

CAUSE NO. 2014-40964

ERIC TORRES, ADAM SINN, XS CAPITAL	§	IN THE DISTRICT COURT OF
MANAGEMENT, L.P., and ASPIRE	§	
COMMODITIES, L.P.,	§	
Plaintiffs	§	
	§	HARRIS COUNTY, TEXAS
v.	§	
	§	
CRAIG TAYLOR and ATLAS	§	
COMMODITIES, L.L.C.,	§	
Defendants	§	157TH JUDICIAL DISTRICT

DEFENDANTS' RESPONSE TO PLAINTIFFS' SPECIAL EXCEPTIONS

Defendants/counter-Plaintiffs Craig Taylor (“Taylor”) and Atlas Commodities, LLC (“Atlas”) (collectively “Taylor”) file this Response to Plaintiffs’/counter-Defendants’ Special Exceptions as follows:

I. INTRODUCTION

Plaintiffs Eric Torres (“Torres”), Adam Sinn (“Sinn”), XS Capital Investments, LP (“XS”), and “Aspire Commodities, LP (“Aspire”) (collectively “Sinn”) filed this suit against Taylor, ostensibly to enforce a settlement agreement among Torres, Sinn, and Taylor (“Settlement Agreement”). But it is Sinn who is in breach of the Settlement Agreement. Since filing this claim, Plaintiffs/counter-Defendants have refused to respond to virtually any discovery. Their special exceptions were filed for no reason other than to continue to avoid discovery and should be overruled.

II. ARGUMENT AND AUTHORITIES

Texas is a notice pleading jurisdiction. *Koplow Dev., Inc. v. City of San Antonio*, 399 S.W.3d 532, 536 (Tex. 2013). Texas Rules of Civil Procedure 45 and 47 require, “in plain and concise language,” “a short statement of the cause of action sufficient to give fair notice of the

claim involved.” Tex. R. Civ. P. 45(b), 47(a). “A ‘petition is sufficient if it gives fair and adequate notice of the facts upon which the pleader bases his claim. The purpose of this rule is to give the opposing party information sufficient to enable him to prepare a defense.’” *Kopplow Dev.*, 399 S.W.3d at 536 (quoting *Roark v. Allen*, 633 S.W.2d 804, 810 (Tex. 1982)). “That an allegation . . . be of legal conclusion shall not be grounds for an objection when fair notice to the opponent is given by the allegations as a whole.” Tex. R. Civ. P. 45(b). Rule 45 does not require a plaintiff to set forth the evidence relied upon to establish an asserted cause of action. *Paramount Pipe & Sup. Co. v. Muhr*, 749 S.W.2d 491, 494–95 (Tex. 1998).

The purpose of special exceptions is to determine whether these “fair notice” requirements have been met. *Aldous v. Bruss*, 405 S.W.3d 847, 857 (Tex. App.—Houston [14th Dist.] 2013, no pet.). “It is not a valid objection to generally complain that the pleading does not set out enough factual details if fair notice of the claim is given.” *Id.* (citing *Sw. Bell Tel. Co. v. Garza*, 164 S.W.3d 607, 616–17 (Tex. 2004)). If the court can ascertain the elements of a cause of action and the relief sought, the pleading is sufficient. *Ross v. Goldstein*, 203 S.W.3d 508, 512 (Tex. App.—Houston [14th Dist.] 2006, no pet.).

A. “Proof” vs. “Notice”

Throughout their special exceptions, the Plaintiffs argue that “[t]o *prove* an action for breach of contract...” *See, eg*, Eric Torres’ Special Exceptions at p. 1, ¶1 (emphasis added). But Taylor is not required to *prove* anything at this stage of litigation, and a special exception is not a motion for summary judgment. So long as the Counterclaim provides the Plaintiffs notice, nothing more needs to be done. Tex. R. Civ. P. 45(b), 47(a). The Court should reject the Plaintiffs’ demand that Taylor “prove” his case while, in violation of the rules, they simultaneously and unilaterally impose on him a nearly complete embargo on discovery of any kind.

B. Sinn’s Special Exception 2 and Torres’ Special Exception 1 – Breach

Torres claims that “Defendants have failed to allege that Torres took any action in violation of the Settlement Agreement.”¹ Sinn claims that “Defendants have failed to allege that Sinn, XS Capital, or Aspire took any action in violation of the non-disparagement clause.”² First of all, Sinn is the principal of both XS and Aspire—his actions are their actions—and all three are signatories to the Signature Agreement, and all three are plaintiffs in this case.

Moreover, Taylor plainly alleges in his Counterclaim that “Sinn and Torres breached the Agreement when they sent the obscene text message described herein to persons associated with Atlas under Atlas’ name and/or participated in its creation.”³ Sinn and Torres are two of the individuals who appear in the photograph complained of, extending their middle fingers at the camera, and are identified as such in the Counterclaim.⁴ According to one of Sinn’s versions of events, this communication was sent by Sinn to people associated with *Atlas* (Taylor’s company) with the tag line “Happy Holidays from Atlas.”⁵ In another of Sinn’s versions, the communication was sent by Sinn to people associated with *Asipre* (Sinn’s company) with the tag line “Happy Holidays from Aspire.”⁶

As described in Taylor’s Counterclaim, the Settlement Agreement between Sinn, Torres, and Taylor contains a non-disparagement provision, which was breached (a) by Sinn and Torres when they extended their middle fingers at the camera in a photograph sent by Sinn to people associated with Atlas under Atlas’ name and (b) by Sinn when he so transmitted that photograph.⁷

¹ Eric Torres’ Special Exceptions to Defendants’ Counterclaim (“Torres’ Special Exceptions”) ¶ 1.

² Adam Sinn, XS Capital, and Aspire [*sic*] Special Exceptions to Defendants’ Plea in Abatement and Counterclaim (“Sinn’s Special Exceptions”) ¶ 2.

³ Defendants’ Original Answer, Plea in Abatement, and Counterclaim (“Counterclaim”) ¶ 43.

⁴ Counterclaim ¶ 29.

⁵ Counterclaim ¶ 32.

⁶ Counterclaim ¶ 33.

⁷ Counterclaim ¶¶ 29, 32, 43.

How posing for and sending such a photograph to Taylor's customers and/or associates or sending to others with reference to Taylor or sending to Taylor himself cannot be considered a "false, derogatory, slanderous or libelous comment[] . . . likely to be harmful to [Taylor or Atlas'] business, business reputation, or personal reputation" Plaintiffs do not and cannot say. Torres' Special Exception number 1 and Sinn's Special Exception number 2 should be denied. Regardless, Plaintiffs/Counterdefendants are on notice and that is all that is required.

B. Sinn's Special Exception 3 and Torres' Special Exception 2 – Injury

Sinn and Torres both claim that "Defendants have failed to allege that they suffered any injury or damages as a result of the alleged text message."⁸ This is a strange claim to make in light of paragraph 48 of the Counterclaim, which says: "Defendants have suffered damages as a result of the breaches of contract alleged herein." This is all that is needed.

Sinn and Torres go on to complain that Taylor "fail[s] to allege any facts to support this conclusory statement."⁹ But Taylor is not required to make allegations of that kind. Tex. R. Civ. P. 45(b), 47(a). Taylor is required only to provide fair notice of his claims, which he has done. Conclusory legal allegations are not objectionable. Tex. R. Civ. P. 45(b). Torres' Special Exception number 2 and Sinn's Special Exception number 3 should be denied.

C. Sinn's Special Exception 4 and Torres' Special Exception 3 – Maximum Amount Claimed

Taylor will amend his Counterclaim in accordance with Texas Rule of Civil Procedure 47 to state a maximum amount of damages sought. Sinn's Special Exception 4 and Torres' Special Exception 3 are moot.

⁸ Sinn's Special Exceptions ¶ 3; Torres' Special Exceptions ¶ 2.

⁹ *Id.*

CONCLUSION AND PRAYER

For these reasons, Eric Torres' Special Exceptions to Defendants' Counterclaim and Adam Sinn, XS Capital, and Aspire's Special Exceptions to Defendants' Counterclaim should be denied. A proposed order is attached.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing instrument was served by electronic filing, certified mail, return receipt requested, email, and/or facsimile on October 21, 2014 as follows:

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