

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

157<sup>TH</sup> JUDICIAL DISTRICT

**SINN PARTY PLAINTIFFS' RESPONSE TO DEFENDANTS' CHALLENGE TO  
PLAINTIFFS' CLAIMS OF PRIVILEGE**

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiffs/Counter-Defendants Aspire Commodities, L.P., XS Capital Investments, L.P., and Adam Sinn ("Sinn Parties") file this Response to Defendants' Challenge to Plaintiffs' Claims of Privilege and would respectfully show this Court:

1. Defendants Craig Taylor and Atlas Commodities ("Taylor Parties") have noticed a hearing on September 4, 2015 regarding "Plaintiffs' claims of privilege asserted under Texas Rule of Civil Procedure 193 with regard to information contained in the documents Bates-numbered CONFIDENTIAL SINN 000225-229 and produced on November 26, 2014" however the Taylor Parties have not identified which such claims of privilege in particular they challenge. The Sinn Parties object to the "notice" as failing to give adequate notice of the issues for the hearing.

2. Nonetheless, the only documents "withheld" by the Sinn Parties in these documents are redacted text messages between Plaintiff Adam Sinn and his attorneys Barrington Hammond, Jr. and Chanler Langham after the photograph at issue was sent and the Taylor Parties' attorney began posturing that this was a breach of the settlement agreement, not only are these

communications privileged, they are exempt under Texas Rule of Civil Procedure 193.3(c). (*See* Exhibit A).

3. The text messages that have been redacted due to the attorney-client communications privilege and work product privilege were sent during a range of dates from December 24, 2013 – January 2, 2014. This was immediately following the incident involving a picture of a few individuals, including Plaintiffs Sinn and Torres, holding up their middle fingers to a camera for a picture at a holiday party. Defendants’ counterclaims and alleged justification for ceasing payment on the Settlement Agreement were originally based on allegations that Sinn sent the picture to Taylor, and the Taylor Parties have alleged that the picture was disparaging, attaching both the picture as well as a number of their lawyer’s communications with Sinn Parties’ counsel about the anticipated litigation to their Counterclaim in this cause.

4. In the Taylor Parties’ counsel’s very first communication on Monday December 23, 2013 to the Sinn Parties’ attorney Chanler Langham concerning the photograph, the Taylor Parties’ attorney begins by saying

“As you know, the settlement agreement between our clients contains confidentiality and nondisparagement clauses. I can’t say I’ve ever seen a violation of those provisions quite like this one, but Mr. Sinn texted the attached picture to Craig Taylor this past weekend.”

(*See* Exhibit B to the Taylor Parties’ Response to the Sinn Parties’ Motion for Traditional Summary Judgment filed 7/17/15, which is incorporated herein by reference).

5. The text messages that were redacted did not need to be produced at all under Tex. R. Civ. P. 193.3 but were included because of this Court’s compelling production and a desire by the Sinn Parties not to delay the process which was explained to the Taylor Parties’ counsel several months ago. (*See* Exhibit D). The messages that have been redacted for privilege are exempt from

the methods of withholding and asserting privileges under Tex. R. Civ. P. 193.3 because the texts are communications to or from a lawyer created or made from the point at which a party consults a lawyer with a view to obtaining professional services from the lawyer in the prosecution or defense of a specific claim in the litigation in which discovery is requested and it concerned the litigation in which the discovery was requested. The text messages regard legal advice related to the incident of the picture being sent to Taylor and the anticipated litigation that eventually resulted therefrom, which is regarding a specific defense (breach of non-disparagement clause) of the Taylor Parties in this litigation, and this litigation is the litigation in which the discovery was requested. *See* Exhibit B, Exhibit C. The redacted text messages are to Chanler Langham, and Barrington Hammond, who were both attorneys of the Sinn Parties at the time of the texts. Exhibit B, Exhibit C.

6. Thus, even if the redacted texts are not exempt from the privilege assertion rule under Tex. R. Civ. P. 193.3(c), which the Sinn Parties maintains they are, the redacted text messages are nonetheless clearly privileged under (a) the attorney-client communications pursuant to Tex. R. Evidence 503 as they are communication with a lawyer for the purpose of facilitating the rendition of professional legal services to the client; and (b) core work product as mental impressions of an attorney developed in anticipation of litigation pursuant to Tex. R. Civ. P. 192.5, and is not discoverable.

WHEREFORE, the Sinn Parties respectfully requests that the sustain the Sinn Party Plaintiffs' assertions of privilege, and for such other and further relief at law or in equity to which the Sinn Parties are justly entitled.

Respectfully submitted,

**RAPP & KROCK, PC**

                        /s/Kenneth Krock

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**ATTORNEYS FOR PLAINTIFFS**

**CERTIFICATE OF SERVICE**

I hereby certify that, on this 28th day of August 2015, 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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