

CAUSE NO. 2019-79857

PATRICK A.P. DE MAN, § IN THE DISTRICT COURT OF
§
§
§
v. § HARRIS COUNTY, TEXAS
§
RAIDEN COMMODITIES, L.P., and §
ASPIRE COMMODITIES, L.P. §
§
§ 61ST JUDICIAL DISTRICT

RAIDEN COMMODITIES, L.P. AND ASPIRE COMMODITIES, L.P.’S MOTION TO VACATE THE ATTEMPTED DOMESTICATION OF FOREIGN JUDGMENT, AND IN THE ALTERNATIVE, REQUEST FOR CLARIFICATION REGARDING PAYMENT

Movants Raiden Commodities, L.P. (“Raiden”) and Aspire Commodities, L.P. (“Aspire” and with Raiden, “Movants”) hereby file their Motion to Vacate Patrick DeMan’s (“DeMan”) Attempted Domestication of Foreign Judgment, and in the Alternative, Request for Clarification Regarding Payment. Movants would show the Court as follows:

DeMan is improperly seeking to domesticate an order from a Puerto Rico court that is at best, interlocutory, and at worst, facially void (the “Partial Judgment”), which he cannot do. As explained in the pending complaint to the Puerto Rico trial court, after the Partial Judgment was rendered, DeMan filed an amended petition in that action, thereby nullifying and voiding the Partial Judgment. Thus, it cannot be enforced here. Moreover, the Partial Judgment is not entitled to full faith and credit—and thus cannot be enforced in Texas—because the Partial Judgment is, at best, interlocutory. Although the Partial Judgment was affirmed by a Puerto Rico court of appeals, the Partial Judgment was never severed from the original—and still ongoing—litigation. Nor did the Partial Judgment dispose of all issues against all parties. Accordingly, the Partial Judgment may still be changed or vacated altogether by the Puerto Rico court and cannot be enforced in Texas until final.

Alternatively, to the extent this Court agrees that the Partial Judgment was properly domesticated and should be enforced in Texas, Movants request that this Court provide Movants with guidance regarding the payment of any such judgment. The Puerto Rico court held that the judgment amount represents wages owed to Mr. DeMan. Movants requested the Puerto Rico court of appeals to clarify that taxes should be withheld from the judgment amount prior to paying it to Mr. DeMan. The trial court, however, refused to provide the requested guidance, putting Movants in a no-win situation. Although Movants dispute the validity and finality of the Partial Judgment, Movants will comply with the Court's order to pay any such judgment. They, however, need to know how it should be paid. In the event this Court holds that Movants must pay the Partial Judgment, Movants respectfully request guidance on such payment.

BACKGROUND

On December 27, 2018, the Superior Court of Bayamon granted DeMan's Motion for Partial Summary Judgment against Movants, ordering Movants to pay DeMan \$690,847 in employee wages and \$103,627.05 in attorneys' fees. *See* Partial Judgment at 8–9, attached to Notice of Filing. The court made clear that its order was a “[p]artial sentence.” *Id.* at 9. The parties continue to litigate a litany of other issues related to DeMan's business relationship with Movants—issues that were not disposed of by the Partial Judgment and may not be disposed of for some time. *See id.* at 2–3.

After the Partial Judgment was entered, and during Movants appeal of that Partial Judgment, DeMan filed an amended complaint. Movants subsequently filed a motion asking the court to declare the Partial Judgment null and void due to the amended complaint. *See Exhibit 1.*

On November 1, 2019, DeMan attempted to domesticate the Partial Judgment by filing a Notice of Foreign Judgment with this Court. He did not provide Movants with notice of that filing

until November 21, 2019. Since that time, De Man has taken a series of *ex parte* steps to try to enforce the judgment, including obtaining a Temporary Restraining Order which is the subject of a concurrently filed Emergency Motion to Dissolve.

ARGUMENT

I. At Best, the Partial Judgment is Interlocutory and Therefore not Entitled to Full Faith and Credit in Texas.

A foreign judgment is not entitled to full faith and credit—and therefore should not be enforced by a Texas court—where, as here, the judgment is interlocutory. *See Reading & Bates Const. Co. v. Baker Energy Resources Corp.*, 976 S.W.2d 702, 713 (Tex. App.—Houston [1st Dist.] 1998, pet. denied); *see also Carter v. Cline*, No. 03-10-00855-CV, 2011 WL 4924214, at *4 (Tex. App.—Austin Oct. 13, 2011, no pet.) (“debtor can avoid enforcement by timely asserting and establishing one or more . . . exceptions to the requirement that a foreign judgment be afforded full faith and credit,” including, where “the decree is interlocutory”). Unlike a judgment after a trial on the merits, a summary judgment “is presumed to dispose of only those issues expressly presented, not all issues in the case.” *City of Beaumont v. Guillory*, 751 S.W.2d 491, 492 (Tex. 1988). “A summary judgment that fails to dispose expressly of all parties and issues in the pending suit is interlocutory,” unless the judgment has been severed from the case. *Id.*

Where a party seeks to domesticate in Texas a “facially non-final foreign judgment,” that party bears “the initial burden of proving the judgment’s finality” and timetables for challenging the domestication do not run until the judgment is proven final. *See Dear v. Russo*, 973 S.W.2d 445, 448 (Tex. App.—Dallas 1998, no pet.) (failure to prove judgment’s finality rendered moot any deadlines for challenging domestication); *see also Carter*, 2011 WL 4924214, at *6 (filing of

judgment under UEFJA does not create prima facie showing of validity and enforceability in Texas and without final judgment, timetables for challenging domestication were inapplicable).¹

The “finality of a foreign judgment is determined under the laws of the state in which it was rendered.” *Id.* at *7 (internal citation omitted). Here, the rendering court was explicit as to the non-finality of the Partial Judgment: it is a “partial sentence” being granted at one “stage” of a lawsuit that is still pending. *See Mindis Metals, Inc. v. Oilfield Motor & Control, Inc.*, 132 S.W.3d 477, 482 (Tex. App.—Houston [14th Dist.] 2004, pet. denied) (“The finality of a judgment or order is controlled by its substance, not its label or form.”). The Partial Judgment does not “expressly state that all issues were resolved, nor that all matters between parties were decided.” *See Guillory*, 751 S.W.2d at 492 (holding court of appeals erred in holding partial judgment was a final, appealable judgment). The Partial Judgment is therefore, on its face, facially non-final, *i.e.*, interlocutory, and not entitled to the full faith and credit of the Texas courts. Accordingly, the Partial Judgment is unenforceable against Movants and should be vacated in this Court.

II. The Partial Judgment is Facially Void and Unenforceable in Texas.

The Partial Judgment infringes the due process rights of the Movants, therefore, it is null and void and unenforceable in Texas. As explained in Movants complaint to the Puerto Rico court (*see* Ex. 1), once DeMan amended his complaint in the Puerto Rico action, the Partial Judgment was nullified and of no effect. DeMan cannot enforce his judgment here because the Partial Judgment is void. *See Karstetter v. Voss*, 184 S.W.3d 396, 402 (Tex. App.—Dallas 2006, no pet.) (“A collateral attack on a judgment is successful only where the judgment is established as void.”).

¹ In any event, Movants file this Motion to Vacate well within thirty days of when they were served with notice of DeMan’s attempt to domesticate the Partial Judgment.

In any event, the Partial Judgment should not be enforced here because motions on the validity of the Partial Judgment are still being considered in the rendering jurisdiction. Accordingly, the Court should vacate the judgment as filed here.

III. In the Alternative, Movants Request the Court to Clarify the Nature of any Required Payment to Mr. DeMan.

The Puerto Rico court concluded that the judgment amount represents wages owed to Mr. DeMan. After entry of the Partial Judgment, Movants requested the court of appeals to declare how Movants should pay the Partial Judgment amount.

In Puerto Rico, Movants sought clarity regarding whether employment or other applicable taxes should be withheld from payment of the Partial Judgment, since the judgment amount represented wages. *See Exhibit 2.* Movants did not want pay the gross judgment amount and then get in trouble with taxing authorities for not withholding applicable employment taxes. Movants also did not want to face additional claims from Mr. DeMan from their unilaterally making such tax withholdings. Despite Movants' requests, the court of appeals in Puerto Rico refused to provide Movants any guidance. Mr. DeMan has never provided his opinion on how the Partial Judgment should be paid. Indeed, despite his machinations in multiple courts, he has never demanded payment.

Here, Movants dispute the validity and finality of the Partial Judgment. Nonetheless, Movants will comply with any order from this Court to pay the Partial Judgment. They, however, need to know how it should be paid and specifically whether applicable taxes should be withheld from its payment. Accordingly, in the event this Court holds that Movants must pay the Partial Judgment, Movants respectfully request that this Court clarify how that payment should be made.

CONCLUSION

This Court should vacate the Partial Judgment filed by DeMan because it is, at best, an interlocutory judgment not entitled to full faith and credit, and at worst, a facially void judgment that cannot be enforced by a Texas Court. Accordingly, Movants respectfully request that this Court vacate the Partial Judgment.

Dated: December 16, 2019

Respectfully submitted,

/s/ Benjamin T. Pendroff

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CERTIFICATE OF SERVICE

I hereby certify that on December 16, 2019 a true and correct copy of the foregoing document was served via electronic service to all counsel of record in accordance with the Texas Rules of Civil Procedure.

/s/ Benjamin T. Pendroff

Benjamin T. Pendroff