

CAUSE NO. 2014-40964

ERIC TORRES, ADAM SINN,
XS CAPITAL MANAGEMENT, L.P.,
AND ASPIRE COMMODITIES, L.P.,

Plaintiffs,

v.

CRAIG TAYLOR AND
ATLAS COMMODITIES, L.L.C.,

Defendants.

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

157TH JUDICIAL DISTRICT

Consolidated with
CAUSE NO. 2015-49014

ERIC TORRES,

Plaintiff,

v.

S. JAMES MARSHALL,

Defendant.

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

157TH JUDICIAL DISTRICT

**ADAM SINN'S MOTION TO QUASH
DEPOSITION NOTICE FOR ADAM SINN,
MOTION FOR PROTECTION, AND MOTION FOR COSTS**

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff Adam Sinn files this Motion to Quash Deposition Notice, Motion for Protection, and Motion for Costs against Defendants Craig Taylor, S. James Marshall, and Atlas Commodities, LLC (collectively "Defendants") and would respectfully show this Court:

I. Introduction

Plaintiff Adam Sinn is being harassed by Defendants and their counsel, and it needs to end. This motion follows the hearing on July 22, 2016 where the Court heard the Motion to

Compel Adam Sinn's Deposition. The Court concluded that because this was the second deposition, Mr. Sinn could be deposed on a Saturday (*See* Order attached as Exhibit A).¹ Mr. Sinn had offered Friday August 5, 2016, Saturday August 6, 2016, as well as Friday September 2, 2016, all of which were rejected by Defendants. Mr. Sinn was also willing to offer other Saturdays but, despite the Order mandating the deposition on a Saturday, Defendants categorically refused to do the deposition on Saturdays and demanded the deposition take place on a Sunday knowing that was the day Mr. Sinn would travel back to his home in Puerto Rico.

Nonetheless, rather than bother this Court again, Mr. Sinn agreed to make himself available on Sunday August 7th. The Parties agreed to the date, Defendants noticed the deposition, and in reliance of the agreed date, counsel for Plaintiffs made arrangements with their families to accommodate this Sunday date, and Mr. Sinn purchased airfare including a later flight out to take him back home after the deposition on Sunday, as well as managed his trading positions, which are on all month long, in order to reduce the risk of his positions due to having to travel without internet access. Defendants are in the same industry as Mr. Sinn, and they are well aware of the fact that summer is the riskiest and most profitable time for an electricity trader, and cancelling this deposition at the last minute caused Mr. Sinn substantial lost opportunity due to having to manage his positions to accommodate the travel.

In keeping with their motif in this case, on August 4, 2016 the Thursday before the Sunday deposition, Defendants cancelled the deposition of Mr. Sinn. Their excuse was they would not have enough time to review the discovery responses that would be produced on Friday August 5, 2016 pursuant to the agreement of the parties and read into the record at the July 22, 2016 hearing in this matter. (Exh. B). This assertion is absurd, as the only discovery being

¹ The Court and Defendants also agreed on the record that this deposition will be related to the documents produced by Sinn after his first deposition.

responded to on August 5, 2016 are four interrogatories that simply match up names with telephone numbers (almost all of which have already been identified for over a year), and two requests for production which requests one specific document only, and communications regarding that document. *Further, Defendants knew at the time they selected August 7th as the deposition date that these discovery responses would be due the Friday before.*

Further, on Thursday, August 4, 2016, Defendants unilaterally served an Amended Notice of Intent to Take the Oral and Videotaped Deposition of Adam Sinn for August 14, 2016, a Sunday date Defendants has insisted on and one that Plaintiffs have repeatedly told them was unavailable. (Exh. C). Defendants do not seem to care about coming to a mutually agreeable date, but simply want to force a date because they know it is inconvenient for Sinn, and likely want to lay the harassment on thick during these most busy and riskiest months of trading in an effort to raise his risk and cost him as many opportunities as possible. This is at least the fourth time in this case that Defendants have cancelled a deposition within a few days of its scheduled date. Mr. Sinn requests the court protect him from Defendants' abuse of the deposition process.

II. Arguments and Authorities

Pursuant to Rule 199.4 of the Texas Rules of Civil Procedure, Sinn objects to the time and place designated for deposition contained in Defendants' Amended Notice of Intent to Take the Oral and Videotaped Deposition of Adam Sinn. Because this motion to quash is filed within three (3) business days after service of the deposition notice, the deposition is automatically stayed until a determination on this motion can be made. Movant requests that the Court quash the Notice of Deposition of Adam Sinn. A hearing has already been held on Defendants' Motion to Compel the Deposition of Adam Sinn, and the Court has ruled that the deposition will be scheduled to accommodate Mr. Sinn's work/travel schedule and as such can be held on

Saturdays. Defendants have flat out refused to do the deposition on a Saturday for unknown, and unexpressed reasons. In compliance with the Texas Rules of Civil Procedure, Sinn offers the following alternative date for his deposition: September 2, 2016 (beginning no earlier than 2:00 pm).

Mr. Sinn requests that Defendants pay him the sum of \$1,867.55 for costs related to this cancelled deposition. (Exh. D). Mr. Sinn purchased a ticket to come to Houston and then had to purchase an even costlier late ticket to return on Sunday to accommodate the deposition. Pursuant to Texas Rule of Civil Procedure 215.1, Mr. Sinn requests that the Court order Defendants to pay these travel costs.

Mr. Sinn further requests the protection of this Court pursuant to Texas Rule of Civil Procedure 192.6. In this instance, the Court has already ruled that the deposition will be scheduled to accommodate Mr. Sinn's work/travel schedule, and Defendants have refused to comply with that Order. Because of Defendants' lack of good faith in scheduling, refusal to comply with the Court order, and refusal to take the deposition even when Mr. Sinn agreed to a Sunday as they demanded by them, Defendants should be should be prevented from any further attempts to take this deposition because the Defendants have used this deposition as a means of harassment and not a legitimate attempt to obtain discovery.

III. Prayer

WHEREFORE, Plaintiff Sinn respectfully requests that the Court enter an order quashing the Amended Notice of Intent to Take the Oral and Videotaped Deposition of Adam Sinn served by Defendants on August 4, 2016, order Defendants to pay costs associated with the deposition they cancelled, order that Defendants are prevented from taking the deposition, and grant all other relief to which Sinn is entitled.

Respectfully submitted,
RAPP & KROCK, PC

/s/Kenneth Krock

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CERTIFICATE OF CONFERENCE

I hereby certify that I have had numerous email discussions with counsel for Defendants regarding attempts to schedule the deposition of Adam Sinn at a mutually agreeable time and place (See attached Exhibit B), and that I communicated to counsel for Defendants on more than one occasion that August 14, 2016 was not available for the deposition, but Defendants noticed the deposition for that date anyway, necessitating this motion.



Matthew M. Buschi

CERTIFICATE OF SERVICE

I hereby certify that, on this 9th day of August, 2016, a true and correct copy of this document was served on counsel of record in accordance with the Texas Rules of Civil Procedure.

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