

CAUSE NO. 2019-79857B

PATRICK A.P. DE MAN, GARNISHOR,	§	IN THE DISTRICT COURT OF
	§	
	§	
vs.	§	HARRIS COUNTY, TEXAS
	§	
JP MORGAN CHASE, GARNISHEE,	§	
	§	
RAIDEN COMMODITIES, L.P., AND ASPIRE COMMODITIES, L.P., DEFENDANTS.	§	61 ST JUDICIAL DISTRICT

SECOND SUPPLEMENT TO EMERGENCY MOTION TO DISSOLVE WRIT OF GARNISHMENT

Movants Raiden Commodities, L.P. (“Raiden”) and Aspire Commodities, L.P. (“Aspire”) (together, “Movants”) hereby file this Second Supplement to Emergency Motion to Dissolve Writ of Garnishment obtained by Patrick DeMan (“DeMan”) against J.P. Morgan Chase (“JPMC”) (the “Writ”) and would show the Court as follows:¹

1. In the Emergency Motion to Dissolve Writ of Garnishment (the “Motion”), Movants object to the many deficiencies in the affidavits purporting to support the application for the Writ. *See* Mot. pp. 5–6. In addition to those deficiencies, the affidavits (both the original and the attempted corrected affidavit) are defective—and thus the Writ should be dissolved—because the affidavits fail “to set forth any facts that would be admissible in evidence as required by rule 658.” *See Wilson v. HPSC, Inc.*, No. 05-09-00703-CV, 2010 WL 1713998, at *1 (Tex. App—Dallas, Apr. 28, 2010, no pet.) (mem. op.) (reversing trial court’s denial of motion to dissolve where garnishment application and supporting affidavit were “defective and cannot sustain issuance of a writ of garnishment.”); *see also* Tex. R. Civ. P. 658 (“The application and any

¹ This Second Supplement is not being filed as, nor is it meant to be, a Reply to Patrick A.P. DeMan’s Response to Emergency Motion to Dissolve Writ of Garnishment. Movants reserve all rights to reply to DeMan’s Response at the January 9, 2020 hearing on the instant motion.

affidavits shall be made on personal knowledge and shall set forth such facts as would be admissible in evidence.”). The affidavits state no basis for the affiant’s purported knowledge that “Defendant does not possess property within this state that is subject to execution and that is sufficient to satisfy the judgment.” For example, the affiant does not state that Plaintiff previously served any discovery in this action, attempted to execute on any of Defendants’ property within this state, or otherwise attempted to determine if Defendants had any such property within the state. The failure to provide any such facts is fatal to the affidavits and the Writ.

2. Furthermore, where a judgment is entered against more than one defendant, as is the case here, the “application for garnishment must state that the garnishment has not been brought to injure *either of the defendants*,” and “*neither of the defendants* has property within the affiant’s knowledge, subject to execution, within the State, which was sufficient to satisfy the garnisher’s claim.” *Kisro v. Heard*, 547 S.W.2d 322, 323 (Tex. App.—Houston [1st Dist.] 1977, no pet.) (emphasis added) (“Where there are two defendants, or more, in the suit, this clearly means the affidavit shall state that ‘the defendants’ have not such property.”); *see also Premium Latin Publishing, Inc. v. Fredonia Enters., Inc.*, Civ. Act. No. 4:07-2739, 2010 WL 11586404, at *1 (S.D. Tex. Jan. 12, 2010) (“However, if the garnishment is requested to satisfy a joint and several judgment against two or more defendants, the application and the supporting affidavits must state that none of the judgment debtors possess property in Texas, that is subject to execution, and that is sufficient to satisfy the judgment.”). The statutes governing writs of garnishment “should be followed with strictness.” *Kisro*, 547 S.W.2d at 323. Here, the affidavits state “**Defendant** does not possess property within this state that is subject to execution . . .” and the “garnishment is not sued out to injure either **Defendant** or Garnishee.” *See* Mot. at Ex. 5, p. 2 (emphasis added). The “failure to state whether all of the debtors have property subject to execution that would satisfy the

debt renders the garnishment application ‘patently defective.’” *Fredonia Enters., Inc.*, 2010 WL 11586404, at *2 (citation omitted). Accordingly, the Writ should be dissolved.

CONCLUSION

For the reasons set forth in the Motion as well as the reasons set forth in the supplements to the Motion, the writ of garnishment should be dissolved.

Dated: January 8, 2020

Respectfully submitted,

/s/ Benjamin T. Pendroff

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CERTIFICATE OF SERVICE

I hereby certify that on January 8, 2020 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