice and Remedies Code, Rule 63.001:

A writ of garnishment is available if ...

(3) a plaintiff has a valid, subsisting judgment and makes an affidavit stating that, within the plaintiff's knowledge, the defendant does not possess property in Texas subject to execution sufficient to satisfy the judgment. TRCP 63.001

Rule 664a allows interested parties to file sworn motions to dissolve writs of garnishment, and said motions shall be set for an evidentiary hearing. Rule 664a states,

A defendant whose property or account has been garnished or any intervening party who claims an interest in such property or account, may by sworn written motion, seek to vacate, dissolve or modify the writ of garnishment, and the order directing its issuance, for any grounds or cause, extrinsic or intrinsic. Such motion shall admit or deny each finding of the order directing the issuance of the writ except where the movant is unable to admit or deny the finding, in which case movant shall set forth the reasons why he cannot admit or deny. Unless the parties agree to an extension of time, the motion shall be heard promptly, after reasonable notice to the plaintiff (which may be less than three days), and the issue shall be determined not later than ten days after the motion is filed. The filing of the 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 is had, and the issue is determined. The writ shall be dissolved unless, at such hearing, the plaintiff shall prove the grounds relied upon for its issuance, but the court may modify its previous order granting the writ and the writ issued pursuant thereto. The movant shall, however, have the burden to prove that the reasonable value of the property garnished exceeds the amount necessary to secure the debt, interest for one year, and probable costs. He shall also have the burden to prove facts to justify substitution of property.

The court's determination may be made upon the basis of affidavits, if uncontroverted, setting forth such facts as would be admissible in evidence; otherwise, the parties shall submit evidence. TRCP 664a

Rule 63.001 outlines Plaintiff's burden for establishing a proper writ of garnishment: (1) does Plaintiff have a valid, subsisting judgment, and (2) does Plaintiff make an affidavit stating that, within the plaintiff's knowledge, the defendant does not possess property in Texas subject to

execution sufficient to satisfy the judgment. TRCP 63.001. Rule 658 expands 63.001 by allowing the affidavit required in 63.001 to be signed by the Plaintiff or his legal counsel. TRCP 658.

B. In this case, Plaintiff satisfied CPRC 63.001 by filing proof of the valid, subsisting judgment, but also counsel's affidavit which states he has personal knowledge of the facts contained in the affidavit, and "Within my knowledge, Defendants do not possess property within this state that is subject to execution and that is sufficient to satisfy the judgment." *See* Affidavit for Writ of Garnishment After Judgment, previously filed with the Court. Plaintiff's affidavit is not contested by Defendants—they do not present the Court with any evidence that they do possess property in Texas sufficient to satisfy the judgment; therefore, Plaintiff's affidavit is uncontroverted. Therefore, Plaintiff asks the Court to deny Defendants' Motion to Dissolve the writ.

6. The Court Should Deny the Motion to Dissolve Because Plaintiff's Affidavit in Support of the Writ of Garnishment Is Not Defective

A. William Boyd, attorney for Garnishor, states in his affidavit in support of the writ of garnishment that he "has personal knowledge of the facts stated in the affidavit and they are true and correct." (*See the affidavit of William Boyd attached to the application for writ of garnishment.*) William Boyd further states that "Defendants do not possess property within this state that is subject to execution and that is sufficient to satisfy the judgment". (*See the affidavit of William Boyd attached to the application for writ of garnishment.*) Plaintiff has met the statutory requirements for an affidavit in support of a writ of garnishment. *Black Coral Inv. v. Bank of Southwest*, 650 S.W.2d 135, 136 (Tex. App.—Houston [14th Dist.] 1983, no writ); 3 Dorsaneo, Texas Litigation Guide § 42.04 (2019). "A writ of garnishment is available if...

(3) a plaintiff has a valid, subsisting judgment and makes an affidavit stating that, within the plaintiff's knowledge, the defendant does not possess

property in Texas subject to execution sufficient to satisfy the judgment.”
Tex. Civ. Prac. & Rem. Code § 63.001 (LexisNexis).

B. In Texas, Rule 14 of the Texas Rules of Civil Procedure allows an attorney to sign an affidavit on behalf of the party and states as follows:

“Whenever it may be necessary or proper for any party to a civil suit or proceeding to make an affidavit, it may be made by either the party or his agent or his attorney.” Tex. R. Civ. P. 14

Since the affidavit in support of the writ of garnishment, regarding assets states facts including the lack of knowledge of assets subject to execution that could satisfy a judgment, the signing of the affidavit by William Boyd was proper and necessary. The rules of procedure allow the affidavit in support of the writ of garnishment to be signed by the attorney for the judgment creditor.

C. The case cited by the movant, *Wilson v. HPSC, Inc.*, 2010 Tex. App. LEXIS 3169 (Tex. App.—Dallas 2010, no pet), is distinguishable on the facts. In *Wilson*, the issue before the court was the requirement for an affidavit in support of a writ of garnishment when based upon ‘information and belief’. In the case before this Court, the affidavit is based upon personal knowledge and thus, *Wilson* does not apply to this case. Further, *Wilson* is not binding authority. The 14th Court of Appeals held contrary to *Wilson*, when it said that such an interpretation places an unreasonable burden on the post judgment garnishor. The 14th Court specifically stated in citing Rule 664a of the Texas Rules of Civil Procedure that the writ shall be dissolved unless at the hearing, the plaintiff shall prove the grounds relied upon. *Black Coral Inv. v. Bank of Southwest*, 650 S.W.2d 135, 136 (Tex. App.—Houston [14th Dist.] 1983, no writ).

D. Plaintiff requests that the Court have a court reporter record the hearing and that the Court accept testimony by Plaintiff/Judgment Creditor in support of the grounds relied upon for issuance of the writ of garnishment. *Black Coral Inv. v. Bank of Southwest*, 650 S.W.2d 135, 136 (Tex. App.—Houston [14th Dist.] 1983, no writ).

7. **The Court Should Deny the Motion to Dissolve the Writ of Garnishment Because the Judgment Debtor has not Proved that the Judgment Has Been Satisfied**

A. *See* attached hereto as Exhibit 1 is the affidavit of Hon. German J. Brau Ramirez, law professor and former trial court judge, wherein Hon. German J. Brau Ramirez states how and why **the judgment in Puerto Rico has not been satisfied**. *See* attached Exhibit 1, the affidavit of Hon. German J. Brau Ramirez wherein he states as follows:

“On January 9, 2020, Defendants in case DAC2016-2144 [the judgment case in Puerto Rico which is the basis of the Domestication of the Foreign Judgment in this Court] deposited \$533,132.53 with the Court in Puerto Rico. Defendants deposited the money under an express reservation of rights, which means that Plaintiffs could not obtain release of the money until Defendant's collateral challenge of the Judgment would finally be adjudicated.” (See Exhibit 1).

Further Hon. German J. Brau Ramirez states:

“In their motion for deposit of the money, Defendants also asked the Court to withhold from the Judgment more than \$260,000, which they allege must be deducted for taxes. Defendants allege, in this respect, that Mr. De Man was merely an employee and that the corresponding deductions must be applied. Defendants also made this argument earlier to the Superior Court in case DAC2016-2144 and to the Puerto Rico Court of Appeals in case KLAN2019-00280. Both Courts rejected this claim, and, respectively, issued and affirmed the Judgment without authorizing the alleged deduction.” (See Exhibit 1)

Moreover, as stated by Hon. German J. Brau Ramirez, the deposits made by the Judgment Debtors in the Puerto Rico Court are not a valid payment under Puerto Rico law, and the amount deposited is insufficient to satisfy the Judgment plus interest accrued. Hon. German J. Brau Ramirez described how the Judgment Debtors continue to ask the Superior Court to withhold taxes from the funds deposited, which is inconsistent with the Judgment, and Plaintiffs are obliged to continue to litigate this issue. Thus, the judgment remains unsatisfied, and the Court should deny the motion to dissolve.

B. Attached hereto is the affidavit of Patrick De Man, judgment creditor, describing the known assets of the judgment debtors, none of which are subject to levy by writ of execution. Judgment debtor, Raiden Commodities, L.P. n/k/a Aspire Power Ventures, L.P. (“Raiden”), continues to trade with ERCOT and profit from the electricity trading while continuing to fail to pay the judgment creditor for the amounts owed under the judgment. Patrick De Man describes how Raiden generated cash revenues of more than \$1,500,000, corresponding to a profit of nearly \$900,000 in the Month of October and through the 12th of November, Raiden generated another \$880,000 in revenues, corresponding to additional profits of more than \$475,000.

8. Judgment Debtors Lack Standing to Dissolve the Garnishment Based on Defects in the Garnishment Affidavit

A. The assertions that (a) the debt is just, due, and unpaid; (b) within the plaintiff’s knowledge, the defendant does not possess property in Texas subject to execution sufficient to satisfy the debt; and (c) the garnishment is not sought to injure the defendant or the garnishee; and (d) the plaintiff has a valid, subsisting judgment and makes an affidavit stating that, within the plaintiff’s knowledge, the defendant does not possess property in Texas subject to execution sufficient to satisfy the judgment in the affidavit concerning the defendant’s lack of property in Texas subject to execution, *are for the benefit of the garnishee*. See *Canyon Lake Bank v. Townsend*, 649 S.W.2d 809, 811 (Tex. App.—Austin 1983, writ ref’d n.r.e.) (statements in garnishment affidavit for benefit of the Garnishee). It is designed to spare the garnishee the expense and vexation of a suit in which the garnishee has no interest, unless no other property of the debtor is available to satisfy the creditor’s judgment.

B. Omission of the required statement from the Plaintiff’s affidavit may serve as a basis for quashing the writ on the *garnishee’s motion, or the garnishee may waive the omission by appearance and answer*. *The Garnishee, ERCOT, has waived any alleged omission by*

appearance and answer. ERCOT has not raised any issue about any alleged defect in the affidavit of William Boyd in support of the Writ of Garnishment. Canyon Lake Bank v. Townsend, 649 S.W.2d 809, 811 (Tex. App.—Austin 1983, writ ref'd n.r.e.). The record and the evidence show that the Plaintiff/Garnishor/Judgment Creditor meets each of the requirements for issuance of a writ of garnishment under the applicable subsection of section 63.001 of the Texas Civil Practice and Remedies Code.

“A writ of garnishment is available if:

...

(3) a plaintiff has a valid, subsisting judgment and makes an affidavit stating that, within the plaintiff's knowledge, the defendant does not possess property in Texas subject to execution sufficient to satisfy the judgment.”
Tex. Civ. Prac. & Rem. Code § 63.001 (LexisNexis),

C. The statements contained in the affidavit of William Boyd on file with the court are true and support the writ of garnishment with respect to the requirement that the Garnishor has no knowledge of any property of the Defendants within the state, subject to execution, sufficient to satisfy the judgment. *See* Tex. Civ. Prac. & Rem. Code § 63.001(2), (3). To be entitled to issuance of a writ of garnishment, the Garnishor needs to prove only a lack of knowledge of any such property, not that no such property existed. *Black Coral Inv. v. Bank of the Southwest*, 650 S.W.2d 135, 136 (Tex. App.—Houston [14th Dist.] 1983, writ ref'd n.r.e.); 3 Dorsaneo, Texas Litigation Guide § 42.04 (2019).

9. Judgment Creditor Is Not Aware of and Judgment Debtors Have Not Identified Any Assets in Texas Subject to Execution That Could Satisfy the Judgment

A. If there are assets subject to levy by writ of execution, the Judgment Debtors have not identified them either in response to post judgment discovery in Texas, in response to discovery in Puerto Rico, nor otherwise. The Judgment Debtors are electricity commodities trading companies and are not known to have equipment, inventory, or other personal property that could

be levied upon by a writ of execution to satisfy judgment in excess of \$880,456.82. Further, no real estate in the name of the Judgment Debtors was known that can form the basis of a levy by writ of execution in satisfaction of this judgment in excess of \$880,456.82. Defendants have not moved to substitute property, of equal value as that garnished, for the garnished property. Tex. R. Civ. P. 664. If sufficient property of the Defendants has been located to satisfy the garnishment order, the court may authorize substitution of one or more items of Defendants' property for all or part of the garnished property, after making findings as to the value of the property to be substituted, Tex. R. Civ. P. 664. This procedure has not been sought by the Judgment Debtors. This procedure operates as an incentive to the Judgment Debtors to produce property in satisfaction of the debt to the Garnishor. *Black Coral Inv. v. Bank of the Southwest*, 650 S.W.2d 135, 136 (Tex. App.—Houston [14th Dist.] 1983, writ ref'd n.r.e.). In such an instance, the defendant has the burden of proving facts to justify the substitution. Tex. R. Civ. P. 664a; 3 Dorsaneo, Texas Litigation Guide § 42.04 (2019). Defendants have not moved for substitution nor met their burden for substitution of property.

CONCLUSION

10. The Court should deny the motion to dissolve because Plaintiff's Affidavit in support of the Writ of Garnishment is not defective and the judgment has not been satisfied. The court should deny the motion to dissolve the writ of garnishment because the Plaintiff and Judgment Creditor has a valid, subsisting judgment and no supersedeas bond has been filed. The court should deny the motion to dissolve the writ of garnishment because there is no defect in the affidavit of Plaintiff in support of the writ of garnishment, or alternatively the judgment debtor lacks standing to seek

dissolution of the writ of garnishment based upon the alleged defect and any alleged defect was waived by the Garnishee's appearance and answer that did not raise any alleged defect as an issue.

PRAYER

11. PATRICK A.P. DE MAN requests that after an evidentiary hearing on the record that Defendant's Motion to Dissolve be denied and PATRICK A.P. DE MAN have such other and further relief to which it may be entitled.

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing has been served by E-Serve, fax or depositing in a wrapper the U.S. Mail, properly addressed on the 13th day of November, 2020 to all counsel of record.

Respectfully submitted,

PATTERSON BOYD & LOWERY, P.C.

By: /s/ Richard Fason

WILLIAM C. BOYD

T/B/A 02779000

RICHARD FASON

T/B/A 00797935

2101 Louisiana St.

Houston, Texas 77002

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Fax: (713) 759-0642

Email: wboyd@pattersonboyd.com

**ATTORNEYS FOR PLAINTIFF IN
JUDGMENT**

Holding Company, LLC; Aspire Commodities Holdings, LLC; Aspire Capital Management, LLC and other parties (“Defendants”), filed before the Court of First Instance of Puerto Rico, Superior Court of Bayamón (the “Superior Court”), civil number DAC2016-2144. I am personally acquainted with all the proceedings of said case.

5. Prior to my joining private practice in 2016, I served as a Trial and Intermediate Appellate Judge in Puerto Rico for almost 25 years. As a Trial Judge, I was assigned to civil litigation and am well-acquainted with the procedural rules of civil cases in Puerto Rico.

6. Since 1992, I have also served as an adjunct professor at the Law Schools of the University of Puerto Rico and Interamerican University of Puerto Rico. I have taught courses in Puerto Rico Civil Procedure and Appellate Practice, among others. I have also been a speaker at several professional seminars for attorneys related to Civil Procedure in Puerto Rico.

7. The partial summary judgment (the “Judgment”) issued by the Superior Court on December 27, 2018, in case DAC2016-2144, ordered Defendants to pay Plaintiffs the total amount of \$794,474.05.

8. Although Defendants conduct business based in Puerto Rico and enjoy tax privileges for doing so, they had no liquid assets there. Plaintiffs obtained an attachment of an immovable property in Dorado, Puerto Rico, owned by Aspire Capital Management, LLC. However, the Judgment could not be executed on this property as this entity was not included as defendant in the Judgment. Defendants sought interlocutory review of the attachment, and recently, on October 19, 2020, the Puerto Rico Court of Appeals reversed the attachment against the Dorado property.

9. After the Judgment became final, the Defendants in case DAC2016-2144 filed a separate suit in the Superior Court collaterally attacking the Judgment as void, under Puerto Rico Rule of Civil Procedure 49.2. *Sinn et al. v. De Man et al.*, BY2019CV05432. Puerto Rico Rule

49.2 is based on Federal Rule of Civil Procedure 60 and expressly indicates that a motion under the Rule does not suspend the effects of a judgment.

10. On January 10, 2020, the Superior Court issued a judgment dismissing the collateral attack filed by Defendants. On February 3, 2020, Defendants moved to reconsider the dismissal of their collateral attack. This motion was denied on July 31, 2020. The Superior Court's ruling was notified on September 28, 2020, and subsequently, on October 28, 2020, Defendants filed an appeal of the dismissal of their collateral suit to annul the Judgment. This implies that Defendants still contest said ruling in case BY2019CV05432.

11. On January 9, 2020, Defendants in case DAC2016-2144 deposited \$533,132.53 with the Court in Puerto Rico. Defendants deposited the money under an express reservation of rights, which means that Plaintiffs could not obtain release of the money until Defendant's collateral challenge of the Judgment would finally be adjudicated.

12. Defendants have never offered to pay Plaintiffs for the full amount of the Judgment. Under Puerto Rico law, in order to constitute a payment, a judicial deposit of monies has to be preceded by an unconditional tender of the money to the creditor, 31 L.P.R.A. sec. 3181. Judicial deposit is deemed an acceptable method of payment only if the creditor refuses the tender.

13. In their motion for deposit of the money, Defendants also asked the Court to withhold from the Judgment more than \$260,000, which they allege must be deducted for taxes. Defendants allege, in this respect, that Mr. De Man was merely an employee and that the corresponding deductions must be applied. Defendants also made this argument earlier to the Superior Court in case DAC2016-2144 and to the Puerto Rico Court of Appeals in case KLAN2019-00280. Both Courts rejected this claim, and, respectively, issued and affirmed the Judgment without authorizing the alleged deduction.

14. On January 10, 2020, the Superior Court issued a Second Partial Judgment holding that Mr. Patrick A.P. De Man is, in fact, a 50% partner in Raiden Commodities, LP. Defendants again moved to reconsider the Second Partial Summary Judgment. This motion was denied on July 31, 2020 by the Superior Court. Subsequently, on September 11, 2020, Defendants filed an appeal of that Second Partial Summary Judgment.

15. The amount deposited with the Court was less than the amount of the Judgment. Under Puerto Rico law, a party is never required to accept partial payment of a debt. 31 L.P.R.A. sec. 3173. Deposit of monies with the Court does not extinguish an obligation unless it is so declared by the Court, and requires a previous tender of the amount to the creditor, which, in this case, did not occur. 31 L.P.R.A. sec. 3181; *TOLIC v. Rodríguez Febles*, 170 D.P.R. 804, 819-820 (2007); *Mercado Riera v. Corte y Mercado, Interventor*, 72 D.P.R. 244, 250-251 (1951).

16. Under Puerto Rico Rule of Civil Procedure 44.3, an unsatisfied judgment generates interest. Even though not mentioned in the Superior Court's ruling, the interest is deemed part of the judgment. *Montañez v. U.P.R.*, 156 D.P.R. 395, 426 (2002); *Municipio de Mayaguez v. Rivera*, 113 D.P.R. 467, 469 (1982). The Judgment generates interest at an annual rate of 5.75%, according to the applicable regulation issued by the Puerto Rico Office of the Commissioner of Financial Institutions.

17. On January 10, 2020, Plaintiffs filed a motion requesting the Superior Court to declare that Defendants owe Plaintiffs for accrued interest under Puerto Rico Rule of Civil Procedure 44.3(a).

18. On July 31, 2020, the Superior Court issued a resolution holding that Defendants' deposit of money with the registry of the Superior Court did not constitute a valid payment under Puerto Rico Law because Defendants deposit was made with a reservation of rights and because the deposit amount included an unauthorized withholding for taxes instead of the full judgment

amount. The Superior Court also ruled that, until payment is made, Defendants are obliged to pay interest on the judgment at a rate of 5.75%.

19. On September 14, 2020, Defendants deposited \$47,434.45 with the registry of the Superior Court, corresponding to the amount of interest owed on the Judgment up to the date of the initial deposit of monies on January 9, 2020. Defendants insisted again that the Superior Court authorize the tax withholding.

20. On September 23, 2020, Plaintiffs filed a motion arguing that Defendants had still not made a proper payment of the money, because the amount deposited was almost \$300,000 less than what was due (including interest), and because the deposit was subject to adjudication of legal arguments, including case BY2019CV05432.

21. On September 28, 2020, Defendants deposited additional checks for \$249,985 to cover the full amount of the principal of the Judgment, and for \$44,272.80 to cover the additional interests through that date. Defendants, however, reiterated that their payments were being made under protest and an absolute reservation of rights, and again asked the Superior Court to authorize the withholding of alleged taxes from the Judgment, even though, as we have seen, the Superior Court had ruled on January 10, 2020, that Mr. De Man is a partner, and was not merely an employee.

22. As of the date of this affidavit, Defendants have still not paid the Judgment. Defendants are currently in debt to Plaintiffs for the amount of \$880,456.82, including interest. Although Defendants deposited a total of \$874,824.78 with the registry of the Superior Court, the deposit is not a valid payment under Puerto Rico law, and moreover, that amount is, at this time, insufficient to satisfy the Judgment plus interest accrued. Furthermore, Defendants continue to ask the Superior Court to withhold taxes from the funds deposited, which is inconsistent with the Judgment, and Plaintiffs are obliged to continue to litigate this issue.

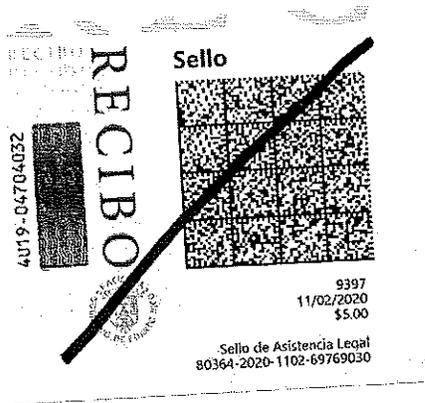
Finally, Plaintiffs still do not have free access to the money, as the deposited funds are ultimately contingent on the adjudication of Defendants' collateral attack of the Judgment through their latest appeal."

SIGNED this the 12th day of November, 2020.


GERMAN J. BRAU RAMÍREZ

SUBSCRIBED AND SWORN TO before me on this the 12th day of November, 2020, to certify which my hand and seal of office.


Notary Public



CAUSE NO. 2019-79857

PATRICK A.P. DE MAN,

Plaintiff,

v.

RAIDEN COMMODITIES, L.P., and
ASPIRE COMMODITIES, L.P.,

Defendants.

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

61ST JUDICIAL DISTRICT

AFFIDAVIT OF PATRICK DE MAN

THE COMMONWEALTH OF PUERTO RICO

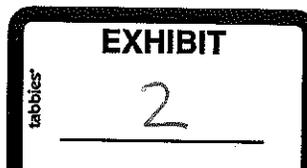
MUNICIPALITY OF DORADO

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BEFORE ME, the undersigned authority, on this day personally appeared Patrick A.P. de Man, known to me, and stated upon his oath the following:

1. "I am over twenty-one (21) years of age, married, a resident of Dorado, Puerto Rico, and am otherwise capable of making this affidavit. The facts stated in this affidavit are within my personal knowledge and are true and correct.

2. I own an enforceable judgment (the "Judgment") against Defendants Raiden Commodities, L.P. n/k/a Aspire Power Ventures, L.P. ("Raiden") and Aspire Commodities, L.P. ("Aspire") (collectively, "Defendants"). After litigation commenced, Raiden was re-domesticated to Texas and Aspire was terminated. For those reasons, and the fact that Defendants had no liquid assets in Puerto Rico, I domesticated the Judgment in Texas under the Uniform Enforcement of Foreign Judgments Act.



3. The Judgment orders Defendants to pay directly to me the amount of \$794,474.05. Interest has been accruing since the Judgment was issued on December 27, 2018, at the annual rate of 5.75% (i.e. \$125.16 per day). Thus, as of today, November 12, 2020, the accumulated amount of interest is \$85,982.77. Therefore, the total amount due under the Judgment is \$880,456.82 (the “Judgment Amount”). To date, Defendants have not offered to pay me the Judgment Amount, and I have received no money from them toward satisfaction of the Judgment. The Judgment is therefore unsatisfied and properly enforceable in Texas.

4. On January 10, 2020, the Court of First Instance of Puerto Rico, Superior Court of Bayamón, in case DAC2016-2144, issued a second partial judgment holding that I am a 50% partner in Raiden. Defendants have appealed that ruling. Furthermore, I am still a member and 50% owner of Raiden Commodities 1, LLC, the entity that is the General Partner of Raiden.

5. Raiden is a financial market participant in the ERCOT¹ electric power market. To support its trading activities, Raiden has deposited substantial amounts of cash into a collateral account under the custody of ERCOT.

6. I am familiar with the relevant sections of the ERCOT Nodal Protocols² (the “Protocols”) regarding the administrative and operational processes with regards to a Market Participant in the ERCOT electric power market. Currently, I own and operate another business that is also registered with ERCOT as a Market Participant.

7. In relation to this case, on September 22, 2020, I served a Writ of Garnishment on ERCOT as Raiden has steadfastly refused to pay me the Judgment Amount. Instead, Raiden continued

¹ Electric Reliability Council of Texas

² The Protocols are available here: <http://www.ercot.com/mktrules/nprotocols/current>

their trading activities, invested the funds belonging to me, and realized profits of more than \$1,375,000.³

8. ERCOT administers the market for a type of financial contract called Congestion Revenue Right (“CRR”). *See* Protocol §7. “ERCOT shall conduct periodic auctions to allow eligible CRR Account Holders to acquire CRRs.” *See* Protocol §7.1(2)(a). Following each CRR Auction, ERCOT publishes on its website “[t]he identities of CRR Account Holders that sold, were awarded, or were allocated CRRs in or before the CRR Auction,” in addition to exact contract details such as clearing prices, volumes, and start/end dates.⁴ *See* Protocol §7.5.3.1(2). The revenues generated from CRRs can be calculated using the prices published by ERCOT.⁵

9. Raiden is a CRR Account Holder and participates in the monthly CRR auctions. For the month of October, Raiden purchased for the total cost of approximately \$623,000, certain CRR positions which have generated cash revenues of more than \$1,500,000, corresponding to a profit of nearly \$900,000. For the month of November, Raiden again purchased CRR positions which have additionally generated, to date, more than \$880,000 in revenues, corresponding to profits of more than \$475,000.⁶ Attached as Exhibit A to this affidavit is a spreadsheet providing more details relating to the revenues and profits Raiden has made through trading CRRs in October and November 2020.

³ Contrary to the truth, Adam Sinn, the individual in control of Raiden, declared that “[i]f Mr. DeMan is allowed to encumber Raiden’s use of that ERCOT account, as he previously attempted, Raiden cannot conduct its business, which would cost Raiden reputational harm at ERCOT, reputational harm with its employees, and tens of thousands of dollars and, depending upon the day or days, potentially millions of dollars.” *See* Movants’ Reply in Support of, and Supplement to, Motion to Vacate the Attempted Domestication of Foreign Judgment, Ex. 2, Declaration of Adam Sinn, ¶4 (filed on July 23, 2020, in Cause Number 2019-79857) (emphasis added).

⁴ Monthly Auction Results are available here:
<http://mis.ercot.com/misapp/GetReports.do?reportTypeId=11201&reportTitle=Monthly%20Auction%20Results&showHTMLView=&mimicKey>

⁵ Day-Ahead Market Settlement Point Prices are available here:
[http://mis.ercot.com/misapp/GetReports.do?reportTypeId=12331&reportTitle=DAM%20Settlement%20Point%20Price&showHTMLView=&mimicKey](http://mis.ercot.com/misapp/GetReports.do?reportTypeId=12331&reportTitle=DAM%20Settlement%20Point%20Prices&showHTMLView=&mimicKey)

⁶ These results are from trading CRRs only. Raiden also participates in ERCOT’s Day-Ahead Market, but identifiable data about those activities will not be published until ERCOT’s 60-day confidentiality period expires.

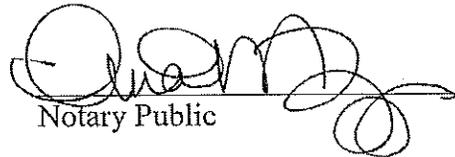
10. After the Writ of Garnishment was served on ERCOT, Raiden managed to generate profits far in excess of the Judgment Amount.⁷ Raiden received these profits in cash and those funds, held by ERCOT, are available free and clear to Raiden. The Judgment would be most expediently satisfied if ERCOT is ordered to pay me the Judgment Amount.”

SIGNED this the 12th day of November, 2020.


PATRICK A.P. DE MAN

SUBSCRIBED AND SWORN TO before me whom I identified by means of license number 6595569 issued by the Commonwealth of Puerto Rico, on this 12th day of November, 2020, to certify which my hand and seal of office.




Notary Public



⁷ This puts to rest Defendants’ tired and phony claim of suffering “immediate and irreparable harm” caused by my collection efforts.

EXHIBIT A

ERCOT CRR Trading Results of Aspire Power Ventures, L.P. (f/k/a Raiden Commodities, L.P.)

Month	October
Start Date	10/1/2020
End Date	10/31/2020

Location Source	Location Sink	TimeOfUse	Hours (h)	Size (MW)	Volume (MWh)	Purchase Price (\$/MWh)	Settlement Price (\$/MWh)	Cost (\$)	Revenue (\$)	Profit (\$)
HB_NORTH	HB_HOUSTON	Peak Weekend	144	100	14,400	2.50	1.51	36,000	21,744	(14,256)
HB_NORTH	LZ_NORTH	Peak Weekday	352	400	140,800	0.57	0.84	80,256	118,272	38,016
HB_NORTH	LZ_NORTH	Peak Weekend	144	502.1	72,302	0.35	0.89	25,306	64,349	39,043
HB_NORTH	LZ_NORTH	Off-peak	248	852	211,296	0.08	0.64	16,904	135,229	118,326
HB_SOUTH	LZ_SOUTH	Peak Weekday	352	50	17,600	3.83	6.12	67,408	107,712	40,304
HB_WEST	HB_NORTH	Peak Weekday	352	200	70,400	2.22	5.21	156,288	366,784	210,496
HB_WEST	HB_NORTH	Peak Weekend	144	300	43,200	1.77	5.27	76,464	227,664	151,200
HB_WEST	HB_NORTH	Off-peak	248	400	99,200	1.66	4.85	164,672	481,120	316,448

For full month of October	Cost	Revenue	Profit
	\$ 623,298	\$ 1,522,875	\$ 899,577

Month	November
Start Date	11/1/2020
End Date	11/12/2020

Location Source	Location Sink	TimeOfUse	Hours (h)	Size (MW)	Volume (MWh)	Purchase Price (\$/MWh)	Settlement Price* (\$/MWh)	Cost (\$)	Revenue (\$)	Profit (\$)
HB_NORTH	HB_HOUSTON	Off-peak	96	200	19,200	0.44	-0.33	8,424	(6,336)	(14,760)
HB_NORTH	LZ_NORTH	Peak Weekday	144	278.9	40,162	0.75	0.42	30,121	16,868	(13,253)
HB_NORTH	LZ_NORTH	Peak Weekend	48	400	19,200	0.45	0.95	8,698	18,240	9,542
HB_WEST	HB_NORTH	Peak Weekday	144	300	43,200	2.58	5.60	111,307	241,920	130,613
HB_WEST	HB_NORTH	Peak Weekend	48	200	9,600	2.08	10.46	19,978	100,416	80,438
HB_WEST	HB_NORTH	Off-peak	96	200	19,200	2.02	8.76	38,784	168,192	129,408
HB_WEST	LZ_NORTH	Peak Weekday	144	400	57,600	3.33	6.02	191,609	346,752	155,143

* Average for November 1 through 12

For November 1 through 12	Cost	Revenue	Profit
	\$ 408,921	\$ 886,052	\$ 477,131

Month	November
Start Date	11/1/2020
End Date	11/30/2020

Location Source	Location Sink	TimeOfUse	Hours (h)	Size (MW)	Volume (MWh)	Purchase Price (\$/MWh)	Settlement Price (\$/MWh)	Cost (\$)
HB_NORTH	HB_HOUSTON	Off-peak	240	200	48,000	0.44	n/a	21,061
HB_NORTH	LZ_NORTH	Peak Weekday	320	278.9	89,248	0.75	n/a	66,936
HB_NORTH	LZ_NORTH	Peak Weekend	160	400	64,000	0.45	n/a	28,992
HB_WEST	HB_NORTH	Peak Weekday	320	300	96,000	2.58	n/a	247,348
HB_WEST	HB_NORTH	Peak Weekend	160	200	32,000	2.08	n/a	66,592
HB_WEST	HB_NORTH	Off-peak	240	200	48,000	2.02	n/a	96,960
HB_WEST	LZ_NORTH	Peak Weekday	320	400	128,000	3.33	n/a	425,798

For full month of November	Cost
	\$ 953,687