

CAUSE NO. 2016-59771

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

DEFENDANT’S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having considered the pleadings and arguments of counsel concerning Defendant Patrick de Man’s special appearance, the Court makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. Patrick de Man (“De Man”) lives in Dorado, Puerto Rico.¹ At all times material to this case he was a citizen of the Netherlands.²
2. After the Lehman Brothers bankruptcy in September 2008, De Man moved to New York City, New York, and he lived there until 2010.³
3. In October 2009, De Man accepted a job offer with Sempra Energy Trading LLC in Stamford, Connecticut.⁴
4. From 2010 to 2013, De Man lived in Stamford, Connecticut.⁵
5. De Man moved to Puerto Rico in 2013, and he has lived there ever since.⁶

¹ De Man Declaration ¶ 1.

² First Sinn Declaration ¶ 6; Second Sinn Declaration ¶ 8.

³ De Man Declaration ¶ 13.

⁴ *Id.*

⁵ De Man Declaration ¶¶ 13, 18.

⁶ De Man Declaration ¶ 18.

6. De Man has not lived in Texas since September 2008.

7. In 2009, Adam Sinn (“Sinn”) approached De Man about the possibility of working with one of the trading companies affiliated with Sinn.⁷

8. During the entire time that Sinn was having those discussions with De Man, De Man lived in New York or Connecticut, and De Man never set foot in Texas.⁸

9. In 2009 and 2010, Sinn met with De Man in New York on at least five occasions and discussed the possibility of a working relationship.⁹

10. At the time of those meetings, De Man felt that he had a job at a well-established and reputable institution, Sempra, and the thought of leaving that job to work with a Sinn-affiliated company seemed risky to him.¹⁰ De Man’s wife had recently given birth to his son, and Sinn sought to persuade De Man to take the risk of working with him.¹¹

11. In 2012 and part of 2013, De Man was hired by Plaintiff Aspire Commodities LP (“Aspire”) to work as a commodities trader in Connecticut, as evidenced by numerous employment documents from the State of Connecticut.¹²

12. In 2013, De Man moved to Puerto Rico, and he was subsequently described as a partner on Schedule K-1 tax forms (IRS Form 1065) for Plaintiffs Raiden Commodities LP (“Raiden”) and Aspire Commodities LP (“Aspire”).¹³

⁷ De Man Declaration ¶ 14.

⁸ *Id.*

⁹ *Id.*

¹⁰ De Man Declaration ¶ 15.

¹¹ *Id.*

¹² De Man Declaration ¶ 17 and Exhibits 20–25.

¹³ De Man Declaration at Exhibits 2, 3, and 9.

13. All of the trading in which De Man engaged in on behalf of Raiden and Aspire was executed from outside of Texas.¹⁴

14. Raiden was originally incorporated in the Virgin Islands, and it was incorporated there at all times prior to and including the date on which this lawsuit was filed.¹⁵

15. The Schedule K-1 tax forms provided by Raiden to Sinn and De Man show that Raiden was located in the Virgin Islands and Puerto Rico.¹⁶

16. The Schedule K-1 tax forms provided by Aspire to Sinn and De Man show that Aspire is located in Puerto Rico.¹⁷

CONCLUSIONS OF LAW

I. Specific Jurisdiction

17. “[F]or a nonresident defendant’s forum contacts to support an exercise of specific jurisdiction, there must be a substantial connection between those contacts and the operative facts of the litigation.” *Moki Mac River Expeditions v. Drugg*, 221 S.W.3d 569, 585 (Tex. 2007).

18. “The purpose of the minimum-contacts analysis is to protect the defendant from being haled into court when its relationship with Texas is too attenuated to support jurisdiction.” *Am. Type Culture Collection, Inc. v. Coleman*, 83 S.W.3d 801, 806 (Tex. 2002).

19. This Court lacks specific jurisdiction over the Plaintiffs’ declaratory judgment actions concerning whether De Man has partnership interests in the Plaintiffs. De Man is a resident of Puerto Rico.¹⁸ Both Raiden and Aspire have their principal places of business in Puerto Rico,

¹⁴ De Man Declaration ¶ 16.

¹⁵ De Man Declaration ¶ 6 and Exhibits 10 and 11.

¹⁶ De Man Declaration at Exhibits 2, 9, and 12.

¹⁷ De Man Declaration ¶ 7 at Exhibits 3 and 12.

¹⁸ De Man Declaration ¶ 18.

as evidenced by the K-1 tax forms filed with the IRS.¹⁹ There is no substantial connection between Plaintiffs' declaratory judgment actions and any Texas contacts by De Man.

20. This Court lacks specific jurisdiction over the Plaintiffs' trade secret claims. Plaintiffs' allegations arise out of conduct that allegedly took place in 2016, while De Man was in Puerto Rico. Plaintiffs have not alleged and the record does not show any jurisdictionally significant facts indicating that Plaintiffs' trade secret claims are substantially connected to Texas contacts by De Man that were purposefully directed at availing himself of the benefits of Texas law.

21. This Court lacks specific jurisdiction over the Plaintiffs' conversion claims. Plaintiffs' allegations arise out of conduct that allegedly took place in 2016, while De Man was in Puerto Rico. Even if the Plaintiffs were located in Texas, allegations that an out-of-state defendant refused to return property that belongs to a Texas plaintiff are insufficient to establish personal jurisdiction over a defendant. *See Pervasive Software, Inc. v. Lexware GmbH & Co. KG*, 688 F.3d 214, 230 (5th Cir. 2012) (citing *Laykin v. McFall*, 830 S.W.2d 266, 269–70 (Tex. App.—Amarillo 1992, no writ)). Plaintiffs have not alleged and the record does not show any jurisdictionally significant facts indicating that Plaintiffs' conversion claims are substantially connected to Texas contacts by De Man that were purposefully directed at availing himself of the benefits of Texas law.

22. This Court lacks specific jurisdiction over the Plaintiffs' alternative claims for breach of partnership obligations. Plaintiffs' allegations arise out of conduct that allegedly took place in 2016, while De Man was in Puerto Rico. There is no substantial connection between Plaintiffs' claims for breach of partnership obligations and any Texas contacts by De Man.

¹⁹ De Man Declaration at Exhibits 3, 9, and 12.

II. General Jurisdiction

23. “For an individual, the paradigm forum for the exercise of general jurisdiction is the individual’s domicile.” *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 924 (2011).

24. General jurisdiction exists only when a defendant has had “continuous and systematic” contacts such that they are “essentially at home” in the forum state. *Id.* at 919. “It may be that whatever special rule exists permitting ‘continuous and systematic’ contacts to support jurisdiction with respect to matters unrelated to activity in the forum applies *only* to corporations.” *Burnham v. Superior Court of California, County of Marin*, 495 U.S. 604, 610 n.1 (1990).

25. At the time this lawsuit was filed, and at all times since then, De Man’s domicile was Puerto Rico.²⁰ Therefore, De Man is not subject to general jurisdiction in Texas.

Signed this the _____ day of _____, 2017

JUDGE PRESIDING

²⁰ De Man Declaration ¶ 18.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on this 21st day of April 2017, a true and correct copy of the foregoing instrument has been served upon counsel of record in accordance with the requirements of the Texas Rules of Civil Procedure, addressed as follows:

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