

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

REPORTER'S RECORD
VOLUME 2 OF 2 VOLUMES

COURT OF APPEALS NO. 01-17-00181-CV
TRIAL COURT CAUSE NO. 2016-59771

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

DEFENDANT'S HEARING ON SPECIAL APPEARANCE

On the 17th day of February, 2017, the following proceedings came on to be held in the above-entitled and numbered cause before the Honorable Kyle Carter, Judge Presiding, held in Houston, Harris County, Texas.

Proceedings reported by computerized stenotype machine.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES

ERICH ALMONTE
SBOT NO. 24100116
KEVIN MOHR
SBOT NO. 24002623
King & Spalding, LLP
1100 Louisiana Street, Suite 4000
Houston, Texas 77002
Telephone: 713-276-7378
Fax: 713-751-3290
Attorney for Plaintiffs

CHRIS REYNOLDS
SBOT NO. 16801900
CORY R. LIU
SBOT NO. 24098003
Reynolds Frizzell, LLP
1100 Louisiana Street, Suite 3500
Houston, Texas 77002
Telephone: 713-485-7200
Fax: 713-485-7250
Attorney for Defendant

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CHRONOLOGICAL INDEX

VOLUME 2

DEFENDANT'S HEARING ON SPECIAL APPEARANCE

February 17, 2017

	PAGE	VOL.
Proceedings	4	2
Court's Ruling	15	2
Adjournment	15	2
Reporter's Certificate	16	2

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

P R O C E E D I N G S

THE COURT: 2016-59711 Raiden Commodities,
LP vs. Patrick De Man.

Counsel, please make your appearances for
the record.

MR. REYNOLDS: Chris Reynolds specially
appearing to contest jurisdiction on behalf of the
defendant Patrick De Man.

MR. MOHR: Kevin Mohr on behalf of the
plaintiffs Aspire Commodities and Raiden Commodities.

MR. LIU: Cory Liu on behalf of Patrick De
Man.

MR. ALMONTE: Erich Almonte on behalf of
Raiden Commodities and Aspire Commodities.

MR. REYNOLDS: May I proceed, your Honor?

THE COURT: You may.

MR. REYNOLDS: We agreed to a briefing
schedule after we filed our special appearance and so
you have an original special appearance filed by my
client in November, then you have a response filed by
them in January, a reply by us and then a supplemental
submission both of which were filed in February.

My client, Patrick De Man, is a resident
of Puerto Rico. No dispute about that at all. At
various points in time that they have talked about in

*Defendant's Hearing on Special Appearance
February 17, 2017*

1 their documents and we have talked about as well, he was
2 a resident of either New York or Connecticut. He has
3 never been a resident of Texas.

4 My client was employed by or, excuse me,
5 the two plaintiffs Raiden Commodities, LP and Aspire
6 Commodities, LP are both controlled by a gentleman by
7 the name of Adam Sinn, of all things; and Mr. Sinn is a
8 resident of Puerto Rico. So we have a Puerto Rico
9 defendant and we have two plaintiffs both of which are
10 controlled by an individual who resides in Puerto Rico.

11 *THE COURT:* Let me just ask this. What's
12 the basis for jurisdiction here in Texas? What are the
13 contacts?

14 *MR. MOHR:* Aspire Commodities is a Texas
15 limited partnership. Raiden Commodities is a
16 U.S./Virgin Islands limited partnership that at the time
17 that the party's relationship began was -- had its
18 principal place of business in Houston, Texas.

19 The plaintiff claims that he is entitled
20 to a partnership interest in these two businesses. We
21 filed our declaratory judgment action to say that they,
22 in fact, the parties never agreed on the terms of a
23 partnership and to determine what the terms of a
24 partnership would be if, in fact, there was such an
25 agreement. So the first thing I would point out is the

Kendra Garcia, CSR, RPR
125th District Court
832-927-2554

*Defendant's Hearing on Special Appearance
February 17, 2017*

1 plaintiff claims a partnership interest in a Texas
2 limited partnership but let me take the Court back to
3 the factual --

4 *THE COURT:* Does that in and of itself
5 give rise to in personam jurisdiction in the State of
6 Texas?

7 *MR. MOHR:* I think it does.

8 *THE COURT:* You can think but I need to
9 see -- I am looking for a real black letter law that
10 says, hey, partners in the company in Texas are all
11 subject to jurisdiction, personal jurisdiction. I don't
12 think that -- that's a stretch. What else you got?

13 *MR. MOHR:* This relationship began in
14 2011. At that point in time, the defendant was living
15 in Connecticut but was soon to be out of a job and he
16 was close friends with Mr. Sinn who had these companies
17 in Houston.

18 They began discussions about either
19 forming a partnership relationship or an employment
20 relationship for Mr. De Man to come to work for these
21 two Texas based companies and they subsequently did
22 agree on some kind of relationship. The terms of that
23 are the issue that's in dispute in the merits.
24 Thereafter, the defendant did work for these two Texas
25 based companies for two years and -- but he performed

*Defendant's Hearing on Special Appearance
February 17, 2017*

1 his services from his home in Connecticut. He was
2 telecommuting to work essentially but his job functions
3 were all based in Texas. The companies were in Texas,
4 the office was in Texas, the -- his boss was in Texas,
5 all of the employees were in Texas.

6 As he alleges, and I think admits, you can
7 trade from anywhere. So the fact that he was living in
8 Connecticut is sort of irrelevant. He could have been
9 living in Alaska or he subsequently moved to Puerto Rico
10 for tax reasons but neither Connecticut nor Puerto Rico
11 had any real nexus to the party's relationship at the
12 time that it began and that relationship at the time
13 when they had all of the discussions about whether he
14 was going to become a partner in these companies, those
15 were Texas companies.

16 *THE COURT:* Where were the discussions
17 had?

18 *MR. MOHR:* The discussions were primarily
19 had by e-mail.

20 *THE COURT:* Do you have any anything for
21 me to indicate that that is an issue in this case?

22 *MR. MOHR:* I'm sorry.

23 *THE COURT:* E-mail communications.

24 *MR. MOHR:* E-mail communications, you
25 know, can give rise to personal jurisdiction. The

*Defendant's Hearing on Special Appearance
February 17, 2017*

1 question about personal jurisdiction dispute ultimately
2 is, did he -- the defendant purposely avail himself of
3 the privilege of doing business in Texas and in this
4 case we know that he did because two different
5 agreements that the parties negotiated demonstrate that
6 they expected that his job was to be performed in Texas.
7 The parties drafted and negotiated the terms of an
8 employment contract which contains a Texas forum
9 selection clause.

10 That employment contract is Exhibit A-1 to
11 the plaintiff's response and in Section 11 of that
12 employment contract draft it notes that the agreement is
13 performable in whole or in part in Harris County and
14 that disputes regarding that relationship would be in
15 Harris County. Now the defendant says he never signed
16 the contract and that is true and we -- when we get to
17 the merits we will see whether what impact that has on
18 whether he is, in fact, an employee or a partner.

19 But from the question of whether he
20 intentionally availed himself of doing a Texas-based
21 job, he negotiated a contract in which he agreed -- the
22 draft contract agreed that the job was performable in
23 Texas. They didn't sign that contract but he responded
24 to it so that he had -- to the draft -- so that he had
25 only minor modifications and didn't raise any question

Kendra Garcia, CSR, RPR
125th District Court
832-927-2554

*Defendant's Hearing on Special Appearance
February 17, 2017*

1 about whether the job was, in fact, performable in
2 Texas.

3 *THE COURT:* So what you are really arguing
4 to me is, okay, maybe performance by virtue of his
5 performance of the work that he assents to the contract
6 but you are saying to me really just by sending back
7 some changes and that's indicating that he is upset
8 about the selection clause then that gives rise to in
9 personam jurisdiction.

10 It's an interesting argument. What I
11 think counsel is arguing and I am going to ask you the
12 question, Mr. Reynolds, is, I think that he is arguing
13 that by virtue of signing up to be a partner or doing
14 work for companies that are in Texas that he is availing
15 himself to the laws of the State of Texas and
16 intentionally doing so in such a manner that would give
17 rise to in personam jurisdiction. Tell me why that's
18 wrong.

19 *MR. REYNOLDS:* Well it's wrong because
20 there are two ways to get personal jurisdiction over a
21 defendant in Texas or any other state in the nation.
22 That is, number one, you show general jurisdiction
23 continuous and systematic contacts such that he is
24 literally at home in Texas. Recent Supreme Court
25 authority -- Cory can talk about it if we need more

Kendra Garcia, CSR, RPR
125th District Court
832-927-2554

*Defendant's Hearing on Special Appearance
February 17, 2017*

1 detail -- but recent supreme court authority has
2 basically said that in personam jurisdiction over an
3 individual defendant on the basis of systematic contacts
4 is basically a dead letter. You have to -- unless the
5 claim arises out of their contacts with Texas which the
6 claims in this case don't. The claims all arise out of
7 stuff that happened in the summer of 2016.

8 The other thing is they're misrepresenting
9 the nature of their companies. This is evidence before
10 the Court just so you can see it. This is Aspire one of
11 the two plaintiffs. Where does it say it's located?
12 Dorado, Puerto Rico. This is in K-1 that they filed
13 reporting my client's share of income and he keeps
14 saying it's a Texas-based company. This is Raiden.
15 2015 Raiden Commodities, Dorado, Puerto Rico. My client
16 Puerto Rico, too. This is a Puerto Rican dispute
17 between companies controlled by Mr. Sinn as I told you,
18 a Puerto Rican, and my client, a Puerto Rican resident.

19 *THE COURT:* So let me get this straight.
20 So if I was to deny or grant -- deny the special
21 appearance and say that there's no jurisdiction here --

22 *MR. REYNOLDS:* That would be to grant it.

23 *THE COURT:* Grant the special appearance
24 and say that there is no jurisdiction here you'd be
25 going to Puerto Rico?

Kendra Garcia, CSR, RPR
125th District Court
832-927-2554

*Defendant's Hearing on Special Appearance
February 17, 2017*

1 MR. REYNOLDS: We are in Puerto Rico
2 already. Mr. De Man has sued these companies, Mr. Sinn
3 and Mr. Sinn's living trust, a number of other people in
4 a case already pending in Puerto Rico. So yes, if you
5 grant the special appearance, everything will be heard
6 in Puerto Rico either as claims or counterclaims. If
7 you deny the special appearance then two cases will be
8 going on simultaneously and we would move to dismiss for
9 forum non convenience in any of them. You have to have
10 the special appearance before you have anything else
11 heard obviously as a matter of practice under 120a.

12 THE COURT: Okay.

13 MR. MOHR: May I respond to a few points?

14 THE COURT: Please address those two
15 points for me.

16 MR. MOHR: Mr. Reynolds' statement that
17 the events related to the dispute are limited to 2016 is
18 incorrect. And the events related to the dispute out of
19 which the dispute arise go all the way back to 2011
20 because the Court question in the case is, what did the
21 parties agree on the nature of their relationship? Was
22 it a partnership; if so, what were the terms? Is he an
23 employee? And, in fact, if you look at the allegations
24 in the complaint that Mr. De Man filed in Puerto Rico in
25 which he sets out the basis for his claim that he is a

*Defendant's Hearing on Special Appearance
February 17, 2017*

1 partner, it discusses events going all the way back to
2 2009 until 2013. At that point in time when those key
3 events occurred, the companies were based in Houston,
4 Texas. They were not based in Puerto Rico. They had no
5 connection to Puerto Rico at all at that point in time.
6 What is the connection to Puerto Rico? That connection
7 arose because for tax reasons Mr. Sinn decided to move
8 his personal residence to Puerto Rico.

9 *THE COURT:* Okay.

10 *MR. MOHR:* Because the income in a
11 partnership like this flows through ultimately to the
12 individual and is taxed on the individual's partnership
13 return so it was better for him to live in Puerto Rico
14 than in Texas. Mr. De Man did the same thing because he
15 wanted his income to be taxed in Puerto Rico instead of
16 in Connecticut.

17 The question, I think, that is important
18 from a personal jurisdiction standpoint and I think that
19 the U.S. Supreme Court's decision in *Burger King* sort of
20 sets this standard is that, that a personal jurisdiction
21 should not be based on contacts that are random,
22 fortuitous or attenuated or the unilateral activity of
23 another party or the third person. So you can't haul
24 someone into court in a state where they have never had
25 any kind of purposeful contact with.

Kendra Garcia, CSR, RPR
125th District Court
832-927-2554

*Defendant's Hearing on Special Appearance
February 17, 2017*

1 In this case the contacts in Puerto Rico
2 are, in fact, the ones that are attenuated because the
3 parties were never doing business in Puerto Rico. The
4 business of trading power in the Texas power markets was
5 here. The business was here in Texas at the time that
6 they decided to form this relationship. They moved to
7 Puerto Rico for reasons that are really unrelated to the
8 nature of the business of the companies. They don't do
9 any business in Puerto Rico. They just sit there
10 because you can do the trading on a computer from
11 anywhere. So it's the Puerto Rico contacts are the ones
12 that are random and attenuated. The business is in
13 Texas.

14 *THE COURT:* Okay.

15 *MR. REYNOLDS:* Your Honor, they originally
16 claimed in their lawsuit my client was employed by the
17 plaintiffs and we filed our response and said that's not
18 true. He was employed by a company called Raiden
19 Commodities 1, LLC at the time of the blow up in the
20 summer of 2016. Raiden Commodities 1, LLC, Puerto Rico.
21 That's the company that employed us at the time of the
22 blow up. And then talked about this all goes back to
23 these contacts and stuff, that's an argument for general
24 jurisdiction. There is no general jurisdiction here.
25 He has made no effort because he can't to show that any

Kendra Garcia, CSR, RPR
125th District Court
832-927-2554

*Defendant's Hearing on Special Appearance
February 17, 2017*

1 of the claims and I have gone through them very
2 carefully starting at paragraph 18 of their plaintiff's
3 original petition, your Honor, they specifically allege
4 defendant has not executed the Aspire limited
5 partnership agreement or the Raiden limited partnership
6 agreement, these agreements that contain these forum
7 selection clauses. And they also allege -- this is in
8 their live pleading -- he has not otherwise agreed to be
9 bound by their terms.

10 Paragraph 20, they talk about what
11 happened in July of 2016 and talk about the fact that
12 they were scared that he is going to start competing
13 with them.

14 Paragraph 22 what happened in July of
15 2016? Mr. Sinn said he was terminating his employment
16 with that company RC1 that's not a party here. They are
17 afraid he is going to go to work in competition with
18 them.

19 Paragraph 26. When did we claim to be a
20 partner? It says, after defendants dramatic
21 departure -- that was July of 2016 -- defendant asserted
22 that he was not merely an employee but was, in fact, a
23 limited partner. That's when that claim was made and we
24 were sitting squarely in Dorado, Puerto Rico on that
25 day. You should sustain the special exception, your

Kendra Garcia, CSR, RPR
125th District Court
832-927-2554

*Defendant's Hearing on Special Appearance
February 17, 2017*

1 Honor.

2 *THE COURT:* Thank you very much,
3 gentlemen. At this time the Court is prepared to rule.
4 Special exception is --

5 *MR. REYNOLDS:* Excuse me, special
6 appearance.

7 *THE COURT:* You are making me say wrong
8 words now.

9 *MR. REYNOLDS:* That was my fault.

10 *THE COURT:* Special appearance is granted,
11 is sustained. I need an order, Counsel, an order on the
12 matter.

13 *MR. REYNOLDS:* Thank you, your Honor.

14 *THE COURT:* It's an interesting argument.

15 (*Proceedings Concluded*)

16 * * * * *

17

18

19

20

21

22

23

24

25

Kendra Garcia, CSR, RPR
125th District Court
832-927-2554

Defendant's Hearing on Special Appearance
February 17, 2017

1 STATE OF TEXAS

2 COUNTY OF HARRIS

3

4 I, Kendra Garcia, CSR, RPR, Official Court Reporter
5 in and for the 125th District Court of Harris County,
6 State of Texas, do hereby certify that the above and
7 foregoing contains a true and correct transcription of
8 all portions of evidence and other proceedings requested
9 in writing by counsel for the parties to be included in
10 this volume of the Reporter's Record in the above-styled
11 and numbered cause, all of which occurred in open court
12 or in chambers and were reported by me.

13 I further certify that this Reporter's Record of the
14 proceedings truly and correctly reflects the exhibits,
15 if any, offered by the respective parties.

16 I further certify that the total cost for the
17 preparation of this Reporter's Record is \$ 91.00 and was
18 paid by REYNOLDS FRIZZELL, LLP.

19 WITNESS MY OFFICIAL HAND this the 9th day of MARCH,
20 2017.

21

22

23

24

25

/s/Kendra Garcia
KENDRA GARCIA, CSR, RPR
Texas CSR 8200
Official Court Reporter
125th District Court
201 Caroline, 10th floor
Houston, Texas 77002
Telephone: (832) 927-2554
Expiration: 12/31/17

Kendra Garcia, CSR, RPR
125th District Court
832-927-2554