No. 01-17-000181-CV

IN THE COURT OF APPEALS FOR THE
FIRST JUDICIAL DISTRICT
HOUSTON, TEXAS

RAIDEN COMMODITIES, LP
AND ASPIRE COMMODITIES, LP,

Appellants,

vs.

PATRICK DE MAN,

Appellee.

On Appeal from Cause No. 2016-59771; in the 125th Judicial District Court, Harris County, Texas; Honorable Kyle Carter presiding

APPELLEE'S MOTION TO CHARACTERIZE APPEAL AS NOT "ACCELERATED"

Appellant Patrick de Man respectfully moves the Court to characterize this appeal as subject to a standard, not accelerated, schedule. As fully set forth below, the judgment from which appellants noticed the appeal is a final judgment, disposing of all issues and all parties, such that Texas Rule of Appellate Procedure 28.1 does not apply and an accelerated schedule is not appropriate. Appellant has indicated that it does not oppose the relief requested by this motion. See Exhibit A.

1. Appellants Raiden Commodities, LP and Aspire Commodities, LP (collectively, "Raiden") brought suit against Patrick de Man, an individual residing in Puerto Rico. De Man was the only defendant.

2. De Man specially appeared, challenging the personal jurisdiction of the Harris County District Court, and on March 7, 2017, the trial court signed an order holding that it lacked personal jurisdiction over the defendant and dismissing the case. The trial court's order is attached as Exhibit B. The entry on the trial court's docket states: "DISMISSED ON DEFENDANT'S MOTION (Final Order)." A copy of the docket is attached as Exhibit C.

3. On March 9, Raiden noticed an appeal. In spite of the finality of the trial court's judgment, Raiden erroneously characterized the appeal as "accelerated." A copy of Raiden's Notice of Appeal is attached as Exhibit D.

4. There is no basis on which to accelerate this appeal from an order that is, in fact, a final judgment. Texas Rule of Appellate Procedure 28.1 supplies the basis for accelerated appeals and provides that "[a]ppeals from interlocutory orders (when allowed by statute), appeals in quo warranto proceedings, appeals required by statute to be accelerated or expedited, and appeals required by law to be filed or perfected within less than 30 days after the date of the order or judgment being appealed are accelerated appeals." None of these applies.

5. This is not an appeal from an interlocutory order. A judgment is interlocutory when it does not determine all issues as to all parties, leaving something to be determined by the trial court. *Bryant v. Shields, Britton & Fraser*, 930 S.W.2d 836, 843 (Tex. App.—Dallas 1996, no writ).

6. By contrast, a judgment is final if it disposes of all pending parties and claims. *Lehmann v. Har-Con Corp.*, 39 S.W.3d 191, 200 (Tex. 2001). The trial court's judgment dismissed the sole defendant for want of jurisdiction. No claims remain against any party. The trial court's judgment was final, and the trial court correctly so indicated on its docket.

7. Section 51.014 of the Texas Civil Practice and Remedies Code does not alter this result. That section provides in part that a person may appeal from an ***interlocutory order*** that grants or denies the special appearance of a defendant. TEX. CIV. PRAC. & REM. CODE § 51.014(a)(7) (emphasis added).

8. The purpose of accelerating an appeal from an interlocutory order—to hasten resolution of the issue so that the trial court may render a complete judgment—is not present in this case. The trial court has already rendered its complete judgment and has dismissed all claims asserted by Raiden, leaving no reason to accelerate this appeal.

For the foregoing reasons, Appellee Patrick de Man respectfully requests that the Court characterize the appeal as an ordinary appeal from a final judgment and

recalculate the filing deadlines so that they are on the standard, not accelerated, schedule.

Respectfully submitted,

REYNOLDS FRIZZELL LLP

By: */s/ Chris Reynolds*

Chris Reynolds
State Bar No. 16801900
Solace Kirkland Southwick
State Bar No. 11522150
Cory R. Liu
State Bar No. 24098003

1100 Louisiana Street, Suite 3500
Houston, TX 77002
PH: (713) 485-7216
Fax: (713) 485-7250
Email: creynolds@reynoldsfrizzell.com
ssouthwick@reynoldsfrizzell.com
cliu@reynoldsfrizzell.com

ATTORNEYS FOR APPELLEE

CERTIFICATE OF CONFERENCE

On March 28, 2017, I received an email from Kevin Mohr, counsel for Plaintiffs/Appellants, indicating that he is not opposed to the relief sought by this Motion.

/s/ Chris Reynolds
Chris Reynolds

CERTIFICATE OF SERVICE

I certify that on March 29, 2017, I used the Court's electronic filing system to file this Motion and to serve this document on counsel for Appellant as follows:

Kevin D. Mohr
Erich J. Almonte
KING & SPALDING LLP
1100 Louisiana Street, Suite 4000
Houston, TX 77002
Fax: (713) 751-3290
Email: kmohr@kslaw.com
ealmonte@kslaw.com

/s/ Solace Kirkland Southwick
Solace Kirkland Southwick