

STACY R. SCHIFFMAN, <i>et al</i> ,	§	IN THE DISTRICT COURT OF
	§	
<i>Plaintiff</i> ,	§	
	§	
v.	§	
	§	
NELSON PARTNERS, LLC, NELSON	§	TRAVIS COUNTY, TEXAS
BROTHERS PROPERTY	§	
MANAGEMENT INC. D/B/A NELSON	§	
PARTNERS PROPERTY	§	
MANAGEMENT, INC., NP EQUITY,	§	
LLC, AND PATRICK NELSON,	§	
	§	
<i>Defendants.</i>	§	98th JUDICIAL DISTRICT

TEMPORARY RESTRAINING ORDER

On this day, the Court considered the Plan Administrator, Gregory S. Milligan’s (“Milligan” or “Plan Administrator”) Verified Application for Temporary Restraining Order and Motion for Expedited Discovery (the “Application”) against Defendants Nelson Partners, LLC, Nelson Brothers Property Management, Inc. d/b/a Nelson Partners Property Management, Inc. and Patrick Nelson (“Nelson Parties”). After reviewing the Application, evidence attached to the Application, the Motion for Contempt and Request for Show Cause Hearing (“Motion”), arguments of counsel and parties, and the Nelson Parties’ Response to the Application, the Court makes the following findings and orders:

By his Application, and in accordance with the definitions, findings, and orders contained in the Court’s April 25 Temporary Injunction, the Plan Administrator seeks a Temporary Restraining Order enjoining the Nelson Parties, as well as any entity under Patrick Nelson’s control, from transferring, assigning, dissipating, or otherwise withdrawing the \$14,760,000 reflected in the October 24 Final Closing Statement as follows:

PAYEE	AMOUNT
Principal buy down to SP 180 Fund, LLC	\$3,000,000.00
Sellers commission to Nelson Partners, LLC	\$6,090,000.00
Deferred Buyer Commission to Nelson Partners Property Mgmt., Inc.	\$5,670,000.00
Total	\$14,760,000.00

This Court has jurisdiction over the Nelson Parties. The Court further entered a Temporary Injunction on or about April 25, 2022, the terms of which are hereby incorporated by reference and attached hereto, and the Court reiterates and adopts the findings therein.

Such wrongful conduct has caused, is causing, and will continue to cause probable and irreparable injury and harm to the Investors' and Plan Administrator's personal, property, contractual, and/or business rights. Without the issuance of a temporary restraining order as requested by the Plan Administrator, the Nelson Parties are substantially likely to cause irreparable harm and injury to the Plan Administrator and Investors, who have no adequate remedy at law because any purported damages are difficult, if not impossible, to quantify. Specifically, the harm will be caused to the Plan Administrator's ability to disperse funds to the Investors and will harm the Plan Administrator's duties and obligations both to the Court and the Investors.

The Court finds that the Plan Administrator presented sufficient information that unless the Court orders the Nelson Parties to refrain from moving the \$14,760,000, there is an imminent risk of irreparable injury, loss, or damage to the Plan Administrator will be unable to fully effectuate the Liquidation Plan, and the Investors will be harmed.

Unless restrained by this Court, the Nelson Parties are likely to transfer the \$14,760,000 outside of the Court's jurisdiction, and the Plan Administrator and Investors will continue to be immediately and irreparably harmed as a result. The threatened harm to the Plan Administrator and Investors outweighs the threatened harm to the Nelson Parties. If a TRO is not issued, the Plan Administrator is at risk of losing control over the \$14,760,000.

The Plan Administrator filed a Motion for Contempt and Request for Show Cause, and has demonstrated through his pleading and the evidence attached thereto that he will likely succeed on the merits of the claims and that he and the Investors will suffer immediate and irreparable injury if the Nelson Parties, and those acting in active concert or participation with them, are not immediately enjoined from transferring the Sol y Luna funds. By virtue of the foregoing, the Plan Administrator has also demonstrated that they have no adequate remedy at law, and that a balancing of the equities favors the issuance of an injunction against the Nelson Parties.

IT IS THEREFORE ORDERED that the Nelson Parties, and any of their respective officers, directors, agents, employees, representatives, attorneys, affiliates, and any other parties acting on his behalf or on instructions from the Nelson Parties are hereby restrained and enjoined from transferring, dissipating, or otherwise absconding with \$14,760,000 of the proceeds from the Sol y Luna sale except as provided in this Order.

It is further ORDERED that the hearing on the Plan Administrator's Application for Temporary Injunction shall commence on December 2, 2022 at 9:00 a.m. in the 250th District Court, Travis County, Texas, and Defendant Patrick Nelson shall appear and show cause, if any exists, why this Temporary Restraining Order should not be continued as a temporary injunction.


It is further ORDERED that the Nelson Parties shall deposit with the Travis County District Court's registry the amount of \$14,760,000, by 5:00 p.m. CST on Friday, November 18, 2022, which amount the Court finds will adequately protect the interests of the Plan Administrator and Investors, pending a hearing on the Plan Administrator's Application for Temporary Injunction.

It is further ORDERED that, upon depositing the \$14,760,000 described herein, the District Clerk of Travis County shall prepare and issue this notice of Temporary Restraining Order and/or

writ of injunction for service upon the Nelson Parties. This Temporary Restraining Order expires on its own terms in 14 days from the date of this Order.

It is further ORDERED that, pursuant to the Agreed Order on Administrator's Powers, Authority, and Implementation Procedures Pursuant to Plan of Liquidation Section 5 entered on July 21, 2022, the Plan Administrator is not required to post any bond, surety, or other security.

SIGNED at 3:50 o'clock ~~a.m.~~/p.m. on the 18th day of November, 2022.



JUDGE PRESIDING
KARIN CRUMP
250th DISTRICT COURT

AGREED AS TO FORM:

/s/ Rusty J. O'Kane

Jason M. Rudd, Tex. Bar No. 24028786

jason.rudd@wickphillips.com

Rusty J. O'Kane, Tex. Bar No. 24088149

rusty.okane@wickphillips.com

Catherine A. Curtis, Tex. Bar No. 24095708

catherine.curtis@wickphillips.com

WICK PHILLIPS GOULD & MARTIN, LLP

3131 McKinney Avenue, Suite 500

Dallas, TX 75204

(214) 692-6200

Counsel for Plan Administrator

/s/ Greg C. Noschese

Greg C. Noschese, Tex. Bar No. 00797164

gnoschese@munsch.com

Courtney L. Sauer, Tex. Bar No. 24066026

csauer@munsch.com

Aynsley K. Young, Tex. Bar No. 24102674

ayoung@munsch.com

Brandon M. Stendara, Tex. Bar No. 24121148

bstendara@munsch.com

MUNSCH HARDT KOPF & HARR, PC

500 N. Akard Street, Suite 3800

Dallas, TX 75204

(214) 855-7500

Counsel for Defendants

/s/ Jennifer A. Lloyd

Jennifer A. Lloyd, Tex. Bar No. 2401305

jlloyd@millerlloyd.com

MILLER LLOYD, P.C.

500 West 5th Street, Suite 700

Austin, TX 78701

(512) 694-5578

- and -

Robert W. Brownlie, CA. Bar No. 138793

robert.brownlie@brownliehansen.com

BROWNLIE HANSEN, LLP

10920 Via Frontera, Suite 550

San Diego, CA 92127

(858) 357-8001

***Counsel for Plaintiff James V. Parziale,
Trustee of the Parziale Family Trust,
derivatively on behalf of NP Skyloft DST***

/s/ D. Douglas Brothers

D. Douglas Brothers, Tex. Bar No. 03084500

dbrothers@gbkh.com

GEORGE BROTHERS KINCAID &
HORTON, LLP

114 West 7th Street, Suite 1100

Austin, TX 78701

(512) 495-1400

***Counsel for Plaintiff Schiffman, et al,
individually and derivatively on behalf of NP
Skyloft DST***

COPY

Filed In The District Court
of Travis County, Texas

APR 25 2022 JG

CAUSE NO. D-1-GN-21-000097

At 2:30 P.M.
Velva L. Price, District Clerk

NP SKYLOFT DST; NP SKYLOFT ST,
LLC; NP SKYLOFT JV, LLC; NP
SKYLOFT EQUITY, LLC; and
NELSON PARTNERS, LLC,
Plaintiffs,

v.

BURGUNDY 523 OFFSHORE FUND,
LTD.; AXONIC SPECIAL
OPPORTUNITIES SBL MASTER FUND,
LP; AXONIC CREDIT OPPORTUNITIES
MASTER FUND, LP; TCG SKYLOFT
OWNER, LLC; and DOES 1-10,
Defendants,

v.

NELSON PARTNERS, LLC; NP
SKYLOFT EQUITY, LLC; NELSON
BROTHERS PROPERTY
MANAGEMENT, INC d/b/a NELSON
PARTNERS PROPERTY
MANAGEMENT, INC. and PATRICK
NELSON, INDIVIDUALLY,
Counter-Defendants,

and

STACY R. SCHIFFMAN; ADELAIDA
MARTINEZ; WILLIAM D. AND SUSAN
M. MADDEN; A.H. ROOT BUILDING,
LLC; RYAN AND LISSA ONG LIVING
TRUST; BLACK TORTUGA GROUP,
LLC; ALLA INVESTMENTS, LLC; 2M &
3D LTD, TEXAS LIMITED
PARTNERSHIP; BUTT RENTALS, LLC;
HUGH G. DYKES III, TRUSTEE OF THE
DYKES FAMILY REVOCABLE TRUST
DATED JULY 7, 2004; SYDNEY CRISP
AND NICOLA CRISP; DANIEL M. BELL;
WILLIAM SMITH; PAUL TESSIER, CO-
TRUSTEE, ANNE T. TESSIER FAMILY

IN THE DISTRICT COURT

OF TRAVIS COUNTY, TEXAS

261st JUDICIAL DISTRICT

TRUST; DONNA DEKKER, TRUSTEE
OF THE DEKKER-ROBERTSON
FAMILY TRUST; HARRY V. AND
JOANNE P. HANSEN, TRUSTEES OF
THE HANSEN FAMILY TRUST,
LAWRENCE K. SAMUELS AND JANE
HEIDER, TRUSTEES OF THE HEIDER
SAMUELS FAMILY TRUST DATED
JUNE 29, 2007; AND JOHN C. POLK and
JANICE C. POLK,

*Intervenors, Individually and
Derivatively on behalf of
Nominal Intervenor,
NP SKYLOFT DST,*

v.

NP SKYLOFT IB, LLC
ACO SKYLOFT MANAGER, LLC;
AXONIC CAPITAL, LLC, AND AXONIC
CREDIT OPPORTUNITIES MASTER
FUND, LP,

Third Party Defendants,

v.

JAMES V. PARZIALE, Trustee of THE
PARZIALE FAMILY TRUST derivatively
on behalf of NP SKYLOFT DST,

Intervenor,

v.

CLAYTON DEGIACINTO,

Third-Party Defendant.

AGREED TEMPORARY INJUNCTION

On March 1, 2022, after notice to all parties, the Court held an evidentiary hearing on Schiffman Intervenors' Application for Temporary Restraining Order. Based on the pleadings, the sworn testimony, and the exhibits received by the Court, the Court concluded that a temporary restraining order was warranted. The Temporary Restraining Order was signed by the

Court on February 16, 2022, and the \$10,000.00 bond deposited by the Schiffman Intervenors for the Temporary Restraining Order remained on deposit in the registry of the Court as bond for the Temporary Restraining Order.

The Schiffman Intervenors, Intervenor Parziale (collectively, "Intervenors"), and the Nelson Parties have notified the Court that they have executed a Stipulation and Plan of Liquidation ("the Liquidation Plan"). The Liquidation Plan is conditioned, in part, on the Court's entry of an Agreed Temporary Injunction which enjoins the Nelson Parties from certain actions in violation of the terms of the Liquidation Plan and reduces the amount of required bond from \$10,000.00 to \$500.00. The Nelson Parties have advised the Court that (1) they do not oppose the entry of this Agreed Temporary Injunction; (2) after consultation with their counsel, they consent to the entry of this Agreed Temporary Injunction; and (3) they waive all objections to the Court's entry of the Agreed Temporary Injunction Order in the form below.

In order to preserve the status quo and implement the Court's oversight and supervision of the Liquidation Plan, Intervenors seek and Patrick Nelson consents that he will not, directly or indirectly, (a) transfer, or cause any entity under his control to assign, encumber or transfer any beneficial interests in any of the properties listed in the sealed Exhibit A, which is attached to a sealed copy of this Order, which Order and Exhibit A shall remain under seal subject to further order of this Court; (b) assign or transfer control of any of the properties listed in the sealed Exhibit A to any person or entity, except as authorized by the Plan of Liquidation or expressed approval of this Court; and (c) take any action or assist any other party to take any action in violation of the terms of the Plan of Liquidation.

1. Reasons for the Issuance of an Injunction: Intervenor, at the hearing and in their Fourth Amended Plea in Intervention and Application for Temporary Restraining Order, presented evidence of the following:

- (i) Schiffman Intervenor, and other similarly situated Investors, invested a total of \$74,515,768.42, as a result of an offering sponsored by the Nelson Parties in connection with the Skyloft Property.
- (ii) Most of the Investors' funds were transferred immediately in a Skyloft "Sources and Uses" account, the funds were then disbursed, in large measure, to a Nelson Partners, LLC account.
- (iii) Patrick Nelson was a signatory on the relevant Skyloft investment accounts and had authority to direct transfers out of those accounts.

2. At the hearing for preliminary approval of the Liquidation Plan, Patrick Nelson advised the Court that he does not contest the evidence presented at the hearing and in their Fourth Amended Plea in Intervention and Application for Temporary Restraining Order listed in paragraph 1 above.

3. Based on the evidence presented and Patrick Nelson's consent and waiver of objection, the Court finds that Intervenor have established probable injury. The evidence supports a finding that the harm to Intervenor is imminent, and that Intervenor will suffer irreparable injury if the injunction does not issue. The Court further finds that Intervenor would have no adequate remedy at law if the injunction is not granted. Intervenor will be further harmed if Patrick Nelson is not enjoined and restrained as set forth herein.

4. The Injunction: IT IS ORDERED that Patrick Nelson, his agents, servants, employees, officers, and assigns are hereby enjoined from directly or indirectly, (a) transferring,

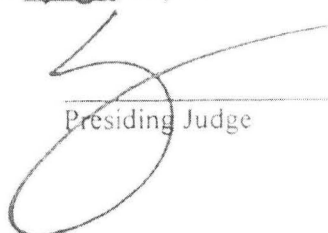
~~or causing any entity under his control from assigning, encumbering or transferring any~~
beneficial interests in any of the properties listed in the sealed Exhibit A, which is attached to a sealed copy of this Order, which Order and Exhibit A shall remain under seal subject to further order of this Court; (b) assigning or transferring control of any of the properties listed in the sealed Exhibit A to any person or entity, except as authorized by the Plan of Liquidation or prior expressed approval of this Court; and (c) taking any action or assist any other party in taking any action in violation of the terms of the Plan of Liquidation..

5. Trial: IT IS FURTHER ORDERED that trial on the merits of this case be set for bench trial before this Court on October 23, 2023 at 9:00 a.m. This temporary injunction shall remain in effect until final judgment in this cause is entered by this Court.

6. Bond: IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the bond posted with respect to the Temporary Restraining Order in this case shall be reduced from \$10,000.00 to \$500.00, which amount shall serve as sufficient bond for this order. The Court further orders the clerk of this court to refund the \$9,500.00 balance of the bond to Counsel for the Intervenors.

7. The clerk shall issue a temporary injunction in conformity with the law and the terms of this order.

SIGNED on April 25, 2022, at 9:36 Am.



Presiding Judge

APPROVED AS TO FORM AND SUBSTANCE

/s/ D. Douglas Brothers

D. Douglas Brothers
GEORGE BROTHERS KINCAID & HORTON L.L.P.

1100 Norwood Tower

114 West 7th Street

Austin, TX 78701

dbrothers@gbkh.com

(512) 495-1400

(512) 499-0094 (facsimile)

*Attorneys for Intervenors, Individually and Derivatively on behalf of Nominal Intervenor,
NP SKYLOFT DST*

/s/ Greg C. Noschese

Greg C. Noschese

James D. Ray, III

Courtney L. Sauer

Munsch Hardt Kopf & Harr, PC

Hartland Plaza

1717 West 6th Street, Suite 250

Austin, Texas 78703-4777

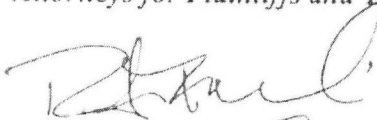
(512) 391-6100 Telephone

gnoschese@munsch.com

jray@munsch.com

csauer@munsch.com

Attorneys for Plaintiffs and Third-Party Defendant NP Skyloft IB, LLC



Robert W. Brocanti

Brocanti Hansen LLP

10920 Via Fraterna Suite 550

San Diego, CA 92127

☎ 858-357-8001

robert.brocanti@brocanti-hansen.com

Attorneys for Intervenors Particular